

Country Report: Netherlands



2021
Update

Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2021, 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 Leeftijdsschouw
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 regular procedure applicable to asylum seekers, which lasts 6 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

EUAA	European Union Agency for Asylum (former EASO)
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 Ogedocumenteerden 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. While this report provides some statistical information on the year 2021, various data was not made publicly available by the time of writing of this report.

Applications and granting of protection status at first instance: 2021

	Applicants in 2021 (1)	Pending at end 2021	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Sub. Prot. rate	Hum. Prot. rate	Rejection rate
Total	26,520	Not available	7,825	2,865	1,375	4,435	47.4%	17.4%	8.3%	26.9%

Breakdown by countries of origin of the total numbers

Syria	8,520	-	2,265	1,300	40	325	57.5%	33%	1%	8.3%
Afghanistan	3,310	-	2,260	130	315	140	79.1%	4.5%	11%	4.9%
Turkey	2,480	-	1,015	10	205	80	77.2%	0.8%	15.5%	6%
Yemen	1,205	-	20	380	5	25	4.6%	87.3%	1.1%	5.8%
Algeria	1,165	-	0	0	0	110	0%	0%	0%	100%
Morocco	980	-	15	0	5	215	0.6%	0%	2.1%	91.5%
Somalia	970	-	15	135	25	105	5.4%	48%	8.9%	37.5%
Iraq	870	-	60	105	30	215	14%	25%	7.2%	51.8%
Eritrea	845	-	10	325	60	90	2%	67%	12.4%	18.5%

Source: Eurostat. Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years. It should be noted that rejections include inadmissibility decisions.

(1) The IND, in its publication on Asylum Trends for December 2021,² indicates that the total number of applicants was 36,620. It should be noted that the IND includes the number of applicants entering the asylum procedure because of family reunification in the total figure. The 5 most represented countries of origin in 2021, including family reunification cases, were **Syria** (14,904), **Afghanistan** (3,425), **Turkey** (3,215), **Yemen** (1,855) and **Eritrea** (1,576).

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

² IND Asylum Trends for December 2021, available at: <https://tinyurl.com/2p872ste>.

Gender/age breakdown of the total number of applicants*: 2021

	Number	Percentage
Total number of applicants	26,520	
Men, incl. children	20,235	76.3%
Women, incl. children	6,275	23.7%
Children	6,225	23.5%
Unaccompanied children	2,125*	8%

Source: Eurostat.

* According to the IND Asylum Trends for December 2021, the total number of unaccompanied children was 2,191.

Comparison between first instance and appeal decision rates: 2021

National authorities did not provide detailed statistics on second instance decisions at the time of writing of the report.

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	Vreemdelingencirculaire 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 2021**.

Asylum procedure

- ❖ **Key asylum statistics:** In 2021, a total of 26,520 applications for international protection were lodged in the Netherlands, mainly by Syrian (8,520), Afghan (3,310) and Turkish (2,480) nationals. The number of first-time applicants was 24,725, while subsequent applications presented were 1,810. This marks an important increase compared to 2020, when the total number of applications was 15,320. The overall recognition rate at first instance stood at 73.1% (i.e. 47.4% refugee status, 17.4% subsidiary protection and 8.3% humanitarian protection). It reached 95.5% Afghans and 91.7% for Syrians. Other nationalities such as Algerians and Moroccans received instead mostly reject decisions, with a rejection rate of 100% and 91.5% respectively.
- ❖ **Reform of the Aliens Decree regarding the Regular Asylum Procedure (“Track 4”):** As announced, the amendments of the Aliens Decree regarding the General Asylum Procedure entered into force on 25 June 2021. The amendments formally provide rules for the registration/reporting procedure and relative interview, that takes place before the start of the rest and preparation period, while cancelling the first interview during the Regular Asylum Procedure.³ This means that, during the registration/ reporting interview, asylum seekers - including unaccompanied minors - are briefly questioned by the IND about the reasons for fleeing their country of origin. During such procedure, asylum seekers - except for the ones at Schiphol Airport who fall under the border procedure - do not benefit from legal assistance nor receive individualised information on the asylum procedure from the Dutch Council for Refugees or other NGOs. Asylum seekers do receive an information brochure from the Immigration and Naturalisation Services (IND) that contains general information about the asylum procedure. As a result, applicants might not be sufficiently informed about the potential impact of their statements on the outcome of their application. Furthermore, the amendments foresee a shortening of the Regular Asylum Procedure from eight to six days, by abolishing the first interview. It should be noted, however, that several grounds for extending the regular asylum procedure beyond six days were introduced. The Dutch Council for Refugees is of the opinion that the grounds for extending the regular procedure will not prevent assessing many asylum cases in the extended procedure, unless the capacity problems within the IND are solved.
- ❖ **Treatment of Afghan applicants in the Netherlands:** The policy regarding the suspension of decisions on Afghan nationals’ and the temporary suspension of returns to Afghanistan due to a temporary uncertain and insecure situation in the country has entered into force 26 August 2021. It originally applied for six months and has recently been prolonged for another six, until August 2022.⁴ This policy is in accordance with Article 43 Aliens Act and Article 45 (4) Aliens Act. This means that, as a rule, the IND has 18 months for taking a decision on new and pending asylum applications of Afghan nationals, while rejected asylum seekers from Afghanistan will not have to return to their home country during the six months the policy applies. They will also have access to reception facilities. This policy does not apply to Afghan nationals who fall under the scope of the Dublin Regulation, who have already obtained international protection in another Member State and who pose a threat to public order or national security.

³ Amendment of the Aliens Decree, *In verband met het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielprocedure*, Staatsblad 2021, 250, 25 June 2021, available in Dutch at: <https://bit.ly/3Fkb7LK>.

⁴ Dutch Parliament, 23 February 2022, *Verlengen besluit- en vertrekmoratorium Afghanistan*, available in Dutch at: <https://bit.ly/3HkpFMs>.

- ❖ **Treatment of Afghan evacuees:** Since August 2021, approximately 2,000 Afghan nationals were evacuated from Afghanistan to the Netherlands. Many of the evacuees used to work for the Dutch government in Afghanistan and were recognised to be at risk of persecution in their home country following the takeover by the Taliban. The applications of these asylum seekers were processed through the short asylum procedure in *ad hoc* emergency facilities created for them. Although the policy regarding the suspension of decisions (see above) is applicable, the applications of evacuated Afghan asylum seekers will be processed and, as far as known, most of them have obtained an asylum permit valid for 5 years.

- ❖ **Subsequent asylum applications:** In the case *L.H. v. the Staatssecretaris van Justitie* of 10 June 2021, the Court of Justice of the European Union (CJEU) ruled that, when the authenticity of documents submitted in the context of a subsequent application cannot be established or its source objectively verified, it cannot automatically be considered not to constitute a ‘new element or finding’ within the meaning of Article 40 Asylum Procedures Directive (APD). Furthermore, the CJEU ruled that, according to Article 40 APD, read together with Article 4(1) and (2) of the Qualification Directive, the assessment of evidence submitted in support of a subsequent application is the same as the assessment of evidence supporting a first application. Dutch policy should be brought in line with this judgment. According to the Dutch Council for Refugees, this has still not occurred.

- ❖ **Beneficiaries of international protection from Greece:** The Council of State ruled on 28 July 2021 that beneficiaries of international protection from Greece could not be sent back to Greece without facing a risk of ill-treatment in violation of Article 3 ECHR. The State Secretary should thus provide a clear motivation justifying the decision to return them to Greece based on the criteria from the Ibrahim case. The State Secretary started an investigation into the situation of beneficiaries of protection in Greece.

- ❖ **Re-evaluation of ‘safe countries of origin’:** The IND had to re-evaluate its list of ‘safe countries of origin’ following a decision from the Council of State on 7 April 2021, which ruled against the IND’s use of the ‘quick reassessment’ procedure. This period of mandatory reassessment was completed on 4 November 2021, resulting in deleting Algeria as a safe country of origin from the list.⁵

- ❖ **Dublin time limits and suspensive effect:** In the course of 2021, the Council of State referred multiple prejudicial questions about the suspensive effect in Dublin cases to the CJEU. These questions related to the application of the so-called ‘chain rule’ in Dublin III,⁶ whether a 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(3) of the Dublin Regulation (case C-338/21);⁷ and whether the Secretary of State can request the suspensive effect in the onward appeal stage (case C-556/21).⁸ All the above-mentioned cases are still pending in front of the CJEU.

- ❖ **Suspension of Dublin transfers to Malta:** On 15 December 2021, the Council of State ruled that the principle of mutual trust no longer applies to Malta.⁹ The Council of State came to this conclusion based on recent information from the NGO aditus foundation, which shows that Dublin returnees will be detained upon return. Several reports, such as the CPT report of 10 March 2021, show that detention conditions in Malta are very poor and that access to legal aid has deteriorated.¹⁰ In particular,

⁵ KST 19637, No 2743, 11 June 2021.

⁶ Cases C-323/21; C-324/21; C-325/21, Council of State, ECLI:NL:RVS:2021:983; ECLI:NL:RVS:2021:984; ECLI:NL:RVS:2021:985, 19 May 2021.

⁷ Council of State, ECLI:NL:RVS:2021:1124, 26 May 2021.

⁸ Council of State, ECLI:NL:RVS:2021:1929, 1 September 2021.

⁹ Council of State, ECLI:NL:RVS:2021:2791, 15 December 2021.

¹⁰ European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), Report to the Maltese Government, 10 March 2021, available via: <https://bit.ly/3Jv7sgz>.

the Council of State referred to the AIDA Malta country report indicating that NGOs have not observed any improvements in detention conditions, nor have they sufficient access to detention centres.

- ❖ **Return decisions for unaccompanied minors:** Dutch policy stipulates that minors who are over 15 years of age at the date of their asylum request receive a return decision without examining whether there are adequate reception facilities in the country of return. For minors under 15 years of age, there is the option of granting a special residence permit in case there are no adequate reception facilities.¹¹ The Regional Court of Den Bosch referred prejudicial questions to the CJEU on whether a return decision could be taken against a minor without investigating if there are adequate reception facilities, whether a Member State is permitted to make distinctions on the basis of the age of a minor (15-/15+), and whether it is permitted under Union law to adopt a return decision against a minor, but not undertake any action to remove the applicant until he turns 18. In the case of TQ (C-441/19) of 14 January 2021, the CJEU ruled that a Member State must ascertain - before adopting a return decision - that an unaccompanied minor will have access to adequate reception facilities upon return.¹² Furthermore, a Member State may not differentiate based on the age of the minor and once the Member State adopts a return decision, the return must actually be carried out. The CJEU also clarified that Member States are under the obligation to apply the principle of the best interest of the child at all stages of the (return) procedure. This ruling shows that the Dutch policy relating to unaccompanied children who receive a return decision is not in line with EU law.
- ❖ **Response to the crisis in Ukraine as of 5 April 2022:** Ukrainians who hold a biometric passport are allowed to enter the Netherlands and remain in the country for 90 days without a visa. Ukrainians who do not have a biometric passport have to apply for a Schengen visa. The visa exemption and the Schengen visa could be extended for 90 additional days.¹³ Dutch municipalities are opening special reception locations in order to accommodate persons who fall within the scope of the TPD. The purpose is to shelter 50,000 persons. The scope of the Directive has been significantly extended; persons that can benefit from temporary protection are for example all those who held a valid residence permit, and left the country after 26 November 2021.¹⁴ Dutch authorities announced that persons who fall within the scope of the TPD and want to benefit from its provisions will have to apply for asylum; they will be considered as asylum seekers falling under a specific asylum regime, which was originally created with the implementation of the TPD into Dutch law in 2004. The persons who fall under the Directive will remain in the country as asylum seekers granted temporary protection, and as such entitled to rights as laid down in the TPD.¹⁵ Furthermore, two policies regarding the suspension of decisions on asylum applications of Ukrainian nationals and non-Ukrainian nationals from Ukraine¹⁶ and the temporary suspension on returns to Ukraine have entered into force. These measures will be valid for (at least) 6 months and are subjected to certain exceptions (Dublin cases, persons having been granted protection in another EU Member State, commission of war crimes/threat to public order or national security). Dutch authorities did not provide an explanation regarding the introduction of such policies, but it is likely that they entered into force on behalf of persons who are from Ukraine, but do not want to benefit from the TPD, or do not fall within the scope of the Directive.

¹¹ However, this permit is rarely granted. The Council for Refugees approximates that the permit has been granted in less than 10 cases since the introduction of the permit in 2012. Conditions are laid down in Section B8/6 Aliens Circular.

¹² CJEU, TQ v Staatssecretaris van Justitie en Veiligheid, C-441/19, 14 January 2021.

¹³ IND, Staying in the Netherlands as a Ukrainian, available in English at: <https://bit.ly/3ly9JHg>.

¹⁴ IND, Temporary scheme Ukraine, available at: <https://bit.ly/3u5Egbf>.

¹⁵ Dutch Parliament, *Aanpak opvang ontheemden Oekraïne*, 30 March 2022, available in Dutch at: <https://bit.ly/36BbUwN>.

¹⁶ Staatscourant 2022, number 6428, available in Dutch at: <https://bit.ly/3DBazlG>; Staatscourant 2022, number 8675, available in Dutch at: <https://bit.ly/3qOAEIC>.

Reception conditions

- ❖ **Reception crisis:** From September 2021, the Netherlands started facing a reception crisis. By the end of the year, a total of 34,088 people were accommodated by Central Agency for the Reception of Asylum Seekers (COA), 8,500 more than in 2020, when occupied places were 27,800. People have been forced to sleep on the floor outside the first reception centre of **Ter Apel**, waiting their turn to register their application and be transferred to one of the many Emergency Reception Centres that have opened (and closed) around the country from September onwards.
- ❖ **Reception of Afghan evacuees:** Afghan evacuees were stationed at locations provided by the Ministry of Defence, given that many of the evacuees were former employees of said Ministry. One of these locations was a large camp with tents in the woods close to Nijmegen, called **Heumensoord** hosting 1,000 people. The location was previously used during the last reception crisis in 2015, and has often been criticised because of the inadequate facilities, a lack of privacy for its residents, and the fact that no financial allowances were provided to its hosts.

Detention of asylum seekers

- ❖ **Effects of the pandemic on detained asylum seekers:** The COVID-19 pandemic entailed specific problems for detained asylum seekers. Due to health restrictions, detainees were sometimes only allowed to leave their rooms for 1 hour per day due to staff shortages, and overall not more than 3.5-4 hours per day. Soap was not available for various months. Up until January 2021, disinfecting gel was not available and it was forbidden to wear facemasks for security reasons. Disinfecting gel later became available, but was accessible only in outside areas that detainees can access only one hour per day. From 22 January 2021, in contrast with previous rules, it became mandatory to wear facemasks inside detention facilities.
- ❖ **No reasonable prospect of removal:** For three important countries of origin, in 2021 courts ruled that there was no reasonable prospect of removal due to the COVID-19 pandemic and the unwillingness of the authorities of the countries of origin of the involved detainees to cooperate in the return process: Morocco, Algeria and Senegal.¹⁷

Content of international protection

Naturalisation: Since 1 January 2022, a new Civic Integration Act was introduced.¹⁸ The civic integration examination entails a language knowledge at B1 level. In 2021, there were no changes in the conditions established for deeming a beneficiary of protection sufficiently integrated to obtain Dutch nationality. In 2022, no additional conditions were introduced through the Civic Integration Act.¹⁹

- ❖ **Housing:** In 2021, reception centres continued registering shortages in terms of accommodation places, due to the consequences of COVID-19 and to the limited availability of rented houses in the Netherlands. As of 1 November 2021, the so called “*Hotel- en accommodatieregeling*” (Hotel- and Accommodation Arrangement) was introduced,²⁰ allowing status holders awaiting regular housing to be hosted in a temporary accommodation at the municipality that will later be responsible for providing long term housing for that particular person. A temporary accommodation could be a hotel, a holiday

¹⁷ Council of State, ECLI:NL:RVS:2021:696, 2 April 2021 (Morocco), Council of State, ECLI:NL:RVS:2021:2092, 17 September 2021 (Algeria), Regional Court Arnhem, ECLI:NL:RBDHA:2021:9994, 10 September 2021 (Senegal).

¹⁸ Besluit van 30 november 2021 tot vaststelling van het tijdstip van inwerkingtreding van de Wet inburgering 2021, Staatsblad 2021, 586, 30 november 2021, beschikbaar via: <https://bit.ly/3tvlrhr>.

¹⁹ KST 32824, nr.346, Brief Voorbereiding ontwerp- algemene maatregelen van bestuur tot wijziging van het Vreemdelingenbesluit 2000 en het Besluit naturalisatietoets in verband met een overgangssituatie na de inwerkingtreding van de Wet inburgering 2021 (Letter from the State Secretary to the parlement about the consequences of the new Civic Integration Act for obtaining long term permit or the Dutch nationality).

²⁰ Stcrt. nr. 45592, 2021.

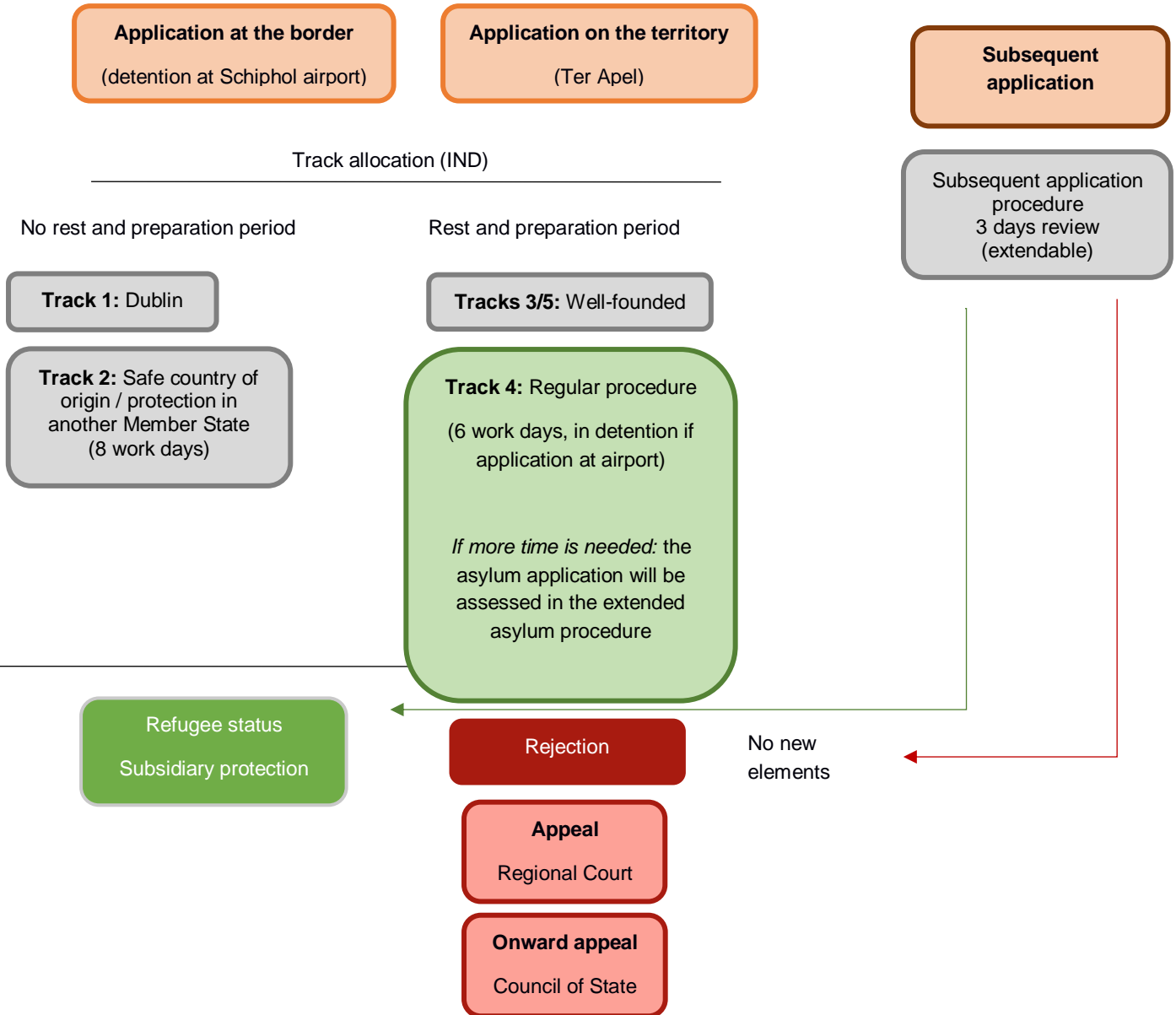
bungalow or a B&B, where the status holder may remain for a maximum of 6 months. After that, the municipality must have found a permanent house or accommodation for the protection beneficiary. The arrangement is only open to single beneficiaries without children. The beneficiary also must not be vulnerable. Status holders remain entitled to the COA's basic provisions, such as a weekly allowance and access to medical care, while receiving an additional payment of 75€ per week from the COA. The benefits granted by the COA will stop as soon as the municipality regular housed the status holder. The municipality receives a payment (8280€ plus 1000€ for guidance) for every status holder that participates in this arrangement.

- ❖ **Sudan revocations:** The Sudan reassessment project was finished in 2021, resulting in 0 revocations on the ground of ceased circumstances. Most of the status holders kept their permits on other grounds as many groups were considered to be at risk in Sudan.
- ❖ **Criteria and conditions for family reunification:** More information is given on the criteria for family reunification involving the proof of identity and family tie of the family member, in the situation that one of the submitted documents is considered as false. There are three ways to dispute the conclusion of the Identity and Document Investigation Unit. The current long waiting periods for consular services have been a reason of concern. In other family reunification cases, in which a refugee-sponsor is not allowed to submit the application within the favourable framework for refugees, the application has to be submitted within the regular framework addressed at both foreigners and Dutch citizens who wish to apply for family reunification with a third-country national.

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: ²¹ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Fast-track processing: ²² | <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: ²³ | <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

²¹ For applications likely to be well founded or made by vulnerable applicants. See Article 31(7) APD.

²² Accelerating the processing of specific caseloads as part of the regular procedure.

²³ 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 on, *inter alia*, interviews; subsequent applications; age assessments; border procedures; the use of country of origin information. Additionally, it provides information 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.²⁴

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.²⁵ Track 1 and 4 had always been part of the IND's practice. 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 executed by MediFirst.²⁶

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 executed by MediFirst.²⁷

²⁴ IND, Work instructions, available in Dutch at: <https://bit.ly/2MtPof7>.

²⁵ Decree WBV 2016/4 of 26 February 2016 amending the Aliens Circular 2000, available in Dutch at: <http://bit.ly/2fp4K0z>.

²⁶ Article 3.109c Aliens Decree.

²⁷ 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 asielpprocedure*) of 6 days, with the possibility to extend this time limit by 6, 8 or 14 days.²⁸ 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 asielpprocedure*) within a time limit of 6 months.
- Track 5** Procedure for applications starting in Track 3 and 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 so far.

Amendments Aliens Decree regarding regular asylum procedure (“Track 4”)

In September 2020, the State Secretary proposed an amendment of the Aliens Decree regarding the regular asylum procedure.²⁹ This was followed by an actual amendment of the Decree, which entered into force on 25 June 2021.³⁰ The amendment of the asylum procedure entails the following:

- (1) the registration procedure is formally laid down in the Aliens Decree;
- (2) during the registration interview the asylum seeker is questioned about his/her reasons for fleeing his/her country of origin;
- (3) cancellation of the first (verification) interview at day 1 of the regular asylum procedure, which results into a shortening of the regular asylum procedure from 8 to 6 working days;
- (4) more grounds for extending the regular asylum procedure.

Rest and preparation period

With the exception of Tracks 1 and 2, the asylum seeker is granted a rest and preparation period starting when the registration phase has ended.³¹ 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.³²

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 (MediFirst³³) 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 asielpprocedure*) which is, as a

²⁸ Article 3.115 (9) Aliens Decree.

²⁹ Dutch Parliament, 10 September 2020, 2019/20, 19637, nr. 2652, available in Dutch at: <https://bit.ly/3GkxjXn>.

³⁰ Amendment of the Aliens Decree, *In verband met het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielpprocedure*, Staatsblad 2021, 250, 25 June 2021, available in Dutch at: <https://bit.ly/3Fkb7LK>.

³¹ When it is assumed that the asylum application will be rejected in accordance with the Dublin Regulation (Article 3.109c Aliens Decree) due to the fact that the safe country of origin concept applies or if the asylum seeker already received international protection in a Member State of the European Union (Article 3.109ca Aliens Decree), the asylum seeker will not be granted a rest and preparation period, including the medical examination by MediFirst.

³² Article 3.109 Aliens Decree.

³³ In 2021, MediFirst substituted the Forensic Medical Society Utrecht (FMMU).

rule, designed to last 6 working days. The regular asylum procedure could be extended 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 assessed 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.³⁴

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).³⁵ 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 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).³⁶

The IND must first examine whether an asylum seeker qualifies for refugee status, before examining whether they 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.³⁷ 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](#)).

Return decision

In the Netherlands, a negative asylum decision is in general automatically accompanied by a return decision.³⁸ A (new) return decision is not issued if, for example:

1. A return decision had already been issued and the asylum seeker has not yet fulfilled the obligation following from that return decision, a second one cannot be issued.
2. The asylum seeker has already received international protection in another EU Member State.³⁹

The obligations following from a return decision are suspended when an (onward) appeal at a regional court or Council of State has suspensive effect.⁴⁰

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.⁴¹ 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

³⁴ See Article 42(4)(5) Aliens Act, which derives from Article 31 (3) of the Asylum Procedures Directive.

³⁵ Article 29 Aliens Act.

³⁶ 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.

³⁷ Council of State, Decision No 20010591481, 28 March 2002.

³⁸ Article 45(1) (2) Aliens Act.

³⁹ Article 62a(1) Aliens Act.

⁴⁰ Article 45(3) Aliens Act.

⁴¹ Article 30c Aliens Act.

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.⁴² 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.⁴³ 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.⁴⁴

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 the Council of State denies this provisional measure, 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).⁴⁵

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 2018, the CJEU ruled that an onward appeal does not have a suspensive effect in itself.⁴⁶ Following this judgment the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.⁴⁷

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 travelling 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, containers, and vehicles traveling to and from the United Kingdom via ferry.

⁴² Article 82(2) Aliens Act.

⁴³ Article 69(2) Aliens Act.

⁴⁴ 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.

⁴⁵ Council of State (Judge for provisional measures), Decision 201609138/3/V2, 20 December 2016.

⁴⁶ CJEU, Case C-175/17, *X v Belastingdienst/ Toeslagen*, 26 September 2018.

⁴⁷ Council of State, Decision No 201609659/1/V2 and 201609659/4/V2, 20 February 2019.

There are no reports of pushbacks at the Dutch borders.

Legal access to the territory

Resettled refugees

The Netherlands takes part to the UNHCR resettlement program, and resettles 500 refugees per year. After arriving in the Netherlands, resettled refugees formally lodge an asylum application at the application centre at Schiphol Airport. They will go through a three-day registration procedure and will be granted a temporary asylum residence permit. The new Dutch government announced in its Coalition Agreement the will to increase the number of resettled refugees from 500 to 900 per year.⁴⁸

Short stay visa

As a rule, people coming from non-EU countries willing to stay in the Netherlands for a maximum of 90 days need a visa. A short stay visa can be issued on the grounds of family visits, touristic or business reasons. A short stay visa allows the holder to travel to the Schengen countries and Switzerland.⁴⁹

A visa could be refused when Dutch authorities evaluate that the third-country national does not have sufficient reasons to return to his or her country of origin. For example, if the person concerned does not have a job, school-aged children or a house of their own property in said country.

In view of these considerations, obtaining a short stay visa might prove difficult for persons coming from countries where the general safety situation is critical or deteriorating. No policy regulating the issuance of humanitarian visas according to Article 25 (1) of the Visa Code is in place,⁵⁰ nor does the Dutch Council for Refugees possess any information regarding persons having been granted a humanitarian visa.

Some third country nationals are exempted from a Schengen visa, such as Ukrainians who hold a biometric passport. They are allowed to stay in the Netherlands for 90 days without a visa. Ukrainians who do not have a biometric passport have to apply for a Schengen visa. The visa-exempt and the Schengen visa could be extended for another 90 days in very exceptional circumstances. The Dutch government announced that Ukrainians are entitled to extend their visa-exempt or their Schengen visa for 90 days.⁵¹

Afghan nationals

The Dutch government committed to assisting certain groups of Afghan nationals in being repatriated or transferred from Afghanistan to the Netherlands. This includes the following categories of Afghan nationals and their core family members (spouse and children up to the age of 25 who are unmarried and living in the house of their parents):⁵²

- (1) Interpreters who worked for the Netherlands in the context of an international military or police mission;
- (2) Persons belonging to risk groups (such as NGO personnel, journalists and human rights defenders) who were previously included in evacuation lists, but were not able to reach the airport during the evacuation operation carried out in August;
- (3) Employees of NGOs working in projects directly financed by the Dutch government and were working since January 1, 2018, who contributed structurally and substantially to the projects for at least one year in a public and visible position;

⁴⁸ Coalition Agreement (*Regeerakkoord*) 2021 – 2025: *Omzien naar elkaar, vooruitkijken naar de toekomst*, available in Dutch at: <https://bit.ly/3ofYtI0>.

⁴⁹ IND, Information about short stay visa, available in Dutch at: <https://bit.ly/3L9fei1>.

⁵⁰ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

⁵¹ IND, *Ukraine: effects on stay or application*, available at: <https://bit.ly/3M02Voy>.

⁵² Dutch Parliament, 14 September 2021, 27925-808, *Stand van zaken in Afghanistan*, available in Dutch at: <https://bit.ly/3B0IaUU> and Dutch Parliament, 11 October 2021, *Kamerbrief ontwikkelingen Afghanistan* available in Dutch at: <https://bit.ly/3L9Z5sF>.

(4) people who worked for at least one year in a structural and substantial way in a public and visible position for Dutch military troops or EUPOL.

The Dutch government left Afghanistan on Thursday 26 August 2021 and since then evacuation flights with military aircraft stopped. Since 9 September 2021, charter flights with planes from other countries (Qatar, Pakistan) departed from Kabul with people who were on the Dutch evacuation list. From 9 September 2021 until the end of December 2021, 573 people have been repatriated or transferred to the Netherlands.⁵³ So far, only people holding a Dutch passport or an (expired) Afghan passport were repatriated or transferred on evacuation flights. Evacuations of people without passports proved very difficult. On 20 January 2022, with Pakistan's support, 35 people were made to cross the land border and will receive a visa and plane ticket for the Netherlands at the Dutch embassy in Pakistan, but this was a rare exception.⁵⁴

The most recent evacuation flight destined to the Netherlands was on 3 December 2021.⁵⁵ On 12 December 2021, a message appeared that the Taliban suspended cooperation on evacuation flights.⁵⁶ Regardless, on 27 January 2022 evacuation flights to Qatar were resumed.⁵⁷

On 9 December 2021, 15 EU Member States pledged 40,000 resettlement places for Afghan nationals by the end of 2022. Out of this number, the Dutch government agreed to resettle 3,159 Afghans.⁵⁸ At the moment of writing, it is unclear whether evacuees will be considered as part of the number of Afghan nationals resettled or not.

The policy regarding the repatriation and transfer of Afghan nationals has been changing on a regularly basis in recent months. As such, some of the information referred to may result outdated.

2. 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

2.1. 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

⁵³ Dutch newspaper, *Algemeen Dagblad*, 'Nog 573 mensen uit Kaboel weggehaald na einde evacuatiemissie', 27 December 2021, available in Dutch at: <https://bit.ly/3LcjJlq>.

⁵⁴ Dutch Parliament, Kamerbrief over verzoek reactie op nieuwsbericht evacuatie Afghanen op Nederlandse evacuatielijst, available in Dutch at: <https://bit.ly/3IA9BGU>.

⁵⁵ Dutch news, NOS, 'Franse evacuatielucht uit Afghanistan, 60 Nederlanders aan boord', 3 December 2021, available in Dutch at: <https://bit.ly/3rmnz8Z>.

⁵⁶ Pakistan Aviation, not dated, *Taliban stop all evacuation flights from Afghanistan*, available in English at: <https://bit.ly/34iFzch>.

⁵⁷ Reuters, 'Qatar resumes Afghan evacuation flights after two-month halt', 27 January 2022, available in English at: <https://reut.rs/3rscd4E>.

⁵⁸ Euractiv, 'EU Member States agree to take in 40,000 Afghans', 10 December 2021, available in English at: <https://bit.ly/3orThkm>.

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.⁵⁹ 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).⁶⁰ 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.⁶¹

As a rule, after registration at the AC, asylum seekers immediately go to the COL. After the registration procedure 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, that requires every asylum seeker to complete an extensive form at the start of the registration procedure, 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.⁶²

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.

The Aliens Decree on the Regular Asylum Procedure ("Track 4") has been amended. The amendment has entered into force on 25 June 2021.⁶³ Consequently, amongst other changes, the registration procedure, including the registration interview, is formally laid down in the Aliens Decree. Since the amendment, the immigration officer also explicitly questions the asylum seeker, during the registration interview, about the reasons for fleeing his or her country of origin. This also applies to unaccompanied minors. The change that was criticised by the Dutch Council for Refugees, given that during the registration procedure, the asylum seeker does not benefit from legal assistance and is not entitled to obtain individualized information. As a result, the asylum seeker will not be informed about the impact of his statements regarding reasons for fleeing his country of origin. It should be noted that asylum seekers receive a brochure from the IND at the start of the registration procedure; however, the brochure just provides general information about the asylum procedure in the Netherlands, and cannot be considered as a substitute for individualised assistance.

Due to the extensiveness of the registration form and its follow up registration interview, the first (verification) interview on day 1 of the regular asylum procedure has been abolished.

⁵⁹ IND, *Voordat jouw asielprocedure begint* – AMV, August 2015, available in Dutch at: <http://bit.ly/2DChVcO>.

⁶⁰ Article 3(3) Aliens Act.

⁶¹ Council of State, Decision ABKort 1999.551, 20 September 1999.

⁶² Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2018/15 *Aanmeldgehoren en Verificatie eerste gehoren*.

⁶³ Amendment Aliens Decree, *In verband met het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielprocedure*, Staatsblad 2021, 250, available in Dutch at: <https://bit.ly/3rb1rhJ>.

2.2. The rest and preparation period

Exclusively in Track 4, the asylum seeker is granted a rest and preparation period. This starts when the registration interview has taken place and the registration procedure has ended.⁶⁴ The rest and preparation period is designed to give first time asylum applicants some days to cope with the stress of fleeing their country of origin and the journey to the Netherlands.

The rest and preparation period takes at least 6 days.⁶⁵ It is designed, on one hand, to offer the asylum seeker some time to rest; 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 (MediFirst) 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 security;⁶⁶
- ❖ the asylum seeker causes nuisance in the reception centre;⁶⁷
- ❖ the asylum seeker is detained on the basis of Article 59b Aliens Act;⁶⁸
- ❖ the application is a subsequent application for asylum.⁶⁹

The rest and preparation period takes at least six days, while no maximum number of days is indicated. 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. 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. A new aim was to clear the backlog by mid-2021. In October 2021, there 500 applications were still to be assessed.⁷⁰ The Task Force used the following measures: (1) interviews via videoconference, (2) written interviews, (3) recruitment of (around) 250 new employees mainly from employment agencies and (4) outsourcing activities.⁷¹ The Task Force has ended its activities at the end of 2021.

The Dutch Council for Refugees has monitored the activities of the Task Force and the measures, which were created to clear the backlog. At the end of 2020, a first analysis was realised and the findings were published in November 2020,⁷² while a follow up to the monitoring report was published in July 2021.⁷³ One of the main findings was that the new employees of the Task Force, mainly recruited by employment agencies, lacked the expertise necessary to realise detailed interviews and assess complex asylum cases (e.g. regarding LGBTI and religious conversion claims). In these complex cases, a process was introduced to overcome this problem: more experienced immigration officers of the IND became involved

⁶⁴ Article 3.109 Aliens Decree.

⁶⁵ This occurs from practice and is not regulated by the law.

⁶⁶ Article 3.109(7)a Aliens Decree.

⁶⁷ Article 3.109(7)a Aliens Decree, for the definition of 'nuisance' see paragraph C1/2.2 Aliens Circular.

⁶⁸ Article 3.109(7)a Aliens Decree.

⁶⁹ Article 3.118b Aliens Decree.

⁷⁰ Dutch Parliament, No 35476 H, 16 November 2021, available in Dutch at: <https://bit.ly/3qlvzlc>.

⁷¹ Dutch Parliament, No 19637 2650, 7 September 2020, available in Dutch at: <https://bit.ly/3foazKd>.

⁷² Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: <https://bit.ly/39P1yH5>.

⁷³ Dutch Council for Refugees, *Monitor Taskforce*, 1 July 2021, available in Dutch at: <https://bit.ly/3zPJvx2>.

and more applications were referred to the extended asylum procedure.⁷⁴ Another relevant point coming from the report was that the written intentions to reject the application and the decisions, which were taken by the Task Force, lacked quality. In case the IND decides to reject the asylum application, it will issue a written intention providing the grounds and reasons for a possible rejection. The written intention is sent to the lawyer and/or handed over to the applicant. Furthermore, an observation was that the written interviews did not help to speed up the processing time of the applications. The applications still were referred to the extended procedure.

The Inspector of the Ministry of Justice & Security who monitored the Task Force also concluded that the new caseworkers lacked expertise and that the decisions taken by the Task Force lacked quality. Processing time was more important than the quality and due diligence of the procedure.⁷⁵

Although the Task Force has taken over the backlog from the IND, due to an increase of applications, a new backlog of 6,400 applications originated in the last months. The objective is to clear it during the first quarter of 2022.⁷⁶ The numbers of the processing time show that it takes 18 weeks when the Regular asylum procedure starts. When the application is referred to the extended procedure, it takes on average 56 weeks before a decision is taken.⁷⁷

Legal penalties

The IND was obliged to pay a large sum in legal penalties (*dwangsommen*)⁷⁸ to asylum seekers whose application had not been decided upon within the legal time frame of 6 months.⁷⁹ The regular asylum procedure in 2019 took on average 27 weeks to assess the asylum claim, while in the extended asylum procedure it took 44.5 weeks.⁸⁰ Therefore, 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 2020.⁸¹ Under the Temporary act, asylum seekers are excluded from giving the IND a notice of default,⁸² going to the regional court and receiving a legal penalty in cases where the IND does not decide upon their application in time. The Temporary Act did not apply to cases in which the legal time frame had already passed and the IND had been given notice of default by the asylum seeker. On 11 July 2021, one year after its entry into force, the Temporary Act expired. Currently, asylum seekers can give the IND a notice of default and lodge an appeal at the regional court, but the asylum seeker is still excluded from obtaining an indemnity as a result of the Temporary act.

In two cases concerning the Temporary Act, the Council of State will rule in an onward appeal whether the Act is in accordance with the EU principle of equality. The Council of State asked the State Secretary to respond to its question regarding this principle. According to the State Secretary the Temporary Act is not in violation with the EU principle of equality because the stipulations laid down in the Temporary Act do not fall within the scope of EU Law, so that the EU Principles of equality and effectiveness do not apply in this situation.⁸³

⁷⁴ Dutch Parliament, No 35476, nr H, 16 November 2021, available in Dutch at: <https://bit.ly/3qlvzlc>.

⁷⁵ Secretary of State, 7 January 2021, information available in Dutch at: <https://bit.ly/3zX8ZIT>.

⁷⁶ Dutch Parliament, no 35476, nr H, 16 November 2021, available in Dutch at: <https://bit.ly/3FiageD>.

⁷⁷ IND, *Doorlooptijden per asielspoort over 2021 (data per track on a monthly basis)* available in Dutch at: <https://bit.ly/3I0pRS2>.

⁷⁸ 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.

⁷⁹ Article 4:17 GALA, Regional Court Arnhem, decision no NL19.22847, 14 November 2019, Regional Court Amsterdam, decision no NL19.18215, 13 September 2019.

⁸⁰ IND, *Doorlooptijden per asielspoort over 2019, Maart – December 2019 (data available per track on a monthly basis)*, available in Dutch at: <https://bit.ly/34fTznw>.

⁸¹ Tijdelijke wet opschorting dwangsommen IND, available in Dutch at: <https://bit.ly/3bQIRqI>.

⁸² This means that the lawyer concerned has to inform (in writing) the IND that it has exceeded the time limit of 6 months and has to request the IND to issue a decision within a maximum period of 2 weeks.

⁸³ Council of State, case number 202102128/1 and 202102144/1, 29 October 2021.

Next to the Temporary Act, a draft bill has been published on 15 October 2020, which stipulates that all applicants who lodge an application based on the Aliens Act are excluded from receiving legal penalties (indenisation). This might mean that not only asylum seekers, but every person who lodges an application on the basis of the Aliens Act will be excluded from receiving legal penalties when the time limits have exceeded, for example people (including Dutch nationals) who apply for family reunification.⁸⁴ Due to national elections and the forming of a new Dutch Cabinet (Administration) the draft bill still has to be discussed in Parliament.

Due to the ongoing pandemic in May 2020, the statutory decision period for asylum applications in general was extended by six months.⁸⁵ The State Secretary 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.⁸⁶ On 16 December 2020, the Council of State ruled that this extension is not unreasonable and not contrary to Union law.⁸⁷

2.3. 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 was suspended from 15 March 2020 up to 28 April 2020.⁸⁸ 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. The Aliens Police, Identification and Human Trafficking Division (AVIM) carries out this process in the application centre in Ter Apel. 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 2020.⁸⁹

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.

⁸⁴ Draft bill 'Herziening regels niet tijdig beslissen op vreemdelingenrechtelijke aanvragen' available in Dutch at: <https://bit.ly/2M2L3PB>.

⁸⁵ Dutch Parliament, 19637-2605, 15 May 2020, *Gevolgen richtsnoeren Europese Commissie voor beslistermijnen IND*, available in Dutch at: <https://bit.ly/2LD9OSD>.

⁸⁶ 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>.

⁸⁷ Council of State, Decision No 202005098/1, ECLI:NL:RVS:2020:3020, 16 December 2020.

⁸⁸ Dutch Parliament, No 35300 VI and 25295-126, available in Dutch at: <https://bit.ly/3o09t9u>.

⁸⁹ Dutch Parliament, No 35 300 VI No 127, available in Dutch at <https://bit.ly/3iwqUO4>.

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 6 working days
 - ❖ Extended procedure 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2021: Not available
4. Average length of the first instance procedure in 2021: Regular procedure: 41 weeks
Extended procedure: 64 weeks⁹⁰

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 6 working days.⁹¹ This deadline may be extended.

In January 2019, the State Secretary of Justice introduced a new policy. It established 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.⁹²

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 (individualised) information from the Dutch Council for Refugees. As a result, the asylum seeker will not be informed about the impact of his statements regarding reasons for fleeing his country of origin or other statements he makes, for example regarding his identity and/or nationality. As Amnesty International concluded in its report *‘Bewijsnood, Wanneer nationaliteit en identiteit ongeloofwaardig worden bevonden’*, once the State Secretary (IND) establishes that the identity or nationality of the asylum seeker is not credible, it will be very difficult for the asylum seeker to refute this opinion.⁹³

Seeing the extensiveness of the form and its follow up registration interview, the verification interview, which was taken on the first day of the short asylum procedure, has been abolished since the

⁹⁰ IND, *Doorlooptijden per asielspoor over 2021 (information per track on a monthly basis)*, available in Dutch at <https://bit.ly/35Jt8Hg>.

⁹¹ Article 3.110(1) Aliens Decree.

⁹² Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2021/8, available in Dutch at: <https://bit.ly/3rfMfji>.

⁹³ Amnesty International, *Bewijsnood, Wanneer nationaliteit en identiteit ongeloofwaardig worden bevonden*, 19 November 2020, available in Dutch at: <https://bit.ly/34zOICW>.

amendment of the Aliens Decree regarding the regular asylum procedure.⁹⁴

For a clear understanding of the current Regular Procedure, it is important to indicate what happens during these six 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:⁹⁵

Day 1	Start of the actual asylum procedure with detailed interview (<i>Nader gehoor</i>)	In this extensive interview the asylum seeker is questioned by the IND about his or her reasons for seeking asylum. ⁹⁶ After the interview is taken the IND could decide to refer the case to the extended procedure.
Day 2	Review of the detailed interview	The asylum seeker and the appointed lawyer review the detailed interview after which corrections and additions thereto may be submitted, which happens generally due to interpretation problems, where a misunderstanding easily occurs.
Day 3	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. At this stage, the IND can also grant the asylum seeker an asylum permit.
Day 4	Submission of the view by the lawyer (<i>Zienswijze</i>)	After the IND has issued a written intention to reject the asylum application, the lawyer submits his or her view in writing concerning the written intention on behalf of the asylum seeker.
Day 5/6	The decision of the IND (<i>Beschikking</i>)	After the submission of the lawyer's view in writing, the IND may decide to either grant or refuse asylum. The IND may also decide to continue the examination of the asylum application in the Extended Procedure.

The IND takes a decision based on the information that stems from the registration interview and the detailed interview and information from official reports and other country information. A decision to reject the asylum application must be motivated and take into account the lawyer's view in writing.⁹⁷

Extension of the regular Asylum Procedure

In the past, the regular Asylum Procedure could be extended during the procedure up to 14, 16 or 22 days. Since 25 June 2021, when the amendments to the Aliens Decree regarding the regular asylum procedure came into force, the 6 days of the asylum procedure can be extended before the start of the procedure or during the procedure. When the IND decides to extend the procedure before its start, for example due to medical reasons, the asylum seeker is not able to be interviewed or there are indications

⁹⁴ Amendment Aliens Decree, *In verband met het regelen van de aanmeldfase en vervallen van het eerste gehoor in de algemene asielprocedure*, Staatsblad 2021, 250 available in Dutch at: <https://bit.ly/3ra1ZEH>.

⁹⁵ Article 3.112-3.115 Aliens Decree.

⁹⁶ See also Work instruction 2021/13, *Nader gehoor*, available in Dutch at: <https://bit.ly/3tu11FM>.

⁹⁷ Article 42(3) Aliens Act.

that the assessment of the asylum claim cannot take place within the 6 days of the regular procedure, the procedure is extended for 3 days. In these cases, the regular asylum procedure takes 9 days.⁹⁸ The grounds for extending the regular procedure before the start of the procedure are laid down in Article 3.115 (1) Aliens Decree.

When the IND decides to extend the regular asylum procedure during the regular procedure, for example when more time is needed to assess the identity or nationality of the asylum seeker or the asylum seeker did not show up for his detailed interview the regular procedure can be extended *with* 12, 14 or 20 days.⁹⁹ The grounds for extending the regular procedure during the procedure itself are laid down in Article 3.115 (2) Aliens Decree.

When there is a combination of grounds from Article 3.115(1) and (2) then the regular procedure could be extended *up to* 21, 23 or 29 days.¹⁰⁰

Extended Procedure (Verlengde asielpprocedure)

When the IND is not able to assess the asylum claim and issue a decision within the time frame of the (extended) regular asylum procedure, it has to refer the case to the extended procedure. Cases of minors under the age of 12 years and cases of asylum seekers who, due to medical reasons, cannot be interviewed are also referred to the extended procedure.¹⁰¹ When the case is referred to the extended procedure, the asylum seeker is relocated from a POL to a centre for asylum seekers (*Asielzoekerscentrum*, AZC).

In general, the detailed interview takes place in the regular asylum procedure, but either the detailed interview or an additional interview can also take place in the extended procedure. If there is an intention to reject the claim during the extended procedure, the asylum seeker and his or her lawyer are given 4 or 6 weeks to submit an opinion on the intention to reject.¹⁰² The IND has to issue a new intention to reject the asylum application if it changes its grounds for rejecting the claim substantially from the written intention in the regular asylum procedure.¹⁰³

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.

Due to the ongoing pandemic in May 2020, the statutory decision period for asylum applications was extended by six months.¹⁰⁴ The State Secretary 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.¹⁰⁵ On 16 December 2020, the Council of State ruled that this extension was not unreasonable, nor in violation of EU law.¹⁰⁶ If the application is assessed within the regular asylum procedure, in 2021, it takes in general 41 weeks and if it is referred to the extended procedure, in general it takes 64 weeks before a decision is adopted.¹⁰⁷

⁹⁸ Article 3.115 (1) and Article 3.115 (3) Aliens Decree.

⁹⁹ Article 3.115 (2) and Article 3.115 (3) Aliens Decree.

¹⁰⁰ Article 3.115 (3) Aliens Decree.

¹⁰¹ Article 3.113 (7) and Article 3.113 (8) Aliens Decree.

¹⁰² Article 3.116 (2) Aliens Decree.

¹⁰³ Article 3.119 Aliens Decree.

¹⁰⁴ Dutch Parliament, 19637-2605, 15 May 2020, *Gevolgen richtsnoeren Europese Commissie voor beslistermijnen IND*, available in Dutch at: <https://bit.ly/2LD9OSD>.

¹⁰⁵ 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>.

¹⁰⁶ Council of State, Decision No 202005098/1, ECLI:NL: RVS:2020:3020, 16 December 2020.

¹⁰⁷ IND, *Doorlooptijden per asielspoor over 2021 (data per track on a monthly basis)*, available in Dutch at: <https://bit.ly/3l0pRS2>.

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 Yemen. 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 2020 and 2021.

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.¹⁰⁸ Every asylum seeker undergoes a detailed interview 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.¹⁰⁹

Interpretation

The asylum seeker is to be interviewed in a language that he or she may reasonably be assumed to understand.¹¹⁰ This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.¹¹¹ The IND may only use certified interpreters by law.¹¹² 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.¹¹³ Interpreters are obliged to perform their duties honestly, conscientiously and must render an oath.¹¹⁴ The IND uses its own code of conduct, which is primarily based on the general code of conduct for interpreters.¹¹⁵ The Legal Aid Board takes the necessary step to ensure the presence of an interpreter facilitating the communication between asylum seekers and their lawyer. They are allowed to make use of the “interpreter telephone”, through which interpretation is provided by phone instead that in person. This service is provided by AVB Vertaaldiensten and Global Talk and paid by the Legal Aid Board.¹¹⁶

¹⁰⁸ Article 3.112 Aliens Decree.

¹⁰⁹ Article 3.113 Aliens Decree.

¹¹⁰ Article 38 Aliens Act.

¹¹¹ IND, *Toelichting inzet tolken*, March 2021, available in Dutch at: <https://bit.ly/3qnP8PK> and Work instruction 2020/5, (Samen) werken met een tolk, available in Dutch at: <https://bit.ly/33gEmCd>.

¹¹² Article 28(1) Law on Sworn Interpreters and Translators.

¹¹³ Article 28(3) Law on Sworn Interpreters and Translators.

¹¹⁴ Frits Koers et al, *Best practice guide asiel: Bij de hand in asielzaken*, Raad voor de Rechtsbijstand, Nijmegen 2012, 38.

¹¹⁵ IND, *Toelichting inzet tolken*, March 2021, available in Dutch at: <https://bit.ly/3qnP8PK>.

¹¹⁶ Legal Aid Board, information on interpretation services, available in Dutch at: <https://bit.ly/33vxctO>.

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 present claims related to sensitive issues, such as sexual violence.¹¹⁷

In the past, there have been concerns about the questions asked during interviews conducted with persons persecuted due to their sexual orientation. These persons had been questioned, for example, on their sexual behaviours and their personal feelings.¹¹⁸ 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.¹¹⁹ As a result, the Council of State now considers that the fact that asylum seekers cannot furnish sufficient information about their attachment to the LGBT community (be it in the Netherlands or in their country of origin) is not a decisive element in the conclusion of a lack of credibility.¹²⁰

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.¹²¹

Recording

The National Ombudsman made recommendations in 2014 concerning the possibilities for civilians to record conversations with governmental institutions.¹²² One of the recommendations is that, in principle, a governmental institution should not 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.¹²³

IND Task Force: written interview

In March 2020, 15,350 asylum applications were passed on to a newly established IND Task Force, with

¹¹⁷ Paragraph C1/2.11. Aliens Circular.

¹¹⁸ Lieneke Luit, *Pink Solution, inventarisatie van LHBT asielzoekers (Inventory of LGBTI asylum seekers)*, available in Dutch at: <http://bit.ly/1MyMHfE>.

¹¹⁹ CJEU, Joined Cases C-148/13, C-149/13 and C-150/13 A, B and C, Judgment of 2 December 2014.

¹²⁰ Council of State, Decisions No 201208550/1, No 201110141/1 and No 201210441/1, 8 July 2015.

¹²¹ See: Council of State, Decision No 201807042/1, ECLI:NL:RVS:2020:1885, 12 August 2020.

¹²² Ombudsman, Report 2014/166, November 2014.

¹²³ Article 3.114 Aliens Regulation.

the aim of clearing the IND's backlogs. At the end of 2021, the backlog had been almost cleared, and the work of the Task Force ended. Written interviews were introduced at the same time, as a measure to accelerate the backlog clearing. Asylum seekers were asked to personally fill in a form at the IND. The written interview was limited to asylum seekers with the following nationalities: Syrian, Yemenite, Eritrean, Turkish and Iranian, as they are considered as more likely to be granted international protection. The forms contained the following sections:¹²⁴ (1) reasons for the asylum application (asylum account); (2) reasons for the asylum application; (3) questions on an application for family reunification (only for Syrian, Turkish, Yemenite and Eritrean nationals); (4) information on documents presented to sustain their asylum claim or other documents; and (5) a criminal record certificate. After filling in the form, the applicants had the possibility to make corrections and additions to the filled in form. Nationals from Iran still were (briefly) interviewed after they had filled in the form. Unaccompanied minors were excluded from the written interviews, as well as asylum seekers with medical issues and illiterate asylum seekers.¹²⁵ Important to note is that the IND carried out in-person interviews in the cases in which a positive decision on the asylum application could not be taken on the basis of the written interview. It was not mandatory to participate in the written interview: asylum seekers who did want to fill in the form, were entitled to a regular interview.¹²⁶ In practice, however, many asylum seekers agreed to the written interview in fear of having to wait even longer.¹²⁷ Through the monitoring of the Task Force's activities, it clearly emerged that the use of written interviews did not help to speed up the processing time of the applications.¹²⁸ The applications still were referred to the extended procedure. As the Dutch Council for Refugees understands, the instrument of written interviews could be used in the near future.¹²⁹

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.¹³⁰ Initially, videoconference interviews were used for nationals of Syria, Turkey and Yemen. Later on for other cases.¹³¹

Only in one case, an asylum seeker explicitly 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.¹³²

In a recent case, an asylum seeker stated that the Secretary of State did not take into account his medical situation during his interview via videoconference. The Court is of the opinion that in this case

¹²⁴ IND, *Written interview*, not dated, available in English at: <https://bit.ly/35YxVC3>.

¹²⁵ IND, *Written interview*, not dated, available in English at: <https://bit.ly/35YxVC3>.

¹²⁶ IND, *Written interview*, not dated, available in English at: <https://bit.ly/35YxVC3>.

¹²⁷ Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: <https://bit.ly/39P1yH5>.

¹²⁸ Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: <https://bit.ly/39P1yH5> and Dutch Council for Refugees, *Monitor Taskforce*, 1 July 2021, available in Dutch at: <https://bit.ly/3zPJvx2>.

¹²⁹ Dutch Parliament, no 35476, nr H, 16 November 2021, available in Dutch at: <https://bit.ly/3FiageD>.

¹³⁰ IND, *Procesbeschrijving Telehoren*, 14 July 2020, available in Dutch at: <https://bit.ly/3c36lIH> which was followed up by IND, *Procesbeschrijving Telehoren*, 1 June 2021, available in Dutch at: <https://bit.ly/3rffN0J>.

¹³¹ EASO, Asylum Report 2021, page 119, <https://bit.ly/3HUKfDS>.

¹³² Regional Court of Utrecht, Decision No NL20.13775, 5 January 2021.

the Secretary of State had not sufficiently taken into account the medical advice from FMMU.¹³³

At the moment, it is unclear whether the instrument of videoconference is used frequently, as the most recent public information about interviewing via videoconference dates from June 2021.¹³⁴

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
Depending on decision	

 - ❖ If yes, is it
 - ❖ If yes, is it suspensive
2. Average processing time for the appeal body to make a decision: Not available

1.4.1. Appeal before the Regional Court

In the **regular asylum procedure**, an asylum seeker whose application for asylum is rejected on the merits within the framework of the regular asylum procedure has one week to lodge an appeal before the Regional Court (*Rechtbank*).¹³⁵ 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 regular 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.¹³⁶

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,

¹³³ Regional Court of Den Haag, Decision No NL21.19215, 10 January 2022.

¹³⁴ IND, *Procesbeschrijving Telehoren*, 1 June 2021, available in Dutch at: <https://bit.ly/3rffNOJ>.

¹³⁵ Article 69(2) Aliens Act.

¹³⁶ Article 82(2)(c) Aliens Act, citing Article 30b(1)(h).

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* has led to a major discussion in Dutch case law about the suspensive effect of appeals in asylum cases.¹³⁷ 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. Additionally, 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.¹³⁸ The Council of State concluded in this case that an asylum seeker could legally remain in the Netherlands during the period for lodging an appeal and during the appeal itself.¹³⁹ 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 illegal and the measure was lifted. Previously, the Council of State had put preliminary questions to the CJEU.¹⁴⁰ 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.¹⁴¹ Should the State Secretary want to detain asylum seekers during this period, which is only possible based on the provisions of the Reception Directive, the law will have to be amended.

It was initially unclear whether the *Gnandi* 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 *Gnandi* judgment did apply.¹⁴² As a result, the legal effects of the return decision were suspended.

According to the Council of State the *Gnandi* judgment is also applicable in case the asylum application was rejected in the border procedure.¹⁴³

The Aliens Act, in particular Article 82, has still not been adjusted to the *Gnandi* judgment.

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 the asylum seeker makes contradictory or inconsistent statements, the review can be more intensive. Previously, the other elements – not the credibility of the statements – for

¹³⁷ CJEU, C-181/16, 19 June 2018.

¹³⁸ Council of State, Decision no 201710445/2/V3, 27 August 2018.

¹³⁹ Council of State, Decisions No 201710445/2/V3 and 201805258/1/V3, 27 August 2018.

¹⁴⁰ Council of State, Decision No 201703937/1, 19 April 2018.

¹⁴¹ CJEU, C-269/18, 5 July 2018.

¹⁴² Council of State, Decision no 201903236/1, 29 January 2020.

¹⁴³ Council of State, Decision no 201808923/1, 5 June 2019.

assessing whether the asylum seeker qualifies for international protection (*de zwaarwegendheid*) had always been reviewed intensively by Regional Courts.

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

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.¹⁴⁴

1.4.2. Onward appeal before the Council of State

After a decision in the regular 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.¹⁴⁵ 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 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.¹⁴⁶

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.¹⁴⁷ Following this judgment, the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.¹⁴⁸ 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 2016.¹⁴⁹ 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 a expulsion date has been set, an asylum seeker can now submit a request for a provisional measure at the time of appeal.¹⁵⁰ 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).¹⁵¹ If granted, a provisional measure allows for reception facilities.

All decisions of the appeal body are public and some are published.¹⁵² 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.

¹⁴⁴ Article 83 Aliens Act.

¹⁴⁵ Article 70(1) Aliens Act.

¹⁴⁶ 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.

¹⁴⁷ CJEU, Case C-175/17 and C-180/17, *X and Y v. Staatssecretaris van Veiligheid en Justitie*, 26 September 2018.

¹⁴⁸ Council of State, Decision No 201609659/1/V2 and 201609659/4/V2, 20 February 2019.

¹⁴⁹ ECtHR, no. 29094/09, 5 July 2016.

¹⁵⁰ Council of State, Decision no. 201609138/3, 20 December 2016.

¹⁵¹ Council of State (Judge for provisional measures), Decision 201609138/3/V2, 20 December 2016.

¹⁵² Decisions of the Regional Courts and Council of State may be found at: <https://www.rechtspraak.nl/>.

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.¹⁵³ To ensure this right, the following system was designed:

1.5.1. Free legal assistance at first instance

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 that 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, a lawyer for every asylum seeker is automatically appointed. 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 the Legal Aid Board recognises the self-appointed lawyer as an official asylum lawyer, it 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 they are 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.

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.¹⁵⁴ 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.¹⁵⁵ This only happens in exceptional cases. On the

¹⁵³ Article 10 Aliens Act.

¹⁵⁴ Circular on payments legal aid in the new asylum procedure, 1 July 2010, available in Dutch at: <http://bit.ly/1HS8gek>.

¹⁵⁵ Article 12 Legal Aid Act.

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, 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 2021 were not available by the time of publication of the report. 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.¹⁵⁶ Most Member States require a negative PCR-test prior to a Dublin transfer. In 2021 (until 1 December), the time limit to carry out the Dublin transfer had passed in approximately 440 cases because the applicant refused to take a PCR-test.¹⁵⁷ As regards the impact of COVID-19 on transfers, see [Suspension of transfers](#).

Statistics based on the years 2016 to 2020

Outgoing procedure		
	Requests	Accepted
Take charge		
Total take charge	10,780	7,620
Italy	3,500	3,210
Greece	1,460	20
Spain	1,250	860
France	1,020	830
Germany	930	600
Take back		
Total take back	39,160	27,290
Germany	19,170	13,730
Italy	6,360	5,540
France	2,660	1,820
Switzerland	1,760	420
Greece	1,490	20

Source: List of questions and answers budget statements Ministry of Justice and Security, 35925-VI, 16 November 2021.

Requests refers to requests sent. Accepted refers to accepted requests.

¹⁵⁶ Letter of the Secretary of State, Parliamentary Document 19637, nr. 2690, 8 January 2020, available in Dutch at: <https://bit.ly/3rlMEzs>.

¹⁵⁷ Answer to Parliamentary Questions nr. 805, Secretary of State, 5 November 2021, available in Dutch at: <https://bit.ly/3G4zHRY>.

2.1.1. Application of the Dublin criteria

As a result of the answers of the CJEU in the case of *H. and R.*¹⁵⁸, the Council of State concluded that an asylum seeker cannot rely on a Chapter III-criterion in case of take backs.¹⁵⁹ The exception to this rule is the situation described in Article 20(5) of the Dublin Regulation.¹⁶⁰ This means that the IND only looks at the responsibility criteria of Chapter III of the Dublin Regulation in take charge and Article 20(5)-situations.

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.¹⁶¹ 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.

Guarantees for) minors: Article 6 and 8 Dublin Regulation

Unaccompanied children who have already applied for asylum in another Member State and who do not have any family members legally residing in the EU will not receive a Dublin claim. The current practice is therefore in line with the CJEU's judgement in the case of *MA and Others*.¹⁶²

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.¹⁶³ According to the Council of State, it cannot always be assumed that being with a family member outweighs all other interests.¹⁶⁴ The Council of State made clear that the IND may not, with reference to the principle of mutual trust, assume without further investigation that the authorities of the other Member State have investigated whether this takeover is in the best interests of the child.¹⁶⁵ 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.¹⁶⁶

Within the scope of age assessment, two officers from the Immigration Service and the Border Police will view an asylum seeker who claims to be a minor.¹⁶⁷ 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.¹⁶⁸ An asylum seeker who claims to be an unaccompanied minor, but who has been

¹⁵⁸ CJEU, C-582/17 and 583/17, *Staatssecretaris van Veiligheid en Justitie v. H. And R.*, 2 April 2019.

¹⁵⁹ Council of State, ECLI:NL: RVS:2019:3672, 31 October 2019.

¹⁶⁰ Regulation (EU) No 604/2013 of the European Parliament and the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third-Country National or a Stateless Person (recast) [2013] OJ L 180/31 (Dublin Regulation).

¹⁶¹ Council of State, ECLI:NL: RVS:2016:2441, Council of State, ECLI:NL: RVS:2015:3012.

¹⁶² CJEU, C-648/11, *MA and Others v Secretary of State for the Home Department*, 6 June 2013.

¹⁶³ 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.

¹⁶⁴ Council of state, ECLI:NL: RVS:2020:3043, 21 December 2020.

¹⁶⁵ Council of state, ECLI:NL: RVS:2020:1281, 27 May 2020.

¹⁶⁶ Council of State, Decision No 201905956/1, 26 August 2019.

¹⁶⁷ Work Instruction 2018/19, 13 December 2018.

¹⁶⁸ Council of State, Decision No 201901529/1, 28 June 2019.

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.¹⁶⁹ The jurisprudence of the Council of State since then demonstrates this has become settled case law.¹⁷⁰ 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 nearly impossible for (alleged) minors to prove they are minors in case another Member State has registered them as an adult.¹⁷¹ There has been some positive jurisprudence from Regional Courts regarding this issue,¹⁷² but up until now, the Council of State still holds that the IND can rely on the registration in the other EU Member State.¹⁷³

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.¹⁷⁴

Family unity: Article 9 and 10 Dublin Regulation

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.¹⁷⁵ 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.¹⁷⁶ Family unity can also be established from circumstantial evidence.¹⁷⁷

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.¹⁷⁸ 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.

Residence documents or visas: Article 12 Dublin Regulation

As to the application of Article 12(4) of the Dublin Regulation, the Council of State ruled 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 phrase refers to the duration of a visa.¹⁷⁹ According to the Council of State, there is no reason to submit preliminary questions on this matter to the CJEU.

On 25 August 2021, the Council of State decided to refer prejudicial questions to the CJEU in the case of applicants who received diplomatic cards from the Ministry of Foreign Affairs of another Member

¹⁶⁹ Council of State, ECLI:NL: RVS:2019:653, 27 February 2019.

¹⁷⁰ Council of State, ECLI:NL: RVS:2019:2984, 2 September 2019; Council of State, ECLI:NL: RVS:2019:2957, 28 August 2019.

¹⁷¹ 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>.

¹⁷² See, for example: Regional Court Groningen, NL21.17799, 24 November 2021.

¹⁷³ As confirmed by: Council of State, ECLI:NL:RVS:2021:2659, 26 November 2021.

¹⁷⁴ Council of State, Decision No 201807010/1, 30 April 2019

¹⁷⁵ Regional Court, The Hague, Decisions No 17/591 and NL.1428, 17 August 2017.

¹⁷⁶ Regional Court Amsterdam, NL19.30086, 12 February 2020.

¹⁷⁷ Regional Court Middelburg, NL19.28911, 9 January 2020.

¹⁷⁸ Council of State, ECLI:NL: RVS:2020:2261, 21 September 2020.

¹⁷⁹ Council of State, ECLI:NL: RVS:2019:2508, 23 July 2019; Council of State, ECLI:NL: RVS:2019:2486, 23 July 2019.

State. The IND claimed the Member State issuing the diplomatic card would be responsible on the basis of Article 12 Dublin Regulation. The Council of State asks whether a diplomatic card issued by a Member State under the Vienna Convention on Diplomatic Relations is a residence document within the meaning of Article 2(1) Dublin Regulation.¹⁸⁰

2.1.1. The dependent persons and discretionary clauses

Dependent persons: Article 16 Dublin Regulation

The burden of proof in showing that a situation of dependency exists lies with the asylum seeker, but the IND has to motivate every case in which it refuses to apply Article 16.¹⁸¹ It is settled case law that the applicant has to demonstrate that a situation of dependency exists between them and their family member, with objective documents demonstrating what concrete assistance their family member offers or receives.¹⁸²

The IND typically only applies Article 16 of the Dublin Regulation in situations of ‘exclusive dependence’, meaning that the asylum seeker has to demonstrate they receive or provide care that no other person could facilitate. The Council of State has approved this strict framework. In 2020, the Council of State ruled that Article 16 did not apply to the situation in which the asylum seeker was dependent on intensive informal care, mainly provided by her son.¹⁸³ According to the Council of State, it had not been shown that it was impossible, or very difficult, to replace her son as a care provider nor had they shown that the presence of her son was necessary for the treatment to be successful. Similarly, in 2019, the Council of State ruled that the asylum seeker had failed to show that she was the only person capable of caring for her seriously ill mother, as her brothers were also present and there is the option of home care.¹⁸⁴ In the case of an asylum seeker who 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 - indicating that the asylum seeker’s presence is indispensable to his mother and his brother – was not sufficient to demonstrate the existence of exclusive dependency.¹⁸⁵

Both the Regional Court of Den Bosch and the Regional Court of Haarlem recently held that the strict interpretation of Article 16 employed by the IND and Council of State conflicts with Union law.¹⁸⁶

On 30 November 2021, the Regional Court of Zwolle decided to refer prejudicial questions on the scope of Article 16 to the CJEU. The case concerns a woman, who married shortly after her arrival in the Netherlands, whose husband resides lawfully in the Netherlands. At the time the IND issued a transfer decision, the woman was pregnant with their child. The Regional Court requested the CJEU whether Union law precludes national legislation that takes into account the best interests of an unborn child and whether Article 16(1) of the Dublin III Regulation applies to the relationship between the unborn child and the father of that unborn child who is lawfully residing in the Member State.¹⁸⁷

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:

¹⁸⁰ Council of State, ECLI:NL:RVS:2021:1873, 25 August 2021; CJEU case number C- 568/21.

¹⁸¹ Council of State, Decision No 201701137/1, 20 March 2017; see also Regional Court Middelburg, Decision No 17/540, 30 January 2017.

¹⁸² Council of State, Decision No 201403670/1, 5 February 2015.

¹⁸³ Council of State, ECLI:NL:RVS:2020:2296, 30 September 2020.

¹⁸⁴ Council of State, ECLI:NL: RVS:2019:834, 13 March 2019.

¹⁸⁵ Council of State, Decision No 201706799/1/V3, 8 October 2018.

¹⁸⁶ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10025, 14 September 2020; Regional Court Haarlem, ECLI:NL:RBDHA:2020:8698, 3 September 2020.

¹⁸⁷ Regional Court Zwolle, ECLI:NL:RBDHA:2021:13167, 30 November 2021; CJEU case number C-725/21.

- ❖ 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 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 its own judgment.¹⁸⁸ 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.¹⁸⁹

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.¹⁹⁰ 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 obliges the IND to apply Article 17 of the Dublin III Regulation.¹⁹¹ 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.¹⁹²

While enjoying a large margin of discretion in applying Article 17, the IND must state reasons for refraining from applying the discretionary clause if the applicant appeals to this clause. The Council of State ruled that the IND had not stated sufficient reasons not to apply Article 17 in the case of two brothers who had been actively searching for each other for the past 16 years.¹⁹³ Similarly, the Council of State ruled that the IND had to state reasons for refraining from applying Article 17 in the case of an asylum seeker who supported her seriously ill sister in the Netherlands¹⁹⁴ and in the case of a woman and her children who had already been staying in the Netherlands for multiple years.¹⁹⁵

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 State 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.¹⁹⁶

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 2021.

¹⁸⁸ Council of State, Decision No 201806712/1, 10 October 2018.

¹⁸⁹ Council of State, ECLI:NL: RVS:2020:545.

¹⁹⁰ Council of State, Decision No 201507801/1, 9 August 2016.

¹⁹¹ Council of State, Decision No 201505706/1, 19 February 2016.

¹⁹² Council of State, Decision No 201505706/1, 19 February 2016.

¹⁹³ Council of State, Decision No 20181004/1, 13 May 2019.

¹⁹⁴ Council of State, ECLI:NL:RVS:2020:2455, 16 October 2020.

¹⁹⁵ Council of State, ECLI:NL:RVS:2021:1256, 17 June 2021.

¹⁹⁶ Paragraph C2/5 Aliens Circular.

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.¹⁹⁷ 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.¹⁹⁸

The IND, in cooperation with the Dutch Council for Refugees, has drafted brochures that provide asylum seekers information on 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 presumes 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 MediFirst.¹⁹⁹ There is one case in which the Regional Court of Rotterdam has ruled that the asylum seeker should have been examined by FMMU/Medifirst, even though the application was dealt with in Track 1.²⁰⁰

Within a few days after filing the application, the asylum seeker takes part in a reporting interview with the IND (see below for more information). After the 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.²⁰¹

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 lasts approximately a week from the moment it officially starts until the decision to not handle the asylum application.

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.²⁰²

In 2018, the Secretary of State submitted a Bill providing a legal basis for apprehending and detaining asylum seekers who have a lawful residence in the Netherlands, such as asylum seekers awaiting their

¹⁹⁷ Paragraph A2/10.1 Aliens Circular.

¹⁹⁸ Paragraph C2/7.9 Aliens Circular.

¹⁹⁹ Article 3.109c(1) Aliens Decree.

²⁰⁰ Regional Court of Rotterdam, ECLI:NL:RBDHA:2021:4036, 20 April 2021.

²⁰¹ Paragraph C2/5 Aliens Circular.

²⁰² Regional Court Amsterdam, Decision NL18.8386, 8 June 2018.

Dublin transfer. The Bill was passed in February 2019.²⁰³ 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.²⁰⁴ 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.²⁰⁵

The IND does not register the average duration of the procedure, from the moment a request is accepted until the transfer takes place. However, the average duration a Dublin case was part of the caseload of DT&V (Repatriation and Departure Service of the Ministry of Security and Justice) and was of 17 weeks in 2021 (until September), which gives some indication regarding the actual duration of the procedure.²⁰⁶ 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?
❖ If so, are interpreters available in practice, for interviews?
☒ Yes ☐ No
☒ 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 "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.²⁰⁷

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 Italian authorities about these corrections.²⁰⁸

²⁰³ Stb. 2019, 75.

²⁰⁴ Article 62c(1) Aliens Act.

²⁰⁵ Council of State, Decision 201701623/1/V/3, 10 August 2017.

²⁰⁶ List of questions and answers budget statements Ministry of Justice and Security, 35925-VI, 16 November 2021.

²⁰⁷ CJEU, Case C-63/15 *Ghezelbash*, Judgment of 7 June 2016.

²⁰⁸ Council of State, Decision No 201700595/1, 6 July 2018.

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?

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

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”.²⁰⁹ The asylum seeker may appeal this decision before the Regional Court.²¹⁰ The appeal has no automatic suspensive effect and must be filed within a week after the decision not to handle the asylum application.²¹¹

Beginning of January 2021, a request for a preliminary ruling was made by the Regional Court Haarlem.²¹² 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. While some Member States offer such an effective remedy to the applicant, some other Member States, others such as the Netherlands do not. The Court decided to bring this issue before the EU Court of Justice. The hearing at the CJEU took place on 11 January 2022.

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?

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

<input type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

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

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

In Dublin cases (“Track 1”), the right to free legal assistance differs from the regular procedure (“Track 4”). Instead of being referred to a lawyer once they register their asylum application, asylum seekers 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.²¹³

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. The Legal Aid Board has published guidelines on how to deal with this situation on 20 September 2019.²¹⁴ Essentially, the lawyer informs the Legal Aid Board and withdraws him- or herself from the case.

²⁰⁹ Article 30(1) Aliens Act.

²¹⁰ Article 62(c) Aliens Act.

²¹¹ Articles 69(2)(b) and 82(2)(a) Aliens Act.

²¹² Regional Court Haarlem, ECLI:NL:RBDHA:2020:12927, 17 January 2021; CJEU case number C-19/21.

²¹³ Article 3.109c(1) Aliens Act. This is due to the lack of a rest and preparation period.

²¹⁴ Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 17 2019, 20 September 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?
❖ If yes, to which country or countries?

☒ Yes ☐ No
Hungary

Dutch case law and practice on the subject of suspension of Dublin transfers is worth mentioning more extensively, referring in particular to some specific Member States.

Italy: Following the *Tarakhel v. Switzerland* judgment,²¹⁵ 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 would be accommodated in one of the listed Protection System for Asylum Seekers and Refugees (SPRAR) locations.²¹⁶

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.²¹⁷ At the beginning of 2019, the Council of State was still holding to this decision.²¹⁸ In June 2019, the Council of State ruled that also in case of particularly vulnerable asylum seekers the principle of mutual trust still applies.²¹⁹ Following this judgement by the Council of State, multiple particularly vulnerable asylum seekers lodged a complaint at the ECtHR arguing that a transfer to Italy would breach their rights under Article 3 ECHR. Over the course of 2019, the ECtHR has granted several interim measures to prevent the transfer of particularly vulnerable applicants to Italy.²²⁰

On 23 March 2021, the ECtHR ruled in the case of *M.T. v the Netherlands*. The Court ruled that the Dublin transfer of a single mother and her two minor children to Italy would not pose a risk of treatment in violation of Article 3 ECHR.²²¹ The Court concluded that, in view of the legislative changes made by the Italian authorities concerning the reception system, the applicants would have access to adequate reception conditions. Following this judgement, all interim measures (that had been in place since 2019) have been lifted and all complaints that were still pending were declared inadmissible by the ECtHR. Following the ECtHR judgement, the Council of State has also confirmed that the principle of mutual trust applies to Italy for particularly vulnerable applicants.²²² Some of the applicants had applied for asylum in 2018 already. Now, almost 4 years later, it is confirmed that they should return to Italy. Some Regional Courts have held that the best interests of the minor children should be taken into account when deciding if it is reasonable to expect these families to return to Italy.²²³

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

²¹⁵ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

²¹⁶ Council of State, Decision No 201506164/1/V3, 7 October 2015.

²¹⁷ Council of State, Decision No 201808522/1/V3, 19 December 2018.

²¹⁸ Council of State, Decision No 201810366/1, 29 January 2019.

²¹⁹ Council of State, Decision No 201809552/1, 12 June 2019; Council of State, Decision No 201901495/1/V3, 8 April 2019.

²²⁰ See, amongst others: ECtHR, *M.T. v the Netherlands*, No. 46595/19, 6 September 2019.

²²¹ ECtHR, 23 March and amended on 15 April 2021, *M.T. v the Netherlands*, appl. no. 46595/19, ECLI:CE:ECHR:2021:0323DEC004659519.

²²² Council of State, Case No. 202107185/1, 29 November 2021.

²²³ Regional Court Den Bosch, NL19.9215 and NL19.9217, 6 July 2021; Regional Court Amsterdam, NL19.23471; NL19.23472; NL19.23476, 18 October 2021; Regional Court Zwolle, NL19.5454, 15 December 2021.

Council of State.²²⁴ 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.²²⁵ In 2019, several Dublin claims were submitted to Greece. 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. 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, 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.²²⁶ Until now, no new transfer to Greece under the Dublin Regulation has been realised.

Malta: On 15 December 2021, the Council of State ruled that the principle of mutual trust no longer applies to Malta.²²⁷ The Council of State comes to this conclusion based on recent information from the Maltese NGO aditus foundation, which shows that asylum seekers who are deported to Malta on the basis of the Dublin Regulation will be detained upon arrival. Several reports also show that detention conditions in Malta are very poor and that access to legal aid has deteriorated.

According to the Council of State, the Secretary of State has provided inadequate reasons that there is no real risk for Dublin claimants of a violation of Article 3 of the ECHR or Article 4 of the EU Charter if they are detained after arrival in Malta. The conclusions of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT report) of 10 March 2021 show that living conditions in the various detention centres are completely inadequate and Malta's response to the report does not reflect the extent to which these shortcomings have actually improved since its publication.²²⁸ Additionally, the Council of State referred to the AIDA Malta country report, indicating that NGOs have not observed any improvements in detention conditions, nor have they sufficient access to detention centres, inferring that no adequate control on detention conditions can be exercised.

Switzerland: On 4 November 2020, the Council of State ruled that the fact that there is a difference in protection against refoulement between the Netherlands and Switzerland for Eritreans who have left Eritrea illegally does not mean that the Netherlands cannot rely on the principle of mutual trust. According to the Council of State, the applicant did not fear indirect refoulement (from Switzerland to Eritrea) since the applicant had not made it plausible that he would be forcibly deported to Eritrea after his Dublin transfer to Switzerland.²²⁹ 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.

Denmark: The Regional Court of Den Bosch has prevented a Dublin-transfer of Syrian applicants from the Netherlands to Denmark.²³⁰ Their asylum permit has been withdrawn in Denmark and the Regional Court wants to await the prejudicial questions that were referred to the CJEU by Italian Courts, regarding indirect refoulement (C-297/21&C-254/21). The prejudicial questions regard Afghan asylum seekers who face a transfer to a different member state, but the Regional Court found they also apply to the case at hand. At the moment, all other Regional Courts have ruled that there is no risk of indirect refoulement. So far, there is no ruling by the Council of State, but a hearing took place on 1 March 2022.

It is also worth mentioning that the Regional Court of Den Bosch has referred prejudicial questions to the CJEU on the on the scope and purport of the principle of mutual trust in the context of the transfer

²²⁴ Paragraph C2/5.1 Aliens Circular. See also Council of State, Decision No 201009278/1/V3, 14 July 2011.

²²⁵ 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>.

²²⁶ Council of State, Decision No 201904035/1/V3, 23 October 2019; Council of state, Decision No 201904044/1/V3, 23 October 2019.

²²⁷ Council of State, ECLI:NL: RVS:2021:2791, 15 December 2021.

²²⁸ European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), Report to the Maltese Government, 10 March 2021, available via: <https://bit.ly/3Jv7sgz>.

²²⁹ Council of State, ECLI:NL:RVS:2020:2592, 4 November 2020.

²³⁰ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10001, 14 September 2021.

of the applicant to the Member State responsible. The Court made specific reference to cases in which said Member State allegedly infringed fundamental rights with respect to the applicant and third-country nationals generally, in the form of, *inter alia*, pushbacks and detention. The Court also asked questions relating to the evidence the applicant has at their disposal and the standard of proof that applies when they claim that transfer should be prohibited under Article 3(2) of the Dublin Regulation.²³¹ Furthermore, the Regional Court of Zwolle referred questions regarding the interpretation to be accorded to Article 6 of Directive 2004/81/EC (Human Trafficking Directive) and to the guarantees (such as a reflection period or a residence permit linked to trafficking), which that article offers to third-country nationals who claim to have been victims of human smuggling.²³²

Hungary: Following a Council of State ruling in November 2015,²³³ 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.

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.²³⁴ 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.²³⁵ 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.²³⁶ This was still the case in 2021.

Bulgaria: The Council of State suspended three Dublin transfers to Bulgaria in 2016,²³⁷ 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 and thus that the IND should have conducted further investigation.²³⁸ In 2017, however, the Council of State found that the principle of mutual trust could be upheld vis-à-vis Bulgaria,²³⁹ including in one case concerning a family with children.²⁴⁰ This led the State Secretary to conclude that the special attention previously paid to vulnerable applicants was no longer necessary for Bulgaria.²⁴¹ 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.²⁴² In a judgment of 28 August 2019, the Council of state confirmed that the principle of mutual trust applies to Bulgaria.²⁴³ This was confirmed by the Regional Courts of Haarlem and Roermond on 21 September 2021 and 27 October 2021, respectively.²⁴⁴

²³¹ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10735, 4 October 2021; CJEU case number: C-614/21.

²³² Regional Court Zwolle, ECLI:NL:RBDHA:2021:727, 28 January 2021; CJEU case number: C-66/21.

²³³ Council of State, Decision No 201507248/1, 26 November 2015.

²³⁴ State Secretary, Letter TK 2017-2018, 19 637, No 2355, 27 November 2017.

²³⁵ KST 19637, No. 2374, 22 March 2018.

²³⁶ KST 19637, No 2374, 22 March 2018.

²³⁷ 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.

²³⁸ Council of State, Decision No 201604780/1, 25 November 2016.

²³⁹ Council of State, Decision No 201604481/1, 4 April 2017.

²⁴⁰ Council of State, Decision No 201603754/1, 19 July 2017.

²⁴¹ State Secretary, Letter TK 2017-2018, 32 317, No. 492, 5 October 2017.

²⁴² Council of State, Decision No 201707643/1/V3, 24 August 2018.

²⁴³ Council of State, Decision No 201810397/1, 28 August 2019.

²⁴⁴ Regional Court Haarlem, ECLI:NL:RBDHA:2021:10688, 21 September 2021; Regional Court Roermond, NL21.1188, 27 October 2021.

Poland: according to 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.²⁴⁵ In 2021, the Regional Courts of Amsterdam,²⁴⁶ Groningen,²⁴⁷ and Den Bosch²⁴⁸ have ruled that the principle of mutual trust does not apply to Dublin transfers to Poland concerning applicants who are part of the LGBTQIA+ community. The Secretary of State did not appeal these judgments; hence the Council of State has not yet ruled on this matter.

Romania: In a case regarding a Dublin transfer to Romania, the applicant stated that he was detained and mistreated by Romanian authorities. The Council of State, however, ruled that the principle of mutual trust still applies to Romania. The statements and country of origin information brought forward by the applicant did not lead the Council to conclude otherwise.²⁴⁹

Croatia: The Council of State ruled that the principle of mutual trust is still upheld for transfers to Croatia.²⁵⁰ The widespread practise of pushbacks in Croatia and the fact that the applicant himself was a victim of pushbacks did not lead the Council of State to conclude otherwise, because it was not shown that the applicant would fear pushbacks as a Dublin returnee.

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 be continued when possible. 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.²⁵¹ 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.²⁵²

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.²⁵³

Dublin transfers 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. The number of countries imposing such additional conditions has increased since September 2020. In a case where the receiving Member State stated that a transfer could only take place only under the condition that the asylum seeker would be quarantined on arrival,

²⁴⁵ Regional Court Haarlem, 12 November 2020, ECLI:NL: RBDHA:2020:11769.

²⁴⁶ Regional Court Amsterdam, ECLI:NL:RBDHA:2021:11115, 29 July 2021.

²⁴⁷ Regional Court Groningen, NL21.1431, 28 April 2021.

²⁴⁸ Regional Court Den Bosch, NL.21.2550, 1 October 2021.

²⁴⁹ Council of State, ECLI:NL:RVS:2021:1645, 29 July 2021.

²⁵⁰ Dutch Council of State, 19 July 2021, ECLI:NL:RVS:2021:1563.

²⁵¹ KST 32317, nr. 625, 19 June 2020.

²⁵² Letter of the Ministry of Justice to the House of Representatives, 8 January 2021.

²⁵³ Council of State, ECLI:NL: RVS:2020:1032, 8 April 2020.

the Regional Court ruled that the interests of the State Secretary in implementing the Dublin Regulation surpassed the asylum seeker's interest in avoiding quarantine.²⁵⁴

Most Member States require a negative PCR-test prior to a Dublin transfer. In 2021 (until 1 December), the time limit to carry out the Dublin transfer was exceeded in approximately 440 cases because the applicant refused to take a PCR-test.²⁵⁵

The Secretary of State has acknowledged that the Dublin Regulation does not allow for suspension of the time limits for transfers based on exceptional circumstances such as the COVID-19 pandemic.²⁵⁶

Time limits for transfer under the Dublin Regulation and suspensive effect

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 (onward) appeal against the decision not to handle the asylum request if suspensive effect was granted in the (onward) appeal stage.

A request for a provisional measure that has been granted during a procedure challenging the way the actual transfer will be carried out,²⁵⁷ is a request that falls under Article 27, third paragraph of the Dublin Regulation.²⁵⁸ In those cases, the transfer period is suspended and will restart after the court ruling.

In the course of 2021, the Council of State has referred multiple prejudicial questions about suspensive effect in Dublin cases to the CJEU. These questions concern whether the so-called 'chain rule' applies to Dublin III (cases C-323/21, C-324/21 and C-325/21);²⁵⁹ whether the 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 (case C-338/21);²⁶⁰ and whether the Secretary of State can request suspensive effect in the onward appeal stage (case C-556/21).²⁶¹ All cases are still pending in front of the CJEU.

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 case,²⁶² the State Secretary clarified Dutch policy on the interpretation of Article 29, second paragraph, of the Dublin Regulation.²⁶³ 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.²⁶⁴ There is as yet no case law on this subject by the Council of State.

²⁵⁴ Regional Court Arnhem, ECLI:NL: RBDHA:2020:6250.

²⁵⁵ Answer to Parliamentary Questions nr. 805, Secretary of State, 5 November 2021, available in Dutch at: <https://bit.ly/3G4zHRY>.

²⁵⁶ Secretary of State, Letter to the House of Representatives no. 19637 2690, 8 January 2021. Available in Dutch at: <https://bit.ly/3td58WS>.

²⁵⁷ Article 72, third paragraph, Aliens Act.

²⁵⁸ Council of state, Decision No. 201907936, 24 February 2020.

²⁵⁹ Council of State, ECLI:NL:RVS:2021:983; ECLI:NL:RVS:2021:984; ECLI:NL:RVS:2021:985, 19 May 2021.

²⁶⁰ Council of State, ECLI:NL:RVS:2021:1124, 26 May 2021.

²⁶¹ Council of State, ECLI:NL:RVS:2021:1929, 1 September 2021.

²⁶² CJEU, ECLI:EU:C:2019:21, 19 March 2019.

²⁶³ WBV 2020/22, 27 October 2020.

²⁶⁴ Regional Court Groningen, NL19.25608, 6 March 2020.

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).²⁶⁵ If the asylum seeker considers the mere exchange of medical 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.²⁶⁶ 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.²⁶⁷

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.²⁶⁸ 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.²⁶⁹

2.7. The situation of Dublin returnees

If an asylum seeker is transferred to the Netherlands under the Dublin Regulation, 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.

So far, no issues regarding access to the asylum procedure or reception conditions were registered among Dublin returnees.

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.

²⁶⁵ Council of State, ECLI:NL: RVS:2018:4131, 19 December 2018.

²⁶⁶ 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.

²⁶⁷ Council of State, ECLI:NL: RVS:2019:3138, 12 September 2019.

²⁶⁸ CJEU, Case C-578/16, *C. K. and Others v Republika Slovenija*, 16 February 2017.

²⁶⁹ Council of State, Decision 201901380/1, 22 August 2019; Council of State, Decision 201709136/1, 16 January 2019.

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 carried out 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 protection in another EU Member State, however, are subject to an [Accelerated Procedure](#) (“Track 2”).²⁷⁰

There are no statistics available on the number of applications dismissed as inadmissible in 2021.

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.²⁷¹ 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.²⁷² This appeal has no automatic suspensive effect, except in the case of the “safe third country” concept.²⁷³

²⁷⁰ Article 3.109ca(1) Aliens Decree.

²⁷¹ Article 3.109ca(1) Aliens Decree.

²⁷² Article 69(2)(c) Aliens Act.

²⁷³ Article 82(2)(b) Aliens Act.

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.²⁷⁴ Therefore the same remarks are applicable concerning legal assistance (see [Regular Procedure: Legal Assistance](#)).

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.²⁷⁵ 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:²⁷⁶

- ❖ Not considered, due to the application of the Dublin Regulation;²⁷⁷
- ❖ Inadmissible;²⁷⁸ or
- ❖ Manifestly unfounded.²⁷⁹

If the IND is not able to stay within the time limits prescribed by the short asylum procedure i.e. 6 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.²⁸⁰ The maximum duration of

²⁷⁴ Article 3.109ca(1) Aliens Decree.

²⁷⁵ IND, Work Instruction 2021/10, available in Dutch at: <https://bit.ly/3dCOKj8>. It was issued in June 2021 and entails instructions concerning the border procedure. It covers the information, which is mentioned in this report.

²⁷⁶ 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.

²⁷⁷ Article 30 Aliens Act.

²⁷⁸ Article 30a Aliens Act.

²⁷⁹ Article 30b Aliens Act.

²⁸⁰ Article 3.109b(1) Aliens Decree.

the border procedure is 4 weeks.²⁸¹ 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 is continued in the regular procedure.²⁸²

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 procedure and the border procedure is the possibility for the decision-making authorities to shorten the rest and preparation period.²⁸³ As previously mentioned, the Dutch Aliens Decree was amended on 25 May 2021, which has altered certain aspects of the asylum procedure and has abolished the first interview. One of the most significant changes concerns the registration interview. During this interview, the asylum seeker will now also be asked to state the grounds for asylum.²⁸⁴ These procedural changes are discussed more in detail in the section on the Regular Procedure.

The following groups are exempted from the border procedure; they follow the general asylum procedure without being subjected to detentive measures:

- ❖ Unaccompanied children;²⁸⁵
- ❖ Families with children where there are no counter-indications such as a criminal record or family ties not found real or credible,²⁸⁶ as the Netherlands does not detain families with children at the border.²⁸⁷ 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;²⁸⁸
- ❖ 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.²⁸⁹

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:²⁹⁰

- ❖ If, after the registration interview, 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*);

²⁸¹ Article 3(7) Aliens Act.

²⁸² Articles 3 and 6 Aliens Act. See also IND, Work Instruction 2017/1 Border procedure, 6.

²⁸³ Article 3.109b(2) Aliens Decree.

²⁸⁴ Article 3.108d(4) Aliens Decree.

²⁸⁵ Article 3.109b(7) Aliens Decree.

²⁸⁶ Paragraph A1/7.3 Aliens Circular.

²⁸⁷ Paragraph A1/7.3 Aliens Circular.

²⁸⁸ Article 5.1a(3) Aliens Decree.

²⁸⁹ Article 3.108 Aliens Decree.

²⁹⁰ Paragraph C1/2 Aliens Circular.

- ❖ If, after the registration interview 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 registration interview, 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.²⁹¹ 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 2020, only 550 asylum seekers filed application at the border. The 40% decline compared to 2019 was due to the corona restrictions.²⁹² No statistics on applications at the border were available at the moment of publication of the report.

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?

- | | | | | | | | |
|---|--|---|-----------------------------|--|---|-----------------------|--|
| <ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive | <table border="0"> <tr> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><input checked="" type="checkbox"/> Judicial</td> <td><input type="checkbox"/> Administrative</td> </tr> <tr> <td colspan="2">Depending on decision</td> </tr> </table> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative | Depending on decision | |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | | | | | | |
| <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.²⁹³ 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).²⁹⁴ This bill came into effect on 22 April 2020.²⁹⁵

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)

²⁹¹ Dutch Council for Refugees, *Standpunt: grensdetentie*, available in Dutch at: <http://bit.ly/2w1LrAF>.

²⁹² 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/3oJJKsp>.

²⁹³ Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019.

²⁹⁴ Explanatory Memorandum, KST 35 271, nr. 3.

²⁹⁵ Stb. 2020, nr. 136.

There is no accelerated procedure defined as such in the law. However, since 2016 a specific “simplified procedure”²⁹⁶ (“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 2.²⁹⁷ In 2020, 1,504 applications were processed under Track 2.²⁹⁸ Statistics for 2021 are not available.

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?

- | | | |
|----------------------------|--|---|
| ❖ 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 |
| | <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?

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

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

²⁹⁶ The term “simplified procedure” is used by the IND in the relevant information leaflet, available at: <http://bit.ly/2w3lOiW>.

²⁹⁷ Antwoord op vragen begroting Kamerstuk 35300 VI (Parliamentary questions), nr. 23, available in Dutch at <https://bit.ly/3843usH>.

²⁹⁸ Rijksoverheid, Staat van Migratie 2021, available in Dutch at: <https://bit.ly/3AikpHs>.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
☐ Yes ☒ For certain categories ☐ No
❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children?
☒ Yes ☐ 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 and Article 29 of its preamble, 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 MediFirst examines every asylum seeker as to whether he or she is mentally and physically able to be interviewed (see Registration). MediFirst is an independent organisation working on behalf of the IND to provide medical advice in asylum procedures. In 2021, MediFirst took over this role from the FMMU. MediFirst’s medical advices forms an important element in the decision as to how the asylum application will be handled. However, it should be noted that the organisation 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. MediFirst cannot be seen as a ‘product’ of the Istanbul Protocol, because its examination is solely limited to the question as to whether the asylum seeker is physically and mentally able to be interviewed based on physical and/or mental limitations. The purpose of the medical advice is to:

- Identify any functional limitations which arise from medical problems that could impede the applicant from giving accurate, coherent statements regarding their asylum story;
- Advise the IND on these limitations in the hearing- and decision-making process on asylum applications.

Participation of the asylum seeker with MediFirst’s role as an advisory body is on a voluntary basis. Even though the IND is not obliged to offer the possibility to get a medical advice by MediFirst to asylum seekers other than the ones in track 4, the possibility is there to get a medical advice first if the situation asks for one.

From the start of the asylum procedure, till the end of the decision-making process, the IND will have to keep examining 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 State Secretary has implemented this provision in the Aliens Decree.²⁹⁹

The IND decides whether the way the interview normally is conducted should be adapted based on MediFirst advice and remarks. The IND bases its decision on the medical advice, its own observations and those of the lawyer, the legal aid worker and the asylum seeker him or herself. Important documents in this context are the IND Work Instructions 2010/13 and 2015/8.³⁰⁰ Work Instruction 2015/8 contains a list of indications, based on 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

²⁹⁹ Article 3.108b Aliens Decree.

³⁰⁰ 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>.

handicapped) or psychological problems (traumatised, depressed or confused). It is explicitly noted that this is not an exhaustive list. Work Instructions 2021/9, on 'special procedural guarantees' and instruction 2021/12 on the issue of 'existing medical problems relating to the question of being able to conduct the interview and being able to take a decision' were introduced in 2021. They mark a confirmation and continuation of the previous Work Instructions above-mentioned that have been in effect for several years.

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 2018/19 301. 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*).³⁰² This means that officers from the KMar and/or the IND assess whether the asylum seeker is evidently over or under the age of 18 based on his or her appearance and discussion with him or her.

This method has been criticised in Dutch case law.³⁰³ As a result, the State Secretary 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 reach a conclusion regarding the obvious majority or minority of age of the applicant. In addition, officials cannot establish that the person is an adult solely based on appearance.³⁰⁴

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 this practice makes it near impossible for (alleged) minors to prove their minority in case another Member State has registered them as an adult.³⁰⁵

Case law of the Dutch highest Administrative Court, the Council of State, has shown over the years that, even in cases in which an asylum seeker was registered in a Member State as both a minor and an adult, the IND may consider this asylum seeker to be an adult.³⁰⁶ Often it is virtually impossible to refute a majority of age registration in a Member State, as both the State Secretary and Council of State require an 'official identifying document' to prove that the asylum seeker is a minor. Most of the presented

³⁰¹ IND Work Instruction 2018/19 Age assessment, 13 December 2018, available in Dutch at: <https://bit.ly/3bSuErL>

³⁰² IND Work Instruction 2018/19 Age assessment, 13 December 2018, available in Dutch at: <https://bit.ly/3bSuErL>

³⁰³ 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.

³⁰⁴ 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.

³⁰⁵ Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), *Nadeel van de Twijfel*, 30 November 2020, available in Dutch at: <https://bit.ly/2LFmUUh>.

³⁰⁶ ABRvS, 29 april 2019, 201901525/1.

documents in Dublin cases, such as baptism certificates or school records, are not regarded as ‘official identifying documents’.

In recent case law however, the Council of State adopted a more nuanced approach, which might open to the possibility of evaluating whether the decision establishing the majority of age without motivating on the accuracy of age registration in another Member State harms the individual concerned.

Questioning whether the current practice concerning dealing with age registration in Member States, in which indicative evidence and statements by the parties are left out, is in line with EU law.³⁰⁷ As of that moment, however, no pre-judicial questions were submitted to the EU Court of Justice. The lower District Court of Den Bosch recently has asked the EU Court whether in Dublin-cases the ‘duty of cooperation between the State and the asylum seeker’ as stated in Article 4 of the Qualification Directive would be in place. The outcome of these questions can be of relevant for Dublin cases in which age assessment plays a major role.³⁰⁸

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.³⁰⁹ This is carried out on the basis of X-rays of the clavicle, the hand and wrist.³¹⁰ 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.³¹¹ The age assessment has to be signed by the radiologist. The whole process is described in Work Instruction 2018/19.

It should be noted that the methods used in the medical age assessment process are still considered to be controversial,³¹² which is also illustrated by the – at times very technical - discussions among radiologists referred to in the case law.³¹³ Two radiologists, independently from each other, examine the X-rays. When one radiologist considers that the clavicle is not closed, the IND has to follow the declared age of the asylum seeker.³¹⁴ 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.³¹⁵

The Dutch Council for Refugees intervened together with ECRE and the AIRE Centre in the 2017 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.³¹⁶

³⁰⁷ ABRvS, 4 June 2021, 202000445/1, ECLI:NL:RVS:2021:1184.

³⁰⁸ MK Rb Den Bosch, 4 October 2021, ECLI:NL:RBDHA:2021:10735.

³⁰⁹ Article 3.109d(2) Aliens Decree.

³¹⁰ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, available in Dutch at: <http://bit.ly/2xIFvky>, 7.

³¹¹ Article 3.2 GALA.

³¹² Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 7.

³¹³ 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.

³¹⁴ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 16.

³¹⁵ 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.

³¹⁶ 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 governmental *Inspectie voor Veiligheid en Justitie*. A medical age assessment should be seen as a tool of last resort, in order to minimize the exposure of minors to X-rays. Possible minors should also be well informed about the risks and the procedures. Minors are represented by their legal guardians, like the organisation NIDOS. Their guardianship only ends if the outcome of the age assessment is that the applicant is evidently of age. If the subject of the age assessment disagrees with its outcome, a counter report by an expert is possible, but difficult to arrange.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> For certain categories	<input type="checkbox"/> 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 and Article 29 of its preamble. 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:³¹⁷

- ❖ Attendance of a person of confidence or family members in the interview;³¹⁸
- ❖ 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.

In 2021, 2 new Work Instructions came into effect, WI 2021/09 and WI 2021/12, dealing with the issue of ‘special procedural guarantees’ and with ‘medical issues concerning the interview and decision-making process in asylum cases’. They are a conformation and continuation of the previous Working Instructions mentioned in the previous chapter, which had been into effect for several years.

According to preamble Article 29 and Article 24 of the recast Asylum Procedures Directive, some applicants may be in need of special procedural guarantees on the grounds of, inter alia, their age, sex, sexual orientation, gender identity, disability, serious illness, mental illness or as a result of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to recognise applicants with those special procedural guarantees as such before a decision is taken at first instance.

The IND does not have specialised units dealing with vulnerable groups. However, every caseworker has to follow the European Union Agency for Asylum (EUAA, former European Asylum Support Office) training module on Interviewing Vulnerable Persons since 2012.³¹⁹ In cases in which many new IND

³¹⁷ IND Work Instruction 2015/ Special procedural guarantees, 20 July 2015, 6.

³¹⁸ This was confirmed as a form of adequate support in Council of State, Decision No 201609551/1, 3 August 2017.

³¹⁹ Tweede Kamer, 2013-2014, Aanhangel 636.

hearing and decision officers were recruited and involved for the first time in the interviewing and decision process, it was observed by either local volunteers of the DCR assisting asylum seekers with their procedure, or by their legal representatives in individual cases, that the IND caseworkers often lacked the required training to deal with asylum seekers with special needs. When there are evidently signs of asylum interviews going wrong, that might become a legal argument in appealing a negative outcome at first instance. However, a certain threshold need to be met in order for courts to recognize the wrongdoings and impose a sanction. The Work Instruction 2021/13 on the asylum interview establish that every IND hearing and decision officer is obliged to take several EUAA training courses, such as the training on interviewing vulnerable persons. The Council of State had previously ruled, on 3 October 2017,³²⁰ that the sole circumstance that a hearing officer did not follow the relevant EASO course, automatically means that the interview does not meet the due diligence requirements.

The asylum seeker cannot appeal the refusal to grant him or her special procedural guarantees, as the refusal is not considered as 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 State Secretary 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 State Secretary to involve the Medical Advice Office (*Bureau Medische Advisering*). The State Secretary could not fulfil its obligations simply asking the asylum seeker to demonstrate his need for international protection in an alternative manner.³²¹

2.2. Exemption from special procedures

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 could last up to 6 months before a decision in first instance needs to be taken.

The **Accelerated Procedure** ("Track 2") is not applicable to unaccompanied children. This was not regulated in the Aliens Decree or Circular. The implementation of Work Instruction 2021/14 (as of 25 June 2021), however, excludes underage unaccompanied minors from the Track 2 procedure, in what can be described as a good practice.

Track 2 is primarily intended for asylum seekers who have very little chance of asylum in the Netherlands, as in the case of asylum seekers from safe countries of origin, asylum seekers that have already received international protection in another European country or are EU citizens. In practice, the aspect of being an underage unaccompanied minor takes precedence over the other Track 2 elements.

Given that it takes place in detention, the **Border Procedure** is not applicable to:

- ❖ Unaccompanied children;³²²
- ❖ Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;³²³
- ❖ Persons for whose individual circumstances border detention is disproportionately burdensome;³²⁴

³²⁰ Council of State, ECLI:NL:RVS:2017:2692, 201702787/1, 3 October 2017.

³²¹ Council of State, Decision No 202001510/1, ECLI:NL:RVS:2020:2057, 26 August 2020.

³²² Article 3.109b(7) Aliens Decree.

³²³ Paragraph A1/7.3 Aliens Circular.

³²⁴ Article 5.1a(3) Aliens Decree.

- ❖ 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.³²⁵

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 MediFirst 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.³²⁶

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.

Human trafficking victims

Special measures, not limited to the asylum procedure, also exist for victims of human trafficking. Trafficking in human beings is intended as the recruitment, transport, transfer, reception or housing of people, with the use of coercion (in a broad sense) and with the aim of exploiting those people. It does not have to happen across borders. The (intended) exploitation is the core of human trafficking. It is therefore regarded as a crime against the person. 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.³²⁷ The IND employees are also trained to recognise victims of human trafficking.³²⁸

In short, the Residence Scheme for Trafficking in Human Beings consists of a possibility to stay on temporary and on non-temporary humanitarian grounds. The conditions for granting stay are described in 3.48 Vb (Aliens Decree) jo. B8 and B9 Vc (Aliens Circular). These are all regular, non- asylum, residence permits, the applications of which are processed by the so-called 'gender units' of the IND. This application procedure can run in parallel with the asylum procedure.

Victims of trafficking who have been refused asylum can be granted a temporary permit on a regular non-asylum ground. During a reflection period of 3 months, the asylum seeker has to consider whether he/she reports a crime and/or wishes to cooperate with the authorities trying 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. After reporting the crime, if further prosecution is halted, or cooperation with the investigating authorities stopped, the temporary residence permit on regular grounds will be revoked. When filing a prosecution or in a lengthy criminal trial (>3 years), the victim of trafficking becomes eligible for a residence permit on non-temporary grounds.

³²⁵ Article 3.108 Aliens Decree.

³²⁶ IND, Work Instruction 2017/1 Border procedure, 11 January 2017, 5.

³²⁷ Section B/9 Aliens Circular.

³²⁸ IND, Work Instruction 2007/16 Victims of human trafficking in the asylum procedure, 18 December 2007, available in Dutch at: <http://bit.ly/1MjGx5i>.

In 2021, a new Working Instruction dealing with human trafficking in asylum cases (WI 2021/16)³²⁹ has been adopted. Human trafficking is considered as a serious crime and the IND contributes to tackling it. Being a victim of human trafficking can also be presented as the core of an asylum claim. In that context, apart from signalling, IND caseworkers have an additional role to play, namely the assessment of whether that motive is grounds for granting an asylum residence permit. In addition, an *ex officio* test of victimization from human trafficking is carried out in asylum cases.

In theory, being a victim of human trafficking can lead to being recognised refugee or subsidiary protection status. However, for it to be the case, exploitation has to reach the (high) level of an act of persecution and be related to race, nationality, religion or political conviction of the foreign national. It is important to note that victims of human trafficking are in principle not seen as a 'social group' within the meaning of the Refugee Convention. In practise, not many asylum seekers are granted protection on the ground of being a victim of human trafficking.

Victims of human trafficking may also be eligible for subsidiary protection. In that case, there must be a real risk of serious harm upon return to the country of origin, combined with a lack of access to adequate protection. That might be the case when criminal trafficking networks against which the authorities cannot provide protection are active in the country of origin. Again, in practise not often will be subsidiary protection be granted in these asylum cases.

A new Work Instruction (2021/18, 12 October 2021) on the 'assessment of the plausibility of the human trafficking account' came into effect.³³⁰ The Work Instruction is a manual for the assessment of applications for a humanitarian non-temporary residence permit based on special individual circumstances (after residence as a victim or victim-declarant of human trafficking).

3. Use of medical reports

Indicators: Use of Medical Reports

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

Every asylum seeker under the General asylum procedure ("Track 4") is invited to be medically examined by MediFirst 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](#)),³³¹ and to see if there are limitations in one person's 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 an 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 ECtHR³³², and/or the UN Committee Against Torture (CAT).

National legislation guarantees the possibility to use a medical examination as supportive evidence.³³³ 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*

³²⁹ IND, Work Instruction 2021/16, *Human trafficking in the asylum procedure*, 14 July 2021, available in Dutch at: <https://bit.ly/3KQIARi>.

³³⁰ Ibid.

³³¹ Article 3.109 Aliens Decree.

³³² 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.

³³³ Article 3.109e Aliens Decree.

Psychiatrie en Psychologie, NIFP), to conduct the examination.³³⁴ The IND bears the costs of this examination. Annually, approximately between 15-20 times, these organisations are asked to perform a medical examination and to establish a medico-legal report. If the asylum seeker is of the opinion that an examination has to be conducted, without the IND supporting this view, the asylum seeker can proceed on his or her own initiative and costs. The objective of said medico legal report is to establish the likelihood that the physical effects or psychological complaints reported by the asylum seeker actually stem from the facts detailed in their asylum claim.

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 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.³³⁵ The authority of iMMO is ‘codified’ in the Aliens Circular and the Council of State has accepted its authority as being an expert in its field.³³⁶ What makes iMMO unique is its working method. Medico legal reports are realised as a result of the combined effort of medical doctors and psychologists/psychiatrists.

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 on the applicants’ physical and psychological signs and symptoms and assesses the correlation of these with the asylum seekers own account, using the qualifications of the Istanbul Protocol. In its report, iMMO also comments on whether the physical and psychological situation of the asylum seeker might have affected their ability to tell his/her story in a complete, consistent and coherent manner, both 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. In 2020 and in 2021, iMMO conducted around 55 medical examinations a year. However, some of these reports were delivered long after the interviews had 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 years later and that their reports were not relevant. In its landmark judgment of 27 June 2018, the Council of State changed its previous orientation and ruled that the iMMO reports could be relevant when assessing the question whether or not physical or psychological limitations were in place in the past, preventing the applicant from telling a coherent, complete and consistent asylum story, when the assessment/report is based on medical documents and medical information which were issued by the time the interviews took place.³³⁷

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:

³³⁴ 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.

³³⁵ Regional Court of 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.

³³⁶ Paragraph C1/4.4.4 Aliens Circular. See Council of State, Decision No 201211436/1, 31 July 2013.

³³⁷ Council of State, Decision No 201607367/1, 27 June 2018, available in Dutch at: <https://bit.ly/2TxB2ZB>.

- ❖ 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 express a clear vision on the implementation of the Istanbul Protocol.³³⁸ In the past, certain members of the government stated that the practice of the Dutch asylum system was in accordance with this Protocol, without specifying 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.³³⁹ 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 evidence in asylum procedures, which has been addressed by Article 18 of the recast Asylum Procedures Directive.³⁴⁰

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?
- The State assumes that when the possibility for the applicant to give full, coherent, consistent and complete statements is limited by assessed limitations, a medico legal report should be able to distinguish to what elements of the story the limitations are in place and to what elements they are not. Does the medical scientific community accept this assumption by the State?
- 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?

³³⁸ Work Instruction 2016/4 refers to the Istanbul Protocol.

³³⁹ 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.

³⁴⁰ 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.

4. Legal representation of unaccompanied children

4.1. General

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.³⁴¹ 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.³⁴²

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.³⁴³

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.³⁴⁴ Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian).³⁴⁵ For unaccompanied children, Nidos will request to be appointed as guardian by the juvenile court.³⁴⁶ Even though formal guardianship is assigned to the organisation, individual professionals, called “youth protectors”, carry out the tasks.

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.

On their arrival in the Netherlands, children under the age of 15 are placed in a foster family, which provides initial reception straight away. After a few days, the child and the guardian go to **Ter Apel** to lodge the asylum application. While the child is staying with this first family, Nidos looks for a permanent home for them. Children over the age of 15 years old live in small-scale housing units with other children. 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**.

The guardian takes important decisions on behalf of the child, 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.

³⁴¹ Articles 1.233 and 1.253ha, Dutch Civil Code.

³⁴² Article 3.109d (2) Aliens Law 2000; Work Instruction 2018/19, 13 December 2018.

³⁴³ Section C1/2.11 Aliens Circular.

³⁴⁴ Article 1.302 (2) Dutch Civil Code.

³⁴⁵ Article 1.245 Dutch Civil Code.

³⁴⁶ Article 1.256 (1) Civil Code.

4.2. Return decisions for unaccompanied minors

On 14 January 2021, the CJEU published its landmark judgment in the case of *T.Q. v Staatssecretaris van Justitie en Veiligheid* (C-441/19).³⁴⁷ The case concerned a minor (T.Q.) who applied for asylum in the Netherlands when he was 15 years old. The IND rejected his asylum request, a decision that automatically entails a return decision in accordance with Dutch law. T.Q. appealed the decision and argued that he does not know where his family lives and that he would not be able to recognize his parents upon return to Guinea. The IND followed Dutch policy, which stipulates that minors who are over 15 years of age at the date of their asylum request receive a return decision without examining whether there are adequate reception facilities in the country of return. For minors under 15 years of age, there is the option of granting a special residence permit in case there are no adequate reception facilities.³⁴⁸ The Regional Court of Den Bosch referred prejudicial questions to the CJEU concerning the case of T.Q. The Regional Court submitted various questions: whether a return decision could be taken against a minor without investigating if there are adequate reception facilities. Whether a Member State is permitted to make distinctions on the basis of the age of a minor (15-/15+), and whether it is permitted under Union law to adopt a return decision against a minor, but not undertake any action to remove the applicant until he turns 18.³⁴⁹

The CJEU ruled that a Member State must ascertain - before adopting a return decision - that an unaccompanied minor returns to adequate reception facilities. Furthermore, a Member State may not differentiate based on the age of the minor and once the Member State adopts a return decision, the return must actually be carried out. The CJEU also makes it very clear that Member States are under the obligation to apply the principle of the best interests of the child at all stages of the procedure. This ruling shows that the Dutch policy relating to unaccompanied children who receive a return decision is not in line with EU law.

The Regional Court of Den Bosch has ruled in the case of T.Q. after the CJEU's judgement and established that T.Q. must be granted a national residence permit.³⁵⁰ The Secretary of State has appealed against the judgement; the case is still pending before the Council of State where a hearing took place on 23 September 2021. The Council of State informed that the final decision will be communicated only in the second quarter of 2022.

The Secretary of State announced that unaccompanied minors would receive a form of 'postponement of removal' as long as the investigation into adequate reception facilities is still ongoing.³⁵¹ The legal basis for this remains unclear; therefore, it also remains uncertain whether this provision will hold up in Court. There is no case law on the implementation of this form of postponement of removal for unaccompanied minors so far.

³⁴⁷ CJEU, *TQ v Staatssecretaris van Justitie en Veiligheid*, C-441/19, 14 January 2021.

³⁴⁸ However, this permit is rarely granted. The Council for Refugees approximates that the permit has been granted in less than 10 cases since the introduction of the permit in 2012. Conditions are laid down in Section B8/6 Aliens Circular.

³⁴⁹ Regional Court Den Bosch, ECLI:NL:RBDHA:2019:5967, 12 June 2019; CJEU case number C-441/19.

³⁵⁰ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:2376, 15 March 2021.

³⁵¹ Section A3/6.1 Aliens Circular, as amended by WBV 2022/1 on 9 December 2021, available in Dutch at: <https://bit.ly/3r8D6ZP>.

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.³⁵²

The assessment of subsequent asylum application takes place in the so-called “one-day review” (*de eendagstoets, EDT*).³⁵³

As of 1 July 2019, a new procedure regarding lodging and assessing subsequent asylum applications is applicable. Through this new procedure, the Aliens Circular have been amended and an IND Work Instruction has been introduced.³⁵⁴ 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 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.³⁵⁵ The term “new facts and findings” is derived from the recast Asylum Procedures Directive.³⁵⁶ According to the Secretary of State,³⁵⁷ and case law,³⁵⁸ 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.³⁵⁹ From here on the “new elements or circumstances” will be called “*nova*”.

In the Dutch context the *nova* criterion has always been 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. According to established law and policy, in some circumstances, certain facts which could have been known at the time of the previous asylum application are nevertheless being considered

³⁵² Paragraphs C1/ 4.6 and C2/6.4 Aliens Circular.

³⁵³ 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.

³⁵⁴ Article 3.118b Aliens Decree; Paragraph C1/2.9 Aliens Circular and IND Work Instruction 2019/9. Procedure *herhaalde aanvragen*, available in Dutch at: <https://bit.ly/3Gp77Lh>.

³⁵⁵ Article 30b(1)(d) Aliens Act.

³⁵⁶ Article 33(1)(d) Aliens Act.

³⁵⁷ Dutch Parliament, *Explanatory notes on the implementation of the recast Asylum Procedures Directive*, Vergaderjaar 34 088, number. 3, 2014-2015, 12.

³⁵⁸ Council of State, Decision No 201113489/1/V4, 28 June 2012.

³⁵⁹ Article 4.6 GALA.

‘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 (first) asylum procedure. In case of having experienced traumatic circumstances, the asylum seeker is also allowed to mention them.

CJEU, L.H. v. Staatssecretaris van Justitie

The strict interpretation of the *nova* criterion can also be applied 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, or whose source could not be verified, cannot be regarded as new facts or elements.³⁶⁰

On 16 December 2019, the Regional Court of Den Bosch referred preliminary questions to the CJEU about this matter in the case *LH*. The case *LH* concerned the situation of an Afghan national who lodged a subsequent application on the ground he fears the Taliban because he worked as a driver for the director of an Afghan administrative entity. He submitted several (original) documents to prove that the Taliban set on fire his house in Afghanistan. The Secretary of State was unable to establish the authenticity of the documents. As a result, the application was found inadmissible. The Court of Den Bosch seeks to ascertain whether documents, which have not been shown to be authentic can, for that reason alone, being excluded from the definition of ‘new elements or findings’ referred to in Article 40 of the recast of the Asylum Procedures Directive (APD).³⁶¹

On 10 June 2021, the CJEU ruled that a document submitted by an applicant for international protection in support of a subsequent application could not automatically be excluded from being considered a ‘new element or finding’, within the meaning of Article 40 APD, when the authenticity of that document cannot be established or its source objectively verified.³⁶²

The evaluation concerning whether new elements could be considered ‘new’ is comprises of two stages. The first one is related to the admissibility of the application and entails the following steps:

Step 1. Article 40(2) of Directive 2013/32 provides that, for the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d) of the directive, a subsequent application for international protection will be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95.³⁶³

Step 2. Only if such new elements or findings exist, as compared to the first application for international protection, the examination of the admissibility of the subsequent application continues, pursuant to Article 40(3) of the directive, in order to ascertain whether those new elements and findings add significantly to the likelihood of the applicant qualifies as beneficiary of international protection.³⁶⁴

The second stage relates to the examination of the substance of such applications.³⁶⁵

Furthermore, the CJEU ruled that according to Article 40 APD read together with Article 4(1) and (2) of the Qualification Directive, the assessment of evidence submitted in support of a subsequent application is the same as the assessment of evidence supporting a first application.³⁶⁶

³⁶⁰ See, for example: Council of State, Decision No 200304202/1, 25 September 2003.

³⁶¹ Request for a preliminary ruling, Case C—921/19, 16 December 2019.

³⁶² CJEU, C-921/19, 10 June 2021, EASO Case Law Database, available at: <https://bit.ly/3njwIDD>.

³⁶³ CJEU, C-921/19, 10 June 2021, paragraph 36.

³⁶⁴ CJEU, C-921/19, 10 June 2021, paragraph 37.

³⁶⁵ CJEU, C-921/19, 10 June 2021, paragraphs 34 and 53.

³⁶⁶ See also EASO Case Law Database, <https://bit.ly/3K4LsdJ>.

The Regional Court of Den Bosch, who referred the preliminary questions to the CJEU in the case *L.H.*, ruled in its final decision that the threshold to establish ‘new’ elements and findings should be more easily reached.³⁶⁷ The examination whether an element or finding is ‘new’ according to Article 40 APD does not entail a substantive research. According to the Regional Court of Den Bosch an element which has not been assessed yet in a previous asylum procedure and has any relation with the asylum account is considered to be ‘new’. As the CJEU ruled, accordingly to Article 4(1) and (2) of the Qualification Directive, that the assessment to establish the existence of new elements or findings must be realised in active cooperation with the applicant. The Regional Court additionally established that in every subsequent asylum procedure the asylum seeker should be interviewed.³⁶⁸

The Council of State, partially confirming the Regional Court of Den Bosch’s decision, ruled that its established case law on the assessment of new elements and findings, in particular concerning documents of which the authenticity cannot be established, had to be revised. The Council of State also ruled that, in order to ascertain whether the new elements and findings add significantly to the likelihood of the applicant qualifying for international protection (first stage, second step), a more substantive research is required.³⁶⁹ In accordance with Article 4(1) and (2) the Secretary of State could, for example, examine new documents in relation to previous statements of the applicant or country of origin information.

In the same judgement however, the Council of State established that, according to Article 42 (2) (b) of the APD, the Secretary of State does not automatically have to interview each asylum seeker lodging a subsequent application, provided that the decision includes a justification for the exclusion of the subsequent applicant from the personal interview.

The Secretary of State responded to the judgment of the CJEU and stated that it did not have strong implications regarding the assessment of a subsequent application.³⁷⁰ In the Dutch Council of Refugees’ opinion, Dutch policy has only partially been adjusted to the Judgment of the CJEU, specifically regarding cases of exemption from an interview regarding subsequent applications.³⁷¹

In this regard, Article 40(4) of the APD 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*” (‘culpability test’). 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.³⁷² 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.

On 9 September 2021, the CJEU ruled in the case *X.Y. v. Austria* that if a Member State has not implemented the optional stipulation of Article 40(4) of APD, in which the culpability test is laid down, the Member State cannot bring up this objection in assessing the new elements and findings.³⁷³ The Netherlands did not transpose the optional stipulation laid down in Article 40(4) APD in national law. The Secretary of State is, for the moment, of the opinion it is not necessary to implement Article 40(4) into

³⁶⁷ Regional Court Den Bosch, Decision No NL19.20920, 7 July 2021.

³⁶⁸ Council of State, Decision No 202104524/1, 26 January 2022.

³⁶⁹ Council of State, Decision No 202104524/1, 26 January 2022, paragraph 5.4.7.

³⁷⁰ State Secretary, 8 July 2021, *Reactie op het bericht ‘Nederland kan honderden nieuwe asielprocessen verwachten na uitspraak Europees Hof’*, available in Dutch at: <https://bit.ly/33rsFbR>.

³⁷¹ Amendment Aliens Circular, *Besluit van de staatssecretaris van Justitie en Veiligheid*, 23 September 2021, *Staatscourant* 2021, No 41948, available in Dutch at: <https://bit.ly/3HZIXc4>.

³⁷² Council of State, Decision No 201604251/1, 6 October 2017.

³⁷³ CJEU, C-18/20, *XY versus Austria*, 9 September 2021.

Dutch law.³⁷⁴ Consequently, Dutch law and policy have so far not been adjusted in accordance with this judgment.³⁷⁵

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, many people completed the form without substantiating their subsequent asylum claim and the IND decided to disregard many asylum applications.³⁷⁶ 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.³⁷⁷ 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.³⁷⁸

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 follows:

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-O).

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 regarding the matter whether the asylum seeker provided sufficient relevant information while submitting a subsequent asylum application.³⁷⁹

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. According to Article 3.118b (3) Aliens Decree an interview only takes place when it is relevant for a diligent assessment of the application. This is presented in more detail in Paragraph C1/2.9 of the Aliens Circular. In this Paragraph 10, 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.³⁸⁰ 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 2019.³⁸¹

³⁷⁴ Dutch Parliament, 3 February 2022, *Uitspraak Hof van Justitie over herhaalde asielaanvragen*, available in Dutch at: <https://bit.ly/3MaZc7Y>.

³⁷⁵ See for example Regional Court Middelburg, Decision No NL21.11983, 3 November 2021.

³⁷⁶ The subsequent claims are refused according to Article 30c (1)(a) of the Aliens Act.

³⁷⁷ Regional Court Amsterdam, Decision NL18.20640, 11 December 2018; Regional Arnhem, Decision NL18.20978, 5 December 2018.

³⁷⁸ Council of State, decision no 201810080/1/V2, 21 February 2019.

³⁷⁹ For example Council of State, Decision No 202103833/1, 17 November 2021; Council of State, 201904869/1, 23 September 2020; Council of State, Decision No 201905226/1, 12 August 2020.

³⁸⁰ Regional Court of Utrecht, Decision No NL20.9117, 31 August 2020.

³⁸¹ Regional Court of Rotterdam, Decision No NL18.24121, 13 February 2019.

In its final judgment after the ruling of the CJEU in the case L.H., the Regional Court of Den Bosch was of the opinion that every asylum seeker who lodges a subsequent asylum application should be interviewed. Additionally, the court ruled that Article 3.118b (3) Aliens Decree in which is stipulated that asylum seekers not always have to be interviewed (worked out in more detail in Paragraph C1/2.9) should be annulled. As previously mentioned, however, the Council of State ruled that according to Article 42 (2) (b) APD an asylum seeker who lodges a subsequent application does not always have to be interviewed.³⁸²

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.

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.³⁸³ The appeal has to be lodged within one week after the rejection.³⁸⁴ 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).³⁸⁵ 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

³⁸² Council of State, decision number 202104524/1/V1, 26 January 2022.

³⁸³ Article 82(2)(b) Aliens Act.

³⁸⁴ Article 69(2) Aliens Act.

³⁸⁵ Article 30a(1)(d) Aliens Act and Paragraph C1/2.7 Aliens Circular.

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.³⁸⁶ 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,³⁸⁷ lodges a subsequent asylum application. In such a case, their asylum application would be assessed by the IND, but an appeal against the rejection of the asylum application will be considered inadmissible by the Regional Court.³⁸⁸ The asylum seeker has to request for cancellation/revocation of the re-entry ban.

In 2021, the number of subsequent asylum applications was 1,814.³⁸⁹

Subsequent applicants in the Netherlands by top 10 countries of origin: 2021	
Country of origin	Number
Afghanistan	301
Iran	221
Syria	142
Nigeria	92
Eritrea	77
Morocco	73
Somalia	66
Algeria	62
Guinea	37
Others	621

Source: Asylum Trends, December 2021, available at: <https://tinyurl.com/2p872ste>.

F. The safe country concepts

Indicators: Safe Country Concepts

- 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
- 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
- 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

³⁸⁶ Council of State, Decision No 201903236/1, 29 January 2020.

³⁸⁷ In Dutch, a so called "*zwaar inreisverbod*" as laid down in Article 66a(7) Aliens Act.

³⁸⁸ Council of State, Decision No 201207041/1, 19 December 2013.

³⁸⁹ According to Eurostat Database on Migration and Asylum, the number of subsequent applicants in 2021 was 1,810, see: <https://bit.ly/3r6AoFc>.

particular third country (Article 30a(1)(b) Aliens Act).³⁹⁰ 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 scarcely used in practice. Often, the (general) third country concept (see under 2. [Safe third country](#)) is used. In 2021, there was only one case about a first country of asylum concerning Peru.³⁹¹ Regional Court Amsterdam decided that the IND should further investigate the residential status of the Yemeni asylum seeker in Peru.

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.³⁹² 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, Courts have this is hardly ever accepted by the courts. Since the *Ibrahim* judgment,³⁹³ the focus of the general situation in the Member State seems to have shifted to the particular vulnerability of the beneficiary of protection. However, case law with regard to the particular vulnerability is also very strict. For example, the Council of State does not automatically recognise families, single parents and status holders with PTSD as particularly vulnerable.³⁹⁴ In an internal information message of the IND, it is stated that for particular vulnerability it is important to assess whether someone is self-sufficient.³⁹⁵ Moreover, that individual guarantees should be requested for particular vulnerable beneficiaries of protection from Greece, Bulgaria and Hungary, given that protection beneficiaries returned to these Member States are in principle assumed to be at risk of facing a situation of extreme material poverty, as stated in the *Ibrahim* ruling.

Most EU-status holders that apply for asylum in the Netherlands come from **Greece**. On 28 July 2021, the Council of State finally ruled that protection beneficiaries from Greece cannot be sent back without the State Secretary motivating better that there is no breach of Article 3 ECHR upon their return.³⁹⁶ In response, the State Secretary announced that it would start a new investigation into the situation of beneficiaries of international protection in Greece, thereby extending the decision term for 9 months for these cases of BIPs as of 1 October 2021 on the ground of being a complex factual and legal matter.³⁹⁷

³⁹⁰ Article 30a(1)(b) Aliens Act.

³⁹¹ Regional Court Amsterdam, Decision Number NL21.18983, 24 December 2021.

³⁹² Council of State, ECLI:NL:RVS:2017:1253, 7 December 2017.

³⁹³ CJEU, C-297/17, C-318/17, C-319/17 en C-438/17, 19 March 2020.

³⁹⁴ 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).

³⁹⁵ IB 2021/56 asiolverzoeken van bijzonder kwetsbare statushouders, available here: <https://bit.ly/32JmhwA> (attached to answers of questions by parliament).

³⁹⁶ Council of State, ECLI:NL:RVS:2021:1626 and ECLI:NL:RVS:2021:1627, 28 July 2021.

³⁹⁷ KST 32317, No 719, 30 September 2019. The extension of the decision term is done by declaring the cases on to be of a complex factual and legal matter (Article 42(4)(a) Aliens Law 2000).

Cases in which the decision term had already expired by 1 October were handled in the national procedure without declaring the requests inadmissible. The letter in which the investigation was announced also resulted in suspending at least one of the two cases of beneficiaries of protection from Greece who applied for asylum in the Netherlands pending at the ECHR.³⁹⁸

On 11 December 2020, an article in the *Volkskrant* mentioned some 'unexpected statuses' from Greece.³⁹⁹ The article reported on the cases of many asylum seekers that reached the Netherlands after their entrance in the EU from Greece, where they did not receive a status, being instead only registered as asylum seekers in the country. Upon request by the IND many of these asylum seekers had been granted a status in Greece, without being informed, while residing in the Netherlands. In such a case, the IND still declares the application inadmissible. This practice is particularly interesting when looking at the blocking of Dublin transfers to Greece by the Council of State (see [Dublin \("Track 1"\)](#)).

Regarding Hungary and Bulgaria, case law results more favourable for status holders. 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.⁴⁰⁰ 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.⁴⁰¹ The State Secretary appealed against the case. At the end of 2020, the Council of State ruled that the situation for protection beneficiaries in **Bulgaria**, while difficult, does not meet the threshold of the *Ibrahim* judgment⁴⁰² and as such, the State Secretary does not need to further investigate their situation in the country.

In February 2021, the CJEU answered prejudicial questions of the Council of State about the detention of EU status holders.⁴⁰³ 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. The Court ruled that the Return Directive does not preclude a Member State from placing in administrative detention a protection beneficiary residing illegally on its territory, in order to carry out the forced transfer to the Member State in which that person holds a protection status. That applies for cases in which the person refused to comply with the order to move to the Member State having issued their status, and it is not possible to issue a return decision.

2. Safe third country

An asylum application can be declared inadmissible in case a third country is regarded as a safe third country for the asylum seeker.⁴⁰⁴ There is no list of safe third countries. However, *some internal information messages* on the safe third country concept have been requested via the Public Access Act. These internal documents list a number of third countries either as 'safe' or 'not safe'.⁴⁰⁵ The concept is applied on a case-by-case basis. There are three criteria that have to be fulfilled regarding safety,

³⁹⁸ ECtHR, 52334/19, D. and others has been suspended until further notice, ECtHR, 31007/20, Alaa ASAAD is also likely to be suspended, but this has not been confirmed.

³⁹⁹ Irene de Zwaan, *Onrust onder asielzoekers die onverwacht een status in Griekenland hebben gekregen*, 11 December 2020, *Volkskrant*, available in Dutch at: <https://bit.ly/2XXL35W>.

⁴⁰⁰ Council of State, ECLI:NL:RVS:2020:1088, 22 April 2020.

⁴⁰¹ Regional Court Den Bosch, ECLI:NL:RBDHA:2020:10437, 19 October 2020.

⁴⁰² Council of State, ECLI:NL:RVS:2021:2857, 16 December 2021.

⁴⁰³ CJEU, C-673/19 (M.), 24 February 2021.

⁴⁰⁴ Article 30a(1)(c) Aliens Act.

⁴⁰⁵ All internal information messages are published at: <https://www.ShouldIStayorShouldIgo.nl>.

connection and admission. From the *internal information message* 2021/8 it can be inferred that the safe third country concept is mostly used in cases that might otherwise be accepted.

Rated as a safe third country according to *internal information messages*:

- Argentina
- Armenia
- Brazil
- Canada
- Chile
- Costa Rica
- Ecuador
- Gambia
- Georgia
- Morocco
- Nigeria
- Peru
- Philippines
- Rwanda
- South Africa
- South Korea
- Suriname
- Uganda
- United Kingdom
- United States of America
- Uruguay

Not rated as a safe third country according to *internal information messages*:

- Albania
- Algeria
- Australia
- Azerbaijan
- Bahrain
- Belarus
- Bosnia and Herzegovina
- Cambodia
- Colombia
- Egypt
- Haiti
- Honduras
- India
- Indonesia
- Iran
- Iraq
- Israel
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kosovo
- Kyrgyzstan
- Lebanon
- Malawi
- Malaysia

- Maldives
- Mexico
- Moldova
- North Macedonia
- Oman
- Panama
- Qatar
- Russia
- Saint Kitts and Nevis
- Saudi Arabia
- Somalia
- Sudan
- Thailand
- Tunisia
- Turkey
- Ukraine
- United Arab Emirates
- Uzbekistan

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 applicable to the individual asylum seeker's case.⁴⁰⁶

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**.⁴⁰⁷

In January 2020, the Regional Court of Amsterdam ruled that it considered **Turkey** a safe third country for Uyghurs from China.⁴⁰⁸ 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. Although Turkey is rated as non-safe third country in general, the Aliens Circular does state that for Uyghur applicants it will be assessed whether Turkey is a safe third country.⁴⁰⁹ In 2021, the Dutch Council of Refugees has seen one decision in which the IND concluded that Turkey was not a safe third country for Uyghurs.

In a case about Armenia as a safe third country, the Council of State ruled that the State Secretary cannot use only the designation of Armenia as a safe country of origin to prove that Armenia is a safe third country for any applicant.⁴¹⁰ It must either be shown which sources were the basis for this

⁴⁰⁶ Council of State, Decisions No 201704433/1, No 201703605/1, No 201609584/1, No 201606126/1, 13 December 2017.

⁴⁰⁷ Council of State, Decisions No 201704433/1, No 201703605/1, No 201609584/1, 13 December 2017.

⁴⁰⁸ Regional Court Amsterdam, Decision No NL19.30580, 15 January 2020.

⁴⁰⁹ Paragraph C7/8.8 Aliens Circular.

⁴¹⁰ Council of State, ECLI:NL:RVS:2020:2356, 6 October 2020.

designation or indicate the sources that in the specific case were the basis for the assessment of Armenia as a safe third country.

Some countries, despite being assessed as safe, did not pass the test. This was the case, for example, for South Africa. In a letter dated 6 December 2016, the State Secretary indicated that South Africa cannot be regarded as a safe country of origin, since this country is party to a number of human rights treaties and has laws and other regulations that offer these guarantees, but that these are insufficiently met and that, furthermore, the system of legal remedies does not provide sufficient guarantees against the violation of rights and freedoms.⁴¹¹ The Regional Court of Den Bosch and Utrecht therefore ruled that South Africa could not meet the security criterion of the safe third country assessment framework either.⁴¹²

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:⁴¹³

- ❖ 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
- ❖ 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.⁴¹⁴ 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 applicable,⁴¹⁵ 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 national policy entails 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 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.⁴¹⁶ According to the *internal information message* 2021/8 states that the asylum seeker would have to make serious attempts to demonstrate that he is not admitted to the third country after the

⁴¹¹ KST 19637, nr. 2266, 6 December 2016.

⁴¹² Regional Court Den Bosch, 27 December 2017, Decision No NL17.12603, Regional Court Utrecht, 29 June 2021, Decision No NL20.17017. The Council of State recently declared the appeal of the State Secretary unfounded, ECLI:NL:RVS:2022:450, 11 February 2022.

⁴¹³ Paragraph C2/6.3 Aliens Circular.

⁴¹⁴ Regional Court Arnhem, Decision No NL19.13391, 26 July 2019.

⁴¹⁵ Regional Court The Hague, Decision No 17/8274, 26 June 2017.

⁴¹⁶ Regional Court Utrecht, ECLI:NL:RBDHA:2020:7575, 15 July 2020.

inadmissibility of his request, which shows similarities with the 'no fault' policy. This shows that the IND sets very high standards for asylum seekers in this regard.

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.⁴¹⁷ 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 risk of treatment contrary to Article 3 ECHR. However, the IND has to assess in every individual case whether, based on the applicant's 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.⁴¹⁸

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

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.⁴¹⁹ 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 in which, according to the Dutch government, nationals are under no risk of persecution, torture or inhuman or degrading treatment. Following a judgement from the Council of State from April 2021,⁴²⁰ the State Secretary had to reassess the list of safe countries of origin. The Council ruled that the IND had to reassess the list every two years and that this reassessment should be carried out through the same procedure used for the designation of a country as a safe country of origin. The 'quick reassessment' that was normally carried out by the IND and focused only on sources from the US State Department and Freedom House – only if these sources showed significant changes in the country, the IND would carry out a 'full reassessment' consulting all sources stated by Article 37(3) Procedures Directive. The period of mandatory reassessment was completed on 4 November 2021, resulting in cancelling **Algeria**⁴²¹ as a safe country of origin and adding some groups of exemption and groups of special attention to the designation of **Mongolia**,⁴²² **Morocco**, **Tunisia** and **Georgia** as safe countries of origin.⁴²³ In addition, the State Secretary decided to shorten the list of safe countries of origin in order to lower the periodical efforts to reassess their situation. Twelve countries - from which an extremely limited number of asylum seekers came from - were deleted from the list: **Andorra**, **Australia**, **Canada**, **Iceland**, **Japan**, **Liechtenstein**, **Monaco**, **New Zealand**, **Norway**, **San Marino**, **Vatican City** and **Switzerland**.⁴²⁴

⁴¹⁷ Article 30b(1)(b) Aliens Act.

⁴¹⁸ Paragraph C2/7.2 Aliens Circular.

⁴¹⁹ KST 19637, 3 November 2015, No 2076.

⁴²⁰ Council of State, ECLI:NL:RVS:2021:738, 7 April 2021.

⁴²¹ KST 19637, No 2743, 11 June 2021.

⁴²² KST 19637, No 2778, 4 November 2021.

⁴²³ KST 19637, No 2726, 6 May 2021.

⁴²⁴ KST 19637, No 2778, 4 November 2021.

On 14 December 2021, the temporary suspension of **India** as a safe country of origin was reassessed. India has then again returned to its designation as a safe country of origin, with the exception of the union territory of Jammu and Kashmir and with the exception of religious minorities, such as Muslims and Christians, as well as Dalit women and girls and journalists. In addition, special attention has to be paid to those who have been critical of government and government policy and have encountered problems as a result, including, for example, human rights activists, academics and protesters.⁴²⁵

According to the EASO overview, the Netherlands had the longest list of safe countries of origin of all EU+ member states.⁴²⁶ As of 1 January 2022, the following countries have been designated safe countries of origin:⁴²⁷

- ❖ EU Member States
- ❖ Albania
- ❖ Armenia*
- ❖ Bosnia-Herzegovina
- ❖ Brazil*
- ❖ Georgia* **
- ❖ Ghana**
- ❖ India* **
- ❖ Jamaica*
- ❖ Kosovo
- ❖ The republic of North Macedonia
- ❖ Morocco* **
- ❖ Mongolia**
- ❖ Montenegro
- ❖ Senegal* **
- ❖ Serbia* **
- ❖ Trinidad and Tobago*
- ❖ Tunisia*
- ❖ United States of America
- ❖ Ukraine* **
- ❖ United Kingdom

* Some groups are exempted from the designation of safe country of origin, cases will be dealt with in Track 4 (for example: LGBT persons in **Trinidad and Tobago, Tunisia, Senegal, Jamaica, Brazil, Armenia** and **Morocco**).

** Some groups need special attention (or sometimes referred to as 'groups of higher concern'), but cases will be dealt with in Track 2 (for example: LGBT's in **Georgia, Serbia, Ukraine, Ghana** and **Mongolia**).

Following the *coup* that took place in **Tunisia** in the summer of 2021, numerous Regional Courts requested the State Secretary to reassess the designation of Tunisia as a safe country of origin.⁴²⁸ On 20 December 2021, the State Secretary announced that Tunisia would remain a safe country of origin because the short thematic official message of 14 December 2021 shows that the political events in Tunisia have not led to (major) changes in the security and human rights situation.

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 or specific areas such as the union territory of Jammu and Kashmir in India.

⁴²⁵ KST 19637, No 2807, 14 December 2021.

⁴²⁶ EASO, Situational update - 'Safe country of origin' concept in EU+ countries, June 2019, see: <https://bit.ly/3JBL0TR>.

⁴²⁷ In comparison to 2020, India and the United Kingdom were added to the list, while various countries were not included anymore: Algeria, Andorra, Australia, Canada, Iceland, Japan, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Vatican City and Switzerland.

⁴²⁸ E.g. Regional Court Haarlem, 26 November 2021, ECLI:NL:RBDHA:2021:14730.

According to the Council of State, exempting specific areas is only allowed if there is a clear dividing line between the safe and no-safe part of the country.⁴²⁹ In these cases, the safe country of origin-concept and the fast rejection Track 2 cannot be regarded as such for a specific group or people from a specific area. Those belonging to this group are not faced with an increased burden of proof.

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, this is often not meaningful, as 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.⁴³⁰ As the designation of specific groups of higher concern does follow from concrete indications of danger for these people, the Dutch Council of Refugees advocates for actually exempting all these groups from the safe country of origin designation.

Since the end of 2015, 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 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,⁴³¹ (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 done either during a one-to-one meeting, or in a group where asylum seekers often do not know each other but speak a common language, generally through an interpreter on the phone. During this information meeting, the asylum seeker will also be informed that the IND may request for their transfer to another Member State under the Dublin Regulation. In such meetings, 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.

⁴²⁹ Council of State, ECLI:NL:2017:1838, 7 July 2017.

⁴³⁰ 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.

⁴³¹ Paragraph C1/2 Aliens Circular.

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 2015.⁴³² A more recent leaflet has been produced for the accelerated procedure (“Track 2”) in April 2017.⁴³³ 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.⁴³⁴

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.⁴³⁵

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?⁴³⁶ ☒ Yes ☐ No
❖ If yes, specify which: Safe countries of origin

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 or specific countries. The safe countries of origin are listed in the section on **Safe Country of Origin**.

Afghan nationals

Suspensions of decisions and temporary stops on return in Afghan cases

The policy regarding the suspension of decisions for applications of Afghan nationals and the temporary stop on the return of Afghan nationals due to a temporary uncertain and insecure situation in Afghanistan

⁴³² 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>.

⁴³³ IND, *The simplified asylum procedure*, April 2017, available at: <http://bit.ly/2w3lOiW>.

⁴³⁴ IND, *Which country is responsible for your asylum application? The Dublin procedure*, August 2015, available at: <http://bit.ly/2fuQzHz>.

⁴³⁵ There are also so-called voluntary visitor groups that visit asylum seekers in detention.

⁴³⁶ Whether under the “safe country of origin” concept or otherwise.

entered into force 26 August 2021 and applies for six months and has recently been prolonged with another six months.⁴³⁷ This policy is in accordance with Article 43 Aliens Act and Article 45 (4) 4 Aliens Act. This means that, in general, the IND has 18 months for taking a decision on new and pending asylum applications of Afghan nationals. Furthermore, rejected asylum seekers will not have to return to Afghanistan during the six months the policy applies. They will also have access to reception facilities. This policy does not apply in the following cases:

- Afghan nationals who either: fall under the scope of the Dublin Regulation; have already obtained international protection in another Member State or in a third country; fall within the concept of a safe third country; have already obtained international protection in the Netherlands; or have implicitly withdrawn or abandoned his application;
- Afghan nationals who are a threat to public order or national security;
- If Article 1F of the Refugee Convention is applicable.

Short asylum procedure evacuated Afghan nationals

Since August 2021, approximately 2000 Afghan nationals were evacuated to the Netherlands. In many cases, the evacuees used to work for the Dutch government in Afghanistan. After the Taliban takeover of the country, these people were considered at risk to be persecuted in their home country. The applications of these asylum seekers were processed in a short asylum procedure in specific emergency facilities. These emergency facilities were created to accommodate the evacuated persons.⁴³⁸ Although the policy regarding the suspension of decisions (see above) is applicable, the applications of evacuated Afghan asylum seekers will be processed and, as far as known, most of them have obtained a temporary asylum permit.

⁴³⁷ Dutch Parliament, 23 February 2022, *Verlengen besluit- en vertrekmoratorium Afghanistan*, available in Dutch at: <https://bit.ly/3HkpFMs>.

⁴³⁸ IND, latest update 27 December 2021, information available in Dutch at: <https://bit.ly/3zP4rUO>.

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.

From September 2021, the Netherlands experienced a new reception crisis. Whereas the former reception crisis in 2015 was due to an unexpected and very high number of new arrivals of asylum seekers, the current one could have been prevented if the government would have anticipated better. People have been sleeping on the floor outside **Ter Apel** awaiting their turn to register, followed by a transfer to one of the many Emergency Reception Centres that opened (and closed) around the country from September onwards.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

- | | | | |
|--|---|---|--|
| 1. Does the law make material reception conditions to asylum seekers 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 ⁴³⁹ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| 6. Onward appeal ⁴⁴⁰ | <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 |
| 2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | |

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

⁴³⁹ Except where there is no suspensive effect.

⁴⁴⁰ Unless provisional measures are granted by the Council of State: Article 3(3)(a) RVA.

of foreigners 2005).⁴⁴¹ The organ responsible for both material as well as non-material reception of asylum seekers is the COA, according to the Reception Act.⁴⁴²

The material reception conditions are not tied to the issuance of any document by the authorities, but the IND will issue a temporary identification card (“W document”) to asylum seekers while their asylum application is still in process. The asylum seeker can use this “W document” to prove his or her identity, nationality and lawful stay in the Netherlands.⁴⁴³ 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 obtain it.⁴⁴⁴

In September-October 2021, due to a lack of capacity at the AVIM, IND and an increase in new arrivals, the application centre in Ter Apel surpassed its maximum capacity. The location was so full that people could not be registered in time and had to stay in tents outside the site. For days, people, including children, have been sleeping on chairs or even on the ground in large tents.⁴⁴⁵

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.⁴⁴⁶ 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.⁴⁴⁷ Starting from 2019, this became an issue due to the long waiting times (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.⁴⁴⁸ 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.⁴⁴⁹ 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.

⁴⁴¹ Article 9(1) RVA.

⁴⁴² Article 3(1) RVA.

⁴⁴³ IND, ‘Vreemdelingen Identiteitsbewijs (Type W en W2)’, available in Dutch at: <http://bit.ly/2y8JraF>.

⁴⁴⁴ Article 9 Aliens Act.

⁴⁴⁵ Dutch Council for Refugees, *Major concerns about the quality of the reception of asylum seekers*, 12 October 2021, see: <https://bit.ly/336Aun9>.

⁴⁴⁶ Article 2(1) RVA.

⁴⁴⁷ Article 9 sub 5 RVA.

⁴⁴⁸ Council of State, ECLI:NL:RVS:2020:1803, 29 July 2020.

⁴⁴⁹ Letter of the Secretary of State, KST 19637, nr 2658, 14 September 2020.

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. 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),
- ❖ 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).⁴⁵⁰ 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.⁴⁵¹ 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". Based on 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.⁴⁵²

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.⁴⁵³

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.⁴⁵⁴ 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.⁴⁵⁵ When the form is

⁴⁵⁰ Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019.

⁴⁵¹ Council of State, ECLI:NL:RVS:2019:3442, 15 October 2019.

⁴⁵² Council of State, ECLI:NL:RVS:2020:8, 6 January 2020.

⁴⁵³ Article 3(3)(a) RVA.

⁴⁵⁴ Council of State, Decision No 201706173/1, 28 June 2018.

⁴⁵⁵ Article 30c (1) Aliens Act.

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 centre.⁴⁵⁶ There are two exceptions: there is no *novum* and the subsequent application was submitted to frustrate the deportation (This is assumed if the deportation 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.⁴⁵⁷ 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 €6.505 for a single person and €13.010 for a married couple), the COA can reduce the provision of reception conditions accordingly, with a maximum of the economic value equivalent to the reception conditions provided.⁴⁵⁸ 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, access to 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 significant monetary indemnities, as a result of the legal penalties imposed on the IND that had not deliberated on time on their applications, were considered to have enough resources to pay for their reception. The COA considered the legal penalty payments as assets. As the COA often did not immediately request the payment, asylum seekers had often already spent the sums received, for example on air tickets for their family members. A limited number of regional courts ruled on this issue, establishing that the COA was allowed to reclaim the costs for reception as the legal penalty payments are not considered as compensation for the asylum seeker but merely as a financial incentive for the IND to decide quicker.⁴⁵⁹ However, one court ruled that the COA should have researched the full financial situation of the asylum seeker (both debts and assets) instead of just reclaiming the money.⁴⁶⁰

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 2021 (in original currency and in €):
 - ❖ Single adult accommodated by COA: €239.68

⁴⁵⁶ Council of State, ECLI:NL:RVS:2019:4358, 19 December 2019 and ECLI:NL:RVS: 2020:244, 29 January 2020.

⁴⁵⁷ Article 2(1) RVA.

⁴⁵⁸ Article 20(2) RVA.

⁴⁵⁹ Regional Court of Groningen, ECLI:NL:RBNNE:2021:4635, 28 October 2021.

⁴⁶⁰ Regional Court Arnhem, ECLI:NL:RBDHA:14536, 27 December 2021.

The allowance of €239.68/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:⁴⁶¹

- ❖ 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:

Weekly allowance to asylum seekers accommodated by COA		
Category of applicant	With dinner provided	Without dinner provided
1-2 person household		
Adult or unaccompanied minor	€46.97	€31.92
Child	€38.92	€27.02
3 person household		
Adult	€37.59	€25.55
Child	€31.15	€21.63
4+ person household		
Adult	€32.90	€22.33
Child	€27.23	€18.90

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.⁴⁶² Unlike the other allowances, this allowance is fixed and not adjusted annually which has been criticized by academia.⁴⁶³

As of 1 January 2022, the social welfare allowance for Dutch citizens is set at €1.037,12 for a single person who is at least 21 years old and not older than 67 years. 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.⁴⁶⁴ According to the COA, this is still possible based on Articles 11(1) and 9(1) RVA.

⁴⁶¹ Article 9(1) RVA.

⁴⁶² Article 14(4) RVA.

⁴⁶³ L. Slingenberg, *Geen cent te maken*, A&MR 2020, nr. 6-7, p. 292-295.

⁴⁶⁴ Secretary of State, Decision No 677862, 10 September 2015.

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;⁴⁶⁵
- ❖ 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;
- ❖ Seriously violates the house rules of the centre;⁴⁶⁶ 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,⁴⁶⁷ 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 as of the 1st of July 2020.⁴⁶⁸ COA is still using the ROV measure of completely withdrawing material reception and financial allowance, thereby announcing that if the asylum seeker does not have a place to go he can stay in a 'time-out room'. During 2020, this measure was imposed 124 times.⁴⁶⁹ However, these numbers do not differentiate between before and after the introduction of the 'time-out rooms'.

Asylum seekers aged 16 or more, who seriously violate the house rules of reception centres or otherwise demonstrate aggressive behaviour, may also be transferred to Enforcement and Surveillance Location (*Handhaving en toezichtlocatie*, HTL) in **Hoogeveen** at a former prison building.⁴⁷⁰ 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.⁴⁷¹ 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.

⁴⁶⁵ Article 19(1)(e) RVA. This provision sets out the obligation to report to the centre once a week.

⁴⁶⁶ Article 19(1) RVA.

⁴⁶⁷ CJEU, C-233/18, 12 November 2019.

⁴⁶⁸ Letter of the Secretary of State, Parliamentary Documents 19637, nr. 2642, 1 July 2020.

⁴⁶⁹ Ministry of Justice and Security, Overview of Incidents 2020, 7 July 2021, available in Dutch at: <https://bit.ly/3qcuxy3>, 16.

⁴⁷⁰ Article 1(n) RVA.

⁴⁷¹ Article 5 Reception Act.

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 the case 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.⁴⁷²

Defence for Children, Kerk in Actie, UNICEF, the Dutch Council for Refugees and War Child wrote a report on transfer of families with children and unaccompanied minors. 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.⁴⁷³ However, similar recommendations are made in a more in a recent general report on the living conditions of children in reception centres.⁴⁷⁴ Children are still on average moving at least once a year.⁴⁷⁵

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*).⁴⁷⁶

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). That applies also to a facility for families, the Family Location (*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, people are not detained but their freedom is restricted to a certain municipality. Although this is not actually controlled by the authorities, asylum seekers have

⁴⁷² Regional Court Roermond, Decision No 09/29454, 2 March 2010. When analysing this ruling, it should be noted that there is formally no distinction anymore between a return and an integration AZC.

⁴⁷³ 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.

⁴⁷⁴ 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.

⁴⁷⁵ Ministry of Justice and Security, State of Migration 2021, 7 July 2021, p. 90, available in Dutch at: <https://bit.ly/3r2SiYD>.

⁴⁷⁶ Articles 19(1)(e) and 10(1)(b) RVA.

to report six days a week (daily except on Sundays). It is therefore difficult to leave the municipality in practice.⁴⁷⁷ 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.⁴⁷⁸

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres: 104
2. Total number of places in the reception centres: 34,088
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).⁴⁷⁹ 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.⁴⁸⁰ Vulnerable asylum seekers such as children do not stay at JCS.

As of the end of 2021, the total capacity of the Dutch reception system reached a total of 36,566 people staying at 104 different locations, of which 70 regular and 34 temporary.⁴⁸¹ The total (104) does not include the reception of Afghan evacuees in locations from the Ministry of Defence and 'acute emergency' reception locations managed by municipalities. One third of the people staying at these locations are beneficiaries of international protection (12,123). It is expected that 42,000 reception places will be necessary to offer all asylum seekers with the right to reception a bed throughout 2022. Between 24 August and 23 December, 9,717 additional reception places were created, most of them in temporary locations. Since a number of these locations have closed again, currently 8,227 additional reception places are available.

Temporary emergency locations were frequently opened and closed in 2021. Recently arrived asylum seekers are placed in these locations, together with family members who came to the Netherlands through family reunification, Afghan evacuees and asylum seekers who filed a subsequent application. Emergency locations have been opened in sport and event halls, on boats, in pavilions and in former COVID-19 test locations.

Afghan evacuees have been located on sites provided by the Ministry of Defence, as many of the evacuees were its former employees. One of these was a large camp with tents in the woods close to Nijmegen called **Heumensoord**, hosting 1,000 people. This location was used during the 2015 reception crisis and was often criticized. The National Ombudsman and the Human Rights Committee went to visit

⁴⁷⁷ These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restriction measures based on Article 56 in conjunction with Article 54 Aliens Act.

⁴⁷⁸ Article 108 Aliens Act.

⁴⁷⁹ Article 3(3) Aliens Act.

⁴⁸⁰ 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.

⁴⁸¹ Numbers available at <https://www.coa.nl>.

Heumensoord in September 2021 as a follow-up to their 2016 visit. These parties recommended the government to close down Heumensoord as soon as possible, most importantly before winter, since the camp was not deemed good for the safety and (mental) health of the residents.⁴⁸² The State Secretary finally moved Afghan evacuees still living in tents at Heumensoord to another site at the end of January 2022. At another site in which Afghan evacuees were located (**Harskamp**), the residents of the village started protests against their arrival on 24 August 2021. Initially quite peaceful and counting only 250 demonstrators, the protest became much more violent in the night, when the few participants left set fire to car tires.⁴⁸³

Asylum seekers whose request is dealt with in Track 2 are only entitled to ‘**austere**’ reception as of September 2020. During 2020, many asylum seekers stayed at the ‘austere’ reception centre (which is a separate fenced building on the same site of normal reception centres in **Ter Apel** and **Budel**). Vulnerable asylum seekers are exempted from staying at the fenced separate ‘austere’ reception building, but they receive an ‘austere’ regime at a normal reception centre. Both the asylum seekers staying at the separate ‘austere’ reception centres and the vulnerable ones have to report their presence daily, do not receive financial allowances and are given frozen microwave meals. Following the Council of State ruling on the risk of treatment in violation of Article 3 ECHR upon return to Greece for international protection beneficiaries,⁴⁸⁴ regional courts decided that beneficiaries of protection from Greece could no longer be obligated to stay at the ‘austere’ reception centres since their applications are no longer chanceless.⁴⁸⁵

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, 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. Among them, limited access to medical care, tension in the centres due to serious concerns about family reunification and a lack of facilities since the (pre-)POL is not designed for a long stay.⁴⁸⁶ Additionally, 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.⁴⁸⁷

⁴⁸² National Ombudsman, ‘Close emergency location Heumensoord and fix other accommodation for Afghan evacuees’, 10 November 2021, see: <https://bit.ly/3HF2KMp>.

⁴⁸³ NOS, ‘Politie grijpt in bij protest in Harskamp tegen komst Afghanen’, 24 August 2021, available in Dutch at: <https://bit.ly/3rqgzsP>.

⁴⁸⁴ Council of State, ECLI:NL:RVS:2021:1626 and ECLI:NL:RVS:2021:1627, 28 July 2021.

⁴⁸⁵ E.g. Regional Court Haarlem, 18 August 2021, ECLI:NL:RBDHA:2021:9028.

⁴⁸⁶ Dutch refugee Council, *Gevangen in een vastgelopen asielsysteem: Gevolgen en verhalen uit de praktijk*, November 2019, available in Dutch at: <https://bit.ly/2vSP2pW>.

⁴⁸⁷ See for example: NOS, ‘Ombudsman: zakgeld en privacy voor asielzoekers vanwege lange wachttijden’, 10 March 2020, available in Dutch at: <https://bit.ly/33OOIL1>.

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.

Due to the large number of asylum applications in 2015, COA was experiencing difficulties in providing accommodation for all the newly arrived 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 2017.⁴⁸⁸ 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,⁴⁸⁹ but this number significantly increased in 2021, to reach 36,059 persons residing in COA reception centres managed at the end of 2021.⁴⁹⁰

The COA continuously requests municipalities to provide more locations and places.

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.⁴⁹¹ 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.⁴⁹²

One HTL in **Hoogeveen**, opened in December 2017 as an EBTL, and became an HTL only in February 2020. The location has a capacity of 50 places.⁴⁹³

The Inspection of the Ministry of Justice and Security did a follow-up investigation on how the Ministry deals with asylum seekers who cause tension or any form of nuisance.⁴⁹⁴ The investigation shows that employees at the HTL are well able to reduce nuisance. Compared to the inspection in 2018, more resources are available at the HTL location to limit nuisance. For example, asylum seekers are not allowed to leave the HTL site without a valid reason. The fact that the residents mainly stay at the HTL location has positive consequences for the nuisance inside and outside the HTL. As a result, the employees also get more time to supervise the residents, not only to set boundaries. The inspection in 2018 of the EBTL concluded that this type of reception had 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.⁴⁹⁵ The difference between the EBTL and the

⁴⁸⁸ *Ibid.*

⁴⁸⁹ *Ibid.*

⁴⁹⁰ COA, *Bezetting*, available in Dutch at: <http://bit.ly/2E95a6F>.

⁴⁹¹ Article 1(n) RVA, Decision of Secretary of State, No 69941, 3 December 2018

⁴⁹² Article 9 (7) RVA

⁴⁹³ COA, *Extra begeleiding en toezichtlocatie*, available in Dutch at: <http://bit.ly/2Bs9QBB>.

⁴⁹⁴ Inspection of the Ministry of Justice and Security, 'Follow-up investigation into the approach of asylum seekers who cause tension or any form of nuisance', 1 April 2021, available in Dutch at: <https://bit.ly/3JWZ4rp>.

⁴⁹⁵ Secretary of State, Letter KST19637 2572, 18 December 2019.

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. Although put forward as a positive change by the Inspection, several lawyers have serious doubts about the restriction of the freedom of movement in the HTL. Asylum seekers are only allowed to go outside for four hours a day, where they cannot leave a small grass field. Several lawyers have argued that asylum seekers are illegally deprived of their liberty in the HTL.⁴⁹⁶ 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.⁴⁹⁷ 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? 13.97 months (01-01-2020)⁴⁹⁸
3. Are unaccompanied children ever accommodated with adults in practice?⁴⁹⁹ ☐ 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.⁵⁰⁰ 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. 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.⁵⁰¹ 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.⁵⁰² 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.

Residents can use the MyCOA-application - available in 11 languages – to obtain extensive information on their stay in an AZC. For example, they receive a message when post arrives; they can obtain information on the job market in the Netherlands or regarding COVID-19 vaccines.

⁴⁹⁶ For example in the case: Regional Court Den Bosch, ECLI:NL:RBDHA:2020:4558, 25 May 2020.

⁴⁹⁷ Regional Court Groningen, ECLI:NL:RBDHA:2020:6252, 10 July 2020.

⁴⁹⁸ Ministry of Justice and Security, State of Migration 2021, 7 July 2021, p. 89, available in Dutch at: <https://bit.ly/3r2SiYD>.

⁴⁹⁹ 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.

⁵⁰⁰ For more information, see COA, *House rules*, available in Dutch at: <http://bit.ly/2DyKs3K>.

⁵⁰¹ Article 18(1) and (3) RVA.

⁵⁰² 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?
❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6 months |
| 2. Does the law allow access to employment only following a labour market test? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?
❖ If yes, specify which sectors: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
168 days |
| 5. Are there restrictions to accessing employment in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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:⁵⁰³

- ❖ 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,⁵⁰⁴ 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 because of the limited time they could be employed for.

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.⁵⁰⁵ 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.⁵⁰⁶ This depends on

⁵⁰³ Article 2(a) Aliens Labour Decree.

⁵⁰⁴ Article 2(a)(1) first sentence and (a), (b) and (c) Aliens Labour Decree.

⁵⁰⁵ Article 6 Aliens Labour Act.

⁵⁰⁶ 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 take part in 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.⁵⁰⁷

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.⁵⁰⁸

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.⁵⁰⁹ 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.⁵¹⁰ 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 as sufficient, they enrol in the suitable education programme.⁵¹¹

According to the RVA, the COA provides access to educational programmes for adults at the AZC.⁵¹² 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.⁵¹³

Theoretically, there are no obstacles as to access to vocational training for adults. However, asylum seekers have often not had the chance to learn Dutch at a sufficient level, and this decreases their chance of accessing vocational training in practice. One of the causes is the fact that Dutch classes for asylum seekers are not compulsory. Moreover, volunteers instead of professional teachers provide them, while refugees with a permit living in reception centres receive Dutch classes from a professional language teacher. Another reason that hinders adult asylum seekers in accessing education is that they do not have a right to financial study aid from the government.

⁵⁰⁷ Article 1a(b) Aliens Labour Decree.

⁵⁰⁸ Article 1g(a) Aliens Labour Decree.

⁵⁰⁹ Law of 30 May 1968 houdende vaststelling Leerplichtwet 1969, available in Dutch at: <http://bit.ly/2kKXQpV>.

⁵¹⁰ Available at: <http://www.lowan.nl/>.

⁵¹¹ 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>.

⁵¹² Article 9(3)(d) RVA.

⁵¹³ 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 [Pharos](#).

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.⁵¹⁴ 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 that 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.⁵¹⁵

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 centres are explicitly included in the COVID-19 vaccination strategy.⁵¹⁶ Around half of the asylum seekers living in AZCs have received one or more vaccinations. Due to the influx and outflow, the vaccination rate varies. Furthermore, not all vaccinations are registered in medical files (e.g. vaccinations that were given abroad), which means that these residents are not included in the vaccination rate. On 29 November 2021, it was recorded that a total of 18,648 asylum seekers had received one or two vaccinations.⁵¹⁷

⁵¹⁴ Article 10(2) Aliens Act.

⁵¹⁵ 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>.

⁵¹⁶ See, point 2.3. Rijksinstituut voor Volksgezondheid en Milieu, COVID-19-vaccinatie Uitvoeringsrichtlijn, March 2021, available at: <https://bit.ly/30wlHxw>.

⁵¹⁷ Answers to questions of Member of Parliament by the Minister of Public Health, Welfare and Sports, 13 December 2021, available in Dutch at: <https://bit.ly/33ndkbZ>.

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 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. An investigation into the treatment of LGBTI persons and of converts and apostates has been completed in 2021.⁵¹⁸ The researchers conclude that COA does not pursue a target group policy, but that the organization does pay structural attention to vulnerable groups in reception. With regard to LGBTI asylum seekers, the COA has developed a policy to increase the quality of life at COA locations. Special LGBTI attention officers are available at various COA locations to assist LGBTI asylum seekers and to whom employees can appeal. In addition, COA is committed to promoting the expertise of its employees on the topic. The report concludes that, in comparison to the LGBTI policy, there is less attention in reception for converts and apostates and attention to issues connected to religious freedom is still limited. The researchers recommended opening special LGBTI units, but the COA is not willing to do separate LGBTI persons. Even if willing to consider their wishes (e.g. having a room for themselves or living in the same building as other LGBTI persons), it is impossible to address them given the current reception crisis.⁵¹⁹

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.⁵²⁰ 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 asylum seekers cannot wash themselves, they are allowed to make use of the regular home care facilities; the asylum seeker is entitled to the same level of 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.

⁵¹⁸ Regioplan and Free University, LGBTIs, converts and apostates in asylum reception, 6 October 2021, available in Dutch at: <https://bit.ly/3nhpc6K>.

⁵¹⁹ Reaction by the State Secretary to the Research on LGBTIs, converts and apostates in asylum reception, 7 December 2021, KST 19637, No 2801, available in Dutch at: <https://bit.ly/3tl7JOr>.

⁵²⁰ Article 3 Reception Act.

The COA had accommodated 940 unaccompanied children by the end of 2021,⁵²¹ more than twice as many when compared to the end of 2020. This is due to the high influx of UAMs, which has also doubled compared to 2020. The reason behind this rising number remains unclear.⁵²² COA does experience various difficulties in finding places to accommodate UAMs: there is urgent need for extra reception capacity for unaccompanied minors: 500 extra reception places as of 1 January 2022 and another 100 reception places at the end of 2022 would be needed.⁵²³

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**, the organisation Nidos decides whether he or she should be placed in the protection reception location, under the responsibility of the NGO Yadeborg, contracted by COA. Their services were inspected by the youth support unit (*Jeugdzorg*), which led to a report in 2017 establishing that still too many children disappear from these locations.⁵²⁴ Another research shows that 1,190 UAMs left COA locations without reason (*MOB-melding*) between 2015 and 2018; 50% of the minors left a protection reception location.⁵²⁵

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.⁵²⁶

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.

⁵²¹ 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>.

⁵²² Petra Vissers, ‘Almost twice as much asylum requests from UAMs’, Trouw 25 December 2021, available in Dutch at: <https://bit.ly/3zMWaRa>.

⁵²³ COA, ‘COA: in 2022 the demand for reception locations will continue to increase’, 3 December 2021, available in Dutch at: <https://bit.ly/3tluEJH>.

⁵²⁴ Jeugdzorg, *De kwaliteit van de beschermde opvang voor alleenstaande minderjarige vreemdelingen Hertoets*, September 2017, available in Dutch at: <http://bit.ly/2DCmIw0>.

⁵²⁵ APM (*Analyseproeftuin Migratieketen*) Report on UAMs leaving reception locations without reason, February 2020, available in Dutch at: <https://bit.ly/3HR9yXs>.

⁵²⁶ COA, *Infosheets*, available in Dutch at: <http://bit.ly/2lfnQXG>.

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](#).

Detention of Asylum Seekers

A. General

Indicators: General

1. Total number of persons detained in 2021:	Not available
2. Number of persons in detention until august 2021:	739
3. Number of detention centres:	3
4. Total capacity of detention centres:	Not available

There are two types of detention of asylum seekers. Either a person is detained at the external border, trying to access the Schengen area in the Netherlands (border detention), or they can be detained in case they are undocumented and subjected to a return decision (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		
	2020	2021
Total	2,360	Not available

Source: Ministry of Justice and Security, *De Staat van Migratie* 2021.

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.”⁵²⁷ Border detention can be extended 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.⁵²⁸

If an asylum seeker 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 Dutch Council for Refugees will prepare the asylum seekers for these interviews; moreover, a staff member of the Dutch Council for Refugees can be 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, as lawyers do not receive a remuneration for this activity. During the interview, there are IND accredited interpreters present.⁵²⁹ Following the *Gnandi* judgement of the CJEU⁵³⁰, the grounds for detention during the appeal procedure have been altered in the Aliens Act, see [Border Procedure](#).

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

⁵²⁷ Article 6 Aliens Act.

⁵²⁸ Article 6a Aliens Act.

⁵²⁹ Regional Court Haarlem, Decision NL18.16477, 19 September 2018; Decision NL18.19950, 6 November 2018.

⁵³⁰ CJEU, Case C-181/16 *Sadikou Gnandi v Belgium*, Judgment of 19 June 2018.

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 – after the *Gnandi* judgment – while they are waiting for the result of their appeal.⁵³¹

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 type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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3. Are asylum seekers detained during a regular procedure in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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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;⁵³²
- ❖ 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.

Migrants are mostly detained because they do not fulfil the requirements as set out in Article 3(1)(a) and (c) Aliens Act.⁵³³ 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 2021/10 lists the cases of exceptions

⁵³¹ 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.

⁵³² 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.

⁵³³ Article 6(1)-(2) Aliens Act.

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](#)).⁵³⁴

Courts have recently been discussing whether beneficiaries of protection from other Member States can be detained at the border. According to Regional Court Amsterdam, they should be released from border detention after the IND run its checks on EURODAC, from which emerged they were recognised international protection in another Member State.⁵³⁵ One of the reasons for this exemption is that Article 6(5)(a) of the Schengen Borders Code states that beneficiaries of protection or third country nationals with a visa should be authorised to enter the territory of the Member States for transit purposes to the Member State which granted them a residence permit. Currently, the Council of State upheld its previous judgements, ruling that EU law does not prohibit automatic application of the border procedure and border detention to everyone who applies for asylum at the border (with the exception of vulnerable persons).⁵³⁶

1.2. Territorial detention of asylum seekers

There are three forms of territorial detention: (a) the detention of third country nationals who have no right of residence (Article 59 of the Aliens Act); (b) the detention of Dublin claimants (Article 59a Vw); and (c) the detention of asylum seekers (Article 59b Vw). They are based respectively on Article 15 of the Return Directive, Article 28 of the Dublin Regulation and Article 8 of the Procedures Directive. Different rules and terms apply to each form, which will be discussed below.

Detention for the purpose of removal

Detention for the purpose of removal can be imposed on both third country nationals (TCNs) with and without lawful residence on the basis of Article 59 of the Aliens Act. However, third country nationals who can be detained with lawful residence on the basis of Article 59(1)(b) of the Aliens Act are considered as asylum seekers, but, for example, as third country nationals who have applied for a regular permit. Only the detention of third country nationals without lawful residence will be discussed in the following paragraph.

Conditions

It follows from the Return Directive that TCNs without lawful residence can be detained if the following cumulative (added together, ed.) conditions are met:

1. Return decision
2. Risk of absconding / hampering return procedure
3. A reasonable prospect of removal
4. Removal arrangements are in progress and executed with due diligence
5. No other sufficient but less coercive measures can be applied

No Return Decision for EU beneficiaries

EU status holders whose asylum application has been declared inadmissible will not receive a return decision, as it refers to return to a country outside the EU - usually the country of origin of the applicant -, while it is clear for EU beneficiaries that they run a risk of refoulement upon return to their country of origin. However, the Court of Justice ruled that this group of TCNs can be detained on national grounds with a view to deportation, without a return decision being imposed on them.⁵³⁷ Therefore, the beneficiaries of protection in another Member State will not be issued a return decision after their asylum application was declared inadmissible; regardless, they have an obligation to leave. If they do not comply with this departure obligation, they can be forcibly deported on the basis of the general deportation authority of Article 63 of the Aliens Act. The status holder can also be detained for deportation on the

⁵³⁴ Article 5.1a(3) Aliens Decree. See IND Work Instruction 2017/1, available in Dutch at: <http://bit.ly/2IZGp2X>.

⁵³⁵ E.g. Regional Court Amsterdam, ECLI:NL:RBDHA:2021:12551, 7 October 2021.

⁵³⁶ Council of State, ECLI:NL:RVS:2021:1648, 28 July 2021; based on ECLI:NL:RVS:2016:1452, 3 June 2016.

⁵³⁷ CJEU, C-673/19, 24 February 2021.

basis of Article 59, paragraph 2 of the Aliens Act (the fiction that the interest of public order demands detention, if the documents necessary for return are available in the short term).

Risk of absconding

According to Article 59 of the Aliens Act, a foreign national can be detained on the grounds of being a potential threat to the interests of public order or national security. Whether there is a risk of absconding is determined based on light and serious grounds for detention as described in paragraphs 3 and 4 of Article 5.1b Aliens Decree. If at least two of these grounds are met, the risk of absconding can be assumed. However, the IND still needs to substantiate why these grounds entail a risk of absconding. A serious ground is for example 'illegal entry'. Practice shows that these grounds are easily met in case of third country nationals who have no right of residence.

A reasonable prospect of removal

The condition 'reasonable prospect of removal' requires the indication of a reasonable period of time within which the removal can be carried out. Courts usually look at whether embassies issue *laissez passers* and whether presentations are possible at the embassy. For example, the Council of State ruled that there was no reasonable prospect of deportation to Morocco, because the Embassy had not issued any *laissez passers* for 16 months.⁵³⁸ If there are no forced repatriations at all, such as to Eritrea, there is no prospect of deportation, and as such, detention is not possible.

Removal arrangements are in progress and executed with due diligence

Numerous rulings analysed this condition. Case law does not clearly specify how many days does the State Secretary have to start deportation acts, however. More than usual diligence is required if the third country national is in possession of a valid passport. Deportation arrangements include conducting departure interviews, investigating the deportation process, applying for the *laissez passer* and taking fingerprints.

No other sufficient but less coercive measures can be applied

Finally, pursuant to Article 59c of the Aliens Detention, detention may only be used as an *ultimum remedium*. Case law is however scarce on this matter. The Council of State often follows the IND position in arguing that the risk of absconding does not allow for alternatives.⁵³⁹

Detention of Dublin claimants

Dublin claimants can be detained for the purpose of transferring them to the responsible Member State.⁵⁴⁰ Two conditions apply: (1) a concrete starting point for a Dublin transfer and (2) a significant risk of absconding. A EURODAC hit and a Dublin claim are both concrete starting points. For the risk of absconding Article 5.1b, paragraph 2 Aliens Decree is also used in Dublin cases. At least two grounds need to apply and at least one needs to be a serious grounds.

Detention of asylum seekers

The Aliens Act also provides a basis for the detention of asylum seekers during the asylum procedure (Article 8 Reception Directive). This form of detention may be imposed when:⁵⁴¹

- 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

⁵³⁸ Council of State, ECLI:NL:RVS:2021:695, 2 April 2021.

⁵³⁹ E.g. Council of State, ECLI:NL:RVS:2020:1546, 1 July 2020.

⁵⁴⁰ Article 59a Aliens Act.

⁵⁴¹ Article 59b Aliens Act.

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 above grounds are further elaborated in Article 5.1c Aliens Decree. In principle, detention of third country nationals with lawful residence may not last longer than four weeks. However, an extension can be given for two weeks if the third country national submitted an asylum application and the intention procedure of Art. 39 Aliens Act is followed. The State Secretary must process the asylum application expeditiously. It appears from a decision by the Council of State that Article 59b sub b of the Aliens Act can no longer be used as a basis for the detention measure on appeal, but only in the administrative phase.⁵⁴²

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,⁵⁴³ detainees were not released, except for 64 Dublin detainees who were released on 18 March 2020.⁵⁴⁴

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.⁵⁴⁵ However, the court stated that the pandemic 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 completely ruled out. In 2021, the COVID-19 pandemic did, however, influence three decisions in which it was established that reasonable prospect of removal to Morocco,⁵⁴⁶ Algeria⁵⁴⁷ and Senegal⁵⁴⁸ had been absent. Practical issues such as the absence of outgoing flights to these countries were due to the pandemic. Moreover, the Moroccan and Algerian authorities did not issue any laissez-passers for over 16 months. Therefore, the reasons behind these decisions were related both to the pandemic and to the non-cooperation of the authorities of the interested countries. From February 2022, the discussion of reasonable prospect of removal to Algeria started again, as the Algerian embassy accepted presentations again and issued a few laissez passers for voluntary return. However, at the moment courts are ruling in a non-homogeneous way on the topic.⁵⁴⁹ On the contrary, removal within reasonable time would be possible to Afghanistan, according to the Council of State (before the Postponement of Decision and Removal to Afghanistan was introduced).⁵⁵⁰

⁵⁴² Council of State, ECLI:NL:RVS:2021:230, 4 February 2021.

⁵⁴³ 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 (VAJN) 5 May 2020, available in Dutch: <https://bit.ly/39ENfoA>.

⁵⁴⁴ See Tweet from *Meldpunt vreemdelingendetentie*: <https://bit.ly/3oUW7Nf>.

⁵⁴⁵ Council of State, ECLI:NL:RVS:2020:1141, 29 April 2020.

⁵⁴⁶ Council of State, ECLI:NL:RVS:2021:696, 2 April 2021.

⁵⁴⁷ Council of State, ECLI:NL:RVS:2021:2092, 17 September 2021.

⁵⁴⁸ Regional Court Arnhem, ECLI:NL:RBDHA:2021:9994, 10 September 2021.

⁵⁴⁹ E.g. no prospect of removal to Algeria: Regional Court of Arnhem, ECLI:NL:RBDHA:2022:1020, 8 February 2022; prospect of removal to Algeria: Regional Court of Den Bosch, ECLI:NL:RBDHA:2022:1019, 11 February 2022.

⁵⁵⁰ Council of State, ECLI:NL:RVS:2021:1638, 26 July 2021.

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.⁵⁵¹ This is also laid down in policy rules.⁵⁵² 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) recommended in a recent report on Return that the government should start experimenting with lighter alternative methods to detention.⁵⁵³ Amnesty International has also argued that there should be a legal obligation imposed on the decision-making authorities to consider alternatives to detention proactively.⁵⁵⁴ 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*.⁵⁵⁵ It further demonstrated that alternatives to imprisonment are considered only in case 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.⁵⁵⁶ 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 it.

Recently, some courts ruled that detention in a specific case was unlawful due to a lack of investigation by the IND into alternatives to detention.⁵⁵⁷

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

⁵⁵¹ Article 59c Aliens Act.

⁵⁵² Paragraph A5/1 Aliens Circular.

⁵⁵³ ACVZ, *Advice: Working together on Return*, April 2021, available at: <https://bit.ly/3HsoxHP>.

⁵⁵⁴ 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.

⁵⁵⁵ Amnesty International, *Het recht op vrijheid. Vreemdelingendetentie: het ultimum remedium-beginsel*, February 2018, available in Dutch at: <https://bit.ly/2TAX1i2>.

⁵⁵⁶ Bill regarding return and detention of aliens (2015-2016), 34309/2, available in Dutch at: <http://bit.ly/2mUloL3>.

⁵⁵⁷ E.g. Regional Court Haarlem, 28 December 2021, NL21.19757; Regional Court Den Bosch, 21 April 2021, Decision No NL21.5216 and NL21.5248.

3.1. Border detention of vulnerable applicants

Article 5.1a (3) of the Aliens Decree 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,⁵⁵⁸ whose detention is only possible when doubt has risen regarding their minority;⁵⁵⁹
- ❖ Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;⁵⁶⁰
- ❖ Persons for whose individual circumstances border detention is disproportionately burdensome;⁵⁶¹
- ❖ 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.⁵⁶²

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 2021/10 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 seekers' "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 sudden hospitalisation for a longer duration, or where the asylum seeker has serious mental conditions.⁵⁶³

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 third country nationals 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.⁵⁶⁴ 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

⁵⁵⁸ Article 3.109b(7) Aliens Decree.

⁵⁵⁹ Also in paragraphs A5/3.2 and A1/7.3 Aliens Circular.

⁵⁶⁰ Also in paragraph A1/7.3 Aliens Circular.

⁵⁶¹ Article 5.1a(3) Aliens Decree.

⁵⁶² Article 3.108b Aliens Decree.

⁵⁶³ IND, Work Instruction 2021/10, available in Dutch at: <https://bit.ly/3dCOKj8>.

⁵⁶⁴ Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016, available at: <http://bit.ly/2f5t3Ql>.

days.⁵⁶⁵ 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.⁵⁶⁶ Defence for Children strongly opposes detention of children on these grounds and in general.⁵⁶⁷ Amnesty International and LOS have also pointed out that detention of children with insufficient balancing of interest has occurred several times.⁵⁶⁸

In 2019, 30 unaccompanied children were placed in detention, compared to 40 unaccompanied children in the whole of 2018.⁵⁶⁹ 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.⁵⁷⁰

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:	Not available
❖ Territorial detention:	Not available

The law provides different maximum time limits for detention depending on the applicable ground.

- ❖ The general time limit for border detention is 18 months.⁵⁷¹
- ❖ 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.⁵⁷² 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.⁵⁷³
- ❖ 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.⁵⁷⁴
- ❖ 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.⁵⁷⁵

⁵⁶⁵ Paragraph A5/2.4 Aliens Circular.

⁵⁶⁶ Paragraph A5/2.4 Aliens Circular.

⁵⁶⁷ Defence for Children, *Vreemdelingenbewaring*, available in Dutch at: <http://bit.ly/2jTIOyZ>.

⁵⁶⁸ Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016.

⁵⁶⁹ Ministry of Security and Justice, *Rapportage vreemdelingenketen*: January-December 2018, 42; January-June 2019, 32.

⁵⁷⁰ 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>.

⁵⁷¹ Article 59(7) Aliens Act

⁵⁷² Article 3(7) Aliens Act.

⁵⁷³ Article 59(5) -(6) Aliens Act.

⁵⁷⁴ Article 59b(2)-(3) Aliens Act.

⁵⁷⁵ Article 59b(4)-(5) Aliens Act.

The majority of persons are detained for less than 3 months both at the border and on the territory. It should be noted, however, how there have been cases of persons detained for more than 6 months (for more information, see [AIDA 2020 Update](#)).

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.⁵⁷⁶ The average duration for territorial detention was 41 days in 2019.⁵⁷⁷ No additional statistics on the average time of detention were provided for the full year of 2020 and for 2021.

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.⁵⁷⁸ This option is provided for in the Bill regarding the return and detention of aliens, which is still in the legislative process.⁵⁷⁹ This is only possible when the detention centre cannot offer adequate care and at the condition that 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. In November 2020, the Council of State ruled that DC Rotterdam was to be considered a special detention facility within the meaning of Article 16 of the Return Directive.⁵⁸⁰ The underlying intention of the article is to ensure that immigrants are separated from criminal detainees in detention.

The three centres have the following capacity.

Detention capacity in the Netherlands: Sept – Dec 2021			
Detention centre	Maximum capacity	Maximum capacity immediately available	Occupancy
Schiphol	487	81	280
Rotterdam	640	187	288
Zeist	370	65	145

Source: DJI.⁵⁸¹

⁵⁷⁶ 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>.

⁵⁷⁷ JI, *Vreemdelingenbewaring* 2019, available in Dutch: <https://bit.ly/3inAiTO>.

⁵⁷⁸ See e.g. CPT, Report of the visit carried out from 2 to 13 May 2016, CPT/Inf(2017) 1, 19 January 2017, 36.

⁵⁷⁹ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁵⁸⁰ Council of State, ECLI:NL:RVS:2020:2795, 25 November 2020.

⁵⁸¹ DJI, Capacity and occupancy statistics, September – December 2021, available in Dutch at: <https://bit.ly/36jPUmM>.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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.⁵⁸² In 2021, the file was still pending because an addition to the Bill had been presented to Parliament. The addition concerns specific 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.⁵⁸³ 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.⁵⁸⁴

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.⁵⁸⁵ 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. Since the beginning of the pandemic, this timetable underwent significant changes. Detainees were sometimes only allowed to leave their rooms for 1 hour a day due to lack of staff in the facilities. Overall, they were not allowed to leave their living areas for more than 3,5-4 hours a day.⁵⁸⁶

The COVID-19 pandemic also caused various additional problems. Soap was not available for a very long time.⁵⁸⁷ In response to a complaint procedure from a detainee, the director of the Detention Centre

⁵⁸² 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>.

⁵⁸³ Ibid.

⁵⁸⁴ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁵⁸⁵ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁵⁸⁶ Meldpunt Vreemdelingendetentie, 'Covid in migrant detention', 1 December 2021, available in Dutch at: <https://bit.ly/3JZKJun>.

⁵⁸⁷ Ibid.

stated that it was not his responsibility to provide soap, and migrants could use the shampoo or shower gel that was available in their standard packages. Moreover, up until January 2021, it was forbidden to wear facemasks since, according to the Minister of Legal Protection, personnel should have been able to see the emotions on the faces of the detainees for security reasons.⁵⁸⁸ On 22 of January however, it became mandatory to wear face masks. Detention centres do not systematically share COVID-19 statistics. However, cases of COVID-19 infections were reported. For example, on 16 October 2020, two detainees were infected, which meant that 142 detainees had to be put under quarantine measures.⁵⁸⁹

As opposed to criminal detainees, migrant detainees are not allowed to access work or education inside the detention centre.

In a report on the detention regime, Amnesty International described the detention conditions as unnecessarily resembling those of a prison.⁵⁹⁰ Amnesty expects that the new Bill regarding return and detention of aliens will improve these conditions, but considers that a more fundamental change would be 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.⁵⁹¹ 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 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.⁵⁹²

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. Up until June 2020, detainees were not allowed to receive visitors. From June 2020, visits restarted, but were limited to a few times a week early in the morning, and only behind glass.⁵⁹³

⁵⁸⁸ Ibid, Answers to questions of Members of Parliament by the Minister of Legal Protection, 9 February 2021, available in Dutch at: <https://bit.ly/3tkFwHr>.

⁵⁸⁹ NOS, '142 mensen in quarantaine in Rotterdams detentiecentrum', available in Dutch at: <https://bit.ly/3HyUqy3>.

⁵⁹⁰ 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>.

⁵⁹¹ Amnesty International, Doctors from the World, *Meldpunt Vreemdelingendetentie (2020): Isolatie in Vreemdelingendetentie*, available in Dutch: <https://bit.ly/3nQgkCh>.

⁵⁹² Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁵⁹³ Meldpunt Vreemdelingendetentie, *Covid in migrant detention*, 1 December 2021, available in Dutch at: <https://bit.ly/3JZKJun>.

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, Stichting LOS visits the detention centres. Stichting LOS is an NGO that strives for improving immigration detention conditions.⁵⁹⁴ 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.⁵⁹⁵

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,⁵⁹⁶ and the decision on the detention is taken within 7 days.⁵⁹⁷ 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).⁵⁹⁸ 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. In January 2021, the Regional Court of Den Bosch added some questions to the ones raised by the Council of State.⁵⁹⁹ Whereas the Council asked whether judges are obliged to rule of their own motion, the Court questioned at first whether judges are allowed to rule of their own motion. Only if this is the case, whether they are also obliged to rule of their own motion in order to prevent legal inequality. The referral cases also differ

⁵⁹⁴ Full name: Stichting Landelijk Ongedocumenteerden Steunpunt. See www.stichtinglos.nl and <https://bit.ly/2WMaB4g>.

⁵⁹⁵ 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).

⁵⁹⁶ Article 94(2) Aliens Act.

⁵⁹⁷ Article 94(5) Aliens Act.

⁵⁹⁸ Council of State, ECLI:NL:RVS:2020:3061, 23 December 2020.

⁵⁹⁹ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:466, 26 January 2021.

significantly. The Council of State is of the opinion that no such obligation exists, while the Court of Den Bosch expressed an opposing view.

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.⁶⁰⁰

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.⁶⁰¹ 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.”

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.⁶⁰² 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.⁶⁰³ 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.⁶⁰⁴

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

Asylum seekers are provided legal aid in detention and it is paid for by the State.⁶⁰⁵ 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.⁶⁰⁶

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.

⁶⁰⁰ Article 96 Aliens Act.

⁶⁰¹ Article 94(5) Aliens Act.

⁶⁰² Paragraph A5/6.3 Aliens Circular.

⁶⁰³ Article 5.3 Aliens Decree.

⁶⁰⁴ Paragraph A5/6.6 Aliens Circular.

⁶⁰⁵ Article 100 Aliens Act.

⁶⁰⁶ 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.⁶⁰⁷ Material rights are the same. The residence permit also has a validity of 5 years.⁶⁰⁸

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 in 2020. Therefore, there is a backlog in registration, also during 2021. Because of limited capacity at the "BRP-straat" priority was given to the registration of refugees with a permit, who will be entitled to a house in a municipality. Priority was 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 2021, there was still a backlog in registration at the "BRP-straat", even if it registered a decrease. Family members of refugees who came to the Netherlands due to family reunification were send to a "BRP-straat" at other locations. Since summer in 2021, they are registered at the "BRP-straat" in Emmen. During the COVID-19 crisis, various delays were registered in the time needed to receive the temporary residence permit (the document itself) from the IND. This is still the case in 2021.

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.⁶⁰⁹ 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 €142 for an adult and €69 for a child.

⁶⁰⁷ Article 28(2) Aliens Act.

⁶⁰⁸ Article 4.22(2) Aliens Decree.

⁶⁰⁹ Article 4.22 Aliens Decree; Article 3.43c(1) Aliens Regulation.

2. Civil registration

Every person who is legally present in the Netherlands is registered in the Persons Database (*Basisregistratie personen*, BRP).⁶¹⁰ That means that asylum seekers and beneficiaries of international 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.⁶¹¹

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. Additionally, 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.⁶¹² 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.

⁶¹⁰ Persons Database Act, available in Dutch at: <http://bit.ly/2Bx1IFu>.

⁶¹¹ Article 2(17) Persons Database Act.

⁶¹² Article 24a Persons Database Decree.

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 clear for the municipality that the person concerned will not be able to obtain a marriage certificate within six months.⁶¹³

Dutch authorities do not, as a rule, recognize a traditional / religious marriage. However, a traditional / religious marriage 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 2021: Not available

Pursuant to Article 45b(1)(d) and (e) of the Aliens Act, a beneficiary can obtain an EU 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 €207 and for children € 69.

⁶¹³ Article 2(10) Persons Database Act.

If it is already clear that the status holder is not going to meet the integration condition (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. The permanent asylum status can be requested at any time after extending the temporary asylum status when the conditions are met.

4. Naturalisation

Indicators: Naturalisation

- | | |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship? | 5 years |
| 2. Number of citizenship grants to beneficiaries in 2021: | Not available |

The conditions for obtaining Dutch citizenship are to be found in Articles 8 and 9 of the Act on Dutch Citizenship.⁶¹⁴ 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 various 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 was 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. Since 1 January 2022, a new Civic Integration Act was introduced.⁶¹⁵ The language level requested to undergo the civic integration examination was raised at a B1 level. Instead, no changes were made regarding the conditions set to evaluate 'sufficient integration', necessary to obtain Dutch nationality, so that the requisite in terms of language knowledge remains at an A2 level. No changes are foreseen for 2022, regardless of the introduction of the new Civic Integration Act.⁶¹⁶

⁶¹⁴ Act on Dutch Citizenship, available in Dutch at: <http://bit.ly/2lfqBbe>.

⁶¹⁵ Stb. 2021, 35, Wet inburgering 2021.

⁶¹⁶ KST 32824, nr.346, Brief Voorbereiding ontwerp- algemene maatregelen van bestuur tot wijziging van het Vreemdelingenbesluit 2000 en het Besluit naturalisatietoets in verband met een overgangssituatie na de inwerkingtreding van de Wet inburgering 2021 (Letter from the State Secretary to the Parliament on the consequences of the new Civic Integration Act for obtaining long term permit or the Dutch nationality).

If the beneficiary holds 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:

- Showing participation for at least 600 hours in a civic integration course; a course preparing for the State Exam Dutch as a second language (NT-2), level I or II, or a combination of both courses. The course must have been taken 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 obtains 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 ("*medenaturalisatie*"). The child under the age of 16 years must live in the Netherlands and must have a residence permit.⁶¹⁷ 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.

⁶¹⁷ Article 11 Act on Dutch Citizenship.

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.

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	2020	2021
A single stateless person or a holder of an asylum residence permit	€670	€688
Plural application stateless persons or holders of an asylum residence permit (e.g. married couples)	€920	€945
A request for a child younger than 18 years-old obtaining the Dutch citizenship together with his/her parents	€133	€137

There are no data available on the number of people who obtained Dutch citizenship in 2021. According to the CBS (Centraal Bureau voor de Statistiek), in 2020 32,191 adults obtained the Dutch nationality via a independent application. 17,082 minors obtained the Dutch nationality via “*medenaturalisatie*” (obtaining Dutch nationality together with their parents). In total, 49,273 people obtained Dutch nationality.⁶¹⁸ It is unknown how many of the applications were issued by beneficiaries of international protection.

The Annual Report of the IND for 2021 is not yet published. In its 2020 Annual Report, the IND mentioned that in 2020, 44,000 applications for naturalisation were submitted. The IND took 50,870 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.⁶¹⁹ While the Annual Report is not yet published, but the IND already published its figures for 2021. During the year, there were 59,680 applications for naturalisation. The IND took 55,930 decisions, 98% of which were positive.⁶²⁰

⁶¹⁸ CBS, available at: <https://bit.ly/3DFqQpG>.

⁶¹⁹ IND, Annual report 2020, available in Dutch at: www.IND.nl.

⁶²⁰ IND, Annual figures 2021 available in Dutch at: www.IND.nl.

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 of the Aliens Act provides the grounds for revocation 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 any of the grounds of Article 32 Aliens Act applies,⁶²¹ as will be the case for temporary asylum status of a beneficiary of subsidiary protection.⁶²²

Revocation of refugee status or subsidiary protection is further explained in Paragraph C2/10.4 of the Aliens Circular.

Within the Dutch system, there is no distinction between the cessation and the withdrawal of asylum status. Moreover, the Dutch system does not differentiate between an asylum status and the asylum permit. Therefore, revocation of the asylum status means that the permit is automatically revoked.

The grounds of revocation from Article 32 Aliens Act are:

- a) False information
- b) Danger to public order or national security
- c) Ceased circumstances
- d) [Change of main residence outside the Netherlands]
- e) End of the family bond (for family reunification statuses – not discussed further)

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 revoked. This is not in accordance with the limitative grounds for revocation in the recast Qualification Directive. It remains a revocation ground by law for regular migration permits, but can no longer be used for asylum permits. However, according to the Aliens Circular a change of main residence outside the Netherlands does not constitute a ground for withdrawal of status.⁶²³ 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.

A. 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 invoked as a reason of withdrawal even after living over 20 years in the Netherlands.⁶²⁴

⁶²¹ Article 3.105d Aliens Decree.

⁶²² Article 3.105f Aliens Decree.

⁶²³ Paragraph C2/10.5 Aliens Circular.

⁶²⁴ For example Council of State, ECLI:NL:RVS:2020:2953, 14 December 2020 (the applicant had an asylum status for over 14 years).

After receiving reports of fraud, the IND started to reassess statuses from homosexual status holders from **Uganda**.⁶²⁵ The IND had reasons to believe that there were organizations helping the Ugandans to get asylum in the Netherlands. Of the 253 inspected cases, one status was withdrawn, while 35 cases are still pending as of November 2020. No recent updates have been given on these cases.

B. 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 the matter is highly 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.⁶²⁶ The policy was tightened in 2016 after the presumed sexual assaults in Cologne at New Year's Eve.⁶²⁷ The prison sentence for withdrawing an asylum residence permit was reduced from 24 to 10 months for refugees and from 18 to 6 months for persons with subsidiary protection (one of the few differences between refugee statuses and subsidiary protection statuses). Moreover, unique in the public order policy, only for subsidiary protection statuses also suspended sentences have to be calculated.⁶²⁸

C. Ceased circumstances

While 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, Dutch authorities shall have regard to whether the change of circumstances is of such 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.⁶²⁹ The legal basis for granting protection status has not ceased to 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.⁶³⁰ 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.⁶³¹

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:⁶³²

- 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.

⁶²⁵ KST 19637, nr. 2670 and appendix, LGBTI in the asylum procedure.

⁶²⁶ Work Instruction 2020/12 *De toepassing van de glijdende schaal*, available in Dutch at: <https://bit.ly/3wiiym0>.

⁶²⁷ BBC, Germany shocked by Cologne New Year gang assaults on women, 5 January 2016, available at: <https://bbc.in/2LIXFM0>.

⁶²⁸ Paragraph C2/10.3 and C2/10.7 Aliens Circular.

⁶²⁹ Article 3.37g Aliens Regulation.

⁶³⁰ Article 3.37g Aliens Regulation.

⁶³¹ Paragraph C2/10.4 Aliens Circular.

⁶³² Paragraph C2/10.4 Aliens Circular.

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).⁶³³ The reassessment project terminated in 2021, resulting in 0 revocations on the ground of ceased circumstances. Most of the status holders kept their permits on other grounds as many groups were considered to be at risk in Sudan.

No extension of the residence permit

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.⁶³⁴ Before, if the protection beneficiary did not renew their residence permit on time, it would be possible they were not entitled to legal stay for a short time. This was problematic for certain allowances and for employer. There is barely any case law on this new phenomenon.

Change of main residence outside the Netherlands

The IND also assumes that the revocation ground 'ceased circumstances' applies if the beneficiary of international protection has left the Netherlands. If the beneficiary is no longer registered in the Municipal Personal Records Database (BRP) it is assumed that he or she has left the Netherlands. This is particularly worrying, given that people who become homeless are also unregistered from the BRP. A few cases concerning beneficiaries who became homeless and lost their asylum status and permit have been assessed by Regional Courts.⁶³⁵ Often, these people realised that their status had been revoked when it was already too late to apply for review and appeal. This means that the courts cannot decide on their cases and the revocation becomes final. One court decided that the Bahaddar-exception was applicable: an article 3 ECHR-risk was very clear, which made it possible to set the final terms for appeal aside.⁶³⁶ The court then ruled that the IND could not revoke the status merely because the persons was unregistered from the BRP, rather the IND needed to assess whether a change of circumstances in the overall situation in (a particular area of) a certain country was applicable and was also significant and of non-temporary nature.

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

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

⁶³³ Decree WBV 2020/1 of 12 January 2020, Stb. 2020, 3262, amending the Aliens Circular 2000, available in Dutch at: <https://bit.ly/3i9r1yB>.

⁶³⁴ Decree WBV 2018/10 of 20 September 2018, Stb. 2018, 52887, available in Dutch at: <https://bit.ly/38FLDLM>.

⁶³⁵ Regional Court Den Bosch, 21 July 2021, Decision No NL20.18837 and Regional Court Utrecht, 14 September 2020, ECLI:NL:RBDHA:2020:9086.

⁶³⁶ Regional Court of Den Bosch, 21 October 2021, NL20.22228.

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.⁶³⁷

5.2. Cessation procedure

The Aliens Act provides that the intention procedure is applicable in case a temporary asylum status is revoked.⁶³⁸ 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.⁶³⁹ In case the IND still intends to revoke temporary asylum status, the status holder will be allowed an interview.⁶⁴⁰ 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.⁶⁴¹

The cessation decision states that there is an obligation to leave the country within 4 weeks.⁶⁴² Within 4 weeks the status holder can appeal the decision to revoke the temporary asylum status before the Regional Court.⁶⁴³ In case a timely appeal has been made, the status holder retains his or her right to lawful residence in the Netherlands based on 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 apply to either 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

See point 5 [Cessation and review of protection status](#).

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

⁶³⁷ Paragraph C2/10.4 Aliens Circular.

⁶³⁸ Article 38 Aliens Act and Article 41(1) Aliens Act.

⁶³⁹ Article 3.116(2)(b) Aliens Decree.

⁶⁴⁰ Article 41(2) Aliens Act.

⁶⁴¹ Article 64 Aliens Act.

⁶⁴² Article 62(1) Aliens Act.

⁶⁴³ Article 69(1) Aliens Act.

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.⁶⁴⁴

Three-month time limit

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 filed timely, 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. The Court further established that no individualised assessment as in Article 17 of the Directive has to be made when the time limit has been exceeded.⁶⁴⁵ However, the Court also ruled 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.⁶⁴⁶

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. According to UNHCR, imposing this term does not sufficiently take into account the specific situation of beneficiaries of international protection and the circumstances that have led to the separation of the family.⁶⁴⁷ UNHCR primarily recommends that no time limit for submission should be imposed. In case a time limit is maintained, the IND should adopt a flexible approach, such as allowing the sponsor to submit a partial application or timely notification which can be completed at a later stage.⁶⁴⁸

⁶⁴⁴ CJEU, Case C-550/16, A and S v. the Netherlands, 12 April 2018.

⁶⁴⁵ CJEU, Case C-380/17, K and B v. the Netherlands, 7 November 2018.

⁶⁴⁶ KST 34544, nr. 6, Letter withdrawing the legislative proposal adjusting the terms in the family reunification procedure for refugees, 12 July 2019.

⁶⁴⁷ UNHCR, No family torn apart, Challenges refugees face securing family reunification in the Netherlands and recommendations for improvements, 1 September 2019, available at: <https://bit.ly/3nUI1wJ>, 66.

⁶⁴⁸ Ibid, 71.

Proof of identity and family ties

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 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 State⁶⁴⁹ has ruled that this policy is in accordance with the ruling of the CJEU of 13 March 2019.⁶⁵⁰ A related issue surges in case the documents submitted are considered as most probably not real, not originally issued, not authentic, false or falsified. In cases where there is a negative probability conclusion of the document, in principle, no further investigation would be carried out.⁶⁵¹ Documents are examined by the office of the immigration service specialised in document research, the Identity and Document Investigation Unit (*"Bureau Documenten"*). There are three ways to dispute the conclusion of the Identity and Document Investigation Unit. First, it is possible to consult a contra-expert that can research the document and provide a conclusion about its authenticity. However, this is not possible if there are no contra-experts available for documents from a certain country. This is the case for example for Eritrean documents. In a case before the court in Zwolle,⁶⁵² the court ruled that the sponsor had made plausible that no contra-expert was available to research the documents from Eritrea. Considering the principle of equality of arms, the State Secretary for Justice had to perform an id-interview to repair the imbalance between the two parties. However, this decision was overruled by the Council of State.⁶⁵³ According to the Council, the principle of equality of arms does not require to compensate the sponsor, as there were additional ways to dispute the conclusion of the Identity and Document Investigation Unit. The second channel through which dispute the conclusion of the Identity and Document Investigation Unit, is to give a plausible explanation on how the document was obtained. However, according to the policy, the mere statement that the sponsor was not aware that the document was false or forged, or that the document was obtained through a third party, is not considered as a valid justification.⁶⁵⁴ This sets the threshold to oppose the conclusion at a very high level. The sponsor has to provide a detailed and plausible explanation that he has acted in good faith and had no reason to expect that the intermediate party he approached would provide false documentation. This explanation has only been considered plausible in limited cases, which did not reach the court. The third way to oppose the conclusion is to give concrete reasons to doubt on the merits of the negative conclusion of the document. However, the reports from the Identity and Document Investigation Unit contains very limited information for reasons of public order. Because of the limited information provided, it is very hard to give concrete leads for doubt about the report. Only if the sponsor has given concrete reasons to doubt of the report, the Secretary of State has the obligation to verify how the Identity and Document Investigation Unit drew the conclusion on the authenticity of the document. For example, requesting access to the underlying documents. The State Secretary may also need to verify how the conclusions were drawn, to assess whether the reasoning therein is understandable and the conclusions drawn are consistent with it. The State Secretary is not required to share the confidential information with the sponsor. He does have to inform the sponsor, if - and to what extent - he endorses the conclusions of the Identity and Document Investigation Unit after examining the underlying documents, or obtaining further information from the Unit. As the underlying documents are not shared with the sponsor, the process' transparency results limited, and the final decision difficult to oppose.

⁶⁴⁹ Council of State, Decision 201902483/1/V/1, 16 September 2019.

⁶⁵⁰ CJEU, Case C-635/17, *E v the Netherlands*, 13 March 2019.

⁶⁵¹ IND, Werkinstructie 2020/13, Nader onderzoek in de nareisprocedure, inclusief DNA-onderzoek in de asielprocedure, 4.

⁶⁵² Rechtbank Zwolle, 8 juni 2020, AWB 19/3561.

⁶⁵³ ABRvS, 17 maart 2021, ECLI:NL:RVS:2021:598.

⁶⁵⁴ IND, Werkinstructie 2020/13, Nader onderzoek in de nareisprocedure, inclusief DNA-onderzoek in de asielprocedure, 4.

Visa issuance

Another topic of concern are the waiting periods for consular services. As an example, the waiting period for an appointment only to pick up visa at the embassy in Beirut, Lebanon, is around 9 months.⁶⁵⁵ Moreover, until the end of 2021, there were no possibilities to switch embassies to pick up the visa at another Dutch embassy. Currently, it is possible to make an appointment at the Dutch embassies in Cairo or Dubai. It remains unclear whether it is feasible in practice for family members to travel to these countries. Additionally, in Beirut interviews can only be done with family members that were registered in Lebanon before 2015 (UNHCR facilitates the interviews). This has resulted in cases that are now waiting for over two years for an interview, with no prospect for a solution.

Total number of family members arriving in 2021

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: 2021	
Country of origin	Number
Total	10,120
Syria	6,439
Turkey	735
Eritrea	731
Yemen	651
Stateless	342
Iraq	265
Pakistan	168
Iran	123
Afghanistan	118
Unknown	100
Others	448

Source: Asylum Trends, December 2021, available at: <https://bit.ly/3KH3ZNI>.

Subsequent application: If family reunification could not take place during the first application

In its judgments of 23 November 2020,⁶⁵⁶ 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, 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 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.

⁶⁵⁵ See Netherlands embassy in Beirut, available at: <https://bit.ly/3tYlpPJ>.

⁶⁵⁶ Council of State, Decisions 201906347/1/V1 (about requirement: minor) and 201900263/1/V1 (about requirement: unaccompanied), 23 November 2020.

Other situations in which the regular framework applies

Apart from the subsequent applications by (former) UAMs, there are other situations in which a sponsor needs to submit an application for his or her family member within the regular framework, even though they are beneficiaries of international protection. This applies for example to the UAM who submits applications for not only his parents, but also for his or her brothers and sisters. The latter applications always need to be submitted within the regular framework. Another example is the reunited family member, who in turn wishes to submit an application for family reunification with a family member who was left behind. In this case, an application can only be submitted in the regular framework, unless the (new) sponsor first obtains his or her own 'independent' asylum status that is not derived anymore from his or her initial sponsor.

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 €57.34. 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 1 January 2022:	11,983

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.⁶⁵⁷

On 1 January 2022, there were 11,983 refugees with a permit residing in COA reception centres.⁶⁵⁸

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.⁶⁵⁹ Together with municipalities, the COA has the obligation to arrange housing for beneficiaries.⁶⁶⁰ Two times per year, the authority lets the municipalities know how many beneficiaries they have to house. The COA matches the beneficiaries with a certain municipality.

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.

⁶⁵⁷ Kamerstuk II, 2017-2018, 34775 VI, No 17.

⁶⁵⁸ COA, *Bezetting*, available in Dutch at: <https://bit.ly/3rJ3vhk>.

⁶⁵⁹ Article 7(1)(a) RVA.

⁶⁶⁰ Article 3(1)(c) RVA; Articles 10(2) and 12(3) Housing Act.

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. The so-called Hosting Scheme (“*Logeerregeling*”) was introduced. The scheme is still in place, being renewed during the last years. Status holders can make use of the Hosting scheme if they would like to stay with friends, family, or a host family. In principle, they can stay there for up to 3 months. In some cases, this period can be extended, if an agreement is reached with the COA. The COA gives status holders aged 21 years and over an additional payment of €25 per week. As of 22 March 2021, the additional payment of the COA is temporarily €75 per week, to encourage more status holder to access the Scheme. The conditions for making use of the Hosting Scheme (“*Logeerregeling*”) can be found in English on the site of COA (the site of COA is available in English).⁶⁶¹

In 2021, reception centres registered a new shortage of places, partly due to the COVID-19 pandemic and partly to the generalised shortage of rented houses in the Netherlands. Since 1 November 2021, the so-called “*Hotel- en accommodatieregeling*” (Hotel- and Accommodation Arrangement) was introduced.⁶⁶² Status holders awaiting regular housing at a municipality had the opportunity of accessing temporary accommodation at the same municipality responsible for their regular housing. A temporary accommodation might be a hotel, a holiday bungalow or a B&B, and would host the status holder for a maximum of 6 months. After that time, the municipality must have found a permanent house/accommodation; in any case, the municipality would then become financially responsible for the status holder. The arrangement is only open to single beneficiaries without children. The beneficiary also may not be vulnerable. The status holders remain entitled to the COA's basic provisions, such as a weekly allowance and access to medical care. The status holder receive an additional payment of € 75 per week from the COA. The benefits granted by the COA will stop as soon as the municipality regular housed the status holder. The municipality receives a payment (€ 8280 plus € 1000 for guidance) for every status holder participating in this arrangement.

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.⁶⁶³ This law is based on international and European legislation.⁶⁶⁴ 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 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 of international protection on the Dutch labour market is very vulnerable, with limited improvements made through time.⁶⁶⁵ Although legal access to

⁶⁶¹ Explanation of the Logeerregeling available in Dutch at: <https://bit.ly/3INAulj>.

⁶⁶² Stcrt. nr. 45592, 2021

⁶⁶³ Aliens Labour Act.

⁶⁶⁴ 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.

⁶⁶⁵ 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

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.⁶⁶⁶ By the end of 2020, 29.6% of the beneficiaries that arrived since 2014 in the Netherlands found work. In June 2020, the percentage registered was only 27.9% due to the pandemic. The increase in the second part of 2020 shows that beneficiaries slowly have found their way back to the Dutch labour market, despite the smaller amount of available participation- and labour places and less guidance by the municipality during the pandemic.⁶⁶⁷ Furthermore, research demonstrates an upcoming trend where municipalities support beneficiaries in maintaining their jobs; one third of the municipalities continue their guidance after beneficiaries started a job.⁶⁶⁸

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.⁶⁶⁹ Employment services find their legal basis in the Participation Act (*Participatiewet*).⁶⁷⁰ 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).⁶⁷¹ 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.⁶⁷²

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 a compulsory Dutch integration course, this is provided for free. The main obstacle is that many refugees lack any credible documents to prove their qualifications. Furthermore, a low educational level form impede access to language courses or vocational educational training.⁶⁷³

2. Access to education

According to the Compulsory Education Act,⁶⁷⁴ 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

Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2020*, November 2020, available in Dutch at: <https://bit.ly/2UNEMfc>.

⁶⁶⁶ 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.

⁶⁶⁷ KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2021*, October 2021, available in Dutch at: <https://bit.ly/3AsjjJc>.

⁶⁶⁸ *Ibid.*

⁶⁶⁹ *Ibid.*, 4.

⁶⁷⁰ 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>.

⁶⁷¹ Ministry of Social Affairs, KST 32 824, nr. 303, 4.

⁶⁷² Annex I, para 7bis Aliens Act Implementing Regulation.

⁶⁷³ EMN, *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, 4.

⁶⁷⁴ Law of 30 May 1968, houdende vaststelling Leerplichtwet 1969, available in Dutch at: <http://bit.ly/2kKXQpV>.

applicable to Dutch children as well as to children with refugee status or with subsidiary protection under similar conditions.⁶⁷⁵

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.⁶⁷⁶ 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 is not aware 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.⁶⁷⁷

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;⁶⁷⁸
- ❖ 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;⁶⁷⁹
2. Rent benefit;⁶⁸⁰
3. Child care benefit;⁶⁸¹

⁶⁷⁵ Article 27 recast Qualification Directive.

⁶⁷⁶ Ministry of Education, *Informatiedocument onderwijs aan asielzoekerskinderen*, May 2016, 6.

⁶⁷⁷ KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2020*, November 2020, available in Dutch at: <https://bit.ly/3tYN3d8>.

⁶⁷⁸ Article 11(2) Participation Act.

⁶⁷⁹ Articles 8-15 Rent Benefit Act.

⁶⁸⁰ Articles 2-2a Healthcare Benefit Act.

⁶⁸¹ Article 2(1) Supplementary Child Care Act.

4. Supplementary child care benefit.⁶⁸²

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.

Since 1 January 2022, a new Civic Integration Act entered into force.⁶⁸³ Part of this new system entails that beneficiaries of international protection will no longer be entitled to the social benefit during the first six months of their legal stay in a Dutch municipality. Instead, the municipality will pay their costs for housing, the energy bills and the healthcare insurance, as far as the social benefits reaches. The beneficiaries will receive the rest of the amount as an allowance, besides the additional benefits, provided by the Tax Office and the Social Security Bank. The goal of this system is to support refugees by their start in the Netherlands so they can focus more on their integration in Dutch society. Municipalities are encouraged to provide trainings about Dutch financial systems and budget coaching so beneficiaries become more financially self-sufficient during the six months.⁶⁸⁴

Conditions for obtaining social welfare

Apart from certain financial requirements, the beneficiary of international protection must also meet benefit-specific conditions:

- **Childcare 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.⁶⁸⁵ 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; (b) 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.

⁶⁸² Article 1.6(1)(g) Child Care Act.

⁶⁸³ Stb 2021, nr. 38.

⁶⁸⁴ Ministry of Social Affairs, KST II 2019/20, 35483, nr. 3.

⁶⁸⁵ See Council of State, Decision No 201800817/1/A2, 12 December 2018.

In this situation, after these 4 weeks, municipalities have 8 weeks to process the allocation and payment of the social benefit.

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. Its aim 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 benefits, 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. Due to the current scarcity of houses in the Netherlands, this problem might be presenting again in the future. Since municipalities have more difficulties with housing beneficiaries, it is more likely that individuals will be placed together in one house, without having a link or sharing a household. Nevertheless, the ‘*kostendelersnorm*’ will be applied.

Single parent allowances

Beneficiaries can also be confronted with the so-called “*ALO-kopproblematiek*”. The “*ALO-kop*” is part of the supplementary childcare 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 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 childcare 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 childcare 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.⁶⁸⁶ 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.

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 € 31,998 per year in 2022. The threshold for a household (2 partners) is € 40.944 per year in 2022.

⁶⁸⁶ Article 2(1) Health Care Act in conjunction with Article 2(1)(1) Long-Term Care Act.

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)