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# National Country Report

## *The Netherlands*



## ACKNOWLEDGMENTS

This report was written by Steven Ammeraal, Frank Broekhof and Angelina Van Kampen and was edited by ECRE

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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 and includes the development of a dedicated website which will be launched in the second half of 2013. 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 for 2012 are not yet available due to the implementation of a new computing system since January 2012.<sup>1</sup>

### Overview of the legal framework

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

Title in English	Original title	Abbreviation	Weblink
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.**

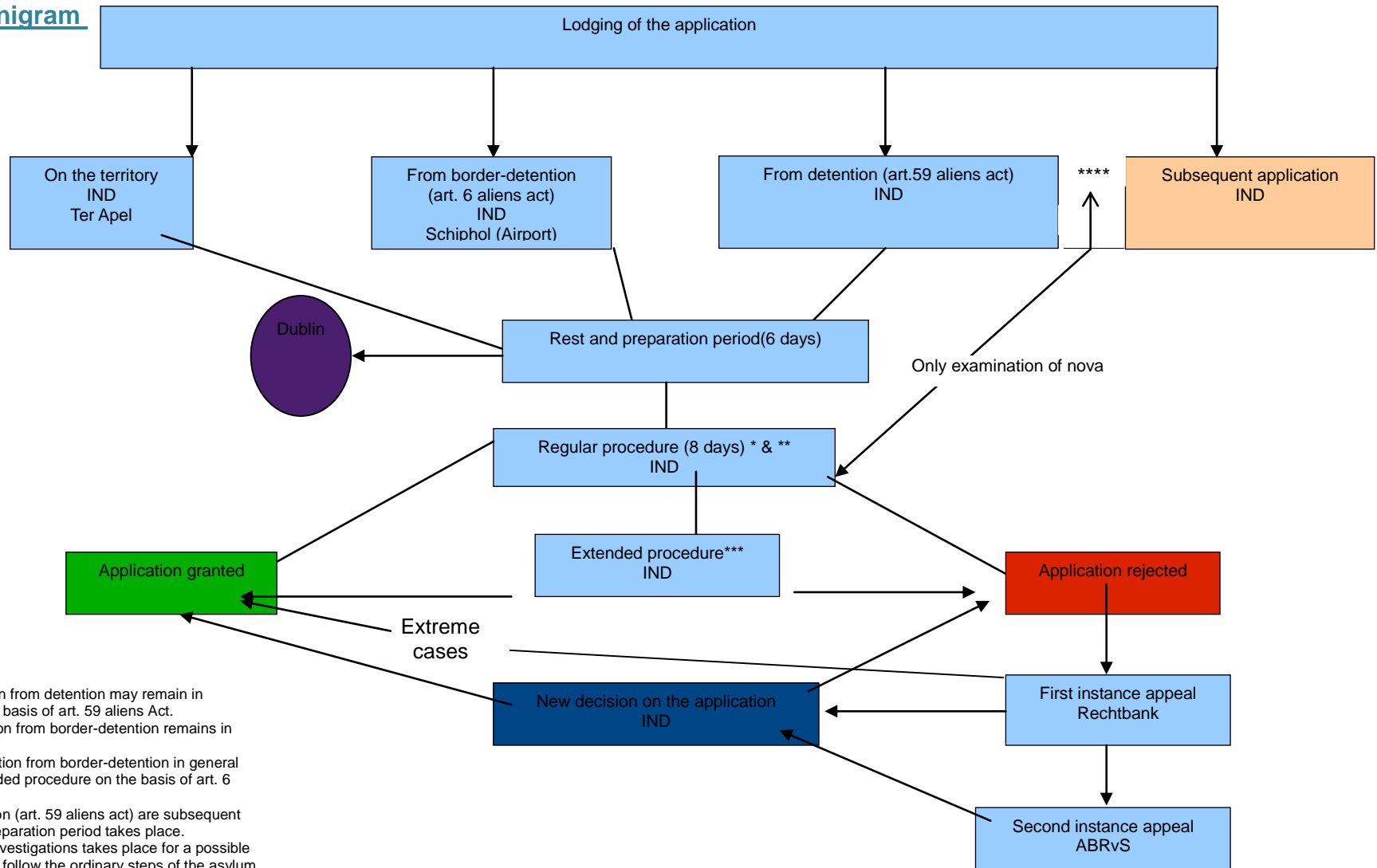
Title in English	Original title	Abbreviation	Weblink
2000 Aliens Decree	Vreemdelingenbesluit 2000 (Vb 2000)	2000 AD	<a href="http://wetten.overheid.nl/BWBR0011825/volledig/geldigheidsdatum_21-02-2013">http://wetten.overheid.nl/BWBR0011825/volledig/geldigheidsdatum_21-02-2013</a> (Dutch)
2000 Aliens Circular	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)

<sup>1</sup> Eurostat, Asylum applicants and first instance decisions on asylum applications: 2012, Issue number 5/2013, May 2013.

# Asylum Procedure

## A. General

### 1. Organigram



\* The asylum seeker who filed their application from detention may remain in 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.

## 2. Types of procedures

### Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure:  yes  no
- border procedure:  yes  no
- admissibility procedure:  yes  no
- accelerated procedure:  yes  no
- Dublin Procedure  yes  no
- Extended Procedure  yes  no

## 3. List of authorities intervening in each stage of the procedure (including Dublin)

Stage of the procedure	Competent authority in EN	Competent authority in original language (NL)
Registration at the border	Royal Military Police	Koninklijke Marechaussee
Registration on the territory	Aliens Police	Vreemdelingenpolitie
Application at the border	Immigration and Naturalisation Service (INS)	Immigratie en Naturalisatiedienst (IND)
Application on the territory	INS	IND
Dublin (responsibility assessment)	INS	IND
Refugee status determination	INS	IND
Appeal procedures: -First appeal -second (onward) appeal	- Regional Court - Council of State	-Rechtbank - Afdeling Bestuursrechtspraak Raad van State (ABRvS)
Subsequent application (admissibility)	-Regional Court -Council of State	-Rechtbank -ABRvS
Repatriation and return	Service Return and Departure	Dienst Terugkeer en Vertrek (DT&V)

## 4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? Yes
Immigration and Naturalization Service (INS)	<b>Not available</b>	Ministry of Security and Justice	Yes, the Secretary of State / Minister has discretion powers to decide in individual cases, but not in asylum cases <sup>2</sup>

<sup>2</sup> Article 3.4.3 Alien Decree gives the Secretary of State the power to grant a residence permit on humanitarian grounds. This is not an asylum permit but in most cases it concerns failed asylum seekers. To grant this permit there

## 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.

Asylum seekers are entitled to a rest and preparation period (*Rust- en Voorbereidingstijd*) before their asylum procedure starts.<sup>3</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>4</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>5</sup>

After the rest and preparation period has ended, the regular asylum procedure starts. In the first instance, all asylum seekers are channelled in the regular asylum procedure (*Algemene Asielprocedure, AA*) which is, as a rule, designed to last eight working days. 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 regular procedure can be extended with 6 working days if more time is needed (this is not the extended regular procedure!)

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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>3</sup> Article 3.109 2000 Aliens Resolution.

<sup>4</sup> See the website of [MediFirst](#).

<sup>5</sup> [The Repatriation and Departure Service of the Ministry of Security and Justice](#).



The short regular procedure can be described as fast, but technically it is not an accelerated procedure. Every asylum application is initially examined in the short regular procedure. Less complex or evident cases will be decided within eight days in the “short” regular procedure while the examination of more complex cases is continued in the extended regular procedure (which can take 6 months to a year to decide). However, Amnesty International and the Dutch Council for Refugees refer to the short regular asylum procedure in the Netherlands as 'the accelerated regular procedure'.<sup>6</sup> Less complex and evident cases, such as family reunification<sup>7</sup> and subsequent applications are mostly dealt with in the short regular procedure. Positive as well as negative decisions can be taken in the short regular procedure.

There is only one asylum status in the Netherlands. However, there are four different grounds on which this asylum status may be issued (besides the grounds for family reunification). These four grounds are,<sup>8</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.

C) Humanitarian grounds; there are compelling humanitarian reasons which are related to the reasons for departure from the country of origin, because of which the individual cannot reasonably be required to return to their country of origin.

D) Categorical protection; if the State Secretary for Security and Justice is of the opinion that a return to a country is of exceptional hardship in relation to the overall situation there.

In the near future grounds C & D will most likely be abolished, so asylum requests in that case, will only be granted on the basis of international treaty obligations.<sup>9</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 D if they do not qualify on the grounds under A, B and C. When an asylum seeker receives a residence permit on for example on ground D, they cannot appeal for a 'higher' status (A, B or C). 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>10</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 D 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 a residence permit on the D-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

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<sup>6</sup> Amnesty International & Vluchtelingenwerk Nederland, [Asielbarometer](#) (Asylum barometer), 2011, p. 5.

<sup>7</sup> Art. 29.1 e and f 2000 Aliens Act.

<sup>8</sup> Article 29 2000 Aliens Act.

<sup>9</sup> House of Representatives, session year 2011–2012, 33 293, no. 2

<sup>10</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.

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>11</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.

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

## 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 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.

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>12</sup> The Royal Military Police refuses the asylum seeker entry to the Netherlands and the asylum seeker will be detained.<sup>13</sup> Problems have been reported by asylum seekers that the Royal Military Police did not recognize 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 recognized 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>14</sup>

The IND takes care of the transfer of the asylum seeker to the Application Center Schiphol, where the further registration of the asylum application takes place. The Application Center 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 to report, when it is considered late, the IND may decide to use stricter requirements for accepting the credibility of the asylum seeker's account<sup>15</sup>.

<sup>12</sup> Voordat jouw asielpprocedure begint – AMV (Before your asylum procedure starts – UAM, July 2010, page 2.

<sup>13</sup> Article 3.3 2000 Aliens Act.

<sup>14</sup> [Report by the Dutch National Ombudsman](#), 1 July 2010.

<sup>15</sup> Regional Court Arnhem, AWB 08/4539, Judgment of 29 February 2008, asylum seeker reported four days after arrival. This is considered too late.

## 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): normally 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 in a short regular procedure and an extended regular procedure. Every asylum application will be assessed in the short regular procedure. During this procedure the Immigration and Naturalisation Service (IND) can decide to refer the case to the extended regular 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 above short overview of the procedure for more information).

#### *The short regular procedure*

A rejection of an asylum application in the short regular procedure has to be issued within eight working days. In exceptional cases, this deadline may be extended by six days. Therefore the total length of the procedure is maximum two weeks.<sup>16</sup> For the overview of the Dutch asylum procedure it is necessary to explain what steps are taken during this 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:** formal submission of the asylum application and the 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*)

<sup>16</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.

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.

### *The extended regular procedure*

If the IND is not able to make a decision on a request for asylum within the time frame of the short regular procedure the asylum seeker is referred to the extended regular 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 regular 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>17</sup>

Contrary to the short regular 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 has agreed to take over/is responsible for examining the asylum application, this period for submitting a view on the intended negative decision is reduced to one week! In the extended regular procedure, the IND also has to present a new intention to reject the asylum application if it changes its reasoning (unless these changes are only superficial), so that the lawyer can react to this reasoning before a decision is taken. In the extended regular 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 regular 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 the aliens policy (Aliens Circular), the Aliens Act and the Netherlands Nationality Act on behalf of the Ministry of Security and Justice. The fulltime-equivalent (fte) was 3.338 at the end of 2011 and the costs of the IND were 364 million € in 2011, 55% of which were related to staff costs.<sup>18</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).

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<sup>17</sup> Article 42 2000 Aliens Act.

<sup>18</sup> Annual report IND 2011, page 38.

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular 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

An asylum seeker whose application for asylum is rejected within the frame work of the short regular 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 regular procedure has suspensive effect. The appeal should be made within four weeks after the rejection.

After a decision in the short and extended 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>19</sup> may appeal against the decision of the regional court to the Council of State.<sup>20</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 regular 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 recognized 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 time of application '*ex tunc*'. There are no obstacles in practice with regard to the appeals in asylum cases.

<sup>19</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>20</sup> Article 70 sub 1 2000 Aliens Act.

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the regular procedure?  Yes  No
- 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 ever conducted through video conferencing?  Yes  No

The legislation provides for an obligation to organise a personal interview of all asylum seekers.<sup>21</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>22</sup> This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.<sup>23</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 practice there are no problems known concerning this subject. The IND may only use certified interpreters by law.<sup>24</sup> But in certain circumstances the IND may derogate from this rule, for example if an asylum seeker speaks a very rare dialect.<sup>25</sup> Asylum application and the obligation of the IND to provide interpreters for the interview have been confirmed in the jurisprudence.<sup>26</sup>

Interpreters are obliged to perform their duties honestly, conscientiously and must render an oath.<sup>27</sup> The IND uses its own code of conduct which is primarily based on the general code of conduct for interpreters.<sup>28</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>29</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>30</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

<sup>21</sup> Article 3.112 2000 Aliens Resolution.

<sup>22</sup> Article 38 2000 Aliens Act.

<sup>23</sup> IND, [Toelichting inzet tolken](#) (Explanatory notes use of interpreters), February 2013, p. 1.

<sup>24</sup> Article 28.1 Law Sworn Interpreters and Translators.

<sup>25</sup> Article 28.3 Law Sworn Interpreters and Translators.

<sup>26</sup> Regional Court The Hague, AWB 12/34730, Judgment of 20 November 2012.

<sup>27</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>28</sup> IND, [Toelichting inzet tolken](#), p. 5.

<sup>29</sup> [Concord's website](#).

<sup>30</sup> House of Representatives, session year 2000–2001, 26 732, no. 95.

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. Academic research has revealed at some point a number of problems concerning the quality of reports and transcripts.<sup>31</sup>

On the 14<sup>th</sup> of March 2013, the IND issued a press release announcing that they ended their collaboration with two Uyghur interpreters who are being suspected to spy for the Chinese authorities.<sup>32</sup> Uyghurs are a Turkish ethnic group who are being persecuted and discriminated by the Chinese authorities because they are seen as political enemies.<sup>33</sup> The Dutch Council for Refugees and Amnesty International were shocked that these interpreters could have informed the Chinese authorities about the application of Uyghur asylum seekers in the Netherlands. It is known that the Chinese authorities regard an asylum application as a political act, which results in firm sanctions. There were already signals in 2012 from The General Intelligence and Security Service (AIVD) that the Chinese authorities were keeping an eye on fled Uyghur community in the Netherlands, it is however astonishing that they could infiltrate in the Dutch asylum system. The IND has announced an investigation and until further notice no Uyghur asylum seeker will be send back to China. It is assumed that a group of 1000 Uyghur asylum seekers whose applications have been rejected have been in contact with one of these interpreters. A special Unit has been set up to investigate this disgrace and a decision has to be made by the Secretary of State for Security of Justice how the Uyghur caseloads should be handled.

### 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 is designed. To actually apply for asylum 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. So 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, (*Raad voor de Rechtsbijstand*), 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. But this does not mean that an asylum seeker has to choose the lawyer who is appointed to him. If the asylum seeker has their own lawyer (in practice mostly in case of a subsequent

<sup>31</sup> Nienke Doornbos, *Op verhaal komen, Institutionele communicatie in de asielpcedure, (Gain strength, Institutional communication in asylum procedures)*, Nijmegen, Wolf Legal, Publishers, 2006.

<sup>32</sup> [IND Press release.](#)

<sup>33</sup> Dutch Council for Refugees and Amnesty International, *Geen weg terug, risico's bij gedwongen terugkeer van Oiegoeren*, (No way back, risks of forced return of Uyghurs), April 2013.



application) than they can make use of this lawyer. If this self-chosen lawyer is recognized by the Legal Aid Board as an official asylum lawyer, the Legal Aid Board will pay for it. 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 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 criticized 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 subsequence application. Only after several recognized '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. Also, in the near future, there will be some more cutbacks in remuneration under the legal aid scheme. The association of the Dutch lawyers has raised a number of concerns on these issues in a letter to the responsible Minister.<sup>34</sup>

There are no problems with availability of lawyers in practice generally.

### 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

<sup>34</sup> Letter of the NOVA, 21 December 2012.

## 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. 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>35</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>36</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 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>37</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 most of these cases are dealt with in the extended procedure.

Except for the implementation of Article 15 section 2 of the Dublin regulation, there is no special regulation concerning the position of vulnerable persons under the Dutch Legislation. There are also no special legal provisions for the transfer of children who have already applied for asylum in another Dublin country. However, if a person is vulnerable, this may be an important factor in the decision to apply Article 3(2) of the Dublin Regulation (sovereignty clause).<sup>38</sup> 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>39</sup>

<sup>35</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>36</sup> Article 30 sub 1 under a, 2000 Aliens Act.

<sup>37</sup> Danielle Zevenum & Geert Lamers, *Dublin II, national asylum procedure in the Netherlands*, Dublin transnational project, p. 16.

<sup>38</sup> C3/2.3.6.4 2000 Aliens Circular.

<sup>39</sup> Council of State, 201000724/1, Judgment of 12 July 2012.

An asylum seeker whose case has been rejected because they are to be transferred to another Dublin country may be detained under the same conditions that are applied to rejected asylum seekers. Rejected asylum seekers within the country may be detained if certain conditions are fulfilled (the asylum seeker has left the previous country pending their asylum application), mainly to prevent them absconding.

An asylum seeker who is transferred to the Netherlands because the Netherlands has the responsibility to deal with their asylum request under the Dublin Regulation will follow the standard asylum procedure (the general 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. 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, 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, regarding Interim Measures from the European Court on Human Rights<sup>40</sup> and rulings from the regional courts,<sup>41</sup> the question has been raised whether transfers of vulnerable persons (women with small children in most cases) to Italy should be suspended. However, so far the Council of State is reticent in such cases<sup>42</sup>. The Council is of the opinion that the (country specified) information submitted in these cases so far does not show that there are concrete indication that the IND cannot rely on the principle of mutual trust between Member States.

The asylum seeker is notified by letter by the IND. Voluntary and escort transfer is possible.

## 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.

<sup>40</sup> European Court of Human Rights, Application No. [81498/12](#), [Judgment of 13 February 2013](#).

<sup>41</sup> Regional Court of Middelburg, Awb 12/20762, Judgment of 17 July 2012.

<sup>42</sup> Council of State, No. 201200615/1, Judgment of 13 November 2012.

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 above concerning 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.

### Personal Interview

#### Indicators:

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

The competent authority, the Immigration and Naturalisation Service (IND), conducts a first interview with the asylum seeker, but does not conduct a follow-up interview as to the reasons for their 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 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 set in the same framework as the second interview in a regular procedure. The remarks concerning video/audio recording, interpreters, accessibility and quality of the (regular) interview are also applicable in the Dublin 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).

### 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

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>43</sup> The Netherlands is assuming responsibility for all asylum application of asylum seekers, who actually should be transferred to Greece. 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>44</sup> In case of asylum seekers which actually should have been transferred to Greece the Dutch authorities are assuming responsibility under Article 3 (2) 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>45</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>46</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>47</sup> So far it is unknown if these changes meet the requirements of the M.S.S. ruling.

The Netherlands rarely makes use of the possibility to substantively examine an application for asylum on the basis of Article 3(2) Dublin Regulation. The authorities are generally very reluctant to use the sovereignty 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 3(2) 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>43</sup> European Court of Human Rights, *M.S.S v Belgium and Greece*, Application No. [30696/09](#), Judgment of 21 January 2011.

<sup>44</sup> [District Court of Maastricht, 2013/02/14, Rb Maastricht, 13/2560 en 13/2557](#), or [2013/03/08, Rb Maastricht, 12/2330](#).

<sup>45</sup> Council of State, 201009278/1/V3, Judgment of 14 July 2011.

<sup>46</sup> Alien Circular C3/2.3.6.2 (old).

<sup>47</sup> Alien Circular C2/5.1.

## 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 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. 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.

The assessment of the asylum claim starts in the short regular asylum procedure (which 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, as a rule, referred to an open reception centre. The 2000 Aliens Circular stipulates in an exhaustive manner (*limitatieve opsomming*) when the asylum seeker is referred to the *closed extended procedure* (*Gesloten Verlengde Asielprocedure*, GVA) which can last up to 6 weeks and during which the asylum seeker remains in detention.<sup>48</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>49</sup> In practice this means that some asylum seekers are in detention during their entire stay in the Netherlands.

The situation 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 that the unaccompanied child is not 18 yet. 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 a authenticity check of submitted documents. The legal aid provider prepares the asylum seeker for the procedure. These investigations and the preparation take place prior to the start of the asylum procedure. The AC at Schiphol 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

<sup>48</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>49</sup> In that case the grounds of his detention will be altered from article 6 Alien Act to article 59 Alien Act.

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 procedure is that during the border procedure, asylum seekers are detained. Asylum seekers in the border procedure can lodge an appeal against the detention decision to the district Court.<sup>50</sup>

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in a border procedure?  Yes       No
- 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 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 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 (extendable with another 6 days).

For more information see above "Regular Procedure".

<sup>50</sup> For further details see the section on judicial review of detention below.

## 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-, regular-, extended- and Dublin procedure) in 33 different languages. 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 learn whether it is unclear if 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.

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 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>51</sup>

<sup>51</sup> There are also so called voluntary visitor groups which visit asylum seekers in detention.



## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes                       No
- Is a removal order suspended during the examination of a first subsequent application?  
 Yes                       No
- Is a removal order suspended during the examination of a second, third, subsequent application?  
 Yes                       No

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>52</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>53</sup> A subsequent application is as a rule dealt with in the short regular procedure, but no rest and preparation period is given to the applicant. The main issue regarding the assessment of 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, if these *nova* are relevant. 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*). 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 seekers 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 is an application which can be rejected in a simplified manner according to Article 4:6, sub 2, General Administrative Law Act.<sup>54</sup> It was questioned whether this was in line with Article 24 of Council Directive 2005/85/EC (hereafter: '2005 Asylum Procedures Directive').<sup>55</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>56</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.

If an asylum seeker at Ter Apel reception centre wants to lodge a subsequent application they have to do it in person at the Central Reception Centre (COL). As soon as the subsequent application is lodged the regular

<sup>52</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>53</sup> C14/4.1 2000 Aliens Circular.

<sup>54</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>55</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>56</sup> 2012/06/29, Council of State, 201112955/1/V4.

procedure starts and the asylum seeker has the right to accommodation at the Process Reception Centre (POL). At the application centre a detailed interview with the asylum seeker is organised that has its main focus on the reason why the asylum seeker lodged a subsequent asylum application and whether new facts or changed circumstances are submitted. In the regular procedure the IND decides whether the subsequent asylum application must be examined substantively or not. If new facts or circumstances that have altered emerged, the subsequent asylum application is as a rule referred to the extended regular procedure. If no new facts or altered circumstances have emerged, the subsequent application is rejected. In the intention to reject and the negative decision from the IND it is explained why the facts and circumstances are not considered as 'new', and reference will be made to the first rejected application. When the asylum seeker receives an intention that their subsequent asylum application will be rejected, the asylum seeker formally can be expelled.<sup>57</sup>

An appeal can be lodged against a negative decision on the subsequent asylum application to the regional court. However, lodging an appeal is not sufficient for the asylum seeker to 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 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>58</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.

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.

Due to recent financial cutbacks, it is most likely that the principle of 'no cure less fee' will be applied with regard to legal assistance in the case of subsequent asylum applications. This would mean that lawyers would receive lower remuneration fees in case of a negative decision of the regional court or the Council of State.<sup>59</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>60</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 an re-entry ban are systematically rejected. Recently the court of Den Bosch decided differently and concluded that there is an interest in lodging an appeal after the rejection of a subsequent application.<sup>61</sup> A verdict of the Council of State is needed (and coming) to clarify this matter.

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<sup>57</sup> Article 3:1 sub 1 2000 Aliens Decree.

<sup>58</sup> Article 62 sub 3 2000 Aliens Act.

<sup>59</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>60</sup> Regional Court Middelburg, Awb 12/27476, Judgment of 20 September.

<sup>61</sup> Regional Court Den Bosch, Awb 12/17011, Judgment of 14 February 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 (children)
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories (children)

Before the personal interview takes place, Medifirst<sup>62</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>63</sup> Adjustments of the interview could be: no interview until the asylum seeker is in a better shape; an adjusted interview with more breaks; 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 considers the following categories as 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, called the 'B9-regeling' after the corresponding chapter of the Alien Circular. 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>64</sup> The IND employees are also trained to recognise victims of human trafficking.<sup>65</sup> Victims of trafficking who have been refused asylum can be granted a temporary permit on the 'B9' 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

<sup>62</sup> See website of [MediFirst](#).

<sup>63</sup> INS, [Working instruction The procedure in case of medical advice of the INS](#), 29 October 2010, (*Werkinstructie behandeling van medisch advies-zaken 2010/13*).

<sup>64</sup> Chapter B/9 2000 Alien Circular.

<sup>65</sup> IND, [Werkinstructie 'Potentiele slachtoffers mensenhandel'](#), (INS Working instruction 'Victims of human trafficking in the asylumprocedure') 2007/16, 18 December 2007.

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. But to make clear this has no reference to asylum.

In sum: there are guarantees, although not by law, that vulnerable asylum seekers are indicated 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.

## 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 Procedures Guarantees' above. 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 if an asylum seeker states they have been arrested and tortured because they joined a demonstration and they have scars to substantiate their claim but the IND does not believe their participation in the demonstration then there is no obligation for the IND to examine the scars.

But if the asylum seeker has 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>66</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>67</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>68</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. This is accepted in jurisprudence.<sup>69</sup> On the other hand if there is initial proof the IND has to investigate.<sup>70</sup>

An NGO called iMMO<sup>71</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>72</sup>

<sup>66</sup> Article. 3:2 jo. 3:46 General Administrative Law Act.

<sup>67</sup> See ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010,

<sup>68</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>

<sup>69</sup> Regional Court Maastricht, 12/38414, 12/3841, Judgment of 21 December 2012.

<sup>70</sup> Council of State, 201103862/1, Judgment of 19 October 2011.

<sup>71</sup> [Netherlands Institute for Human Rights and Medical Assessment](http://www.immo.nl).

<sup>72</sup> C14/3.5.2 2000 Aliens Circular.

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>73</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>74</sup> MediFirst cannot be seen as a product of the Istanbul Protocol because the examination is limited to the question whether the asylum seeker can be heard.

### 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>75</sup> One is considered a “minor” (under the legal age) 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>76</sup> This means that a member of the KMar has to 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 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>77</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 that the methods which are used in the age assessment process are controversial,<sup>78</sup> which is also illustrated by the sometimes very technical discussions among radiologists referred to in the jurisprudence.<sup>79</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>80</sup>

<sup>73</sup> National knowledge and advice centre for the healthcare of migrants and asylum seekers, available [here](#).

<sup>74</sup> See Care Full, *Medico-legal reports and the Istanbul Protocol in asylum procedures*, 2006.

<sup>75</sup> B14/2.2.2 2000 Aliens Circular.

<sup>76</sup> IND and EMN study, *alleenstaande minderjarige vreemdelingen in Nederland; AMV-beleid en cijfers inzake opvang, terugkeer en integratie (Unaccompanied minors in the Netherlands, UAM policy, statistics concerning reception, return and integration)*, 2010, page 17.

<sup>77</sup> Commissie leeftijdsonderzoek, (*Committee Age assessment*), Rapport Commissie leeftijdsonderzoek (*Report Committee age assessment*), 2012, page 7.

<sup>78</sup> *Ibidem*.

<sup>79</sup> See for example [Regional Court Amsterdam, 10/14112](#), 18 December 2012.

<sup>80</sup> Commissie leeftijdsonderzoek, Rapport Commissie leeftijdsonderzoek (*Committee Age Assessment, Report Committee Age Assessment*) (2012), page 16.

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>81</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>82</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>83</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>84</sup> The child has to give their consent. Even though the formal guardianship is assigned to the organisation, the tasks are carried out by individual professionals, called “youth 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.

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>85</sup>

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.

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<sup>81</sup> C13/1.1 2000 Aliens Circular.

<sup>82</sup> Website of [NIDOS](#).

<sup>83</sup> Article 1:245 of the Dutch Civil Code.

<sup>84</sup> Art. 1:254 under 2 Civil Act.

<sup>85</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, page 113-115.

## 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>86</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. For the safe third country concept<sup>87</sup> the same requirements as regarding to the safe country of origin concept applies with the additional requirement that the asylum seeker has resided in this country.

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<sup>88</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.

In practice the safe country concepts are hardly applied.

## G. Treatment of specific nationalities

By the end of February the Dutch authorities started a pilot project regard to the asylum applications of Syrian nationals. The Immigration and Naturalisation Service (IND) tries to handle all Syrian applications within 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 regular procedure but this is caused by the 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 regular procedure (all granted a residence permit) and 11 were handled in the extended regular procedure (no figures available yet about their admittance).

<sup>86</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>87</sup> Article 29 sub 2 under h 2000 Alien Act.

<sup>88</sup> Article 29 sub 2 under 1 2000 Alien Act.

## 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                       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>89</sup> During the whole asylum procedure the COA is responsible for the reception of asylum seekers.

During the rest and 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 rest and preparation period an individual is entitled to material reception conditions.

When the asylum application is rejected during the short regular asylum procedure, the asylum seeker continues to be entitled to reception conditions until four weeks after the negative decision of the IND.<sup>90</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 regular 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

<sup>89</sup> Article 2 sub 1 2005 Regulation on benefits for asylum seekers.

<sup>90</sup> From this moment the asylum seeker is officially falling under the scope of the 2005 Regulation on benefits for asylum seekers.



weeks no decision has been taken. The Council of State decided that the right to reception conditions nevertheless ends four weeks after the negative decision regardless of whether the Court has decided on the appeal or not.<sup>91</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 regular 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>92</sup>

When an asylum seeker wishes to lodge a subsequent asylum application they have to apply at the Central Reception location (COL) in Ter Apel. The asylum seeker will be dismissed and after a while, on the indication of the IND, they have to return for an official application. Until the asylum seeker officially submits their application there is no right to reception conditions. Only after the subsequent asylum application has been officially lodged, asylum seekers are again entitled to the same reception conditions as foreseen for a first asylum application until the first instance decision.

After a subsequent asylum application has been rejected in the regular asylum procedure, no voluntary departure period is granted.<sup>93</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>94</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>95</sup>

In theory reception facilities can be withdrawn or refused if an asylum seeker has resources of their own. In practice this never happens and the COA does not investigate whether an asylum seeker has sufficient resources.

## **2. Forms and levels of material reception conditions**

### *Indicators:*

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): Euro 227.36, every 4 weeks, on the basis of an adult asylum seeker without children who arranges their own food in the reception centre).<sup>96</sup>

The right to reception conditions includes the right to:<sup>97</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

<sup>91</sup> Council of State, 201113284/1/V1, 2 May 2012, 2012/05/02.

<sup>92</sup> Art. 5.1 under a 2005 Regulation on benefits for asylum seekers.

<sup>93</sup> Article 62 sub 3 under c 2000 Aliens Act.

<sup>94</sup> Article 82 sub 2 under b 2000 Alien Act.

<sup>95</sup> Art. 3.3 and under a 2005 Regulation on benefits for asylum seekers & art. 66 2000 Aliens Act.

<sup>96</sup> Art. 14 under 2.3 & 4 Regulation Benefits asylum seekers.

<sup>97</sup> Art. 9.1 Regulation Benefits asylum seekers.

- 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.

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 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.

### 3. Types of accommodation

#### *Indicators:*

- Number of places in all the reception centres (both permanent and for first arrivals): not available
- Number of places in private accommodation: not available
- Number of reception centres: not available
- Are there any problems of overcrowding in the reception centres?  Yes  No
- What is, if available, the average length of stay of asylum seekers in the reception centres?
- Are 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>98</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>99</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 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>100</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 regular 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 regular 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>101</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>102</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>103</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 and the Dutch Supreme High Court decided that children should be offered reception conditions in all circumstances.<sup>104</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

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<sup>98</sup> Article 6 under b 2000 Aliens Act.

<sup>99</sup> Asylum seekers who are not stopped at an international border of the Netherlands and want to make an asylum application have to go to the COL in Ter Apel, even if they initially came by plane or boat.

<sup>100</sup> Article 3 sub 3 under m 2005 Regulation Benefits for asylum seekers.

<sup>101</sup> Article 59 2000 Aliens Act.

<sup>102</sup> Article 56 2000 Aliens Act *juncto* art. 54, under b, 2000 Aliens Act.

<sup>103</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>104</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.

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>105</sup> There are six of these reception centres for families.<sup>106</sup> A stricter regime is applied to this form of reception location<sup>107</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.

There are no indications that asylum centres are overcrowded at the time of writing. An average AZC has a capacity of 400 asylum seekers.<sup>108</sup>

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

#### 4. 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>109</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 Verstrekingen, ROV*).<sup>110</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>111</sup>

Withdrawal or reduction of reception facilities by the Central Agency for the Reception of asylum seekers is, regarding the legal remedies against those decisions, subject to the Aliens Act 2000.<sup>112</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. In theory reception facilities can be withdrawn or refused if an asylum seeker has resources of their own. In practice this never happens and the COA does not investigate whether an asylum seeker has sufficient resources.

<sup>105</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>106</sup> With around 1900 residents in total.

<sup>107</sup> There is a duty to report six times a week for example.

<sup>108</sup> AZC, [Living in an AZC](#).

<sup>109</sup> Article 19 sub 1 under e 2005 Regulation Benefits asylum seekers.

<sup>110</sup> Delegated powers relating the reception of asylum seekers on the basis of article 10, 2005 [Regulation on Benefits for asylum seekers](#).

<sup>111</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>112</sup> Article 3a Act of the Agency of Reception.

## 5. 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 and legal advisors, representatives of the 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.

## 6. 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 is liveable and COA is responsible for the welfare of the asylum seekers.<sup>113</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 more or less the same 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>114</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>115</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

<sup>113</sup> Article 3 Act of the Agency of Reception.

<sup>114</sup> See Phoenix's [website](#).

<sup>115</sup> See [NIDOS' website's section on reception](#).

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 the protected reception location.

## **7. 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”

*Article 2 sub 4 states that “The Central Organ Reception Asylum Seekers provides information in writing (meaning brochures) in a language that is understandable for the asylum seeker.”* The Dutch council for Refugees considers these brochures sufficient. There are no issues in practice with providing information.

## **8. Freedom of movement**

Question:

Is the freedom of movement of asylum seekers (excluding those detained) restricted to a particular area? If so specify. No restrictions for asylum seekers.

The freedom of movement of asylum seekers who are not in detention and who are still in the asylum procedure is not restricted to a particular area. 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) 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>116</sup> The penalty for not reporting could be a fine or even criminal detention<sup>117</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.

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<sup>116</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>117</sup> Article 108 2000 Aliens Act.

## 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 after the asylum application was lodged
- 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>118</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 to 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>119</sup>

- a. the asylum application has been lodged at least six months 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>120</sup>

The procedure to apply for an employment-license should not take longer than 5 weeks.<sup>121</sup> If the asylum seeker stays in the reception facility which is 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.

<sup>118</sup> Art. 2a par. 1 first sentence and under a, b and c Buwav. (Decree on how to implement the Aliens Labour Act).

<sup>119</sup> Art. 2 under a Buwav.

<sup>120</sup> During their lawful stay in the Netherlands asylum seekers receive an identity card, a so called *W-document*, pending their procedure.

<sup>121</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>122</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 sufficient, they enrol in the suitable education program.<sup>123</sup>

In 2009 UNICEF published a report concerning children asylum seekers.<sup>124</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>125</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>126</sup> Depending on the stage of the asylum application the COA offers different educational programmes including vocational training.<sup>127</sup> An integration program is offered to asylum seekers who have been granted an asylum permit while staying in a reception centre.<sup>128</sup>

## 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  No

<sup>122</sup> Article 3 leerplichtwet 1969 (The act on compulsory school attendance).

<sup>123</sup> See the website of [Central Organ for Reception of Asylum Seekers](#).

<sup>124</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>125</sup> For more information, please consult [Defence For Children's](#) website.

<sup>126</sup> Art. 9.3 Regulation Benefits asylum seekers.

<sup>127</sup> See the website of [Central Organ for Reception of Asylum Seekers](#).

<sup>128</sup> Art. 9 a Regulation Benefits asylum seekers.



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>129</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>130</sup>

When an asylum seeker stays in a reception facility but the 2005 Regulation on benefits for asylum seeker 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 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>131</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. For this group problems can arise if there is a medical problem but no emergency.<sup>132</sup>

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<sup>129</sup> [Healthcare for Asylum seekers Regulation](#).

<sup>130</sup> See [Phoenix's website](#).

<sup>131</sup> Art. 10 2000 Aliens Act.

<sup>132</sup> The national ombudsman recently started an investigation concerning medical care for failed asylum seekers.

## Detention of Asylum Seekers

### A. General

#### Indicators:

- Number of asylum seekers who entered detention in the previous year: 620 (2012)
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): 50
- Number of detention centres: 1
- Total capacity: At present not known to us.

In 2012 a total of 620 asylum seekers who applied for asylum at the Dutch border were detained.<sup>133</sup> These asylum seekers were detained during the asylum procedure at the border on the basis of Article 6 of the Aliens Act.<sup>134</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 land detention centres on basis of Article 59 of the 2000 Aliens Act. The Dutch Council for Refugees is not present at these detention centres, so the information in this chapter is limited to border detention (Article 6 of the 2000 Aliens Act).

### B. Grounds for detention

#### Indicators:

- In practice, are asylum seekers automatically detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  Yes  No
- Are asylum seekers ever detained during a regular procedure?  Yes  No
- Are unaccompanied asylum-seeking children ever detained?  
 Yes  Yes, but only in border/transit zones  No
- Are asylum seeking children in families ever detained?  
 Yes  Yes, but rarely  No
- What is the maximum detention period set in the legislation (inc extensions): 18 months<sup>135</sup>
- In practice, how long in average are asylum seekers detained? 39 days<sup>136</sup>

<sup>133</sup> Ministry of Security and Justice, *Vreemdelingenbewaring in Getallen (Detention of aliens in numbers)*, 2007-2011, page 15.

<sup>134</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.'

<sup>135</sup> According to Article 15 of the EU Return Directive, 2008/115/EC.

<sup>136</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.

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>137</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.

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>138</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 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>139</sup>

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<sup>137</sup> The Aliens Circular stipulates that a person should have sufficient means to cover expenses for 3 months.

<sup>138</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.

<sup>139</sup> Amnesty International, [The Netherlands: the detention of irregular migrants and asylum-seekers](#), 2008, p. 25.

Recently, UNHCR and the Dutch Council for Refugees recommend in their report the following:<sup>140</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 maximum 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>141</sup>

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>142</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>143</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>144</sup>

### C. Detention conditions

#### Indicators:

- Does the law allow to detain asylum seekers 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
- 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

<sup>140</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>141</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>142</sup> Dutch Council for Refugees and UNHCR, *op. cit.*, page 12.

<sup>143</sup> Amnesty International, *Vreemdelingendetentie: in strijd met mensenrechten* (Alien Detention: violating human rights), p. 28-29.

<sup>144</sup> *Ibid*, p. 3.

The rules relating to the detention regime applicable to asylum seekers are laid down in the Border Regime Facilities Code.<sup>145</sup> Dutch legislation does allow for the detention of asylum seekers in a prison-like accommodation.

Adults are detained at the Justitieel Complex Schiphol and families with minor 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 minor age.<sup>146</sup>

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>147</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>148</sup> Asylum seekers do have access to open spaces.

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.

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 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>149</sup>

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

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<sup>145</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>146</sup> Amnesty international, *Vreemdelingendetentie in strijd met mensenrechten* (Alien Detention: violating human rights), p. 15.

<sup>147</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>148</sup> The National Ombudsman, *Immigration detention: penal regime or step towards deportation, about respecting human rights in immigration detention*, 2012, p. 23.

<sup>149</sup> There are also so called voluntary visitor groups which visit asylum seekers in detention.

## D. Judicial Review of the detention order

### Indicators:

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

According to Article 93 2000 Aliens Act the asylum seeker is entitled to lodge an appeal at any moment the asylum seeker is detained on basis of Article 6 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. 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.

## 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. 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.