

# Country Report: Netherlands



2016  
Update



## Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2016.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary

<b>Wet COA</b>	Act of the Agency of Reception   Wet Centraal Opvang Orgaan
<b>Rest and Preparation period</b>	Lasting six days, the period allows the asylum seeker to rest and the authorities to start preliminary investigations   Rust- en Voorbereidingstijd
<b>AC</b>	Application Centre   Aanmeldcentrum
<b>AIVD</b>	Dutch Intelligence Service
<b>AZC</b>	Centre for Asylum Seekers   Asielzoekerscentrum
<b>COA</b>	Central Agency for the Reception of Asylum Seekers   Centraal Orgaan opvang Asielzoekers
<b>COL</b>	Central Reception Centre   Centraal Opvanglocatie,
<b>CTIVD</b>	Committee of the Dutch Intelligence Service
<b>DT&amp;V</b>	Repatriation and Departure Service of the Ministry of Security and Justice   Dienst Terugkeer en Vertrek
<b>CJEU</b>	Court of Justice of the European Union
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>GL</b>	Family Housing   Gezinslocatie
<b>IND</b>	Immigration and Naturalisation Service   Immigratie- en Naturalisatiedienst
<b>KMar</b>	Royal Military Police   Koninklijke Marechaussee
<b>LGBTI</b>	Lesbian, gay, bisexual, transsexual and intersex
<b>VBL</b>	Freedom restrictive location   Vrijheidsbeperkende locatie

## Statistics

### Overview of statistical practice

The most relevant statistics are made available on a monthly basis by the IND: IND Asylum Trends.

**Table 1: (First time) applications and granting of protection status at first instance: 2016**

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
<b>Total</b>	20,700	12,245	9,470	10,705	365	8,065	33.1%	37.4%	1.3%	28.2%
Breakdown by countries of origin of the total numbers										
Syria	2,158	1,200	6,735	6,130	30	395	50.7%	46.1%	0.2%	3%
Albania	1,664	100	0	0	0	795	0%	0%	0%	100%
Eritrea	1,497	680	40	3,060	20	125	1.2%	94.4%	0.6%	3.8%
Morocco	1,271	425	10	0	0	240	0.4%	0%	0%	99.6%
Afghanistan	1,026	1,950	140	340	100	1,090	8.4%	20.4%	6%	65.2%
Algeria	980	375	0	0	0	160	0%	0%	0%	100%
Serbia	938	50	0	0	0	560	0%	0%	0%	100%
Iraq	888	1,750	135	800	45	1,050	6.6%	39.4%	2.2%	51.8%
Iran	884	1,505	355	25	50	395	43%	3%	6.1%	47.9%
Georgia	578	255	5	0	0	135	3.6%	0%	0%	96.4%

Source: IND; Eurostat (rounded).

**Gender/age breakdown of the total number of applicants: 2016**

	Number	Percentage
<b>Total number of first time applicants*</b>	20,700	-
Men	14,315	69.1%
Women	6,380	30.9%
Children	6,175	11.7%
Unaccompanied children	1,707	8.2%

Source: IND; Eurostat.

**Comparison between first instance and appeal decision rates 2016**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>				
Positive decisions				
1. <i>Refugee status</i>				
2. <i>Subsidiary protection</i>				
3. <i>Humanitarian protection</i>				
Negative decisions				

Source: Eurostat.



## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions and detention

Title in English	Original Title (NL)	Abbreviation	Web Link
General Administrative Law Act	Algemene Wet Bestuursrecht (AWB)	GALA	<a href="http://bit.ly/1Hlpzv1">http://bit.ly/1Hlpzv1</a> (EN)
2000 Aliens Act	Vreemdelingenwet 2000 (Vw 2000)	2000 AA	<a href="http://bit.ly/1RPkp8j">http://bit.ly/1RPkp8j</a> (NL) <a href="http://bit.ly/1CPkXEI">http://bit.ly/1CPkXEI</a> (EN)
Act of the Agency of Reception	Wet Centraal Opvang Orgaan (Wet COA)	AAR	<a href="http://bit.ly/1KjQoJS">http://bit.ly/1KjQoJS</a> (NL)

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

Title in English	Original Title (NL)	Abbreviation	Web Link
2000 Aliens Decree	Vreemdelingenbesluit 2000 (Vb 2000)	2000 AD	<a href="http://bit.ly/1Kkkv0N">http://bit.ly/1Kkkv0N</a> (NL)
2000 Aliens Circular	Vreemdelingen-circulaire 2000 (Vc 2000)	2000 AC	<a href="http://bit.ly/1Jx3f5C">http://bit.ly/1Jx3f5C</a> (NL)
2000 Aliens Regulation	Voorschrift Vreemdelingen 2000 (Vv 2000)	2000 AR	<a href="http://bit.ly/1HQDvkn">http://bit.ly/1HQDvkn</a> (NL)
2005 Regulation on benefits for asylum seekers and other categories of foreigners	Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 (Rva 2005)	2005 RBA	<a href="http://bit.ly/1HQDugl">http://bit.ly/1HQDugl</a> (NL)
Border Accommodation Regime Regulation	Reglement Regime Grenslogies (Rrg)	BRR	<a href="http://bit.ly/1g40K3N">http://bit.ly/1g40K3N</a> (NL)
Aliens Labour Act	Wet Arbeid Vreemdelingen (Wav)	ALA	<a href="http://bit.ly/1JeYnWU">http://bit.ly/1JeYnWU</a> (NL)

## Overview of the main changes since the previous report update

The report was previously updated in **November 2015**.

### *Asylum procedure*

- ❖ **Introduction five track procedure:** In the Netherlands the Secretary of State introduced the so called “Five Tracks” procedure on 1 March 2016. Each track represents a specific procedure. In practice tracks 3 and 5 are not yet applied. New is also track 2 in which applications from asylum seekers from 'safe countries of origin' and asylum seekers who have already been granted international protection in another EU Member State, are dealt with.
- ❖ **Time limits:** The time limits as mentioned in the recast Article 31(3) Asylum Procedures Directive (APD) have been implemented in national legislation in Article 42 Aliens Act. Since the 11th of February 2016, the government in general extended the statutory time-limit according to Article 42, paragraph 4, sub b, of the Aliens Act (similar to Article 31, paragraph 3, sub b, of the recast Asylum Procedures Directive) with a maximum period of 9 months by publishing *Wijzigingsbesluit (WBV) 2016/3*. This is due to the increased number of asylum applications in the Netherlands in 2015. In its judgment of 8 December 2016, the Council of State ruled that the State Secretary was able to extend the asylum procedure in general by publishing *WBV 2016/3*. According to the Council of State, the State Secretary did not and does not have to inform each asylum seeker individually by letter/written notice about an extension of the time-limit on this ground.
- ❖ **Intensity of judicial review:** The intensity of the judicial review conducted by regional courts (administrative judges) has changed in 2016. According to the Council of State in its judgment of 13 April 2016, Article 46, paragraph 3, of the Asylum Procedures Directive does not impose a general intensity of judicial review under administrative law in asylum cases in general and thus also not in cases regarding the credibility of an asylum seeker's statements in particular. In the Dutch context the regional court is not allowed to examine the overall credibility of the statements of the asylum seeker intensively (full). This is, according to the Council of State, due to the fact that the IND has specific expertise to verify statements of the asylum seeker and is therefore in general in a better position to examine the credibility of the claim. An administrative judge can never substitute the authorities' judgment on the credibility of the asylum seeker's statements by his own judgment on the credibility. Where contradictory or inconsistent statements are made by the asylum seeker, the review can, however, be more intensive (this is different than it used to be). The other elements - not the credibility of the statements - for assessing whether the asylum seeker qualifies for international protection (*de zwaarwegendheid*) have always been reviewed intensively by regional courts.

### *Reception conditions*

- ❖ **Return policy:** Throughout 2016, the number of asylum seekers in reception centres in the Netherlands has decreased. As a result, the use of emergency shelters has been abandoned. Return centers (*terugkeerlocaties*, TL) are also not being used anymore. Rejected asylum seekers that have a right to reception now stay at a regular reception centre (*asielzoekerscentrum*, AZC). If the voluntary return period has ended, they can stay at a freedom restricting location (*vrijheidsbeperkende locatie*, VBL). When this report was last updated, the discussion on whether the government is obliged to provide reception for aliens without a residence permit was still ongoing. The discussion is now settled; the government is allowed to require rejected asylum seekers to participate in their return procedure as a condition to stay in a VBL, although it should be possible to deviate from that requirement in case of exceptional circumstances.
- ❖ **UASC:** the reception of unaccompanied minors has altered. In sum, it can be concluded that responsibility is shifting from the COA to Nidos, the guardianship agency.

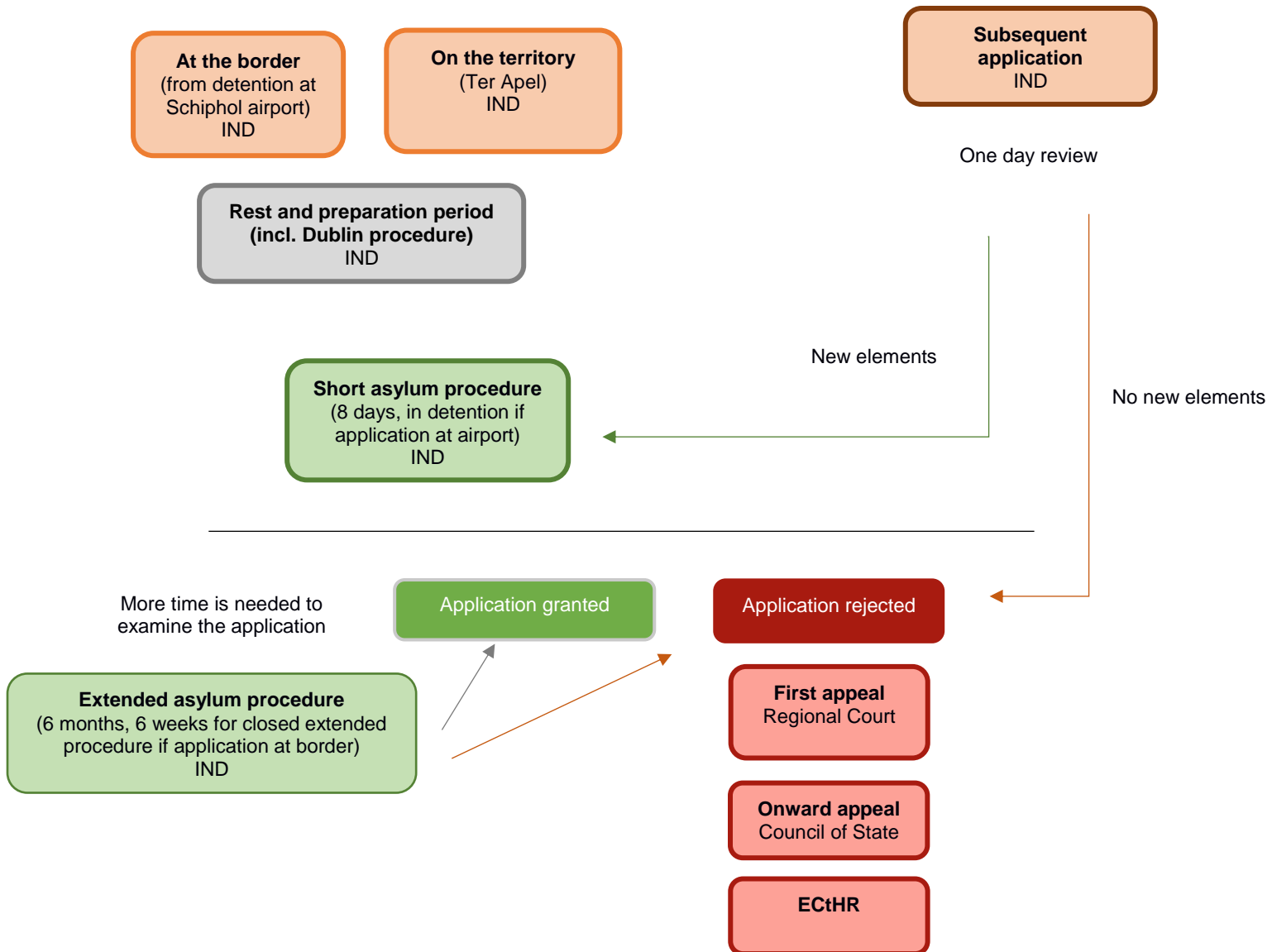
## *Detention*

- ❖ **No prolonged border procedure:** This means that asylum seekers who have not received a decision within four weeks after applying for asylum at the border, will in principle not be detained during the rest of their asylum procedure.
- ❖ **More detention grounds:** Before the last update of this report, differentiation existed only between detention on the territory and detention at the border. Now, there is a legal basis for the detention of aliens at the border, for the detention of aliens who have made an asylum application at the border, of border detention of aliens whose application falls under the responsibility of another member state (Dublin), of aliens on the territory, of aliens who have made an asylum application.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |  |
|---|---|--|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Prioritised examination: <sup>1</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Fast-track processing: <sup>2</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:              | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Border procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure: <sup>3</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other: Extended procedure             |   |  |

Are any of the procedures that are foreseen in the law, not being applied in practice?  Yes  No

## 3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority in EN	Competent authority in original language (NL)
Registration at the border	Royal Military Police	Koninklijke Marechaussee
Registration on the territory	Aliens Police	Vreemdelingenpolitie
Application at the border	Immigration and Naturalisation Service (INS)	Immigratie en Naturalisatiedienst (IND)
Application on the territory	Immigration and Naturalisation Service (INS)	Immigratie en Naturalisatiedienst (IND)
Dublin (responsibility assessment)	Immigration and Naturalisation Service (INS)	Immigratie en Naturalisatiedienst (IND)
Refugee status determination	Immigration and Naturalisation Service (INS)	Immigratie en Naturalisatiedienst (IND)
Appeal procedures <ul style="list-style-type: none"> <li>• First appeal</li> <li>• Second (onward) appeal</li> </ul>	<ul style="list-style-type: none"> <li>• Regional Court</li> <li>• Council of State</li> </ul>	<ul style="list-style-type: none"> <li>• Rechtbank</li> <li>• Afdeling Bestuursrechtspraak Raad van State (ABRvS)</li> </ul>
Subsequent application (admissibility)	<ul style="list-style-type: none"> <li>• Regional Court</li> <li>• Council of State</li> </ul>	<ul style="list-style-type: none"> <li>• Rechtbank</li> <li>• Afdeling Bestuursrechtspraak Raad van State (ABRvS)</li> </ul>
Repatriation and return	Service Return and Departure	Dienst Terugkeer en Vertrek (DT&V)

<sup>1</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

<sup>2</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>3</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

#### 4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Immigration and Naturalisation Service (INS)	Not available	Ministry of Security and Justice	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

#### 5. Short overview of the asylum procedure

Expressing the wish to apply for asylum does not mean that the request for asylum has officially been lodged. Asylum applications can be lodged at the border or on Dutch territory. Any person arriving in the Netherlands and wishing to apply for asylum must report to the Immigration and Naturalisation Service (hereafter IND). Asylum seekers from a non-Schengen country, arriving in the Netherlands by plane or boat, are refused entry to the Netherlands and are detained. In this case, the asylum seeker needs to apply for asylum immediately before crossing the Dutch (Schengen) external border, at the Application Centre at **Schiphol Amsterdam airport** (Aanmeldcentrum Schiphol, **ACS**).

When an asylum seeker enters the Netherlands by land, or is already present on the territory, he has to report immediately at the Central Reception Centre (Centraal Opvanglocatie, **COL**) in **Ter Apel** (nearby **Groningen**, north-east of the Netherlands), where registration takes place (fingerprints, travel and identity documents are examined). After registration activities in the COL have been concluded the asylum seeker is transferred to a Process Reception Centre (Proces Opvanglocatie, **POL**). Third country nationals (TCNs) who are detained in an aliens' detention centre can apply for asylum at the detention centre.

The application/registration procedure in the COL takes three days. During this procedure the asylum seeker has to complete a form, his fingerprints are taken and he is interviewed regarding his identity, family members, travel route and profession. Data from EURODAC and EU-VIS are consulted. From all this information the IND could conclude that, according to the Dublin Regulation, another Member State is responsible for examining the asylum application. In case of a 'match' in Eurodac the IND can already submit a request to another Member State to assume responsibility for the asylum application under the Dublin Regulation (Dublin claim).

Depending on the procedure ('track') in which the asylum application is assessed the asylum seeker is granted a rest and preparation period starting from the moment the asylum application is formally lodged by signing an application form.<sup>4</sup> The rest and preparation period grants first time asylum applicants some days to cope with the stress of fleeing their country of origin and the journey to the Netherlands.<sup>5</sup>

The rest and preparation period takes at least six days. On the one hand, the rest and preparation period is designed to offer the asylum seeker some time to rest, on the other hand, it is designed to provide the time needed for undertaking several preparatory actions and investigations. The main activities during the rest and preparation period are investigation of documents conducted by the Royal Military Police (Koninklijke Marechaussee, **KMar**), a medical examination by FMMU<sup>6</sup> (which is an independent agency,

<sup>4</sup> When it is assumed that the asylum application will be rejected in accordance with the Dublin Regulation (Article 3.109c Aliens Decree (*Vreemdelingenbesluit*)) or due the fact that the safe country of origin concept applies or the asylum seeker already receives international protection in a Member State of the European Union (Article 3.109ca Aliens Decree) the asylum seeker will not have a rest and preparation period, including the medical examination by FMMU.

<sup>5</sup> Article 3.109 Aliens Decree.

<sup>6</sup> See the website FMMU, available at: <http://bit.ly/1STLNPh>.

hired by the IND to provide medical advice on whether an asylum seeker is physically and psychologically capable to be interviewed by the IND) counselling by the Dutch Council for Refugees (VluchtelingenWerk Nederland) and substantive preparation for the asylum procedure by the lawyer. During the rest- and preparation period the IND continues its investigation whether, according to the Dublin Regulation, another Member State may be responsible for examining the asylum request. In case a 'match' is found in Eurodac the IND can already submit a request, during the rest and preparation period, to another Member state to assume responsibility for the asylum application under the Dublin Regulation (Dublin claim).<sup>7</sup>

After the rest and preparation period, the actual asylum procedure starts. In first instance, all asylum seekers are channelled into the so-called standard/general asylum procedure (Algemene Asielprocedure, AA) which is, as a rule, designed to last eight working days (hereinafter called 'short asylum procedure'). The short asylum procedure may be extended by 6, 8 or 14 working days if more time is needed.

If it becomes clear on the fourth day of the short asylum procedure that the IND will not be able to take a well-founded decision on the asylum application within these eight days, the application is further investigated in the extended asylum procedure (Verlengde Asielprocedure, VA). In this extended asylum procedure the IND has to take a decision on the application within 6 months. This time limit can be extended by 9 months, and another 3 months.<sup>8</sup>

The short asylum procedure can be described as fast, but technically it is not an accelerated procedure. Every asylum application is initially examined in the short asylum procedure. Less complex and evident cases, such as requests for family reunification<sup>9</sup> and subsequent applications are mostly dealt with in the short asylum procedure. Positive as well as negative decisions can be taken in the short asylum procedure. The examination of more complex cases takes place in the extended asylum procedure<sup>10</sup> (the period for making a decision is then 6 months to a year).<sup>11</sup>

There is only one asylum status in the Netherlands. However, there are two different grounds on which this asylum status may be granted (besides family reunification). These two grounds are:<sup>12</sup>

- ❖ Refugee status (A-status); qualification as a refugee under Article 1A of the Geneva Convention, if there is a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.<sup>13</sup> (Article 29, first paragraph, under a, Aliens Act)
- ❖ Subsidiary protection (B-status) can be granted on three grounds; (1) death penalty or execution; (2) according to Article 3 of the European Convention on Human Rights and (3) Article 15(c) of the Qualification Directive. Also trauma suffered in the country of origin, as a result of which it is not reasonable to require the asylum seeker to return to his country of origin, falls within the scope of Article 29, first paragraph, under b, of the Aliens Act.<sup>14</sup>

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<sup>7</sup> The Repatriation and Departure Service of the Ministry of Security and Justice, available at <http://bit.ly/1PKtFY6>.

<sup>8</sup> See Article 42 (4) (5) Aliens Act.

<sup>9</sup> Article 29(1)(e) and (f) Aliens Act.

<sup>10</sup> Amnesty International & Vluchtelingenwerk Nederland, *Asielbarometer (Asylum barometer)*, 2011, 5, available at <http://bit.ly/1NWQ98k>.

<sup>11</sup> Article 29(1)(e) and (f) Aliens Act.

<sup>12</sup> Article 29 Aliens Act.

<sup>13</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189.

<sup>14</sup> The trauma policy used to have its own ground (Article 29 (1) (c) c Aliens Act) before January 1st 2014. Nowadays the policy is set out in 2000 Aliens Circular 2/3, sub: Previous confrontation with atrocities ("Eerdere confrontatie met wandaden") Former specific groups which qualified for a residence permit under the 'c-ground'(e.g. Unaccompanied Afghan women) are now eligible for international protection under Article

The IND must first examine whether an asylum seeker qualifies for refugee status, before examining whether the asylum seeker should be granted subsidiary protection. This means that an asylum seeker may only qualify for subsidiary protection in case he does not qualify as a refugee under Article 1A of the Geneva Convention. In case an asylum seeker is granted subsidiary protection, he cannot appeal in order to obtain refugee status.<sup>15</sup> This is because regardless of the ground on which the permit is granted, the asylum permit – entitles the status holder to the same rights regarding social security.

Asylum seekers whose application is rejected may appeal this decision at a regional court (Rechtbank). In the 'short' regular procedure this appeal should be submitted within one week after the negative decision. Depending on the ground for rejecting the asylum claim this appeal has suspensive effect or not. This means that the asylum seeker can be expelled before the court's decision. To prevent expulsion the legal representative (or in theory the asylum seeker) should request a provisional measure to suspend removal pending the appeal. This must be done immediately after the rejection in order to prevent possible expulsion from the Netherlands. After a rejection of the asylum request in the short regular procedure the asylum seeker is, as a rule, entitled to accommodation for a period of 4 weeks regardless whether he lodges an appeal and whether this appeal has suspensive effect due to a granted provisional measure.

An appeal against a negative decision in the extended procedure has suspensive effect and must be submitted within four weeks. The asylum seeker is entitled to accommodation during this appeal. Both the asylum seeker and the IND may lodge an appeal against the decision of the regional court to the Council of State (Afdeling Bestuursrechtspraak Raad van State, ABRvS). This procedure does not have suspensive effect, unless the Council of State issues a provisional measure. In case this provisional measure is denied by the Council of State, the asylum seeker is no longer entitled to accommodation.

The Council of State ruled in 2016 that a request for a provisional measure preventing expulsion during the appeal has to be granted if the asylum request is considered to be an arguable claim (as in Article 13 ECHR).<sup>16</sup>

As the abovementioned 'short procedure' is considered to be the standard procedure in the Netherlands, the Secretary of State introduced the so called "Five Tracks" policy on 1 March 2016.<sup>17</sup> Each track stands for a specific procedure.

**Track 1:** In this situation the IND is of the opinion that the Dublin Regulation is applicable on the asylum application. The application is assessed in a so called (separate) Dublin procedure.

**Track 2:** Applications from asylum seekers from 'safe countries of origin' or asylum seekers who already receive international protection in another Member State are assessed in this fast-track procedure. The IND finds that it is not likely that these asylum requests will be complied with. . The assessment of the application takes place in 8 steps (in practice in less than 8 days). The asylum seeker is not entitled to a rest and preparation period nor a medical examination by FMMU.

The steps entail the following:

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29 (1) sub b 2000 Alien Act Other groups, like westernized Afghan school girls, can attain a regular residence permit instead of a permit under Article 29 (1) sub 'c' as was the case before January 1st 2014.

<sup>15</sup> Council of State, 20010591481, Judgment of 28 March 2002.

<sup>16</sup> Council of State (Judge for provisional measures), 201609138/3/V2, Decision of 20 December 2016.

<sup>17</sup> Staatsblad 2016, 87 and WBV 2016/4.



1. *The registration of the asylum seeker with the IND takes place.*
2. *The asylum seeker fills in a form.*
3. *The identification/registration with the Aliens Police takes place.*
4. *The IND decides that the application will be assessed in 'track 2'.*
5. *The interview of the asylum seeker takes place.*
6. *The IND assesses the application and issues an intended decision (to reject the application).*
7. *With the help of his lawyer the asylum seeker has the opportunity to make adjustments and additions to his interview. The lawyer/ asylum seeker has the opportunity to lodge/make his view.*
8. *The IND issues a decision.*

The asylum seeker can lodge an appeal with the regional court against the decision.

**Track 3:** This procedure has not been applied yet. Applications of asylum seekers which are – in advance – considered likely to be granted will be assessed in this fast track procedure. For instance, applications for asylum by Eritreans and Syrians whose nationality is not in question could be assessed in track 3. Please see also page 20 of the latest report. Furthermore, this procedure is also linked to track 5.

**Track 4:** This procedure is the abovementioned standard asylum procedure of 8 days with the possibility to extend this time limit by f 6 days. In case the application cannot be thoroughly assessed within the standard/regular asylum procedure there is a possibility of assessing the application in the extended Procedure.

**Track 5:** This procedure is linked to track 3. Track 5 has not been applied yet. Asylum applications that could not be assessed in track 3, because of the fact that nationality/identity documents have not been submitted, are assessed in track 5.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No

There have been no reports or testimonies of people refused entry at the border and returned without examination of their protection needs in the Netherlands.

### 2. Registration of the asylum application

#### Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?  Yes  No

If an asylum seeker enters the Netherlands by land he has to apply at the COL, where the registration takes place. The IND is responsible for the registration of the asylum seeker. The Foreigners' Office (Vreemdelingenpolitie /AVIM) takes note of personal data such as name, date of birth and country of origin.

If an asylum seeker from a non-Schengen country has arrived in the Netherlands by plane or boat, the application for asylum is to be made *before* crossing the Dutch external (Schengen) border, at the Application Centre **Schiphol Airport** (AC). The Royal Military Police (KMar) is mainly responsible for the registration of those persons who apply for asylum at the international airport.<sup>18</sup> The KMar refuses the asylum seeker entry to the Netherlands and the asylum seeker will be detained.<sup>19</sup> Problems have been reported by asylum seekers, i.e. that the KMar did not recognise their claim for international protection as an asylum request.<sup>20</sup> However, no estimate is available of how often this occurs.

The IND takes care of the transfer of the asylum seeker to the AC, where further registration of the asylum application takes place. The AC is a closed centre. It sometimes happens that an application cannot be registered immediately, for instance when no interpreters are available. In this situation an asylum seeker can be detained at the Border Detention Centre (Grenshospitium).

If an asylum seeker is already on Dutch territory he is expected to express his wish for asylum to the authorities as soon as possible after arrival in the Netherlands, which is, according to jurisprudence, preferably within 48 hours.<sup>21</sup>

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance:     | 8 working days  |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2016:  | Not available   |

As mentioned in the section on [Overview of the Procedure](#), the asylum procedure is divided into a short asylum procedure and an extended asylum procedure. The assessment of each asylum application starts in the short asylum procedure. During this procedure the IND can decide to refer the case to the extended asylum procedure. Before the start of the actual asylum procedure the asylum seeker is granted a rest and preparation period in which several enquiries as well as medical examinations take place.

#### The short asylum procedure

A rejection of an asylum application in the short asylum procedure has to be issued within eight working days. In exceptional cases, this deadline may be extended by six days. These extensions are not frequent in practice. According to paragraph C1/2.3 of the Aliens Act Implementations guidelines C1/2.3, the IND is reticent regarding extension of the deadline of the short asylum procedure. Therefore, the

<sup>18</sup> Voordat jouw asielpcedure begint – AMV (Before your asylum procedure starts – UAM), July 2010, 2.

<sup>19</sup> Article 3(3) Aliens Act.

<sup>20</sup> Report by the Dutch National Ombudsman, 31 December 2002, available at: <http://bit.ly/1MkePoW>.

<sup>21</sup> Council of State, ABKort 1999,551, Judgment of 20 September 1999.

total length of the 'short' asylum procedure is 14, 16 or 22 days depending on the grounds for extending the short procedure.<sup>22</sup>

For a clear understanding of the short asylum procedure it is important to indicate what happens during these eight days. In short: on the odd days the asylum seeker has contact with the IND and on the even days with his legal advisor/counsellor:

<b>Day 1</b>	Start of the actual asylum procedure with first interview	On the day of the official lodging of the asylum application, the IND conducts the first interview with the asylum seeker to ascertain the asylum seekers' identity, nationality, and travel route from their country of origin to the Netherlands. The first interview does not concern the reasons for seeking asylum. A lawyer is automatically appointed from day 1.
<b>Day 2</b>	Review of the first interview and preparation of the second interview	The asylum seeker and the appointed lawyer review the first interview after which corrections and additions to the first interview may be submitted which happens generally due to interpretation problems, where a misunderstanding easily occurs. The second day also focuses on the preparation of the second interview.
<b>Day 3</b>	Second interview by the IND	In the second and more extensive interview, the asylum seeker is questioned by the IND about his reasons for seeking asylum.
<b>Day 4</b>	Review of the second interview and corrections and additions	The lawyer and the asylum seeker review the report on the day after the second interview. During this stage, the asylum seeker may submit any corrections and additions to the second interview.  After day 4, the IND makes an assessment of the asylum application. It may decide to grant asylum. If not, the IND chooses either to continue the examination in the short asylum procedure or to refer to the extended procedure.
<b>Day 5</b>	The intention to reject the asylum application	In case the IND decides to reject the asylum application it will issue a written intention ( <i>Voornemen</i> ). The intention to reject provides the grounds and reasons for a possible rejection.
<b>Day 6</b>	Submission of the view by the lawyer (Zienswijze)	After the IND has issued a written intention to reject the asylum application, the lawyer submits their view in writing with regards to the written intention on behalf of the asylum seeker.
<b>Day 7/8</b>	The decision of the IND (Beschikking)	After submission of the lawyer's view in writing, the IND may decide either to grant or refuse asylum. It may also still

<sup>22</sup> Article 3.110 Aliens Decree. An extension with six days is applied for instance in case an interpreter is not available or documents have to be analysed.

	decide to continue the examination of the asylum application in the extended asylum procedure.
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When the IND cannot assess the asylum claim and cannot make a decision within the time frame of the short asylum procedure the IND has to refer the case to the extended asylum procedure. A decision is taken by the IND on the basis of the information that stems from the first and second interviews, and information from official reports and other country information. A decision to reject the asylum application must be motivated and take into account the lawyer's view in writing.<sup>23</sup>

### **The extended asylum procedure**

In case the IND, after the second interview and the submission of corrections and additional information in the short asylum procedure, decides to continue examination of the asylum application in the extended asylum procedure, the asylum seeker is relocated from a POL to a centre for asylum seekers (Asielzoekerscentrum, AZC).

The asylum seeker and his lawyer are given four weeks to submit a viewpoint in writing in response to the intention of the IND to reject the asylum application.<sup>24</sup> The IND has to issue a new intention to reject the asylum application if it changes its grounds for rejecting the claim substantially.

If the IND is not able to decide on a request for asylum within the time frame of the short asylum procedure, the examination of the asylum application is referred to the extended asylum procedure.<sup>25</sup> There are no specific conditions under which the IND can refer a case to the extended asylum procedure, but in general the IND needs more time to investigate the identity of the asylum seeker or their reasons for seeking asylum. This reference cannot be appealed.

If an asylum application is examined in the extended asylum procedure the maximum time limit for making a decision is six months. According to Article 42, paragraph 4, of the Aliens Act (similar to Article 31 paragraph 3 of the Asylum Procedures Directive (APD)), this time limit can be prolonged by 9 months if, for example, the case is complex or there is an increased number of asylum applications at the same time. Above the 9 months prolongation the time limit can be extended by another 3 months according to Article 42 paragraph 5 Aliens Act.

Since the 11<sup>th</sup> of February 2016, the government in general extended the statutory time-limit according to Article 42 paragraph 4 sub b of the Aliens Act (similar to Article 31 paragraph 3 sub b of the recast Asylum Procedures Directive) with a maximum period of 9 months by publishing Wijzigingsbesluit (WBV) 2016/3. This was due to the increased number of asylum applications in the Netherlands in 2015. In its judgment of 8 December 2016, the Council of State ruled that the State Secretary was able to extend the asylum procedure in general by publishing WBV 2016/3.<sup>26</sup> According to the Council of State, the State Secretary did not and does not have to inform each asylum seeker individually by letter/written notice when he extends the time limit.

## **1.2. Prioritised examination and fast-track processing**

There is no prioritised examination and fast-tracking processing.

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<sup>23</sup> Article 42(3) Aliens Act.

<sup>24</sup> Article 3.117 Aliens Decree.

<sup>25</sup> Paragraph C1/2.3 Aliens Circular.

<sup>26</sup> Council of State, 8 December 2016, 201606176/1.

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
3. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The law provides for an obligation to organise a personal interview for all asylum seekers.<sup>27</sup> Every asylum seeker is interviewed at least twice, with the exception of applications dealt with in track 1 and track 2. The first interview is designed to clarify nationality, identity and travel route. In the second interview the asylum seeker is able to explain the reasons for fleeing his country of origin.<sup>28</sup>

The National Ombudsman has made recommendations concerning the possibilities for civilians to record conversations with governmental institutions.<sup>29</sup> One of the recommendations is that a governmental institution should not, in principle, refuse the wish of a civilian to make recordings of a hearing or conversation with a governmental institution. This recommendation is also explicitly applicable in relation to asylum seekers and the IND. The Dutch Council for Refugees has started a pilot on 1 December 2016 at **AC Zevenaar** which entails that there is a possibility to record the interview.<sup>30</sup>

The asylum seeker is to be interviewed in a language which he may reasonably be assumed to understand.<sup>31</sup> This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.<sup>32</sup> The IND may only use certified interpreters by law.<sup>33</sup> However, in certain circumstances the IND may derogate from this rule, for example, when in urgent situations there is a need for an interpreter or if an asylum seeker speaks a very rare dialect.<sup>34</sup> Interpreters are obliged to perform their duties honestly, conscientiously and must render an oath.<sup>35</sup> The IND uses its own code of conduct which is primarily based on the general code of conduct for interpreters.<sup>36</sup> The Legal Aid Board arranges for an interpreter in order to facilitate the communication between asylum seekers and their lawyer. They are allowed to make use of the 'interpreter telephone'. This service is provided by Concorde<sup>37</sup> and paid by the Legal Aid Board.<sup>38</sup>

<sup>27</sup> Article 3.112 Aliens Decree.

<sup>28</sup> Article 3.113 Aliens Decree.

<sup>29</sup> The National Ombudsman, 2014/166, report of 27 November 2014.

<sup>30</sup> Available at: <http://bit.ly/1MjB3HJ>.

<sup>31</sup> Article 38 Aliens Act.

<sup>32</sup> IND, *Toelichting inzet tolken (Explanatory notes use of interpreters)*, (February 2013), 1, available at <http://bit.ly/111J3Ui>.

<sup>33</sup> Article 28.1 Law Sworn Interpreters and Translators.

<sup>34</sup> Article 28.3 Law Sworn Interpreters and Translators.

<sup>35</sup> Frits Koers et al, *Best practice guide asiel: Bij de hand in asielzaken (Best Practice guide asylum)* (Raad voor de Rechtsbijstand, Nijmegen 2012), 38.

<sup>36</sup> IND, *Toelichting inzet tolken*, 5.

<sup>37</sup> Concord's website, available at: <http://bit.ly/111K8eZ>.

<sup>38</sup> Decision of the Secretary of State, 1 April 2013, nr. INDVIT13-273, 110.

The asylum seeker can express the wish to be interviewed by an employee of the IND of his own gender (this includes the interpreters as well). This may make it easier for an asylum seeker to speak about issues such as sexual violence.

In the past there have been concerns about questioning in cases of persecution related to grounds of sexuality. Persons with LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex) asylum claims were for instance questioned about sexual conduct and what kind of feelings this raised.<sup>39</sup> However, the IND has changed this practice and stopped asking such questions. Recent examples of such inappropriate questions are therefore not known to the Dutch Council for Refugees.<sup>40</sup>

Besides that the Council of State has raised preliminary questions to the Court of Justice of the European Union (CJEU) asking which limits are set by Article 4 of the Qualification Directive in assessing the credibility of alleged sexual orientation and if with this assessment different thresholds apply compared to the assessment of the credibility of the other grounds of persecution.<sup>41</sup> These questions have been answered in the CJEU's judgment of 2 December 2014.<sup>42</sup> The Court clarifies the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for international protection. The Dutch government had stated that this judgment is in line with Dutch policy on assessing the credibility of homosexual asylum seekers except on the point that the conclusion of a lack of credibility cannot solely be reached if an applicant cannot furnish information about the gay scene (in the Netherlands or in their country of origin). In some cases the IND based its judgment too predominantly on the fact that an applicant could not give details about the gay scene. Following *A, B and C*, however, this is no longer possible according to the Council of State in a judgment of 8 July 2015,<sup>43</sup> and the Secretary of State had to further clarify how the credibility examination of LGBTI claimants takes place. The IND has issued a Work instruction which stresses the relevance of questions about the personal experience (including awakening and self-acceptance) of the asylum seeker concerning his/her sexual orientation.<sup>44</sup> The Council of State has accepted this Work instruction as a solid base for assessing the credibility of the sexual orientation in LGBTI asylum claims.<sup>45</sup>

On day 2 and 4 of the short regular procedure the asylum seeker and his lawyer have the possibility to submit any corrections and additions they wish to make regarding the interview that took place the day before. On day 6, after and if the IND has issued a written intention to reject the asylum application, the lawyer submits his view in writing with regards to the written intention on behalf of the asylum seeker. If the lawyer's view is not submitted on time (i.e. by day 6 of the general procedure), the IND may make a decision without considering that view.<sup>46</sup>

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<sup>39</sup> Lieneke Luit, *Pink Solution, inventarisatie van LHBT asielzoekers (Inventory of LGBTI asylum seekers)*, available at: <http://bit.ly/1MyMHfE>.

<sup>40</sup> De Volkskrant, 'Wat kunt u vertellen over de homoscene in uw land?', 26 February 2014. Rectified "De Volkskrant," 27 February 2014.

<sup>41</sup> Council of State, 201110141/1/T1/V2, Judgment of 30 March 2013.

<sup>42</sup> CJEU, Joined Cases C-148/13, C-149/13 and C-150/13 *A, B and C*, Judgment of 2 December 2014.

<sup>43</sup> Council of State, 201208550/1, 201110141/1 and 201210441/1, Judgment of 8 July 2015.

<sup>44</sup> Work Instruction 2015/9, October 2015, available at <http://bit.ly/2k8Wl4x>.

<sup>45</sup> Council of State, 201601800/1, Judgment of 16 June 2016 (et al.).

<sup>46</sup> Article 3:114 Aliens Regulation.

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

- |   |  |   |
|---|--|---|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it   | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive  |  |   |
| ○ Short asylum procedure  | In some cases                                |   |
| ○ Extended procedure  | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| 2. Average processing time for the appeal body to make a decision:                                  |  | 4 weeks                                 |

After the first instance decision of the IND the law does not provide for an interview.

#### The short asylum procedure

An asylum seeker whose application for asylum is rejected within the framework of the short asylum procedure has one week to lodge an appeal.<sup>47</sup> This appeal has suspensive effect except in case the rejection is, for example, based on:

- ❖ The Dublin Regulation;
- ❖ Inadmissibility (except third country objection);
- ❖ Manifestly unfounded claim (except illegal entrance; extending residence unlawfully or not promptly reported to the authorities);
- ❖ Not-processing the application; and
- ❖ In case of a subsequent application in the sense of the GALA and only in the situation that another Member State is responsible for assessing the asylum application according the Dublin Regulation.<sup>48</sup>

In these cases the lawyer has to request a provisional measure pending the appeal. In case the request for a provisional measure is granted the appeal has suspensive effect, which means that the right to accommodation is retained and the asylum seeker may remain in COA accommodation.

#### The extended asylum procedure

An appeal after a rejection of the asylum claim (decision of the IND) in the extended asylum procedure has to be – depending on the grounds for rejection – lodged within one or four weeks. Depending on the grounds for rejection the appeal has suspensive effect.<sup>49</sup>

The intensity of the judicial review conducted by regional courts (administrative judges) has changed in 2016. According to the Council of State in its judgment of 13 April 2016, Article 46(3) of the Asylum Procedures Directive does not impose a general intensity of judicial review under administrative law in asylum cases in general and thus also not in cases regarding the credibility of an asylum seeker's statements in particular. In the Dutch context the regional court is not allowed to examine the overall credibility of the statements of the asylum seeker intensively (full). This is, according to the Council of State, due to the fact that the IND has specific expertise to verify statements of the asylum seeker and is therefore in general in a better position to examine the credibility of the claim. An administrative judge can never substitute its own opinion on the credibility of the asylum seeker's statements for that of the

<sup>47</sup> Article 69(2) Aliens Act.

<sup>48</sup> Article 82 Aliens Act. The Aliens Act is a part of the GALA in the sense that the Aliens Act is the *lex specialis* and the GALA is the *lex generalis*. In theory it is therefore possible that in some cases an asylum request is rejected on the GALA instead of the Alien Act but it is very unlikely that this is going to happen in practice. See Article 4(6) GALA in relation to Dublin.

<sup>49</sup> Article 69 (2) Aliens Act.

authorities. Where contradictory or inconsistent statements are made by the asylum seeker, the review can, however, be more intensive (this is different than it used to be). The other elements - not the credibility of the statements - for assessing whether the asylum seeker qualifies for international protection (de zwaarwegendheid) have always been reviewed intensively by regional courts.

Furthermore, when assessing the appeal the regional court takes into consideration all the new facts and circumstances which appear after the decision issued by the IND. This is the so called *ex nunc* examination of the appeal.<sup>50</sup>

After a decision in the short and extended asylum procedure is made by the regional court, either the asylum seeker and/or the IND may appeal against the decision of the regional court to the Council of State.<sup>51</sup> The IND makes use of this possibility especially in matters of principle. For example if a court judges that a particular minority is systematically subjected to a violation of Article 3 ECHR. This procedure does not have any suspensive effect. The Council of State carries out a marginal *ex tunc* review of the (judicial) judgment of the district court and does not examine the facts of the case.<sup>52</sup> A provisional measure from the president of the Council of State is needed to prevent expulsion before the verdict of the Council.<sup>53</sup> A provisional measure is only granted in case the departure date is set. A granted provisional measure gives a right to reception facilities. In the extended asylum procedure the right to accommodation ends after the verdict of the court, or in the case of onward appeal and this appeal has suspensive effect, after the verdict of the Council. But, in most cases only in a very late stage the departure date and time is set so in general there are no reception facilities during the onward appeal.

All decisions of the appeal body are public and some are published. There are no obstacles in practice with regard to the appeals in asylum cases. However, asylum seekers are not generally informed about their possibility to appeal, time limits etc. but if they have specific questions they can address them to the Dutch Council for Refugees. The representatives of the asylum seekers are responsible for the submission of the appeal.

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  Representation in interview  
 Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  Representation in courts  
 Legal advice

Every asylum seeker is entitled to free legal assistance.<sup>54</sup> To ensure this right the following system has been designed:

<sup>50</sup> Article 83 Aliens Act.

<sup>51</sup> Article 70(1) Aliens Act.

<sup>52</sup> Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015), 22 and Chapter 8.5 GALA.

<sup>53</sup> Article 8:106 GALA.

<sup>54</sup> Article 10 Aliens Act.



For making the actual asylum application the asylum seeker has to go to an application centre. These application centres have schedules on which an asylum lawyer can subscribe. For instance if five asylum lawyers are scheduled on a Monday they are responsible for all the asylum requests which are made that day. Those lawyers are also physically present at the centre all day. The Legal Aid Board (*Raad voor de Rechtsbijstand*), a state funded organisation, is responsible for this schedule and makes sure that on every day sufficient lawyers are enlisted on the schedules. Therefore every asylum seeker is automatically appointed a lawyer from the day they apply for asylum. On the other hand, in case there are too many applications on one day, it may also happen that lawyers are forced to take on too many cases.

An appointed lawyer from the Legal Aid Board is free of charge for the asylum seeker. However, an asylum seeker may choose a lawyer himself. If this self-chosen lawyer is recognised by the Legal Aid Board as an official asylum lawyer, the Legal Aid Board will pay for the costs. This happens in the vast majority of cases. There are no limitations to the scope of the assistance of the lawyer as long as they get paid.

The Dutch Council for Refugees also provides legal assistance. During the rest and preparation period, the Dutch Council for Refugees offers asylum seekers information about the asylum procedure. Asylum seekers are informed about their rights and duties, as well as what they might expect during the asylum procedure. Counselling may be given either individually or collectively. During the official procedure, asylum seekers may always contact the Dutch Council for Refugees, in order to receive counselling and advice on various issues. In addition, representatives of the Dutch Council for Refugees may be present during both interviews at the request of the asylum seeker or his lawyer. The Dutch Council for Refugees has offices in most of the reception centres. Lawyers are paid for eight hours during the procedure at first instance. The Dutch Council for Refugees has criticised the fact that the contact hours between lawyers and their clients are limited in this system.

At the appeal stage of the asylum procedure asylum seekers continue to have access to free legal assistance. No merits test applies.<sup>55</sup> Every asylum seeker has access to free legal assistance under the same conditions. However, the lawyer can decide not to submit any written viewpoint (day six regular asylum procedure), if they think the appeal is likely to be unsuccessful. In this scenario the lawyer has to report to the Legal Aid Board and the asylum seeker can request for a 'second opinion', meaning that another lawyer takes over the case.<sup>56</sup> This only happens in exceptional cases. On the one hand, the intention of the legislator is that the same lawyer will represent the asylum seeker during the whole procedure, on the other hand, if the lawyer will not submit a written viewpoint, this would be considered as "malpractice" because writing a written viewpoint is actually the core of the lawyer's job during the whole procedure. Even if the lawyer is strongly of the opinion that a written viewpoint will not be of any use it may not be the case in future circumstances, for example in case of a subsequent application. Only after several recognised 'malpractices' can an asylum lawyer be penalised. The gravest penalisation is disbarment.

The amount of financial compensation for lawyers who represent asylum seekers can be an obstacle. Some lawyers consider the amount of time to prepare a case (and therefore the compensation they get) as too little. This means that it is possible that some lawyers spend more work on a case than they get paid for or that some cases are not prepared thoroughly enough. Alongside this, due to the economic crises, more cutbacks had to be made within the state funded legal aid. Firstly the Secretary of State

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<sup>55</sup> Circular payments legal aid in the new asylum procedure (Beleidsregel vergoedingen voor rechtsbijstand in de nieuwe asielprocedure), available at: <http://bit.ly/1HS8gek>.

<sup>56</sup> Article 12 Law on legal aid (Wet op de rechtsbijstand Wrb).

initially reduced the compensation when a case is dealt by the Courts without a hearing.<sup>57</sup> The reasoning behind this reduction was that those cases would have been easily decided or perhaps required no proceedings at all. According to asylum lawyers this may be true for several disciplines in law but is not a workable criterion in asylum cases due to the nature of such cases. 95% of asylum cases in onward appeal are dealt without a hearing while in other disciplines of law this percentage is much lower (15%).<sup>58</sup>

## 2. Dublin

### 2.1. General

**Dublin statistics: 2016 N/A**

**Dublin statistics: 2015**

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	4813	705	<b>Total</b>	1675	379
Germany	1976	232	Germany	746	133
Hungary	866	12	France	204	16
Italy	558	37	Sweden	156	42

Source: Eurostat.

#### Application of the Dublin criteria

In addition to a match in the Eurodac system other information, such as an original visa supplied by another Member State or statements from the asylum seeker regarding family members or his travel route, may result in a Dublin claim.<sup>59</sup>

In a recent judgment from 18 January 2017 the Council of State ruled that no formal application for asylum is required for Germany to be the responsible Member State. The asylum seeker did express a wish for asylum to the German authorities. Even though this wish had not yet been formalized the Council of State ruled that the German authorities are responsible for examining the asylum application.<sup>60</sup>

As to the application of Article 6 and Article 8 of the Dublin Regulation, The State Secretary for Security and Justice informed the House of Representatives on the 2 September 2013 about the consequences and the change in policy concerning unaccompanied children, who have already applied for asylum in another Member State, in order to comply with the CJEU's *M.A.* judgment.<sup>61</sup> The Council of State ruled end of September 2013 that the IND should not have refused to examine the asylum request of an unaccompanied minor who does not have any family members legally residing in the EU.<sup>62</sup>

<sup>57</sup> Decision of the Secretary of State 10 September 2013, *starting 1 October 2013 regarding the modification of decision on own contribution litigant and legal aid (Besluit aanpassingen eigen bijdrage rechtzoekenden en vergoeding rechtsbijstandverleners)*, Publication of the State (Staatsblad) 2013, 345.

<sup>58</sup> NJ Blog, Mies Westerveld and Marc Wijngaarden, 7 October 2013, available at: <http://bit.ly/1Od3Uhy>. On 20 November 2013, a debate took place in Parliament on this issue.

<sup>59</sup> On the practical application of the Dublin criteria, see Dublin Transnational Network, *Dublin II Regulation: National report, The Netherlands*, 22-29.

<sup>60</sup> Council of State, 18 January 2017, 201608443/1.

<sup>61</sup> Letter of the State Secretary for Security and Justice concerning case C-648/11 of the CJEU, 2 September 2013. See also C2/5 Aliens Circular.

<sup>62</sup> Council of State, 201205236/1, Judgment of 5 September 2013.

## The discretionary clauses

### Article 16 Dublin Regulation

As to the application of Article 16 of the Dublin Regulation, the Council of State ruled that, in order to conclude that a situation of dependency exists, the asylum seeker has to demonstrate using objective documents, what concrete assistance his family member is offering him.<sup>63</sup> In the case of an asylum seeker who had objectively shown that he benefits from the care of his sister, the Council of State ruled that no situation of dependency exists as it has not been shown that only the asylum seekers sister can offer him the help he needs.<sup>64</sup>

### Article 17 Dublin Regulation

The IND is reticent regarding application of Article 17 of the Dublin Regulation in taking responsibility for handling an asylum request. This is a result of the principle of mutual trust between Member States. Paragraph C2/5 of the Aliens Act Implementation Guidelines stipulates when Article 17 of the Dublin Regulation will in any case be applied:

- ❖ in case there are concrete indications that the Member State responsible for handling the asylum request does not respect international obligations
- ❖ transfer of the asylum seeker to the responsible Member State is, because of special, individual circumstances, of a disproportionate harshness
- ❖ in case the IND finds that application of Article 17 of the Dublin Regulation may better serve process control, in particular when the asylum seeker originates from a safe country of origin

The Council of State ruled that there is no obligation for the IND to protect family relations other than those mentioned in the Dublin Regulation.<sup>65</sup> For example, the relationship between the asylum seeker and his wife, who has been naturalized and is pregnant with his child, is not, according to the Council of State, a special, individual circumstance that gives rise to the application of Article 17 of the Dublin Regulation.<sup>66</sup> The interests of the child and respect for family life are enshrined in the Dublin Regulation in various binding criteria for identifying the responsible Member State, according to the Council of State.<sup>67</sup>

The Council of State ruled end of November 2015 that the Secretary of State cannot claim, without further investigating the situation for Dublin returnees after their transfer to Hungary, they will not find themselves in a situation contrary to Article 3 ECHR.<sup>68</sup> At the moment the discretionary clause is applied in cases where it has been established that Hungary is the responsible Member State and the time frame for transferring the asylum seeker (Article 29 of the Dublin Regulation) has expired.

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? N/A

Immediately after the request for asylum has been filed, during the application procedure, the IND starts investigating whether another Member State is responsible for examining the asylum application. All asylum seekers are systematically fingerprinted and checked in Eurodac and EU\_VIS.

<sup>63</sup> Council of State, 201403670/1, 5 February 2015.

<sup>64</sup> Council of State, 201502436/1, 1 December 2016.

<sup>65</sup> Council of State, 9 August 2016, 201507801/1.

<sup>66</sup> Council of State, 19 February 2016, 201505706/1.

<sup>67</sup> Council of State, 19 February 2016, 201505706/1.

<sup>68</sup> Council of State, 26 November 2015, 201507248/1.

The IND (in coproduction with the Dutch Council for Refugees) has drafted brochures in 13 languages several languages for asylum seekers with information about the Dublin procedure. These brochures are available in Arabic, Amnian, Chinese, Dari, English, Farsi, French, Mongolian, Russian, Servo-Croatian, Somali, Tigrinja and Armenian.

In case the IND has (strong) indication to believe that another Member State is responsible for examining the asylum request on its merits, the application will be assessed in 'track 1' as explained above. In this procedure the asylum seeker is not granted a rest- and preparation period and is not medically examined by FMMU.

Within a few days after filing the application, the asylum seeker has a reporting interview with the IND (aanmeldgehoor). This interview solely focuses on the asylum seekers identity, nationality and travel route. During this interview, the asylum seeker is informed that the IND may request or already has requested another Member State to examine the request for asylum. The asylum seeker may present the reasons as to why the Netherlands should deal with his asylum application. As a result of the ECtHR ruling in *Ghezelbash*, the asylum seeker can claim wrongful application of the Dublin criteria as well as state circumstances and facts that transfer would result in a violation of Article 3 ECHR.<sup>69</sup> After this interview the IND decides whether another Member State is responsible for examining the asylum request. If that is the case, the asylum request is rejected and processed in the Dublin procedure.<sup>70</sup>

The IND files a Dublin claim as soon as it has good reason to assume that another Member State is responsible for examining the asylum application (it does so according to the criteria set out in the Dublin Regulation). The IND does not wait for a response from the other Member State before the next step in the Dublin procedure is taken (in track 1). The negative decision on the asylum request, however, is only taken after the Dublin claim has been (tacitly) accepted by the other Member State. The actual time lapse until the execution of the transfer to the responsible Member State within the fixed term of six months depends on whether an appeal against a Dublin transfer decision was submitted.

### **Transfers**

An asylum seeker whose case has been rejected because he is to be transferred to another Member State may be detained if certain conditions are fulfilled, mainly to prevent him from absconding. Article 28 of the Dublin Regulation is interpreted in a way that allows detention in many cases (See section on [Detention of Asylum Seekers](#)).

Normally, vulnerable and ill persons are also transferred under the Dublin Regulation. The IND will examine from the outset whether someone should be considered as a vulnerable person in need of special care. Transfer is carried out in accordance with Article 32 of the Dublin Regulation.

### **Individualised guarantees: transfer to Italy under the Dublin Regulation**

In the *Tarakhel* judgment, the ECtHR ruled that the Swiss authorities were required to obtain individual guarantees from the Italian authorities that, after transfer to Italy, the family with minor children would be housed in suitable accommodation and that the family would be kept together. Without these guarantees, transfer of the Tarakhel family is contrary to Article 3 ECHR. Since this judgment a specific procedure has developed regarding transfers of vulnerable asylum seekers to Italy. Reference is made to a circular letter from the Italian authorities of 8 June 2015, in which several SPRAR locations have been earmarked for the accommodation of vulnerable asylum seekers, including families with minor children. According to the Council of State, the Secretary of State may rely on the guarantees given by the Italian authorities in this circular letter, that families with minor children will be accommodated in one of the listed SPRAR locations.<sup>71</sup>

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<sup>69</sup> ECtHR, C063/15, 7 June 2016.

<sup>70</sup> C2/5 Aliens Circular.

<sup>71</sup> Council of State, 7 October 2015, 201506164/1/V3.

Furthermore, as to the suitability of the accommodation, reference is made to a report of a fact-finding mission by the liaison officers of the Dutch IND, the German Bundesamt für Migration und Flüchtlinge and the Swiss Eidgenössisches Justiz- und Polizeidepartment of 13 July 2015. The Council of State concludes that the Secretary of State has thus made certain that the reception of families with minor children is in accordance with *Tarakhel*. No further (individual) guarantees are required. As to the limited number of available accommodation, the Council of State considered that the Italian authorities have made it clear that they will increase capacity if needed.<sup>72</sup> In a recent judgment the Council of State concluded that, although the more recent circular letter from the Italian authorities, dating the 15 February 2016, lists fewer suitable SPRAR locations, it has not been shown that not enough suitable accommodation is available, taking into account that the Italian authorities will enlarge capacity if needed.<sup>73</sup> No further individual guarantees are needed for the Secretary of State to rely on the principle of mutual trust. This was different, however, in the case of a pregnant women. In that case the Council of State ruled that reference to the circular letter of the 8 February 2015 was not sufficient, as the guarantees in that letter do not also concern pregnant women.<sup>74</sup>

As to the scope of the *Tarakhel* judgment, the Council of State ruled in December 2015 that the judgment does not only regard families with minor children, but also those asylum seekers who can be designated as belonging to a potential particularly vulnerable group. Gender, age and medical circumstances are important factors in designating an asylum seeker as particularly vulnerable.<sup>75</sup> In the case of a woman with a serious medical condition the Council of State ruled in March 2016 that individual guarantees from the Italian authorities are not required, as transfer will take place in accordance with Article 32 of the Dublin Regulation.<sup>76</sup>

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

As mentioned above, a personal interview is solely conducted during the application procedure. The interview is conducted by the IND, in order to determine whether another Member State is responsible for examining the asylum request. During this interview, the asylum seeker is informed that the Netherlands might or already has sent a take back or take charge request to another Member State. The asylum seeker may present arguments as to why transfer should not take place and why the Netherlands should deal with his asylum application

Remarks concerning video/audio recording, interpreters, accessibility and quality of the (regular) interview also apply to the Dublin procedure. The whole procedure, from the moment it officially starts until the decision to not handle the asylum application, takes about a week.

<sup>72</sup> Council of State, 7 October 2015, 201506164/1.

<sup>73</sup> Council of State, 9 December 2016, 201605509/1.

<sup>74</sup> Council of State, 6 January 2017, 201507918/1.

<sup>75</sup> Council of State, 3 December 2015, 201504479/1.

<sup>76</sup> Council of State, 14 March 2016, 201505068/1, see also Council of State, 3 August 2016, 201602689/1.

## 2.4. Appeal

### Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?
- ❖ If yes, is it  Yes  No
- ❖ If yes, is it suspensive  Judicial  Administrative
- Yes  No

When an asylum application has been rejected because according to the Dublin Regulation another Member State is responsible for examining the asylum application, the asylum request is rejected under Article 30, first paragraph, of the Aliens Act. The asylum seeker may appeal this decision with the regional court.<sup>77</sup> The asylum seeker is entitled to accommodation until the actual transfer.<sup>78</sup> The appeal has no suspensive effect and must be filed within a week after the decision not to handle the asylum application.<sup>79</sup>

As a result of the ECtHR ruling in *Ghezelbash*, the asylum seeker can claim wrongful application of the Dublin criteria as well as state circumstances and facts that transfer would result in a violation of Article 3 ECHR.<sup>80</sup>

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
- ❖ Does free legal assistance cover:  Yes  With difficulty  No
- Representation in interview<sup>81</sup>
- Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
- ❖ Does free legal assistance cover  Yes  With difficulty  No
- Representation in courts
- Legal advice

The legal assistance system and conditions under the Dublin procedure are the same as in the regular procedure within the section on legal assistance in the regular procedure. The same practical obstacles are encountered.

<sup>77</sup> Article 62(c) Aliens Act.

<sup>78</sup> Article 8(m) Aliens Act juncto Article 3(m)(p) Regulation benefits asylum seekers.

<sup>79</sup> Article 69(2) and 82(2)(a) Aliens Act.

<sup>80</sup> ECtHR, C063/15, 7 June 2016.

<sup>81</sup> In general the lawyer is not present at the interview but he or she is allowed to attend the interview: Article 2(1) GALA.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?  Yes  No
- ❖ If yes, to which country or countries? Greece, Hungary

The leading case in national jurisprudence concerning Dublin transfers in general is the ruling of the Council of State on 14 of July 2011, interpreting the *M.S.S.* judgment.<sup>82</sup> In this case the Council of State stated that general information concerning the situation in the country to which the Dutch authorities want to transfer must be examined. This is in contrast with former policy (Aliens Act Implementation Guidelines)<sup>83</sup> and a ruling of the Council of State in which only individual circumstances applicable to the asylum seeker were weighed.<sup>84</sup> After this, the Aliens Act Implementation Guidelines have changed to incorporate this jurisprudence.<sup>85</sup>

The Netherlands has suspended all transfers to **Greece** on the basis of the European Court on Human Rights ruling in the case of *M.S.S. v Belgium and Greece*.<sup>86</sup> The Netherlands is assuming responsibility for all asylum applications of asylum seekers, who actually should be transferred to Greece.

As mentioned above, the Council of State ruled end of November 2015, that the Secretary of State cannot claim, without further investigating the situation for Dublin returnees after their transfer to Hungary, that they will not find themselves in a situation contrary to Article 3 ECHR.<sup>87</sup> At the moment the discretionary clause is applied in cases where it has been established that Hungary is the responsible Member State. As a result, to our knowledge, no asylum seekers are transferred to Hungary at the moment.

The Council of State recently granted suspensive effect in three cases concerning Dublin transfers to Bulgaria.<sup>88</sup> The regional courts had ruled that transfer to Bulgaria would not result in ill-treatment in breach of Article 3 ECHR. One other case, concerning an asylum seeker suffering from psychological illness, the Council of State ruled that concrete indication for doubting the principle of mutual trust can be found in the AIDA Country report. The IND should have investigated further.<sup>89</sup>

As mentioned above, a special policy applies with regard to transfers of vulnerable asylum seekers to Italy as a result of the judgement of the ECtHR in the case of *Tarakhel v Switzerland* (see section on [Dublin: Procedure](#)).

Regarding other Member States suspension of transfers is applied on a case by case basis.<sup>90</sup><sup>91</sup><sup>92</sup> Countries disputed in Court are mainly Germany, France, Spain, Norway, Malta, Lithuania, Belgium and the Czech Republic.

<sup>82</sup> Council of State, 201009278/1/V3, Judgment of 14 July 2011.

<sup>83</sup> Alien Circular C3/2.3.6.2 (old).

<sup>84</sup> *Ibid*, note 115.

<sup>85</sup> Aliens Circular C2/5.1.

<sup>86</sup> ECtHR, *M.S.S v Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

<sup>87</sup> Council of State, 26 November 2015, 201507248/1.

<sup>88</sup> Council of State, 18 November 2016, 201608203/2, Council of State, 25 October 2016, 201606446/2 and Council of State, 13 October 2016, 201606788/2.

<sup>89</sup> Council of State, 25 November 2016, 201604780/1.

<sup>90</sup> Council of State, 201507322/2, Judgment 23 September 2015.

<sup>91</sup> District Court Haarlem, 15/2103, Judgment 24 July 2015; District Court Den Bosch, 15/4045, Judgment 24 July 2015.

<sup>92</sup> District Court Haarlem, 14/24576, Judgment 6 June 2015.

## 2.7. The situation of Dublin returnees

If an asylum seeker is transferred to the Netherlands under the Dublin Regulation, the Dutch authorities are responsible for examining the asylum request and will follow the standard asylum procedure (the regular and perhaps the extended asylum procedure).

In the Netherlands, the IND is responsible for all asylum applications, including asylum applications lodged by asylum seekers who are transferred (back) to the Netherlands. The asylum seeker should request asylum in the Netherlands at the central reception location in **Ter Apel** or at the application centre of **Schiphol airport**.

In the case of a 'take back' (terugname) procedure the asylum seeker may file a new request if there are new circumstances. In 'take charge' (overname) procedures the asylum seeker has to apply for asylum if they want international protection.<sup>93</sup>

If the asylum seeker previously lodged an asylum application in the Netherlands and wants to re-apply for asylum, they follow the standard procedure.<sup>94</sup> The application will be dealt with as a subsequent asylum application.

## 3. Admissibility procedure

### 3.1. General (scope, criteria, time limits)

There is no separate admissibility procedure. Having said that, the outcome of the asylum procedure may be that an asylum request is rejected as inadmissible. This examination is done in the asylum procedure as described earlier.

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?  Yes  No

❖ If so, are questions limited to identity, nationality, travel route?  Yes  No

❖ If so, are interpreters available in practice, for interviews?  Yes  No

2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The same procedure as in the regular asylum procedure is followed. Therefore the same remarks are applicable concerning the interview.

<sup>93</sup> As described earlier in this report.

<sup>94</sup> As described in this report.



### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?
- |                             |  |   |
|-----------------------------|--|---|
|                             | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it             | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive  |  |   |
| - Dublin transfer decisions | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> No  |
| - Other grounds             | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |

The asylum seeker has one week to lodge an appeal against the decision to reject his asylum application.<sup>95</sup> This appeal has, except in the case of inadmissibility because of a safe third country, no suspensive effect.<sup>96</sup>

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
- |  |   |  |                             |
|--|---|--|-----------------------------|
|  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|--|---|--|-----------------------------|
- ❖ Does free legal assistance cover:
- |  |  |  |
|--|--|--|
|  | <input type="checkbox"/> Representation in interview |  |
|  | <input checked="" type="checkbox"/> Legal advice     |  |
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
- |  |   |  |                             |
|--|---|--|-----------------------------|
|  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|--|---|--|-----------------------------|
- ❖ Does free legal assistance cover
- |  |  |  |
|--|--|--|
|  | <input checked="" type="checkbox"/> Representation in courts |  |
|  | <input checked="" type="checkbox"/> Legal advice             |  |

The same procedure as in the regular asylum procedure is followed. Therefore the same remarks are applicable concerning legal assistance.

## 4. Border procedure (border and transit zones)

### 4.1. General (scope, time-limits)

#### Indicators: Border Procedure: General

2. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?
- |  |   |                             |
|--|---|-----------------------------|
|  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|--|---|-----------------------------|
3. Can an application made at the border be examined in substance during a border procedure?
- |  |   |                             |
|--|---|-----------------------------|
|  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|--|---|-----------------------------|
4. Is there a maximum time-limit for border procedures laid down in the law?
- |  |   |                             |
|--|---|-----------------------------|
|  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|--|---|-----------------------------|
- ❖ If yes, what is the maximum time-limit? 4 weeks

Since the transposition of the recast Asylum Procedures Directive in July 2015, the Netherlands has a formal border procedure.

<sup>95</sup> Article 69 Aliens Act.

<sup>96</sup> Article 82 Aliens Act.

The Dutch Council for Refugees strongly objects to the use of the border procedure in light of the individual interests of the asylum seeker.<sup>97</sup> The Committee of Human Rights (*Comité voor de Mensenrechten*) has also published advice to the Dutch government in which the Committee concludes that it is unnecessary to *always* detain asylum seekers at the border, especially children.<sup>98</sup> According to the Committee the detention of all asylum seekers at the border without weighing the interest of the individual asylum seeker in relation to the interests of the state is not in line with European regulations and human rights standards.

The border procedure in the Netherlands proceeds as follows: the decision on refusal or entry to the Netherlands is suspended for a maximum of 4 weeks and the asylum seeker stays in detention. During this period, the IND has to decide on which of the grounds the application will be rejected. If the examination takes longer than 4 weeks or another ground of rejection is applicable, the detention is lifted, the asylum seeker is allowed to access the Netherlands and the treatment of the application is continued in a regular asylum procedure.<sup>99</sup> In 2016 there was an influx of 240 aliens detained at the border.<sup>100</sup>

Since 1 September 2014, the Netherlands no longer detains families with children at the border.<sup>101</sup> Instead of being put in border detention, families seeking asylum at **Amsterdam Schiphol airport** are now redirected to a closed reception centre in **Zeist**.<sup>102</sup>

A number of assessments take place prior to the actual start of the asylum procedure, including a medical examination, a nationality and identity check and an authenticity check of submitted documents. The legal aid provider prepares the asylum seeker for the entire procedure. These investigations and the preparation take place prior to the start of the asylum procedure. The AC at **Schiphol airport** is a closed centre. The asylum seeker is subjected to border detention to prevent them entering the country *de iure*. During the first steps of the asylum procedure, the asylum seeker remains in the closed Application Centre at **Schiphol**. In these stages the border procedure more or less follows the steps of the short asylum procedure described in the section on the regular procedure. One example of a difference between the regular procedure and the border procedure is the possibility for the decision-making authorities to shorten the rest and preparation period.<sup>103</sup>

In the following situations the IND will, after the first hearing, conclude that the application cannot be handled in the border procedure and therefore has to be channelled into the regular asylum procedure:<sup>104</sup>

- ❖ If, after the first hearing, the identity, nationality and origin of the asylum seeker has been sufficiently established and the asylum seeker is likely to fall under a temporary 'suspension of decisions on asylum applications and reception conditions for rejected asylum seekers' (*Besluit en vertrekmoratorium*);
- ❖ If after the first hearing the identity, nationality and origin of the asylum seeker has been sufficiently established and the asylum seeker originates from an area where an exceptional situation as referred to in Article 15(c) of the recast Qualification Directive is applicable;
- ❖ If after the first hearing, the identity, nationality and origin of the asylum seeker has been sufficiently established and there are other reasons to grant an asylum permit.

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<sup>97</sup> See <https://www.vluchtelingenwerk.nl/wat-wij-doen/standpunten/standpunt-grensdetentie>.

<sup>98</sup> The Committee for Human Rights, *Advies: Over de Grens, Grensdetentie van asielzoekers in het licht van mensenrechtelijke normen*, May 2014, available at: <http://bit.ly/1YeuUBM>.

<sup>99</sup> Articles 3 and 6 Aliens Act.

<sup>100</sup> Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

<sup>101</sup> Aliens Circular, A1/7.3.

<sup>102</sup> See Section Detention.

<sup>103</sup> Article 3.109b(2) Aliens Decree.

<sup>104</sup> Section C1/2 Aliens Circular.

If the IND is not able to stay within the time limits prescribed by the short asylum procedure (e.g. 8 days) it can continue the border procedure if the IND suspects it can reject the asylum application based on Article 30 (Dublin applicability), Article 30a (inadmissible) or Article 30b of the Aliens Act (manifestly unfounded).<sup>105</sup> The maximum duration of the border procedure is four weeks.<sup>106</sup>

## 4.2. Personal Interview

### Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?  Yes  No
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The same rules and obstacles as in the asylum procedure are applicable.

## 4.3. Appeal

### Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
  - Yes  No
  - ❖ If yes, is it  Judicial  Administrative
  - ❖ If yes, is it suspensive  Yes  No

According to Article 93 of the Aliens Act the asylum seeker is entitled to lodge an appeal at any moment the asylum seeker is detained on the basis of Article 6 or 6a of the Aliens Act. Furthermore, there is an automatic review by a judge (regional court) of the decision to detain. If the court is convinced that the detention is unreasonably burdensome because the decision-making authorities did not sufficiently take into account the interests of the alien, detention can be lifted.<sup>107</sup>

However, the appeal is not suspensive. The decision to suspend the entry to the Dutch territory remains applicable.<sup>108</sup>

The first judicial review examines the lawfulness of the grounds for detention – whether the conditions for detention were fulfilled – whereas further appeals against immigration detention review the lawfulness of continued detention.<sup>109</sup>

<sup>105</sup> Article 3.109b Aliens Decree.

<sup>106</sup> Article 3(7) Aliens Act.

<sup>107</sup> Article 94(5) Aliens Act. For more information, see Section Detention.

<sup>108</sup> Article 93 Aliens Act.

<sup>109</sup> Article 96 Aliens Act.

#### 4.4. Legal assistance

##### Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

Exactly the same rules and obstacles as in the regular procedure are applicable to border procedures.

#### 5. Accelerated procedure

There is no accelerated procedure, but all asylum applications are first examined in the short asylum procedure in which decisions are taken within 8 working days (this time limit may be extended by 6, 8, or 14 days).<sup>110</sup>

In a report by the Dutch scientific research and documentation centre (*Wetenschappelijk onderzoeken documentatiecentrum*, WODC) of 2014 regarding the evaluation of the revised asylum procedure, it is stated that between 2007-2009 20% of all the asylum applications were handled within the (predecessor of the) short asylum procedure; 50% in 2011, 60% in 2012 and 70% in 2013.<sup>111</sup>

In practice, authorities comply with the time limits in all procedures. On the one hand probably because they can prolong the time limits<sup>112</sup> and on the other hand the IND has to pay a fine if the time limits are extended.<sup>113</sup>

#### D. Guarantees for vulnerable groups

##### 1. Identification

##### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  
 Yes       For certain categories       No  
❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No

Before the start of the short asylum procedure,<sup>114</sup> a medical examiner from FMMU will examine every asylum seeker as to whether they are able (mentally and physically) to be interviewed (see section on

<sup>110</sup> Article 3.115 Aliens Decree.

<sup>111</sup> Wetenschappelijk Onderzoek- en Documentatiecentrum, *Evaluatie van de Herziene Asielprocedure*, 2014, 50 available at: <http://bit.ly/1MSFDtl>.

<sup>112</sup> Articles 43 and 44 Aliens Act.

<sup>113</sup> Work instruction 2013/17 (AUA, 5 September 2013), available at: <http://bit.ly/1lrwsdK>.

<sup>114</sup> This only concerns the 'track 4' procedure.

short overview of the asylum procedure). FMMU is an independent agency, working on behalf of the IND to provide medical advice.<sup>115</sup> FMMU's medical advice forms an important element in the decision as to how the application will be handled. However, it should be noted that FMMU is not an agency that identifies vulnerable asylum seekers as such, it solely gives advice to the IND as to whether the asylum seeker can be interviewed and if so, what the special needs are for the asylum seeker to be interviewed. FMMU cannot be seen as a 'product' of the Istanbul Protocol, because the examination is limited to the question as to whether the asylum seeker is able to be interviewed based on his physical and/or mental capacity.

The IND decides whether the way the interview is conducted will be adapted as a result of the FMMU advice. The IND bases its decision on the medical advice, its own observations and of the lawyer and asylum seeker himself. An important document in this context is the working instruction of the IND, number 2010/13.<sup>116</sup> Adjustments of the interview could be that no interview will be conducted until the asylum seeker is in a better shape, an adjusted interview with more breaks, and a female employee of the IND in case of sexual violence of female asylum seeker.

From the start of the asylum procedure, the IND will examine whether the asylum seeker is vulnerable and in need of special care. In order to meet the obligations of Article 24 of the recast Asylum Procedures Directive, the Secretary of State has implemented this provision in the Aliens Decree.<sup>117</sup> Besides that, the IND has drafted a working instruction to its employees on how to establish vulnerability.<sup>118</sup> In this working instruction, there is a list of indications on the basis of which it may be concluded that the asylum seeker is a vulnerable person. This list is divided in several categories; for instance physical problems (e.g. pregnancy; blind or handicapped) or psychological problems (traumatised, depressed or confused). But also the statements of the asylum seeker himself could indicate that he or she is a vulnerable person. It is explicitly noted that this is not an exhaustive list.

### Age assessment

If an asylum seeker, who claims to be an unaccompanied minor, lodges an asylum application at the border, the KMar can conduct an inspection (*leeftijdsschouw*).<sup>119</sup> This means that officers from the KMar assess whether the asylum seeker is evidently over or under 18 by looking at and talking to the asylum seeker. This is usually done in cases where it seems evident that the asylum seeker is an adult. The opposite is possible too: when an asylum seeker claims he is of age an inspection can follow if the KMar suspects they are dealing with a minor. This method has been criticised in recent Dutch case law.<sup>120</sup> The Secretary of State recently made some adjustments to the '*leeftijdsschouw*'. As a result, three officers from the IND, AVIM or KMar independently from one and another conduct the inspection. Also, the assessment that the unaccompanied minor is evidently an adult cannot simply be based on the estimation of the appearance of the minor.<sup>121</sup>

If the officers from IND, AVIM or Kmar cannot conclude that the asylum seeker is evidently over 18 years of age, age assessment takes place. This is carried out on the basis of X-rays of the clavicle, the hand

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<sup>115</sup> See website available at: <http://bit.ly/1HVgopa>.

<sup>116</sup> IND, *Werkinstructie behandeling van medisch advies-zaken*, (Werkinstructie nr. 2010/13 (AUB), 29 October 2010), available at: <http://bit.ly/1NANE76>. See also IND Work Instruction 2015/8 about general guarantees for persons with special needs.

<sup>117</sup> Article 3.108b Aliens Decree.

<sup>118</sup> IND, *Working instruction 2015/8 procedural guarantees how to work with vulnerable people*, (20 July 2015), available at: <http://bit.ly/1S0RQAU>.

<sup>119</sup> Paragraph C1/2 Aliens Circular.

<sup>120</sup> Regional court Amsterdam, 13 July 2016, Awb 16/13578; regional court Haarlem 12 February 2016, Awb 16/833; regional court Arnhem, 16 June 2016, Awb 16/10627.

<sup>121</sup> Secretary of State, 7 November 2016, Answering questions of the Lower House (Tweede Kamer), Kamervragen 2016, ahangsel 314.

and wrist.<sup>122</sup> Radiologists examine if the clavicle is closed. When the clavicle is closed the asylum seeker' is considered to be at least 20 years old according to some scientific experts. It is the responsibility of the IND to ensure the examination has been conducted by certified professionals and is carefully performed.<sup>123</sup> The age-assessment has to be signed by the radiologist. It should be noted that the methods which are used in the age assessment process are controversial,<sup>124</sup> which is also illustrated by the sometimes very technical discussions among radiologists referred to in the jurisprudence.<sup>125</sup> The X-rays will be examined by two radiologists, independently from each other. When one radiologist considers that the clavicle is not closed, the IND has to follow the declared age of the asylum seeker.<sup>126</sup> This method is criticised by the temporary Dutch Association of Age Assessment Researchers (DA-AAR). These researchers conclude that it is undesirable to base age assessment exclusively on four X-ray images – especially as various researchers have expressed serious doubts about these images that have not yet been the subject of public scientific discussion. If age assessment is necessary, it should at least be performed by a multidisciplinary team using various methods, under the leadership of an independent child development expert.<sup>127</sup>

Until recently a special commission (Medico-ethical Commission, Medisch-ethische Commissie) supervised the examination of age assessment. Now this has been assigned to the Inspectie voor Veiligheid en Justitie.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
  - Yes     For certain categories     No
- ❖ If for certain categories, specify which: Unaccompanied minors

If the request for asylum is rejected but the asylum seeker cannot travel due to medical problems, Article 64 of the Aliens Act is applied. This means that, for the time being, the asylum seeker is not expelled and has a right to accommodation facilities. However, Article 64 of the Aliens Act does not mean that the person receives a residence permit. Expulsion is only suspended.

Special measures also exist for victims of human trafficking but technically this has nothing to do with asylum. The Human Trafficking Coordination Centre and the Health Coordinator are the entities that are responsible for a safe reception and daily accompaniment of these victims.<sup>128</sup> The IND employees are also trained to recognise victims of human trafficking.<sup>129</sup> Victims of trafficking who have been refused asylum can be granted a temporary permit on a regular ground. During a time frame of 3 months the asylum seeker has to consider whether he lodges a complaint or cooperate with the authorities to prosecute the trafficker. During the reflection period, a victim has the right to receive a social security

<sup>122</sup> Commissie leeftijdsonderzoek, (Committee Age assessment), *Rapport Commissie leeftijdsonderzoek (Report Committee age assessment)*, 2012, 7.

<sup>123</sup> Article 3:2 GALA.

<sup>124</sup> Commissie leeftijdsonderzoek, (Committee Age assessment), *Rapport Commissie leeftijdsonderzoek (Report Committee age assessment)*, 2012, 7.

<sup>125</sup> See for example [Regional Court Amsterdam, 10/14112](#), 18 December 2012.

<sup>126</sup> Commissie leeftijdsonderzoek, *Rapport Commissie leeftijdsonderzoek (Committee Age Assessment, Report Committee Age Assessment)*, 2012, 16.

<sup>127</sup> Temporary Dutch Association of Age Assessment Researchers (DA-AAR), *age assessment of unaccompanied minor asylum seekers in the Netherlands, radiological examination of the medial clavicular epiphysis*, May 2013.

<sup>128</sup> Chapter B/9 Aliens Circular.

<sup>129</sup> IND, *Werkinstructie "(potentiële) slachtoffers van mensenhandel en de asielprocedure"* (INS Working instruction "Victims of human trafficking in the asylum procedure") (2007/16, 18 December 2007), available at: <http://bit.ly/1MjGx5i>.

contribution, health insurance, legal support and housing, for example. However, this is unrelated to the asylum system.

All asylum seekers start their asylum procedure within the short asylum procedure. This implies that even asylum seekers who are victims of rape, torture or other serious forms of psychological, physical or sexual violence firstly will be processed within this procedure. However, generally, in most of these cases more investigation is needed, for example a medical report has to be drawn up. In such cases the application will be referred to the extended asylum procedure. This principle also applies with regards to the [Border Procedure](#). Within these 'border procedures' a case can be referred to the extended closed border procedure on the same grounds as mentioned above.

### 3. Use of medical reports

#### Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       In some cases       No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
 Yes       No

Every asylum seeker is invited to be medically examined by FMMU in order to assess whether he can be interviewed.<sup>130</sup> This is the medical examination conducted by FMMU as mentioned above. Besides that, the IND has, since the implementation date of the recast Asylum Procedures Directive, the legal obligation to medically examine asylum seekers in connection to their reasons for requesting protection. Although the obligation to conduct a medical examination is now explicitly incorporated in Dutch law and policy, it is defensible to claim the Dutch authorities already had this obligation due to rulings of the ECtHR.<sup>131</sup>

#### Medical evidence of past persecution or serious harm

Due to Article 18 recast Asylum Procedures Directive, the Secretary of State has implemented national legislation in which a medical examination (to be used as supportive evidence) is guaranteed.<sup>132</sup>

Dutch law and policy provide that a medical examination has to be done if the IND finds this necessary for the examination of the asylum application. If this is the case, the IND asks an independent third party, namely the Dutch Forensic Institute (*Nederlands Forensisch Instituut - NFI*) or the Dutch Institute for Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische Psychiatrie en Psychologie*), to conduct the examination.<sup>133</sup> The IND bears the costs of this examination. If the asylum seeker is of the opinion that an examination has to be conducted, but the IND disagrees, the asylum seeker can proceed but on his own initiative and costs.

An NGO, called iMMO,<sup>134</sup> has the resources and specific expertise, to medically examine (physically and psychologically) asylum seekers, at their request, if this is needed. This NGO is not funded by the State and operates independently. It works with freelance doctors on a voluntary basis and does not charge the asylum seeker. The lawyer of the asylum seeker is obligated to make an effort to get the

<sup>130</sup> Article 3.109 Aliens Decree.

<sup>131</sup> ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010.

<sup>132</sup> Article 3.109<sup>e</sup> Aliens Decree.

<sup>133</sup> IND Work Instruction 2016/4, *Forensisch medisch onderzoek naar steunbewijs*.

<sup>134</sup> Netherlands Institute for Human Rights and Medical Assessment, available at <http://bit.ly/1ObGRDC>.

expenses reimbursed.<sup>135</sup> The authority of IMMO is 'codified' in the Dutch Aliens policy and its authority has been accepted by the Council of State.<sup>136</sup>

In this regard the main question is whether the IND finds it is necessary to conduct an examination.

According to the Aliens Act Implementation Guidelines, the following criteria are taken into consideration by the IND when making this assessment<sup>137</sup>

- ❖ Can a 'positive' examination in any way lead to an asylum permit?
- ❖ The explanations of the asylum on the presence of significant physical and / or psychological traces;
- ❖ Submitted medical documents in which reference is made to significant physical and / or psychological traces;
- ❖ The presence of other evidence in support of the proposition that return to the country of origin leads to persecution or serious harm;
- ❖ The explanations of the asylum seeker about the cause of physical and / or psychological traces in relation to public available information about the country of origin;
- ❖ Indications of the presence of scars, physical complaints and / or psychological symptoms may come from:
  - The 'hear medical advice and decide';
  - The reports of the interviews; and
  - Other medical documents.

Until now, the Dutch Government did not adopt a clear vision on the implementation of the Istanbul Protocol.<sup>138</sup> In the past, certain members of the government stated that the practice of the Dutch asylum system was in accordance with this Protocol, but without being specific on which points. Amnesty International, the Dutch Council for Refugees and Pharos<sup>139</sup> started a project in 2006 to promote the implementation of the Istanbul Protocol in the Dutch legislation, which resulted, *inter alia*, in a major publication on the issue.<sup>140</sup> This publication has been an inspiration for the national and European policy makers in asylum-related affairs. One of the recommendations from the publication was to provide more awareness to vulnerable groups of asylum seekers prior to the processing of their asylum applications, which has been an important issue in the recast proposals of the Reception Directive and Asylum Procedures Directive. Another recommendation was to use medical evidence as supporting evidence in asylum procedures, which has been addressed by Article 18 of the recast Asylum Procedures Directive.<sup>141</sup>

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<sup>135</sup> Regional Court The Hague (11 March 2014, Awb 14/3855) ruled that, as a provisional measure, the IND had to reimburse the expenses of this iMMO report. See also Regional Court Haarlem, 6 February 2015, Awb 14/1945.

<sup>136</sup> Paragraph C1/4.4.4 Aliens Circular.

<sup>137</sup> Paragraph C1/ 4.4.4 Aliens Circular.

<sup>138</sup> In Work Instruction 2016/4 the IND refers to the Istanbul Protocol.

<sup>139</sup> National knowledge and advice centre for the healthcare of migrants and asylum seekers, available at: <http://bit.ly/1S0So9U>.

<sup>140</sup> René Bruin, Marcelle Reneman, Evert Bloemen, "Care Full, Medico-legal reports and the Istanbul Protocol in asylum procedures" (2008) *Journal of Refugee Studies* 21(1): 134-136.

<sup>141</sup> No explicit reference in the explanatory notes on the implementation of Article 18 recast Asylum Procedures Directive is made, see Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015).



#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes  No

Minors are considered to be unaccompanied if they travel without their parents or their guardian and their parents or guardian are not already present in the Netherlands. One is considered a “child” (underage) when under the age of 18 and not (registered as) married. In case the IND doubts whether an asylum seeker is a child, an age assessment examination can be initiated.

In principle the same conditions apply for unaccompanied minors and adults when it comes to the eligibility for a residence permit. However, unaccompanied minors seeking asylum are considered as particularly vulnerable compared to adult asylum seekers and therefore specific guarantees apply. As a general rule, unaccompanied asylum seeking minors are interviewed by employees of the IND who are familiar with their special needs.<sup>142</sup>

Unaccompanied children may lodge an asylum application themselves. However, in the case of unaccompanied children younger than 12 years old, their legal representative or their guardian has to sign the asylum application form on their behalf.<sup>143</sup>

A guardian is assigned to every unaccompanied minor. NIDOS,<sup>144</sup> the independent guardianship and (family) supervision agency, is responsible for the appointment of guardians for unaccompanied asylum seeking children in a reception location.<sup>145</sup> Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian).<sup>146</sup> For unaccompanied minors, NIDOS will request to be appointed as a guardian by the juvenile court.<sup>147</sup> The minor has to give their consent. Even though the formal guardianship is assigned to the organisation, the tasks are carried out by individual professionals, called “youth protectors”.

Minors from the age of 13 to 18 years are accommodated in a specific POL. After their stay in the POL they are transferred to foster families or small-scale housing. A campus reception is only advised if the child is able to live independently in a large-scale setting. Minors who arrive at **Schiphol airport** are transferred to the application centre in **Ter Apel** and are not detained in **AC Schiphol** if their minority is not disputed. Minors under the age of 15 are not immediately sent to **Ter Apel** but are placed in a foster family straight away. After a few days the minor and the guardian go to **Ter Apel** to lodge the asylum application.

The guardian takes important decisions in the life of the minor which are taken with his/her future in mind, *inter alia*, which education fits, where the unaccompanied child can find the best housing and what medical care is necessary. The purpose of the guardianship can be divided into legal and pedagogical. A methodology of the guardian is derivative in certain domains:

- ❖ Advocacy;
- ❖ Education and care;
- ❖ Identify and prevent with the aim prevention of abuse, prevention of disappearances and the prevention of illegality.

<sup>142</sup> C2 Aliens Circular.

<sup>143</sup> C2 Aliens Circular.

<sup>144</sup> Website of NIDOS, available at <http://www.nidos.nl/>.

<sup>145</sup> Article 1:245 of the Dutch Civil Code.

<sup>146</sup> Article 245, Book 1, Civil Code.

<sup>147</sup> Art.1:254 under 2 Civil Act.

When an asylum application is rejected the minor is able to be granted a specific permit (which is a permit that is not an asylum permit). However, there are many conditions that have to be met in order to qualify for this specific permit. As a result, as far as we know, no permit on this ground has been granted yet.<sup>148</sup>

## E. Subsequent applications

**Indicators: Subsequent Applications**

1. Does the law provide for a specific procedure for subsequent applications?
 

Yes       No
  
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance       Yes       No
  - ❖ At the appeal stage       Yes       No
  
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance       Yes       No
  - ❖ At the appeal stage       Yes       No

### Subsequent applications lodged in 2016

	Number	Percentage
Total number of subsequent applications	1657	100

Main countries of origin		
Afghanistan	358	22
Iraq	156	9
Iran	110	7

Source: IND Asylum Trends.

After a final rejection of the asylum application, the asylum seeker is able to lodge a subsequent asylum application (*herhaalde aanvraag*) with the IND. This follows from the non-*refoulement* principles, codified in Article 33 of the Refugee Convention and Article 3 of the European Convention on Human Rights. The Aliens Circular stipulates how subsequent asylum applications are examined.<sup>149</sup>

As of 1 January 2014 there has been a major change in the procedure for handling subsequent asylum applications. From that date, the assessment of subsequent asylum application takes place in the so called 'one-day review' (*de eendagstoets*).<sup>150</sup> Also the implementation of the recast Asylum Procedures Directive on 20 July 2015 meant a 'formal' change, namely the obligation for the IND to declare a subsequent application inadmissible in case there are no new elements or findings.<sup>151</sup> The terminology

<sup>148</sup> Conditions to be met are laid down in policy, paragraph B8/6 Aliens Circular.

<sup>149</sup> Paragraphs C1/ 4.6 and C2/6.4 Aliens Circular.

<sup>150</sup> The 'one-day review' means that on the first day of the procedure it is assessed whether the asylum seeker has a document which is not an asylum procedure. The whole administrative procedure regarding assessing the subsequent application as a rule takes three days.

<sup>151</sup> Article 30b(1)(d) Aliens Act.

'new facts and findings' is derived from the Directive.<sup>152</sup> According to the Secretary of State<sup>153</sup> and case law,<sup>154</sup> this terminology must be interpreted exactly the same as the former terminology of "new elements or circumstances." Therefore all the old jurisprudence and policy before the implementation date is still applicable.<sup>155</sup> From here on the 'new elements or circumstances' will be called '*nova*'.

The *nova* criterion is interpreted strictly. In case of *nova*, there will be a substantive examination of the subsequent asylum application. According to paragraph C1/4.6 of the Aliens Act Implementation Guidelines the circumstances and facts are considered 'new' if they are dated from after the previous decision of the IND. In some circumstances, certain facts, which could have been known at the time of the previous asylum application, are nevertheless being considered 'new' if it would be unreasonable to decide otherwise. This is the case, for example if the asylum seeker only after the previous decision gets hold of relevant documents which are dated from before the previous asylum application(s). The basic principle is that the asylum seeker must submit all the information and documents known to them in the initial asylum procedure. Also in case of possible traumatic experiences it is, in principle, for the asylum seeker to, even briefly, mention it.<sup>156</sup>

The assessment of the regional court as to whether the asylum seeker has submitted 'new facts and circumstances' has changed. In the past it was mandatory for regional courts (administrative judges) – to assess – *ex officio* – whether the asylum seeker had submitted 'new facts and circumstances' regardless the viewpoint of the IND on this matter. Nowadays the regional court reviews the decisions of the subsequent asylum applications in the same way as other decisions: depending on the grounds the asylum seeker submitted in appeal.

The subsequent asylum procedure is as follows: the asylum seeker is required to fill out a form. According to the Council of State this is the formal application for asylum.<sup>157</sup> When the IND has received this form and assessed whether the application is complete, the asylum seeker receives an invitation to submit an asylum application at an IND application centre. The IND strives to deal with an actual application submitted by the asylum seeker within two weeks of the reception of the form. However, the latter cannot be guaranteed by the IND.

At the appointed day and time the asylum seeker must register himself and his luggage at the allocated IND application centre. Firstly the IND shall check his identity using fingerprints and several other documents. After his identity has been checked, the asylum application is signed and an interview is conducted by an employee from the IND and an interpreter. This interview does not consist of a complete review of the asylum request and statements. The IND will solely address the question whether new facts or circumstances exist on the basis of which a new asylum application would be justifiable.

After the interview, the same day, the IND decides whether status will be granted, the asylum application will be rejected or further research is required. Three scenarios are possible:

- ❖ The application is granted (refugee protection or subsidiary protection): On the same day the application is granted, the asylum seeker receives a report of the interview and the positive decision.
- ❖ The application is rejected: On the same day (day 1) the application is rejected, the asylum seeker receives a report of the interview and the intention to reject his asylum application. The asylum seeker discusses the report of the interview and the intention the next day (day 2) with his lawyer. The lawyer will draft an opinion on the intended decision and will also submit further

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<sup>152</sup> Article 33(1)(d) Aliens Act.

<sup>153</sup> Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015), 12.

<sup>154</sup> Council of State, 201113489/1/V4, Judgment 28 June 2012.

<sup>155</sup> Article 4:6 GALA.

<sup>156</sup> Council of State, 200509675/1, Judgment 13 March 2006.

<sup>157</sup> Council of State, 29 March 2016, 201504600/1/V1.

information. On the third day (day 3) the asylum seeker will receive an answer from the IND as to whether the application is rejected, approved or requires further research.

- ❖ Further research: When further research is required, the application will be assessed in the short or extended asylum procedure.

During the short or extended asylum procedure the asylum seeker enjoys the right to shelter until the IND has made a judgement on the application. When the application is granted, the asylum seeker will retain the right to shelter until there is housing available.

When the asylum seeker receives a decision that his subsequent asylum application has been rejected, the asylum seeker can be expelled.<sup>158</sup>

An appeal can be lodged against a negative decision on the subsequent asylum application to the regional court. However, lodging an appeal is not sufficient for the asylum seeker to retain lawful residence in the Netherlands, which means he may be expelled during the appeal. To prevent this, the asylum seeker has to request for a provisional measure with the regional court.<sup>159</sup> The appeal has to be lodged within one week after the rejection.<sup>160</sup> The court mainly examines if the elements and findings are 'new' in the sense of the Aliens Act (and Aliens Circular) and the GALA.<sup>161</sup> After the decision of the regional court the asylum seeker can lodge an onward appeal with the Council of State.

A problem arises when asylum seekers with a re-entry ban, issued on the ground that the asylum seeker has a criminal past,<sup>162</sup> lodges a subsequent asylum application. In that case their asylum application will be assessed by the IND, but an appeal against the rejection of the asylum application will be considered inadmissible by the regional court.<sup>163</sup> The asylum seeker has to request for cancellation/revocation of issuing the re-entry ban.

## F. The safe country concepts

### Indicators: Safe Country Concepts

1. Does national legislation allow for the use of "safe country of origin" concept?  
 Yes  No
  - ❖ Is there a national list of safe countries of origin?  Yes  No
  - ❖ Is the safe country of origin concept used in practice?  Yes  No
2. Does national legislation allow for the use of "safe third country" concept?  
 Yes  No
  - ❖ Is the safe third country concept used in practice?  Yes  No
3. Does national legislation allow for the use of "first country of asylum" concept?  
 Yes  No

With the implementation of the recast Asylum Procedures Directive, the safe country concepts find a new place within the national system. The following concepts are used:

<sup>158</sup> Article 3:1(1) Aliens Decree.

<sup>159</sup> Article 82 Aliens Act.

<sup>160</sup> Article 69 Aliens Act.

<sup>161</sup> Article 30a (1)(d) Aliens Act and Aliens Circular paragraph C1/2.7.

<sup>162</sup> In Dutch, a so called 'zwaar inreisverbod' as laid down in Article 66a (7) Aliens Act.

<sup>163</sup> Council of State, 19 December 2013, 201207041/1.

## 1. First country of asylum

An asylum request can be declared inadmissible when the asylum seeker has been recognized as refugee in a third country and can still receive protection in that country, or can enjoy sufficient protection in that country, including protection from *refoulement*, and will be re-admitted to the territory of that particular third country (Article 30a, first paragraph, under b, Aliens Act).

As stipulated in C2/6.2 Aliens Act Implementation Guidelines, the IND assumes that the asylum seeker will be re-admitted in the third country in case:

- ❖ The asylum seeker still has a valid permit for international protection in the third country;
- ❖ The asylum seeker has a valid permit or visa and he can obtain international protection;
- ❖ Information from the third country from which it can be deduced that the asylum seeker already has been granted international protection or that he is eligible for international protection;
- ❖ Statements of the asylum seeker that he has already been granted protection in a third country and this information has been confirmed by the third country.

In the situations as mentioned above the IND assumes that the asylum seeker will be re-admitted to the third country, unless the asylum seeker can substantiate (make it plausible) that he will not be re-admitted to the third country.

The mere fact that the asylum seeker has a valid visa for entering the third country is not sufficient to consider that the asylum seeker receives protection from that third country according to Article 30a, first paragraph, under b, Aliens Act.

## 2. Safe third country

An asylum request can be declared inadmissible in case a third country is regarded a safe country for the asylum seeker (Article 30a, first paragraph, under c, Aliens Act. There is no list of safe third countries. The concept is applied on a case by case basis.

Article 3.106a, first paragraph, of the Aliens Decree stipulates the criteria for a country to be considered a safe third country. This is an implementation of Article 38 of the Asylum Procedures Directive. Article 3.37e of the Aliens Regulation stipulates that the Secretary of State's assessment, whether a third country can be considered to be safe, should be based on a number of sources of information, specifically from EASO, UNHCR, the Council of Europe and other relevant/authoritative/reputable organizations.

On the basis of paragraph 2 of Article 3.106a of the Aliens Decree a connection (band) with the third country is required on the basis of which it would be reasonable for the asylum seeker to go to that country. This has been elaborated on in Article 3.37e, third paragraph, of the Aliens Regulations and in paragraph C2/6.3 Aliens Act Implementation Guidelines. According to the IND such a connection exists in case: (C2/6.3 Aliens Act Implementation Guidelines):

- ❖ the husband/wife or partner of the asylum seeker has the nationality of the third country;
- ❖ first or direct family members reside in the third country, with whom the asylum seeker is still in contact, or
- ❖ the asylum seeker has stayed in the third country

There is no recent jurisprudence from the Council of State on the concept of safe third country. We are not aware of cases in which mere transit through a third country was considered to be sufficient to declare the asylum request inadmissible on the basis of the concept of safe third country.

### 3. Safe country of origin

An asylum request can be declared manifestly unfounded in case the asylum seeker is from a safe country of origin (Article 30b, first paragraph, under b, Aliens Act). Anticipating a European list of safe countries of origin, the Secretary of State communicated end 2015 his intention to draft a national list of safe countries of origin.<sup>164</sup> As stipulated in the Asylum Procedures Directive and Article 3.105ba of the Aliens Decree, this national list was annexed to the Aliens Regulations. The following countries were designated as safe countries of origin: Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. Also Liechtenstein, Norway, Iceland, Andorra, Monaco, San Marino, Vatican City, Switzerland, Australia, Canada, Japan, the US and New-Zealand were designated as safe countries of origin.

On 9 February 2016 the Secretary of State added the following countries to the national list of safe countries of origin: Ghana, India, Jamaica, Morocco, Mongolia and Senegal.<sup>165</sup> Recently, the Secretary of State added Ukraine, Georgia, Algeria and Tunisia to this list.<sup>166</sup>

At the request of the Council of State, the Councillor Advocate General has drafted a conclusion concerning (the application of) the concept of safe country of origin.<sup>167</sup>

Some of the above-mentioned countries the Secretary of State considers to be safe, with the exception of a particular group of people (mainly LGBTI) and/or a certain region/area. In a recent judgment the Council of state considered this practice not to be in violation of the Asylum Procedures Directive.<sup>168</sup>

Since the end of 2015, the regional courts have ruled in many cases concerning the question whether the above mentioned countries have been rightly designated as safe countries of origin. Most of these judgments concern the question whether the Secretary of State has, while referring to the required sources, sufficiently substantiated that the country can be considered to be a safe country of origin. Some regional courts have recently ruled that appointing Mongolia, Algeria and Morocco as safe countries of origin has not been well founded by the Secretary of State.<sup>169</sup>

The statements of the asylum seeker form the basis for the assessment whether a country that has been designated as a safe country of origin is safe for the individual asylum seeker. The IND considers whether the particular country in practice complies with the obligations under the relevant human rights treaties. The IND cannot maintain the presumption of safe country of origin if the asylum seeker can demonstrate that his country of origin cannot be regarded as a safe country for him. In that case the IND assesses whether the asylum seeker is eligible for international protection (C2/7.2 Aliens Act Implementation Guidelines).

This is the current national list of safe countries of origin:

Appointed safe countries of origin		
Albania	Algeria	Andorra
Australia	Belgium	Bulgaria
Bosnia-Herzegovina	Canada	Cyprus
Denmark	Germany	Estonia

<sup>164</sup> KST 19637, 3 November 2015, nr. 2076.

<sup>165</sup> KST 19637, 9 February 2016, nr. 2123.

<sup>166</sup> KST 19637, 11 October 2016, nr. 2241.

<sup>167</sup> Conclusie Staatsraad Advocaat Generaal, 20 July 2016, 201603036/3.

<sup>168</sup> Council of State, 1 February 2017, nr. 201606592/1.

<sup>169</sup> Regional Court Roermond, 9 August 2016, NL 16.1759 (regarding Mongolia); Regional Court Groningen, 19 December 2016, 16/27140 (regarding Algeria) and the Council of State has asked questions to the Secretary of State about appointing Morocco as a safe country of origin, 17 December 2016, 201606592/1.

Finland	France	Georgia
Ghana	Greece	Hungary
Ireland	India	Italy
Jamaica	Japan	Kosovo
Croatia	Lithuania	Liechtenstein
Latvia	Luxembourg	Macedonia
Malta	Morocco	Monaco
Mongolia	Montenegro	Netherlands
New Zealand	Norway	Ukraine
Austria	Poland	Portugal
Romania	San Marino	Senegal
Serbia	Slovakia	Spain
Togo	Czech Republic	Tunisia
Vatican City	United Kingdom	United States
Iceland	Sweden	Switzerland

## G. Relocation

### Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme [insert number]

### Relocation statistics: 2016 (status 6 December 2016)\*

Relocation from Italy			Relocation from Greece		
	Received requests	Relocations		Received requests	Relocations
<b>Total</b>	425	331	<b>Total</b>	950	767
Unspecified**			Unspecified		
Unspecified			Unspecified		
Unspecified			Unspecified		

\* Source: Annex to COM(2016) 791 final.

\*\* Break-downs about nationality and special needs are not available. There are no numbers about duration and rejections of relocation requests.

Relocated persons in the Netherlands will be assessed in the standard/ general asylum procedure of 8 days. They are excluded from the extended 9 months for time-limit as mentioned above.

## H. Information for asylum seekers and access to NGOs and UNHCR

### 1. Information on the procedure

#### Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
- ❖ Is tailored information provided to unaccompanied children?  Yes  No

As laid down in the Aliens Circular,<sup>170</sup> (representatives of) the Dutch Council for Refugees inform the asylum seekers about the asylum procedure during the rest and preparation period. This can be either done during a one-to-one meeting, or in a group where asylum seekers often do not know each other but speak a common language, generally through an interpreter on the phone. During this information meeting, the asylum seeker will also be informed that the IND may request for their transfer to another Member State under the Dublin Regulation. In such meetings, the asylum seeker receives information from the Dutch Council for Refugees on how the Dutch asylum procedure works and what their rights and duties are.

The Dutch Council for Refugees also has brochures available for every step in the asylum procedure (rest and preparation-, short-, extended- and Dublin procedure) in 33 different languages, which are based on the most common asylum countries, notably Somalia, Iraq and Afghanistan. The brochure describes the steps in the asylum procedure, the competent authorities and the duties of the asylum seeker. In addition to this brochure there are employees of the Dutch Council for Refugees present in the COL, POL and at AC **Schiphol**.

The IND also has leaflets with information on the different types of procedures, and rights and duties of the asylum seekers. UNHCR verifies the content of the brochure and leaflets of the IND and the Dutch Council for Refugees. The common information forms included in Annexes X to XIII of the Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 are in use.<sup>171</sup>

### 2. Access to NGOs and UNHCR

#### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No

Asylum seekers who are detained during their border procedure do have access to (other) NGOs (such as Amnesty International) and UNHCR. These organisations are able to visit asylum seekers in detention as any other regular visitor, but in practice this hardly happens. On the one hand, asylum

<sup>170</sup> C1/2 Aliens Circular.

<sup>171</sup> Website IND, available at <http://bit.ly/1Szg8Ss>.



seekers are not always familiar with the organizations and do not always know how to reach them. On the other hand (representatives of) the organizations do not have the capacity to visit all the asylum seekers who wish to meet the representatives of the NGOs or UNHCR.<sup>172</sup>

## I. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  
 Yes  No  
❖ If yes, specify which: -
2. Are applications from specific nationalities considered manifestly unfounded?<sup>173</sup>  
 Yes  No  
❖ If yes, specify which: Safe countries of origin

In general, applications from asylum seekers from 'safe countries of origin', are considered manifestly unfounded. However, in policy rules exceptions are being made with regard to certain groups, like LGBTI asylum seekers. The safe countries of origin are listed in the section on [Safe countries of origin](#).

At the moment, a moratorium on decisions and departure with regard to Burundi is applicable (until 1 July 2017).

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<sup>172</sup> There are also so called voluntary visitor groups which visit asylum seekers in detention.

<sup>173</sup> Whether under the "Safe Country of Origin" concept or otherwise.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers accessible in the following stages of the asylum procedure?
 

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No <sup>174</sup>
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No <sup>175</sup>
❖ Onward appeal	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No <sup>176</sup>
❖ Subsequent application	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
  
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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The regime of reception conditions for asylum seekers has been laid down in a number of legislative instruments, of which the Central Agency Act for the Reception of Asylum Seekers (*Wet Centraal Orgaan opvang Asielzoekers*) is the most important. The 2005 Regulation on benefits for asylum seekers (*Regeling verstrekkingen asielzoekers 2005*) is based on this Act and it is of greatest importance in practice. This Regulation defines who is entitled to reception conditions and who is exempt from this right. The organisation responsible for the reception of asylum seekers is the COA. This is an independent administrative body that falls under the political responsibility of the Secretary of State of Security and Justice.

The Secretary of State is also entitled to exclude certain categories of asylum seekers from reception conditions when there is an emergency in terms of capacity. The COA only provides reception to the categories of people listed in the 2005 Regulation on Benefits for asylum seekers. The system is based on the principle that all asylum seekers are entitled to material reception conditions. However, according to Dutch legislation only asylum seekers who lack resources are entitled to material reception conditions.<sup>177</sup> During the whole asylum procedure the COA is responsible for the reception of asylum seekers.

During the preparation period an individual is already considered an asylum seeker under the 2005 Regulation on benefits for asylum seekers because this person has lodged an application for asylum. So already during the preparation period an individual is entitled to reception.

<sup>174</sup> Although in general there is no entitlement to reception facilities after a rejection based on inadmissibility the law subscribes that, in case that a provisional measure is granted by the district court proclaiming that the asylum seeker cannot be expelled until the decision on the appeal is made, there is a right to reception. See Article 3(3)(a) RBA.

<sup>175</sup> If the appeal has suspensive effect there is a right to reception facilities. In general an appeal has suspensive effect except in the following cases: the rejection is based on Dublin; inadmissible application (except inadmissibility based on a safe third country); manifestly unfounded application (except illegal entry, extending residence unlawfully or not promptly reported to the authorities); not processing the application; and in case of a subsequent application (see Article 82(2) 2000 Aliens Act)

<sup>176</sup> Although in general there is no entitlement to reception facilities pending an onward appeal the law subscribes that, in case that a provisional measure is granted by the Council of State proclaiming that the asylum seeker cannot be expelled until the decision on the appeal is made, there is a right to reception. See Article 3(3)(a) RBA.

<sup>177</sup> Article 2(1) Regulation on benefits for asylum seekers.

When the asylum application is rejected during the regular asylum procedure, the asylum seeker continues to be entitled to reception facilities until four weeks after the negative decision of the IND.<sup>178</sup> After those four weeks, the asylum seeker has to leave the reception centre. To avoid this precarious situation an asylum seeker can make a request for an 'immediate' provisional measure as soon as it is clear that the court will not decide within this four week period.<sup>179</sup> Making such a request for a provisional measure ensures that after the four week period the asylum seeker is still entitled to stay in the reception centre while the appeal is still pending.

Asylum seekers who receive their negative decision in the asylum procedure are in principle granted a four week period to appeal this decision at the court. During these four weeks they are entitled to reception conditions. If the asylum seeker makes use of the possibility to appeal the first instance decision within these four weeks the right to reception conditions continues until four weeks after the verdict of the court.<sup>180</sup>

When an asylum seeker wishes to lodge a subsequent asylum application they have to fill in a separate form. For more information see section on Subsequent application.

After a subsequent asylum application has been rejected in the extended asylum procedure, no voluntary departure period is granted.<sup>181</sup> An appeal against a negative decision for subsequent applications has no suspensive effect.<sup>182</sup> Since the asylum seeker who submitted a subsequent application in principle has to leave the territory immediately after a negative decision there is no right to reception conditions.<sup>183</sup> Of course there is still an opportunity to appeal and request a provisional measure. Only after this appeal or provisional measure has been granted can the asylum seeker benefit from reception conditions once again.<sup>184</sup>

In theory reception facilities can be withdrawn or refused if asylum seekers have resources of their own. In practice this rarely happens but it is a possibility. For instance, it has recently come to the attention of the Dutch Council for Refugees that the COA considers asylum seekers that have a derived refugee status (based on their relationship with a refugee) and that now want to get a divorce and lodge their own asylum application, as still having enough resources. According to the COA, these people are to be regarded as spouses of people who have a right to housing in the municipality, even when they filed for divorce, and as such they can be considered as asylum seekers with enough resources of their own. They are therefore not entitled to reception facilities.

There is no specific assessment to determine whether the asylum seeker is destitute. But there are more or less some guarantees that asylum seekers do not become destitute. For instance, if an asylum seeker has financial means of a value higher than the maximum resources allowed in order to benefit from the social allowance system (around €6,000 for a single person), the COA is allowed to reduce the provision of reception conditions accordingly but with a maximum of the economic value equivalent to the reception conditions provided.<sup>185</sup>

Asylum seekers are entitled to material reception conditions after they have shown their wish to apply for asylum. This can be done by registering themselves in the Central Reception Centre COL in **Ter**

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<sup>178</sup> From this moment the asylum seeker officially falls under the scope of the 2005 Regulation on benefits for asylum seekers.

<sup>179</sup> District Court Den Bosch, 11/25103, Judgment 1 September 2011.

<sup>180</sup> Article 5 Regulation on benefits for asylum seekers.

<sup>181</sup> Article 62(2)(b) Aliens Act.

<sup>182</sup> Article 82(2)(b) Aliens Act.

<sup>183</sup> Article 62 Aliens Act.

<sup>184</sup> Article 3(3)(a) Regulation on benefits for asylum seekers.

<sup>185</sup> Article 20(2) Regulation on benefits for asylum seekers.

**Apel.** The actual registration of the asylum application will happen after spending at least six days (three weeks for minors) at a reception location. During this time the asylum seeker is entitled to reception conditions stipulated in Article 9(1) of the 2005 RBA.<sup>186</sup> The organ responsible for both material as well as non-material reception of asylum seekers is the COA, according to the Wet COA.<sup>187</sup>

The material reception conditions are not tied to the issuance of any document by the authorities but the IND will issue a temporary identification card (W document) to asylum seekers while their asylum application is still in process. The asylum seeker can use this W document to prove their identity, nationality and their lawful stay in the Netherlands.<sup>188</sup> If such a document is not issued, the asylum seeker can apply for this. The law makes it clear that the asylum seeker is entitled to such document.<sup>189</sup> There are no reports indicating that asylum seekers are unable to access material reception conditions or that there are any obstacles which prevent asylum seekers from accessing material reception conditions in practice if they are entitled to it.

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2016 (in original currency and in €):
  - ❖ Single adult accommodated by COA: €296.24

The right to reception conditions includes the right to:<sup>190</sup>

- ❖ Accommodation;
- ❖ A weekly financial allowance for the purpose of food, clothing and personal expenses;
- ❖ Public transport tickets to visit a lawyer;
- ❖ Recreational and educational activities (for example a preparation for the integration-exam);
- ❖ A provision for medical costs (healthcare insurance);
- ❖ An insurance covering the asylum seekers' legal civil liability;
- ❖ Payment of exceptional costs.

The weekly allowance depends on the situation. Asylum seekers have the possibility to have breakfast and lunch at the reception location, but this will lead to a reduction of their allowance. In the situation where the asylum seekers choose to take care of their own food, these are the amounts:

Category of applicant	Allowance in COA with food provided	Allowance in COA with no food provided
One or two persons in one household	€ 29.68	€44.38
A parent with one minor	€ 25.06	€ 36.54
Three persons household		
Adult	€ 23.73	€ 35.49
Child	€ 25.06	€ 29.26
Four or more persons house hold		
Adult	€ 20.79	€ 31.08
Child	€ 17.57	€ 25.55

The cost for clothes and other expenses is a fixed amount: € 12.95 per week, per person.<sup>191</sup>

<sup>186</sup> Article 9(1) Regulation on benefits for asylum seekers.

<sup>187</sup> Article 3(1) Regulation on benefits for asylum seekers.

<sup>188</sup> available at: <http://bit.ly/1PLOnXD>.

<sup>189</sup> Article 9 Aliens Act.

<sup>190</sup> Article 9(1) Regulation on benefits for asylum seekers.

<sup>191</sup> Article 14(4) Regulation on benefits for asylum seekers.

As of 1 January 2017, the social welfare allowance for Dutch citizens is € 982.79 for a single person of 21 years and older. Relatively speaking, an asylum seeker receives only about 30% of the social welfare allowance for Dutch citizens. However, it has to be acknowledged that it is difficult to compare these amounts because an asylum seeker is offered accommodation and other benefits etc.

Asylum seekers who are granted a residence permit are allowed to stay in the reception centre until COA has arranged housing facilities in cooperation with a municipality. The asylum seeker is obliged to make use of the offer of the COA in the sense that the right to reception facilities will end at the moment housing is offered.

In general material support is never given through an allowance only. Due to the large numbers of asylum seekers applying for asylum in 2015 the Secretary of State made it possible for asylum seekers who had been granted a residence permit but were still accommodated in the AZC's to stay with family and friends from the moment they obtained their residence permit until suitable housing was found.<sup>192</sup> According to the COA, this is still possible based on article 11(1) and 9(1) of the Regulation Benefits asylum seekers.

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the law provide for the possibility to withdraw material reception conditions?  
 Yes  No

An asylum seeker has to abide by the internal rules of the reception centre and there is a duty to report once a week.<sup>193</sup> When an asylum seeker violates these rules, a reduction of material reception conditions can be imposed. Based on article 10 of the Regulation on benefits for asylum seekers the COA can reduce and withdraw reception conditions. The application of such measures has been intensified in 2016, according to the Secretary of State.<sup>194</sup>

Withdrawal or reduction of reception facilities is a decision of the COA and therefore subject to the Aliens Act regarding the legal remedies against such a decision.<sup>195</sup> This means that the same court that decides on alien matters is competent. A lawyer can get an allowance from the Legal Aid Board to defend the asylum seeker. If the decision becomes irrevocable the measures cannot be re-instated.

### 4. Freedom of movement

#### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes  No
2. Does the law provide for restrictions on freedom of movement?  Yes  No

The asylum seeker who is residing in an AZC is barely restricted in his freedom of movement. AZC's are so-called open centres. This entails that asylum seekers are free to go outside if they please.

<sup>192</sup> Decision of the Secretary of State 677862, 10 September 2015.

<sup>193</sup> Article 19(1) Regulation on benefits for asylum seekers.

<sup>194</sup> Letter of the Secretary of State 743155, 31 March 2016.

<sup>195</sup> Article 5 Act of the Agency of Reception.

However, there is a weekly duty to report (*meldplicht*) and if asylum seekers fail to report themselves twice the reception conditions will be withdrawn.<sup>196</sup>

Failed asylum seekers (rejected with no legal remedies left) who are located in the freedom restricted locations (*Vrijheidsbeperkende locatie*, VBL) and family housing (*Gezinslocatie*, GL), which is also a freedom restricted location, are not detained but their freedom is restricted to a certain municipality. They are not allowed to leave the borders of the municipality. This is not really checked by the authorities but the asylum seekers have to report six days a week (except Sunday) so in practice it is hard to leave the municipality.<sup>197</sup> The penalty for not reporting could be a fine or even criminal detention or an indication that the asylum seeker is not willing to cooperate regarding their return (this is a requirement for staying in the freedom restricted location) which could be a reason to detain (with the aim to remove) them.<sup>198</sup>

The stage of the procedure of the asylum seeker is relevant relating to the type of accommodation he is entitled to. Every asylum seeker starts in the POL and is transferred to the COL. After this the asylum seeker is transferred to an AZC if he is still entitled to reception conditions (this is the case when he is granted a permit, he is referred to the extended asylum procedure, his appeal has suspensive effect or he is entitled to a four week departure period). If the application is rejected and the asylum seeker is not entitled to reception conditions based on his procedure he can be transferred to a VBL if he is willing to cooperate in establishing his departure. In case of a family with minor children cooperation is not required.

An asylum seeker can appeal against the decision to transfer him from an AZC to a VBL because a transfer to a VBL is a freedom restricting measure against which there must be an appeal available by law.<sup>199</sup> There is no appeal available against 'procedural' transfers (movements) from COL/POL to AZC. Indirectly there is an appeal available against a transfer to another AZC but in practice this does not happen often.<sup>200</sup> Asylum seekers can be moved to another AZC due to the closure of the centre they are currently staying at or because this serves the execution of the asylum procedure, e.g. in order to avoid that the AZC is so full this would create tension amongst the residents.

With regard to the transfer of families with children and unaccompanied minors, a report was written by Defence for Children, Kerk in Actie, UNICEF, the Dutch Council for Refugees and War Child. The report makes several recommendations to improve the situation of children in reception centres, for example not to move children from one place to another. The Secretary of State has acknowledged the need to minimize the movements these children make during the asylum procedure.<sup>201</sup>

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<sup>196</sup> Article 7(1)(j) and 10(1)(b) Regulation on benefits for asylum seekers.

<sup>197</sup> These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restricted measures based on Article 56 *juncto* 54 Aliens Act.

<sup>198</sup> Article 108 Aliens Act.

<sup>199</sup> These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restricted measure based on Article 56 *juncto* 54 Aliens Act.

<sup>200</sup> District Court Roermond, 09/29454, Judgment of 2 March 2010. When reading this ruling, it should be noted that there is formally no distinction anymore between a return and an integration AZC.

<sup>201</sup> Letter of the Secretary of State 2011959, 29 November 2016; Report of Defence for Children, Kerk in Actie, Unicef the Netherlands, the Dutch Council for Refugees and War Child, *Zo kan het ook! Aanbevelingen voor een betere situatie van kinderen in asielzoekerscentra (Recommendations for a better situation of children in centres for asylum seekers)* (18 November 2016), available at [www.kind-in-azc.nl](http://www.kind-in-azc.nl).

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

- |  |               |
|--|---------------|
| 1. Number of reception centres: <sup>202</sup>   | 106           |
| 2. Total number of places in the reception centres: <sup>203</sup>   | 26,185        |
| 3. Total number of places in private accommodation:  | Not available |
| 4. Type of accommodation most frequently used in a regular procedure:  |               |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other |               |
| 5. Type of accommodation most frequently used in an accelerated procedure:   |               |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other |               |

If an asylum seeker from a non-Schengen country has arrived in the Netherlands by plane or boat, the application for asylum must be lodged at the **AC Schiphol**, which is located at the *Justitieel Centrum Schiphol (JCS)*.<sup>204</sup> The application centre **Schiphol** is a closed centre, which means the asylum seeker is not allowed to leave the centre. The asylum seeker is also not transferred to the POL after the application, as is the case for asylum seekers who entered the Netherlands by land and/or lodged their asylum application at the COL.<sup>205</sup> Vulnerable asylum seekers such as children do not stay at JCS.

Asylum seekers who enter the Netherlands by land have to apply at the COL in **Ter Apel**, where they stay for a maximum of three days. The COL is not designed for a long stay. In the COL the COA determines whether an individual is in need of special accommodation. Except for some specialised accommodation for asylum seekers with psychological problems (mostly traumatised asylum seekers) and unaccompanied children COA does not provide separate reception centres for vulnerable groups, nor special accommodation for (single) women.

After this short stay at the COL, the asylum seeker is transferred to a POL. There are four POLs in the Netherlands. At the POL the asylum seeker will take the next steps of the rest and preparation period and awaits the official asylum application at the application centre. As soon as the asylum seeker has officially lodged an asylum application he or she receives a certificate of legal stay.

An asylum seeker remains in the POL if the IND decides to examine the asylum application in the regular asylum procedure (within eight days). If protection is granted, the asylum seeker is transferred to a centre for asylum seekers, AZC, before receiving housing in the Netherlands. If the IND decides, usually after four days, to handle the application in the extended asylum procedure, the asylum seeker will also be transferred from the POL to an AZC.

If the asylum application is rejected the asylum seeker will have a right to reception during the return period, which is in principle four weeks. However, the return period is shorter in case the rejection is based on Dublin, it is declared inadmissible (except inadmissibility based on a safe third country), it is manifestly unfounded (except illegal entry, extending residence unlawfully or not promptly reporting to the authorities), it is not being processed, or in case of a subsequent application. In any case the right to reception ends as soon as the return period comes to an end.<sup>206</sup>

<sup>202</sup> This concerns both permanent and first arrivals and also includes the currently closed reception centres.

<sup>203</sup> Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)* (Period January 2016 until June 2016), 24-25.

<sup>204</sup> Article 3(3) Aliens Act.

<sup>205</sup> Asylum seekers who are not stopped at an international border of the Netherlands and want to make an asylum application have to go to the COL in Ter Apel, even if they initially came by plane or boat.

<sup>206</sup> Article 5 Regulation benefits for asylum seekers.

If it is expected that an expulsion can be carried out within two weeks, detention with the aim of removal can be imposed.<sup>207</sup> If it is expected that an expulsion will not be accomplished within two weeks a measure restricting freedom can be imposed for, in principle, twelve weeks.<sup>208</sup> This means that an asylum seeker, after the regular term of four weeks has expired, will be offered reception during an additional period of twelve weeks but in a Restricted Reception Centre (VBL).<sup>209</sup> This form of reception is offered on the condition that the asylum seeker whose application was rejected cooperates with organising his or her departure from the Netherlands.

The European Committee for Social Rights (ECSR) and the Dutch Supreme High Court decided that children should be offered reception conditions in all circumstances.<sup>210</sup> The bottom line of this verdict is the assumed responsibility of the State for irregularly residing children on Dutch territory from the moment the parents are not capable to take care of their child. As a result families with minor children who lose the right to reception conditions can be transferred to a family housing centre (GL) which is a restricted reception centre. UNICEF, the Dutch Council for Refugees and Defence for Children have criticised the family housing centres stating that this form of reception in conjunction with the restricted measure is not in line with the Convention on the Rights of the Child.<sup>211</sup> There are eight of these reception centres for families.<sup>212</sup> A stricter regime is applied to this type of location because asylum seekers whose application has been rejected and who are staying in the family housing centre and Restricted Reception centre do not fall under the scope of the 2005 Regulation on Benefits for asylum seekers whereas asylum seekers staying at the POL, COL and AZC do fall under its scope.<sup>213</sup>

In November 2014 a new report of the ECSR was published. In this report the ECSR states that the Dutch government violates the rights of irregular migrants. According to the ECSR the Netherlands should provide shelter, clothes and food for all rejected asylum seekers who are not entitled to reception conditions (and not only children as was the case in in the earlier mentioned report of the ECSR). In general it concerns asylum seekers who are legally obliged to leave the Netherlands. The ECSR is of the opinion that the deprivation of reception conditions for this group of asylum seekers is below a certain threshold of human dignity.<sup>214</sup>

Because the Secretary of State disagreed with this opinion a judgement of the Committee of Ministers was needed. Unfortunately the judgement of the Committee kept the government divided as to whether it entails an absolute obligation to provide reception to rejected asylum seekers.<sup>215</sup> The Dutch Council of State later ruled that the government is in principle allowed to require rejected asylum seekers to participate in their return procedure as a condition to stay in a VBL, although it should be possible to deviate from that requirement in case of exceptional circumstances.<sup>216</sup>

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<sup>207</sup> Article 59 Aliens Act.

<sup>208</sup> Article 56 Aliens Act *juncto* Article 54(f) Aliens Act.

<sup>209</sup> A6/4.3.5 Aliens Circular; the regulation benefits asylum seekers and Council Directive 2003/9/EC are not formally applicable for the stay at the restricted reception location.

<sup>210</sup> European committee of Social Rights, 47/2008, DCI t. Nederland, judgment on 28 February 2010 and Supreme Court of the Netherlands, 1/01153, Judgment on 21 September 2012.

<sup>211</sup> See Werkgroep Kind in azc: <http://www.kind-in-azc.nl/gezinslocaties/>

<sup>212</sup> With around 1,900 residents in total.

<sup>213</sup> There is a duty to report six times a week for example.

<sup>214</sup> Report to the Committee of Ministers, *Conference of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, Strasbourg, 1 July 2014.

<sup>215</sup> Committee of Ministers, Resolution CM/ResCHs (2015) 5, Judgment 15 April 2015.

<sup>216</sup> Council of State 201500577/1/V1, judgement 26 November 2015



## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres?  
Between 8 and 12 months<sup>217</sup>
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

Due to the large number of asylum applications in 2015, COA was experiencing difficulties to provide accommodation for all asylum seekers. Creative solutions were needed, for example emergency reception centres and allowing refugees with a residence permit to reside with family and friends. The number of people in reception centres has decreased throughout 2016. Therefore, such solutions are no longer needed. The COA has even decided to close several of the reception centres.

At the time of writing, there are no reports of serious deficiencies in the sanitary facilities that are provided.

Residents of a reception centre usually live with five to eight people in one unit. Each unit has several bedrooms and a shared living room, kitchen and sanitary facilities. Residents are responsible for keeping their habitat in order.<sup>218</sup> Unaccompanied children live in small-scale shelters, which are specialized in the reception of unaccompanied children. They are intensively monitored to increase their safety.<sup>219</sup>

Adults can attend programs and counselling meetings, tailored to the stage of the asylum procedure in which they are located. Next to this, it is possible for asylum seekers to work on maintenance of the centre, cleaning of common areas, etc. and earn a small fee doing this, up to € 14 per week.<sup>220</sup> It is also possible for children as well as adults to participate in courses or sports at the local sports club. Children of school age are obliged to attend school. To practice with teaching materials and to keep in touch with family and friends, asylum seekers can visit the Open Education Centre (Open Leercentrum) which is equipped with computers with internet access. Children can do their homework here. There is supervision by other asylum seekers and Dutch volunteers.

AZCs are so-called open centres. This entails that asylum seekers are free to go outside if they please. However, there is a weekly duty to report (*meldplicht*) in order for the COA to determine whether the asylum seeker still resides in the facility and whether he or she is still entitled to the facilities.<sup>221</sup> Some reception centres have a stricter regime (see section on [Types of Accommodation](#)).

There have recently been some individual incidents and issues involving asylum seekers. On 16 January of 2016, an Iraqi asylum seeker who was residing in an emergency reception location committed suicide. This was investigated by the Ministry of Security and Justice which resulted in a report finding that the Dutch government had not acted negligently. However, several recommendations regarding communication and transparency were formulated.<sup>222</sup> Other incidents are related to Dutch citizens

<sup>217</sup> Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

<sup>218</sup> For more information see <http://bit.ly/2lvp6a0>.

<sup>219</sup> See section on [Special reception needs of vulnerable groups](#).

<sup>220</sup> Article 18(1) and (3) Regulation Benefits asylum seekers.

<sup>221</sup> Article 19(1)(e) Regulation Benefits asylum seekers.

<sup>222</sup> Ministry of Security and Justice, Rapport overlijden irakese asielzoeker in de noodopvang in Alphen aan den Rijn (12 August 2016) available at <http://bit.ly/2lvp6a0>.

protesting the establishment of a reception centre in their city.<sup>223</sup> Recently there have been issues in reception centres with asylum seekers originating from safe countries. In response, the state secretary decided to take several measures amongst which the decision to limit their right to reception.<sup>224</sup>

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?  Yes  No
  - ❖ If yes, when do asylum seekers have access the labour market? 6 months
2. Does the law allow access to employment only following a labour market test?  Yes  No
3. Does the law only allow asylum seekers to work in specific sectors?  Yes  No
  - ❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time?  Yes  No
  - ❖ If yes, specify the number of days per year 168 days per year
5. Are there restrictions to accessing employment in practice?  Yes  No

Despite the fact that Dutch legislation provides for access to the labour market to asylum seekers,<sup>225</sup> in practice, it is extremely hard for an asylum seeker to find a job. Employers are not eager to contract an asylum seeker due the administrative hurdles and the supply on the labour market.

The Aliens Labour Act and other regulations lay down the rules regarding access to the labour market for asylum seekers. Despite having the right to work, asylum seekers can only work limited time, namely a maximum of 24 weeks each 12 months. Before the asylum seeker can start working, the employer must request an employment-license for asylum seekers (*tewerkstellingsvergunning*). To acquire an employment-license the asylum seeker must fulfil certain conditions:<sup>226</sup>

- ❖ The asylum application has been lodged at least six months before and is still pending a (final) decision, and;
- ❖ The asylum seeker is staying legally in the Netherlands on the basis of Article 8, under (f) or (h) of the Aliens Act, and;
- ❖ The asylum seeker is provided reception conditions as they come within the scope of the 2005 Regulation on benefits for asylum seekers, the Regulation on Reception for asylum seekers, or under the responsibility of NIDOS, and;
- ❖ The asylum seeker does not exceed the maximum time limit of employment (24 weeks per 12 months), and;
- ❖ The intended work is conducted under general labour market conditions, and;

<sup>223</sup> For example see: NRC Handelsblad, Betogers tegen azc in Brabantse Heesch bestormen gemeentehuis (18 January 2016) available at <http://bit.ly/2lsnAom>.

<sup>224</sup> Letter of the State Secretary, 13 December 2016, 19637/2268.

<sup>225</sup> Article 2(a)(1) first sentence and under a, b and c Buwav. (Decree on how to implement the Aliens Labour Act).

<sup>226</sup> Article 2 under a Buwav.

- ❖ The employer submits a copy of the W-document (identity card).<sup>227</sup>

The procedure to apply for an employment license in practice takes no longer than two weeks. If the asylum seeker stays in the reception facility arranged by the COA for the reception of asylum seekers, they should contribute a certain amount of money to the accommodation costs. This depends on how much they have earned and it can never exceed the economic value of the accommodation facilities. Besides that, the financial allowance can be withdrawn. Asylum seekers are also allowed to do internships or voluntary work.

In practice, asylum seekers encounter obstacles in relation to administrative hurdles. The 'work permit procedure' for paid labour is an illustrative example of this. An asylum seeker in the Netherlands is allowed to perform paid labour if he or she hands in a copy of a work permit. The employer concerned can apply for a work permit on the condition that at the moment of application, the asylum application has been lodged at least six months before and is still pending a (final) decision. The application procedure at the Netherlands Employees Insurance Agency can take up to two weeks.<sup>228</sup> Before the employer can apply for the work permit, however, a declaration of reception must be obtained. So next to total six and a half months (six months in procedure + two weeks for the work permit), the time for obtaining the declaration of reception should be added. In conclusion, the moment the asylum seeker has the right to perform paid labour differs significantly from the moment the asylum seeker can factually exercise its right to work.

## 2. Access to education

### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children?  
 Yes  No
2. Are children able to access education in practice?  
 Yes  No

According to Dutch law education is mandatory for every child under 18, including asylum seekers.<sup>229</sup> Asylum-seeking children have the same rights to education as Dutch children or children who are treated in the same way (e.g. children with a residence permit). This also applies to children with special needs: if possible, arrangements will be made to ensure that those children get the attention they deserve.<sup>230</sup> Every AZC is in touch with and has arrangements with an elementary school nearby. However, if the parents wish to send their child to another school, they are free to do so.

Children below 12 go to elementary school either at the school nearby the AZC or at the AZC itself. Children between the age of 12 and 18 are first taught in an international class. When their level of Dutch is considered to be sufficient, they enrol in the suitable education program.<sup>231</sup>

According to the Regulation on benefits for asylum seekers, the COA provides access to educational programmes for adults at the AZC.<sup>232</sup> Depending on the stage of the asylum application, the COA offers

<sup>227</sup> During their lawful stay in the Netherlands, asylum seekers receive an identity card, a so called *W-document*, pending their procedure.

<sup>228</sup> Article 6 Labour Act for Aliens.

<sup>229</sup> Article 3 Leerplichtwet 1969 (The act on compulsory school attendance).

<sup>230</sup> Available at: <http://www.lowan.nl/>.

<sup>231</sup> For more information see the Agreement concerning the increased influx of asylum seekers (28 April 2016) as attachment to the letter of the Minister of Internal Affairs (28 April 2016) 19637/2182, available at <http://bit.ly/2miTKiV>; and the website of Central Organ for Reception of Asylum Seekers, available at: <http://bit.ly/2lBa5Ht>.

<sup>232</sup> Article 9(3)(d) Regulation Benefits asylum seekers.

different educational programmes including vocational training. Refugees who have been granted a residence permit can still be offered an educational programme.<sup>233</sup>

There are no theoretical obstacles as to access to vocational training for adults. However, asylum seekers have often not had the chance to learn Dutch which decreases their chance of accessing vocational training in practice. Moreover, asylum seekers do not have a right to financial study aid from the government.

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes  No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes  Limited  No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes  Limited  No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
 Yes  Limited  No

The COA is responsible for the provision of health care in the reception centres. In principle, the health care provided to asylum seekers should be in line with the Dutch regular health care. As any other person in the Netherlands, an asylum seeker can visit a general practitioner, midwife or hospital. The Health Centre for Asylum seekers (*Gezondheidscentrum Asielzoekers*) is the first point of reference for the asylum seeker in case of health issues.

The relevant legislation can be found in Article 9(1)(e) of the Regulation on benefits for asylum seekers. This provision is further elaborated in the Healthcare for Asylum Seekers Regulation (*Regeling Zorg Asielzoekers*).<sup>234</sup> According to the latter, asylum seekers have access to basic health care. This includes *inter alia*, hospitalisation, consultations with a general practitioner, physiotherapy, dental care (only in extreme cases) and consultations with a psychologist. If necessary, an asylum seeker can be referred to a mental hospital for day treatment. There are several institutions specialized in the treatment of asylum seekers with psychological problems (for example: 'Phoenix').<sup>235</sup>

When an asylum seeker stays in a reception facility but the 2005 Regulation on benefits for asylum seekers is not applicable, health care is arranged differently.

Asylum seekers in the POL, the COL and the VBL and adults in the GL only have access to health care in extreme cases (a medical emergency).<sup>236</sup> In medical emergency situations, there is always a right to healthcare. This is codified in Article 10 of the Aliens Act. For this group problems can arise if there is a medical problem but no emergency. Care providers who do help irregular migrants who are unable to pay their own medical treatment can declare those costs at a special foundation, which then pays the costs. The national ombudsman has investigated the access to health care for asylum seekers and rejected asylum seekers and has requested the Minister of Public Health to ensure that undocumented migrants also have access to health care.<sup>237</sup>

<sup>233</sup> Article 12(1) Regulation Benefits asylum seekers.

<sup>234</sup> Healthcare for Asylum seekers Regulation, available at <http://bit.ly/1QJkhVx>.

<sup>235</sup> See Phoenix's website, available at: <http://bit.ly/1suo57>.

<sup>236</sup> Article 10(2) Aliens Act.

<sup>237</sup> Report of the national ombudsman on health care for asylum seekers and rejected asylum seekers (3 October 2013) available at <http://bit.ly/2mfJ3Cv>; Letter and recommendations of the national ombudsman to the Minister of Public Health (16 December 2015) available at <http://bit.ly/2kdMvvF>.

Problems might also arise with respect to access to health care where the asylum seeker wants to use a health care provider whose costs are not covered by their insurance.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
 Yes  No

Employees of the COA have to make sure that a reception centre provides an adequate standard of living and the COA is responsible for the welfare of the asylum seekers.<sup>238</sup> In practice, this means that COA takes into account the special needs of the asylum seekers. For example, if an asylum seeker is in a wheelchair the room will be on the ground floor. Besides that, if an asylum seeker, for instance, cannot wash themselves due to whatever reason they are allowed to make use of the regular home care facilities (in the sense that the asylum seeker is entitled to similar health care as a Dutch national). This means that COA does not provide special reception centres for vulnerable people except for asylum seekers with psychological problems and children.<sup>239</sup>

Unaccompanied children younger than 15 are accommodated in foster families and are placed with those families immediately.<sup>240</sup> Unaccompanied children between 15 and 18 years old are initially accommodated in a special reception location (POL-amv). They are guided by their guardian of Stichting Nidos (the guardianship agency) and by the Dutch Council for Refugees. They stay in this POL-amv during their procedure for a maximum of 7 weeks. If their application gets rejected, they go to small housing units (*kleine woonvoorziening*). The small housing units fall under the responsibility of the COA and are designed for children between the age of 15 and 18 years old, often of different nationalities. The capacity of the small housing units is between 16 and 20 children. A mentor is present 28.5 hours a week. If they receive a residence permit, Nidos is responsible for accommodation. Because of low capacity, 2016 has been a transition period in which the COA was also providing accommodation for unaccompanied minors with a refugee status.

Unaccompanied minor asylum seekers are extra vulnerable with regard to human smuggling and trafficking. Children who have a higher risk of becoming a victim, based on the experience of the decision-making authorities, are therefore placed in protection reception locations.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

Article 2(3) and (4) of the Regulation on Benefits for asylum seekers is the legal basis for the provision of information to asylum seekers. Article 2(3) states that the COA provides information concerning benefits and obligations with regard to reception, legal aid, and reception conditions within 10 days after the asylum application has been lodged.

Article 2(4) states that “The COA provides information in writing in the form of brochures in a language that is understandable for the asylum seeker.” The exact content and the modalities of the information

<sup>238</sup> Article 3 Act of the Agency of Reception.

<sup>239</sup> See Phoenix’s website, available at: <http://bit.ly/1suo57/>.

<sup>240</sup> See NIDOS <http://www.nidos.nl/>.

provision varies from one reception centre to another. For instance, in some centres information meetings on health care and security in the reception centre are organized in group, whereas the rights and duties of the asylum seeker in the centre are usually discussed individually.<sup>241</sup>

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

Yes       With limitations       No

Article 9(3)(b) of the Regulation on Benefits for Asylum seekers states that during a stay in the reception centre, the asylum seeker must have the opportunity to communicate with family members, legal advisers, representatives of UNHCR and NGOs. There are no major obstacles in relation to the accessibility of UNHCR representatives or other legal advisers at reception centres known to the author of this report.

## G. Differential treatment of specific nationalities in reception

In general, no distinction is made on grounds of nationality in the Netherlands. However, the state secretary has recently announced that asylum seekers from safe countries will have a limited right to reception. This was a reaction to complaints about asylum seekers originating from North African countries.<sup>242</sup> Apart from this situation, we have no indication to believe that some nationalities are given priority over others regarding reception.

<sup>241</sup> The information provided by the COA is available at <http://bit.ly/2lfnQXG>.

<sup>242</sup> Letter of the State Secretary, 13 December 2016, 19637/2268.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016: <sup>243</sup>	1,780
2. Number of asylum seekers in detention at the end of 2016 <sup>244</sup> :	293
3. Number of detention centres:	3
4. Total capacity of detention centres (incl. territorial detention):	789 <sup>245</sup>

There are two types of detention of asylum seekers in the Netherlands depending on where they cross the Dutch border. Either this is done at the external border, which means that the third country national is trying to enter the Schengen area in the Netherlands, or this can be done after the third country national has already entered the Schengen area before entering the Netherlands. The former can lead to border detention, the latter can lead to territorial detention.

#### Border detention

Pursuant to Article 6(1) and (2) of the Aliens Act, the third-country national who has been refused entry when he or she wants to enter the Schengen area at the Dutch border, is obliged "to stay in a by the border control officer designated area or place, which [...] can be protected against unauthorised departure."<sup>246</sup>

The border detention based on Article 6(1) and (2) of the Aliens Act can be continued with the aim of transferring asylum seekers to the member state that is responsible for the assessment of their asylum application according to the Dublin Regulation.<sup>247</sup>

If the alien makes an asylum application at an external border of the Netherlands, his or her application will be assessed in the border procedure. Consequently, these asylum seekers can be detained based on Article 6(3) of the Aliens Act. The whole asylum procedure will take place in detention. Both of the personal interviews (*eerste gehoor* [first interview] *en nader gehoor* [second interview]) take place in the detention centre. The asylum seekers will be prepared for these interviews by the Dutch Council for Refugees and it is also possible that a staff member of the Dutch Council for Refugees is present at the personal interview. This depends on whether the asylum seeker requests this and whether there is enough staff available. The lawyer is also allowed to be present at the hearing but in practice this rarely happens because lawyers do not receive a remuneration for this activity. During the interview, there are IND accredited interpreters present.

In the period from January until September 2016, the influx of people detained at the border was 240.<sup>248</sup> If they also applied for asylum, they were detained during the asylum procedure at the border on the basis of Article 6(3) of the Aliens Act (hereinafter border detention). There is one border detention centre for detaining asylum seekers. Asylum seekers who enter the Netherlands via airplane or boat are

<sup>243</sup> This relates to the period January until September 2016 and includes *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention. See Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

<sup>244</sup> As of 25 October 2016. See Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

<sup>245</sup> See <http://bit.ly/2jUgbwC>

<sup>246</sup> Article 6 Aliens Act.

<sup>247</sup> Article 6a Aliens Act.

<sup>248</sup> Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

required to apply for asylum at the detention centre at *Justitieel Complex Schiphol*. During this procedure, the asylum seeker will be placed in detention.

### **Territorial detention**

In addition, there are also asylum seekers detained in detention centres on the territory on basis of Article 59, 59a or 59b of the Aliens Act (hereinafter territorial detention). In the period from January until September 2016, the influx of people detained on the territory was 1,540.<sup>249</sup>

Article 59 Aliens Act allows the IND and the DT&V to detain migrants who are irregularly residing on Dutch territory on the condition that there is a possibility to expel them to their country of origin or a third country where they can stay legally.<sup>250</sup> Territorial detention of asylum seekers is not possible based on article 59 Aliens Act. Only after the asylum application has been rejected and the asylum seeker is not willing to return to his or her country of origin on a voluntary basis, there is a possibility to detain him or her with the aim of expelling the asylum seeker, if the public order or national security dictates such a measure.

In principle, only asylum seekers in border detention are detained during the whole asylum procedure. If an asylum seeker arrives via land they will not automatically be detained. On the other hand asylum seekers who, for instance, are detained with a view to expulsion but apply for asylum, either for the first time or again (subsequent application), can be held in detention during this new procedure. This detention is based on Article 59b Aliens Act. This article stipulates different conditions than Articles 59 Aliens Act. However, Article 59b Aliens Act does not require that the asylum seeker can only be put in detention with the aim of expelling him or her.

Article 59a Aliens Act provides for the possibility to detain asylum seekers with the aim of transferring them to the member state that is responsible for the assessment of their asylum application according to the Dublin Regulation.

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<sup>249</sup> Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

<sup>250</sup> According to Article 59(1) of the Aliens Act, the asylum seeker can, in the interest of public order or national security, and with a view to deportation from the Netherlands, be put into detention if they do not have a legal status. In some cases, this can also be done with asylum seekers who do have a legal status.



## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained?
  - ❖ on the territory:  Yes  No
  - ❖ at the border:  Yes  No
2. Are asylum seekers detained in practice during the Dublin procedure?
  - Frequently  Rarely  Never
3. Are asylum seekers detained during a regular procedure in practice?
  - Frequently  Rarely  Never

#### Number of applicants detained per ground of detention: 2016

Ground for detention	Detentions in 2016 <sup>251</sup>
Border detention	240
Territorial detention	1,540
Total applicants detained	1,780

#### Border detention

The legal grounds for refusing entry to the Dutch territory at the border are laid down in Article 3(1)(a)-(d) Aliens Act. In addition the asylum seeker can be detained on the basis of Article 6(1) and (2) Aliens Act. In practice this leads to an initial systematic detention of all asylum seekers at the border.

According to Article 3(1) Aliens Act in other cases than in the Schengen Border Code listed cases, access to the Netherlands shall be denied to the alien who:

- ❖ Does not possess a valid document to cross the border, or does possess a document to cross the border but lacks the necessary visa;
- ❖ Is a danger to the public order or national security;
- ❖ Does not possess sufficient means to cover the expenses of a stay in the Netherlands as well as travel expenses to a place outside the Netherlands where their access is guaranteed;<sup>252</sup>
- ❖ Does not fulfil the requirements set by a general policy measure.

These grounds are further elaborated in Article 2.1 – 2.11 of the Aliens Resolution and paragraph A1/4 of the Aliens Circular.

Migrants are mostly detained because they do not fulfil the requirements as set out in Article 3(1)(a) and (c) Aliens Act.<sup>253</sup> Migrants, who, after arriving to the Netherlands, apply for asylum, can be detained as well. This is based on Article 6(3) read in conjunction with Article 3(3) Aliens Act. They are kept in detention throughout their asylum procedure. However, the detention during the border procedure will not be continued if this is disproportionately aggravating because of special individual circumstances.<sup>254</sup>

For more information on this subject see the section on Border Procedure.

<sup>251</sup> Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

<sup>252</sup> The Aliens Circular stipulates in paragraph A1/4.5 that the condition of sufficient means will be fulfilled if the asylum seeker disposes of at least €34 per day.

<sup>253</sup> Article 6(1)-(2) Aliens Act.

<sup>254</sup> Article 5.1a(3) Aliens Decree. See IND Werkinstructie 2017/1, available at <http://bit.ly/2IZGp2X>.

## Territorial detention

With regard to detention on the territory, Article 5.1a of the Aliens Decree stipulates in which case an asylum seeker can be detained. In general, an alien can be detained based on the fact that the interest of the public order or national security dictates this and if there is a risk of absconding or the alien evades or impedes the preparation of the departure.<sup>255</sup> A risk of absconding is demonstrated when at least two grounds for detention, stipulated in Article 5.1b(3)-(4), are applicable.<sup>256</sup>

Relating to detention of asylum seekers subject to a transfer under the Dublin Regulation there must be a concrete indication that the asylum seeker can be transferred based on the Dublin Regulation and that there is a significant risk of absconding. According to Article 5.1b(2) of the Aliens Decree, a 'significant risk' is demonstrated in the context of the Dublin Regulation when at least two grounds for detention are applicable, of which at least one is 'severe'. These grounds are also stipulated in Article 5.1b(3)-(4) Aliens Decree.

The conditions for the detention of asylum seekers as stipulated in Article 59b of the Aliens Act are further clarified in Article 5.1c of the Aliens Decree. Territorial detention of asylum seekers is only possible in the following situations:

- ❖ In case detention is necessary for ascertaining the identity and nationality of the asylum seeker. This is the case when the identity or nationality of the asylum seeker are insufficiently known to the authorities and at least two of the grounds for detention are applicable.
- ❖ In case detention is necessary for acquiring information that is necessary for the assessment of the asylum application, especially when there is a risk of absconding. This condition is fulfilled when information that is necessary for the assessment of the asylum application can be obtained and at least two of the grounds for detention are applicable.
- ❖ In case the asylum seeker has already been detained in the context of a return procedure, has previously had the chance to make an asylum application and has only made the asylum application to delay the return procedure. This assessment takes into account all circumstances.
- ❖ In case the asylum seeker is a threat to public order or national security. This condition is in any case fulfilled if Article 1F of the Refugee Convention is probably applicable.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
  - Reporting duties
  - Surrendering documents
  - Financial guarantee
  - Residence restrictions
  - Other
2. Are alternatives to detention used in practice?  Yes  No

Aliens' detention is supposed to be a matter of last resort. This is also laid down in policy rules.<sup>257</sup> Consequently, one alternative to detention is the limitation of freedom based on Article 56 of the Aliens Act. This includes reporting duties and restriction of freedom of movement, for instance within the borders of one specific municipality.

Other alternatives to aliens' detention, such as giving a financial guarantee, are rarely used, which has been criticized multiple times. For instance, ACVZ (*Adviescommissie in Vreemdelingenzaken*) has

<sup>255</sup> This is detention based on Article 59 Aliens Act.

<sup>256</sup> Article 5.1b Aliens Decree.

<sup>257</sup> Paragraph A5/1 of the Aliens Circular.

noted that there is no explicit legal ground stating the circumstances in which an alien cannot be put in detention.<sup>258</sup> Amnesty International has also argued that there should be a legal obligation imposed on the decision-making authorities to proactively consider alternatives to detention.<sup>259</sup> Previously, however, there have been pilots on alternatives to aliens' detention.<sup>260</sup>

The Decree relating to the Bill regarding return and detention of aliens, which is supposed to enter into force in the first quarter of 2017, now specifies the circumstances in which alternatives to detention can be applied.<sup>261</sup>

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
- ❖ If frequently or rarely, are they only detained in border/transit zones?  Yes  No
2. Are asylum seeking children in families detained in practice?  
 Frequently  Rarely  Never

In principle no group of vulnerable aliens is automatically and per se excluded from detention. According to Amnesty International and Stichting LOS, a Dutch NGO working with undocumented migrants, vulnerable aliens sometimes end up in detention because there are no legal safeguards with regard to specific groups of vulnerable aliens.<sup>262</sup> However, families with minor children and unaccompanied minors are in principle not detained. A policy with regard to the exclusion of other categories of vulnerable aliens to detention has not been adapted.

Families with minors and unaccompanied minors who enter the Netherlands at an external border are redirected to the application centre in **Ter Apel**. Detention of children at the border is only possible when doubt has risen regarding the minority of the child.<sup>263</sup> Exceptions in the context of territorial detention are made for unaccompanied minors that are suspected of or convicted for a crime, that have left the reception centre or that have not abided by a duty to report or a freedom restrictive measure. It is also possible to detain unaccompanied minors when there is a prospect of removing the minor within 14 days.<sup>264</sup> Detention of families with minors is possible when the conditions of Articles 5.1a and 5.1b of the Aliens Decree are fulfilled for all family members. In addition, it must be clear that at least one of the family members is not cooperating in the return procedure.<sup>265</sup> Defence for Children strongly opposes detention of children on these grounds and in general.<sup>266</sup> In 2016 about 80 minors were placed in detention for migrants, of which about 10 children were unaccompanied minors.<sup>267</sup> These children (and their families) are detained at the closed family location in Zeist.

<sup>258</sup> ACVZ, *Aliens' detention or a less intrusive measure?* (May 2013) available at <http://bit.ly/2lbi4Kv>.

<sup>259</sup> Amnesty International, *Remarks to the Bill regarding return and detention of aliens (online consultation)* (February 2014) available at <http://bit.ly/2kJVsZM>. See also: Amnesty International, *Detention of aliens in the Netherlands: human rights as a standard* (2013).

<sup>260</sup> See <http://bit.ly/2jUr6GA>.

<sup>261</sup> See <http://bit.ly/2mUoL3>.

<sup>262</sup> Amnesty International, Dokters van de Wereld, Stichting Landelijk Ongedocumenteerden Steunpunt, *Report Vulnerable people in detention* (April 2016) available at <http://bit.ly/2lBhCWQ>.

<sup>263</sup> Paragraph A5/3.2 Aliens Circular. See also paragraph A1/7.3 Aliens Circular.

<sup>264</sup> Paragraph A5/2.1 Aliens Circular.

<sup>265</sup> Paragraph A5/2.1 Aliens Circular.

<sup>266</sup> <http://bit.ly/2jTIoyZ>.

<sup>267</sup> See <http://bit.ly/2jUiZdq>.

## 4. Duration of detention

### Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):
  - ❖ Border detention: 4 weeks<sup>268</sup>
  - ❖ Territorial detention: 18 months<sup>269</sup>
  - ❖ Territorial detention of asylum seekers: 4.5 months (15 months for public policy threats)<sup>270</sup>
2. In practice, how long in average are asylum seekers detained?
  - ❖ Border detention: less than three months
  - ❖ Territorial detention: less than three months

The majority of aliens in detention, both at the border and on the territory, are detained for less than three months. In the period of January until September 2016, 150 migrants were detained for a period between three and six months. Less than 40 people were detained for a period longer than six months.<sup>271</sup>

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

In principle asylum seekers are not detained in prisons for the purpose of their asylum procedure. What is remarkable, however, is that aliens in detention with psychological problems sometimes will be transferred to a prison specialized in offering such psychological care. This option is provided for in the Bill regarding the return and detention of aliens, which is expected to enter into force in the first quarter of 2017.<sup>272</sup> This is only possible when the detention centre cannot offer adequate care and on the condition the asylum seeker is kept separate from criminal detainees.<sup>273</sup>

Even though asylum seekers are not detained with criminals or in prisons, the facilities are very similar. During the border procedure, adults are detained at the Justitieel Complex **Schiphol**. They stay in a separate wing at the detention centre. Territorial detention of aliens takes place in **Rotterdam** for men and in **Zeist** for women and (families with) children.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Netherlands in 2011 and recommended that there should be more emphasis on the difference between the facilities for the detention of foreign nationals and criminal detention.<sup>274</sup> Amnesty International, the Ombudsman and the Dutch Council for Refugees also have

<sup>268</sup> Article 3(7) Aliens Act.

<sup>269</sup> Article 59(5) Aliens Act.

<sup>270</sup> Article 59b(3) and (5) Aliens Act.

<sup>271</sup> Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)*, (Period January 2016 until September 2016), 36.

<sup>272</sup> Bill regarding return and detention of aliens (2015-2016), 34309/2.

<sup>273</sup> See Section Conditions in detention facilities.

<sup>274</sup> Report to the government of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 10 to 21 October 2011, (CPT/Inf

called for a more open regime for detention of asylum seekers.<sup>275</sup> This gave rise to the Bill regarding return and detention of aliens.<sup>276</sup> The Bill stresses the difference between criminal detention and detention of aliens which does not have a punitive character. It proposes an improvement in detention conditions for aliens who are placed in detention at the border and on the territory. For instance, aliens are free to move within the centre for at least twelve hours per day.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

Aliens in detention have a right to health care, either provided by a doctor appointed by the centre or by a doctor of their own choosing. This right to health care is stipulated in the Bill regarding return and detention of aliens, which is expected to enter into force in the first quarter of 2017.<sup>277</sup> Both aliens in border detention and aliens in territorial detention have a right to health care. This health care includes a basic health care package which is equal to the health care provided outside of detention.

However, Amnesty investigated the situation in the detention centres with regard to health care and their main conclusion was that it seems to be impossible to provide adequate health care to aliens with special health issues when they are detained. The situation in practice poses threats to people who are particularly vulnerable and contains risks regarding access to health care as well as continuity of such care.<sup>278</sup>

There are no known problems of overcrowding. Due to a reserve, overcrowding is highly unlikely. For instance, in October 2016 293 aliens were detained, whereas the total capacity is 789.<sup>279</sup>

No recent information is available as to whether sufficient clothing is given. Based on the Bill regarding return and detention of aliens, detainees have a right to sufficient clothing or a sum of money to allow them to buy sufficient clothing themselves.

Detained asylum seekers are allowed to leave their living areas within the detention centre between the hours of 8 AM and 10 PM. During these hours a program is offered. Detained asylum seekers are able to make phone calls, go outside in the recreational area of the detention centre, receive visitors (four hours a week), access spiritual counselling, visit the library, watch movies, and do sports and other recreational activities such as singing, dancing, drawing and painting. All units have access to the internet. The asylum seeker can independently gather news and information, for example concerning their country of origin.<sup>280</sup>

(2012) 21 August 2012), 31 “Detention under aliens’ legislation in the Netherlands is not covered by specific regulations; instead detention and expulsion centres for foreign nationals are governed by the same rules as those applicable to the prison system. It has always been the CPT’s view that, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens’ legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and regime appropriate to their legal situation and staffed by suitably qualified personnel. One of the logical consequences of that precept is that the facilities in question should be governed by a distinct set of rules. The CPT would like to receive the comments of the Dutch authorities on the above remarks.”

<sup>275</sup> The National Ombudsman, *Immigration detention: penal regime or step towards deportation, about respecting human rights in immigration detention*, 2012, 23; Amnesty International, *Detention of aliens in the Netherlands: human rights as a standard* (2013).

<sup>276</sup> Bill regarding return and detention of aliens (2015-2016), 34309/2.

<sup>277</sup> Bill regarding return and detention of aliens (2015-2016), 34309/2.

<sup>278</sup> Amnesty International, *Getekende zorg: gezondheidszorgen in vreemdelingendetentie* (May 2014).

<sup>279</sup> See <http://bit.ly/2jUgbwC> and Questions and Answers on the adapting of the budget for the ministry of Security and Justice of 2017 (25 November 2016), 34550 VI 11.

<sup>280</sup> Bill regarding return and detention of aliens (2015-2016), 34309/2.

Finally specialised care can be provided to asylum seekers with mental health issues. Health care in detention centres has been subject to a major debate in the Netherlands due to the death of the Russian asylum seeker Dolmatov and more recently of a South African asylum seeker, both in the detention centre in **Rotterdam**. This gave rise to investigations that pointed out several shortcomings in the access to psychological care for aliens in detention.<sup>281</sup> There are now psychologists present at the detention centre. If the regular facilities of the detention centre cannot meet the medical needs of the alien, he or she will be transferred to another wing of the detention centre or a prison psychiatric hospital. In case of the latter, asylum seekers will be kept separate from criminally detained persons.<sup>282</sup>

### 3. Access to detention facilities

#### Indicators: Conditions in Detention Facilities

1. Is access to detention centres allowed to
- |                   |   |                                  |                             |
|-------------------|---|----------------------------------|-----------------------------|
| ❖ Lawyers:        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs:           | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

According to the Bill regarding return and detention of aliens, contact with the outside world is guaranteed through certain people, amongst which the National Ombudsman, the legal counsellor of the alien, members of parliament and relevant NGOs.<sup>283</sup>

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention?  Yes  No
2. If yes, at what interval is the detention order reviewed? 4 weeks

According to Article 93 of the Aliens Act the asylum seeker is entitled to lodge an appeal at any moment the asylum seeker is detained on the basis of Article 6, 6a, 58, 59a or 59b of the Aliens Act. There is also an automatic review by a judge of the decision to detain, regardless of whether it concerns border detention or territorial detention. According to Article 94 Aliens Act, the authorities have to notify the district court within 28 days after the detention of a migrant is ordered, unless the migrant or asylum seeker has already lodged an application for judicial review themselves. According to Article 94(2) of the Aliens Act, the hearing will take place within 14 days after the notification or the application for judicial review by the migrant. According to Article 94(5) of the Aliens Act, the decision on the detention will be provided within 7 days. When the regional court receives the notification it considers this as if the migrant or asylum seeker lodged an application for judicial review.

<sup>281</sup> Ministry of Security and Justice, *Report 'Onderzoek betreffende het overlijden van de heer Dolmatov in het Detentiecentrum Rotterdam'* (April 2013) available at <http://bit.ly/2kF8fUw>; Ministry of Security and Justice, *Report 'Onderzoek naar het overlijden van een asielzoeker in het Detentiecentrum Rotterdam'* (February 2016), available at <http://bit.ly/2jUmjVl>.

<sup>282</sup> Bill regarding return and detention of aliens (2015-2016), 34309/2.

<sup>283</sup> Bill regarding return and detention of aliens (2015-2016), 34309/2.

The first judicial review examines the lawfulness of the grounds for detention – whether the conditions for detention were fulfilled – whereas further appeals against immigration detention review the lawfulness of continued detention.<sup>284</sup>

If the court is convinced that the detention is unreasonably burdensome because the decision-making authorities did not sufficiently take into account the interests of the alien, detention can be lifted.<sup>285</sup> Paragraph A5/1 of the Aliens Circular stipulates that the interests of the alien need to be weighed against the interests of the government in keeping the alien available for the return procedure. This is stressed in the specific context of the detention of asylum seekers.<sup>286</sup> The weighing of interest is not mentioned explicitly in policy with regard to border detention.

Detainees have the right to be informed about the reason for their detention; this is laid down in the Aliens Decree.<sup>287</sup> Usually this information is provided to the individual concerned by the government official who issues their detention order, or by a lawyer. In all cases, the detention order has to be given in writing and state the reasons for detention. More practical rules on how the information should be provided, are laid down in policy guideline Aliens Circular.<sup>288</sup>

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes  No

Asylum seekers are provided with legal aid in detention that is paid for by the State. The IND website explicitly states "When you appeal against a custodial measure, it is mandatory to have a lawyer. If you cannot afford this, a lawyer will then be assigned to you."<sup>289</sup> Individuals who claim asylum upon their arrival at the border and who are subsequently detained, will be assigned a lawyer/legal aid worker specialised in asylum law. Because of the existence of these state funded lawyers, NGO's in general do not intervene in such cases before the regional court.

## E Differential treatment of specific nationalities in detention

No distinctions are made between aliens of different nationalities in detention. We have no indication to believe that some nationalities are treated less favorably compared to others in the context of detention.

<sup>284</sup> Article 96 Aliens Act.

<sup>285</sup> Article 94(5) Aliens Act.

<sup>286</sup> Paragraph A5/6.3 Aliens Circular.

<sup>287</sup> Article 5.3 Aliens Decree.

<sup>288</sup> Paragraph A5/6.6 Aliens Circular.

<sup>289</sup> Immigration and Naturalisation Service, available at: <http://bit.ly/2jUMxaM>.

## Content of International Protection

### A Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

- |  |         |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? |         |
| ❖ Refugee status   | 5 years |
| ❖ Subsidiary protection  | 5 years |
| ❖ Humanitarian protection  | 5 years |

#### Duration of residence permits granted for different statuses

Refugees and beneficiaries of subsidiary protection are granted temporary asylum status for five years (Article 28, second paragraph, Aliens Act). Material rights are the same. The residence permit also has a validity of five years (Article 4.22, second paragraph, Aliens Decree).

#### Procedure for granting a permit

The Dutch Immigration and Naturalisation Service (IND) is responsible for issuing a residence permit. The Dutch authorities have made efforts to register and issue residence permits to status holders who have been housed in a municipality at an earlier time. End of 2015 the so called BRP-*straat* (BRP stands for *Basisregistratie Personen*, the Persons Database of the municipality) was introduced in Application Centres nationally. As a result, asylum seekers who are granted temporary asylum status during their stay at the Application Centre, will be registered immediately in the Persons Database and will receive their temporary residence permit. This means that, once they are assigned to a local authority, their registration can be quickly and easily processed by that new local authority. Also, they will have quicker access to social security benefits. Organisations contributing to the BRP-*straat* are IND, COA, NVVB and Platform *Opnieuw Thuis*.

Migrants who already have been transferred to a Centre for Asylum Seekers when granted temporary asylum status will, within a few weeks after status has been granted, be invited to pick up their residence permit at one of the offices of the IND. There are no problems known to us regarding this procedure.

#### Procedure for renewing a permit

In case the residence permit is stolen or lost, the migrant is requested to report this to the police (Article 4.22 Aliens Decree and Article 3.43c, first paragraph, Aliens Regulations). In order to acquire a new permit a form, which can be found on the website of the IND, has to be filled out and sent to the IND. A copy of the police report has to be included. Costs for renewing a residence permit are 159 euro for an adult and 51 euro for a minor (website IND).

#### 2. Long-term residence

##### Indicators: Long-Term Residence

- |   |                               |
|---|-------------------------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2016: |                               |
|   | Not available (2015: 15,846). |

Pursuant to Article 45b, sub 1 (d and e) Vreemdelingenwet, a beneficiary can obtain a long-term residence permit if he meets the requirements of article 45b sub 2 Vreemdelingenwet.



- ❖ the applicant must have had legal stay for five continuously years and immediately preceding the application. In the aforementioned period, the applicant is not allowed to stay outside the Netherlands for six consecutive months or more, or in total ten months;
- ❖ whether or not together with its family members, the applicant must have means which are independent, sustainable and sufficient;
- ❖ is not convicted for a crime threatened with imprisonment of three years or more;
- ❖ should not constitute a risk for national security;
- ❖ must have adequate medical insurance for him and his family members;
- ❖ and must have passed the integration test.

In 2015, 15846 beneficiaries received long-term resident status. The numbers for 2016 are currently not available.

### 3. Naturalisation

#### Indicators: Naturalisation

- |   |                |
|---|----------------|
| 1. What is the waiting period for obtaining citizenship?  | 5 years        |
| 2. Number of citizenship grants to beneficiaries in 2016: | not available. |

The conditions for obtaining Dutch citizenship are to be found in Articles 8 and 9 of the Rijkswet op het Nederlanderschap (National Act on Dutch Citizenship).<sup>290</sup> When a holder of an asylum residence permit wants to obtain Dutch citizenship he must have a permanent residence permit. There are no different criteria for recognised refugees and those who have been granted subsidiary protection.

If you want to obtain Dutch citizenship you must meet the following conditions:

- ❖ You must be 18 years old or older.
- ❖ You have lived uninterruptedly in the Kingdom of the Netherlands for at least 5 years with a valid residence permit. You have always extended your residence permit on time. Your residence permit must be valid during the naturalisation procedure. There are a number of exceptions to the 5-year rule. For refugees one of the most important exception is the following. If you are officially recognized as a stateless person you can submit an application for naturalisation after at least 3 years living in the Netherlands with a valid residence permit.
- ❖ Immediately prior to the application for obtaining the Dutch citizenship one must have a valid residence permit. This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. At the time of the decision on the application the permanent residence permit must still be valid. (There is an exception for recognized stateless refugees. They can submit an application for naturalisation after at least 3 years even if they still have an asylum residence permit that is not permanent yet).
- ❖ One has to be sufficiently integrated. This means that someone can read, write speak and understand Dutch. In order to show that you are sufficiently integrated, you have to take the civic integration examination at A2 level. The civic integration examination has been changed a few times. As of 1 January 2015, the civic integration examination consists of the following parts: reading skills Dutch, listening skills Dutch, writing skills Dutch, speaking skills Dutch, knowledge of Dutch society and orientation on the Dutch labour market.

If you have certain diplomas or certificates, you can be exempt for the obligation to pass for the civic integration examination. For example, if you received an education in the Dutch language and was issued a diploma based on a Dutch Act such as the Higher Education and Research

<sup>290</sup> Staatsblad 2003, 113 (text) and 118 (date of entry into force): <http://bit.ly/2lfqBbe>.

Act, Higher Professional Education Act, Secondary Act Education Professions Act or Apprentice Act.

When someone suffers from severe permanent physical problems or serious mental health limitations, they may get an exemption on the civic integration examination. One has to prove that due to a psychological or physical impairment or a mental disability, one is permanently unable to pass the civic integration examination. One needs an advice about that from an independent doctor. At this moment one has to undergo a medical examination done by a medical adviser from Argonaut, which is the Medical Advisor assigned by the Minister of Social Affairs and Employment.

It is possible to get an exemption on non-medical grounds for example in case of illiteracy, Therefore you need to prove that you made sufficient efforts to pass for the civic integration examination. There are two ways of showing that. Firstly you show that you have participated at least 600 hours in a civic integration course at an language institution with a quality mark of an organisation called *Blik op Werk* and that you have not passed parts of the civic integration examination at least 4 times. The second way is showing that you have participated at least 600 hours in an (adult) literacy course at an institution with a quality mark of *Blik op Werk* and you have demonstrated with a learning ability test taken by DUO (Education Executive Agency) that you do not have the learning ability to pass the civic integration examination.

- ❖ In the previous 4 years before the application for naturalisation one has not received a prison sentence, training or community service order or paid or had to pay a large fine either in the Netherlands or abroad. A large fine is a fine with an amount of 810 Euro or more. Someone must also not have received multiple fines of 405 Euro or more, with a total amount of 1215 Euro or more. At the time of the application there must also be no ongoing criminal proceedings against the person. There also must not be a suspicion on violation of human rights or the suspicion that someone is a danger to society.
- ❖ Another condition for naturalisation is that you must renounce your current nationality. There are some exceptions to this rule. One of the exceptions is the following. When a person has a (permanent) asylum residence permit they do not have to renounce their nationality.
- ❖ You must make the declaration of solidarity. One is obligated to go to the naturalisation ceremony and to make the statement of allegiance. You agree that the laws of the Netherlands also apply to you. The statement of allegiance must be done in person.

### **Minor children**

A child can only apply for naturalisation together with the parent. The child under the age of 16 years must live in the Netherlands and must have a residence permit.<sup>291</sup> This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. Children of holders of a permanent asylum residence permit must have the same permit or an asylum residence permit dependent on the permanent asylum residence permit of the parents.

Children of the age of 16 or 17 years old must have been living uninterruptedly in the Netherlands for at least 3 years with a valid residence permit. This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. Children of holders of a permanent asylum residence permit must have the same permit or an asylum residence permit dependent on the permanent asylum residence permit of the parents. The child must be present for the application and he must indicate that he agrees with the application. Children of 16 and 17 years old must also meet the condition mentioned here above under 5 and 7.

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<sup>291</sup> Article 11 of the National Act on Dutch Citizenship.

A person has to submit the application for naturalisation in the municipality where he lives. The municipality has to check whether the application is complete. When someone submits the application in regular cases one has to show a legalised birth certificate and a valid foreign passport. Holders of a permanent asylum residence permit are exempt from this (only in very specific situations the IND can ask for document). The municipality also looks at whether the person meets all the conditions for naturalisation and gives a recommendation to the IND (Immigration and Naturalisation Service). The municipality sends the application to the IND.

The IND is the service that makes the decision. The IND checks whether a person meets all the conditions required. The IND must make a decision within 12 months.

One has to pay a fee for the application for naturalisation. Holders of an asylum residence permit pay less than holders of a regular residence permit. A single request by stateless people or holders of an asylum residence permit costs 636 Euro. Multiple persons requests (married couples) of stateless people or holders of an asylum residence permit cost 873 Euro. A request for children under 18 obtaining the Dutch citizenship together with their parents costs 126 Euro.

There are no numbers available about how many people obtained the Dutch citizenship in 2016. In 2015 22.000 people obtained the Dutch citizenship by naturalisation according to the CBS (Central Office of Statistics). It is unknown how many of those people are beneficiaries of international protection. The IND has mentioned in the annual report of 2015 of the organisation that there were 25.450 applications for naturalisation. The IND took 23.330 decisions on applications for naturalisation. 96% of those decisions were positive. It is unknown how many of the applications are from beneficiaries of international protection.

#### 4. Cessation and review of protection status

##### Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

##### Grounds for cessation of status

Article 32, first paragraph, under c, Aliens Act stipulates the grounds for cessation of temporary asylum status. This article applies to recognised refugees as well as to beneficiaries of subsidiary protection. Article 32, first paragraph, under c, of the Aliens Act states that temporary asylum status can be revoked, and the request to extend the period of validity can be denied, in case: the legal ground for granting protection status has ceased to exist (Article 32, first paragraph, and under c, Aliens Act)

Article 3.105d, first paragraph, Aliens Decree states that the temporary asylum status of a recognised refugee will be revoked in case Article 32, first paragraph, and under c, of the Aliens Act applies. Article 3.105f, first paragraph, Aliens Decree states that temporary asylum status as a beneficiary of subsidiary protection will be revoked in case Article 32, first paragraph, and under c, of the Aliens Act applies.

Cessation of refugee status or status as a beneficiary of subsidiary protection is further explained in paragraph C2/10.4 of the Aliens Act Implementation Guidelines. A detailed explanation can also be found in the IND work instruction 2013/5.

In considering whether a temporary asylum status, granted to a recognised refugee or a beneficiary of subsidiary protection, will be revoked because the legal ground for granting status is no longer applicable, the Dutch authorities shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the fear of persecution or the real risk of serious harm can no longer be regarded as well-founded (Article 3.37g, Aliens Regulations). The legal basis for granting protection status has not ceased to exist if the migrant can state compelling grounds arising out of previous persecution or former serious harm, to refuse to request protection of the country of his nationality or his former place of residence (Article 3.37g, Aliens Regulations). It will be stated in the country-based asylum policy whether the IND considers a change of circumstances in the overall situation in (a particular area of) a certain country to be significant and non-temporary as in Article 3.37g of the Aliens Regulations (C2/10.4 Aliens Act Implementing Guidelines).

In C2/10.4 of the Aliens Act Implementation Guidelines it is stipulated that if the IND finds that the legal ground for granting a temporary asylum status has ceased to exist, and the change of circumstances under Article 3.37g Aliens Regulations is of a significant and non-temporary nature, the IND investigates in any case:

- ❖ Whether at the time of granting temporary asylum status another legal ground for granting protection status, provided for in Article 29, first or second paragraph, Aliens Act, applied;
- ❖ Whether at the time of review of the temporary asylum status another ground for granting protection status, as provided for in Article 29, first or second paragraph, Aliens Act, applies;
- ❖ Whether the status holder can state compelling grounds arising out of previous persecution or former serious harm, as in Article 29, paragraph b, of the Aliens Act, to refuse to return to his country of origin.

If at least one of these conditions applies, the IND does not revoke temporary asylum status.

C2/10.4 of the Aliens Act Implementation furthermore elaborates on what should be regarded as 'compelling grounds.'

Concerning voluntary return to the country of origin, the Aliens Act Implementing Guidelines stipulate that this is not sufficient ground for the IND to revoke temporary asylum status. In case the IND finds that a recognized refugee or a beneficiary of subsidiary protection has, of his own free will, returned to his country of origin, the IND will conduct an interview concerning this journey. It is then up to the status holder to prove that he is still in need of protection.

Considering Article 1C of the Geneva Convention, it is stipulated that a temporary asylum status of a recognised refugee shall be revoked in case he requests and receives a passport from the authorities of his country of origin. Temporary asylum status is not revoked in case the recognised refugee can prove that Article 1C of the Geneva Convention does not apply (C2/10.4 Aliens Act Implementing Guidelines).

### **Procedure for cessation**

Article 41, first paragraph, of the Aliens Act stipulates that the intention procedure, as in Article 38 of the Aliens Act, is applicable in case a temporary asylum status is revoked. Article 38 stipulates that the status holder will be informed in writing of the intention to revoke his temporary asylum status. Within six weeks the status holder can put forward his view on the intention to revoke temporary asylum status (Article 3.116, second paragraph, and under b, Aliens Decree). In case the IND still intends to revoke temporary asylum status, Article 41, second paragraph, of the Aliens Act stipulates that the status holder will be allowed an interview. During the interview the status holder will be given the opportunity to react on the intention to revoke temporary asylum status and explain his view on this. The legal representative can attend the interview.

In the decision to revoke temporary asylum status the IND considers on its own accord, on the basis of Article 3.6a of the Aliens Decree, whether the status holder can be granted a temporary regular residence permit, or whether there are sufficient grounds for granting delay of departure from the Netherlands on medical grounds (Article 64 Aliens Act).

The cessation decision states that there is an obligation to leave the country within four weeks (Article 62, first paragraph, Aliens Act).

### Appealing a cessation decision

Within four weeks the status holder must appeal the decision to revoke his temporary asylum status at the regional court.<sup>292</sup> In case a timely appeal has been made, the status holder retains his right to lawful residence in the Netherlands on the basis of Article 8, under c, Aliens Act. This means that the status holder retains his material rights, until the courts' decision, including his right to a residence permit. The status holder has a right to legal assistance.

### Systematic review of protection status

The IND can review protection status at any time. As the temporary asylum status is valid for five years, the refugee or beneficiary of subsidiary protection must either apply to extend the period of validity of his status or apply for a permanent asylum residence permit. At that time, the IND systematically reviews protection status.

### Practice

Cessation of temporary asylum status is applied in practice. However, numbers over 2016 are not (yet) available. From government documents, it can be deduced that in 2015 a total of 280 asylum statuses were revoked/withdrawn.<sup>293</sup> Unfortunately, it is not specified whether these numbers concern cessation/withdrawal of temporary and/or permanent asylum status. From court decisions available to us it cannot be concluded that cessation of status was applied to specific groups.

## 5. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

### Grounds for withdrawal of status

Article 32, first paragraph, under a and b, of the Aliens Act stipulates the grounds for withdrawal of temporary asylum status. This article applies to recognised refugees as well as to beneficiaries of subsidiary protection. Article 32, first paragraph, under a and b, of the Aliens Act states that temporary asylum status can be revoked, and the request to extend the period of validity can be denied, in case:

- ❖ the recognised refugee or the beneficiary of subsidiary protection has given false information, or has withheld information that would have resulted in a negative decision on the application for asylum or the request to extend the period of validity of the temporary asylum status (Article 32, first paragraph, under a, Aliens Act);

<sup>292</sup> Article 69, first paragraph, Aliens Act.

<sup>293</sup> KST 34550 VI 11, 2016-2017, 25 November 2016.

- ❖ the recognised refugee or the beneficiary of subsidiary protection is a danger to public order or national security (Article 32, first paragraph, under b, Aliens Act)

### Procedure for withdrawing protection status

Article 41, first paragraph, of the Aliens Act stipulates that the intention procedure, as in Article 38 of the Aliens Act, is applicable in case a temporary asylum status is withdrawn. Article 38 stipulates that the status holder will be informed in writing of the intention to withdraw his temporary asylum status. Within six weeks the status holder can put forward his view on the intention to withdraw temporary asylum status (Article 3.116, second paragraph, and under b, Aliens Decree). In case the IND still intends to withdraw temporary asylum status, Article 41, second paragraph, of the Aliens Act stipulates that the status holder will be allowed an interview. During the interview the status holder will be given the opportunity to react on the intention to withdraw temporary asylum status and explain his view on this. The legal representative can attend the interview.

In the decision to withdraw temporary asylum status the IND considers on its own accord, on the basis of Article 3.6a of the Aliens Decree, whether the status holder is eligible for a temporary regular residence permit, or whether there are sufficient grounds for granting delay of departure from the Netherlands on medical grounds.<sup>294</sup>

The decision to withdraw protection status states that there is an obligation to leave the country within four weeks (Article 62, first paragraph, Aliens Act). In case temporary asylum status is withdrawn because the recognised refugee or the beneficiary of subsidiary protection is a danger to public order, the migrant is obligated to leave the Netherlands immediately (Article 62, second paragraph, Aliens Act).

### Rules for appealing a withdrawal decision

See section on [Cessation and review of protection status](#).

### Number of withdrawals issued in 2016

See section on [Cessation and review of protection status](#).

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  Yes  No
  - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  Yes  No
  - ❖ If yes, what is the time limit? 3 months
3. Does the law set a minimum income requirement?  Yes  No

The beneficiary has to apply for family reunification within three months after he is granted the asylum residence permit, in order to have his or her application considered within a more flexible framework for

<sup>294</sup> Article 64 Aliens Act.

family reunification. This framework applies to holders of an asylum residence permits and contains less strict conditions for family reunification in comparison to the regular framework. There are no income and health insurance requirements if the beneficiary lodges the application within these three months.

If, however, the beneficiary fails to apply for family reunification within three months, he will have to apply for regular family reunification, meaning that he will have to meet stricter requirements like a minimum income.

Refugees and subsidiary protection beneficiaries can apply for family reunification under the same conditions. There are however different views on whether subsidiary protection beneficiaries can invoke the EU family reunification directive.<sup>295</sup>

11,814 persons gained access to the Netherlands over 2016 in the context of family reunification with the holder of an asylum residence permit.<sup>296</sup>

## 2. Status and rights of family members

Family members are granted the same status and rights as the sponsor. Their status however, is derived from the status of the sponsor. This entails that if the relationship between the sponsor and the family member ends within the first five years the family member has a permit, the permit can be revoked.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of international protection are not restricted in their freedom of movement within the Netherlands. For the housing of beneficiaries COA takes into account four placement criteria (see heading 'Housing').

### 2. Travel documents

Holders of an asylum residence permit or a permanent asylum residence permit can apply for a *vluchtelingenpaspoort*, a passport for refugees, issued by the Netherlands. There are no differences between refugees and subsidiary protection beneficiaries.

The duration of validity of the passport for refugees issued to a holder of a permanent asylum residence permit is 5 years. The duration of validity of the passport of a holder of a non-permanent asylum residence permit depends on the validity of the residence permit. There is a minimum duration of validity of 1 year and a maximum duration of validity of 3 years of the passport for refugees. So, if the residence permit has a duration of validity less than a year, it is not possible to obtain a passport for refugees.

The possibility for obtaining a passport for refugees is provided in the Paspoortwet (Act of Passports). Holders of a (permanent) asylum residence permit can apply for a passport for refugees in the municipality where they live and where they are registered at the BRP (BRP means Persons Database). The municipality issues passports for refugees. The application must be done in person. The person must show his residence document and he must bring two passport photos. Fingerprints will also be taken. The municipality must issue the passport as soon as possible, which means most of the time in

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<sup>295</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

<sup>296</sup> Ministry of Security and Justice, Asylum Trends: Monthly Report on Asylum Applications in the Netherlands, December 2016, p. 7.

5 days. The municipality officially has 4 weeks to decide to issue the passport. The fee for a passport for refugees is € 51.46 maximum.

## D. Housing

### Indicators: Housing

1. For how long are beneficiaries entitled to stay in reception centres?
2. Number of beneficiaries staying in reception centres as of 31 December 2016

The main forms of accommodation provided to beneficiaries of international protection are

- ❖ reception centres;
- ❖ temporary placements and;
- ❖ housing.

The right to reception ends on the date that adequate housing (outside the reception centre) can be realized. What 'adequate housing' is, is assessed by the 'COA' (see article 7(1-a) Rva 2005). Together with municipalities the COA has the obligation to arrange housing for beneficiaries (see article 3(1-c) Wet COA and articles 10(2) & article 12(3) Huisvestingswet 2014).

Due to the high number of asylum applications, a shortage of places within the reception centre arose. It has therefore been decided that beneficiaries who are awaiting housing, can also temporarily stay at families and friends. This is the so-called '*Zelfzorgarrangement*'. Beneficiaries can – on a voluntary basis – make use of this arrangement. The participant of the '*Zelfzorgarrangement*' is responsible for arranging the accommodation address. The '*Zelfzorgarrangement*' has been terminated on 1 September of 2016. Apart from the '*Zelfzorgarrangement*' there is the so-called '*logeerregeling vergunninghouders*'. Difference with the '*Zelfzorgarrangement*' is that the duration of which a participant can make use of this arrangement is limited to three months. On 1 September of 2016, this arrangement has been continued/prolonged. Finally, there is the '*Gemeentelijke Versnellingsarrangement*', the legal basis on which municipalities can deploy non-regular accommodation (for example a hotel) for temporarily housing of beneficiaries until final placement in the municipalities is possible. This arrangement is still in force but will cease to exist when the financial budget for it has been consumed/exhausted.

For the housing of beneficiaries, COA takes into account four placement criteria, which are:

- ❖ Education, provided that the study is location specific.
- ❖ Work, provided that the beneficiary can prove that he or she has a labour contract with a duration of minimal six months and for 20 hours of more per week
- ❖ Medical and/or psychosocial indications, provided that the beneficiary can prove that the medical treatment can only be done by the current care provider, or that a customized home is necessary
- ❖ the presence of first degree family in the Netherlands.

If one of these indications occur, COA tries to place the beneficiary in a radius of 50 km of the municipality concerned. If COA does not take into account the aforementioned indications and the beneficiary refuses the house on justifiable grounds, then a new offer will be done.

A beneficiary can refuse an offer for placement. COA will assess within 14 days whether the refusal is justifiable. If the COA is of the opinion that the accommodation is suitable and the refusal unjustified, then the beneficiary is awarded a 24 hour to reconsider its position and to accept the accommodation.



If the beneficiary continues to refuse the housing, then COA does not provide for a new offer. As a consequence, the beneficiary is summoned to leave the centre and the benefits granted by COA are terminated.

## E. Employment and education

### 1. Access to the labour market

The rights and duties for asylum seekers and refugees with regard to labour are included in the Aliens Employment Act ('Wet arbeid vreemdelingen' (Wav)).<sup>297</sup> This national law is based on articles in international and European legislation.<sup>298</sup> In the Netherlands, refugees and subsidiary beneficiaries with a residence permit have free access to the Dutch labour market as soon as they receive their residence permit. The identification card (W-document) must contain a notification 'free access to the labour market, no work permit required' ('*arbeid vrij toegestaan, tewerkstellingsvergunning niet vereist*'). Free access means in this context, free access to employment, the right to entrepreneurship, to follow an internship or to do voluntary work. There is no work permit or a so-called 'volunteers' declaration' required. The Dutch law makes no distinction between refugees or subsidiary protection beneficiaries.

For asylum seekers, the access to the labour market is restricted by several conditions. A person can only enter the labour market after being in the asylum procedure for 6 months.<sup>299</sup> He or she needs a work permit provided by the Employee Insurance Agency and the duration of a labour contract should not cover more than 24 weeks per year.<sup>300</sup> Also for internships or voluntary work a permission given by the Employee Insurance Agency is required, except for internships that form an obligatory part of a vocational training or study.

Even though for asylum seekers a work permit granted by the Employee Insurance Agency is obliged, a labour market test whether a position could be filled by a national, EU-citizen or other legally residing third-country national, is not required. This contrary to other groups who require a work permit.<sup>301</sup>

According to several studies, the position of refugees on the Dutch labour market is very vulnerable and not improving.<sup>302</sup> Although legal access to labour participation is granted, the effective access is limited as refugees face practical obstacles, such as psychological and physical distress, lack of documentation proving qualifications, lack of a social network, low educational levels, lack of language proficiency, etc. Therefore, beneficiaries are in a more disadvantageous position than other immigrants or Dutch nationals.<sup>303</sup>

The Dutch government applies a hybrid approach for employment-related support measures, by combining generic measures for migrants with specific tailored measures to beneficiaries. Examples are integration courses, assistance in obtaining recognition of professional qualifications and housing

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<sup>297</sup> Available at: <http://bit.ly/2kepOre>.

<sup>298</sup> See article 17, 18, 19 and 24 of the 1951 Refugee Convention, article 6 of ICESCR, article 26, lid 1 of the Qualification Directive, article 14 of the Directive on family reunification, article 1 of the European Social Charter, etc.

<sup>299</sup> This is less restricted than stated in article 15 of the Reception Directive where after maximum 9 months access to the labour must be granted

<sup>300</sup> Article 2a BuWav and paragraph 29 of the Uitvoeringsregels of the Ruwav.

<sup>301</sup> Article 2a BuWav and paragraph 29 of the Uitvoeringsregels of the Ruwav.

<sup>302</sup> See for example, 'WRR-Policy Brief 4. 'Geen tijd te verliezen'.

<sup>303</sup> EMN Inform, The integration of Beneficiaries of International / Humanitarian Protection into the Labour Market: Policies and Good Practices, p.3.

assistance.<sup>304</sup> Employment services find their legal basis in the Participation Act (Participatiewet).<sup>305</sup> For asylum seekers the government also tend to improve the labour participation by focussing on participation in an earlier stage, i.e. while people are still in an AZC. Recently a pilot has started, where COA does a screening on labour skills and finds a matching municipality for housing in order to increase job opportunities. Whether this is a successful measure is not inquired yet. Another example is that the government simplified the procedure to acquire a voluntary permit. Nowadays, an asylum seeker can start its voluntary work as soon as the Employee Insurance Agency confirmed the application for a voluntary permit done by the employer.<sup>306</sup>

For many job opportunities, professional qualifications are required. In order to obtain recognition of these qualifications, the SBB and EP-Nuffic jointly compare foreign diplomas with the Dutch educational system. In case a refugee follows a Dutch integration course this is provided for free. The main obstacle is that many refugees lack any credible documents to prove their qualifications. Also, a low educational level form impede access to language courses or vocational educational training.<sup>307</sup>

## 2. Access to education

According to the Compulsory Education Act,<sup>308</sup> all children in the Netherlands in the age from 5 to 16 years old should have access to school and education is compulsory. From the age of 16 and 17 children have the obligation to obtain a certificate in order to acquire access (a start qualification) to the Dutch labour market. Abovementioned right to education is applicable to Dutch children as well as to children with a refugee status or with subsidiary protection on similar conditions.<sup>309</sup> Children that are still in the asylum procedure should be granted access to school within 3 months after submitting their asylum application. However, one needs to put the maximum effort to accelerate this process.<sup>310</sup>

The municipality where a child is housed is responsible for its access to education. In most cases, all children who are newcomers go to a regular school.<sup>311</sup> Schools receive a compensation for their costs to provide this specialized education. Furthermore, they can request for an additional financial compensation. Children in the asylum procedure often go to a school that is linked to the reception centre where they are housed.<sup>312</sup>

According to the Qualification Directive all minor children have the same access to education regardless their legal status. We do not know of any obstacles in practice for children to access education. There are preparatory classes also known as international intermediate classes.

Minors aged 16 or 17 have an obligation to obtain a start qualification to be able to access the Dutch labour market. Therefore, they need to obtain a diploma in secondary or vocational education.<sup>313</sup> The conditions for Dutch nationals are the same as those for aliens.

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<sup>304</sup> EMN Inform, The integration of Beneficiaries of International / Humanitarian Protection into the Labour Market: Policies and Good Practices, p.4.

<sup>305</sup> Available at: <http://bit.ly/2jUSKUj>.

<sup>306</sup> Paragraaf 7bis in bijlage I of the Regeling Uitvoering Wet Arbeid Vreemdelingen

<sup>307</sup> EMN Inform, The integration of Beneficiaries of International / Humanitarian Protection into the Labour Market: Policies and Good Practices, p.4.

<sup>308</sup> Available at: <http://bit.ly/2kKXQpV>.

<sup>309</sup> Article 27, right to education, Qualification Directive.

<sup>310</sup> Bron: Min. O.C.&W., Informatiedocument onderwijs aan asielzoekerskinderen, d.d. mei 2016, p. 6.

<sup>311</sup> Bron: Min. O.C.&W., Informatiedocument onderwijs aan asielzoekerskinderen, d.d. mei 2016, p. 6.

<sup>312</sup> Bron: Min. O.C.&W., Informatiedocument onderwijs aan asielzoekerskinderen, d.d. mei 2016, p. 8.

<sup>313</sup> Law on schooling for minors.

## F. Health care

Beneficiaries are required to be insured for health care as of the moment the permit is granted.<sup>314</sup> It makes no difference if the beneficiary still resides at the reception centre or not. Moreover, although these beneficiaries are medically insured via the COA, as a part of the 'Rva 2005', they are also obliged to insure themselves privately for healthcare. Beneficiaries are entitled to the same health care as nationals. Like every national, beneficiaries have to pay health insurance fees. In order to compensate the paid fees, beneficiaries are entitled to health care benefits, provided that their income does not reach a threshold of an annual income of approximately € 27.012 per year.

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<sup>314</sup> Article 2 lid 1 Zorgverzekeringswet jo. article. 2.1.1 Wet langdurige zorg.

## ANNEX I - Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	1 October 2013	Wijziging van de Vreemdelingenwet 2000 ter implementatie van richtlijn 2004/83/EG van de Raad van 29 april 2004 betreffende minimumnormen voor de erkenning en de status van onderdanen van derde landen en staatlozen als vluchteling of als persoon die anderszins internationale bescherming behoeft, en de inhoud van de verleende bescherming (PbEU L 304)	<a href="http://bit.ly/1HXcHir">http://bit.ly/1HXcHir</a> (NL)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015	20 July 2015	Wet van 8 juli 2015 wijziging van de Vreemdelingenwet 2000 ter implementatie van Richtlijn 2013/32/EU van het Europees parlement en de Raad van 26 juni 2013 betreffende gemeenschappelijke procedures voor de toekenning en intrekking van de internationale bescherming (PbEU 2013, L 180) en Richtlijn 2013/33/EU van het Europees parlement en de Raad van 26 juni 2013 tot vaststelling van normen voor de opvang van verzoekers om internationale bescherming (PbEU 2013, L 180)	<a href="http://bit.ly/1CSh5md">http://bit.ly/1CSh5md</a> (NL)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	20 July 2015	Wet van 8 juli 2015 wijziging van de Vreemdelingenwet 2000 ter implementatie van Richtlijn 2013/32/EU van het Europees parlement en de Raad van 26 juni 2013 betreffende gemeenschappelijke procedures voor de toekenning en intrekking van de internationale bescherming (PbEU 2013, L 180) en Richtlijn 2013/33/EU van het Europees parlement en de Raad van 26 juni 2013 tot vaststelling van normen voor de opvang van verzoekers om internationale bescherming (PbEU 2013, L 180)	<a href="http://bit.ly/1CSh5md">http://bit.ly/1CSh5md</a> (NL)