

NETHERLANDS

1 Arrivals

1 Total number of applications for asylum lodged, with monthly breakdown and percentage variation between years

Table 1:

Month	2003	2004	Variation +/- (%)
January	1,234	976	-21%
February	1,042	836	-19%
March	1,398	940	-33%
April	1,570	681	-57%
May	1,391	627	-55%
June	831	772	-7%
July	1,127	672	-41%
August	989	787	-20%
September	1,103	849	-23%
October	1,015	904	-11%
November	931	956	+3%
December	771	782	+1%
TOTAL	13,402	9,782	-27%

Source: IND

2 Breakdown according to the country of origin/nationality of applicant, with percentage variation

Table 2:

Country	2003	2004	Variation +/- (%)
Iraq	3,472	1,043	-70%
Unknown	525	889	+70%
Somalia	451	792	+76%
Afghanistan	492	688	+40%
Iran	555	450	-19%
Burundi	402	405	+1%
Serbia & Montenegro	393	395	+0,5 %
Turkey	414	338	-19%
China	295	265	-10%
Sudan	293	255	-13%
Other	6,110	4,262	-30%

Source: IND

3 Persons arriving under family reunification procedure

468 persons (2003: 456).

Source: IOM Statistics

4 Refugees arriving as part of a resettlement programme

232 persons (2003: 164).

Source: IOM Statistics

5 Unaccompanied minors

Table 3:

Nationality	2004	2003
China	99	116
India	57	40
Somalia	46	75
Burundi	32	30
Angola	28	146
Iraq	27	108
Afghanistan	23	41
Guinea	22	70
Nigeria	21	40
Other	239	550
Total	594	1,216

Source: IND

2 Recognition Rates

6 The statuses accorded at first instance and appeal stages as an absolute number and percentage of overall decisions

Table 4:

Statuses	2003		2004	
	First instance Number	Appeal %	First instance Number	Appeal %
No status awarded				
Convention status				
Subsidiary status				
Other				
Total	28,250	12,089	21,802	4,300

Source: IND Year results 2004

Comments

Figures on which status is awarded (or no status) are unavailable.

7 Refugee recognition rates (1951 Convention: as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages

No figures available.

8 Subsidiary and other status granted (as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages

No figures available.

3 Returns, Removals, Detention and Dismissed Claims

9 Persons returned on safe third country grounds

No figures available.

10 Persons returned on safe country of origin grounds

In the first eight months of 2004, 20 persons were rejected on safe third country and safe country of origin grounds (2003: 39).

Source: IND

11 Number of applications determined inadmissible

No figures available.

12 Number of asylum seekers denied entry to the territory

No figures available.

13 Number of asylum seekers detained, the maximum length of and grounds for detention

No figures available.

14 Deportations of rejected asylum seekers

Deportation: 1,488 (2003: 1,713) and Returns under State supervision: 2,354 (2003: 2,221), total: 3,842 (2003: 3,934).

Source: IND

15 Details of assisted return programmes, and numbers of those returned

Total returned with IOM facilities: 3,714 (2003: 2,912).

Table 5:

Nationality/country of origin	2003	2004
Afghanistan	91	248
Angola	227	401
Bosnia-Herzegovina	195	190
Iraq	90	168
Iran	218	208
Yugoslavia	343	328
Ukraine	173	303
Russian Federation	140	116
Sudan	56	109
Turkey	67	122
Other	1312	1521
Total	2,912	3,714

Source: IOM Statistics

16 Number of asylum seekers sent back to the Member State responsible for examining the asylum application under the Dublin II Regulation

In 2004 there were 1,862 Dublin claims. It is unknown how many were transferred.

Source: IND

4 Specific Refugee Groups

17 Developments regarding refugee groups of particular concern

Unaccompanied minors

In 2004 the asylum procedure for unaccompanied minors was amended:

As of 2001 the immigration board interviewed children between four and twelve years old. From the summer of 2004 this practice was discontinued for children under six years old. Children under the age of twelve are no longer interviewed in the accelerated procedure.

Country/region related policy

General

In the following list, all countries of origin are included for which in 2004 a general policy applied or was withdrawn. A general policy means that either all persons belonging to a group/nationality are admitted on subsidiary protection grounds or that a policy of non-decision (decision moratorium) or non-return (deportation moratorium) was applied to a group/nationality.

Afghanistan

Afghan asylum cases were assessed individually. There was no noteworthy change in the policy regarding the assessment of Afghan asylum requests. In 2004 the minister for aliens' affairs clarified her policy concerning Afghan women: adopting a Western lifestyle after leaving Afghanistan is not sufficient grounds for asylum, as women are able to re-adapt on return to Afghanistan.

Asylum statuses that had been granted because of the general situation in Afghanistan continued to be withdrawn. Forced returns started after 1 April 2004, in accordance with the Memorandum of Understanding, that was signed by Afghanistan, the Netherlands and UNHCR in March 2003.

Burundi

The general protection policy for Burundi's asylum seekers was continued throughout 2004.

Congo (Tutsi)

The general protection for Tutsi asylum seekers from the Democratic Republic of Congo was continued throughout 2004.

Iraq

The moratorium of decisions and the moratorium of returns of asylum seekers from Northern Iraq (see ECRE Country Report 2003, question 16) were not extended after 1 February 2004. Northern Iraq is considered safe for return of people originating from this region. As a result there has not been a special policy concerning asylum seekers from Northern Iraq as of February 2004.

In contrast, the general policy regarding Central and Southern Iraq was widened. For asylum seekers from these regions in Iraq the moratoria of decisions and returns were extended in February 2004 until June 2004. As of June 2004 they qualify for categorical protection because of the general situation in Iraq. This means that they qualify for asylum status, even if they do not qualify for Convention Refugee Status or other subsidiary protection based on their individual circumstances.

Ivory Coast

As of 24 November 2004, a moratorium of decisions and returns for Ivorian asylum seekers was initially introduced for a period of six months. This was due to uncertainty on the human rights and safety situation in the Ivory Coast.

Liberia

The moratoria of decision and returns (see ECRE Country Report 2003; question 16) were extended until 27 June 2004. The moratorium on returns could not be extended any further because of the maximum time limit of one year for the moratoria stipulated by the Aliens Act.

As of June, Liberian asylum seekers did not enjoy a special policy any more, although the minister of Aliens' Affairs acknowledged that the situation in Liberia did not allow for returns to be made. The

minister argued that other European countries did not offer any special protection, and that a general policy would place the Netherlands "out of line" with other European countries.

Russia (Chechens)

The developments in Russia did not lead to a change in Dutch policy concerning Chechen asylum seekers. The Minister for Aliens' Affairs holds that in general there is a relocation alternative for Chechens within the Russian Federation. However, Chechen asylum cases are not processed in accelerated procedures. Furthermore the Minister informed Parliament that the majority of Chechen asylum seekers are granted asylum on individual grounds.

Somalia

Interim measures ordered by the European Court for Human Rights in 2004 had far-reaching consequences for the policies concerning Somali asylum seekers, which until then allowed for deportations of failed Somali asylum seekers to 'safe' Northern Somalia.

On 10 separate occasions the ECHR ordered interim measures in applications of Somalis, who had appealed against the Netherlands. Initially this seemed to be for minorities from Southern Somalia without ties in Northern Somalia. However on August 31st an interim measure was executed on the basis of "the information currently available concerning the situation of internally displaced persons in Puntland". The minister of Aliens Affairs, only after being ordered in (higher) appeal in national procedures, decided to introduce return moratoriums; at first for minorities and in 2005 for all Somalis.

Sudan

Asylum seekers from southern Sudan enjoyed general protection throughout 2004, unless they had stayed trouble-free in Northern Sudan longer than six months before their flight. The region of general protection was extended in April 2004 to include asylum seekers from Darfur.

5 Legal and Procedural Developments

18 New legislation passed

Period for revoking asylum status extended to five years

Following an amendment of the Aliens Act that came into force on September 1st 2004 the period for revoking asylum status was extended from three to five years. This means that an asylum status can be withdrawn during this period due to changed circumstances in the country of origin. After five years the holder of an asylum status can obtain a permanent status. However, an examination of the grounds for withdrawal will precede the issuance of such a permanent asylum status. These policies reinforce the notion of temporary asylum in the Netherlands.

Judicial review of aliens' detention

On 1 September a change in the system of judicial review of an alien's detention became effective. The Immigration Service now has to notify the Court of the detention of a non-national within 28 days instead of 3 days, if the detainee has not yet appealed on his own accord within that period. The court session must take place within fourteen days following the notification or after the appeal has been received, and the court has to decide within another seven days after the session. As of 1st September the system of automatic periodic review by the court was abolished. However, a detained alien can still appeal the prolongation of the detention at any time.

Implementation of the Directive on Temporary Protection

Only in 2004/2005 the EU-Directive on Temporary Protection was implemented in Dutch legislation. Displaced persons belonging to a category that is designated by the European Council as being in need of temporary protection will not be entitled to asylum status. Instead, as long as the EU Temporary Protection measure is effective, they will be granted the status of asylum seeker, for whom a decision moratorium or, after rejection of the claim, a return moratorium applies. To enjoy protection they will have to submit an asylum request.

19 Changes in refugee determination procedure, appeal or deportation procedures

Determination procedure

Refugee status due to discriminatory exclusion from medical care

In December 2004 a paragraph was added to the Aliens' Circular, which explicitly states that exclusion from medical care, might be grounds to qualify as a refugee. A number of conditions must be fulfilled:

- There is no internal flight alternative i.e. the exclusion is nation wide in the country of origin;
- The exclusion from medical care is related to discrimination on one of the grounds of art. 1 Geneva Refugee Convention;
- The exclusion from medical care must cause serious mental or physical damage to the asylum seeker concerned.

Relevance of medical data in determination procedure

The Dutch Minister for Aliens' Affairs considers information about the medical condition of an asylum seeker as irrelevant for verifying the credibility of his / her asylum request. In a letter submitted to the Dutch Parliament in 2004 the minister argued that it is virtually impossible to determine if a scar or a trauma is caused by events that are proposed by an asylum seeker.

Reduction of working hours in Application Centres

The Immigration Service decided to stop the use of evening hours for processing asylum cases in the Application Centres (Schiphol and Ter Apel), leaving the time between 8 a.m. and 6 p.m. as processing hours. In the inland Application Centre in Ter Apel, Saturday and Sunday were dropped as processing days. Therefore since December 2004 it may actually take almost a week to reach 48 processing hours in an accelerated procedure in the Application Centres.

Granting asylum in Application Centres

In December 2004 the Minister for Aliens' Affairs announced that the accelerated procedure may also be applied in Application Centres if the Immigration Service considers deciding positively on an asylum request. Granting asylum within the accelerated procedure is exceptional however.

Appeal Procedures

There were no noteworthy changes in appeal procedures. There was a change in the judicial review of aliens' detention though (see section 18).

Deportation procedures

There were no noteworthy changes in deportation procedures. See section 17 regarding the deportation of failed Somali asylum seekers.

20 Important case-law relating to the qualification for refugee status and other forms of protection

Dublin II Regulation

Time limit in Article 20(1)(d)

In several instances there was a matter of dispute concerning the time limit in Dublin cases where pre-suspensive effect was applied. In regular asylum procedures appeal has suspensive effect, as well as in Dublin cases. The applicants argued that where (pre) suspensive effect on appeal was granted by the court the time limit of six months was exceeded and the Netherlands was therefore responsible for the asylum request. However the Administrative Jurisdiction Department of the Council of State (AJDC) (highest appeal authority) judged in these cases (Nr. 200409817/1, Nr. 200408891/1 and Nr. 200410250/1 that the time of (pre) suspensive effect is not part of the time limit of six months within the meaning of article 20(1)(d).

Article 29 Dublin II - transition period

With respect to the interpretation of article 29 Dublin II, the asylum authorities took the position that Dublin II is only applicable in cases where the request to take charge of an asylum seeker or an applicant who had already lodged an asylum request in another Member State had been made after 1 September 2003. However the AJDC, judged on 22 November 2004 (Nr. 200407538/1) that from the text of article 29 Dublin II it was clear that the time limits of Dublin II were applicable in all cases where the asylum request was lodged before 1 September 2003 and the request to the other member state was made after that date. In another case the AJDC judged on 10 January 2005 (Nr. 200407867/1) that the time limits of Dublin II are even applicable in cases where the asylum request and the request to the other Member State dates from before 1 September 2003, while the reply of the other Member State dates from after 1 September 2003.

Article 6 Dublin II - minors

In one case article 6 was not respected: the Netherlands had asked Spain to take responsibility of the asylum application of a minor, while the mother stayed in the Netherlands. Spain accepted the responsibility based on article 13 Dublin II but was not informed of the presence of the mother in the Netherlands. The district court Zwolle judged on June 27th 2003 (AWB 03/22224) that the Netherlands was responsible on the basis of article 6 Dublin II.

Indirect refoulement: article 3 ECHR and Dublin II

There are two positive judgements from the district court Zwolle with respect to Greece

In a judgement of September 29th 2004 (AWB 04/30154) the court judged on the basis of the following article: Why Greece is not a Safe Host Country for Refugees, Skordas and Sitaropoulos, International Journal of Refugee Law, 2004(16) pp. 25-52, as well as information of the World Organisation Against Torture that the expulsion to Greece could result in indirect refoulement where an application for asylum had already been lodged in Greece.

In a judgement of February 10th 2005 (AWB 04/57933) the same district court judged on the basis of different sources among which were a letter of the Greek Council for Refugees, a letter of the Dutch Refugee Council and a report of UNHCR (November 2004) that expulsion to Greece could result in indirect refoulement. Asylum seekers who leave Greece while an asylum request is pending are not able to continue their procedure upon return to Greece nor are they able to start a new asylum procedure as leaving the country results in the case being interrupted (discontinued). (See Greece s. 16).

Article 3(2) and Eurodac

In a judgement of the district court Haarlem of November 3rd 2004 (AWB 04/45334) the court referred to article 3(2). Eurodac indications showed that a minor had been in Spain before his arrival in the Netherlands. The Netherlands did not ask Spain if the minor had applied for asylum there and instead took responsibility for the asylum request (which was rejected in the fast track procedure). The asylum seeker argued on appeal that Spain had to be asked to take responsibility. With reference to article 3(2) the court judged that it was not necessary to ask Spain to take responsibility as each member state had the right to deal with the case itself.

Article 3(2) and article 15 Dublin II

There seems to be a problem with the interpretation of article 15 if a former recognized refugee is naturalized. This is illustrated by a case in which the applicant appealed to article 3(2) and article 15. The applicant, an Iraqi woman, arrived together with three minor children in the Netherlands while her husband, who also originated from Iraq, lived in Sweden where he was a naturalized Swedish citizen. The woman, who wanted to go to Sweden, was stopped in the Netherlands during transit and applied for asylum. During the first interview she was asked whether she would object if Sweden took responsibility for the asylum request. After the interview however the asylum authorities did not take any steps to examine whether Sweden would be willing to take the responsibility of the asylum request or not. According to the asylum authorities Dublin II was not applicable in this case because the husband of the applicant was not an asylum seeker and had Swedish nationality. On appeal the applicant argued that with respect to article 3(2) and article 15 of Dublin II, the asylum authorities had been obliged to ask Sweden to take responsibility for the asylum request. The district court Haarlem

judged on April 12th 2005 (AWB 05/13491) that the Dublin Regulation does not compel the asylum authorities to examine whether another member state is responsible for the asylum request or whether another member state would, with respect to article 15, be willing to take responsibility. The asylum authorities always remain authorized to deal with an asylum request themselves. According to the court the humanitarian clause of article 15 is restricted to very special, individual cases and family reunification is only possible with asylum seekers. Given the fact that the husband has Swedish nationality and there is a procedure for family reunification, the court judged that the asylum authorities did not act contrary to Dublin II.

Armenian language analysis and contra expertise INALCO (French Institute)

In many cases where the asylum authorities doubt the nationality of a person, a language analysis is performed. Asylum seekers who dispute the result can perform a contra analysis.

In recent years there has been criticism of the quality of the language analysis performed by an Armenian language analyst at the Immigration and Naturalisation Service (IND) in the Country and Language Office. For this reason the IND took the initiative to start a contra analysis by themselves to see whether the comments regarding their language analyst were well founded or not. The results of the analyses of 12 languages were provided to a language analyst of the French language institute INALCO (Institute National des Langues et Cultures Orientales) in Paris. While the results of the contra expertise were not brought into the appeal procedure by the asylum authorities, a report of the Country and Language Office was provided in which it was concluded that the results of the French expert did not give cause to doubt that the analysis performed by the Armenian language analyst lacked expertise and objectivity, for the results of both analysts were largely the same.

However the district court of Rotterdam judged on September 28th (AWB 03/5310, 03/5306 and 03/5312) that the analysts used different points of departure and that the report of the IND Office Country and Language did not give much insight into the realisation of the conclusions of the report. For this reason the court judged that the expertise of the language analyst could be doubted.

The State lodged a higher appeal against this judgement. According to the Administrative Jurisdiction Division (AJD) (March 24th 2005, Nr. 200408740/1) the non-national must challenge the correctness of the language analysis with his/her own contra analysis. In this case it was not the alien who performed this but the IND. According to the AJD it has to be assumed that the language analyst has expertise unless there are concrete reasons to doubt this expertise. The report of the Office of Country and Language does not support this.

Developments Case Law Article 1F

Article 1F and article 3 of the European Convention on Human Rights (ECHR)

In many cases where asylum applicants are rejected on the basis of article 1F, the asylum authorities only execute an exclusion decision based on article 1F without any considerations being given to the possible risks of persecution or cruel punishment in breach of article 3 ECHR upon return to the home country. On July 2nd (Nr. 200400554/1) the AJD judged that this decision making was not in line with article 45 of the Aliens Act in which the consequences of a rejection are stipulated, including expulsion of an asylum seeker. For this reason asylum authorities have to detail in the rejection based on article 1F whether the person can be expelled or whether expulsion would be in breach of article 3 ECHR. If the expulsion will breach article 3 ECHR this does not mean that the asylum seeker will be granted a residence permit based on article 29(b) (article 3 ECHR). However according to the AJD it is undesirable that persons remain in the Netherlands without any residence permit, when they cannot be expelled on the basis of article 3 ECHR. To avoid this limbo situation, the asylum authorities when deciding on granting a residence permit, have to take three factors into consideration: 1) whether article 3 ECHR will prevent expulsion in the long run, 2) whether a third country is responsible for the rejected person and 3) whether there are particular circumstances in the individual case which make the denial of a residence permit disproportionate.

Article 1F (The Exclusion Clause) and child soldiers

The policy with regard to the exclusion of child soldiers based on article 1F is stipulated in TBV 2003/17 and C1/5.13.3.1. According to this policy article 1F is not applied to former child soldiers younger than 15. With respect to those between 15 and 18, the age at which the applicant became a child soldier is important and whether this was voluntary or not. If the applicant was recruited by force

at an age below 15, it will be less reasonable to apply article 1F. The facts and circumstances, which have to be taken into consideration, are: The age at which the applicant was recruited; the voluntary or involuntary nature of the recruitment; the consequences of refusal; whether or not serious violence was used during the recruitment; the duration that the applicant served as a soldier; whether it was possible to escape or to withdraw from personal participation in crimes; the forced use of drugs and/or medication; and whether the applicant received promotion for good performance.

In a judgement of October 18th 2004, the district court of Arnhem decided in favour of a former child soldier of UNITA (AWB 03/26654). The court judged that the decision of the asylum authorities had not sufficiently taken into consideration the young age of recruitment (11 years) as well as the impossibility for him to escape or withdraw from personal participation. According to the court it is generally known that UNITA punishes persons who are disloyal without mercy. For these reasons the asylum authorities had, according to the court, failed to examine the personal responsibility of the applicant in a careful way.

Eritrea, asylum request and article 3 ECHR

In two judgements of March 2nd (Nr. 200500781/1) and March 4th (Nr. 200409530/1) the AJD judged that, with respect to the country report of the Ministry of Foreign Affairs, it is not out of the question that Eritrea nationals who applied for asylum risk persecution which breaches article 3 of the ECHR upon their return to Eritrea.

Somali, ECHR, interim measures

Since January 30th 2004 the President of the ECHR ordered interim measures in several cases of members of minority groups from Somalia. On May 3rd 2004 an interim measure was ordered with the consequence that the AJD judged on May 28th 2004 (Nr. 200403186/1) that the interim measure prevented the expulsion of members of minority groups as well as persons who had no family or clan relations in the northern part of Somalia. As a result of this judgement the Minister for Aliens Affairs and Integration ordered a return moratorium for rejected Somali asylum seekers who fall into these groups. On 31 August 2004 the President of the ECHR also executed an interim measure in the case of a Somali who belongs to a majority clan (Darod). This interim measure concerns all Somali persons who would be internally displaced upon return to Northern Somalia. As a result of this interim measure the AJD judged that all Somalis originating from the South are not to be expelled to Northern Somalia (December 17th 2004, Nr. 200409774/1). On the 20th of February 2005, the Minister ordered a deportation moratorium for all Somalis who do not originate from the so-called safe areas. The departure moratorium was in force until July 1st 2005.

April 5th 2005, the European Court announced that there will be no fact-finding hearing and that it does not need more information concerning the situation in Somalia. The Court first will examine the admissibility of the complaints and the interim measures will be extended.

General Protection (article 29(d) Aliens Act 2000) and the policy of other EU-member states

If the general security situation in a county is very unsafe, asylum seekers originating from this country are eligible for an asylum residence permit (article 29(d)). The question of whether a policy of categorical protection applies depends on three criteria: 1) the nature of the violence, 2) the activities of international organisations in that country and 3) the policy of other EU-member states. While the first factor used to be the most important one, over the last few years the policies of other states appear to have become increasingly more important. In the case of Liberia the minister stated that in spite of the widespread and intense violence in the country no policy of categorical protection was indicated, because of the absence of such a policy in other EU-member states. According to the AJD this policy is not unreasonable (AJD, September 6th, Nr. 200500646/1).

No general protection for North Iraq

While Iraqi asylum seekers from Central and Southern Iraq are eligible for asylum based on the categorical protection policy for these parts of Iraq, asylum seekers originating from Northern Iraq have to return if their asylum request is rejected.

March 3rd 2005 (Nr. 200410603/1) the AJD judged that the fact that forced expulsion to Northern Iraq is not possible at this moment is no reason to have a policy of categorical protection in place. The AJD considers in this respect that, according to the Minister, voluntary return is possible.

No general protection for Chechens from the Russian Federation

While the minister for Aliens Affairs and Integration holds that the security and human rights situation in Chechnya is precarious, no policy of categorical protection is initiated, for according to the minister there is a relocation alternative in other parts of the Russian Federation. In a judgement of April 6th 2004 (Nr. 200500031/1) the AJD judged that this policy is reasonable. This is in spite of the point of view of UNHCR of March 1st 2004, in which it states that all ethnic Chechens whose place of permanent residence is the Chechen Republic and who seek asylum abroad, are in principle considered to be in need of international protection.

Detention

Detention of minors

According to asylum policy, A5/1.5 Vc 2000, detention based on article 6(1)(2) Vw 2000 has to be restricted as far as possible, especially in cases of minors younger than 16 years. So in cases where minors are detained in order to expell them, the expulsion has to take place as soon as possible, so that the detention will be restricted. The fact that the alien has a departure duty (article 5 Vw 2000) does not change this. The AJD considered this in a judgement of March 23rd 2004 (Nr. 200308926/1).

No detention if forced expulsion is impossible

The AJD judged on January 14th 2005 (Nr. 200409900/1) in a case of a rejected asylum seeker from Northern Iraq that detention is unlawful, where there is no prospect of forced expulsion. In cases where forced expulsion is not possible and return can only take place through voluntary departure, detention based on departure is unlawful.

21 Development s in the use of the exclusion clauses of the Refugee Convention in the context of the national security debate

For general developments see above under case law. There were no developments specifically related to the security debate.

22 Developments regarding readmission and cooperation agreements

According to the annual report of the Ministry of Foreign Affairs over 2004, there were no successful negotiations with third countries on readmission agreements, neither bilaterally nor by the EU. The EU had started negotiations with Albania, Ukraine, the Russian Federation, Turkey, Pakistan, Sri Lanka, China, Algeria and Morocco.

The report further mentions specific cooperation with EU accession countries both in the context of Matra (Social Transformation Programme for Central and Eastern Europe) /ADEPT, Phare pre-accession and Phare twinning. The Matra/Adept programme of the Dutch Ministry of Foreign Affairs aimed at familiarising civil servants from the new EU countries and EU accession countries with the EU acquis. The Matra-flex programme, which started in 2004, will build on this.

The annual Report further mentions cooperation between the EU and third states. A partnership and cooperation agreement was concluded with the Russian Federation in October 2004. However neither agreement on visas, readmission and return, nor cooperation within the framework of the Neighbourhood programme were included in this. Further Partnership and Cooperation Agreements (PCA's) were concluded with Armenia and Georgia. Georgia, Armenia and Azerbaijan are included in the Neighbourhood Programme. PCA's with Azerbaijan, Kazakhstan, Kyrgistan, Moldova, Ukraine and Uzbekistan are anticipated in 2005. The Council agreed upon specific Action Plans regarding Ukraine and Moldova.

Within the Framework of protection in the region and Convention plus, the Netherlands engaged in several UNHCR projects in Africa.

6 The Social Dimension

23 Changes in the reception system

In 2004 the capacity of the reception system was further reduced from 60,000 to 40,000 places. The way the COA (the organisation responsible for the reception of asylum seekers) reduces the capacity of the reception system was again subject of parliamentary debate. After discussions in Parliament the minister said that the needs of children would be better taken into account when centres are being closed down. The minister also called for the improvement of the quality of the reception system by closing down centres with lower standards.

A new reception system was introduced in January 2005. Reception centres were divided into five 'orientation and integration' centres and other centres became 'return' centres.

When an asylum seeker asks for asylum and his application is not rejected during the 48 hour procedure he or she will go to the orientation and integration centre. When he or she is granted asylum, housing will be continued in the orientation and integration centre, until placement in regular housing takes place. As soon as an asylum seeker receives a negative decision and appeals he will be sent to the return centre, where the asylum seeker will be obliged to follow a programme to stimulate return. 2005 is a transition year; the system will actually come into force in 2006.

In 2004, a pilot project was started whereby asylum seekers with a status in the centres could begin Dutch lessons and orientation in Dutch society and the labour market. The project will be evaluated in 2005 and might become a structured part of the new reception system.

The Reception Directive was implemented in February 2005. Important changes as a result are:

- The financial allowance of asylum seekers that had not been raised since 1997 was raised by one euro per week following the implementation of the European Reception Directive. The Parliament was not satisfied with this and the minister promised an investigation to see if the financial allowance is sufficient. The results will probably be presented in the summer;
- Protection of the unity of the family when asylum seekers are placed or reallocated to another centre;
- Access for legal advisors and NGO's to accommodation centres;
- A right to reception facilities for asylum seekers who get a status outside the reception system. Asylum seekers now have the opportunity to wait for housing in a reception centre. However people who make a second asylum request are still not entitled to reception facilities although this might be contrary to the provisions of the Reception Directive
- It will be possible to punish asylum seekers (by withdrawing part of their allowances) if they do not participate in the orientation or return programme that the COA is offering them. This is contrary to the provisions of the Reception Directive since the Directive doesn't mention this ground for withdrawal of reception conditions.

24 Changes in the social welfare policy relevant to refugees

Apart from the changes under integration and reception, there were no significant changes in welfare policies. However, the transfer of competences from the Aliens Police to the Immigration and Naturalisation Service (IND) regarding the issuance of documents and renewal of permits caused serious logistical chaos in 2004. As a result, documents of migrants and refugees expired and were not renewed in time. Many migrants and refugees had serious problems accessing social benefits and/or lost their job, as they did not have valid documents. These problems have still not been resolved in 2005 and are currently being investigated by the National Auditor's Office.

25 Changes in policy relating to refugee integration

The government (Balkenende II) that came to power in the spring of 2003 drew up some general guidelines for the coming period. While the plans were presented as measures to promote the integration of foreigners, including refugees, most of them meant stricter demands to integrate newcomers and people who had lived in the Netherlands for a longer period ('old comers').

The Minister of Immigration introduced these plans on Integration in 2003 and most concerned the alteration of the existing Integration of Newcomers Act (WIN, 1998).

In 2006 the current WIN will be renamed the Integration Act (Wet Inburgering). This act will oblige everyone, both newcomers and those who have lived in the Netherlands for a longer period ('old comers'), to take an exam related to their integration. If a person passes the test within three years, part of the cost is refunded. If a person fails to pass the test within five years, he/she will be fined.

A pass is a prerequisite for permanent status i.e. 'for an indefinite period'.

The consequences for refugees

Refugees who are granted status will be offered a basic pre-integration programme while they are waiting for independent housing in a municipality. Once they are housed in a municipality they can register for social benefits. This means that the municipality will offer them an integration programme. Refugees who are entitled to social benefits will have to pay a contribution of 270 euros.

In 2005 a new law will be introduced: the Integration in the Country of Origin Act (Wet Inburgering in het Buitenland (WIB). Newcomers who come to live in the Netherlands voluntarily will have to pass a basic test in their country of origin, concerning knowledge of Dutch language and/or society, before they are allowed to apply for a residence permit. This law applies primarily to people who want to join their family or want to marry a person living in the Netherlands. The persons concerned will have to provide and pay for courses themselves. In order to comply with the EC Directive on family reunification, family members who wish to be reunited with a refugee living in the Netherlands are excluded from this measure.

Women

A special commission was established whose primary task is to suggest initiatives promoting participation of ethnic minority women in society, including their participation in the labour market. The commission will also look at initiatives addressed at youth unemployment, since a large number of the unemployed have an ethnic minority background.

Employment

The special law promoting labour market integration for minorities expired in 2003 and therefore a follow-up action plan, which aims at promoting diversity management in cooperation with employers, has been presented to Parliament. Activities under way include voluntary registration of diversity at the workplace and increasing the role of the central government as pioneer in employing ethnic minorities.

Social Cohesion

After the murder of the controversial cineaste Theo van Gogh 2 November 2004 the whole country was shocked. The fact that a young man of Moroccan descent had planned and committed this crime, stirred up the already heated debate on integration. It was clear that concrete measures needed to be taken to prevent society from disintegrating and to close the gap between 'foreigners and Dutchmen'. Among others, the Dutch cabinet took the initiative to ask all relevant organisations working in the field of integration and civil society to meet and present possible solutions. At this meeting the director of the Dutch Council for Refugees seized the opportunity to launch an employment offensive for refugees. Several parties welcomed this. The employment offensive for refugees will be put into practice in the second half of 2005.

26 Changes in family reunion policy

In November 2004 the income requirement for family reunification was raised to 120% of the minimum wage (to €1380 p/m). It used to be equal to the subsistence level, as provided for in the Dutch Work and Benefits Act. Also the minimum age for family formation was raised from 18 to 21 years. The policy on family reunion became stricter by giving the immigration service more reasons to turn down a request in the case of a breach of public order.

The law containing the obligation to pass a test in basic Dutch before entering the country will probably come into force in the autumn of 2005. The law has already been approved by parliament. Family members of refugees are exempted but family members of asylum seekers with a regular status (like medical or some humanitarian like statuses) will not be exempted. Family members won't be exempted in a case where:

- The family reunion procedure started later than three months after the refugee received his/her status;
- The spouse or children have a different nationality from the refugee himself;
- The refugee has a regular status e.g. for medical reasons.

In 2004 the Minister presented new proposals to Parliament on fees for a residence permit. The costs for permits and yearly renewal were raised drastically in 2003. They will be lowered by July 2005, but the costs of the necessary entry visa for family reunion or family formation will be raised from €50 to €803. Family members of refugees will be exempted in most cases from these enormous fees.

A legal procedure was started by 25 migrant organisations (including the Dutch Council for Refugees) against the high fees. In February 2005 a court ruled that the high fees were not allowed for Turkish citizens because of the Association treaty with Turkey. Both the State and the migrant organisation will appeal the verdict.

7 Other Policy Developments

27 Developments in resettlement policy

In 2004 a new resettlement policy was announced. For the last few years the Netherlands was supposed to resettle 500 refugees a year. Due to the very restrictive policy regarding the recognition of refugees, almost half of the nominations from UNHCR were being turned down, and only 700 refugees filled the quota of 1,500 for the last three years. For the next three years the Netherlands will resettle 500 refugees per year but the policy is now based on selection missions. In practice this makes it easier to fill the quota than on a file based selection. The first two selection missions carried out by the Dutch government went to Uganda (for mainly Congolese refugees) and to Ecuador (Columbian refugees). There will be four selection missions per year.

28 Developments in return policy

Government decision to expel 26 000 asylum seekers

In February 2004 the Dutch parliament approved the plans of the Dutch Minister of Immigration and Integration for the return of those asylum seekers who applied for asylum before April 1st 2001 and whose application was or will be rejected within three years. In the media, the image that there existed a group of 26,000 rejected asylum seekers who were still residing in the Netherlands prevailed. In fact, the main part of this group is still waiting for a final decision on their procedure. In July 2004 a special project, the "Project Return", started to facilitate the return of those asylum seekers from this group whose appeals were rejected by the courts. A departure centre was opened in July 2004.

According to Minister Verdonk the project includes the following measures to facilitate the return of asylum seekers whose applications have been rejected:

- Immigration experts will give asylum seekers whose applications have been rejected counselling for a period of eight weeks to prepare them for their return.
- Asylum seekers whose applications have been rejected wanting to return to their own countries will be given assistance. The government will pay for their flight tickets, and give them some money to help them settle and build a future in their country of origin.
- Asylum seekers not returning immediately will be transferred to a departure centre, where they will be given individual guidance for another eight weeks to prepare them for their return. After this four month period, anyone who can demonstrate objectively that they cannot return to their own country will be given a residence permit.
- Those who can return, but do not want to, will run the risk of being held in detention.

According to the minister, it all depends on the cooperation of the people in question. If they still refuse to return after going through the entire return procedure, the government cannot force them to do so. For asylum seekers who applied for asylum under the Aliens Act 2000, support is withdrawn by right four weeks after the final negative decision. When their application is finally rejected, asylum seekers whose applications have been rejected have to leave the country within four weeks. If they do not leave, they are considered to remain illegally in the country. The only support left for them is medical support in life threatening situations, and education for children who are obliged by law to go to school. The Aliens Act does not provide for an expulsion time limit. However, if the alien cannot be expelled, (further) detention is not allowed. Even if the alien himself is not very cooperative, this principle still holds. If a detention lasts longer than six months courts are critical if there is a realistic chance, that expulsion is still feasible.

(Note: there is a difference with border detention: aliens who are detained because they don't qualify for access into the Netherlands, can also be held in custody if deportation is impossible, as long as they are able to leave the country of their own accord.)

Results of the return policy

In February 2005 the Dutch Immigration Service handled about 9,000 cases of the total amount of 26,000 asylum seekers. 41 % received a residence permit. More than half of these residence permits were given on asylum related grounds, 23 % left the country 'in a controlled way', and 36 % absconded. The large amount of asylum seekers who are absconding caused a lot of indignation in parliament, as the Minister of Immigration and Integration had promised that her return measures would result in a closed asylum system; either an asylum seeker would receive a residence permit, or he/she would leave the Netherlands.

In the Return Project Rita Verdonk, the Minister of Immigration and Integration committed herself not to return family members if it would separate them from each other. In practice the Minister is keeping her promise only for those families that already existed before entering the country, and not for those who formed a family after arriving.

If there are members within a family of different nationalities, the minister will look for a country where all family members would be safe. If a country cannot be found where all family members can go, the minister can give the family permission to stay in the Netherlands. In a situation where one or more family members' applications are rejected and other member's applications are still under

consideration they will not be returned until the other family members also have their final negative decision. This holds only if the family existed already before arriving in the Netherlands. If one of the partners received a residence permit, and the other did not, and the family already existed in the country of origin, they can apply for family reunification.

The Minister awards a residence permit in only a few cases because the asylum seeker could not return for reasons beyond his control. It is unclear, what is expected from the asylum seeker, and how he/she can demonstrate that he/she has done everything possible to obtain travel documents. It is also far from clear what kind of assistance and facilitation asylum seekers can receive from the Dutch authorities in getting their travel documents. The given period of time is in many cases too short for embassies to issue the required travel documents.

Cooperation on Return with third countries

The Netherlands seems to have concluded informal return agreements with third countries. The Dutch authorities are reluctant, and in some cases unwilling to disclose information concerning these agreements. In some cases the agreements/arrangements are within the public domain. According to the government's 'Note on Returns' of November 2003 return arrangements exist with Afghanistan, Algeria, the Democratic Republic of Congo and Nigeria. Also arrangements with Serbia/Montenegro are acknowledged.

The Dutch Council for Refugees has requested the disclosure of all arrangements, as they may be important to establish security concerns related to returns as well as for establishing opportunities for the return of rejected asylum seekers. The termination of reception and the possibility to obtain a residence permit for the inability to return are linked to the fiction that all asylum seekers can return to their country of origin/country of habitual residence, unless they prove otherwise.

According to a letter from the Ministry of Justice to the Dutch Council for Refugees in October 2004, the Netherlands has agreements (Memorandum of Understanding, practical arrangements, or other) with China, Jordan, Angola, Somalia (Puntland) and Guinea. Although the Minister of Justice indicated similar arrangements are in place with regards to Iran, Syria, Lebanon, Azerbaijan, Armenia, Ethiopia, Eritrea, Mauritania, Sudan and Chad, the Dutch Ministry of Justice did not want to acknowledge any arrangements or agreements.

29 Developments in border control measures (Jan. 2004 - March 2005)

Prolonged refusal of entry of asylum seekers intensified

There is a tendency towards refusing more asylum seekers entry and sending them to closed reception centres or detention centres (see Country Report 2003, Section 28). Increasingly asylum seekers are transferred from Schiphol Airport to the Grenshospitium (border detention centre), while the fiction of refusal of entry is maintained. Reception/detention in a closed facility can continue for six weeks if a decision on the asylum request is expected within that period of time. Detention of these asylum seekers can even continue when their appeals against a rejection of their claim are allowed, the detention of these asylum seekers can even continue to apply while the Immigration Service is preparing a new decision on their asylum request.

30 Other developments in refugee policy

There were developments regarding unaccompanied minors not qualifying for an asylum status:

- Unaccompanied minors, who do not qualify for an asylum status, are eligible for a residence permit provided that there is no adequate reception in the home country. Adequate reception includes: a foster home or reception in a child institution. The Netherlands currently pays for reception facilities in Angola and will also pay for reception facilities in Democratic Republic of Congo in 2005. Also the Republic of China arrangements are concluded so that there is always reception available for each child returned. With respect to some other countries of origin, the Dutch immigration board makes the assumption that there must be reception for the child because it is not possible for a child to arrange to come to the Netherlands and the child is denied asylum status on this basis.

Due to these policy changes and practices regarding adequate reception in the home countries, the number of (asylum) applications from unaccompanied minors in the Netherlands has dropped dramatically:

Table 6:

2000	6.705	15.4%
2001	5.951	18.2%
2002	3.232	17.3%
2003	1.216	9.1%
Total	594	6.0%

- The Courts overturned another restrictive policy regarding unaccompanied minors in 2004. According to a policy of 2001, children who were accompanied by an adult who was not a formal caretaker were not considered to be unaccompanied minors. Also children who had a relative (up to the fourth degree) living in the Netherlands, were not considered unaccompanied minors, as this relative - although not a parent - was supposed to take the child into his/her care. This caused particular problems if the unaccompanied minor was not granted asylum, since the child was also not granted a status for unaccompanied minors, the family member (sometimes refugee) or accompanying adult was made responsible for their return. The Administrative Jurisdiction Division (AJD) of the Council of State (the highest Court in asylum cases) considered that this policy was not in line with the alien's legislation and that the state should take care of the child, and take care of their return, including finding adequate reception. It lasted until April 1st 2005 when the old policy from before 2001 was restored. The definition of an unaccompanied minor is now: a child who asks for asylum at the border and is not accompanied by a parent or a guardian appointed by law.

8 Political Context

31 Government in power during 2004

The government coalition of Prime Minister Balkenende (CDA) is made up of Christian Democrats (CDA), Liberal conservatives (VVD) and Liberal progressives or 'left wing' liberals (D66). The opposition parties are the Labour Party (PVDA), List Fortuyn Party (LPF), Green Party (GL), Protestant Christian parties (CU) and the Reformed Christian Party (SGP). In 2004 Wilders, MP for the VVD, left his party while keeping his seat in Parliament as an independent MP. His new 'Group Wilders' aims at filling the gap of the populist LPF's whose support seems to be dwindling. In practice, the government usually finds a majority for its migration and asylum policies, as the LPF and Wilders, although in the opposition, usually support restrictive measures on migration and asylum, which sometimes go too far for coalition-partner D66.

32 Governmental policy vis-à-vis EU developments

Under the Dutch EU-Presidency the Hague Programme was concluded. Although this builds on the Tampere-Agenda and aims at establishing a Common European Asylum System, the focus of the Dutch government seems to be strongly on 'the external dimension' of EU asylum policies. The Annual Report of the Ministry of Justice for example merely refers to internal EU-asylum policies, but extensively discusses the co-operation with third countries, such as protection in the region, the causes of migration and the problems in transit countries (especially in the Mediterranean), as well as return readmission and border control.

Protection in the region is a particular priority for the Dutch government. Both at the EU-level and at the UNHCR and UNHCR's Convention Plus, the Dutch government actively promotes initiatives, aimed at offering solutions for refugees in protracted situations. However, increasing readmission, interception and border control are part of the Dutch external dimension approach, which raises serious

doubts concerning the will to come to true burden and responsibility sharing approaches, by taking refugee protection as their first concern.

A more active policy to fill the quotas for refugee resettlement should ensure that 1,500 refugees be resettled in three years. There have so far been no proposals to expand the resettlement quotas.

The Dutch government is actively promoting its national asylum policies, which it perceives as particularly successful in bringing down the number of asylum applications. Key elements are the accelerated procedure, the revocable asylum status, but also the 'marginal' judicial screening of IND decisions, the shifted burden of proof for undocumented asylum seekers and the procedures for subsequent applications. These 'policies' are to a significant extent a result of the jurisprudence of the Administrative Jurisdiction Division of the Council of State (AJDC), the last instance court in asylum cases. They are generally criticised by UNHCR, academics and national and international NGO's, and are all part of procedures pending before the European Court of Human Rights.

33 Asylum in the national political agenda

Integration and multicultural society, and related to this, (illegal) migration and asylum, are among the most important national issues for the political and public debate. The murder of Theo van Gogh, often placed in the context of terrorism, has further intensified this. Ms. Verdonk, minister for Aliens Affairs and Integration, and her media-activities play a significant part in the debates. Her approach is appreciated by some as direct and clear to immigrants, however, it is considered as particularly tactless by others, who point out that minister Verdonk is polarising and stigmatising migrants in a complex national context. A majority in Parliament virtually never challenges the government's policies.

As the numbers of asylum seekers are dropping rapidly, asylum is not so much a separate issue, but rather seen in the context of migration and integration. In this it has an important symbolic role - restrictive policies are perceived as rectifying the allegedly wrongful liberal approach on migration and asylum of former governments. Thus, the intense and much criticised use of the 48 hour accelerated procedure, is portrayed as a rectification of the long and ineffective asylum procedures under the Aliens Act 1994. The harsh and indiscriminate termination of reception policies is seen as a clear message that failed asylum seekers should return. The Dutch government does little to contribute to supporting refugee protection. The building down of the asylum infrastructure, closing of reception centres, and finding other activities for staff of immigration and reception agencies, is a constant actor in the Dutch asylum context.

The return policies however raise heated debates, especially the threat to deport the 26,000 'once rejected' - see under returns. The fact that no amnesty was granted was and is heavily disputed and receives a lot of media interest.

Biography

Wilma Klaassen/Leonie Harbers - Information Specialists (Questions 1-16)

Geert Lamers - Policy Officer (Questions 17,18, 29)

Soheila Mazaheri - Legal Adviser (Questions 20-21)

Stefan Kok - Policy Officer (Questions 22, 24, 31, 32, 33)

Ariane den Uyl - Policy Officer (Questions 23, 24, 26, 27)

Roswitha Weiler - Senior Policy Officer (Question 25)

Jurry Ekkelboom - Policy Officer (Question 28)

DUTCH COUNCIL FOR REFUGEES

The Dutch Refugee Council Association is an independent, broadly based professional organisation. Based on the Universal Declaration of Human Rights, it works to protect asylum seekers and refugees. This work is mainly done by its many volunteers and entails personal support and the protection of refugees' interests during admission, reception and social participation, primarily in the Netherlands.

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