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Asylum Information
Database

Country Report: The Netherlands



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The AIDA project

The AIDA project is jointly co-ordinated 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 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice



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Glossary & List of Abbreviations

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

Statistics

Table 1: Applications and granting of protection status at first instance: 2015 (January-September)

	Applicants in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	34,958	Not available	4,430	4,965	390	4,195	31.7%	35.5%	2.8%	30%

Breakdown by countries of origin of the total numbers

Syria	16,655	Not available	2,385	2,405	65	360	45.7%	46.1%	1.2%	7%
Eritrea	6,466	Not available	30	1,955	15	145	1.4%	91.1%	0.7%	6.8%
Stateless	2,991	Not available	1,350	50	90	170	81.3%	3%	5.4%	10.3%
Iraq	1,186	Not available	45	95	10	195	13%	27.5%	2.9%	56.6%
Afghanistan	919	Not available	80	145	45	260	15.1%	27.3%	8.5%	49.1%
Somalia	645	Not available	5	75	20	130	2.2%	32.6%	8.7%	56.5%
Iran	531	Not available	200	10	0	145	56.3%	2.8%	0%	40.9%
Kosovo	551	Not available	0	0	0	200	0%	0%	0%	100%
Ukraine	442	Not available	0	0	0	335	0%	0%	0%	100%
Unknown	416	Not available	20	30	15	95	12.5%	18.7%	9.3%	59.5%

Source: IND, Asylum Statistics September 2015 (applications), <http://bit.ly/1IGGec4>; Eurostat (decisions) (rounded).

Note that as of October 2015, the number of applicants was 46,834. The three main nationalities remained Syria (23,102), Eritrea (7,656) and Stateless (4,006).

Table 2: Gender/age breakdown of the total numbers of applicants: 2015 (January-August)

	Number	Percentage
Total number of applicants	18,395	100%
Men	13,360	73%
Women	5,000	27%
Children	3,905	21.2%
Unaccompanied children	1,466	8%

Source: Eurostat (rounded). For data on unaccompanied children, IND, Asylum Statistics August 2015 (applications), <http://bit.ly/1OZPtQr>.
Note that as of October 2015, the number of unaccompanied children seeking asylum was 2,961, more than doubling the total number as of August.

Table 3: Comparison between first instance and appeal decision rates: 2015

There is no available data on appeal decisions in 2015.

Table 4: Applications processed under the accelerated procedure in 2015

The Netherlands does not have an accelerated procedure.

Table 5: Subsequent applications lodged in 2015 (January-September)

	Number	Percentage
Total number of subsequent applications	1,546	100%

Main countries of origin

Afghanistan	255	16.5%
Iraq	186	12%
Somalia	143	9.2%
Iran	112	7.2%
Unknown	108	7%

Source: IND, Asylum Statistics September 2015 (applications), <http://bit.ly/1IGGec4>.

Table 6: Number of applicants detained per ground of detention: 2013-2014

Ground for detention	2013	2014
Territorial detention	3,504	2,467
Border detention	164	261
Total number of applicants detained	3,668	2,728

Source: Department of Justice, Ministry of Security and Justice, *Vreemdelingsbewaring in getal, 2010-2014*, May 2015.

Table 7: Number of applicants detained and subject to alternatives to detention

Figures on alternatives to detention are not available.

Overview of the legal framework

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

Title in English	Original Title (NL)	Abbreviation	Web Link
General Administrative Act	Algemene Wet Bestuursrecht (AWB)	GALA	http://bit.ly/1Hlpzy1 (EN)
2000 Aliens Act	Vreemdelingenwet 2000 (Vw 2000)	2000 AA	http://bit.ly/1RPkp8j (NL) http://bit.ly/1CPkXEI (EN)
Act of the Agency of Reception	Wet Centraal Opvang Orgaan (Wet COA)	AAR	http://bit.ly/1KjQoJS (NL)

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

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

Overview of the main changes since the previous report update

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

On 20 July 2015, the recast Asylum Procedures Directive and Reception Conditions Directive were implemented in national legislation. Several major and some minor changes have been made to the Dutch asylum system. The most important changes are the following:

Procedure

- Implementation of Article 46 of the recast Asylum Procedures Directive concerning an effective remedy. This article prescribes a full examination of both facts and points of law by the court *ex nunc* in the first instance. This has been implemented in national legislation in Article 83a Aliens Act. It remains to be seen what this entails in practice. Will it mean that the court can substitute its judgment on credibility in place of that of the IND?¹ This was absolutely impossible before the implementation date. The Secretary of State is of the opinion that this is not the case. According to him the new examination only subscribes a more 'intensified' examination. The word 'full' in the text of Article 46 of the Directive is translated as '*volledig*' in the Dutch text which also can be translated back as 'entire' or 'complete'.
- The introduction of a formal border procedure. The Secretary of State always denied that the Netherlands had a border procedure while *de facto* there was a border procedure. In the explanatory memorandum on the implementation legislation of the recast Directives the Secretary of State acknowledges that the former practice was not in line with Article 43 of the recast Asylum Procedures Directive. Under the new system, the decision on refusal or entry to the Netherlands is suspended for a maximum of 4 weeks and the asylum seekers stay in detention. During this period the IND has to decide on which of the grounds the application will be rejected. If the examination takes longer than four weeks or another ground of rejection is applicable the detention is lifted and the asylum seeker is allowed to access the Netherlands and the treatment of the application is continued in a regular asylum procedure.
- Another major change, although more on the surface rather than an in-depth change, is the introduction of five grounds to reject an asylum application by the IND. These grounds are: to not process the application due to Dublin; manifestly unfounded; unfounded, inadmissible or an 'out-of-procedure-judgement'. These grounds to reject are more a collective name to reject an asylum application than a new way to handle and examine applications. For instance in the former situation an asylum seeker could be rejected on the ground that he did not provide enough information which gives grounds to grant an asylum permit. The same reason to reject an asylum application still exists but now the IND has to declare the application in this case 'unfounded'. The different grounds of rejection have different consequences regarding the entitlement to reception rights, the right to legally reside in the Netherlands during the appeal at the court and the length of the period in which the asylum seeker has to voluntarily leave the Netherlands.
- A procedure was introduced to identify the special needs of asylum seekers. With Article 3.108a Aliens Decree, Article 24 of the recast Asylum Procedures Directive is implemented into national legislation. The more practical consequences are described in work instruction 2015/8.² The medical advice has a central role in determining whether an asylum seeker needs special attention.
- Due to Article 18 recast Asylum Procedures Directive, the Secretary of State has implemented national legislation in which a medical examination (to be used as supportive evidence) is

¹ Article 83a Aliens Act.

² Accessible at, <http://bit.ly/1P0IQ0k>.

guaranteed.³ Dutch law stipulates that a medical examination has to be done if the IND finds this necessary for the examination of the asylum application. If this is the case, the IND asks an independent third party (at the time of writing this is unknown) to conduct the examination. The IND bears the costs of this examination. If the asylum seeker is of the opinion an examination has to be conducted but the IND disagrees he or she is allowed to do this on his or her own initiative and costs. An NGO called iMMO⁴ has the resources and specific expertise, to medically examine (physically and psychologically) asylum seekers, at their request, if this is needed. At the time of writing no jurisprudence has yet evolved around the discretionary power to conduct a medical examination.

- Moreover, temporary suspension of decisions on asylum applications and reception conditions for rejected asylum seekers has been: (a) prolonged in April 2015 for **Iraq**; (b) put in place for **Yemen** on 5 August 2015; and (c) put in place on 12 May 2015 and prolonged on 29 September 2015 until 20 April 2016 for **Somalia**.

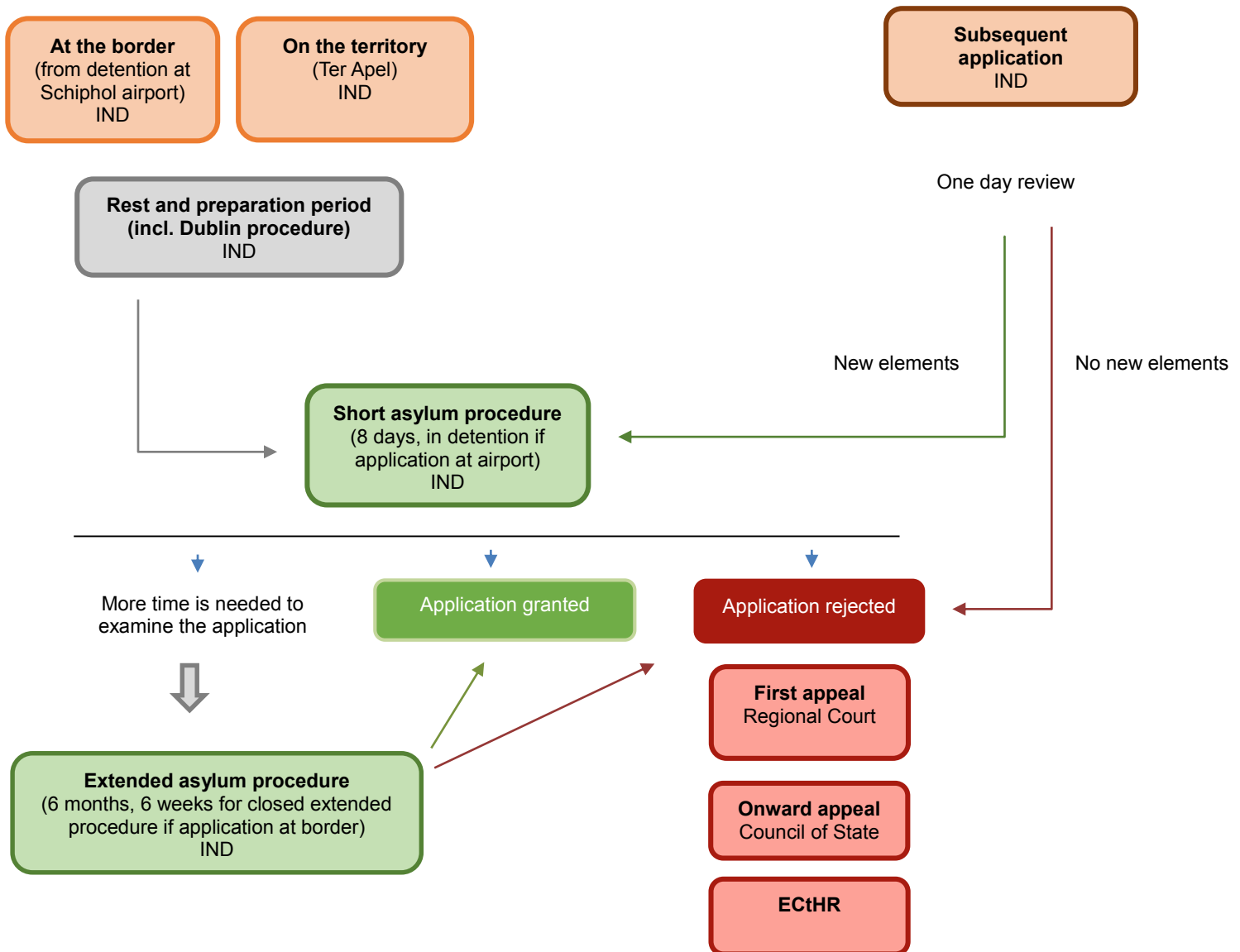
³ Article 3.109^e 2000 Aliens Decree.

⁴ Website of Netherlands Institute for Human Rights and Medical Assessment, accessible at <http://bit.ly/1ObGRDC>.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

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

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

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

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?

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

² Accelerating the processing of specific caseloads as part of the regular procedure.

³ Labelled as "accelerated procedure" in national law. See Article 31(8) APD.

Immigration and Naturalisation Service (INS)	3,000	Ministry of Security and Justice	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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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 Naturalisation 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 COL have been concluded the asylum seekers are transferred to a Process Reception Centre (Proces Opvanglocatie, **POL**). Third country nationals (TCNs) who are detained in an aliens' detention centre may apply for asylum at the detention centre itself.

Expressing the wish to apply for asylum does not directly imply that the request for asylum has officially been lodged. The asylum seeker will first have to lodge the application using a form offered to them by the Dutch authorities. This marks the formal start of the asylum procedure. This form is signed at the beginning of the rest and preparation period (Rust- en Voorbereidingstijd).⁴ This is a period in which first time asylum applicants are granted a period to cope with the stress of fleeing their country of origin and the journey to the Netherlands.⁵

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 FMMU⁶ (which is an independent agency, hired by the IND to provide medical advice concerning the question of 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 DT&V coordinates the actual departure of TCNs who do not have the right of residence in the Netherlands. The DT&V is not part of the IND.⁷

⁴ Due to the implementation of the Dublin III Regulation on January the first 2014 the mentioned form is signed at the beginning of this rest and preparation period which is an alternation of the former practice whereby the signing of the document took place on the first day of the actual asylum procedure. The main difference is that now an applicant is formally an asylum seeker as of the start of the rest and preparation period whereas before the application of the Dublin III Regulation they were not. However, this has no consequences on their situation and access to rights under material law.

⁵ Article 3,109 Aliens Resolution.

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

⁷ The Repatriation and Departure Service of the Ministry of Security and Justice, accessible at

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

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 by another 6 months).

On the other hand the short asylum procedure can be extended by 6 working days if more time is needed (this is not, however, the extended asylum procedure). In 2012 almost 60% of all asylum applications were dealt with within the short asylum procedure.⁸ It is unlikely this is still the case in 2015 due to the increased number of asylum applications since the summer of 2015.

The short asylum procedure can be described as fast, but technically it is not an accelerated procedure. Every asylum application is initially examined in the short asylum procedure. Less complex or evident cases will be decided within eight days in the short asylum procedure while the examination of more complex cases is continued in the extended asylum procedure (which can take 6 months to a year to decide). However, Amnesty International and the Dutch Council for Refugees refer to the short asylum procedure in the Netherlands as 'the accelerated regular procedure'.⁹ Less complex and evident cases, such as family reunification¹⁰ and subsequent applications are mostly dealt with in the short asylum procedure. Positive as well as negative decisions can be taken in the short asylum procedure.

There is only one asylum status in the Netherlands. However, there are two different grounds on which this asylum status may be issued (besides the grounds for family reunification). These two grounds are:¹¹

- (1) Refugee status; qualification as a refugee under Article 1A of the Geneva Convention¹² (if there is a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion).
- (2) Subsidiary protection; according to Article 3 of the European Convention on Human Rights and Article 15(c) of the Qualification Directive. Within this scope fall traumatic experiences in the country of origin, due to which it is not reasonable to require that the asylum seeker returns to their country of origin.¹³

It should be noted that before 1 January 2014, two additional grounds (humanitarian grounds and categorical protection) existed on the basis of which the single asylum status could be granted. Both

<http://bit.ly/1PKtFY6>.

⁸ Letter of the Minister of Asylum and Integration to the House of Representatives, 5 September 2012, 2, accessible at <http://bit.ly/1Li4qGe>.

⁹ Amnesty International & Vluchtelingenwerk Nederland, *Asielbarometer (Asylum barometer)*, 2011, 5, accessible at <http://bit.ly/1NWQ98k>.

¹⁰ Article 29(1)(e) and (f) Aliens Act.

¹¹ Article 29 Aliens Act.

¹² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189.

¹³ The trauma policy has had its own ground (Article 29 (1), sub C Aliens Act) before January 1st 2014. Now the policy is set out in 2000 Aliens Circular 2/3, sub: Previous confrontation with atrocities ("Eerdere confrontatie met wandaden") Former specific groups which qualified for a residence permit under the 'c-ground'(e.g. Unaccompanied Afghan women) are now eligible for international protection under Article 29 (1) sub b 2000 Alien Act Other groups, like westernized Afghan school girls, can attain a regular residence permit instead of a permit under Article 29 (1) sub 'c' as was the case before January 1st 2014.

grounds have been abolished by law.¹⁴

The IND must first examine whether an asylum seeker qualifies for protection under ground A, before examining B, and so on. This means that an asylum seeker may only qualify for protection under B if they do not qualify on the grounds under A. When an asylum seeker receives a residence permit on ground B, they cannot appeal for the 'higher' A-status.¹⁵ This is because every asylum permit – regardless of the ground on which 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-status¹⁶ 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 recognised as a refugee in the sense of the 1951 Geneva Refugee Convention. However, when a residence permit is withdrawn on the B-ground, the asylum seeker can make a claim to be recognised as a refugee (A-status) once again. In this case it is helpful, while having a residence permit on the B-status, that an asylum seeker keeps collecting evidence to strengthen their (eventual) future case on the A-status.

Asylum seekers whose application is rejected may appeal against this decision at a regional court (Rechtbank). Appealing against a negative decision in the 'short' regular procedure should be submitted within one week to the regional court and has no suspensive effect itself. This means an asylum seeker can be expelled before the verdict of the court. To avoid this situation the legal representative (or in theory the asylum seekers themselves) should request a provisional measure to suspend removal pending the appeal. This must be done within 24 hours after the rejection. After a rejection in the short regular procedure the asylum seeker has the right to be accommodated for a period of 4 weeks regardless of whether the asylum seeker appeals the rejection and whether this has suspensive effect due to a granted provisional measure. An appeal against a negative decision in the extended procedure has suspensive effect and must be submitted within four weeks. The asylum seeker also continues to have a right to accommodation during this appeal. Both the asylum seeker and the IND may lodge an appeal against the decision of the regional court to the Council of State (Afdeling Bestuursrechtspraak Raad van State, **ABRvS**). This procedure does not have any suspensive effect. At this stage the right to accommodation ends unless the Council of State has issued a provisional measure.¹⁷

The IND is responsible for examining asylum applications, including the examination of the Dublin Regulation criteria. The 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.

¹⁴ Law of 25 of November 2013, Publication of the State (Staatsblad) 2013, 478 and House of Representatives, Session year 2011–2012, 33 293, no. 2.

¹⁵ Council of State, 20010591481, Judgment of 28 March 2002.

¹⁶ 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.

¹⁷ Danielle Zevenum et al. Dublin II, *National asylum procedure in the Netherlands*, (Dublin transnational project), 2012, 11.

B. Procedures

1. Registration of the asylum application

Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application? ☐ Yes ☒ No
2. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☐ Yes ☒ No

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

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

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

If 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.²¹ Any person arriving in the Netherlands and wishing to apply for asylum must report to the IND. While there is no specific time limit laid down by law, where the request is considered late, the IND may decide to use stricter requirements when assessing the asylum seeker's credibility.²²

2. Regular procedure

2.1. General (scope, time limits)

¹⁸ Voordat jouw asielpprocedure begint – AMV (Before your asylum procedure starts – UAM), July 2010, 2.

¹⁹ Article 3(3) Aliens Act.

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

²¹ Council of State, ABKort 1999,551, Judgment of 20 September 1999.

²² Regional Court Arnhem, AWB 08/4539, Judgment of 29 February 2008, asylum seeker reported four days after arrival. This is considered as being too late.

Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 8 working days
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases as of 30 September 2015: Not available

As mentioned in the section on Overview of the Procedure, the regular procedure is divided into a short asylum procedure and an extended asylum procedure. Every asylum application will firstly be assessed in the short asylum procedure. During this procedure the IND can decide to refer the case to the extended asylum procedure. Before the start of the actual asylum procedure the asylum seeker has a rest and preparation period in which several enquiries as well as medical examinations take place.

The IND implements policies regulating treatment of TCNs on behalf of the Ministry of Security and Justice.

The fulltime-equivalent (fte) was 3,500 at the end of 2014. Within the total capacity of the IND 3000 fte is designated for civil servants (*'ambtelijke bezetting'*). It is unclear which part of the civil servants is dealing with asylum applications. The external hiring has increased slightly due to the rise in numbers of asylum seekers (no figures available how much this would be) ²³

The IND has 4 main tasks which are:

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

The short asylum procedure

A rejection of an asylum application in the short asylum procedure has to be issued within eight working days. In exceptional cases, this deadline may be extended by six days. These extensions are not frequent in practice. According to the Aliens Circular 2000 C1/2.3, the IND should refrain from relying on extensions. Therefore, the total length of the procedure is a maximum of two weeks.²⁴ For the overview of the Dutch asylum procedure it is necessary to explain what steps are taken during these eight days.

During the odd days the asylum seeker has contact with the IND and during the even days with their legal advisor/counsellor:

Day 1	Start of the actual asylum procedure with first interview	On the day of the official lodging of the asylum application, the IND conducts the first interview with the asylum seeker to ascertain the asylum seekers' identity, nationality, and travel route from their country of origin to the Netherlands.
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²³ Annual report IND 201, 25, accessible at <http://bit.ly/1H4La4j>.

²⁴ Article 3.110 Aliens Decree. An extension with six days is applied for instance in case an interpreter is not available or documents have to be analysed.

		The first interview does not concern the reasons for seeking asylum. A lawyer is automatically appointed from day 1.
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 due to interpretation problems, where 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	<p>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.</p> <p>After day 4, the IND makes an assessment of the asylum application. It may decide to grant asylum. If not, the IND chooses either to continue the regular procedure or to refer to the extended procedure.</p>
Day 5	The intention to reject the asylum application	When the IND decides to reject the asylum application it will issue a written intention (<i>Voornemen</i>). The intention to reject provides the grounds and reasons for a possible rejection.
Day 6	Submission of the view by the lawyer (Zienswijze)	After the IND has issued a written intention to reject the asylum application, the lawyer submits their view in writing with regards to the written intention on behalf of the asylum seeker.
Day 7/8	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 the 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.²⁵

The extended asylum procedure

If the IND is not able to make a decision on a request for asylum within the time frame of the short asylum procedure, the asylum seeker is referred to the extended asylum procedure.²⁶ There are no

²⁵[Article 42(3) Aliens Act.

²⁶ Paragraph C1/2.3 Aliens Circulaire.

specific conditions under which the IND can refer a case but in general the main grounds to refer are based on the fact that the IND needs more time to investigate the identity of the asylum seeker or their reasons for seeking asylum. This reference cannot be appealed.

If an asylum application is examined in the extended asylum procedure there is a maximum time limit for making a decision of six months. This time limit can be prolonged by another six months if the IND has to hire a third party, for instance the Ministry of Foreigner Affairs, which can conduct an investigation in the country of origin of the asylum seeker.²⁷

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

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

Data on backlogs for cases are unavailable, this is perhaps because the IND has to pay a fine when they exceed the time limits.²⁸

2.2. Fast-track processing

The IND fast-tracks (or somehow regulates more) applications from **Syrian** and **Eritrean** nationals. At the time of writing the Dutch Council for Refugees has been informed that the IND is changing the current procedure. It is not completely clear how the procedure looks like. The main point is that the IND wants to combine the first and second interview.²⁹ It is likely the procedure for Syrian and Eritrean will be as follow:

- Day 1: Registration day. The asylum seeker has to fill out a form with standard questions regarding their country of origin but also questions like; “did you serve in the army?” or “do your relatives have the same nationality?”
- Day 2: Tuberculosis check
- Day 3: First and second interview

After those 3 days a ‘profile’ plan is established by the IND based on the interviews and the form. 4 options are possible:

- (1) Rejection;
- (2) Granting a permit;
- (3) Dublin;
- (4) No second interview has been taken so direct referral to the short asylum procedure.

On day 4 in all cases, except in Dublin cases, the asylum seeker is redirected to a POL to wait for the start of the short asylum procedure. At this moment this can take 3 to 4 months. Asylum seekers with a Dublin claim are redirected to an AZC.

²⁷ Article 42 Aliens Act.

²⁸ Work instruction 2013/17, 5 September 2013, accessible at: <http://bit.ly/1lrwsdK/>.

²⁹ Information received from the IND.

2.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

The law provides for an obligation to organise a personal interview of all asylum seekers.³⁰ 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.³¹ In the case Dublin is not applicable a 'normal' interview takes place where the asylum seeker can give their reasons for applying for asylum (asylum motives).³²

The asylum seeker is to be interviewed in a language which they may reasonably be assumed to understand.³³ This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.³⁴ If the asylum seeker wishes, the second interview will be conducted by an employee of the IND of their own gender (this includes the interpreters as well). This makes it easier for asylum seekers to speak about issues such as sexual violence.

In the past there have been concerns over questioning in cases of persecution related to grounds of sexuality. Persons with LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex) asylum claims were for instance questioned about the type of sexual conduct and what kind of feelings this raised.³⁵ However, the IND has changed this practice and they have stopped asking such questions. Recent examples of such inappropriate questions are therefore not known to the Dutch Council for Refugees.³⁶ Besides that the Council of State has raised preliminary questions to the Court of Justice of the European Union (CJEU) asking which limits are set by Article 4 of the Qualification Directive in assessing the credibility of alleged sexual orientation and if with this assessment different thresholds apply compared to the assessment of the credibility of the other grounds of persecution.³⁷

These questions are answered in the CJEU's judgment of 2 December 2014.³⁸ The Court clarifies the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for international protection. The Dutch government had stated that this judgment is in line with Dutch policy on assessing the credibility of homosexual asylum seekers except on the point that the conclusion of a lack of credibility cannot solely be reached if an applicant cannot furnish information about the gay scene (in the Netherlands or in their country of origin). In some cases the IND based its judgment too predominantly on the fact that an applicant could not give details about the

³⁰ Article 3.112 Aliens Resolution.

³¹ Article 3.109c Aliens Resolution.

³² Article 3.109c Aliens Resolution.

³³ Article 38 Aliens Act.

³⁴ IND, *Toelichting inzet tolken (Explanatory notes use of interpreters)*, (February 2013), 1, accessible at <http://bit.ly/111J3Ui>.

³⁵ Lieneke Luit, *Pink Solution, inventarisatie van LHBT asielzoekers (Inventory of LGBTI asylum seekers)*, accessible at: <http://bit.ly/1MyMHfE>.

³⁶ De Volkskrant, 'Wat kunt u vertellen over de homoscene in uw land?', 26 February 2014. Rectified "De Volkskrant," 27 February 2014.

³⁷ Council of State, 201110141/1/T1/V2, Judgment of 30 March 2013.

³⁸ CJEU, Joined Cases C-148/13, C-149/13 and C-150/13 A, B and C, Judgment of 2 December 2014.

gay scene. Following *A, B and C*, however, this is no longer possible according to the Council of State in a judgment of 8 July 2015,³⁹ and the Secretary of State has to further clarify how the credibility examination of LGBTI claimants takes place. At the time of writing this has not happened and therefore several courts⁴⁰ and the Council⁴¹ have ruled in favour of the asylum seeker.

On day 2 and 4 of the short regular procedure the asylum seeker and their lawyer may submit any corrections and additions they wish to the interview that took place the day before. On day 6, after and if the IND has issued a written intention to reject the asylum application, the lawyer submits their view in writing with regards to the written intention on behalf of the asylum seeker. If the lawyer's view is not submitted on time (i.e. by day 6 of the general procedure), the IND may make a decision without considering that view.⁴² A comprehensive research in 2006 revealed several problems regarding this communication in the interviews.⁴³

The IND may only use certified interpreters by law.⁴⁴ However, in certain circumstances the IND may derogate from this rule, for example if an asylum seeker speaks a very rare dialect.⁴⁵

Interpreters are obliged to perform their duties honestly, conscientiously and must render an oath.⁴⁶ The IND uses its own code of conduct which is primarily based on the general code of conduct for interpreters.⁴⁷ 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 Concorde⁴⁸ and paid by the Legal Aid Board.⁴⁹

On 14 March 2013, the IND issued a press release announcing that they ended their collaboration with two Uyghur interpreters who were suspected of spying for the Chinese authorities.⁵⁰ The allegations were based on an individual report of the Dutch Intelligence Service (AIVD). The interpreters subsequently filed a complaint at the Monitoring Committee of the Dutch Intelligence Service (CTIVD). The CTIVD acknowledged that the interpreters were right in arguing that the individual report was insufficiently motivated.⁵¹

³⁹ Council of State, 201208550/1, 201110141/1 and 201210441/1, Judgment of 8 July 2015.

⁴⁰ For instance: District court Haarlem 15/13178, Judgment of 4 August 2015.

⁴¹ Council of State, 201502654/1, Judgment of 31 July 2015.

⁴² Article 3:114 Aliens Regulations.

⁴³ Nienke Doornbos, *Op verhaal komen, Institutionele communicatie in de asielprocedure, (Gain strength, Institutional communication in asylum procedures)*, (Nijmegen, Wolf Legal, Publishers 2006): 'Four interrogations were intimidating in character. Most commonly, there was a conjunction of problems affecting the role and behaviour of all actors. For instance, some officers lacked experience or cultural or political knowledge. Their questions did not connect to the knowledge or understanding of asylum claimants. Their speed of questioning was often too fast or they jumped from one subject to the other. Some let the interpreter take control over the meeting. Some showed prejudiced behaviour, for instance, they assumed that the applicant was unreliable before they had even spoken to them. A few interpreters lacked fluency in one of their languages. They regularly did not translate what the other participants said, but what was a relevant answer to the question according to them. They sometimes interfered in the interview and posed questions themselves. Some of them displayed prejudiced behaviour and talked about applicants in a negative way. In ten out of the ninety interviews attended, interpreters, contrary to their code of conduct, provided the officer with background information on the applicant that heightened the impression that the applicant was unreliable.' (...) 'Only in a few cases were the problems mentioned in the report or was the interview resumed in another language. If applicants do not explicitly mention the problems and make sure themselves that the problems are noted, adjudicators and judges will assume from the report that the communication process went smoothly.'

⁴⁴ Article 28.1 Law Sworn Interpreters and Translators.

⁴⁵ Article 28.3 Law Sworn Interpreters and Translators.

⁴⁶ Frits Koers et al, *Best practice guide asiel: Bij de hand in asielzaken (Best Practice guide asylum)* (Raad voor de Rechtsbijstand, Nijmegen 2012), 38.

⁴⁷ IND, Toelichting inzet tolken, 5.

⁴⁸ Concord's website, accessible at: <http://bit.ly/1I1K8eZ>.

⁴⁹ Decision of the Secretary of State, 1 April 2013, nr .INDVITI3-273, 110.

⁵⁰ Accessible at: <http://bit.ly/1jcTt2H>.

⁵¹ NRC NL, Dutch Intelligence Service Report, News, 10 September 2013, accessible at:

The National Ombudsman has made recommendations concerning the possibilities for civilians to record conversations with governmental institutions.⁵² One of the recommendations is that a governmental institution should not, in principle, refuse the wish of a civilian to make recordings of a hearing or conversation with a governmental institution. This recommendation is also explicitly applicable in relation to asylum seekers and the IND. Therefore the IND has started a pilot on 1 June 2015 on one AC (Zevenaar) where the asylum seeker is given the possibility to record the hearing.⁵³ At the time of writing only one case is known where recordings were made. Due to an increased interest the pilot has expanded to all the ACs. In October there will be an evaluation of the pilot.⁵⁴

2.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive <ul style="list-style-type: none"> ○ Short asylum procedure ○ Extended procedure 	<div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial </div> <div> <input type="checkbox"/> No <input type="checkbox"/> Administrative </div> </div> <div style="margin-top: 10px;"> In some cases <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </div>
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2. Average processing time for the appeal body to make a decision:⁵⁵ 18 weeks

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

The short asylum procedure

An asylum seeker whose application for asylum is rejected within the framework of the short asylum procedure has one week to lodge an appeal.⁵⁶ This appeal has suspensive effect except in the case the rejection is based on:

- Dublin;
- Inadmissibility (except third country objection);
- Manifestly unfounded claim (except illegal entrance; extending residence unlawfully or not promptly reported to the authorities);
- Not-processing the application; and
- In case of a subsequent application in the sense of the GALA.⁵⁷

In these cases the lawyer has to request a provisional measure pending the appeal. The appeal and the provisional measure are handled simultaneously by the same judge in the regional court. 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 to accommodation continues. If the court does not decide within four weeks (on the provisional measure or appeal), the asylum seeker has to apply for an (urgent)

<http://bit.ly/1LjmRKI>.

⁵² The National Ombudsman, 2014/166, report of 27 November 2014.

⁵³ Accessible at: <http://bit.ly/1MjB3HJ>.

⁵⁴ Information from the Legal Aid Board, not publicly available.

⁵⁵ 95% of all alien cases are handled within 9 months: *Annual report district courts 2014*, accessible at: <http://bit.ly/1kBBog2>, para 12.4.

⁵⁶ Article 69(2) Aliens Act.

⁵⁷ The Aliens Act is a part of the GALA in the sense that the Aliens Act is the *lex specialis* and the GALA is the *lex generalis*. In theory it is therefore possible that in some cases an asylum request is rejected on the GALA instead of the Alien Act but it is very unlikely that this is going to happen in practice. See Article 4(6) GALA in relation to Dublin.

provisional measure again to ascertain their right to accommodation and other reception facilities.⁵⁸ Many organisations, *inter alia* the Dutch Council for Refugees, find this unnecessarily complicated.

The extended asylum procedure

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

In both instances, the regional court carries out a full judicial review of the case with the understanding that it is recognised that the IND has the expertise to judge an asylum request. This means that the court will not substitute its judgement about the credibility in place of that of the IND. It applies a marginal scrutiny when reviewing the decision on the facts and assesses them as they stand at that point '*ex nunc*' and not as they were at the time of application '*ex tunc*'.⁵⁹ With the transposition of Article 46 of the recast Asylum Procedures Directive within national legislation in July 2015,⁶⁰ it is debatable whether this framework still exists. The question remains, therefore whether the court can substitute its judgement about the credibility in place of that of the IND. The Secretary of State is of the opinion that this is not the case. According to him, the new examination only subscribes a more 'intensified' examination, especially concerning some elements like credibility.⁶¹ The word 'full' in the text of Article 46 of the recast Asylum Procedures Directive is translated as '*volledig*' in the Dutch text which also can be translated back as 'entire' or 'complete'. So in that sense it does not mean 'full' as in the opposite of marginal.

After a decision in the short and extended asylum procedure is made by the regional court, either the asylum seeker and/or the IND⁶² may appeal against the decision of the regional court to the Council of State.⁶³ This procedure does not have any suspensive effect. The Council of State carries out a marginal *ex tunc* review of the (judicial) judgment of the district court and does not examine the facts of the case.⁶⁴ A provisional measure from the president of the Council of State is needed to prevent expulsion before the verdict of the Council.⁶⁵ A provisional measure is only granted in case the departure date is set. A granted provisional measure gives a right to reception facilities. In the extended asylum procedure the right to accommodation ends after the verdict of the court, or in the case of onward appeal and this appeal has suspensive effect, after the verdict of the Council. But, in most cases only in a very late stage the departure date and time is set so in general there are no reception facilities during the onward appeal.

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

2.5. Legal assistance

⁵⁸ Article 3(3)(a) RBA.

⁵⁹ Possibly subject to major change in the future due to the mandatory implementation of Article 46(3) of the recast Asylum Procedures Directive which requires that 'Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law'.

⁶⁰ Article 83a Aliens Act.

⁶¹ Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015), 20.

⁶² The IND makes use of this possibility especially in matters of principle. For example if a court judges that a particular minority is systematically subjected to a violation of Article 3 ECHR.

⁶³ Article 70(1) Aliens Act.

⁶⁴ Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015), 22 and Chapter 8.5 GALA.

⁶⁵ Article 8:106 GALA.

Indicators: Regular Procedure: Legal Assistance

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

Every asylum seeker is entitled to free legal assistance.⁶⁶ To ensure this right the following system has been designed:

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

An appointed lawyer from the Legal Aid Board is free of charge for the asylum seeker. This however does not mean that an asylum seeker has to choose the lawyer who is appointed to him. If asylum seekers have their own lawyers (in practice mostly in case of a subsequent application) then they can make use of this lawyer. If this self-chosen lawyer is recognised by the Legal Aid Board as an official asylum lawyer, the Legal Aid Board will pay for it. This happens in the vast majority of cases. There are no limitations to the scope of the assistance of the lawyer as long as they get paid.

The Dutch Council for Refugees also provides 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 criticised the fact that the contact hours between lawyers and their clients are limited in this system.

At the appeal stage of the regular procedure asylum seekers continue to have access to free legal assistance. No merits test applies.⁶⁷ 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

⁶⁶ Article 10 Aliens Act.

⁶⁷ Circular payments legal aid in the new asylum procedure (Beleidsregel vergoedingen voor rechtsbijstand in de nieuwe asielprocedure), accessible at: <http://bit.ly/1HS8gek>.

another lawyer takes over the case.⁶⁸ 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 may not be the case in future circumstances, for example in case of a subsequent application. Only after several recognised ‘malpractices’ can an asylum lawyer be penalised. The gravest penalisation is disbarment.

The amount of financial compensation for lawyers who represent asylum seekers can be an obstacle. Some lawyers consider the amount of time to prepare a case (and therefore the compensation they get) as too little. This means that it is possible that some lawyers spend more work on a case than they get paid for or that some cases are not prepared thoroughly enough. Alongside this, due to the economic crises, more cutbacks had to be made within the state funded legal aid. Firstly the Secretary of State initially reduced the compensation when a case is dealt by the Courts without a hearing.⁶⁹ The reasoning behind this reduction was that those cases would have been easily decided or perhaps required no proceedings at all. According to asylum lawyers this may be true for several disciplines in law but is not a workable criterion in asylum cases due to the nature of such cases. 95% of asylum cases in onward appeal are dealt without a hearing while in other disciplines of law this percentage is much lower (15%).⁷⁰

Eventually the Secretary of State withdrew this measure in February 2014 after severe objections from lawyers.⁷¹ Secondly, another major cutback, which is finalised in law and entered into force the first of January 2014, is the principle of ‘no cure, less fee’ when handling a subsequent application. Lawyers will receive a lower compensation at subsequent applications when the appeal has been declared inadmissible (instead of four “points” they will receive two “points”).⁷²

3. Dublin

3.1. General

Indicators: Dublin: General

No statistics on the operation of the Dublin system are provided by the IND.

Application of the Dublin criteria

In addition to a match in the Eurodac system other grounds such as an original visa of another Member State and information, like sugar bags or bills of a sleeping accommodation, collected by the Aliens Police through the searching of clothes and luggage may give rise to a Dublin claim.⁷³ Except for the implementation of Article 16 of the Dublin III Regulation, there is no special regulation concerning the position of vulnerable persons under Dutch legislation. The State Secretary for Security

⁶⁸ Article 12 Law on legal aid (Wet op de rechtsbijstand Wrb).

⁶⁹ Decision of the Secretary of State 10 September 2013, *starting 1 October 2013 regarding the modification of decision on own contribution litigant and legal aid (Besluit aanpassingen eigen bijdrage rechtzoekenden en vergoeding rechtsbijstandverleners)*, Publication of the State (Staatsblad) 2013, 345.

⁷⁰ NJ Blog, Mies Westerveld and Marc Wijngaarden, 7 October 2013, accessible at: <http://bit.ly/1Od3Uhy>. On 20 November 2013, a debate took place in Parliament on this issue.

⁷¹ Letter of the State Secretary for Security and Justice concerning legal aid to the House of Representatives, 8 February 2014, accessible at: <http://bit.ly/1MP0JgF>. Stelselvernieuwing gesubsidieerde rechtsbijstand (New system state funded legal aid).

⁷² *Ibid.*, 84.

⁷³ On the practical application of the Dublin criteria, see Dublin Transnational Network, *Dublin II Regulation: National report, The Netherlands*, 22-29.

and Justice informed the House of Representatives on the 2 September 2013 about the consequences and the change in policy for unaccompanied children, who have already applied for asylum in another Dublin country, in order to comply with the CJEU's *M.A.* judgment.⁷⁴ The Council of State ruled that the CJEU interpreted the law without any time limits.⁷⁵

If the asylum seeker states there are family members which can be reunified under the Dublin Regulation the IND uses the criteria mentioned in the Dublin Executive Regulation (118/2014). In practice however, the Dutch Council for Refugees thinks that the question whether somebody is a relative or not is not the real issue in this context. The main issue is, assuming there is a family link, whether the Netherlands is responsible for the asylum application under Article 17 Dublin Regulation (the discretionary clause seen below). DNA is one of the possibilities on which family ties can be determined.

The discretionary clauses

If a person is vulnerable, this may be an important factor in the decision to apply Article 17 of the Dublin Regulation (discretionary clause).⁷⁶ This discretionary clause can also be invoked if a transfer is of disproportional harshness. Disproportional harshness and vulnerability in most cases go hand in hand. The discretionary clause of Article 17 is also applied in combination with Article 16 in dependent family member cases.

In case an asylum seeker has physical and/or psychological problems, which makes it impossible for them to travel they can apply for an Article 64 Aliens Act measure (delay of departure). If the IND decides to grant this measure then the IND has to handle the asylum application, as, according to case law, Article 64 Aliens Act is a residence permit under Article 16(2) Dublin Regulation.⁷⁷ The Dutch authorities are very reluctant in the use of the discretionary clause.⁷⁸ This is principally because, 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 ECHR, unless there is concrete evidence to the contrary. If this is the case, the Netherlands can take charge of the asylum application on the basis of Article 17 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.

At the moment there is a big European debate about the refugee crisis and the situation in Hungary, in particular. Nevertheless the Dutch authorities persist in claiming that asylum seekers can be transferred to Hungary. In the end the Council of State has (temporarily) stopped these transfers.⁷⁹

3.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

During the rest and preparation period, the IND starts investigating whether another country is responsible for examining the asylum application. All asylum seekers are systematically fingerprinted and checked in Eurodac.

⁷⁴ Letter of the State Secretary for Security and Justice concerning case C-648/11 of the CJEU, 2 September 2013.

⁷⁵ Council of State, 201205236/1, Judgment of 5 September 2013.

⁷⁶ C3/2.3.6.4 Aliens Circular.

⁷⁷ Council of State, 201000724/1, Judgment of 12 July 2012.

⁷⁸ C2(5) Alien Circular.

⁷⁹ Council of State, 201506653, Judgment of 22 September 2015.

There are no signals that asylum seekers refuse to provide their fingerprints, however, some cases are known about Somali asylum seekers removing their fingerprints. In theory where an asylum seeker refuses to provide their fingerprints the asylum application is likely to be rejected on the ground that the asylum seeker is not cooperating in establishing their identity or travel route.⁸⁰

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.⁸¹ 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 (see [Dublin: Personal Interview](#)).

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

The IND files a Dublin claim as soon as it has good reason to assume that another Dublin country is responsible for examining an asylum application (it does so according to the criteria set in the Dublin Regulation). The IND does not wait until the results of this claim are known before having a Dublin interview and follows the next steps of the asylum procedure.⁸² However, the decision to refuse asylum due to the possibility of a Dublin transfer is only taken after the Dublin claim has been (tacitly) accepted by the other Dublin country. The IND tries to handle Dublin cases as much as possible during the regular procedure, but the dependency on other Member States in such cases has the consequence that a large number of these cases are dealt with in the extended asylum procedure. The actual time it takes until the execution of the transfer to the responsible Dublin country within the fixed term of six months depends on whether an appeal against a Dublin transfer decision was submitted. The practice on this topic is elaborated in the Dublin II Regulation National Report of the Netherlands.⁸³

Individualised guarantees

⁸⁰ District Court Groningen, Judgment 09/15667, 15 May 2009.

⁸¹ Article 30(1)(a) Aliens Act.

⁸² Danielle Zevenum & Geert Lamers, *Dublin II, national asylum procedure in the Netherlands*, Dublin Transnational Project, 16.

⁸³ *Ibid*, 39-40: 'A provisional measure issued to allow an applicant to await a decision on appeal, as well as a provisional measure to await a decision on a request for a provisional measure (see chapter 3.5.3 on effective remedies), suspends the transfer term of six months in accordance with Article 20(1)(d) Dublin Regulation. However, as long as there is no decision from the court on a request for a provisional measure, the appeal procedure has no suspensive effect and the time limit continues to run. If the time limit of six months is surpassed, the IND will be reluctant to continue waiting for the court's decision and can plan a transfer. The asylum seeker then has to ask the court to rule on the provisional measure before the planned transfer ('*spoed-vovo*'). If the judge grants the provisional measure, the transfer term of six months will begin again after the court has ruled on the appeal procedure (see also chapter 3.5.3 on effective remedies). The Council of State has held that an interim measure under Rule 39 of the procedures of the Court issued by the ECtHR suspends the transfer term in Article 20. Once an interim measure has been issued, an asylum seeker enjoys lawful residence in the Netherlands, and may therefore not be transferred under the Dublin Regulation. An interim measure from the ECtHR is regarded as a factual barrier relating to the postponement of the moment of transfer.'

If Italy is the country to which the asylum seeker is transferred due the Dublin Regulation, the *Tarakhel* judgment⁸⁴ prescribes that Italy must guarantee upfront how the accommodation is arranged.⁸⁵ These guarantees must be very specific and tailor made.⁸⁶ The recognition rates as such are not an aspect which could be decisive.

Transfers

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

The situation of Dublin returnees

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

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

In the case of a 'take back' (*terugname*) procedure the asylum seeker may file a new request if there are new circumstances. In 'take charge' (*overname*) procedures the asylum seeker has to apply for asylum if they want international protection.⁸⁷

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.⁸⁸ 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. According to the most recent known publication on statistics of the IND⁸⁹ it is stated that "fewer aliens are subjected to detention as a result of Dublin III because more aliens under Dublin III are leaving voluntarily to the responsible Member State."

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.

3.3. Personal interview

⁸⁴ ECtHR, *Tarakhel v. Switzerland*, 29217/12, 4 November 2014.

⁸⁵ Council of State, 201404312/1, Judgment 22 July 2015.

⁸⁶ District Court Rotterdam, 15/13038, Judgment 28 August 2015.

⁸⁷ *Ibid*, 44-45.

⁸⁸ Article 3.109(6) Alien Decree; Council of State, Judgment 201103598/1/V2, 10 May 2011.

⁸⁹ Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)*, (Period January 2014 until December 2014), 45.

Indicators: Dublin: Personal Interview

☒ Same as regular procedure

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

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

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

The Dublin interview is combined with the first interview in a special Dublin procedure. Nevertheless the remarks concerning video/audio recording, interpreters, accessibility and quality of the (regular) interview are also applicable in the Dublin procedure. The whole procedure, from the moment it officially starts until the final decision takes about a week. But due to the enormous increase of asylum application at the moment the official starting point is delayed by months. If more investigation whether Dublin is applicable is needed the asylum seeker is directed to the extended asylum procedure.

3.4. Appeal

Indicators: Dublin: Appeal

☐ Same as regular procedure

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

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 request is rejected on Article 30(1) Aliens Act. The lawyer may appeal against such a decision with the regional court. The asylum seeker has four weeks in which he has to leave the Netherlands voluntarily.⁹⁰ The asylum seeker is entitled to accommodation until the actual transfer.⁹¹ There is no suspensive effect of the appeal and the appeal must be done within a week after the rejection.⁹² If, after four weeks, the asylum seeker has not left the Netherlands and the IND wants to carry out the transfer the asylum

⁹⁰ Article 62(c) Aliens Act.

⁹¹ Article 8(m) Aliens Act.

⁹² Article 69 Aliens Act.

seeker has to apply for a provisional measure to ensure he is not expelled during the appeal stage.⁹³ 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.⁹⁴ The appeal body takes circumstances and facts into account if this could mean that transfer would result in a violation of Article 3 ECHR. Important aspects are the level of reception conditions and the procedural guarantees in the other Member State.

3.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview ⁹⁵
<input checked="" type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

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

3.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------

 - ❖ If yes, to which country or countries?

Greece, Hungary

The leading case in national jurisprudence concerning Dublin transfers in general is the ruling of the Council of State on 14 of July 2011, interpreting the *M.S.S.* judgment.⁹⁶ 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)⁹⁷ and a ruling of the Council of State in which only individual circumstances applicable to the asylum seeker were weighed.⁹⁸ Recently the Aliens Circular has changed to incorporate this jurisprudence.⁹⁹ In general the *Tarakhel* judgment has not changed this practice *in jure*.

The Netherlands has suspended all transfers to **Greece** on the basis of the European Court on

⁹³ Article 82 Aliens Act.

⁹⁴ C2(5) Alien Circular.

⁹⁵ In general the lawyer is not present at the interview but he or she is allowed to attend the interview: Article 2(1) GALA.

⁹⁶ Council of State, 201009278/1/V3, Judgment of 14 July 2011.

⁹⁷ Alien Circular C3/2.3.6.2 (old).

⁹⁸ *Ibid*, note 115.

⁹⁹ Aliens Circular C2/5.1.

Human Rights ruling in the case of *M.S.S. v Belgium and Greece*.¹⁰⁰ The Netherlands is assuming responsibility for all asylum applications of asylum seekers, who actually should be transferred to Greece. As mentioned above, a special policy applies with regard to transfers of families with under age children to Italy as a result of the judgment of the ECtHR in the case of *Tarakhel v Switzerland* (see section on Dublin: Procedure).

However, regarding **Italy**, the Dutch authorities are of the opinion that new Italian policy, mentioned in the letter of the Italian Ministry of Interior of 8 June 2015,¹⁰¹ provides an adequate safeguard that families with minor children are kept together in accommodation appropriate to their needs. In light of the information given by the Italian authorities in the letter of 8 June 2015, it is no longer necessary to receive individual guarantees shortly before the actual transfer. On 13 July 2015, the Dutch, German and Swiss migration liaison officers to Italy issued a report on SPRAR in general, including on the requirements that the accommodation must fulfil and on two projects they had visited on the suggestion of the Italian Government.¹⁰²

Regarding other Member States suspension of transfers is applied on a case by case basis. At the time of writing transfers (besides Italy) to **Hungary**¹⁰³ and **Malta**¹⁰⁴ are heavily disputed in court with success. From jurisprudence it seems that an appeal against a transfer to **Bulgaria** is likely to fail.¹⁰⁵

4. Admissibility procedure

4.1. General (scope, criteria, time limits)

With the implementation of the recast Asylum Procedures Directive in July 2015, the Netherlands has a formal inadmissibility procedure.¹⁰⁶ However the examination whether an application can be declared inadmissible is done in the regular asylum procedure as mentioned in the section on the regular procedure.

Grounds to declare an application inadmissible are summed up in Article 30(1) Aliens Act and can be divided as follows:

- Third country exception;
- A subsequent application and if the asylum seeker is already allowed to legally reside in the Netherlands because of refugee status or subsidiary protection.¹⁰⁷

¹⁰⁰ ECtHR, *M.S.S v Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

¹⁰¹ Italian Ministry of Interior, Letter to all Dublin Units, 8 June 2015.

¹⁰² Fabiano Bertini (CH), Sonja Rexvani (DE) and Jeske Uiterhoeve (NL), *The SPAR System, a description of the Italian system for the accommodation of asylum seekers and refugees*, 13 July 2015.

¹⁰³ Council of State, 201507322/2, Judgment 23 September 2015.

¹⁰⁴ District Court Haarlem, 15/2103, Judgment 24 July 2015; District Court Den Bosch, 15/4045, Judgment 24 July 2015.

¹⁰⁵ District Court Haarlem, 14/24576, Judgment 6 June 2015.

¹⁰⁶ Wet van 8 juli 2015 wijziging van de Vreemdelingenwet 2000 ter implementatie van Richtlijn 2013/32/EU van het Europees parlement en de Raad van 26 juni 2013 betreffende gemeenschappelijke procedures voor de toekenning en intrekking van de internationale bescherming (PbEU 2013, L 180) en Richtlijn 2013/33/EU van het Europees parlement en de Raad van 26 juni 2013 tot vaststelling van normen voor de opvang van verzoekers om internationale bescherming (PbEU 2013, L 180).

¹⁰⁷ Article 30(1) Aliens Act.

4.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

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

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

4.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?
 - ☒ Yes ☐ No
 - ❖ If yes, is it ☒ Judicial ☐ Administrative
 - ❖ If yes, is it suspensive
 - Dublin transfer decisions ☐ Yes ☒ No
 - Other grounds ☒ Yes ☐ No

The asylum seeker has one week to lodge an appeal¹⁰⁸ which has, except in the case of safe third country, no suspensive effect.¹⁰⁹

4.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

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

To make sure the asylum seeker is entitled to accommodation during the appeal stage, a provisional measurement requiring that the asylum seeker will not be expelled is needed.¹¹⁰ At the time of writing it is unclear if, in the case of an asylum seeker who is rejected based on the safe third country exception, needs such a provisional measurement too.

¹⁰⁸ Article 69 Aliens Act.

¹⁰⁹ Article 82 Aliens Act.

¹¹⁰ Article 3 (3)(a) RBA.

5. Border procedure (border and transit zones)

5.1. General (scope, time-limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
3. Is there a maximum time-limit for border procedures laid down in the law? ☒ Yes ☐ No
❖ If yes, what is the maximum time-limit? 4 weeks

With the transposition of the recast Asylum Procedures Directive in July 2015, the Netherlands has a formal border procedure.¹¹¹ Before this date, there was a procedure which could be labelled as a border procedure but was not officially recognised as such. In the explanatory notes on the implementation of the recast Asylum Procedures Directive the Secretary of State explains why a correct implementation of the recast Directive stipulates that there has to be a formal border procedure. First, the recast Directive prescribes that an application done at the border can only be rejected on a limited number of grounds, including Dublin applicability, rejection as inadmissible or manifestly unfounded, while in the former practice an application done at the border could be rejected on every ground. Second, in the former Dutch unofficial border procedure the Secretary of State could not suspend the decision to allow or reject the entry to Dutch territory when an asylum application was made. Third, the period of detention was longer than prescribed in Article 43 of the recast Asylum Procedures Directive (6 weeks instead of 4 weeks). As these aspects are not in line with Article 43 of the recast Directive, the Secretary of State decided to adopt an official border procedure.¹¹²

The new system is as follows: the decision on refusal or entry to the Netherlands is suspended for a maximum of 4 weeks and the asylum seeker stays in detention. During this period, the IND has to decide on which of the grounds the application will be rejected. If the examination takes longer than 4 weeks or another ground of rejection is applicable, the detention is uplifted, the asylum seeker is allowed to access the Netherlands and the treatment of the application is continued in a regular asylum procedure.¹¹³

Since 1 September 2014, the Netherlands no longer detains families with children at the border. Instead of being put in border detention, families seeking asylum at Amsterdam Schiphol airport are now redirected to a closed reception centre in Zeist.¹¹⁴ In 2014, there were 1,040 refugees in border detention (an increase of 34% relative to 2013).¹¹⁵

A number of assessments take place prior to the actual start of the asylum procedure, including a medical examination, a nationality and identity check and an authenticity check of submitted documents. The legal aid provider prepares the asylum seeker for the entire procedure. These investigations and the preparation take place prior to the start of the asylum procedure. The AC at Schiphol airport is a closed centre. The asylum seeker is subjected to border detention to prevent them entering the country *de facto*. During the first steps of the asylum procedure, the asylum seeker remains in the closed Application Centre at Schiphol. In these stages the border procedure follows

¹¹¹ *Ibid*, note 123.

¹¹² Tweede Kamer, *Explanatory notes on the implementation of the recast Asylum Procedure Directive* (Vergaderjaar 34 088, number. 3, 2014–2015), 29.

¹¹³ Articles 3 and 6 Aliens Act.

¹¹⁴ Aliens Circular, A1/7.3.

¹¹⁵ Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)* (Period January 2014 until December 2014), 34.

more or less the steps of the short asylum procedure described in the section on the regular procedure.

In the following situations the IND will, after the first hearing, conclude that the application cannot be handled in the border procedure and therefore has to be channelled into the regular asylum procedure:¹¹⁶

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

If the IND is not able to stay within the time limits prescribed by the short asylum procedure (e.g. 8 days) it can continue the border procedure if the IND suspects it can reject the asylum application on the basis of Article 30 (Dublin applicability), Article 30a (inadmissible) or Article 30b of the Aliens Act (manifestly unfounded).¹¹⁷ The maximum period is four weeks.¹¹⁸

5.2. Personal Interview

Indicators: Border Procedure: Personal Interview

☒ Same as regular procedure

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

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

5.3. Appeal

Indicators: Border Procedure: Appeal

☒ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

The decision to suspend the entry to the Dutch territory is applicable.¹¹⁹ If the asylum seeker i.e. the lawyer does not appeal against the decision to refuse entry (which can be done throughout the

¹¹⁶ Section C1/2 Aliens Circular.

¹¹⁷ Article 3.109b Aliens Decree.

¹¹⁸ Article 3(7) Aliens Act.

¹¹⁹ Article 93 Aliens Act.

detention) an 'automated' appeal will be done after 28 days at the district court.¹²⁰

Because the asylum seeker is detained during the examination of the application, the IND has to deal with it in a 'prosperous manner'. There is no exact definition as to what a 'prosperous manner' means.

The Dutch Council for Refugees strongly objects to the use of the border procedure in light of the individual interests of the asylum seeker. Indeed, relevant international and EU standards illustrate that there is no obligation to detain aliens at the border and the Dutch authorities have not reflected on any alternatives to detention.¹²¹

Also the Committee of Human Rights (*Comité voor de Mensenrechten*) has published advice to the Dutch government in which the Committee concludes that it is unnecessary to *always* detain asylum seekers at the border, especially children.¹²² According to the Committee the detention of all asylum seekers at the border without weighing the interest of the individual asylum seeker in relation to the interests of the state is not in line with European regulations and human rights standards. In addition, research shows that the majority of the detained asylum seekers are, after the detention period, allowed to enter Dutch territory.

5.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

☒ Same as regular procedure

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

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

6. Accelerated procedure

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

In a report of the Dutch scientific research and documentation centre (*Wetenschappelijk onderzoeks en documentatiecentrum, WODC*) of 2014 regarding the evaluation of the revised asylum procedure it is stated that between 2007-2009 20% of all the asylum applications were handled within the (predecessor of the) short asylum procedure; 50% in 2011, 60% in 2012 and 70% in 2013.¹²³

¹²⁰ Article 94(1) Aliens Act.

¹²¹ Dutch Council for Refugees and UNHCR, '*Pas nu weet ik: vrijheid is het hoogste goed*' *Gesloten Verlengde Asielprocedure 2010-2012*, April 2013, accessible at: <http://bit.ly/1Qs1qz0>.

¹²² The Committee for Human Rights, *Advies: Over de Grens, Grensdetentie van asielzoekers in het licht van mensenrechtelijke normen*, May 2014, accessible at: <http://bit.ly/1YeuUBM>.

¹²³ Wetenschappelijk Onderzoek- en Documentatiecentrum, *Evaluatie van de Herziene Asielprocedure*, 2014, 50 accessible at: <http://bit.ly/1MSFDtI>.

In practice, authorities comply with the time limit in all procedures. On the one hand probably because they can prolong the time limits¹²⁴ and on the other hand the IND has to pay a fine if the time limits are extended.¹²⁵

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

Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☒ Yes ☐ With difficulty ☐ No
 - ❖ Is tailored information provided to unaccompanied children? ☒ Yes ☐ No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

As laid down in the Aliens Circular,¹²⁶ (representatives of) the Dutch Council for Refugees inform the asylum seekers about the asylum procedure during the rest and preparation period. This can be either done during a one-to-one meeting, or in a group where asylum seekers often do not know each other but speak a common language, generally through an interpreter on the phone. During this information meeting, the asylum seeker will also be informed that the IND may request for their transfer to another Member State under the Dublin Regulation. In such meetings, the asylum seeker receives information from the Dutch Council for Refugees on how the Dutch asylum procedure works and what their rights and duties are.

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

The IND also has leaflets with information on the different types of procedures, and rights and duties of the asylum seekers. UNHCR verifies the content of the brochure and leaflets of the IND and the Dutch Council for Refugees. The common information forms included in Annexes X to XIII of the Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 are in use.¹²⁷

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

¹²⁴ Articles 43 and 44 Aliens Act.

¹²⁵ Work instruction 2013/17 (AUA, 5 September 2013), accessible at: <http://bit.ly/1lrwsdK>.

¹²⁶ C1/2 Aliens Circular.

¹²⁷ Website IND, accessible at <http://bit.ly/1Szg8Ss>.

seekers are not always familiar with the organizations and do not always know how to reach them. On the other hand (representatives of) the organizations do not have the capacity to visit all the asylum seekers who wish to meet the representatives of the NGOs or UNHCR.¹²⁸

D. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance ☐ Yes ☒ No
 - ❖ At the appeal stage ☐ Yes ☒ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance ☐ Yes ☒ No
 - ❖ At the appeal stage ☐ Yes ☒ No

After a final rejection of the asylum application, the asylum seeker is able to lodge a subsequent asylum application (*herhaalde aanvraag*) with the IND. This follows from the non-*refoulement* principle, codified under Article 3 ECHR. The Aliens Circular lays down the working instructions for the IND establishing how the authority should deal with subsequent applications.¹²⁹

In January-September 2015, 1,546 such applications were filed (compared to 2,720 in 2014).¹³⁰ The success rate is not available.

As of 1 January 2014 there has been a major change in the procedure for handling subsequent asylum applications but not in the assessment of those applications. The handling of these applications is now done in the so called 'one-day review' (*de eendags toets*).¹³¹ Also the implementation of the recast Asylum Procedures Directive on 20 July 2015 meant a 'formal' change and not a change in the assessment of those applications.¹³² The formal change constitutes the obligation of the IND to declare a subsequent application inadmissible when there are no new elements or findings.¹³³ The terminology 'new facts and findings' is derived from the Directive.¹³⁴ According to the Secretary of State¹³⁵ and case law,¹³⁶ this terminology must be interpreted exactly the same as the former terminology of 'new elements or circumstances'¹³⁷ therefore all the old jurisprudence and policy before the implementation date is still applicable. From here on the 'new elements or circumstances' will be called '*nova*'.

The nova criterion is interpreted strictly. If the nova are considered relevant, there will be a substantive

¹²⁸ There are also so called voluntary visitor groups which visit asylum seekers in detention.

¹²⁹ C14/4.1 Aliens Circular.

¹³⁰ Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)*, (Period January 2014 until December 2014), 24.

¹³¹ C1/3 Aliens Circular.

¹³² Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015), 12.

¹³³ Article 30b(1)(d) Aliens Act.

¹³⁴ Article 33(1)(d) Aliens Act.

¹³⁵ Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015), 12.

¹³⁶ Council of State, 201113489/1/V4, Judgment 28 June 2012.

¹³⁷ Article 4:6 GALA.

examination of the subsequent asylum application. According to the Aliens Circular, Chapter C1/2,7, the circumstances and facts are considered 'new' if they are dated from after the previous decision of the IND. In some circumstances, certain facts, which could have been known at the time of the previous asylum application, are nevertheless being considered as new if it is unreasonable to decide otherwise. This is the case, for example if the asylum seeker only after the previous decision gets hold of relevant documents which are dated from before the previous asylum application(s). The basic principle is that the asylum seeker must submit all the information and documents known to them in the initial asylum procedure. Also in case of possible traumatic experiences it is, in principle, for the asylum seeker to, even briefly, mention it.¹³⁸

The subsequent asylum applicant procedure is as follows: The asylum seeker is required to fill out a form and when the IND has received this form and assessed whether the application is complete, the asylum seeker will receive an invitation to submit an asylum application at an IND application centre. The IND strives to deal with an actual application submitted by the asylum seeker within two weeks of the reception of the form. However, the latter cannot be guaranteed by the IND.

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

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

- (1) The application is granted (refugee protection or subsidiary protection): On the same day the application is granted, the asylum seeker will receive a report of the hearing and the granted decision.
- (2) The application is rejected: On the same day (day 1) the application is rejected, the asylum seeker will receive a report of the hearing and the intended decision considering the rejection. The asylum seeker will discuss the report of the hearing and the intended decision the next day (day 2) with his lawyer. The lawyer will draft an opinion on the intended decision and will also submit further information. On the third day (day 3) the asylum seeker will receive an answer from the IND as to whether the application is rejected, approved or requires further research.
- (3) Further research: When further research is required, the application will be assessed in the short or extended asylum procedure.

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

When the asylum seeker receives a decision that their subsequent asylum application will be rejected, the asylum seeker can be expelled.¹³⁹

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,

¹³⁸ Council of State, 200509675/1, Judgment 13 March 2006.

¹³⁹ Article 3:1(1) Aliens Decree.

the asylum seeker has to request for a provisional measure with the regional court.¹⁴⁰ The appeal has to be lodged within one week after the rejection.¹⁴¹ The court mainly examines if the elements and findings are 'new' in the sense of the Aliens Act and the policy.¹⁴² A hearing in court takes place. After the decision of the regional court the asylum seeker can lodge an onward appeal with the Council of State.

When the negative decision is final the asylum seeker is not entitled to legally stay and can be expelled immediately.¹⁴³ This means that the asylum seeker cannot benefit from a period of 4 weeks to return of their own accord and no accommodation is offered to the asylum seeker.

Due to recent financial cutbacks the principle of 'no cure less fee' is applied with regard to legal assistance in the case of subsequent asylum applications. This means that lawyers would receive lower remuneration fees in case of a negative decision of the regional court or the Council of State.¹⁴⁴

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'.¹⁴⁵ 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.¹⁴⁶ As a result of the fact that the applicant is considered not to have any lawful interest in lodging the appeal with the Court, appeals in cases concerning subsequent asylum applications from asylum seekers with a re-entry ban are systematically rejected.¹⁴⁷ The Council of State confirmed this verdict in July 2012.¹⁴⁸ However, after this ruling there has been an interesting judgment of the regional court of Middelburg on this issue.¹⁴⁹ This court ruled that, based on the judgment of the CJEU in the case of *Arslan*,¹⁵⁰ an asylum seeker whose subsequent application is rejected and has an entry ban (due to his first application) can lawfully reside on the territory of the Member State until there is a decision on the appeal of the rejected subsequent application. This is contrary to the earlier judgment of the Council of State that there was only lawful residence until the decision in first instance.

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

1. Special procedural guarantees

¹⁴⁰ Article 82 Aliens Act.

¹⁴¹ Article 69 Aliens Act.

¹⁴² Article 30a (1)(d) Aliens Act and Aliens Circular Chapter C1/2.7.

¹⁴³ Article 62(3) Aliens Act.

¹⁴⁴ 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), 8.

¹⁴⁵ District Court Arnhem, 13/20849, Judgment 12 November 2015.

¹⁴⁶ Regional Court Middelburg, Awb 12/27476, Judgment of 20 September 2012.

¹⁴⁷ Regional Court Den Bosch, Awb 12/17011, Judgment of 14 February 2013.

¹⁴⁸ Council of State, 2012045591/1, Judgment of 7 July 2012.

¹⁴⁹ Regional Court Middelburg, Awb 13/27018 Judgment of 30 January 2014.

¹⁵⁰ CJEU, C-534/11, *Mehmet Arslan v. Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie*, Judgment of 30 May 2013.

Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ For certain categories ☐ No
❖ If for certain categories, specify which: Unaccompanied children
2. Are there special procedural arrangements/guarantees for vulnerable people? ☐ Yes ☒ For certain categories ☐ No
❖ If for certain categories, specify which: Unaccompanied children

Before the personal interview takes place a medical examiner (FMMU)¹⁵¹ will examine every asylum seeker as to whether they are able (mentally and physically) to be interviewed (see section on short overview of the asylum procedure). FMMU is an independent agency, hired by the IND to provide medical advice. FMMU's medical advice forms an important element in the decision as to how the application will be handled. However, it should be noted that FMMU is not an agency that identifies vulnerable asylum seekers as such but gives advice to the IND on how the asylum seeker should be interviewed. FMMU cannot be seen as a product of the Istanbul Protocol because the examination is limited to the question as to whether the asylum seeker is able to be interviewed based on his physical and/or mental capacity.

The IND decides whether the 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 2010/13.¹⁵² Adjustments of the interview could be that no interview will be conducted until the asylum seeker is in a better shape, an adjusted interview with more breaks, and a female employee of the IND in case of sexual violence of female asylum seeker.

In the COL, the IND will from the outset look at whether there are any vulnerable people in need of special care. To meet the obligations from Article 24 of the recast Asylum Procedures Directive the Secretary of State has implemented this provision in the Alien Decree.¹⁵³ Besides that the IND has drafted a working instruction to its employees how to establish vulnerability.¹⁵⁴

In this working instruction there is a list of indications which could indicate that the asylum seeker is a vulnerable person. It is divided in several categories; for instance physical problems (e.g. pregnancy; blind or handicapped) or psychological problems (traumatised, depressed or confused). But also the statements of the asylum seeker him or herself could indicate that he or she is a vulnerable person. It is explicitly noted that this is not an exhaustive list.

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 impractical on medical grounds.

Special measures also exist for victims of human trafficking but technically this has nothing to do with asylum. The Human Trafficking Coordination Centre and the Health Coordinator are the entities that

¹⁵¹ See website accessible at: <http://bit.ly/1HVgopa>.

¹⁵² IND, *Werkinstructie behandeling van medisch advies-zaken*, (Werkinstructie nr. 2010/13 (AUB), 29 October 2010), accessible at: <http://bit.ly/1NANE76>.

¹⁵³ Article 3.109b Aliens Decree.

¹⁵⁴ IND, *Working instruction 2015/8 procedural guarantees how to work with vulnerable people*, (20 July 2015), accessible at: <http://bit.ly/1S0RQAU>.

are responsible for a safe reception and daily accompaniment of these victims.¹⁵⁵ The IND employees are also trained to recognise victims of human trafficking.¹⁵⁶ Victims of trafficking who have been refused asylum can be granted a temporary permit on a regular ground. During a time frame of 3 months the asylum seeker has to consider whether they lodge a complaint or cooperate with the authorities to prosecute the trafficker. During the reflection period, a victim has the right to receive a social security contribution, health insurance, legal support and housing in a shelter, for example. However, this is unrelated to the asylum system.

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

Unaccompanied minors will not be detained unless the IND thinks the minor is of age.¹⁵⁷

2. Use of medical reports

Indicators: Use of medical reports

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

There is a legal obligation for the IND to medically examine every asylum seeker to assess whether the asylum seeker can be interviewed. This is the medical examination conducted by FMMU mentioned above. Besides that the IND has, since the implementation date of the recast Asylum Procedures Directive, the legal obligation to medically examine asylum seekers in connection to their reasons for requesting protection. Although the obligation to conduct a medical examination is now explicitly incorporated in Dutch law it is defensible to claim the Dutch authorities already had this obligation due to rulings of the ECtHR.¹⁵⁸

Medical evidence of past persecution or serious harm

Due to Article 18 recast Asylum Procedures Directive, the Secretary of State has implemented national legislation in which a medical examination (to be used as supportive evidence) is guaranteed.¹⁵⁹

Dutch law provides that a medical examination has to be done if the IND finds this necessary for the examination of the asylum application. If this is the case, the IND asks an independent third party (which is at the time of writing unknown) to conduct the examination. The IND bears the costs of this

¹⁵⁵ Chapter B/9 Aliens Circular.

¹⁵⁶ IND, *Werkinstructie "(potentiële) slachtoffers van mensenhandel en de asielpcedure"* (INS Working instruction 'Victims of human trafficking in the asylum procedure') (2007/16, 18 December 2007), accessible at: <http://bit.ly/1MjGx5i>.

¹⁵⁷ Letter from the Minister of Immigration and Asylum to the Parliament on 10 March 2011.

¹⁵⁸ ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010.

¹⁵⁹ Article 3.109^e Aliens Decree.

examination. If the asylum seeker is of the opinion an examination has to be conducted but the IND disagrees he is allowed to do this on his or her own initiative and costs.

An NGO called iMMo¹⁶⁰ has the resources and specific expertise, to medically examine (physically and psychologically) asylum seekers, at their request, if this is needed. This NGO is not funded by the State and operates independently. It works with freelance doctors on a voluntary basis and does not charge the asylum seeker. The authority of iMMo is 'codified' in the Dutch Aliens policy and its authority is accepted by the Council of State.¹⁶¹

Recently the Hague Regional Court ruled that, as a provisional measure, the IND had to reimburse the expenses of this iMMo report.¹⁶²

In this regard the main question is when the IND finds it is necessary to conduct such an examination. According to the Alien Circular the IND takes into consideration the following conditions:¹⁶³

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

At the time of writing no jurisprudence has yet evolved around the discretionary power to conduct a medical examination. Under the old 'jurisprudence', the most important aspect can be summed up as follows: if the story of the asylum seeker is considered not to be credible, the IND will leave aside medical evidence, which has been accepted in jurisprudence.¹⁶⁴ On the other hand, if there is initial proof given by the doctor the IND has to investigate.¹⁶⁵ It remains open as to how far the 'old' jurisprudence is still valid after the implementation.

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 Pharos¹⁶⁶ 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.¹⁶⁷ This publication has been an inspiration for the national and European

¹⁶⁰ Netherlands Institute for Human Rights and Medical Assessment, accessible at <http://bit.ly/1ObGRDC>.

¹⁶¹ C14/3.5.2 Aliens Circular.

¹⁶² District Court, The Hague, AWB 14/3855, Judgment of 11 March 2014 and District Court Haarlem, 14/1945, Judgment 6 February 2015.

¹⁶³ C1/4.4.4 Aliens Circular.

¹⁶⁴ District Court Maastricht, 12/38414, 12/3841, Judgment of 21 December 2012.

¹⁶⁵ Council of State, 201103862/1, Judgment of 19 October 2011.

¹⁶⁶ National knowledge and advice centre for the healthcare of migrants and asylum seekers, accessible at: <http://bit.ly/1S0So9U>.

¹⁶⁷ René Bruin, Marcelle Reneman, Evert Bloemen, "Care Full, Medico-legal reports and the Istanbul Protocol in asylum procedures" (2008) *Journal of Refugee Studies* 21(1): 134-136.

policy makers in asylum-related affairs. One of the recommendations from the publication was to provide more awareness to vulnerable groups of asylum seekers prior to the processing of their asylum applications, which has been an important issue in the recast proposals of the Reception Directive and Asylum Procedures Directive. Another recommendation was to use medical evidence as supporting evidence in asylum procedures, which has been addressed by Article 18 of the recast Asylum Procedures Directive.¹⁶⁸

Mental state and credibility

Psychological complication as a result of torture can support the claim of an asylum seeker if he has been tortured. In the section of the Aliens Circular regarding medical examination an examination of the psychological condition of the asylum seeker is possible.¹⁶⁹

3. Age assessment and legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?
☒ Yes ☐ No
2. Does the law provide for the appointment of a representative to all unaccompanied children?
☒ Yes ☐ No

Children will be considered unaccompanied if they travel without their parents or guardian and their parents/guardian are not already present in the Netherlands.¹⁷⁰ One is considered a “child” (underage) when under the age of 18 and not (registered as) married. When the 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 KMar can conduct an inspection (*schouw*).¹⁷¹ 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 marrow examination is carried out (age assessment). The opposite is possible too: when an asylum seekers claims he is of age an inspection can follow if the KMar suspect they are dealing with a minor.

In most cases the age assessment will be carried out on the basis of X-rays of the clavicle, the hand and wrist.¹⁷² 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.¹⁷³ The age-assessment has to be signed by the radiologist. A commission (Medico-ethical Commission, Medisch-ethische-Commissie) supervises the age assessment. It should be noted that the methods which are used in the age assessment process are controversial,¹⁷⁴ which

¹⁶⁸ No explicit reference in the explanatory notes on the implementation of Article 18 recast Asylum Procedures Directive is made, see Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive (Vergaderjaar 34 088, number. 3, 2014–2015).

¹⁶⁹ *Ibid* note C14/3.5.2 Aliens Circular.

¹⁷⁰ B14/2.2.2 Aliens Circular.

¹⁷¹ 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, 17.

¹⁷² Commissie leeftijdsonderzoek, (Committee Age assessment), *Rapport Commissie leeftijdsonderzoek (Report Committee age assessment)*, 2012, 7.

¹⁷³ Article 3:2 GALA.

¹⁷⁴ Commissie leeftijdsonderzoek, (Committee Age assessment), *Rapport Commissie leeftijdsonderzoek*

is also illustrated by the sometimes very technical discussions among radiologists referred to in the jurisprudence.¹⁷⁵ 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.¹⁷⁶ This method is criticised by the temporary Dutch Association of Age Assessment Researchers (DA-AAR). These researchers conclude that it is undesirable to base age assessment exclusively on four X-ray images – especially as various researchers have expressed serious doubts about these images that have not yet been the subject of public scientific discussion. If age assessment is necessary, it should at least be performed by a multidisciplinary team using various methods, under the leadership of an independent child development expert.¹⁷⁷

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 who are familiar with their special needs.¹⁷⁸

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.¹⁷⁹

A guardian is assigned to every unaccompanied child. NIDOS,¹⁸⁰ the independent guardianship and (family) supervision agency, is responsible for the appointment of guardians for unaccompanied asylum seeking children in a reception location.¹⁸¹ Children from the age of 13 to 18 years will be accommodated in a POL. After the POL they will be transferred to foster families or small-scale housing. A campus reception will only be advised if the child is able to live independently in a large-scale housing.¹⁸² Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian).¹⁸³ For unaccompanied children, NIDOS will request to be appointed as a guardian by the juvenile court.¹⁸⁴ 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 protectors”. Youth protectors need to have a bachelor degree in Social Work specific qualifications and receive training. A guardian who works a fulltime equivalent has a caseload of 21 minors.¹⁸⁵ Children who arrive through Schipol airport are then transferred to the application centre in Ter Apel and they are not detained in the AC Schiphol if their minority is not disputed. Minors under the age of 15 are not immediately sent to Ter Apel but are placed in a foster family straight away. After a few days the minor and the guardian go to Ter Apel for the application.

NIDOS has the same legal responsibility and powers like a parent.¹⁸⁶ In 2014 NIDOS was responsible for the guardianship of 2.582 minors, and from 1 January 2015 till 29 September 2015 the number is

(*Report Committee age assessment*), 2012, 7.

¹⁷⁵ See for example Regional Court Amsterdam, 10/14112, 18 December 2012.

¹⁷⁶ Commissie leeftijdsonderzoek, *Rapport Commissie leeftijdsonderzoek (Committee Age Assessment, Report Committee Age Assessment)*, 2012, 16.

¹⁷⁷ Temporary Dutch Association of Age Assessment Researchers (DA-AAR), *age assessment of unaccompanied minor asylum seekers in the Netherlands, radiological examination of the medial clavicular epiphysis*, May 2013.

¹⁷⁸ C13/1.1 Aliens Circular.

¹⁷⁹ C1/ 2000 Aliens Circular.

¹⁸⁰ Website of NIDOS, accessible at <http://www.nidos.nl/>.

¹⁸¹ Article 1:245 of the Dutch Civil Code.

¹⁸² Annual Report NIDOS 2012, 19.

¹⁸³ Article 245, Book 1, Civil Code.

¹⁸⁴ Art.1:254 under 2 Civil Act.

¹⁸⁵ Oral information given by NIDOS.

¹⁸⁶ Inspectie Jeugdzorg, *'De voogdijtaak van Nidos'*, (Utrecht September 2011), 9.

1802 ¹⁸⁷ The guardian of NIDOS accompanies an unaccompanied child at their arrival, stay and possible expulsion from the Netherlands. The guardian takes important decisions in the life of the minor which are taken with his/her future in mind, *inter alia*, which education fits, where the unaccompanied child can find the best housing and what medical care is necessary. The purpose of the guardianship can be divided into legal and pedagogical. A methodology of the guardian is derivative in certain domains:

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

In case an unaccompanied minor has not applied for asylum in another Member State a Dublin claim is only possible when this is in the best interest of the child.¹⁸⁸ In case of 'take charge' claims (the minor has applied for asylum) a transfer is possible. NIDOS agrees with a transfer if it is clear where and how a child will be accommodated if there is a guardian and who that guardian will be. NIDOS expresses significant concerns about the reception conditions and guardianship of unaccompanied children in Italy, Spain, Malta and Hungary. The IND will not transfer a minor without consulting NIDOS.

Another concern expressed by NIDOS relates to the precarious position of unaccompanied minors whose asylum application has been rejected and who do not fulfil the condition of a 'regular' permit to stay in the Netherlands (a permit which is not given on asylum grounds is called a 'regular' permit). In theory these unaccompanied minors have to return to their country of origin but in practice these unaccompanied children are not expelled before they turn 18. So an unaccompanied child can be in a situation where he has no right to reside in the Netherlands lawfully but cannot be expelled until his/her 18th birthday. NIDOS takes the position that for this group of children a residence permit should be in place. It is an unbearable hardship for a child to know that they will be returned to their country of origin upon turning 18.¹⁸⁹

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.¹⁹⁰

¹⁸⁷ NIDOS, accessible at <http://bit.ly/1QJ8o1W>.

¹⁸⁸ Article 8 Dublin Regulation.

¹⁸⁹ Defence for Children and UNICEF also expressed their concern on this issue, accessible at <http://bit.ly/1N8w1kL>.

¹⁹⁰ Frits Koers, Nienke Doornbos and Theo Wijngaard, *Best practice guide asiel: Bij de hand in asielzaken (Best Practice Guide asylum)*, Raad voor de Rechtsbijstand, 113-115.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Due to the implementation of the recast Asylum Procedures Directive, the safe country concepts find a new place within the national system. It is questionable whether this reshuffle will have any implication in practice. Until the time of writing there has been no jurisprudence on this matter. The following concepts are used:

First country of asylum

In the Aliens Circular it is stipulated that in case of protection in another Member State as well as in the case of asylum protection or other protection against *refoulement* the IND can invoke this concept. There is no list of countries.¹⁹¹

Safe third country

This can be invoked by the IND in the case that the asylum seeker can ask for protection in a third country because the asylum seeker has a link with this country. A possible link could be that the asylum seeker has had a working permit in the third country. There is no list of countries. The country must fulfil its international human rights obligation (legally and in practice). If the asylum seeker makes it plausible that this is not the case the IND cannot invoke this concept.¹⁹²

Safe country of origin

More or less the same concept as above except that the IND does not have to determine if there is a link between the country of origin and the asylum seeker because this is obvious. The most important condition is that the country of origin must fulfil its international human rights obligation (legally and in practice). If the asylum seeker makes it plausible that this is not the case the IND cannot invoke this concept.¹⁹³

In general the practice of safe country concepts is not used a lot presumably because the IND finds it a ‘difficult’ concept to invoke. In some cases it is just easier to find the account of the asylum seeker not credible. Nevertheless it does happen. For instance the concept is used in relation to Syrian nationals whom have resided in another country before departure to the Netherlands.¹⁹⁴

¹⁹¹ Article 30a(1)(a) and (b) Aliens Act.

¹⁹² Article 30a(1)(c) Aliens Act.

¹⁹³ Article 30b(1)(b) Aliens Act.

¹⁹⁴ Regional Court Haarlem, 13/17242, Syria, Judgment of 23 July 2013.

G. Treatment of specific nationalities

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No
❖ If yes, specify which: Syria, Eritrea
2. Are applications from specific nationalities considered manifestly unfounded?¹⁹⁵ ☐ Yes ☒ No
❖ If yes, specify which:

The temporary suspension of decisions on asylum applications and reception conditions for rejected asylum seekers from **Iraq** (*Besluit en vertrekmoratorium Irak*) has been prolonged in April 2015. After the start of the Islamic State threat in Iraq and the Sinjar drama the Secretary of State of Security and Justice decided to suspend decisions on asylum applications from Iraqis from 7 regions in Iraq (Bagdad, Anbar, Ninewa, Salaheddin, Ta'mim (Kirkuk), Diyala en Babil). This is for a period of 6 months starting on 17 October 2014. On 29 April the temporary suspension has been prolonged until 16 October 2015.¹⁹⁶ Asylum seekers from these regions who have the obligation to leave the Netherlands (because their asylum application was rejected before 17 October 2014) are entitled to reception conditions for this same period. During this period they receive reception conditions comparable to asylum seekers who apply for asylum for the first time. This means reception in an AZC.

A temporary suspension of decisions on asylum applications and reception conditions for rejected asylum seekers from **Yemen** (*Besluit en vertrekmoratorium Jemen*) has been put in place on 5 August 2015. The reason is the uncertain situation at the moment in Yemen.¹⁹⁷ During this period those asylum receive reception conditions comparable to an asylum seeker who has applied for asylum for the first time. This means reception in an AZC

A temporary suspension of decisions on asylum applications and reception conditions for rejected asylum seekers from **Somalia** (*Besluit en vertrekmoratorium Somalie*) has been put in place on 12 May 2015 and prolonged on 29 September until 20 April 2016. Because of the insufficient information concerning the risks of Somali returnees to areas which are controlled by Al Shabaab (South/Central Somalia) the Secretary of State has installed the temporary suspension of decisions of Somali asylum seekers who are coming from these areas.¹⁹⁸ During this period those asylum applicants receive reception conditions comparable to an asylum seeker who has applied for asylum for the first time. This means reception in an AZC

Applications from **Syrians** and **Eritreans** are prioritised (see Fast-Track Processing). In some cases the applications are dealt with in the extended asylum procedure but this is caused by the extensive statements of the asylum seekers during the interviews or in some cases a further investigation needs to take place for instance when the IND suspects Article 1F Refugee Convention is applicable.

23,102 asylum applications were lodged by Syrian refugees in the Netherlands from January until

¹⁹⁵ Whether under the "Safe Country of Origin" concept or otherwise.

¹⁹⁶ Decision of the Secretary of State of Security and Justice, 29 April 2015, (Besluit van de Staatssecretaris van Veiligheid en Justitie van 29 april 2015, nr. 639857, tot verlenging van een besluitmoratorium en een vertrekmoratorium voor Iraakse vreemdelingen afkomstig uit de provincies Bagdad, Anbar, Ninewa, Salaheddin, Ta'mim (Kirkuk), Diyala en Babil).

¹⁹⁷ Decision of the Secretary of State of Security and Justice of 5 August 2015, (Besluit van de Staatssecretaris van Veiligheid en Justitie van 5 augustus 2015, nummer WBV 2015/11, houdende wijziging van de Vreemdelingen-circulaire 2000).

¹⁹⁸ Decision of the Secretary of State of Security and Justice of 29 September 2015 (Besluit van de Staatssecretaris van Veiligheid en Justitie van 29 September).

October 2015. In the first three quarters of the year, the overall protection rate was 93%, consisting almost evenly of refugee status and subsidiary protection grants.

Persons are eligible to international protection where a real risk of treatment contrary to Article 3 ECHR can be identified upon return to Syria and upon satisfying the following conditions:

- (1) The asylum seeker does not qualify as a refugee;
- (2) The asylum seeker is not an active supporter of the Syrian regime and;
- (3) There are no reasons to withhold a permit due to the fact that the asylum seeker has committed offences which exclude an asylum seeker from protection.

Where an applicant from Syria has received a negative asylum decision, humanitarian status will not be provided. Most rejections of applications submitted by Syrians are based on exceptions, such as the existence of a working permit in Qatar or Egypt or based on the safe third country concept, i.e. rejected Syrians will not be sent back to Syria but to the responsible EU Member State or safe third country. For instance the IND is in some cases of the opinion that the Syrian national also has an Armenian nationality and therefore is able to go to Armenia to be protected against *refoulement*.¹⁹⁹ Cases of forced returns to Syria of rejected asylum seekers are not known to the Dutch Refugee Council.

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

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

¹⁹⁹ District Court Overijssel, 15/8982, Judgment 18 August 2015.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No ²⁰⁰
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No ²⁰¹
❖ Onward appeal	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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The regime of reception conditions for asylum seekers has been laid down in a number of legislative instruments, of which the Central Agency Act for the Reception of Asylum Seekers (*Wet Centraal Orgaan opvang Asielzoekers*) is the most important. The 2005 Regulation on benefits for asylum seekers (*Regeling verstrekkingen asielzoekers 2005*) is based on this Act. 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. The 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.²⁰² During the whole asylum procedure the COA is responsible for the reception of asylum seekers.

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

When the asylum application is rejected during the short asylum procedure, the asylum seeker continues to be entitled to reception conditions until four weeks after the negative decision of the IND.²⁰³ After those four weeks, the asylum seeker has to leave the reception centre. There is an

²⁰⁰ Although in general there is no entitlement to reception facilities after a rejection based on inadmissibility the law subscribes that, in case that a provisional measure is granted by the district court proclaiming that the asylum seeker cannot be expelled until the decision on the appeal is made, there is a right to reception facility. See Article 3(3)(a) RBA.

²⁰¹ If the appeal has suspensive effect there is a right to reception facilities. In general an appeal has suspensive effect except in the case the rejection is based on: Dublin; inadmissible (except third country objection); manifestly unfounded (except illegal entrance; extending residence unlawfully or not promptly reported to the authorities); not-processing- the application and in case of a subsequent application.

²⁰² Article 2(1) Regulation on benefits for asylum seekers.

²⁰³ From this moment the asylum seeker officially falls under the scope of the 2005 Regulation on benefits for asylum seekers.

agreement with the Council for the Judiciary (*Raad voor de Rechtspraak*) that there will be a decision on the appeal and provisional measures in the extended asylum procedure by the regional court within four weeks after the negative decision. So in theory, decisions are taken within this timeframe but in practice it happens that after four weeks no decision has been taken. The Council of State decided that the right to reception conditions nevertheless ends four weeks after the negative decision regardless of whether the Court has decided on the appeal or not.²⁰⁴ 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.²⁰⁵ Making such a request for a provisional measure ensures that after the four week period the asylum seeker is still entitled to stay in the reception centre while the appeal is still pending.

Asylum seekers who receive their negative decision in the extended asylum procedure are granted a four week period to appeal this decision at the court. During these four weeks they are entitled to reception conditions. If the asylum seeker makes use of the possibility to appeal the first instance decision within these four weeks the right to reception conditions continues until four weeks after the verdict of the court.²⁰⁶

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

After a subsequent asylum application has been rejected in the extended asylum procedure, no voluntary departure period is granted.²⁰⁷ An appeal against a negative decision for subsequent applications has no suspensive effect.²⁰⁸ 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.²⁰⁹ 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 can the asylum seeker benefit from reception conditions once again.²¹⁰

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

There is no specific assessment to determine whether the asylum seeker is destitute. But there are more or less some guarantees that asylum seekers do not become destitute. For instance, if an asylum seeker has financial means of a value higher than the maximum resources allowed in order to benefit from the social allowance system (around €6,000 for a single person), the COA is allowed to reduce the provision of reception conditions accordingly but with a maximum of the economic value equivalent to the reception conditions provided.²¹¹

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

²⁰⁴ Council of State, 201113284/1/V1, Judgment 2 May 2012.

²⁰⁵ District Court Den Bosch, 11/25103, Judgment 1 September 2011.

²⁰⁶ Article 5(1)(a) Regulation on benefits for asylum seekers.

²⁰⁷ Article 62(3)(c) Aliens Act.

²⁰⁸ Article 82(2)(b) Aliens Act.

²⁰⁹ Article 62 Aliens Act.

²¹⁰ Article 3(3)(a) Regulation on benefits for asylum seekers and Article 66 Aliens Act.

²¹¹ Article 19(2) RBA.

Apel. The actual registration of the asylum application will happen after spending at least six days (three weeks for minors) at a reception location. During this time the asylum seeker is entitled to reception conditions stipulated in Article 9(1) of the 2005 RBA.²¹² The organ responsible for both material as well as non-material reception of asylum seekers is the COA, according to the Wet COA.²¹³

The material reception conditions are not tied to the issuance of any document by the authorities but the IND will issue a temporary identification card (W document) to asylum seekers while their asylum application is still in process. The asylum seeker can use this W document to prove their identity, nationality and their lawful stay in the Netherlands.²¹⁴ If such a document is not issued, the asylum seeker can apply for this. The law makes it clear that the asylum seeker is entitled to such document.²¹⁵ There are no reports indicating that asylum seekers are unable to access material reception conditions or that they are any obstacles which prevent asylum seekers from accessing material reception conditions in practice if they are entitled to it.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 30 September 2015 (in original currency and in €):
 - ❖ Single adult accommodated by COA: €246.90

The right to reception conditions includes the right to:²¹⁶

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

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

Category of applicant	Allowance in COA with food provided	Allowance in COA with no food provided
One or two persons in one household	€ 27.72	€44,66
A parent with one minor	€ 19.11	€ 34.86
Three persons household		
Adult	€ 23.01	€ 37.07
Child	€ 15.86	€ 28.93
Four or more persons household		
Adult	€ 20.51	€ 33.05
Child	€ 14.14	€ 25.08

²¹² Article 9(1) Regulation Benefits asylum seekers.

²¹³ Article 3(1) Regulation Benefits asylum seekers.

²¹⁴ Accessible at: <http://bit.ly/1PLOnXD>.

²¹⁵ Article 9 Aliens Act.

²¹⁶ Article 9(1) Regulation Benefits asylum seekers.

The cost for clothes and other expenses is a fixed amount: € 12.95 per week, per person.²¹⁷

The social welfare allowance for Dutch citizens is € 627.93 for a single person of 21 years and older. In relative amounts then, 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 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 to reception facilities will end at the moment housing is offered.

In general material support is never given through an allowance only. Due to the large numbers of asylum seekers at the time of writing the Secretary of State has made it possible that asylum seekers who have been granted a residence permit but are still accommodated in the AZC's are allowed to stay with family and friends from the moment they obtain their residence permit until the COA has found suitable housing.²¹⁸ They receive an allowance for this. The ratio of this measure is that the places in the AZC are needed for new asylum seekers who do not have a status yet. The allowance varies from €100 for a single until a maximum of €650 for a whole family per month.²¹⁹

3. Types of accommodation

Indicators: Types of Accommodation

- | | |
|--|---------------|
| 1. Number of reception centres: ²²⁰ | 84 |
| 2. Total number of places in the reception centres: ²²¹ | 24,850 |
| 3. Total number of places in private accommodation: | Not available |
| 4. Type of accommodation most frequently used in a regular procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |
| 5. Type of accommodation most frequently used in an accelerated procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |

The COA, responsible for the reception and accompaniment of asylum seekers, 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 AC Schiphol.²²² 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

²¹⁷ Article 13 Regulation Benefits asylum seekers.

²¹⁸ Decision of the Secretary of State 677862, 10 September 2015.

²¹⁹ Decision of the Secretary of State 677862, 10 September 2015, Article 2(2).

²²⁰ Both permanent and for first arrivals.

²²¹ As of December 2014: Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)*, 27.

²²² Article 6(b) Aliens Act.

transferred to the 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 COL.²²³

If the asylum seeker entered the Netherlands by land they have to apply at the 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 of 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 COL, the asylum seeker is transferred to a POL.²²⁴ There are four POLs in the Netherlands. At the POL the asylum seeker will take the next steps of the rest and preparation period and 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 IND decides to examine the asylum application in the short asylum procedure (within eight days). If protection is granted, the asylum seeker is transferred to a centre for asylum seekers, AZC, before they receive housing in the Netherlands. If the IND decides, usually after four days, to handle the application in the extended asylum procedure, the asylum seeker will also be transferred from the POL to an AZC. If the asylum application is rejected the asylum seeker will be transferred to a return centre, 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.²²⁵ 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.²²⁶ 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 (VBL).²²⁷ 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 (ESCR) and the Dutch Supreme High Court decided that children should be offered reception conditions in all circumstances.²²⁸ The bottom line of this verdict is the assumed responsibility of the State for irregularly residing children on Dutch territory from the moment the parents are not capable to take care of their child. As a result families with minor children who lose the right to reception conditions can be transferred to a family housing centre (GL) which is a restricted reception centre. UNICEF, the Dutch Council for Refugees and Defence for Children have criticised the family housing centres stating that this form of reception in conjunction with the restricted measure is not in line with the Convention on the Rights of the Child.²²⁹ There are six of these

²²³ 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.

²²⁴ Article 3(3)(m) Regulation benefits for asylum seekers.

²²⁵ Article 59 Aliens Act.

²²⁶ Article 56 Aliens Act *juncto* Article 54(b) Aliens Act.

²²⁷ A6/4.3.5 Aliens Circular; the regulation benefits asylum seekers and Council Directive 2003/9/EC are not formally applicable for the stay at the restricted reception location.

²²⁸ 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.

²²⁹ 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), accessible at: <http://bit.ly/1WX9ITO>.

reception centres for families.²³⁰ A stricter regime is applied to this form of reception location²³¹ because asylum seekers whose application has been rejected and staying in the family housing centre and Restricted Reception centre do not fall under the scope of the 2005 Regulation on Benefits for asylum seekers whereas asylum seekers staying at the POL, COL and AZC do fall under its scope.

In November 2014 a new report of the ECSR was published. In this report the ECSR states that the Dutch government violates the rights of irregular migrants. According to the ECSR the Netherlands should provide shelter, clothes and food for all rejected asylum seekers who are not entitled to reception conditions (and not only children as was the case in the earlier mentioned report of the ECSR). In general it concerns asylum seekers who are legally obliged to leave the Netherlands. The ECSR is of the opinion that the deprivation of reception conditions for this group of asylum seekers is below a certain threshold of human dignity.²³²

Because the Secretary of State disagreed with this opinion a judgment of the Committee of Ministers was needed. Unfortunately the judgment of the Committee kept the government divided whether it entails an absolute obligation to provide reception condition to rejected asylum seeker.²³³ The state of play at the moment is that the Secretary of State is responsible for the costs of reception of a rejected asylum seeker which has been made available by a local municipality.²³⁴

4. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? 79% less than 2013²³⁵
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

At time of writing it is unclear how well the COA is managing the large number of asylum seekers, in view of 46,834 asylum applications in January-October 2015, compared to 13,680 applications done in 2014.²³⁶ Creative solutions are needed. As mentioned in the section on Types of Accommodation, asylum seekers with a status are allowed to reside with family or friends until the COA finds suitable housing. Besides that the COA is opening new AZC's very regularly.²³⁷ Even accommodation in pavilions is an option.²³⁸

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

Residents of a reception centre usually live with five to eight people together in a unit. Each unit has a number of bedrooms and a shared living room, kitchen and sanitary facilities. Residents are

²³⁰ With around 1,900 residents in total.

²³¹ There is a duty to report six times a week for example.

²³² Report to the Committee of Ministers, *Conference of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, Strasbourg, 1 July 2014.

²³³ Committee of Ministers, Resolution CM/ResCHs (2015) 5, Judgment 15 April 2015.

²³⁴ Letter of the Secretary of State to the House of Representatives, 22 April 2015, 19637/1994.

²³⁵ Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)*, (Period January 2014 until December 2014), 27.

²³⁶ IND Asylum trends, October 2015.

²³⁷ Accessible at: <http://bit.ly/1j50F0t>.

²³⁸ Accessible at: <http://bit.ly/1LjxDk5>.

responsible for keeping their habitat in order.²³⁹ Unaccompanied children live in small-scale shelters, which are usually outsourced to specialised partners. These are mostly youth organisations. The children's residential groups usually take care of twelve children, which are under 24-hour supervision.²⁴⁰

In order to protect children from adults, there are several reception centres which are specialized in the reception of unaccompanied children. They are intensively monitored to increase their safety.²⁴¹ The AZCs that have special places for children are **Drachten**, **Oisterwijk** and **Oude Pekela**. **POL Wageningen** is also available for unaccompanied children. Except for the earlier mentioned family housing centre there are no specific reception centres for families. However, in general families are all located in the same reception centre and share the same accommodation. There are no reports stating the opposite.

Adults can attend programs and counselling meetings, tailored to the stage of the asylum procedure in which they are located. Next to this, it is possible for asylum seekers to work on maintenance of the centre, cleaning of common areas, etc. and earn a small fee doing this, up to € 13.80 per week.²⁴² It is also possible for both children and adults to participate in courses or sports at the local sports club. Children of school age are obliged to attend school. To practice with teaching materials and to keep in touch with family and friends, asylum seekers can visit the Open Leercentrum (Open Education Centre) which is equipped with computers with internet access. Children can do their homework here. There is supervision by other asylum seekers and Dutch volunteers.

AZCs are so-called open centres. This entails that asylum seekers are free to go outside if they please. However, there is a weekly duty to report (*meldplicht*) in order for the COA to determine whether the asylum seeker still resides in the facility and whether he or she is still entitled to the facilities.²⁴³ However, some reception centres have a stricter regime (see section on Types of Accommodation).

There have recently been some individual incidents and issues involving asylum seekers. Whether they relate to the reception conditions remains unclear. These issues include the suicide of a Burundi asylum seeker who possibly wanted to avoid expulsion of himself and his two children (April 2012),²⁴⁴ the public suicide of an Iraqi asylum seeker by setting himself on fire (March 2013),²⁴⁵ the hunger strike of several rejected asylum seekers (August 2013)²⁴⁶ and the death of the Russian Alexander Dolmatov in the detention centre where he was awaiting his expulsion. Careful investigation of this incident by the Ministry of Security and Justice resulted in a critical report on the Dutch government. It seemed that the Dutch government had on several occasions acted in a negligent way.²⁴⁷

²³⁹ For more information see <http://bit.ly/1MPgnc2>.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² Article 18(1) and (3) Regulation Benefits asylum seekers.

²⁴³ Article 19(1)(e) Regulation Benefits asylum seekers.

²⁴⁴ De Volkskrant, 'Kamer wil uitleg over zelfmoord asielzoeker NEWS (12 April 2012).

²⁴⁵ HLN.be, 'Asielzoeker-steekt-zichzelf-in-de-brand' (4 March 2013), accessible at <http://bit.ly/20Z4h6h>.

²⁴⁶ NRC Handelsblad, 'Ook-asielzoekers-in-rotterdam-in-hongerstaking' (7 May 2013), accessible at <http://bit.ly/1Odcj4k>.

²⁴⁷ See the report on the Dolmatov Case, accessible at: <http://bit.ly/1lsuiyu>.

5. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

An asylum seeker has to abide by the internal rules of the reception centre and there is a duty to report once a week.²⁴⁸ When an asylum seeker violates these rules, a reduction of material reception conditions can be imposed. Certain measures may be imposed by the COA under the Regulation Abstention Benefits (*Reglement Onthouding Verstrekkingen*, **ROV**).²⁴⁹ 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.²⁵⁰ The penalty ranges from a small fine (€15.89) for light nuisance to a permanent withdrawal of all reception benefits in the case an asylum seeker repeatedly causing severe nuisance.²⁵¹

Withdrawal or reduction of reception facilities by the COA is, regarding the legal remedies against those decisions, subject to the Aliens Act.²⁵² This means that the same court that decides on alien matters is competent. A lawyer can get an allowance from the Legal Aid Board to defend the asylum seeker. If the decision becomes irrevocable the measurements cannot be re-instated. The ground mentioned in Article 20(2) recast Reception Conditions Directive (reduction of material reception conditions when the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival) is not applied in the Netherlands.

6. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
☐ Yes ☒ With limitations ☐ No

Article 9(6) of the Regulation on Benefits for Asylum seekers states that during a stay in the reception centre, the asylum seeker must have the opportunity to communicate with family members, legal advisers, representatives of UNHCR and NGOs. There are no major obstacles in relation to the accessibility of UNHCR representatives or other legal advisers at reception centres known to the author of this report.

7. Addressing special reception needs of vulnerable persons

Indicators: Special Reception Needs

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

Employees of the COA have to make sure that a reception centre provides an adequate standard of

²⁴⁸ Article 19(1)(e) Regulation Benefits asylum seekers.

²⁴⁹ Delegated powers relating the reception of asylum seekers based on Article 10, 2005 Regulation on Benefits for asylum seekers.

²⁵⁰ 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.

²⁵¹ See Regulation Abstention Benefits.

²⁵² Article 3(a) Act of the Agency of Reception.

living and the COA is responsible for the welfare of the asylum seekers.²⁵³ In practice, this means that COA takes into account the special needs of the asylum seekers. For example, if an asylum seeker is in a wheelchair the room will be on the ground floor. Besides that, if an asylum seeker, for instance, cannot wash themselves due to whatever reason they are allowed to make use of the regular home care facilities (in the sense the asylum seeker is entitled to similar healthcare as a Dutch national). This means that there are no special reception centres for vulnerable people except for asylum seekers with psychological problems²⁵⁴ 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 COA. However, children younger than 12 are accommodated in foster families and are placed with those families immediately.²⁵⁵

The child living groups are designed for children until the age of fifteen. There is 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 an AZC, where the children are accompanied by employees of the COA.

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

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

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

8. Provision of information

Article 2(3) and (4) of the Regulation on Benefits for asylum seekers is the legal basis for the provision of information to asylum seekers. Article 2(3) states that “The COA provides, 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(4) states that “The COA provides information in writing in the form of brochures in a language

²⁵³ Article 3 Act of the Agency of Reception.

²⁵⁴ See Phoenix's website, accessible at: <http://bit.ly/1suo57/>.

²⁵⁵ See NIDOS <http://www.nidos.nl/>.

that is understandable for the asylum seeker.” The Dutch Council for Refugees considers these brochures on house rules to be sufficient, which are generally provided in English. A request from the Dutch Council for Refugees to attend such information meetings is rejected by the COA, without substantiating their decision.

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

9. Freedom of movement

Indicators: Freedom of Movement

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

The asylum seeker who is residing in an AZC is barely restricted in his freedom of movement. AZC's are so-called open centres. This entails that asylum seekers are free to go outside if they please. However, there is a weekly duty to report (*meldplicht*) and an asylum seeker fails to report themselves twice the reception conditions will be withdrawn.

Failed asylum seekers (rejected with no legal remedies left) who are located in the freedom restricted locations (*Vrijheidsbeperkende locatie*, **VBL**) and family housing (*Gezinslocatie*, **GL**) which is also a freedom restricted location (VBL) are not detained but their freedom is restricted to a certain municipality. They are not allowed to leave the borders of the municipality. This is not really checked by the authorities but the asylum seekers have to report six days a week (except Sunday) so in practice it is hard to leave the municipality.²⁵⁶ The penalty for not reporting could be a fine or even criminal detention²⁵⁷ or an indication that the asylum seeker is not willing to cooperate regarding their return (this is a requirement if the asylum seeker stays in the freedom restricted location) which could be a reason to detain (with the aim to remove) them.

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

An asylum seeker can appeal against the decision to transfer him from an AZC to a VBL because a transfer to a VBL is a freedom restricting measure²⁵⁸ against which there must be an appeal available by law. There is no appeal available against 'procedural' transfers (movements) from COL/POL to AZC. Indirectly there is an appeal available against a transfer to another AZC but in practice this does not happen often.²⁵⁹ At least no practice is known that the authorities move asylum seekers from one

²⁵⁶ These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restricted measures based on Article 56 *juncto* 54 Aliens Act.

²⁵⁷ Article 108 Aliens Act.

²⁵⁸ These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restricted measure based on Article 56 *juncto* 54 Aliens Act.

²⁵⁹ District Court Roermond, 09/29454, Judgment of 2 March 2010. When reading this ruling, it should be noted that there is formally no distinction anymore between a return and an integration AZC.

centre to another. What is known, and which is a valid reason, is the transfer of asylum seekers due to the closure of the centre.

There is a critical report, written by Defence for Children, Dutch Council for Refugees et al about the amount of movements (including the procedural movements) asylum children have to make during the procedure. The reports states that these children move 10 times more within a year than Dutch children. They move from COL, to POL to AZC. Or to a VBL or GL. Or they have to move back to the country of origin.²⁶⁰

B. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

Despite the fact that Dutch legislation provides for access to the labour market to asylum seekers,²⁶¹ in practice, it is extremely hard for an asylum seeker to find a job. Employers are not eager to contract an asylum seeker due the administrative hurdles and the supply on the labour market.

The Aliens Labour Act and other regulations lay down the rules regarding access to the labour market for asylum seekers. Despite having the right to work, asylum seekers can only work limited time, namely a maximum of 24 weeks each 12 months. Before the asylum seeker can start working, the employer must request an employment-license for asylum seekers (*tewerkstellingsvergunning*). To acquire an employment-license the asylum seeker must fulfil certain conditions:²⁶²

- a. The asylum application has been lodged at least six months before and is still pending 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;

²⁶⁰ Report of Defence for Children, Dutch Council for Refugees, *Ontheemd, De verhuizingen van asielzoekerskinderen in Nederland (Displaced persons, movements of asylum children in the Netherlands)* (January 2013), accessible at <http://bit.ly/1SVp4T0>.

²⁶¹ Article 2(a)(1) first sentence and under a, b and c Buwav. (Decree on how to implement the Aliens Labour Act).

²⁶² Article 2 under a Buwav.

- e. The intended work is conducted under general labour market conditions, and;
- f. The employer submits a copy of the W-document (identity card).²⁶³

The procedure to apply for an employment- license should not take longer than 5 weeks.²⁶⁴ If the asylum seeker stays in the reception facility arranged by the COA for the reception of asylum seekers, they should contribute a certain amount of money to the accommodation costs. This depends on how much they have earned and it can never exceed the economic value of the accommodation facilities. Besides that, the financial allowance can be withdrawn. Asylum seekers are also allowed to do internships or voluntary work.

In practice, asylum seekers encounter obstacles in relation to administrative hurdles.

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

According to Dutch law education is mandatory for every child under 18, including asylum seekers.²⁶⁵ Asylum-seeking children have the same rights to education as Dutch children or children who are treated in the same way (e.g. children with a residence permit). This also applies to children with special needs: if it is possible, arrangements will be made to ensure that those children get the attention they deserve.²⁶⁶ Every AZC has contacts and arrangements with an elementary school nearby. However, if the parents wish to send their child to another school, they are free to do so.

Children below 12 go to elementary school either at the school nearby the AZC or at the AZC itself. Children between the age of 12 and 18 are first taught in an international class. When their level of Dutch is considered to be sufficient, they enrol in the suitable education program.²⁶⁷

According to the Regulation on benefits for asylum seekers, the COA provides access to educational programmes for adults at the AZC.²⁶⁸ Depending on the stage of the asylum application, the COA offers different educational programmes including vocational training. An integration program is offered to asylum seekers who have been granted an asylum permit while staying in a reception centre.²⁶⁹

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

²⁶³ During their lawful stay in the Netherlands, asylum seekers receive an identity card, a so called *W-document*, pending their procedure.

²⁶⁴ Article 6 Aliens Labour Act.

²⁶⁵ Article 3 leerplichtwet 1969 (The act on compulsory school attendance).

²⁶⁶ Accessible at: <http://www.lowan.nl/>.

²⁶⁷ See the website of Central Organ for Reception of Asylum Seekers, accessible at: <http://bit.ly/1IsuKZE/>.

²⁶⁸ Article 9(3) Regulation Benefits asylum seekers.

²⁶⁹ Article 9(a) Regulation Benefits asylum seekers.

C. Health care

Indicators: Health Care

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

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

The relevant legislation can be found in Article 9(1) of the Regulation on benefits for asylum seekers. This provision is further elaborated in the Healthcare for Asylum Seekers Regulation (*Regeling Zorg Asielzoekers*).²⁷⁰ According to the latter, asylum seekers have access to basic healthcare. This includes *inter alia*, hospitalisation, consultations with a general practitioner, physiotherapy, dental care (only in extreme cases) and consultations with a psychologist. If necessary, an asylum seeker can be referred to a mental hospital for day treatment. There are a number of special treatment institutions for asylum seekers with psychological problems (for example: 'Phoenix').²⁷¹

When an asylum seeker stays in a reception facility but the 2005 Regulation on benefits for asylum seekers is not applicable, health care is arranged differently. In the case of the 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 GL the health care for the adults is only accessible in extreme cases (a medical emergency). This is the same for other asylum seekers who no longer have a right to reside in the Netherlands (rejected asylum seekers and irregular migrants)²⁷² or have the right (for example after the unsuccessful asylum procedure) to start up a procedure for a regular residence permit (permit on non-asylum grounds) but do not fall under the scope of the 2005 Regulation on benefits for asylum seekers. In medical emergency situations, there is always a right to healthcare. This is codified in Article 10 2000 Aliens Act. For this group problems can arise if there is a medical problem but no emergency.²⁷³ Care providers who do help irregular migrants who are unable to pay their own medical treatment can declare those costs at a special foundation, which then pays the costs.²⁷⁴

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

²⁷⁰ Healthcare for Asylum seekers Regulation, accessible at <http://bit.ly/1QJkhVx>.

²⁷¹ See Phoenix's website, accessible at: <http://bit.ly/1Isuo57>.

²⁷² Article 10 Aliens Act.

²⁷³ The national ombudsman recently started an investigation concerning medical care for failed asylum seekers.

²⁷⁴ For more information on the Law on costs for medical treatment of irregular migrants, accessible at: <http://bit.ly/1QJlagM>.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2014: ²⁷⁵	261
2. Number of asylum seekers in detention at the end of 2015:	Not available
3. Number of detention centres:	1
4. Total capacity of detention centres (incl. territorial detention):	1,762

There are two types of detention of asylum seekers in the Netherlands:

Border detention

Pursuant to Article 6(1) and (2) of the Aliens Act, the third-country national who has been refused entry to the Netherlands, is obliged "to stay in and by the border control officer designated area or place, which [...] can be protected against unauthorised departure."²⁷⁶

Both of the personal interviews (*eerste gehoor* [first interview] *en nader gehoor* [second interview]) take place in the detention centre. The asylum seekers will be prepared for these interviews by the Dutch Council for Refugees, and it is also possible that a staff member of the Dutch Council for Refugees is present at the personal interview. This depends on whether the asylum seeker requests for this and whether there are enough staff available. The lawyer is also allowed to be present at the hearing but in practice this rarely happens because lawyers do not receive a remuneration for this activity. During the interview, there are IND accredited interpreters present.

In 2014, a total of 261 asylum seekers who applied for asylum at the Dutch border were detained (hereinafter border detention).²⁷⁷ These asylum seekers were detained during the asylum procedure at the border on the basis of Article 6 of the Aliens Act. There is one border detention centre for detaining asylum seekers. Asylum seekers who enter the Netherlands via airplane or boat are required to apply for asylum at the detention centre at Justitieel Complex Schiphol. During this procedure, the asylum seeker will be placed in detention.

Territorial detention

In addition, there are also asylum seekers detained in detention centres on the territory on basis of Article 59 of the Aliens Act (hereinafter territorial detention). In 2014, 2,467 aliens were put in territorial detention.²⁷⁸ The IND and the DT&V have the authority to detain migrants who are irregularly residing on Dutch territory and if there is a possibility to expel them to their country of origin or third country where they can stay legally.²⁷⁹ Concerning asylum seekers this means that this type of detention is only applicable when the asylum application is rejected and the asylum seeker is not willing to return to his or her country of origin on a voluntary basis, there is a possibility to expel him or her to this country and the interest of public order or national security dictates such a measure, for example in

²⁷⁵ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

²⁷⁶ Article 6 Aliens Act.

²⁷⁷ Ministry of Security and Justice, *Rapportage vreemdelingenketen (Report alien chain)*, (Period January 2014 until December 2014), 30.

²⁷⁸ Department of Justice, Ministry of Security and Justice, *Vreemdelingsbewaring in getal, 2010-20124 (Statistics on Detention of third country nationals, 2010-2014)*, (May 2015), 21.

²⁷⁹ According to Article 59(1) of the Aliens Act, the asylum seeker can, in the interest of public order or national security, and with a view to deportation from the Netherlands, be put into detention if they do not have a legal status. In some cases, this can also be done with asylum seekers who do have a legal status.

case the asylum seeker has criminal antecedents.²⁸⁰

In principle, only asylum seekers in border detention are detained during the whole asylum procedure. If an asylum seeker arrives via land they will not automatically be detained. On the other hand asylum seekers who, for instance, are detained with a view to expulsion but apply for asylum again (subsequent application), can be held in detention during this new procedure.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

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

Border detention

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

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

- 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;²⁸¹
- 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 A1/3 of the Aliens Circular.²⁸²

According to Article 2(1) under 1 Aliens Act, access will be denied on the basis of Article 3(1) Aliens Act if the applicant did not sufficiently motivate their intention to stay, or in this context, submitted insufficient documents in proving their intention.

²⁸⁰ Accessible at: <http://bit.ly/1YeFuJ7>.

²⁸¹ The Aliens Circular stipulates that a person should have sufficient means to cover expenses for 3 months.

²⁸² A1/3 Aliens Circular.

Article 6(1) and (2) Aliens Act 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(1)(a) and (c) Aliens Act. Migrants, who, after arriving to the Netherlands, apply for asylum, are detained on the grounds of Article 3 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.

On the basis of Article 6 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 4 weeks. For more information on this subject see the section on [Border Procedure](#).

Territorial detention

Due to the fact that the Dublin III Regulation came into force on 1 January 2014, new legislation was adopted relating to the assessment of the risk of absconding.²⁸³ Article 5.1(a) of the Aliens Decree stipulates in which case an asylum seeker can be detained. In general, an alien can be detained based on the fact that the interest of the public order or national security dictates this and if there is a risk of absconding or the alien evades or impedes the preparation of the departure.

Relating to detention of asylum seekers subject to a transfer under the Dublin Regulation there must be a concrete indication that the Dublin Regulation is applicable and there is a significant risk of absconding. According to the notes of the Parliament of the changes to the Aliens Act, a 'significant risk' is demonstrated when at least two 'severe' grounds are applicable. These severe grounds are the following:

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

If one or more of these grounds are applicable there is no need for the IND to give a further explanation (motivation) in relation to the decision to detain the asylum seeker. If solely one of these grounds is applicable or none of these grounds and the IND is still of the opinion the asylum seeker has to be detained the IND has to motivate this thoroughly. This will be the case if individual circumstances induce this. On the other hand if individual circumstances are submitted by the asylum seeker highlighting that why in his case detention is, despite the presence of severe grounds, unreasonable, these circumstances have to be taken into account by the IND and could give reason for deciding not to detain the asylum seeker.²⁸⁴

2. Alternatives to detention

²⁸³ Article 5.1(a) Aliens Decree.

²⁸⁴ Explanatory notes of the Parliament, Number 550 550, dossier TK 33 699, 19 December 2013.

Indicators: Alternatives to Detention

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

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: ²⁸⁵

“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 (*garantstelling*). 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.”²⁸⁶

Amnesty International concludes in the Update from 2010 that most of their key recommendations were still valid as they had not been addressed.²⁸⁷

Recently, UNHCR and the Dutch Council for Refugees recommend in their report the following:²⁸⁸

“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.”

²⁸⁵ The National Ombudsman, *Immigration detention: penal regime or step towards deportation, about respecting human rights in immigration detention*, (2012), 37. Amnesty International, *The Netherlands: The detention of irregular migrants and asylum-seekers*, (2008), accessible at <http://bit.ly/1SzwdYq> and also see Amnesty International, *Vreemdelingendetentie: in strijd met mensenrechten (Aliens detention: in violation with human rights)*, 9 and 10.

²⁸⁶ Amnesty International, *The Netherlands: The detention of irregular migrants and asylum-seekers*, 2008, accessible at <http://bit.ly/1SzwdYq>, 25.

²⁸⁷ *Ibid*, 3.

²⁸⁸ Dutch Council for Refugees and UNHCR, *Pas nu weet ik: vrijheid is het hoogste goed*, *Gesloten Verlengde Asiel procedure 2010-2012 (The Extended Closed Border Procedure in the Netherlands: a survey by UNHCR and the Dutch Council for Refugees)*, April 2013.

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.²⁸⁹ Particularly the rules laid down in the recast Reception Conditions Directive and Asylum Procedures Directive are not always applied correctly.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

Since 1 September 2014, the Netherlands, in principle, no longer detains families with children at the border. Instead of being put in border detention, families seeking asylum at Amsterdam Schiphol airport, are now redirected to a closed reception centre in Zeist if there are reasons to believe that there might be human trafficking involved. If not they are redirected to the application centre in Ter Apel. In that case they are free to move within the country.²⁹⁰ In 2014, 44 families and 82 children were redirected to the closed reception centre in Zeist.²⁹¹ Unaccompanied children will never be put in border detention except if the minor age is disputed.²⁹² They are redirected to the application centre in Ter Apel.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions): N/A
2. In practice, how long in average are asylum seekers detained?
 - ❖ Border detention Not available
 - ❖ Territorial detention²⁹³ 67 days

The average stay in detention with view to expulsion is 67 days. There are no statistics on how long the detention is in case of border detention or in the case a subsequent application is made.

²⁸⁹ Amnesty International, *Vreemdelingendetentie: in strijd met mensenrechten* (Alien Detention: violating human rights), 28-29.

²⁹⁰ Alien Circulars, A1/7.3.

²⁹¹ Department of Justice, Ministry of Security and Justice, *Vreemdelingsbewaring in getal, 2010-20124* (*Statistics on Detention of third country nationals, 2010-2014*), May 2015, 25.

²⁹² See Aliens Circular A1/7.3 and the letter of the Secretary of State of Security and Justice to the Parliament, May 2014, footnote 4 <http://bit.ly/1MSRDeK>.

²⁹³ Department of Justice, Ministry of Security and Justice, *"Vreemdelingsbewaring in getal, 2010-20124"* (*Statistics on Detention of third country nationals, 2010-2014*), May 2015, 25.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

The rules relating to border detention are laid down in the Border Regime Facilities Code.²⁹⁴ In case of territorial detention the same set of rules are applicable as to 'normal' detainees. These rules are set out in the Custodial Institutions Act.²⁹⁵ In the following paragraph only the border detention is elaborated.

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

Adults are detained at the **Justitieel Complex Schiphol**. During this period they are staying in a separate wing at the detention centre. Unaccompanied children are not detained when there is still doubt about their age.²⁹⁶ There is, however, no official age assessment procedure and the IND follows the information which it gathers throughout the procedure. As to single women, they are not detained in separate facilities or floors.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Netherlands in 2011 and recommended that there should be more emphasis on the difference between the facilities for the detention of foreign nationals and criminal detention.²⁹⁷ Amnesty International, the Ombudsman and the Dutch Council for Refugees also have called for a more open regime for detention of asylum seekers.²⁹⁸ Asylum seekers do have access to open space.

²⁹⁴ On the legal basis of Article 6 (3) Aliens 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.'

²⁹⁵ Law of 18 June 1998, Penitenciaire Beginselenwet.

²⁹⁶ Amnesty International, *Vreemdelingendetentie in strijd met mensenrechten (Alien Detention: violating human rights)*, 15.

²⁹⁷ Report to the government of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 10 to 21 October 2011, (CPT/Inf (2012) 21 August 2012), 31 "Detention under aliens' legislation in the Netherlands is not covered by specific regulations; instead detention and expulsion centres for foreign nationals are governed by the same rules as those applicable to the prison system. It has always been the CPT's view that, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens' legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and regime appropriate to their legal situation and staffed by suitably qualified personnel. One of the logical consequences of that precept is that the facilities in question should be governed by a distinct set of rules. The CPT would like to receive the comments of the Dutch authorities on the above remarks."

²⁹⁸ The National Ombudsman, *Immigration detention: penal regime or step towards deportation, about respecting human rights in immigration detention*, 2012, 23.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is access to detention centres allowed to | | |
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ NGOs: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ Family members: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |

Health care is provided to detainees during the asylum procedure. This is based on Article 8 (d) of the Border Regime Facilities Code. This provision states that the manager of the facility has to provide for necessary medical care. If asylum seekers experience any medical difficulties, they have the right to see a doctor. There are also psychologists present at the detention centre. Health care in detention centres for asylum seekers with the view of expulsion has been subject to a major debate in the Netherlands due to the death of the Russian asylum seeker Dolmatov and in a more recent case where a young girl with cancer was neglected by the medical service, and, nevertheless, subject to a Dublin transfer.²⁹⁹ A recent report of the inspection services concerning security and healthcare (*Inspectie voor de Gezondheidszorg*, IGZ) and the *Inspectie Veiligheid en Justitie* (Inspectie VenJ) concludes that no medical mistakes in this case were made.³⁰⁰ These cases, however, do not concern access to health care during border detention.

Asylum seekers who are detained during their border procedure do have access to (other) NGOs (such as Amnesty International) and UNHCR. These organizations are able to visit asylum seekers in detention as any other regular visitor, but in practice this hardly happens. On the one hand, asylum seekers are not always familiar with the organisations and do not always know how to reach them. On the other hand (representatives of) the organisations do not have the capacity to visit all the asylum seekers who wish to meet the representatives of the NGOs or UNHCR.³⁰¹

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

Dienst Justitiële Inrichtingen (DJI) as well as the IND are responsible for the detention centres. In the Jesuit Refugee Service-report 'Becoming vulnerable in detention', some asylum seekers were asked about their treatment by the staff.³⁰² It is stated in the report that "from the relationship with the detention centre staff emerges a positive image. Most interaction takes place with the security staff and occasionally with medical staff. The relationship is mostly perceived positive/neutral: "Staff is ok. They are guards: usually either two men and one woman, or two women and one man. The guards change three times a day. I don't have problems with them. Some are extremely friendly others are less friendly. I am quite content with them."

Detainees do not feel discriminated in the centre, according to the report. Another noteworthy aspect is that the detainees do not perceive the interaction with detention staff to be problematic due to

²⁹⁹ Questions to the Secretary of State from Parliament, 2013Z15534, 8 August 2013.

³⁰⁰ Letter from the Inspection of Security and Justice to the Secretary of Security and Justice, 19 November 2013.

³⁰¹ There are also so called voluntary visitor groups which visit asylum seekers in detention.

³⁰² Jesuit Refugee Service – European Regional Office, *Becoming Vulnerable in Detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project)*, 2010, 285 onwards.

language problems. It seems that they are able to express themselves satisfactorily on the daily issues. If detainees want to discuss their (asylum) case, they can contact their lawyer or an IND official. For those conversations, an interpreter is available.

There are no known reports of serious deficiencies in the sanitary facilities. However, Amnesty International does criticise the Dutch government for detaining vulnerable groups such as children, elderly, victims of human trafficking, victims of torture and persons with mental or physical health problems. Next to this, Amnesty remains critical about the maximum time of detention possible, which is 18 months.³⁰³

There are no known problems of overcrowding. The report "Vreemdelingenbewaring in getal, 2010-2014" shows that the capacity of Dutch detention centres (this relates to both border detention and territorial detention) decreased from 2,249 (130 reserves reserves) in 2010 to 1,522 (240 reserves) in 2014. Ever since 2009 the detention centres have a reserve³⁰⁴ capacity of anywhere between 130 and 325 extra places, which can be made available within four months. Due to this system, overcrowding seems highly unlikely.³⁰⁵

No recent information is available as to whether sufficient clothing is given. The report of the Jesuit Refugee Service states that when it comes to food, most detainees are not satisfied about the quality or quantity. Although it seems to be possible to make some requests for specific meals,³⁰⁶ detainees are possibly not aware of it. In the interviews it does not become clear to what extent the quality and quantity of food can be related to a decrease/increase of the detainees' health. More research into this specific aspect would be required.

Detained asylum seekers are allowed to leave their living areas within the detention centre between the hours of 8.00-12.00 and 13.00-17.00. In these hours a program is offered. Detained asylum seekers are able to make phone calls, go outside in the recreational area of the detention centre, receive visitors (two hours a week and two hours in the weekend), access spiritual counselling, visit the library, watch movies, and do sports and other recreational activities such as singing, dancing, drawing and painting. All units have access to the internet. The asylum seeker can independently gather news and information, for example concerning their country of origin.³⁰⁷ Outside of the activities the detainees stay in a common lounge area. The size of this area is not known. Parents with children who stay in a detention centre and TCNs who are refused at the border are provided a day program. For instance they are allowed to receive company; play sports; use the common area and watch a movie.³⁰⁸

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

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

³⁰³ Accessible at: <http://bit.ly/1YeLTUC>.

³⁰⁴ The normal capacity can be extended with this reserve capacity. This extra capacity must be made available within four months to (temporarily) detain aliens if there is more demand for detention space than initially was estimated.

³⁰⁵ Department of Justice, Ministry of Security and Justice, *Vreemdelingenbewaring in getal, 2008-2012, (Statistics on Detention of third country nationals, 2008-2012)*, (May 2013).

³⁰⁶ Jesuit Refugee Service – European Regional Office, *Becoming Vulnerable in Detention*, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project), (2010), Section 3.7.

³⁰⁷ Department of Justice, Ministry of Security and Justice, *Safety and security in detention*, accessible at: <http://bit.ly/1kCf8m1>.

³⁰⁸ Accessible at: <http://bit.ly/1kCf8m1>.

Moreover, in terms of medical care within the detention centres, the basic principle is that it is equal to medical care outside. There are nurses available on a daily basis, a general physician visits the clinic several times each week as well as specialists such as psychiatrists and psychologists. A medical intake will be taken of each asylum seeker within 24 hours after arriving in a detention facility.

Finally there is specialised care available for asylum seekers with mental health problems. If the detention centre cannot provide the care necessary, the asylum seeker will be transferred to a regular hospital, a prison psychiatric hospital or another closed health care facility.³⁰⁹ The earlier mentioned Dolmatov report shows a critical view on the health care in these centres.³¹⁰

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 4 weeks | |

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

Furthermore, whether it concerns border detention or territorial detention, by law there is an automatic review by a judge (regional court) of the decision to detain. According to Article 94 Aliens Act, the authorities have to notify the district court within 28 days after the detention of a migrant is ordered, unless the migrant or asylum seeker has already lodged an application for judicial review themselves. According to Article 94(2) of the Aliens Act, the hearing will take place within 14 days after the notification or the application for judicial review by the migrant. According to Article 94(3) of the Aliens Act, the decision on the detention will be provided within a week. When the regional court receives the notification it considers this as if the migrant or asylum seeker lodged an application for judicial review. In paragraph C1/2.4 Aliens Circular, the grounds for the closed extended procedure are mentioned.

Whereas the first judicial review examines the lawfulness of the grounds for detention – whether detention of the irregular migrant or asylum seeker was justified by “public order considerations” – further appeals against immigration detention review the lawfulness of continued detention.³¹¹

Detention may be lifted if it is considered unreasonably burdensome. Although the 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.³¹² This examination can be described as a proportionality test rather than a necessity test. It means that in practice it is more a weighing of interests of the authorities to execute an effective return policy against

³⁰⁹ *Ibid.*

³¹⁰ Inspection of Security and Justice, *Het overlijden van Alexander Dolmatov (The death of Alexander Dolmatov)*, (April 2013), accessible at: <http://bit.ly/1PxXJaQ>. The Secretary of State announced it will take over the recommendations in this report, accessible at: <http://bit.ly/1j5kPgZ>.

³¹¹ Article 96 Aliens Act.

³¹² Where border detention is specified it is stated that the Minister can order detention. This means it is not mandatory but a weighing of interest has to take place. A letter of the Secretary of State of 13 September 2013 confirms this practice, accessible at: <http://bit.ly/1NNK7CD>.

the interest of the individual to enjoy his freedom instead of the question whether the detention is really necessary.³¹³

Detainees have the right to be informed about the reason for their detention; this is laid down in the Aliens Decree.³¹⁴ Usually this information is provided to the individual concerned by the government official who issues their detention order, or by a lawyer. In all cases, the detention order has to be given in writing and state the reasons for detention. More practical rules on how the information should be provided, are laid down in policy guideline Aliens Circular.³¹⁵

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

- | | | |
|--|---|-----------------------------|
| 1. Does the law provide for access to free legal assistance for the review of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do asylum seekers have effective access to free legal assistance in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Asylum seekers are provided with legal aid in detention that is paid for by the State. The IND website explicitly states "When you appeal against a custodial measure, it is mandatory to have a lawyer. If you cannot afford this, a lawyer will then be assigned to you."³¹⁶ Individuals who claim asylum upon their arrival at the border and who are subsequently detained, will be assigned a lawyer/legal aid worker specialised in asylum law. Because of the existence of these state funded lawyers, NGO's in general do not intervene in such cases before the regional court.

³¹³ Council of State, 200901316/1/V3, Judgment 31 March 2009.

³¹⁴ Article 4.18 Aliens Decree and subsequent.

³¹⁵ Aliens Circular, Chapter A2/4.

³¹⁶ Immigration and Naturalisation Service, accessible at: <http://bit.ly/1YeFuJ7/>.

ANNEX I - Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 October 2013	Wijziging van de Vreemdelingenwet 2000 ter implementatie van richtlijn 2004/83/EG van de Raad van 29 april 2004 betreffende minimumnormen voor de erkenning en de status van onderdanen van derde landen en staatlozen als vluchteling of als persoon die anderszins internationale bescherming behoeft, en de inhoud van de verleende bescherming (PbEU L 304)	http://bit.ly/1HXcHir (NL)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	20 July 2015	Wet van 8 juli 2015 wijziging van de Vreemdelingenwet 2000 ter implementatie van Richtlijn 2013/32/EU van het Europees parlement en de Raad van 26 juni 2013 betreffende gemeenschappelijke procedures voor de toekenning en intrekking van de internationale bescherming (PbEU 2013, L 180) en Richtlijn 2013/33/EU van het Europees parlement en de Raad van 26 juni 2013 tot vaststelling van normen voor de opvang van verzoekers om internationale bescherming (PbEU 2013, L 180)	http://bit.ly/1CSh5md (NL)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	20 July 2015	Wet van 8 juli 2015 wijziging van de Vreemdelingenwet 2000 ter implementatie van Richtlijn 2013/32/EU van het Europees parlement en de Raad van 26 juni 2013 betreffende gemeenschappelijke procedures voor de toekenning en intrekking van de internationale bescherming (PbEU 2013, L 180) en Richtlijn 2013/33/EU van het Europees parlement en de Raad van 26 juni 2013 tot vaststelling van normen voor de opvang van verzoekers om internationale bescherming (PbEU 2013, L 180)	http://bit.ly/1CSh5md (NL)

Main changes

Procedure

- The Secretary of State of Security and Justice is of the opinion that due to the recast Asylum Procedures Directive the Dutch two-staged credibility assessment (the so-called 'positively persuasive'- test) is not in line with the system of the recast Directive. Therefore the IND has implemented a new credibility assessment test as of the beginning of 2015. Although technically speaking it is questionable if this new credibility-test by the authorities is, in light of the recast Asylum Procedures Directive, absolutely necessary, it is an additional argument to implement this test, regarding to the prescribed

full and *ex nunc* examination of both facts and points of law by the courts under Article 46 of the recast Asylum Procedures Directive.

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

Reception Conditions

- The Secretary of State of Security and Justice is of the opinion that the Netherlands nearly meets all the requirements set out in the Recast Reception Directive and therefore not a great amount of changes to legislation had to be made. The following changes we, however, made:
- Stipulations concerning the determination of vulnerable asylum seekers and their special needs. Articles 18 et seq. Regulation on benefits for asylum seekers and other categories of foreigners.
- Stipulations concerning (border) detention had to be altered. Article 3, 59a, 59b and 59c Aliens Act.

Qualification

- Stricter norms concerning the use of the authorities to claim that (state) protection against persecution is available. The authorities have to investigate if the State or third parties are willing and able to offer the needed protection in practice.
- The possibility for the authorities to raise an internal protection alternative (*binnenlands beschermingsalternatief*) is also more strictly defined. Instead of 'staying' in the defined area a person has to be able to 'settle' in that area. And no internal protection alternative can be raised if the actor of persecution is the state or state agent.

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