



nationale ombudsman

Report

An investigation into a raid on a private residence by the Dutch Caribbean Police Force (KPCN)

Decision

On the basis of the investigation, the National Ombudsman refrains from issuing a decision on the complaint made against the Dutch Caribbean Police Force on Bonaire.

What is the complaint?

The complaint concerns the way in which officers of the Dutch Caribbean Police Force (Korps Politie Caribisch Nederland, hereafter referred to as the KPCN) acted upon entering the complainant's home on 8 July 2016. The complainant states that the officers shone bright lights in his eyes, punched him so hard in the face that he lost consciousness, left him lying naked on the floor for a long time with a hood over his head and pulled him up by the handcuffs.

In addition, the complainant states that, after entering his home, the KPCN officers did not make it clear, or made it insufficiently clear, that they were police officers, as a result of which the complainant was under the impression for an hour and a half that he was the victim of a robbery.

What preceded the complaint?

The Royal Netherlands Marechaussee (Koninklijke Marechaussee, hereafter referred to as KMar) received information from the Criminal Intelligence Unit about a possible stash of drugs and firearms at a residential property on Bonaire. KMar responded to this information by launching an investigation, as part of which the public prosecutor granted permission to enter the house in question. Because the information made reference to the possible presence of firearms on the premises, the KPCN was asked to deploy its Special Assignments Team (Groep Bijzondere Opdrachten, GBO) to enter the property. The suspected possession of drugs and firearms centred on two people. In addition to these two individuals, the complainant, his partner and his partner's cousin were also present in the house at the time of the raid.

The raid took place on 8 July 2016. The members of the Special Assignments Team were the first to enter the house with the aim of securing the scene and bringing those present under control. Those present were brought under control and taken outside onto the veranda until the public prosecutor arrived and KMar was able to start searching the house.

What was the original complaint?

The raid had a substantial impact on the complainant, his partner and his partner's cousin. The complainant states that excessive violence was used during the raid. For example, the complainant says he sustained a blow to the face which caused him to lose consciousness.

When he regained consciousness, he was lying on the floor, handcuffed and blindfolded. He says he lay on the floor for an hour and a half before being pulled upright in a way that caused him pain. All this time, the complainant, his partner and his partner's cousin were convinced that they were the victims of an armed robbery.

Due to the impact the raid had on the complainant, his partner and his partner's cousin, he went to the police station five months after it took place to report the police officers involved for assault. No police report was drawn up, but the complainant was given the opportunity to file a complaint and opted to make use of this opportunity.

On 8 December 2016, the complainant filed a complaint with the KPCN about the force used during the raid on the house. He described the impact that the raid had on him as well. The complainant also wanted to know the reason for the raid and why so much force was used. In addition, he requested access to the official reports on the raid.

What was the response to the complaint?

On 28 February 2017, the KPCN responded in writing to the complaint. The response was issued in consultation with the Royal Netherlands Marechaussee (KMar) and the Public Prosecutions Service (PPS) because both organisations had also played a role during the raid. The KPCN informed the complainant that, in response to information received from the Criminal Intelligence Unit, an investigation had been launched, led by the PPS. The investigation was conducted by KMar with the support of the KPCN. The KPCN writes that, while a raid is bound to have a dramatic impact on those involved, entering a suspected crime scene in order to conduct a search is also a risky undertaking for the law enforcement services. For this reason, standard procedures are followed which combine safety with effective action. The complainant's home was entered by the Special Assignments Team (hereafter referred to as the SA Team), a unit specially trained to

carry out this type of operation as safely as possible. The KPCN also writes that the property was entered in compliance with the Opium Act (BES Islands) and the rules that govern the entry of a home. The deployment of the SA Team was authorised by the chief public prosecutor and the chief of police. In its response to the complaint, the KPCN states that the SA Team shouted 'police, police' in a loud voice when entering the house. The SA Team found a man in the kitchen and when the man did not obey the Team's order to kneel down, force was used to bring him to the ground. A second person present in the house was woken up and told that he was dealing with the police.

A team leader from KMar was in charge of the search and the commander of the SA Team was in charge of entering the house. The KPCN writes that the search leader identified himself to the complainant as the assistant public prosecutor. Furthermore, the KPCN states that the complainant was not identified as a suspect in the investigation and was not prosecuted. The KPCN ends its response by informing the complainant that he can submit a request to KMar for camera footage of the raid. The KPCN does not explicitly state whether it regards the complaint to be founded or unfounded.

What prompted the complaint to the National Ombudsman?

The complainant stated that he disagreed with the version of events given in the KPCN's response. For example, the KPCN's response only mentions the complainant's partner and his partner's cousin as being present, and makes no mention of the complainant himself. The complainant noted that, according to the KPCN's response, the responsibility for entering the house lay with the commander of the SA Team. However, the complainant argued that final responsibility for the raid lies with the examining magistrate and/or the public prosecutor. The complainant was also surprised by the KPCN's written assertion that standard procedures were followed during the raid to achieve a balance between safety and effective action. The complainant viewed this as an attempt by the KPCN to justify the abuse inflicted on him, his partner and his partner's cousin.

The complainant asked the National Ombudsman to obtain clarification of the actions of the police officers concerned during the raid on the house. His request centred on the way in which he, his partner and his partner's cousin were treated during the search and whether such action was justifiable. The complainant also noted that it took the assistant public prosecutor an hour and a half to arrive at the house. By then, the search had been going on for quite some time. The complainant observed that the SA Team was only authorised to secure the house and was not allowed to search it. He went on to add that as soon as the SA Team declared the house to be safe, the police should have uncuffed the people found in the house, all of whom had their hands cuffed painfully behind their backs.

What did the National Ombudsman investigate?

The National Ombudsman asked the Minister of Justice and Security, the government department responsible for the KPCN, to respond to the complaints and to state its position on them. The National Ombudsman also made a number of inquiries based on the issues raised by the complainant. For example, the National Ombudsman wanted to know the reasons for deploying an SA Team in this case and whether it was standard procedure to deploy such a team when entering a home on Bonaire. The National Ombudsman also asked a number of questions about the actions taken by the SA Team. Lastly, the National Ombudsman wanted to know how the SA Team informed the people in the house that they were police officers.

The house that formed the focus of the raid was guarded by security cameras. The video recorder on which this surveillance footage was stored was seized during the raid. Given that the raid was probably captured by the security camera, the National Ombudsman, at a preliminary stage of the investigation, asked KMar to secure this footage and provide a copy. It transpired that this footage had been removed, and that no copy could therefore be handed over. The National Ombudsman wanted more information on the removal of the footage and decided to expand its investigation to include KMar. The Minister of Defence, under whose responsibility KMar falls, was asked to confirm whether the footage had indeed been removed from the confiscated camera and to provide reasons why this was done. The National Ombudsman also asked KMar about its report on the search.

How did the Minister of Justice and Security respond?

In his response, the Minister pointed out that a police raid on a home is an intimidating experience for those present. This is especially so when the raid is carried out by an SA Team. With this in mind, the Minister noted that careful deliberation must therefore precede any deployment of such a team. The Minister also confirmed that powerful lights were used when entering the building and said he could not rule out that these were shone in the complainant's eyes for a short time. The Minister considered this to be "an unfortunate consequence of the standard procedure followed by the SA Team when they enter a home."

According to the Minister, the complainant and his partner resisted being brought under control and did not obey the instructions of the SA Team. As a result, physical action was taken against them. As far as the Ministry of Justice and Security was aware, this did not involve a blow to the face that would have rendered the complainant unconscious. Nor had the Minister received any information to the effect that the complainant was made to lie naked on the ground for any length of time. The complainant was given the opportunity to put on his underwear and was then required to sit outside on a chair, blindfolded and handcuffed, the Minister writes. He considered the use of handcuffs to be in proportion given the resistance encountered by the SA Team on entering the building.

After the SA Team declared the scene to have been secured, the assistant public prosecutor and his team went to the house to conduct the search. When he arrived on the scene, the assistant public prosecutor introduced himself to those involved and asked the SA Team to remove the blindfolds and handcuffs. The assistant public prosecutor then showed his ID, stated the reason for the raid and stated his willingness to answer questions insofar as the investigation permitted him to do so. Those present were asked to show proof of identity and then the search began. The Minister considered the complaint about the conduct of the police officers to be unfounded.

With regard to the complainant's statement that the team did not identify themselves sufficiently as police officers on entering the house, the Minister made the following remarks:

"The KPCN state that the word 'police' was shouted loudly in Dutch immediately upon entering the building. In addition, the bulletproof vests and shields used bear the word 'politie' and 'police' respectively. I therefore consider this part of the complaint to be unfounded."

In response to the complaint about the failure to send the complainant a report on the raid, the Minister stated that this report had been sent to the complainant on 11 July 2016. On this point, too, the Minister declared the complaint to be unfounded.

The Minister also stated his view that the applicant should have been given the opportunity to file a complaint at the time, that the process for handling complaints was in need of improvement and that any such improvement should involve the setting up of an independent complaints panel.

The Minister also expressed the view that in the letter dated 28 February 2017, which was sent to the complainant by the KPCN's chief of police, greater attention could have been paid to the impact that the SA Team's actions had on the complainant. The Minister stated that he was in talks with the KPCN about ways to improve the handling of complaints, and that steps in this direction had already been taken.

When asked by the National Ombudsman whether the SA Team is deployed as standard, the Minister stated that this is not the case. The team is only deployed to enter a residence when the facts and circumstances of the case give cause to do so.

In the complainant's case, this cause was the suspected presence of firearms in the house. This – along with the fact that the house was situated on a large plot of land which was unknown to the police and difficult to oversee – led the chief public prosecutor to authorise deployment of the SA Team.

How did the Minister of Defence respond?

In her response, the Minister of Defence confirmed that the video recorder, which was the property of one of the suspects, had been seized and that the hard disk was later destroyed. The reason for the seizure was to prevent the possible dissemination of footage of the raid. If the footage had been made available to third parties, there was an appreciable risk that members of the SA Team could be identified and that information on the tactics used to enter a building could have been revealed. When deploying an SA Team, it is essential that the identity of its members is secret and remains so.

After the seizure, an attempt was made to access the information on the recorder. This failed because the recorder was protected by a password that was not known to KMar. During an interrogation, the owner of the recorder was asked to provide the password but he refused. Three weeks after the raid, by order of the public prosecutor and in consultation with the chief of police, a decision was taken to destroy the recorder's hard disk and replace it with a new one. The hard disk had already been removed before the applicant filed his complaint with the KPCN and before the National Ombudsman requested access to the hard disk. Since the hard drive had been removed by order of the public prosecutor, the Ministry refrained from expressing an opinion about the complaint.

How did the complainant respond?

The complainant responded to the statement issued by the Minister of Justice and Security. He argued that a member of the SA Team should be aware that when bright lights are used during a raid, people are blinded by them. This made it impossible for the complainant and his partner to see that this was a police raid. Furthermore, the complainant stated that he was knocked unconscious without having given any provocation for such an action, adding that he had been given no medical attention. He said that a member of the SA Team saw that his face was covered in blood, but this was not recorded in the official report.

The complainant believed the Minister's information to be incorrect: he reiterated that he had been left lying blindfolded, handcuffed and naked on the ground for a considerable length of time. The complainant said he was not given the opportunity to get dressed. By the time he regained consciousness he had been handcuffed, and this made it impossible for him to put on any clothes.

Interview with the commander

On a visit to Bonaire, National Ombudsman staff interviewed the officer in command of the raid. The National Ombudsman asked the commander whether he agreed with the complainant's account of what had happened. The commander then gave his version of the events during the raid. The SA Team was deployed to make the situation in the house safe for the search, and the team brought the persons present in the house under control.

Since the duration of the raid and the force used were central to the complaint, the National Ombudsman also asked the commander whether force had been used during the raid and how long he thought the raid had lasted.

The commander replied that the complainant and his partner did not obey the instructions given by the members of the SA Team. The team then responded by wrestling the complainant and his partner to the ground, and handcuffing and blindfolding them. Once that had been done, all the occupants of the house were moved out onto the veranda. The commander said he was not aware of anyone being punched in the face. Nor were any injuries reported to the public prosecutor. The commander estimated that the raid took half an hour at most. Then the search began. He said it was not standard procedure for the SA Team to draw up a report after a raid has been carried out. For this reason, no report on this specific raid was made.

Additional questions

The National Ombudsman asked the chief of police whether it was true that he had referred to the camera footage in the letter dated 28 February 2017 in response to the complaint, although he knew that the footage had been removed. The National Ombudsman also asked for more information about the presence of the partner's cousin and about the layout of the premises. Because the complainant indicated that the property had been divided in two while the KPCN described it as a single building, the National Ombudsman asked, with reference to a floor plan provided by the complainant, where, according to the SA Team commander, the passage to the 'second house' was located.

The chief of police stated that he was not the one who authorised the removal of the footage. He said the decision to seize the recorder had been taken by KMar, and that subsequently the public prosecutor had authorised the replacement of the recorder's hard disk with a new hard disk. The old hard disk was destroyed by order of the prosecutor. The chief of police pointed out that he had not been involved in this investigation and did not know what had happened to the footage. It was for this reason the chief of police had referred the complainant to the chief public prosecutor in his letter about the complaint.

In answer to the question about the presence of the third person, the chief of police stated that he had made inquiries with the commander. The commander reported that he could not remember the whereabouts of this person at the time of the raid. In addition, the commander said that the partner's cousin had been nervous and that the SA Team had reassured him by informing him that it was a police raid. He was then put on the veranda.

In response to the questions about the floor plan of the building, the National Ombudsman was sent a number of photographs.

The National Ombudsman asked the complainant whether he had photographs of the injuries he sustained during the raid. The complainant submitted two photographs of his face, which showed a graze on his face and an injury to his lip.

What is the decision of the National Ombudsman?

It is evident that the parties involved have differing views of what happened during the raid on the house. For example, the complainant stated that he was left lying unconscious on the floor for an hour and a half, whereas the KPCN said this was not the case. The complainant was under the impression that he was the victim of a robbery, whereas the KPCN said the SA Team called 'police, police' in Dutch on entering the building. Furthermore, the KPCN does not acknowledge the blow to the face that the complainant says he received in the course of the raid. The camera footage stored on the video recorder was removed by order of the public prosecutor and the statement given about the raid submitted by the Minister of Justice and Security does not correspond to the account given by the complainant. It should also be noted that while the complainant stated that the property was divided into two different homes, the KPCN spoke of a single home in which all those involved were found.

It cannot be ruled out that the complainant's account of the raid is an accurate reflection of what actually took place. However, because the versions of events during the raid differ so significantly, the National Ombudsman is unable to establish the exact details of what occurred during the raid. In addition, the nature of the contradictions is such that it cannot be argued that one version is more plausible than the other. The National Ombudsman therefore has no choice but to refrain from giving a decision on the actual course of events during the raid.

The National Ombudsman does, however, see reason to express an official view of the reporting carried out by KMar.

The National Ombudsman assessed KMar's reporting in relation to the requirement of professionalism.

The requirement of professionalism means that it is the government's duty to ensure that its employees work in accordance with professional standards. Citizens have a right to expect a high level of expertise from them. Among other things, this means that a raid should always be the subject of a full official report. Section 163 of the Code of Criminal Procedure for the BES Islands lays down the requirements with which an official report must comply.

Section 163 states that a person who has entered a home without the explicit permission of the occupant shall draw up a written report of this entry under oath of office or solemn affirmation. Any such report must include:

- a.** the officer's name and capacity;
- b.** the date of the authorisation and the name and capacity of the person who gave the authorisation to enter;
- c.** the legal provisions that provide a basis for entering the home and the purpose of entering the home;
- d.** the location of the home and the name of the resident;
- e.** the method of entry and the time at which the home was entered and left;
- f.** what actions were taken or what otherwise occurred in the home, the number of persons involved and the capacity in which they were involved, the names of the persons in the home who were deprived of their liberty and any objects seized in the home.

g. where applicable, the reasons why and the manner in which the provisions of Section 155, subsection four or Section 162, subsection two were applied.

The official report drawn up by KMar does not meet the requirements of Section 163 of the Code of Criminal Procedure for the BES Islands. For example, KMar's official report does not state what took place during the SA Team's raid, the state in which the persons in the house were found, whether they were handcuffed and many other relevant details. Due to the fact that no full official report was drawn up, the facts can no longer be established. This restricts the complainant's position in the complaints procedure and makes it impossible for the National Ombudsman to investigate the complaint. By neglecting this duty, KMar has acted contrary to the requirement of professionalism. The National Ombudsman views this as grounds for making a recommendation.

Conclusion

The National Ombudsman refrains from making a decision on the complaint about the raid by the KPCN on a house on Bonaire. And it states the official view that KMar acted contrary to the requirement of professionalism.

Recommendation

The National Ombudsman advises KMar to draw up a full report after each and every raid or entry into a home, in compliance with the requirements set out in Section 163 of the Code of Criminal Procedure for the BES Islands.

The National Ombudsman,

Reinier van Zutphen