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# Country Report

## *The Netherlands*



Hungarian Helsinki Committee



**ecre**

European Council  
on Refugees and Exiles



# ACKNOWLEDGMENTS

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## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project 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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## Statistics

Disaggregated statistics on asylum applications and decisions in the Netherlands are not available due to the implementation of a new computing system since January 2012 and due to the fact that the IND doesn't aggregate its decisions on the ground on which they grant an asylum permit (every asylum seeker receives the same permit notwithstanding the fact that the asylum seeker is a treaty refugee, granted subsidiary protection or on basis of family reunification).

The following numbers have been retrieved from Eurostat:<sup>1</sup> 14,375 first applications have been filed in the Netherlands in 2013. Somalia, Syria and Iraq form the three main citizenships of asylum applicants in the Netherlands.<sup>2</sup> In the first half of 2013, some 7,670 applications have been filed, an increase of 18% compared to last year.<sup>3</sup>

The total number of applicants, including persons who submitted a subsequent application in 2013 was 17,160. For 2014 there are numbers available until November.<sup>4</sup> In this period 22,690 first asylum requests are registered. That is an increase of 74% in comparison to the same period in 2013. Syria and Eritrea are the two main citizenships of asylum applicants in 2014. The third big group are stateless persons. The number of subsequent applications in 2014 until November is 1,989.<sup>5</sup>

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<sup>1</sup> Eurostat, Asylum applicants and first instance decisions on asylum applications: 2013, Issue number /2014, 2013.

<sup>2</sup> Iraq: 1391 (14.3%); Afghanistan: 1022 (10.5%); Somalia : 877 (9%)

<sup>3</sup> Letter house of representatives, '*Rapportage vreemdelingenketen periode januari-juni 2013*'.

<sup>4</sup> Asylum Trends. Monthly Report on Asylum Applications in The Netherlands and Europe, November 2014 INDIAC, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2014/12/20/tk-bijlage-asylum-trends.html>

<sup>5</sup> This is based on the abovementioned Report. The total amount of applications in the period January-November 2013 was 13,044 (Total number of applications (14,399) minus December 2013 (1,355)). Numbers 2014 minus numbers 2013 divided by the numbers 2013 multiplied by 100% =  $\frac{22690-13044}{13044} \times 100 = 74\%$

## Overview of the legal framework

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

<b>Title in English</b>	<b>Original title</b>	<b>Abbreviation</b>	<b>Weblink</b>
General Administrative Law Act	Algemene Wet Bestuursrecht (AWB)	GALA	<a href="http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2006/06/21/engelse-tekst-awb.html">http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2006/06/21/engelse-tekst-awb.html</a> (English)
2000 Aliens Act	Vreemdelingenwet 2000 (Vw 2000)	2000 AA	<a href="http://wetten.overheid.nl/BWBR0011823/geldigheidsdatum_18-02-2013">http://wetten.overheid.nl/BWBR0011823/geldigheidsdatum_18-02-2013</a> (Dutch) <a href="http://www.legislationline.org/documents/id/4680">http://www.legislationline.org/documents/id/4680</a> (English)
Act of the Agency of Reception	Wet Centraal Opvang Orgaan (Wet COA)	AAR	<a href="http://wetten.overheid.nl/BWBR0006685/geldigheidsdatum_21-02-2013">http://wetten.overheid.nl/BWBR0006685/geldigheidsdatum_21-02-2013</a> (Dutch)

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

<b>Title in English</b>	<b>Original title</b>	<b>Abbreviation</b>	<b>Weblink</b>
2000 Aliens Decree	Vreemdelingenbesluit 2000 (Vb 2000)	2000 AD	<a href="http://wetten.overheid.nl/BWBR0011825/volledig/geldigheidsdatum_21-02-2013">http://wetten.overheid.nl/BWBR0011825/volledig/geldigheidsdatum_21-02-2013</a> (Dutch)
2000 Aliens Circular	Vreemdelingen-circulaire 2000 (Vc 2000)	2000 AC	<a href="http://wetten.overheid.nl/BWBR0012289/geldigheidsdatum_05-02-2013">http://wetten.overheid.nl/BWBR0012289/geldigheidsdatum_05-02-2013</a> (Dutch)
2000 Aliens Regulation	Voorschrift Vreemdelingen 2000 (Vv 2000)	2000 AR	<a href="http://wetten.overheid.nl/BWBR0012002/geldigheidsdatum_21-02-2013">http://wetten.overheid.nl/BWBR0012002/geldigheidsdatum_21-02-2013</a> (Dutch)
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://wetten.overheid.nl/BWBR0017959/geldigheidsdatum_21-02-2013">http://wetten.overheid.nl/BWBR0017959/geldigheidsdatum_21-02-2013</a> (Dutch)
Border- accommodation Regime Regulation	Reglement Regime Grenslogies (Rrg)	BRR	<a href="http://wetten.overheid.nl/BWBR0005848/geldigheidsdatum_21-02-2013">http://wetten.overheid.nl/BWBR0005848/geldigheidsdatum_21-02-2013</a> (Dutch)
Aliens Labour Act	Wet Arbeid Vreemdelingen (Wav)	ALA	<a href="http://wetten.overheid.nl/BWBR0007149/geldigheidsdatum_27-02-2013">http://wetten.overheid.nl/BWBR0007149/geldigheidsdatum_27-02-2013</a> (Dutch)

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

This report was previously updated in March 2014:

- **Statistics**

With regard to 2014 there are numbers available until November.<sup>6</sup> In this period 22.690 first asylum applications are registered. That is an increase of 74% in comparison to the same period in 2013.<sup>7</sup> Syria and Eritrea are the two main citizenships of asylum applicants in 2014. The third big group are stateless persons. The number of subsequent applications in 2014 until November is 1,989.

- **Credibility assessment**

Since the beginning of 2015 the IND has implemented a new credibility assessment test, which anticipates the implementation of the recast Asylum Procedure Directive as of June 2015. The new credibility assessment entails a more integral examination of the credibility of an asylum application. The main change in this context is the abolition of the 'positively persuasive –test' (*positieve overtuigingskracht, POK-toets*).<sup>8</sup> This test was part of the two-staged assessment of an asylum application. First stage: are there documents substantiating the travel route and identity? If not, or not sufficiently, than the further story (stage two) of the asylum seeker has to be 'positively persuasive'. In other words the principle of the benefit of the doubt was not applicable in that case. In case the asylum seeker passed the first test (e.g. sufficient documents) the benefit of the doubt was applicable (not 'two-stages' in that case). According to the new policy introduced since the beginning of 2015 this two-staged assessment does not exist anymore and each element, whether it concerns ID documents or arrest warrants, has to be examined on its own merits and weighed in the light of the whole asylum request.

- **Report of the ECSR which states that the Dutch government violates the rights of irregular migrants**

In the case of *Conference of European Churches (CEC) v. the Netherlands* the European Committee for Social Rights (ECSR) concludes that the Dutch social welfare system violates the rights of irregular migrants. The report states that the Netherlands should provide shelter, clothes and food for all rejected asylum seekers who are not entitled to reception conditions. 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>9</sup>

The Secretary of State for Security and Justice disagrees with this opinion and wants to wait for the judgment of the Committee of Ministers on this report, which is expected in March of 2015.<sup>10</sup> Meanwhile the Dutch Administrative High Court has already ordered a municipality to provide shelter and food for rejected asylum seekers based on this report of the ECSR.<sup>11</sup>

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<sup>6</sup> Asylum Trends. Monthly Report on Asylum Applications in The Netherlands and Europe, November 2014 INDIAC <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2014/12/20/tk-bijlage-asylum-trends.html>

<sup>7</sup> This based on the abovementioned Report. The total amount of application in the period January-November 2013 was 13,044 (Total application (14,399) minus December 2014 (1,355). Figures 2014 minus those of 2013 divided by the figures 2013 multiply by 100 =  $22690 - 13044 / 13044 \times 100 = 74\%$

<sup>8</sup> See for more information in English about credibility assessment in EU: UNCHR 'Beyond proof, Credibility systems in EY Asylum Systems, May 2013, <http://www.unhcr.org/51a8a0299.html>

<sup>9</sup> Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013 ,REPORT TO THE COMMITTEE OF MINISTERS, Strasbourg, 1 July 2014

<sup>10</sup> [Letter of the Secretary of State to the House of Representatives](#), 11 November 2014, 19637/29325-1915

<sup>11</sup> Dutch Administrative High Court, 14/6025 WMO-VV, Judgment of 17 December 2014. The Dutch Administrative High Court is the equivalent of the Council of State in social benefit cases.



- **A, B and C - Judgment**

Court of Justice of the European Union Judgment in Joined Cases C-148/13 to C-150/13, Judgment of 2 December 2014.

*A, B and C v Staatssecretaris van Veiligheid en Justitie*

The Court clarifies the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for asylum. The Dutch government considers this judgment to be 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 tell anything about the gay-scene (in the Netherlands or in their country of origin). In some cases the IND based their judgment too heavily on the fact that an applicant could not tell anything about the gay scene but after the A, B and C judgment this is not possible anymore.

- **Temporary suspension of decisions on asylum applications and reception conditions for rejected asylum seekers (Besluit en vertrekmoratorium Irak)**

- After the start of the IS threat in Iraq and the Sinjar drama the Secretary of State of Security and Justice decided to suspend decisions on asylum applications from Iraqis from 7 regions in Iraq (Bagdad, Anbar, Ninewa, Salaheddin, Ta'mim (Kirkuk), Diyala en Babil). This is for a period of 6 months started on the 17<sup>th</sup> October 2014. Asylum seekers from these regions who have the obligation to leave the Netherlands (because their asylum application was rejected before 17 October 2014) are entitled to reception conditions for this same period.<sup>12</sup> During this period they receive reception conditions comparable to asylum seeker who apply for asylum for the first time. This means reception in an AZC (Asielzoekerscentra – Centres for Asylum Seekers).

- **The significant increase of Eritrean asylum applications has come to an end in the middle of the summer.<sup>13</sup>**

- **Suspension of transfers to Italy on the Dublin Regulation of families with minor children**

Recently, due to the Tarakhel judgment of the ECtHR<sup>14</sup> the Secretary of State has made new policy regarding Dublin transfers of families with under age children to Italy.<sup>15</sup> According to a letter from the Government Agency of the Netherlands of the Department of Foreign affairs, dated 7 January 2015 (not public) the process in case of a transfer of a family with under age children to Italy is as follows. The transfer will be announced 10 to 15 days in advance of the day of the actual transfer, in order to give the Italian authorities the opportunity to provide information assuring that the conditions in the facility where the family will be accommodated are adapted to the age of the children and that the family will be kept together. This period is longer than usual (in other cases only a couple of days).<sup>16</sup> The Dutch authorities will not transfer families with under age children to Italy under the Dublin Regulation without receiving the aforementioned guarantee relating to the individual case at hand. If these guarantees are not received within the time-limit for transfers set out in the Dublin Regulation, the persons involved will be channeled into the Dutch asylum procedure. [During this period they receive reception conditions comparable to asylum seeker who apply for asylum for the first time. This means reception in an AZC (Asielzoekerscentra – Centres for Asylum Seekers)]

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<sup>12</sup> Decision of the Secretary of State of Security and Justice of 10 October 2014, (Besluit van de Staatssecretaris van Veiligheid en Justitie van 10 oktober, 2014, nummer WBV 2014/31, houdende wijziging van de Vreemdelingencirculaire 2000)

<sup>13</sup> Asylum Trends. Monthly Report on Asylum Applications in The Netherlands and Europe, November 2014, INDIAC <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2014/12/20/tk-bijlage-asylum-trends.html>

<sup>14</sup> ECtHR, *Tarakhel v. Switzerland*, Application no. [29217/12](https://www.echr.coe.int/ViewDoc.aspx?id=12011712), Judgment of 4 November 2014.

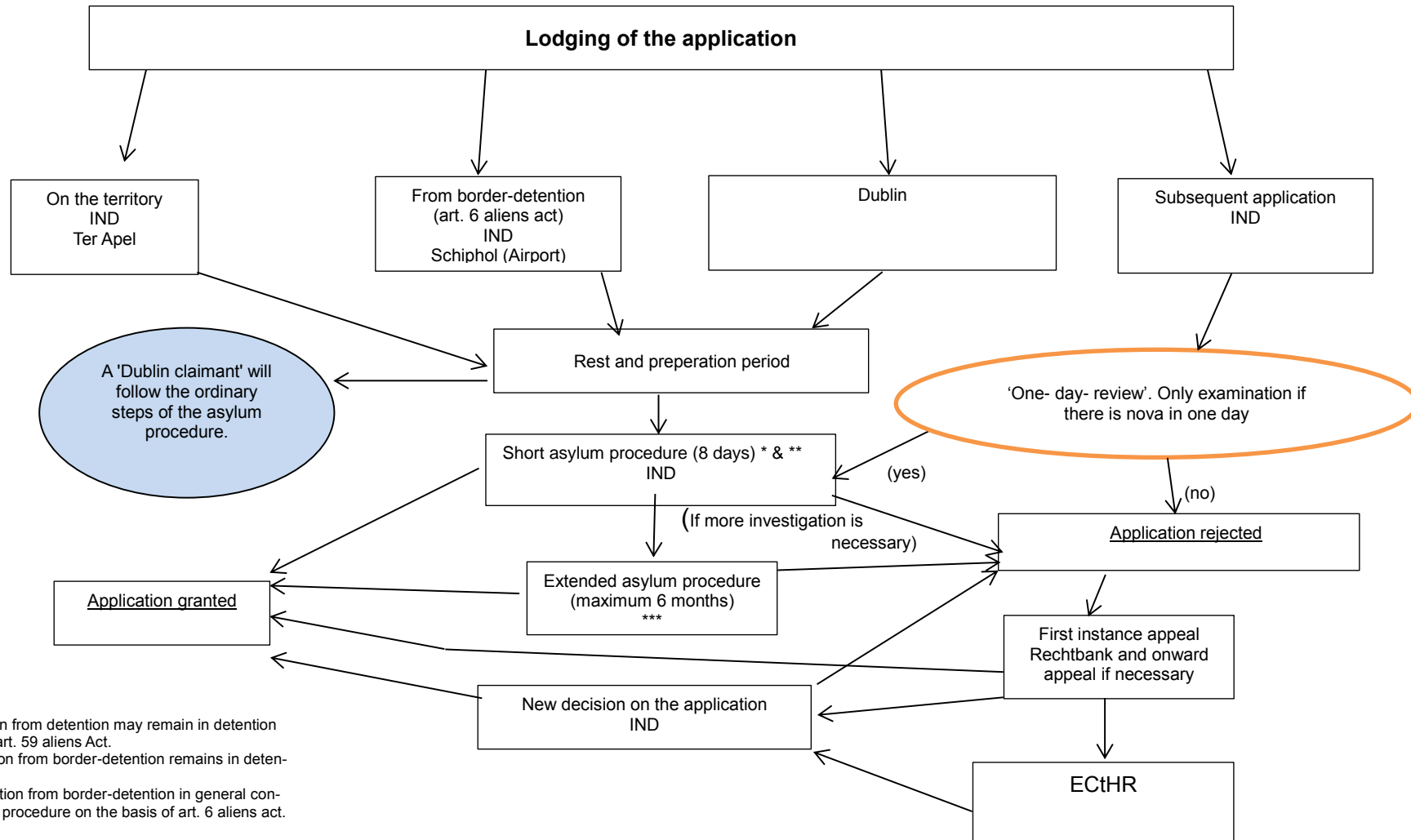
<sup>15</sup> Letter of the Secretary of State of 20 November 2014, to the Parliament, 29344, 122

<sup>16</sup> Transnational Dublin Project, [www.dublin-project.eu/Netherlands](http://www.dublin-project.eu/Netherlands) [http://www.dublin-project.eu/dublin/content/download/6235/75897/version/2/file/Rapport\\_Netherlands\\_WEB%5B1%5D.pdf](http://www.dublin-project.eu/dublin/content/download/6235/75897/version/2/file/Rapport_Netherlands_WEB%5B1%5D.pdf), page 18

# Asylum Procedure

## A. General

### 1. Flowchart



\* The asylum seeker who filed their application from detention during the asylum procedure on the basis of art. 59 aliens Act.  
 \*\* The asylum seeker who filed their application from border-detention remains in detention on the basis of art. 6 aliens act.  
 \*\*\* The asylum seeker who filed their application from border-detention in general continues their procedure in the closed extended procedure on the basis of art. 6 aliens act. Maximum 6 weeks  
 \*\*\*\* In practice, most application from detention (art. 59 aliens act) are subsequent applications which means that no rest and preparation period takes place.  
 \*\*\*\*\* During the rest and preparation period investigations takes place for a possible Dublin Claim. A 'Dublin claimant' will however follow the ordinary steps of the asylum procedure.



## 5. Short overview of the asylum procedure

Asylum applications can be lodged at the border or on the Dutch territory. Any person arriving in the Netherlands and wishing to apply for asylum must report to the Immigration and Naturalization Service (hereafter *IND*). Asylum seekers from a non-Schengen country, who arrive 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 of Schiphol Amsterdam airport (*Aanmeldcentrum Schiphol, AC*). When an asylum seeker enters the Netherlands by land, or is already present on the territory they have to apply at the Central Reception Centre (*Centraal Opvanglocatie, COL*) in Ter Apel (nearby Groningen, north-east of the Netherlands), where their registration takes place (fingerprints, travel- and identity documents are taken). After registration activities in the Central Reception Centre have been concluded the asylum seekers are transferred to a Process Reception Centre (*Proces Opvanglocatie, POL*). Third country nationals who are detained in an aliens' detention centre may apply for asylum at the detention centre itself.

Expressing the wish to apply for asylum does not directly imply that the request for asylum has officially been lodged. The asylum seeker will first have to lodge the application using a form offered to them by the Dutch authorities. This marks the formal start of the asylum procedure. This form is signed at the beginning of the rest and preparation period (*Rust- en Voorbereidingstijd*).<sup>18</sup> This is a period in which first time asylum applicants are granted a period to cope with the stress of fleeing their country of origin and the journey to the Netherlands.<sup>19</sup>

The duration of the rest and preparation period is 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 investigations by the Royal Military Police (*Koninklijke Marechaussee, KMar*), a medical examination by Medifirst<sup>20</sup> (which is an independent agency, hired by the IND to provide medical advice concerning the question 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 some preparations for the asylum procedure are conducted by the lawyer. Another important activity carried out by the IND during the rest and preparation period is the (re)search in the *Eurodac-system*. When a positive 'match' is found the IND can already submit a request, during the rest and preparation period, to another state to assume responsibility for the asylum application under the Dublin Regulation (Dublin claim). When an application is rejected, on the basis of the 'Dublin claim' for example, the Repatriation and Departure Service of the Ministry of Security and Justice (*Dienst Terugkeer en Vertrek, DT&V*) is responsible for the transfer to the state responsible. The Repatriation and Departure Service (DT&V) coordinates the actual departure of foreign nationals who do not have the right of residence in the Netherlands. Return and Departure Service is not part of the Immigration and Naturalization Service.<sup>21</sup>

After the rest and preparation period has ended, the actual asylum procedure starts. In the first instance, all asylum seekers are channelled in the so called regular asylum procedure (*Algemene Asielprocedure, AA*) which is, as a rule, designed to last eight working days hereinafter called 'short asylum procedure'.

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grounds. This is not an asylum permit but in most cases it concerns failed asylum seekers. To grant this permit there has to be a combination of factors that makes it unreasonable for the Secretary of State to expel the foreigner to his country of origin. At least the following factors are required: long stay in the Netherlands and integrated in society. Above that there needs to be a 'special circumstance'. For example the foreigner's child has deceased in the Netherlands and he wants to visit the grave.

<sup>18</sup> Due to the implementation of the Dublin III Regulation on January the first 2014 the mentioned form is signed at the beginning of this rest and preparation period which is an alternation of the former practice whereby the signing of the document took place on the first day of the actual asylum procedure. The main difference is that now an applicant is formally an asylum seeker as of the start of the rest and preparation period whereas before the application of the Dublin III Regulation they were not. However, this has no consequences on their situation and access to rights under material law.

<sup>19</sup> Article 3.109 2000 Aliens Resolution.

<sup>20</sup> See the website of [MediFirst](#).

<sup>21</sup> [The Repatriation and Departure Service of the Ministry of Security and Justice](#).

If it becomes clear on the fourth day that the IND will not be able to take a thorough decision concerning the asylum application within these eight days, the application continues according to the extended asylum procedure (*Verlengde Asielprocedure, VA*). In this extended procedure the IND has to make a decision on the application within 6 months (the time frame of 6 months can be extended with another 6 months).

On the other hand the short asylum procedure can be extended with 6 working days if more time is needed (this is not the extended asylum procedure!). Almost 60% of all asylum applications is dealt with within the short asylum procedure.<sup>22</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 or evident cases will be decided within eight days in the short asylum procedure while the examination of more complex cases is continued in the extended asylum procedure (which can take 6 months to a year to decide). However, Amnesty International and the Dutch Council for Refugees refer to the short asylum procedure in the Netherlands as 'the accelerated regular procedure'.<sup>23</sup> Less complex and evident cases, such as family reunification<sup>24</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.

There is only one asylum status in the Netherlands. However, there are two different grounds on which this asylum status may be issued (besides the grounds for family reunification). These two grounds are;<sup>25</sup>

A) Refugee status; qualification as a refugee under Article 1A of the Geneva Convention (July 28th, 1951), if there is a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

B) Subsidiary protection; in the meaning of Article 3 of the European Convention on Human Rights and article 15c of the Qualification Directive. Within this scope fall traumatic experiences in the country of origin. Because of these experiences it is not reasonable to require that the asylum seeker returns to their country of origin.<sup>26</sup>

It should be noted that before 1 January 2014, two additional grounds (humanitarian grounds and categorical protection) existed on the basis of which the single asylum status could be granted. Both grounds have been abolished by law.<sup>27</sup>

The IND must first examine whether an asylum seeker qualifies for protection under ground A, before examining B, and so on. This means that an asylum seeker may only qualify for protection under B if they do not qualify on the grounds under A. When an asylum seeker receives a residence permit on ground B, they cannot appeal for the 'higher' A status. This is because every asylum permit - it does not matter on which ground the permit is granted - gives the same rights regarding social security.

Due the fact that it is harder for the IND to withdraw a residence permit based on the A-status than a B-status<sup>28</sup> it would have been of interest to the asylum seeker if it was possible to appeal for a 'higher status'. Furthermore some asylum seekers want to be recognized as a refugee in the sense of the 1951 Geneva Refugee Convention. However, when a residence permit is withdrawn on the B ground, the asylum seeker can make a claim to be recognized as a refugee (A-status) once again. In this case it is helpful, while having

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<sup>22</sup> [Letter of the Minister of Asylum and Intergration to the House of Representatives](#), 5 September 2012, p. 2.

<sup>23</sup> Amnesty International & Vluchtelingenwerk Nederland, [Asielbarometer](#) (Asylum barometer), 2011, p. 5.

<sup>24</sup> Art. 29.1 e and f 2000 Aliens Act.

<sup>25</sup> Article 29 2000 Aliens Act.

<sup>26</sup> The trauma policy has had its own ground (art. 29 para 1, sub C Aliens Act) before January 1st 2014. Now 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 now are eligible for international protection under art. 29 para 1 sub b 2000 Alien Act Other groups, like westernized Afghan school girls, can attain a regular residence permit instead of a permit under art. 29 para 1 sub 'c' as was the case before January 1st 2014.

<sup>27</sup> Law of 25th of November 2013, Publication of the State (Staatsblad) 2013, 478 and House of Representatives, session year 2011–2012, 33 293, no. 2

<sup>28</sup> It is for example harder to withdraw a residence permit which is issued on the A ground than on the B ground, when an asylum seeker forms a so-called threat to public order.

a residence permit on the B-status, that an asylum seeker keeps collecting evidence to strengthen their (eventual) future case on the A-status.

Asylum seekers whose application is rejected may appeal against this decision at a regional court (*Rechtbank*). Appealing against a negative decision in the 'short' regular procedure should be submitted within one week to the regional court and has no suspensive effect itself. This means an asylum seeker can be expelled before the verdict of the court. To avoid this situation the legal representative (or in theory the asylum seekers themselves) should request a provisional measure to suspend removal pending the appeal. This must be done within 24 hours after the rejection. After a rejection in the short regular procedure the asylum seeker has the right to be accommodated for a period of 4 weeks regardless of whether the asylum seeker appeals the rejection and whether this 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 also continues to have a right 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 any suspensive effect. At this stage the right to accommodation ends unless the Council of State has issued a provisional measure.<sup>29</sup>

The IND is responsible for examining asylum applications, including the examination of the Dublin Regulation criteria. The Repatriation and Departure Service (DT&V) carries out the Dublin transfers. On the third day of the regular procedure a so-called Dublin-hearing takes place if the IND thinks another Member State is responsible for the application. This interview concerns the potential responsibility of another Member State and the asylum seeker has an opportunity during this interview to argue that the Netherlands should examine their asylum application. On day 5 of the short regular procedure the IND issues its intention to reject the asylum application which means that no substantive review of the application takes place. The asylum seeker can respond to this intended negative decision which will be revised on day 7 and 8 when the decision on the application takes place.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators:

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes       No  
If so, and if available specify
  - o the time limit at the border:
  - o the time limit on the territory:
  - o the time limit in detention:
- 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

If an asylum seeker entered the Netherlands by land they have to apply at the Central Reception Location (*Centraal Opvanglocatie – COL*), where the registration takes place. The Immigration and Naturalisation Service (IND) is responsible for the registration of the asylum seeker. The Foreigners' Office (*Vreemdelingendienst*) takes note of a number of personal data.

<sup>29</sup> Danielle Zevenum et al. Dublin II, national asylum procedure in the Netherlands, (Dublin transnational project), (2012), page 11.

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. The Royal Military Police is mainly responsible for the registration of those persons who apply for asylum at the international airport.<sup>30</sup> The Royal Military Police refuses the asylum seeker entry to the Netherlands and the asylum seeker will be detained.<sup>31</sup> Problems have been reported by asylum seekers, i.e. that the Royal Military Police did not recognise their claim for international protection as an asylum request. However, no estimate is available of how often this occurs. One example known to the Dutch Council for Refugees concerns the case of an asylum seeker whose claim was rejected by the Swedish authorities and who was expelled from Sweden to Afghanistan via the Netherlands. The person concerned applied for asylum in transit zone at Schiphol airport in Amsterdam, but his request was not recognised by the Royal Military Police who escorted him. The person concerned was expelled to Afghanistan. The Dutch Council for Refugees and Amnesty International intervened in this case and filed a complaint with the Dutch National Ombudsman. This complaint was successful.<sup>32</sup>

The IND takes care of the transfer of the asylum seeker to the Application Centre Schiphol, where the further registration of the asylum application takes place. The Application Centre Schiphol 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 they are already on the territory asylum seekers are expected to express their wish to apply for asylum to the authorities as soon as possible after arrival in the Netherlands, which is, according to jurisprudence, preferably within 48 hours. Any person arriving in the Netherlands and wishing to apply for asylum must report to the IND. While there is no specific time limit laid down by law, where the request is considered late, the IND may decide to use stricter requirements when assessing the asylum seeker's credibility.<sup>33</sup>

## 2. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 8 working days
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
- As of 31<sup>st</sup> December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: not available

As mentioned earlier the regular procedure is divided into a short asylum procedure and an extended asylum procedure. Every asylum application will firstly be assessed in the short asylum procedure. During this procedure the Immigration and Naturalisation Service (IND) can decide to refer the case to the extended asylum procedure. Before the start of the actual asylum procedure the asylum seeker has a rest and preparation period in which several investigations / examinations will take place during this period (see "short overview of the procedure").

<sup>30</sup> Voordat jouw asielpprocedure begint – AMV (Before your asylum procedure starts – UAM, July 2010, page 2.

<sup>31</sup> Article 3.3 2000 Aliens Act.

<sup>32</sup> [Report by the Dutch National Ombudsman](#), 1 July 2010.

<sup>33</sup> Regional Court Arnhem, AWB 08/4539, Judgement of 29 February 2008, asylum seeker reported four days after arrival. This is considered too late.

### *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 the Aliens Circular 2000 C1/2.3, the IND should refrain from relying on extensions. Therefore the total length of the procedure is maximum two weeks.<sup>34</sup> For the overview of the Dutch asylum procedure it is necessary to explain what steps are taken during these eight days. During the odd days the asylum seeker has contact with the IND and during the even days with their legal advisor/counsellor.

#### **Day 1:** 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 one.

#### **Day 2:** 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 because due to interpretation problems a misunderstanding easily occurs. The second day also focuses on the preparation of the second interview.

#### **Day 3:** second interview by the IND

In the second and more extensive interview, the asylum seeker is questioned by the IND about their reasons for seeking asylum.

#### **Day 4:** 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 four, the IND makes an assessment of the asylum application. It may decide to grant asylum. If not, the IND chooses either to continue the regular procedure or to refer to the extended procedure.

#### **Day 5:** the intention to reject the asylum application

When the IND decides to reject the asylum application it will issue a written intention (*Voornemen*). The intention to reject provides the grounds and reasons for a possible rejection.

#### **Day 6:** 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.

#### **Days 7 and 8:** 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 decide to continue the asylum procedure in the extended asylum procedure.

When the IND cannot assess the asylum claim and cannot make a decision within the time frame of the short regular procedure the IND has to refer case to the extended regular procedure. A decision is taken by the IND on the basis of the information that stems from the first and second interview, 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.

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<sup>34</sup> Article 3.110, 2000 Aliens Decree. An extension with six days is applied for instance in case an interpreter is not available or documents have to be analysed.



### *The extended asylum procedure*

If the IND is not able to make a decision on a request for asylum within the time frame of the short asylum procedure the asylum seeker is referred to the extended asylum procedure. There are no specific conditions under which the IND can refer a case but in general the main grounds to refer are based on the fact that 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 there is a maximum time limit for making a decision of six months. This time limit can be prolonged by another six months if the IND has to hire a third party, for instance the Ministry of Foreigner Affairs, which can conduct an investigation in the country of origin of the asylum seeker.<sup>35</sup>

Contrary to the short asylum procedure the lawyer has a period of four weeks to submit a view in writing on behalf of the asylum seeker concerning the intention of the IND to reject the application. However, if the reason for the intended rejection is that another Dublin country is to take over the asylum request, this period for submitting a view is only one week. In the extended asylum procedure, the IND also has to present a new intention to reject the asylum application if it changes its reasoning (unless these changes are not substantial), so that the lawyer can react to this reasoning before a decision is taken. In the extended asylum procedure, the IND has to issue its formal written decision granting or refusing protection within six months after the formal lodging of the asylum application, except in the circumstances explained above.

If, after the second interview and the submission of corrections and additional information in the short asylum procedure, the IND decides to continue the process as an extended asylum procedure, the asylum seeker will be relocated from a POL (Process Reception Centre) to a centre for asylum seekers (*asielzoekerscentrum* - AZC) until the end of the asylum procedure.

The IND implements policies regulating treatment of third country nationals on behalf of the Ministry of Security and Justice. The fulltime-equivalent (fte) was 3.478 at the end of 2012. Within the total capacity of the INS 2900 fte is designated for civil servants ('ambtelijke bezetting'). It is unclear which part of the civil servants is dealing with asylum applications.<sup>36</sup>

The IND has 4 main tasks which are:

- 1) handling applications of foreign nationals requesting the Dutch government to protect them against, for example, persecution in their country of origin (asylum);
- 2) handling applications for residence permits for living and working in the Netherlands (regular);
- 3) handling applications to acquire Dutch citizenship (naturalisation);
- 4) handling applications for short stay visas (visas).

The backlog of asylum cases in the first months of 2012 was reduced from 4.440 in January to 4.110 in April of cases in first instance. Exact figures are not known but in general backlog in asylum cases is not an issue except in rare case onward appeal may take more than the 23 weeks in which they have to make a ruling.

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<sup>35</sup> Article 42 2000 Aliens Act.

<sup>36</sup> Annual [report](#) IND 201, page 25.

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - Yes       No
  - if yes, is the appeal       judicial  administrative
  - If yes, is it suspensive       Yes  No
- Average delay for the appeal body to make a decision: not available

An asylum seeker whose application for asylum is rejected within the framework of the short asylum procedure has four weeks to leave the country and therefore is entitled to reception facilities for this same period. An appeal against the negative decision has no suspensive effect. So to make sure the appeal is dealt with within these four weeks the lawyer has to request a provisional measure pending the appeal. This request has to be done within 24 hours after the rejection. The appeal and the provisional measure are handled simultaneously by the same judge. In most cases the judge rejects the provisional measure and decides on the appeal. Except in cases where more time is needed to decide on the appeal a provisional measure is granted. Therefore the appeal has suspensive effect and the right on accommodation continues. If the court does not decide within four weeks (on the provisional measure or appeal), the asylum seeker has to apply for a (urgent) provisional measure again to ascertain their right to accommodation and other reception facilities. Many organisations, inter alia the Dutch Council for Refugees find this unnecessarily complicated.

An appeal in the extended asylum procedure has suspensive effect. The appeal should be made within four weeks after the rejection.

After a decision in the short and extended asylum procedure of the regional court appeal to the Council of State is possible but this appeal has no suspensive effect. In order to ensure the asylum seeker will not be expelled during this procedure they will have to ask for a provisional measure again. This provisional measure is only granted if there is a set date on which the asylum seeker will be expelled.

After the first instance decision of the IND the law does not provide for a hearing.

All decisions of the appeal body are public and some are published. Both asylum seekers and the Immigration and Naturalisation Service (IND)<sup>37</sup> may appeal against the decision of the regional court to the Council of State.<sup>38</sup> This procedure does not have any suspensive effect. In the short regular procedure the right to accommodation ends after the verdict of the court. In the extended asylum procedure this right ends 4 weeks after the verdict of the court. Onward appeal at the Council of State does not have suspensive effect. At this stage a provisional measure from the president of the Council of State is needed to prevent expulsion before the verdict of the Council. A provisional measure is only granted in case the departure date is set. A granted provisional measure gives a right to reception facilities. As a paradox, 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.

The regional court carries out a full judicial review of the case with the understanding that it is recognised that the IND has the expertise to judge an asylum request. This means that the court will not substitute its judgement about the credibility in place of that of the IND. It applies a marginal scrutiny when reviewing the decision on the facts and assesses them as they stand at that point '*ex nunc*' and not as they were at the

<sup>37</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 EVRM.

<sup>38</sup> Article 70 sub 1 2000 Aliens Act.

time of application 'ex tunc'.<sup>39</sup>

There are no obstacles in practice with regard to the appeals in asylum cases. Asylum seekers are not generally informed about their possibility to appeal, time limits etc but if they have specific questions they can address the Council on Refugees. The representatives of the asylum seekers are responsible for the submission of the appeal.

### Personal Interview

#### Indicators:

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

The legislation provides for an obligation to organise a personal interview of all asylum seekers.<sup>40</sup> Every asylum seeker will be interviewed twice at least. The first interview is designed to clarify the travel route. Depending on this interview a Dublin interview will follow. In the case Dublin is not applicable a 'normal' interview takes place where the asylum seeker can give their reasons to apply for asylum (asylum motives).

The asylum seeker is to be interviewed in a language which they may reasonably be assumed to understand.<sup>41</sup> This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.<sup>42</sup> If the asylum seeker wishes so, the second interview is conducted by an employee of the Immigration and Naturalisation Service (IND) of their own gender (this includes the interpreters as well). This makes it easier for asylum seekers to speak about issues such as sexual violence. In the past there were some issues concerning the questioning of the sexual orientation if the asylum seeker stated this orientation caused problems in the country of origin. Persons with LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex) asylum claims were for instance questioned about the type of sexual conduct and what kind of feelings this raised.<sup>43</sup> However the IND has changed this practice and they have stopped asking such questions. Recent examples of such inappropriate questions are therefore not known to the Dutch Council for Refugees.<sup>44</sup> Besides that the Council of State has raised prejudicial questions to the Court of Justice of the European Union (CJEU) asking which limits are set in Article 4 of the Qualification Directive (2004/83/EC) in assessing the credibility of an alleged sexual orientation and if with this assessment different thresholds apply compared to the assessment of the credibility of the other grounds of prosecution?<sup>45</sup> These questions are answered in the CJEU's judgment of 2 December 2014.<sup>46</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 tell anything 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

<sup>39</sup> Possibly subject to major change in the future due to the mandatory implementation of the recast Asylum Procedure (Directive 2013/32/EU, Article 46 para 3) which requires that 'Member States shall ensure that an effective remedy provides for a full and ex nunc examination of both facts and points of law'.

<sup>40</sup> Article 3.112 2000 Aliens Resolution.

<sup>41</sup> Article 38 2000 Aliens Act.

<sup>42</sup> IND, [Toelichting inzet tolken](#) (Explanatory notes use of interpreters), February 2013, p. 1.

<sup>43</sup> COC Pink Solution, [inventarisatie van LHBT asielzoekers](#) (Inventory of LGBTI asylum seekers), Lieneke Luit.

<sup>44</sup> De Volkskrant, 'Wat kunt u vertellen over de homoscene in uw land?', 26 februari 2014 NEWS

Rectified "De Volkskrant, 27 februari 2014, NEWS,

<sup>45</sup> Council of State, 201110141/1/T1/V2, Judgment of 30 March 2013

<sup>46</sup> CJEU, Joined Cases C-148/13, C-149/13 and C-150/13,, A, B and C, Judgment of 2 December 2014.

could not tell anything about the gay scene but after the A, B and C judgment this is no longer possible.

The IND may only use certified interpreters by law.<sup>47</sup> But in certain circumstances the IND may derogate from this rule, for example if an asylum seeker speaks a very rare dialect.<sup>48</sup> Asylum application and the obligation of the IND to provide interpreters for the interview have been confirmed in the jurisprudence.<sup>49</sup>

Interpreters are obliged to perform their duties honestly, conscientiously and must render an oath.<sup>50</sup> The IND uses its own code of conduct which is primarily based on the general code of conduct for interpreters.<sup>51</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>52</sup> and paid by the Legal Aid Board.

There are no audio or video recordings being made during the personal interview. Former Secretary of State of the Justice Department Kalsbeek advised against the use of audio recording during the interview.<sup>53</sup> Kalsbeek's argumentation was that the costs would not outweigh the possible positive effects. One of the objections raised by the interviewers against the use of audio-recording was that they considered it annoying and were 'obliged' to use the prescribed pattern, meaning that they could not freely interview the asylum seeker. When the interview has taken place a summary transcript (a report) of the interview is drafted.

On day 2 and 4 of the short regular procedure the asylum seeker and their lawyer may submit any corrections and additions they wish to 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 their 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 six of the general procedure), the IND may make a decision without considering that view. A comprehensive research in 2006 revealed several problems regarding to the communication in the interviews.<sup>54</sup>

On 14 March 2013, the IND issued a press release announcing that they ended their collaboration with two

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<sup>47</sup> Article 28.1 Law Sworn Interpreters and Translators.

<sup>48</sup> Article 28.3 Law Sworn Interpreters and Translators.

<sup>49</sup> Regional Court The Hague, AWB 12/34730, Judgment of 20 November 2012.

<sup>50</sup> Frits Koers et al, Best practice guide asiel: Bij de hand in asielzaken (Best Practice guide asylum). Raad voor de Rechtsbijstand, Nijmegen (2012), p. 38.

<sup>51</sup> IND, Toelichting inzet tolken, p. 5.

<sup>52</sup> Concord's [website](#).

<sup>53</sup> House of Representatives, session year 2000–2001, 26 732, no. 95.

<sup>54</sup> Nienke Doornbos, Op verhaal komen, Institutionele communicatie in de asielprocedure, (*Gain strength, Institutional communication in asylum procedures*), Nijmegen, Wolf Legal, Publishers, 2006.

'Four interrogations were intimidating in character. Most commonly, there was a conjunction of problems affecting the role and behaviour of all actors. For instance, some officers lacked experience or cultural or political knowledge. Their questions did not connect to the knowledge or understanding of asylum claimants. Their speed of questioning was often too fast or they jumped from one subject to the other. Some let the interpreter take control over the meeting. Some showed prejudiced behaviour, for instance, they assumed that the applicant was unreliable before they had even spoken to them. A few interpreters lacked fluency in one of their languages. They regularly did not translate what the other participants said, but what was a relevant answer to the question according to them. They sometimes interfered in the interview and posed questions themselves. Some of them displayed prejudiced behaviour and talked about applicants in a negative way. In ten out of the ninety interviews attended, interpreters, contrary to their code of conduct, provided the officer with background information on the applicant that heightened the impression that the applicant was unreliable.' (...) 'Only in a few cases were the problems mentioned in the report or was the interview resumed in another language. If applicants do not explicitly mention the problems and make sure themselves that the problems are noted, adjudicators and judges will assume from the report that the communication process went smoothly.'

Uyghur interpreters who are being suspected to spy for the Chinese authorities.<sup>55</sup> The allegations were based on an individual report of the Dutch Intelligence Service (AIVD). The interpreters subsequently filed a complaint at the Monitoring Committee of the Dutch Intelligence Service (CTIVD). The CTIVD acknowledged that the interpreters were right now the individual report was insufficiently motivated.<sup>56</sup>

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
 Yes       not always/with difficulty       No
- In the first instance procedure, does free legal assistance cover:  
 representation during the personal interview     legal advice     both     Not applicable
- In the appeal against a negative decision, does free legal assistance cover  
 representation in courts       legal advice       both       Not applicable

Every asylum seeker is entitled to free legal assistance. To ensure this right the following system was designed:

For 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. The Legal Aid Board (Raad voor de Rechtsbijstand), makes sure that on every day sufficient lawyers are enlisted on the schedules. In this manner all asylum seekers are being represented. In practice, due to insufficient numbers of applications lawyers are even cancelled, as there are more asylum lawyers than applicants. 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. Therefore every asylum seeker is automatically appointed a lawyer from the day they apply for asylum. Those lawyers are also physically present at the centre all day. The Legal Aid Board, a state funded organisation, is responsible for this schedule. An appointed lawyer from the Legal Aid Board is free of charge for the asylum seeker. This however does not mean that an asylum seeker has to choose the lawyer who is appointed to him. If asylum seekers have their own lawyers (in practice mostly in case of a subsequent application) then they can make use of this lawyer. If this self-chosen lawyer is recognised by the Legal Aid Board as an official asylum lawyer, the Legal Aid Board will pay for it. 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 (*VluchtelingenWerk Nederland*) also provides for legal assistance for the asylum seeker. 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

<sup>55</sup> <http://nos.nl/artikel/484597-ind-zet-twee-tolken-op-nonactief.html>

<sup>56</sup> NRC NL, [Dutch Intelligence Service Report](#), News, 10 September 2013.

Refugees, in order to receive counselling 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 their lawyer. The Dutch Council for Refugees has offices in most of the reception centres. The 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 regular procedure asylum seekers continue to have access to free legal assistance. No merits test applies. Every asylum seeker has access to free legal assistance under the same conditions. However, the lawyer can decide not to submit any views (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. This would only happen 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 would not submit a view, this would be considered as "malpractice" because writing a written view is actually the core of the job of the lawyer in the whole procedure. Even if the lawyer is strongly of the opinion that a written view will not be of any use it is not said that this is also the case in future circumstances, for example in case of a subsequent application. Only after several recognised 'malpractices' an asylum lawyer can be punished. The severest punishment is disbarment.

The amount of the financial compensation for the lawyers who represent the 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. Besides this, due to the economic crises, more cutbacks had to be made within the state funded legal aid. Firstly the Secretary of State initially reduced the compensation when a case is dealt by the Courts without a hearing. The reasoning behind this reduction was that those cases would have been very easy or probably there was no need for 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>57</sup> Eventually the Secretary of State withdrew this measure in February 2014 after severe objections from lawyers.<sup>58</sup> Secondly, another major cutback, which is finalised in law and entered into force the first of January 2014, is the principle of 'no cure, less fee' when handling a subsequent application. Lawyers will receive a lower compensation at subsequent applications when the appeal has been declared inadmissible (instead of four "points" they will receive two "points").

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<sup>57</sup> NJ Blog, Mies Westerveld and Marc Wijngaarden, <http://njb.nl/blog/asielbeleid-en-rechtshulp-het-is-nog-erger.10610.lynkx>, 7 October 2013. On 20 November 2013, a debate took place in Parliament on this issue.

<sup>58</sup> [Letter of the State Secretary for Security and Justice concerning legal aid to the House of Representatives](#), 8 February 2014, Stelselvernieuwing gesubsidieerde rechtsbijstand (New system state funded legal aid).

### 3. Dublin

#### Indicators:

- Number of outgoing requests in the previous year: not available
- Number of incoming requests in the previous year: not available
- Number of outgoing transfers carried out effectively in the previous year: not available
- Number of incoming transfers carried out effectively in the previous year: not available

#### Procedure

#### Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State?  
not available

During the rest and preparation period, the Immigration and Naturalisation Service (IND) starts investigating whether another country is responsible for examining the asylum application. All asylum seekers are systematically fingerprinted and checked in EURODAC. There are no signals that asylum seekers refuse to provide their fingerprints, however, some cases are known about Somali asylum seekers removing their fingerprints. In theory where an asylum seeker refuses to provide their fingerprints the asylum application is likely to be rejected on the ground that the asylum seeker is not cooperating in establishing their identity or travel route. In addition to a match in the EURODAC system other grounds such as an original visa of another Member State and information collected by the Aliens Police through the searching of clothes and luggage may give rise to a Dublin claim.<sup>59</sup> This Dublin investigation can be extended after the rest and preparation period and can continue for a few weeks to a few months. If there are indications that another country is responsible for examining the asylum application, the IND starts a Dublin procedure.

An asylum application may be rejected if another Member State is responsible for the application.<sup>60</sup> In such a case, the Netherlands does not assess the content of the asylum application, since another Member State may be held responsible for the asylum request. The IND conducts a first interview with the asylum seeker, but does not conduct a follow-up interview as to the reasons for this asylum application. Instead, the IND will conduct an interview concerning the transfer (Dublin Interview).

During the Dublin interview, the asylum seeker is informed that the Netherlands might or already has filed out a Dublin claim to another Member State. The IND (in coproduction with the Dutch Council for Refugees) has brochures in thirty-two languages with information about the Dublin Claim for asylum seekers. The asylum seeker may present the reasons as to why the Netherlands should deal with their asylum application.

The IND files a Dublin claim as soon as it has good reason to assume that another Dublin country is responsible for examining an asylum application (it does so according to the criteria set in the Dublin Regulation). The IND does not wait until the results of this claim are known before having a Dublin interview and follows the next steps of the asylum procedure.<sup>61</sup> However, the decision to refuse asylum due to the possibility of a Dublin transfer is only taken after the Dublin claim has been (tacitly) accepted by the other Dublin country. The IND tries to handle Dublin cases as much as possible during the regular procedure, but the dependency on other Member States in such cases has the consequence that a large number of these cases are dealt with in the extended asylum procedure. The actual time it takes until the transfer to the

<sup>59</sup> On this practical application of the Dublin criteria, see European network for technical cooperation on the application of the Dublin II Regulation, National report The Netherlands, pp. 22-29.

<sup>60</sup> Article 30 sub 1 under a, 2000 Aliens Act.

<sup>61</sup> Danielle Zevenum & Geert Lamers, *Dublin II, national asylum procedure in the Netherlands*, Dublin transnational project, p. 16.

responsible Dublin country will be executed within the fixed term of six months depends on whether an appeal against a Dublin transfer decision was submitted. The practice on this topic is elaborated in the Dublin II Regulation National Report of the Netherlands.<sup>62</sup>

Except for the implementation of Article 16 recast Dublin Regulation, there is no special regulation concerning the position of vulnerable persons under the Dutch Legislation. The State Secretary for Security and Justice informed the House of Representatives on the 2 September 2013 about consequences and the change in policy for unaccompanied children, who have already applied for asylum in another Dublin country, in order to comply with the CJEU's *M.A.* judgment.<sup>63</sup> The Council of State ruled that the CJEU interpreted the law without any time limits.<sup>64</sup>

If a person is vulnerable, this may be an important factor in the decision to apply Article 17 recast Dublin Regulation (discretionary clause).<sup>65</sup> This discretionary clause can also be invoked if a transfer is of disproportional harshness. Disproportional harshness and vulnerability in most cases go hand in hand.<sup>66</sup> The discretionary clause of Article 17 is also applied in combination with Article 16 in dependant family member cases.

In case an asylum seeker has physical and/or psychological problems, which makes it impossible for them to travel they can apply for an Article 64 Alien Act measure (delay of departure). If the IND decides to grant this measure then the IND has to handle the asylum application, because according to case law Article 64 Alien Act is a residence permit under Article 16(2) Dublin Regulation.<sup>67</sup>

An asylum seeker whose case has been rejected because they are to be transferred to another Dublin country may be detained if certain conditions are fulfilled, mainly to prevent them absconding. Article 28 of the recast Dublin Regulation is interpreted in a way that allows detention in many cases. See for further details on this subject the Chapter "Detention".

An asylum seeker who is transferred to the Netherlands because it has the responsibility to deal with their asylum request under the Dublin Regulation will follow the standard asylum procedure (the short and perhaps the extended asylum procedure).

In the Netherlands, the IND is responsible for all asylum applications, including asylum applications lodged by persons who are transferred back to the Netherlands. The asylum seeker may 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.

If the asylum seeker previously lodged an asylum application in the Netherlands and wants to re-apply for asylum, they follow the standard procedure. They have an appointment for submitting the new application,

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<sup>62</sup> *Ibid*, p. 39-40

*'A provisional measure issued to allow an applicant to await a decision on appeal, as well as a provisional measure to await a decision on a request for a provisional measure (see chapter 3.5.3 on effective remedies), suspends the transfer term of six months in accordance with Article 20(1)(d) Dublin Regulation. However, as long as there is no decision from the court on a request for a provisional measure, the appeal procedure has no suspensive effect and the time limit continues to run. If the time limit of six months is surpassed, the IND will be reluctant to continue waiting for the court's decision and can plan a transfer. The asylum seeker then has to ask the court to rule on the provisional measure before the planned transfer ('spoed-vovo'). If the judge grants the provisional measure, the transfer term of six months will begin again after the court has ruled on the appeal procedure (see also chapter 3.5.3 on effective remedies). The Council of State has held that an interim measure under Rule 39 of the procedures of the Court issued by the ECtHR suspends the transfer term in Article 20. Once an interim measure has been issued, an asylum seeker enjoys lawful residence in the Netherlands, and may therefore not be transferred under the Dublin Regulation. An interim measure from the ECtHR is regarded as a factual barrier relating to the postponement of the moment of transfer.'*

<sup>63</sup> Letter of the State Secretary for Security and Justice concerning case C-648/11 of the CJEU, 02 September 2013.

<sup>64</sup> Council of State, 201205236/1, Judgment of 05 September 2013.

<sup>65</sup> C3/2.3.6.4 2000 Aliens Circular.

<sup>66</sup> See note 42, page 35 and 56.

<sup>67</sup> Council of State, 201000724/1, Judgment of 12 July 2012.



but will not get a formal rest and preparation period or accommodation offered while waiting for this appointment. The application will be dealt with as a subsequent asylum application. Asylum seekers who are transferred to the Netherlands because they had previously applied for asylum in the Netherlands run a higher risk than other (rejected) asylum seekers to be subjected to detention. The authorities often assume in such cases that the asylum seeker may abscond because it happened in the past.

Normally, vulnerable and ill persons will also be 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. The IND determines the vulnerability of Dublin claimants through the medical check during the rest and preparation period, and through information provided by the applicant during interviews. Recently, due to the Tarakhel judgment of the ECtHR<sup>68</sup> the Secretary of State has made new policy regarding Dublin transfers of families with under age children to Italy.<sup>69</sup> According to a letter from the Government Agency of the Netherlands of the Department of Foreign affairs dated 7 January 2015 (not public) the process in case of a transfer of a family with under age children to Italy is as follows. The transfer will be announced 10 to 15 days in advance of the day of the actual transfer, in order to give the Italian authorities the opportunity to provide information assuring that the conditions in the facility where the family will be accommodated are adapted to the age of the children and that the family will be kept together. This period is longer than usual (in other cases only a couple of days).<sup>70</sup> The Dutch authorities will not transfer families with under age children to Italy under the Dublin Regulation without receiving the aforementioned guarantee relating to the individual case at hand. If these guarantees are not received within the time-limit for transfers set out in the Dublin Regulation, the persons involved will be channeled into the Dutch asylum procedure. [During this period they receive reception conditions comparable to asylum seekers who apply for asylum for first time. This means reception in an AZC (Asielzoekerscentra – Centres for Asylum Seekers)].

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
  - Yes  No
  - o if yes, is the appeal  judicial  administrative
  - o If yes, is it suspensive  Yes  No
- Average delay for the appeal body to make a decision: not available

When an asylum application has been rejected in the Netherlands because another State is responsible for examining the asylum application under the Dublin Regulation, the asylum seeker may (in practice the lawyer) appeal against such decision with the regional court. The same legal context is applicable as described in the section on the regular procedure (appeal) with one difference in the extended regular procedure.

Normally an appeal against a rejection of an asylum application in the extended procedure has suspensive effect but not if the rejection is based on the Dublin regulation. This means the lawyer has to request the court to issue a provisional measure to prevent transfer during the appeal procedure. If the court provides such a provisional measure, the asylum seeker maintains the right to accommodation facilities. In general the court relies on the principle of mutual trust between states concerning the question whether an asylum seeker can be transferred to another member state. The appeal body takes circumstances and facts into account if this could mean that transfer would result in a violation of Article 3 of the European Convention on Human Rights. Important aspects are the level of reception condition and the procedural guarantees in the other Member State. The recognition rates as such are not an aspect which could be decisive.

<sup>68</sup> ECtHR, *Tarakhel v. Switzerland*, Application no. [29217/12](#), Judgment of 4 November 2014.

<sup>69</sup> Letter of the Secretary of State of 20 November 2014, to the Parliament, 29344, 122

<sup>70</sup> Transnational Dublin Project, [www.dublin-project.eu/Netherlands](http://www.dublin-project.eu/Netherlands) [http://www.dublin-project.eu/dublin/content/download/6235/75897/version/2/file/Rapport\\_Netherlands\\_WEB%5B1%5D.pdf](http://www.dublin-project.eu/dublin/content/download/6235/75897/version/2/file/Rapport_Netherlands_WEB%5B1%5D.pdf), page 18

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the Dublin procedure?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No

The competent authority, the Immigration and Naturalisation Service (IND), conducts a Dublin interview (Dublin Gehoor) with the asylum seeker concerning the transfer and not a follow-up interview as to the reasons for their asylum application. During the Dublin interview, the asylum seeker is informed that the Netherlands might or already has requested a Dublin transfer (take back or take charge request) to another Member State. The asylum seeker may present the arguments as to why the Netherlands should deal with their asylum application instead.

Within the framework of the short regular asylum procedure, this Dublin interview is usually held in the application centre, because in most cases it will already be clear during this procedure that a request for transfer will be made to another Member State. However, a Dublin interview may also be conducted in the extended regular asylum procedure, i.e. if, after prolonged examination, the IND only then decides to submit a request for a Dublin transfer to another Member State. After this interview, the same steps of the regular asylum procedure are taken. However, in this case the procedure does not concern granting asylum but the intended transfer to another Dublin country.

The Dublin interview is combined with the first interview within the framework of the short asylum procedure. The remarks concerning video/audio recording, interpreters, accessibility and quality of the (regular) interview are also applicable in the Dublin procedure. As a result the short asylum procedure is shortened in Dublin cases, because the interview about the asylum motives is left out. If more investigation whether Dublin is applicable is needed the asylum seeker is directed to the extended asylum procedure.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision?  Yes  always/with difficulty  No

The legal assistance system and conditions under the Dublin procedure are the same as in the regular procedure (see Legal assistance section, Regular Procedure). The same practical obstacles are applicable.

## Suspension of transfers

### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?  Yes  No
  - o If yes, to which country/countries? Greece/Bulgaria (not official)

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>71</sup> The Netherlands is assuming responsibility for all asylum application of asylum seekers, who actually should be transferred to Greece. As mentioned above, a special policy applies with regard to transfers of families with under age children to Italy as a result of the judgment of the ECtHR in the case of *Tarakhel v. Switzerland* (see above Dublin Procedure). The Dutch authorities will in such cases communicate the date of the actual transfer 10 to 15 days in advance to the Italian authorities and the transfer will not be carried out without having received sufficient guarantees that the accommodation provided in Italy is adapted to the age of the children and that the family will be kept together. In case no such guarantees are provided within the time limits for transfers laid down in the Dublin Regulation, the Dutch authorities will assume responsibility for examining their asylum application. Regarding other Member States suspension of transfers is applied on a case by case basis. For instance in individual cases transfers to Italy and Malta are suspended due to the ruling of the court.<sup>72</sup> In case of asylum seekers who actually should have been transferred to Greece, the Dutch authorities are assuming responsibility under Article 17 of the recast Dublin Regulation.

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>73</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)<sup>74</sup> and ruling of the Council of State in which only specific on the asylum seeker applicable individual circumstances were weighed. Recently the Alien Circular has changed to incorporate this jurisprudence.<sup>75</sup>

The Netherlands rarely makes use of the possibility to substantively examine an application for asylum on the basis of Article 17 recast Dublin Regulation. The authorities are generally very reluctant to use the discretionary clause. Firstly, based on the principle of mutual trust between states, it is assumed that Member States comply with their obligations under the Refugee Convention and Article 3 European Convention on Human Rights, unless there is concrete evidence to the contrary. If this is the case, the Netherlands can take charge of the asylum application on the basis of Article 17 recast Dublin Regulation. In this regard the Aliens Circular states that it does not matter whether this concerns a request to take back or to take charge of an asylum application.

## 4. Admissibility procedures

In the Netherlands there are no admissibility procedures.<sup>76</sup>

<sup>71</sup> European Court of Human Rights, *M.S.S v Belgium and Greece*, Application No. [30696/09](#), [Judgment of 21 January 2011](#).

<sup>72</sup> District Court of Maastricht, 2013/02/14, Rb Maastricht, 13/2560 en 13/2557, or 2013/03/08, Rb Maastricht, 12/2330,

<sup>73</sup> Council of State, 201009278/1/V3, Judgment of 14 July 2011.

<sup>74</sup> Alien Circular C3/2.3.6.2 (old).

<sup>75</sup> Alien Circular C2/5.1.

<sup>76</sup> Due to the implementation of the Asylum Procedures Directive there will be an admissibility procedure as of 20 July 2015.

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

### General (scope, time-limits)

#### Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
- Are there any substantiated reports of refoulement at the border (based on NGO reports, media, testimonies, etc)?  Yes  No
- Can an application made at the border be examined in substance during a border procedure?  
 Yes  No

Formally there is no specific border procedure<sup>77</sup> in relation to the asylum application but asylum seekers can be detained (and in most cases will be detained) if they enter the Netherlands through the international airport (Schiphol) or a harbour. Since 1 September 2014, the Netherlands no longer detains families with children at the border. 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>78</sup> In 2013, there were nearly 700 refugees in border detention. Among them 76 children who were younger than 15 years old. 64 children have been detained at the border until September 2014. This means that every asylum seeker (coming from a non-Schengen country) who has arrived in the Netherlands by plane or boat will be apprehended by the Royal Military Police, a military constabulary with border control among its tasks. If they wish to apply for asylum, they are transferred to the closed Application Centre (*Aanmeldcentrum*, AC) at Schiphol airport Amsterdam to formally lodge their application. In this situation the asylum seeker is refused entry to the Netherlands and is deprived of their liberty. The duration of detention depends on the length of the asylum procedure and in case the asylum application is rejected, the asylum seeker can subsequently be expelled. Asylum seekers who are detained at Schiphol Airport are formally not on the territory of the Netherlands. All other asylum procedures start in the town of Ter Apel. The asylum seekers in Ter Apel cannot be deprived of their liberty during the entire asylum procedure. Approximately 10% of all asylum requests are processed at Schiphol airport and 90% in Ter Apel. The legal discussion at the moment in the Netherlands focusses on the question whether the Netherlands has a specific 'border' asylum procedure or a general national procedure which applies at the border as well. This distinction is important in relation to the scope of Article 35 of the Asylum Procedures Directive. The Dutch government stated, backed up by the Council of State, that there exists only one general procedure, not a specific border procedure.<sup>79</sup> Therefore the Dutch government has to acknowledge that every (expression of a) wish of international protection made at the Dutch borders falls within the scope of the Asylum Procedures Directive. Asylum seekers can no longer be refused entry into the Netherlands, but "further entry" into the Netherlands can be prevented by keeping asylum seekers in detention at the border in closed centres. The recent Asylum Procedures Directive Recast has increased the pressure on the Dutch government to clarify whether or not they continue to deny the existence of a specific border asylum procedure. It looks like the Dutch government is going to acknowledge the existence of a specific border procedure which then will have consequences for the maximum duration of detention for persons in an asylum procedure at the border.

The assessment of the asylum claim starts in the short regular asylum procedure (which normally takes 8 days and can take up to 2 weeks). However, if the Immigration and Naturalisation Service (IND) decides during this short regular procedure that more time is needed to assess the asylum claim the asylum seeker is, will, as a rule, be referred to an open reception centre to continue the asylum procedure. For situations in which the Dutch government need more time to take an expected negative decision, the 2000 Aliens Circular

<sup>77</sup> Due to the implementation of the Asylum Procedures Directive there has to be a formal border procedure as of 20 July 2015.

<sup>78</sup> Alien Circular, A1/7.3.

<sup>79</sup> Council of State, 201102753/1, judgment of 4 October 2011.

stipulates in an exhaustive manner (limitatieve opsomming) when the asylum seeker is referred to the closed extended procedure (Gesloten Verlengde Asielprocedure, GVA). The GVA can last up to 6 weeks and during which the asylum seeker remains in detention.<sup>80</sup> When the IND is not able to make a decision within the 6 weeks the GVA can be extended and the asylum seeker still remains detained. When the asylum seeker lodges an appeal against the rejection of the asylum application, the asylum seeker continues to be detained. In case the court rejects the appeal the asylum seeker can be kept in detention if there is a prospect of their expulsion.<sup>81</sup> In practice this means that some asylum seekers are held in detention during their entire stay in the Netherlands.

The situation at the border for families with minor children and unaccompanied minors is different. Families with minor children are detained up to a maximum period of 14 days and after this period of time they will be transferred to an open reception centre. Unaccompanied children are as a rule not detained in the closed centre Schiphol Airport (Justitieel Complex Schiphol), but only when there is no doubt about their minor age. Then they will be transferred to an open reception centre where their asylum claim is being assessed.

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 facto*. During the first steps of the asylum procedure, the asylum seeker remains in the closed Application Centre at Schiphol. When the IND is not able to assess the asylum claim within the short regular procedure the case is referred to the closed extended procedure, which also means that the asylum seeker concerned will be transferred to another closed (detention) centre: the *Grenshospitium*.

## Appeal

### Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?  
 Yes  No
  - o if yes, is the appeal  judicial  administrative
  - o If yes, is it suspensive?  Yes  No

The main difference between the border and the regular asylum procedure at Ter Apel is that during the border procedure, asylum seekers are detained. The border procedure is not described in law and follows more or less the regular procedure. Because the asylum seeker is detained during the examination of the application the IND has to deal in a 'prosperous manner'. There is no exact definition what a 'prosperous manner' is. Asylum seekers in the border procedure can lodge an appeal against the detention decision to the district Court. After a border detention of six week the asylum seeker is in principle released except if their behaviour indicates something different, i.e. if the asylum seeker frustrates the examination of the application.<sup>82</sup>

The Dutch Council for Refugees strongly objects the use of the border procedure in the light of the individual interests of the asylum seeker. Apart from that relevant international and EU standards illustrate that there is no obligation to detain aliens at the border and the Dutch authorities have not reflected on any alternatives to

<sup>80</sup> For example, the asylum seeker is referred to the closed extended procedure when their nationality and identity needs further assessment. Please, see chapter C1/2.4 from the 2000 Aliens Circular.

<sup>81</sup> In that case the grounds of his detention will be altered from article 6 Alien Act to article 59 Alien Act.

<sup>82</sup> For further details see the section on *judicial review of detention*.

detention.<sup>83</sup>

Also the Committee of Human Rights (*Comité voor de Mensenrechten*) has published an advice for the Dutch government in which the Committee concludes that it is unnecessary to *always* detain asylum seekers at the border, especially children.<sup>84</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. In addition, research shows that the majority of the detained asylum seekers are, after the detention period, allowed to enter Dutch territory.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the border procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  Yes  No

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

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure?  Yes  not always/with difficulty  No

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

## 6. Accelerated procedure

The Netherlands does not apply an accelerated procedure but all asylum applications are first examined in the short regular procedure in which decisions are taken within 8 working days (extendible with another 6 days).

40% of asylum applications are transferred to the extended procedure after having been examined in the short regular procedure.

In practice, authorities comply with the time limit.

For more information see "Regular Procedure"

<sup>83</sup> Dutch Council for Refugees and UNHCR, <https://www.vluchtelingenwerk.nl/sites/public/u152/VWN-GVA-rapport-DEF-WEB-spreadLR.pdf>, April 2013.

<sup>84</sup> The Committee for Human Rights, *Advies: Over de grens*, May 2014, <http://crvdm-zoeken.stippacceptatie.nl/StippWebDLL/Resources/Handlers/DownloadBestand.ashx?id=2306>

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

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  
 Yes       not always/with difficulty       No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?       Yes       not always/with difficulty       No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?       Yes       not always/with difficulty       No
- 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       not always/with difficulty       No

As laid down in the Aliens Circular, in chapter C1/2, (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 Immigration and Naturalisation Service (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 like 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 Central Reception Centre (COL), Process Reception Centre (POL) and at AC Schiphol. In order to assess whether these brochures give sufficient information to the asylum seekers the Dutch Council for Refugees is considering carrying out a survey on the brochures.

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. At the time of the last update of this report (March 2014), the common information forms included in Annexes X to XIII of the Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 were not used as such.<sup>85</sup>

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 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>86</sup>

<sup>85</sup> See Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2014 L 39/1.

<sup>86</sup> There are also so called voluntary visitor groups which visit asylum seekers in detention.

## D. Subsequent applications

### Indicators:

- does the legislation provide a special procedure:  Yes  No
- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance  Yes  No  no, not systematically
  - o At the appeal stage  Yes  No  no, not systematically
  
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance  Yes  No  no, not systematically
  - o At the appeal stage  Yes  No  no, not systematically

After a final rejection of the asylum application, the asylum seeker is able to lodge a subsequent asylum application (*herhaalde aanvraag*) with the Immigration and Naturalisation Service (IND).<sup>87</sup> This follows from the non-*refoulement* principle, codified under Article 3 European Convention on Human Rights. The Aliens Circular lays down the working instructions for the IND establishing how the IND should deal with subsequent applications.<sup>88</sup>

As of 1 January 2014 there has been a major change in the procedure for handling subsequent asylum applications but not in the assessment of those applications. The handling of these applications is now done in the so called 'one-day review' (*de eendags toets*).<sup>89</sup>

This procedure is as follows. The asylum seeker is required to fill out a form and when the IND has received this form and assessed whether the application is complete, the asylum seeker will receive 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 appointed IND application centre. Firstly the IND shall check the identity of the asylum seeker using fingerprints and several other documents. After the identity has been checked, the asylum application will be signed and a hearing will take place with an employee from the IND and an interpreter. This hearing will 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.

When the hearing has taken place there will be an assessment and judgement whether the application will be granted, rejected or further research is required. This will occur on the same day as the hearing. Three scenarios are possible:

A. The application is granted (refugee protection or subsidiary protection):

On the same day the application is granted, the asylum seeker will receive a report of the hearing and the granted decision.

B. The application is rejected:

On the same day (day 1) the application is rejected, the asylum seeker will receive a report of the hearing and the intended decision considering the rejection. The asylum seeker will discuss the report of the hearing

<sup>87</sup> Article 4:6, sub 1 General Administrative Law Act states: "In case a new application is made after a (full or partial) rejection decision, the applicant must mention the new elements or the changed circumstances."

<sup>88</sup> C14/4.1 2000 Aliens Circular.

<sup>89</sup> C1/3 2000 Aliens Circular.



and the intended decision the next day (day 2) with his lawyer. The lawyer will draft an opinion on the intended decision and will also submit further information. On the third day (day 3) the asylum seeker will receive an answer from the IND whether the application is rejected, approved or requires further research.

### C. 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 their subsequent asylum application will be rejected, the asylum seeker can be expelled.<sup>90</sup>

The main issue in assessing the subsequent application is whether the asylum seeker has submitted new facts or circumstances (nova) in relation to their previous asylum application and if so, whether these nova are relevant. The nova criterion is interpreted strictly. If the nova are considered relevant, there will be a substantive examination of the subsequent asylum application. If this is not the case, the application will be rejected on the basis of Article 4:6 sub 1, General Administrative Law Act (Algemene Wet Bestuursrecht), i.e. where the application does not raise new facts and circumstances different from the previous asylum application. The rationale behind this provision is to prevent that the IND has to decide several times on the same matter.

According to the Aliens Circular, chapter C1/3, 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 as new if it is 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.

A subsequent application can be rejected in a simplified manner according to Article 4:6, sub 2, General Administrative Law Act.<sup>91</sup> It was questioned whether this was in line with Article 24 of Council Directive 2005/85/EC (hereafter: '2005 Asylum Procedures Directive').<sup>92</sup> The Council of State ruled in June 2012 that Article 4:6, sub 2, General Administrative Law Act is in line with EU law.<sup>93</sup> This is the case when the asylum seeker did not put forward new facts or changed circumstances, the IND merely refers in this situation to the earlier decision rejecting the asylum application, and the application is not substantively examined. This procedure is the same for every following (2<sup>nd</sup>, 3<sup>rd</sup>, etc.) subsequent asylum application. There are no limitations as to how many subsequent applications can be lodged by an asylum seeker and all of these subsequent applications are treated in the same way. A subsequent asylum application will only be successful when new facts have emerged or circumstances have altered since the initial asylum application.

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 get lawful residence in the Netherlands, which means they can be expelled during their appeal. To prevent this, the asylum seeker has to request for a provisional measure with the regional court. After the decision of the regional court the

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<sup>90</sup> Article 3:1 sub 1 2000 Aliens Decree.

<sup>91</sup> Article 4:6 sub 2 General Administrative Law Act 'If no new facts or altered circumstances are stated, the administrative authority may, without applying article 4:5, reject the application by referring to its administrative decision rejecting the previous application'.

<sup>92</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ 2005 L 326/13.

<sup>93</sup> 2012/06/29, Council of State, 201112955/1/V4.

asylum seeker can lodge an appeal with the Council of State. Contrary to the IND the Court must, *ex officio*, apply Article 4:6 AWB in case of a subsequent application. This means that the scope of the review of the Court is limited to reviewing whether there are new facts and altered circumstances.

When the negative decision is final the asylum seeker does not have lawful stay and can be expelled immediately.<sup>94</sup> This means that the asylum seeker is not entitled to a period of 4 weeks to return on their own accord and that no accommodation is offered to the asylum seeker.

Due to recent financial cutbacks the principle of 'no cure less fee' is applied with regard to legal assistance in the case of subsequent asylum applications. This means that lawyers would receive lower remuneration fees in case of a negative decision of the regional court or the Council of State.<sup>95</sup>

Currently, a problem arises when asylum seekers with a re-entry ban lodge a subsequent asylum application. In that case they are allowed to make the application and the re-entry ban is not applicable during the examination of their subsequent asylum application. However, if the subsequent asylum application is rejected, the entry ban is 'reactivated'. According to Dutch case law this means the asylum seeker is considered not to have any interest in lodging an appeal against the negative decision because it is impossible to reside lawfully in the Netherlands when an entry ban has been issued on a person and to obtain a residence permit as long as the entry ban is in force.<sup>96</sup> As a result of the fact that the applicant is considered not to have any lawful interest in lodging the appeal with the Court appeals in cases concerning subsequent asylum applications from asylum seekers with a re-entry ban are systematically rejected.<sup>97</sup> The Council of State confirmed this verdict in July 2012.<sup>98</sup> But after this ruling there has been an interesting judgment of the regional court of Middelburg on this issue.<sup>99</sup> This court ruled that, based on the judgment of the Court of Justice of the European Union (CJEU) in the case of Arslan,<sup>100</sup> an asylum seeker whose subsequent application is rejected and has an entry ban (due to his first application) can lawfully reside on the territory of the Member State until there is a decision on the appeal of the rejected subsequent application. This is contrary to the earlier judgement of the Council of State that there was only lawful residence until the decision in first instance.

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<sup>94</sup> Article 62 sub 3 2000 Aliens Act.

<sup>95</sup> Frits Koers, Nienke Doornbos and Theo Wijngaard, *Best practice guide asiel: Bij de hand in asielzaken. (Best practice guide asylum)* Raad voor de Rechtsbijstand (Legal Aid Board), (2012), page 8.

<sup>96</sup> Regional Court Middelburg, Awb 12/27476, Judgment of 20 September.

<sup>97</sup> Regional Court Den Bosch, Awb 12/17011, Judgment of 14 February 2013.

<sup>98</sup> Council of State, 2012045591/1, Judgment of 7 July 2012

<sup>99</sup> Regional Court Middelburg, Awb 13/27018 Judgment of 30 January 2014.

<sup>100</sup> CJEU, C-534/11, Mehmet Arslan v. Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie, Judgment of 30 May 2013.

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  No  Yes, but only for some categories (specify: children)
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories (specify: children)

Before the personal interview takes place, Medifirst<sup>101</sup> will examine every asylum seeker whether they are able (mentally and physically) to be interviewed. Medifirst is an independent agency, hired by the Immigration and Naturalisation Service (IND) to provide medical advice. Medifirst's medical advice forms an important element in the decision as to how the application will be handled. However, it should be noted that MediFirst is not an agency that identifies vulnerable asylum seekers as such but gives advice to the IND how the asylum seeker should be interviewed.

The IND decides whether the interview has to be adjusted to the asylum seeker. The IND bases judgement on the medical advice, own observations of the asylum seeker and remarks of the lawyer and asylum seeker. An important document in this context is the working instruction of the IND, number 2010/13.<sup>102</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.

In the COL (Centre Reception Location), the IND will from the outset look at whether there are any vulnerable people in need of special care. 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 person 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. The expulsion or transfer is only suspended for the period during which travelling is considered irresponsible on medical grounds.

The Dutch Council for Refugees, unlike the IND which has not codified who should be considered "vulnerable" and generally finds that vulnerability should be based on individual grounds, considers the following categories to be potential vulnerable groups of asylum seekers: (unaccompanied) children, (single) women, persons with medical problems, victims of torture and persons suffering from trauma. The Dutch Council for Refugees recommends that more and special attention should be paid to the asylum applications of vulnerable groups, for example, by dealing with such applications in the extended regular procedure and not in the 'short' regular procedure.

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>103</sup> The IND employees are also trained to recognise victims of human trafficking.<sup>104</sup> Victims of trafficking who have been refused asylum can

<sup>101</sup> See website of <http://www.medi-first.nl/>

<sup>102</sup> INS, <http://www.ind.nl/Klant-informatie/Documents/WI%202010-13.pdf>, 29 October 2010, (*Werkinstructie behandeling van medisch advies-zaken 2010/13*).

<sup>103</sup> Chapter B/9 2000 Alien Circular.

<sup>104</sup> IND, *Werkinstructie 'Potentiele slachtoffers mensenhandel'*, (INS Working instruction 'Victims of human trafficking in the asylum procedure') 2007/16, 18 December 2007.

be granted a temporary permit on a regular ground. During a time frame of 3 months the asylum seeker has to consider whether they lodge 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 contribution, health insurance, legal support and housing in a shelter, for example. However, this is unrelated to the asylum system.

In sum, there are guarantees, although not by law, that vulnerable asylum seekers are identified as such and that the IND adjusts their interview to the situation of the asylum seeker. Victims of human trafficking are special category in this context. Besides this there are procedural guarantees concerning the departure of rejected asylum seekers with medical problems.

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. But in general in most of these cases more investigation is needed, for example a medical report has to be drawn up. In that case the application will be referred to the extended asylum procedure. This principle also applies with regard 'border procedure' which formally does not exist in the Netherlands but in practice a border procedure is used. Within these 'border procedures' a case can be referred to the extended closed border procedure on the same grounds as mentioned above. See more about this subject in paragraph "2. Border procedures".

Unaccompanied minors will not be detained unless the IND thinks the minor is of age.<sup>105</sup>

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       Yes, but not in all cases       No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?  
 Yes       No

There is a legal obligation for the Immigration and Naturalisation Service (IND) to medically examine every asylum seeker to assess whether the asylum seeker can be interviewed. This is the medical examination conducted by Medifirst mentioned under 'Special Procedural Guarantees'. However it is important to highlight that there is no clear legal obligation for the IND to medically examine asylum seekers in connection to their reasons for requesting protection. For example, where an asylum seeker states they have been arrested and tortured because they joined a demonstration and they have scars to substantiate their claim, the IND does, however, not believe they participated in the demonstration there is no obligation for the IND to examine the scars. Where the asylum seeker has, however, some initial proof, for example a statement of a doctor which confirms that the scars are a result of torture, then there is a legal obligation for the IND to assess this statement.<sup>106</sup> This means in practice that, if the IND wants to reject the statement of the doctor, it has to medically examine the asylum seeker, which is also a requirement under the jurisprudence of the European Court on Human Rights in the case of *R.C v Sweden*.<sup>107</sup> Therefore, the IND has established its own medical department for carrying out this task, the Bureau of Medical Advise (*Bureau Medisch Advies*, BMA). The position of BMA as independent agency is criticised<sup>108</sup> because their judgments are based on the reports established by the doctor who brought the 'initial proof'. In sum, if the story of the asylum seeker is considered not to be credible the IND will leave aside medical evidence, which is accepted in

<sup>105</sup> Letter from the Minister of Immigration and Asylum to the Parliament on 10 March 2011

<sup>106</sup> Article. 3:2 jo. 3:46 General Administrative Law Act.

<sup>107</sup> See ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010,

<sup>108</sup> The position of BMA as independent is criticised. See for example: <http://medischcontact.artsennet.nl/nieuws-26/archief-6/tijdschriftartikel/88189/kritiek-op-artsen-ind.htm>

jurisprudence.<sup>109</sup> On the other hand, if there is initial proof the IND has to investigate.<sup>110</sup>

An NGO called iMMO<sup>111</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. It is not clear under which conditions iMMO accepts a request. The authority of iMMO is 'codified' in the Dutch Alien policy and its authority is accepted by the Council of State.<sup>112</sup>

Recently the regional court of the Hague ruled that, as provisional measure, the IND had to reimburse the expenses of this iMMO- report.<sup>113</sup>

Until now the Dutch Government did not adopt a clear vision on the implementation of the Istanbul Protocol. 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>114</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>115</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 Procedure Directive. Another recommendation was to use medical evidence as supporting evidence in asylum procedures, which has been addressed by recast Article 18 of the Asylum Procedure Directive.

MediFirst cannot be seen as a product of the Istanbul Protocol because the examination is limited to the question whether the asylum seeker is able to be interviewed based on his physical and/or mental capacity.

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

Unaccompanied children will be considered unaccompanied if they travel without their parents or guardian and their parents/guardian are not already present in the Netherlands.<sup>116</sup> One is considered a "child" (underage) when under the age of 18 and not (registered as) married. When the Immigration and Naturalisation Service (IND) doubts whether an asylum seeker is a child, an age assessment examination can be initiated.

If an unaccompanied child lodges an asylum application at the border, the Royal Military Police (*Koninklijke Marechaussee, KMar*) can conduct an inspection (*schouw*).<sup>117</sup> This means that a member of the KMar has to

<sup>109</sup> Regional Court Maastricht, 12/38414, 12/3841, Judgment of 21 December 2012.

<sup>110</sup> Council of State, 201103862/1, Judgment of 19 October 2011.

<sup>111</sup> [Website](#) of Netherlands Institute for Human Rights and Medical Assessment.

<sup>112</sup> C14/3.5.2 2000 Aliens Circular.

<sup>113</sup> Regional Court The Hague, AWB 14/3855, Judgment of 11 March 2014.

<sup>114</sup> National knowledge and advice centre for the healthcare of migrants and asylum seekers, available [here](#).

<sup>115</sup> See Care Full, [Medico-legal reports and the Istanbul Protocol in asylum procedures](#), 2006.

<sup>116</sup> B14/2.2.2 2000 Aliens Circular.

<sup>117</sup> IND and EMN study, *alleenstaande minderjarige vreemdelingen in Nederland; AMV-beleid en cijfers inzake opvang*,

judge whether a young person is under 18 by just looking at the asylum seeker. This is usually done in cases where it seems evident that the asylum seeker is an adult but in general the benefit of the doubt is applied. But if there still remains any doubt about the age of the applicant, a bone marrow examination is carried out (age assessment).

In most cases the age assessment will be carried out on the basis of X-rays of the clavicle, the hand and wrist.<sup>118</sup> Radiologists examine if the clavicle is closed. When the clavicle is closed the asylum seeker's age 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. The age-assessment has to be signed by the radiologist. A commission (Medico-ethical Commission, *Medisch-ethische-Commissie*) supervises the age assessment. It should be noted that the methods which are used in the age assessment process are at least controversial,<sup>119</sup> which is also illustrated by the sometimes very technical discussions among radiologists referred to in the jurisprudence.<sup>120</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>121</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>122</sup>

In principle the same conditions apply for unaccompanied children and adults when it comes to the eligibility for a residence permit. However, unaccompanied children seeking asylum are considered as particularly vulnerable compared to adult asylum seekers and therefore specific guarantees apply. As a general rule, unaccompanied asylum seeking children are interviewed by employees of the IND which are familiar with their special needs.<sup>123</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.

A guardian is assigned to every unaccompanied child. NIDOS,<sup>124</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>125</sup> Children from the age of 13 to 18 years will be accommodated in a Process Reception Location (POL). After the Process Reception Location they will be transferred to foster families or small-scale housing. A campus reception will only be advised if the child is able to live independently in a large-scale housing.<sup>126</sup> Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian). For unaccompanied children, NIDOS will request to be appointed as a guardian by the juvenile court.<sup>127</sup> The child has to give their consent. Even though the formal

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terugkeer en integratie (*Unaccompanied minors in the Netherlands, UAM policy, statistics concerning reception, return and integration*), 2010, page 17.

<sup>118</sup> Commissie leeftijdsonderzoek, (*Committee Age assessment*), Rapport Commissie leeftijdsonderzoek (*Report Committee age assessment*), 2012, page 7.

<sup>119</sup> *Ibidem*.

<sup>120</sup> See for example [Regional Court Amsterdam, 10/14112](#), 18 December 2012.

<sup>121</sup> Commissie leeftijdsonderzoek, Rapport Commissie leeftijdsonderzoek (*Committee Age Assessment, Report Committee Age Assessment*) (2012), page 16.

<sup>122</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>123</sup> C13/1.1 2000 Aliens Circular.

<sup>124</sup> Website of [NIDOS](#).

<sup>125</sup> Article 1:245 of the Dutch Civil Code.

<sup>126</sup> Annual Report NIDOS 2012, p. 19.

<sup>127</sup> Art.1:254 under 2 Civil Act.

guardianship is assigned to the organisation, the tasks are carried out by individual professionals, called “youth protector”. Youth protectors need to have specific qualifications and receive trainings. Some guardians have the responsibility for more than 100 unaccompanied children which raises the question whether there are enough guardians. Children who arrive through Schipol airport are then transferred to the application centre in s-Hertogenbosch (Den Bosch) and they are not detained in the AC Schiphol if their minority is not disputed.

NIDOS has the same legal responsibility and powers like a parent.<sup>128</sup> In 2010 NIDOS was responsible for the guardianship of 2.624 minors, and it has 180 guardians<sup>129</sup> The guardian of Nidos accompanies an unaccompanied child at their arrival, stay and possible expulsion from the Netherlands. The guardian takes important decisions in the life of the minor which are aimed on his or her future perspective, inter alia, which education fits, where the juvenile can find the best housing and what medical care is necessary. The purpose of the guardianship can be divided in a legal and pedagogy. From these this aim a methodology of the guardian is derivative in certain domains:

- a. Advocacy
- b. Education and care
- c. Identify and prevent with the aim prevention of abuse, prevention of disappearances and the prevention of illegality

A major concern of NIDOS is unaccompanied children subjected to the Dublin procedure. NIDOS agrees with a transfer if it is clear where and how a child will be accommodated if there is a guardian and who that guardian will be. NIDOS expresses big concerns about the reception conditions and guardianship of unaccompanied children in Italy, Spain, Malta and Hungary.<sup>130</sup> However, subject to the Dublin Regulation, the IND transfers unaccompanied children without informing NIDOS if and how the reception and guardianship is arranged in the respective country. NIDOS is in consultation with IND about this topic.<sup>131</sup>

Another concern expressed by NIDOS relates to the precarious position of unaccompanied minors who exhausted all legal remedies because there is adequate reception in the country of origin (this is a condition to obtain a legal status).<sup>132</sup> But in practice these unaccompanied children are not expelled before they turn 18. So an unaccompanied child can become in a situation where he has no right to reside in the Netherlands lawfully but isn't expelled until their 18<sup>th</sup> birthday. NIDOS takes the position that for this group of children a residence permit will be in place. It is an unbearable hardship for a child to know that they will be returned to their country of origin upon turning 18.<sup>133</sup>

Children under the age of 12 are interviewed in a first interview. These young children are heard by the IND in a special child-friendly interview room. Normally, the IND follows the regular procedure in assessing the reasons for seeking asylum of an unaccompanied child. The lawyer discusses with the client if they can prove their age with documents. This is important because if an age assessment is negative, often the whole story will be considered implausible by the IND. It is the lawyers' task to inform their client about the content and consequences of an age assessment. When an age assessment is negative, the standard procedure is to undergo a contra-expertise.<sup>134</sup>

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<sup>128</sup> Inspectie Jeugdzorg; 'de voogdijtaak van Nidos', Utrecht september 2011, p. 9.

<sup>129</sup> NIDOS, [Organisation](#).

<sup>130</sup> NIDOS annual report 2012, p. 21.

<sup>131</sup> *Ibid.* “NIDOS thinks it is unacceptable that juveniles after a transfer cannot be traced and that they will not receive reception in for example Italy, living a wandering existence. This leads to mayor concerns about the well-being of these kids. Besides that, NIDOS remains to be the guardian in many cases and is responsible for the behaviour and acts of the juvenile. NIDOS therefore cannot cooperate in future transfers if reception and guardianship are not arranged. However, if juveniles are detained with a view on expulsion and the judge does not consider that there are any grounds to suspend the transfer, transfers will take place.”

<sup>132</sup> *Ibid.* p. 22.

<sup>133</sup> Defence for Children and UNICEF also expressed their [concern](#) on this issue.

<sup>134</sup> Frits Koers, Nienke Doornbos en Theo Wijngaard, *Best practice guide asiel: Bij de hand in asielzaken (Best Practice Guide asylum)*. Raad voor de Rechtsbijstand, pp. 113-115.

If the unaccompanied child is not granted asylum, they may still qualify for a non-asylum temporary residence permit if they meet the following conditions:

- (1) they are actually unaccompanied
- (2) they are actually a child
- (3) they are not able to support themselves on their own in the country of origin
- (4) there is no adequate reception available for them in the country of origin
- (5) there are no contra-indications (e.g. a criminal record).

This specific temporary residence permit is withdrawn when the unaccompanied child reaches the age of 18 or if adequate reception becomes available in the country of origin. If they are not yet 18, the holder of such residence permit may apply for a more permanent residence permit after three years. This more permanent residence permit is not withdrawn when the holder turns 18. The Dutch government is planning to abolish the option for unaccompanied children to obtain a non-asylum temporary residence permit within the foreseeable future.

## F. The safe country concepts (if applicable)

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure?  
 Yes       No
- Does national legislation allow for the use of safe third country concept in the asylum procedure?  
 Yes       No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure?  Yes       No
- Is there a list of safe countries of origin?       Yes       No
- Is the safe country of origin concept used in practice?       Yes       No
- Is the safe third country concept used in practice?       Yes       No

The Dutch legislation has incorporated the safe country of origin concept.<sup>135</sup> The safe country of origin should have signed the 1951 Refugee Convention, the European Convention on Human Rights and the UN Convention against Torture. The same requirements applied to the safe country of origin concept also apply to the safe third country concept<sup>136</sup> with the additional requirement that the asylum seeker has resided in this country. These terms also apply for the first country of asylum concept.<sup>137</sup>

A period of more than two weeks is considered to be 'residing'. The provision relating to the safe country of origin cannot be invoked when the asylum seeker makes it plausible that this country is not safe in their individual circumstances, even if the country concerned is a party to the mentioned treaties.

<sup>135</sup> Article 31 sub 2 under g 2000 Aliens Act; 'the alien comes from a country which is a party to the Convention on Refugees and one of the other conventions referred to in section 30 (d) and the alien has not made a plausible case that such country does not fulfill its treaty obligations with regard to him'.

<sup>136</sup> Article 29 sub 2 under h 2000 Alien Act.

<sup>137</sup> According to the [transposing table](#) of the Asylum Procedure Directive the first country of asylum concept is implemented in art. 30 sub 1 under d Alien Act and art. 31 sub 2 under e Alien Act.



The concept of country of earlier residence<sup>138</sup> is applied in the case the asylum seeker will be admitted to a country of earlier residence until they have found lasting protection elsewhere. A period of more than two weeks is considered to be 'residing'. The provision relating to the safe country of origin cannot be invoked when the asylum seeker makes it plausible that this country is not safe in their individual circumstances, even if the country concerned is a party to the mentioned treaties.

The concept of country of earlier residence is applied in case the asylum seeker will be admitted to a country of earlier residence until they have found lasting protection elsewhere. The difference with the safe third country is that the concept of country of earlier residence does not have to be a party of the mentioned treaties, but the applicant should be protected there against *refoulement*. Moreover, it must be ensured that the applicant is admitted. In the country of earlier residence it is not necessary that the applicant is entitled to a residence permit.

In practice the safe country concepts are hardly applied. In the safe country concept the burden of proof against *refoulement* is on the IND.<sup>139</sup> No lists of safe countries of origin or safe third countries exist or are being used by the asylum authorities.

## G. Treatment of specific nationalities

### Iraq

#### Temporary suspension of decisions on asylum applications and entitlement to reception conditions for rejected asylum seekers (Besluit en vertrekmoratorium Irak)

After the start of the IS threat in Iraq and the Sinjar drama the Secretary of State of Security and Justice decided to suspend decisions on asylum applications from Iraqi's from 7 region's in Iraq (Bagdad, Anbar, Ninewa, Salaheddin, Ta'mim (Kirkuk), Diyala en Babil). This is for a period of 6 months which started on 17 October 2014. Asylum seekers from these regions who have the obligation to leave the Netherlands (because their asylum application was rejected before 17 October are entitled to reception conditions for this same period.<sup>140</sup> [The same reception conditions are provided as would have been given in the case of a first asylum request. This means reception in an AZC (Asielzoekerscentra – Centres for Asylum Seekers)].

### Syria

The Immigration and Naturalisation Service (IND) "prioritises" applications from Syrian nationals. This started as a pilot in February 2013 and is now 'common' practice for this group. It is unknown how long Syrian nationalities will be treated in this manner.<sup>141</sup> All asylum applications of persons fleeing Syria are dealt with in the short regular procedure and in most cases the asylum seeker is already granted a residence permit after 4 days. During these 4 days the following steps are taken:

**Day 1:** formal submission of the asylum application and the first interview by the IND

**Day 2:** review of the first interview with the lawyer

**Day 3:** second interview by the IND

**Day 4:** review second interview with the lawyer and/or granting of asylum

In some cases the applications are dealt with in the extended asylum procedure but this is caused by the

<sup>138</sup> Article 29 sub 2 under 1 2000 Alien Act.

<sup>139</sup> Regional Court Haarlem, 13/17242, Syria, Judgment of 23 July 2013.

<sup>140</sup> Decision of the Secretary of State of Security and Justice of 10 October 2014, (Besluit van de Staatssecretaris van Veiligheid en Justitie van 10 oktober, 2014, nummer WBV 2014/31, houdende wijziging van de Vreemdelingencirculaire 2000)

<sup>141</sup> This is still the procedure at time of writing the third update of this report (January 2015).

extensive statements of the asylum seekers during the interviews. In February 2013, 53 Syrian applications have been dealt this way and 42 were handled in the short asylum procedure (all granted a residence permit) and 11 were handled in the extended regular procedure (no figures available yet about their admittance).

A similar pilot has been adopted for Eritrean asylum seekers because the influx of this group is rising and most of them are granted an asylum permit on subsidiary grounds.

There is currently no statistical data available on the recognition rates in the Netherlands in relation to asylum seekers from Syria; however according to provisional data published by Eurostat 2,705 asylum applications were lodged by Syrian refugees in the Netherlands in the year of 2013. Persons are eligible to international protection where a real risk of treatment contrary to Article 3 ECHR can be identified upon return to Syria and upon satisfying the following conditions:

- the asylum seeker does not qualify as a refugee,
- the asylum seeker is not an active supporter of the Syrian regime and
- there are no reasons to withhold a permit due to the fact that the asylum seeker has committed offences which exclude an asylum seeker from protection

Where an applicant from Syria has received a negative asylum decision humanitarian status will not be provided. Most rejections of applications submitted by Syrians are based on exceptions, such as the existence of a working permit in Qatar or Egypt or based on the safe third country concept, i.e. rejected Syrians will not be sent back to Syria but to the responsible EU Member State or safe third country. Cases of forced returns to Syria of rejected asylum seekers are not known to the Dutch Refugee Council.

As usual residence permits granted to Syrian refugees are issued for a period of five years. Where the permit is not withdrawn within five years a permit for an indefinite period can be obtained. Syrian refugees have a right to family reunification within 3 months after a temporary asylum permit is granted. Upon receiving their permit they may access the Dutch labour market.

In the Dutch system, regardless of the grounds upon which an asylum permit is granted and the protection status, material rights are the same, as there is only one temporary asylum permit, i.e. where an applicant was provided subsidiary protection status, that person will have access to the same rights as a person recognised as a refugee. However, it should be noted that withdrawal of asylum permits are undertaken more easily by authorities in the case of subsidiary protection than in relation to refugee status.

Concerning Somali nationals, there has been an important ruling from the European Court of Human Rights (ECtHR) in *KAB v Sweden* in September 2013.<sup>142</sup> In this ruling the Court found that the applicant, a Somali man from Mogadishu, would not be at risk as a result of the current security situation in Mogadishu, the general level of violence in the city having decreased since 2011 or beginning of 2012. Also assessing the applicant's personal situation, the Court concluded that he had failed to prove that he would face a real risk of being killed or subjected to ill-treatment upon return. Following this ruling the Dutch immigration authorities no longer assume that the situation in Mogadishu qualifies as a situation which is covered by Article 15c of the Qualification Directive. From now on every asylum application from Somali nationals has to be examined on their own merits.

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<sup>142</sup>European Court of Human Rights, *KAB vs Sweden*, Application no. 886/11, 05 September 2013.

## Reception Conditions

### A. Access and forms of reception conditions

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

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation:
  - o During border procedures:  
 Yes                     Yes, but limited to reduced material conditions                     No
  - o During the regular procedure:  
 Yes                     Yes, but limited to reduced material conditions                     No
  - o during the Dublin procedure:  
 Yes                     Yes, but limited to reduced material conditions                     No
  - o During the appeal procedure (first appeal and onward appeal):  
 Yes (*but not in onward appeal*)    Yes, but limited to reduced material conditions    No
  - o In case of a subsequent application:  
 Yes                     Yes, but limited to reduced material conditions                     No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?    Yes                     No

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. This Regulation defines who is entitled to reception conditions and who is exempt from this right.

The Secretary of Justice is also entitled to exclude certain categories of asylum seekers from reception conditions when there is an emergency in terms of capacity (this nearly never happens). The Central Agency for the Reception of asylum seekers (*Centraal Orgaan opvang asielzoekers*, COA) only provides reception to those persons who are 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>143</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 material reception conditions.

When the asylum application is rejected during the short asylum procedure, the asylum seeker continues to be entitled to reception conditions until four weeks after the negative decision of the IND.<sup>144</sup> After those four weeks, the asylum seeker has to leave the reception centre. There is an agreement with the Council for the Judiciary (*Raad voor de Rechtspraak*) that there will be a decision on the appeal and provisional measures in the extended asylum procedure by the regional court within four weeks after the negative decision. So in theory, decisions are taken within this timeframe but in practice it happens that after four weeks no decision has been taken. The Council of State decided that the right to reception conditions nevertheless ends four

<sup>143</sup> Article 2 sub 1 2005 Regulation on benefits for asylum seekers.

<sup>144</sup> From this moment the asylum seeker is officially falling under the scope of the 2005 Regulation on benefits for asylum seekers.

weeks after the negative decision regardless of whether the Court has decided on the appeal or not.<sup>145</sup> 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. 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 extended asylum procedure are 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>146</sup>

When an asylum seeker wishes to lodge a subsequent asylum application they have to fill in a separate form. See for more information on this subject the Chapter "Subsequent application".

After a subsequent asylum application has been rejected in the extended asylum procedure, no voluntary departure period is granted.<sup>147</sup> Because an appeal against a negative decision based on the fact that the application was a subsequent application the appeal has no suspensive effect.<sup>148</sup> Because 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. Of course there is still an opportunity to appeal and request for a provisional measure. Only after this appeal or provisional measure has been granted the asylum seeker can benefit from reception conditions once again.<sup>149</sup>

In theory reception facilities can be withdrawn or refused if an asylum seeker has resources of their own. In practice this rarely happens but recently the Dutch Refugee Council received a decision from the COA in which they asked the asylum seeker to reimburse the financial allowance, provided for the purpose of food, clothing and personal expenses. According to the COA the concerned asylum seeker had resources of its own because he was initially admitted entrance to the Netherlands based on a short term visa (family visit) and this visa is only granted if the person can demonstrate he has sufficient currency to reside in the Netherlands for three month. 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>150</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 (Centrale Ontvangstlocatie, COL) in Ter 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 shelter, a weekly financial allowance for food, clothing and other personal expenses, public transport tickets to travel to and from the legal aid provider in relation to the asylum procedure, recreational and educational activities, the coverage of the costs of medical benefits, and any extraordinary expenses. This is stipulated in Article 9, para. 1 of the 2005 RBA.<sup>151</sup> The organ responsible for both material as well as immaterial reception of asylum seekers is the Centraal Orgaan opvang Asielzoekers (COA), according to the Wet COA.<sup>152</sup>

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<sup>145</sup> Council of State, 201113284/1/V1, 2 May 2012, 2012/05/02.

<sup>146</sup> Art. 5.1 under a 2005 Regulation on benefits for asylum seekers.

<sup>147</sup> Article 62 sub 3 under c 2000 Aliens Act.

<sup>148</sup> Article 82 sub 2 under b 2000 Alien Act.

<sup>149</sup> Art. 3.3 and under a 2005 Regulation on benefits for asylum seekers & art. 66 2000 Aliens Act.

<sup>150</sup> Article 19 para 2 2005 RBA

<sup>151</sup> Article 9 para. 1 2005 Regulation Benefits asylum seekers.

<sup>152</sup> Article 3 para 1 2005 Regulation Benefits asylum seekers.

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>153</sup> If such a document is not issued, the asylum seeker can apply for this. The law makes it clear the asylum seeker is entitled to such document.<sup>154</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:*

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2013 (per month, in original currency and in euros): around 240 euro (60\*4)

The right to reception conditions includes the right to:<sup>155</sup>

- 1) Accommodation
- 2) A weekly financial allowance for the purpose of food, clothing and personal expenses
- 3) Public transport tickets to visit a lawyer
- 4) Recreational and educational activities (for example a preparation for the integration-exam)
- 5) A provision for medical costs (healthcare insurance)
- 6) An insurance covering the asylum seekers' legal civil liability
- 7) 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:

- One or two persons in one household: € 42.56. A parent with one minor, the minor: € 33.25
- Three persons household: adult: € 35.35, child: € 27.51
- Four or more persons house hold: adult: € 31.57 child: € 24.57

If they choose to have breakfast and lunch at the centre:

- One or two persons in one household: € 26.25. A parent with one minor, the minor: € 18.13;
- Three persons household: adult: € 21.77, child: € 15.03
- Four or more persons house hold: adult: € 19.44, child: € 13.43

The cost for clothes and other expenses is a fixed amount: € 12.95 per day, per person.

The social welfare allowance for Dutch citizens is € 627.93 for a single person of 21 years and older. In this example, an asylum seeker receives only 27% of the social welfare allowance for Dutch citizens. However, it is acknowledged that it is difficult to compare these amounts because an asylum seeker is offered accommodation and other benefits etc. Asylum seekers are able to ensure an adequate standard of living with the amount provided.

The objective of the 2000 Aliens Act is to ensure that an asylum seeker does not stay longer than one year at a reception location.

Asylum seekers who are granted a residence permit are allowed to stay in the reception centre until COA

<sup>153</sup> [https://kdw.ind.nl/KnowledgeRoot.aspx?knowledge\\_id=MWOW\\_EnW2\\_Document](https://kdw.ind.nl/KnowledgeRoot.aspx?knowledge_id=MWOW_EnW2_Document)

<sup>154</sup> Article 9 2000 Alien Act

<sup>155</sup> Art. 9.1 2005 Regulation Benefits asylum seekers.

has arranged housing facilities in a municipality. The asylum seeker is obliged to make use of the offer of the COA in the sense that the right on reception facilities will end at the moment housing is offered.

In general material support is never given through an allowance only. Only in exceptional cases an asylum seeker can ask the COA if he can be allocated with a family member. In that case the asylum seeker receives an allowance of around € 43 a week. (single adult or single adult with only one child) . The compensation for clothing and other expenses is € 12,95 per person, per week.<sup>156</sup>

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): -
- Type(s) of accommodation most frequently used in a regular procedure:  
 Reception centre     Hotel/hostel     Emergency shelter     private housing     other (please explain)
- Type(s) of accommodation most frequently used in an accelerated procedure :  
 Reception centre     Hotel/hostel     Emergency shelter     private housing     other (please explain)
- Number of places in private accommodation (provided by the State): 0
- Number of reception centres: 15
- Are there any problems of overcrowding in reception centres?  Yes     No
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?     Yes     Yes but rarely     No
- What is, if available, the average length of stay of asylum seekers in the reception centres? a year
- Are there unaccompanied children ever accommodated with adults in practice?     Yes     No

The Central Agency for the Reception of asylum seekers (*Centraal Orgaan opvang asielzoekers*, COA) is responsible for the reception and accompaniment of asylum seekers. The COA is an independent administrative body and falls under the political responsibility of the Secretary of State for Security and Justice.

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 application centre (*Aanmeldcentrum*, AC) Schiphol.<sup>157</sup> The application centre Schiphol is a closed centre, so the asylum seeker is not allowed to leave the centre. The asylum seeker is also not transferred to the Process Reception Centre (POL) after the application, as it is the case for asylum seekers who entered the Netherlands by land and/or lodged their asylum application at the Central Reception Centre (COL).<sup>158</sup> An asylum seeker will be transferred to the Border Detention Center (*Grenshospitium*) if the application is rejected in the regular procedure or if the case is referred to the 'closed extended asylum procedure' (GVA, extended asylum procedure but in detention with a maximum of six weeks).

If the asylum seeker entered the Netherlands by land they have to apply at the Central Reception Location (COL) in Ter Apel, where they stay for a maximum of three days as the COL is not designed for a long stay. The COA looks at the COL whether an individual is in need for special accommodation. Except for some

<sup>156</sup> Article 13 2005 Regulation Benefits asylum seekers

<sup>157</sup> Article 6 under b 2000 Aliens Act.

<sup>158</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.

specialised accommodation for asylum seekers with psychological problems (mostly traumatised asylum seekers) there is no special accommodation available for vulnerable groups, nor special accommodation for (single) women.

After this short stay at the Central Reception Location, the asylum seeker is transferred to a Process Reception Location (POL).<sup>159</sup> There are four POLs in the Netherlands. At the Process Reception Location the asylum seeker will take the next steps of the rest and preparation period and waits for the moment to officially apply for asylum at the application centre. As soon as the asylum seeker officially lodged an asylum application they receive a certificate of legal stay.

An asylum seeker remains in the POL if the Immigration and Naturalisation Service (IND) decides to examine the asylum application in the short asylum procedure (within eight days). If protection is granted, the asylum seeker is transferred to a centre for asylum seekers (*Asielzoekerscentrum*, AZC), before they receive 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 asylum seekers centre (AZC). If the asylum application is rejected the asylum seeker will be transferred to a return centre (*Terugkeerlocatie*, TL). An asylum seeker whose application was rejected can stay for a maximum of four weeks in a return centre. The right to reception conditions ends when this period has expired or as soon as the regional court rules negatively on an appeal or request for a provisional measure.

If it is expected that an expulsion can be carried out within two weeks, detention with the aim of removal can be imposed.<sup>160</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>161</sup> This means that an asylum seeker, after the regular term of four weeks has expired, will be offered an additional period of twelve weeks reception conditions but in a Restricted Reception Centre (*Vrijheidsbeperkende Locatie*, VBL).<sup>162</sup> This form of reception is offered on the condition that the asylum seeker whose application was rejected cooperates with organising their 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>163</sup> The bottom line of this verdict is the assumed responsibility of the State for unlawfully 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 (*Gezinslocatie*, 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>164</sup> There are six of these reception centres for families.<sup>165</sup> A stricter regime is applied to this form of reception location<sup>166</sup> because asylum seekers whose application has been rejected and 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. In November 2014 a new report of the ECSR has been 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 the earlier mentioned report of the ECSR). In general it concerns asylum seekers who are legally obliged to leave the Netherlands. The

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<sup>159</sup> Article 3 sub 3 under m 2005 Regulation Benefits for asylum seekers.

<sup>160</sup> Article 59 2000 Aliens Act.

<sup>161</sup> Article 56 2000 Aliens Act *juncto* art. 54, under b, 2000 Aliens Act.

<sup>162</sup> A6/4.3.5 2000 Aliens Circular; the regulation benefits asylum seekers and COUNCIL DIRECTIVE 2003/9/EC establishing minimum standards for the reception of asylum seekers are formally not applicable for the stay at the restricted reception location.

<sup>163</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>164</sup> Dutch Council for Refugees and Defence for Children, "[Gezinslocaties voor uitgeprocedeerde gezinnen schadelijk en nutteloos](#)" (*Family housing centres for rejected families are damaging and useless*), 21 December 2012.

<sup>165</sup> With around 1900 residents in total.

<sup>166</sup> There is a duty to report six times a week for example.

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>167</sup> The Secretary of State for Security and Justice disagrees with this opinion and wants to wait for the judgment of the Committee of Ministers on this report, which is expected in the beginning of 2015.<sup>168</sup> Meanwhile the Dutch Administrative High Court has already ordered a municipality to provide shelter and food for rejected asylum seekers based on this report of the ECSR.<sup>169</sup>

There are no indications that asylum centres are overcrowded at the time of writing but, due to the increased influx of asylum seekers in 2014 it is a big challenge for the COA to accommodate every asylum seeker arriving in the Netherlands. A lot of new reception centres have opened this year. An average AZC has a capacity of 400 asylum seekers.<sup>170</sup> In total 24,929 asylum seekers have been accommodated by the COA in 2014.<sup>171</sup>

The accommodation of unaccompanied children is discussed in the section addressing 'Special reception needs of vulnerable persons'.

In order to protect children from adults, there are several reception centres which are specialized in the reception of unaccompanied children. They are intensively monitored to increase their safety.<sup>172</sup> The AZC's that have special places for children are Drachten, Oisterwijk and Oude Pekela. POL Wageningen is also available for unaccompanied children. Except for the earlier mentioned family housing centre there are no specific reception centres for families. But in general families are all located in the same reception centre and share the same accommodation. There are no reports stating the opposite.

#### 4. Conditions in reception facilities

There are no reports of overcrowding nor of serious deficiencies in the sanitary facilities that are provided. Residents of a reception centre usually live with five to eight people together in a unit. Each unit has a number of bedrooms and a shared living room, kitchen and sanitary facilities. Residents are responsible for keeping their habitat in order.<sup>173</sup> Unaccompanied children live in small-scale shelters, which are usually outsourced to specialized partners. These are mostly youth organizations. The children's residential groups usually take care of twelve children, which are under 24-hour supervision.<sup>174</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 € 13,80 per week.<sup>175</sup> It is also possible for both children and 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 Leercentrum (Open Education Centre) which is equipped with computers with internet access. Children can do their homework here. There is supervision by other asylum seekers

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<sup>167</sup> *Conference of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, REPORT TO THE COMMITTEE OF MINISTERS, Strasbourg, 1 July 2014.

<sup>168</sup> Letter of the [Secretary of State](#) to the House of Representatives, 11 November 2014, 19637/29325-1915.

<sup>169</sup> Dutch Administrative High Court, 14/6025 WMO-VV, Judgment of 17 December 2014. The Dutch Administrative High Court is the equivalent of the Council of State in social benefit cases.

<sup>170</sup> AZC, [Living in an AZC](#).

<sup>171</sup> <http://www.coa.nl/nl/over-coa/feiten-en-cijfers> Website COA.

<sup>172</sup> For more information see [here](#).

<sup>173</sup> For more information see [here](#).

<sup>174</sup> For more information see [here](#).

<sup>175</sup> Article 18 paras. 1 and 3. 2005 Regulation Benefits asylum seekers.



and Dutch volunteers.<sup>176</sup>

AZC's (Asielzoekers Centra – Centres for Asylum Seekers) 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 seekers still resides in the facility and whether he or she are still entitled to the facilities.<sup>177</sup> However, some reception centres have a stricter regime (see for more information the paragraph 3 'Types of accommodation').

There have recently been some individual incidents and issues involving asylum seekers. Whether they relate to the reception conditions remains unclear. These issues include the suicide of a Burundi asylum seeker who possibly wanted to avoid expulsion of himself and his two children (april 2012)<sup>178</sup>, the public suicide of an Iraqi asylum seeker by setting himself on fire (March 2013)<sup>179</sup>, the hunger strike of several rejected asylum seekers (August 2013)<sup>180</sup> and the death of the Russian Alexander Dolmatov in the detention centre where he was awaiting his expulsion. Careful investigation of this incident by the Ministry of Security and Justice resulted in a critical report on the Dutch government. It seemed that the Dutch government had on several occasions acted in a negligent way.<sup>181</sup>

## 5. Reduction or withdrawal of reception conditions

### Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?  
 Yes       No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes       No

An asylum seeker has to abide the internal rules of the reception centre and there is a duty to report once a week.<sup>182</sup> When an asylum seeker violates these rules, a reduction of material reception conditions can be imposed. Certain measures may be imposed by the Central Agency for the reception of asylum seekers (COA) under the Regulation Abstention Benefits (*Reglement Onthouding Verstrekkingsen*, ROV).<sup>183</sup> The imposition of these sanctions is a punitive measure. This means that before such measures can be taken, the interests of the asylum seeker need to be balanced against the interests of ensuring compliance with the internal rules and an individual decision needs to be notified to the asylum seeker. An asylum seeker may lodge an appeal against such decision.<sup>184</sup> The penalty ranges from a small fine (€ 15,89) for light nuisance to a permanent withdrawal of all reception benefits in the case an asylum seeker repeatedly causes severe nuisance.<sup>185</sup>

Withdrawal or reduction of reception facilities by the COA is, regarding the legal remedies against those decisions, subject to the Aliens Act 2000.<sup>186</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 measurements cannot be re-instated. The ground mentioned in Article 20

<sup>176</sup> <http://www.coa.nl/nl/asielzoekers/wonen-op-een-asielzoekerscentrum> (NL).

<sup>177</sup> 2005 Regulation Benefits asylum seekers article 19, para 1, sub e.

<sup>178</sup> De Volkskrant, 12 April 2012, Kamer wil uitleg over zelfmoord asielzoeker NEWS.

<sup>179</sup> 4 March 2013, Asielzoeker-steekt-zichzelf-in-de-brand, NEWS.

<sup>180</sup> NRC Handelsblad, 7 May 2013, Ook-asielzoekers-in-rotterdam-in-hongerstaking.

<sup>181</sup> See the report on the Dolmatov Case [here](#).

<sup>182</sup> Article 19 sub 1 under e 2005 Regulation Benefits asylum seekers.

<sup>183</sup> Delegated powers relating the reception of asylum seekers based on article 10, 2005 [Regulation on Benefits for asylum seekers](#).

<sup>184</sup> Because this forms a decision in the meaning of 1:3 General Administrative Law Act, the asylum seeker can appeal against such decision within six weeks 6:7 General Administrative Law Act.

<sup>185</sup> See Regulation Abstention Benefits.

<sup>186</sup> Article 3a Act of the Agency of Reception.

paragraph 2 recast Reception Conditions Directive (reduction of material reception conditions when the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival) is not applied in the Netherlands.

In theory, reception facilities can be withdrawn or refused if an asylum seeker has resources of their own. In practice, this rarely happens but recently the Dutch Refugee Council received a decision from the COA in which they asked the asylum seeker to recover the financial allowance, provided for the purpose of food, clothing and personal expenses. According to the COA the concerned asylum seeker had resources of its own because he was initially admitted entrance to the Netherlands based on a short term visa (family visit) and this visa is only granted if the person can demonstrate he has sufficient currency to reside in the Netherlands for three month.

As of the year 2000 the influx of asylum seekers in the Netherlands stabilized after there had been a considerable influx of asylum seekers from the former Yugoslavia. For the last 5 years the number of yearly arrivals of asylum seekers who have to be accommodated remains between 10.000 and 15.000 asylum seekers. This is a number the COA can handle and therefore no emergency measures as far as reception capacity is concerned had to be applied in recent years.

This is different from the period early to mid-90's during the increased influx of asylum seekers from the former Yugoslavia, when there were around 50.000 asylum seekers in the Netherlands. This resulted in a shortage of reception facilities. As a result some asylum seekers had to be accommodated in tents at that time.

## 6. Access to reception centres by third parties

### Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes       with limitations       No

Article 9 sub 6, 2005 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.

## 7. Addressing special reception needs of vulnerable persons

### Indicators:

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

The Central Agency for the Reception of asylum seekers (*Centraal Orgaan opvang asielzoekers*, COA) is responsible for the reception of asylum seekers. 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>187</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 the asylum seeker is entitled to similar healthcare as a Dutch national). This means that there are no special reception centres for vulnerable people except for asylum seekers with psychological problems<sup>188</sup> and children.

Initially, unaccompanied children are accommodated in a Child Living Group (*kinderwoongroepen*) close to an Application Centre. If it appears that the individual is actually under 18, the guardian will decide within three months which of the following forms of reception is the most suitable for the child: 1) placement in a "child living group", (2) small housing units (*kleine wooneenheden*), (3) the unaccompanied children campus (*alleenstaande minderjarige vreemdeling campus*) or (4) a protected reception location (*Beschermde opvang locatie*). All of these forms of reception are managed by the Central Agency for Reception of asylum seekers (COA). However, children younger than 12 are accommodated in foster families and are placed with those families immediately.<sup>189</sup>

The child living groups are designed for children until the age of fifteen. There is a 24-hour supervision available in these units. The small housing units are designed for children between the age of 15 and 18, often from different nationalities. In each small housing four children live together. A mentor is present 28.5 hours a week. Children in this age group can also be located at the unaccompanied children campus, usually located on the grounds as a centre for asylum seekers (AZC), where the children are accompanied by employees of the Central Organ for Reception of Asylum Seekers.

Because of the high disappearance (absconding) rate of unaccompanied children from the reception centres in the last few years, a special protected reception regime for this group has been established since January 2008. NIDOS, the guardianship agency, is vigilant for unaccompanied children who have been victim or are vulnerable to become a victim of human trafficking. NIDOS conducts interviews at an early stage with this vulnerable group and if NIDOS believes there is a risk of being trafficked the child is immediately referred to protected reception location.

Unaccompanied children from certain countries (like Nigeria, China and India) are directly assigned to the protected reception location.

The abovementioned arrangements are not codified in law and there are no indications that they are not being complied with in practice.

## 8. Provision of information

Article 2 sub 3 and 4 2005 Regulation on Benefits for asylum seekers (RvA) is the legal basis for the provision of information to asylum seekers.

Article 2 sub 3 states that "The Central Organ Reception Asylum Seekers provides, within a term of 10 days after placement in a reception location;

- a. information concerning the rights and obligations of the asylum seeker regarding reception
- b. information concerning legal aid and reception conditions"

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<sup>187</sup> Article 3 Act of the Agency of Reception.

<sup>188</sup> See Phoenix's [website](#).

<sup>189</sup> See [NIDOS' website's section on reception](#).

Article 2 sub 4 states that “The Central Organ Reception Asylum Seekers provides information in writing in the form of brochures in a language that is understandable for the asylum seeker.” The Dutch Council for Refugees considers these brochures on house rules to be sufficient, which are generally provided in English. A request from the Dutch Council for Refugees to attend such information meetings is rejected by the COA, without substantiating their decision.

In practice, no obstacles are known as to the provision of information.

## 9. Freedom of movement

The asylum seeker who is residing in an AZC ('open reception centre for asylum seekers) 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. However, there is a weekly duty to report (meldplicht) in order for the COA to determine whether the asylum seekers are still entitled to the provision of material conditions.<sup>190</sup> If an asylum seeker fails to report themselves twice the reception conditions will be withdrawn.

Failed asylum seekers (rejected and 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, VBL) 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 failed asylum seekers have to report six days a week (except Sunday) so in practice it is hard to leave the municipality.<sup>191</sup> The penalty for not reporting could be a fine or even criminal detention<sup>192</sup> or an indication that the asylum seeker is not willing to cooperate regarding their return (this is a requirement if the asylum seeker stays in the freedom restricted location) which could be a reason to detain (with the aim to remove) them.

The stage of the procedure of the asylum seeker is relevant relating to the type of accommodation he is entitled to. Every asylum seekers starts in the Process Reception Location (POL) and is being transferred to the Central Reception Location (COL). After this the asylum seeker is transferred to an open asylum centre (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 weeks 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 Freedom Restricted Location (VBL) if he is willing to cooperate in establishing his departure. In case of a family with minor children the demand of cooperation is not applicable.

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 restricted measure<sup>193</sup> against which there must be an appeal available by law. There is no appeal available against 'procedural' transfers (movements) from COL/POI to AZC. Indirectly there is an appeal available against a transfer to another AZC but in practice this does not happen often.<sup>194</sup> At least no practice is known that the authorities move asylum seekers from one centre to another. What is known, and which is a valid reason, is the transfer of asylum seekers due to the closure of the centre.

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<sup>190</sup> 2005 Regulation Benefits Asylumseekers, article 19, para 1, sub e.

<sup>191</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 2000 Alien Act.

<sup>192</sup> Article 108 2000 Aliens Act.

<sup>193</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 2000 Alien Act.

<sup>194</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.

There is a critical report, written by Defence for Children, Dutch Council for Refugees et al about the amount of movements (including the procedural movements) asylum children have to make during the procedure. The reports states that these children move 10 times more within a year than Dutch children.<sup>195</sup>

## B. Employment and education

### 1. Access to the labour market

#### Indicators:

- Does the legislation allow for access to the labour market for asylum seekers?  Yes  No
- If applicable, what is the time limit after which asylum seekers can access the labour market: 6 months
- Are there restrictions to access employment in practice?  Yes  No

Despite the fact that Dutch legislation provides for access to the labour market to asylum seekers,<sup>196</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 maximum 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>197</sup>

- a. the asylum application has been lodged at least six month before and is still pending for a (final) decision, and;
- b. the asylum seeker is staying legally in the Netherlands on the basis of Article 8, under f or h of the Aliens Act, and;
- c. 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;
- d. the asylum seeker does not exceed the maximum time limit of employment (24 weeks per 12 months), and;
- e. the intended work is conducted under general labour market conditions, and
- f. the employer submits a copy of the W-document (identity card).<sup>198</sup>

The procedure to apply for an employment- license should not take longer than 5 weeks.<sup>199</sup> If the asylum seeker stays in the reception facility arranged by the Central Agency 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.

<sup>195</sup> Kind in AZC, Ontheemd, De verhuizingen van asielzoekerskinderen in Nederland (Displaced persons, movemens of asylum children in the Netherlands), Report of Defence for Children, Dutch Council for Refugees, et al, published January 2013.

<sup>196</sup> Art. 2a par. 1 first sentence and under a, b and c Buwav. (Decree on how to implement the Aliens Labour Act).

<sup>197</sup> Art. 2 under a Buwav.

<sup>198</sup> During their lawful stay in the Netherlands, asylum seekers receive an identity card, a so called *W-document*, pending their procedure.

<sup>199</sup> Art. 6 Aliens Labour Act.

## 2. Access to education

### Indicators:

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- 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>200</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 it is possible, arrangements will be made to ensure that those children get the attention they deserve.<sup>201</sup> Every Centre for asylum seekers (AZC) has contacts and 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>202</sup>

In 2009 UNICEF published a report concerning children asylum seekers.<sup>203</sup> The report also involved an examination of the access to education. Some of the main observations included:

- Children switch school too often due to the system of the asylum procedure causing problems of interruption in the educational programmes for those children. During the asylum procedure a child moves on average once a year.<sup>204</sup>
- Due to the isolated areas where AZC are located only children asylum seekers go to the elementary school concerned which does not promote integration.
- Lack of facilities such as spaces to do homework and lack of computers.

According to the 2005 Regulation on benefits for asylum seekers, the Central Organ for Reception of Asylum Seekers (COA) provides access to educational programmes for adults at the AZC.<sup>205</sup> Depending on the stage of the asylum application the COA offers different educational programmes including vocational training.<sup>206</sup> An integration program is offered to asylum seekers who have been granted an asylum permit while staying in a reception centre.<sup>207</sup>

Asylum-seeking children between 12 and 18, arriving in the Netherlands, go to an international transition class. When reaching a sufficient level of Dutch they go to the type of school suitable for them.

No obstacles are known as to access to vocational training for adults.

<sup>200</sup> Article 3 leerplichtwet 1969 (The act on compulsory school attendance).

<sup>201</sup> For More information see [here](#).

<sup>202</sup> See the website of [Central Organ for Reception of Asylum Seekers](#).

<sup>203</sup> Karin Kloosterboer, *Kind in het centrum; kinderrechten in asielzoekerscentra (Child in the reception centre, the rights of the child in reception centres)*, 2009.

<sup>204</sup> For more information, please consult [Defence For Children's](#) website.

<sup>205</sup> Article 9.3 Regulation Benefits asylum seekers.

<sup>206</sup> See the website of [Central Organ for Reception of Asylum Seekers](#).

<sup>207</sup> Article 9 a Regulation Benefits asylum seekers.

## C. Health care

### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Yes, to a limited extent       No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care?  Yes       No       with limitations

The Central Agency for Reception of Asylum seekers (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 family doctor/general practitioner, midwife or hospital. The Health Centre for Asylum seekers (*Gezondheidscentrum Asielzoekers*) is the first contact for the asylum seeker in case of health issues.

The relevant legislation can be found in Article 9 section 1, sub e of the 2005 Regulation on benefits for asylum seekers. This provision is further elaborated in the Healthcare for Asylum seekers Regulation (*Regeling Zorg Asielzoekers*).<sup>208</sup> According to the latter, asylum seekers have access to basic healthcare. This includes *inter alia*, hospitalisation, consultations of 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 a number of special treatment institutions for asylum seekers with psychological problems (for example: 'Phoenix').<sup>209</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. In the case of the Restricted Reception Location (*Vrijheidsbeperkende locatie*, VBL) the health care is available to the same standard as for asylum seekers to whom the 2005 Regulation on benefits for asylum seeker applies, but this is not prescribed by law.

In the family housing location (*Gezinslocatie*, GL) the health care for the adults is only accessible in extreme cases (a medical emergency). This is the same for other asylum seekers who no longer have a right to reside in the Netherlands (rejected asylum seekers and irregular migrants)<sup>210</sup> or have the right (for example after the unsuccessful asylum procedure) to start up a procedure for a regular residence permit (permit on non-asylum grounds) but do not fall under the scope of the 2005 Regulation on benefits for asylum seekers. In medical emergency situations, there is always a right to healthcare. This is codified in Article 10 2000 Aliens Act. For this group problems can arise if there is a medical problem but no emergency.<sup>211</sup> Care providers who do help irregular migrants who are unable to pay their own medical treatment can declare those cost at a special foundation, which pays the costs.<sup>212</sup>

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

<sup>208</sup> Healthcare for Asylum seekers [Regulation](#).

<sup>209</sup> See [Phoenix's](#) website.

<sup>210</sup> Art. 10 2000 Aliens Act.

<sup>211</sup> The national ombudsman recently started an investigation concerning medical care for failed asylum seekers.

<sup>212</sup> For more information on the Law on costs for medical treatment of irregular migrants go [here](#).

The following table provides an overview of the right to a specific reception conditions in the various reception facilities in the Netherlands.<sup>213</sup>

	Registration Centre (POL/COL)	AZC	Reception Centre for vulnerable groups	Unaccompanied children	Family Locations	Freedom Restricting Reception
<b>Food</b>	yes	yes	yes	yes	Yes	yes
<b>Clothing</b>	yes	yes	yes	yes	No	no
<b>Allowance</b>	no	yes	yes	yes	No	no
<b>Emergency Medical Care</b>	yes	yes	yes	yes	Yes	yes
<b>Medical Care</b>	yes	yes	yes	yes	Yes, for the children, no for the adults unless it is a medical emergency	yes
<b>Psychological Care</b>	yes	yes	yes	yes	Yes, for the children, no for the adults unless it is a medical emergency	yes
<b>(Free) Legal Assistance</b>	yes	yes	yes	yes	Yes	yes
<b>Access to the Labour Market</b>	no	yes	-	-	No	no
<b>Translation Services</b>	yes	yes	yes	yes	Yes	yes
<b>Access to education</b>	no	yes	yes	yes	Yes	yes
<b>Access to vocational training</b>	no	yes	yes	yes	No	no

<sup>213</sup> EMN, The Organisation of Reception Facilities for Asylum Seekers in Different Member States, [THE NETHERLANDS](#).



## Detention of Asylum Seekers

### A. General

*Indicators:* (only border detention)

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention) 2013 = 780
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): not available
- Number of **border** detention centres: 1  
Total capacity: not known

In 2013, a total of 780 asylum seekers who applied for asylum at the Dutch border were detained (hereinafter border detention).<sup>214</sup> In the first half of 2014 a total of 600 asylum seekers were detained (this is an increase of 79% compared with the first half of 2013).<sup>215</sup> [This increase corresponds to the increase of the number of asylum applications with 74%. The policy change regarding the abolition of detention of children (see below section B on grounds for detention) came only into effect in the second half of 2014.] These asylum seekers were detained during the asylum procedure at the border on the basis of Article 6 of the Aliens Act.<sup>216</sup> There is one border detention centre for detaining asylum seekers. This detention centre is called *Justitieel Complex Schiphol*. There is no report of this detention centre being overcrowded.

In addition, there are also asylum seekers detained in detention centres on the territory on basis of Article 59 of the 2000 Aliens Act (hereinafter territorial detention). The Dutch Council for Refugees is not present in these detention centres, so information as to detention is limited to border detention (Article 6 of the 2000 Aliens Act).

<sup>214</sup> Ministry of Security and Justice, Rapportage vreemdelingenketen (Report alien chain), Period January 2013 until December 2013, page 30

<sup>215</sup> Ministry of Security and Justice, Rapportage vreemdelingenketen (Report alien chain), Period January 2014 until June 2014, page 34

<sup>216</sup> Article 6, sub 1 Alien Act states that ' An alien who has been refused entry into the Netherlands may be required to stay in a space or place designated by a border control officer.' Article 6, sub 2 Alien act states ' A space or place as referred to in subsection 1 may be secured against unauthorised departure.'

## B. Grounds for detention

### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
  - o If frequently or rarely, are they only detained in border/transit zones?  Yes  No
- Are asylum seeking children in families detained in practice?  Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (inc extensions): 18 month
- In practice, how long in average are asylum seekers detained? 39
- What is the maximum detention period set in the legislation (inc extensions): 18 months<sup>217</sup>
- In practice, how long in average are asylum seekers detained? 39 days<sup>218</sup>

There are two types of detention of asylum seekers:

First 'border detention: asylum seekers who enter the Netherlands via airplane or boat are required to apply for asylum at the reception centre at Justitieel Complex Schiphol. During this procedure, the asylum seeker will be placed in detention. Pursuant to Article 6, para. 1 and 2 of the Aliens Act 2000 (VreemdelingenWet 2000), the alien who has been refused entry to the Netherlands, is obliged "to stay in a by the border control officer designated area or place, which (...) can be protected against unauthorized departure."<sup>219</sup>

Second territorial detention: the IND and the DT&V have the authority to detain migrants who are irregularly residing on Dutch territory and if there is a possibility to expel them to their country of origin or third country where they can stay legally.<sup>220</sup> Concerning asylum seekers this means that this type of detention is only applicable when the asylum application is rejected and the asylum seeker is not willing to return to his country of origin on a voluntary basis, there is a possibility to expel him to this country and the interest of public order or national security dictates such a measure. For example in case the asylum seekers has criminal antecedents.<sup>221</sup>

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 (territorial detention). On the other hand asylum seekers who, for instance, are detained with the view to expulsion but apply for asylum again (subsequent application), can be held in detention during this new procedure.

<sup>217</sup> According to Article 15 of the EU Return Directive, 2008/115/EC.

<sup>218</sup> [Report](#) from the Dutch Council for Refugees and UNHCR, 'Pas nu weet ik: vrijheid is the hoogste goed'. Gesloten Verlengde Asielprocedure 2010-2012' (*The Extended Closed Border Procedure in the Netherlands: a survey by UNHCR and the Dutch Council for Refugees*), April 2013.

<sup>219</sup> Article 6, 2000 Alien Act.

<sup>220</sup> According to Article 59, para. 1 of the Aliens Act 2000, 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.

<sup>221</sup> See: [Forced Repatriation](#).

(1) Border detention:

The legal grounds for refusing entry to the Dutch territory at the border are laid down in Article 3 section 1 sub a-d Aliens Act. In addition the asylum seeker can be detained on the basis of Article 6 section 1 and 2 Aliens Act. In practice this leads to an initial systematic detention of all asylum seekers at the border. This detention lasts throughout the asylum procedure and sometimes even extended detention is ordered.

According to Article 3 section 1 Aliens Act 2000 in other cases than in the Schengen Border Code listed cases, access to the Netherlands shall be denied to the alien who:

- a. does not possess a valid document to cross the border, or does possess a document to cross the border but lacks the necessary visa
- b. Is a danger to the public order or national security
- c. 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>222</sup>
- d. 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 A2/5 of the Aliens Circular.

According to Article 2.1 under 1 Aliens Act 2000, access will be denied on the basis of Article 3 section 1 Aliens Act 2000 if the applicant did not sufficiently motivate their intention to stay, or in this context, submitted insufficient documents in proving their intention.

Article 6 section 1 and 2 Aliens Act 2000 states that

- a. An alien who has been refused entry into the Netherlands may be required to stay in a space or place designated by a border control officer.
- b. A space or place as referred to in subsection 1 may be secured against unauthorised departure.

Migrants are mostly detained because they do not fulfil the requirements as set out in Article 3 section 1 sub a and c 2000 Aliens Act. Migrants, who, after arriving to the Netherlands, apply for asylum, are detained on the grounds of Article 3 2000 Aliens Act as well. They are kept in detention throughout their asylum procedure. In practice, the asylum seeker receives a decision, but individual circumstances are not taken into account.

Paragraph A6/5.3.3.3 of the Aliens Circular lists a number of alternatives to detention such as the imposition of a reporting obligation, a financial deposit or accommodation in a freedom-restricted institution. However, hardly any use is made of the possibilities mentioned in the Aliens Circular.

The National Ombudsman and Amnesty International sharply criticised the detention of irregular migrants and asylum seekers in The Netherlands and in particular the fact that alternatives to detention are hardly being used:<sup>223</sup>.

'In the Netherlands, however, alternatives to detention for migrants and asylum-seekers are hardly considered, despite the fact that the 2000 Aliens Act contains several other possibilities, such as a duty to report regularly. The State Secretary of Justice is granted discretionary powers to establish grounds for immigration detention and of the use of possible alternatives; courts may only marginally scrutinise these powers. However, alternatives to detention are hardly used in practice. Amnesty International's research shows that in detention cases the grounds for ordering the detention are given, but that there is a lack of substantive arguments for not using alternatives to immigration detention in particular cases, such as a

<sup>222</sup> The Aliens Circular stipulates that a person should have sufficient means to cover expenses for 3 months.

<sup>223</sup> The National Ombudsman, *Immigration detention: penal regime or step towards deportation, about respecting human rights in immigration detention*, 2012, page 37. Amnesty International, [The Netherlands: the detention of irregular migrants and asylum-seekers](#), 2008, and also see Amnesty International, *Vreemdelingendetentie: in strijd met mensenrechten* (Aliens detention: in violation with human rights), pp. 9 and 10.

reporting measure or providing a financial deposit (*garantiestelling*). The existence of a former criminal background, the mere absence of official registration or an address, and a lack of financial means are considered sufficient grounds to show that there is a risk of absconding.”<sup>224</sup>

Recently, UNHCR and the Dutch Council for Refugees recommend in their report the following:<sup>225</sup>

“When detention of an asylum-seeker at the border is considered, an individual determination needs to take place, weighing the grounds for detention against the circumstances of the individual. The necessity and proportionality tests further require an assessment of whether there were less restrictive or coercive measures that could have been applied to the individual concerned and which would be effective in the individual case. To guard against arbitrariness, any detention needs to be necessary in the individual case, reasonable in all the circumstances and proportionate to a legitimate purpose. Failure to consider less coercive or intrusive means could also render detention arbitrary.”

On the basis of Article 6 2000 Aliens Act asylum seekers can also be held in the closed extended detention. If the IND cannot make a decision on the asylum application within the short regular procedure, the detention can be extended up to a maximum period of 6 weeks, but this period can be prolonged in case the asylum seeker is responsible for the delay. This decision to prolong the duration of the detention is made by the IND and is examined by the regional Court.<sup>226</sup>

In practice, it could take up to a whole year as is described in the earlier mentioned report of the Dutch Council for Refugees and UNHCR. The average period of this so-called ‘Closed Extended Procedure’ is 39 days. However, according to the Dutch Council for Refugees this number is not correct – it should be 44 days.<sup>227</sup>

In The Netherlands there are regulations for persons with special needs in detention. However, the report from Amnesty International shows that in practice these rules are not always applied.<sup>228</sup>

Particularly the rules laid down in the Receptions Directive and Asylum Procedures Directive are not always applied correctly.

Amnesty International concludes in the Update from 2010 that most of their key recommendations were still valid as they had not been addressed.<sup>229</sup>

Dutch law does not prohibit the detention of unaccompanied children and other particularly vulnerable asylum seekers, and since 1 September 2014, the Netherlands, in principle, no longer detains families with children at the border. Instead of being put in border detention, families seeking asylum at Amsterdam Schiphol airport, are now redirected to a closed reception centre in Zeist if there are reasons to believe that there might be human trafficking involved. If not they are redirected to the application centre in Ter Apel. In that case they are free to move within the country.<sup>230</sup> In 2013 there were 76 children (children of families and unaccompanied children) who were younger than 15 years old, 64 children have been detained at the border

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<sup>224</sup> Amnesty International, [The Netherlands: the detention of irregular migrants and asylum-seekers](#), 2008, p. 25.

<sup>225</sup> Dutch Council for Refugees and UNHCR, *Pas nu weet ik: vrijheid is het hoogste goed*, Gesloten Verlengde Asielprocedure 2010-2012 ([The Extended Closed Border Procedure in the Netherlands: a survey by UNHCR and the Dutch Council for Refugees](#)), April 2013.

<sup>226</sup> The 2000 Aliens Circular (C1/2,4) states: “If the investigation is not terminated within 6 weeks after the start of the closed extended procedure the IND has to weigh the interests of the alien again if it wants to prolong the border detention. The IND can only prolong the border detention due to imputable conduct of the asylum seeker.

<sup>227</sup> Dutch Council for Refugees and UNHCR, *op. cit.*, page 12.

<sup>228</sup> Amnesty International, *Vreemdelingendetentie: in strijd met mensenrechten* (Alien Detention: violating human rights), p. 28-29.

<sup>229</sup> *Ibid*, p. 3.

<sup>230</sup> Alien Circular, A1/7.3

until September 2014.<sup>231</sup> Unaccompanied children will never be put in border detention except if the minor age is disputed.<sup>232</sup> They are redirected to the application centre in Ter Apel.]

(2) Territorial detention:

Due to the fact that the Dublin III Regulation came into force on 1 January new legislation was adopted relating to the assessment of the risk of absconding.<sup>233</sup> 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. Relating to detention of asylum seekers subject to a transfer under the Dublin Regulation there must be a concrete indication that the Dublin Regulation is applicable and there is a significant risk of absconding. According to the notes of the Parliament of the changes to the Aliens Act a 'significant risk' is demonstrated when at least two 'severe' grounds are applicable. These severe grounds are the following:

- the asylum seeker has entered the Netherlands illegally and unlawfully absconded the supervision of the Dutch authorities;
- in an earlier stage the person has received a decision which entailed that he had to leave the Netherlands but he has not obeyed to this order;
- the person did not cooperate with the determination of their identity and nationality; threw away their identification papers; used forged identification papers or the asylum seeker made very clear they will not cooperate with the transfer to another member state.

If one or more of these grounds are applicable there is no need for the IND to give a further explanation (motivation) in relation to the decision to detain the asylum seeker. If solely one of these grounds is applicable or none of these grounds and the IND is still of the opinion the asylum seeker has to be detained the IND has to motivate this thoroughly. This will be the case if individual circumstances induce this. On the other hand if individual circumstances are submitted by the asylum seeker why in his case detention is, despite the presence of severe grounds, unreasonable these circumstances have to be taken into account by the IND and could give reason for deciding not to detain the asylum seeker.<sup>234</sup>

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<sup>231</sup> Dad, have we done something wrong? No Child in Detention. A coalition of Amnesty International, Defence for Children, Stichting INLIA, Kerk in Actie, Stichting Kinderpostzegels Nederland, Stichting LOS, UNICEF - the Netherlands and the Dutch Council for Refugees., January 2014

<sup>232</sup> See Alien Circular A1/7.3 and the letter of the Secretary of State of Security and Justice to the Parliament, May 2014, footnote 4 <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2014/05/28/brief-tweede-kamer-invoering-screening-en-nieuwe-locatie-voor-kinderen/pers5969ainvoeringsscreeningennieuwelocatievoorkinderen-1.pdf>

<sup>233</sup> Article 5.1 a 2000 Aliens Decree.

<sup>234</sup> Explanatory notes of the Parliament, nr.550 550 d.d. 19 December 2013; dossier TK 33 699).

## C. Detention conditions

### Indicators:

- Does national legislation 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
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures?  Yes  No
- Do detainees have access to health care in practice?  Yes  No
  - o If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  Yes  Yes, but with some limitations  No
  - o Family members:  Yes  Yes, but with some limitations  No

The rules relating to border detention are laid down in the Border Regime Facilities Code.<sup>235</sup> In case of territorial detention the same set of rules are applicable as to 'normal' detainees. These rules are set out in the Custodial Institutions Act.<sup>236</sup> In the following paragraph only the border detention is elaborated.

Asylum seekers are not detained with criminals; however, they are 'treated' like them. Even in some situations detained asylum seekers have fewer rights than criminals.

Adults are detained at the Justitieel Complex Schiphol and families with children are detained for a maximum period of up to 14 days. During this period they are staying in a separate wing at the detention centre. Unaccompanied children are not detained when there is still doubt about their age.<sup>237</sup> There is, however, no official age assessment procedure and the IND follows the information which it gathers throughout the procedure. As to single women, they are not detained in separate facilities or floors.

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>238</sup> Amnesty International, the Ombudsman and the Dutch Council for Refugees also have called for a more open regime for detention of asylum seekers.<sup>239</sup> Asylum seekers do have access to open space.

<sup>235</sup> On the legal basis of article 6 sub 3 Alien Act which states; 'Rules relating to the regime applicable to the secure space or place referred to in subsection 1, including the requisite administrative measures, may be laid down by Order in Council.

<sup>236</sup> Law of 18 June 1998, Penitentiare Beginselenwet.

<sup>237</sup> Amnesty international, *Vreemdelingendetentie in strijd met mensenrechten* (Alien Detention: violating human rights), p. 15.

<sup>238</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, August 2012, page 31 (paragraph 59): "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>239</sup> The National Ombudsman, *Immigration detention: penal regime or step towards deportation, about respecting human rights in immigration detention*, 2012, p. 23.

Health care is provided to detainees during the asylum procedure. This is based on Article 8 sub d of the Border Regime Facilities Code. This provision states that the manager of the facility has to provide for necessary medical care. If asylum seekers experience any medical difficulties, they have the right to see a doctor. There are also psychologists present at the detention centre. Health care in detention centres for asylum seekers with the view of expulsion has been subject to a major debate in the Netherlands due to the death of the Russian asylum seeker Dolmatov and in a more recent case a young girl with cancer neglected by the medical service, who was, nevertheless, subject to a Dublin transfer. A recent report of the inspection services concerning security and healthcare (*Inspectie voor de Gezondheidszorg* (IGZ) and the *Inspectie Veiligheid en Justitie* (Inspectie VenJ) concludes that no medical mistakes in this case was made.<sup>240</sup> These cases, however, do not concern access to health care during border detention.

Asylum seekers who are detained during their border procedure do have access to (other) NGOs (such as Amnesty International) and UNHCR. These organizations are able to visit asylum seekers in detention as any other regular visitor, but in practice this hardly happens. On the one hand, asylum seekers are not always familiar with the organisations and do not always know how to reach them. On the other hand (representatives of) the organisations do not have the capacity to visit all the asylum seekers who wish to meet the representatives of the NGOs or UNHCR.<sup>241</sup>

Lawyers also have access to asylum seekers at the AC Schiphol and during the closed extended procedure (*grenshospitium*).

Dienst Justitiële Inrichtingen (hereafter: DJI) as well as the Immigration and Naturalisation Service (Immigratie en Naturalisatie Dienst, hereafter: IND) are responsible for the detention centres. In the Jesuit Refugee Service-report 'Becoming vulnerable in detention', some asylum seekers were asked about their treatment by the staff.<sup>242</sup> It is stated in the the report that "from the relationship with the detention centre staff emerges a positive image. Most interaction takes place with the security staff and occasionally with medical staff. The relationship is mostly perceived positive/neutral: "Staff is ok. They are guards: usually either two men and one woman, or two women and one man. The guards change three times a day. I don't have problems with them. Some are extremely friendly others are less friendly. I am quite content with them." Detainees do not feel discriminated in the centre, according to the report. Another noteworthy aspect is that the detainees do not perceive the interaction with detention staff to be problematic due to language problems. It seems that they are able to express themselves satisfactorily on the daily issues. If detainees want to discuss their (asylum) case, they can contact their lawyer or an IND official. For those conversations, an interpreter is available.

There are no known reports of serious deficiencies in the sanitary facilities. However, Amnesty International does criticize the Dutch government for detaining vulnerable groups such as children, elderly, victims of human trafficking, victims of torture and persons with mental or physical health problems. Next to this, Amnesty remains critical about the maximum time of detention possible, which is 18 months.<sup>243</sup>

There are no known problems of overcrowding. The report "Vreemdelingenbewaring in getal, 2008-2012" shows that the capacity of Dutch detention centres (this relates to both border detention and territorial detention) decreased from 2759 (no reserves) in 2008 to 1750 (325 reserves) in 2012. Ever since 2009 the detention centres have a reserve<sup>244</sup> capacity of anywhere between 130 and 325 extra places, which can be

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<sup>240</sup> Letter from the Inspection of Security and Justice to the Secretary of Security and Justice, 19 November 2013.

<sup>241</sup> There are also so called voluntary visitor groups which visit asylum seekers in detention.

<sup>242</sup> Jesuit Refugee Service – European Regional Office, BECOMING VULNERABLE IN DETENTION, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project), (2010) Page 285 and further

<sup>243</sup> <http://www.amnesty.nl/nieuwsporaal/rapport/vreemdelingendetentie-in-nederland-mensenrechten-als-maatstaf>

<sup>244</sup> [The normal capacity can be extended with this reserve capacity. This extra capacity must be made available within

made available within four months. Due to this system, overcrowding seems highly unlikely.<sup>245</sup> Also in 2013 there was a total capacity of 1691 places of which 390 was reserve.<sup>246</sup>

No recent information is available as to whether sufficient clothing is given. The report of the Jesuit Refugee Service states that when it comes to food, most detainees are not satisfied about the quality or quantity. Although it seems to be possible to make some requests for specific meals (see quote § 3.7 from the report [not found, red]), detainees are possibly not aware of it. In the interviews it does not become clear to what extent the quality and quantity of food can be related to a decrease/increase of the detainees' health. More research into this specific aspect would be required.

Detained asylum seekers are allowed to leave their living areas within the detention centre between the hours of 8.00-12.00 and 13.00-17.00. In 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 (two hours a week and two hours in the weekend), 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>247</sup> Outside of the activities the detainees stay in a common lounge area. The size of this area is not known. Parents with children who stay in a detention centre and aliens who are refused at the border are provided a day program that runs until 9 pm.<sup>248</sup>

It is not known if media or politicians can visit the detention centre.

There are special units for families with children available in which there is a special, pedagogically trained staff available. There are a lot of family friendly activities provided and children under the age of 14 are able to access school.

Secondly, there are people that require special medical attention. The basic principle is that medical care within the detention centres is equal to medical care outside. There are nurses available on a daily basis, a general physician is visiting the clinic several times each week as well as specialists such as psychiatrists and psychologists. A medical intake will be taken of each asylum seeker within 24 hours after arriving in a detention facility. Finally there is specialized care available for asylum seekers with mental health problems. If the detention centre cannot provide the care necessary, the asylum seeker will be transferred to a regular hospital, a prison psychiatric hospital or another closed health care facility.<sup>249</sup> The earlier mentioned Dolmatov report shows a critical view on the health care in these centres.<sup>250</sup>

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four months to (temporarily) detain aliens if there is more demand for detention space than initially was estimated.] .

<sup>245</sup> Department of Justice, Ministry of Security and Justice, "[Vreemdelingsbewaring in getal, 2008-2012](#)" (Statistics on Detention of third country nationals, 2008-2012), May 2013.

<sup>246</sup> Department of Justice, Ministry of Security and Justice, "[Vreemdelingsbewaring in getal, 2009-2013](#)" (Statistics on Detention of third country nationals, 2009-2013), June 2014.

<sup>247</sup> Department of Justice, Ministry of Security and Justice, "[Safety and security in detention](#)."

<sup>248</sup> Dienst Justitiële Inrichtingen, Ministerie van Veiligheid en Justitie, May 2013.

<sup>249</sup> Ibid.

<sup>250</sup> Het overlijden van Alexander Dolmatov (*The death of Alexander Dolmatov*), Inspection of Security and Justice, April 2014, [https://www.ivenj.nl/Images/het-overlijden-van-alexander-dolmatov\\_tcm131-495157.pdf](https://www.ivenj.nl/Images/het-overlijden-van-alexander-dolmatov_tcm131-495157.pdf) (NL)



## D. Procedural safeguards and judicial Review of the detention order

### Indicators:

- Is there an automatic review of the lawfulness of detention?  Yes  No

According to Article 93 of the 2000 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 of the 2000 Aliens Act.

Furthermore, whether it concerns border detention or territorial detention, by law there is an automatic review by a judge (regional court) of the decision to detain. 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 sub 2 of the Aliens Act 2000, the hearing will take place within 14 days after the notification or the application for judicial review by the migrant. According to Article 94 sub 3 of the Aliens Act 2000, the decision on the detention will be provided within a week. When the regional court receives the notification it considers this as if the migrant or asylum seeker lodged an application for judicial review. In paragraph C1/2.4 Aliens Circular, the grounds for the closed extended procedure are mentioned.

Whereas the first judicial review examines the lawfulness of the grounds for detention – whether detention of the irregular migrant or asylum seeker was justified by “public order considerations” – further appeals against immigration detention review the lawfulness of continued detention.

Detention may be lifted if it is considered unreasonably burdensome. Although the 2000 Aliens Act does not explicitly contain the duty to perform a ‘balance of interests’ investigation when ordering detention, during the discussion of the draft Act the State Secretary for Justice stated that, before applying detention, the interests of the asylum-seekers will be weighed against the interests of the state.<sup>251</sup> This examination can be described as a proportionality test rather than a necessity test.

Detainees have the right to be informed about the reason for their detention; this is laid down in the Aliens Decree.<sup>252</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, is laid down in policy guideline Aliens Circular.<sup>253</sup>

Asylum seekers who enter the Netherlands via airplane or boat are required to apply for asylum at the reception centre at Justitieel Complex Schiphol. During this procedure, the asylum seeker will be placed 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 for 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.

<sup>251</sup> The provision in which the border detention is, states that the Minister can order detention. This means it is not mandatory but a weighing of interest has to take place. A [letter](#) of the secretary of state of 13 September 2013, p. 16, confirms this practice.

<sup>252</sup> Article 4.18 Alien Decree and subsequents.

<sup>253</sup> Alien Circular, Chapter A2/4.

## E. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  
 Yes       No
- 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 Immigration and Naturalisation Services website, which is the organ responsible for detention in the Netherlands 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>254</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.

These are the same lawyers who handle the asylum application. For instance an Article 6 of the Alien Act measure is simultaneously handled with the asylum application. For that reason all the obstacles, which apply in general concerning legal assistance also apply for border detention. On the other hand, there are obstacles concerning detention with a view to expulsion.

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<sup>254</sup> Immigration and Naturalization Service, [Leaving the Netherlands voluntarily](#). see: 'Legal Aid'.

## ANNEX I - OVERVIEW MAIN CHANGES IN ASYLUM LAW AND PRACTICE WITH EFFECT FROM 1 JANUARY 2014

Theme	Situation before 1 January 2014	Situation after 1 January 2014	Additional comments
Categorical protection policy (Article 29 (1)(d) AA).	Despite the legal basis in the Aliens Act 2000 ("Vreemdelingenwet"), the categorical protection policy has not been applied for years.	The legal basis of the categorical protection policy has lapsed <b>per January 1st 2014</b> .	In May 2009 the subsidiary protection policy with regard to Somalia has ended. Only a small group of asylum seekers possesses a residence permit on the basis of the categorical protection policy.
Trauma policy (Article 29 (1)(c) AA) <sup>1</sup>	On the basis of the trauma policy asylum seekers could qualify for a residence permit applying the 'c-ground'.	The former trauma policy is a result of the implementation of motion "Strik" of the Senate, which is to be found in Article 29 (1)(b) AA. Asylum seekers who fulfill these conditions could qualify for a residence permit on the basis of Article 29 (1)(b) AA.	The trauma policy as set out in paragraph C2/4.1 of the Aliens Act implementation guide ("Vreemdelingen-circulaire") has lapsed on <b>January 1st 2014</b> . Now the policy is set out in Cv 2/3, sub: <i>Previous confrontation with atrocities</i> ("Eerdere confrontatie met wandaden")
Specific groups (Article 29 (1)(c) AA)	Specific groups which qualified for a residence permit by applying the 'c-ground':  – Unaccompanied Afghan women  – Homosexuals, bisexuals en transsexuals from Iran.	The basis (c-ground) for the policy for specific groups has lapsed on <b>January 1st 2014</b> . According to the government, asylum seekers who previously qualified as a specific group may be eligible for international protection (Article 29 (1)(a)(b) AA). Hence, unaccompanied Afghan women and LHBT's from Iran may be eligible for international protection.	1. Note: (limited) requirement of individualization.  2. With regard to the specific groups the motion, of the Senate member "Strik", still has to be implemented. In this motion the government is requested to retain the de facto policy.
Compelling humanitarian reasons (Article 29 (1) (c) AA)	Westernized Afghan girls were eligible for the attainment of an asylum residence permit on grounds of "compelling humanitarian reasons".	Westernized Afghan minor girls are going to be eligible for attainment of a regular residence permit on humanitarian grounds from <b>January 1st 2014</b>	The persons concerned will attain a regular residence permit.  They will be exempted from the long stay visa or passport requirement, nor will

<sup>1</sup> Article 29 (1)(c) AA distinguishes three categories: 1. Trauma policy 2. Specific groups and 3. Compelling humanitarian reasons.

			they have to pay fees.
Family reunification policy (Article 29 (1)(e) and (f) AA)	Family members with a long stay visa received a derivative asylum permit after they applied for asylum in The Netherlands.	Family members with a long stay visa will receive <b>per January 1<sup>st</sup> 2014</b> automatically a derivative permit and will not enter the asylum procedure. Possibly they could apply for a permit themselves (when there are personal and independent reasons for application).	<p>1. A family member can apply independently for asylum.</p> <p>2. See: Vluchtweb checklist "Family reunification".</p> <p><b>3. Per January 1st 2014</b> family members can be eligible for a residence permit on the basis of Article 29 (2) (a) or (b) AA. Article 29 (2) AA includes the <b>c-ground</b>: Parents of a single minor who were granted an asylum permit (due to personal and independent reasons) can be eligible for a residence permit.</p>
First asylum procedure	During the first asylum procedure there will be an automatic review whether Article 64 AA can be applied. (postponement of departure due to medical conditions), "B9" <sup>2</sup> and the trauma policy.	During the first asylum procedure the following aspects will be automatically reviewed: Article 8 EVRM, "B9", no-fault, discretionary power and Article 64 AA. (see last page of this survey for more details).	The policies with regard to the aforementioned humanitarian grounds have not been altered. Asylum seekers will be exempted from the long stay visa and passport requirements. No fees will have to be paid when the application is granted, though there is a passport requirement.
First humanitarian procedure	<p>1. An alien who wants to submit a regular (humanitarian) application and does not possess a long stay visa can do this at the M50-desk of the INS.</p> <p>2. The application is subject to review only with regard to the requested purpose of stay.</p>	<p>1. All regular humanitarian applications will be subjected to a one-day review.</p> <p>2. If the other requirements with regard to the purpose of stay are fulfilled one shall be exempted from the long stay visa requirement.</p> <p>3. The first regular humanitarian application will contain an automatic review of the following aspects; Article 8 ECHR, "B9", No-fault policy, 'discretionary power', medical treatment and Article 64 AA.</p>	<p>M50-desk of the INS will be lifted.</p> <p>2. This measure will be implemented in the second quarter of 2014.</p>

<sup>2</sup> From April 1st 2013 the policy with regard to witnesses and victims of human trafficking is to be found in paragraph B8/3).

Subsequent procedure asylum (and regular)	A subsequent application will be assessed in the regular asylum procedure (without rest and preparation period).	Within the subsequent asylum applications there will be an assessment within one day to review whether there are new facts or circumstances (the one-day review). The subsequent asylum application will commence with a written notice (through a M35-0 form) which will have to be send to the INS. AC-Schiphol is exempted from this one-day review.	<ol style="list-style-type: none"> <li>1. The asylum seeker will have to make a written notification at the INS and deliver all relevant documents before the commencement of the one-day review.</li> <li>2. The one-day review also applies to the subsequent regular applications and the first humanitarian regular applications. The measure will be implemented in the second quarter of 2014.</li> </ol>
Medical procedures (Article 64 AA, a regular medical application on the basis of Article 3.46 Alien Decree 2000)	The alien claims that there are medical reasons due to which he cannot be deported. (e.g. Article 64 AA or a regular medical application). The INS collects the medical data and the BMA will review this.	The alien will deliver all relevant medical documents in case of an (extended-) application in which medical circumstances should be assessed (in accordance with the motion "Spekman"). Subsequently, the BMA will assess the medical data.	<ol style="list-style-type: none"> <li>1. The onus will be shifted to the alien.</li> <li>2. The government assumes that this method will shorten the timeframe with at least 6 weeks.</li> <li>3. This measure will be implemented in the <b>second quarter of 2014.</b></li> </ol>
Legal aid ('No cure, less fee') asylum and regular.	Regardless the outcome of the subsequent application, the lawyers will receive a complete compensation on the basis of a governmental decree "Besluit rechtsbijstand- en toevoegingscriteria (Brt)".	Lawyers will receive a lower compensation at subsequent applications when the appeal has been declared inadmissible.(instead of four "points" they will receive two "points"). This measure entered into force <b>January 1<sup>st</sup> 2014</b>	Regarding the second and subsequent applications, the measure "no cure less fee" will be implemented in the <b>second quarter of 2014.</b>
Dublin-procedure	<ol style="list-style-type: none"> <li>1. Not all Dublin-cases will be settled in the regular asylum procedure (distinction is made between a Eurodac match category 1 (asylum application in another Member State) and category 2(illegal entry in another Member State)).</li> <li>2. Dublin-cases will be assessed in the regular asylum procedure. The first hearing will take place on day 1 and the second hearing on day 3.</li> </ol>	<ol style="list-style-type: none"> <li>1. Dublin-cases will be settled to the greatest degree in the regular asylum procedure.</li> <li>2. In Dublin-cases the first and second hearing will be combined.</li> </ol>	

Presentation of the intended decision	The intended decision was presented to the asylum seeker.	From <b>January 1<sup>st</sup> 2014</b> the intended decision will not be presented to the asylum seekers at the application centers (except for AC Schiphol). The intended decision will be faxed to their lawyers directly. The lawyer will discuss the intended decision with the asylum seeker.	
Fees for the replacement of a residence permit	Currently there are no fees charged for the replacement of an asylum residence permit. However fees are charged for the replacement of a regular residence permit (250 euro).	From <b>January 1st 2014</b> fees will be charged for the replacement of an asylum residence permit. (152 Euro)	

## ANNEX II - Transposition of the CEAS in national legislation

### *Directives transposed*

Directive	Date of transposition (N/A if not yet transposed)	Official title of corresponding national legal act (and weblink)
Recast Asylum procedures Directive	Not yet transposed	<p>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)</p> <p><a href="http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2014/11/27/tk-wetsvoorstel-voorstel-van-wet-wijziging-van-de-vreemdelingenwet-2000-procedure Richtlijn/lp-v-j-0000007017.pdf">http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2014/11/27/tk-wetsvoorstel-voorstel-van-wet-wijziging-van-de-vreemdelingenwet-2000-procedure Richtlijn/lp-v-j-0000007017.pdf</a></p>
Recast Reception Conditions Directive	Not yet transposed	The same as above, it is one amendment
Recast Qualification Directive	1 October 2013	<p>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)</p> <p><a href="https://zoek.officielebekendmakingen.nl/dossier/30925/kst-20082009-30925-I-h1?resultIndex=0&amp;sorttype=1&amp;sortorder=4">https://zoek.officielebekendmakingen.nl/dossier/30925/kst-20082009-30925-I-h1?resultIndex=0&amp;sorttype=1&amp;sortorder=4</a></p>

### *Pending transposition and reforms*

Legislation	Stage of transposition	NGO participation (Yes/No)
Recast Asylum procedures Directive	Currently being debated in national Parliament	Yes, Dutch Council for Refugees
Recast Reception Conditions Directive	Currently being debated in national Parliament	Yes, Dutch Council for Refugees
Recast Qualification Directive	Transposed, 1 October 2013	Yes, Dutch Council for Refugees

## ***Main changes adopted/planned in relation to the transposition of the Directives***

### **Asylum Procedures Directive**

#### The most important changes:

- The Secretary of State of Security and Justice is of the opinion that due to the recast Asylum Procedures Directive the Dutch two-staged credibility assessment (the so-called 'positively persuasive'-test, see also *document 'Main changes since previous update'*) is not in line with the system of the recast Directive. Therefore the IND has implemented a new credibility assessment test as of the beginning of 2015. Although technically speaking it is questionable if this new credibility-test by the authorities is, in light of the recast Asylum Procedures Directive, absolutely necessary, it is an additional argument to implement this test, regarding to the prescribed full and *ex nunc* examination of both facts and points of law by the courts ex. Article 46 of the recast Asylum Procedures Directive.
- This full and *ex nunc* examination mentioned above by the court will be the most profound change for the Netherlands due to the recast Directive. It hopefully entails a more integral examination of the credibility. The current legal examination by the court is a marginal one. The court only verifies whether the immigration authority *reasonably* could reject an asylum application without the court being able to assess whether it finds the application credible. In the future the court can judge that an application is credible despite the opinion of the immigration authority. This opposite opinion of the court can result from weighing the various aspects of the asylum application differently. An example: if the credibility of an asylum application depends on the explanation of the asylum seeker about the escape from prison and the immigration authority is of the opinion that the statements regarding this escape are contradictory and therefore not credible the court can rule otherwise. For instance: the court can follow the argument of the asylum seeker that he was in a state of panic during the escape and therefore cannot exactly remember what happened, whereas the immigration authority did not accept this explanation, In the current situation the Court can never do this as this would go beyond a marginal scrutiny of the facts. ]
- The obligation to arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm on the basis of Article 18 Asylum Procedures Directive.
- The obligation to officially install a border procedure and adopt legislation that meets the requirements in accordance with Article 43 of the Asylum Procedures Directive.
- The introduction of new types of handling asylum applications. The possibility for the IND to declare an application inadmissible or manifestly unfounded. Also the IND can decide to 'not-process' an asylum application. Examples are: the possibility to declare a subsequent asylum application inadmissible or to declare an application manifestly unfounded because the asylum seeker has misled the authorities. There is no suspensive effect of the appeal where an application is rejected in the aforementioned cases. A provisional measure (an interim measure) has to be requested to make sure that the asylum seeker is not expelled to their country of origin before the case is handled by the court.

*Besides the credibility-test (which is already adopted) all changes are planned for mid-2015.*

### **Reception Conditions Directive**

- The Secretary of State of Security and Justice is of the opinion that the Netherlands already meets the requirements set out in the Recast Reception Directive and therefore no change in law is necessary.

### **Qualification Directive**

#### The most important changes

- Stricter norms concerning the use of the authorities to claim that (state) protection against persecution is available. The authorities have to investigate if the State or third parties are willing and able to offer the needed protection in practice.
- The possibility for the authorities to raise an internal protection alternative (*binnenlands beschermingsalternatief*) is also more strictly defined. Instead of 'staying' in the defined area a person has to



be able to 'settle' in that area. And no internal protection alternative can be raised if the actor of persecution is the state or as state agent.

- The possibility to consider women as members of a particular social group as described in the Geneva Refugee Convention
- In spite of the possibility for the authorities to withdraw a granted asylum permit because the circumstances in the country of origin have improved this shall not be the case when a beneficiary of international protection status is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

*All changes have been adopted and transposed into national law.*