

Country Report: Netherlands



2020
Update



Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2020, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary

Age inspection	Process by which officials of the Immigration and Naturalisation Service or the Royal Police assess whether the asylum seeker is evidently over or under the age of 18 based on appearance and discussion with him or her Leefijdsschouw
Extended asylum procedure	Procedure applicable where the Immigration and Naturalisation Service deems it impossible to take a decision within the deadlines of the short asylum procedure. The extended procedure lasts 6 months as a rule Verlengde asielprocedure
Nova	New elements or circumstances in the examination of subsequent applications
Rest and preparation period	Lasting six days, the period allows the asylum seeker to rest and the authorities to start preliminary investigations Rust- en Voorbereidingstijd
Self-care arrangement	Voluntary scheme in place between 2015 and 2016, allowing beneficiaries of protection who were awaiting housing to temporarily stay with families and friends Zelfzorgarrangement
Short asylum procedure	The general procedure applicable to asylum seekers, which lasts 8 working days as a rule Algemene Asielprocedure
Tracks	Procedural modalities applied to different caseloads. 5 such tracks exist
Written intention	Written notification of the Immigration and Naturalisation Service stating its intention to reject the asylum application. The intention provides the ground for rejection Voornemen
Written submission	Written submission of the lawyer in response to the written intention (<i>Voornemen</i>) of the Immigration and Naturalisation Service Zienswijze
AC	Application Centre Aanmeldcentrum
ACVZ	Advice Commission on Aliens' Matters Adviescommissie in Vreemdelingenzaken
ALO	Alleenstaande Ouderkop - The ALO is a regulation of the Tax Authorities for single parents, which can lead to certain additional allocations or entitlements.
AVIM	Aliens Police - Afdeling Vreemdelingenpolitie, Identificatie en Mensenhandel (AVIM)
AZC	Centre for Asylum Seekers Asielzoekerscentrum
BRP	Persons' Database Basisregistratie Personen
CBS	Central Office of Statistics Centraal Bureau voor de Statistiek
COA	Central Agency for the Reception of Asylum Seekers Centraal Orgaan opvang Asielzoekers
COL	Central Reception Centre Centraal Opvanglocatie,
CJEU	Court of Justice of the European Union
DA-AAR	Dutch Association of Age Assessment Researchers
DJI	Custodial Institutions Service Dienst Justitiële Inrichtingen
DT&V	Repatriation and Departure Service of the Ministry of Security and Justice Dienst Terugkeer en Vertrek
DUO	Education Executive Agency Dienst Uitvoering Onderwijs
EASO	European Asylum Support Office
EBTL	Extra Guidance and Supervision Location Extra begeleiding en toezichtlocatie
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EMN	European Migration Network

FMMU	Forensic Medical Society Utrecht - Forensisch Medische Maatschappij Utrecht
GL	Family housing Gezinslocatie
iMMO	Institute for Human Rights and Medical Assessment instituut voor Mensenrechten en Medisch Onderzoek, iMMO
IND	Immigration and Naturalisation Service Immigratie- en Naturalisatiedienst
KMar	Royal Military Police Koninklijke Marechaussee
LGBTI	Lesbian, gay, bisexual, transsexual and intersex
LOS	National Support Point for Undocumented Migrants - Landelijk Ongedocumenteerden Steunpunt
NFI	Dutch Forensic Institute Nederlands Forensisch Instituut
Nidos	Independent guardianship and (family) supervision agency for refugee children
NVVB	Dutch Association for Civil Affairs Nederlandse Vereniging voor Burgerzaken
POL	Process Reception Centre Proces Opvanglocatie
ROV	Regulation of Internal Order Reglement Onthoudingen Verstrekkingen
SBB	Cooperation Organisation for Vocational Education, Training and the Labour Market Stichting Samenwerking Beroepsonderwijs Bedrijfsleven
VBL	Freedom restrictive location Vrijheidsbeperkende locatie
VIS	Visa Information System
WRR	Scientific Council for Government Policy Wetenschappelijke Raad voor het Regeringsbeleid

Statistics

Overview of statistical practice

The Immigration and Naturalisation Service (IND) publishes Asylum Trends with statistics on asylum and family reunification applications on a monthly basis.¹ These do not indicate decisions on asylum applications, however.

Applications and granting of protection status at first instance: 2020

	First time Applicants in 2020*	Pending at end 2020	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	13,637	Not available	4,975	2,820	820	4,965	37%	21%	6%	36%
Breakdown by countries of origin of the total numbers										
Syria	4,022	:	2,600	1,510	55	465	56%	32%	1%	10%
Algeria	993	:	0	0	0	420	0%	0%	0%	100%
Turkey	989	:	1,130	10	330	105	10%	10%	20%	7%
Morocco	774	:	5	0	5	470	0%	0%	1%	98%
Nigeria	633	:	5	5	0	185	2,5%	2,5%	0%	95%
Unknown	581	:	240	85	30	135	17%	17%	6%	28%
Yemen	410	:	30	550	20	45	85%	85%	3%	7%
Afghanistan	389	:	90	60	105	280	11%	11%	20%	53%
Iran	370	:	285	10	110	435	1%	1%	13%	525%
Eritrea	368	:	5	260	25	150	59%	59%	5%	34%

Source: Eurostat. Note that the number of applicants concerns first time applicants and “rejection” covers inadmissibility decisions in Eurostat data. The total number of first time applicants and subsequent applicants was 15,320.

¹ IND, *Asylum trends*, available at: <http://bit.ly/2jPWOVX>.

Gender/age breakdown of the total number of applicants*: 2020

	Number	Percentage
Total number of asylum applicants	13,637	
Men	10,540 (incl.children)	77.29 % (incl.children)
Women	3,120 (incl.children)	22.88 % (incl.children)
Children (<18)	3,175	23.28 %
Unaccompanied children	986	7.23 %

Source: Eurostat; IND Asylum Trends.

* It concerns the number of first time applicants.

Comparison between first instance and appeal decision rates: 2020

The number of appeal decisions is not available.

Overview of the legal framework

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

Title in English	Original Title (NL)	Abbreviation	Web Link
General Administrative Law Act	Algemene Wet Bestuursrecht (AWB)	GALA	https://bit.ly/2MsylJS (NL)
Aliens Act 2000	Vreemdelingenwet 2000 (Vw 2000)	Aliens Act	https://bit.ly/3qUN0MS (NL) http://bit.ly/1CPkXEI (EN)
Act of the Central Agency of Reception	Wet Centraal Opvang Orgaan (Wet COA)	Reception Act	https://bit.ly/36cQane (NL)
Aliens Labour Act	Wet Arbeid Vreemdelingen (Wav)	Aliens Labour Act	https://bit.ly/3a8zONB (NL)

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

Title in English	Original Title (NL)	Abbreviation	Web Link
Aliens Decree 2000	Vreemdelingenbesluit 2000 (Vb 2000)	Aliens Decree	https://bit.ly/3ccPTEJ (NL)
Aliens Circular 2000	Vreemdelingen-circulaire 2000 (Vc 2000)	Aliens Circular	A: https://bit.ly/3sXEJtu B: https://bit.ly/3a5qFWi C: https://bit.ly/3pkVUCZ (NL)
Aliens Regulation 2000	Voorschrift Vreemdelingen 2000 (Vv 2000)	Aliens Regulation	https://bit.ly/3qUDYzz (NL)
Regulation on benefits for asylum seekers and other categories of foreigners 2005	Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 (Rva 2005)	RVA	https://bit.ly/2Ma6hLw (NL)
Border Accommodation Regime Regulation	Reglement Regime Grenslogies (Rrg)	Border Regime Regulation	https://bit.ly/3ceEyE4 (NL)

Overview of the main changes since the previous report update

The report was previously updated in **March 2020**.

Asylum procedure

- ❖ **COVID-19: asylum procedure suspended:** Due to the measures relating to the COVID-19 pandemic, the asylum procedure was suspended from 15 March 2020 up to 28 April 2020.² During this period, the registration of asylum seekers was limited to taking fingerprints to search the Dutch and European databases, frisking, searching luggage and taking possession of documents. This process is carried out in the application centre in Ter Apel by the Aliens Police, Identification and Human Trafficking Division (AVIM). After the registration and before they were able to lodge the official application for asylum, asylum seekers were taken to an emergency accommodation in Zoutkamp. They could not freely leave this accommodation. The emergency location was closed on 12 May 2020.
- ❖ **COVID-19: interviews via videoconference:** In order to minimise physical contact during the COVID-19 pandemic, the IND has started conducting videoconference interviews since April 2020. The interviews take place via a secure link for video conferencing. Through this link, the asylum seeker is able to speak with the IND staff members working from Zevenaar, Den Bosch, Schiphol or Ter Apel. Lawyers can also use these facilities. Unaccompanied minors and asylum seekers with medical problems are excluded from videoconference interviews.³
- ❖ **Registration procedure:** On 20 October 2020, the Secretary of State presented a draft proposal to amend the Aliens Decree regarding the registration procedure.⁴ The proposed amendment will formally establish the registration phase and the registration interview, and will abolish the first interview in the asylum procedure altogether. This entails that asylum seekers will be asked about their asylum motives during the registration interview, when they do not benefit from any legal assistance yet and when they have not had a rest and preparation period. The proposal further entails an amendment to the Regular Asylum Procedure and proposes to shorten the procedure from eight to six days. In addition, a possibility is created to extend the General Asylum Procedure in more situations, for example when asylum seekers change their statements on an essential point.⁵ If adopted, the proposal will likely enter into force in 2021, drastically changing the registration phase of the Regular Procedure.
- ❖ **Task Force IND and delays:** As a general rule, the rest and preparation period takes six days after which the actual asylum procedure starts. Since 2018, this period has been considerably extended. In March 2020, 15,350 asylum applications of people who applied for asylum before 1 April 2020 were passed on to a newly established Task Force, with the aim of clearing the backlogs before the end of 2020. The Task Force has not succeeded in doing so. On 18 November 2020, asylum seekers received a letter from the IND which stated that its Task Force would not meet its goal and that the Task Force will continue to decide on the remaining applications in 2021. The aim is to complete these by mid-2021.⁶ By 31 December 2020 the Task Force had decided upon 8,200 applications, meaning that over 7,000 applications have been postponed to 2021.⁷

² Dutch Parliament, No 35300 VI and 25295-126, available in Dutch at: <https://bit.ly/3o09t9u>.

³ IND, *Procesbeschrijving Telehoren*, 14 July 2020, available in Dutch at: <https://bit.ly/3c36IIH>.

⁴ Ministry of Justice and Security, *Wijziging Vreemdelingenbesluit i.v.m. regelen aanmeldfase*, available in Dutch at: <https://bit.ly/3bXZGi0>.

⁵ See also: Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), *Advies over het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielprocedure*, December 2020, available in Dutch at: <https://bit.ly/3ixVwOR>.

⁶ IND, *Progress of your asylum procedure*, 18 November 2020, available in English at: <https://bit.ly/35TzIs8>.

⁷ Dutch Parliament, No 19637-2689, 7 January 2021, available in Dutch at: <https://bit.ly/3qwhHYE>

- ❖ **Written interviews:** In order to address the backlog of pending cases as described above, a written interview was introduced as a measure to clear the backlogs faster. The IND hopes that by using a form, it will accelerate the decision making on asylum applications. Asylum seekers fill in the form themselves at the IND. Currently, the written interview is limited to asylum seekers with the following nationalities: Syrian, Yemenite, Eritrean, Turkish and Iranian. Unaccompanied minors are not invited for the written interview, as well as asylum seekers with medical issues or asylum seekers who are unable to read or write.⁸ Important to note is that the IND will always carry out an interview in person if they cannot decide positively on the asylum application on the basis of the written interview. It is not mandatory to participate in the written interview. If an asylum seeker does not want to fill in the form, a regular interview is carried out.⁹ In practice, however, asylum seekers have indicated that they agree to the written interview in fear of having to wait even longer.¹⁰

Reception conditions

- ❖ **Length of stay in reception centres:** Due to the long waiting times at the IND and a delay in housing of status holders, applicants spend longer periods in the reception centres. The Central Agency for the Reception of Asylum Seekers (COA) still desperately needs 5,000 extra places in 2021 due to this development. COA announced that it is ready to start with urgent measures.
- ❖ **Reception leniency:** Asylum seekers with a rejected asylum request were allowed to stay in the reception centers because of a 'corona-leniency' policy until 6 April 2020. This leniency was not applied in later phases of the lockdown.
- ❖ **Separate and austere reception centres for 'Track 2':** Asylum seekers whose asylum application is processed in 'Track 2' (i.e. safe countries of origin or status holders in another Member State), must – as of September 2020 – stay in separate 'austere' reception centres. In this reception centre they receive benefits in kind, they have to report daily, and additional security is present. Asylum seekers who appeal the asylum rejection also remain in the austere reception centre. Children and vulnerable asylum seekers are excluded from the austerity of reception but must adhere to the austerity regime (reporting daily) in the AZC.
- ❖ **Change of the sanction regime:** Following the Haqbin judgment the COA is not allowed to (temporarily) withdraw all of the reception conditions. Therefore, COA announced to start sanctioning with the use of 'time-out rooms'. Little is known about the use of this sanction so far. Another sanction that has been used throughout 2020 is the placement of asylum seekers aged 16 or more, who seriously violated the house rules of reception centres or who demonstrated aggressive behavior, in so-called Enforcement and Surveillance Location (*Handhaving en toezichtlocatie*, HTL).

Detention of asylum seekers

- ❖ **Border detention after the rejection of an asylum application:** The Aliens Act has been amended to ensure that border detention of asylum seekers with rejected asylum applications can be continued. The Council of State ruled that, following the *Gnandi*¹¹ and *C.S.J.*¹² judgments of the CJEU, the former legal basis for prolonging detention at the border after the rejection of an asylum application at least during the period for lodging an appeal was not valid.

⁸ IND, *Written interview*, not dated, available in English at: <https://bit.ly/35YxVC3>.

⁹ IND, *Written interview*, not dated, available in English at: <https://bit.ly/35YxVC3>.

¹⁰ Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: <https://bit.ly/39P1yH5>.

¹¹ CJEU, Case C-181/16, *Sadikou Gnandi vs Belgium*, 19 June 2018.

¹² CJEU, Case C-269/18 (order of the Court), *Staatssecretaris van Veiligheid en Justitie vs. C; and J and S vs. Staatssecretaris van Veiligheid en Justitie*, 5 July 2018.

- ❖ **Questions for a preliminary ruling on the judicial review:** The Council of State has referred a question for a preliminary ruling to the CJEU on the review of the detention of aliens on 23 December 2020 (C-704/20).¹³ It questions whether judges are obliged to rule on their own motion upon all the conditions of detention, even when the detainee has not complained about certain conditions. The question follows from the Mahdi-case (C-146/14) in which the Council of State did not read this obligation. However, some regional courts did rule on their own motion that – for example – the IND or DT&V had not acted expeditiously.
- ❖ **Locked up for 21 hours a day in detention:** In the context of COVID-19 measures, detainees have been detained for 21 hours a day with 2 persons in 1 cell. No – or almost no – activities were organised during the other three hours. Detainees were allowed to receive visitors or goods from outside the detention centre. Soap was not provided for a long time.

Content of international protection

- ❖ **Cessation of subsidiary protection status of Sudanese nationals:** As of January 2020, the IND no longer considers certain parts of Sudan to be in a conflict that reaches the Article 15c QD-standards. The IND announced that around a hundred statuses are going to be reassessed as they believe that the change of circumstances in Sudan have such a significant and non-temporary nature that the fear of persecution or the real risk of serious harm could no longer be regarded as well-founded (article 3.37g Aliens Regulation). The reassessments are still in process.
- ❖ **Housing:** More people are awaiting housing once they obtained an international protection status. On 4 January 2021 there were 8,398 refugees with a permit residing in COA reception centres, compared to 5,385 at 6 January 2020.
- ❖ **Family reunification:** Since the previous report update not many changes can be reported on the conditions for family reunification in the Netherlands. Family reunification has been severely impacted by the measures against the Covid-19 measures. Many family members who already had permission to reunite were not able to obtain the visa from the Dutch embassies, or could not travel to the Netherlands on the visa that had been issued. The Dutch Immigration Services and the department of Foreign Affairs agreed that family members for whom the permission to obtain visa or the visa itself had expired, were offered new visa directly from the embassy if they could not reach the embassy within three months of expiration. Family members who could not meet that condition were offered an expeditious handling of their subsequent application at the Immigration Office. The focus on proving the identity of the family member and family ties with the sponsor is still the main bottleneck for family reunification. The Council of State ruled that a subsequent application for family reunification of an unaccompanied minor should be done within the regular framework if the unaccompanied minor has reached the age of 18 in the meantime, or has been taken care of by one of his parents. The Council ruled that the circumstances as to why family reunification could not take place during the first application, should be taken into account in the subsequent procedure within the regular framework.¹⁴

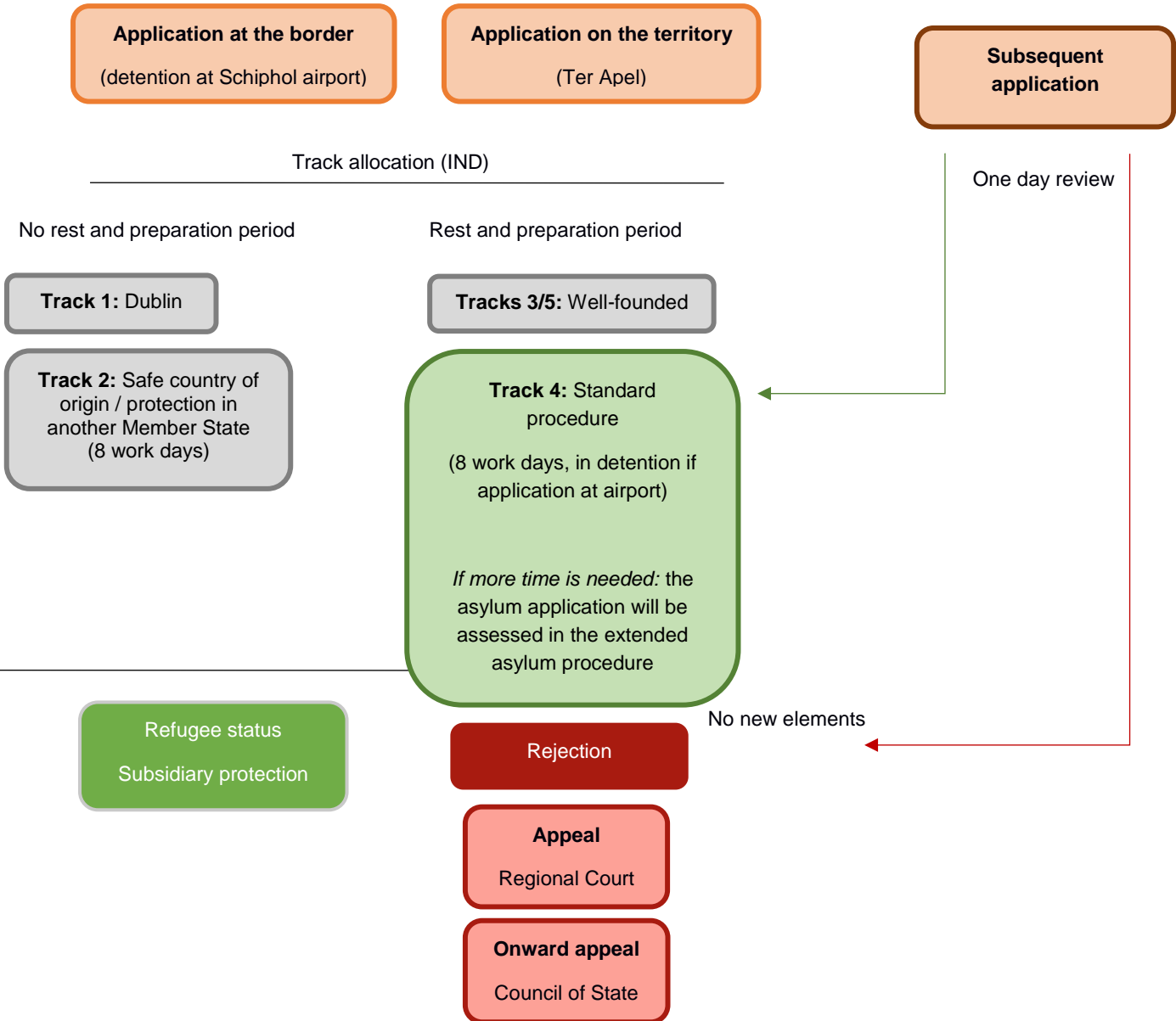
¹³ Council of State, ECLI:NL:RVS:2020:3061, 23 December 2020.

¹⁴ Council of State, Decision 201902483/1/V1, 16 September 2019.

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: ¹⁵ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Fast-track processing: ¹⁶ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ¹⁷ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Extended procedure | | Other: |

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

4. Number of staff and nature of the determining 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 determining authority?
Immigration and Naturalisation Service (IND)	Not available	Ministry of Security and Justice	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

¹⁵ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

¹⁶ Accelerating the processing of specific caseloads as part of the regular procedure.

¹⁷ Labelled as "accelerated procedure" in national law. See Article 31(8) APD.

The Immigration and Naturalisation Service (IND) is responsible for examining applications for international protection and competent to take decisions at first instance. The work instructions applied by caseworkers are published in Dutch on the IND's website. This includes procedural instructions inter alia on interviews, subsequent applications, age assessments, border procedures, the use of country of origin information, but also on how to work with an interpreter, how to handle medical advice, how to decide in cases in which sexual orientation and gender identity issues are brought up as grounds for asylum, or how to conduct child-friendly interviews.¹⁸

5. Short overview of the asylum procedure

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

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

The application/registration procedure in the COL takes three days. During this procedure the asylum seeker has to complete an extensive application form, fingerprints are taken and he or she is interviewed regarding his or her identity, family members, travel route and profession. Data from Eurodac and the Visa Information System (VIS) are consulted. From all this information the IND may conclude that, according to the Dublin Regulation, another Member State is responsible for examining the asylum application. In case of a "hit" in Eurodac the IND can already submit a request to another Member State to assume responsibility for the asylum application under the Dublin Regulation.

Procedural tracks: The IND applies a "Five Tracks" policy, whereby asylum seekers are channelled to a specific procedure track (*spoor*) depending on the circumstances of their case.¹⁹ Track 1 and 4 had always been part of the IND's practise. Track 2 has been applied since 1 March 2016 and tracks 3 and 5 have not been applied (yet). The tracks are only applicable when the asylum application has been lodged on the territory, not when it was lodged at the border.

Track 1 Dublin Procedure. The asylum seeker is not entitled to a rest and preparation period nor a medical examination by the Forensic Medical Society Utrecht (FMMU).²⁰

Track 2 Procedure for applicants from a Safe Country of Origin and applicants who have already received international protection in another Member State. The IND considers it unlikely that these applications will be granted. The assessment takes place in a fast-track procedure which takes place within a maximum of 8 days. The asylum seeker is not entitled to a rest and preparation period or a medical examination by FMMU.²¹

¹⁸ IND, Work instructions, available in Dutch at: <https://bit.ly/2MtPof7>.

¹⁹ Decree WBV 2016/4 of 26 February 2016 amending the Aliens Circular 2000, available in Dutch at: <http://bit.ly/2fp4K0z>.

²⁰ Article 3.109c Aliens Decree.

²¹ Article 3.109ca Aliens Decree.

- Track 3** Fast-track procedure for applications which are considered likely to be granted. The procedure is linked to track 5, but neither track has been applied yet.
- Track 4** Regular Procedure (*Algemene asielprocedure*) of 8 days, with the possibility to extend this time limit by 6, 8 or 14 days.²² In case the application cannot be thoroughly assessed within the Regular Procedure there is a possibility of assessing the application in the Extended Procedure (*Verlengde asielprocedure*).
- Track 5** Procedure for applications that start in Track 3 and are likely to be granted, but where additional research must take place regarding identity and/or nationality. Like Track 3, Track 5 has not been applied yet.

Rest and preparation period: With the exception of Tracks 1 and 2, the asylum seeker is granted a rest and preparation period starting from the moment the asylum application is formally lodged by signing an application form.²³ The rest and preparation period grants first time asylum applicants some days to cope with the stress of fleeing their country of origin and the journey to the Netherlands.²⁴

The rest and preparation period takes at least 6 days. It is designed, on the one hand, to offer the asylum seeker some time to rest, and on the other hand, to provide the time needed to undertake several preparatory actions and investigations. The main activities during the rest and preparation period are:

- Investigation of documents conducted by the Royal Military Police (*Koninklijke Marechaussee*, KMar);
- Medical examination by an independent medical agency (FMMU) which provides medical advice on whether the asylum seeker is physically and psychologically capable to be interviewed by the IND;
- Counselling by the Dutch Council for Refugees (*VluchtelingenWerk Nederland*); and
- Appointment of a lawyer and substantive preparation for the asylum procedure.

After the rest and preparation period, the actual asylum procedure starts. At first instance, asylum seekers are channelled into the so-called Regular Procedure (*Algemene asielprocedure*) which is, as a rule, designed to last 8 working days (“short asylum procedure”). The short asylum procedure may be extended by 6, 8 or 14 working days if more time is needed.

If it becomes clear on the fourth day of the short asylum procedure that the IND will not be able to take a well-founded decision on the asylum application within these eight days, the application is further investigated in the Extended Procedure (*Verlengde asielprocedure*). In this extended asylum procedure the IND has to take a decision on the application within 6 months. This time limit can be extended by 9 months, and another 3 months.²⁵

There is only one asylum status in the Netherlands. However, there are two different grounds on which this asylum status may be granted (besides family reunification).²⁶ These two grounds are: refugee status (A-status); and subsidiary protection (B-status). In addition to the grounds of Article 15 of the recast Qualification Directive, trauma suffered in the country of origin, as a result of which it is not

²² Article 3.115(6) Aliens Decree.

²³ When it is assumed that the asylum application will be rejected in accordance with the Dublin Regulation (Article 3.109c Aliens Decree) or due to the fact that the safe country of origin concept applies or the asylum seeker already receives international protection in a Member State of the European Union (Article 3.109ca Aliens Decree) the asylum seeker will not have a rest and preparation period, including the medical examination by FMMU.

²⁴ Article 3.109 Aliens Decree.

²⁵ See Article 42(4)(5) Aliens Act.

²⁶ Article 29 Aliens Act.

reasonable to require the asylum seeker to return to his country of origin, falls within the scope of Article 29(1)(b) of the Aliens Act (B-status).²⁷

The IND must first examine whether an asylum seeker qualifies for refugee status, before examining whether the asylum seeker should be granted subsidiary protection. This means that an asylum seeker may only qualify for subsidiary protection in case he or she does not qualify as a refugee under Article 1A of the Refugee Convention. In case an asylum seeker is granted subsidiary protection, he or she cannot appeal in order to obtain refugee status.²⁸ This is because, regardless of the ground on which the permit is granted, the asylum permit entitles the status holder to the same rights regarding social security (see [Content of International Protection](#)).

Appeal: Asylum seekers whose application is rejected may appeal this decision at a Regional Court (*Rechtbank*). In the procedures of Track 4, as well as Tracks 1 and 2, this appeal should be submitted within one week of the negative decision. The appeal has automatic suspensive effect, except for cases falling in Tracks 1 and 2 or cases in Track 4 in which the IND discontinues to examine the asylum application because, for example, the asylum seeker lacks to provide (sufficient) relevant information according to the IND.²⁹ This means that the asylum seeker can be expelled before the court's decision. To prevent expulsion the legal representative (or in theory the asylum seeker) should request a provisional measure to suspend removal pending the appeal. This must be done immediately after the rejection in order to prevent possible expulsion from the Netherlands. After a rejection of the asylum request in the short asylum procedure the asylum seeker is, as a rule, entitled to accommodation for a period of four weeks regardless whether he or she lodges an appeal and whether this appeal has suspensive effect due to a granted provisional measure.³⁰ Depending on the grounds for refusal, an appeal against a negative decision in the "extended procedure" can have automatic suspensive effect. Also depending on the grounds, the appeal must be submitted within one or four weeks.³¹ The asylum seeker is entitled to accommodation during this appeal.

Following the decision of the CJEU answering the questions of the Council of State and the *Gnandi* judgment of the CJEU, the Council of State concluded that an asylum seeker has the right to remain legally in the Netherlands during the period of the appeal regarding a case in which the asylum application was rejected as manifestly unfounded. The State Secretary also stated that Dutch national law is in general in accordance with European Union law.³²

Both the asylum seeker and the IND may lodge an appeal against the decision of the Regional Court to the Council of State (*Afdeling Bestuursrechtspraak Raad van State*, ABRvS). This procedure does not have suspensive effect, unless the Council of State issues a provisional measure. In case this provisional measure is denied by the Council of State, the asylum seeker is no longer entitled to accommodation. The Council of State ruled in 2016 that a request for a provisional measure preventing expulsion during the appeal shall be granted if the asylum request is considered to have an arguable claim in the sense of Article 3 of the European Convention on Human Rights (ECHR).³³

However, in April 2017 the Council of State referred preliminary questions to the CJEU regarding the suspensive effect of an onward appeal against the rejection of an asylum application. In September

²⁷ The trauma policy used to have its own ground: Article 29(1)(c) Aliens Act (C-status) before 1 January 2014. Nowadays the policy is set out in: 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)(b) of the Aliens Act. Other groups, like Westernised Afghan school girls, can attain a regular residence permit instead of a permit under Article 29(1)(c) as was the case before.

²⁸ Council of State, Decision No 20010591481, 28 March 2002.

²⁹ Article 30c Aliens Act.

³⁰ Article 82(2) Aliens Act.

³¹ Article 69(2) Aliens Act.

³² CJEU, Case C-269/18, *Staatssecretaris van Veiligheid en Justitie v C and J and S v Staatssecretaris van Veiligheid en Justitie*, 5 July 2018; CJEU, Case C-181/16, *Sadikou Gnandi vs Belgium*, 19 June 2018.

³³ Council of State (Judge for provisional measures), Decision 201609138/3/V2, 20 December 2016.

2018 the CJEU ruled that an onward appeal does not have a suspensive effect in itself.³⁴ Following this judgment the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.³⁵

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No
2. Is there a border monitoring system in place? Yes No
 - ❖ If so, who is responsible for border monitoring? National authorities NGOs Other
 - ❖ If so, how often is border monitoring carried out? Frequently Rarely Never

There is border control at the external borders of the Netherlands at the European external border at airports, in seaports and along the coast. Mobile Security Supervision (MTV) is the supervision of persons traveling to the Netherlands from another Schengen country at the Belgian and German borders. The checks take place on roads, in trains, on water and in air traffic. In the area immediately behind the border, the Royal Netherlands Marechaussee checks travel documents on a random basis.

Migration control dogs help the Marechaussee to detect hidden persons (stowaways) in, for example, trucks, coaches and buses that cross the borders. They also search ships. In the Dutch ports of IJmuiden and Hoek van Holland, the dogs control ships and containers and other traffic traveling to and from the United Kingdom via ferry.

There are no reports of pushbacks at the Dutch borders.

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. If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? Yes No
4. Is the authority with which the application is lodged also the authority responsible for its examination? Yes No
5. Can an application be lodged at embassies, consulates or other external representations? Yes No

1.1. Making and registering the application

If an asylum seeker enters the Netherlands by land, he or she has to apply at the Central Reception Centre (*Centraal Opvanglocatie*, COL) in **Ter Apel** (nearby **Groningen**, north-east of the Netherlands), where the registration takes place. The Aliens Police (*Vreemdelingenpolitie*, AVIM) takes note of personal data such as name, date of birth and country of origin. Data from Eurodac and the Visa

³⁴ CJEU, Case C-175/17, *X v Belastingdienst/ Toeslagen*, 26 September 2018.

³⁵ Council of State, Decision No 201609659/1/V2 and 201609659/4/V2, 20 February 2019.

Information System (VIS) are consulted and AVIM registers the application in Eurodac. The asylum application is formally lodged at the Immigration and Naturalisation Service (IND).

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 at **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.³⁶ The KMar refuses the asylum seeker entry to the Netherlands if he or she does not fulfil the necessary conditions, and the asylum seeker will be detained in the Border Detention Centre (*Justitieel Complex Schiphol*, JCS).³⁷ As far as known in recent years, no problems have been reported by asylum seekers as regards the fact that the KMar did not recognise their claim for international protection as an asylum request.

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

If an asylum seeker is already on Dutch territory he or she is expected to express the wish for asylum to the authorities as soon as possible after arrival in the Netherlands, which is, according to jurisprudence, preferably within 48 hours.³⁸

As a rule, after registration at the AC, asylum seekers immediately go to the COL. After the three-day period in the COL, they are transferred to a Process Reception Centre (*Proces Opvanglocatie*, POL).

In January 2019 the State Secretary of Justice introduced a new policy which means that at the start of the registration procedure every asylum seeker has to complete an extensive form containing questions about their (1) identity; (2) place and date of birth; (3) nationality, religious and ethnic background; (4) date of leaving the country of origin; (5) arrival date in the Netherlands; (6) remains/stay in one or more third countries when appropriate; (7) identity cards or passport; (8) itinerary; (9) schooling/education; (10) military services; (11) work/profession; and (12) living environment and family.³⁹

The completed form is followed by a registration interview (*Aanmeldgehoor*). During the registration interview, questions can be asked about identity, nationality, travel route and family members. Questions about asylum motives are currently explicitly avoided in the registration interview, but the completed form and interview play an essential part in the asylum procedure nonetheless. During the registration procedure, the asylum seeker does not benefit from legal assistance and does not obtain information from the Dutch Council for Refugees.

Seeing the extensiveness of the form and its follow up registration interview, the first interview during the general asylum procedure is now less extensive. It has become a so-called verification interview. This practice has not been formally regulated. However, on 20 October 2020, the Secretary of State presented a draft proposal to amend the Aliens Decree.⁴⁰ The proposed amendment would not only formally establish the registration phase and the registration interview, it would abolish the first interview in the asylum procedure altogether. This also entails that asylum seekers will be asked about their asylum motives during the registration interview, when they do not benefit from any legal assistance yet and when they have not had a rest and preparation period.

The proposal further entails an amendment to the Regular Asylum Procedure and proposes to shorten the procedure from eight to six days. In addition, a possibility is created to extend the General Asylum

³⁶ IND, *Voordat jouw asielpprocedure begint* – AMV, August 2015, available in Dutch at: <http://bit.ly/2DChVcO>.

³⁷ Article 3(3) Aliens Act.

³⁸ Council of State, Decision ABKort 1999.551, 20 September 1999.

³⁹ Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2018/15 *Aanmeldgehoren en Verificatie eerste gehoren*.

⁴⁰ Ministry of Justice and Security, *Wijziging Vreemdelingenbesluit i.v.m. regelen aanmeldfase*, available in Dutch at: <https://bit.ly/3bXZGi0>.

Procedure in certain situations, for example when asylum seekers change their statements on an essential point.⁴¹ This proposal will likely enter into force in 2021, drastically changing the registration phase of the Regular Procedure.

1.2. The rest and preparation period

Exclusively in Track 4, the asylum seeker is granted a rest and preparation period. This starts from the moment the asylum application is formally lodged by signing an application form. The rest and preparation period grants first time asylum applicants some days to cope with the stress of fleeing their country of origin and the journey to the Netherlands.⁴²

The rest and preparation period takes at least 6 days.⁴³ It is designed, on the one hand, to offer the asylum seeker some time to rest, and on the other hand, to provide the time needed to undertake several preparatory actions and investigations. The main activities during the rest and preparation period are:

- ❖ Investigation of documents conducted by the KMar;
- ❖ Medical examination by an independent medical agency (FMMU) which provides medical advice on whether the asylum seeker is physically and psychologically capable to be interviewed by the IND;
- ❖ Counselling by the Dutch Council for Refugees (*VluchtelingenWerk Nederland*); and
- ❖ Appointment of a lawyer and substantive preparation for the asylum procedure.

The rest and preparation period is not available to asylum seekers falling in the Dublin procedure (Track 1) or those coming from a safe country of origin or who receive protection in another EU Member State (Track 2). Furthermore, there is no rest and preparation period in the following situations:

- ❖ the asylum seeker constitutes a threat to public order or national security⁴⁴;
- ❖ the asylum seeker causes nuisance in the reception centre⁴⁵;
- ❖ the asylum seeker is detained on the basis of Article 59b Aliens Act⁴⁶;
- ❖ the application is a subsequent application for asylum⁴⁷.

The rest and preparation period takes at least six days, there is no maximum number of days. During the entire period asylum seekers have access to reception and medical aid. From 2018 onwards, this period has been considerably extended due to delays on the side of the IND. The rest and preparation period can currently take up to several months, sometimes even years.⁴⁸ In March 2020, 15,350 asylum applications of people who applied for asylum before 1 April 2020 were passed on to a newly established Task Force, with the aim of clearing the backlogs before the end of 2020. The Task Force has not succeeded in doing so. On 18 November 2020, asylum seekers received a letter from the IND which stated that its Task Force would not meet its goal and that the Task Force will continue to decide on the remaining applications in 2021. The aim is to complete these by mid-2021.⁴⁹ By 31 December 2020 the Task Force had decided upon 8,200 applications, meaning that over 7,000 applications have been postponed to 2021.⁵⁰

Because the Task Force has taken over the backlogs from the IND, the IND should be able to process new applications in time. However, in a letter dating 18 November 2020, the Dutch Secretary of State states that two-thirds of the asylum applications submitted between 1 April 2020 and 1 November 2020

⁴¹ See also: Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), *Advies over het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielprocedure*, December 2020, available in Dutch at: <https://bit.ly/3ixVwOR>.

⁴² Article 3.109 Aliens Decree.

⁴³ This occurs from practice and has not been enshrined in the law.

⁴⁴ Article 3.109(7)a Aliens Decree.

⁴⁵ Article 3.109(7)a Aliens Decree, for the definition of 'nuisance' see paragraph C1/2.2 Aliens Circular.

⁴⁶ Article 3.109(7)a Aliens Decree.

⁴⁷ Article 3.118b Aliens Decree.

⁴⁸ Dutch Council for Refugees, *Timeline of the delays in the asylum procedure*, available in Dutch at: <https://bit.ly/33cd9fB>.

⁴⁹ IND, *Progress of your asylum procedure*, 18 November 2020, available in English at: <https://bit.ly/35TzIs8>.

⁵⁰ Dutch Parliament, No 19637-2689, 7 January 2021, available in Dutch at: <https://bit.ly/3qwhHYE>.

had not been decided upon yet.⁵¹ Further delays therefore seem inevitable.

Because of the delays, the IND had to pay a large sum of legal penalties (*dwangsommen*)⁵² to asylum seekers whose application had not been decided upon within the legal time frame.⁵³ The total sum of legal penalties the IND is expected to pay over the years 2020 and 2021 amounts to 43.5 million euros.⁵⁴

Because of these legal penalties, the 'Temporary act on suspension of penalties for the IND (*Tijdelijke wet opschorting dwangsommen IND*)' was passed by the Dutch Parliament and entered into force on 11 July 2020.⁵⁵ Under the Temporary act, asylum seekers are excluded from receiving a legal penalty in cases where the IND does not decide upon their application in time. The Temporary act does not apply to cases in which the legal time frame had already past and the IND had already been given notice of default by the asylum seeker. As the name suggests, the Temporary act will expire one year after its entry into force. However, a draft bill has been published on 15 October 2020 which would stipulate that foreign nationals will be excluded from these legal penalties altogether.⁵⁶

In a letter dated 15 May 2020 the Secretary of State stated that, due to the ongoing pandemic and its effects on the examination of asylum cases, the statutory decision period for asylum applications would be extended by six months.⁵⁷ The Secretary of State referred to the European Commission's Guidance, which mentioned that Article 31(3)(b) of the Asylum Procedures Directive allows Member States to extend the six months period for concluding the examination of applications.⁵⁸ The statutory decision period was extended by six months on 20 May 2020⁵⁹; on 16 December 2020, the Council of State ruled that this extension is not unreasonable and not contrary to Union law.⁶⁰

1.3. Impact of COVID-19 Measures on access to the procedure and registration

Due to the measures relating to the COVID-19 pandemic, the asylum procedure has been suspended from 15 March 2020 up to 28 April 2020.⁶¹ During this period, the registration of asylum seekers had been limited to the of taking fingerprints to search the Dutch and European databases, frisking, searching luggage and taking possession of documents. This process is carried out in the application centre in Ter Apel by the Aliens Police, Identification and Human Trafficking Division (AVIM). After the registration and before they were able to lodge the official application for asylum, asylum seekers were taken to an emergency accommodation in Zoutkamp. They could not freely leave this accommodation. The emergency location was closed on 12 May 2020.⁶²

⁵¹ Dutch Parliament, No 19637-2621, 18 November 2020, available in Dutch at: <https://bit.ly/3nUcsjX>.

⁵² The Penalty Payments and Appeals for Failure to Make a Timely Decision Act, provides that a citizen can go to court when an administrative body does not take a timely decision and request a penalty payment. The Act entered into force in 2009, and has been applicable to the IND since October 2012. It foresees that an asylum seeker can receive a penalty payment following a non-timely decision.

⁵³ Article 4:17 GALA, Regional Court Arnhem, decision no NL19.22847, 14 November 2019, Regional Court Amsterdam, decision no NL19.18215, 13 September 2019.

⁵⁴ Dutch Parliament, No 19637-2621, 18 November 2020, available in Dutch at: <https://bit.ly/3nUcsjX>, this letter specifies that a total of 11.5 million euros had already been paid from January 2020 up to and including October 2020 and that approximately 32 million would still have to be paid over the years 2020 and 2021.

⁵⁵ Tijdelijke wet opschorting dwangsommen IND, available in Dutch at: <https://bit.ly/3bQIRql>.

⁵⁶ Draft bill 'Herziening regels niet tijdig beslissen op vreemdelingenrechtelijke aanvragen' available in Dutch at: <https://bit.ly/2M2L3PB>.

⁵⁷ Dutch Parliament, 19637-2605, 15 May 2020, *Gevolgen richtsnoeren Europese Commissie voor beslistermijnen IND*, available in Dutch at: <https://bit.ly/2LD9OSD>.

⁵⁸ European Commission, Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, 17 April 2020, available at: <https://bit.ly/35T5DIY>.

⁵⁹ WBV 2020/12, 20 May 2020, available in Dutch at: <https://bit.ly/3nSENHi>.

⁶⁰ Council of State, Decision No 202005098/1, ECLI:NL:RVS:2020:3020, 16 December 2020.

⁶¹ Dutch Parliament, No 35300 VI and 25295-126, available in Dutch at: <https://bit.ly/3o09t9u>.

⁶² Dutch Parliament, No 35 300 VI No 127, available in Dutch at <https://bit.ly/3iwqUO4>.

C. Procedures

Since March 2016, the IND has implemented a “Five Tracks” policy whereby asylum seekers are channelled to a specific procedure depending on the circumstances of their case. Beyond the regular asylum procedure (“Track 4”), the policy foresees specific tracks for manifestly well-founded cases (“Tracks 3 and 5”), applicants coming from a safe country of origin or receiving protection in another Member State (“Track 2”) and Dublin cases (“Track 1”).

While the Netherlands has transposed the recast Asylum Procedures Directive, it should be noted that the “Five Tracks” policy does not fully follow the structure of the Directive in terms of regular procedure, prioritised procedure and accelerated procedure. The different sections below refer to the applicable track in each case.

1. Regular procedure (“Track 4”)

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to decide on the asylum application at first instance:
 - ❖ Short procedure 8 working days
 - ❖ Extended procedure 6 months (extended by 6 months on 20 May 2020)⁶³
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? Yes No
6. Backlog of pending cases at first instance as of 31 December 2020: Not available

The general asylum procedure (Track 4) is divided into a Regular Procedure (*Algemene Asielprocedure*) of 8 days and an Extended Procedure (*Verlengde Asielprocedure*). The assessment of each asylum application starts in the short asylum procedure. During this procedure the IND can decide to refer the case to the Extended Procedure.

Regular Asylum Procedure (*Algemene Asielprocedure*)

A decision on an asylum application in the Regular Procedure currently has to be issued within 8 working days.⁶⁴ In exceptional cases, this deadline may be extended by 6, 8 or 14 more days. Therefore, the total length of the Regular Procedure is 14, 16 or 22 days depending on the grounds for extending the Regular Procedure.⁶⁵ These extensions are not frequent in practice. According to Paragraph C1/2.3 of the Aliens Circular, the IND is reticent regarding extensions of the deadline of the Regular Procedure.

In January 2019 the State Secretary of Justice introduced a new policy which means that at the start of the registration procedure every asylum seeker has to complete an extensive form containing questions about their (1) identity; (2) place and date of birth; (3) nationality, religious and ethnic background; (4) date of leaving the country of origin; (5) arrival date in the Netherlands; (6) remains/stay in one or more third countries when appropriate; (7) identity cards or passport; (8) itinerary; (9) schooling/education; (10) military services; (11) work/profession; and (12) living environment and family.⁶⁶

The completed form is followed by a registration interview (*Aanmeldgehoor*). During the registration interview, questions can be asked about identity, nationality, travel route and family members. Questions about asylum motives are currently explicitly avoided in the registration interview, but the completed

⁶³ WBV 2020/12, 20 May 2020, available in Dutch at: <https://bit.ly/3nSENHi>.

⁶⁴ Article 3.110(1) Aliens Decree.

⁶⁵ Article 3.110(2) Aliens Decree. An extension with six days is applied for instance in case an interpreter is not available or documents have to be analysed.

⁶⁶ Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2018/15 Aanmeldgehooren en Verificatie eerste gehoren.

form and interview play an essential part in the asylum procedure nonetheless. During the registration procedure, the asylum seeker does not benefit from legal assistance and does not obtain information from the Dutch Council for Refugees.

Seeing the extensiveness of the form and its follow up registration interview, the first interview during the general asylum procedure is now less extensive. It has become a so-called verification interview. This practise has not been formally regulated. However, on 20 October 2020, the Secretary of State presented a draft proposal to amend the Aliens Decree.⁶⁷ The proposed amendment would not only formally establish the registration phase and the registration interview, it would abolish the first interview in the asylum procedure altogether. This also entails that asylum seekers will be asked about their asylum motives during the registration interview, when they do not benefit from any legal assistance yet and when they have not had a rest and preparation period.

The proposal further entails an amendment to the Regular Asylum Procedure and proposes to shorten the procedure from eight to six days. In addition, a possibility is created to extend the General Asylum Procedure in more situations, for example when the asylum seeker changes their statements on an essential point.⁶⁸ If adopted, this proposal will likely enter into force in 2021, drastically changing the registration phase of the Regular Procedure.

For a clear understanding of the current Regular Procedure it is important to indicate what happens during these eight days. In short, on the odd days the asylum seeker has contact with the IND and on the even days with his or her legal advisor / counsellor:⁶⁹

Day 1	Start of the actual asylum procedure with first (verification) interview (<i>Verificatie eerste gehoor</i>)	On the day of the official lodging of the asylum application, the IND conducts the first (verification) interview with the asylum seeker to ascertain the asylum seeker's identity, nationality and travel route from their country of origin to the Netherlands. The first interview does not concern the reasons for seeking asylum. Up until now a lawyer is automatically appointed from day 1. The State Secretary announced that this will be changed in 2021: free legal assistance will be available only when the IND has issued a written intention to reject the asylum application. ⁷⁰
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 thereto 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 (<i>Nader gehoor</i>)	In the second and more extensive interview, the asylum seeker is questioned by the IND about his or her reasons for seeking asylum.
Day 4	Review of the second interview and corrections and additions	The lawyer and the asylum seeker review the report on the day after the second interview. During this stage, the

⁶⁷ Ministry of Justice and Security, *Wijziging Vreemdelingenbesluit i.v.m. regelen aanmeldfase*, available in Dutch at: <https://bit.ly/3bXZGi0>.

⁶⁸ See also: Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), *Advies over het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielprocedure*, December 2020, available in Dutch at: <https://bit.ly/3ixVwOR>.

⁶⁹ Article 3.112-3.115 Aliens Decree.

⁷⁰ State Secretary of Justice & Security, 15 November 2019, available in Dutch at: <https://bit.ly/31mi8cB>; and State Secretary of Justice & Security, 19 December 2019, available in Dutch at: <https://bit.ly/2RUks7R>.

asylum seeker may submit any corrections and additions to the second interview.

After day 4, the IND assesses the asylum application. It may decide to grant asylum. If not, the IND chooses either to continue the examination in the Regular Procedure or to refer to the Extended Procedure.

Day 5 The intention to reject the asylum application (*Voornemen*) In case the IND decides to reject the asylum application it will issue a written intention. 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 his or her 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 examination of the asylum application in the Extended Procedure.

When the IND cannot assess the asylum claim and cannot take a decision within the time frame of the Regular Procedure, it has to refer the case to the Extended Procedure. A decision is taken by the IND on the basis of the information that stems from the first and second interviews, and information from official reports and other country information. A decision to reject the asylum application must be motivated and take into account the lawyer's view in writing.⁷¹

Extended Procedure (Verlengde asielprocedure)

In case the IND, after the second interview and the submission of corrections and additional information in the Regular Procedure, decides to continue the examination of the asylum application in the Extended Procedure, the asylum seeker is relocated from a POL to a centre for asylum seekers (*Asielzoekerscentrum*, AZC). There are no specific conditions under which the IND can refer a case to the Extended Procedure.

The asylum seeker and his or her lawyer are given 4 weeks to submit a viewpoint in writing in response to the intention of the IND to reject the asylum application.⁷² The IND has to issue a new intention to reject the asylum application if it changes its grounds for rejecting the claim substantially.

If an asylum application is examined in the Extended Procedure the maximum time limit for deciding is 6 months. According to Article 42(4) of the Aliens Act, transposing Article 31(3) of the recast Asylum Procedures Directive, this time limit can be prolonged by 9 months if, for example, the case is complex or there is an increased number of asylum applications at the same time. In addition to the 9-month prolongation, the time limit can be extended by another 3 months according to Article 42(5) of the Aliens Act.

In a letter dated 15 May 2020 the Secretary of State stated that, due to the ongoing pandemic and its effects on the examination of asylum cases, the statutory decision period for asylum applications would be extended by six months.⁷³ The Secretary of State referred to the European Commission's Guidance, which mentioned that Article 31(3)(b) of the Asylum Procedures Directive allows Member States to

⁷¹ Article 42(3) Aliens Act.

⁷² Article 3.117 Aliens Decree.

⁷³ Dutch Parliament, 19637-2605, 15 May 2020, *Gevolgen richtsnoeren Europese Commissie voor beslistermijnen IND*, available in Dutch at: <https://bit.ly/2LD9OSD>.

extend the six months period for concluding the examination of applications.⁷⁴ The statutory decision period was extended by six months on 20 May 2020⁷⁵; on 16 December 2020, the Council of State ruled that this extension is not unreasonable and not contrary to Union law.⁷⁶

1.2. Prioritised examination and fast-track processing (“Tracks 3 and 5”)

Track 3 foresees a fast-track procedure for applicants who are *prima facie* likely to be granted protection, for instance nationalities such as Syria and Eritrea. Track 5 applies to the same cases, where nationality or identity documents have not been submitted. There is no prioritised examination and fast-tracking processing in practice, as neither Track 3 nor Track 5 were applied in 2018 and 2019.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? Yes No
 - ❖ If so, is this applied in practice, for interviews? Yes No

The law requires the IND to organise a personal interview for all asylum seekers.⁷⁷ Every asylum seeker is interviewed at least twice, with the exception of applications dealt with in the [Dublin Procedure](#) (Track 1) and the [Accelerated Procedure](#) (Track 2). The first (verification) interview is designed to clarify nationality, identity and travel route. It has become less exhaustive in 2019 following the introduction of an extensive form and a follow-up interview at registration stage. In the second interview the asylum seeker is able to explain the reasons for fleeing his or her country of origin.⁷⁸

Interpretation

The asylum seeker is to be interviewed in a language which he or she may reasonably be assumed to understand.⁷⁹ This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.⁸⁰ The IND may only use certified interpreters by law.⁸¹ However, in certain circumstances the IND may derogate from this rule, for example, when in urgent situations there is a need for an interpreter or if an asylum seeker speaks a very rare dialect.⁸² Interpreters are obliged to perform their duties honestly, conscientiously and must render an oath.⁸³ The IND uses its own code of conduct, which is primarily based on the general code of conduct for interpreters.⁸⁴ The Legal Aid Board arranges for an interpreter in order to facilitate the communication between asylum seekers and their

⁷⁴ European Commission, Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, 17 April 2020, available at: <https://bit.ly/35T5DIY>.

⁷⁵ WBV 2020/12, 20 May 2020, available in Dutch at: <https://bit.ly/3nSENHi>.

⁷⁶ Council of State, Decision No 202005098/1, ECLI:NL:RVS:2020:3020, 16 December 2020.

⁷⁷ Article 3.112 Aliens Decree.

⁷⁸ Article 3.113 Aliens Decree.

⁷⁹ Article 38 Aliens Act.

⁸⁰ IND, *Toelichting inzet tolken*, February 2014, available in Dutch at <http://bit.ly/2E6UYv9>, 1.

⁸¹ Article 28(1) Law on Sworn Interpreters and Translators.

⁸² Article 28(3) Law on Sworn Interpreters and Translators.

⁸³ Frits Koers et al, *Best practice guide asiel: Bij de hand in asielzaken*, Raad voor de Rechtsbijstand, Nijmegen 2012, 38.

⁸⁴ IND, *Toelichting inzet tolken*, February 2014, 5.

lawyer. They are allowed to make use of the “interpreter telephone”. This service is provided by [Concorde](#) and paid by the Legal Aid Board.⁸⁵

Gender and sexual orientation

The asylum seeker can express the wish to be interviewed by an employee of the IND of his or her own gender; this includes interpreters as well. This may make it easier for an asylum seeker to speak about issues such as sexual violence.⁸⁶

In the past, there have been concerns about the questions asked during interviews conducted with persons that had been persecuted because of their sexual orientation. These persons had been questioned for example about their sexual behaviours and their feelings.⁸⁷ In a judgment of 2 December 2014, the CJEU clarified the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for international protection.⁸⁸ As a result, the Council of State now considers that the fact that asylum seekers cannot furnish sufficient information about his attachment to the gay community (be it in the Netherlands or in his/her country of origin) is not a decisive element in the conclusion of a lack of credibility.⁸⁹

The IND’s work instruction 2015/9 has been followed by new IND work instructions: 2018/9 and 2019/17. Work instruction 2019/17 is currently in force and lays down the elements that have to be taken into account while assessing the credibility of the one’s sexual orientation. These include the following: the private life of the asylum seeker; his/her current and previous relationships and contacts with LGBT communities in the country of origin and in the Netherlands; discrimination, repression and persecution in the country of origin. The emphasis is put on the personal experiences of the asylum seeker. However, the Secretary of State stressed that the new work instructions 2018/9 and 2019/17 do not entail a new assessment framework compared to work instruction 2015/9. This is also followed by judgments of the Council of State.⁹⁰

Recording

The National Ombudsman made recommendations in 2014 concerning the possibilities for civilians to record conversations with governmental institution.⁹¹ One of the recommendations is that a governmental institution should not, in principle, refuse the wish of a civilian to record a hearing or conversation with a governmental institution. This recommendation is also explicitly applicable in relation to asylum seekers and the IND. The Dutch Council for Refugees has started a pilot on 1 December 2016 at **AC Zevenaar** which entails that there is a possibility to record the interview. Since 2017 the possibility to record interviews is provided to all asylum seekers on all applications centres. Asylum seekers must give notice of the wish to record the interview in advance. In practice, however, interviews are rarely recorded.

On day 2 and 4 of the regular asylum procedure, the asylum seeker and his or her lawyer have the possibility to submit any corrections and additions they wish to make regarding the interview that took place the day before. A record of the interviews can be very supportive by the making of any corrections and submissions. On day 6, after and if the IND has issued a written intention to reject the asylum application, the lawyer submits his or her 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 asylum procedure), the IND may decide without considering that view.⁹²

⁸⁵ Secretary of State Decision No INDVIT13-273, 1 April 2013, 110.

⁸⁶ Paragraph C1/2.11. Aliens Circular.

⁸⁷ Lieneke Luit, *Pink Solution, inventarisatie van LHBT asielzoekers (Inventory of LGBTI asylum seekers)*, available in Dutch at: <http://bit.ly/1MyMHfE>.

⁸⁸ CJEU, Joined Cases C-148/13, C-149/13 and C-150/13 A, B and C, Judgment of 2 December 2014.

⁸⁹ Council of State, Decisions No 201208550/1, No 201110141/1 and No 201210441/1, 8 July 2015.

⁹⁰ See: Council of State, Decision No 201807042/1, ECLI:NL:RVS:2020:1885, 12 August 2020.

⁹¹ Ombudsman, Report 2014/166, November 2014.

⁹² Article 3.114 Aliens Regulation.

IND Task Force: written interview

In March 2020, 15,350 asylum applications that were all lodged before 1 April 2020 were passed on to a newly established IND Task Force, with the aim of clearing the IND's backlogs. The written interview was introduced as a measure to clear the backlogs faster. The IND hopes that by using a form, it will be able to decide more quickly on asylum applications. Asylum seekers fill in the form themselves at the IND. Currently, the written interview is limited to asylum seekers with the following nationalities: Syrian, Yemenite, Eritrean, Turkish and Iranian. Unaccompanied minors are not invited for the written interview, as well as asylum seekers with medical issues or, of course, asylum seekers who are unable to read or write.⁹³ Important to note is that the IND will always carry out an interview in person if they cannot decide positively on the asylum application on the basis of the written interview. It is not mandatory to participate in the written interview. If an asylum seeker does not want to fill in the form, a regular interview is carried out.⁹⁴ In practice, however, asylum seekers have indicated that they agree to the written interview in fear of having to wait even longer.⁹⁵

COVID-19: interviews via videoconference

In order to minimise physical contact during the COVID-19 pandemic, the IND has started conducting videoconference interviews since April 2020. The interviews by videoconference take place via a secure link for video conferencing. Via this link, the asylum seeker is able to speak with the IND staff members working from Zevenaar, Den Bosch, Schiphol or Ter Apel. Lawyers can use the facilities, too. Unaccompanied minors and asylum seekers with medical problems are excluded from videoconference interviews.⁹⁶

At the time of writing, there has only been one case in which the asylum seeker argued that he was put at a procedural disadvantage because of the use of a videoconference interview instead of a physically attended interview. According to the Regional Court of Utrecht, the Secretary of State (IND) gave sufficient reasons as to why he could suffice with a video interview instead of an interview in person. The fact that this way of conducting an interview is different from the usual way - because of the lack of direct contact - does not mean that this method does not meet the (minimum) requirements, according to the Court. Nor has it emerged that the third-country national would have made other statements during an interview in person than during an interview via video connection. The Court has also not found that the third-country national did not understand the interpreter and / or the person who conducted the interview.⁹⁷

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	Depending on decision	
2. Average processing time for the appeal body to make a decision: Not available

1.4.1. Appeal before the Regional Court

⁹³ IND, *Written interview*, not dated, available in English at: <https://bit.ly/35YxVC3>.

⁹⁴ IND, *Written interview*, not dated, available in English at: <https://bit.ly/35YxVC3>.

⁹⁵ Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: <https://bit.ly/39P1yH5>.

⁹⁶ IND, *Procesbeschrijving Telehoren*, 14 July 2020, available in Dutch at: <https://bit.ly/3c36IIH>.

⁹⁷ Regional Court of Utrecht, Decision No NL20.13775, 5 January 2021.

In the **short asylum procedure**, an asylum seeker whose application for asylum is rejected on the merits within the framework of the short asylum procedure has one week to lodge an appeal before the Regional Court (*Rechtbank*).⁹⁸ In the **extended asylum procedure** an appeal after a rejection of the asylum claim has to be – depending on the grounds for rejection – lodged within 1 or 4 week(s). Claims rejected as manifestly unfounded, dismissed as inadmissible, or rejected following implicit withdrawal or abandonment have to be lodged within one week.

The appeal against a negative in-merit decision in the short or extended asylum procedure has automatic suspensive effect, except for situations where the claim is deemed manifestly unfounded for reasons other than irregular presence, unlawful extension of residence or not promptly reporting to the authorities.⁹⁹

The concept of “manifestly unfounded” (*kennelijk ongegrond*) application is defined in Article 30b(1) of the Aliens Act as encompassing the following situations:

- a. The applicant has raised issues unrelated to international protection;
- b. The applicant comes from a safe country of origin;
- c. The applicant has misled the Minister by providing false information or documents about his or her identity or nationality or by withholding relevant documents which could have a negative impact on the application;
- d. The applicant has likely in bad faith destroyed an identity or travel document;
- e. The applicant has presented manifestly inconsistent and contradictory statements or false information, rendering the claim clearly unconvincing;
- f. The applicant has lodged an application only to postpone or delay the execution of a removal order;
- g. The applicant has lodged an admissible subsequent application;
- h. The applicant has irregularly entered or resided in the Netherlands and has not reported to the authorities as soon as possible to apply for international protection, without valid reason;
- i. The applicant refuses to be fingerprinted;
- j. There are serious grounds to consider that the applicant poses a risk to national security or public order;
- k. The applicant has been expelled for serious reasons of public security or public order.

In cases where the appeal has no automatic suspensive effect, a provisional measure has to be requested. In case the request for a provisional measure is granted the appeal has suspensive effect, which means that the right to accommodation is retained and the asylum seeker may remain in Central Agency for the Reception of Asylum Seekers (COA) accommodation.

The judgment of the EU Court of Justice of 19 June 2018 in the case *Gnandi*¹⁰⁰ has led to a major discussion in Dutch case law about the suspensive effect of appeals in asylum cases. In the Netherlands the judgment of the Court is especially relevant for cases in which the appeal does not have suspensive effect. In those cases, the asylum seeker can request a provisional measure, but while a decision on this request has not yet been made, the asylum seeker may be placed in detention on the basis of Article 59, first paragraph, under a, of the Aliens Act. Also, the asylum seeker is not entitled to reception once the departure period has expired.

According to the Council of State, detention was no longer possible on the basis of Article 59, first paragraph, under a of the Aliens Act in cases where the asylum seeker is awaiting a decision on the request for a provisional measure.¹⁰¹ The Council of State concluded in this case that an asylum seeker can legally remain in the Netherlands during the period for lodging an appeal and during the appeal

⁹⁸ Article 69(2) Aliens Act.

⁹⁹ Article 82(2)(c) Aliens Act, citing Article 30b(1)(h).

¹⁰⁰ CJEU, C-181/16, 19 June 2018.

¹⁰¹ Council of State, Decision no 201710445/2/V3, 27 August 2018.

itself.¹⁰² The asylum seeker concerned had been detained in a removal detention centre after his asylum application was rejected as manifestly unfounded. The removal detention was subsequently considered to be illegal and the measure was lifted. Previously, the Council of State had put preliminary questions to the CJEU.¹⁰³ The CJEU indicated that Directives 2008/115 and 2013/32 should be interpreted as precluding an asylum seeker, whose application has been rejected as manifestly unfounded, from being held in detention for the purpose of expulsion while he legally remains in the Netherlands until judgment is given on his request for a provisional measure.¹⁰⁴ Should the State Secretary want to detain asylum seekers during this period, which is only possible on the basis of the provisions of the Reception Directive, the law will have to be amended.

It was initially unclear whether the Gnanadi judgment was applicable in cases in which an asylum seeker makes a second or subsequent application. However, the Council of State concluded that, in a case involving a fourth asylum application with the asylum seeker having been placed in detention, the Gnanadi judgment did apply.¹⁰⁵ As a result, the legal effects of the return decision were suspended.

According to the Council of State the Gnanadi judgment is also applicable in case the asylum application was rejected in the border procedure.¹⁰⁶

Scope and intensity of review

The intensity of the judicial review conducted by Regional Courts (administrative judges) changed in 2016. According to the Council of State's judgment of 13 April 2016, Article 46(3) of the recast Asylum Procedures Directive does not impose a general intensity of judicial review under administrative law in asylum cases and thus not in cases regarding the credibility of an asylum seeker's statements in particular. In the Dutch context, the Regional Court is not allowed to examine the overall credibility of the statements of the asylum seeker intensively (full review). This is, according to the Council of State, due to the fact that the IND has specific expertise to verify statements of the asylum seeker and is therefore in general in a better position to examine the credibility of the claim. An administrative judge can never substitute his or her own opinion on the credibility of the asylum seeker's statements for that of the authorities. Where contradictory or inconsistent statements are made by the asylum seeker, the review can, however, be more intensive; this is different than it used to be. The other elements – not the credibility of the statements – for assessing whether the asylum seeker qualifies for international protection (*de zwaarwegendheid*) have always been reviewed intensively by Regional Courts.

Regional courts thus rule whether the grounds of a decision of the IND is valid. When the grounds are not valid then the IND has to make a new decision. And of course the regional courts take into account the grounds for appeal from the asylum seeker and the arguments of the IND.

Furthermore, when assessing the appeal, the Regional Court takes into consideration all the new facts and circumstances which appear after the decision issued by the IND. This is the so-called *ex nunc* examination of the appeal.¹⁰⁷

1.4.2. Onward appeal before the Council of State

After a decision in the short and extended asylum procedure is taken by the Regional Court, either the asylum seeker and/or the IND may appeal against the decision of the regional court to the Council of State.¹⁰⁸ 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. The Council

¹⁰² Council of State, Decisions No 201710445/2/V3 and 201805258/1/V3, 27 August 2018.

¹⁰³ Council of State, Decision No 201703937/1, 19 April 2018.

¹⁰⁴ CJEU, C-269/18, 5 July 2018.

¹⁰⁵ Council of State, Decision no 201903236/1, 29 January 2020.

¹⁰⁶ Council of State, Decision no 201808923/1, 5 June 2019.

¹⁰⁷ Article 83 Aliens Act.

¹⁰⁸ Article 70(1) Aliens Act.

of State carries out a marginal *ex tunc* review of the (judicial) judgment of the Regional Court and does not examine the facts of the case.¹⁰⁹

In April 2017, the Council of State referred preliminary questions to the CJEU on whether an onward appeal in asylum cases should have automatic suspensive effect. The Council of State in doing so referred to the Return Directive, the Asylum Procedures Directive and Article 47 of the EU Charter on the right to an effective remedy. On 26 September 2018 the CJEU ruled that for an onward appeal in asylum cases to have automatic suspensive effect cannot be derived from the APD, Return Directive and the EU Charter.¹¹⁰ Following this judgment, the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.¹¹¹ As a result, a provisional measure from the president of the Council of State is needed to prevent expulsion.

Initially, a provisional measure could only be requested in case of urgency, such as imminent deportation, detention or termination of reception, but this condition no longer applies. The Council of State changed its course as a result of the ECtHR judgment in *A.M v. The Netherlands* of 5 July 2016.¹¹² According to the ECtHR appeal on the Council of State, in its existing form, did not qualify as an effective remedy. The Council of State made clear that it is no longer necessary to wait until an expulsion date has been set, an asylum seeker can now submit a request for a provisional measure at the time of appeal.¹¹³ Also, the Council of State made clear that a request for a provisional measure preventing expulsion will be granted if the asylum request is considered to have an arguable claim in the sense of Article 3 of the European Convention on Human Rights (ECHR).¹¹⁴ If granted, a provisional measure allows for reception facilities.

All decisions of the appeal body are public and some are published.¹¹⁵ There are no obstacles in practice with regard to the appeals in asylum cases. However, asylum seekers are not generally informed about their possibility to appeal, time limits etc. but if they have specific questions they can address them to the Dutch Council for Refugees. The representatives of the asylum seekers are responsible for the submission of the appeal.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

Every asylum seeker is entitled to free legal assistance.¹¹⁶ To ensure this right, the following system has been designed:

1.5.1. Free legal assistance at first instance

¹⁰⁹ Tweede Kamer, *Explanatory notes on the implementation of the recast Asylum Procedure Directive*, Vergaderjaar 34 088, number. 3, 2014–2015, 22 and Chapter 8.5 GALA.

¹¹⁰ CJEU, Case C-175/17 and C-180/17, *X and Y v. Staatssecretaris van Veiligheid en Justitie*, 26 September 2018.

¹¹¹ Council of State, Decision No 201609659/1/V2 and 201609659/4/V2, 20 February 2019.

¹¹² ECtHR, no. 29094/09, 5 July 2016.

¹¹³ Council of State, Decision no. 201609138/3, 20 December 2016.

¹¹⁴ Council of State (Judge for provisional measures), Decision 201609138/3/V2, 20 December 2016.

¹¹⁵ Decisions of the Regional Courts and Council of State may be found at: <https://www.rechtspraak.nl/>.

¹¹⁶ Article 10 Aliens Act.

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

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

Last year's AIDA report mentioned that the Dutch Secretary of State had announced that she was drafting a proposal to adjust the Aliens Decree which would limit the free legal assistance at first instance. This measure was part of the 2017 Coalition Agreement of the Dutch administration. On 9 April 2020, the Secretary of State announced that free legal assistance would be kept in place. On the same day, however, it was announced that asylum seekers would be exempt from receiving legal penalties in case the IND does not decide upon their application within the legal time frame.¹¹⁷

The Dutch Council for Refugees also provides legal assistance. During the rest and preparation period (see [Registration](#)), the Dutch Council for Refugees offers asylum seekers information about the asylum procedure. Asylum seekers are informed about their rights and obligations, as well as what they might expect during the asylum procedure. Counselling may be given either individually or collectively. During the official procedure, asylum seekers may always contact the Dutch Council for Refugees, in order to receive counselling and advice on various issues. In addition, representatives of the Dutch Council for Refugees may be present during both interviews at the request of the asylum seeker or his or her lawyer. The Dutch Council for Refugees has offices in most of the reception centres.

1.5.2. Free legal assistance on appeal

At the appeal stage of the asylum procedure, asylum seekers continue to have access to free legal assistance and no merits test applies.¹¹⁸ Every asylum seeker has access to free legal assistance under the same conditions. However, the lawyer can decide not to submit any written opinion – on day 6 of the short asylum procedure – if they think the appeal is likely to be unsuccessful. In this scenario the lawyer has to report to the Legal Aid Board and the asylum seeker can request for a “second opinion”, meaning that another lawyer takes over the case.¹¹⁹ This only happens in exceptional cases. On the one hand, the intention of the legislator is that the same lawyer will represent the asylum seeker during the whole procedure. On the other hand, if the lawyer does not submit a written viewpoint, this would be considered as ‘malpractice’ because submitting a written viewpoint is actually the core of the lawyer’s job during the whole procedure. Even if the lawyer is strongly of the opinion that a written viewpoint will not be of any use it may not be the case in future circumstances, for example in case of a subsequent application. Only after several recognised ‘malpractices’ can an asylum lawyer be penalised. The gravest penalisation is disbarment.

The amount of financial compensation for lawyers who represent asylum seekers can be an obstacle. Some lawyers consider the amount of time to prepare a case, and therefore the compensation they get,

¹¹⁷ Dutch Parliament, No 19 637-2598 No 4, 9 April 2020, available in Dutch at: <https://bit.ly/3iwMq5i>.

¹¹⁸ Circular on payments legal aid in the new asylum procedure, 1 July 2010, available in Dutch at: <http://bit.ly/1HS8gek>.

¹¹⁹ Article 12 Legal Aid Act.

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 crisis, more cutbacks had to be made within the state-funded legal aid system.

2. Dublin (“Track 1”)

2.1. General

Dublin statistics for the full year 2020 were not available by the time of publication of this AIDA report (March 2021). It has been reported that since the resumption of Dublin transfers in the summer of 2020 up until 20 November 2020, around 600 Dublin transfers took place, of which 270 forced Dublin transfers.¹²⁰ As regards the impact of COVID-19 on transfers, see [Suspension of transfers](#).

Application of the Dublin criteria

Eurodac and prior applications

According to the Council of State, the State Secretary may rely on the information in Eurodac when establishing which Member State is responsible for handling the asylum request.¹²¹ It is up to the asylum seeker to demonstrate that the registration is incorrect. In addition to a match in the Eurodac system or a prior application, other information, such as an original visa supplied by another Member State or statements from the asylum seeker regarding family members or his or her travel route, may result in a Dublin claim.

As to the application of Article 12, paragraph 4 of the Dublin III-Regulation, the Council of State gave a ruling on the interpretation of the phrase “one or more visas which have expired.” It stated that Regulation 810/2009 (Visa code) differentiates between the duration, the permitted length of stay and the number of entries permitted by a visa. The Council of State concludes that the above-mentioned phrase refers to the duration of a visa.¹²² According to the Council of State there is no reason to submit preliminary questions on this matter to the CJEU.

Unaccompanied children

As to the application of Articles 6 and 8 of the Dublin III Regulation on unaccompanied children, the State Secretary for Security and Justice informed the House of Representatives on 2 September 2013 about the consequences and the change in policy concerning unaccompanied children, who have already applied for asylum in another Member State, in order to comply with the CJEU’s *M.A.* judgment.¹²³ The Council of State ruled end of September 2013 that the IND should not have refused to examine the asylum request of an unaccompanied minor who does not have any family members legally residing in the EU.¹²⁴ The IND still applies this policy.

In case an unaccompanied child has a family member legally residing in another Member State, the IND assumes this country as responsible for the application. However, in specific cases this approach has been found incompatible with the best interests of the child.¹²⁵ According to the Council of State, it cannot always be assumed that being with a family member outweighs all other circumstances.¹²⁶ The Council of State made clear that the IND may not, with reference to the principle of mutual trust, assume without

¹²⁰ Kamerbrief 8 januari 2020. 19637, nr. 2690, available in Dutch at: <https://bit.ly/3rlMEzs>

¹²¹ Council of State, ECLI:NL:RVS:2016:2441, Council of State, ECLI:NL:RVS:2015:3012.

¹²² Council of State, ECLI:NL:RVS:2019:2508, 23 July 2019; Council of State, ECLI:NL:RVS:2019:2486, 23 July 2019.

¹²³ Letter of the State Secretary for Security and Justice concerning case C-648/11 of the CJEU, 2 September 2013. See also para C2/5 Aliens Circular.

¹²⁴ Council of State, Decision 201205236/1, 5 September 2013.

¹²⁵ Council of State, Decision No 201905956/1, 26 August 2019; Regional Court Haarlem, NL19.25372, 21 November 2019; Regional Court Haarlem, NL19.22926 and NL19.22928, 21 October 2019; Regional Court The Hague, NL19.12394 and NL19.12397, 29 August 2019. Also see Work Instruction 2019/8.

¹²⁶ Council of state, ECLI:NL:RVS:2020:3043, 21 December 2020.

further investigation that the Swedish authorities, in agreeing to the takeover request, have investigated whether this takeover is in the best interests of the child.¹²⁷ In these cases, reference has been made to Article 6 of the Dublin Regulation and Work Instruction 2019/8. In the situation that a minor is accompanied by a family member, the Council of State made clear that the phrase “family member legally residing in another Member State,” as in Article 8 of the Dublin Regulation, does not refer to the situation after a possible Dublin transfer.¹²⁸

Within the scope of age assessment, an asylum seeker who claims to be a minor will be viewed by two officers from the Immigration Service and the Border Police.¹²⁹ These officers indicate whether they can conclude the asylum seeker is evidently a minor or evidently an adult. Such a viewing does not take place, however, in case of an EU-VIS hit. The Immigration Service will also conduct a search in Eurodac. Already in September 2016, taking into account the principle of mutual trust, the Council of State ruled that the registration in another Member State is assumed to be accurate. This is also the case when the asylum seeker has been registered numerous times with different data by the authorities of the other Member state.¹³⁰ An asylum seeker who claims to be an unaccompanied minor, but who has been registered as an adult in another Member State, has to substantiate this claim. Only when the asylum seeker has made plausible that he/she is a minor, the IND may be compelled to execute an age assessment. In general, authentic papers of identification are required. Supporting documents, such as a birth certificate, are considered insufficient proof of minority.¹³¹ The jurisprudence of the Council of State since then demonstrates this has become settled case-law.¹³² Lastly, according to the Council of State, the principle of mutual trust does not imply an obligation for the Immigration Service to adhere to the registration in the other Member State.¹³³

Family unity

Dutch policy only clarifies how family links are assessed with regard to unaccompanied children. In such cases, where possible, the IND uses DNA tests. If this option is not available, for example due to family links not being biological, the IND assesses family ties with identifying questions. When an applicant has not mentioned his or her family members during the interview conducted at the start of the asylum procedure, this can be used against the family members when they wish to invoke the family unity criteria in Articles 8-11 of the Regulation.¹³⁴ In general, jurisprudence shows that documents are required in order for the IND to establish a family relationship or a marital bond. However, even without official documents having been produced, there may be cause for the State Secretary to investigate whether family unity and a stable relationship exist.¹³⁵ Family unity can also be established from circumstantial evidence.¹³⁶

On 27 September 2017, the Council of State requested the CJEU for a preliminary ruling.¹³⁷ The case concerned an asylum seeker who had previously lodged an application for international protection in Germany. The IND submitted a take back request to the German authorities and decided not to examine the application for international protection. According to the IND, the asylum seeker was not entitled to rely on Article 9 of the Dublin III Regulation in order to establish the responsibility of the Netherlands on account of her husband’s presence there, since a take back situation rather than a take charge situation was at issue. As a result of the answers of the CJEU (*H. and R. judgment*),¹³⁸ the Council of State concluded that, in case of a take back situation, an asylum seeker can in principle not rely on a Chapter

¹²⁷ Council of state, ECLI:NL:RVS:2020:1281, 27 May 2020.

¹²⁸ Council of State, Decision No 201905956/1, 26 August 2019.

¹²⁹ Work Instruction 2018/19, 13 December 2018.

¹³⁰ Council of State, Decision No 201901529/1, 28 June 2019.

¹³¹ Council of State, ECLI:NL:RVS:2019:653, 27 February 2019.

¹³² Council of State, ECLI:NL:RVS:2019:2984, 2 September 2019; Council of State, ECLI:NL:RVS:2019:2957, 28 August 2019.

¹³³ Council of State, Decision No 201807010/1, 30 April 2019

¹³⁴ Regional Court, The Hague, Decisions No 17/591 and NL.1428, 17 August 2017.

¹³⁵ Regional Court Amsterdam, NL19.30086, 12 February 2020.

¹³⁶ Regional Court Middelburg, NL19.28911, 9 January 2020.

¹³⁷ Council of State, ECLI:NL:RVS:2017:2571, 27 September 2017.

¹³⁸ CJEU, C-582/17 and 583/17, *Staatssecretaris van Veiligheid en Justitie v. H. And R.*, 2 April 2019.

III-criterion, including Article 9 of the Regulation.¹³⁹ However, the exception to the rule is in case a situation as in Article, 20, paragraph 5, of the Dublin III Regulation applies.

As to the question of whether there is a stable relationship within the meaning of the Dublin Regulation the Council of State ruled that this must also be seen in the light of the circumstances under which the applicants were able to give substance to their relationship in their country of origin.¹⁴⁰ According to the Council of State, in view of the difficult position of the LGBTI community in Russia, the State Secretary should have asked more questions regarding the sustainability of the relationship between the asylum seeker and her female partner.

The dependent persons and discretionary clauses

Dependent persons: Article 16 Dublin Regulation

It has become settled case-law that, in order to conclude that a situation of dependency exists, the asylum seeker has to demonstrate, with objective documents, what concrete assistance his or her family member offers him or her.¹⁴¹ In 2019, in the case of an asylum seeker who has objectively shown that her mother benefits from her care, the Council of State ruled that a situation of dependency does not exist. According to the Council of State the asylum seeker had failed to make plausible that she is the only person capable of giving her seriously ill mother the help and care she needs, as her brothers are also present and there is the option of home care.¹⁴² In 2018 the Council of State ruled on a case in which an asylum seeker claimed that a situation of dependency existed between him, his mother and his mentally impaired brother. The Council of State ruled that a statement of a family doctor - in which it is laid down that the asylum seeker's presence is indispensable to his mother and his brother – is not sufficient to demonstrate the existence of a dependency relationship, as regulated in Article 16 of the Dublin III Regulation. Moreover, it had not been shown what specific help the asylum seeker provided his mother and brother; nor that the necessary care could only be delivered by him.¹⁴³

The Council of State has become stricter when it comes to the motivation of refusals: the IND has to motivate every case where it refuses to apply Article 16.¹⁴⁴

Sovereignty clause: Article 17(1) Dublin Regulation

The IND is reticent regarding the application of Article 17 of the Dublin III Regulation in taking responsibility for handling an asylum request. This is a result of the principle of mutual trust between Member States. Paragraph C2/5 of the Aliens Circular stipulates in which case Article 17(1) of the Dublin III Regulation will be applied:

- ❖ Where there are concrete indications that the Member State responsible for handling the asylum request does not respect international obligations;
- ❖ Where the transfer of the asylum seeker to the responsible Member State is of disproportionate harshness, due to special individual circumstances;
- ❖ Where the IND finds that the application of Article 17 of the Dublin III Regulation may better serve process control, in particular when the asylum seeker originates from a safe country of origin, and a return to the country of origin is guaranteed in the foreseeable future (after the procedure has been processed).

The Council of State has already ruled in 2018 that the Court shall review the application of the discretionary clause of Article 17 of the Dublin III Regulation with reticence. The Regional Court cannot overrule the IND's decision to apply Article 17 of the Dublin III Regulation and replace that decision with

¹³⁹ Council of State, ECLI:NL:RVS:2019:3672, 31 October 2019.

¹⁴⁰ Council of State, ECLI:NL:RVS:2020:2261, 21 September 2020.

¹⁴¹ Council of State, Decision No 201403670/1, 5 February 2015.

¹⁴² Council of State, ECLI:NL:RVS:2019:834, 13 March 2019.

¹⁴³ Council of State, Decision No 201706799/1/V3, 8 October 2018.

¹⁴⁴ Council of State, Decision No 201701137/1, 20 March 2017; see also Regional Court Middelburg, Decision No 17/540, 30 January 2017.

its own judgment.¹⁴⁵ Again, in 2020 the Council of State ruled that as to the application of Article 17 of the Dublin Regulation, the Courts should limit themselves to testing the decision-making by the State Secretary against the requirements set by the law. The Courts should refrain from substituting their own judgment for that of the State Secretary.¹⁴⁶

The Council of State ruled in 2016 that there is no obligation for the IND to protect family relations other than those mentioned in the Dublin III Regulation.¹⁴⁷ For example, the relationship between the asylum seeker and his wife, who has been naturalised and is pregnant with his child is not, according to the Council of State, a special, individual circumstance that allows the application of Article 17 of the Dublin III Regulation.¹⁴⁸ The interests of the child and respect for family life are enshrined in the Dublin III Regulation in various binding criteria for identifying the responsible Member State, according to the Council of State.¹⁴⁹ Some regional courts have found this approach incompatible in certain situations. According to the regional Haarlem Court, the IND needs to motivate more extensively why the situation of an asylum seeker, who has been the most important educator and caregiver to his sister, does not lead to the application Article 17 of the Dublin III Regulation.¹⁵⁰ In 2019, the Council of State ruled only once that the IND needed to motivate more extensively why Article 17 of the Dublin III Regulation had not been applied. The case concerned two brothers who had been actively searching for each other for the past 16 years.¹⁵¹

The Council of State ruled at the end of November 2015 that the Secretary of State cannot claim, without further investigating the situation for Dublin returnees after their transfer to Hungary, that they will not find themselves in a situation contrary to Article 3 ECHR.¹⁵² At the moment the discretionary clause is applied in cases where it has been established that Hungary is the responsible Member State and the time frame for transferring the asylum seeker under Article 29 of the Dublin III Regulation has expired. In 2019, the IND has continued this course of action (see below for more information).

In 2020, the Council of State ruled on the question whether there may be indirect refoulement by transferring an asylum seeker to the responsible Member State.¹⁵³ According to the Council of State, the fact that Dutch and Swiss policy, regarding protection against refoulement for illegally traveling Eritreans, differs does not mean that the State Secretary cannot rely on the principle of mutual trust concerning Switzerland. Since the illegally traveled Eritrean has failed to demonstrate that he will be forcibly deported by the Swiss authorities, the Council of State considers that there is no risk of indirect refoulement by transferring him to Switzerland. According to the Council of State this concerns an *acte clair*, as a result of which it is not necessary to submit a preliminary question to the European Court of Justice. According to the Council of State, it follows from CJEU case law that any shortcomings must reach a particularly high threshold of seriousness, in order to assume a risk of (indirect) refoulement exists.

Humanitarian clause: Article 17(2) Dublin Regulation

The IND is equally reticent with regard to the application of Article 17(2) of the Dublin III Regulation in requesting another Member to undertake responsibility for an asylum application. Reasons for using the clause can be family reunification or cultural grounds, although there have to be special individual circumstances that would result in the asylum seeker facing disproportionate hardship if he or she is not reunited with his or her family.¹⁵⁴

¹⁴⁵ Council of State, Decision No 201806712/1, 10 October 2018.

¹⁴⁶ Council of State, ECLI:NL:RVS:2020:545.

¹⁴⁷ Council of State, Decision No 201507801/1, 9 August 2016.

¹⁴⁸ Council of State, Decision No 201505706/1, 19 February 2016.

¹⁴⁹ Council of State, Decision No 201505706/1, 19 February 2016.

¹⁵⁰ Regional Court Haarlem, NL18.11120, 10 July 2018 and see also Regional Court Amsterdam, NL18.23502, 14 December 2018.

¹⁵¹ Council of State, Decision No 20181004/1, 13 May 2019.

¹⁵² Council of State, Decision No 201507248/1, 26 November 2015.

¹⁵³ Council of State, ECLI:NL:RVS:2020:2592, 4 November 2020.

¹⁵⁴ Paragraph C2/5 Aliens Circular.

In a recent judgment, the Council of State ruled that the State Secretary did not substantiate enough in his decision why Article 17 of the Dublin Regulation had not been applied in the case of an asylum seeker for whom France is the responsible Member State.¹⁵⁵ The applicant wants her asylum request to be handled by the Dutch authorities, as her ailing sister resides there. According to the Council of State the State Secretary, in his balancing of interests, has insufficiently weighed the fact that the applicants' sister very seriously ill, as well as the statements made by the applicant, her sister and her sisters daughters.

The IND does not register the grounds most commonly accepted for using the “humanitarian clause” or the number of cases in which it is used. This practice has not changed in 2020.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?
 Yes No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?
Not available

Immediately after the request for asylum has been filed, during the application procedure, the IND starts investigating whether another Member State is responsible for examining the asylum application. All asylum seekers are systematically fingerprinted and checked in Eurodac and EUVis.¹⁵⁶ Refusal to be fingerprinted can be considered as lack of sufficient cooperation during the procedure which can in turn lead to a rejection of the asylum application.¹⁵⁷

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

In case the IND has a (strong) indication to believe that another Member State is responsible for examining the asylum request on its merits, the application will be assessed in “Track 1” as explained in the [Overview of the Procedure](#). In this procedure, the asylum seeker is not granted a rest and preparation period and is not medically examined by FMMU.¹⁵⁸ The Dutch Council for Refugees has not received any specific signals or proven impact of this difference in procedure in 2020.

Within a few days after filing the application, the asylum seeker has a reporting interview with the IND (see below for more information). After this interview the IND decides whether another Member State is indeed responsible for examining the asylum request on its merits. If that is the case, the asylum request is rejected and processed in the Dublin procedure.¹⁵⁹

The IND files a Dublin request as soon as it has good reason to assume that another Member State is responsible for examining the asylum application according to the criteria set out in the Dublin III Regulation. The IND does not wait for a response from the other Member State before the next step in the Dublin procedure is taken in Track 1. The negative decision on the asylum request, however, is only taken after the Dublin request has been expressly or tacitly accepted by the other Member State. The whole procedure, from the moment it officially starts until the decision to not handle the asylum application, takes about a week.

¹⁵⁵ Council of State, ECLI:NL:RVS:2020:2455, 16 October 2020.

¹⁵⁶ Paragraph A2/10.1 Aliens Circular.

¹⁵⁷ Paragraph C2/7.9 Aliens Circular.

¹⁵⁸ Article 3.109c(1) Aliens Decree.

¹⁵⁹ Paragraph C2/5 Aliens Circular.

An asylum seeker whose request has been rejected because another Member State is responsible for handling the asylum request may, under certain conditions, be detained. Article 28 of the Dublin III Regulation is interpreted in a way that allows detention in many cases (see section on [Detention of Asylum Seekers](#)). The Regional Court compensated an asylum seeker who had been detained before being transferred to another Member State, as the IND's explanation of the reasons for having postponed the transfer were considered to be insufficient.¹⁶⁰

In a judgment of 2 May 2018, the Council of State ruled that the IND's refusal to conduct an interview with an asylum seeker prior to his pre-removal detention under the Dublin procedure is not in accordance with the CJEU's jurisprudence.¹⁶¹ This practice of the IND is a consequence of an earlier judgment of 1 November 2016 in which the Council of State had ruled that Article 50 of the Aliens Act does not provide a legal basis for apprehending and detaining asylum seekers who are awaiting their Dublin transfer as they are legally staying in the Netherlands.¹⁶² In fact, according to Article 50 of the Aliens Act, this is only possible for asylum seekers who are staying irregularly in the Netherlands. As a result, the Secretary of State has submitted a Bill which provides a legal basis for apprehending and detaining asylum seekers who have a lawful residence in the Netherlands, such as asylum seekers awaiting their Dublin transfer. The Bill was passed in February 2019.¹⁶³ It amended the Aliens Act 2000 and provided a legal basis for stopping and transferring asylum seekers awaiting transfer to another Member State, for the purpose of detention.

In principle, the asylum seeker has the option to either travel to the responsible Member State voluntarily or under escort. When the applicant chooses to leave voluntarily, he or she has 4 weeks to do so.¹⁶⁴ On the other hand, the Council of State has ruled in 2017 that the IND may withhold this possibility, especially when the responsible Member State does not agree to a voluntary transfer.¹⁶⁵

The IND does not register the average duration of the procedure, from the moment a request is accepted until the transfer takes place. The actual time lapse until the execution of the transfer to the responsible Member State within the fixed term of 6 months depends on whether an appeal against the Dublin transfer decision has been submitted.

General remarks concerning video/audio recording, interpreters, accessibility and quality of the interview also apply to the Dublin procedure. The whole procedure takes approximately a week from the moment it officially starts until the IND decision not to process the asylum application.

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

During the application procedure, the IND conducts a reporting interview that solely focuses on the asylum seeker's identity, nationality and travel route. The aim of this interview is to determine whether another Member State is responsible for examining the asylum request on its merits. During this interview, the asylum seeker is informed that the Netherlands may or already has sent a "take back" or

¹⁶⁰ Regional Court Amsterdam, Decision NL18.8386, 8 June 2018.

¹⁶¹ Council of State, Decision No 201801240/1/V3, 2 May 2018.

¹⁶² Council of State, Decision No 201605964/1, 1 November 2016.

¹⁶³ Stb. 2019, 75.

¹⁶⁴ Article 62c(1) Aliens Act.

¹⁶⁵ Council of State, Decision 201701623/1/V3, 10 August 2017.

“take charge” request to another Member State. The asylum seeker may present arguments as to why the transfer should not take place and why the Netherlands should deal with his or her asylum application. As a result of the CJEU’s ruling in *Ghezelbash* in 2016, the asylum seeker can claim a wrongful application of the Dublin criteria as well as state circumstances and facts demonstrating that a transfer would result in a violation of Article 3 ECHR.¹⁶⁶

In the case of an asylum seeker who, during the reporting interview had declared to have entered the EU via Italy, but later on claimed these statements were incorrect, the Council of State ruled that the IND was not compelled to inform the Italian authorities about these corrections.¹⁶⁷

2.4. Appeal

Indicators: Dublin: Appeal
 Same as regular procedure

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

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> No
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In case an asylum application is rejected because another Member State is responsible for examining the asylum application according to the IND, the asylum request “shall not be considered”.¹⁶⁸ The asylum seeker may appeal this decision before the Regional Court.¹⁶⁹ The appeal has no automatic suspensive effect and must be filed within a week after the decision not to handle the asylum application.¹⁷⁰

Beginning of January 2021, a request for a preliminary ruling was made by the Regional Court Haarlem (full bench panel).¹⁷¹ The court was faced with the question whether an asylum seeker has the right to bring an effective legal remedy against the rejection to take him/her over based on Article 8, second paragraph, of the Dublin Regulation. Some Member States offer such an effective remedy to the applicant, some other Member States, such as the Netherlands, do not. The Court decided to bring this issue before the EU Court of Justice.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance
 Same as regular procedure

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

<ul style="list-style-type: none"> ❖ Does free legal assistance cover: 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Representation in interview <input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> With difficulty <input type="checkbox"/> No
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2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

<ul style="list-style-type: none"> ❖ Does free legal assistance cover 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Representation in courts <input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> With difficulty <input type="checkbox"/> No
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In Dublin cases (“Track 1”), the right to free legal assistance differs from the regular procedure (“Track 4”). Instead of being appointed a lawyer once they register their asylum application, asylum seekers

¹⁶⁶ CJEU, Case C-63/15 *Ghezelbash*, Judgment of 7 June 2016.

¹⁶⁷ Council of State, Decision No 201700595/1, 6 July 2018.

¹⁶⁸ Article 30(1) Aliens Act.

¹⁶⁹ Article 62(c) Aliens Act.

¹⁷⁰ Articles 69(2)(b) and 82(2)(a) Aliens Act.

¹⁷¹ Regional Court Haarlem, ECLI:NL:RBDHA:2020:12927, 17 January 2021.

subject to the Dublin procedure are assigned a legal representative only at the point when the IND issues a written intention to reject the application.¹⁷²

Numerous cases have been reported where this has caused problems concerning the obligation, or even the possibility, for a legal counsel to represent the asylum seeker. In those cases, no contact was established between the applicant and his or her lawyer due to the fact that the applicant would abscond after receiving the IND's written intention to reject the application. It remains unclear whether the lawyer concerned then has power of attorney to represent the case.¹⁷³ The Dutch Council for Refugees has not received any specific signs or proven impact of this difference in the procedure in 2019.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

Covid-19

In 2020, Dublin transfers were temporarily suspended due to Covid-19. In a letter to the House of Representatives on 20 March 2020, the State Secretary reported that the Netherlands would temporarily suspend all incoming and outgoing transfers of asylum seekers under the Dublin Regulation. The State Secretary added that administrative processes regarding Dublin procedures would, if possible, be continued. From a letter to the House of Representatives of 19 June 2020, it became clear that the State Secretary called to the EU Council Secretariat for the possibility of applying longer transfer periods on the basis of the force majeure doctrine.¹⁷⁴ However, the EU Council Secretariat, like the Commission, came to the conclusion that the Dublin Regulation does not allow for the application of force majeure. As a result, the State Secretary acknowledges that there are no possibilities to extend the transfer deadlines because of Covid-19. The State Secretary concludes that in cases where the deadline has been exceeded the asylum application will be processed by the Dutch authorities. As a result, approximately 1,500 Dublin cases for which the Netherlands was in first instance not the responsible Member State, will be processed in the Dutch asylum procedure.¹⁷⁵

According to the Council of State Covid-19 is a temporary, de facto impediment to the transfer of the asylum seeker to the responsible authorities, which does not alter the determination of (in this case Italy as) the responsible Member State.¹⁷⁶

Dublin transfers were eventually resumed in July 2020. It has become clear that several Member States impose additional conditions on accepting Dublin transfers to their territory, such as the submission of a recent negative COVID-19 test. Also, the number of countries imposing such additional conditions has increased since September 2020. The State Secretary expects that the requirement to show a negative COVID-19 test can lead to a significant additional influx of asylum seekers into the Dutch asylum procedure as she expects that as a result of this additional requirement deadlines for Dublin transfers may not be met.¹⁷⁷ In a case where the receiving Member State stated that transfer could only take place under the condition that the asylum seeker would be quarantined on arrival, the Regional Court ruled that the interests of the State Secretary in implementing the Dublin Regulation weigh more heavily than the interests of the asylum seeker in avoiding quarantine.¹⁷⁸ At the moment it is not clear what the

¹⁷² Article 3.109c(1) Aliens Act. This is due to the lack of a rest and preparation period.

¹⁷³ Regional Court Haarlem, Decision NL17.9768; Regional Court Den Bosch, Decision No 17/3849, 13 March 2017; Regional Court Roermond, Decision No 17/4719, 28 March 2017; Regional Court Utrecht, Decision NL17.2072, 1 June 2017.

¹⁷⁴ KST 32317, nr. 625, 19 June 2020.

¹⁷⁵ Letter of the Ministry of Justice to the House of Representatives, 8 January 2021.

¹⁷⁶ Council of State, ECLI:NL:RVS:2020:1032, 8 April 2020.

¹⁷⁷ Letter of the Ministry of Justice to the House of Representatives, 8 January 2021.

¹⁷⁸ Regional Court Arnhem, ECLI:NL:RBDHA:2020:6250.

consequence will be in case an asylum seeker refuses to take a Covid-19 test if required to do so for transfer to be able to take place.

In a general position statement of 8 April 2020, the State Secretary pointed out that the current exceptional situation as a result of Covid-19 will jeopardize deadlines for carrying out Dublin transfers. After all, exceptional circumstances do not allow for deadlines for transfers to be exceeded. According to the Secretary of State it is therefore logical to grant suspensive effect to an appeal, as the time limit for the implementation of the transfer starts with the decision on appeal. It is therefore clear that the State Secretary takes the position that she does not oppose granting suspensive effect in cases where the asylum seeker has appealed the decision of the Immigration Service not to handle his/her asylum request. In most cases, however, lawyers withdrew their request for suspensive effect pending the appeal.

Time limits for transfer under the Dublin Regulation

In line with Article 29, first paragraph of the Dublin Regulation, the Dutch authorities must carry out the transfer of an asylum seeker to the responsible Member State as soon as practically possible, and at the latest within six months after the take back/take over request was accepted by the responsible Member State or within six months after the final decision on the appeal against the decision not to handle the asylum request.

A request for a provisional measure that has been granted during a procedure challenging the way the actual transfer will be carried out,¹⁷⁹ is a request that falls under Article 27, third paragraph of the Dublin Regulation.¹⁸⁰ In those cases the transfer period is suspended and will start again after the courts ruling. The question arose whether suspensive effect granted as a result of an application for residence in the Netherlands on regular grounds can also be regarded as suspensive effect in accordance with Article 27, third paragraph of the Dublin Regulation. Most regional Courts that have considered this issue concluded that it is not, and that such a provisional measure therefore does not suspend the transfer period.¹⁸¹ This issue has been submitted to the Council of State. On 17 September 2020, the Council of State submitted a number of questions on this subject to the parties concerned. No judgment has yet been made by the Council of State.

Extension of time limits in case of absconding (Article 29, second paragraph Dublin Regulation)

With reference to the ruling of the CJEU in the Jawo case¹⁸², the State Secretary clarified Dutch policy on the interpretation of Article 29, second paragraph, of the Dublin Regulation.¹⁸³ The State Secretary made clear in which two situations it may in any case be assumed that the asylum seeker absconds, resulting in an extension of the transfer period to eighteen months:

- in case the asylum seeker leaves without informing authorities as to his destination, or
- in case the asylum seeker does not appear at the time of transfer

Several Regional Courts have ruled on this matter.¹⁸⁴ There is as yet no case law on this subject by the Council of State.

Asylum seekers with medical problems

Asylum seekers with serious medical problems, who need medical care, are transferred to the responsible Member State in accordance with Article 32 of the Dublin III Regulation (Exchange of health data before a transfer is carried out).¹⁸⁵ If the asylum seeker considers the mere exchange of medical

¹⁷⁹ Article 72, third paragraph, Aliens Act.

¹⁸⁰ Council of state, Decision No. 201907936, 24 February 2020.

¹⁸¹ See for instance Regional Court Roermond, NL20.4699, 1 July 2020, Regional Court, NL19.26819, 20 March 2020.

¹⁸² CJEU, ECLI:EU:C:2019:21, 19 maart 2019.

¹⁸³ WBV 2020/22, 27 October 2020.

¹⁸⁴ Regional Court Groningen, NL19.25608, 6 March 2020.

¹⁸⁵ Council of State, ECLI:NL:RVS:2018:4131, 19 December 2018.

information to be insufficient, he may request the IND to obtain additional guarantees from the other Member State. It is for the asylum seeker to demonstrate that, without these additional guarantees, he will not have access to adequate care and reception.¹⁸⁶ In the case of a family with six children, with one child suffering from severe psychological problems as a result of PTSD, the Council of State considered that no additional guarantees were required from the Italian authorities as it had not been established that adequate care could not be accessed.¹⁸⁷

In the case of *C.K. and others* the CJEU stated that even if there are no serious grounds for believing that there are systemic failures in the asylum procedure and the conditions for the reception of applicants for asylum, a transfer in itself can entail a real risk of inhuman or degrading treatment within the meaning of Article 4 Charter of Fundamental Rights of the European Union (CFR). According to the CJEU this is notably the case in circumstances where the transfer of an asylum seeker, with a particularly serious mental or physical condition, leads to the applicant's health significantly deteriorating.¹⁸⁸ This CJEU judgment has been invoked several times. The Council of State has made clear that not only does the asylum seeker need to mention his medical condition and (the need for) medical treatment, but also the consequences of a transfer in itself. Moreover, a medical practitioner should have declared there is an actual danger or high risk of suicide and decompensation. Only then is the IND expected to investigate further.¹⁸⁹

On 19 March 2019 the CJEU ruled in the *Jawo* case on the transfer of an asylum applicant to the Member State responsible for processing the asylum application if there is a serious risk that the applicant will be subjected to inhuman or degrading treatment.¹⁹⁰ The CJEU first ruled that, according to its case law, an asylum applicant may not be transferred under the Dublin III Regulation to the Member State responsible for processing their application, if the living conditions would expose them to a situation of extreme material poverty amounting to inhuman or degrading treatment within the meaning of Article 4 CFR. In this regard, the Court held that the threshold was only met where such deficiencies, in light of all the circumstances of the individual case, attained a particularly high level of severity beyond a high degree of insecurity or a significant degradation of living conditions. Correspondingly, national courts had the obligation to examine, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, whether there was a real risk for the applicant to find himself in such situation of extreme material poverty. Dublin cases in which a plea to this judgment have been made have as yet not been brought before the Council of State.

As to the subject of the suspension of transfers, Dutch case law and practice concerning some particular Member States is worth mentioning more extensively.

Poland: according to the full bench panel (three judges) of the Regional Court Haarlem, there is a fundamental lack of independence of the courts of Poland. However, according to the court it cannot be inferred that there are compelling and factual grounds for believing that every asylum seeker runs a real risk that his fundamental right to an independent court will be violated. The court finds that the principle of mutual trust regarding Poland still stands.¹⁹¹

Croatia: according to the Regional Court Den Bosch (full bench panel) the principle of mutual trust no longer stands.¹⁹² There is abundant evidence from non-governmental organizations that (violent) pushbacks take place at the border with Serbia. The State Secretary acknowledges that pushbacks take place and that the Croatian authorities in doing so act in violation of Article 3 ECHR and Article 4 of the

¹⁸⁶ Council of State, ECLI:NL:RVS:2019:2792, 19 July 2019; Council of State, ECLI:NL:RVS:2019:2042, 27 June 2019; Council of State, Decision No 201410601/1, 17 April 2015.

¹⁸⁷ Council of State, ECLI:NL:RVS:2019:3138.

¹⁸⁸ CJEU, Case C-578/16, *C. K. and Others v Republika Slovenija*, 16 February 2017.

¹⁸⁹ Council of State, Decision 201901380/1, 22 August 2019; Council of State, Decision 201709136/1, 16 January 2019.

¹⁹⁰ CJEU, C-163/17, *Jawo*, 19 March 2019.

¹⁹¹ Regional Court Haarlem, 12 November 2020, ECLI:NL:RBDHA:2020:11769.

¹⁹² Regional Court Den Bosch, ECLI:NL:RBDHA:2020:17088.

Charter. Moreover, the Croatian authorities still deny pushbacks take place. According to the Court it is not clear why the applicant should be able to rely on the faithful implementation of the Dublin Regulation by the Croatian authorities. After all, it concerns the same Croatian authorities that allow violent pushbacks to be carried out.

Greece: The Netherlands suspended all Dublin transfers to Greece after the ECtHR's ruling in *M.S.S. v. Belgium and Greece*. The Aliens Circular incorporates the *M.S.S.* jurisprudence as interpreted by the Council of State.¹⁹³ However, following the recommendation of the European Commission of 8 December 2016, the Dutch government expressed the wish to recommence Dublin transfers to Greece, with the exception of transfers of vulnerable asylum seekers.¹⁹⁴ In a press release and a letter of 24 May 2018 addressed to the House of Representatives, the Dutch Council for Refugees has expressed its concerns regarding transfer of asylum seekers to Greece.¹⁹⁵

In 2019, several Dublin claims were submitted to the Greek authorities. Guarantees were required from the Greek authorities, i.e. that reception conditions are suitable and that the asylum seeker will be treated in accordance with European standards. The Dutch authorities further asked whether Greece has an "accommodation model" that may be regarded as suitable in general, probably in order to obtain a general guarantee for future cases. However, in two recent judgments, the Council of State ruled that transfer to Greece will result in a violation of Article 3 ECHR, unless the asylum seeker is guaranteed legal assistance during the asylum procedure by the Greek authorities.¹⁹⁶ Until now, the Dutch authorities have not transferred asylum seekers to Greece under the Dublin Regulation.

Hungary: Following a Council of State ruling in November 2015,¹⁹⁷ the "sovereignty" clause is applied in cases where it has been established that Hungary is the responsible Member State. As a result, to our knowledge, no asylum seekers have been transferred to Hungary.

Also, there were differences of opinion between the Dutch and Hungarian authorities concerning the interpretation of the Regulation. This concerns two categories of cases:

- (1) asylum seekers who travel through Hungary and apply for asylum for the first time in the Netherlands;
- (2) asylum seekers who have applied for asylum in Hungary and applied for a second time in the Netherlands.

According to the Dutch authorities, Hungary is responsible for the asylum application in both situations, but the Hungarian authorities generally refused these requests. Therefore, the Dutch State Secretary initiated a conciliation procedure with the European Commission.¹⁹⁸ In a letter to the House of Representatives of 22 March 2018, the Secretary of State made clear that Hungary refuses to participate in a conciliation procedure.¹⁹⁹ As the Secretary of State has no other means to resolve the differences of interpretation between the Hungarian and Dutch authorities, he informed the House of Representatives that Dublin claims to Hungary are suspended.²⁰⁰ This was still the case in 2020.

Bulgaria: The Council of State suspended three Dublin transfers to Bulgaria in 2016,²⁰¹ and found in another case - which concerned an asylum seeker suffering from a psychological illness - that concrete indicators provided in the AIDA Country Report Bulgaria were questioning the principle of mutual trust

¹⁹³ Paragraph C2/5.1 Aliens Circular. See also Council of State, Decision No 201009278/1/V3, 14 July 2011.

¹⁹⁴ Commission Recommendation of 8.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, available at: <https://bit.ly/2kLKs1L>.

¹⁹⁵ For more information, see: <https://bit.ly/2C7oAc6>.

¹⁹⁶ Council of State, Decision No 201904035/1/V3, 23 October 2019; Council of state, Decision No 201904044/1/V3, 23 October 2019

¹⁹⁷ Council of State, Decision No 201507248/1, 26 November 2015.

¹⁹⁸ State Secretary, Letter TK 2017-2018, 19 637, No 2355, 27 November 2017.

¹⁹⁹ KST 19637, No. 2374, 22 March 2018.

²⁰⁰ KST 19637, No 2374, 22 March 2018.

²⁰¹ Council of State, Decision No 201608203/2, 18 November 2016; Council of State, Decision No 201606446/2, 25 October 2016; Council of State, Decision No 201606788/2, 13 October 2016.

and thus that the IND should have conducted further investigation.²⁰² In 2017, however, the Council of State found that the principle of mutual trust could be upheld vis-à-vis Bulgaria²⁰³ including in one case concerning a family with children.²⁰⁴ This led the State Secretary to conclude that the special attention previously paid to vulnerable applicants was no longer necessary for Bulgaria.²⁰⁵ In a judgment of 24 August 2018 the Council of State ruled that the mere circumstance that the Bulgarian authorities have accepted the “take back” request under Article 18(1)(d) of the Dublin Regulation does not ensure that the asylum seeker will not be placed in detention after being transferred.²⁰⁶ In a judgment of 28 August 2019, the Council of state confirmed that the principle of mutual trust applies to Bulgaria.²⁰⁷

Italy: Following the *Tarakhel v. Switzerland* judgment,²⁰⁸ a specific procedure was developed regarding transfers of vulnerable asylum seekers to Italy. Reference was made to Circular letters from the Italian authorities, issued on 8 June 2015, 15 February 2016, 12 October 2016 and 4 July 2018, in which several SPRAR locations were earmarked as being suitable for the accommodation of vulnerable asylum seekers, including families with minor children. According to the Council of State, the Secretary of State could rely on the guarantees given by the Italian authorities in these Circulars, notably the fact that families with minor children will be accommodated in one of the listed Protection System for Asylum Seekers and Refugees (SPRAR) locations.²⁰⁹ In the case of a pregnant woman, the Council of State ruled that the reference to the Italian Circular Letter was not sufficient, as the latter only concerns families with minor children but not pregnant women.²¹⁰

As to the scope of the *Tarakhel* judgment, the Council of State ruled in December 2015 that the judgment does not only concern families with minor children, but also those asylum seekers who can be designated as belonging to a potential particularly vulnerable group. Gender, age and medical circumstances are important factors in designating an asylum seeker as particularly vulnerable.²¹¹

With the coming into force of the Salvini Decree, it was argued that particularly vulnerable asylum seekers who are to be transferred to Italy will no longer have access to suitable reception locations. Nevertheless, according to the Council of State transfer to Italy of not particularly vulnerable asylum seekers is in conformity with Article 3 ECHR. The asylum seeker did not demonstrate that the decree would lead to shortcomings in reception nor that there would be such a structural deterioration of reception conditions that there would be a violation of Article 3 ECHR.²¹² At the beginning of 2019 the Council of State was still holding to this decision.²¹³ Some six months later – in June 2019 - the Council of State ruled that also in case of particularly vulnerable asylum seekers the principle of mutual trust still applies.²¹⁴

On 6 September 2019, the ECtHR indicated to the Dutch authorities, under Rule 39, in the case of a single mother and her children, that they should not be removed to Italy.²¹⁵ In the following months, six more interim measures were granted to families with minor children who were to be transferred to Italy. Recently, in two of these cases the interim measure has been lifted. Both cases concerned asylum seekers who had previously been awarded a “special protection” permit in Italy. Also, in these two cases an individual guarantee as to the specific location of reception had been awarded. Perhaps these

²⁰² Council of State, Decision No 201604780/1, 25 November 2016.

²⁰³ Council of State, Decision No 201604481/1, 4 April 2017.

²⁰⁴ Council of State, Decision No 201603754/1, 19 July 2017.

²⁰⁵ State Secretary, Letter TK 2017-2018, 32 317, No. 492, 5 October 2017.

²⁰⁶ Council of State, Decision No 201707643/1/V3, 24 August 2018.

²⁰⁷ Council of State, Decision No 201810397/1, 28 August 2019.

²⁰⁸ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

²⁰⁹ Council of State, Decision No 201506164/1/V3, 7 October 2015.

²¹⁰ Council of State, Decision No 201507918/1, 6 January 2017.

²¹¹ Council of State, Decision No 201504479/1, 3 December 2015.

²¹² Council of State, Decision No 201808522/1/V3, 19 December 2018.

²¹³ Council of State, Decision No 201810366/1, 29 January 2019.

²¹⁴ Council of State, Decision No 201809552/1, 12 June 2019; Council of State, Decision No 201901495/1/V3, 8 April 2019.

²¹⁵ ECtHR, M.T. t. Netherlands, No. 46595/19, 6 September 2019.

circumstances lead to the interim measure being lifted. As to the other five cases, the interim measures have been extended indefinitely. The asylum seekers involved are still awaiting a ruling of the Court.

As a result of these seven interim measures, in cases concerning transfer of families with minor children to Italy, especially those with medical problems, some Regional Courts decided to award suspensive effect to the appeal.²¹⁶ However, most Regional Courts followed the case law of the Council of State, concluding that no guarantees were necessary prior to transfer of (particularly vulnerable) asylum seekers to Italy. In two judgments made on the same day, the Council of State perpetuated its case law in 2020 and concluded that no guarantees from the Italian authorities were necessary prior to transfer regarding a single mother and her baby and a psychologically particularly vulnerable man.²¹⁷ Worth noting is that the Regional Court Haarlem does not follow the case law of the Council of State regarding the interpretation of the Tarakhel judgment.²¹⁸ Contrary to the Council of State, the Court considers the requirements set by the ECtHR in Tarakhel relevant as to the question whether the reception conditions in Italy are adequate, given the special vulnerability of the asylum seeker and her son.

2.7. The situation of Dublin returnees

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

In the Netherlands, the IND is responsible for all asylum applications, including asylum applications lodged by asylum seekers who are transferred (back) to the Netherlands. The asylum seeker can request asylum in the Netherlands at the COL in Ter Apel or at the AC of Schiphol airport (see [Border Procedure](#)).

In the case of a “take back” (*terugname*) procedure where the asylum seeker has previously lodged an application in the Netherlands, the asylum seeker may file a new request if there are new circumstances. This is dealt with as a subsequent application, with the exception of previous applications that were implicitly withdrawn. In “take charge” (*overname*) procedures the asylum seeker has to apply for asylum if they want international protection.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

There is no separate admissibility procedure in the Netherlands. Having said that, the outcome of the asylum procedure may be that an asylum request is rejected as inadmissible.

According to Article 30a of the Aliens Act, an application may be declared inadmissible where the asylum seeker:

- ❖ Enjoys international protection in another EU Member State;
- ❖ Comes from a “first country of asylum” i.e. is recognised as a refugee or otherwise enjoys sufficient protection in a third country;
- ❖ Comes from a “safe third country”;
- ❖ Has submitted a subsequent application with no new elements;
- ❖ Has already been granted a residence permit.

This examination is done in the asylum procedure as described in the [Regular Procedure](#) (“Track 4”) for most cases. Applications from persons who are presumed to have already received international

²¹⁶ See for example Regional Court Den Bosch, NL20.8146, 4 May 2020, Regional Court Den Haag, NL20.2325, 19 February 2020, Regional Court Zwolle, NL19.24467, 14 February 2020.

²¹⁷ Council of State, ECLI:NL:RVS:2020:987, 8 April 2020 and Council of State, ECLI:NL:RVS:2020:986, 8 April 2020.

²¹⁸ Regional Court Haarlem, 18 December 2020, ECLI:NL:RBDHA:2020:13014.

protection in another EU Member State, however, are subject to an [Accelerated Procedure](#) (“Track 2”).²¹⁹

There are no statistics available on the number of applications dismissed as inadmissible in 2020.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

The same procedure as in the regular asylum procedure is followed, with the exception of persons who have already received international protection in another EU Member State.²²⁰ Therefore the same remarks are applicable concerning the interview (see [Regular Procedure: Personal Interview](#)).

3.3. 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
 - Safe third country Yes No
 - Other grounds Yes No

The asylum seeker has one week to lodge an appeal against the decision to reject the asylum application as inadmissible.²²¹ This appeal has no automatic suspensive effect, except in the case of the “safe third country” concept.²²²

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

The same procedure as in the regular asylum procedure is followed, with the exception of persons who have already received international protection in another EU Member State.²²³ Therefore the same remarks are applicable concerning legal assistance (see [Regular Procedure: Legal Assistance](#)).

²¹⁹ Article 3.109ca(1) Aliens Decree.

²²⁰ Article 3.109ca(1) Aliens Decree.

²²¹ Article 69(2)(c) Aliens Act.

²²² Article 82(2)(b) Aliens Act.

²²³ Article 3.109ca(1) Aliens Decree.

4. Border procedure (border and transit zones)

4.1. 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. Where is the border procedure mostly carried out? Air border Land border Sea border
3. Can an application made at the border be examined in substance during a border procedure? Yes No
4. 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
5. Is the asylum seeker considered to have entered the national territory during the border procedure? Yes No

The Netherlands has a border procedure applicable to asylum seekers applying at airports and ports.²²⁴ The border procedure in the Netherlands proceeds as follows: the decision on refusal or entry to the Netherlands is suspended for a maximum of 4 weeks and the asylum seeker stays in detention (see [Detention of Asylum Seekers](#)). During this period, the IND may reject the claim as:²²⁵

- ❖ Not considered, due to the application of the Dublin Regulation;²²⁶
- ❖ Inadmissible;²²⁷ or
- ❖ Manifestly unfounded.²²⁸

If the IND is not able to stay within the time limits prescribed by the short asylum procedure i.e. 8 days, it can continue the border procedure if it suspects it can reject the asylum application based on the Dublin III Regulation, or declare it inadmissible or manifestly unfounded.²²⁹ The maximum duration of the border procedure is 4 weeks.²³⁰ However, if the examination takes longer than 4 weeks or another ground of rejection is applicable, the detention measure is lifted, the asylum seeker is allowed to enter the Netherlands and the treatment of the application is continued in the regular procedure.²³¹

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 him or her entering the country *de jure*. During the first steps of the asylum procedure, the asylum seeker remains in the closed AC at **Schiphol**.

In these stages the border procedure more or less follows the steps of the short asylum procedure described in the section on [Regular Procedure](#). One example of a difference between the regular

²²⁴ IND, Work Instruction 2018/3, available in Dutch at: <https://bit.ly/39msJH5>. It was issued in March 2018 and entails instructions concerning the border procedure. It covers the information, which is mentioned in this report.

²²⁵ Article 3.109b(1) Aliens Decree. See also IND, Work Instruction 2017/1 Border procedure, 11 January 2017, available in Dutch at: <http://bit.ly/2wa4v3o>, 7.

²²⁶ Article 30 Aliens Act.

²²⁷ Article 30a Aliens Act.

²²⁸ Article 30b Aliens Act.

²²⁹ Article 3.109b(1) Aliens Decree.

²³⁰ Article 3(7) Aliens Act.

²³¹ Articles 3 and 6 Aliens Act. See also IND, Work Instruction 2017/1 Border procedure, 6.

procedure and the border procedure is the possibility for the decision-making authorities to shorten the rest and preparation period.²³²

The following groups are exempted from the border procedure, they will follow the general asylum procedure in freedom:

- ❖ Unaccompanied children;²³³
- ❖ Families with children where there are no counter-indications such as a criminal record or family ties not found real or credible,²³⁴ as the Netherlands does not detain families with children at the border.²³⁵ Instead of being put in border detention, families seeking asylum at Amsterdam **Schiphol Airport** are now redirected to the application centre in Ter Apel where they can await their asylum procedure in liberty. If further research needs to be done as to the relationship between the child and the grown-up they will be redirected to a closed family reception centre in **Zeist** (see Detention of Vulnerable Applicants);
- ❖ Persons for whose individual circumstances border detention is disproportionately burdensome;²³⁶
- ❖ Persons who are in need of special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured.²³⁷

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:²³⁸

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

The Dutch Council for Refugees strongly objects to the use of the border procedure in light of the individual interests of the asylum seeker.²³⁹ The Committee of Human Rights (*College voor de rechten van de mens*) has also published advice to the Dutch government in previous years, in which it concludes that it is unnecessary to *always* detain asylum seekers at the border, especially children.²⁴⁰ 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.

During 2019, 920 asylum seekers filed applications at the border. In the first half of 2020 only 280 asylum seekers filed application at the border. The difference of 32% in the first half of 2020 is due to the corona restrictions.²⁴¹

²³² Article 3.109b(2) Aliens Decree.

²³³ Article 3.109b(7) Aliens Decree.

²³⁴ Paragraph A1/7.3 Aliens Circular.

²³⁵ Paragraph A1/7.3 Aliens Circular.

²³⁶ Article 5.1a(3) Aliens Decree.

²³⁷ Article 3.108 Aliens Decree.

²³⁸ Paragraph C1/2 Aliens Circular.

²³⁹ Dutch Council for Refugees, *Standpunt: grensdetentie*, available in Dutch at: <http://bit.ly/2w1LrAF>.

²⁴⁰ Committee for Human Rights, *Advies: Over de Grens, Grensdetentie van asielzoekers in het licht van mensenrechtelijke normen*, May 2014, available at: <https://bit.ly/3cqcGUY>.

²⁴¹ Ministry of Security and Justice, *Rapportage Vreemdelingenketen: January – December 2019*, available in Dutch at: <https://bit.ly/3nG6NO6>; and Ministry of Security and Justice, *Rapportage Vreemdelingenketen: January – June 2020*, available in Dutch at: <https://bit.ly/3olJKsp>.

4.2. Personal interview

The same rules and obstacles as in the [Regular Procedure: Personal Interview](#) are applicable.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

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

In the border procedure, the IND may reject an asylum application on the basis of the Dublin Regulation or as inadmissible or manifestly unfounded. Depending on the type of decision issued, the rules described in the [Dublin Procedure: Appeal](#), [Admissibility Procedure: Appeal](#) or [Regular Procedure: Appeal](#) apply.

On 5 June 2019, the Council of State ruled that the border detention of asylum seekers who appealed their decision was not in line with EU-law as clarified in the *Gnandi*-case.²⁴² In response to this decision, a bill was presented to adjust the basis for detention of asylum seekers at the border in the Aliens Act. Detention of asylum seekers who have appealed the rejection of their asylum request will be based on the Reception Conditions Directive (article 8 (3)(c) RCD) instead of the Return Directive (article 6(3) Aliens Act).²⁴³ This bill came into effect on 22 April 2020.²⁴⁴

4.4. Legal assistance

Exactly the same rules and obstacles as in the [Regular Procedure: Legal Assistance](#) are applicable to the border procedure.

5. Accelerated procedure (“Track 2”)

5.1. General (scope, grounds for accelerated procedures, time limits)

There is no accelerated procedure defined as such in the law. However, since 2016 a specific “simplified procedure”²⁴⁵ (“Track 2”) has been established by Article 3.109ca of the Aliens Decree for applicants who are presumed to:

- ❖ Come from a [Safe Country of Origin](#);
- ❖ Benefit from international protection in another EU Member State.

In these cases, the procedure in practice is conducted in less than 8 working days. The procedure is not applied to unaccompanied children in practice, although this is not regulated by law.

From 1 January to 1 October 2019, 1,800 applications were processed under Track 2.²⁴⁶ Statistics on 2020 are not available.²⁴⁷

²⁴² Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019.

²⁴³ Explanatory Memorandum, KST 35 271, nr. 3.

²⁴⁴ Stb. 2020, nr. 136.

²⁴⁵ The term “simplified procedure” is used by the IND in the relevant information leaflet, available at: <http://bit.ly/2w3IOiW>.

²⁴⁶ Antwoord op vragen begroting Kamerstuk 35300 VI (Parliamentary questions), nr. 23, available in Dutch at <https://bit.ly/3843usH>.

²⁴⁷ Antwoord op vragen begroting Kamerstuk 35300 VI (Parliamentary questions), nr. 23, available in Dutch at <https://bit.ly/3843usH>.

5.2. Personal interview

The same rules and obstacles as in the [Regular Procedure: Personal Interview](#) are applicable.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated 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

Applications falling under the accelerated procedure may be rejected either as inadmissible or manifestly unfounded. Therefore, an appeal before the Regional Court must be lodged within one week and has no automatic suspensive effect.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

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

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
❖ Does free legal assistance cover:	<input type="checkbox"/> Representation in interview		
	<input checked="" type="checkbox"/> Legal advice		
2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
❖ Does free legal assistance cover	<input checked="" type="checkbox"/> Representation in courts		
	<input checked="" type="checkbox"/> Legal advice		

Contrary to the regular procedure, asylum seekers channelled under the accelerated procedure (“Track 2”) are not appointed a lawyer from the outset of the procedure. The lawyer is appointed when the IND issued the intention to reject. As a result, there is not much time for the lawyer to get to know the applicant his or her case well in advance.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> For certain categories	<input type="checkbox"/> No
❖ If for certain categories, specify which:	Unaccompanied children		
2. Does the law provide for an identification mechanism for unaccompanied children?

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

There is no definition of “vulnerability” in Dutch law. In order to meet the obligations arising from Article 24 of the recast Asylum Procedures Directive, Article 3.108b of the Aliens Decree provides that the IND shall examine from the start of the asylum procedure whether the individual applicant needs special procedural guarantees. However, unaccompanied children are generally considered as a vulnerable group in policy.

1.1. Screening of vulnerability

Before the start of the General asylum procedure in Track 4, therefore not in Tracks 1 and 2, a medical examiner from FMMU examines every asylum seeker as to whether he or she is mentally and physically able to be interviewed (see [Registration](#)). FMMU is an independent agency, working on behalf of 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; it solely gives advice to the IND as to whether the asylum seeker can be interviewed and, if so, what special needs he or she has in order to be interviewed. FMMU cannot be seen as a 'product' of the Istanbul Protocol, because its examination is limited to the question as to whether the asylum seeker is able to be interviewed based on physical and/or mental capacity.

From the start of the asylum procedure, the IND will examine whether the asylum seeker is vulnerable and in need of special care. In order to meet the obligations of Article 24 of the recast Asylum Procedures Directive, the Secretary of State has implemented this provision in the Aliens Decree.²⁴⁸

The IND decides whether the way the interview is conducted should be adapted as a result of FMMU advice. The IND bases its decision on the medical advice, its own observations and those of the lawyer and asylum seeker him or herself. Important documents in this context are the IND Work Instructions 2010/13 and 2015/8.²⁴⁹ Work Instruction 2015/8 contains a list of indications on the basis of which it may be concluded that the asylum seeker is a vulnerable person. This list is divided in several categories, for instance physical problems (e.g. pregnancy; blind or handicapped) or psychological problems (traumatised, depressed or confused). It is explicitly noted that this is not an exhaustive list.

1.2. Age assessment of unaccompanied children

The age assessment procedure is governed by Paragraph C1/2.2 of the Aliens Circular and elaborated on in IND Work Instruction 2018/19250. The procedure starts with an age inspection.

Age inspection (*leeftijdsschouw*)

If an asylum seeker, who claims to be an unaccompanied minor, and does not have documents to support this claim, lodges an asylum application in the Netherlands, the Royal Police (KMar) and/or the IND always conduct an age inspection (*leeftijdsschouw*).²⁵¹ This means that officers from the KMar and/or the IND assess whether the asylum seeker is evidently over or under 18 based on his or her appearance and discussion with him or her.

This method has been criticised in Dutch case law.²⁵² As a result, the Secretary of State made some adjustments to the *age inspection* in 2016. The policy on age assessment was amended as of 1 January 2017 and Work Instruction 2018/19 was introduced in December 2018. Currently, three officers from the IND, the KMar or the Border Police (AVIM) have to conduct the inspection independently from one another. There must ultimately be a unanimous judgment to conclude obvious majority or minority of the

²⁴⁸ Article 3.108b Aliens Decree.

²⁴⁹ IND Work Instruction 2010/13 Treatment of medical advice, 29 October 2010, available in Dutch at: <http://bit.ly/1NANE76>; IND Work Instruction 2015/8 Procedural guarantees, 20 July 2015, available in Dutch at: <http://bit.ly/1S0RQAU>.

²⁵⁰ IND Work Instruction 2018/19 Age assessment, 13 December 2018, available in Dutch at: <https://bit.ly/3bSuErL>

²⁵¹ IND Work Instruction 2018/19 Age assessment, 13 December 2018, available in Dutch at: <https://bit.ly/3bSuErL>

²⁵² In one case, the Court allowed an appeal against an age assessment decision on the ground that the age inspection had not been carried out by experts on the matter: Regional Court of Amsterdam, Decision No 16/13578 of 13 July 2016. See also critiques of the age inspection by: Regional Court of Arnhem, Decision No 16/10627 of 16 June 2016; Regional Court of Haarlem, Decisions No 16/5615 of 19 April 2016 and No 16/833 of 12 February 2016.

applicant. In addition, officials cannot establish that the person is an adult solely based on appearance.²⁵³

If there is still doubt regarding the age of the (alleged) minor, further investigation will take place. In practice, this investigation is often carried out by the Dublin Unit and consists of research into (age) registrations in other EU Member States. In case of an Eurodac or EU-Vis 'hit' in which the (alleged) minor is registered as an adult in another Member State, the (alleged) minor will be registered as an adult by the IND and/or AVIM. In a report published on 30 November 2020, the Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) argues that it this practice makes it near impossible for (alleged) minors to prove their minority in case another Member State has registered them as an adult.²⁵⁴

Medical age assessment

If the officers from IND, AVIM or KMar cannot conclude that the asylum seeker is evidently over 18 years of age, he or she cannot prove his or her minority, and there is no EU-Vis or Eurodac 'hit', a medical age assessment can take place.²⁵⁵ This is carried out on the basis of X-rays of the clavicle, the hand and wrist.²⁵⁶ Radiologists examine if the clavicle is closed. When the clavicle is closed the asylum seeker is considered to be at least 20 years old according to some scientific experts. It is the responsibility of the IND to ensure the examination has been conducted by certified professionals and is carefully performed.²⁵⁷ The age assessment has to be signed by the radiologist.

It should be noted that the methods which are used in the medical age assessment process are controversial,²⁵⁸ which is also illustrated by the sometimes very technical discussions among radiologists referred to in the case law.²⁵⁹ 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.²⁶⁰ 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.²⁶¹

The Dutch Council for Refugees intervened together with ECRE and the AIRE Centre in the case of *Darboe and Camara v. Italy*, drawing attention to the fact that no existing medical method can reliably determine the age of an individual. The interveners state that medical age assessments have been criticised by medical experts.²⁶²

²⁵³ Tweede Kamer, Reply by the Secretary of State for Security and Justice to a parliamentary question on age assessment of unaccompanied children, 7 November 2016, available in Dutch at: <http://bit.ly/2glbqMT>. See also Paragraph C1/2.2, *ad b* Aliens Circular.

²⁵⁴ Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), *Nadeel van de Twijfel*, 30 November 2020, available in Dutch at: <https://bit.ly/2LFmUH>.

²⁵⁵ Article 3.109d(2) Aliens Decree.

²⁵⁶ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, available in Dutch at: <http://bit.ly/2xIFvky>, 7.

²⁵⁷ Article 3.2 GALA.

²⁵⁸ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 7.

²⁵⁹ See e.g. Regional Court Amsterdam, Decision No 10/14112, 18 December 2012. See also the pending case before the ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17.

²⁶⁰ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 16.

²⁶¹ 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.

²⁶² ECRE *et al.*, *Third party intervention in Darboe and Camara v. Italy*, 5 July 2017, available at: <http://bit.ly/2uqoBFu>.

Until 2016 a special commission, the Medico-ethical Commission (*Medisch-ethische Commissie*) supervised the practice of age assessment. Now this has been assigned to the *Inspectie voor Veiligheid en Justitie*.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No
- ❖ If for certain categories, specify which:
- Unaccompanied minors
 - Families with children
 - Victims of torture or violence

2.1. Adequate support during the interview

Article 3.108b of the Aliens Decree sets out the obligation to provide adequate support to the applicant where he or she needs procedural guarantees as per Article 24 of the recast Asylum Procedures Directive. The notion of “adequate support” (*passende steun*) is further elaborated in the IND Work Instruction 2015/8, also citing Work Instruction 2010/13, which provides a non-exhaustive list of special guarantees such as:²⁶³

- ❖ Attendance of a person of confidence or family members in the interview;²⁶⁴
- ❖ Attendance of the lawyer in the interview;
- ❖ Additional breaks during interviews, including splitting the interview in several days;
- ❖ Additional explanation about the interview;
- ❖ The opportunity for an applicant with physical impairment such as back aches to walk in the interviewing room during the interview;
- ❖ Leniency from the interviewing officer on small inconsistencies and contradictions;
- ❖ Postponement of the interview to a later date.

Further adjustments to the interview could be that a female employee of the IND will conduct the interview in cases of a female asylum seeker who has suffered sexual violence.

The IND does not have specialised units dealing with vulnerable groups. However, every caseworker has to follow the European Asylum Support Office (EASO) training module on Interviewing Vulnerable Persons since 2012.²⁶⁵

The asylum seeker cannot appeal the refusal to grant him or her special procedural guarantees, as the refusal is not considered to be an appealable decision. The asylum seeker is able to make objections regarding the refusal of the IND to grant him or her special procedural guarantees in the appeal against the negative decision on the asylum application.

In a recent judgment, the Council of State confirmed that the Secretary of State (IND) should have investigated appropriate forms of information gathering, taking into account the medical history of the asylum seeker. The file showed that the asylum seeker could not be interviewed by the IND for medical reasons, which should have led the Secretary of State to involve the Medical Advice Office (*Bureau Medische Advisering*), for example. The State Secretary could not suffice with simply asking the asylum seeker to demonstrate his need for international protection in an alternative manner.²⁶⁶

2.2. Exemption from special procedures

²⁶³ IND Work Instruction 2015/ Special procedural guarantees, 20 July 2015, 6.

²⁶⁴ This was confirmed as a form of adequate support in Council of State, Decision No 201609551/1, 3 August 2017.

²⁶⁵ Tweede Kamer, 2013-2014, Aanhangel 636.

²⁶⁶ Council of State, Decision No 202001510/1, ECLI:NL:RVS:2020:2057, 26 August 2020.

In the regular procedure (“Track 4”), all asylum seekers start their procedure within the short asylum procedure. This implies that even asylum seekers who are victims of rape, torture or other serious forms of psychological, physical or sexual violence firstly will be processed within this procedure. However, generally, in most of these cases more investigation is needed, for example a medical report has to be drawn up. In such cases the application will be referred to the extended procedure which lasts 6 months.

The **Accelerated Procedure** (“Track 2”) is not applicable to unaccompanied children. This is not regulated in law but happens in practice. Due to the fact that it takes place in detention, the **Border Procedure** is not applicable to:

- ❖ Unaccompanied children;²⁶⁷
- ❖ Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;²⁶⁸
- ❖ Persons for whose individual circumstances border detention is disproportionately burdensome;²⁶⁹
- ❖ Persons who are in need of special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured.²⁷⁰

For the cases of applicants in need of special procedural guarantees or for whom detention at the border would be disproportionately burdensome, IND Work Instruction 2017/1 clarifies that vulnerability does not automatically mean that the applicant will not be detained at the border. The central issue remains whether the detention results into a disproportionately burdensome situation for the asylum seeker as mentioned in Article 5.1a (3) of the Aliens Decree in view of his or her “special individual circumstances”. Whether there are such “special individual circumstances” must be assessed on a case-by-case basis and can be derived from a FMMU medical report. The IND Work Instruction provides two examples of such circumstances: where a medical situation of an asylum seeker leads to sudden hospitalisation for a longer duration, or where the asylum seeker has serious mental conditions.²⁷¹

The decision to detain at the border has to contain the reasons why the IND, though taking into account the individual and special circumstances produced by the asylum seeker, is of the opinion to detain the asylum seeker concerned; for example where the IND is of the opinion that the border security interest should prevail above individual circumstances.

If during the detention at the border special circumstances arise which are disproportionately burdensome for the asylum seeker concerned, the detention will end and the asylum seeker will be placed in a regular reception centre (see examples under **Detention of vulnerable applicants**). This means that during the detention it has to be monitored whether such circumstances arise.

Special measures also exist for victims of human trafficking (but these are not specific for the asylum procedure). The Human Trafficking Coordination Centre and the Health Coordinator are the entities that are responsible for a safe reception and daily accompaniment of these victims.²⁷² The IND employees are also trained to recognise victims of human trafficking.²⁷³ Victims of trafficking who have been refused asylum can be granted a temporary permit on a regular ground. During a time frame of 3 months the asylum seeker has to consider whether he lodges a complaint or cooperate with the authorities to prosecute the trafficker. During the reflection period, a victim has the right to receive a social security contribution, health insurance, legal support and housing, for example.

3. Use of medical reports

²⁶⁷ Article 3.109b(7) Aliens Decree.

²⁶⁸ Paragraph A1/7.3 Aliens Circular.

²⁶⁹ Article 5.1a(3) Aliens Decree.

²⁷⁰ Article 3.108 Aliens Decree.

²⁷¹ IND, Work Instruction 2017/1 Border procedure, 11 January 2017, 5.

²⁷² Section B/9 Aliens Circular.

²⁷³ IND, Work Instruction 2007/16 Victims of human trafficking in the asylum procedure, 18 December 2007, available in Dutch at: <http://bit.ly/1MjGx5i>.

Indicators: Use of Medical Reports

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

Every asylum seeker under the General asylum procedure ("Track 4") is invited to be medically examined by FMMU (Forensic Medical Company Utrecht – Forensisch Medische Maatschappij Utrecht) prior to the interviews with the IND. This in order to assess whether he or she can be interviewed with or without special precautions (see [Identification](#)),²⁷⁴ and to see if there are limitations in ones ability to give a full, coherent and consistent account of ones asylum story that needs to be taken into account when hearing an asylum seeker and when deciding on a asylum request. Besides that, the IND has, since the implementation date of the recast Asylum Procedures Directive in 2015, the legal obligation to medically examine asylum seekers in connection to their reasons for requesting protection. Although the obligation to conduct a medical examination is now explicitly incorporated in Dutch law and policy, it is defensible to claim the Dutch authorities already had this obligation due to rulings of the ECtHR²⁷⁵, and/or the UN Committee Against Torture (CAT).

National legislation guarantees the possibility to use a medical examination as supportive evidence.²⁷⁶ Dutch law and policy provide that a medical examination has to be done but only if the IND finds this relevant for the outcome of the examination of the asylum application. If this is the case, the IND asks an independent third party, namely the Dutch Forensic Institute (*Nederlands Forensisch Instituut*, NFI) or the Dutch Institute for Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische Psychiatrie en Psychologie*, NIFP), to conduct the examination.²⁷⁷ The IND bears the costs of this examination. Annually, approximately between 15-20 times, these organisations are asked to perform establish a medico legal report. If the asylum seeker is of the opinion that an examination has to be conducted, but the IND disagrees with this view, the asylum seeker can proceed but on his or her own initiative and costs. The main question that needs to be answered in such a medico legal report is how likely it is that the physical scars or the psychological complaints stem from the asylum story given by the asylum seeker?

An NGO, called iMMO (Institute for Human Rights and Medical Assessment (*instituut voor Mensenrechten en Medisch Onderzoek*),) has the resources and specific expertise to medically examine asylum seekers (physically and psychologically) at their request. iMMO is not funded by the government and operates independently. Besides having a few staff members, iMMO uses free lance professionals – especially physicians and psychologists – who have the required knowledge and expertise, who commit themselves on a voluntary basis and who are not bound to iMMO by an employment contract. These assessors are trained by iMMO and perform assessments working independently within the framework of their professional responsibility. These professionals perform Medical Forensic Medical Investigations on a voluntary basis and do not charge the asylum seeker, although the lawyer of the asylum seeker is obligated to try to get the expenses reimbursed by the state.²⁷⁸ The authority of iMMO is 'codified' in the Aliens Circular and its authority as being an expert in its field has been accepted by the Council of State.²⁷⁹ What makes iMMO unique is its working method. Medico legal reports are drawn

²⁷⁴ Article 3.109 Aliens Decree.

²⁷⁵ For example: ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010 and ECtHR, *R.J. v France*, Application No. 10466/11, Judgment of 19 September 2013.

²⁷⁶ Article 3.109e Aliens Decree.

²⁷⁷ IND, Work Instruction 2016/4 Forensic medical examination for supporting evidence, 1 July 2016, available in Dutch at: https://ind.nl/Documents/WI_2016-4.pdf.

²⁷⁸ Regional Court The Hague, Decision No 14/3855, 11 March 2014 ruled that, as a provisional measure, the IND had to reimburse the expenses of this iMMO report. See also Regional Court Haarlem, Decision No 14/1945, 6 February 2015.

²⁷⁹ Paragraph C1/4.4.4 Aliens Circular. See Council of State, Decision No 201211436/1, 31 July 2013.

up as a combined effort by medical doctors on the one hand and psychologists/psychiatrists on the other.

Besides forensic medical assessments iMMO offers advice and consultation to professionals having questions regarding medical aspects of (amongst other) the asylum procedure. iMMO also provides training and education, e.g. with regard to the early recognition of victims of torture or inhumane treatment. iMMO participates in an international community of institutions specialized in the reception, assessment and treatment of victims of torture and inhumane treatment.

iMMO conducts a lengthy and thorough examination of ones physical and psychological signs and symptoms and assesses the correlation of these with the asylum seekers own account thereby using the qualifications of the Istanbul Protocol. iMMO in its report also reaches a conclusion whether ones physical and psychological well being interfered with the ability of the asylum seeker to tell his/her story in a complete, consistent and coherent manner in the past and in the present.

Every year, iMMO, issues around 100 Forensic Medical Reports. In 2020 this number decreased significantly due to the Corona limitations. However, these reports are usually delivered long after the interviews have taken place, especially in the case of repeated asylum claims. Because of this time-lapse, the Council of State first considered that iMMO was not able to conduct a proper assessment and that their reports were not relevant. In its main judgment of 27 June 2018, the Council of State changed its opinion and ruled that the iMMO reports could be relevant when the assessment/report is based on medical documents and medical information which were issued by the time the interviews took place.²⁸⁰

In this regard, one of the main legal questions over the years has been whether the IND finds it relevant to conduct a medical examination by itself, or not, was justified under Article 18 of the recast Asylum Procedures Directive. According to Paragraph C1/4.4.4 of the Aliens Circular, the following criteria are taken into consideration by the IND when making this assessment:

- ❖ Whether a 'positive' examination can in any way lead to an asylum permit;
- ❖ The explanations of the asylum seeker 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 would lead to persecution or serious harm;
- ❖ The explanations of the asylum seeker on 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 coming from: (a) the FMMU medical advice 'to hear and to decide'; (b) the reports of the interviews; and (c) other medical documents.

Until 2016, the Dutch Government did not adopt a clear vision on the implementation of the Istanbul Protocol.²⁸¹ In the past, certain members of the government stated that the practice of the Dutch asylum system was in accordance with this Protocol, but without being specific on which points. Amnesty International, the Dutch Council for Refugees and [Pharos](#) 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.²⁸² This publication has been an inspiration for the national and European policy makers in asylum-related affairs. One of the recommendations from the publication was to provide more awareness to vulnerable groups of asylum seekers prior to the processing of their asylum applications, which has been an important issue in the recast proposals of the Reception Conditions Directive and Asylum Procedures Directive. Another recommendation was to use medical evidence as supporting

²⁸⁰ Council of State, Decision No 201607367/1, 27 June 2018, available in Dutch at: <https://bit.ly/2TxB2ZB>.

²⁸¹ Work Instruction 2016/4 refers to the Istanbul Protocol.

²⁸² René Bruin, Marcelle Reneman and Evert Bloemen, 'Care Full, Medico-legal reports and the Istanbul Protocol in asylum procedures' (2008) 21:1 Journal of Refugee Studies 134.

evidence in asylum procedures, which has been addressed by Article 18 of the recast Asylum Procedures Directive.²⁸³

The main legal questions at this moment concerning the value of medico legal reports in the Dutch asylum procedure are:

- How does such a report need to be weighed and addressed by the State?
- When is there an obligation for the State to start and conduct such a medical investigation or a follow up medical investigation?
- What exactly is the legal meaning of the word 'relevant' (concerning the question for the State whether or not starting a medical investigation by itself)
- Does a State have to wait with deciding an asylum request upon the completion of a medical report by a third party (for example by iMMO)?
- Can a medical legal report make an incredible asylum story become credible?
- When should an asylum seeker be given the benefit of the doubt?
- How does national case law set by the national courts and the national immigration services relates to the international case law as laid out by the ECtHR and the CAT?

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes

No

Children are considered to be unaccompanied if they travel without their parents or their guardian and their parents or guardian are not already present in the Netherlands. One is considered as a "child" (underage) when under the age of 18. However, an underage mother aged 16 or more can request the Juvenile Court to be emancipated in order to raise and care for one's child.²⁸⁴ In case the IND doubts whether an asylum seeker is a child and the child is unable to prove its identity, an age assessment examination can be initiated.²⁸⁵

In principle the same conditions apply to unaccompanied children and adults when it comes to eligibility for a residence permit. However, unaccompanied minors seeking asylum are considered as particularly vulnerable compared to adult asylum seekers and therefore specific guarantees apply. As a general rule, unaccompanied asylum seeking minors are interviewed by employees of the IND who are familiar with their special needs.²⁸⁶

Unaccompanied children may lodge an asylum application themselves. However, in the case of unaccompanied children younger than the age of 12, their legal representative or their guardian has to sign the asylum application form on their behalf.

A guardian is assigned to every unaccompanied child. [Nidos](#), the independent guardianship and (family) supervision agency, is responsible for the appointment of guardians for unaccompanied asylum seeking children in a reception location.²⁸⁷ Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian).²⁸⁸ For unaccompanied children, Nidos will request to be appointed as guardian by the juvenile court.²⁸⁹ Even though formal guardianship is assigned to the organisation, the tasks are carried out by individual professionals, called "youth protectors".

²⁸³ No explicit reference is made, however, in the explanatory notes on the implementation of Article 18 recast Asylum Procedures Directive: Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive, Vergaderjaar 34 088, number. 3, 2014-2015.

²⁸⁴ Articles 1.233 and 1.253ha, Dutch Civil Code.

²⁸⁵ Article 3.109d (2) Aliens Law 2000; Work Instruction 2018/19, 13 December 2018.

²⁸⁶ Section C1/2.11 Aliens Circular.

²⁸⁷ Article 1. 302 (2) Dutch Civil Code.

²⁸⁸ Article 1.245 Dutch Civil Code.

²⁸⁹ Article 1.256 (1) Civil Code.

There is no time limit for the appointment of a legal guardian to an unaccompanied child. However, no instances have been reported where the period between entry into the Netherlands and the appointment of a guardian was unreasonably long.

Children from the age of 13 to 18 years are accommodated in a specific Process Reception Centre (POL). After their stay in the POL they are transferred to foster families or small-scale housing. Campus reception is only advised if the child is able to live independently in a large-scale setting. Children who arrive at **Schiphol airport** are transferred to the application centre in **Ter Apel** and are not detained in **AC Schiphol** if their minority is not disputed. Children 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 child and the guardian go to **Ter Apel** to lodge the asylum application.

The guardian takes important decisions on behalf of the child which are taken with consideration to his or her future, *inter alia*, which education fits, where the unaccompanied child can find the best housing and what medical care is necessary. Thus, the purpose of guardianship can be divided into legal and pedagogical.

When an asylum application is rejected the child may be granted a specific permit, which is not an asylum permit. However, there are many conditions that have to be met in order to qualify for this specific permit.²⁹⁰ As a result, as far as the author is aware, no permit on this ground has been granted yet.

E. Subsequent applications

Indicators: Subsequent Applications

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

After a final rejection of the asylum application, the asylum seeker is able to lodge a subsequent asylum application (*herhaalde aanvraag*) with the IND. This follows from the *non-refoulement* principles, codified in Article 33 of the Refugee Convention and Article 3 ECHR. The Aliens Circular stipulates how subsequent asylum applications are examined.²⁹¹

The assessment of subsequent asylum application takes place in the so called “one-day review” (*de eendagstoets, EDT*).²⁹²

As of 1 July 2019, a new procedure regarding lodging and assessing subsequent asylum applications is applicable. Regarding this new procedure the Aliens Circular have been amended and an IND Work Instruction has been introduced.²⁹³ Relevant is whether the asylum seeker has filled in a fully completed subsequent asylum application form and whether the IND will not continue to examine the subsequent application because the asylum seeker does not provide the relevant information according to the IND. Another relevant change is that an interview does not always take place when assessing a subsequent

²⁹⁰ Conditions to be met are laid down in policy Paragraph B8/6 Aliens Circular.

²⁹¹ Paragraphs C1/ 4.6 and C2/6.4 Aliens Circular.

²⁹² The “one-day review” means that on the first day of the procedure it is assessed whether the asylum seeker has a document which is not an asylum procedure. The whole administrative procedure regarding assessing the subsequent application as a rule takes three days, with a possibility for extension.

²⁹³ Article 3.118b Aliens Decree; Paragraph C1/2.9 Aliens Circular and IND Work Instruction 2019/9.

asylum application.

1. New facts and findings (*nova*)

When a subsequent asylum application form is fully completed and the IND continues to examine the application an EDT (“one-day review”) takes place. In that situation the following is applicable. The IND shall declare a subsequent application inadmissible in case there are no new elements or findings.²⁹⁴ The term “new facts and findings” is derived from the recast Asylum Procedures Directive.²⁹⁵ According to the Secretary of State,²⁹⁶ and case law,²⁹⁷ this terminology must be interpreted exactly the same as the former terminology of “new elements or circumstances”. Therefore, all the old jurisprudence and policy before the transposition of the recast Directive is still applicable.²⁹⁸ From here on the “new elements or circumstances” will be called “*nova*”.

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

In this regard, Article 40(4) of the recast Asylum Procedures Directive states that Member States may provide that a subsequent application will only be further examined if the asylum seeker concerned presents new elements or findings which could, through no fault of his or her own, not have been presented in a previous procedure. This is the so-called “*verwijtbaarheidstoets*”. This Article is not explicitly and separately transposed into Dutch law, leading to a debate in case law as to whether this was necessary. The Council of State ruled in 2017 that it was not. The principle of Article 40(4) of the Directive was already incorporated in Article 33(2)(d) of the Aliens Act, while Article 40 (2) and (3) of the Directive are explicitly transposed in the Aliens Act.²⁹⁹ This means that new elements or findings will only be further examined when they have not been presented in a previous procedure due to no fault of the applicant.

The strict interpretation of the *nova* criterium can also be seen in cases in which new documents form the basis of a subsequent application. According to the established case law of the Council of State, original documents of which the authenticity cannot be established, cannot be regarded as new facts.³⁰⁰ On 16 December 2019, the Regional Court of Den Bosch referred questions to the CJEU about this matter. The Court of Den Bosch court seeks to ascertain whether documents which have not been shown to be authentic can, for that reason alone, be deemed not to be covered by the term ‘new elements or findings’ referred to in Article 40 of the Procedures Directive.³⁰¹ On 11 February 2021, Advocate General Hogan published his Opinion in this case.³⁰² AG Hogan concluded that the Dutch practice is incompatible with Article 40(2) of the Procedures Directive, read in conjunction with Article 4(2) of the Qualification Directive (Directive 2011/95). He also highlights that it cannot make a difference whether authenticated originals, non-authenticated originals or copies are provided. They all have to be

²⁹⁴ Article 30b(1)(d) Aliens Act.

²⁹⁵ Article 33(1)(d) Aliens Act.

²⁹⁶ Tweede Kamer, *Explanatory notes on the implementation of the recast Asylum Procedures Directive*, Vergaderjaar 34 088, number. 3, 2014-2015, 12.

²⁹⁷ Council of State, Decision No 201113489/1/V4, 28 June 2012.

²⁹⁸ Article 4.6 GALA.

²⁹⁹ Council of State, Decision No 201604251/1, 6 October 2017.

³⁰⁰ See, for example: Council of State, Decision No 200304202/1, 25 September 2003.

³⁰¹ Request for a preliminary ruling, Case C—921/19, 16 December 2019.

³⁰² Opinion of Advocate General Hogan in case C-921/19, <https://bit.ly/3r4KOmL>.

examined to the standard provided in Article 40(2) and (3) of the Procedures Directive, read in conjunction with Article 4(2) of the Qualification Directive.

2. Subsequent application procedure

In June 2018, the Council of State ruled that asylum seekers who file a subsequent asylum application by filling in the form (M35-O) have a right to accommodation. As a result, a lot of people completed the form without substantiating their subsequent asylum claim and the IND decided to disregard many asylum applications.³⁰³ Regional Courts rule differently when it comes to determining whether and at which moment during the procedure an asylum seeker should have had the opportunity to substantiate his or her claim.³⁰⁴ The Council of State concluded that the State Secretary of Justice (IND) could give its viewpoint just in the written intention that the subsequent asylum application lacks (sufficient) relevant information and could give the asylum seeker the opportunity to provide more information. The State Secretary was not obliged to do this before issuing the written intention to reject the application.³⁰⁵

As a result, in July 2019 the State Secretary of Justice & Security introduced a new procedure regarding lodging and assessing subsequent asylum applications. The main changes are as follow:

1. Lodging the asylum application:

Asylum seekers (or their legal representative) have to lodge their asylum application in person at the application centre in **Ter Apel** (ACTA) with a completed subsequent application form (M35-0).

2. Completed application form:

A completed application form has to be lodged in ACTA. When the application form is not completed the IND could take a viewpoint that the application lacks relevant information, hence the application is rejected according to article 30c (1)(a) Aliens Act (in Dutch: *'buitenbehandelingstelling van de asielaanvraag'*). A lot of case law has been delivered by Regional Courts regarding the matter whether the asylum seeker provided sufficient relevant information while submitting a subsequent asylum application.³⁰⁶

3. Fully completed application without interview:

When a fully completed subsequent asylum application form has been submitted, an asylum seeker will not automatically be interviewed. An interview only takes place when it is relevant for a diligent assessment of the application. In the Aliens Circular seven categories are mentioned in which no interview will take place anyway. A lawyer will not automatically be appointed, but an asylum seeker can look for a lawyer himself (also free legal assistance). A "one day review" (Dutch: *'de eendagstoets'*, EDT) will take place.

On 31 August 2020, the Regional Court of Utrecht ruled that the Secretary of State (IND) had not given sufficient reasons why no interview had been conducted about the asylum seeker's subsequent application.³⁰⁷ Similarly, the Regional Court of Rotterdam held that the asylum seeker should have been interviewed on his subsequent application in a judgement dating 13 February 2019.³⁰⁸

4. Fully completed application with interview:

When a fully completed subsequent asylum application has been lodged and the IND is of the opinion that an interview should take place a lawyer will be appointed and the EDT will take place.

³⁰³ The subsequent claims are refused according to Article 30c (1)(a) of the Aliens Act.

³⁰⁴ Regional Court Amsterdam, Decision NL18.20640, 11 December 2018; Regional Arnhem, Decision NL18.20978, 5 December 2018.

³⁰⁵ Council of State, decision no 201810080/1/V2, 21 February 2019.

³⁰⁶ Regional Court Arnhem, decision no NL19.12911, 4 July 2019; Region Court Rotterdam, decision no NL19.3760, 22 March 2019; Regional Court Groningen, decision no NL19.23848, 28 November 2019.

³⁰⁷ Regional Court of Utrecht, Decision No NL20.9117, 31 August 2020.

³⁰⁸ Regional Court of Rotterdam, Decision No NL18,24121, 13 February 2019.

When an interview takes place this interview does not consist of a complete review of the asylum request and statements. The IND will solely address the question whether new facts or circumstances exist on the basis of which a new asylum application would be justifiable.

After the interview, on the same day, the IND decides whether status will be granted, whether the asylum application will be rejected or further research is required.

Three scenarios are possible:

- ❖ **The application is granted** (refugee protection or subsidiary protection): On the same day the application is granted, the asylum seeker receives a report of the interview and the positive decision;
- ❖ **The application is rejected**: On the same day (day 1) the application is rejected; the asylum seeker receives a report of the interview and the intention to reject his or her asylum application. The asylum seeker discusses the report of the interview and the written intention the next day (day 2) with his or her 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;

Further research: When further research is required, the application will be assessed in a 6-day procedure (day 1: interview; day 2: review of the interview and corrections and additions; day 3: written intention to reject the asylum application; day 4: submission of the view by the lawyer; day 5: delivery of decision and day 6: distribution of decision). When necessary the procedure can be extended up to 20 days.

When the asylum seeker receives a decision that his or her subsequent asylum application has been rejected, the asylum seeker can be expelled. The asylum seeker could, under certain conditions, be expelled even at the moment the written intention to reject the subsequent application is taken.

An appeal before the Regional Court can be lodged against a negative decision on the subsequent asylum application. However, lodging an appeal does not automatically have suspensive effect for the asylum seeker to remain lawfully in the Netherlands, which means he or she may be expelled during the appeal. To prevent this, the asylum seeker has to request for a provisional measure with the Regional Court.³⁰⁹ The appeal has to be lodged within one week after the rejection.³¹⁰ The court mainly examines if the elements and findings are 'new' in the sense of the Aliens Act (and Aliens Circular) and the General Administrative Law Act (GALA).³¹¹ After the decision of the Regional Court the asylum seeker can lodge an onward appeal with the Council of State. As a result of the *Gnandi* judgment of the CJEU, divergent national case law has been delivered on the matter in which cases an appeal has automatic suspensive effect, also regarding to an appeal to the refusal of a subsequent asylum application. However, in a judgment of 29 January 2020 in a case involving a fourth asylum application and in which the third-country national was placed in detention, the Council of State ruled that the *Gnandi* judgment did apply.³¹² The legal effects of the return decision were thus suspended. In view of this judgment, it therefore seems that the *Gnandi* judgment applies to a subsequent application.

A problem arises when an asylum seeker with a re-entry ban, issued on the ground that he or she has a criminal past,³¹³ lodges a subsequent asylum application. In that case their asylum application will be assessed by the IND, but an appeal against the rejection of the asylum application will be considered inadmissible by the Regional Court.³¹⁴ The asylum seeker has to request for cancellation/revocation of the re-entry ban.

³⁰⁹ Article 82(2)(b) Aliens Act.

³¹⁰ Article 69(2) Aliens Act.

³¹¹ Article 30a(1)(d) Aliens Act and Paragraph C1/2.7 Aliens Circular.

³¹² Council of State, Decision No 201903236/1, 29 January 2020.

³¹³ In Dutch, a so called "*zwaar inreisverbod*" as laid down in Article 66a(7) Aliens Act.

³¹⁴ Council of State, Decision No 201207041/1, 19 December 2013.

In 2020, the number of subsequent asylum applications was 1,596.

Subsequent applicants in the Netherlands by top 10 countries of origin : 2020	
Country of origin	Number
Afghanistan	182
Iran	182
Iraq	175
Syria	83
Morocco	73
Nigeria	96
Total	1,596

Source: IND Asylum trends, 2020

F. The safe country concepts

Indicators: Safe Country Concepts

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

1. First country of asylum

1.1. Third countries

An asylum application can be declared inadmissible when the asylum seeker has been recognised as refugee in a third country and can still receive protection in that country, or can enjoy sufficient protection in that country, including protection from *refoulement*, and will be re-admitted to the territory of that particular third country.³¹⁵ This inadmissibility clause is an implementation of Article 33 (2) (b) and Article 35 Procedure Directive.

As stipulated in Paragraph C2/6.2 of the Aliens Circular, the IND assumes that the asylum seeker will be re-admitted in the third country in case:

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

In the situations mentioned above, the IND assumes that the asylum seeker will be re-admitted to the third country, unless the asylum seeker can substantiate (make it plausible) that he or she will not be re-admitted to the third country. The first country of asylum concept is barely used in practice. Often, the

³¹⁵ Article 30a(1)(b) Aliens Act.

(general) third country concept is used. However, there are a few cases concerning **Uganda** as the first country of asylum.³¹⁶

1.2 EU Member States

An asylum application will be declared inadmissible if the asylum seeker has international protection in another EU Member State (Article 30a (1) under a of the Aliens Act). Even if the residence permit has expired, the asylum application will be declared inadmissible.³¹⁷ This is because it is assumed that the international protection status can only be actively withdrawn and cannot simply expire.

Asylum seekers have often argued that their return to another Member State would be contrary to Article 3 ECHR. However, this is hardly ever accepted by the courts. Since the *Ibrahim* judgment³¹⁸, the focus of the general situation in the Member State seems to have shifted to the particular vulnerability of the foreign national. But the case law with regard to the special vulnerability is also very strict. For example, families, single parents and status holders with PTSD are not automatically seen as particularly vulnerable by the Council of State.³¹⁹

There are two EU-member states to which the case law for status holders is a bit more positive: Hungary and Bulgaria. The Council of State ruled in 2020 that the State Secretary must provide further reasons why the status holder and her minor children, due to their special vulnerability, would not end up in a state of material deprivation as described in the *Ibrahim* judgment, in violation of Article 3 ECHR after their return to **Hungary**. The country information included by the Council of State showed that conditions in Hungary are extremely difficult for status holders. The Council also considered that the Hungarian authorities have not been willing to assist status holders and even actively oppose them.³²⁰ With regard to **Bulgaria**, the Regional Court of Den Bosch ruled in 2020 that the State Secretary must make sure that the status holders will not end up in a situation of material deprivation as described in the *Ibrahim* judgment, after their return to Bulgaria. Individual guarantees in that regard needs to be obtained. This will not be easy, given the 'catch 22' situation in Bulgaria regarding the requirement to have identity papers for housing and vice versa.³²¹

In September 2019, the Council of State asked prejudicial questions about the detention of EU status holders.³²² The question was whether the Return Directive prevents EU status holders from being detained on national grounds, given that with such detention, removal to another Member State and for that reason an order was given to leave for the territory of that Member State but no return decision has subsequently been taken. In its Opinion, the AG states that the Return Directive does not prevent foreign nationals from entering custody.³²³

Most EU-status holders that apply for asylum in the Netherlands come from **Greece**. The Council of State has repeatedly assessed the situation in Greece as not in breach of Article 3 ECHR.³²⁴ On 11 December 2020 an article in the *Volkscrant* mentioned some 'unexpected statuses' from Greece.³²⁵ The article describes that there have recently been many asylum seekers who have entered the EU via Greece and left for the Netherlands without receiving a status or having had asylum interviews. Once in the Netherlands they apply for asylum, but they might need to wait because of the delays in the asylum

³¹⁶ Regional Court Arnhem, ECLI:NL:RBDHA:2020:7946, 19 August 2020 and Council of State, ECLI:NL:RVS:2018:1083, 29 March 2018.

³¹⁷ Council of State, ECLI:NL:RVS:2017:1253, 7 December 2017.

³¹⁸ CJEU, C-297/17, C-318/17, C-319/17 en C-438/17, 19 March 2020.

³¹⁹ Council of State, ECLI:NL:RVS:2020:1102, 22 April 2020 (single parents are not particularly vulnerable), Regional Court Middelburg, Decision No NL20.15979, 24 November 2020 (PTSD on its own does not lead to particular vulnerability).

³²⁰ Council of State, ECLI:NL:RVS:2020:1088, 22 April 2020.

³²¹ Regional Court Den Bosch, ECLI:NL:RBDHA:2020:10437, 19 October 2020.

³²² Council of State, 4 September 2019, ECLI:NL:RVS:2019:3053.

³²³ Advocate General Szpunar, C-673/19, 20 October 2020.

³²⁴ Council of State, ECLI:NL:RVS:2018:1795, 30 May 2018.

³²⁵ Irene de Zwaan, *Onrust onder asielzoekers die onverwacht een status in Griekenland hebben gekregen*, 11 December 2020, *Volkscrant*, available in Dutch at: <https://bit.ly/2XXL35W>.

procedure. After some (sometimes a very long) time, the IND investigates whether Greece might have granted them a status – even though in EURODAC it is stated that they only have fingerprints or an asylum request. The investigation subsequently showed that Greece granted them a status while they were already residing in the Netherlands. In such a case, the IND still declares the application inadmissible. This practice is particularly interesting because of the blocking of Dublin transfers to Greece by the Council of State (see [Dublin \(“Track 1”\)](#)).

2. Safe third country

An asylum application can be declared inadmissible in case a third country is regarded a safe third country for the asylum seeker.³²⁶ There is no list of safe third countries. The concept is applied on a case by case basis. There are three criteria that have to be fulfilled: the safety criterium, the connection criterium and the admission criterium.

2.1. Safety criteria

Article 3.106a(1) of the Aliens Decree provides the criteria for a country to be considered a safe third country. This is an implementation of Article 38 of the Asylum Procedures Directive. Article 3.37e of the Aliens Regulation provides that the Secretary of State's assessment as to whether a third country can be considered to be safe should be based on a number of sources of information, specifically from EASO, UNHCR, the Council of Europe and other relevant / authoritative / reputable organisations. In four cases concerning **Kuwait**, the **United Arab Emirates** and **Russia**, the Council of State ruled that the State Secretary must rely on country of origin information which must be transparent and also applicable to the individual asylum seeker's case.³²⁷ It also noted that a country qualifies as a safe third country when the applicant is admitted in that country.

The law does not expressly require the third country to have ratified the Refugee Convention without limitation. The Council of State found that Article 38 of the recast Asylum Procedures Directive does not require the third country to have ratified the Refugee Convention to be considered a safe third country. Nevertheless, the third country must abide by the principle of *non-refoulement*. The cases concerned the **United Arab Emirates** and **Kuwait**.³²⁸

In January 2020, the Regional Court of Amsterdam ruled that it considered **Turkey** a safe third country for Uyghurs from China.³²⁹ Reasons for this judgment were the historical link between Turkey and the Uyghur community and that twenty to thirty thousand Uyghurs live in Turkey. Since 2018, Uyghurs have a special long-term residence permit. Other refugees and asylum seekers in Turkey do not have the right to apply for long-term residence. This permit allows Uyghurs to apply for Turkish citizenship after five years.

2.2. Connection criteria

On the basis of Article 3.106a(2) of the Aliens Decree a connection (*band*) with the third country is required on the basis of which it would be reasonable for the asylum seeker to go to that country. This has been elaborated on in Article 3.37e(3) of the Aliens Regulation and in Paragraph C2/6.3 of the Aliens Circular. According to the IND such a connection exists where:³³⁰

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

³²⁶ Article 30a(1)(c) Aliens Act.

³²⁷ Council of State, Decisions No 201704433/1, No 201703605/1, No 201609584/1, No 201606126/1, 13 December 2017.

³²⁸ Council of State, Decisions No 201704433/1, No 201703605/1, No 201609584/1, 13 December 2017.

³²⁹ Regional Court Amsterdam, Decision No NL19.30580, 15 January 2020.

³³⁰ Paragraph C2/6.3 Aliens Circular.

- ❖ The asylum seeker has stayed in the third country.

As regards the nationality of the partner of the asylum seeker, the Regional Court Arnhem ruled that there is still a connection between the asylum seeker and the country of nationality of his partner when the partner has permanently moved away from her country of nationality.³³¹ The Regional Court The Hague examined the relevance of a connection (*band*) to the United States for an Afghan national who worked as an interpreter to the US Army and US Government in Afghanistan. The court concluded that a sufficient connection existed for the “safe third country” concept to be applicable³³² although the admission criterion was not met.

The Dutch Council for Refugees is not aware of cases in which mere transit through a third country was considered to be sufficient to declare the asylum request inadmissible on the basis of the concept of safe third country.

2.3 Admission criterion

Positive case law with regard to the admission criterion is scarce. Although the policy assumes a heavy burden of proof for the IND, in practice it is quickly assumed that this burden of proof has been met. Even in subsequent asylum applications in which the asylum seeker argues that he was not able to get admitted to the third country of origin, is often negative. For example, the Regional Court Utrecht considered **Brazil** to be a safe third country for two Turkish asylum seekers, even though their passports were expired. The Court ruled that re-admission to Brazil was probably possible after asking for a visa or a laissez-passer at the Brazilian embassy and then asking for asylum again upon their arrival in Brazil.³³³

3. Safe country of origin

An asylum request can be declared manifestly unfounded in case the asylum seeker is from a safe country of origin.³³⁴ Applicants presumed to come from safe countries of origin are channelled under the **Accelerated Procedure** (“Track 2”) by the IND.

In case an asylum seeker is from a safe country of origin, it is presumed that he/she has no well-founded fear of persecution and does not run the risk of treatment contrary to Article 3 ECHR. However, the IND has to assess in every individual case whether, on the basis of the applicants statements, this country is indeed safe for the asylum seeker. In other words, the IND must consider whether the authorities of the applicants’ country of origin, in practice, comply with their obligations under the relevant human rights treaties.

The IND cannot maintain the presumption of safe country of origin if the asylum seeker demonstrates that his or her country of origin cannot be regarded as a safe country for him/her. In that case the IND has to assess whether the asylum seeker is eligible for international protection.³³⁵

Should it become clear, during the Track 2 procedure, that the asylum seeker might have a well-founded fear for persecution (for example because of his or her sexual orientation), more thorough assessment by the IND is required. As a result, the asylum request is further assessed in Track 4. Switching from Track 2 to Track 4 may also occur when for example there is ample medical evidence which demonstrates that the asylum seeker is vulnerable and needs special procedural guarantees.

List of safe countries of origin

³³¹ Regional Court Arnhem, Decision No NL19.13391, 26 July 2019.

³³² Regional Court The Hague, Decision No 17/8274, 26 June 2017.

³³³ Regional Court Utrecht, ECLI:NL:RBDHA:2020:7575, 15 July 2020.

³³⁴ Article 30b(1)(b) Aliens Act.

³³⁵ Paragraph C2/7.2 Aliens Circular.

Anticipating an EU list of safe countries of origin, the State Secretary communicated at the end of 2015 his intention to draft a national list of safe countries of origin.³³⁶ As provided in the recast Asylum Procedures Directive and Article 3.105ba of the Aliens Decree, this national list was annexed to the Aliens Regulation. The list contains countries where, according to the Dutch government, nationals are under no risk of persecution, torture or inhuman or degrading treatment.

As of the end of 2018 the following countries have been designated safe countries of origin as of the.³³⁷ This list is still being applied in 2020.

- ❖ EU Member States and Schengen Associated States
- ❖ Albania
- ❖ Bosnia-Herzegovina
- ❖ Kosovo
- ❖ The republic of North Macedonia
- ❖ Montenegro
- ❖ Serbia
- ❖ Andorra
- ❖ Monaco
- ❖ San Marino
- ❖ Vatican City
- ❖ Australia
- ❖ Canada
- ❖ Japan
- ❖ US
- ❖ New Zealand
- ❖ Ghana
- ❖ India (temporarily suspended)
- ❖ Jamaica
- ❖ Morocco
- ❖ Mongolia
- ❖ Senegal
- ❖ Ukraine
- ❖ Georgia
- ❖ Algeria
- ❖ Tunisia
- ❖ Brazil
- ❖ Trinidad and Tobago

In September 2020, tranches 2 until 5 were reassessed.³³⁸ As a result, the following changes were made to the list of safe countries of origin:

- ❖ India – a reassessment in 2020 showed such deterioration in circumstances that it was decided that the designation of India as a safe country of origin should be suspended.
- ❖ Togo - in December 2018, the State Secretary reassessed the situation in Togo.³³⁹ Awaiting further assessment, Togo was not regarded a safe country of origin. Reassessing in September 2020 the State Secretary decided to delete Togo off the list of safe countries of origin.
- ❖ Algeria – for certain groups of people Algeria is (no longer) regarded a safe country of origin: those who have been openly critical of the authorities and those who adhere to another faith than Islam or do not conform to the Sunni faith within Islam and have encountered problems as a result of that.

³³⁶ KST 19637, 3 November 2015, No 2076.

³³⁷ KST 19637, 9 February 2016, No 2123; KST 19637, 11 October 2016, No 2241; KST 19637, 25 April 2017, No. 2314. The latest amendment added Brazil and Trinidad and Tobago.

³³⁸ KST 19637, nr. 2664, 30 September 2020

³³⁹ KST 19637, No 2448, 7 December 2018, Reassessment safe countries of origin fourth and fifth tranche, available in Dutch at: <https://bit.ly/2HTakJw>.

- ❖ Brazil – Brazil is not regarded a safe country of origin for LGBTI and journalists having reported on corruption, crime or having been openly critical of the authorities. They have been designated a group of higher attention.
- ❖ Morocco – Morocco is not regarded a safe country of origin for Hirak Rif-activists and journalists who have reported on the problematic situation in the Rif.

Application of the concept of safe country of origin

The State Secretary can designate a country as a safe country of origin, while exempting specific groups such as LGBTI or women. In that case, the safe country of origin cannot be regarded as such for a specific group. Those belonging to this group are not faced with an increased burden of proof. The Council of State concurred with the conclusion of the Advocate-General by establishing that a country can be designated a safe country of origin, while making an exception for one or more particular groups of people.³⁴⁰

The State Secretary decided that a country can be designated as safe country of origin, even in case of a small unsafe region, provided that there is a clear division between safe and unsafe parts of the country. The Council of State concurred with this practice of the State Secretary under the condition that there is a clear dividing line between the safe and the non-safe part of the country.³⁴¹

The State Secretary stated that some groups may be designated as 'groups of higher concern' (mainly LGBT persons and persons originating from specific regions/areas). In practice, these groups have a less onerous burden of proof, but the presumption that their country of origin is "safe" is maintained. According to the Council of State the classification as a 'group of higher concern' does not imply an adjustment in the assessment framework, but merely aims to draw the attention of the decision-maker to the fact that the designation of a safe country of origin may not be enforceable in individual cases. The Council of State also considers this to be in line with the recast Asylum Procedures Directive.³⁴²

Since the end of 2015, the Regional Courts have ruled in many cases concerning the question whether the abovementioned countries have been rightly designated as safe countries of origin. Most of these judgments concern the question whether the Secretary of State has, while referring to the required sources, sufficiently substantiated that the country can be considered to be a safe country of origin. In recent years the focus in jurisprudence has shifted somewhat to assessing whether an individual belonging to a group for which an exception has been made, or to a group of higher concern, may run the risk of treatment contrary to Article 3 ECHR.

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

1. Information on the procedure

Indicators: Information on the Procedure

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

As laid down in the Aliens Circular,³⁴³ (representatives of) the Dutch Council for Refugees inform asylum seekers about the asylum procedure during the rest and preparation period (see [Registration](#)). 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

³⁴⁰ Council of State, 1 February 2017, ECLI:NL:RVS:2017:210

³⁴¹ Council of State, 7 July 2017, ECLI:NL:2017:1838

³⁴² For example see: Council of State, Decision No 201606592/1, 1 February 2017; Council of State, Decision No 20174170/1, 22 December 2017 and Council of State, Decision No 201700276/1, 8 March 2017.

³⁴³ Paragraph C1/2 Aliens Circular.

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, asylum seekers receive information from the Dutch Council for Refugees on the Dutch asylum procedure and on their rights and obligations.

The Dutch Council for Refugees also has up-to-date brochures available for every step in the asylum procedure (rest and preparation, short procedure, extended procedure 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 Application Centres.

The IND also has leaflets with information on the different types of procedures, and rights and duties of the asylum seekers, most of which were updated in August 2015.³⁴⁴ A more recent leaflet has been produced for the accelerated procedure (“Track 2”) in April 2017.³⁴⁵ 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 are in use.³⁴⁶

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

There are employees of the Dutch Council for Refugees present in the COL, POL and the Application Centres (AC).

Asylum seekers who are detained during their border procedure do have access to (other) NGOs (such as Amnesty International) and UNHCR. These organisations are able to visit asylum seekers in detention as any other regular visitor, but in practice this hardly happens. On the one hand, asylum seekers are not always familiar with the 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.³⁴⁷

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?³⁴⁸ Yes No
❖ If yes, specify which: Safe countries of origin

³⁴⁴ See e.g. IND, *Your asylum application: Information on the general asylum procedure*, August 2015, available at: <http://bit.ly/2f5a74M>; *The extended asylum procedure*, August 2015, available at: <http://bit.ly/2f3fwJe>.

³⁴⁵ IND, *The simplified asylum procedure*, April 2017, available at: <http://bit.ly/2w3lOiw>.

³⁴⁶ IND, *Which country is responsible for your asylum application? The Dublin procedure*, August 2015, available at: <http://bit.ly/2fuQzHz>.

³⁴⁷ There are also so-called voluntary visitor groups which visit asylum seekers in detention.

³⁴⁸ Whether under the “safe country of origin” concept or otherwise.

In general, applications from asylum seekers from “safe countries of origin” are considered manifestly unfounded and subject to an [Accelerated Procedure](#) (“Track 2”). However, in policy rules exceptions are being made with regard to certain groups, like LGBTI asylum seekers. The safe countries of origin are listed in the section on [Safe Country of Origin](#).

Due to an increase of asylum applications of **Moldavian** nationals the State Secretary of Justice & Security announced specific policy changes towards their application.³⁴⁹ Moldavia is not considered to be a safe country of origin according to the State Secretary of Justice & Security. Nevertheless, the State Secretary announced in December 2019 that Moldavian nationals will be assessed in track 4 (general asylum procedure) with a priority and in less days (more steps in one day). Furthermore, the reception facilities are limited for this group of nationals. They are housed as a group in more modest facilities with limited resources. They do not receive a financial allowance, but they receive benefits in kind such as food and goods for personal hygiene.

³⁴⁹ State Secretary of Justice & Security, “Kamerbrief over maatregelen hoge instroom van Moldaviërs”, 16 December 2019, available in Dutch at: <https://bit.ly/31mXolc> .

Reception Conditions

Short overview of the reception system

The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers – COA) is the authority responsible for the accommodation of asylum seekers and thus manages the reception centres. Asylum seekers who enter the Netherlands by land have to apply at the Central Reception Centre (Centraal Opvanglocatie, COL) in **Ter Apel**, where they should stay for a maximum of three days. The COL is not designed for a long stay. If applicants arrive during the weekend they will have access to night reception until registration on the first working day. After this stay at the COL, the asylum seeker is transferred to a Process Reception Centre (Proces Opvanglocatie, POL). There are four POL in the Netherlands: **Ter Apel**, **Budel**, **Wageningen**, and **Gilze**, totalling a capacity of 2,000 places.

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

During the procedure asylum seekers are housed in collective centres. There is no possibility of individual housing, provided by the state at this point.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

1. Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
2. Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
3. Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
4. Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
5. First appeal ³⁵⁰	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
6. Onward appeal ³⁵¹	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
7. Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
- 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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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 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 set out in Article 9(1) RVA (Regulation on benefits for asylum seekers and other categories of foreigners 2005).³⁵² The organ responsible for both material as well as non-material reception of asylum seekers is the COA, according to the Reception Act.³⁵³

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

³⁵⁰ Except where there is no suspensive effect.

³⁵¹ Unless provisional measures are granted by the Council of State: Article 3(3)(a) RVA.

³⁵² Article 9(1) RVA.

³⁵³ Article 3(1) RVA.

application is still in process. The asylum seeker can use this “W document” to prove his or her identity, nationality and lawful stay in the Netherlands.³⁵⁴ 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.³⁵⁵ There are no reports indicating that asylum seekers are unable to access material reception conditions or that there are any obstacles which prevent asylum seekers entitled to material reception conditions from accessing them in practice.

1.1. Right to reception in different procedural stages

The COA only provides reception to the categories of people listed in the RVA. The system is based on the principle that all asylum seekers are entitled to material reception conditions. However, according to Dutch legislation only applicants who lack resources are entitled to material reception conditions.³⁵⁶ During the whole asylum procedure the COA is responsible for the reception of asylum seekers.

Rest and preparation period: During the rest and preparation period an individual is already considered an asylum seeker under the RVA because this person has made an application for asylum. So already during the rest and preparation period an individual is entitled to reception. However, daily allowances are reduced during the rest and preparation period.³⁵⁷ Due to the long waiting times starting from 2019, this has become an issue (see [The rest and preparation period](#)). The RVA distinguishes between asylum seekers awaiting the start of their asylum procedure and asylum seekers awaiting the decision. On 29 July 2020, the Council of State ruled that this distinction is permitted by the Reception Conditions Directive.³⁵⁸ The applicants pointed to Article 2(f) RCD for arguing that the distinction made by the RVA is not in accordance with EU-law. Article 2(f) RCD states that ‘material reception conditions’ include reception provided in kind, or as financial allowances or in vouchers, or a combination of the three, *and* a daily expenses allowance. However, the Council of State concluded that this article in the RCD is merely an article giving definitions and cannot be used as a legal basis for the right to receive a financial allowance for daily expenses. Therefore, the Council of State found that the distinction made in the RVA, resulting in not giving daily allowances to asylum seekers in the RVT, is not in contradiction with EU-law.

Asylum procedure/awaiting the decision: During the actual procedure, asylum seekers stay in a process reception location (POL) and while they wait for the decision of the IND, they stay in an AZC. Asylum seekers whose asylum application is processed in ‘Track 2’, however, must – as of September 2020 – stay in a ‘austere’ reception centre. In this reception centre they receive benefits in kind, they have to report daily, and extra security is present.³⁵⁹ Even if the asylum seeker appeals after the rejection of his asylum application, he will remain in the austere reception centre. Children and vulnerable asylum seekers are excluded from the austerity of reception but must adhere to the austerity regime (reporting daily) in the AZC.

Rejection / appeal: Pursuant to article 5 of the RVA, the right to reception of the rejected asylum seeker continues to exist as long as no deportation decision is taken under the Aliens Act is not taken. Article 82 of the Aliens Act provides that an appeal against the rejection of an asylum application has an automatic suspensive effect even before the appeal is lodged. The asylum seeker therefore retains his right to reception if he lodges an appeal within 4 weeks and then until a decision has been taken on this appeal. From the moment the appeal is declared unfounded, the departure period of (usually) 4 weeks starts.

The negative asylum decision does not automatically have suspensive effect in all cases. There is no automatic suspensive effect in case of:

- ❖ a rejection based on the Dublin procedure (Article 30 of the Aliens Act),

³⁵⁴ IND, ‘Vreemdelingen Identiteitsbewijs (Type W en W2)’, available in Dutch at: <http://bit.ly/2y8JraF>.

³⁵⁵ Article 9 Aliens Act.

³⁵⁶ Article 2(1) RVA.

³⁵⁷ Article 9 sub 5 RVA.

³⁵⁸ Council of State, ECLI:NL:RVS:2020:1803, 29 July 2020.

³⁵⁹ Letter of the Secretary of State, KST 19637, nr 2658, 14 September 2020.

- ❖ asylum applications declared inadmissible (Article 30a of the Aliens Act, with the exception of paragraph 1 under c - safe third country),
- ❖ manifestly unfounded asylum applications (Article 30b of the Aliens Act, with the exception of sub 1 under h - unlawful entry / failure to notify immediately),
- ❖ in the event of “not considering the case on its merits” (article 30c of the Aliens Act) and the rejection of subsequent applications on the basis of article 4:6 GALA.

Nevertheless, even in these cases the asylum seeker does not immediately lose his/her right to reception. He/she retains it for the duration of the remedy period (four weeks after rejection). This can be deduced from the jurisprudence of the Council of State following the *Gnandi* judgment (C-181/16).³⁶⁰ The *Gnandi* judgment shows that all legal consequences of a return decision must be suspended by operation of law during the legal remedies period. The remedy period is the period in which it is still possible to lodge an appeal, while it has not yet been used. During this period, according to the Council of State, there is a national right of residence of a temporary nature.³⁶¹ This right of residence concerns lawful residence on the basis of Article 8 opening words under h of the Aliens Act: "pending the decision on appeal". On the basis of the interpretation in accordance with the directive, 'appeal' should also be read as 'request (for a provisional measure)'. The rejection of an asylum application as manifestly unfounded does not therefore lead to the loss of lawful residence. In addition, residence after requesting a provisional measure remains lawful until a decision has been made on that request, on the basis of article 8 opening words under h of the Aliens Act jo. art. 7.3 Vb (cf. Article 46 (6) and (8) of the Procedural Directive).

However, in the case of beneficiaries of international protection from other EU-member states, the COA often does not wait for the applicant to request a provisional measure before ending their stay at the reception centre. Therefore, the Council of State ruled that asylum seekers, whose application is deemed inadmissible because they received protection in another EU-member state, had the right to reception during the period following the inadmissibility decision in which they were able to appeal.³⁶²

Onward appeal: If the person lodges an onward appeal to the Council of State, there generally is no entitlement to reception facilities. However, the law subscribes that, in case that a provisional measure is granted by the Council of State, proclaiming that the asylum seeker cannot be expelled until the decision on the appeal is made, there is a right to reception.³⁶³

Status holders: When the asylum application is granted, the asylum seeker will retain the right to shelter until there is housing available.

Subsequent applicants: When an asylum seeker wishes to lodge a [Subsequent Application](#) he or she has to complete a separate form. From this point onwards, the asylum seeker enjoys the right to reception.³⁶⁴ However, if the form is not completely filled in (e.g. when no new circumstances are put forward) the application will be disregarded and the right to reception will end.³⁶⁵ When the form is complete, and the application is being handled during the short or extended asylum procedure, the asylum seeker enjoys the right to shelter until the IND has made a decision on the application.

If the subsequent application is rejected, the applicant must ask a preliminary ruling in order to keep his right to reception. In two judgments, the Council of State ruled that the main rule for subsequent applications based on EU Directives is that the processing of a request for a preliminary ruling after rejection may be awaited in the reception center.³⁶⁶ There are two exceptions: there is no *novum* and the subsequent application was submitted to frustrate the deportation (This is assumed if the deportation

³⁶⁰ Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019.

³⁶¹ Council of State, ECLI:NL:RVS:2019:3442, 15 October 2019.

³⁶² Council of State, ECLI:NL:RVS:2020:8, 6 January 2020.

³⁶³ Article 3(3)(a) RVA.

³⁶⁴ Council of State, Decision No 201706173/1, 28 June 2018.

³⁶⁵ Article 30c (1) Aliens Act.

³⁶⁶ Council of State, ECLI:NL:RVS:2019:4358, 19 December 2019 and ECLI:NL:RVS: 2020:244, 29 January 2020.

date is known.) If the main rule applies to the case, the asylum seeker retains the right to reception after rejection of the subsequent application until a decision in appeal has been made.

1.2. Assessment of resources

According to Dutch legislation only asylum seekers who lack resources are entitled to material reception conditions.³⁶⁷ There is no specific assessment to determine the resources of the asylum seeker. 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 €6,295 for a single person and €12,590 for a married couple), 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.³⁶⁸ The assessment of resources is carried out two days after the asylum seeker has been moved to a Centre for Asylum Seekers (AZC).

In theory reception facilities can be withdrawn or refused if asylum seekers have resources of their own. In practice this rarely happens but it is a possibility. For instance, in 2016 it came to the attention of the Dutch Council for Refugees that the COA considers asylum seekers that have a derived refugee status (based on their relationship with a refugee) and that now want to get a divorce and lodge their own asylum application, are still having enough resources. According to the COA, these people are to be regarded as spouses of people who have a right to housing in the municipality, even when they filed for divorce, and as such they can be considered as asylum seekers with enough resources of their own. They are therefore not entitled to reception facilities. This practice has continued throughout 2020.

In 2020 another problem arose: asylum seekers who received penalties from the IND because the decision upon their asylum application was not on time, were considered to have enough resources. The COA considered these penalty payments as assets. As the COA often did not reclaim this immediately, asylum seekers had already spent it, for example, on air tickets for their family members. A solution has not been found yet.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2020 (in original currency and in €):
 - ❖ Single adult accommodated by COA: €239.12

The allowance of €239.12 /month covers food, clothing and personal expenses, but it does not include public transportation nor medical costs.

The right to reception conditions includes an entitlement to:³⁶⁹

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

The weekly allowance depends on the situation of the applicant. Asylum seekers have the possibility to have the main meal 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, the amounts are as follows:

³⁶⁷ Article 2(1) RVA.

³⁶⁸ Article 20(2) RVA.

³⁶⁹ Article 9(1) RVA.

Weekly allowance to asylum seekers accommodated by COA		
Category of applicant	With food provided	Without food provided
1-2 person household		
Adult or unaccompanied minor	€31.57	€46.83
Child	€26.60	€38.64
3 person household		
Adult	€25.27	€37.45
Child	€21.28	€30.94
4+ person household		
Adult	€22.12	€32.76
Child	€18.62	€27.02

Source: Article 14(2)-(3) RVA.

The cost for clothes and other expenses is covered by a fixed amount of €12.95 per week per person.³⁷⁰ Unlike the other allowances, this allowance is not fixed and adjusted annually which has been criticized by academia.³⁷¹

As of 1 January 2021, the social welfare allowance for Dutch citizens is set at €1,052 for a single person who is at least 21 years old. An asylum seeker receives approximately less than 30% of the social welfare allowance provided to Dutch citizens. However, it has to be acknowledged that it is difficult to compare these amounts as asylum seekers are offered accommodation and other benefits.

Due to the large numbers of asylum seekers applying for asylum in 2015, the Secretary of State made it possible for asylum seekers who had been granted a residence permit but were still accommodated in the AZC to stay with family and friends from the moment they obtained their residence permit until suitable housing was found.³⁷² According to the COA, this is still possible based on Articles 11(1) and 9(1) RVA.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

Article 10 RVA sets out the grounds for restricting or, in exceptional cases, withdrawing reception conditions. These include cases where the asylum seeker:

- ❖ Has left the reception centre without informing the COA or without permission, if permission is required;
- ❖ Has not reported to the reception centre for two weeks;³⁷³
- ❖ Has failed to respond to COA requests for information for two weeks, including personal details required for registration in the centre;
- ❖ Has failed to appear for the personal interview with the IND for two consecutive times;
- ❖ Has lodged a subsequent application after a final decision;
- ❖ Has concealed financial resources and therefore improperly benefitted from reception;
- ❖ Does not pay back a fee paid to him or her for childbirth costs;

³⁷⁰ Article 14(4) RVA.

³⁷¹ L. Slingenberg, *Geen cent te makken*, A&MR 2020, nr. 6-7, p. 292-295.

³⁷² Secretary of State, Decision No 677862, 10 September 2015.

³⁷³ Article 19(1)(e) RVA. This provision sets out the obligation to report to the centre once a week.

- ❖ Seriously violates the house rules of the centre;³⁷⁴ Has committed a serious form of violence to asylum seekers staying in the centre, persons employed in the centre or others.

Measures that can be imposed in the aforementioned circumstances are sanctions and preventative measures (*Reglement Onthoudingen Verstrekkingen* (ROV)). The ROV measures entail an actual reduction or withdrawal of material reception conditions e.g. suspension of the financial allowance or accommodation. Before imposing a measure, the asylum seeker must be heard. Following the *Haqbin* judgment,³⁷⁵ the COA is not allowed to completely withdraw material reception as a sanction. The State Secretary therefore announced that instead of temporarily withdrawing material receptions, ‘time out rooms’ will be introduced in AZCs.³⁷⁶ Data about the use of these rooms is not available yet.

Asylum seekers aged 16 or more who seriously violate the house rules of reception centres or who otherwise demonstrate aggressive behaviour may also be transferred to Enforcement and Surveillance Location (*Handhaving en toezichtlocatie*, HTL) in **Hoogeveen** at a former prison building.³⁷⁷ Placement in the HTL is accompanied by a freedom-restricting measure on the basis of Article 56 of the Aliens Act.

Reduction of reception facilities is a decision of the COA and therefore subject to the Aliens Act regarding applicable legal remedies.³⁷⁸ This means that the same court that decides on alien’s law matters is competent. A lawyer can get an allowance from the Legal Aid Board to defend the asylum seeker. If the decision becomes irrevocable the measures cannot be re-instated.

4. Freedom of movement

Indicators: Freedom of Movement

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

The stage and type of asylum procedure applicable to the asylum seeker is relevant relating to the type of accommodation he or she is entitled to. Every asylum seeker not subject to the border procedure starts in the COL (Central Reception Centre) and is transferred to the POL (Process Reception Centre). After this the asylum seeker is transferred to an AZC (Centre for Asylum Seekers) if he or she is still entitled to reception conditions, that is if he or she (i) is granted a permit, (ii) is referred to the extended asylum procedure, (iii) lodges an appeal with suspensive effect, or (iv) is entitled to a four week departure period (see [Criteria and Restrictions](#)).

Moreover, asylum seekers can be moved to another AZC due to the closure of the centre they are currently staying at or because this serves the execution of the asylum procedure, e.g. in order to avoid that the AZC is so full this would create tension amongst the residents. It may also happen that the applicant has to relocate from one reception centre to another if their case changes “tracks” during the procedure, for example if they are moved from the accelerated procedure (“Track 2”) to the regular procedure (“Track 4”).

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.³⁷⁹

³⁷⁴ Article 19(1) RVA.

³⁷⁵ CJEU, C-233/18, 12 November 2019.

³⁷⁶ Letter of the Secretary of State, Parliamentary Documents 19637, nr. 2642, 1 July 2020.

³⁷⁷ Article 1(n) RVA.

³⁷⁸ Article 5 Reception Act.

³⁷⁹ Regional Court Roermond, Decision No 09/29454, 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.

With regard to the transfer of families with children and unaccompanied minors, a report was written by Defence for Children, Kerk in Actie, UNICEF, the Dutch Council for Refugees and War Child. The report makes several recommendations to improve the situation of children in reception centres, for example not to move children from one place to another. The Secretary of State has acknowledged the need to minimise the movements these children make during the asylum procedure.³⁸⁰ However, similar recommendations are made more in a recent general report on the living conditions of children in reception centres.³⁸¹

In 2019, there were 2,540 transfers from one AZC to another, out of which 690 were requested by the applicants themselves, 1,650 were requested by the COA, less than 5 were forced and 200 were due to the closure of centres. The numbers of transfers in 2020 are not available.³⁸²

AZC are so-called open centres in which the freedom of movement of asylum seekers is not restricted. This entails that asylum seekers are free to go outside if they please. However, there is a weekly duty to report (*meldplicht*) and if asylum seekers fail to report themselves twice the reception conditions will be withdrawn.³⁸³

Rejected asylum seekers, whose claims are rejected without any legal remedies, are not entitled to reception and may be placed in locations where their freedom of movement is restricted (*Vrijheidsbeperkende locatie*, VBL), such as family housing (*Gezinslocatie*, GL). An applicant is transferred to a VBL if he or she is willing to cooperate in establishing departure and there is a possibility to depart. In case of a family with minor children cooperation is not required for the transfer to a GL. In these centres they are not detained but their freedom is restricted to a certain municipality. Although this is not really controlled by the authorities, asylum seekers have to report six days a week (daily except on Sundays). It is therefore difficult to leave the municipality in practice.³⁸⁴ The penalty for not reporting can be a fine or even criminal detention or an indication that the asylum seeker is not willing to cooperate on his or her return. It can further lead to pre-removal detention.³⁸⁵

When the corona crisis broke out, the Lodewijk van Nassau Barracks in **Zoutkamp** became available as an emergency shelter for asylum seekers. The emergency location could accommodate 210 people. The asylum seekers were imposed a "strict area restriction" in connection with corona. That turned out to be so tight that the asylum seekers were not allowed to leave the site. After a visit, UNHCR reported that they were very concerned because many residents were frustrated because of the lack of information and the lack of clarity about the length of their stay in Zoutkamp.³⁸⁶ The emergency accommodation at Zoutkamp closed on 12 May 2020.

³⁸⁰ Defence for Children, Kerk in Actie, UNICEF the Netherlands, the Dutch Council for Refugees and War Child, *Zo kan het ook! Aanbevelingen voor een betere situatie van kinderen in asielzoekerscentra*, 18 November 2016, available in Dutch at www.kind-in-azc.nl.

³⁸¹ Defence for Children, Kerk in Actie, UNICEF the Netherlands, the Dutch Council for Refugees, Stichting de Vrolijkheid and War Child, *Werkgroep Kind in AZC, Leefomstandigheden van kinderen in asielzoekerscentra en gezinslocaties*, 6 June 2016, available in Dutch at www.kind-in-azc.nl.

³⁸² Ministry of Security and Justice, *Rapportage vreemdelingenketen: January-December 2019*, available in Dutch: <https://bit.ly/3bMI1K5>, p 29. Ministry of Security and Justice, *Rapportage Vreemdelingenketen: January – June 2020*, available in Dutch at: <https://bit.ly/3oJJKsp>.

³⁸³ Articles 19(1)(e) and 10(1)(b) RVA.

³⁸⁴ These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restricted measures based on Article 56 in conjunction with Article 54 Aliens Act.

³⁸⁵ Article 108 Aliens Act.

³⁸⁶ UNHCR, *UNHCR bezorgd over situatie noodonderdaklocatie Zoutkamp en stop asielprocedure*, 23 April 2020, available in Dutch here: <https://bit.ly/2Y0MsZl>.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres: 58
2. Total number of places in the reception centres: 27,800
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other
5. Type of accommodation most frequently used in an accelerated procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other

If an asylum seeker from a non-Schengen country has arrived in the Netherlands by plane or boat, the application for asylum must be lodged at the **AC Schiphol**, which is located at the *Justitieel Centrum Schiphol* (JCS).³⁸⁷ The application centre **Schiphol** is a closed centre, which means that asylum seekers are not allowed to leave the centre (see [Place of Detention](#)). Asylum seekers are further not transferred to the POL after the application, as is the case for asylum seekers who entered the Netherlands by land and/or lodged their asylum application at the COL.³⁸⁸ Vulnerable asylum seekers such as children do not stay at JCS.

As of 2020, the total capacity of the Dutch reception system reached 27,800 and the AZCs are full. The COA is thus almost at the maximum responsible occupancy. An even higher occupancy entails risks for the quality of life, manageability and safety of locations. 5,000 extra shelter places are urgently needed. The COA has been asking for this for more than a year,³⁸⁹ and is therefore preparing for escalation options.³⁹⁰ Possibilities include hotel accommodation and bonuses for municipalities that quickly accommodate status holders. The last escalation option is the emergency shelter in sports halls. 5,000 additional places have been announced for 2020 to tackle the significant delays in the rest and preparation period and the subsequent length of stay of asylum seekers in reception centres.³⁹¹ The reception system is divided into different types of accommodation described below.

1.1. Central Reception Centre (COL) and Process Reception Centres (POL)

Asylum seekers who enter the Netherlands by land have to apply at the Central Reception Centre (*Centraal Opvanglocatie*, COL) in **Ter Apel**, where they stay for a maximum of three days. The COL is not designed for a long stay.

After this stay at the COL, the asylum seeker is transferred to a Process Reception Centre (*Proces Opvanglocatie*, POL). There are four POL in the Netherlands: **Ter Apel**, **Budel**, **Wageningen**, **Schiphol** and **Gilze**, totalling a capacity of 2,000 places. Neither capacity nor occupancy of COL and POL are registered.

At the POL the asylum seeker will take the next steps of the rest and preparation period and awaits the official asylum application at the application centre. As soon as the asylum seeker has officially lodged an asylum application he or she receives a certificate of legal stay. Due to lack of capacity in the POL,

³⁸⁷ Article 3(3) Aliens Act.

³⁸⁸ 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.

³⁸⁹ COA, 'COA: 5.000 nieuwe opvangplekken nodig in 2020', 8 november 2019, available in Dutch at: <https://bit.ly/2RYuu09>.

³⁹⁰ Letter of the Secretary of State, 19 637, Nr. 2684, 24 November 2020.

³⁹¹ COA, 'COA: 5.000 nieuwe opvangplekken nodig in 2020', 8 november 2019, available in Dutch at: <https://bit.ly/2RYuu09>.

the so-called pre-POLs have been opened. Often these are located at the site of an AZC, but the people staying at the pre-POL will have the same (limited) facilities as asylum seekers at the POL, so they will have different access to medical care and language lessons, and no weekly allowance. The Dutch Council for Refugees reported that the excessive waiting time in the rest and preparation period (up to two years) has serious consequences regarding the material reception conditions and mental health of asylum seekers, such as access to medical care, tension in the centers due to serious concerns about family reunification and a lack of facilities since the (pre-)POL is not designed for a long stay.³⁹² Also, The Dutch Council for Refugees and the Ombudsman fear a set-back in integration possibilities for applicants since there is no or limited possibility to perform volunteer work or get access to language education.³⁹³

1.2. Centres for Asylum Seekers (AZC)

An asylum seeker remains in the POL if the IND decides to examine the asylum application in the regular asylum procedure (within eight days). If protection is granted, the asylum seeker is transferred to a Centre for Asylum Seekers (*Asielzoekerscentrum*, AZC) before receiving housing in the Netherlands. If the IND decides, usually after four days, to handle the application in the extended asylum procedure, the asylum seeker will also be transferred from the POL to an AZC. At the end of 2020, there were 27,846 persons residing in reception centres managed by COA.³⁹⁴

Due to the large number of asylum applications in 2015, COA was experiencing difficulties to provide accommodation for all asylum seekers. Creative solutions were needed, for example emergency reception centres and allowing refugees with a residence permit to reside with family and friends. The number of people in reception centres has decreased from 47,764 at the end of 2015 to 21,037 at the end of 2017.³⁹⁵ Therefore, such solutions were no longer needed. However, due to the long waiting times at the IND, applicants spend longer periods in the reception centres. In addition, more and more beneficiaries of international protection have to stay in the reception centres awaiting to be housed. At the end of 2020, 7,762 beneficiaries of international protection were staying in COA locations.³⁹⁶ The COA continuously asks for more locations and places. The Secretary of State mentioned in a letter that 95% of the capacity is reached by the COA, which means that the need for more locations is very pressing.³⁹⁷ When new locations will not be found, COA has to recede to emergency reception centres, for examples in sport halls, again.

1.3. Handhaving en Toezichtlocatie (HTL)

The Enforcement and Supervision Location (Handhaving en Toezichtlocatie, HTL) was installed as a special reception centre for asylum seekers who have caused tension or any form of nuisance at an AZC, for example by bullying other inhabitants, destroying materials, exhibiting aggressive behaviour or violating the COA house rules. Minors aged 16 or more can also be transferred to these locations.³⁹⁸ This facility is to be distinguished from VBL or GL, where persons subject to return proceedings may be housed.

The rules in these centres are stricter than in a regular AZC; inhabitants are obliged to report whenever they leave or return to the centre. There are also compulsory day programs during which asylum seekers have limited opportunities to communicate with the outside world.³⁹⁹

³⁹² Dutch refugee Council, *Gevangen in een vastgelopen asielsysteem: Gevolgen en verhalen uit de praktijk*, November 2019, available in Dutch at: <https://bit.ly/2vSP2pW>.

³⁹³ See for example: NOS, "Ombudsman: zakgeld en privacy voor asielzoekers vanwege lange wachttijden", 10 March 2020, available in Dutch at: <https://bit.ly/33OOIL1>.

³⁹⁴ COA, *Bezetting*, available in Dutch at: <http://bit.ly/2E95a6F>.

³⁹⁵ *Ibid.*

³⁹⁶ *Ibid.*

³⁹⁷ Answers to questions of MP Becker by the Secretary of State, KST 730, 9 November 2020.

³⁹⁸ Article 1(n) RVA, Decision of Secretary of State, No 69941, 3 December 2018

³⁹⁹ Article 9 (7) RVA

There is one HTL in **Hoogeveen**, which opened in December 2017 as an EBTL and became a HTL in February 2020. The HTL has a capacity of 50 places.⁴⁰⁰

At the end of 2019 an evaluation of the EBTL took place. It concluded that this type of reception has not been effective in changing the behaviour of violent applicants. This is partly due to the fact that these applicants often have mental disorders and psychiatric problems. As a result, the EBTL was closed.⁴⁰¹ The difference between the EBTL and the HTL is that the HTL objective is no longer to change the behaviour of the applicant. Applicants placed in the HTL will get a stringent area ban and a compulsory day programme. For example, asylum seekers are only allowed to go outside for four hours a day, where they can only stay on a small grass field. Several lawyers have argued that asylum seekers are illegally deprived of their liberty in the HTL. However, the Regional Court of Groningen conducted an on-site investigation and concluded that placement in the HTL is not contrary to Article 5 ECHR.⁴⁰² This was mostly due to the possibility to leave the HTL, even though leaving means that one loses his right to reception.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice?⁴⁰³ Yes No

Residents of a reception centre usually live with 5 to 8 people in one unit. Each unit has several bedrooms and a shared living room, kitchen and sanitary facilities. At the time of writing, there are no reports of serious deficiencies in the sanitary facilities that are provided in the reception centres. Residents are responsible for keeping their habitat in order.⁴⁰⁴ Unaccompanied children live in small-scale shelters, which are specialised in the reception of unaccompanied children. They are intensively monitored to increase their safety (see section on [Special Reception Needs](#)).

Adults can attend programmes and counselling meetings, tailored to the type and stage of the asylum procedure in which they are in. 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 of up to €14 per week doing this.⁴⁰⁵ It is also possible for children as well as adults to participate in courses or sports at the local sports club. Children of school age are obliged to attend school. To practice with teaching materials and to keep in touch with family and friends, asylum seekers can visit the Open Education Centre (*Open Leercentrum*) which is equipped with computers with internet access. Children can do their homework here. There is supervision by other asylum seekers and Dutch volunteers.

AZC 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.⁴⁰⁶ Some reception centres such as HTL, as well as centres for rejected asylum seekers, have a stricter regime. There have previously been some incidents and issues with asylum seekers. Other incidents are related to Dutch citizens protesting the establishment of a reception centre in their city.

⁴⁰⁰ COA, *Extra begeleiding en toezichtlocatie*, available in Dutch at: <http://bit.ly/2Bs9QBB>.

⁴⁰¹ Secretary of State, Letter KST19637 2572, 18 December 2019.

⁴⁰² Regional Court Groningen, ECLI:NL:RBDHA:2020:6252, 10 July 2020.

⁴⁰³ However, this might be possible in the future with the introduction of the EBTL locations to which asylum seekers aged 16 years old or more can be transferred to.

⁴⁰⁴ For more information, see COA, *House rules*, available in Dutch at: <http://bit.ly/2DyKs3K>.

⁴⁰⁵ Article 18(1) and (3) RVA.

⁴⁰⁶ Article 19(1)(e) RVA.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

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-licence for asylum seekers (*tewerkstellingsvergunning*). To acquire an employment-licence the asylum seeker must fulfil the following cumulative conditions:⁴⁰⁷

- ❖ The asylum application has been lodged at least 6 months before and is still pending a (final) decision;
- ❖ The asylum seeker is staying legally in the Netherlands on the basis of Article 8(f) or (h) of the Aliens Act;
- ❖ The asylum seeker is provided reception conditions as they come within the scope of RVA, or under the responsibility of Nidos;
- ❖ The asylum seeker does not exceed the maximum time limit of employment, which is 24 weeks per 12 months;
- ❖ The intended work is conducted under general labour market conditions;
- ❖ The employer submits a copy of the "W document" (identity card).

Despite the fact that Dutch legislation provides for access to the labour market to asylum seekers,⁴⁰⁸ 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 assumed administrative hurdles and the supply on the labour market.

The procedure for applying for an employment licence at the Dutch Employees Insurance Agency in practice takes no longer than 2 weeks, which is the time limit foreseen in law.⁴⁰⁹ Moreover, although access to the labour market is granted 6 months after the application has been lodged, before the employer can apply for the work permit, a declaration of reception must be obtained. Therefore, the time for obtaining the declaration of reception should be added to the waiting period before employment. In conclusion, the moment the asylum seeker has the right to perform paid labour differs significantly from the moment he or she can in fact exercise it.

If asylum seekers are employed and stay in the reception facility arranged by the COA, they should contribute a certain amount of money to the accommodation costs. Asylum seekers are allowed to keep 25% of their income with a maximum of €215 per month. In case their monthly income becomes higher than the contribution to accommodation costs, they can keep any surplus income.⁴¹⁰ This depends on

⁴⁰⁷ Article 2(a) Aliens Labour Decree.

⁴⁰⁸ Article 2(a)(1) first sentence and (a), (b) and (c) Aliens Labour Decree.

⁴⁰⁹ Article 6 Aliens Labour Act.

⁴¹⁰ Article 5(4) Regeling eigen bijdrage asielzoekers met inkomen (Reba).

how much they 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 voluntary work. This is possible as from the moment the asylum procedure has started. The employer needs a “volunteer’s declaration” form from the Dutch Employees Insurance Agency. Work usually needs to be unpaid, non-profit and of social value.⁴¹¹

Asylum seekers are allowed to do an internship according to the rules explained above (after six months in procedure and with a permit (“tewerkstellingsvergunning”). Only when the internship forms an obligatory part of their study, these conditions do not apply. In that case the internship is allowed directly after lodging the asylum application and a permit is not required.⁴¹²

2. Access to education

Indicators: Access to Education

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

According to Article 3 of the Compulsory Education Act, education is mandatory for every child under 18, including asylum seekers.⁴¹³ Asylum-seeking children have the same rights to education as Dutch children or children who are treated in the same way e.g. children with a residence permit. This also applies to children with special needs: if possible, arrangements will be made to ensure that those children get the attention they deserve.⁴¹⁴ Every AZC is in touch with and has arrangements with an elementary school nearby. However, if the parents wish to send their child to another school, they are free to do so.

Children below 12 go to elementary school either at the school nearby the AZC or at the AZC itself. Children between the age of 12 and 18 are first taught in an international class. When their level of Dutch is considered to be sufficient, they enrol in the suitable education programme.⁴¹⁵

According to the RVA, the COA provides access to educational programmes for adults at the AZC.⁴¹⁶ Depending on the stage of the asylum application, the COA offers different educational programmes including vocational training. Refugees who have been granted a residence permit can still be offered an educational programme.⁴¹⁷

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

⁴¹¹ Article 1a(b) Aliens Labour Decree.

⁴¹² Article 1g(a) Aliens Labour Decree

⁴¹³ Law of 30 May 1968 houdende vaststelling Leerplichtwet 1969, available in Dutch at: <http://bit.ly/2kKXQpV>.

⁴¹⁴ Available at: <http://www.lowan.nl/>.

⁴¹⁵ For more information see the Agreement of 28 April 2016 concerning the increased influx of asylum seekers as Annex to Minister of Internal Affairs, Letter No 19637/2182, 28 April 2016, available at <http://bit.ly/2miTKiV>; and the website of the COA, available at: <http://bit.ly/2lBa5Ht>.

⁴¹⁶ Article 9(3)(d) RVA.

⁴¹⁷ Article 12(1) RVA.

D. Health care

Indicators: Health Care

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

The COA is responsible for the provision of health care in the reception centres. In principle, the health care provided to asylum seekers should be in line with the regular health care applied in the Netherlands. As any other person in the Netherlands, an asylum seeker can therefore visit a general practitioner, midwife or hospital. As of 1 January 2018, the [Regeling Medische zorg Asielzoekers \(RMA\) Healthcare](#) was the first point of reference for asylum seeker who had health issues.

The relevant legal provision can be found in Article 9(1)(e) RVA. This provision is further elaborated in the Healthcare for Asylum Seekers Regulation (*Regeling Zorg Asielzoekers*). According to the latter, asylum seekers have access to basic health care. This includes *inter alia*, hospitalisation, consultations with a general practitioner, physiotherapy, dental care (only in extreme cases) and consultations with a psychologist. If necessary, an asylum seeker can be referred to a mental hospital for day treatment. There are several institutions specialised in the treatment of asylum seekers with psychological problems, such as [Phoenix](#).

When an asylum seeker stays in a reception facility but the RVA is not applicable, health care is arranged differently. Asylum seekers in the POL, the COL, as well as rejected asylum seekers in the VBL and adults in the GL only have access to emergency health care.⁴¹⁸ In medical emergency situations, there is always a right to healthcare, according to Article 10 of the Aliens Act. For this group, problems can arise if there is a medical problem which does not constitute an emergency. Care providers who do help irregular migrants who are unable to pay their own medical treatment can declare those costs at a special foundation, which then pays the costs. The National Ombudsman has investigated access to health care for asylum seekers and rejected asylum seekers and has requested the Minister of Public Health to ensure that undocumented migrants also have access to health care.⁴¹⁹

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

Asylum seekers, undocumented migrants and migrants in detention centers are explicitly included in the COVID-19 vaccination strategy.⁴²⁰

⁴¹⁸ Article 10(2) Aliens Act.

⁴¹⁹ Ombudsman, Report on health care for asylum seekers and rejected asylum seekers, 3 October 2013, available in Dutch at: <http://bit.ly/2mfJ3Cv>; Ombudsman, Letter and recommendations to the Minister of Public Health, 16 December 2015, available at: <http://bit.ly/2kdMvvF>.

⁴²⁰ See, point 2.3. Rijksinstituut voor Volksgezondheid en Milieu, COVID-19-vaccinatie Uitvoeringsrichtlijn, March 2021, available at: <https://bit.ly/30wlHxw>

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

Article 18a RVA refers to Article 21 of the recast Reception Conditions Directive to define asylum seekers considered to be vulnerable. With the exception of specialised accommodation for unaccompanied children, the COA does not provide separate reception centres for women, LGBTI persons or other categories – although there have been calls for their creation.

However, employees of the COA have to make sure that a reception centre provides an adequate standard of living as the COA is responsible for the welfare of the asylum seekers.⁴²¹ In practice, this means that the COA considers 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 himself due to whatever reason, he is allowed to make use of the regular home care facilities; the asylum seeker is entitled to the same health care as a Dutch national.

1. Reception of unaccompanied children

Unaccompanied children younger than 15 are accommodated in foster families and are placed with those families immediately.

Unaccompanied children between 15 and 18 years old are initially accommodated in a special reception location (POL-amv). Children are guided by their guardian of Stichting Nidos, the guardianship agency, and by the Dutch Council for Refugees. They stay in this POL-amv during their procedure for a maximum of 7 weeks. If their application is rejected, they go to small housing units (*kleine woonvoorziening*). The small housing units fall under the responsibility of the COA and are designed for children between the age of 15 and 18 years old, often of different nationalities. These small housing units are located in the area of a larger AZC, at a maximum distance of 15km. The capacity of the small housing units is between 16 and 20 children. The total number of children housed in the small housing and the AZC cannot exceed 100.

A mentor is present 28.5 hours a week. If unaccompanied children receive a residence permit, Nidos is responsible for their accommodation.

At the end of 2020, 441 unaccompanied children were accommodated by the COA.⁴²²

Protection reception locations

Unaccompanied asylum-seeking children are extra vulnerable with regard to human smuggling and trafficking. Children who have a higher risk of becoming a victim, based on the experience of the decision-making authorities, are therefore placed in protection reception locations (*beschermde opvang*). The children are living in small locations, with 24/7 professional guidance available. When a child arrives at **Ter Apel**, Nidos decides whether he or she should be placed in the protection reception location. This reception is carried out by **Jade**, contracted by COA. Their services were inspected by the youth support unit (*Jeugdzorg*) which led to a report in 2017, in which the inspection concluded that still too many children disappear from these locations.⁴²³

⁴²¹ Article 3 Reception Act.

⁴²² COA, "Personen in de opvang uitgesplitst naar leeftijd en land van herkomst", available in Dutch at: <https://bit.ly/2uKH5Cu>; COA, "Personen in de opvang uitgesplitst naar leeftijd en land van herkomst", available in Dutch at: <http://bit.ly/2ipVtYv>.

⁴²³ Jeugdzorg, *De kwaliteit van de beschermde opvang voor alleenstaande minderjarige vreemdelingen Hertoets*, September 2017, available in Dutch at: <http://bit.ly/2DCmlw0>.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

Article 2(3) and (4) RVA is the legal basis for the provision of information to asylum seekers. Article 2(3) states that the COA provides information concerning benefits and obligations with regard to reception, legal aid, and reception conditions within 10 days after the asylum application has been lodged. Article 2(4) states that “The COA provides information in writing in the form of brochures in a language that is understandable for the asylum seeker.” In practice, asylum seekers are informed of the house rules of the reception centre and provide their agreement by signature

The exact content and the modalities of the information provision vary from one reception centre to another. For instance, in some centres information meetings on health care and security in the reception centre are organised in groups, whereas the rights and duties of the asylum seeker in the centre are usually discussed individually.⁴²⁴

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

Article 9(3)(b) RVA 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 access of UNHCR representatives or other legal advisers at reception centres known to the author of this report.

G. Differential treatment of specific nationalities in reception

In general, no distinction is made on grounds of nationality in the Netherlands. However asylum seekers from **safe countries of origin** and third country nationals who have already been granted an international protection status and whose asylum application is dealt with in ‘Track 2’ will only be entitled to ‘austere reception conditions’, see [Access and forms of reception conditions](#).

⁴²⁴ COA, *Infosheets*, available in Dutch at: <http://bit.ly/2lfnQXG>.

Detention of Asylum Seekers

A. General

Indicators: General

1. Total number of persons detained in 2020:	Not available
2. Number of persons in detention at the end of 2020:	300
3. Number of detention centres:	3
4. Total capacity of detention centres:	1,448

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

Statistics published by the Ministry of Justice and Security do not distinguish asylum seekers from other categories of persons in immigration detention:

Immigration detention in the Netherlands		
	2019	From 1 January to 30 June 2020
Total	3,790	990

Source: Ministry of Justice and Security, Rapportage Vreemdelingenketen.

Border detention: Pursuant to Article 6(1) and (2) of the Aliens Act, the third-country national who has been refused entry when he or she wants to enter the Schengen area at the Dutch border, is obliged “to stay in a by the border control officer designated area or place, which can be protected against unauthorised departure.”⁴²⁵ Border detention can be continued with the aim of transferring asylum seekers to the Member State that is responsible for the assessment of their asylum application according to the Dublin Regulation.⁴²⁶

If the alien makes an asylum application at an external border of the Netherlands, his or her application will be assessed in the [Border Procedure](#). Consequently, these asylum seekers can be detained based on Article 6(3) of the Aliens Act.

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 and the whole asylum procedure will take place in detention. Both of the personal interviews (*eerste gehoor* -first interview and *nader gehoor*-second interview) take place in the detention centre. The asylum seekers will be prepared for these interviews by the Dutch Council for Refugees and it is also possible that a staff member of the Dutch Council for Refugees is present at the personal interview. This depends on whether the asylum seeker requests this and whether there is enough staff available. The lawyer is also allowed to be present at the hearing but in practice this rarely happens because lawyers do not receive a remuneration for this activity. During the interview, there are IND accredited interpreters present.⁴²⁷ Following the *Gnandi* judgement of the CJEU⁴²⁸, the grounds for detention during the appeal procedure have been altered in the Aliens Act, see Border Procedure.

⁴²⁵ Article 6 Aliens Act.

⁴²⁶ Article 6a Aliens Act.

⁴²⁷ Regional Court Haarlem, Decision NL18.16477, 19 September 2018; Decision NL18.19950, 6 November 2018.

⁴²⁸ CJEU, Case C-181/16 *Sadikou Gnandi v Belgium*, Judgment of 19 June 2018.

Territorial detention: Asylum seekers may also be detained in the course of the asylum procedure on the territory, in accordance with Article 59b of the Aliens Act, which transposes Article 8 of the recast Reception Conditions Directive. Article 59a of the Aliens Act foresees the possibility to detain an asylum seeker for the purpose of transferring him or her under the Dublin Regulation. This article refers to Article 28 of the EU Dublin Regulation.

Territorial detention is also applicable to persons without a right to legal residence under Article 59 of the Aliens Act. Detention based on Article 59 cannot be applied to asylum seekers during their asylum procedure or in some cases – as a consequence of the *Gnandi* judgment – while they are waiting for the result of their appeal.⁴²⁹

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

- | | | | |
|-------------------------------------------------------------------------|------------------------------------------------|--------------------------------------------|--------------------------------|
| 1. In practice, are most asylum seekers detained? | | | |
| ❖ on the territory: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | |
| ❖ at the border: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input checked="" type="checkbox"/> Frequently | <input type="checkbox"/> Rarely | <input type="checkbox"/> Never |
| 3. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely | <input type="checkbox"/> Never |

1.1. Border detention

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

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

- ❖ Does not possess a valid document to cross the border, or does possess a document to cross the border but lacks the necessary visa;
- ❖ Is a danger to the public order or national security;
- ❖ Does not possess sufficient means to cover the expenses of a stay in the Netherlands as well as travel expenses to a place outside the Netherlands where their access is guaranteed;⁴³⁰
- ❖ Does not fulfil the requirements set by a general policy measure.

These grounds are further elaborated in Article 2.1 to 2.11 of the Aliens Decree and Paragraph A1/3 of the Aliens Circular.

Work Instruction 2020/9 describes the border procedure if a traveller who is refused entry applies for asylum.⁴³¹

⁴²⁹ Secretary of State of Justice and Security: *Memorie van antwoord Wet terugkeer en vreemdelingenbewaring*, 13 December 2018, available in Dutch at: <https://bit.ly/2I580Po>, 7. There was also a decision from the Regional Court of the Hague, Decision NL18.11194, 26 June 2018, with the same conclusion.

⁴³⁰ The Aliens Circular stipulates in paragraph A1/4.5 that the condition of sufficient means will be fulfilled if the asylum seeker disposes of at least €34 per day.

⁴³¹ IND, Work Instruction 2020/9 Border procedure, 27 May 2020, available in Dutch at: <https://bit.ly/2LAIR2T>.

Migrants are mostly detained because they do not fulfil the requirements as set out in Article 3(1)(a) and (c) Aliens Act.⁴³² Migrants, who, after arriving to the Netherlands, apply for asylum, can be detained as well. This is based on Article 6(3) read in conjunction with Article 3(3) of the Aliens Act. They are kept in detention throughout their asylum procedure. Work Instruction 2020/9 lists the cases of exceptions under which the asylum seeker is not subject to the border procedure and is already allowed entry during the asylum procedure (see further [Detention of Vulnerable Applicants](#)).⁴³³

1.2. Territorial detention of asylum seekers

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

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

The first and second paragraphs add the requirement of a risk of absconding for detaining an asylum seeker in order to obtain information. A risk of absconding is demonstrated when at least two grounds for detention, as set out in Article 5.1b(3)-(4) of the Aliens Decree, are applicable.⁴³⁴

Dutch courts have referred questions to the CJEU regarding the compatibility of the grounds for detention of asylum seekers with the Charter of Fundamental Rights. The Council of State referred a preliminary question to the CJEU on the compatibility of detention on grounds of public order or national security, which was affirmed by the Court in *J.N. v. Secretary of State for Security and Justice* in 2016.⁴³⁵ After the CJEU ruling, the Council of State ruled in the same case that, while Article 59b(d) of the Aliens Act is valid, the public order or national security ground may only be fulfilled where there is a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.” The *J.N.* ruling also gave rise to a change of jurisprudence of the Council of State: a subsequent asylum application only suspends the return decision rather than annulling it.⁴³⁶

A question on the compatibility of the grounds for detention regarding identity / nationality and acquisition of information necessary for the assessment of the application was referred by the Regional Court of The Hague, and the CJEU clarified in *K. v. Secretary of State for Security and Justice* that their application was conform with the Charter.⁴³⁷ Even prior to the *K* case, the Council of State had ruled that the general principles regarding the detention of asylum seekers as set out in Articles 8 and 9 of

⁴³² Article 6(1)-(2) Aliens Act.

⁴³³ Article 5.1a(3) Aliens Decree. See IND Work Instruction 2017/1, available in Dutch at: <http://bit.ly/2IZGp2X>.

⁴³⁴ Article 5.1c Aliens Decree.

⁴³⁵ CJEU, Case C-601/15 PPU *J.N.*, Judgment of 15 February 2016.

⁴³⁶ Council of State, Decision No 201507608/2, 8 April 2016.

⁴³⁷ CJEU, Case C-18/16 *K.*, Judgment of 14 September 2017.

the Reception Directive apply to each ground for detention. In this regard the Council of State referred to the findings in *J.N.* (par. 59 - 63). This means that these principles also apply to the ground for detention in order to determine the main elements of the claim.⁴³⁸

Relating to detention of asylum seekers subject to a transfer under the Dublin Regulation under Article 59a of the Aliens Act, there must be a concrete indication that the asylum seeker can be transferred based on the Dublin Regulation. Asylum seekers in Dublin procedures are not systematically detained but they may be detained when there is a significant risk of absconding. According to Article 5.1b(2) of the Aliens Decree, a “significant risk” is demonstrated in the context of the Dublin Regulation when at least two grounds for detention are applicable, of which at least one is “severe”. The “severe” grounds can be found in Article 5.1b(3) of the Aliens Decree, while the “light” grounds are set out in Article 5.1b(4). A significant risk of absconding may already be determined, for example, when the person concerned has not entered the Netherlands lawfully (a “severe” ground) and does not possess sufficient resources (“light” ground).

Detention during the Covid-19 lockdown

During the first Covid 19-lockdown from March 2020, multiple organisations argued that the grounds for detention could not be met as international transport was minimised. Despite these calls,⁴³⁹ detainees were not released, except for 64 Dublin detainees who were released on 18 March 2020.⁴⁴⁰

The Council of State ruled that the corona crisis and the fact there were no flights interfered with the reasonable prospect of removal in general.⁴⁴¹ However, the court stated that the corona virus was just a temporary impediment. The question of a reasonable prospect of removal should be assessed case by case, in general the issues around Covid-19 did not mean that this prospect was abject.

2. Alternatives to detention

Indicators: Alternatives to Detention

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

Detention is supposed to be a matter of last resort.⁴⁴² This is also laid down in policy rules.⁴⁴³ Consequently, one alternative to detention is the limitation of freedom based on Article 56 of the Aliens Act. This includes reporting duties and restriction of freedom of movement, for instance within the borders of one specific municipality (see [Freedom of Movement](#)).

Other alternatives to detention, such as giving a financial guarantee, are rarely used. This has been criticised multiple times. For instance, the Advice Commission on Aliens’ Matters (*Adviescommissie in Vreemdelingenzaken*, ACVZ) has noted in previous years that there is no explicit legal ground stating the circumstances in which an alien cannot be put in detention.⁴⁴⁴ Amnesty International has also argued that there should be a legal obligation imposed on the decision-making authorities to proactively

⁴³⁸ Council of State, Decision No 201600224/1, 13 May 2016.

⁴³⁹ Letter asking for the release of the foreign detainees from Amnesty International, the Dutch Council for Refugees, Doctors from the World, Stichting LOS and the organization for asylum lawyers (VAJM) 5 May 2020, available in Dutch: <https://bit.ly/39ENfoA>.

⁴⁴⁰ See Tweet from *Meldpunt vreemdelingendetentie*: <https://bit.ly/3oUW7Nf>.

⁴⁴¹ Council of State, ECLI:NL:RVS:2020:1141, 29 April 2020.

⁴⁴² Article 59c Aliens Act.

⁴⁴³ Paragraph A5/1 Aliens Circular.

⁴⁴⁴ ACVZ, *Aliens’ detention or a less intrusive measure?*, May 2013, available at: <http://bit.ly/2lbi4Kv>.

consider alternatives to detention.⁴⁴⁵ In 2013, however, there have been pilots on alternatives to aliens' detention.⁴⁴⁶ Unfortunately, not much has changed since then. In 2018, Amnesty International concluded in a report that immigration detention (both territorial and at the border) are applied too often and not just as an *ultimum remedium*.⁴⁴⁷ It further demonstrated that alternatives to imprisonment are only considered if the immigrant actively facilitates his or her expulsion.

A draft Decree relating to a Bill regarding return and detention of aliens, specifies the circumstances in which alternatives to detention can be applied.⁴⁴⁸ However, the adoption of this Bill had been delayed (see below). The Bill has been presented to the Senate of the Dutch Parliament, which is assessing the Bill.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
-------------------------------------	--------------------------------------------	--------------------------------
- ❖ If frequently or rarely, are they only detained in border/transit zones?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
------------------------------	----------------------------------------
2. Are asylum seeking children in families detained in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
-------------------------------------	--------------------------------------------	--------------------------------

3.1. Border detention of vulnerable applicants

The Aliens Decree Article 5.1a (3) stipulates that border detention is not imposed or prolonged if there are special individual circumstances that make the detention disproportionate. As IND Work Instruction 2020/9 indicates, border detention cannot be applied to:

- ❖ Unaccompanied children,⁴⁴⁹ whose detention is only possible when doubt has risen regarding their minority;⁴⁵⁰
- ❖ Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;⁴⁵¹
- ❖ Persons for whose individual circumstances border detention is disproportionately burdensome;⁴⁵²
- ❖ Persons who need special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured within the border procedure.⁴⁵³

For the cases of applicants in need of special procedural guarantees or for whom detention at the border would be disproportionately burdensome, IND Work Instruction 2020/9 clarifies that vulnerability does not automatically mean that the applicant will not be detained at the border. The central issue remains whether the detention results into a disproportionately burdensome situation in view of the asylum seeker's "special individual circumstances" as mentioned in the Aliens Decree. Whether there are such "special individual circumstances" must be assessed on a case-by-case basis. The IND Work Instruction provides two examples of such circumstances: where a medical situation of an asylum seeker leads to

⁴⁴⁵ Amnesty International, *Remarks to the Bill regarding return and detention of aliens (online consultation)*, February 2014, available at: <http://bit.ly/2kJVszM>; Amnesty International, *Detention of aliens in the Netherlands: human rights as a standard*, 2013.

⁴⁴⁶ Rijksoverheid, *Bijlage: resultaten van de pilots in het kader van alternatieve vreemdelingenbewaring*, 13 September 2013, available in Dutch at: <http://bit.ly/2jUr6GA>.

⁴⁴⁷ Amnesty International, *Het recht op vrijheid. Vreemdelingendetentie: het ultimum remedium-beginsel*, February 2018, available in Dutch at: <https://bit.ly/2TAX1i2>.

⁴⁴⁸ Bill regarding return and detention of aliens (2015-2016), 34309/2, available in Dutch at: <http://bit.ly/2mUloL3>.

⁴⁴⁹ Article 3.109b(7) Aliens Decree.

⁴⁵⁰ Also in paragraphs A5/3.2 and A1/7.3 Aliens Circular.

⁴⁵¹ Also in paragraph A1/7.3 Aliens Circular.

⁴⁵² Article 5.1a(3) Aliens Decree.

⁴⁵³ Article 3.108b Aliens Decree.

sudden hospitalisation for a longer duration, or where the asylum seeker has serious mental conditions.⁴⁵⁴

The decision to detain at the border has to contain the reasons why the IND, though considering the individual and special circumstances produced by the asylum seeker, is of the opinion to detain the asylum seeker concerned (for example the IND is of the opinion the border security interest should prevail above the individual circumstances).

If during the detention at the border special circumstances arise which are disproportionately burdensome for the asylum seeker concerned the detention will end and the asylum seeker will be placed in a regular reception centre. This means that during the detention it has to be monitored whether such circumstances arise.

3.2. Territorial detention of vulnerable applicants

In principle no group of vulnerable aliens is automatically and per se excluded from detention. According to Amnesty International and *Stichting LOS* vulnerable aliens sometimes end up in detention because there are no legal safeguards with regard to specific groups of vulnerable aliens.⁴⁵⁵ However, families with minor children and unaccompanied minors are in principle not detained. A policy with regard to the exclusion of other categories of vulnerable aliens to detention has not been adopted.

Families with children and unaccompanied children who enter the Netherlands at an external border are redirected to the Application Centre in **Ter Apel**. Exceptions in the context of territorial detention are made for unaccompanied children that are suspected of or convicted for a crime, that have left the reception centre or that have not abided by a duty to report or a freedom restrictive measure. It is also possible to detain unaccompanied minors when there is a prospect of removing the minor within 14 days.⁴⁵⁶ Detention of families with children is possible when the conditions of Articles 5.1a and 5.1b of the Aliens Decree are fulfilled for all family members, i.e. risk of absconding, obstruction the return procedure, additional information needed for the processing of an application, public order grounds, or significant risk of absconding in Dublin cases. In addition, it must be clear that at least one of the family members is not cooperating in the return procedure.⁴⁵⁷ Defence for Children strongly opposes detention of children on these grounds and in general.⁴⁵⁸ Amnesty International and LOS have also pointed out that detention of children with insufficient balancing of interest has occurred several times.⁴⁵⁹

In 2019, 30 unaccompanied children were placed in detention, compared to 40 unaccompanied children in the whole of 2018.⁴⁶⁰ These children are detained at the closed family location in **Zeist**. Until September 2020, around 30 families stayed in Zeist, their average stay was 8 days. Less than 10 unaccompanied children stayed in Zeist until September 2020, their average stay was 6 days.⁴⁶¹

⁴⁵⁴ IND, Work Instruction 2018/3 Border procedure, 15 March 2018, 5. IND, Work Instruction 2020/9 Border procedure, 27 May 2020, 5.

⁴⁵⁵ Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016, available at: <http://bit.ly/2f5t3QI>.

⁴⁵⁶ Paragraph A5/2.4 Aliens Circular.

⁴⁵⁷ Paragraph A5/2.4 Aliens Circular.

⁴⁵⁸ Defence for Children, *Vreemdelingenbewaring*, available in Dutch at: <http://bit.ly/2jTIOyZ>.

⁴⁵⁹ Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016.

⁴⁶⁰ Ministry of Security and Justice, *Rapportage vreemdelingenketen: January-December 2018*, 42; *January-June 2019*, 32

⁴⁶¹ Answers to written questions about the budget of the Ministry of Justice and Safety 2021, Question 480, available in Dutch at: <https://bit.ly/35Pj8cE>.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law :
 - ❖ Border detention: 4 weeks
 - ❖ Territorial detention: 18 months
 - ❖ Territorial detention of asylum seekers: 4.5 / 15 months

2. In practice, how long in average are asylum seekers detained?
 - ❖ Border detention: approx. 3 weeks
 - ❖ Territorial detention: 41 days⁴⁶²

The law provides different maximum time limits for detention depending on the applicable ground.

- ❖ The general time limit for border detention is 18 months.⁴⁶³
- ❖ Border detention may be imposed for a maximum of four weeks. In case the asylum request is denied and entry is refused the border detention can be prolonged. As a consequence, if an asylum request at the border is not rejected within four weeks, the detention is lifted and the asylum seeker is allowed entry during his further asylum procedure.⁴⁶⁴ In case the asylum request is denied and entry is refused the border detention can be prolonged during the appeal procedure. The asylum seeker has 1 week to appeal the decision and the court has 4 weeks to make a decision. The prolonging should therefore not last more than 5 weeks.
- ❖ Territorial pre-removal detention under Article 59 of the Aliens Act may be imposed for a maximum of 18 months.⁴⁶⁵
- ❖ Territorial detention of asylum seekers under Article 59b of the Aliens Act may be imposed initially for four weeks, subject to the possibility of extension by another two weeks or another 3 months.⁴⁶⁶
- ❖ Territorial detention of asylum seekers on grounds of public order may be ordered for a period of up to 6 months, with the possibility of an extension for another 9 months in the case of complex factual and legal circumstances, or an important issue of public order or national security.⁴⁶⁷

The majority of persons in detention both at the border and on the territory are detained for less than 3 months in practice, although in some cases they are detained for longer:

Duration of detention: 2019		
	Border detention	Territorial detention
< 3 months	350	2,820
3-6 months	10	450
> 6 months	<5	90

Source: *Rapportage Vreemdelingenketen*, Government of the Netherlands⁴⁶⁸

⁴⁶² The average is taken down by the many Albanians that are often staying for a short period of time in the detention centre.

⁴⁶³ Article 59(7) Aliens Act

⁴⁶⁴ Article 3(7) Aliens Act.

⁴⁶⁵ Article 59(5) -(6) Aliens Act.

⁴⁶⁶ Article 59b(2)-(3) Aliens Act.

⁴⁶⁷ Article 59b(4)-(5) Aliens Act.

⁴⁶⁸ Ministry of Security and Justice, *Rapportage vreemdelingenketen*: January-December 2019, 45, available in Dutch: <https://bit.ly/3bMI1K5>.

The available figures do not distinguish asylum seekers from other immigrants. In the first half of 2020 the average border detention period was around three weeks.⁴⁶⁹ The average duration for territorial detention was 41 days in 2019.⁴⁷⁰

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

In principle asylum seekers are not detained in prisons for the purpose of their asylum procedure. However, foreigners with psychological problems that are detained may be transferred to a specialised prison which offers psychological care.⁴⁷¹ This option is provided for in the Bill regarding the return and detention of aliens, which is still in the legislative process.⁴⁷² This is only possible when the detention centre cannot offer adequate care and on the condition the asylum seeker is kept separate from criminal detainees.

Even though asylum seekers are not detained with criminals or in prisons, the facilities for their detention managed by the Custodial Institutions Service (*Dienst Justitiële Inrichtingen*, DJI) are very similar. During the border procedure, adults are detained at the **Justitieel Complex Schiphol**. They stay in a separate wing at the detention centre. Territorial detention takes place in **Rotterdam** for men and in **Zeist** for women and (families with) children.

The three centres have the following capacity.

Detention capacity in the Netherlands: 2020			
Detention centre	Maximum capacity	Maximum capacity immediately available	Occupancy
Schiphol	471	96	Not available
Rotterdam	641	231	Not available
Zeist	336	73	Not available
Total	1,448	400	Not available

Source: DJI.⁴⁷³

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
 - ❖ If yes, is it limited to emergency health care? Yes No

⁴⁶⁹ Answers to written questions about the budget of the Ministry of Justice and Safety 2021, Question 480, available in Dutch at: <https://bit.ly/35Pj8cE>.

⁴⁷⁰ JI, *Vreemdelingenbewaring* 2019, available in Dutch at: <https://bit.ly/3inAiTO>.

⁴⁷¹ See e.g. CPT, Report of the visit carried out from 2 to 13 May 2016, CPT/Inf(2017) 1, 19 January 2017, 36.

⁴⁷² Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁴⁷³ DJI, Capacity and occupancy statistics, May- August 2020, available in Dutch at: <https://bit.ly/2LB9h3p>.

The Bill regarding return and detention of aliens was introduced in 2015 but is still being debated and will enter into force once it is accepted by the Senate.⁴⁷⁴ In 2020 the file was still pending because an addition to the Bill had been presented to Parliament. The addition concerns measures for nuisance causing aliens. The Bill stresses the difference between criminal detention and detention of aliens which does not have a punitive character. It proposes an improvement in detention conditions for aliens who are placed in detention at the border and on the territory. For instance, aliens would be free to move within the centre for at least twelve hours per day.

Persons in detention have a right to health care, either provided by a doctor appointed by the centre or by a doctor of their own choosing. This right to health care is provided in the Bill regarding return and detention of aliens.⁴⁷⁵ Both aliens in border detention and aliens in territorial detention have a right to health care. This health care includes a basic health care package which is equal to the health care provided outside of detention. Finally, specialised care can be provided to asylum seekers with mental health issues. There are now psychologists present at the detention centre. If the regular facilities of the detention centre cannot meet the medical needs of the alien, he or she will be transferred to another wing of the detention centre or a prison psychiatric hospital. In case of the latter, asylum seekers will be kept separate from criminally detained persons.⁴⁷⁶

There are no known problems of overcrowding. Due to a reserve both on the short term and on the long run, overcrowding is highly unlikely.

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

According to the Bill regarding return and detention of aliens, detained asylum seekers will be allowed to leave their living areas within the detention centre between the hours of 8 am and 10 pm. During these hours a programme is offered. Detained asylum seekers are able to make phone calls, go outside in the recreational area of the detention centre, receive visitors (four hours a week), access spiritual counselling, visit the library, watch movies, and do sports and other recreational activities such as singing, dancing, drawing and painting. All units have access to the internet. The asylum seeker can independently gather news and information, for example concerning their country of origin.⁴⁷⁷ Most of these conditions are already set in place, except for the possibility for people to leave their living areas. Currently they can leave between 8 am – 12 pm and 1 pm – 5 pm.

As opposed to criminal detainees, alien detainees are not allowed to do any work or get an education inside the detention centre.

In a report on the detention regime, Amnesty International described the detention conditions as resembling unnecessarily to a prison.⁴⁷⁸ Amnesty expects that the new Bill regarding return and detention of aliens will improve these conditions, but considers that a more fundamental change is still needed.

Another report from Amnesty International, Doctors from the World and Immigration Detention Hotline (*Meldpunt Vreemdelingendetentie*) showed the frequent use of isolation cells in the detention centres.⁴⁷⁹ Detainees have been put in isolation 1,176 times in 2019. Isolation is an order measure for the safety of the personnel, other detainees or the detainee himself, but also a punishment. The organizations give

⁴⁷⁴ Bill regarding return and detention of aliens (2015-2016), 34309/2. Information on the current state of affairs can be found on the website of the Senate at: <https://bit.ly/2DY5WoF>.

⁴⁷⁵ Ibid.

⁴⁷⁶ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁴⁷⁷ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁴⁷⁸ Amnesty International: *Geen cellen en handboeien! Het beginsel van minimale beperkingen in het regime van vreemdelingendetentie*, 2018, available in Dutch at: <https://bit.ly/2DVqWMt>.

⁴⁷⁹ Amnesty International, Doctors from the World, Meldpunt Vreemdelingendetentie (2020): *Isolatie in Vreemdelingendetentie*, available in Dutch: <https://bit.ly/3nQgkCh>.

a few recommendations to reduce isolating detainees: isolation should not be used for punishment, nor as a collective measure, it should also be used much less and for a shorter period.

3. Access to detention facilities

Indicators: Conditions in Detention Facilities

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

According to the Bill on return and detention of aliens (once it enters into force), contact with the outside world is guaranteed through certain people, amongst which the National Ombudsman, the legal counsellor of the alien, members of parliament and relevant NGOs.⁴⁸⁰

Current policies do not specify the capacity of visitors, but Paragraph A5/6.10 of the Aliens Circular grants detained migrants the right to receive visitors, to make phone calls and to send and receive correspondence. However, these rights may be restricted by the managing director of the detention facility when the person in question abuses them to abscond or obstruct their return procedure. There is however no information on how often this occurs. Moreover, during the lockdown period of the coronacrisis, visitors were not allowed.

The Dutch Council for Refugees has an active branch in the Schiphol detention centre, which enables the DCR to support asylum seekers during their asylum procedure. Asylum lawyers are also present on a regular basis at the Schiphol detention centre. Since 2018, the DCR has also consulting hours available three days a week for asylum seekers in the detention centre of Rotterdam. Furthermore, the DCR occasionally visits the centre in Zeist to provide legal assistance and information to asylum seekers.

Moreover, the detention centres are visited by Stichting LOS. Stichting LOS is an NGO that strives for improving immigration detention conditions.⁴⁸¹ Stichting LOS supports detainees for instance with files of complaints against detention conditions. Stichting LOS also has an “Immigration Detention Hotline” that detainees can call (using their right to make phone calls) free of charge.

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 | |

Before a detention order is issued, or as soon as possible after this, the detainee has to be interviewed so that he can give his opinion about the (intended) detention.⁴⁸²

⁴⁸⁰ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁴⁸¹ Full name: Stichting Landelijk Ongedocumenteerden Steunpunt. See www.stichtinglos.nl and <https://bit.ly/2WMaB4g>.

⁴⁸² Article 59(2) Aliens Decree. The importance of this procedural condition was stressed in the following judgments: Council of State, Decision No 201506839/1/V3, 30 March 2016; and Council of State, Decision No 201801240/1/V3, 2 May 2018. The Council of State referred to EU law, including to the CJEU’s judgment *Mukarubega* of 5 November 2014 (Case C-166/13).

According to Article 93 of the Aliens Act, an asylum seeker is entitled to lodge an appeal at any moment he or she is detained on the basis of territorial detention or border detention.

There is also an automatic review by a judge of the decision to detain, regardless of whether it concerns border detention or territorial detention. According to Article 94 of the Aliens Act, the authorities have to notify the Regional 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 him or herself. The hearing takes place within 14 days after the notification or the application for judicial review by the migrant,⁴⁸³ and the decision on the detention is taken within 7 days.⁴⁸⁴ When the Regional Court receives the notification it considers this as if the migrant or asylum seeker has lodged an application for judicial review.

The Council of State has referred a question for a preliminary ruling to the CJEU on the review of the detention of aliens on 23 December 2020 (C-704/20).⁴⁸⁵ The Council questions whether judges are obliged to rule of their own motion upon all the conditions of detention, even when the detainee has not complained about certain conditions. The question follows from the Mahdi-case (C-146/14) in which the Council of State has not read this obligation before. However, some regional courts did rule of their own motion that – for example – the IND or DT&V had not acted expeditiously.

The first judicial review examines the lawfulness of the grounds for detention – whether the conditions for detention were fulfilled – whereas further appeals against immigration detention review the lawfulness of the continuation of detention.⁴⁸⁶

If the court is convinced that the detention is unreasonably burdensome because the decision-making authorities have not sufficiently taken into account the interests of the individual, detention can be lifted.⁴⁸⁷ Article 59c Aliens Act stipulates: “Our Minister shall only detain an alien on the basis of Article 59, 59a or 59b, insofar as no less coercive measures can be applied effectively” and “Detention of an alien is waived or terminated if it is no longer necessary with a view to the purpose of the detention.” (provisional translation)

Paragraph A5/1 of the Aliens Circular states that the interests of the person need to be weighed against the interests of the government in keeping him or her available for the return procedure. This is stressed in the specific context of the detention of asylum seekers.⁴⁸⁸ The weighing of interests is not mentioned explicitly in policy with regard to border detention.

Detainees have the right to be informed about the reason for their detention; this is laid down in the Aliens Decree.⁴⁸⁹ Usually this information is provided to the individual concerned by the government official who issues the 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.⁴⁹⁰

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

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

⁴⁸³ Article 94(2) Aliens Act.

⁴⁸⁴ Article 94(5) Aliens Act.

⁴⁸⁵ Council of State, ECLI:NL:RVS:2020:3061, 23 December 2020.

⁴⁸⁶ Article 96 Aliens Act.

⁴⁸⁷ Article 94(5) Aliens Act.

⁴⁸⁸ Paragraph A5/6.3 Aliens Circular.

⁴⁸⁹ Article 5.3 Aliens Decree.

⁴⁹⁰ Paragraph A5/6.6 Aliens Circular.

Asylum seekers are provided legal aid in detention and it is paid for by the State.⁴⁹¹ 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, NGOs in general do not intervene in such cases before the Regional Court.

A report published in 2018 was critical about the quality of the legal assistance in such cases. The researchers found that lawyers have poor knowledge of the applicable law to immigration detention.⁴⁹²

E. Differential treatment of specific nationalities in detention

No distinctions are made between different nationalities in detention. The Dutch Council for Refugees has no indication to believe that some nationalities are treated less favourably compared to others in the context of detention.

⁴⁹¹ Article 100 Aliens Act.

⁴⁹² Van der Spek, Flikweert & Terlouw, *Detentie van asielzoekers. Een onderzoek naar de toepassing van artikel 59b Vw, Oisterwijk: Wolf Legal Publishers, 2018*. The report is also critical about the authorities and the judges.

Content of International Protection

Regardless of the ground on which the permit is granted, the asylum permit entitles the status holder to the same rights and entitlements.

A Status and residence

1. Residence permit

Indicators: Residence Permit

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

Refugees and beneficiaries of subsidiary protection are granted temporary asylum status for 5 years.⁴⁹³ Material rights are the same. The residence permit also has a validity of 5 years.⁴⁹⁴

Procedure for granting a permit

The IND is responsible for issuing a residence permit. Asylum seekers who are granted temporary asylum (i.e. refugee status and subsidiary protection) status during their stay at the Application Centre are registered immediately in the Persons' Database at the so called "BRP-straat" (BRP stands for *Basisregistratie Personen*, the Persons' Database of the municipality) and will receive their temporary residence permit from the IND. There are no problems known to the Dutch Council for Refugees regarding tot this procedure.

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

Because of Covid 19 the "BRP-straat" was temporarily closed on several occasions. Therefore there is a backlog in registration. Because of limited capacity at the "BRP-straat" they have given priority to the registration of refugees with a permit who will be getting a house in a municipality. Priority is also given to family members of refugees who came to the Netherlands because of family reunification. No priority is given to asylum seekers who want to be registered, unless there is a very special reason (for example medical reasons). During the Covid-19 crisis it is also possible that there is a delay in receiving the temporary residence permit (the document itself) from the IND.

The first issuance of the temporary residence permit for refugees is free of charge. In case the residence permit is stolen or lost, the beneficiary is requested to report this to the police.⁴⁹⁵ In order to acquire a new permit, a form, which can be found on the website of the IND, has to be completed and sent to the IND. A copy of the police report has to be included. Costs for renewing a residence permit are €132 for an adult and €57 for a child.

2. Civil registration

Every person who is legally present in the Netherlands is registered in the Persons Database (*Basisregistratie personen*, BRP).⁴⁹⁶ That means that asylum seekers and beneficiaries of international

⁴⁹³ Article 28(2) Aliens Act.

⁴⁹⁴ Article 4.22(2) Aliens Decree.

⁴⁹⁵ Article 4.22 Aliens Decree; Article 3.43c(1) Aliens Regulation.

⁴⁹⁶ Persons Database Act, available in Dutch at: <http://bit.ly/2Bx1IFu>.

protection also have to be registered in the BRP. The registration takes place in the municipality where the person resides.

The following personal details are registered at the BRP:

- ❖ Civil status: name, date of birth, marriage, child birth certificates;
- ❖ Address;
- ❖ Nationality;
- ❖ Legal status;
- ❖ Registration of travel documents;
- ❖ Official identity number;
- ❖ Parental authority; and
- ❖ Information on voting rights.

The registration of foreigners is based on family documents and identity documents. If there are no documents available, a person can be registered based on a sworn statement on his or her personal records. It is not possible to register a person's nationality with a sworn statement.

If someone does not know his or her date of birth, the IND can make a declaration on the day of birth that they determined and used in the asylum procedure. The IND can do the same when someone has no documents to prove his or her nationality. The municipality can use the declaration of the IND to register the day of birth and/or the nationality in this way if necessary.⁴⁹⁷

The registration in the Persons Database is necessary to obtain an official identity registration number ("*burgerservicenummer*"). Having an official identity registration number is an administrative requirement in order to access social welfare, housing, health care insurance and other public provisions.

The registration of asylum seekers takes place at the Application Centers. At the end of 2015 the so called "*BRP-straat*" (the Persons' Database of the municipality) was introduced in Application Centres nationwide. As a result, asylum seekers who are granted temporary asylum status during their stay at the Application Centre are registered immediately in the Persons' Database and will receive their temporary residence permit. This means that, once they are assigned to a local authority, their registration can quickly and easily be processed by that new local authority. Also, they will have quicker access to social security benefits. Organisations contributing to the *BRP-straat* are IND, COA, the Dutch Association for Civil Affairs (NVVB) and the former Platform *Opnieuw Thuis*.

The *BRP-straat* is working well in practice. Refugees with a permit as well as asylum seekers are registered. There are a few conditions for asylum seekers before they can be registered. As soon as the identity of the asylum seeker is determined, the IND notifies the municipality stating that this person can be registered.⁴⁹⁸ However, the IND does not notify the municipality for people falling under the [Dublin Procedure](#) (Track 1) or the [Accelerated Procedure](#) (Track 2). These applicants cannot register at the BRP early in the asylum procedure.

Childbirth registration

When a child of an asylum seeker or beneficiary of international protection is born in the Netherlands, the child will be registered at the BRP even if the parents are not registered at the BRP. The child can obtain a birth certificate.

Marriage registration

The registration of a marriage is based on a marriage certificate. Some applicants and beneficiaries do not have a marriage certificate from their country of origin. In this case the instrument of sworn statement can provide a solution, provided that: (a) a marriage certificate cannot be produced; and (b) it is very

⁴⁹⁷ Article 2(17) Persons Database Act.

⁴⁹⁸ Article 24a Persons Database Decree.

clear for the municipality that the person concerned will not be able to obtain a marriage certificate within six months.⁴⁹⁹

A traditional / religious marriage as such is not recognized by the Dutch authorities. However, a traditional / religious marriage which is contracted in the country of origin can be recognized if it is perceived as legally valid in the country of origin. Sometimes the law of the country of origin requires a formal registration of the traditional / religious marriages before these become legal.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2020: Not available

Pursuant to Article 45b(1)(d) and (e) of the Aliens Act, a beneficiary can obtain a long-term residence permit if he or she meets the requirements of Article 45b(2) of the Aliens Act:

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

However, most beneficiaries do not apply for EU long-term resident status, but for permanent asylum status on the basis of Article 33 of the Aliens Act.

After five years of residence in the Netherlands, a status holder with a temporary asylum residence status (both refugees and subsidiary protection beneficiaries) may be eligible for a permanent asylum residence permit. The conditions that apply to the permanent residence permit application are the following:

1. The status holder has lawful residence in the Netherlands on the basis of a temporary asylum residence permit.
2. The status holder has resided lawfully in the Netherlands for more than 5 years without interruption.
3. The status holder has not provided incorrect information or concealed any information that could have caused the IND to reject the asylum application.
4. The status holder is not a threat to public order or national security.
5. The status holder meets the conditions of his permit. This means that the ground for asylum must still exist.
6. The status holder has fulfilled the integration requirement.
7. The status holder must be registered in the Personal Records Database (BRP) of his / her place of residence (municipality).
8. The status holder must pay legal fees. The legal fee for adults is € 192 and for children € 64.

If it is already clear that the status holder is not going to meet the integration (for example, someone does not yet have an integration diploma and that will also take considerable time), it is better to apply for an extension of the temporary asylum status. There are no legal fees for the application of an extension.

⁴⁹⁹ Article 2(10) Persons Database Act.

4. Naturalisation

Indicators: Naturalisation

- | | |
|-----------------------------------------------------------|---------------|
| 1. What is the waiting period for obtaining citizenship? | 5 years |
| 2. Number of citizenship grants to beneficiaries in 2020: | Not available |

The conditions for obtaining Dutch citizenship are to be found in Articles 8 and 9 of the Act on Dutch Citizenship.⁵⁰⁰ When a holder of an asylum residence permit wants to obtain Dutch citizenship he or she must have a permanent residence permit. There are no different criteria for recognised refugees and those granted subsidiary protection.

To fulfil the conditions for Dutch citizenship, a beneficiary must:

1. Be 18 years old or older.
2. Have lived uninterruptedly in the Netherlands for at least 5 years with a valid residence permit. The person must always extend his or her residence permit on time.

There are a number of exceptions to the 5-years rule. If, however, the beneficiary is officially recognised as a **stateless person** he or she can apply for naturalisation after at least 3 years living in the Netherlands with a valid residence permit.

3. Have a valid residence permit immediately prior to the application for citizenship. This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. At the time of the decision on the application, the permanent residence permit must still be valid. There is an exception for recognised **stateless persons**: they can apply for naturalisation after at least 3 years even if they still have an asylum residence permit that is not yet permanent.
4. Be sufficiently integrated. This means that he or she can read, write speak and understand Dutch. In order to show that sufficient integration, the beneficiary has to take the civic integration examination at A2 level. The civic integration examination has been changed a few times. As of 1 January 2015, its examination consists of the following parts: reading skills in Dutch, listening skills in Dutch, writing skills in Dutch, speaking skills in Dutch, knowledge of Dutch society and orientation on the Dutch labour market. Since 1 October 2017 a new part has been added: the Declaration of Participation. This is a part of the civic integration examination. One must sign the participation statement after attending a workshop on Dutch core values.

If the beneficiary has certain diplomas or certificates e.g. education in the Dutch language certified by a diploma based on a Dutch Act such as the Higher Education and Research Act, Higher Professional Education Act, Secondary Act Education Professions Act or Apprentice Act, he or she can be exempt for the obligation to pass for the civic integration examination.

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

It is possible to get an exemption on non-medical grounds for example in case of illiteracy. Therefore, the person needs to prove that he or she has made sufficient efforts to pass for the civic integration examination. As of 1 July 2018, the following elements are considered:

⁵⁰⁰ Act on Dutch Citizenship, available in Dutch at: <http://bit.ly/2lfqBbe>.

- Showing participation for at least 600 hours in a civic integration course at a language institution with a quality mark of an organisation called Blik op Werk and that the person has not passed parts of the civic integration examination at least 4 times. Maximum two of those parts can be parts of the State Exam Dutch as a second language (NT-2), level I or II;
 - Showing participation for at least 600 hours in an (adult) literacy course at an institution with a quality mark of Blik op Werk and having demonstrated through a learning ability test taken by the Education Executive Agency (DUO) that he or she does not have the learning ability to pass the civic integration examination.
 - Showing participation for at least 600 hours in an (adult) literacy course and a following civic integration course, both at a language institution with a quality mark of Blik op Werk; at least 300 hours must have been attended in a (adult) literacy course and it has been demonstrated - with a learning ability test taken by DUO, that the person does not have the learning ability to pass the civic integration examination.
5. Not have received a prison sentence, training or community service order or paid or had to pay a large fine either in the Netherlands or abroad in the previous 5 years before the application for naturalisation (up until 1 May 2018 this period was 4 years). A large fine is a fine with an amount of €810 or more. Someone must also not have received multiple fines of €405 or more, with a total amount of €1,215 or more. At the time of the application there must also be no ongoing criminal proceedings against the person. There also must not be a suspicion on violation of human rights or the suspicion that someone is a danger to society.
 6. Renounce his or her current nationality. There are some exceptions to this rule. One of the exceptions is the following. When a person has a (permanent) asylum residence permit he or she does not have to renounce his or her nationality.
 7. Make the declaration of solidarity. One is obligated to go to the naturalisation ceremony and to make the statement of allegiance. They agree that the laws of the Netherlands also apply to them. The statement of allegiance must be done in person.

A child can only apply for naturalisation together with the parent. The child under the age of 16 years must live in the Netherlands and must have a residence permit.⁵⁰¹ This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. Children of holders of a permanent asylum residence permit must have the same permit or an asylum residence permit dependent on the permanent asylum residence permit of the parents.

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

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

⁵⁰¹ Article 11 Act on Dutch Citizenship.

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

The beneficiary has to pay a fee for the application for naturalisation. Holders of an asylum residence permit pay less than holders of a regular residence permit.

Fees for citizenship applications		
Category of applicant	2019	2020
A single stateless person or a holder of an asylum residence permit	€655	€670
Plural application stateless persons or holders of an asylum residence permit (e.g. married couples)	€899	€920
A request for a child younger than 18 years-old obtaining the Dutch citizenship together with his/her parents	€130	€133

There is no data available on the number of people who obtained Dutch citizenship in 2020. In its 2020 Annual Report, the IND has mentioned that there had been 44,000 applications for naturalisation. The IND took 27,090 decisions on applications for naturalisation into consideration. 97% of those decisions were positive, but it is unknown how many of the applications were issued by beneficiaries of international protection.⁵⁰²

5. Cessation and review of protection status

Indicators: Cessation

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

5.1. Grounds for cessation of status

Article 32(1)(c) of the Aliens Act provides the grounds for cessation of temporary asylum status. This article applies to recognised refugees as well as to beneficiaries of subsidiary protection. It states that temporary asylum status can be revoked, and the request to extend the period of validity can be denied, in case the legal ground for granting protection status has ceased to exist. The temporary asylum status of a recognised refugee will be revoked in case Article 32(1)(c) of the Aliens Act applies,⁵⁰³ as will be the case for temporary asylum status of a beneficiary of subsidiary protection.⁵⁰⁴

Cessation of refugee status or subsidiary protection is further explained in Paragraph C2/10.4 of the Aliens Circular.

Ceased circumstances

In considering whether a temporary asylum status, granted to a recognised refugee or a beneficiary of subsidiary protection, will be revoked because the legal ground for granting status is no longer applicable, the Dutch authorities shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the fear of persecution or the real risk of serious harm can no longer be regarded as well-founded.⁵⁰⁵ The legal basis for granting protection status has not ceased to

⁵⁰² IND, Annual report 2020, available in Dutch at: www.IND.nl.

⁵⁰³ Article 3.105d Aliens Decree.

⁵⁰⁴ Article 3.105f Aliens Decree.

⁵⁰⁵ Article 3.37g Aliens Regulation.

exist if the beneficiary can state compelling grounds arising out of previous persecution or former serious harm, to refuse to request protection of the country of his or her nationality or his or her former place of residence.⁵⁰⁶ It will be stated in the country-based asylum policy whether the IND considers a change of circumstances in the overall situation in (a particular area of) a certain country to be significant and non-temporary for the purposes of cessation.⁵⁰⁷

If the IND finds that the legal ground for granting a temporary asylum status has ceased to exist, and the change of circumstances is of a significant and non-temporary nature, it investigates in any case:⁵⁰⁸

- Whether at the time of granting temporary asylum status another legal ground for granting protection status, provided for in Article 29(1) or (2) of the Aliens Act, applied;
- Whether at the time of review of the temporary asylum status another ground for granting protection status, as provided for in Article 29(1) or (2) of the Aliens Act, applies;
- Whether the status holder can state compelling grounds arising out of previous persecution or former serious harm to refuse to return to his or her country of origin.

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

If the status holder has a permanent status of international protection, ceased circumstances do not lead to the revocation of the status (article 35 Aliens Act).

In January 2020, the IND decided that it would no longer consider certain parts of **Sudan** to be in a conflict that reaches the Article 15c QD-standards. At the same time, the IND announced starting a reassessment of all subsidiary protection statuses that were granted in line with the country policy stating that there was a 15c-situation in some parts of Sudan. The IND announced that around a hundred statuses were going to be reassessed because they believed that the change of circumstances in Sudan had such a significant and non-temporary nature that the fear of persecution or the real risk of serious harm could no longer be regarded as well-founded (article 3.37g Aliens Regulation).⁵⁰⁹ Although the concerned beneficiaries of subsidiary protection received a letter around May 2020 that their status would be reassessed within 6 months, most of the beneficiaries are still waiting for the IND to decide whether their status will be maintained or the cessation procedure will be started with written intention to surcease.

The IND also assumes that the ground for cessation 'ceased circumstances' applies if the beneficiary of international protection has neither applied for an extension of the period of validity of his or her status nor for a permanent asylum residence permit (paragraph C2/10.4 Aliens Circular). This hypothetical policy is quite new.⁵¹⁰ Before, if the BIP did not renew his residence permit in time, it would be possible that there was a short time in which he did not have legal stay. This was problematic for certain allowances and for employer. There is barely any case law on this new phenomenon.

Voluntary return

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

Voluntary re-availing

⁵⁰⁶ Article 3.37g Aliens Regulation.

⁵⁰⁷ Paragraph C2/10.4 Aliens Circular.

⁵⁰⁸ Paragraph C2/10.4 Aliens Circular.

⁵⁰⁹ Decree WBV 2020/1 of 12 January 2020, Stb. 2020, 3262, amending the Aliens Circular 2000, available in Dutch at: <https://bit.ly/3i9r1yB>.

⁵¹⁰ Decree WBV 2018/10 of 20 September 2018, Stb. 2018, 52887, available in Dutch at: <https://bit.ly/38FLDLM>.

Considering Article 1C of the 1951 Refugee Convention, it is stipulated that a temporary asylum status of a recognised refugee shall be revoked in case he or she requests and receives a passport from the authorities of the country of origin. Temporary asylum status is not revoked in case the recognised refugee can prove that Article 1C of the Refugee Convention does not apply.⁵¹¹

5.2. Cessation procedure

The Aliens Act provides that the intention procedure⁵¹² is applicable in case a temporary asylum status is revoked.⁵¹³ Under the intention procedure, the status holder is informed in writing of the intention to revoke his or her temporary asylum status. Within 6 weeks the status holder can put forward his or her view on the intention to revoke temporary asylum status.⁵¹⁴ In case the IND still intends to revoke temporary asylum status, the status holder will be allowed an interview.⁵¹⁵ During the interview the status holder will be given the opportunity to react on the intention to revoke temporary asylum status and explain his or her view on this. The legal representative can attend the interview.

In the decision to revoke temporary asylum status, the IND considers on its own accord, on the basis of Article 3.6a of the Aliens Decree, whether the status holder can be granted a temporary regular residence permit, or whether there are sufficient grounds for granting delay of departure from the Netherlands on medical grounds.⁵¹⁶

The cessation decision states that there is an obligation to leave the country within 4 weeks.⁵¹⁷ Within 4 weeks the status holder can appeal the decision to revoke the temporary asylum status before the Regional Court.⁵¹⁸ In case a timely appeal has been made, the status holder retains his or her right to lawful residence in the Netherlands on the basis of Article 8(c) of the Aliens Act. This means that the status holder retains his or her material rights, until the court's decision, including the right to a residence permit. The status holder has a right to legal assistance during the procedure.

The IND can review protection status at any time. As the temporary asylum status is valid for 5 years, the refugee or beneficiary of subsidiary protection must either apply to extend the period of validity of his or her status or apply for a permanent asylum residence permit. At that time, the IND systematically reviews protection statuses.

6. Withdrawal of protection status

Indicators: Withdrawal

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

6.1. Grounds for withdrawal of status

Article 32(1)(a)-(b) of the Aliens Act establishes the grounds for withdrawal of temporary asylum status. This article applies to recognised refugees as well as to beneficiaries of subsidiary protection.

⁵¹¹ Paragraph C2/10.4 Aliens Circular.

⁵¹² Article 38 Aliens Act.

⁵¹³ Article 41(1) Aliens Act.

⁵¹⁴ Article 3.116(2)(b) Aliens Decree.

⁵¹⁵ Article 41(2) Aliens Act.

⁵¹⁶ Article 64 Aliens Act.

⁵¹⁷ Article 62(1) Aliens Act.

⁵¹⁸ Article 69(1) Aliens Act.

Temporary asylum status can be revoked, and the request to extend the period of validity can be denied, in case the beneficiary:

- a. Has given false information, or has withheld information that would have resulted in a negative decision on the application for asylum or the request to extend the period of validity of the temporary asylum status;⁵¹⁹
- b. Is a danger to public order or national security.⁵²⁰

Article 32(1)(d) of the Aliens Act provides that, where the beneficiary of international protection changes his or her main residence outside the Netherlands, temporary asylum status can be withdrawn. This is not in accordance with the limitative grounds for revocation and withdrawal in the recast Qualification Directive. However, according to the Aliens Circular a change of main residence outside the Netherlands does not constitute a ground for withdrawal of status.⁵²¹ Given this policy, this revocation ground is no longer used in practice. Nevertheless, when a beneficiary of international protection changes his or her main residence outside the Netherlands, according to policy, the Dutch authorities assess whether the legal ground for granting protection has ceased to exist. This is laid down in paragraph C2/10.5 of the Aliens Circular.

False information

The withdrawal ground of false information is applicable to both temporary (article 32 Aliens Act) and permanent statuses of international protection (article 35 Aliens Act). This means that this ground can be used for withdrawal even after living over 20 years in the Netherlands.⁵²²

After receiving signs of fraud, the IND started to reassess statuses from homosexual status holders from **Uganda**.⁵²³ The IND had reasons to believe that there were organizations helping the Ugandans to get asylum in the Netherlands. Of the 253 inspected cases 1 status has been withdrawn and 35 cases are still pending as of November 2020.

Danger to public order or national security

The withdrawal ground of being a danger to public order or national security is applicable to both temporary (article 32 Aliens Act) and permanent statuses of international protection (article 35 Aliens Act). This means that this ground can be used for withdrawal even after living over 20 years in the Netherlands.

Article 3.86 Aliens Decree gives a number of 'sliding scales'. The article establishes a link between the duration of the irrevocable punishment for a crime and the duration of lawful residence in the Netherlands. Although all this is more complex, in short, the longer the foreign national legally resides in the Netherlands, the heavier the penalty must be in order to reject the application for extension or to terminate the legal residence.⁵²⁴ The policy was tightened up in 2016 after the presumed sexual assaults in Cologne at New Year's Eve.⁵²⁵ The prison sentence for withdrawing an asylum residence permit was reduced from 24 to 10 months refugees and from 18 to 6 months for persons with subsidiary protection (this is also one of the few differences between refugee statuses and subsidiary protection statuses), and - unique in the public order policy - only for subsidiary protection statuses also suspended sentences are to be included in this.⁵²⁶

⁵¹⁹ Article 32(1)(a) Aliens Act.

⁵²⁰ Article 32(1)(b) Aliens Act.

⁵²¹ Paragraph C2/10.5 Aliens Circular.

⁵²² For example Council of State, ECLI:NL:RVS:2020:2953, 14 December 2020 (the applicant had an asylum status for over 14 years).

⁵²³ KST 19637, nr. 2670 and appendix, LGBTI in the asylum procedure.

⁵²⁴ Work Instruction 2020/12 *De toepassing van de glijdende schaal*, available in Dutch here: https://ind.nl/Documents/WI_2020-12.pdf.

⁵²⁵ BBC, Germany shocked by Cologne New Year gang assaults on women, 5 January 2016, available in English here: <https://bbc.in/2LIXFM0>.

⁵²⁶ Paragraph C2/10.3 and C2/10.7 Aliens Circular.

6.2. Withdrawal procedure

The intention procedure described in the section on [Cessation](#) applies to withdrawal of temporary asylum status. The only difference concerns return in case temporary asylum status is withdrawn because the recognised refugee or the beneficiary of subsidiary protection is a danger to public order. In such a case, the person is obligated to leave the Netherlands immediately.⁵²⁷

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

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

Refugees and subsidiary protection beneficiaries can apply for family reunification under the same conditions.

Family members that are eligible for family reunification are the spouse and registered or unregistered partner, if there is a sustainable and exclusive relationship. Minor children and young adult children (aged between 18 and 25 years old) who still belong to the family of the parents are also eligible for family reunification. This applies to biological and foster or adoptive children or children from a previous marriage from one of the parents. Lastly, the parents of an ‘unaccompanied minor’ in the meaning of article 2(f) of the Family Reunification Directive qualify for family reunification. Since the CJEU judgment of 12 April 2018, persons that are minor while applying for asylum are considered minor in the meaning of article 2(f) of the Family Reunification Directive (Directive 2003/86) even when they reach the age of 18 when they are eventually granted the asylum status and apply for family reunification.⁵²⁸

The beneficiary has to apply for family reunification within 3 months after being granted the asylum residence permit, in order to have his or her application considered within a more favourable framework for family reunification. This framework applies to holders of an asylum residence permit and contains less strict conditions for family reunification in comparison to the regular framework. There is no income and health insurance requirement if the beneficiary lodges the application within these 3 months.

If the beneficiary fails to apply for family reunification within 3 months, he or she will have to apply for regular family reunification, meaning that he will have to meet stricter requirements like a minimum income. To save this term the application should be timely filed, but it may be incomplete. The sponsor can complete the application once it is filed. However, after the sponsor receives a ‘rectification of omission’-letter stating what information and supporting documents are missing, the incomplete application must be completed within 4 weeks.

In its judgment of 7 November 2018, the CJEU ruled that the time limit of three months in which the application has to be lodged in order to enjoy the more favourable provisions for refugees, is in accordance with the Family Reunification Directive and no individualised assessment as in Article 17 of the Directive has to be made when the time limit has been exceeded.⁵²⁹ However, the Court also ruled

⁵²⁷ Article 62(2) Aliens Act.

⁵²⁸ CJEU, Case C-550/16, A and S v. the Netherlands, 12 April 2018.

⁵²⁹ CJEU, Case C-380/17, K and B v. the Netherlands, 7 November 2018.

that legislation should lay down rules in which particular circumstances render the late submission of the initial application objectively excusable. In addition, member states should ensure that sponsors recognised as refugees continue to benefit from the more favourable conditions for the exercise of the right to family reunification applicable to refugees, specified in articles 10 and 11 or in article 12(2) of the directive. To date, this has not yet been secured in legislation. The legislative proposal extending the time limit for applying for family reunification from 3 to 6 months and the decision period from 6 to 9 months, has been withdrawn after the ruling of the Court.⁵³⁰

In practice, there can be difficulties in applying for family reunification within the 3-month time limit due to misinformation or a high influx of asylum seekers, for example.

Another bottleneck is the requirement that identity and family ties have to be proved or at least made plausible by official documents, and in absence thereof, with sufficient unofficial documents or explanations as to why there are no official documents. Only if there are sufficient unofficial documents or plausible explanations, DNA-research will be done and/or interviews will be held. However, if the unofficial documents are not sufficient and/or explanations are not considered plausible, the immigration service will reject the application without further research. The Council of State,⁵³¹ has ruled that this policy is in accordance with the ruling of the CJEU of 13 March 2019.⁵³²

The following numbers of persons had access to the Netherlands in the context of family reunification with the holder of an asylum residence permit:

Family reunification with beneficiaries of protection in the Netherlands: 2020	
Country of origin	Number
Total	3,863
Syria	1,461
Eritrea	1,070
Yemen	423
Turkey	255
Stateless	132
Iraq	108
Pakistan	97
Iran	48
Unknown	40
Afghanistan	36

Source: Asylum Trends, December 2020

Subsequent application: If family reunification could not take place during the first application

In its judgments of 23 November 2020⁵³³ the Council of State ruled that unaccompanied minors could not lodge a subsequent application for family reunification within the favourable framework if they no longer meet the age condition or unaccompanied condition. In the cases before the court the subsequent applications were lodged because, in one case, the parents were not able to leave their country to conduct DNA-research at the Dutch embassy. In the other case, the mother could reunite but the father had been missing. At the time of the subsequent applications the minor had reached the age of 18 or was taken into care by his mother respectively. The Council ruled that only subsequent applications within the regular framework were open to these (former) UAMs. The Council ruled that the

⁵³⁰ KST 34544, nr. 6, Letter withdrawing the legislative proposal adjusting the terms in the family reunification procedure for refugees, 12 July 2019.

⁵³¹ Council of State, Decision 201902483/1/V/1, 16 September 2019.

⁵³² CJEU, Case C-635/17, E v the Netherlands, 13 March 2019.

⁵³³ Council of State, Decisions 201906347/1/V/1 (about requirement: minor) and 201900263/1/V/1 (about requirement: unaccompanied), 23 November 2020.

circumstances as to why family reunification could not take place during the first application should be taken into account in the subsequent procedure within the regular framework.

2. Status and rights of family members

Family members are granted the same status and rights as the sponsor. Their status however, is derived from the status of the sponsor. This entails that if the relationship between the sponsor and the family member ends within the first 5 years after the family member received the permit, the permit can be revoked. There is an exception for children. If the family life between minor or adult children and their parents ends (e.g. because the child forms a family of his own or lives independently) after the first year after the family member (either the child itself or the parent of the unaccompanied minor) received the derived asylum status, the permit will not be revoked. This also applies to the child that lives within this first year separately from its parents because of study or because of a lack of room in the housing accommodation of the family. In these cases family life will not be considered to have ended.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection are not restricted in their freedom of movement within the Netherlands. For the housing of beneficiaries, the COA takes into account four placement criteria (see section on [Housing](#)).

2. Travel documents

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

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

The possibility for obtaining a passport for refugees is provided in the Act of Passports (*Paspoortwet*). Holders of a (permanent) asylum residence permit can apply for a passport for refugees in the municipality where they live and where they are registered at the BRP. The municipality issues passports for refugees. The application must be done in person. The person must show his or her residence document and must bring two passport photos. Fingerprints will also be taken. The municipality must issue the passport as soon as possible, which means most of the time in 5 days. The municipality officially has 4 weeks to decide to issue the passport. The fee for a passport for refugees is maximum €53,97. The refugee passport contains a travel limitation, prohibiting travel to the country of origin.

The application for a travel document is filed by an automated system at the municipality; the beneficiary does not need to apply. As far as the Dutch Council for Refugees is aware, there are no obstacles in the recognition of travel documents for beneficiaries of international protection issued by other countries. There are no statistics available on the number of travel documents issued.

D. Housing

Indicators: Housing

1. For how long are beneficiaries entitled to stay in reception centres?	Not regulated
2. Number of beneficiaries staying in reception centres as of 4 January 2021:	8,398

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

- ❖ Reception centres;
- ❖ Temporary placements; and
- ❖ Housing.

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

The law does not state a maximum period for the stay of beneficiaries in reception centres. The aim of the Dutch government for 2018 is to have a maximum stay of 3.5 months in the reception centre after the granting of a residence permit.⁵³⁴

On 4 January 2021 there were 8,398 refugees with a permit residing in COA reception centers.⁵³⁵

The right to reception ends on the date that adequate housing – outside the reception centre – can be realised. The notion of “adequate housing” is assessed by the COA.⁵³⁶ Together with municipalities the COA has the obligation to arrange housing for beneficiaries.⁵³⁷

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

1. Education, provided that the study is location-specific;
2. Work, provided that the beneficiary can prove that he or she has a labour contract with a duration of minimal 6 months and for 20 hours of more per week;
3. Medical and/or psychosocial indications, provided that the beneficiary can prove that the medical treatment can only be done by the current care provider, or that a customized home is necessary;
4. The presence of first degree family in the Netherlands.

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

A beneficiary can refuse an offer for placement. The COA will assess within 14 days whether the refusal is justifiable. If the COA is of the opinion that the accommodation is suitable and the refusal unjustified, then the beneficiary is awarded a 24 hour to reconsider its position and to accept the accommodation. If the beneficiary continues to refuse the housing, then COA does not provide for a new offer. As a consequence, the beneficiary is summoned to leave the centre and the benefits granted by COA are terminated.

Due to the high number of asylum applications in 2015, a shortage of places within the reception centre arose. It was therefore decided that beneficiaries who were awaiting housing could also temporarily stay at families and friends.

⁵³⁴ Kamerstuk II, 2017-2018, 34775 VI, No 17.

⁵³⁵ COA, *Bezetting*, available in Dutch at: <https://www.coa.nl/nl/over-coa/bezetting>

⁵³⁶ Article 7(1)(a) RVA.

⁵³⁷ Article 3(1)(c) RVA; Articles 10(2) and 12(3) Housing Act.

Two schemes have been terminated and one is still ongoing:

- ❖ The so-called “self-care arrangement” (“*Zelfzorgarrangement*”) was terminated on 1 September of 2016.
- ❖ The so-called ‘Municipal Acceleration Package’ (“*Gemeentelijke Versnellingsarrangement*”) which provided for a legal basis on which municipalities could deploy non-regular accommodation, e.g. a hotel for temporarily housing of beneficiaries until final placement in the municipalities was made possible, has terminated on 31 December 2018.
- ❖ The “accommodation for residence permit holders” scheme (“*logeerregeling vergunninghouders*”) was prolonged and, as of 1 February 2018, a new pilot ‘accommodation scheme’ (*logeerregeling*) came into effect. The goal of the new *logeerregeling* is not to avoid the shortage of places in reception centres but to assess whether staying with families and friends has a positive effect on the integration and participation of beneficiaries of protection in society. The pilot was completed in January 2019, but the scheme still exists. The pilot of the *logeerregeling* has been evaluated and the evaluation report has been presented in Parliament on 24 June 2019.⁵³⁸ It concluded that the *logeerregeling* contributes to a more rapid start for holders of a temporary residence permit in building a new life in the Netherlands. Another conclusion is that the knowledge about the existence of the *logeerregeling*, among both employees of asylum seeker centres and refugees, must be improved, so that more people can make use of the arrangement. Persons still make use of the *logeerregeling*.

What does the arrangement entail? Beneficiaries can make use of this arrangement on a voluntary basis. Unlike the previous *logeerregeling vergunninghouders of 2017*, the duration of participation to the arrangement is not limited to 3 months, but runs until the moment when housing becomes final. Another difference is that young adults (aged 18 to 21 years old) can also make use of the arrangement. The conditions for making use of the *logeerregeling* can be found on the site of COA.⁵³⁹

To trigger the use of the arrangement, the COA cooperates with an organisation called Takecarebnb. The COA informs beneficiaries about the possibility to stay with a host family, but beneficiaries themselves are responsible for registering with Takecarebnb. The task of Takecarebnb is to match a beneficiary with a host family. Takecarebnb screens host families in order to ensure that the beneficiary has the opportunity to integrate and to learn the Dutch during his or her stay. In exchange, the host family is financially compensated (25 euro per week).

E. Employment and education

1. Access to the labour market

The rights and duties for beneficiaries with regard to employment are included in the Aliens Labour Act.⁵⁴⁰ This law is based on international and European legislation.⁵⁴¹ In the Netherlands, refugees and subsidiary protection beneficiaries with a residence permit have free access to the Dutch labour market as soon as they receive their residence permit. The identification card (*W-document*) must contain a notification stating: “free access to the labour market, no work permit required” (*arbeid vrij toegestaan, tewerkstellingsvergunning niet vereist*). Free access means in this context: free access to employment, the right to entrepreneurship, to follow an internship or to do voluntary work. There is no work permit or

⁵³⁸ Kamerstuk 33 042, nr. 33.

⁵³⁹ <https://www.coa.nl/nl/asielopvang/huisvesting-vergunninghouders/logeerregeling>

⁵⁴⁰ Aliens Labour Act.

⁵⁴¹ See Articles 17, 18, 19 and 24 Refugee Convention, Article 6 ICESCR, Article 26(1) recast Qualification Directive, Article 14 Family Reunification Directive, Article 1 European Social Charter, etc.

a so-called “volunteer’s declaration” required. Dutch law makes no distinction between refugees or subsidiary protection beneficiaries.

According to several studies, the position of beneficiaries on the Dutch labour market is very vulnerable and only little improving.⁵⁴² Although legal access to labour participation is granted, the effective access is limited as they face practical obstacles, such as psychological and physical distress, lack of documentation proving qualifications, lack of a social network, low educational levels, lack of language proficiency, etc. Therefore, beneficiaries are in a more disadvantageous position than other immigrants or Dutch nationals.⁵⁴³

The Dutch government applies a hybrid approach to employment-related support measures, by combining generic measures for migrants with specific tailored measures to beneficiaries. Examples are integration courses, assistance in obtaining recognition of professional qualifications and housing assistance.⁵⁴⁴ Employment services find their legal basis in the Participation Act (*Participatiewet*).⁵⁴⁵ For asylum seekers the government also tends to improve the labour participation by focussing on participation at an earlier stage, i.e. while people are still in an AZC.

An example of this is the so-called ‘screening and matching’ process, during which the COA conducts a screening of labour skills and finds a matching municipality for housing in order to increase job opportunities. Furthermore, COA provides language classes for asylum seekers who are likely to receive international protection (at this moment only for Syrians, Eritreans, Turks, Yemeni and stateless persons).⁵⁴⁶ Another example is that the government simplified the procedure to acquire a volunteering permit. Nowadays, an asylum seeker can start its voluntary work as soon as the Employee Insurance Agency confirmed the application for a volunteering permit done by the employer.⁵⁴⁷

For many job opportunities, professional qualifications are required. In order to obtain recognition of these qualifications, the Cooperation Organisation for Vocational Education, Training and the Labour Market (*Stichting Samenwerking Beroepsonderwijs Bedrijfsleven*) jointly compare foreign diplomas with the Dutch educational system. In case a refugee follows obligatory a Dutch integration course this is provided for free. The main obstacle is that many refugees lack any credible documents to prove their qualifications. Also, a low educational level form impede access to language courses or vocational educational training.⁵⁴⁸

2. Access to education

According to the Compulsory Education Act,⁵⁴⁹ all children in the Netherlands from the age of 5 to 16 should have access to school and education is compulsory. The abovementioned right to education is applicable to Dutch children as well as to children with refugee status or with subsidiary protection under similar conditions.⁵⁵⁰

⁵⁴² See e.g. Scientific Council for Government Policy (WRR), *Geen tijd te verliezen: van opvang naar integratie van asielmigranten*, December 2015 and CBS, *Uit de startblokken*, April 2018; SER, *Integratie door werk. Meer kansen op werk voor nieuwkomers*, May 2019, available in Dutch at: <https://bit.ly/2RZQwH9>; KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2020*, November 2020, available in Dutch at: <https://www.kis.nl/publicatie/monitor-gemeentelijk-beleid-arbeidstoeleiding-vluchtelingen-2020>.

⁵⁴³ European Migration Network (EMN), *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, available at: <https://bit.ly/39mwEUj>, 3.

⁵⁴⁴ *Ibid.*, 4.

⁵⁴⁵ Wet van 9 oktober 2003, houdende vaststelling van een wet inzake ondersteuning bij arbeidsinschakeling en verlening van bijstand door gemeenten (Wet werk en bijstand), available in Dutch at: <https://bit.ly/2t8pSP6>.

⁵⁴⁶ Ministry of Social Affairs, KST 32 824, nr. 303, p. 4

⁵⁴⁷ Annex I, para 7bis Aliens Act Implementing Regulation.

⁵⁴⁸ EMN, *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, 4.

⁵⁴⁹ Law of 30 May 1968, houdende vaststelling Leerplichtwet 1969, available in Dutch at: <http://bit.ly/2kKXQpV>.

⁵⁵⁰ Article 27 recast Qualification Directive.

The municipality where a child is housed is responsible for its access to education. In most cases, all children who are newcomers go to a regular school.⁵⁵¹ Schools receive a compensation for their costs to provide this specialised education. Furthermore, they can request for an additional financial compensation.

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

From the age of 16 and 17 children have the obligation to obtain a certificate in order to acquire access (a start qualification) to the Dutch labour market. Therefore, they need to obtain a diploma in secondary or vocational education. The conditions for Dutch nationals are the same as those for aliens.

Adults with a residence permit have the same access to education as Dutch nationals. Nevertheless, research shows that this group of beneficiaries faces difficulties to be accepted at an education. According to municipalities, whereas for 40% of the status holders the best way to integrate would have been starting an education, only 17% has started one in 2020. Reasons are among other an insufficient knowledge of Dutch or subjects such as mathematics or English, financial barriers or a lack of (soft) study skills.⁵⁵²

F. Social welfare

Dutch law provides access to social welfare for beneficiaries of international protection under the same conditions as nationals. There is no special legislation for beneficiaries of international protection beyond general legislation valid for every resident legally present in the Netherlands, except for asylum seekers whose rights are regulated by RVA. No distinction is made between refugees and subsidiary protection beneficiaries.

1. Types and conditions of social assistance

Beneficiaries of international protection between the age of 18 and 67 can apply for:

- ❖ Social benefit (*algemene bijstand*): The social benefit is meant to financially support people who are not able to cater for their own living and cannot rely on other social facilities until a job has been found;⁵⁵³
- ❖ Benefits (*toeslagen*), which have a different aim from the social benefit; and
- ❖ Child benefit (*kinderbijslag*).

There are four types of Benefits (*toeslagen*), each contributing towards specific costs. Beneficiaries of international protection can apply for:

1. Health care benefit;⁵⁵⁴
2. Rent benefit;⁵⁵⁵
3. Child care benefit;⁵⁵⁶
4. Supplementary child care benefit.⁵⁵⁷

⁵⁵¹ Ministry of Education, *Informatiedocument onderwijs aan asielzoekerskinderen*, May 2016, 6.

⁵⁵² KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2020*, November 2020, available in Dutch at: <https://bit.ly/3tYN3d8>.

⁵⁵³ Article 11(2) Participation Act.

⁵⁵⁴ Articles 8-15 Rent Benefit Act.

⁵⁵⁵ Articles 2-2a Healthcare Benefit Act.

⁵⁵⁶ Article 2(1) Supplementary Child Care Act.

⁵⁵⁷ Article 1.6(1)(g) Child Care Act.

Municipalities are responsible for providing social benefits for their residents. The Tax Office provides the benefits and the Social Security Bank allocates the child benefit.

The Coalition Agreement of October 2017 has introduced a new plan with regard to the access to social welfare of beneficiaries of international protection.⁵⁵⁸ According to that plan, prospective beneficiaries of international protection will no longer be entitled to the social benefit, rent benefit and health care benefit during the first 2 years of their legal stay in the Netherlands. Instead beneficiaries of international protection will receive services by the municipalities such as housing, a healthcare insurance and assistance in the integration process in kind. In addition, beneficiaries of international protection will receive an allowance. However, the implications of these plans are not clear yet. Research is currently being conducted to assess the legal merits of the plan and its compatibility with Union law. The legislative procedure has started and was estimated to enter into force in January 2021. This is postponed to January 2022.⁵⁵⁹ The lower regulation on this matter is expected to be drafted in spring 2021.

Conditions for obtaining social welfare

Apart from certain financial requirements, the beneficiary of international protection must also meet benefit-specific conditions:

- **Child care benefit:** the person must: (a) have a paid job; or (b) attend a civic integration course, provided that the course is compulsory. In a judgment, the Council of State decided that, in exceptional cases, non-paid jobs could also suffice.⁵⁶⁰ If the beneficiary has a spouse, both persons have to meet one of the aforementioned conditions in order to be eligible for the child care benefit together.
- **Rent benefit:** The person concerned must: (a) rent a house; (b) have a signed rental contract; (c) be registered in the Persons Database (BRP) of the municipality where the property is located; and (d) have a rental contract of durable nature.
- **Child benefit:** The child benefit is not dependent on the income of the beneficiary. Each resident who is legally present in the Netherlands and has a child is in principle eligible. However, the person must demonstrate that there is a durable bond of personal nature between him or her and the Netherlands. This bond is presumed in the case of beneficiaries of international protection, but can be problematic for other foreigners who become eligible only after a certain period of time e.g. six months or one year.

The benefits and child benefit are not tied to a requirement to reside in a specific place or region. The social benefit as such is not bound by a requirement of residence either. However, the person concerned can only apply for a social benefit at the municipality in whose BRP he or she is registered.

2. Obstacles to accessing social assistance in practice

Processing times

After the beneficiary has applied for the social benefit the processing time for the allocation and payment can run up to 8 weeks. Municipalities can grant an advance payment but this does not always cover the whole period. To prevent further delay, it is of utmost importance to apply for the social benefit timely. The processing time for the application is even longer for young adults below the age of 27, who are subject to a statutory waiting period of 4 weeks. In these 4 weeks the young adult has to try to find a paid job. If he or she is not successful in finding a job, the municipality starts processing the application. In this situation, after these 4 weeks, municipalities have 8 weeks to process the allocation and payment of the social benefit.

⁵⁵⁸ Cabinet, *Regeerakkoord 'Vertrouwen in de toekomst'*, 10 October 2017, part 4.5.

⁵⁵⁹ Ministry of Social Affairs, KST 35 483, nr. 63.

⁵⁶⁰ See Council of State, Decision No 201800817/1/A2, 12 December 2018.

Issues related to social benefits in shared households

Another known problem is the situation of collective housing of multiple, unconnected, beneficiaries. Collective housing was an important instrument especially in 2016, in order to cope with high housing demand due to the large influx of arrivals. The so-called “*kostendelersnorm*” was introduced in the Participation Act in 2015 and applies to persons aged 21 to 67. The aim of the “*kostendelersnorm*” is to prevent a stack of social benefits within one household. The rationale is that family, friends and/or roommates can share costs and that less social benefits are therefore needed. The “*kostendelersnorm*” also applies in the situation of the “*logeerregeling*”. However, the Ministry of Social Affairs and Employment agreed that municipalities may decide themselves whether or not they apply the “*kostendelersnorm*” or not.

More concretely, this means that the group as a whole gets more social benefit, although the individual pro rata sum is lower. However, beneficiaries who do not have a link with one another do not share the costs in practice. This can lead to situations in which the income of beneficiaries is so low that it falls under the poverty line.

Single parent allowances

Beneficiaries can also be confronted with the so-called “*ALO-kopproblematiek*”. The “*ALO-kop*” is part of the supplementary child care benefit and can be seen as an additional financial compensation for single parents. In practice, problems arise when the spouse of the beneficiary is still living abroad awaiting family reunification. A spouse living abroad cannot be registered into the computer system of the Tax Office, because spouses and cannot be registered in the BRP of the municipality at that stage.

In order to obtain benefits, including the supplementary child benefit, the Tax Office thus proposes that beneficiaries register themselves as single parents. However, the supplementary child care benefit and the *ALO-kop* are linked in the computer system of the Tax Office and cannot be granted separately. As a result, by applying for the supplementary child care benefit, the beneficiary also automatically receives the *ALO-kop*, even though the beneficiary is not entitled to the *ALO-kop*. When the family reunification has been finalised and the spouse is registered into the BRP, the Tax Office will automatically be notified. The Tax Office is then legally obliged to recover the *ALO-kop*. It regularly occurs that the beneficiary becomes aware of this fact too late and has spent the *ALO-kop*. The Dutch Council for Refugees has addressed and continues to address this issue.

The Tax Office recognised the problem and decided in 2018 to adjust its computer system in order to grant the supplementary child care benefit separately from the *ALO-kop*. As a result, beneficiaries will no longer be confronted to a reclamation after the family reunification. Although the offered solution entails a significant improvement, practice shows that beneficiaries really need the additional *ALO-kop*. The Participation act makes it possible for some municipalities to compensate the lack of the *ALO-kop* by increasing the social benefit. However, due to the fact that this is not obligatory, differences in practice exist.

G. Health care

Beneficiaries are required to be insured for health care as of the moment the permit is granted.⁵⁶¹ There is no difference if the beneficiary still resides in the reception centre or not. Moreover, although these beneficiaries are medically insured via the COA as a part of RVA, they are also obliged to insure themselves privately for healthcare.

⁵⁶¹ Article 2(1) Health Care Act in conjunction with Article 2(1)(1) Long-Term Care Act.

Beneficiaries are entitled to the same health care as nationals. Like every national, beneficiaries have to pay health insurance fees. In order to compensate the paid fees, beneficiaries are entitled to health care benefits, provided that their income does not reach a threshold of an annual income of € 31,138 per year in 2021. The threshold for a household (2 partners) is €39,979 per year in 2021.

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	Wet van 29 oktober 2008 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)