

2023 UPDATE

NETHERLANDS



COUNTRY REPORT

Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2023, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is managed by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Türkiye, and the United Kingdom). 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.



This report is part of the Asylum Information Database (AIDA), partially funded by the European Union's Asylum, Migration and Integration Fund (AMIF) and ECRE. The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of the European Commission.



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Glossary & List of Abbreviations

Age inspection	Process by which officials of the Immigration and Naturalisation Service or the Royal Police assess whether the asylum seeker is evidently over or under the age of 18 based on appearance and discussion with him or her Leefijdsschouw
Extended asylum procedure	Procedure applicable where the Immigration and Naturalisation Service deems it impossible to take a decision within the deadlines of the short asylum procedure. The extended procedure lasts 6 months as a rule Verlengde asielpcedure
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
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	Advisory Council on Migration Adviesraad Migratie
ALO	Alleenstaande Ouderkop - The ALO is a regulation of the Tax Authorities for single parents, which can lead to certain additional allocations or entitlements.
APD	Asylum Procedures Directive 2013/32
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
CNO	Crisis Emergency Location Crisisnoodopvang
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

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDT	One day review de eendagstoets
EMN	European Migration Network
EUAA	European Union Agency for Asylum
FMMU	Forensic Medical Society Utrecht - Forensisch Medische Maatschappij Utrecht
GALA	General Administrative Law Act
GL	Family housing Gezinslocatie
HTL	Enforcement and Surveillance Location Handhaving en toezichtlocatie
iMMO	Institute for Human Rights and Medical Assessment instituut voor Mensenrechten en Medisch Onderzoek, iMMO
Inspection of Justice and Security	Dutch government agency based in The Hague that carries out supervision for the Ministry of Justice and Security. Migration is one of its monitoring areas. The aim of the supervision is to improve the quality of implementation of government tasks.
IND	Immigration and Naturalisation Service Immigratie- en Naturalisatiedienst
JCS	Border Detention centre Justitieel Complex Schipol
KMar	Royal Military Police Koninklijke Marechaussee
KST	Kamerstuk Parliamentary document
LGBTQI+	Lesbian, gay, bisexual, transgender, queer and intersex community
LOS	National Support Point for Undocumented Migrants - Landelijk Ongedocumenteerden Steunpunt
NFI	Dutch Forensic Institute Nederlands Forensisch Instituut
Nidos	Independent guardianship and (family) supervision agency for refugee children
NO	Emergency Location Noodopvang
NVVB	Dutch Association for Civil Affairs Nederlandse Vereniging voor Burgerzaken
POL	Process Reception Centre Proces Opvanglocatie
QD	Qualification Directive 2011/95
ROV	Regulation of Internal Order Reglement Onthoudingen Verstrekkingen
SBB	Cooperation Organisation for Vocational Education, Training and the Labour Market Stichting Samenwerking Beroepsonderwijs Bedrijfsleven
TCN	Third Country National
TP	Temporary Protection
TPD	Temporary Protection Directive
(non-)UA	(non-)Ukrainian
UWV	Employee Insurance Agency Uitvoeringsinstituut Werknemersverzekeringen
VBL	Freedom restricted location Vrijheidsbeperkende locatie

VOE	Declaration under oath or promise Verklaring Onder Ede
VWN	Dutch Council for Refugees VluchtelingenWerk Nederland
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 2023, various data was not made publicly available by the time of writing of this report.

Applications in 2023

Statistics on applicants concern people, including children and dependents.

	Total applicants in 2023	First time applicants in 2023	Repeated applicants in 2023
Total	39,767	38,377	1,390
Breakdown by top 10 countries of origin			
Syria	13,109	13,028	81
Türkiye	At least 2,862	2,862	Not available
Eritrea	2,407	2,345	62
Yemen	At least 1,982	1,982	Not available
Somalia	1,851	1,807	44
Algeria	1,643	1,556	87
Iraq	1,600	1,495	105
Unknown ²	At least 1,231	1,231	Not available
Iran	1,215	1,122	93
Morocco	1,033	884	149
Others	10,834	10,065	769

Source: IND, *Asylum trends*, available at: <http://bit.ly/3YJwEXS>.

¹ IND, *Asylum trends*, available at: <http://bit.ly/3YJwEXS>.

² Unknown nationality refers to applicants who cannot prove their nationality. They either have a nationality or they are stateless, but they are not able to prove this or the IND does not believe the nationality they claim to have. See the website of the Government, available in Dutch at: <https://bit.ly/3PKWrNY> and Workinstruction 2018/12 IND as identifying partner: changing identification registration by the IND, available in Dutch at: <https://bit.ly/3vFpc80>.

Granting of protection status at first instance: figures for 2023

Pending applications at the end of 2023: 49,860³

Based on [Eurostat explanatory texts](#), this data refers to the number of persons covered by rejection/protection decisions, rather than the number of decisions (which may cover more than one person).

	Total decisions in 2023 (1)	Total rejections (2)	Refugee status	Subsidiary protection	Humanitarian protection (3)
Breakdown by top 10 countries of origin of applicants					
Total	17,910 ⁴	3,425	3,290	10,460	735
Syria	7,895	310	565	6,940	85
Türkiye	1,120	70	890	5	155
Eritrea	870	110	10	730	25
Yemen	1,745	15	35	1,675	20
Somalia	810	235	45	495	35
Algeria	330	325	5	0	0
Iraq	370	150	25	165	25
Unknown ⁵	350	80	85	145	40
Iran	335	65	225	10	35
Morocco	280	270	10	0	0

Source: Eurostat, First instance decisions on applications by type of decision, citizenship, age and sex - annual aggregated data, available at: <https://bit.ly/3VAXROP>.

Note 1: Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.

Note 2: Due to lack of disaggregated data, rejections include both rejections on the merits and inadmissibility, etc rejections.

Note 3: Humanitarian protection in the Dutch context refers to the 'derived asylum status' for family members, Some family members who were not eligible for international protection themselves, but who came to the Netherlands together with a family member who was eligible for international protection, might receive a 'derived asylum status' upon their asylum request that was originally declined. This includes, spouses, partners, children and parents of minor children.⁶

³ IND, *Jaarcijfers 2023*, pending at the end of 2023 in Track 1: 4,030; Track 2: 190; Track 4 (first time applicants, repeated applicants, applicants whose applications had to be reassessed after a court decision, applicants who changed Track and Resettled applicants): 45,640, available in Dutch at: <https://bit.ly/3TTfeJw>.

⁴ Total decisions including Track 1 (Dublin) and 2 (Safe countries of origin and EU-BIPs), Repeated applicants, applicants whose applications had to be reassessed after a court decision, applicants who changed Track and Resettled applicants: 34,980, source: IND, *Jaarcijfers 2023*, available in Dutch at: <https://bit.ly/3TTfeJw>.

⁵ Unknown nationality refers to applicants who cannot prove their nationality. They either have a nationality or they are stateless, but they are not able to prove this or the IND does not believe the nationality they claim to have. See the website of the Government, available in Dutch at: <https://bit.ly/3PKWrNY> and Workinstruction 2018/12 IND as identifying partner: changing identification registration by the IND, available in Dutch at: <https://bit.ly/3vFpc80>.

⁶ Based on information received by the IND in March 2024.

Applications and granting of protection status at first instance: rates for 2023

	Overall rejection rate	Overall protection rate	Refugee rate	Subsidiary protection rate	Humanitarian protection rate
Total	19.2%	80.8%	18.4%	58.4%	4.1%

Breakdown by countries of origin of the total numbers

Syria	4%	96%	7.2%	87.9%	1.1%
Türkiye	6.3%	93.7%	79.7%	0.45%	10.2%
Eritrea	12.6%	87.4%	1.1%	83.9%	2.9%
Yemen	0.9%	99.1%	2%	95.9%	1.1%
Somalia	28%	71%	5.5%	61%	4.3%
Algeria	98.5%	1.5%	1.5%	0%	0%
Iraq	40.6%	59.4%	7.6%	44.6%	6.7%
Unknown ⁷	22.9%	77.1%	24.3%	41.4%	11.4%
Iran	19.4%	80.6%	67.2%	3%	10.4%
Morocco	96.4%	3.6%	3.6%	0%	0%

Source of the percentages: Percentages calculated by the Dutch Refugee Council, on the basis of the raw data from Eurostat provided in the table above.

Notes:

- Due to lack of disaggregated data, these rates are calculated based on total decisions, including inadmissibility decisions, which do not always imply that the persons did not have a, potentially recognised, protection need.
- These rates are calculated including humanitarian protection among positive and total decisions.

⁷ Unknown nationality refers to applicants who cannot prove their nationality. They either have a nationality or they are stateless, but they are not able to prove this or the IND does not believe the nationality they claim to have. See the website of the Government, available in Dutch at: <https://bit.ly/3PKWrNY> and Workinstruction 2018/12 IND as identifying partner: changing identification registration by the IND, available in Dutch at: <https://bit.ly/3vFpc80>.

Gender/age breakdown of the total number of applicants: 2023

	Men	Women	Unknown
Number	29,195	8,975	20
Percentage	76.4%	23.5%	<0.1%

	Adults	Children	
		Accompanied	Unaccompanied
Number	27,630	10,555	5,804
Percentage	72.4%	27.6%	*

Source: Eurostat (with the exception of UAMs)

Note: The gender breakdown (Men/Women) applies to all applicants, not only adults.

* IND does not include unaccompanied minors in the total number of applicants.

First instance and appeal decision rates: 2023

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) https://bit.ly/3uzy7XV (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 **May 2023**.

International protection

Asylum procedure

- ❖ **Key asylum statistics:** In 2023, a total of 49,892 asylum applications were lodged in the Netherlands (including repeated applications and family reunification). 38,377 first applications for international protection were lodged, mainly by Syrian (13,028), Turkish (2,862) and Eritrean (2,345) nationals. The number of first asylum applications increased slightly from 35,535 in 2022. 1,390 repeated asylum applications were lodged in 2023, a decrease from 1,529 in 2022.⁸ 17,490 decisions on first asylum requests were taken during 2023.
The overall recognition rate at first instance stood at 80.2%: 18.35% refugee status, 58.38% subsidiary protection, and 4.1% humanitarian protection (see [Statistics](#)).
- ❖ **Growing backlog and ‘pilots’:** The backlog of asylum cases continues to grow. The IND does not have the capacity to handle all the incoming asylum requests and tries to implement experimental procedural changes to increase the speed of the decision-making process and efficiency of the available personnel. Due to these ‘pilots’, problems arise with some nationalities receiving their decisions much faster, and more complicated asylum requests being decided upon after years of waiting. As a result of these pilots, the asylum procedure has become more chaotic and has resulted in less predictable interview and decision dates (see [Regular Procedure – Personal interview](#)).
- ❖ **Extension of the time limit to issue an asylum decision:** The third extension of the time limit to issue an asylum decision was announced on 19 December 2023. This means that the IND can take 15 months instead of the normal 6 months to decide on asylum requests. Whether this extension is in accordance with the Asylum Procedures Directive is still uncertain, as preliminary questions have been referred to the CJEU, but until the Court’s judgment the extension of the time limit is upheld as the IND struggles to clear the backlog of cases and increase its own capacity (see [The rest and preparation period](#)).
- ❖ **Provisional measures in Dublin cases:** In the case of *E.N., S.S. and J.Y. v. The Netherlands* the CJEU considered that the State Secretary can only request suspensive effect of the transfer deadline in the onward appeal stage if the first appeal had suspensive effect. In practice, this means that the State Secretary (and the asylum seeker) can only request to suspend the transfer deadline in Dublin cases when presenting an appeal against a judgment of the Council of State if the first instance court had granted suspensive effect per request of the asylum seeker.
Following this judgment, the IND changed their policy regarding suspensive effect of a provisional ruling. The State Secretary argued that the mere request of a provisional ruling amounted to suspensive effect as laid down in Article 27(3) Dublin Regulation, meaning that this resulted in the suspension of the transfer period (Article 29(1) Dublin Regulation). Before, only an allocated provisional measure would result in the suspension of the transfer decision. On 22 November 2023, the Council of State ruled that this policy was not in accordance with the Dublin Regulation, and that a judge’s decision regarding the request for a provisional ruling decided if it had suspensive effect, and not the mere request. As a result, the policy change was reverted to the situation as it was before (see [Dublin procedure - Procedure](#)).

⁸ IND, *Asylum Trends: Monthly Report on Asylum Applications in the Netherlands. December 2023*, available at: <https://bit.ly/3O7cDs9>.

- ❖ **Suspension of Dublin transfers to Italy:** On 5 December 2022, the Italian authorities issued a Circular Letter asking other member states' Dublin Units to temporarily halt all Dublin transfers to Italy due to a lack of reception facilities for Dublin returnees. Some Regional Courts concluded that this Circular Letter was indeed of temporary nature, whereas other Regional Courts found that the Letter was proof of the structural issues within Italian reception's system and conditions. On 26 April 2023, the Council of State judged that there was no more mutual trust with regards to Italy. The main reason for the suspension is the lack of accommodation facilities in Italy, where a transfer to that country could mean that an asylum seeker finds themselves in a situation of severe material deprivation as outlined in the ECJ judgment *Jawo*. Following this decision, all Dublin transfers to Italy were suspended and have yet to resume (see [Dublin – Suspension of transfers](#)).

- ❖ **Suspension of certain Dublin transfers to Belgium:** On 20 February 2023, the Regional Court of Rotterdam ruled that it is unclear whether the applicant will have access to reception facilities upon returning to Belgium. It concluded that the applicant provided concrete indications of his risk of being treated contrary to Article 3 ECHR or Article 4 EU Charter if returned to Belgium. Following this judgment, multiple other Regional Courts decided likewise with regards to single men. For families, women and vulnerable people, the principle of mutual trust is still applicable as they receive priority with regards to accommodation. Single men were placed on a waiting list, meaning they had to wait for several months. Appeals from men have therefore generally been successful, whereas women, families and vulnerable people can be transferred to Belgium. Until then appeals against transfers of single men to Belgium were all expected to be successful. On 13 March 2024, the Council of State ruled that transfers for single men can also continue. It found that even though there are significant problems with the Belgian reception facilities, since asylum seekers can find shelter at locations such as homeless shelters, the situation can not be said to reach the threshold of the situation of severe material deprivation as outlined in the CJEU judgment *Jawo*⁹ (see [Dublin – Suspension of transfers](#)).

- ❖ **Pushback practices in Bulgaria, Croatia, Poland and Romania:** Both the Regional Courts and the Council of State issued many judgments during 2023 regarding the principle of mutual trust and pushbacks vis-à-vis Bulgaria, Croatia, Poland and Romania, and to a lesser degree Slovenia. The presence of pushbacks is mostly undisputed, but because these illegal activities occur on the outer borders of these countries and do not concern Dublin returnees, Dublin transfers are not suspended. Only if Dublin returnees can be victims of pushbacks, is there a possibility of suspension of Dublin transfers. In this regard the preliminary questions regarding the principle of mutual trust put to the European Court of Justice are highly important, as the answers to those questions might shift the policies with regards to these countries if the Court finds that human rights' infringements at the borders can detract from the principle of mutual trust (see [Dublin – Suspension of transfers](#)).

- ❖ **Beneficiaries of international protection from Greece:** As all other asylum seekers, beneficiaries of international protection in Greece wait 15 months for their asylum application to be processed. The IND decided on their applications as if they were first-time applicants. On 30 August 2023, following preliminary questions to the CJEU from Germany,¹⁰ the Council of State sent to the CJEU additional preliminary questions on how to deal with an asylum application of a TCN who has already been granted international protection in Greece but faces inhuman conditions in Greece¹¹ (see [First country of asylum – EU Member States](#)).

⁹ Council of State, ECLI:NL:RVS:2024:896, 13 March 2024, available in Dutch at: <https://bit.ly/3U3FNKX>.

¹⁰ *QY v Bundesrepublik Deutschland*, C-753/22, 12 December 2022, CJEU case information available at: <https://bit.ly/48XiHfb> and *El Baheer v Bundesrepublik Deutschland*, C-288/23, request filed 3 May 2023, CJEU case information available at: <https://bit.ly/42n4Egc>.

¹¹ Council of State, ECLI:NL:RVS:2023:3275, 30 August 2023, available in Dutch at: <https://bit.ly/49j94XJ>; information at the CJEU level (case C-551/23) can be found at: <https://bit.ly/42wqfD5>.

Reception conditions

- ❖ **Reception conditions:** Half of the people entitled to reception conditions, i.e. asylum seekers, as well as beneficiaries of international protection who have not been offered housing yet, were staying in (crisis) emergency centres over the course of 2023 (32,667 out of 64,405 people). Different reports highlight how that the majority of the (crisis) emergency locations still largely fail to meet the State's obligations under European law.¹² While some (crisis) emergency locations have adequate facilities, these are exceptions, and conditions elsewhere are equally distressing, if not worse than last year. Additionally, the (social) safety and self-sufficiency of residents in (crisis) emergency locations need improvement. This can make a significant difference in how residents experience their stay. Without structural measures, the dire situation in which residents find themselves at the (crisis) emergency locations continues to be without a foreseeable resolution. The Dutch government thereby violates its obligation to provide adequate and humane accommodation for asylum seekers in the Netherlands. Moreover, people suffer severely from a lack of privacy, tranquillity, and suitable nutrition. Sanitary facilities are inadequate and particularly unhygienic in too many places. Problems with healthcare accessibility exist in almost half of the (crisis) shelters. Additionally, the majority of the (crisis) shelters are detrimental to children, who experience a decline in health and weight loss due to a lack of activities, safe play areas, and healthy food. Finally, residents at three-quarters of the (crisis) emergency locations indicate that the living conditions affect their well-being and sense of human dignity. Large differences between (crisis) shelters also reveal that whether asylum seekers are able to experience decent reception in the Netherlands is subject to arbitrariness (see [Reception conditions](#)).

- ❖ **Ter Apel:** In 2023, no asylum seekers had to sleep out in the open in Ter Apel. However, over the course of 2023 there were many moments in which Ter Apel reached its capacity and urgent measures needed to be taken. In a letter of 24 May 2023, the State Secretary announced that it needed to open two locations for unregistered asylum seekers again.¹³ In a letter of 6 June 2023 it was announced that three or four of these locations were needed.¹⁴ On 1 July 2023, the first of these locations opened in Assen with a capacity of 500 beds.¹⁵ Unfortunately, in late 2023, distressing circumstances occurred again. Because there was no longer space in the facility itself, starting from 9th October 2023, the waiting area of the Immigration and Naturalization Service (IND) was used to accommodate asylum seekers.¹⁶ The waiting area did not have beds or showers. Initially, it only affected asylum seekers who reported to Ter Apel in the evening or at night, but it rapidly also included those who reported during the day, and asylum seekers (including children) sometimes had to stay there for multiple nights. On December 2, 2023, the Red Cross had to be called in to provide mattresses and emergency showers.¹⁷ On December 7, 2023, the Inspection of the Ministry of Justice and Security reported that the situation in Ter Apel was untenable.¹⁸ Fire safety were not in order, basic requirements for bedding and bathing were not met, and the risk of violent incidents was increasing.¹⁹ Subsequently, an

¹² VWN, *Gevlucht en vergeten?*, August 2023, available in Dutch at: <https://bit.ly/4205TBR>; Nationale ombudsman en Kinderombudsman, *De crisis voorbij*, June 2023, available in Dutch at: <https://bit.ly/3vIr2V0>; Pharos, Rode Kruis en Dokters van de Wereld, *Zorgen in tijden van crisis*, available in Dutch at: <https://bit.ly/3TUvbiW>.

¹³ KST 19637, nr. 3110, available in Dutch at: <https://bit.ly/3S6Ttns>.

¹⁴ Letter to parliament, 6 June 2023, available in Dutch at: <https://bit.ly/3vKQYzi>.

¹⁵ NOS, 'Evenementenhal in Assen wordt 'wachtkamer' voor aanmeldcentrum Ter Apel', 24 May 2023, available in Dutch at: <https://bit.ly/4217KGv>.

¹⁶ See for an overview of all these different moments this blog on the website of COA, available in Dutch at: <https://bit.ly/4aUqED8>.

¹⁷ Dutch Council for Refugees, 'Extra voorzieningen voor asielzoekers in wachtruimtes Ter Apel', 2 December 2023, available in Dutch at: <https://bit.ly/3RX7eop>.

¹⁸ Inspection of Justice and Security, 'Letter about unsafe situation at Ter Apel', 7 December 2023, available in Dutch at: <https://bit.ly/4aTiACx>.

¹⁹ Ibid.

overnight shelter was opened in Stadskanaal, making it no longer necessary for asylum seekers to sleep in the waiting area²⁰ (see [Criteria and restrictions to access reception conditions](#)).

- ❖ **Vulnerable people in (crisis) emergency locations:** A report from the Dutch Council of Refugees in which 22 (crisis) emergency locations were visited concluded that in 17 locations were present vulnerable people whose (medical) needs could not be met.²¹ This includes individuals with severe physical or mental conditions, chronically ill individuals, and pregnant women. A particularly distressing case involves a man with cancer undergoing chemotherapy while staying in a (crisis) shelter set up in an event hall. In 2023, the Inspection of the Ministry of Health Care and Youth warned multiple times that long term stay in (crisis) emergency locations results in urgent risks for the individual health of asylum seekers, public health, and the continuity of health care. Among other things, the Inspection identified a lack of medical intake and tuberculosis screening before placement in crisis emergency locations, thus risking the placement of vulnerable people in unsuitable locations and the spread of infectious diseases, a lack of an electronic patient records and thus insufficient transfer of information between health care professionals, and a delay in providing necessary health care due to the limitation of health care to emergency care, leading to worsening health care problems.²² A report from three prominent health care NGOs from June contains similar findings²³ (see [Special reception needs of vulnerable groups](#) and [Health care](#)).
- ❖ **Reception of unaccompanied minors:** Reports on overcrowding of the UAM facilities in Ter Apel continued in 2023. UAMs need to wait in Ter Apel in order to be transferred to one of the few UAM facilities in the country. In June, Stichting Nidos, the guardianship agency, published a shared letter with the COA urgently requesting all municipalities to provide reception places for UAMs.²⁴ Additionally, in April, the Inspections of the Ministries of Justice and Security, Healthcare and Youth and Education as well as the Dutch Labour Inspection sent another letter to the Ministry on the situation of the children staying in Ter Apel and in emergency locations, in which they conclude that the reception of children does not meet minimal quality requirements. Access to education and health care are insufficiently guaranteed, the child's individual best interests receive inadequate attention and the overcrowding of locations leads to safety issues.²⁵ UAMs are residing in Ter Apel for longer than intended, leading to a delayed start of education.²⁶ Several months later the Inspections reiterated their concerns about UAMs in Ter Apel, detailing amongst other things that the housing of UAMs in Ter Apel is structurally full over capacity, and that under these conditions the physical and emotional wellbeing of the UAMs cannot be guaranteed²⁷ (see [Reception of unaccompanied children](#)).

Detention of asylum seekers

- ❖ **Immigration detention:** a total of 3,710 migrants were detained in the Netherlands in 2023.
- ❖ **Periodic visit of the CPT:** In June 2023, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment published its report on its periodic visit to the Netherlands in May 2022. The CPT remains critical of the fact that immigration detention in the Netherlands is not covered by specific rules reflecting the administrative nature of immigration detention but by the same rules

²⁰ RTL Nieuws, 'COA: wachtrijmtes IND niet meer in gebruik als nachtopvang', 7 December 2023, available in Dutch at: <https://bit.ly/41WqBCP>.

²¹ VWN, *Gevlucht en vergeten?*, August 2023, available in Dutch at: <https://bit.ly/4205TBR>.

²² Ibid, 1-2.

²³ Dokters van de Wereld, Pharos, Rode Kruis, *Zorgen in tijden van crisis*, June 2023, available in Dutch at: <https://bit.ly/422N5Cc>.

²⁴ Nidos, COA, 'Oproep COA en Nidos voor AMV Opvang' 28 June 2023, available in Dutch at: <https://bit.ly/47lo0NS>.

²⁵ Inspection Justice and Security, Inspection Health Care and Youth, Inspection Education, Dutch Labour Inspection, 'Kinderen in de noodopvang en crisisnoodopvang', 19 April 2023, available in Dutch at: <https://bit.ly/3O07tOr>, 2.

²⁶ Ibid, 4.

²⁷ Inspection Health Care and Youth, 'Inspecties: Situatie in Ter Apel is uiterst kritisch', 31 October 2023, available in Dutch at <https://bit.ly/3HngRrv>.

and restrictions as those applicable to persons detained under criminal law. The CPT also raised concerns about the use of segregation and isolation as a measure and as a disciplinary sanction in immigration detention centres and about the fact that women and men are accommodated together at the border detention centre at Schiphol (see [Place of detention](#) and [Conditions in detention facilities](#)).

Content of international protection

- ❖ **Family reunification:** The IND made public the general instructions for handling applications for family reunification by holders of an asylum permit, in order to become more transparent. This Work instruction 2023/2 includes also the instruction that a late submission (exceeding the three-month time-limit) may be considered excusable. Factors taken into account are: the number of days of exceedance (less than two weeks is excusable), the efforts the sponsor has demonstrated to file the application and the exceptional circumstances causing the late submission. With regard to the young adult policy, the Council of State ruled that the State Secretary may also consider a family tie to be broken if a young adult child has been living separately for a long time and has been proven to ‘shape’ their life independently, even in the situation where the young adult was initially forced to leave their family. Finally, the Council of State has ruled that the mere fact that a family member has entered and stays in the Netherlands during the family reunification procedure, is not a ground to reject the application for family reunification. In other words, the family reunification procedure continues and may lead to approval and issuance of the derived asylum permit to the family member (see [Family Reunification](#)).
- ❖ **Revocation of status on the grounds of ‘danger to the public order or national security’:** Although the CJEU ruled on 6 July 2023 that the degree of seriousness of a crime cannot be attained by a combination of separate offences, none of which constitutes a particularly serious crime on its own,²⁸ the Aliens Circular still states that the assessment of a ‘particularly serious crime’ is based on whether the total sum of imposed sentences is at least 10 months²⁹ (see [Cessation and withdrawal](#)).

Temporary protection

The information given hereafter constitute a short summary of the annex on Temporary Protection in the Netherlands, for further information, see [Temporary Protection Netherlands](#).

Temporary protection procedure

- ❖ **Non-Ukrainian nationals:** Initially, displaced non-Ukrainian nationals who had a valid Ukrainian residence permit on 23 February 2022 – whether this was a temporary or a permanent permit – were entitled to temporary protection. However, this rapidly changed. As of 19 July 2022, non-UA nationals who merely held a temporary residence permit in Ukraine no longer fall under the scope of the TPD in the Netherlands. For those who had been registered, their right to temporary protection was to end on 4 March 2023. Beginning of 2023 the Secretary of State announced that temporary protection for this group would be extended until 4 September 2023; following a judgment of the Council of State in January 2024, temporary protection was extended until 4 March 2024. As a result of legal procedures against the ending of temporary protection, the Regional Court Amsterdam raised preliminary questions to the CJEU on 29 March 2024. On 29 March and 2 April 2024 the Council of State issued provisional measures in seven cases of non-UA nationals. On 25 April the Council of State also raised preliminary questions to the CJEU. Following this, the Secretary of State announced that all those covered by this specific group were allowed to stay in the Netherlands until 4 March 2025, while awaiting for the CJEU to answer.

²⁸ CJEU, *Staatssecretaris van Justitie en Veiligheid v M.A.*, C-402/22, 6 July 2023, available at: <https://bit.ly/3UpQ06b>.

²⁹ WBV 2023/25, available in Dutch at: <https://bit.ly/3S3k3Pi>.

- ❖ **Reception laws:** Due to extraordinary circumstances as a result of the invasion in Ukraine, the Dutch government found itself unable to provide (emergency) accommodation to the displaced persons within the existing structure. This is the reason that the Dutch government activated, on 1 April 2022, the Relocation Population Act (Wet verplaatsing bevolking), which is state emergency law. To replace the Relocation Population Act a bill was created: the Temporary Act on the Reception of Displaced Persons from Ukraine. Once this law has passed the responsibility for the municipalities to provide for the reception of displaced persons from Ukraine will be transferred from the Relocation and Population Act to the Temporary Act. The bill has been sent to Parliament. The bill is being considered by the House of Representatives and has not passed yet.
- ❖ **Reception capacity:** On 20 October 2023 the initial or general reception centre (HUB) at Amsterdam Central Station closed as there were no more places available in reception centres either in or close to the capital. Since 27 February 2024, the HUB at Utrecht Central Station is temporarily closed, due to a serious shortage of reception places available in Dutch municipalities. As a result, men traveling alone and couples are no longer accommodated by the HUB. They are advised to report to a municipality on their own initiative. In case they are in need of a place to stay the night they can contact the Red Cross. Women with children, families with children and people in need of care do still have access to the Utrecht HUB. As registration in the BRP is not possible as long as people have not been able to find a municipality where they can be accommodated, the DCR is concerned people will be left too long without access to temporary protection and the associated rights.
- ❖ **Proof of residency:** Once a displaced person has been registered in the BRP, they have to obtain proof of residency from the IND. At that moment, the IND further assesses whether the person concerned should be granted temporary protection, which means that the IND could refuse temporary protection (and proof of residency). Complaints against the refusal could be made; in case of a refusal from the IND, the entitlement to rights arising from the TPD, such as the right to housing and to work, cease immediately, and the complaint has no suspensive effect, so a provision measure has to be requested before a regional court. Several judgments on requests to grant a provisional measure have been issued. The IND has issued new (follow up) decisions on the written complaints. In some cases temporary protection was granted and the objections were found justified. In many other cases temporary protection was refused by the IND. The authors are aware of appeals having been lodged with regional courts, but have as yet not seen any rulings on these appeals.

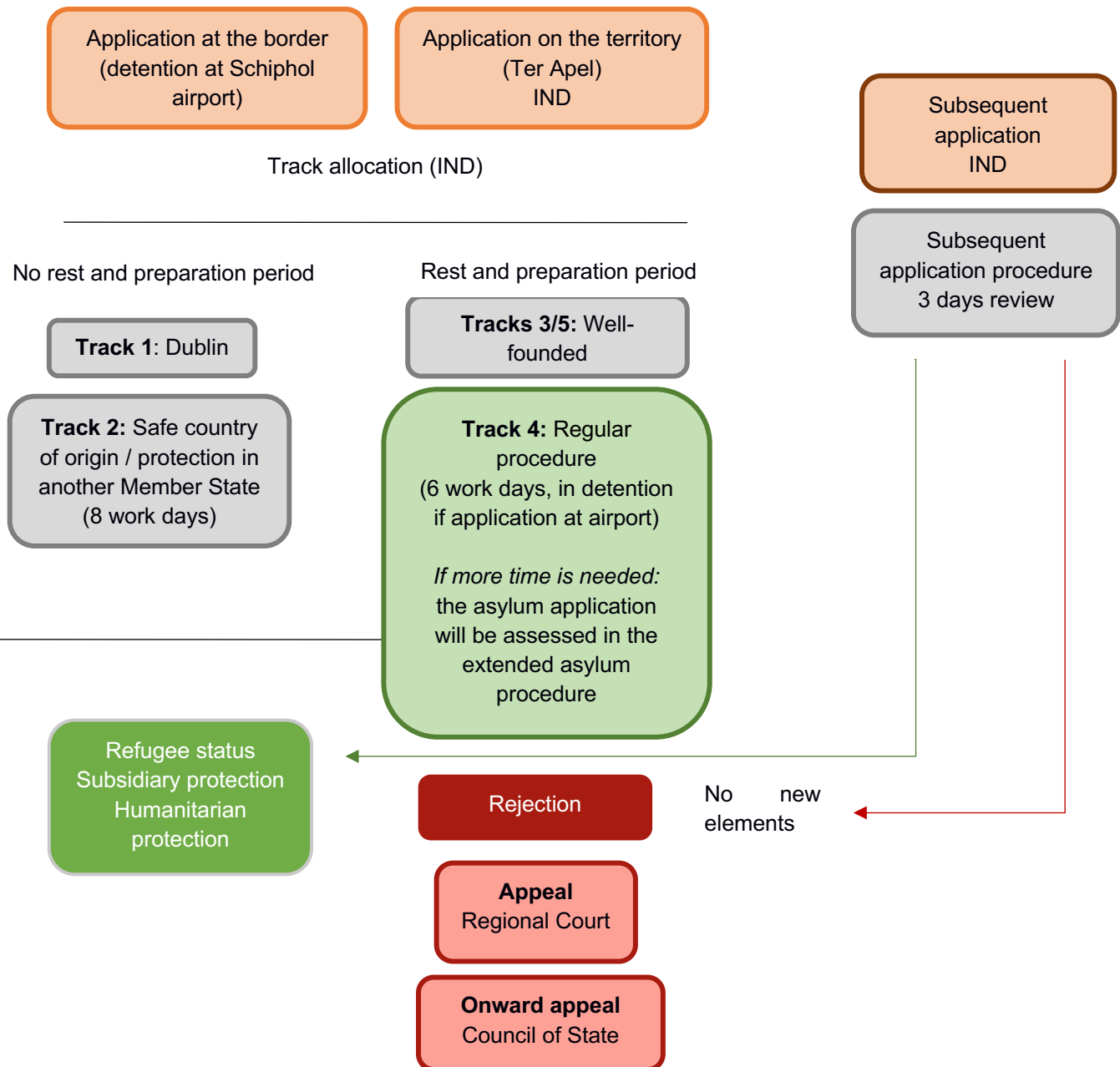
Content of temporary protection

- ❖ **Access to asylum:** To Ukrainian nationals who do not fall under the scope of the Temporary Protection Directive in the Netherlands and who have submitted an asylum application at the application centre in Ter Apel, the following applies. From 28 February 2022, the State Secretary (IND) did not have to take a decision on Ukrainians' asylum applications on the grounds that a suspension on decisions on Ukrainian asylum applications applied, unless the time limit of 21 months to issue a decision on the asylum application has been exceeded in an individual case. This policy is based on Article 43 of the Aliens Act. The policy was prolonged until 28 November 2023. Moreover, rejected asylum seekers from Ukraine were not forced to return to Ukraine, however the measure regarding the suspension on forced returns was not formally extended, as the maximum duration of this suspension is one year. This is based on Article 45(4) of the Aliens Act. Nevertheless, the government still does not take any measures regarding forced returns of Ukrainian nationals.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

1. Which types of procedures exist in your country?
- ❖ Regular procedure:
 - Prioritised examination:³⁰ Yes No
 - Fast-track processing:³¹ Yes No
 - ❖ Dublin procedure: Yes No
 - ❖ Admissibility procedure: Yes No
 - ❖ Border procedure: Yes No
 - ❖ Accelerated procedure:³² Yes No
 - ❖ Other:³³ Yes No
2. 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 van de 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)	6,039 FTE ³⁴	Ministry of Security and Justice	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

³⁰ For applications likely to be well founded or made by vulnerable applicants. See Article 31(7) APD.

³¹ Accelerating the processing of specific caseloads as part of the regular procedure.

³² Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

³³ Asylum seekers can be referred to the ‘Extended Procedure’ if more time and/or information is needed to take a decision.

³⁴ IND, *Jaarcijfers 2023*, available in Dutch at: <https://bit.ly/3UKIAKV>.

The Immigration and Naturalisation Service (IND) is responsible for examining applications for international protection and taking decisions at first instance. The work instructions applied by caseworkers are published in Dutch on the IND's website.³⁵ This includes procedural instructions on, *inter alia*, interviews, subsequent applications, age assessments, border procedures, and 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.

To keep up with the yearly increase in the number of asylum requests, the IND has gradually been raising its capacity. The number of IND personnel has increased from 3,788.5 FTE in 2018, to 4,302 FTE in 2019, 4,762 FTE in 2020, 4,969 FTE in 2021, 5,393 in 2022 (FTE being a 'fulltime-equivalent', where one FTE corresponds to a full workweek for one person).³⁶ This number increased to 6,039 in 2023. In addition, the IND has experimented with different methods to make the asylum procedure more efficient, for example by implementing a written interview or outsourcing positive decisions to external partners. However, the backlog of cases continues to grow, increasing from 31,340 to 44,030 asylum requests in the Regular and Extended Procedures (excluding family reunification and Tracks 1 and 2, see [Procedures](#)) during the first eleven months of 2023.³⁷

In addition to the staff of the IND, there was also European Union Agency for Asylum (EUAA) personnel present on Dutch territory in 2023. Because of the ongoing accommodation crisis, on 21 December 2021 the then Minister for Migration addressed a letter to the EUAA requesting support in dealing with this crisis. In the rapid needs assessment conducted over the following months, it was concluded that the EUAA would provide up to 160 temporary containers and 7 staff members in support to reception activities.

In May 2022, the EUAA signed its first operational plan with the Netherlands, to help with first operational response to address temporary reception needs, as well as operational collaboration in the field of reception.³⁸ In December 2022, the EUAA and the Netherlands signed a new operating plan for 2022-2023, focused on the first objective of helping with first operational response to address temporary reception needs.³⁹

Throughout 2023, the EUAA deployed 32 experts to the Netherlands.⁴⁰ These included 15 junior reception child protection experts, 8 junior asylum information provision experts and 4 members of the roving team.⁴¹

As of 19 December 2023, a total of 28 EUAA experts were deployed in the Netherlands, out of which 15 were junior reception child protection experts, 7 junior asylum information provision experts and 3 members of the roving team.⁴²

In 2023, the EUAA delivered 7 training sessions to a total of 34 experts and personnel of national authorities, relevant partners and EUAA contracted personnel.⁴³

³⁵ IND, 'Work instructions', available in Dutch at: <https://bitly.ws/39eVk>.

³⁶ IND, *Annual reports 2018 – 2022*, available at: <https://bit.ly/48aADS3>.

³⁷ IND, *De IND in cijfers*, available in Dutch at: <https://bit.ly/48moKJP>.

³⁸ EUAA, *Operational Plan 2022 agreed with the European Union Agency for Asylum and the Netherlands*, 6 May 2022, available at: <https://bit.ly/3ypVNMJ>, Annex 1.

³⁹ EUAA, *Operational Plan 2022-2023 agreed with the European Union Agency for Asylum and the Netherlands*, December 2022, available at: <https://bit.ly/3FenQ5x>, Annex 1.

⁴⁰ EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

⁴¹ Information provided by the EUAA, 26 February 2024.

⁴² Information provided by the EUAA, 26 February 2024.

⁴³ Information provided by the EUAA, 26 February 2024.

5. Short overview of the asylum procedure

Registration phase

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 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 **Amsterdam Airport Schiphol** (*Aanmeldcentrum Schiphol, AC*).

When an asylum seeker enters the Netherlands by land, or is already present on the territory, they must report immediately to the Central Reception Centre (*Centrale Ontvangstlocatie, 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 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 the asylum seeker is interviewed regarding their identity, family members, travel route and profession. This is called the registration interview (*aanmeldgehoor*). 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.

However, due to the high number of asylum applications and the ongoing capacity problems at the IND, said procedure has not always been followed in recent years. Instead, an alternative procedure was introduced: depending on both the capacity of the Aliens Police and the available accommodation at the COL in Ter Apel, either the regular registration phase as outlined above is followed, or temporary ‘waiting areas’ are installed for a period of time. This was notably the case between September 2022 and March 2023, and now again since summer of 2023. In the first weeks of 2024, it was communicated that the backlog of asylum seekers still to be registered is decreasing. However, it is expected that the ‘pre-registration locations’ will remain open for the time being to accommodate the capacity problems⁴⁴ (for detailed information see [Making and registering the application](#)).

Procedural tracks

The IND applies a “Five Tracks” policy, whereby asylum seekers are channelled into a specific procedure track (*spoor*) depending on the circumstances of their case.⁴⁵ Track 1 and 4 have 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.

⁴⁴ The information above follows from meetings with the IND, COA, AVIM and the Dutch Council for Refugees. The IND website at time of writing also mentions the possibility of a ‘pre-registration’ at <https://bit.ly/47rYv3m>.

⁴⁵ Decree WBV 2016/4 of 26 February 2016 amending the Aliens Circular 2000, available in Dutch at: <http://bit.ly/2fp4K0z>.

- Track 1** Dublin Procedure. The asylum seeker is not entitled to a rest and preparation period or a medical examination executed by MediFirst.⁴⁶
- 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 result in a positive decision. 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.⁴⁷
- 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 ever been applied yet.
- Track 4** Regular Procedure (*Algemene asielprocedure*) of 6 days, with the possibility to extend this time limit by 6, 8 or 14 days.⁴⁸ In case the application cannot be thoroughly assessed within the Regular Procedure, there is a possibility of assessing the application in the Extended Procedure (*Verlengde Asielprocedure*) 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 never been applied yet.

Amendments Aliens Decree regarding Regular Procedure (“Track 4”)

The Aliens Decree was amended on 25 June 2021.⁴⁹ This amendment entails the following:

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

Rest and preparation period

With the exception of Tracks 1 and 2, the asylum seeker is granted a rest and preparation period which starts once the registration phase has ended.⁵⁰ 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.⁵¹

The rest and preparation period lasts at least 6 days. It is intended to offer the asylum seeker time to rest and to provide the different organisations involved with 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);

⁴⁶ Article 3.109c Aliens Decree.

⁴⁷ Article 3.109ca Aliens Decree.

⁴⁸ Article 3.115 (3) Aliens Decree.

⁴⁹ Amendment to 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 <http://bit.ly/3yxsSpU>.

⁵⁰ 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.

⁵¹ Article 3.109 Aliens Decree.

- ❖ Medical examination by an independent medical agency (MediFirst⁵²) 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.

Regular procedure

At first instance, asylum seekers are channelled into the so-called **Regular Procedure** (*Algemene asielprocedure*) which is, as a rule, designed to last 6 working days. The Regular Procedure can be extended if more time is needed.

If it becomes clear on the fourth day of the Regular Procedure that the IND will not be able to take a well-founded decision on the asylum application within these 8 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, in certain cases, be extended by 9 months, and another 3 months if in a specific case more time is necessary to form a well-founded decision.⁵³ Because of the IND's capacity problems and the large influx of asylum seekers in recent years, the time limit for deciding for all asylum requests has been extended to 15 months until at least 1 January 2025.⁵⁴

There is only one asylum status (*éénstatusstelling*) in the Netherlands, meaning that both asylum permits issued on grounds of refugee status and subsidiary protection give the same rights regarding for example validity, family reunification, and accommodation. However, there are two different grounds on which this asylum status may be granted (besides family reunification).⁵⁵ 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 their country of origin, falls within the scope of Article 29(1)(b) of the Aliens Act (B-status).⁵⁶

The IND must first examine whether an asylum seeker qualifies for refugee status, before examining whether they should be granted subsidiary protection.⁵⁷ This means that an asylum seeker may only qualify for subsidiary protection in case they do not qualify as a refugee under Article 1A of the Refugee Convention. In case an asylum seeker is granted subsidiary protection, they cannot appeal in order to obtain refugee status.⁵⁸ 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](#)).

⁵² In 2021, MediFirst substituted the Forensic Medical Society Utrecht (FMMU).

⁵³ See Article 42(4)(5) Aliens Act, which derives from Article 31 (3) APD.

⁵⁴ Amendment to the Aliens Circular, *Besluit van de Staatssecretaris van Justitie en Veiligheid van 26 januari 2023*, nummer WBV 2023/3, houdende wijziging van de Vreemdelingencirculaire 2000, available in Dutch at: <https://bit.ly/3vHsqHq>.

⁵⁵ Article 29 Aliens Act.

⁵⁶ 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.

⁵⁷ Paragraph C2/2 Aliens Circular.

⁵⁸ Council of State, Decision No 20010591481, 28 March 2002.

Return decision

In the Netherlands, a negative asylum decision is in general automatically accompanied by a return decision.⁵⁹ 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;
- (2) The asylum seeker has already received international protection in another EU Member State.⁶⁰

If an (onward) appeal has automatic suspensive effect, the obligations following from a return decision are suspended.⁶¹ As outlined below, this is not the case for Dublin cases or asylum seekers from 'a safe country of origin'. For most cases processed in a Track 4, the appeals have automatic suspensive effect.

Appeal

Asylum seekers whose application is rejected may appeal this decision before 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 fails to provide (sufficient) relevant information according to the IND.⁶² This means that the asylum seeker can be expelled before the court's decision. To prevent expulsion the asylum seeker (or in practice the legal representative) should request that the Regional Court or the Council of State (depending on the procedure) issue 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 regular procedure the asylum seeker is, as a rule, entitled to accommodation for a period of four weeks regardless of whether they lodge an appeal and whether this appeal has suspensive effect due to a granted provisional measure.⁶³ 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.⁶⁴ 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.⁶⁵

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 van de 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. In September 2018, the CJEU ruled that an onward appeal does not have a suspensive effect in itself.⁶⁶ Following this judgment the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.⁶⁷

⁵⁹ Article 45(1) (2) Aliens Act.

⁶⁰ Article 62a(1) Aliens Act.

⁶¹ Article 45(3) Aliens Act.

⁶² Article 30c Aliens Act.

⁶³ Article 82(2) Aliens Act.

⁶⁴ Article 69(1) (2) Aliens Act.

⁶⁵ 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, available at: <https://bit.ly/3waFsO9>; CJEU, Case C-181/16, *Sadikou Gnandi vs Belgium*, 19 June 2018, available at: <https://bit.ly/3wi2O4e>.

⁶⁶ CJEU, Case C-175/17, *X v Belastingdienst/ Toeslagen*, 26 September 2018, available at: <https://bit.ly/497dyRv>.

⁶⁷ Council of State, Decision No 201609659/1/V2 and 201609659/4/V2, 20 February 2019, available in Dutch at: <https://bit.ly/49sYwFH>.

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
3. If so, who is responsible for border monitoring? National authorities NGOs Other
4. If so, how often is border monitoring carried out? Frequently Rarely Never

1.1 Border monitoring

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 unit of the Royal Netherlands Marechaussee (KMar), monitoring 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 KMar checks travel documents on a random basis.

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

For asylum seekers requesting asylum at the border, KMar is the organisation responsible for the initial care.⁶⁸

There have not been any reports of pushbacks at the Dutch borders.

1.2 Legal access to the territory

Resettled refugees

The Netherlands take part in the UNHCR resettlement programme; prior to 2021, it aimed at resettling 500 refugees per year. The new Dutch government announced in its Coalition Agreement for 2021 until 2025 the will to increase the number of resettled refugees from 500 to 900 per year.⁶⁹ In 2022, 717 refugees were resettled to the Netherlands, 437 of which came from Syria. In 2023, 801 refugees were resettled to the Netherlands, 428 of which are Syrian.⁷⁰ UNHCR identifies vulnerable asylum seekers as candidates for resettlement. The Dutch government will then embark on 'selection missions' to certain countries (usually in the Middle East or Africa) to interview these candidates and establish whether they are eligible for resettlement to the Netherlands.⁷¹ This usually occurs four or five times per year.⁷² The specific details of this selection process is unclear. Asylum seekers selected to resettle to the Netherlands arrive at International Airport Schiphol.⁷³ Following the mandatory health and identity checks at Schiphol, they are immediately granted an asylum permit, and can directly move into their

⁶⁸ Ministry of Defence, Grenstoezicht, available in Dutch at: <https://bit.ly/2kMGU1b>.

⁶⁹ Coalition Agreement (*Regeerakkoord*) 2021 – 2025: *Omzien naar elkaar, vooruitkijken naar de toekomst*, available in Dutch at: <http://bit.ly/3mPnSdX>.

⁷⁰ IND, *Asylum Trends, Appendix 1: Relocation and Resettlement*, December 2023, available at: <https://bit.ly/3uzPxUu>.

⁷¹ UNHCR, Frequently asked questions regarding resettlement, accessed on 23 February 2024, available in Dutch at: <https://bit.ly/3uJIKsk>.

⁷² COA, *Hervestiging Vluchtelingen*, accessed on 23 February 2024, available in Dutch at: <https://bit.ly/48lyfm9>.

⁷³ Ministry of Justice and Security, *Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0FO>, 66.

allocated house in the responsible Dutch municipality.⁷⁴ At this point, their rights and obligations are the same as permit holders that have undergone the Regular Procedure.

No asylum seekers were relocated from other EU member states during 2022. During 2021, 50 asylum seekers were relocated to the Netherlands.⁷⁵ Information on 2023 was not available at the time of publication of this report.

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.⁷⁶

A visa could be refused when Dutch authorities evaluate that the third-country national does not have sufficient reasons to return to their 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.⁷⁷ Humanitarian visas are thus not provided for people aiming to come to the Netherlands to request international protection.

Some third country nationals are exempted from a Schengen visa, such as Ukrainians who hold a biometric passport. For more info regarding Ukrainians benefiting from Temporary Protection, see [Annex on Temporary Protection](#).

Regarding legal access of people in need of protection to Dutch territory, see also [Family reunification](#).

Afghan nationals

In 2021, 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):⁷⁸

- (1) Interpreters or other high-profile workers 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 2021;
- (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;
- (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 (applied to the data available on 11 October 2021).

During the military evacuations between 15 and 26 August 2021, 1,860 people were evacuated (both Dutch and Afghan nationals who worked for the Dutch government). Between 26 August 2021 and 4 July 2023, a total of 2,677 people were transferred from Afghanistan to the Netherlands. On 4 July 2023

⁷⁴ Ministry of Justice and Security, *Hervestiging van vluchtelingen naar Nederland*, 26 May 2020, available in Dutch at: <https://bit.ly/3vzNHDb>.

⁷⁵ Ministry of Justice and Security, *Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0FO>, 80.

⁷⁶ IND, Information about short stay visa, available in Dutch at: <https://bit.ly/3L9fei1>.

⁷⁷ 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).

⁷⁸ Dutch Parliament, 14 September 2021, 27925-808, *Stand van zaken in Afghanistan*, available in Dutch at: <https://bit.ly/3B0laUU> and Dutch Parliament, 11 October 2021, *Kamerbrief ontwikkelingen Afghanistan* available in Dutch at: <https://bit.ly/3L9Z5sF>.

105 persons were still being considered for transfer to the Netherlands, but their transfer was deemed exceedingly difficult due to (most of) them not possessing a valid travel document.⁷⁹

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.⁸⁰ According to the Dutch government these numbers referred to the people who were already on the evacuation lists and those who were already evacuated, no new persons.⁸¹ In the yearly report regarding migration to and from the Netherlands, the pledge was said to have been 'fulfilled'.⁸² Of the 4,220 evacuated Afghan nationals who were still in the Netherlands on 31 December 2022 (some moved to other countries), 4,170 received a residence permit in an accelerated procedure.⁸³

On 14 September 2022 and 22 February 2023, the Council of State ruled that the e-mails rejecting requests for evacuations of Afghans were formal decisions that could be appealed for those belonging to the groups named in the Letter to the parliament of 11 October 2021,⁸⁴ in which the evacuation criteria were summed up.⁸⁵ In 2023, dozens of court cases regarding rejections of Afghan asylum requests were published. Until now, in most of the cases the judge confirmed the rejection, because the asylum seeker did not meet the criteria outlined above. According to the Regional Courts, the Dutch government was free to establish their own criteria, because it had no obligation to evacuate people and the policy was beneficial.⁸⁶

In 2023 there was also some political discussion regarding Afghan guards who worked for the Dutch military, the Dutch embassy or EUPOL. In October 2023 a critical evaluation report of the Dutch evacuation process was published.⁸⁷ Subsequently, the Dutch government announced in two letters of December 2023 that they would propose new criteria for the evacuation of these groups at the end of February 2024.⁸⁸

⁷⁹ Central government, *Kamerbrief over voortgang overbrengingen Afghanistan*, 15 August 2022, available in Dutch at: <https://bit.ly/3OwjWLO> and Central government, *Kamerbrief over stand van zaken overbrengingen van personen uit Afghanistan*, 17 October 2022, available in Dutch at: <https://bit.ly/43074kw>.

⁸⁰ Euractiv, 'EU Member States agree to take in 40,000 Afghans', 10 December 2021, available in English at: <https://bit.ly/3orThkm>.

⁸¹ Government answer in Parliament, 32 317 JBZ Raad, Nr 738, available in Dutch at: <https://bit.ly/3pZxIB1>.

⁸² Ministry of Justice and Security, *Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0FO>, 66.

⁸³ Ministry of Justice and Security, *Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0FO>.

⁸⁴ Dutch Parliament, *Kamerbrief ontwikkelingen Afghanistan*, 11 October 2021, available in Dutch at: <https://bit.ly/3L9Z5sF>.

⁸⁵ Council of State, ECLI:NL:RVS:2022:2592, 14 September 2022, available in Dutch at: <https://bit.ly/3w2XMIP> and ECLI:NL:RVS:2023:719, 22 February 2023, available in Dutch at: <https://bit.ly/49wPJ5J>.

⁸⁶ See for example: Regional Court The Hague, ECLI:NL:RBDHA:2023:16743, 7 November 2023, available in Dutch at: <https://bit.ly/3HTTeao>.

⁸⁷ Commissie van Onderzoek Evacuatieoperatie Kaboel, *Reconstructie en analyse van de evacuatie uit Kaboel in augustus 2021*, 6 October 2023, 90, available in Dutch at: <https://bit.ly/3TX977p>.

⁸⁸ Dutch Parliament, *Kamerbrief planning vervolgstappen motie betrekken EUPOL-bewakers en tolken bij traject voor ambassadebewakers*, 22 December 2023, available in Dutch at: <https://bit.ly/3U5epO2> and Dutch Parliament, *Kamerbrief over voortgang uitvoering motie-Piri c.s. over (voormalig) ASG-bewakers*, 19 December 2023, available in Dutch at: <https://bit.ly/3SntDgh>.

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

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 IND.

If an asylum seeker from a non-Schengen country arrives in the Netherlands by airplane 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 primarily responsible for the registration of those persons who apply for asylum at the international airport.⁸⁹ The KMar refuses the asylum seeker entry to the Netherlands if they do not fulfil the necessary conditions, and the asylum seeker will be detained in the Border Detention Centre (*Justitieel Complex Schiphol*, JCS).⁹⁰ 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 enters the Netherlands by land, they have to lodge their asylum request at the Central Reception Centre (*Centrale Ontvangstlocatie*, COL) in **Ter Apel** (nearby **Groningen**, north-east of the Netherlands), where the registration takes place.

If an asylum seeker is already on Dutch territory, they are 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.⁹¹ Asylum requests lodged within 48 hours after arrival are deemed to be lodged 'promptly' (*onverwijld*). The IND can negatively weigh the circumstance that an asylum request is not lodged within 48 hours, but this cannot on its own justify a negative decision.⁹²

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).

The application/registration procedure in the COL takes three days. The Aliens Police (AVIM, *Vreemdelingenpolitie*) takes note of personal data such as name, date of birth and country of origin. Data from Eurodac and the Visa 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). Every asylum seeker must complete an extensive application form at the start of the

⁸⁹ KMar, *Taken Marechaussee*, available in Dutch at: <https://bit.ly/3OUzJCG>.

⁹⁰ Article 3(3) Aliens Act.

⁹¹ Council of State, Decision ABKort 1999.551, 20 September 1999.

⁹² See for example: Regional Court of Den Bosch, Decision No NL21.10091, 9 May 2022.

registration procedure, containing questions regarding 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) earlier stays in one or more third countries if applicable; (7) identity cards and/or passport; (8) itinerary; (9) schooling/education; (10) military services; (11) work/profession; and (12) living environment and family.⁹³

Subsequently, the IND conducts a registration interview (*Aanmeldgehoor*). During the registration interview, questions can be asked about identity, nationality, travel route and family members. This is mainly to establish whether the asylum seeker is the person they claim to be. Additionally, the IND briefly questions the asylum seeker as to their reasons for requesting asylum, in order to assess the complexity of the case, to better prepare for subsequent steps to be taken during the rest of the procedure, and to determine whether the asylum seeker is in need of specific procedural guarantees.⁹⁴

The Aliens Decree on the Regular Procedure (“Track 4”) was amended and entered into force on 25 June 2021.⁹⁵ Consequently, amongst other changes, the registration procedure, including the registration interview, was formally laid down in the Aliens Decree. Since the amendment, the immigration officer explicitly asks the asylum seeker, about the reasons for fleeing their country of origin. This also applies to unaccompanied minors. This change 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 receive individualised information. As a result, the asylum seeker is not be informed about the impact of their statements regarding reasons for fleeing their country of origin. It should be noted that asylum seekers receive several brochures from the IND at the start of the registration procedure. However, the brochures just provide general information about the asylum procedure in the Netherlands, and cannot be considered a substitute for individualised assistance. On 25 February 2022, the Regional Court of Zwolle agreed with the asylum seeker that due to their explicit request for legal assistance at the start of the application procedure not being addressed, the State Secretary had violated the principle of due care.⁹⁶

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

However, due to the high number of asylum applications and the ongoing capacity problems at the IND, the above described procedure has not always been followed in recent years. Instead, an alternative procedure has been introduced. Depending on both the capacity of the Aliens Police and the available accommodation at the COL in Ter Apel, either the regular registration phase as outlined above is followed, or temporary ‘waiting areas’ are installed for a period of time. From September 2022 to March 2023, asylum seekers travelling to Ter Apel were not registered immediately. Instead, they were only ‘pre-registered’ (*voorregistratie*), where only the asylum seeker’s identity, nationality and origin were noted. Following this pre-registration, asylum seekers were transported to a different location (the main one being **Zoutkamp**, some 100 kilometers north-west of Ter Apel). Whilst staying at Zoutkamp, asylum seekers had to wait for the confirmation of their appointment to register them in Ter Apel or Budel. This waiting period could take several weeks, up to four months. This pre-registration procedure was not used in the period following March 2023, as there was enough capacity at Ter Apel to register and accommodate arriving asylum seekers.

However, this pre-registration procedure was put in use again during the summer of 2023, due to the lack of capacity of the Aliens Police and lack of available accommodation. Different ‘pre-registration locations’ (*voorportaallocaties*) are in use at different times, dependent on the capacity every day. In weeks where the influx of asylum seekers is lower, it can be that they can be registered immediately

⁹³ Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2018/15 *Aanmeldgehoren en Verificatie eerste gehoren*.

⁹⁴ IND, Working Instruction 2021/8, *Aanmeldgehoren*, available in Dutch at: <https://bit.ly/3vFivz8>.

⁹⁵ 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>.

⁹⁶ Regional Court Zwolle, ECLI:NL:RBDHA:2022:2666, 25 February 2022, available in Dutch at: <https://bit.ly/3SXMbmp>.

after arrival in Ter Apel. In more busy weeks, people are temporarily transported to pre-registration locations across the country, for example in Assen, Amsterdam, Biddinghuizen, Leeuwarden and Stadskanaal.

In the first weeks of 2024, it was communicated that the backlog of asylum seekers still to be registered is decreasing. However, it is expected that the 'pre-registration locations' will remain open for the time being to accommodate the capacity problems⁹⁷ (see for more information [Asylum Procedure – Short overview of the asylum procedure](#)).

2.2 The rest and preparation period (RVT)

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 phase has ended.⁹⁸ 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.⁹⁹ It is primarily designed to provide the asylum seeker some time to rest. Additionally, it provides the organisations involved time 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 following 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;¹⁰⁰
- ❖ The asylum seeker causes nuisance in the reception centre;¹⁰¹
- ❖ The asylum seeker is detained on the basis of Article 59b Aliens Act;¹⁰²
- ❖ The application is a subsequent application for asylum.¹⁰³

The rest and preparation period takes at least 6 days, while no maximum number of days is indicated. During the entire rest and preparation period, asylum seekers have access to accommodation and medical aid. From 2018 onwards, this period has been considerably extended due to the IND's delays, meaning it can last more than a year. This means asylum seekers often have to wait more than a year for the detailed interview, which marks the end of this stage.

Backlog

In March 2020, 15,350 asylum applications lodged before 1 April 2020 were passed on to a newly established Task Force, with the aim of clearing the backlog before the end of 2020. The Task Force

⁹⁷ The information above follows from meetings with the IND, COA, AVIM and the Dutch Council for Refugees. The IND website at time of writing also mentions the possibility of a 'pre-registration' at: <https://bit.ly/47rYv3m>.

⁹⁸ Article 3.109 Aliens Decree.

⁹⁹ This occurs from practice and is not regulated by the law.

¹⁰⁰ Article 3.109(7)a Aliens Decree.

¹⁰¹ Article 3.109(7)a Aliens Decree, for the definition of 'nuisance' see paragraph C1/2.2 Aliens Circular.

¹⁰² Article 3.109(7)a Aliens Decree.

¹⁰³ Article 3.118b Aliens Decree.

did succeed in doing so.¹⁰⁴ In June 2021, the Task Force was dissolved; afterwards, the remaining 1,520 cases were transferred to another department.¹⁰⁵

Although the Task Force took over the backlog from the IND, due to an increase of applications, a new backlog of 6,400 applications arose in the last months of 2021. The objective to clear it during the first quarter of 2022 was not met, and the backlog continues to grow rapidly.¹⁰⁶ At the end of 2022, the total backlog of asylum cases (first and subsequent asylum requests, excluding family reunification requests) was 32,370. This number grew to 44,030 at the end of November 2023.¹⁰⁷

In March 2023, statistics on the processing time shows that it takes 43 weeks, when the Regular Procedure starts, for a decision to be taken. When the application is referred to the extended procedure, on average, 48 weeks pass before a decision is taken.¹⁰⁸ In recent months, the IND has not published the average time taken for a decision, but they have published the average waiting times for the interviews. For Dublin Procedures (Track 1), asylum seekers have to wait seven weeks before their first interview. Asylum seekers from a safe country of origin or already benefiting from international protection in another member state (Track 2) have to wait on average eight weeks before they meet with the IND. In the Regular Procedure (Track 4) it takes on averages 14 weeks before the registration interview takes place (note that theoretically, this interview should happen on the third day after the asylum request). After this interview, another 37 weeks elapse on average before the detailed interview takes place.¹⁰⁹ This means that on average, the detailed interview takes place almost one year after the asylum request. However, after the detailed interview, the IND can also take several weeks or months to reach a decision, leading to a large amount of asylum seekers waiting for more than 15 months before a decision is issued. As the statistics show, the number of cases that have not been decided upon after 15 months has grown from 1,610 in November 2022 to 5,490 in November 2023.¹¹⁰

Legal penalties

In 2019, the IND was obliged to pay a large sum in legal penalties (*dwangsommen*)¹¹¹ to asylum seekers whose application had not been decided upon within the legal time frame of 6 months.¹¹² On 31 January 2020, around 8,900 individual cases had not been dealt with within the legal time limit of 6 months.¹¹³ 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 2020.¹¹⁴ Under the Temporary act, asylum seekers were excluded from giving the IND a notice of default,¹¹⁵ 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. However, one of the Act's articles stipulated that if a proposal for a new act was submitted before the expiration of the Temporary Act, that

¹⁰⁴ For further in-depth information about and analysis of the work of the task force, see previous updates to this country report available at: <https://bit.ly/3SMHHji>.

¹⁰⁵ AEF, *Leren van de Taskforce Dwangsommen, toekomstgerichte evaluatie*, 18 February 2022, available in Dutch at: <https://bit.ly/3XfjoKB>.

¹⁰⁶ Dutch Parliament, no 35476, nr H, 16 November 2021, available in Dutch at: <https://bit.ly/3FiageD>.

¹⁰⁷ IND, *De IND in cijfers*, 16 January 2024, available in Dutch at: <https://bit.ly/48moKJP>.

¹⁰⁸ IND, *Doorlooptijden asielaanvraag*, 4 January 2023, available in Dutch at: <https://bit.ly/3vH7HQX>.

¹⁰⁹ IND, *Asiel: Laatste ontwikkelingen*, available in Dutch at: <https://bit.ly/3tMTVzZ>.

¹¹⁰ IND, *De IND in cijfers*, available in Dutch at: <https://bit.ly/48moKJP>.

¹¹¹ 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.

¹¹² Article 4:17 GALA, Regional Court Arnhem, ECLI:NL:RBDHA:2019:12133, 14 November 2019, available in Dutch at: <https://bit.ly/48gml2q>; Regional Court Amsterdam, Decision No NL19.18215, 13 September 2019, not published on a publicly available website.

¹¹³ KST 19637, nr. 2585, *Doorlooptijden asielaanvragen IND en dwangsommen*, 3 March 2020, available in Dutch at: <https://bit.ly/3wqr5oU>.

¹¹⁴ 'Tijdelijke wet opschorting dwangsommen IND', available in Dutch at: <https://bit.ly/3bQIRqI>.

¹¹⁵ 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.

would entail its extension for the duration of one year.¹¹⁶ Under the Temporary Act that entered into force on 11 July 2022 the possibility of receiving legal penalties was still suspended.

However, on 30 November 2022 the Council of State ruled, in two separate cases, that the Temporary Act was partially not in accordance with European Law.¹¹⁷ Regarding the judicial penalty (*rechterlijke dwangsom*), the Council of State judged that by suspending the ability of receiving judicial penalties, asylum seekers did not have an effective way of forcing the IND to take a decision regarding their asylum application. Therefore, the Temporary Act was deemed incompatible with the right to an effective remedy stemming from article 47 of the Charter of Fundamental Rights of the European Union, preventing asylum seekers from being able to exercise their rights.¹¹⁸ Following this judgment, the IND published a new Information Message outlining the new policy that for any ongoing and future cases, judicial penalties would be forfeited.¹¹⁹

Regarding the administrative penalty (*bestuurlijke dwangsom*), which is automatically forfeited after two weeks from the submission of the notion of default, the Council of State evaluated that its abolition under the Temporary Act conformed to the existing legal framework. The main reasoning for this is the administrative penalty is a measure that goes beyond the minimum rules dictated by the recast Asylum Procedures Directive. Considering that asylum seekers would still be able to enjoy their rights by receiving only the corresponding amount from a judicial penalty, abolishing the administrative penalty in asylum cases was deemed legal.¹²⁰ As a result, in ongoing and future asylum cases, no administrative penalties will be forfeited.

Due to the large number of cases received over the last year and the arrival of a large number of asylum seekers from Afghanistan and people fleeing from Ukraine, in September 2022 the IND decided to extend the time limit for deciding to 9 months in all cases where the 6-months time limit had not yet expired on 27 September 2022. In addition, for all asylum applications lodged after 27 September 2022, the time limit was pre-emptively extended by 9 months, meaning that the IND can take a maximum of 15 months to decide on asylum applications lodged after 27 September and before 1 January 2023.¹²¹ For some asylum seekers, this means that the IND can take the maximum number of months (21) to decide on their asylum application. On 3 February 2023, it was announced that this measure would also be in place for asylum requests lodged between 1 January 2023 and 1 January 2024.¹²² On 19 December 2023, the decision to extend this measure for asylum requests lodged during 2024 was announced.¹²³ The IND can thus take at least 15 months to decide on asylum requests lodged until at least 1 January 2025.

On 23 November 2022, the Regional Court of Den Bosch ruled in favour of the (first) general extension of the time limit for deciding.¹²⁴ On the contrary, on 6 January 2023, the Regional Court of Amsterdam issued a judgement declaring the time limit extension unlawful.¹²⁵ The IND argued that, due to the numerous new arrivals – especially regarding Afghan and Ukrainian nationals, but also many individuals later channelled into the Dublin procedure – it was impossible to manage the existing caseload. Despite this, the Court maintained that, even though there was an increase in the amount of asylum applications, it was not of such magnitude that the threshold included in art. 42(4)(b) Aliens Act was reached. In the

¹¹⁶ Tijdelijke wet opschorting dwangsommen IND, available in Dutch at: <https://bit.ly/3bQIRqI>, article 4.

¹¹⁷ Council of State, ECLI:NL:RVS:2022:3353 and ECLI:NL:RVS:2022:3352, 30 November 2022, available in Dutch at: <https://bit.ly/3HWrAcZ> and <https://bit.ly/3uhh4tK>.

¹¹⁸ Council of State, ECLI:NL:RVS:2022:3353, 30 November 2022, available in Dutch at: <https://bit.ly/3HWrAcZ>.

¹¹⁹ IND, Information Message 2022/107 Afdelingsuitspraken d.d. 30 november 2022 inzake de Tijdelijke Wet dwangsom (3), 2 December 2022, no longer published on a publicly available website.

¹²⁰ Council of State, ECLI:NL:RVS:2022:3352, 30 November 2022, available in Dutch at: <https://bit.ly/3uhh4tK>.

¹²¹ Amendment Aliens Circular, Besluit van de staatssecretaris van Justitie en Veiligheid, 26 September 2022, Staatscourant 2022, No 25775, available in Dutch at: <https://bit.ly/3CsTDyJ>.

¹²² IND, Information Message 2023/10 'Verlengen beslistermijn asiel', available in Dutch at: <https://bit.ly/3XLhL6U>.

¹²³ WBV 2023/26, available in Dutch at: <https://bit.ly/41XJwNI>.

¹²⁴ Regional Court Den Bosch, Decision No. NL22.21366, 23 November 2022, available in Dutch at: <https://bit.ly/49vETwS>.

¹²⁵ Regional Court of Amsterdam, ECLI:NL:RBDHA:2022:12636, 6 January 2023, available in Dutch at: <https://bit.ly/3w7jz29>.

months that followed, numerous other courts followed the judgment of the Regional Court of Den Bosch. However, the State Secretary submitted an onward appeal with regards to the judgment of the Regional Court of Amsterdam, meaning the Council of State had to look into the issue. On 8 November 2023, the Council of State ruled that European Law was too ambiguous to determine whether the general extension of the time limit for deciding was legal. As a result, it referred preliminary questions to the Court of Justice of the European Union, asking for clarification regarding the definitions of ‘a large number of third-country nationals’, ‘simultaneously’ and ‘very difficult’ as laid down in Article 31(3)(b) of the Recast Asylum Procedures Directive.¹²⁶ These questions have been referred to the CJEU vis-à-vis the first extension, but the answers are also relevant for the second extension in 2023 (WBV 2023/3) and the last extension (2023/26) concerning 2024. Until the CJEU answers these questions, the IND holds on to the time limit of 15 months.

C. Procedures

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

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

1. Regular procedure (“Track 4”)

1.1 General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to decide on the asylum application at first instance: | |
| ❖ Regular 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? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2023: | 45,440 ¹²⁷ |
| 4. Average length of the first instance procedure in 2023: | not available ¹²⁸ |

The general asylum procedure (Track 4) is divided into a Regular Procedure (*Algemene Asielprocedure*) of 6 days and an Extended Procedure (*Verlengde Asielprocedure*). The assessment of each asylum application starts in the Regular Procedure. During this procedure, the IND can decide to refer the case to the Extended Procedure. There is also the option to extend the regular procedure with a number of days, without referring an applicant to the Extended procedure. This is called the Regular Procedure

¹²⁶ Council of State, ECLI:NL:RVS:2023:4125, 8 November 2023, available in Dutch at: <https://bit.ly/3SRLqMH>.
¹²⁷ IND, *Jaarcijfers 2023*, Track 4 – first time applicants, repeated applicants, applicants whose application needs to be reassessed after a court decision, applicants who changed Track and resettled applicants, available in Dutch at: <https://bit.ly/3TTfeJw>.

¹²⁸ The average length of the procedure is not available. However, as of 19 January 2024, the average waiting period for the registration interview is 18 weeks, and thereafter another 43 weeks for the detailed interview. IND, ‘Asiel: Laatste ontwikkelingen’, available in Dutch at: <https://bit.ly/3tMTVyZ>.

Plus, or AA+. In practice, this limited extension is not applied often. In an Evaluation report of the IND published in March 2023, only 0.6% of 34,576 cases were found to have been referred to the AA+.¹²⁹

The laws, rules and policies regarding the Asylum Procedure are included in the Aliens Act, the Aliens Decree, the Aliens Regulation and the Aliens Circular.

Regular Procedure (*Algemene Asielprocedure*)

A decision on an asylum application in the Regular Procedure currently has to be issued within 6 working days.¹³⁰ This deadline may be extended.

The asylum procedure is preceded by a registration phase (see [Making and registering the application](#)). Firstly, an asylum seeker has to fill out a registration form containing questions regarding their nationality, identity, travel route and documentation.¹³¹ The completed form is followed by a registration interview (*Aanmeldgehoor*). During the registration interview, questions can be asked regarding an asylum seeker's identity, nationality, travel route and family members. Since the formal introduction of the registration interview, the IND will also briefly inquire about the reasons for seeking asylum. The completed form and interview play an essential part in the asylum procedure. During the registration phase, 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 them to refute this evaluation.¹³² In addition, failure to provide sufficient evidence of the nationality and/or identity can lead to the IND not assessing the need for protection itself.¹³³ The Council of State has consistently judged that this practice is permitted, as the motives for requesting asylum only hold value against the background of the identity, nationality and origin of a person.¹³⁴

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 amendment of the Aliens Decree regarding the Regular Procedure.¹³⁵

After the registration phase, the asylum seeker is given time to rest and prepare for the asylum procedure. In theory this [rest and preparation period](#) (RVT) lasts a minimum of 6 days.¹³⁶ In practice, it can last several months. On one of the last days of the RVT, the asylum seeker meets their lawyer. This is called 'Day -1', because the Regular Procedure starts in the following days. The asylum seeker and the lawyer discuss the statements made during the registration interview, and prepare for the Regular Procedure and more specifically, the detailed interview. After this meeting the RVT ends, and the Regular Procedure starts.

¹²⁹ IND, Evaluatie Wijzigingen Algemene Asielprocedure, 9 June 2023, available in Dutch at: <https://bit.ly/3T82Ft8>.

¹³⁰ Article 3.110(1) Aliens Decree.

¹³¹ Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2021/8, available in Dutch at: <https://bit.ly/3uTF7yV>.

¹³² Amnesty International, *Bewijsnood, Wanneer nationaliteit en identiteit ongeloofwaardig worden bevonden*, 19 November 2020, available in Dutch at: <https://bit.ly/34zOICW>.

¹³³ ACVZ, *Naar een gelijk speelveld bij vaststelling nationaliteit en identiteit van migranten*, 11 April 2022, available in Dutch at: <https://bit.ly/3jPH7T9>.

¹³⁴ Council of State, ECLI:NL:RVS:2015:4061, 24 December 2015, available in Dutch at: <https://bit.ly/3HPCIs9>.

¹³⁵ 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>.

¹³⁶ Article 3.109 Aliens Decree.

For a clear understanding of the current Regular Procedure, it is important to indicate what happens during these 6 days. In short, on the odd days the asylum seeker is in contact with the IND and on the even days with their legal advisor / lawyer:¹³⁷

Day 1	Start of the Regular Procedure with a detailed interview (<i>Nader gehoor</i>)	In this extensive interview the asylum seeker is questioned by the IND about their reasons for seeking asylum. ¹³⁸ After the interview, the IND could decide to refer the case to the Extended Procedure in case they estimate that more time is needed to take a proper decision.
Day 2	Review of the detailed interview	The asylum seeker and the lawyer review the detailed interview after which corrections and additions thereto may be submitted. This generally happens due to interpretation problems, where a misunderstanding easily occurs.
Day 3	The intention to reject the asylum application (<i>Voornemen</i>)	In case the IND decides to reject the asylum application, it will issue a negative intended decision. 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 their view in writing concerning the intended decision 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 stemming from the registration interview and the detailed interview and information from official reports and other country information. An intended decision to reject the asylum application must be motivated and take into account the lawyer's view in writing.¹³⁹

Extension of the Regular Procedure (*Algemene Asielprocedure+ or AA+*)

In the past, the Regular 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 Procedure came into force, the 6 days of the asylum procedure can be extended before the start or during the procedure. When the IND decides to extend the procedure before its start, for example due to medical reasons, if the asylum seeker is not able to be interviewed or there are indications that the assessment of the asylum claim cannot take place within the 6 days of the Regular Procedure, the procedure is extended by 3 days.¹⁴⁰ In these cases, the Regular Procedure takes 9 days.¹⁴¹

¹³⁷ Article 3.112-3.115 Aliens Decree.

¹³⁸ See also Work instruction 2021/13, *Nader gehoor*, available in Dutch at: <https://bit.ly/48tRhQ>.

¹³⁹ Article 42(3) Aliens Act.

¹⁴⁰ Article 3.115 (1) Aliens Decree.

¹⁴¹ Article 3.115 (1) and Article 3.115 (3) Aliens Decree.

When the IND decides to extend the Regular Procedure during the 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 their detailed interview the Regular Procedure can be extended by 12, 14 or 20 days.¹⁴²

When there is a combination of grounds from Article 3.115(1) and (2) Aliens Decree then the Regular Procedure could be extended *up to* 21, 23 or 29 days.¹⁴³

Extended Procedure (*Verlengde Asielprocedure*)

When the IND is not able to assess the asylum claim and issue a decision within the time frame of the (extended) Regular 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.¹⁴⁴ 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 Procedure, but both the detailed interview and an (optional) additional interview can also take place in the Extended Procedure. If there is an intention to reject the request during the Extended Procedure, the asylum seeker and their lawyer are given 4 or 6 weeks to submit an opinion on the intended decision.¹⁴⁵ The IND has to issue a new intended decision if it changes its grounds for rejecting the claim substantially from the written intention in the Regular Procedure.¹⁴⁶

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 extended by 9 months if, for example, the case is complex or there is an increased number of asylum applications at the same time. This last reason has been used by the Dutch government to extend the time limit for deciding by 9 months for all asylum requests submitted after 27 September 2022. This extension was also issued for the entirety of the year 2023.¹⁴⁷ On 19 December 2023 it was announced that this measure was also imposed for asylum requests made during 2024.¹⁴⁸ The Council of State has submitted preliminary questions to the European Court of Justice regarding the interpretation of this provision since it is a transposition of article 31(3)(b) Asylum Procedures Directive (see [Legal penalties](#)).¹⁴⁹ In addition to the 9-month prolongation, the time limit can be extended by another 3 months according to Article 42(5) of the Aliens Act. In no case may the maximum time limit of 21 months be exceeded.¹⁵⁰

In March 2023, the statistics on processing times showed that it takes 43 weeks when the Regular asylum procedure starts for a decision to be taken. When the application is referred to the extended procedure, on average, 48 weeks pass before a decision is taken.¹⁵¹ In the Regular Procedure (Track 4) it takes on averages 14 weeks before the registration interview takes place (note that theoretically, this interview should happen on the third day after the asylum request). After this interview, another 37 weeks elapse on average before the detailed interview takes place.¹⁵² This means that on average, the detailed interview takes place almost one year after the asylum request.

¹⁴² Article 3.115 (2) and Article 3.115 (3) Aliens Decree.

¹⁴³ Article 3.115 (3) Aliens Decree.

¹⁴⁴ Article 3.113 (7) and Article 3.113 (8) Aliens Decree.

¹⁴⁵ Article 3.116 (2) Aliens Decree.

¹⁴⁶ Article 3.119 Aliens Decree.

¹⁴⁷ Stcrt 2023, nr. 3235, available in Dutch at: <https://bit.ly/3vHsqHq>.

¹⁴⁸ Parliament letter, 19 December 2023, available in Dutch at: <https://bit.ly/48Y2J43>.

¹⁴⁹ Council of State, ECLI:NL:RVS:2023:4125, 8 November 2023, available in Dutch at: <https://bit.ly/3SRLqMH>.

¹⁵⁰ Article 43 (1) Aliens Act.

¹⁵¹ IND, *Doorlooptijden asielaanvraag*, 4 January 2023, available in Dutch at: <https://bit.ly/3vH7HQX>.

¹⁵² IND, *Asiel: Laatste ontwikkelingen*, available in Dutch at: <https://bit.ly/3tMTVyZ>.

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 applicants from countries such as Syria and Yemen. Track 5 applies to the same cases, where nationality or identity documents have not been submitted yet. There is no prioritised examination and fast-tracking processing in practice, as neither Track 3 nor Track 5 have been applied in previous years. For now, asylum seekers from these countries are handled in Track 4.

1.3 Personal interview

Indicators: Regular Procedure: Detailed 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.¹⁵³ Every asylum seeker undergoes a detailed interview with the exception of applications handled in the [Dublin Procedure](#) (Track 1) and the [Accelerated Procedure](#) (Track 2). The [registration interview](#) is designed to clarify nationality, identity and travel route. It became less exhaustive in 2019 following the introduction of an extensive form and a follow-up interview at registration stage. In the detailed interview, the asylum seeker is given the opportunity to explain the reasons for fleeing their country of origin.¹⁵⁴

Interviews are always conducted separately, meaning family members that apply for asylum together are interviewed individually. This is to ensure that everyone has the chance to tell their individual reasons for requesting asylum. Children under the age of 15 that request asylum as part of their parents' asylum requests, are in principle not interviewed. However, in some cases this may occur, for example if the child requests this or if the child has individual reasons for requesting asylum. The interview will take place separate from the parents' interviews. Children over the age of 15 request asylum independently (so not linked to the parents' asylum request). As a result, the IND will interview them, separately. Unaccompanied minors between the ages of 6 and 12 (not included) are interviewed in special rooms designed to be safer and more comfortable for children. The interview takes place with the Nidos guardian present. If an interview is difficult to conduct, other solutions will be explored.¹⁵⁵ There is no extensive training and specialisation when it comes to interviewing children.¹⁵⁶

Exceptionally, family members or other people lending support can be present at an asylum seeker's interview. This only occurs if their presence is 'necessary fitting support', and has to be supported with medical documentation.¹⁵⁷

¹⁵³ Article 3.112 Aliens Decree.

¹⁵⁴ Article 3.113 Aliens Decree.

¹⁵⁵ Paragraph C1/2.1 Aliens Circular.

¹⁵⁶ Stephanie Rap, "A Test that is about Your Life": The Involvement of Refugee Children in Asylum Application Proceedings in the Netherlands', *Refugee Survey Quarterly*, 2022(41), 306.

¹⁵⁷ Article 3.108b Aliens Decree.

Vulnerable Persons

The asylum seeker can express the wish to be interviewed by an employee of the IND of their own gender; this includes the interpreter. This may make it easier for an asylum seeker to present claims related to sensitive issues, such as sexual violence.¹⁵⁸

In the past, there have been concerns regarding the questions asked during interviews with persons persecuted due to their sexual orientation. These persons had been questioned, for example, on their sexual behaviour and their personal feelings.¹⁵⁹ In a judgment of 2 December 2014, the CJEU clarified the methods which national authorities may use to assess the credibility of the declared sexual orientation of applicants for international protection.¹⁶⁰ As a result, the Council of State established that the fact that asylum seekers cannot showcase sufficient proof regarding their connection to the LGBTQI+ community (be it in the Netherlands or in their country of origin) cannot be considered a decisive element to determine the lack of credibility of their asylum claim.¹⁶¹

The IND's Work Instruction 2015/9 was 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 one's sexual orientation. These include the following: the private life of the asylum seeker; their current and previous relationships and contacts with LGBTQI+ communities in their country of origin and in the Netherlands, and discrimination, repression and persecution in the country of origin. The emphasis is put on the personal experiences of the asylum seeker. However, the State Secretary 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 has been confirmed in Council of State judgments.¹⁶²

Work Instruction 2021/9 outlines the policy regarding asylum seekers in need of special procedural needs. The medical check by MediFirst, which occurs during the rest and preparation period, determines whether procedural needs are necessary, for example for people having experienced traumatic experiences in the past, human trafficking or sexual violence in country of origin or during the trip to the Netherlands. Procedural guarantees can consist of more time taken to conduct the interview, more breaks, less focus on exact dates (in case of head trauma), the presence of a third person, or a written interview instead of an oral interview.¹⁶³ IND personnel must constantly be vigilant whether the asylum seeker is in need of any special measures. This is not limited to the period leading up to the detailed interview. If a medical examination did not show any need for procedural measures, but during the interview the asylum seeker seems distressed, unwell, nervous, tired or even suicidal, the IND must provide further assistance, which could mean stopping the interview and requesting a medical examination.¹⁶⁴ This was for example ruled so recently by the Council of State, where it was also emphasised that in every Track the IND has the responsibility to be on the lookout for the special needs of asylum seekers.¹⁶⁵

Bespoediging Afdoening Asiel ('BAA')

In the last years, the IND has experimented with various measures and methods of hearing and deciding on asylum cases in order to try to decrease the backlog of cases. Multiple of these 'pilots' have been implemented, adopted and/or abolished. The subsections below will outline the main pilots used in the last years. Most of these pilots focus on Syrian and Yemeni, and to a lesser extent Turkish cases. This is due to the fact that these nationalities have a high probability of receiving international protection.

¹⁵⁸ Paragraph C1/2.11. Aliens Circular.

¹⁵⁹ Lieneke Luit, *Pink Solution, inventarisatie van LHBT asielzoekers (Inventory of LGBTI asylum seekers)*, available in Dutch at: <https://bit.ly/3wdRN47>.

¹⁶⁰ CJEU, Joined Cases C-148/13, C-149/13 and C-150/13 A, B and C, Judgment of 2 December 2014, available at: <https://bit.ly/49vIcVE>.

¹⁶¹ Council of State, ECLI:NL:RVS:2015:2170, 8 July 2015 available in Dutch at: <https://bit.ly/3T8HkQk>.

¹⁶² See: Council of State, ECLI:NL:RVS:2020:1885, 12 August 2020, available in Dutch at: <https://bit.ly/3SwsX7a>.

¹⁶³ Work Instruction 2021/9, paragraph 3.5, available in Dutch at: <https://bit.ly/4bQyGNK>.

¹⁶⁴ Work Instruction 2021/9, paragraph 3 and annex, available in Dutch at: <https://bit.ly/4bQyGNK>.

¹⁶⁵ Council of State, ECLI:NL:RVS:2023:3365, 6 September 2023, available in Dutch at: <https://bit.ly/48b7oyz>.

In March/April of 2023, the IND announced its intention to start a project in order to speed up the decision-making process for 13,000 Syrian and Yemeni cases. This project is called the '*Bespoediging Afdoening Asiel*', or 'speeding up handling asylum cases' (not an official translation). The project officially started on 1 May 2023 and concerned asylum requests lodged between 1 May 2022 and 1 May 2023.¹⁶⁶ On 19 December 2023, it was announced that the project required more time to process the 13,000 cases, due to a Parliamentary decision to stop the use of the written interview in asylum cases. The end date was moved to 1 August 2024.¹⁶⁷ On 1 November 2023, 5,510 decisions had been taken.¹⁶⁸

The project itself is made up of different experimental methods, most of them already used in previous years:

- ❖ Written interview;
- ❖ Interviews at location;
- ❖ Combination interview.

In the announcement of the project, other methods were also considered, but in practice they have not been utilised.

Participation in the project is voluntary. In the invitation letter indicating the start of the procedure, it is stated that the request can be considered within one of the methods in the project.

Written interview

Written interviews were first introduced in 2021,¹⁶⁹ 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.

After the conclusion of this pilot project 'written interviews' (*schriftelijk horen*), in October 2022 the IND started with a further pilot, offering written interviews to Syrian, Turkish and Yemenite nationals. The pilot involves nationals of the above-mentioned countries based on the likelihood of receiving protection. It was renamed to the 'Paper & Ink procedure', or PIP. During the project, the decision was made to exclude Turkish nationals from the project, as their asylum requests were too complicated to take a decision based on the written interview.¹⁷⁰

The invitation to partake in a written interview was sent one week before the start of the written interview, which was deemed insufficient by lawyers. To determine who is eligible for the PIP, the IND screened asylum seekers and excluded those who are illiterate, in need of special medical guarantees, or people suspected of being a danger to public order and security. If based on the written interview the IND cannot take a positive decision on the asylum application, the asylum seeker will be referred to the Regular Procedure.¹⁷¹ The asylum seeker had the option to partake in the PIP or follow the regular procedure. However, in practice many asylum seekers chose to partake in the PIP regardless, because they were worried that otherwise it will take even longer for an interview to take place. The written interviews were referred to two external partners, Eiffel and Brunel, who advised on whether on the basis of the written interview the asylum seeker could be given an asylum permit. The IND always took the final decision. If the external partners could not give a positive opinion, the asylum seeker had to be heard in person in an additional interview. No statistics are available regarding the number of written interviews concluded in the PIP, and the IND did not evaluate the PIP. At the end of 2023, the Legal Aid Board conducted a

¹⁶⁶ KST 19637, nr. 3156, 13 July 2023, available in Dutch at: <https://bit.ly/3Hjowas>.

¹⁶⁷ KST 19637, nr. 3184, 19 December 2023, available in Dutch at: <https://bit.ly/3tR0alp>.

¹⁶⁸ Ministry of Justice and Security, *Motie afschaffen schriftelijk horen voor kansrijke asielzoekers*, 19 December 2023, available in Dutch at: <https://bit.ly/3U2kRW1>.

¹⁶⁹ For further in-depth information about and analysis of the work of the task force, see previous updates to this country report available at: <https://bit.ly/3SMHHji>.

¹⁷⁰ This was communicated by the IND in a meeting with the Dutch Council for Refugees.

¹⁷¹ IND, *Asiel: Laatste ontwikkelingen*, available in Dutch at: <https://bit.ly/3VIITCH>.

survey with lawyers regarding the PIP.¹⁷² The results of this survey are not publicly available, but in general lawyers were pleased with the procedure for Syrians and Yemenites, provided that the screening takes place diligently. The role of the lawyer was generally conceived quite positively, as there was less preparation needed and the procedure was predictable. In addition, their clients received their decision earlier. A negative point was the rigidity of the written interview, as there was little room to ask for details and specifics about a case, or to clear up ambiguities.

With the start of the project BAA, it was announced that the written interview would be an important tool to reach the desired 13,000 cases. However, on 10 October 2023, a parliamentary motion was adopted to abolish the use of the written interview, due to fears of asylum permits being granted wrongfully and on the basis of negligent research.¹⁷³ The decision to cancel the written interviews within the BAA project was finalised on 19 December 2023.¹⁷⁴

COVID-19: interviews via videoconference

In order to minimise physical contact during the COVID-19 pandemic, the IND started conducting videoconference interviews in April 2020. The interviews by videoconference took place via a secure link for video conferencing. Via this link, the asylum seeker was able to speak with the IND staff members working from Zevenaar, Den Bosch, Schiphol or Ter Apel. Lawyers could use these facilities too. Unaccompanied minors and asylum seekers with medical problems were excluded from videoconference interviews.¹⁷⁵ Initially, videoconference interviews were used for nationals of Syria, Türkiye and Yemen. This was later extended to nationals of other countries.¹⁷⁶

Since the resumption of in-person interviews due the end of the pandemic, interviews via videoconference have not been used frequently. In April 2021, the IND evaluated the use of interviews via videoconference, and stated they were looking into the possibility of further application of the instrument to future procedures.¹⁷⁷ However, in the years following the pandemic, no additional documents have been published and it is uncertain whether any steps are being taken in view of a more extensive use of remote interviews. The only mentions of interviews conducted via videoconference occur in detention cases.¹⁷⁸ No information is published by the IND or in court judgments as to whether in asylum cases this method is still in use.

Interviews at location

In 2022, the IND started interviewing certain asylum seekers at their accommodation, as opposed to the asylum seekers making an appointment and visiting the IND themselves.¹⁷⁹ This instrument was introduced informally, and there is no official IND policy as regards to where these interviews are conducted. The IND has so far conducted interviews at different locations, mainly the emergency shelter locations such as boats which are not regularly used as accommodation, but because of the ongoing reception crisis many different places have been used to provide temporary shelter (see [Access and forms of reception conditions](#)). Due to the lack of an official policy on this matter, it is difficult to make sure all necessary steps in the procedure – regarding, for example, the provision of healthcare and legal support – are being followed. In addition, the IND only interviewed people of certain nationalities, which led to a high level of uncertainty for applicants, who could not know when they would be interviewed. Apart from the fact that this method is being used, no more public information is available on this project.

¹⁷² Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 17 2023, 15 December 2023.

¹⁷³ Ministry of Justice and Security, *Motie afschaffen schriftelijk horen voor kansrijke asielzoekers*, 19 December 2023, available in Dutch at: <https://bit.ly/3U2kRW1>.

¹⁷⁴ KST 19637, nr. 3184, 19 December 2023, available in Dutch at: <https://bit.ly/3tR0alp>.

¹⁷⁵ IND, *Procesbeschrijving Telehoren*, 8 May 2020, available in Dutch at: <https://bit.ly/3wCdVFi>.

¹⁷⁶ EASO, *Asylum Report 2021*, 2021, available at: <https://bit.ly/3NjoEKi>, 119.

¹⁷⁷ IND, *Vreemdelingenvisie 29*, 22 April 2021, available in Dutch at: <https://bit.ly/3lLdRha>.

¹⁷⁸ See for example Regional Court of Groningen, Decision No NL23.39925, ECLI:NL:RBDHA:2024:63, 4 January 2024, available in Dutch at: <https://bit.ly/42B4DoZ>.

¹⁷⁹ IND, *Vreemdelingenvisie 37*, 29 November 2022, available in Dutch at: <https://bit.ly/3Zlt4oB>.

With the start of the BAA project, it was announced that ‘interviewing at location’ would also be utilised. Dependent on the situation, the IND can visit a location and conduct the interview there. This could also happen in combination with another ‘pilot’, such as the written interview or the combination interview. Prerequisite for this method is the availability of a suitable location for the interviews.¹⁸⁰

Combination interview

In February 2023, the IND conducted 50 combination interviews with Syrian nationals in Ter Apel. The combination interview is one interview consisting of the questions asked during the registration and detailed interview. The registration interview is condensed to the core questions regarding identity, nationality and travel route. Afterwards, questions originating from the detailed interview are asked regarding the reasons for requesting international protection. The lawyer meets with the asylum seeker before the interview. No medical examination takes place before the interviews.¹⁸¹

The combination interview is also used within the BAA project. The asylum seeker receives a letter inviting them to either a (shorter) Regular Procedure, a written interview or a combination interview. Unaccompanied minors are all subjected to combination interviews in Den Bosch.¹⁸² Unfortunately, no further information is available regarding the quantity of these interviews being conducted.

1.3.1 Interpretation

The asylum seeker is to be interviewed in a language that they may reasonably be assumed to understand.¹⁸³ This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.¹⁸⁴ The IND may only use certified interpreters by law.¹⁸⁵ However, in certain circumstances the IND may derogate from this rule. For example, if there is a need for an interpreter in an urgent situation or if an asylum seeker speaks a very rare dialect.¹⁸⁶ Interpreters are obliged to perform their duties honestly, conscientiously and must swear an oath.¹⁸⁷ The IND uses its own code of conduct, which is primarily based on the general code of conduct for interpreters.¹⁸⁸ The Legal Aid Board (Raad voor Rechtsbijstand) takes the necessary steps to ensure the presence of an interpreter facilitating the communication between asylum seekers and their lawyer. Interpreters may also provide their services via phone instead of in person through the ‘interpreter telephone’. This service is provided by AVB Vertaaldiensten and Global Talk and paid for by the Legal Aid Board.¹⁸⁹

1.3.2 Recording

The National Ombudsperson made recommendations in 2014 concerning the possibilities for civilians to record conversations with governmental institutions.¹⁹⁰ The Ombudsperson recommended, *inter alia*, that a governmental institution should not refuse the wish of a civilian to record a hearing or conversation with a governmental institution. Said recommendation is also explicitly applicable in relation to asylum seekers and the IND. The Dutch Council for Refugees started a pilot project on 1 December 2016 at **AC Zevenaar**, providing asylum seekers with the opportunity to record the interview. Since 2017, the possibility to record interviews is provided to all asylum seekers in all applications centres. Asylum

¹⁸⁰ Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 16 2023, 18 October 2023.

¹⁸¹ Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 2 2023, 26 January 2023.

¹⁸² Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 15 2023, 4 October 2023.

¹⁸³ Article 38 Aliens Act.

¹⁸⁴ 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>.

¹⁸⁵ Article 28(1) Law on Sworn Interpreters and Translators.

¹⁸⁶ Article 28(3) Law on Sworn Interpreters and Translators.

¹⁸⁷ Frits Koers et al, *Best practice guide asiel: Bij de hand in asielzaken*, Raad voor de Rechtsbijstand, Nijmegen 2012, 38.

¹⁸⁸ IND, *Toelichting inzet tolken*, March 2021, available in Dutch at: <https://bit.ly/3qnP8PK>.

¹⁸⁹ Legal Aid Board, information on interpretation services, available in Dutch at: <https://bit.ly/33vxctO>.

¹⁹⁰ Ombudsperson, Report 2014/166, November 2014.

seekers must give notice of the wish to record the interview in advance. In practice, however, interviews are rarely recorded.¹⁹¹

On day 2 and 4 of the Regular Procedure, the asylum seeker and their lawyer have the possibility to submit any corrections and additions they wish to make regarding the interview that took place the day before. On day 6, after and if the IND has issued an intended decision to reject the asylum application, the lawyer submits their view in writing with regards to the intended decision on behalf of the asylum seeker. If the lawyer's view is not submitted on time (i.e. by day 6 of the Regular Procedure), the IND may decide without considering that view.¹⁹² However, if the view is received by the IND prior to the publication of the decision, the IND has to consider it in their decision.¹⁹³

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 Procedure**, an asylum seeker whose application for asylum is rejected on the merits within the framework of the Regular Procedure has one week to lodge an appeal before the Regional Court (*Rechtbank*).¹⁹⁴ In the **Extended 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). Appeal against applications 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 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.¹⁹⁵

The concept of “manifestly unfounded” (*kennelijk ongegrond*) 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;

¹⁹¹ This is an observation made by the writers of the Dutch Council for Refugees, who deal with lawyers and asylum cases on a daily basis. The IND also does not publish any more information about it.

¹⁹² Article 3.114 Aliens Regulation.

¹⁹³ Article 3.114 (5) Aliens Regulation.

¹⁹⁴ Article 69(2) Aliens Act.

¹⁹⁵ Article 82(2)(c) Aliens Act, citing Article 30b(1)(h).

- 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 can be requested. In case the request for a provisional measure is granted the appeal has suspensive effect, which means that the right to accommodation is retained and the asylum seeker may remain in Central Agency for the Reception of Asylum Seekers (COA) accommodation.

The judgment of the CJEU of 19 June 2018 in the case *Gnandi* has led to a major discussion in Dutch case law regarding the suspensive effect of appeals in asylum cases.¹⁹⁶ 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 taken, the asylum seeker may be placed in detention on the basis of Article 59(1)(a) of the Aliens Act. Additionally, the asylum seeker is not entitled to visitors once the departure period has expired.

According to the Council of State, detention was no longer possible on the basis of Article 59(1)(a) of the Aliens Act in cases where the asylum seeker is awaiting a decision on the request for a provisional measure.¹⁹⁷ 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.¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰ 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.²⁰¹ 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.²⁰² The Aliens Act, in particular Article 82, has still not been adjusted to incorporate 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

¹⁹⁶ CJEU, Case C-181/16, *Sadikou Gnandi vs Belgium*, 19 June 2018, available at: <https://bit.ly/33vxctO>.

¹⁹⁷ Council of State, ECLI:NL:RVS:2018:2828, 27 August 2018, available in Dutch at: <https://bit.ly/3I03spD>.

¹⁹⁸ *Ibid.*

¹⁹⁹ Council of State, ECLI:NL:RVS:2018:1307, 19 April 2018, available in Dutch at: <https://bit.ly/3SQeioG>.

²⁰⁰ 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, available at: <https://bit.ly/3waFsO9>.

²⁰¹ Council of State, ECLI:NL:RVS:2020:244, 29 January 2020, available in Dutch at: <https://bit.ly/3UzbRYE>.

²⁰² Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019, available in Dutch at: <https://bit.ly/49Mwe9t>.

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 their own opinion on the credibility of the asylum seeker's statements to the authorities'. Where the asylum seeker makes contradictory or inconsistent statements, the review can be more intensive. Before 2016, the other elements – not the credibility of the statements – for 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 are 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 take a new decision.

Furthermore, when assessing the appeal, the Regional Court takes into consideration all new facts and circumstances which appear after the decision issued by the IND. This is the so-called *ex nunc* examination of the appeal.²⁰³

1.4.2 Onward appeal before the Council of State

After the Regional Court issues a judgment regarding the IND's decision, both the asylum seeker and the IND may appeal the decision of the Regional court to the Council of State.²⁰⁴ The IND makes use of this possibility especially in matters of principle, for example if a Regional Court concludes that a particular minority is systematically subjected to a violation of Article 3 of the European Convention on Human Rights (ECHR). The Council of State carries out a marginal *ex tunc* review of the Regional Court's judgment and does not examine the facts of the case.²⁰⁵

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 it cannot be derived from these European legal instruments that an onward appeal in asylum cases has automatic suspensive effect.²⁰⁶ Following this judgment, the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.²⁰⁷ 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 2016.²⁰⁸ According to the ECtHR, onward appeal to 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 for an expulsion date to be set. An asylum seeker can now submit a request for a provisional measure at the time of appeal.²⁰⁹ The Council of State also 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 ECHR.²¹⁰ If granted, a provisional measure allows for reception facilities.

²⁰³ Article 83 Aliens Act.

²⁰⁴ Article 70(1) Aliens Act.

²⁰⁵ 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.

²⁰⁶ CJEU, Case C-175/17 and C-180/17, *X and Y v. Staatssecretaris van Veiligheid en Justitie*, 26 September 2018, available at: <https://bit.ly/3waFsO9>.

²⁰⁷ Council of State, ECLI:NL:RVS:2019:457, 20 February 2019, available in Dutch at: <https://bit.ly/49sYwFH>.

²⁰⁸ ECtHR, *A.M. v. the Netherlands*, No. 29094/09, 5 July 2016, available at: <https://bit.ly/3SwAPW1>.

²⁰⁹ Council of State (Judge for provisional measures), ECLI:NL:RVS:2016:3350, 20 December 2016, available in Dutch at: <https://bit.ly/42wCnEc>.

²¹⁰ Council of State (Judge for provisional measures), ECLI:NL:RVS:2016:3350, 20 December 2016, available in Dutch at: <https://bit.ly/42wCnEc>.

All decisions of the Courts and Council of State are public and some are published.²¹¹ 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 and other details, but if they have specific questions they can address them to the Dutch Council for Refugees. The legal representatives of the asylum seekers are responsible for the submission of the appeal.

1.5 Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover:
 - Representation in interview
 - Legal advice

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

Every asylum seeker is entitled to free legal assistance.²¹² To ensure this right, the following system discussed in the next subsection was designed.

1.5.1 Free legal assistance at first instance

An asylum seeker can only register their asylum request at an Application Centre (AC). There are lists at the Application Centres where asylum lawyers note their availability for that day. 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 Rechtsbijstand*), a state-funded organisation, is responsible for defining timetables and making sure that sufficient lawyers are available on a particular day. In this way, every asylum seeker is assigned a lawyer from the start of their procedure. In case a large number of applications are lodged on one day, it may also happen that lawyers are forced to accept an excessive number of cases. The Legal Aid Board schedules a certain number of lawyers to handle the asylum requests that come in that day, to a maximum of three cases per day.²¹³

An appointed lawyer from the Legal Aid Board is free of charge for the asylum seeker. However, an asylum seeker may choose a lawyer independently. 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 regarding 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 under 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 the different steps and stages of the procedure. Counsel 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 their lawyer. The Dutch Council for Refugees has offices in most of the reception centres.

²¹¹ Decisions of the Regional Courts and Council of State may be found at: <https://www.rechtspraak.nl/>.

²¹² Article 10 Aliens Act.

²¹³ J. Nijland and K. Geertsema, *Wat verdient een sociale vreemdelingenadvocaat?*, A&MR 2020, nr. 6-7, 361-370.

1.5.2 Free legal assistance on appeal

Free legal assistance is also provided if an asylum seeker decides to appeal a negative decision.²¹⁴ 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 Regular Procedure – if they think the appeal is unlikely to be successful. In this scenario, the lawyer has to report to the Legal Aid Board and the asylum seeker can request a “second opinion”, meaning that another lawyer takes over the case.²¹⁵ This only happens in exceptional cases. On the one hand, the intention of the legislator is that the same lawyer will represent the asylum seeker during the whole procedure. On the other hand, if the lawyer does not submit a written opinion, this would be considered as ‘malpractice’ because submitting a written viewpoint is part of 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, this 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.

Limited financial compensation for lawyers representing asylum seekers can be an obstacle, as some lawyers consider the compensation they obtain in exchange for the time spent preparing a case insufficient. This means that some lawyers are underpaid in comparison to the time spent on a case, or that some cases are not prepared with sufficient care. Additionally, due to the economic crisis, more cutbacks had to be made within the state-funded legal aid system. As a result asylum lawyers’ salaries have decreased, leading to a structural problem of underpayment. To counter this, the Dutch government is raising the amount received per point that an asylum lawyer receives after the completion of a case.²¹⁶ A point corresponds to the amount of time allocated to a specific case, meaning that for more difficult and time-intensive cases, lawyers will receive more money, more realistically reflecting the amount of time spent on the case.

2. Dublin (“Track 1”)

2.1 General

In 2022, 17% of all asylum requests were handled in Track 1, amounting to approximately 8,401 requests. 4,050 Dublin claimants appealed their decision to a Regional Court. The number of onward appeals is not available.²¹⁷

Dublin statistics: 1 January – 31 December 2023

These numbers concern total requests, both initial and re-examination requests.

Outgoing procedure				Incoming procedure			
	Requests	Accepted	Transfers		Requests	Accepted	Transfers
Total	10,704	8,365	1,807	Total	4,834	2,785	1,034
Germany	2,851	2,144	872	Germany	1,612	983	324
Italy	1,565	1,825	1	France	957	442	106
Spain	1,157	770	285	Belgium	898	556	224
France	990	618	163	Switzerland	675	440	177
Austria	877	553	152	Austria	141	76	50

Source: Eurostat

²¹⁴ Circular on payments legal aid in the new asylum procedure, 1 July 2010, available in Dutch at: <http://bit.ly/1HS8gek>. Article 6(1)(a), Decree on Own Contribution to Legal Aid.

²¹⁵ Article 12 Legal Aid Act.

²¹⁶ J. Nijland and K. Geertsema, *Wat verdient een sociale vreemdelingenadvocaat?*, A&MR 2020, nr. 6-7, 361-370.

²¹⁷ Ministry of Justice and Security, *Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0F>, 92.

Outgoing Dublin requests by criterion: 2023		
Dublin III Regulation criterion	Requests sent	Requests accepted
“Take charge”: Articles 8-15:	2,721	2,782
Article 8 (minors)	64	12
Article 9 (family members granted protection)	10	4
Article 10 (family members pending determination)	8	3
Article 11 (family procedure)	20	10
Article 12 (visas and residence permits)	1,384	1,160
Article 13 (entry and/or remain)	1,221	1,591
Article 14 (visa free entry)	2	0
“Take charge” dependent persons: Article 16	1	0
“Take charge” humanitarian clause: Article 17(2)	11	1
Take charge – Criteria unknown	0	21
“Take back”: Article 18 and 20(5) (and unknown)	7,467	5,136
Article 18 (1) (b)	5,125	2,163
Article 18 (1) (c)	47	553
Article 18 (1) (d)	1,947	1,833
Article 20(5)	16	472
Take back - Criteria unknown	332	115

Source: Eurostat

Incoming Dublin requests by criterion: 2023		
Dublin III Regulation criterion	Requests received	Requests accepted
“Take charge”: Articles 8-15	864	672
Article 8 (minors)	74	21
Article 9 (family members granted protection)	12	2
Article 10 (family members pending determination)	7	11
Article 11 (family procedure)	19	8
Article 12 (visas and residence permits)	694	617
Article 13 (entry and/or remain)	16	1
Article 14 (visa free entry)	0	0
“Take charge” dependent persons: Article 16	4	0
“Take charge” humanitarian clause: Article 17(2)	38	12
“Take back”: Articles 18 and 20(5) (and unknown)	3,904	2,007
Article 18 (1) (b)	3,604	628
Article 18 (1) (c)	24	458
Article 18 (1) (d)	266	909
Article 20(5)	4	5
Take back - Criteria unknown	6	7

Source: Eurostat

2.1.1 Application of the Dublin criteria

As a result of the answers of the CJEU in the case of *H. and R.*²¹⁸, the Council of State concluded that an asylum seeker cannot rely on a Chapter III-criterion in case of take backs.²¹⁹ The exception to this rule is the situation described in Article 20(5) of the Dublin Regulation.²²⁰ 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.

Out of the total of 10,704 outgoing requests in 2023 (per Eurostat), 2,721 requests were take charge requests. All other requests were take back requests in which the criteria of Chapter III are, in principle, not applied following the ruling in *H. and R.*

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.²²¹ 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 their 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.*²²²

In cases where an unaccompanied minor has a family member in another Member State or travels with a family member, the IND may not transfer the unaccompanied minor without investigating whether transfer would be in the best interest of the child. This follows from several judgements by the Council of State.²²³ The Regional Court of Amsterdam has ruled that the best interest of the child should also be taken into account in cases where not the child, but their family member, receives a Dublin claim.²²⁴ The IND has not yet appointed an agency to carry out best interest of the child assessments in Dublin cases, because of this the best interest assessment does not take place in practice. In February 2022, it was confirmed that the IND is still searching for an organisation or body that can carry out these assessments.²²⁵

For more information on age assessment, see section on [Age Assessment](#).

²¹⁸ CJEU, C-582/17 and 583/17, *Staatssecretaris van Veiligheid en Justitie v. H. And R.*, 2 April 2019, available in Dutch at: <https://bit.ly/3wvf8cp6>.

²¹⁹ Council of State, ECLI:NL: RVS:2019:3672, 31 October 2019, available in Dutch at: <https://bit.ly/3UuXtq0>.

²²⁰ 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).

²²¹ Council of State, 1 September 2016, ECLI:NL:RVS:2016:2441, available in Dutch at: <https://bit.ly/3OEsWN4>; Council of State, ECLI:NL: RVS:2015:3012, 16 September 2015, available in Dutch at: <https://bit.ly/3UzCBZ1>.

²²² CJEU, C-648/11, *MA and Others v Secretary of State for the Home Department*, 6 June 2013, available at: <https://bit.ly/3wl1Zrm>.

²²³ Council of State, ECLI:NL: RVS:2020:1281, 27 May 2020, available in Dutch at: <https://bit.ly/3UyXyDG>;

Council of State, ECLI:NL: RVS:2020:3043, 21 December 2020, available in Dutch at: <https://bit.ly/4bwxKxN>.

²²⁴ Regional Court of Amsterdam, NL22.19633 and NL22.19634, 28 October 2022, available in Dutch at: <https://bit.ly/49kyJ2q>.

²²⁵ This information follows from a private letter sent from the IND to a lawyer defending a child in a Dublin case.

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 does not mention their 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.²²⁶ 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, there may be cause for the State Secretary to be obligated to investigate whether family unity and a stable relationship exist.²²⁷ Family unity can also be established from circumstantial evidence.²²⁸

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.²²⁹ 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.

Per Eurostat, out of the total of 2,721 outgoing take charge requests in 2023, only 18 were on the basis of articles 9 and 10 of the Dublin Regulation. There were 19 incoming requests, with 5 people actually having been transferred to the Netherlands.

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.²³⁰ 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 preliminary questions to the CJEU in the case of applicants who received diplomatic cards from the Ministry of Foreign Affairs of another Member 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.²³¹ The Court of Justice concluded that the diplomatic card is indeed a residence document, therefore falling under the definition of Article 2(1) Dublin Regulation, rendering Article 12 applicable in cases of a diplomatic card being issued by another member state.²³²

²²⁶ Regional Court, The Hague, Decisions No 17/591 and NL.1428, 17 August 2017.

²²⁷ Regional Court Amsterdam, NL19.30086, 12 February 2020.

²²⁸ Regional Court Middelburg, NL19.28911, 9 January 2020, available in Dutch at: <https://bit.ly/495TWNr>.

²²⁹ Council of State, ECLI:NL: RVS:2020:2261, 21 September 2020, available in Dutch at: <https://bit.ly/3SAolr3>.

²³⁰ Council of State, ECLI:NL: RVS:2019:2508, 23 July 2019, available in Dutch at: <https://bit.ly/3SRgQ5l>;

Council of State, ECLI:NL: RVS:2019:2486, 23 July 2019, available in Dutch at: <https://bit.ly/4bvXtGG>.

²³¹ Council of State, ECLI:NL:RVS:2021:1873, 25 August 2021, available in Dutch at: <https://bit.ly/49s6Eq2>; CJEU, C- 568/21, *Staatssecretaris van Justitie en Veiligheid v E., S.*, 21 September 2023, available at: <https://bit.ly/3SVYdxS>.

²³² CJEU, C-568/21, *Staatssecretaris van Justitie en Veiligheid v E., S.*, 21 September 2023, available at: <https://bit.ly/3SVYdxS>.

2.1.2 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 16.²³³ 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.²³⁴

The IND typically only applies Article 16 of the Dublin Regulation in situations of ‘exclusive dependence’, meaning that the asylum seeker has to demonstrate that 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.²³⁵ 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.²³⁶ 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.²³⁷

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.²³⁸

On 30 November 2021, the Regional Court of Zwolle decided to refer preliminary 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.²³⁹ The CJEU has concluded that Article 16 of the Dublin Regulation does not apply to a dependency link either between an applicant for international protection and that applicant’s spouse who is legally resident in the Member State in which the application was lodged, or between the unborn child of that applicant and the spouse who is also the father of that child. However, Article 17 of the Regulation does not preclude the legislation of a Member State from requiring competent national authorities, on the sole ground of the best interests of the child, to examine an application for international protection lodged by a third-country national where she was pregnant at the time her application was lodged, even though the criteria set out in Articles 7 to 15 of the Regulation indicate that another Member State is responsible for that application.

²³³ Council of State, Decision No 201701137/1, 20 March 2017, not published on a publicly available website; see also Regional Court Middelburg, Decision No 17/540, 30 January 2017, not published on a publicly available website.

²³⁴ Council of State, ECLI:NL:RVS:2015:370, 5 February 2015, available in Dutch at: <https://bit.ly/498rVoW>.

²³⁵ Council of State, ECLI:NL:RVS:2020:2296, 30 September 2020, available in Dutch at: <https://bit.ly/48h885b>.

²³⁶ Council of State, ECLI:NL:RVS:2019:834, 13 March 2019, available in Dutch at: <https://bit.ly/48ZAySB>.

²³⁷ Council of State, Decision No 201706799/1/V3, 8 October 2018, available in Dutch at: <https://bit.ly/498FH18>.

²³⁸ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10025, 14 September 2021, available in Dutch at: <https://bit.ly/3UwFUQL>; Regional Court Haarlem, ECLI:NL:RBDHA:2020:8698, 3 September 2020, available in Dutch at: <https://bit.ly/3OBSHh4>.

²³⁹ Regional Court Zwolle, ECLI:NL:RBDHA:2021:13167, 30 November 2021, available in Dutch at: <https://bit.ly/3Oy5v83>; CJEU, C-745/21, *L.G. v Staatssecretaris van Justitie en Veiligheid*, 16 February 2023, available at: <https://bit.ly/3TPXmyR>.

Sovereignty clause: Article 17(1) Dublin Regulation

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

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

The Council of State already ruled in 2018 that the Court shall only minimally review the application of the discretionary clause of Article 17 of the Dublin III Regulation. 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.²⁴⁰ 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.²⁴¹ In its judgment of 30 September 2023, the European Court of Justice reiterated the discretionary nature of Article 17, concluding that a judge cannot order a member state to make use of Article 17, as the State Secretary has the exclusive power to handle an asylum request without obligation.²⁴²

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.²⁴³ 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.²⁴⁴ 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.²⁴⁵ This line of reasoning is still referenced in recent judgments, with Regional Courts declaring that Dublin Regulation is not meant as a route through which a residence permit with a family member in the Netherlands can be accomplished.²⁴⁶ Although Article 6 of the Dublin Regulation does not oblige the State Secretary to assume responsibility on the basis of Article 17(1) of the Dublin Regulation, the best interests of the child should be taken into account.²⁴⁷

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.²⁴⁸ Similarly, the Council of State ruled that the IND had to state reasons for refraining from applying Article 17 in the case of an

²⁴⁰ Council of State, Decision No 201806712/1, 10 October 2018, available in Dutch at: <https://bit.ly/4by9oE8>.
²⁴¹ Council of State, ECLI:NL:RVS:2020:545, 21 February 2020, available in Dutch at: <https://bit.ly/4bzQuwK>.
²⁴² CJEU, C-228/21, ECLI:EU:C:2023:934, *Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino (C-228/21), DG (C-254/21), XXX.XX (C-297/21), PP (C-315/21), GE (C-328/21) v CZA (C-228/21), Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino (C-254/21, C-297/21, C-315/21 and C-328/21)*, 30 November 2023, available at: <https://bit.ly/3uj63rT>.
²⁴³ Council of State, Decision No 201507801/1, 9 August 2016, available in Dutch at: <https://bit.ly/3SwwkuQ>.
²⁴⁴ Council of State, Decision No 201505706/1, 19 February 2016, available in Dutch at: <https://bit.ly/3HRuU9h>.
²⁴⁵ Ibid.
²⁴⁶ Regional Court of Zwolle, Decision No NL18.4980, 1 September 2023.
²⁴⁷ Council of State, ECLI:NL:RVS:2022:1671, 13 June 2022, available in Dutch at: <https://bit.ly/3w9wlgL>.
²⁴⁸ Council of State, Decision No 20181004/1, 13 May 2019, not published on a publicly available website.

asylum seeker who supported her seriously ill sister in the Netherlands²⁴⁹ and in the case of a woman and her children who had already been staying in the Netherlands for multiple years.²⁵⁰ Also in cases where Dublin claimant experienced treatment contrary to Article 3 ECHR, the State Secretary must motivate why Article 17 was not applied.²⁵¹

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 they are not reunited with their family.²⁵²

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 2023.

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.

Specific rules regarding the Dublin Procedure are included in Paragraph C1/2.6 Aliens Circular.

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 EU-VIS.²⁵³ Refusal to be fingerprinted can be considered as lack of sufficient cooperation during the procedure. If the application is rejected, the refusal to be fingerprinted can lead to a rejection as ‘manifestly unfounded’ instead of ‘unfounded’, which entails that an entry ban (of two years) would also be imposed to the applicant.

The IND, in cooperation with the Dutch Council for Refugees, has drafted brochures that provide asylum seekers information on the Dublin procedure in 12 languages. These brochures are available in Arabic, Chinese, Dari, Dutch, English, Farsi, French, Pashtu, Russian, Somali, Tigrinya and Turkish.

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.²⁵⁴ 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 1.²⁵⁵

Within a few days after filing the application, the asylum seeker takes part in a registration 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

²⁴⁹ Council of State, ECLI:NL:RVS:2020:2455, 16 October 2020, available in Dutch at: <https://bit.ly/489eeos>.

²⁵⁰ Council of State, ECLI:NL:RVS:2021:1256, 17 June 2021, available in Dutch at: <https://bit.ly/3wd2mo7>.

²⁵¹ Regional Court of Haarlem, NL23.28650, ECLI:NL:RBDHA:2023:18085, 10 November 2023, available in Dutch at: <https://bit.ly/4bzLEiM>.

²⁵² Paragraph C2/5 Aliens Circular.

²⁵³ Paragraph A2/10.1 Aliens Circular.

²⁵⁴ Article 3.109c(1) Aliens Decree.

²⁵⁵ Regional Court of Rotterdam, ECLI:NL:RBDHA:2021:4036, 20 April 2021, available in Dutch at: <https://bit.ly/4997Heu>.

request is rejected and processed in the Dublin procedure.²⁵⁶ In 2022 and 2023, there have been issues relating to the formal registration and the registration interview, because of the chaotic situation in Ter Apel (for more information, see [Short overview of the asylum procedure](#) and [Reception Conditions](#)). Because of this, asylum seekers had to wait up to several months after filing their application until they had their reporting interview. Because this disparity between the moment people request asylum and when they are able to officially lodge the asylum request, the following issue arose: at what moment do the Dublin time periods for take back and take charge requests, as well as transfer periods start. The IND used the day of the official registration (so sometimes months after arrival in Ter Apel) as the starting date to calculate these deadlines. However, on 21 September 2023, the Council of State ruled that original moment of expressing the need for international protection is to be considered the starting date for the Dublin time periods.²⁵⁷ In line with this ruling, the IND has started using this moment as the starting date and in cases where incorrectly a later date was used, Region Courts have ruled in favour of the asylum seeker.

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 that the asylum request 'shall not be considered', however, is only taken after the Dublin request has been expressly or tacitly accepted by the other Member State.²⁵⁸ Normally, the asylum seeker will be notified that their application will be handled in the Dublin-track relatively soon after registration. However, the procedure took much longer than usual starting in 2022. For comparison: in 2019 it took an average of 14-15 weeks from the moment of registration to the issuance of a Dublin decision. In 2022, the average time increased to 20-28 weeks.²⁵⁹ As of 2 January 2024, the Dublin interview is conducted after 7 weeks.²⁶⁰ On average it takes 26 weeks between the moment of registration to the moment of a Dublin decision.²⁶¹

General remarks concerning video/audio recording, interpreters, accessibility and quality of the interview also apply to the Dublin procedure.

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 charge 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,²⁶² is a request that falls under Article 27, third paragraph of the Dublin Regulation.²⁶³ In those cases, the transfer period is suspended and will restart after the court ruling.

In the course of 2021, the Council of State referred multiple preliminary questions about suspensive effect in Dublin cases to the CJEU. These questions concerned whether the so-called 'chain rule' applies to Dublin III (cases C-323/21, C-324/21 and C-325/21);²⁶⁴ whether the suspensive effect granted as a result of an application for residence in the Netherlands on regular grounds can also be regarded as

²⁵⁶ Paragraph C2/5 Aliens Circular.

²⁵⁷ Council of State, Decision No 202302386/1, ECLI:NL:RVS:2023:3569, 21 September 2023, available in Dutch at: <https://bit.ly/3STIeAm>.

²⁵⁸ Article 30, Aliens Act.

²⁵⁹ IND, Asylum processing times, available at: <https://bit.ly/3Ijt8rW>.

²⁶⁰ IND, *Asiel: Laatste ontwikkelingen*, available in Dutch at: <https://bit.ly/3tMTVyZ>.

²⁶¹ Ministry of Justice and Security, *Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0FO>, 88.

²⁶² Article 72, third paragraph, Aliens Act.

²⁶³ Council of state, Decision No. 201907936/1/V3, 24 February 2020, available in Dutch at: <https://bit.ly/49qJmAM>.

²⁶⁴ Council of State, ECLI:NL:RVS:2021:983; ECLI:NL:RVS:2021:984; ECLI:NL:RVS:2021:985, 19 May 2021, available at: <https://bit.ly/49waXAn>.

suspensive effect in accordance with Article 27, third paragraph of the Dublin Regulation (case C-338/21);²⁶⁵ and whether the State Secretary can request suspensive effect in the onward appeal stage (case C-556/21).²⁶⁶

On 12 January 2023, the CJEU ruled that the ‘chain rule’ does not apply to Dublin cases. On 30 March 2023, the CJEU answered the preliminary questions about the transfer period and suspensive effect in Dublin cases. In the case of *E.N., S.S. and J.Y. v. The Netherlands* (C-556/21),²⁶⁷ the CJEU considered that the State Secretary can only request suspensive effect in the onward appeal stage if the first appeal had suspensive effect. In practice, this means that the State Secretary can only request to suspend the transfer deadline in Dublin cases when presenting an appeal against a judgment of the Council of State, if the first instance court had granted suspensive effect per request of the asylum seeker.

In the case of *S.S. and N.Z v. Netherlands* (C-338/21),²⁶⁸ the CJEU considered that suspensive effect that was granted in a procedure for a residence permit on regular grounds (in this case: a residence permit as a victim of human trafficking) does not lead to suspension of the Dublin transfer period.

Following the judgment of *E.N., S.S and J.Y. v. The Netherlands*, the IND changed their policy regarding suspensive effect of a provisional ruling. Prior to this decision, an asylum seeker was allowed to stay in the Netherlands to await the result of the provisional ruling, if that provisional ruling was requested within 24 hours of the negative decision.²⁶⁹ However, the provisional judge’s ruling was still decisive as to whether the transfer decision had suspensive effect. In other words, if the provisional judge decided to reject the request and not grant suspensive effect, the asylum seeker could be transferred to the responsible member state, even though the appeal was not yet decided upon by the court. As a result, the transfer period was not suspended if the provisional measure was rejected.

This change in policy amounted to the following. The State Secretary argued that the mere request of a provisional ruling amounted to suspensive effect as laid down in Article 27(3) Dublin Regulation, meaning that this resulted in the suspension of the transfer period (Article 29(1) Dublin Regulation). On 22 November 2023, the Council of State ruled that this policy was not in accordance with the Dublin Regulation, and that a judge’s decision regarding the request for a provisional ruling decided if it had suspensive effect, and not the mere request.²⁷⁰ As a result, the policy change was reverted to the situation as it was before.

Lastly, the Council of State also ruled in accordance with the ECJ’s judgment in *E.N., S.S and J.Y. v. The Netherlands*, that an onward appeal only has suspensive effect, if the transfer decision was suspended in appeal. Both the State Secretary and asylum seeker can thus only request a provisional measure in onward appeal, if a provisional measure was allocated in appeal.²⁷¹

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,²⁷² in 2020 the State Secretary clarified Dutch policy regarding the interpretation of Article 29(2) of the Dublin Regulation.²⁷³ 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 the reception facilities without informing authorities as to their destination, or

²⁶⁵ Council of State, ECLI:NL:RVS:2021:1124, 26 May 2021, available in Dutch at: <https://bit.ly/4bxHNmn>.

²⁶⁶ Council of State, ECLI:NL:RVS:2021:1929, 1 September 2021, available in Dutch at: <https://bit.ly/3Oysyjq>.

²⁶⁷ CJEU, C-556/21, *Staatssecretaris van Justitie en Veiligheid v E.N., S.S., J.Y.*, 30 March 2023, available at: <https://bit.ly/3wbmaZ7>.

²⁶⁸ CJEU, C-338/21, *Staatssecretaris van Justitie en Veiligheid v S.S., N.Z., S.S.*, 30 March 2023, available at: <https://bit.ly/3SRiu7o>.

²⁶⁹ Paragraph C2/11 Aliens Circular.

²⁷⁰ Council of State, ECLI:NL:RVS:2023:4198, 22 November 2023, available in Dutch at: <https://bit.ly/3OCfz04>.

²⁷¹ Council of State, ECLI:NL:RVS:2023:4197, 22 November 2023, available in Dutch at: <https://bit.ly/48d4ycD>.

²⁷² CJEU, C-163/17, *Abubacarr Jawo v Bundesrepublik Deutschland*, 19 March 2019, available at: <https://bit.ly/3wi0WIM>.

²⁷³ WBV 2020/22, 27 October 2020.

- ❖ in case the asylum seeker does not appear at the time of transfer

The Council of State has ruled that a person only ‘absconds’ in the sense of the *Jawo* case when they deliberately remain physically out of reach of the authorities.²⁷⁴ The Regional Court of Roermond recently clarified that these two criteria are cumulative. The asylum seeker is deemed to have absconded, if they leave the reception facilities without informing the authorities, and subsequently does not show up for their transfer.²⁷⁵

2.2.1 Individualised guarantees

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).²⁷⁶ If the asylum seeker considers the mere exchange of medical information to be insufficient, they 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, they will not have access to adequate care and reception.²⁷⁷ 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.²⁷⁸

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.²⁷⁹ 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.²⁸⁰

In individual cases, the State Secretary might need to seek reassurances as to whether an asylum seeker will receive accommodation and is treated in accordance with EU law in the responsible member state. If the State Secretary fails to do so, a Regional Court might rule that failing to seek these reassurances results in an illegitimate transfer decision. For example, the Regional Court of Utrecht found that a young woman with an infant could not be transferred to France without further individual guarantees as determined in the CJEU case *Tarakhel v. Switzerland*.²⁸¹ These individual guarantees are not requested for specific countries or for specific groups of asylum seekers, but the State Secretary

²⁷⁴ Council of State, ECLI:NL:RVS:2022:3630, 14 December 2022, available in Dutch at: <https://bit.ly/48grCHg>.

²⁷⁵ Regional Court of Roermond, Decision No NL23.17941, ECLI:NL:RBDHA:2023:17327, 14 November 2023, available in Dutch at: <https://bit.ly/49uaLlj>.

²⁷⁶ Council of State, Decision No ECLI:NL:RVS:2018:4131, 19 December 2018, available in Dutch at: <https://bit.ly/488cXhf>.

²⁷⁷ Council of State, Decision No ECLI:NL: RVS:2019:2792, 19 July 2019, available in Dutch at: <https://bit.ly/48cxHo0>; Council of State, Decision No ECLI:NL: RVS:2019:2042, 27 June 2019, available in Dutch at: <https://bit.ly/489JgMP>; Council of State, Decision No 201410601/1, 17 April 2015, available in Dutch at: <https://bit.ly/49a1OOD>.

²⁷⁸ Council of State, Decision No ECLI:NL: RVS:2019:3138, 12 September 2019, available in Dutch at: <https://bit.ly/49f5BtW>.

²⁷⁹ CJEU, Case C-578/16, *C. K. and Others v Republika Slovenija*, 16 February 2017, available at: <https://bit.ly/3OAwO1y>.

²⁸⁰ Council of State, Decision No 201901380/1, 22 August 2019, available in Dutch at: <https://bit.ly/4byalMI>; Council of State, Decision No 201709136/1, 16 January 2019, available in Dutch at: <https://bit.ly/3uCMSsV>.

²⁸¹ Regional Court of Utrecht, ECLI:NL:RBDHA:2023:19180, 15 November 2023, available in Dutch at: <https://bit.ly/49pX1bl>.

must be vigilant as to whether the asylum seeker will be treated in accordance with international regulations in the responsible state.

2.2.2 Transfers

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.²⁸²

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, they have 4 weeks to do so.²⁸³ 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.²⁸⁴

2.3 Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

During the application procedure, the IND conducts a registration interview that 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 send 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 their 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.²⁸⁵ In principle, these arguments should be brought to the attention of the IND during the registration interview. However, if the IND decides to not consider the asylum request on the ground that the Dublin Regulation applies, the asylum seeker can appeal this decision, and present these arguments in court. In theory an additional interview can be conducted after the registration interview to further explain the arguments as to why a Dublin transfer would be in breach of European Law, but in practice this does not occur.²⁸⁶

In the case of an asylum seeker who, during the registration 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.²⁸⁷

²⁸² Regional Court Amsterdam, Decision NL18.8386, 8 June 2018.

²⁸³ Article 62c(1) Aliens Act.

²⁸⁴ Council of State, ECLI:NL:RVS:2017:2162, 10 August 2017, available in Dutch at: <https://bit.ly/4bsZiEl>.

²⁸⁵ CJEU, Case C-63/15, *Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie*, Judgment of 7 June 2016, available at: <https://bit.ly/3HTE8lj>.

²⁸⁶ Practice-based observation by the Dutch Council for Refugees, January 2024.

²⁸⁷ Council of State, ECLI:NL:RVS:2018:2272, 6 July 2018, available in Dutch at: <https://bit.ly/4bxBRK1>.

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?
 - ❖ If yes, is it Yes No
 - ❖ If yes, is it suspensive Judicial Administrative
 - Yes No

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”.²⁸⁸ The asylum seeker may appeal this decision before the Regional Court.²⁸⁹ The appeal must be filed within a week after the decision not to handle the asylum application.²⁹⁰ As the appeal has no automatic suspensive effect, the applicant must file a separate request to suspend the transfer, a so called provisional ruling (*voorlopige voorziening*, or *vovo*).

At the beginning of January 2021, a request for a preliminary ruling was made by the Regional Court of Haarlem.²⁹¹ The court was faced with the question of whether an unaccompanied minor has the right to bring an effective legal remedy against the rejection to take charge of their case based on Article 8, second paragraph, of the Dublin Regulation. The CJEU concludes that an unaccompanied minor applicant must be able to exercise a judicial remedy, under Article 27(1) of the Dublin Regulation, not only where the requesting Member State adopts a transfer decision, but also where the requested Member State refuses to take charge of the person concerned, in order to be able to plead an infringement of the right conferred by Article 8(2) of that regulation.²⁹²

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?
 - ❖ Does free legal assistance cover: Yes With difficulty No
 - Representation in interview
 - Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 - ❖ Does free legal assistance cover Yes With difficulty No
 - Representation in courts
 - 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 lawyer only when the IND issues a written intention to reject the application.²⁹³ The method for appointing the lawyer to the asylum seeker is the same as outlined in [Regular Procedure – Legal assistance](#).

²⁸⁸ Article 30(1) Aliens Act

²⁸⁹ Article 62(c) Aliens Act.

²⁹⁰ Articles 69(2)(b) and 82(2)(a) Aliens Act.

²⁹¹ Regional Court Haarlem, ECLI:NL:RBDHA:2021:157, 17 January 2021, available in Dutch at <https://bit.ly/3UNRPda>; CJEU, C-19/21, *I, S v Staatssecretaris van Justitie en Veiligheid*, 01 August 2022, available at: <https://bit.ly/3Sv6MhD>.

²⁹² CJEU, C-19/21, *I, S v Staatssecretaris van Justitie en Veiligheid*, 01 August 2022, available at: <https://bit.ly/3Sv6MhD>.

²⁹³ Article 3.109c(1) Aliens Act. This is due to the lack of a rest and preparation period.

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 their 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 2019.²⁹⁴ Essentially, the lawyer informs the Legal Aid Board and withdraws themselves from the case.

2.6 Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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 ECtHR judgement in the case of *M.T. v the Netherlands*,²⁹⁵ establishing that a Dublin transfer to Italy of a single mother and two children would not violate Article 3 ECHR, the Council of State has also confirmed that the principle of mutual trust applies to Italy for particularly vulnerable applicants.²⁹⁶

A more detailed description of the case law regarding Dublin Italy cases over the years 2015 – 2021 can be found in the [AIDA report: Netherlands update 2021](#).

However, on 5 December 2022, the Italian authorities issued a circular letter asking the other Dublin Units to temporarily halt all Dublin transfers to Italy due to a lack of reception facilities for Dublin returnees. The IND emphasised that this was a temporary transfer impediment and that this did not mean that Italy can no longer be regarded as the responsible Member State. Some Regional Courts agreed with this assessment,²⁹⁷ whereas others concluded that this could not be seen as a temporary issue and must rather be seen as a possible structural issue with Italian reception conditions.²⁹⁸

Following the Circular Letter, Dublin transfers to Italy were suspended until the Council of State issued its judgment. On 26 April 2023, the Council of State judged that there was no more mutual trust vis-à-vis Italy.²⁹⁹ The main reason for the suspension is the lack of accommodation in Italy, where a transfer to that country could mean that an asylum seeker finds itself in a situation of severe material deprivation as outlined in the CJEU judgment *Jawo*. Following this decision, no more transfers of Dublin claimants have taken place. The IND still sends claim requests to Italy which are fictively accepted, meaning asylum seekers have to wait another six months before their asylum request is handled by the Netherlands.³⁰⁰

Greece: The Netherlands suspended all Dublin transfers to Greece after the ECtHR's ruling in *M.S.S. v. Belgium and Greece*. The Aliens Circular incorporates the *M.S.S.* jurisprudence as interpreted by the Council of State.³⁰¹ However, following the recommendation of the European Commission of 8 December 2016, the Dutch government expressed the wish to recommence Dublin transfers to Greece,

²⁹⁴ Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 17 2019, 20 September 2019.

²⁹⁵ ECtHR, 23 March and amended on 15 April 2021, *M.T. v the Netherlands*, appl. no. 46595/19, ECLI:CE:ECHR:2021:0323DEC004659519, available at: <https://bit.ly/3SyPRKX>.

²⁹⁶ Council of State, ECLI:NL:RVS:2020:986, 8 April 2020, available in Dutch at: <https://bit.ly/3OUrc2j>.

²⁹⁷ See, for example: Regional Court of Arnhem, NL22.25014, 23 January 2023, available in Dutch at: <https://bit.ly/3w9xogH>; Regional Court of Den Haag, NL22.25592, 12 January 2023.

²⁹⁸ See, for example: Regional Court of Utrecht, NL22.25746, 13 January 2023, available in Dutch at: <https://bit.ly/42BdKpJ>; Regional Court of Roermond, ECLI:NL:RBDHA:2023:1082, 3 February 2023, available in Dutch at: <https://bit.ly/48azmdO>.

²⁹⁹ Council of State, Decision No 202300521/1, ECLI:NL:RVS:2023:1655, 26 April 2023, available in Dutch at: <https://bit.ly/3S0004U>.

³⁰⁰ IND Information Message 2023/86 'Dublin-Italië', available in Dutch at: <https://bit.ly/3SQdwXB>.

³⁰¹ Paragraph C2/5.1 Aliens Circular. See also Council of State, Decision No 201009278/1/V3, 14 July 2011, available at: <https://bit.ly/499GGYD>.

with the exception of transfers of vulnerable asylum seekers.³⁰² In 2019, the Dutch Secretary of State tried to transfer several applicants to Greece on the basis of these recommendations by the EC. 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 would result in a violation of Article 3 ECHR, unless the asylum seeker is guaranteed legal assistance during the asylum procedure by the Greek authorities.³⁰³ This situation is still in place today, and the State Secretary has not issued any transfer decisions for Dublin transfers to Greece.

Malta: On 15 December 2021, the Council of State ruled that the State Secretary must conduct further research on the situation for asylum seekers in Malta.³⁰⁴ The Council of State came to this conclusion based on recent information from the Maltese NGO aditus foundation, which shows that asylum seekers who are transferred 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 State Secretary 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.³⁰⁵ 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. There have not been any requests sent to Malta or transfers to Malta since this judgement.

Denmark: On 6 July 2022, the Council of State issued three judgments on indirect refoulement in Dublin cases in the event of differences in protection policies between Member States.³⁰⁶ Two of these cases concerned Syrian nationals who argued that would be at risk of refoulement in case of being returned to Denmark, as in the country the province of Damascus is considered safe enough to return to. The Council ruled that a difference in protection policy may be a reason to suspend the Dublin transfer. To this end, the applicant must demonstrate: 1) that there is a fundamental difference in protection policy between the Netherlands and the other Member State (whereby it is established that he would receive protection in the Netherlands and not in the other Member State), 2) that the highest national court in the other Member State does not disapprove of the policy applicable there. In the opinion of the Council of State, the applicants had fulfilled their burden of proof with regard to the Danish policy on Damascus and the level of judicial protection in Denmark.

However, on 6 September 2023, the Council of State judged that the Danish protection policy had changed in such a way that Syrian transfers to Denmark do not violate the prohibition of indirect *refoulement* anymore.³⁰⁷ The two countries' protection policies could not be said to be 'fundamentally different' anymore. As such, Syrians can be transferred to Denmark again on the basis of the Dublin Regulation.

³⁰² 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>.

³⁰³ Council of State, Decision No 201904035/1/V3, 23 October 2019, available in Dutch at: <https://bit.ly/3OFvr1U>; Council of state, Decision No 201904044/1/V3, 23 October 2019, available in Dutch at: <https://bit.ly/3OD8Z9x>.

³⁰⁴ Council of State, ECLI:NL: RVS:2021:2791, 15 December 2021, available in Dutch at: <https://bit.ly/3OEffxF>.

³⁰⁵ 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>.

³⁰⁶ Council of State, ECLI:NL:ABRVS:2022:1862, ECLI:NL:ABRVS:2022:1863 and ECLI:NL:ABRVS:2022:1864, 6 July 2022, available in Dutch at: <https://bit.ly/3OFdGzD>.

³⁰⁷ Council of State, Decision No 202206466/1, ECLI:NL:RV:S2023:3286, 6 September 2023, available in Dutch at: <https://bit.ly/3SxAOKS>.

Hungary: Following a Council of State ruling in November 2015,³⁰⁸ the “sovereignty” clause is applied in cases where it has been established that Hungary is the responsible Member State. As a result, to the Dutch Council for Refugees’ 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 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.³⁰⁹ In a letter to the House of Representatives of 22 March 2018, the State Secretary made it clear that Hungary refuses to participate in a conciliation procedure.³¹⁰ As the State Secretary 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.³¹¹ This was still the case in 2023.

Poland: According to a 2020 decision of the Regional Court Haarlem, there is a fundamental lack of independence of the courts of Poland. However, according to the court, it cannot be inferred that there are compelling and factual grounds to believe that every asylum seeker runs a real risk that their fundamental right to an effective remedy will be violated. The Regional Court found that the principle of mutual trust regarding Poland still stands.³¹² In 2021, the Regional Courts of Amsterdam,³¹³ Groningen,³¹⁴ and Den Bosch³¹⁵ 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 Regional Court of Den Bosch has referred preliminary questions to the CJEU on the scope and purport of the principle of mutual trust in the context of the transfer 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.³¹⁶ Because the IND decision in that case was withdrawn, the questions were also withdrawn and there will be no judgment from the CJEU in that case. However, the questions were asked again in a case about a Dublin transfer to Poland.³¹⁷ The Council of State held a hearing on Dublin-Poland cases on 14 December 2022 and decided to wait for the CJEU case before issuing a judgment on the matter.³¹⁸ The Advocate-General of the ECJ concluded on 13 July 2023 that the principle of mutual trust is ‘divisible’, meaning that it is possible that a member state infringes upon the rights of third-country nationals at the border in the form of pushbacks, but that the principle of mutual trust is still applicable for Dublin returnees as they will not be in contact with these rights’ infringements.³¹⁹ On 29 February 2024, the Court of Justice followed the conclusion of the

³⁰⁸ Council of State, Decision No 201507248/1, 26 November 2015, available in Dutch at: <https://bit.ly/3UffS0W>.

³⁰⁹ State Secretary, Letter TK 2017-2018, 19 637, No 2355, 27 November 2017.

³¹⁰ KST 19637, No. 2374, 22 March 2018.

³¹¹ KST 19637, No 2374, 22 March 2018.

³¹² Regional Court of Haarlem, 12 November 2020, ECLI:NL:RBDHA:2020:11769, available in Dutch at: <https://bit.ly/3Utg0xs>.

³¹³ Regional Court of Amsterdam, ECLI:NL:RBDHA:2021:11115, 29 July 2021, available in Dutch at: <https://bit.ly/3HWylLT>.

³¹⁴ Regional Court of Groningen, NL21.1431, 28 April 2021.

³¹⁵ Regional Court of Den Bosch, NL.21.2550, 1 October 2021.

³¹⁶ Regional Court of Den Bosch, ECLI:NL:RBDHA:2021:10735, 4 October 2021, available in Dutch at: <https://bit.ly/3HUwHuc>; CJEU, C-614/21, *G v Staatssecretaris van Justitie en Veiligheid*, 15 March 2022, available in Dutch at: <https://bit.ly/485n4n2>.

³¹⁷ Regional Court of Den Bosch, ECLI:NL:RBDHA:2022:5724, 15 June 2022, available in Dutch at: <https://bit.ly/3wk1Lkj>.

³¹⁸ Council of State, *Persagenda*, available in Dutch at: <https://bit.ly/3UNulzl>.

³¹⁹ CJEU, Conclusions of the Advocate General, ECLI:EU:C:2023:593, *X. v. the Netherlands*, 13 July 2023, available at: <https://bit.ly/49xFY7j>.

Advocate-General in that the principle of mutual trust is divisible. The chance the asylum seeker will be subjected to a treatment contrary to Article 4 EU Charter upon returning to the responsible member state determines the lawfulness of the transfer decision. Because of this decision, it is expected that Dublin transfers to Poland will continue, as Dublin returnees are generally treated in accordance with European law and the human rights violations such as pushbacks and detention only occur at the border.³²⁰

Romania: The Council of State ruled on 29 July 2021 that the Netherlands could still depend on the principle of mutual trust with regards to Romania.³²¹ However, on 1 August 2023 the Regional Court of Utrecht ruled that this was uncertain due to reports of pushbacks on Romanian soil. A decisive factor in this case was information from NGOs stating that also Dublin returnees could be subjected to pushbacks.³²² This judgment was followed by the Regional Court of Haarlem three months later.³²³ As a result, the State Secretary had to conduct research regarding the pushback situation in Romania. On 27 December, the Council of State ruled that the principle of mutual trust was still applicable to Romania.³²⁴ According to them, it did not follow from the available information that Dublin returnees are subjected to pushbacks, or that they could be transferred to Serbia on the basis of an agreement between the two countries. As such, Dublin transfers to Romania were continued.

Croatia: On 13 April 2022, the Council of State ruled that the State Secretary must conduct further research regarding the situation of asylum seekers being transferred to Croatia under the Dublin Regulation. This is due to reports of frequent pushbacks (including of asylum seekers who have already reached Croatian territory), which may result in a violation of the principle of nonrefoulement.³²⁵ On 20 January 2023, the State Secretary announced that Dublin transfers to Croatia would be resumed.³²⁶ The Croatian authorities had responded to questions put forward by the Dutch authorities and had assured that they will act in line with international obligations, according to the State Secretary. However, following the decision to resume the transfers, several Regional Courts ruled that the information provided by the Croatian government differed vastly from other publicly available information.³²⁷ Once again, the Council of State had to decide on the issue. In its judgment on 13 September 2023, it ruled that the conducted research was deemed sufficient and that the situation in Croatia was satisfactory enough to decide to continue Dublin transfers.³²⁸

Bulgaria: In a judgment of 28 August 2019, the Council of state confirmed that the principle of mutual trust applies to Bulgaria. In 2022, various Regional Courts reference to the Council of State judgement regarding pushbacks in Croatia (see above) and have ruled that the widespread practice of pushbacks in Bulgaria also stand in the way of Dublin transfers to that Member State.³²⁹ The Council of State ruled on 16 August 2023 that the State Secretary did not need to conduct further research regarding the Bulgarian situation, because the pushbacks in Bulgaria only happen at the borders.³³⁰ Dublin returnees have limited moving space, and as such will not be subjected to pushbacks. Additionally, the accommodation situation was not deemed severe enough to contradict the principle of mutual trust. As a result, Dublin transfers to Bulgaria continued again.

³²⁰ CJEU, Case C-392/22, *X. v. the Netherlands*, Judgment of 29 February 2024, available at: <https://bit.ly/3vrXgJu>.

³²¹ Council of State, ECLI:NL:RVS:2021:1645, 29 July 2021, available in Dutch at: <https://bit.ly/49u0DJf>.

³²² Regional Court of Utrecht, Decision No NL23.20052, 1 August 2023, available in Dutch at: <https://bit.ly/495WUIt>.

³²³ Regional Court of Haarlem, Decision No NL23.30353 and NL23.30354, 8 November 2023.

³²⁴ Council of State, Decision No ECLI:NL:RVS:2023:4844, 27 December 2023, available in Dutch at: <https://bit.ly/49f7qXO>.

³²⁵ Council of State, ECLI:NL:RVS:2022:1042 and ECLI:NL:RVS:2022:1043, 13 April 2022, available in Dutch at: <https://bit.ly/42uYhYx>.

³²⁶ State Secretary, Letter to the House or representatives no. 19673 3061, 20 January 2023, available in Dutch at: <https://bit.ly/3XOwka8>.

³²⁷ See for example Regional Court of Amsterdam, ECLI:NL:RBDHA:2023:8123, 6 July 2023, available in Dutch at: <https://bit.ly/497kmi1>.

³²⁸ Council of State, ECLI:NL:RVS:2023:3411, 13 September 2023, available in Dutch at: <https://bit.ly/42xjFWG>.

³²⁹ Regional court of Utrecht, NL22.7820 and NL22.7821, 15 May 2022; Regional Court Haarlem, NL22.12598, 29 July 2022.

³³⁰ Council of State, ECLI:NL:RVS:2023:3133, 16 August 2023, available in Dutch at: <https://bit.ly/42z1eHq>.

Cyprus: Several Regional Courts have ruled that Dublin transfers to Cyprus can no longer be carried out, due to a lack of reception facility in Cyprus.³³¹ Most recently, the Regional Court of Middelburg ruled that the accommodation problems in Cyprus were very severe. Of all Dublin returnees, only women and families were assured of receiving shelter.³³² The Council of State is yet to decide on this matter.

Belgium: On 20 February 2023, the Regional Court of Rotterdam ruled that it is not clear whether the applicant will have access to reception facilities upon return to Belgium. It concluded that the applicant provided concrete indications of his risk of being treated contrary to Article 3 ECHR or Article 4 EU Charter if returned to Belgium. Consequently, the Court annulled the decision and requested the State Secretary to justify its reliance on the principle of mutual trust.³³³ Following this judgment, multiple other Regional Courts decided likewise with regard to single men. For families, women and vulnerable people, the principle of mutual trust was still applicable as they received priority with regards to accommodation. Single men were placed on a waiting list, meaning they had to wait for a number of months.³³⁴ Appeals from men have therefore generally been successful, whereas women, families and vulnerable people can be transferred to Belgium. However, on 13 March 2024, the Council of State ruled that transfers for single men can also continue. It found that even though there are significant problems with the Belgian reception facilities, since asylum seekers can find shelter at locations such as homeless shelters, the situation can not be said to reach the threshold of the situation of severe material deprivation as outlined in the ECJ judgment *Jawo*.³³⁵

Suspension of transfers due to the war in Ukraine

In a letter to parliament dated 17 March 2022, the State Secretary stated that Poland, Slovakia, the Czech Republic and Romania had suspended all incoming Dublin transfers due to the influx of Ukrainian refugees.³³⁶ This suspension lasted only until summer; around August 2022, the State Secretary resumed Dublin transfers to these countries. This has not changed.

For information regarding BIPs, please see [First Country of Asylum – EU Member States](#).

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.

³³¹ Regional Court Zwolle, NL22.3233 and NL22.3236, 5 March 2022; Regional Court of Amsterdam, NL22.3404, 15 March 2022; Regional Court of Amsterdam, ECLI:NL:RBDHA:2021:14245, 15 December 2021; Regional Courts of Haarlem, NL21.2036, 31 March 2021.

³³² Regional Court Middelburg, Decision No NL23.18813, ECLI:NL:RBDHA:2023:15644, 12 October 2023, available in Dutch at: <https://bit.ly/3SGCusq>.

³³³ Regional Court Rotterdam, ECLI:NL:RBDHA:2023:1853, 20 February 2023, available in Dutch at: <https://bit.ly/3SAsaC1>.

³³⁴ See for example Regional Court of Utrecht, ECLI:NL:RBDHA:2023:13006, 23 August 2023, available in Dutch at: <https://bit.ly/3SBcSYS>.

³³⁵ Council of State, ECLI:NL:RVS:2024:896, 13 March 2024, available in Dutch at: <https://bit.ly/3U3FNKX>.

³³⁶ State Secretary, Letter to the House of Representatives no. 19637 2834, 17 March 2022, available in Dutch at: <https://bit.ly/3GfnQC6>.

As mentioned in this report, there have been significant issues with [Registration](#) and [reception](#) of asylum seekers throughout 2022 and 2023. When an asylum seeker is transferred (back) to the Netherlands on the basis of the Dublin Regulation, they will encounter the same problems as all other asylum seekers in the Netherlands.

3. Admissibility procedure

3.1 General (scope, criteria, time limits)

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

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

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

This examination is 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, are handled in the [Accelerated Procedure](#) (“Track 2”).³³⁷

There are no statistics available on the number of applications dismissed as inadmissible in 2023. No statistics are (publicly) available regarding the number of applications dismissed as inadmissible.

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 Procedure is followed, with the exception of persons who have already received international protection in another EU Member State, whose asylum requests are handled in Track 2 as outlined below.³³⁸ Therefore, the same remarks are applicable concerning the interview (see [Regular Procedure: Personal Interview](#)).

³³⁷ Article 3.109ca(1) Aliens Decree.

³³⁸ Article 3.109ca(1) Aliens Decree.

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
 - Judicial Administrative
- ❖ If yes, is it
 - Yes No
- ❖ 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 inadmissible³³⁹ Just like most other rejection grounds (with the exception of ‘manifestly unfounded’), an asylum seeker whose request was rejected as inadmissible has to leave the Netherlands within four weeks.³⁴⁰ This appeal has no automatic suspensive effect, except in the case of the “safe third country” concept.³⁴¹

The same rules apply regarding a request rejected as inadmissible as the other grounds for rejection outlined in [Regular Procedure: Appeal](#).

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 Procedure is followed, with the exception of persons who have already received international protection in another EU Member State, whose asylum requests are handled in Track 2 as outlined below.³⁴² Therefore the same remarks are applicable concerning legal assistance (see [Regular Procedure: Legal Assistance](#)).

3.5 Suspension of returns for beneficiaries of protection in another Member State

For detailed information on this, please see [First Country of Asylum – EU Member States](#).

³³⁹ Article 69(2)(c) Aliens Act.

³⁴⁰ Article 62 Aliens Act.

³⁴¹ Article 82(2)(b) Aliens Act.

³⁴² Article 3.109ca(1) Aliens Decree.

4. Border procedure (border and transit zones)

4.1 General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Where is the border procedure mostly carried out? Air border Land border Sea border
3. Can an application made at the border be examined in substance during a border procedure? Yes No
4. Is there a maximum time limit for border procedures laid down in the law? Yes No
❖ If yes, what is the maximum time limit? 4 weeks
5. Is the asylum seeker considered to have entered the national territory during the border procedure? Yes No

The Netherlands has a border procedure applicable to asylum seekers applying at airports and ports.³⁴³ 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:³⁴⁴

- ❖ Not considered, due to the application of the Dublin Regulation;³⁴⁵
- ❖ Inadmissible;³⁴⁶ or
- ❖ Manifestly unfounded.³⁴⁷

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.³⁴⁸ The maximum duration of the border procedure is 4 weeks.³⁴⁹ 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.³⁵⁰

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 upcoming interviews by explaining what to expect and investigating whether relevant documents could be collected (see section [Regular Procedure: Legal Assistance](#) for the appointment of the legal aid provider). These investigations and the preparation take place prior to the start of the asylum procedure. The AC at Schiphol Airport is a closed centre. The asylum seeker is subjected to border detention to prevent them from 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

³⁴³ 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.

³⁴⁴ 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.

³⁴⁵ Article 30 Aliens Act.

³⁴⁶ Article 30a Aliens Act.

³⁴⁷ Article 30b Aliens Act.

³⁴⁸ Article 3.109b(1) Aliens Decree.

³⁴⁹ Article 3(7) Aliens Act.

³⁵⁰ Articles 3 and 6 Aliens Act. See also IND, Work Instruction 2017/1 Border procedure, available in Dutch at: <https://bit.ly/3SXji9l>, 6.

rest and preparation period.³⁵¹ As previously mentioned, the Dutch Aliens Decree was amended on 25 May 2021, which has altered certain aspects of the Regular Procedure that also apply to the border procedure. For example, the abolishment of 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.³⁵² 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;³⁵³

Families with children where there are no counter-indications such as a criminal record or family ties not found real or credible,³⁵⁴ as the Netherlands does not detain families with children at the border.³⁵⁵ 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;³⁵⁶

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.³⁵⁷

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 Procedure:³⁵⁸

- ❖ 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*);
- ❖ 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.³⁵⁹ 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 an application at the border. The 40% decline compared to 2019 was due to the corona restrictions. In 2021, 1,120 asylum seekers filed an application at the border.³⁶⁰ In 2022, 1550 asylum seekers filed an application at the border.³⁶¹ No statistics on applications of 2023 at the border were available at the moment of publication of the report.

³⁵¹ Article 3.109b(2) Aliens Decree.

³⁵² Article 3.108d(4) Aliens Decree.

³⁵³ Article 3.109b(7) Aliens Decree.

³⁵⁴ Paragraph A1/7.3 Aliens Circular.

³⁵⁵ Paragraph A1/7.3 Aliens Circular.

³⁵⁶ Article 5.1a(3) Aliens Decree.

³⁵⁷ Article 3.108 Aliens Decree.

³⁵⁸ Paragraph C1/2 Aliens Circular.

³⁵⁹ Dutch Council for Refugees, *Standpunt: asielprocedure*, available in Dutch at: <https://bit.ly/3joFDin>.

³⁶⁰ Ministry of Justice and Security, *De Staat van Migratie 2022*, available in Dutch at: <https://bit.ly/3hLODxJ>.

³⁶¹ Ministry of Justice and Security, *De Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0FO>.

4.2 Personal interview

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

4.3 Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

❖ If yes, is it

❖ If yes, is it suspensive

Yes

No

Judicial

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.³⁶² 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).³⁶³ This bill came into effect on 22 April 2020.³⁶⁴

4.4 Legal assistance

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

5. Accelerated procedure (“Track 2”)

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

There is no accelerated procedure defined as such in the law. However, since 2016 a specific “simplified procedure”³⁶⁵ (“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 forbidden by law. In addition, asylum requests from certain groups are handled in the [Regular Procedure](#) of Track 4 instead of Track 2. This is the case for groups exempted from the safe country of origin designation, such as LGBTIQI+, journalists, women or human rights activists. Certain regions can also be excluded from the safe country of origin designation, such as Jammu and Kashmir in India.³⁶⁶ However, asylum seekers need to prove that they belong to such exempted groups or regions in their registration interview. As such, it is possible that the IND does not believe that someone is a human rights activist, which means the asylum application is handled in Track 2 instead of Track 4.

³⁶² Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019, available in Dutch at: <https://bit.ly/49ucBmd>.

³⁶³ Explanatory Memorandum, KST 35 271, nr. 3.

³⁶⁴ Stb. 2020, nr. 136.

³⁶⁵ The term “simplified procedure” is used by the IND in the relevant information leaflet, available at: <http://bit.ly/2w3lOiW>.

³⁶⁶ Aliens Circular, paragraph C7/1.2.

Vulnerable people are not exempted from their asylum request being processed in Track 2. In addition, the medical examination is not mandatory in Track 2. However, in a judgment of 6 September 2023, the Council of State ruled that the State Secretary always needs to look out for signs that an asylum seeker is vulnerable. However, this does not mean that the asylum request should be handled in Track 4.³⁶⁷

In 2020, 1,504 applications were processed under Track 2.³⁶⁸ In 2021, approximately 1,486 applications were processed under Track 2.³⁶⁹ In 2022, approximately 1,482 applications were processed under Track 2.³⁷⁰ This number has remained stable through previous years.

5.2 Detailed interview

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

5.3 Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

- Does the law provide for an appeal against the decision in the accelerated procedure?

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

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

5.4 Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

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

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

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

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

³⁶⁷ Council of State, Decision No 202201535, ECLI:NL:RVS:2023:3365, 6 September 2023, available in Dutch at: <https://bit.ly/48b7oyz>.

³⁶⁸ Rijksoverheid, *Staat van Migratie 2021*.

³⁶⁹ Rijksoverheid, *Staat van Migratie 2022*, available in Dutch at: <https://bit.ly/3jXYyRe>.

³⁷⁰ Ministry of Justice and Security, *Staat van Migratie 2023*, 06 October 2023, available in Dutch at: <https://bit.ly/3RUo0FO>.

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, until the end of this procedure, whether the individual applicant needs special procedural guarantees. However, unaccompanied children are, by definition, considered as a vulnerable group in Dutch 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, at least in theory, every asylum seeker, to assess whether they are mentally and physically able to be interviewed (see [Registration](#)). MediFirst is a private company working on behalf of the IND to provide medical advice in asylum procedures. In 2021, MediFirst took over this role from the FMMU organisation. MediFirst’s medical advice forms an important element in the decision as to how the asylum application will be handled. However, it should be noted that MediFirst 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 they need in order to be interviewed, or what kind of limitations by the asylum seeker should be taken into account by the IND. MediFirst cannot be seen as a ‘product’ of the Istanbul Protocol, because its examination is solely limited 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 how to address these limitations during the interviews and throughout the 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 obtain medical advice by MediFirst to asylum seekers other than the ones in track 4, the possibility to receive it in case of need exists but is offered in limited cases and the question whether or not an asylum seeker outside of track 4 should have received a medical advice due to the overall signs of need, can be subject of litigation when an asylum claim has been rejected.

From the start of the asylum procedure, until 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.³⁷¹

The IND decides whether the way the interview is conducted for regular cases should be adapted based on MediFirst advice and remarks. The IND bases its decision to conduct and how to conduct a further interview on the medical advice from MediFirst itself, its own observations and those of other participants in the asylum procedure, like the asylum lawyer, the legal aid worker and the asylum seeker themselves.

³⁷¹ Article 3.108b Aliens Decree.

Important documents in this context have been the IND Work Instructions 2010/13 and 2015/8.³⁷² Work Instruction 2015/8 contains a long 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; being blind, deaf or 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'³⁷³ 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 2021.³⁷⁴ They mark a confirmation and continuation of the previous Work Instructions above-mentioned that had been into effect for several years.

1.2 Age assessment of unaccompanied children

Designating an asylum seeker as an adult or a minor has several consequences for the asylum procedure. For example, it is relevant for determining which Member State is responsible for examining the asylum application [see for instance Article 8 of the Dublin Regulation]. In addition, the Asylum Procedures Directive (APD) obliges member states to guarantee additional procedural guarantees for unaccompanied minor asylum seekers [see Article 25 APD]. The question of whether or not the asylum seeker is a minor is relevant for access to reception facilities for minors and assistance from the guardianship institution of Nidos. The determined age of the asylum seeker is also important within the asylum procedure for the substantive assessment of the asylum story. For example, minors may fear child-specific forms of persecution and the asylum seeker's frame of reference, for which age is relevant, must be taken into account when assessing credibility.

There is no EU-wide practice in the field of age determination. Partly because of the differences between Member States in the implementation of age determination, the EU Commission requested the European Asylum Office (EASO) to update the guidelines in the context of age determination. In March 2018, EASO produced a practical manual containing guidelines, key recommendations and tools for the implementation of the best interests of the child in age assessment from a multidisciplinary and holistic approach.³⁷⁵ The manual is not legally binding, but can be regarded as a reference tool for the interpretation and implementation of the EU acquis. The report contains information about the different methods used in the EU Member States and new methods that are being investigated. EASO recommends that age assessment should have a multidisciplinary approach, as there is (as yet) no scientific method to determine the exact age of a person.

In July 2021, EASO published a follow-up report on the age assessment process in EU+ countries.³⁷⁶ The report includes information from more than 20 EU+ countries on recent developments in ways to determine age; documents that must be provided during the determination procedure; the involvement of youth protection authorities, etc. The report also provides information about the impact of the age determination in the Dublin procedure.

According to the DCR, the age assessment procedure in the Netherlands does not adopt a presumption of minority and the methods of age assessment are insufficiently holistic and multidisciplinary, which indicates a lack of implementation of the EASO Practical Guide on age assessment.

³⁷² IND Work Instruction 2010/13 Treatment of medical advice, 29 October 2010, available in Dutch at: <https://bit.ly/48zBFaB>; IND Work Instruction 2015/8 Procedural guarantees, 20 July 2015, available in Dutch at: <https://bit.ly/42W9GRp>.

³⁷³ IND Work instruction 2021/9 on 'special procedural guarantees', 25 June 2021, available in Dutch at: <https://bit.ly/4bQyGNK>.

³⁷⁴ IND Work instruction 2021/12 on 'existing medical problems relating to the question of being able to conduct the interview and being able to take a decision', 25 June 2021, available in Dutch at: <https://bit.ly/3SVE2yF>.

³⁷⁵ EASO, *EASO Practical guide on age assessment, second edition*, 9 March 2018, available at: <https://bit.ly/3Sv8yPP>.

³⁷⁶ EASO, *Age assessment practices in EU+ countries: updated findings*, 1 September 2021, available at: <https://bit.ly/42Dgnr9>.

The age assessment procedure in the Netherlands is governed by Paragraph C1/2.1 and C1/2.2 of the Aliens Circular and elaborated on in IND Work Instruction 2023/6.³⁷⁷ The age assessment 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 can conduct an age inspection (*leeftijdsschouw*).³⁷⁸ This involves officers from the KMar, the immigration police (AVIM), and/or the IND determining whether the asylum seeker is clearly above or below the age of 18. They also assess the provided age when doubts arise, considering the individual's ability to engage in conversation. This age inspection is not required if the asylum seeker's visa is listed in the EU visa information system EU-VIS (a so-called 'EU-VIS hit'), if an age inspection has already taken place no more than six months ago, or if there is no doubt whatsoever about the fact that they are dealing with a child under the age of 12 years.

The age inspection is conducted in two sessions:

- ❖ One session with one Kmar/AVIM official and one session with two IND employees, or;
- ❖ One session with two Kmar/AVIM officials and one session with one IND employee.

This means that the governmental employees mentioned above see the asylum seeker separately from each other and draw their own conclusion. To guarantee the independence of both parties involved, it is not possible in the governmental electronic systems for one party to read the official report of the other party before conducting their own age inspection.

The age inspection of the applicant should evaluate the following aspects about the asylum seeker:

- ❖ Appearance;
- ❖ Behaviour;
- ❖ Statements;
- ❖ Any other relevant circumstances.

The age inspector also includes external/physical characteristics in the age inspection report, which may – among other factors – include the presence or absence of:

- ❖ Wrinkles (around eyes, forehead, corners of the mouth, hands);
- ❖ Receding hairline;
- ❖ Abundant facial/body hair;
- ❖ Grey hair;
- ❖ Visible Adam's apple.

The conclusion of the Kmar/AVIM employees is noted in an official police report, the conclusion of the IND is included in the report of the IND Application Interview. As described in the Work Instruction 2023/06, it is not sufficient anymore to conclude that someone is clearly over or under the age of 18 or if there are doubts about their age. The official police report and the report of the IND Application Hearing must also contain the specific reasons behind the decision. 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.³⁷⁹ If there is no unanimity, by definition then there is doubt and probably further assessment needed.

³⁷⁷ IND, *Work Instruction Age Determination*, 8 June 2023, available in Dutch at: <https://bit.ly/3HU3WxO>.

³⁷⁸ IND, *Work Instruction 2018/19 Age assessment*, 13 December 2018, available in Dutch at: <https://bit.ly/3uYoa6q>.

³⁷⁹ Tweede Kamer, *Reply by the State Secretary 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.

In 2023, various lower courts raised the question of whether the age assessment used in Dutch practice has a scientific basis and whether the results of the assessment can be regarded as a result of careful research.³⁸⁰ Hereby, lower courts also more regularly question the extent to which the aspects of the asylum seeker's appearance, behaviour and statements noted by the AVIM/KMar/IND can actually lead to the conclusion of doubt about one's age or lead to the conclusion of adulthood.³⁸¹ Various lower courts have also pointed out the occasional contradictions between the observations of the AVIM/KMar on the one hand and the IND on the other, for example the presence of 'striking' crow's feet and wrinkles according to the AVIM but not according to the IND. According to various courts, these inconsistencies lead to additional doubts about the accuracy of the inspection methods and the scientific basis of the age inspection.³⁸²

So, if there is still doubt between the parties concerned 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 generally first contacting other EU units that carry out research of (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*) argued 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.³⁸³ In April 2022 the ACVZ presented another report on 'the human dimension in migration policy'.³⁸⁴ It dealt with imbalance in the possibility to present evidence – for migrants and the government respectively – useful to determine the nationality and identity (including age) in relation to the principle of 'equality of arms'. In concrete terms, this means, according to the ACVZ, there should be some form of a balance between the parties in regarding the possibility to provide evidence.

Case law of the Dutch highest Administrative Court, the Council of State, as well as lower courts, 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 as an adult, the IND may consider this asylum seeker to be an adult.³⁸⁵ 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 documents in Dublin cases, such as baptism certificates or school records, are not regarded as 'official identifying documents'. The burden of proof rests entirely with the asylum seeker.³⁸⁶

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. This consideration implies that an unmotivated choice regarding the date of birth – determining whether the

³⁸⁰ Regional Court of Roermond, ECLI:NL:RBDHA:2023:195, 21 February 2023, available in Dutch at: <https://bit.ly/3SyS7Sr>; Regional Court Amsterdam, ECLI:NL:RBDHA:2023:3351, 10 March 2023, available in Dutch at: <https://bit.ly/48cA8XG>; Regional Court Zwolle, ECLI:NL:RBDHA:2023:15164, 15 September 2023, available in Dutch at: <https://bit.ly/3P0l6xv>.

³⁸¹ Regional Court the Hague, 21 June 2023, ECLI:NL:RBDHA:2023:9097, available in Dutch at: <https://bit.ly/42CyLRc>; Regional Court Arnhem, 4 September 2023, ECLI:NL:RBDHA:2023:13712, available in Dutch at: <https://bit.ly/3SNEzTb>; Regional Court Zwolle, 15 September 2023 ECLI:NL:RBDHA:2023:15164, 15 September 2023, available in Dutch at: <https://bit.ly/3P0l6xv>; Regional Court Zwolle, 3 October 2023, ECLI:NL:RBDHA:2023:15158, available in Dutch at: <https://bit.ly/3OEBgwx>; Regional Court Zwolle, 3 October 2023, ECLI:NL:RBDHA:2023:15145, available in Dutch at: <https://bit.ly/49a6Gmr>.

³⁸² Regional Court Zwolle, 3 October 2023, ECLI:NL:RBDHA:2023:15158, available in Dutch at: <https://bit.ly/3OEBgwx>; Regional Court Zwolle, 3 October 2023, ECLI:NL:RBDHA:2023:15145, available in Dutch at: <https://bit.ly/49a6Gmr>.

³⁸³ Dutch Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken, ACVZ*), *Nadeel van de Twijfel*, 30 November 2020, available in Dutch at: <https://bit.ly/2LFImUh>.

³⁸⁴ Dutch Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken, ACVZ*), *Naar een gelijk speelveld bij vaststelling van nationaliteit en identiteit bij migranten*, 11 April 2022, available in Dutch at: <https://bit.ly/3lgig3W>.

³⁸⁵ Council of State, 29 April 2019, ECLI:NL:RVS:2019:1395, available in Dutch at: <https://bit.ly/3wd87Cf>.

³⁸⁶ Council of State, 26 November 2021, ECLI:NL:RVS:2021:2659, available in Dutch at: <https://bit.ly/3SRzx9p>.

applicant is considered to be an adult or a minor - will no longer be accepted by the Council of State. In particular, the court questioned whether the current practice in dealing with age registration in Member States, in which indicative evidence and statements by the parties are not taken into account, is in line with EU law.³⁸⁷

In June 2022, the lower District Court of Den Bosch 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 applies.³⁸⁸ This Court had presented similar questions before, but they had to be withdrawn in March 2022 as the IND had withdrawn the contested decision in the main proceeding. The outcome of these questions would be extremely relevant for Dublin cases in which age assessment plays a major role, but it is yet to be seen if the CJEU will rule on the matter.³⁸⁹ On July 13 2023, the Advocate-General de la Tour's conclusions were published.³⁹⁰ They dealt mainly with the question whether or not the 'mutual trust principle between Member States' was divisible or indivisible. They also discussed the duty of cooperation between the State and the asylum seeker and tailoring its risk assessment to the individual. However, the EU court decision, which is necessary for full comprehension of the state of the law, is still pending.

On 2 November 2022 the Council of State³⁹¹ ruled in favour of the State Secretary's policy on the choice of a specific date of birth between multiple minor and adult age registrations in other EU Member States. Based on the 'interstate trust principle, the 'State Secretary 'can assume age registrations in other Member States to be correct if the Dutch age registration does not give an unequivocal answer as to whether the foreign national is clearly over or under the age of 18. The Council of State highlighted however that an exception should be made in the case of multiple age registrations in a member state; for such cases, the State Secretary must research whether there are certain age registrations where identifying source documents were used. The State Secretary may, in case of different age registrations, accept the registration of the applicant as an adult, if taken into account how the other state had come to the conclusion, provided the registration has taken place in a careful manner, which can be subject to litigation.

On April 26 2023 the Council of State³⁹² ruled that an asylum seeker can also use indicative documents to demonstrate that the date of birth registered in another Member State is incorrect. The policy on copying age registrations from other Member States was therefore changed as a result of these Council of State Rulin, resulting in Work Instruction 2023/6. Based on this new Working Instruction, lower courts regularly ruled that, due to the statements or documents provided by the asylum seeker, the age registration in another Member State cannot be assumed to be an genuine adult age registration. This includes, among other things, statements by the asylum seeker about inadequacies in the age registration in the other Member State, or about the reasons why an age of majority was stated there.³⁹³ Case law has also confirmed that indicative documents, such as birth certificates, extracts from population registers, or school reports indeed have evidentiary value.³⁹⁴

³⁸⁷ Council of State, 4 June 2021, ECLI:NL:RVS:2021:1184, available in Dutch at: <https://bit.ly/3OHIzn1>.

³⁸⁸ Regional Court Den Bosch, 15 June 2022, ECLI:NL:RBDHA:2022:5724, available in Dutch at: <https://bit.ly/3wk1Lkj>.

³⁸⁹ Regional Court Den Bosch, 4 October 2021, ECLI:NL:RBDHA:2021:10735, available in Dutch at: <https://bit.ly/3HUwHuc>.

³⁹⁰ CJEU, Conclusions of the Advocate General, ECLI:EU:C:2023:593, *X. v. the Netherlands*, 13 July 2023, available at: <https://bit.ly/49xFY7j>.

³⁹¹ Council of State, 2 November 2022, ECLI:NL:RVS:2022:3147, available in Dutch at: <https://bit.ly/42w3f7f>.

³⁹² Council of State, 26 April 2023, ECLI:NL:RVS:2023:1654, available in Dutch at: <https://bit.ly/3OyyCII>.

³⁹³ Regional Court Zwolle, 3 October 2023, available in Dutch at: <https://bit.ly/3OEBgwX>; Regional Court Groningen, 6 September 2023, ECLI:NL:RBDHA:2023:13419, available in Dutch at: <https://bit.ly/4bwHsAf>; Regional Court Middelburg, 28 July 2023, ECLI:NL:RBDHA:2023:11536, available in Dutch at: <https://bit.ly/49ugHe5>.

³⁹⁴ Regional Court Groningen, 6 September 2023, ECLI:NL:RBDHA:2023:13419, available in Dutch at: <https://bit.ly/4bwHsAf>; Regional Court Groningen, 1 August 2023, ECLI:NL:RBDHA:2023:11389, available in Dutch at: <https://bit.ly/48cRe82>; Regional Court Utrecht, 1 August 2023, ECLI:NL:RBDHA:2023:12970, available in Dutch at: <https://bit.ly/3uuJ790>; Regional Court Utrecht, 31 July 2023, ECLI:NL:RBDHA:2023:12621, available in Dutch at: <https://bit.ly/3URVyGz>.

Medical age assessment

If the officers from IND, AVIM or KMar cannot conclude that the asylum seeker is evidently over 18 years of age, they cannot prove their minority of age, and there is no EU-Vis or Eurodac 'hit', a medical age assessment can take place.³⁹⁵ This can be done also when the result is relevant for the evaluation of which Member State is responsible for examining the application for a fixed-term asylum residence permit or the question whether the foreign national is eligible for reception conditions of the COA.

Article 25 (5) from the EU Asylum Procedures Directive states that, if there is any doubt about the age of an unaccompanied minor foreign national, the Member States can determine the age by means of a medical examination. This article in the Procedures Directive obliges Member States to guarantee additional procedural guarantees when it comes to an unaccompanied minor.

According to Work Instruction 2023/6,³⁹⁶ if the IND has not yet received clarity about the age based on the inspection or any age registration in another Member State, the IND will ask MediFirst for a referral for a medical age assessment. The MediFirst doctor themselves carries out an examination to determine the age, comparable to an age inspection (leeftijdsschouw). If the referring doctor themselves concludes that the asylum seeker is clearly a minor or adult, this conclusion will be assumed and no (further) medical age assessment will be offered.

The medical age assessment is carried out according to the 'Protocol Age Assessment',³⁹⁷ in which the entire procedure and technique can be read. This medical examination carried out on the basis of X-rays of the clavicle, the hand and wrist.³⁹⁸ Two radiologists examine if the clavicle is closed. If that is the case, the asylum seeker is considered to be at least 20 years old according to some scientific experts. A recent literature review by the Netherlands Forensic Institute (NFI) has shown that the youngest individuals with a fully matured collarbone are all at least 18 years old, where previously it was considered to be 20 years. Since 1 October 2022, with a mature collarbone, a minimum age of 18 years of the asylum seeker is assumed.³⁹⁹

It is the responsibility of the IND to ensure the examination has been conducted by certified professionals and is carefully performed.⁴⁰⁰ The age assessment has to be signed by the radiologist. The whole process is described in Work Instruction 2023/6. The age examination is carried out on behalf of the IND by the Netherlands Forensic Institute (NFI), the X-rays are made at the company 'Diagnostiek voor U' (*Diagnostics for you*).

It should be noted that the methods used in the medical age assessment process are still considered as controversial,⁴⁰¹ which is also illustrated by the – at times very technical - discussions among radiologists referred to in the case law over the years.⁴⁰² 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.⁴⁰³ 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

³⁹⁵ Article 3.109d(2) Aliens Decree.

³⁹⁶ IND, *Work Instruction Age Determination*, 8 June 2023, available in Dutch at: <https://bit.ly/3uzRUq3>.

³⁹⁷ Protocol leeftijdsonderzoek, IND, 16 December 2019, available in Dutch at: <https://bit.ly/3TfaVrE>.

³⁹⁸ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, available in Dutch at: <http://bit.ly/2xIFvky>, 7.

³⁹⁹ WBV 2022/23, 1 October 2022, available in Dutch at: <https://bit.ly/48xp8Vb>.

⁴⁰⁰ Article 3.2 GALA.

⁴⁰¹ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, available in Dutch at: <http://bit.ly/2xIFvky>, 7.

⁴⁰² See e.g. Regional Court Amsterdam, Decision No 10/14112, 18 December 2012. See also ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17.

⁴⁰³ Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, available in Dutch at: <http://bit.ly/2xIFvky>, 16.

multidisciplinary team using various methods, under the leadership of an independent child development expert.⁴⁰⁴

Until 2016 a special commission, the Medico-ethical Commission (*Medisch-ethische Commissie*) supervised the practice of age assessment. Afterwards, such role was assigned to the governmental Inspectorate for Security and Justice (*Inspectie voor Veiligheid en Justitie*). Furthermore, the Authority for Nuclear Safety and Radiation Protection supervises the use of ionizing radiation (without medical purpose).

A medical age assessment should be seen as a tool of last resort, in order to minimize the exposure of possible minors to X-rays. Possible minors should also be well informed, with the help of an interpreter, about the method, purpose, consequences, risks and the procedures of the age assessment. The information should be provided in a manner appropriate to the level of age and developmental background of the possible minor, in a language that they have indicated understanding or which it can reasonably be assumed they understand, and in such a way that ultimately there is a situation of informed consent on the part of the possible minor.

The possible minor must also be informed of the possibility of any refusal to cooperate in this investigation and its consequences. Member States may not base the rejection of the application for asylum solely on the fact that the possible minor has not cooperated in the age assessment. If the individual involved agrees, they must give written permission for the investigation.⁴⁰⁵

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, presenting a counter report realised by an expert is possible, but very difficult to arrange in practice. First of all, it is the asylum seeker's responsibility to contact a counter expert. When the asylum seeker calls in a counter expert, the IND will temporarily make the CD-ROM with X-ray images available to the counter expert.

Case law made clear over the years that not every counter-expert assisting the asylum seeker will be recognised as suitable for the role. The question arose whether there are sufficient counter-experts to be found in Dutch practice who have the required specific radiological expertise to act as a counter-expert in a legal proceeding. In 2016, parliamentary questions were put to the then Secretary of State about the possibility of having a counter-expertise carried out in age assessment procedures. The Secretary of State replied that the State is in consultation with the National Forensic Institute (NFI) and the IND to ensure that the actual availability and willingness of counter-experts is sufficiently guaranteed. To date, the outcome of these consultations is not known to the authors of the report.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

2.1 Adequate support during the interview

Article 3.108b of the Aliens Decree sets out the obligation to provide adequate support to the applicant where they need 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

⁴⁰⁴ 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.

⁴⁰⁵ Article 25 (5)(c) APD and Article 3.109d(3) Aliens Decree.

the IND Work Instruction 2015/8, also citing Work Instruction 2010/13, which provides a non-exhaustive list of special guarantees such as:⁴⁰⁶

- ❖ Attendance of a person of confidence or family members in the interview;⁴⁰⁷
- ❖ 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, two new Work Instructions came into effect, WI 2021/09 and WI 2021/12,⁴⁰⁸ 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 confirmation 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 did not establish specialised units dealing with vulnerable groups. However, since 2012, every caseworker has to follow the EUAA training module on Interviewing Vulnerable Persons.⁴⁰⁹ In cases in which many new IND 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 IND caseworkers often lacked the required training to deal with asylum seekers with special needs. When there are clear signs that the special procedural guarantees that have to be granted in asylum interviews have not been met, this can be used as a legal argument to appeal the negative outcome of the asylum decision by the IND in court. However, a certain threshold need to be met in order for courts to recognise the wrongdoings and impose a sanction. The Work Instruction 2021/13 on the asylum interview establishes that every IND hearing and decision officer is obliged to take several EUAA training courses,⁴¹⁰ such as the above-mentioned training on interviewing vulnerable persons. The Council of State had ruled, on 3 October 2017,⁴¹¹ that the sole circumstance that a hearing officer did not follow the relevant course, does not automatically mean that the interview did not meet due diligence requirements.

The asylum seeker cannot appeal the refusal to recognise their right to special procedural guarantees, as the refusal is not considered as a decision that can be subjected to an appeal. Instead, the asylum seeker can object being denied such right in the appeal against the negative decision on the asylum application.

⁴⁰⁶ IND, Work Instruction 2015/ Special procedural guarantees, 20 July 2015, 6, available in Dutch at: <https://bit.ly/48zBFaB>.

⁴⁰⁷ This was confirmed as a form of adequate support in Council of State, ECLI:NL:RVS:2017:2115, 3 August 2017, available in Dutch at: <https://bit.ly/3UOrtl6>.

⁴⁰⁸ IND Work instructions, 2021/9, 25 June 2021, available in Dutch at: <https://bit.ly/49Q0lwl> and IND Work instruction 2021/12, 25 June 2021, available in Dutch at: <https://bit.ly/3UVPQDD>.

⁴⁰⁹ Tweede Kamer, 2013-2014, Aanhangsel 636.

⁴¹⁰ IND Work Instruction 2021/13, 25 June 2021, available in Dutch at: <https://bit.ly/3wFPORh>.

⁴¹¹ Council of State, ECLI:NL:RVS:2017:2692, 3 October 2017, available in Dutch at: <https://bit.ly/4bxHx6N>.

In a 2020 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.⁴¹²

2.2 Exemption from special procedures

In the regular procedure (“Track 4”), all asylum seekers are channelled in 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, will initially access this procedure, regardless of the fact that in most of these cases more time and investigation is needed (for example, a medical report had yet to be prepared). 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 minors. This was not regulated in the Aliens Decree or Circular. The implementation of Work Instruction 2021/14 (as of 25 June 2021),⁴¹³ however, excludes underage unaccompanied minors from the Track 2 procedure, which can be described as a good practice.

Track 2 is primarily intended for asylum seekers who have limited chances of being granted international protection in the country, 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 who are EU citizens. In practice, the aspect of being an underage unaccompanied minor takes precedence over the other Track 2 elements.

From 20 July 2015, the Netherlands introduced a border procedure in the national asylum legislation. The border procedure concerns – briefly said – the procedure at the border (or in a transit zone) in which decisions are taken on the asylum application from a foreign national who expressed at the ‘Schengen external EU border’ a wish to submit an asylum application and does not meet the conditions for granting access to the Netherlands.

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

- ❖ Unaccompanied children (minors);⁴¹⁴
- ❖ Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;⁴¹⁵
- ❖ Persons for whose individual circumstances border detention is disproportionately burdensome;⁴¹⁶
- ❖ 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.⁴¹⁷

For the cases of applicants in need of special procedural guarantees or for whom detention at the border would be disproportionately burdensome, the new IND Work Instruction 2022/15 clarifies that vulnerability does not automatically mean that the applicant will not and cannot be detained at the border.⁴¹⁸ The central issue remains whether 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 their “special individual circumstances”. Whether there are such “special individual circumstances” must be

⁴¹² Council of State, ECLI:NL:RVS:2020:2057, 26 August 2020, available in Dutch at: <https://bit.ly/3SShhvr>.

⁴¹³ IND Work instruction, 2021/14, 25 June 2021, available in Dutch at: <https://bit.ly/42RFGpJ>.

⁴¹⁴ Article 3.109b(7) Aliens Decree.

⁴¹⁵ Paragraph A1/7.3 Aliens Circular.

⁴¹⁶ Article 5.1a(3) Aliens Decree.

⁴¹⁷ Article 3.108 Aliens Decree.

⁴¹⁸ IND Work Instruction 2022/15, 22 July 2022, available in Dutch at: <https://bit.ly/431M1Pu>.

assessed on a case-by-case basis and can be derived for instance from a (MediFirst) medical report or from a 'signalinglist' handed it by the aliens lawyer when there are clear signs of physical or psychological burdens. The previous 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 suffers from a serious mental disorder.⁴¹⁹

The decision establishing detention at the border has to list the reasons for which the IND, while taking into account the individual and special circumstances produced by the asylum seeker, is of the opinion that the asylum seeker can be detained; for example, where the IND is of the opinion that the border security interest should prevail over individual circumstances.

If during 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](#)). The insurgence of such circumstances should thus be monitored. However, given the fact that, from the perspective of national authorities, granting easy access to the country's territory could undermine internal security and public order interests, even in cases of vulnerable people requiring special procedural guarantees this opportunity is generally not granted. Incidentally, it is possible for the State to transfer the foreign national to a specialised psychiatric institution ('Veldzicht') during the border procedure, without them being considered as having gained legal access to Dutch territory.

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.⁴²⁰ The IND employees are also trained to identify victims of human trafficking.⁴²¹

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 a residence permit are described in Article 3.48 Aliens Decree jo. Paragraphs 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 they report a crime and/or wish 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. While a prosecution is being filed or in a lengthy criminal trial (>3 years), the victim of trafficking becomes eligible for a residence permit on non-temporary grounds.⁴²²

In 2021, a new Working Instruction dealing with human trafficking in asylum cases (WI 2021/16)⁴²³ was adopted. Human trafficking is considered as a serious crime and the IND contributes to tackling it. Being

⁴¹⁹ IND, Work Instruction 2017/1 Border procedure, 11 January 2017, 5, available in Dutch at: <https://bit.ly/3SXji9l>.

⁴²⁰ Section B/9 Aliens Circular.

⁴²¹ IND, Work Instruction 2007/16 Victims of human trafficking in the asylum procedure, 18 December 2007, available in Dutch at: <http://bit.ly/1MjGx5i>.

⁴²² See 3.48 Vb, B8, B9 Vc.

⁴²³ IND, Work Instruction 2021/16, *Human trafficking in the asylum procedure*, 14 July 2021, available in Dutch at: <https://bit.ly/3KQIARi>.

a victim of human trafficking can also be presented as the core of an asylum claim. In that context, apart from signaling, 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 victimhood from human trafficking is carried out in asylum cases.

In theory, being a victim of human trafficking can lead to being acknowledged as a refugee or being granted subsidiary protection status. However, for that 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.⁴²⁴

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. However, applicants are not often granted subsidiary protection in such cases.

A new Work Instruction (2021/18, 12 October 2021) on the 'assessment of the plausibility of the human trafficking account' came into effect.⁴²⁵ 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). This Work Instruction was followed in March 2023 by Work Instruction 2023/5, the content of which - remained virtually the same.⁴²⁶

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 by the IND to be seen by MediFirst prior to the interviews with the IND. This in order to assess whether they can be interviewed with or without special precautions (see [Identification](#)),⁴²⁷ 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 under article 18 (1) to medically examine asylum seekers in connection to their reasons for requesting protection if they consider it 'relevant' for the decision making process. Obviously, the qualification of its relevancy has been subject to many litigations whereas the asylum seeker claims that a forensic medical examination by the government was 'relevant', and the government argues that it was not relevant because the non-credibility of the asylum story could be based on other factors. Although the obligation to conduct a medical examination is now explicitly incorporated in Dutch law and policy, it is legitimate to claim the Dutch authorities already had this obligation due to rulings of the ECtHR,⁴²⁸ and/or the UN Committee Against Torture (CAT).

⁴²⁴ IND, Work Instruction 2021/16, *Human trafficking in the asylum procedure*, 14 July 2021, available in Dutch at: <https://bit.ly/42YNjun>.

⁴²⁵ IND, Work Instruction 2021/18 'assessment of the plausibility of the human trafficking account', 12 October 2021, available in Dutch at: <https://bit.ly/4bV13x4>.

⁴²⁶ IND, Work Instruction 2023/5, available in Dutch at: <https://bit.ly/3SVHPff>.

⁴²⁷ Article 3.109 Aliens Decree.

⁴²⁸ For example: ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010, available at: <https://bit.ly/49qQDR6> and ECtHR, *R.J. v France*, Application No. 10466/11, Judgment of 19 September 2013, available in French at: <https://bit.ly/49qQHjO>.

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 under article 18(1) of the directive:

- ❖ Whether a 'positive' medical 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 MediFirst medical advice 'to hear and to decide'; (b) the reports of the interviews; and (c) other medical documents.

So, national legislation guarantees the possibility to use a (forensic) medical report as supportive evidence.⁴²⁹ That had not always been the case. Till around 2005 - 2010 the general legal perception in the Netherlands was that medical supportive evidence only had a very limited role to play in the decision making process, due to the fact that the outcome of such supporting evidence could not give a 100% certain answer about the who, when, why and where questions that could be asked.

As written above, the Dutch law and policy provides that a forensic 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) and/or the Dutch Institute for Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische Psychiatrie en Psychologie*, NIFP), to conduct the examination.⁴³⁰ The IND bears the costs of this examination. Previous AIDA reports indicated that annually, approximately between 15-20 times, these organisations were asked by the State to perform a medical examination and to establish a medico-legal report. In 2022 journalist investigations brought to light the fact that only a handful of such medico legal reports were written annually.⁴³¹ That leads to the conclusion that the Dutch government is not fully fulfilling its obligation under article 18(1) of the recast Asylum Procedures Directive.

If the asylum seeker is of the opinion that a forensic medical examination needs to be conducted, without the IND supporting this view, the asylum seeker can according to article 18(2) from the same Directive, seek one on their own initiative and costs. The objective of such 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 as detailed in their asylum claim. Another objective can be to examine whether the physical and psychological situation of the asylum seeker might have affected a persons' ability to detail their asylum claim in a complete, consistent and coherent manner in front of the IND.

An NGO, called iMMO (Institute for Human Rights and Medical Assessment (*instituut voor Mensenrechten en Medisch Onderzoek*)⁴³² has the specific expertise to medically examine asylum seekers (physically and psychologically) at their request, resulting in a forensic medico-legal report. iMMO is not funded by the government, but by other NGO's such as the DCR and Amnesty International, among several others. iMMO was founded in 2012 and operates independently. It started as a very small organisation that mainly relied on (former) professionals – especially physicians and psychologists – who have the required knowledge and expertise, who committed themselves on a voluntary basis and who are not bound to iMMO by an employment contract. These assessors are

⁴²⁹ Article 3.109e Aliens Decree.

⁴³⁰ IND, Work Instruction 2016/4 Forensic medical examination for supporting evidence, 1 July 2016, available in Dutch at: <https://bit.ly/3OYxhej>.

⁴³¹ ARGOS, 1 October 2022, 'IND rarely researches refugee seeker's trauma', available in Dutch at: <https://bit.ly/3LKV4w0>.

⁴³² See: <http://bit.ly/3Lkmyd3/>.

trained by iMMO and perform assessments working independently within the framework of their professional responsibility. In the last few years, the balance between paid professional staff and unpaid professional volunteers shifted towards having more paid staff. Both the staff and the volunteers from iMMO perform medical forensic examinations. They do not charge the asylum seeker or their legal representatives, although the legal representative of the asylum seeker is, according to the rules set by iMMO, obligated to try to get the expenses for the examination and the writing of a report reimbursed by the state.

iMMO's role is 'codified' in the Aliens Circular and the Council of State has accepted its authority as being an expert in its field.⁴³³ What makes iMMO unique is its working method. Medico legal reports are realised as a result of the combined effort of both medical doctors and psychologists/psychiatrists.

Besides forensic medical assessments, iMMO offers advice and consultation to professionals having questions regarding, amongst others, medical aspects of the asylum procedure. iMMO also provides training and education for the IND, the judiciary, asylum lawyers and DCR, 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.

From the start in 2012, iMMO, issued 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, and around 50 in 2022. In 2023, this number increased to approximately 70 reports per year. Some of these reports were delivered long after the interviews with the IND 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 concluded that their reports were not relevant. In its landmark judgment of 27 June 2018, the Council of State changed its previous position 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.⁴³⁴

From 2016, the Dutch Government did express a clear vision on the implementation of the Istanbul Protocol.⁴³⁵ 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.⁴³⁶ This publication has been an inspiration for the national and European policy makers in asylum-related affairs and still holds value today. 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

⁴³³ Paragraph C1/4.4.4 Aliens Circular. See Council of State, ECLI:NL:RVS:2013:621, 31 July 2013, available in Dutch at: <https://bit.ly/3SCp3tp>.

⁴³⁴ Council of State, ECLI:NL:RVS:2018:2085, 27 June 2018, available in Dutch at: <https://bit.ly/2TxB2ZB>.

⁴³⁵ Work Instruction 2016/4 refers to the Istanbul Protocol.

⁴³⁶ 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.

supporting evidence in asylum procedures, which has been addressed by Article 18 of the recast Asylum Procedures Directive.⁴³⁷

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?

Outcomes of cases evaluated by lower courts tackling these questions have varied significantly, mostly based on the story of the individual asylum seeker and legal arguments brought forward by their legal representative. Additionally, the highest judicial body, the Council of State seldomly issues fully motivated verdicts and even the motivated verdicts can be interpret differently.

In 2022, the DCR analysed around 100 new public decisions by lower courts and the Council of State dealing with medical support evidence, iMMO and MediFirst. Around 90 of them were decisions by lower courts, while 6 were issued by the Council of State. 2022 also saw 2 complaints presented before the European Courts of Human Rights and the Anti-Torture Committee to be deemed inadmissible (without motivation). In around 60 out of 90 decisions by lower courts, the foreign national successfully appealed the negative decision from the IND. The success rate to appeal a negative IND decision was higher in 2022 compared to previous years. More and more court decisions appear to be critical towards the policy and practises of the Secretary of State in this domain, questioning whether the State should have initiated its own forensic medical report, whether vulnerable asylum seekers were given proper care, or whether the iMMO report should have been taken into account when dealing with credibility issues.

One judgment by the Council of State should be highlighted on this matter. On 7 December 2022, the Council of State ruled that the so called 'component requirement' was no longer tenable.⁴³⁸ The 'component requirement' means that if in a forensic medico-legal report the examiner (for instance iMMO) has come to the conclusion that the physical and psychological situation of the asylum seeker might have affected (heavily) their ability to tell their asylum story in a complete, consistent and coherent manner during the interviews with the IND, the examiner should be able to pinpoint directly which components of the asylum story the assumed limited ability affects. The component rule had been laid down by the Council of State in its landmark ruling from 27 June 2018, as mentioned earlier. In 2018 and 2019, both the IND and many lower courts rejected iMMO's view that from a medical scientific point of view, the component requirement cannot be met in a way that would be satisfactory for the IND and the legal courts. Since 2020, the balance has shifted in caselaw. More and more courts have adopted the view expressed by iMMO, leading to the above-mentioned judgment in which the Council of State abandoned its view adopted in 2018. This judgment is an important one, strengthening the position and

⁴³⁷ 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.

⁴³⁸ Council of State, ECLI:NL:RVS:2022:3615, 7 December 2022, available in Dutch at: <https://bit.ly/3w8nKLg>.

value of medico-legal reports in the Dutch asylum procedure. It is our assumption that in 2023 many decisions by the Secretary of State and lower courts will be overturned due to this ruling.

Another relevant ruling is that of 7 November 2023⁴³⁹ in which the Council of State upheld the appeal of an asylum seeker against a negative ruling of a lower court. The Council of State agreed that the State Secretary had not provided proper reasons for deciding not to start its own medico legal examination by NFI/NIFP. It ruled that during the whole asylum procedure, the State Secretary had missed several signs of physical and psychological complaints by the asylum seeker brought forward during the interviews and in the asylum seeker handing over medical files. Therefore, it could not have ruled that the asylum story lacked credibility without any further medical examination.

Moreover, the ruling of the Council of State from 13 December 2023⁴⁴⁰ is also important. In a court procedure that spanned over many years, the Council of State ruled that the conclusion by iMMO that an enormous feeling of shame, caused the asylum seeker's inability to speak earlier in the asylum procedure about sexual violence and torture, should be taken into account by the IND. The IND did not believe the torture and sexual abuse story due to the fact that the asylum seeker was able to talk about it only later in the procedure. The IND wrongfully neglected to take into account the medico legal report by iMMO that was introduced into the procedure.

In 2023 the DCR has another survey of the publicly available case law from the year 2023 on medical support evidence, medico legal reports, iMMO and MediFirst cases. What stood out the most is that the total number of cases dealing with the above mentioned issues was much lower compared to the previous years (55 cases in 2023 versus around a 100 cases in 2022). What also stood out was the relatively high number of cases from the Council of State (13 out of 55). Most of these referenced and reaffirmed the 7 December 2022 decision in which the 'component' requirement' was abandoned. Moreover, in cases dealing specifically with iMMO or with MediFirst issues, an overwhelming majority of lower court decisions (28 out of 41) ruled in favor of the asylum seeker. Therefore it is safe to say that, according to numbers by iMMO, in over 2/3 of all the cases in which an iMMO-medical legal report is introduced, this will eventually lead to some form of residence granted to the asylum seeker by the IND.

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.⁴⁴¹

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.⁴⁴² The IND employees conducting these interviews have followed the EUAA course on interviewing vulnerable persons, but this is not prescribed by law.⁴⁴³ As other applicants,

⁴³⁹ Council of State, 7 November 2023, ECLI:NL:RVS:2023:4098, available in Dutch at: <https://bit.ly/48rcSpj>.

⁴⁴⁰ Council of State, ECLI:NL:RVS:2023:4620, 13 December 2023, available in Dutch at: <https://bit.ly/499eNj8>.

⁴⁴¹ Articles 1.233 and 1.253ha, Dutch Civil Code.

⁴⁴² Section C1/2.11 Aliens Circular.

⁴⁴³ Practice based observation of the Dutch Council for Refugees, January 2024.

UAMs will be screened by MediFirst in order to determine if there are special needs for the interview (see [Screening of vulnerability](#)).

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.⁴⁴⁴ Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian).⁴⁴⁵ For unaccompanied children, Nidos will request to be appointed as guardian by the juvenile court.⁴⁴⁶ 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.

The guardian takes important decisions on behalf of the child, with consideration to their future, *inter alia*, regarding their education, 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.

On their arrival in the Netherlands, children under the age of 15 are placed in a foster family, which provides initial reception. 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.

Normally, unaccompanied children do not stay in Ter Apel for a long period of time after lodging their application for international protection. In 2022 and 2023, however, there have been several instances where children had to stay in Ter Apel for multiple days or even weeks. The conditions in Ter Apel in the fall of 2022 were harrowing: children staying there had to sleep on plastic chairs and did not have access to sanitary facilities.⁴⁴⁷ The Ombudsperson for Children has raised concerns on multiple occasions, stating that the situation in Ter Apel constitutes a severe violation of children’s rights.⁴⁴⁸ The situation for children in Ter Apel had become so worrisome that Nidos decided to evacuate 150 of them, even though it was not their legal obligation to provide shelter for the children. The situation improved in 2023, however, there were still too many unaccompanied minors at the reception centre in Ter Apel. Formally, there is room for 55 unaccompanied minors in a special area of the reception centre with additional guidance and security. At some moments in 2023, there were more than seven times as many unaccompanied minors staying in Ter Apel.⁴⁴⁹ COA and Nidos have called on municipalities to create more reception locations for minors. Although unaccompanied minors did not have to sleep on the floor in 2023, they have had to move from one temporary reception centre to another, which is unbeneficial for their wellbeing.⁴⁵⁰

⁴⁴⁴ Article 1.302 (2) Dutch Civil Code.

⁴⁴⁵ Article 1.245 Dutch Civil Code.

⁴⁴⁶ Article 1.256 (1) Civil Code.

⁴⁴⁷ NOS, ‘Situatie alleenstaande kinderen verslechterd’, 10 October 2022, available in Dutch at: <https://bit.ly/3ZeIwaU>.

⁴⁴⁸ Kinderombudsman, ‘Nog steeds sprake van kinderrechtschendingen Ter Apel’, 7 November 2022, available in Dutch at: <https://bit.ly/3Za7bZg>.

⁴⁴⁹ NOS, ‘351 alleenreizende minderjarigen in opvang Ter Apel, zeven maal te veel’, 21 September 2023, available in Dutch at: <http://bit.ly/3UiHBS3>.

⁴⁵⁰ NOS, ‘Met spoed bijna 4700 extra opvangplekken nodig voor minderjarige asielzoekers’, 4 March 2023. Available in Dutch at: <https://bit.ly/3vHKXDw>.

4.2 Age assessment

In case the IND doubts whether an asylum seeker is a child and the child is unable to prove their identity, an age assessment examination can be initiated. Within the scope of age assessment, two officers from the Immigration Service and the Border Police assess the physical characteristics and the behaviour of an asylum seeker who claims to be a minor.⁴⁵¹ These officers indicate whether they can conclude the asylum seeker is evidently a minor or evidently an adult. Such an assessment does not take place, however, in case of an EU-VIS hit. The Immigration Service will also conduct a search in Eurodac. In a report published on 30 November 2020, the Dutch Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken*, ACVZ) argued that 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.⁴⁵² For more information, please see the [Age assessment of unaccompanied children](#) section above.

One of the issues that unaccompanied minors face when they are registered as an adult in another Member State, is that they will be transferred to a reception centre for adults when the immigration service changes their age based on the registration in the other Member State. On 4 November 2022, the Regional Court of Den Bosch ruled that a minor could not be transferred to an adult reception centre until the age of the applicant was properly examined.⁴⁵³

4.3 Return decisions for unaccompanied minors

On 14 January 2021, the CJEU published its landmark judgment in the case of *TQ v Staatssecretaris van Justitie en Veiligheid* (C-441/19).⁴⁵⁴ The case concerned a minor (TQ) 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. TQ appealed the decision and argued that he does not know where his family lives and that he would not be able to recognise 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.⁴⁵⁵ The Regional Court of Den Bosch referred preliminary questions to the CJEU concerning the case of TQ. 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 18.⁴⁵⁶

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

⁴⁵¹ Work Instruction 2018/19, 13 December 2018, available in Dutch at: <https://bit.ly/3T1OpAW>.

⁴⁵² Dutch Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken*, ACVZ), *Nadeel van de Twijfel*, 30 November 2020, available in Dutch at: <https://bit.ly/2LFImUh>.

⁴⁵³ Regional Court Den Bosch, ECLI:NL:RBDHA:2022:11809, 4 November 2022, available in Dutch at: <https://bit.ly/3HVjlbw>.

⁴⁵⁴ CJEU, *TQ v Staatssecretaris van Justitie en Veiligheid*, C-441/19, 14 January 2021, available at: <https://bit.ly/3HPP8jL>.

⁴⁵⁵ 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.

⁴⁵⁶ Regional Court Den Bosch, ECLI:NL:RBDHA:2019:5967, 12 June 2019, available in Dutch at: <https://bit.ly/3wiG4B7>; CJEU, *TQ v Staatssecretaris van Justitie en Veiligheid*, C-441/19, 14 January 2021, available at: <https://bit.ly/3HPP8jL>.

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 delivered its final judgement in the case of *TQ* on 15 March 2021.⁴⁵⁷ The Secretary of State appealed the judgement, and the Council of State published its ruling on this onward appeal on 8 June 2022.⁴⁵⁸ The Council of State established that there are three possible situations for unaccompanied minors who do not qualify for an asylum permit:

1. There is adequate reception in the country of return. A return decision is issued.
2. There is no adequate reception. The unaccompanied minor must be granted a residence permit on national grounds.
3. Further research is needed. The unaccompanied minor will receive a rejection on the merit of the asylum claim; the decision also includes an explanation as to why extra time is needed to investigate adequate reception and how long the investigation will take. The asylum decision and the return decision are therefore separated. In this situation, the unaccompanied minor retains lawful residence on the basis of Article 8, preamble and under f, Aliens Act. The investigation can lead to two conclusions: either there is adequate reception, so that a return decision can be issued, or there is no adequate reception and the unaccompanied minor receives a residence permit on national grounds. The unaccompanied minor can appeal the decision stating that further research is needed.

The Council of State further ruled that the fact that the applicant is not a minor anymore does not mean that the Secretary of State can refrain from investigating whether they should have been granted a permit based on national grounds.

Following the Council of State judgment, the IND issued an internal information message in which it is stated that the period for further research into adequate reception will, in principle, be of one year.⁴⁵⁹ This period can be extended if the unaccompanied minor does not cooperate with the research.⁴⁶⁰ In 2023, the policy in the Aliens Circular was still not adjusted in accordance with the *TQ*-judgment. To DCR's knowledge, no unaccompanied minors have received a permit on national grounds due to the fact that there is no adequate reception in their country of origin. However, there have been some cases in which unaccompanied minors did receive a permit, but it based on art. 8 ECHR (private life).

The most pressing issue at the moment is the State Secretary's decision that the one year period to perform further research into the adequate reception will only start after the final decision on the asylum application. Due to the long waiting time in the asylum procedure, this can take more than a 1.5 year. This means that minors will remain for years in uncertainty about their residential status. There have been some judgements in first instance concerning this matter, however no final ruling by the Council of State has been pronounced yet.⁴⁶¹

⁴⁵⁷ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:2376, 15 March 2021, available in Dutch at: <https://bit.ly/493Upjw>.

⁴⁵⁸ Council of State, ECLI:NL:RVS:2022:1530, 8 June 2022, available in Dutch at: <https://bit.ly/496pDXb>.

⁴⁵⁹ Internal information messages are the lowest type of policy documents. These messages are directed at IND officers who carry out interviews and decide on asylum applications. However, it is possible to use these information messages in court, as the officers are obliged to follow the rules laid down in these messages. IND, IB 2022/74, 29 July 2022, available in Dutch at: <https://bit.ly/3igKEcl>.

⁴⁶¹ Regional Court Amsterdam, ECLI:NL:RBDHA:2023:21386, 4 July 2023, available in Dutch at: <https://bit.ly/4bWhRRw>.

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 (*Opvolgende asielaanvraag*) with the IND. This follows from the *non-refoulement* principles, codified in Article 33 of the Geneva Convention and Article 3 ECHR. The Aliens Circular stipulates how subsequent asylum applications are examined.⁴⁶²

The assessment of subsequent asylum application takes place in the so-called “one-day review” (*de eendagstoets, EDT*).⁴⁶³

In July 2019, a new procedure regarding lodging and assessing subsequent asylum applications was introduced, amending the Aliens Circular and putting in place a new IND Work Instruction.⁴⁶⁴ Following such procedure, it has to be examined whether the asylum seeker has filled in a fully completed subsequent asylum application form (M35-O) 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. If that is the case, the IND shall declare a subsequent application inadmissible in case there are no new elements or findings.⁴⁶⁵ The term “new facts and findings” is derived from the recast Asylum Procedures Directive.⁴⁶⁶ According to the Secretary of State,⁴⁶⁷ and case law,⁴⁶⁸ 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.⁴⁶⁹ From here on, “new elements or circumstances” will be referred to as “*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

⁴⁶² Paragraphs C1/ 4.6 and C2/6.4 Aliens Circular.

⁴⁶³ 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.

⁴⁶⁴ 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>.

⁴⁶⁵ Article 30b(1)(d) Aliens Act.

⁴⁶⁶ Article 33(1)(d) Aliens Act.

⁴⁶⁷ Dutch Parliament, *Explanatory notes on the implementation of the recast Asylum Procedures Directive*, Vergaderjaar 34 088, number. 3, 2014-2015, 12.

⁴⁶⁸ Council of State, ECLI:NL:RVS:2012:BX0767, 28 June 2012, available in Dutch at: <https://bit.ly/3HVjTnc>.

⁴⁶⁹ Article 4.6 GALA.

‘new’ if it would be unreasonable to decide otherwise. This is the case, for example, if the asylum seeker gets hold of relevant documents that pre-date their initial asylum application(s), provided that the documents came into possession of the asylum seeker after receiving the previous decision. The basic principle is that the asylum seeker must submit all the information and documents known to them 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.⁴⁷⁰

On 16 December 2019, the Regional Court of Den Bosch referred preliminary questions to the CJEU about this matter in the case *LH*.

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.⁴⁷¹

The evaluation concerning whether new elements could be considered ‘new’ is comprised 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 2011/95.⁴⁷²
- ❖ 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.⁴⁷³

On 15 September 2022, the Council of State ruled that the practice after the ruling in *LH* had been incorrect.⁴⁷⁴ Article 40(3) of the APD stipulates that Member States can examine subsequent applications where the *nova* add significantly to the likelihood of the applicant qualifying as a beneficiary of international protection. However, this provision has not been transposed into Dutch law, which means that determining whether subsequent applications are deemed admissible should not be based on article 40(3) of the APD, but Article 30a(1)(d) of the Aliens Act, which only stipulates that *nova* must be relevant in order for the subsequent application to be considered admissible. In accordance with this judgement, the IND changed their policy, and only determines whether new documents or elements are relevant for examining the subsequent application.⁴⁷⁵ The IND stated during the previous reporting year that it is examining whether it is necessary to change national laws to better reflect the rules laid down

⁴⁷⁰ See, for example: Council of State, Decision No 200304202/1, 25 September 2003, available in Dutch at: <https://bit.ly/3StprdA>.

⁴⁷¹ CJEU, C-921/19, 10 June 2021, *L.H. v. Staatssecretaris van Justitie en Veiligheid*, available at: <https://bit.ly/3UuXaWI>.

⁴⁷² *Ibid*, paragraph 36.

⁴⁷³ *Ibid*, paragraph 37.

⁴⁷⁴ Council of State, ECLI:NL:RVS:2022:2699, 15 September 2022, available in Dutch at: <https://bit.ly/3wbttHHn>.

⁴⁷⁵ IB 2022/91 Niet-ontvankelijkheid opvolgende aanvragen, available here: <https://bit.ly/3PynACy>.

in the APD. The policy that only new and 'relevant' elements will lead to the admissibility of a subsequent asylum request has since been incorporated into the Aliens Circular as of June 2023.⁴⁷⁶

The second stage relates to the examination of the substance of such applications.⁴⁷⁷

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.

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 set at a lower bar.⁴⁷⁸ 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.⁴⁷⁹

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), more substantive research is required.⁴⁸⁰ 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 State Secretary 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 State Secretary is allowed to forego a personal interview if it is not necessary for acquiring and examining the information needed for the assessment of the subsequent asylum request. However, the possibility to forego the personal interview exists only on the condition that the asylum seeker is able to put forward a written submission responding to the intended decision to forego the interview and reject the asylum request. The State Secretary must explicitly justify why it is not necessary to provide a personal interview in the intended decision, and the court has the power to scrutinise this justification.

The State Secretary responded to the judgment of the CJEU and stated that it did not have strong implications regarding the assessment of a subsequent application.⁴⁸¹ In the Dutch Council for 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.⁴⁸² On 1 July 2022, the IND published a new Work Instruction 2022/13 outlining their policy regarding subsequent applications, including the situations in which an interview will not be conducted.⁴⁸³ The Working

⁴⁷⁶ See paragraphs C1/2.9 and C1/4.6 of the Aliens Circular.

⁴⁷⁷ CJEU, C-921/19, 10 June 2021, *L.H. v. Staatssecretaris van Justitie en Veiligheid*, available at: <https://bit.ly/3UuXaWI>, paragraphs 34 and 53.

⁴⁷⁸ Regional Court Den Bosch, ECLI:NL:RBDHA:2021:6993, 7 July 2021, available in Dutch at: <https://bit.ly/3USes0e>.

⁴⁷⁹ Council of State, ECLI:NL:RVS:2022:208, 26 January 2022, available in Dutch at: <https://bit.ly/3upoFGD>.

⁴⁸⁰ *Ibid.*, paragraph 5.4.7.

⁴⁸¹ State Secretary, 8 July 2021, *Reactie op het bericht 'Nederland kan honderden nieuwe asielaanvragen verwachten na uitspraak Europees Hof'*, available in Dutch at: <https://bit.ly/33rsFbR>.

⁴⁸² 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>.

⁴⁸³ IND, Work Instruction 2022/13 *Opvolgende asielaanvragen*, 1 July 2022, available in Dutch at <https://bit.ly/3X07gwF>.

Instruction 2022/13 includes a non-exhaustive list of examples of when the subsequent application can be rejected without providing a personal interview. For example, when the asylum seeker provides evidence or information that clearly is incapable of leading to a positive decision or if the evidence provided has been falsified, this could be grounds for foregoing the personal interview.⁴⁸⁴ The Working Instruction notes that in case of doubt, preference should be given to providing a personal interview before deciding on the subsequent application. It is at the discretion of the Immigration Officer responsible for the examination of the subsequent application to decide whether a personal interview is required, but his decision is subject to judicial review.

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 their 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 case. 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.⁴⁸⁵ 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.⁴⁸⁶ The Netherlands did not transpose the optional stipulation laid down in Article 40(4) APD in national law. On 15 September 2022, the Council of State ruled in accordance with the CJEU, stipulating that the State Secretary could not declare a subsequent application non-admissible if new elements and findings could have been submitted in a previous application.⁴⁸⁷ In the Information Message published in response to this ruling, the IND did not mention the considerations by the Council of State regarding the culpability test.⁴⁸⁸ Indeed, Work Instruction 2022/13 regarding subsequent procedures of 1 July 2022 already mentioned that the culpability test is untenable because it has not been transposed into law. This was perhaps in anticipation of the ruling of the Council of State.

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.⁴⁸⁹ 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.⁴⁹⁰

As a result, in July 2019 the State Secretary introduced a new procedure regarding lodging and assessing subsequent asylum applications. The main changes, compared to the previous rules governing the matter, are as follow:

1. Lodging the asylum application:

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

⁴⁸⁴ The list of examples are also included in paragraph C1/2.9 of the Aliens Circular.

⁴⁸⁵ Council of State, ECLI:NL:RVS:2017:2718, 6 October 2017, available in Dutch at: <https://bit.ly/3wk7C9h>.

⁴⁸⁶ CJEU, C-18/20, *XY versus Austria*, 9 September 2021, available at: <https://bit.ly/496q041>.

⁴⁸⁷ Council of State, ECLI:NL:RVS:2022:2699, 15 September 2022, available in Dutch at: <https://bit.ly/3wbttHHn>.

⁴⁸⁸ IB 2022/91 Niet-ontvankelijkheid opvolgende aanvragen, available in Dutch at: <https://bit.ly/3PynACy>.

⁴⁸⁹ The subsequent claims are refused according to Article 30c (1)(a) of the Aliens Act.

⁴⁹⁰ Council of State, ECLI:NL:RVS:2019:574, 21 February 2019, available in Dutch at: <https://bit.ly/3w8lO4a>.

2. Completed application form:

If the application form is not completed the IND could take the 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'*). The Council of State issued numerous decisions regarding the matter whether the asylum seeker provided sufficient relevant information while submitting a subsequent asylum application.⁴⁹¹

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 where several categories are mentioned in which the IND can decide not to conduct an interview. A lawyer will not automatically be appointed, but an asylum seeker can look for a lawyer themselves (also free legal assistance – see [Regular procedure: 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 as to why no interview had been conducted after the asylum seeker's subsequent application.⁴⁹² 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 2019.⁴⁹³

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.⁴⁹⁴

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, it does not consist of a complete review of the asylum request and statements. The IND will solely address the question as to 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, the asylum application will be rejected or if further research is required.

Three scenarios are possible:

⁴⁹¹ For example Council of State, ECLI:NL:RVS:2021:2549, 17 November 2021, available in Dutch at: <https://bit.ly/3uko4pJ>; Council of State, ECLI:NL:RVS:2020:2285, 23 September 2020, available in Dutch at: <https://bit.ly/3SO4M47>; Council of State, ECLI:NL:RVS:2020:1940, 12 August 2020, available in Dutch at: <https://bit.ly/49osafP>.

⁴⁹² Regional Court Utrecht, ECLI:NL:RBDHA:2020:14792, 31 August 2020, available in Dutch at: <https://bit.ly/42SOuLK>.

⁴⁹³ Regional Court Rotterdam, Decision No NL18.24121, 13 February 2019, not published on a publicly available website.

⁴⁹⁴ Council of State, ECLI:NL:RVS:2022:208, 26 January 2022, available in Dutch at: <https://bit.ly/3upoFGD>.

- ❖ **The protection 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 their asylum application. The asylum seeker discusses the report of the interview and the written intention the next day (day 2) with their lawyer. The lawyer drafts an opinion on the intended decision and also submits further information. On the third day (day 3) the asylum seeker receives an answer from the IND as to whether the application is rejected, approved or requires further research;
- ❖ **Further research**: if 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). If necessary the procedure can be extended up to 20 days. The person then has the same rights and entitlements as during a [Track 4 “Regular” procedure](#).

When the asylum seeker receives a decision that their 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 they may be expelled during the appeal. To prevent this, the asylum seeker has to request for a provisional measure with the Regional Court.⁴⁹⁵ A provisional measure is granted if the applicant can prove that they are in an emergency situation where their interests are liable to be prejudiced if the measure were to not be granted.⁴⁹⁶ The threat of being expelled and/or losing reception entitlements usually qualifies as an emergency situation.⁴⁹⁷

The appeal has to be lodged within one week after the rejection.⁴⁹⁸ 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).⁴⁹⁹ After the decision of the Regional Court the asylum seeker can lodge an onward appeal with the Council of State. As a result of the *Gnandi* judgment of the CJEU, divergent national case law has been delivered on the matter in which cases an appeal has automatic suspensive effect, also regarding to an appeal to the refusal of a subsequent asylum application. However, in a judgment of 29 January 2020 in a case involving a fourth asylum application and in which the third-country national was placed in detention, the Council of State ruled that the *Gnandi* judgment did apply.⁵⁰⁰ 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 in the past arose when an asylum seeker with a re-entry ban of more than five years (*zwaar inreisverbod*),⁵⁰¹ issued on the ground of being considered a serious threat to public policy, public security or national security,⁵⁰² lodged 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 would be considered inadmissible by the Regional Court.⁵⁰³ The asylum seeker had to request a cancellation/revocation of the re-entry ban. This practice was abandoned in 2018, when the Council of

⁴⁹⁵ Article 82(2)(b) Aliens Act.

⁴⁹⁶ Article 8:81 General Administrative Law Act (GALA).

⁴⁹⁷ See for example: Regional Court Haarlem, ECLI:NL:RBDHA:2023:13719, 24 August 2023 (expulsion), available in Dutch at: <https://bitly.ws/3dX55>; Regional Court Utrecht, ECLI:NL:RBDHA:2022:11553, 7 April 2022 (reception facilities and entitlements), available in Dutch at: <https://bitly.ws/3dX6y>.

⁴⁹⁸ Article 69(2) Aliens Act.

⁴⁹⁹ Article 30a(1)(d) Aliens Act and Paragraph C1/2.7 Aliens Circular.

⁵⁰⁰ Council of State, ECLI:NL:RVS:2020:244, 29 January 2020, available in Dutch at: <https://bit.ly/3OEF3tL>.

⁵⁰¹ Article 66a(7) Aliens Act.

⁵⁰² Article 11(2) Return Directive and Article 6.5a(5) Aliens Decree.

⁵⁰³ Council of State, ECLI:NL:RVS:2013:2539, 19 December 2013, available in Dutch at: <https://bit.ly/48e8o57>.

State ruled, pursuant to the *Ouhrami* ruling of the CJEU,⁵⁰⁴ that the re-entry ban only comes into effect when the alien has left the territory of the CEAS, meaning that there are no grounds for restricting the right of appeal of those who have not left the territory.⁵⁰⁵

In 2023, there were 1,390 subsequent asylum applications, compared to 1,529 for the whole of 2022.

Subsequent applicants in the Netherlands by top 10 countries of origin: Jan – Dec 2023	
Country of origin	Number
Nigeria	150
Morocco	149
Iraq	105
Iran	93
Algeria	87
Syria	81
Eritrea	62
Uganda	52
Somalia	44
Gambia	40

Source: IND, *Asylum Trends*, December 2023, available at: <https://bitly.ws/3dX9F>.

F. The safe country concepts

Indicators: Safe Country Concepts

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

1. First country of asylum

1.1 Third countries

An asylum application can be declared inadmissible when the asylum seeker has been recognised as refugee in a third country and can still receive protection in that country, or can enjoy sufficient protection in that country, including protection from *refoulement*, and will be re-admitted to the territory of that particular third country (Article 30a(1)(b) Aliens Act).⁵⁰⁶ This inadmissibility clause is an implementation of Article 33(2)(b) and Article 35 APD.

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 residence permit or visa and he or she can obtain international protection;

⁵⁰⁴ CJEU, C-225/16, *Mossa Ouhrami*, 26 July 2017, available at: <https://bit.ly/49otxet>.

⁵⁰⁵ Council of State, ECLI:NL:RVS:2018:3998, 5 December 2018, available in Dutch at: <https://bit.ly/495zbli>.

⁵⁰⁶ Article 30a(1)(b) Aliens Act.

- ❖ 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 they 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.⁵⁰⁷ Regional Court Amsterdam decided that the IND should further investigate the residential status of the Yemeni asylum seeker in Peru. Following the decision, the asylum seeker got another interview after which he received a residence permit.

In 2022, just one case of application of the first country of asylum (concerning Costa Rica) was brought in front of a court. The Regional Court of Middelburg decided that when the 'first country of asylum' concept is used, the IND should investigate whether this country is 'safe' using the same sources as with the investigation of 'safe third countries'.⁵⁰⁸ The State Secretary appealed this ruling and the appeal was still pending in 2023. Moreover, the Council of State ruled in an onward appeal of a case from 2020 concerning Uganda that a copy of the Refugee Family Attestation Card was enough to prove that person enjoyed international protection in Uganda.⁵⁰⁹

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.⁵¹⁰ This is because it is assumed that the international protection status can only be actively withdrawn and cannot simply expire.

Asylum seekers have often argued that their return to another Member State would be contrary to Article 3 ECHR. However, this is hardly ever accepted by the courts. Since the *Ibrahim* judgment,⁵¹¹ 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 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.⁵¹² 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.⁵¹³ Moreover, the internal information message states that individual guarantees should be requested for particularly 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.

⁵⁰⁷ Regional Court Amsterdam, Decision No NL21.18983, 24 December 2021.

⁵⁰⁸ Regional Court Middelburg, ECLI:NL:RBDHA:2022:10443, 6 October 2022.

⁵⁰⁹ Council of State, ECLI:NL:RVS:2023:2670, 12 July 2023, available in Dutch at: <https://bit.ly/4bqEkpP>.

⁵¹⁰ Council of State, ECLI:NL:RVS:2017:1253, 19 May 2017, available in Dutch at: <https://bit.ly/3utWGpa>.

⁵¹¹ CJEU, *Bashar Ibrahim (C-297/17)*, *Mahmud Ibrahim*, *Fadwa Ibrahim*, *Bushra Ibrahim*, *Mohammad Ibrahim*, *Ahmad Ibrahim (C-318/17)*, *Nisreen Sharqawi*, *Yazan Fattayrji*, *Hosam Fattayrji (C-319/17) v Bundesrepublik Deutschland*, and *Bundesrepublik Deutschland v Taus Magamadov (C-438/17)*, 19 March 2019, available at: <https://bit.ly/499i3uS>.

⁵¹² Council of State, ECLI:NL:RVS:2020:1102, 22 April 2020, available in Dutch: <https://bit.ly/3ST9zmc> (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).

⁵¹³ IB 2021/56 asiolverzoeken van bijzonder kwetsbare statushouders, available in Dutch at: <https://bit.ly/3hCLBf6>.

Greece: Most EU-status holders that apply for asylum in the Netherlands come from **Greece**. On 7 November 2022, the State Secretary communicated there were 1,000 such cases pending before the IND.⁵¹⁴

On 11 December 2020, an article in the *Volkskrant* mentioned some ‘unexpected statuses’ from Greece.⁵¹⁵ 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”) – [Suspension of transfers](#)).

On 28 July 2021, the Council of State finally ruled that protection beneficiaries from Greece cannot be sent back without the State Secretary more thoroughly motivating that there is no breach of Article 3 ECHR upon their return.⁵¹⁶ In response, the State Secretary announced that it would start an 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 it being a complex factual and legal matter.⁵¹⁷ Cases in which the decision term had already expired by 1 October were handled in the national procedure without declaring the requests inadmissible.

The announced investigation was carried out by the Ministry of Foreign Affairs. The report was published on 24 June 2022.⁵¹⁸ On 14 September 2022, the State Secretary announced that it needed more time to study the report, which meant that decision-making in cases of BIPs from Greece was still suspended.⁵¹⁹ Finally, on 7 November 2022 the State Secretary said that following the report, BIPs from Greece could no longer be sent back to the country. However, as the situation in Greece is changing rapidly, cases will still only be decided upon after the prolonged decision period has ended (using the general prolonging of decision from WBV 2022/22, see [Legal Penalties](#)).⁵²⁰ This means that BIPs from Greece applying for asylum in the Netherlands have to wait 15 months before their asylum procedure starts. However, an exception has been made for the asylum requests of BIPs who can be regarded as ‘self-reliant’. The conditions are as follows: the BIP possesses a residence permit and residence document (the ADET), a tax number, a social security number, had access to accommodation and facilities in Greece and can obtain them again. However, the few cases that were (about to be) declared inadmissible based on this ‘self-reliance’ criterium were all cancelled or dismissed in court,⁵²¹ with just one exception.⁵²²

For a short period of time during 2022, the IND also exempted unaccompanied minors with a status in Greece from the suspension of decision-making. In a few cases, the IND asked the Greek authorities

⁵¹⁴ KST 30573, nr. 195, 7 November 2022, available in Dutch at: <https://bit.ly/3BKuHC5>.

⁵¹⁵ 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>.

⁵¹⁶ Council of State, ECLI:NL:RVS:2021:1626 and ECLI:NL:RVS:2021:1627, 28 July 2021, available in Dutch at: <https://bit.ly/4btJzoD>.

⁵¹⁷ 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).

⁵¹⁸ Ministry of Foreign Affairs, ‘Verslag feitenonderzoek naar statushouders in Griekenland juni 2022’, 24 June 2022, available in Dutch at: <https://bit.ly/3HOcBD0>.

⁵¹⁹ IB 2022/84 Griekse statushouders, available in Dutch at: <https://bit.ly/3WwmFor>.

⁵²⁰ KST 30573, nr. 195, 7 November 2022, available in Dutch at: <https://bit.ly/3BKuHC5>.

⁵²¹ Regional Court Haarlem, ECLI:NL:RBDHA:2022:13464, 11 November 2022, available in Dutch at: <https://bit.ly/49L3DRH>. The Dutch Council for Refugees knows of two other cases in which the IND intended to declare the asylum request inadmissible but decided not after the view of the asylum lawyer. Regional Court Middelburg, ECLI:NL:RBDHA:2023:19330, 6 December 2023, available in Dutch at: <https://bit.ly/48rppcb>.

⁵²² Regional Court Roermond, ECLI:NL:RBDHA:2022:3491, 12 April 2022, available in Dutch at: <https://bit.ly/3SGK7z4>.

for individual guarantees on reception of the minor. Some of these cases are still pending, but individual guarantees are no longer requested.⁵²³

Whether the IND is allowed to treat asylum seekers who are BIPs from Greece (but cannot be sent back to Greece) as first-time applicants is still up for discussion. On 30 August 2023, following preliminary questions from Germany,⁵²⁴ the Council of State sent the Court additional preliminary questions on how to deal with an asylum request of a TCN who has already been granted international protection in Greece but faces inhuman conditions in Greece.⁵²⁵

Hungary: The Council of State ruled in 2020 that the State Secretary must provide further reasons why a BIP 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.⁵²⁶ As far as known to the authors of the report, there is no case law on BIPs from Hungary registered in 2023.

Bulgaria: At the end of 2021, the Council of State ruled that the situation for protection beneficiaries in Bulgaria, while difficult, does not meet the threshold of the *Ibrahim* judgment,⁵²⁷ as such, the State Secretary did not need to further investigate their situation in the country. Since then, case law has been varying.⁵²⁸ The Regional Court of Den Bosch issued positive rulings regarding the Bulgarian cessation law, which states that BIPs who do not renew their identity card and/or residence permit within the set period will be faced with the withdrawal or termination of their protection status upon return to Bulgaria.⁵²⁹ This cessation clause is not in line with the EU Qualification Directive and might lead to risk of inhumane treatment upon return to Bulgaria. However, in the onward appeal initiated by the State Secretary, the Council of State ruled that the possibility of revoking permits due to untimely renewal is not problematic, as there is no systematic reassessment, and – according to the Bulgarian authorities – this only prompts the start of an investigation to revoke, which is allowed under Article 44 APD.⁵³⁰

In February 2021, the CJEU answered preliminary questions of the Council of State about the detention of EU status holders.⁵³¹ The question was whether the Return Directive prevents BIPs recognised in other EU member states from being detained on national grounds, given that they do not receive a return decision, but merely an order to leave for the territory of the other Member State. The Court ruled that the Return Directive does not preclude a Member State from placing a protection beneficiary residing illegally on its territory in administrative detention, 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.

⁵²³ This is derived from the internal information message IB 2022/84 Griekse statushouders, available in Dutch at: <https://bit.ly/3CrqMKO>.

⁵²⁴ *QY v Bundesrepublik Deutschland*, C-753/22, 12 December 2022, CJEU case information available at: <https://bit.ly/48XiHfb> and *El Baheer v Bundesrepublik Deutschland*, C-288/23, request filed 3 May 2023, CJEU case information available at: <https://bit.ly/42n4Egc>.

⁵²⁵ Council of State, ECLI:NL:RVS:2023:3275, 30 August 2023, available in Dutch at: <https://bit.ly/3wiaSly>. The case is registered as case C-551/23 before the CJEU and information on its progress can be found here: <https://bit.ly/42yvUIJ>.

⁵²⁶ Council of State, ECLI:NL:RVS:2020:1088, 22 April 2020, available in Dutch at: <https://bit.ly/3OC6zYK>.

⁵²⁷ Council of State, ECLI:NL:RVS:2021:2857, 16 December 2021, available in Dutch at: <https://bit.ly/3utXZV6>.

⁵²⁸ Some negative rulings following the ruling of the Council of State: Regional Court The Hague, ECLI:NL:RBDHA:2022:13278, 1 December 2022, available in Dutch at: <https://bit.ly/3utY8YE>; Regional Court Middelburg, ECLI:NL:RBDHA:2022:12279, 14 November 2022, available in Dutch at: <https://bit.ly/3OyfV7F>; Regional Court Haarlem, ECLI:NL:RBDHA:2022:13310, 31 October 2022, available in Dutch at: <https://bit.ly/3SC7g5s>.

⁵²⁹ Regional Court of Den Bosch, ECLI:NL:RBDHA:2022:11120 and ECLI:NL:RBDHA:2022:11129, 16 October 2022, available in Dutch at: <https://bit.ly/3USzczf>. Followed by Regional Court Middelburg, ECLI:NL:RBDHA:2022:11615, 2 November 2022, available in Dutch at: <https://bit.ly/3uskd9V>.

⁵³⁰ Council of State, ECLI:NL:RVS:2023:3967, 1 November 2023, available in Dutch at: <https://bit.ly/3UtnNLI>.

⁵³¹ CJEU, C-673/19, *M, A, Staatssecretaris van Justitie en Veiligheid v Staatssecretaris van Justitie en Veiligheid, T*, 24 February 2021, available at: <https://bit.ly/3HV1p6A>.

2. Safe third country

An asylum application can be declared inadmissible in case a third country, not being their country of origin, is regarded as a safe third country for the asylum seeker.⁵³² There is no list of safe third countries; however, the IND has published internal information messages on the safe third country concept. These internal documents list a number of third countries either as 'safe' or 'not safe'.⁵³³ The internal information messages focus on the applicability of asylum systems and the way asylum seekers and other foreigners are treated. The concept is applied on a case-by-case basis. There are three criteria that have to be fulfilled regarding safety, connection and admission. From the internal information message 'Assessment of safe third countries in the asylum procedure - burden of proof and country information' (IB 2021/8) states that in principle, asylum seekers will only be countered with a safe third country by the IND if their asylum request is likely to be granted, and that otherwise preference is given to a substantive rejection of the asylum request.

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

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

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

- | | | |
|--------------------------|-------------------|-------------------------|
| ❖ Albania | ❖ Iraq | ❖ Panama |
| ❖ Algeria | ❖ Israel | ❖ Qatar |
| ❖ Australia | ❖ Japan | ❖ Russia |
| ❖ Azerbaijan | ❖ Jordan | ❖ Saint Kitts and Nevis |
| ❖ Bahrain | ❖ Kazakhstan | ❖ Saudi Arabia |
| ❖ Belarus | ❖ Kenya | ❖ Sierra Leone |
| ❖ Bosnia and Herzegovina | ❖ Kosovo | ❖ Somalia |
| ❖ Cambodia | ❖ Kyrgyzstan | ❖ Sudan |
| ❖ Colombia | ❖ Lebanon | ❖ Thailand |
| ❖ Egypt | ❖ Malawi | ❖ Tunisia |
| ❖ Haiti | ❖ Malaysia | ❖ Türkiye |
| ❖ Honduras | ❖ Maldives | ❖ Ukraine |
| ❖ India | ❖ Mexico | ❖ United Arab Emirates |
| ❖ Indonesia | ❖ Moldova | |
| ❖ Iran | ❖ North Macedonia | |
| ❖ Uzbekistan | ❖ Oman | |

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 State Secretary'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 EUAA, UNHCR, the Council of Europe and other relevant/ authoritative/ reputable organisations. In a landmark

⁵³² Article 30a(1)(c) Aliens Act.

⁵³³ All internal information messages are published in Dutch at: <https://bit.ly/3RmHIZk>. Include *veilig derde land* (safe third country) as *onderwerp* (subject) to find all the information messages on the safe third countries.

case concerning **Kuwait**, the **United Arab Emirates** and **Russia**, the Council of State ruled that when applying the safe third country clause, the State Secretary must rely on country of origin information, which must be transparent and applicable to the individual asylum seeker's case.⁵³⁴

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*.⁵³⁵

In January 2020, the Regional Court of Amsterdam ruled that it considered **Türkiye** a safe third country for Uyghurs from China.⁵³⁶ Reasons for this judgment were the historical link between Türkiye and the Uyghur community and that twenty to thirty thousand Uyghurs live in Türkiye. Since 2018, Uyghurs have a special long-term residence permit. Other refugees and asylum seekers in Türkiye do not have the right to apply for long-term residence. This permit allows Uyghurs to apply for Turkish citizenship after five years. Although Türkiye is rated as non-safe third country in general, the Aliens Circular does state that for Uyghur applicants it will be assessed whether Türkiye is a safe third country.⁵³⁷ In 2023, the Dutch Council of Refugees saw one court case in which the Regional Court of Roermond ruled that Türkiye was a safe third country for Uyghurs with permanent residence permits.⁵³⁸

In a case about Armenia as a safe third country, the Council of State ruled that the State Secretary cannot merely state that Armenia is designated as a safe country of origin to prove that Armenia is also a safe third country for any applicant.⁵³⁹ It must either be shown which sources were the basis for this designation or indicate the sources that in the specific case were the basis for the assessment of Armenia as a safe third country.

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:⁵⁴⁰

- ❖ The spouse 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 their partner when the partner has permanently moved away from her country of nationality.⁵⁴¹ 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,⁵⁴² although the admission criterion was not met.

⁵³⁴ Council of State, ECLI:NL:RVS:2017:3381, 13 December 2017, available in Dutch at: <https://bit.ly/49uEZoo>.

⁵³⁵ Ibid.

⁵³⁶ Regional Court Amsterdam, Decision No NL19.30580, 15 January 2020, not published on a publicly available website.

⁵³⁷ Paragraph C7/8.8 Aliens Circular.

⁵³⁸ Regional Court Roermond, Decision No NL23.11610, 18 August 2023, not published on a publicly available website.

⁵³⁹ Council of State, ECLI:NL:RVS:2020:2356, 6 October 2020, available in Dutch at: <https://bit.ly/3wbDhK6>.

⁵⁴⁰ Paragraph C2/6.3 Aliens Circular.

⁵⁴¹ Regional Court Arnhem, Decision No NL19.13391, 26 July 2019, not published on a publicly available website.

⁵⁴² Regional Court The Hague, ECLI:NL:RBDHA:2017:7118, 26 June 2017, available in Dutch at: <https://bit.ly/48qNVKr>.

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 they were 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.⁵⁴³ According to the internal information message 2021/8 the asylum seeker needs to make serious attempts to demonstrate that they would not be admitted to the third country after the 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.⁵⁴⁴ Asylum requests from applicants presumed to come from safe countries of origin are handled in the **Accelerated Procedure** ("Track 2") by the IND.

In case an asylum seeker is from a safe country of origin, it is presumed that they have no well-founded fear of persecution nor a 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 their country of origin cannot be regarded as a safe country for them. In that case, the IND has to assess whether the asylum seeker is eligible for international protection.⁵⁴⁵

Should it become clear during the Track 2 procedure that the asylum seeker might have a well-founded fear for persecution in their country of origin (for example because of their 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 there is medical evidence, demonstrating that the asylum seeker is vulnerable and in need of 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 the intention to draft a national list of safe countries of origin.⁵⁴⁶ As provided in the recast APD and Article 3.105ba of the Aliens Decree, this national list was annexed to the Aliens Regulation. In 2022, it was also added to the Aliens Circular. The list contains countries in which, according to the Dutch government, nationals are presumed not to be at risk of persecution, torture or inhuman or degrading treatment. The Council of State ruled in a judgement in April 2021⁵⁴⁷ that the State Secretary had to reassess the list of safe countries of origin every two years and that this reassessment should be carried

⁵⁴³ Regional Court Utrecht, ECLI:NL:RBDHA:2020:7575, 15 July 2020, available in Dutch at: <https://bit.ly/3HS01kY>.

⁵⁴⁴ Article 30b(1)(b) Aliens Act.

⁵⁴⁵ Paragraph C2/7.2 Aliens Circular.

⁵⁴⁶ KST 19637, 3 November 2015, No 2076.

⁵⁴⁷ Council of State, ECLI:NL:RVS:2021:738, 7 April 2021, available in Dutch at: <https://bit.ly/3SQ1oab>.

out through the same procedure used for the designation of a country as a safe country of origin. This reassessment replaced 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, would the IND carry out a 'full reassessment' consulting all sources stated by Article 37(3) Procedures Directive.

The period of mandatory reassessment expired on 4 November 2021, resulting in removing **Algeria**⁵⁴⁸ from the safe country of origin list and adding some exempted groups and groups of special attention to the designation of **Mongolia**,⁵⁴⁹ **Morocco**, **Tunisia** and **Georgia** as safe countries of origin.⁵⁵⁰ In addition, the State Secretary decided to shorten the list of safe countries of origin in order to decrease the periodical efforts to reassess their situation. Twelve countries - from which an extremely limited number of asylum seekers arrived - were removed from the list: **Andorra**, **Australia**, **Canada**, **Iceland**, **Japan**, **Liechtenstein**, **Monaco**, **New Zealand**, **Norway**, **San Marino**, **Vatican City** and **Switzerland**.⁵⁵¹ All safe countries of origin still need to be reassessed every two years, meaning many countries were reassessed again at the end of 2023. The current list of safe countries of origin is included below. In addition, the IND needs to constantly monitor whether there are signs that the safety situation in a country designated as a safe country of origin is deteriorating.

As of 1 January 2024, the following countries have been designated as safe countries of origin:⁵⁵²

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

* Some groups or regions are exempted from the designation of safe country of origin. These cases will be handled in Track 4 (for example: LGBTQI+ persons in **Trinidad and Tobago**, **Tunisia**, **Senegal**, **Jamaica**, **Brazil**, **Armenia** and **Morocco** or the exclusion of Abkhazia and South Ossetia in **Georgia**).

Due to recent developments with Russia, the designation of **Ukraine** as a safe country of origin has been suspended until 28 November 2023.⁵⁵³ Until then, the safe countries of origin concept will not be applied to Ukrainian asylum seekers. Since November 2023, this designation has not been prolonged, but in practice the safe country of origin concept is not applied to Ukraine. For more information on the current Dutch policies regarding Ukraine, see [Annex on Temporary Protection](#) in the Netherlands.

The United Kingdom has been deleted from the list on 8 February 2023, as very few people from the UK apply for asylum in the Netherlands.⁵⁵⁴

Following the *coup d'état* that took place in **Tunisia** in the summer of 2021, numerous Regional Courts requested that the State Secretary reassess the designation of Tunisia as a safe country of origin.⁵⁵⁵ On 20 December 2021, State Secretary announced that Tunisia would remain a safe country of origin

⁵⁴⁸ KST 19637, No 2743, 11 June 2021, available in Dutch at: <https://bit.ly/318auZw>.

⁵⁴⁹ KST 19637, No 2778, 4 November 2021, available in Dutch at: <https://bit.ly/42MyISR>.

⁵⁵⁰ KST 19637, No 2726, 6 May 2021, available in Dutch at: <https://bit.ly/3OOGOr>.

⁵⁵¹ KST 19637, No 2778, 4 November 2021, available in Dutch at: <https://bit.ly/42MyISR>.

⁵⁵² Paragraph C7/1.2 Aliens Circular.

⁵⁵³ KST 19637, No 3163, 4 November 2021, available in Dutch at: <https://bit.ly/4aSysoO>.

⁵⁵⁴ Stcrt 2023, nr. 3235, available in Dutch at: <https://bit.ly/3YvewS4>.

⁵⁵⁵ E.g. Regional Court Haarlem, 26 November 2021, ECLI:NL:RBDHA:2021:14730, available in Dutch at: <https://bit.ly/3waUx2d>.

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 LGBTQI+ individuals or women, or specific areas such as the union territory of Jammu and Kashmir in India. According to the Council of State, exempting specific areas is only allowed if there is a clear dividing line between the safe and not-safe part of the country.⁵⁵⁶ In these cases, the safe country of origin-concept does not apply and those belonging to this group or region do not have a higher burden of proof. The asylum request is handled in Track 4.

On 25 May 2022, the State Secretary decided for procedural and economic reasons to no longer use the 'groups with higher concern'⁵⁵⁷ in response to a ruling of the Council of State.⁵⁵⁸ The Council of State had ruled that the consequences of designating a specific 'group with higher concern' for the assessment framework are unclear and that the State Secretary should either give a substantial interpretation to this concept or abolish it. All groups with higher concern will henceforth be treated as exempted groups.

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
2. Is tailored information provided to unaccompanied children? Yes No

As laid down in the Aliens Circular,⁵⁵⁹ (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-on-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 asylum procedure and on their rights and obligations.

The Dutch Council for Refugees also has up-to-date brochures (last updated July 2023) available for every step in the asylum procedure (for example: the registration phase and the rest and preparation period, the general procedure, the extended procedure, the border procedure and the Dublin procedure) in 24 different languages, which are based on the most common countries of origins of asylum seekers, notably Türkiye, Syria and Afghanistan.⁵⁶⁰ 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 at the different locations such as the COL, POL and AC's. At the moment, there are seven different brochures available for asylum seekers. The

⁵⁵⁶ Council of State, ECLI:NL:2017:1838, 7 July 2017, available in Dutch at: <https://bit.ly/49VF300>.

⁵⁵⁷ For further information about this concept and how it was used, see previous updates to this country report, available at: <https://bit.ly/3SMHHji>.

⁵⁵⁸ KST 19637, no. 2894, available in Dutch at: <https://bit.ly/3Vn7Tzf>. Council of State, ECLI:NL:RVS:2022:985, 5 April 2022, available in Dutch at: <https://bit.ly/3OC4BaK>.

⁵⁵⁹ Paragraph C1/2 Aliens Circular. See also: Dutch Council for Refugees, 'Voorlichtingsfolders Asielprocedure en de Gezinsherenigingsprocedure', available at: <https://bit.ly/319JdFS>.

⁵⁶⁰ Dutch Council for Refugees, 'Voorlichtingsfolders over de Asielprocedure en de Gezinsherenigingsprocedure', available in Dutch at: <https://bit.ly/49N56qv>.

information in the brochures has been coordinated with the IND. The IND and the Dutch Council for Refugees hand out the brochures together at different moments in the asylum procedure.

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.

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 rarely 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.⁵⁶¹ Detainees do have access to the assistance from the Dutch Council for Refugees, and their lawyer.

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?⁵⁶² Yes No
❖ If yes, specify which: Safe countries of origin

No applications from specific nationalities are considered as manifestly well-founded. However, Dutch authorities publish country-specific policy recommendations for processing asylum cases of various specific nationalities. This country-specific policy includes for example which groups are considered to be at risk, in which areas an armed conflict is considered to reach the art. 15c QD standard, but also for which nationalities there is a Postponement of Decision and Departure in place (see below).

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 LGBTQI+ asylum seekers or specific ethnicities. The safe countries of origin are listed in the section on [Safe Country of Origin](#).

For all other nationalities there is no differentiated treatment in the procedure. There is one exception made for the written interview (paper-and-ink procedure) which is offered only to certain nationalities

⁵⁶¹ There are also so-called voluntary visitor groups that visit asylum seekers in detention.

⁵⁶² Whether under the “safe country of origin” concept or otherwise.

who have relatively high protection rates: Türkiye, Syria and Yemen. For more information see the section dedicated to the [Written interview](#).

Public Country-specific policy

In 2022, the State Secretary published the country-specific policy for 35 nationalities; these are usually based on an official country report from the ministry of Foreign Affairs.⁵⁶³ It is published in the Aliens Circular C7⁵⁶⁴ and currently includes the following countries:

- ❖ Afghanistan
- ❖ Angola
- ❖ Armenia
- ❖ Azerbaijan
- ❖ Belarus
- ❖ Bosnia-Herzegovina
- ❖ Burundi
- ❖ Cameroon
- ❖ China
- ❖ Colombia
- ❖ Democratic Republic Congo
- ❖ Egypt
- ❖ Eritrea
- ❖ Ethiopia
- ❖ Guinee
- ❖ Iraq
- ❖ Iran
- ❖ Ivory Coast
- ❖ Lebanon: situation for Palestinians
- ❖ Libya
- ❖ Mali
- ❖ Nepal
- ❖ Nigeria
- ❖ Ukraine
- ❖ Pakistan
- ❖ Palestinian Territories
- ❖ Russian Federation
- ❖ Somalia
- ❖ Sri Lanka
- ❖ Sudan
- ❖ Syria
- ❖ Türkiye
- ❖ Uganda
- ❖ Venezuela
- ❖ Yemen

The following paragraphs explain which categories and groups can be distinguished in a country-specific policy and provides some examples. For the complete and up-to-date public country-specific policy please see paragraph C7 of the Aliens Circular.⁵⁶⁵

The standard country-specific policy consists of the following paragraphs:

1. Postponement of Decision
2. Article 1F Refugee Convention
3. Persecution under the Refugee Convention
4. Serious Harm under art 15 QD
5. Protection
6. Adequate reception for unaccompanied minors
7. Postponement of Departure
8. Particularities

Postponement of Decision and Departure

When the situation in a certain country is uncertain, Dutch authorities can proclaim a general Postponement of Decision and Departure for a certain nationality or certain groups within a country of origin. This means that the time limit for deciding is prolonged for six months. During these six months there will usually also be no forced returns executed. The Postponement of Decision and Departure can be prolonged with an additional 6 months. In 2023, there was a Postponement of Decision and Departure in place for Ukraine (prolonged for the third time for 3 additional months until the 28th of November 2023, exactly 21 months since the first Postponement of Decision and Departure was in place) and Sudan (since 8 July 2023, and prolonged for 6 additional months on 8 January 2024). Due

⁵⁶³ The official country report takes into account all types of information, also EUAA country guidance information. However, the EUAA guidance is not always followed in the actual country specific policy.

⁵⁶⁴ Please see the following link: <https://bit.ly/3SxpgOo>.

⁵⁶⁵ Please see the following link: <https://bit.ly/3SxpgOo>.

to the current situation in Gaza, the State Secretary announced a Postponement of Decision and Departure for the Palestinian Territories (Gaza and Westbank) on the 19th of December 2023⁵⁶⁶ The Dutch Council for Refugees has unsuccessfully called on the outgoing government to no longer postpone deciding on the asylum requests of Palestinian asylum seekers as they are entitled to protection according to international law and it is obvious that they are at risk in Gaza.⁵⁶⁷

Article 1F Refugee Convention

For some nationalities the Dutch authorities have included a description of categories in which 'personal and knowing participation' within the meaning of art. 1F Refugee Convention is assumed. These categories include lists of military positions within a certain military branch or during a certain regime or time. In 2023 the country-specific policy of Afghanistan and Iraq include an 1F-paragraph.⁵⁶⁸

Refugee protection: Group Persecution and Groups at Risk

The country-specific policy first identifies groups that have well-founded fear of being persecuted under the Refugee Convention. A group can be identified as being at risk of group persecution. As a result, being a member of this groups is enough to qualify for refugee protection. In 2023 groups that have been identified as being at risk of group persecution are:

- ❖ Afghanistan: translators that have been working for international military or policy missions.⁵⁶⁹
- ❖ China: Uyghurs
- ❖ China: Active followers of religious and spiritual movements identified as *xie jiao* by the Chinese authorities⁵⁷⁰
- ❖ Iraq: LGBT⁵⁷¹
- ❖ Iran: Christians who are active in 'new churches' or evangelize and/or members of house churches attending meetings.⁵⁷²
- ❖ Russian Federation: LGBT individuals from Chechnya⁵⁷³

A group can also be qualified as a Group at Risk.⁵⁷⁴ This means that the Dutch authorities accept there is an elevated risk of persecution for members of this group in the country of origin. In theory, applicants being a member of a Group at Risk should have a lower burden of proof and it should be easier to qualify for international protection. In practice, the effect of being qualified as a Group at Risk on the protection rate varies greatly. A Group at Risk can consist of an ethnicity (for example Hazara in Afghanistan), a social group (for example LGBTQI+ in Egypt) or religious group (for example Christians in Libya and Pakistan). Some Groups at Risk have a very broad definition (for example 'journalists' in Libya and Burundi), others have a very narrow and specific definition (for example in Somalia one Group at Risk is defined as: "Leaders of clans who support the government or elections, or other prominent persons with a large public reach and who openly spoke out against Al-Shabaab").

Subsidiary Protection: Systemic Exposure and Vulnerable groups

Next, country policies include a section regarding the concept of serious harm under article 15 QD (subsidiary protection). This section sets forward groups that might be eligible for subsidiary protection

⁵⁶⁶ KST 19637, nr. 3181, Letter to the Dutch Parliament, "Besluit- en vertrekmoratorium Palestijnse Gebieden", 19 December 2023, available in Dutch: <https://bit.ly/4aUs1lj>, no. 701, available in Dutch at: <https://bit.ly/3SS0GrC>.

⁵⁶⁷ Dutch Council for Refugees, *Oproep: IND behandel asielverzoeken van Palestijnen uit Gaza*, 23 November 2023, available in Dutch at: <https://bit.ly/3uJ5Yh6>. Dutch Council for Refugees, *VluchtelingenWerk: erken Palestijnen die onder UNRWA vallen als vluchteling*, 9 February 2024, available in Dutch at: <https://bit.ly/3SS15dC>.

⁵⁶⁸ See paragraph C7/2.2 (Afghanistan) and C7/16.2 (Iraq) Aliens Circular.

⁵⁶⁹ See C7/2.3.1 Aliens Circular.

⁵⁷⁰ See C7/9.3.1 Aliens Circular.

⁵⁷¹ See C7/16.3.1 Aliens Circular.

⁵⁷² See C7/17.3.1 Aliens Circular.

⁵⁷³ See C7/28.3.1 Aliens Circular.

⁵⁷⁴ See section [C7 Aliens Circular](#) for a list of all the Groups at Risk per country.

(as opposed to refugee protection). The groups identified are those at risk of systemic exposure to serious harm. As a result, being a member of this group is enough to qualify for subsidiary protection. In 2023, no groups were considered to be at risk of systemic exposure. Only in Somalia, the human rights situation in southern and central Somalia, where Al-Shabaab is in power or controls the area, is considered so severe that any returnee is considered to be at risk of serious harm. However, under certain conditions, it can be argued that an internal protection alternative exists, mainly in an area where Al-Shabaab is not in power.

A group can also qualify as a Vulnerable Group. This means that the Dutch authorities accept that there is an elevated risk of serious harm for members of this group in the country of origin. In theory, applicants being a member of a Vulnerable Group should have a lower burden of proof and it should be easier to qualify for subsidiary protection. In practice, the effect of being qualified as a Vulnerable group on the protection rate varies greatly. A Vulnerable Group can consist of an ethnicity (for example Yezidi in Iraq), a religious group (for example converted Christians in Afghanistan) or other groups (for example displaced (minor) women from Darfur, South Kordofan (including Abyei) and Blue Nile in Sudan). Some Groups at Risk are also considered a Vulnerable group: this is the case for the Country-specific Policy for Afghanistan, which includes the group of “non-(practising) Muslims, including converts (converts to Christianity), (alleged) apostates, Christians, Bahai and Sikhs/Hindus.”

Exceptional circumstances under article 15c QD

The Country-specific policy also includes the countries and areas for which the Dutch Authorities consider an armed conflict is considered to reach the art. 15c QD standard.⁵⁷⁵ In 2023, this was the case for the whole of Yemen. As a result, every applicant coming from the country will be granted subsidiary protection status (subject to possible application of the safe third country concept and other contraindications such as exclusion clauses). In Congo DRC there is also considered to be exceptional situation that reaches the art. 15c QD standard in the provinces North-Kivu, South-Kivu and Ituri. However, an internal protection alternative is considered to be present in other areas of the country.⁵⁷⁶ The same accounts for Cameroon and the provinces North-West and South-West (NWSW).⁵⁷⁷ Since 2023, the authorities consider that in Mali for there is an exceptional situation that reaches the art. 15c QD standard in the regions Gao, Ménaka and Mopti; however there is an internal protection alternative in Bamako.⁵⁷⁸

Protection

Some country-specific policies contain a protection paragraph. This paragraph discusses the (im)possibility to receive protection from the authorities in that country or the (im)possibilities of an internal protection alternative. Sometimes the policies list the groups for which the Dutch authorities assume no protection from the authorities is possible (for example women who fear FGM in Sudan),⁵⁷⁹ or no protection alternative can be opposed (for example Ahmadi's in Pakistan).⁵⁸⁰ This means that members of these groups cannot be asked to return to another part of their country of origin (as is usually expected when an internal protection alternative is opposed) nor can they be expected to request protection against persecution or serious harm from the authorities of their country of origin.

Adequate reception for unaccompanied minors

In the country-specific policy it is also mentioned whether there is adequate reception for unaccompanied minors. Either the country-specific policy includes that: “general reception facilities are

⁵⁷⁵ In court cases, there is often discussion about whether the level of conflict in a certain country or area reaches the standard for art. 15C, this was for example the case for Libya. When the highest court in the Netherlands decides there is a 15c policy in a country, it is usually included in the country policy.

⁵⁷⁶ See paragraph C7/11.4.1 and C7/11.5.2 Aliens Circular.

⁵⁷⁷ See paragraph C7/20 Aliens Circular.

⁵⁷⁸ See paragraph C7/23 Aliens Circular and Strct. 2023, No. 3235, available in Dutch at: <https://bit.ly/3vHsqHq>.

⁵⁷⁹ See paragraph C7/32.5.1 Aliens Circular.

⁵⁸⁰ See paragraph C7/27.5.2 Aliens Circular.

not available and/or not adequate, and the authorities do not take care of the reception” (this is the case for example for applicants from Uganda and Syria), or it is included explicitly that there is adequate reception for unaccompanied minors (for example for applicants from Türkiye).

Syrian nationals

The country-specific policy for Syria contains no groups that fear Group Persecution or Systemic Exposure to serious harm. Also, no exceptional circumstances under art. 15C QD are accepted for any part of the country. However, almost all applicants from Syria are eligible for a subsidiary protection status. The Dutch authorities assume that a foreign national from Syria runs a real risk of serious harm upon or after returning from abroad. Two exceptions are formulated: applicants that are active supporters of the regime and applicants that have already returned to Syria without experiencing problems.⁵⁸¹ In 2023 there were several rejections of asylum requests by Syrian nationals due to the fact that they had returned to Syria after their initial departure. This includes people who travelled from neighboring countries such as Lebanon, and for various reasons including family-visits and work-related travel. Various courts in first instance deemed these rejections unlawful, emphasising that the Dutch country policy assumes anyone returning to Syria will face a real risk of serious harm and that the actions of the Syrian authorities are too arbitrary to suggest that an earlier return without problems will guarantee a safe return to Syria in the future.⁵⁸² The Council of State still has to decide on the matter and has asked questions to the parties in the appeal by the State Secretary.⁵⁸³

Afghan nationals

For information re. the evacuation of Afghan nationals, see [Legal access to the territory](#).

There is an elaborate country policy for Afghanistan including extensive lists with groups of risk and vulnerable groups.

Groups of risk include:

- a) family members associated by the Taliban with the interpreters.
- b) persons who are or have been active in journalism and media or in the field of human rights and their family members associated with them by the Taliban.
- c) representatives and employees of the judiciary, police, army and ministries under the previous regime and their relatives associated with them by the Taliban.
- d) women who work or have worked in areas within the public arena other than those referred to under b and c (particularly non-governmental organisations, in education and health care).
- e) civilians associated with – or considered supportive of – the former Afghan authorities, Afghan civil society and the international community in Afghanistan, including international forces, and as a result are at increased risk of targeted violence, in particular by the Taliban and ISKP. This also includes employees of Dutch or other international development projects, fixers of journalists and people who have worked for the Dutch government or other Western countries (other than interpreters) in Afghanistan. This also applies to relatives associated with them by the Taliban.
- f) persons who have (in the past) publicly criticized the Taliban.
- g) Hazaras.
- h) persons who come from a living area where they belong to a (marginalized) ethnic minority, who experience serious problems there.
- i) persons who come from a living area where they belong to a (marginalized) religious minority, who experience serious problems there.
- j) non-(practising) Muslims, including converts (converts to Christianity), (alleged) apostates, Christians, Bahai and Sikhs/Hindus.
- k) LGBT people.

⁵⁸¹ See paragraph C7/33.4.4 Aliens Circular.

⁵⁸² For example: Regional Court Amsterdam, ECLI:NL:RBDHA:2023:16418, 11 July 2023, available in Dutch at: <https://bit.ly/4bHLWo5>.

⁵⁸³ Council of State, no. 202300173/1/V2 and 202305713/1/V2, the case is at hearing the 18th of January 2024.

- l) victims of Bacha Bazi abuse.⁵⁸⁴

Vulnerable groups:

- a) aliens who come from an area where they belong to a (marginalised) ethnic minority, who experience serious problems there.
- b) aliens who come from an area where they belong to a (marginalised) religious minority, who experience serious problems there.
- c) non-(practising) Muslims, including converts (converts to Christianity), (alleged) apostates, Christians, Bahai and Sikhs/Hindus.

With regard to female applicants there are two categories which are considered as in need of protection: single women and westernised women. Single women obtain a subsidiary protection status, except when the applicant has been able to maintain herself independently in Afghanistan in the past. For westernised women the following is included in the country specific policy: as a rule, a Western lifestyle developed in the Netherlands cannot, in itself, lead to refugee status or subsidiary protection. Adaptation to Afghanistan's customs may be required. There are two exceptions to this: if the Western behaviour is an expression of a religious or political conviction, or if a woman has personal characteristics that are extremely difficult or virtually impossible to change and because of these characteristics she fears persecution or inhumane treatment in Afghanistan. Because of the worrying security and human rights situation in Afghanistan, the IND stated in IND Information Message 2022/71 of 21 July 2022⁵⁸⁵ that many Afghans will receive the benefit of the doubt, leading to a high chance of the applications being accepted. This Information Message also states that due to the very worrying situation of women in Afghanistan (alleged) westernised women will “sooner receive the benefit of the doubt.”

⁵⁸⁴ This is a traditional practice that entails sexual abuse of children, in particular boys.

⁵⁸⁵ IND, Information Message 2022/71, *Beslissen op Afghaanse asielaanvragen*, available in Dutch at: <https://bit.ly/3Cx3L9d>.

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. Normally 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). An asylum seeker remains in the POL if the IND decides to examine the asylum application in the **Regular 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. Asylum seekers and beneficiaries of protection who have not yet been housed are hosted in collective centres. Currently, no option to access individual housing is provided by the authorities.

The Netherlands experienced various reception crises, one of which in 2015, while the latest started in September 2021. Whereas the reception crisis experienced in 2015 was due to an unexpected and very high number of new arrivals of asylum seekers, the current one could have been prevented, had the government anticipated the possibility of having to manage an increase in the number of new arrivals. Instead, many reception centres were closed as soon as the number of arriving asylum seekers dropped, which caused the current shortage of asylum reception places.⁵⁸⁶ Some people have been sleeping on the floor inside the waiting room of IND in **Ter Apel** for over 2 days with no showers or beds available while waiting for a transfer to one of the many (Crisis) Emergency Reception Centres that opened (and closed) around the country from September 2021 onwards. The reception crisis continued throughout 2023.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

- Does the law allow for access to material reception conditions for asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal ⁵⁸⁷	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal ⁵⁸⁸	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

⁵⁸⁶ This has also been confirmed by the ACVZ and ROB (*Raad voor het Openbaar Bestuur*). In their report they state that the reception crisis is a self-made crisis by the Dutch government: 'Asielopvang uit de crisis', 14 June 2022, available in Dutch at: <https://bit.ly/3ik1OGw>.

⁵⁸⁷ Except where there is no suspensive effect.

⁵⁸⁸ Unless provisional measures are granted by the Council of State: Article 3(3)(a) RVA.

Asylum seekers are entitled to material reception conditions after they have shown their wish to apply for asylum. This can be done by registering themselves in the Central Reception Centre COL in **Ter Apel**. The actual registration of the asylum application will happen after spending at least six days (three weeks for minors) at a reception location. During this time, the asylum seeker is entitled to reception conditions set out in Article 9(1) RVA (Regulation on benefits for asylum seekers and other categories of foreigners 2005).⁵⁸⁹ The organ responsible for both material as well as non-material reception of asylum seekers is the COA, according to the Reception Act.⁵⁹⁰

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. Asylum seekers can use this “W document” to prove their identity, nationality and lawful stay in the Netherlands.⁵⁹¹ 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.⁵⁹²

From May 2022, newly arrived asylum seekers in need of registering their asylum application at **Ter Apel** slept on a chair, on the floor or even outside in the grass, for one or more days.⁵⁹³ As of July, the number of asylum seekers sleeping outdoors had risen to 300.⁵⁹⁴ On 24 August 2022, 700 people slept outside in the grass at Ter Apel.⁵⁹⁵ Although attempts were made to house them in crisis emergency locations, there were not always enough available spots. Moreover, many asylum seekers felt compelled to stay in Ter Apel because they feared that they would not be registered otherwise (which proved to be a well-founded fear). The State Secretary stated at 25 May 2022, ‘every day it is uncertain to what extent reception can be assured’.⁵⁹⁶ From 25th August until 11th of September Médecins sans Frontières (*Artsen zonder Grenzen*) provided medical care in Ter Apel.⁵⁹⁷ It was the very first time that MSF operated in the Netherlands. MSF provided 449 medical and 203 psychological consults.

At the beginning of September 2022, the Ministry of Defence opened a location at **Marnewaard** to temporarily house unregistered asylum seekers during their registration period at Ter Apel. From the opening of this ‘waiting room’ on, no more asylum seekers slept outside in Ter Apel – except for one night.⁵⁹⁸ The location at **Marnewaard** was closed again on 1 March 2023.⁵⁹⁹

In 2023, no asylum seekers had to sleep out in the open in **Ter Apel**. However, over the course of 2023 there were many moments in which Ter Apel reached its capacity and urgent measures needed to be taken. In a letter of 24 May 2023 the State Secretary announced that it needed to open two locations for unregistered asylum seekers again.⁶⁰⁰ In a letter of 6 June 2023 it was announced that three or four of these locations were needed.⁶⁰¹ On 1 July 2023, the first of these locations opened in Assen with a capacity of 500 beds.⁶⁰² Unfortunately, in late 2023, distressing circumstances occurred again. Because there was no longer space in the facility itself, starting from October 9, 2023, the waiting area of the

⁵⁸⁹ Article 9(1) RVA.

⁵⁹⁰ Article 3(1) RVA.

⁵⁹¹ IND, ‘Vreemdelingen Identiteitsbewijs (Type W en W2)’, available in Dutch at: <http://bit.ly/2y8JraF>.

⁵⁹² Article 9 Aliens Act.

⁵⁹³ NOS, ‘Noodkreet na noodkreet, maar in Ter Apel verandert er (bijna) niets’, 12 May 2022, available in Dutch at: <https://bit.ly/3GRhdap>.

⁵⁹⁴ NOS, ‘300 asielzoekers in Ter Apel sliepen vannacht buiten, hoogste aantal tot nu toe’, 17 July 2022, available in Dutch at: <https://bit.ly/3vMZieW>.

⁵⁹⁵ NOS, ‘Asielcrisis Ter Apel: vannacht hebben 700 mensen buiten geslapen’, 24 August 2022, available in Dutch at: <https://bit.ly/3IFeeDp>.

⁵⁹⁶ Letter from State Secretary and Minister of Housing to parliament, 25 May 2022, available in Dutch at: <https://bit.ly/3X3Lh8z>.

⁵⁹⁷ MSF, ‘Crisis at Ter Apel Registration Centre’, 11 September 2022, available in Dutch at: <https://bit.ly/3QsWpcx>.

⁵⁹⁸ NOS, ‘Ondanks noodverordening toch buitenslapers bij Ter Apel’, 28 September 2023, available in Dutch at: <https://bit.ly/3SjCxLK>.

⁵⁹⁹ RTV Noord, ‘Noodopvang locatie Marnewaard bij Zoutkamp sluit zoals gepland in maart’, 2 February 2023, available in Dutch at: <https://bit.ly/3RXcfNR>.

⁶⁰⁰ KST 19637, nr. 3110, available in Dutch at: <https://bit.ly/3S6Ttns>.

⁶⁰¹ Letter to parliament, 6 June 2023, available in Dutch at: <https://bit.ly/3vKQYzi>.

⁶⁰² NOS, ‘Evenementenhal in Assen wordt ‘wachtkamer’ voor aanmeldcentrum Ter Apel’, 24 May 2023, available in Dutch at: <https://bit.ly/4217KGv>.

Immigration and Naturalization Service (IND) was used to accommodate asylum seekers.⁶⁰³ The waiting area did not have beds or showers. Initially, this only affected asylum seekers who reported in the evening or at night in Ter Apel, but soon it also affected those who reported during the day, and asylum seekers (including children) sometimes had to stay there for multiple nights. On December 2, 2023, the Red Cross had to be called in to provide mattresses and emergency showers.⁶⁰⁴ On December 7, 2023, the Inspection of the Ministry of Justice and Security reported that the situation in Ter Apel was untenable.⁶⁰⁵ Fire safety were not in order, basic requirements for bedding and bathing were not met, and the risk of violent incidents was increasing.⁶⁰⁶ Subsequently, an overnight shelter was opened in Stadskanaal, making it unnecessary for asylum seekers to sleep in the waiting area.⁶⁰⁷

In December 2023, the reception centre in Ter Apel had again reached its capacity. Therefore, asylum seekers had to sleep in the waiting room of the IND without beds or showers – sometimes for more than 2 days. On 22 December 2023 the municipality which Ter Apel is part of (Municipality **Westerwolde**) sued the COA for breach of contract because the maximum capacity of 2,000 asylum seekers was exceeded time and time again in 2023.⁶⁰⁸ On 23 January 2024, the civil court ruled in favour of the Municipality, stating that COA has to pay a legal penalty of € 15,000,- for every day that there will be more than 5,000 people residing in Ter Apel.⁶⁰⁹

The support from EUAA has not been very visible. No information is provided on this by the Dutch government or COA. The only publicly available information is a Twitter post from February 2023 by EUAA about the delivery of 160 temporary reception units to the Winsum and Uithuizen locations in the Netherlands, and the delivery of a best practices workshop.⁶¹⁰ According to the Operating Plan signed by EUAA and the Dutch government in December 2022, EUAA would provide immediate support to the reception system through the increase of the temporary reception capacity, support through the deployment of EUAA personnel, and contribution to, and collaboration on, contingency planning.⁶¹¹ The Operational Plan for 2024, signed by EUAA and the Dutch government in December 2023, proposes support to the reception system through the increase of the temporary reception capacity, support in reception through the deployment of EUAA asylum support teams, and contribution to, and collaboration on, contingency planning.⁶¹²

Throughout 2023, the EUAA deployed 32 experts to the Netherlands.⁶¹³ These included 15 junior reception child protection experts, 8 junior asylum information provision experts and 4 members of the roving team.⁶¹⁴ As of 19 December 2023, a total of 28 EUAA experts were deployed in the Netherlands, out of which 15 were junior reception child protection experts, 7 junior asylum information provision

⁶⁰³ See for an overview of all these different moments this blog at the website of COA, available in Dutch at: <https://bit.ly/4aUqED8>.

⁶⁰⁴ Dutch Council for Refugees, 'Extra voorzieningen voor asielzoekers in wachtruimtes Ter Apel', 2 December 2023, available in Dutch at: <https://bit.ly/3RX7eop>.

⁶⁰⁵ Inspection of Justice and Security, 'Letter about unsafe situation at Ter Apel', 7 December 2023, available in Dutch at: <https://bit.ly/4aTiACx>.

⁶⁰⁶ Ibid.

⁶⁰⁷ RTL Nieuws, 'COA: wachtruimtes IND niet meer in gebruik als nachtopvang', 7 December 2023, available in Dutch at: <https://bit.ly/41WqBCP>.

⁶⁰⁸ RTV Noord, 'Westerwolde sleept COA voor de rechter vanwege te hoog aantal asielzoekers in Ter Apel', 22 December 2023, available in Dutch at: <https://bit.ly/3vDsqbK>.

⁶⁰⁹ Civil Court North-Netherlands, ECLI:NL:RBNNE:2024:129, 23 January 2024, available in Dutch at: <https://bit.ly/3SVti4A>.

⁶¹⁰ EUAA on Twitter 'The #EUAA delivered 160 temporary reception units to #Winsum & #Uithuizen #Netherlands. Staff from @FedasilBelgium, @COAnl & #EUAA visited these locations & organised a workshop to share lessons learned & best practices in the delivery & installation of these #reception units', available at: <https://bit.ly/3RLrOYU>.

⁶¹¹ EUAA, Operational Plan to the Netherlands 2022-2023, December 2022, available at: <https://bit.ly/3tOLaEw>.

⁶¹² EUAA, Operational Plan to the Netherlands 2024, December 2023, available at: <https://bit.ly/3vC2Vr2>.

⁶¹³ EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

⁶¹⁴ Information provided by the EUAA, 26 February 2024.

experts and 3 members of the roving team.⁶¹⁵ In 2023, the EUAA delivered 7 training sessions to a total of 34 experts and personnel of national authorities, relevant partners and EUAA contracted personnel.⁶¹⁶

2.1 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.⁶¹⁷ During the whole asylum procedure, the COA is responsible for the reception of asylum seekers. As will be further addressed in sections below, during a reception crisis, asylum seekers and BIPs in all stages can be housed in (crisis)emergency centres.

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.⁶¹⁸

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.⁶¹⁹ 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 providing daily allowances to asylum seekers in the RVT, is not in violation of EU-law.

During the procedure started by the Dutch Council for Refugees in August 2022, the COA stated that asylum seekers would receive allowances during the Rest and Preparation period starting from 1 August 2022 – except for asylum seekers staying at crisis emergency shelter centres (See: [2. Conditions in reception facilities](#)). The RVA has not been altered yet and no public report on this is available.

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.⁶²⁰ Even if the asylum seeker appeals after the rejection of their asylum application, they will remain in the austere reception centre. Children and vulnerable asylum seekers are excluded from the austerity of reception but must adhere to the austerity regime (reporting daily) in the AZC.

Rejection / appeal: Pursuant to article 5 of the RVA, the right to reception of the rejected asylum seeker continues to exist as long as no deportation decision is taken under the Aliens Act. 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 their right to reception if they lodge 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.

⁶¹⁵ Information provided by the EUAA, 26 February 2024.

⁶¹⁶ Information provided by the EUAA, 26 February 2024.

⁶¹⁷ Article 2(1) RVA.

⁶¹⁸ Article 9 sub 5 RVA.

⁶¹⁹ Council of State, ECLI:NL:RVS:2020:1803, 29 July 2020, available in Dutch at: <https://bit.ly/3HSuPLV>.

⁶²⁰ Letter of the State Secretary, KST 19637, nr 2658, 14 September 2020.

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 their right to reception, retaining it instead 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).⁶²¹ 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, if it has not yet been presented. During this period, according to the Council of State, there is a national right of residence of a temporary nature.⁶²² 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 Aliens Decree (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.⁶²³

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.⁶²⁴

Beneficiaries of international protection: When the asylum application has a positive outcome, the asylum seeker will retain the right to shelter until there is housing available. For more information on the allocation of Housing see [Content of International Protection – Housing](#).

Subsequent applicants: When an asylum seeker wishes to lodge a [Subsequent Application](#) they have to complete a separate form. From this point onwards, the asylum seeker enjoys the right to reception.⁶²⁵ 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.⁶²⁶ When the form is complete, and the application is being handled during the short or extended asylum procedure, the asylum seeker enjoys the right to reception until the IND has made a decision on the application.

If the subsequent application is rejected, the applicant must ask for a provisional measure in order to keep their 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 provisional

⁶²¹ Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019, available in Dutch at: <https://bit.ly/49ucBmd>.

⁶²² Council of State, ECLI:NL:RVS:2019:3442, 15 October 2019, available in Dutch at: <https://bit.ly/3urqBOS>.

⁶²³ Council of State, ECLI:NL:RVS:2020:8, 6 January 2020, available in Dutch at: <https://bit.ly/48tCeCE>.

⁶²⁴ Article 3(3)(a) RVA.

⁶²⁵ Council of State, ECLI:NL:RVS:2018:2157, 28 June 2018, available in Dutch at: <https://bit.ly/49aFHqW>.

⁶²⁶ Article 30c (1) Aliens Act.

measure after rejection may be awaited in the reception centre.⁶²⁷ 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.

2.2 Assessment of resources

According to Dutch legislation, only asylum seekers who lack resources are entitled to material reception conditions.⁶²⁸ 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 €7,605 for a single person and €11,210 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.⁶²⁹ The assessment of resources is carried out two days after the asylum seeker has been moved to a Centre for Asylum Seekers (AZC).

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.⁶³⁰ 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.⁶³¹ Another court ruled that COA calculates the amount of money that needs to be paid back incorrectly.⁶³² COA calculates for how long someone needs to pay until their financial means are below the threshold of the social allowances again. This could mean that the asylum seeker already is requested to pay for reception they have not enjoyed yet and that they might even not access at all – in case they receive a permit and housing before.

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 2023 (in original currency and in €):
 - ❖ Single adult accommodated by COA: Up to € 280.08 (depending on meals)

With the allowance of € 280.08 / month the asylum seeker needs to cover food, clothing and personal expenses.

Apart from the financial allowance, the right to reception conditions includes an entitlement to:⁶³³

- ❖ Accommodation
- ❖ Public transport tickets to visit a lawyer;

⁶²⁷ Council of State, ECLI:NL:RVS:2019:4358, 19 December 2019, available in Dutch at: <https://bit.ly/3STeJi3> and ECLI:NL:RVS:2020:244, 29 January 2020, available in Dutch at: <https://bit.ly/42Pq8Tv>.

⁶²⁸ Article 2(1) RVA.

⁶²⁹ Article 20(2) RVA.

⁶³⁰ E.g. Regional Court Middelburg, ECLI:NL:RBDHA:2022:11143, 21 October 2022, available in Dutch at: <https://bit.ly/49LO7F0> and Regional Court Groningen, ECLI:NL:RBNNE:2021:4635, 28 October 2021, available in Dutch at: <https://bit.ly/3uzXAAAn>.

⁶³¹ Regional Court Arnhem, ECLI:NL:RBDHA:14536, 27 December 2021, available in Dutch at: <https://bit.ly/3SxL2lg>.

⁶³² Regional Court Haarlem, Decision No AWB 21/4779, 28 April 2022, not published on a publicly available website.

⁶³³ Article 9(1) RVA.

- ❖ 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. In some reception centres there are no cooking facilities. A caterer provides the main meal at the reception location or microwave meals are distributed; in these cases the allowance amount is reduced. The amounts are as follows:

Weekly food allowance to asylum seekers accommodated by COA in 2023		
Category of applicant	With dinner provided	Without dinner provided
1-2 person household		
❖ Per Adult or unaccompanied minor	€ 37.80	€ 56.00
❖ Per Child	€ 32.06	€ 46.34
3 person household		
❖ Per adult	€ 30.24	€ 44.80
❖ Per child	€ 32.06	€ 37.10
4+ person household		
❖ Per adult	€ 26.46	€ 39.20
❖ Per child	€ 22.47	€ 32.41

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

The costs for clothes and other expenses is covered by an additional fixed amount of € 14.02 per week per person.⁶³⁴ Unlike the other allowances, this allowance was only adjusted in 2023. From 2005 – 2022 it was € 12.95, which was criticised by academia.⁶³⁵

It is impossible to cook in almost all the (crisis) emergency locations, in which half of the asylum seekers were staying during 2023. Therefore, catering or microwave meals are provided.

As of 1 January 2023, the social welfare allowance for Dutch citizens is set at €1.283,83 for a single person who is at least 21 years old and not older than 67 years. Thus, an asylum seeker receives approximately less than 22% of the social welfare allowance provided to Dutch citizens.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

- Does the law provide for the possibility to reduce material reception conditions?
 Yes No
- 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;⁶³⁶
- ❖ Has not reported to the reception centre for two weeks;⁶³⁷

⁶³⁴ Article 14(4) RVA.

⁶³⁵ L. Slingenberg, *Geen cent te makken*, A&MR 2020, nr. 6-7, 292-295.

⁶³⁶ This specific ground is not elaborated on in the Measures Policy. In general, there are no rules as to report when you leave the premises. Absence is only penalized if one fails to adhere to the reporting obligation.

⁶³⁷ Article 19(1)(e) RVA. This provision sets out the obligation to report to the centre once a week.

- ❖ 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 them for childbirth costs;
- ❖ Seriously violates the house rules of the centre;⁶³⁸
- ❖ Has committed a serious form of violence to asylum seekers staying in the centre, persons employed in the centre or others.

This sanction policy is further elaborated in the Measures Policy (*Maatregelenbeleid COA*).⁶³⁹ It specifies the measures that can be imposed for incidents based on their level of impact. The 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,⁶⁴⁰ 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 places' would be introduced in AZCs as of 1 July 2020.⁶⁴¹ COA is still using the ROV measure of completely withdrawing material reception and financial allowances, thereby announcing that if the asylum seeker does not have a place to go they can stay in a 'time-out place'. Staying in a 'time-out place' means that someone temporarily stays at a different location and will receive no financial allowances, just microwave food.

Individuals who received a positive asylum decision might, however, lose the entitlement to reception according to COA. Article 12(2) RVA states that BIPs must report to the COA every two weeks (and also once at AVIM). If they do not report twice in a row, they will be removed from the reception centre. There are only a few court decisions on this kind of cases. The outcomes are very different. One positive case refers to *Haqbin* and the applicability of the Reception Directive on BIPs through article 3 RVA.⁶⁴² In other cases courts ruled that COA was allowed to stop the reception.⁶⁴³

The position of BIPs who have been removed from reception centres is very precarious. They can no longer be hosted in another asylum seekers' centre, the freedom-restricting location or a national aliens facility - the latter because they already have a permit - and they often have difficulties finding housing at the municipality by themselves without the COA intervention.

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.⁶⁴⁴ Placement in the HTL is accompanied by a freedom-restricting measure on the basis of Article 56 of the Aliens Act. See [Types of Accommodation](#).

Reduction of reception facilities is a decision of the COA and therefore subject to the Aliens Act regarding applicable legal remedies.⁶⁴⁵ 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.

⁶³⁸ Article 19(1) RVA.

⁶³⁹ Maatregelenbeleid COA, available in Dutch at: <https://bit.ly/3t06E0T>.

⁶⁴⁰ CJEU, C-233/18, *Zubair Haqbin v Federaal Agentschap voor de opvang van asielzoekers*, 12 November 2019, available at: <https://bit.ly/49r6xul>.

⁶⁴¹ Letter of the State Secretary, Parliamentary Documents 19637, no. 2642, 1 July 2020, available in Dutch at: <https://bit.ly/49sarE4>.

⁶⁴² Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10832, 27 September 2021, available in Dutch at: <https://bit.ly/3OC8pZE>.

⁶⁴³ Regional Court Utrecht, Decision No AWB 22/9208, 29 December 2022, not published on a publicly available website.

⁶⁴⁴ Article 1(n) RVA.

⁶⁴⁵ 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 they are entitled to.

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 which 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 or to a (crisis) emergency centre but in practice, this does not happen often.⁶⁴⁶

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 State Secretary has acknowledged the need to minimise the movements these children make during the asylum procedure.⁶⁴⁷ However, similar recommendations are made in a more in a recent general report on the living conditions of children in reception centres.⁶⁴⁸

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*).⁶⁴⁹

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 they are 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 to report six days a week (daily except on Sundays). It is therefore difficult to leave the municipality in practice.⁶⁵⁰ 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 their return. It can further lead to pre-removal detention.⁶⁵¹

⁶⁴⁶ 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.

⁶⁴⁷ 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: <https://bit.ly/47LiiVnM>.

⁶⁴⁸ 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*, May 2018, available in Dutch at: <https://bit.ly/483VgQw>.

⁶⁴⁹ Articles 19(1)(e) and 10(1)(b) RVA.

⁶⁵⁰ 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.

⁶⁵¹ Article 108 Aliens Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

- | | |
|--|---------------|
| 1. Number of reception centres: | 170 |
| 2. Total number of places in the reception centres: | 45,840 |
| 3. Total number of places in private accommodation: | Not available |
| 4. Type of accommodation most frequently used in a regular procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |
| 5. Type of accommodation most frequently used in an accelerated procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |

As of 1 January 2024, 64,405 people in the Netherlands were entitled to access reception conditions.⁶⁵² Only half of them are staying at one of the 85 'regular' reception centres by COA (32,667). The rest are hosted in one of the 156 emergency locations managed by COA (24,618) or other locations such as (crisis)management centres managed by a municipality (7,120). In 2023, as in 2021 and 2022, one third of the people entitled to receive reception by COA were beneficiaries of international protection (15,368). These figures do not include displaced people from Ukraine. It is important to note that not only newly arrived asylum seekers are staying at (crisis) emergency locations. Asylum seekers who are already staying in the Netherlands awaiting the (start of) their procedure and BIPs can be also placed at (crisis) emergency locations.

Twice a year the COA predicts the capacity it will need in the upcoming period. In October 2023, COA was expecting, for the beginning of 2024, to need to house 69,900 asylum seekers. In its report, the COA foresaw there would be a shortage of 15,000 places at the beginning of the year, a number that is expected to grow throughout the year,⁶⁵³ as contracts with municipalities for reception centres are ending and many of them do not want to renew the contracts. At the end of 2024, a shortage of 53,000 places is expected by COA.

On 26 August 2022, the State Secretary announced several measures to address the reception crisis,⁶⁵⁴ often referred to as the 'asylum deal'. The most important measures are the prolonging of the time period of decision-making (WBV 2022/22), the suspension of family reunification, temporary cancellation of resettlement of refugees under the EU-Türkiye deal and the launch of the 'Spreading law' (*Spreadingswet*). In response to the reception crisis, on 8 November 2022 a legislative proposal aimed at distributing the number of reception places in the country was put forward.⁶⁵⁵ The 'Spreading law' will ensure that the municipalities are also be responsible for providing sufficient reception places for asylum seekers (article 6 paragraph 1). On 10 October 2023, the Spreading Law was approved by the House of Representatives and on 23 January 2024 the Senate also approved the Law.⁶⁵⁶ The Law entered into force on February 1, 2024.

The law outlines the following time structure. Once every two years before 1 February, the minister will announce in the capacity estimate how many reception places for asylum seekers will be needed in the following two years (Article 2 paragraph 1). These places are divided among the twelve provinces that will discuss with the municipalities how these places are divided. Before 1 September, the minister will

⁶⁵² Numbers available at <https://www.coa.nl>, accessed at 9 January 2023.

⁶⁵³ COA Website: <https://www.coa.nl/nl/lijst/capaciteit-en-bezetting>, figures are updated monthly.

⁶⁵⁴ KST 19637, no. 2992, Letter of the Ministry of Justice and Security on decision-making concerning the reception crisis, 26 August 2022, available in Dutch at: <https://bit.ly/3ikz3JP>.

⁶⁵⁵ Concept Bill and explanatory memorandum, 8 November 2022, available in Dutch at: <https://bit.ly/3CzSjtz>.

⁶⁵⁶ See overview of the consideration of the bill the website of the Senate, available in Dutch: <https://bit.ly/3SibK2h>.

decide on the basis of the reports from the provincial discussions what the minimum number of required reception places is for the next two years, which will be divided over the municipality designated in the decision (Article 5 paragraph 1). The financial system put in place is very difficult. Municipalities receive different amounts of compensations based on whether they offer accommodations before or after the minister announces the estimated capacity and on the number of years they provide the accommodation for.

The Dutch Council for Refugees' initial response to the consultation identified the following issues in the bill:⁶⁵⁷ (1) The distribution and reward system makes the law extremely complex and administratively cumbersome; (2) little to no attention is paid to the importance of buffer capacity and prevent downscaling reception capacity; (3) monitoring of the division of responsibility is insufficiently guaranteed; (4) a quality framework should be anchored in the law; (5) more attention should be paid to the realization of small-scale reception facilities; (6) the relationship with other laws and context is not sufficiently included, for example the relation with the reception regulations for displaced people from Ukraine (7) attention should be paid to the long-term commitment with a parallel approach for the short term. Finally, the Council for Refugees argued that for the nearly 20,000 people who are currently staying in conditions that do not comply with the (international) rules that the Netherlands must adhere to, acute state emergency law or urgent legislation is required.

At the end of April 2023, the government published the number of asylum seekers they expected to come to the Netherlands for the remainder of 2023 and the shortages that would occur in asylum reception.⁶⁵⁸ The following measures were proposed in that letter. The cabinet focused on a number of measures in the areas of (1) inflow, (2) progression, (3) reception, and (4) outflow and departure. This effort is aimed at:

1. 'Gaining control over asylum inflow through involvement in Europe;
2. The government found a trend of granting more asylum applications in 2022 than before and more than by other EU-member states. Therefore, measures need to be implemented for a fair, humane, and effective asylum policy. Realization of acceleration at the Immigration and Naturalization Service (IND) to catch up on backlogs, and improvement of progression through an efficient identification and registration process;
3. Organising sufficient reception capacity by focusing on governance, additional measures by the COA, realization of sustainable capacity in line with the Spreading Law; and support in other policy domains;
4. Promotion of the outflow of beneficiaries of international protection by providing flexible housing to municipalities and the continuous encouragement of departure.'

1.1 Central Reception Centre (COL)

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).⁶⁵⁹ 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.⁶⁶⁰ Vulnerable asylum seekers such as children do not stay at JCS.

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. In 2023, the location of **Ter Apel** reached its full capacity multiple times,

⁶⁵⁷ VWN, 'Response to Internetconsultation on Spreading Law', 23 November 2022, available in Dutch at: <https://bit.ly/3VZOgh4>.

⁶⁵⁸ KST, 19637, nr. 3100, 28 April 2023, available in Dutch at: <https://bit.ly/421cvjj>.

⁶⁵⁹ Article 3(3) Aliens Act.

⁶⁶⁰ 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.

resulting in asylum seekers sleeping in the waiting room of the IND without bed or shower and being sent all over the country – see A1. [Criteria and restrictions to access reception conditions](#). On 10 September 2022, the Ministry of Defence opened a special location at **Marnewaard** to house asylum seekers who are still going through the registration process in Ter Apel. This location, also called ‘the waiting room’ has a capacity of 600. Asylum seekers do not stay for longer than a week at Marnewaard. The location at **Marnewaard** was closed again on 1 March 2023.⁶⁶¹ But on 1 July 2023, a similar location opened again in **Assen** with a capacity of 500 beds.⁶⁶² Followed by other locations in **Amsterdam** and **Leeuwarden**.⁶⁶³

In 2019 and 2023, the RVA 2005 was altered in order to allow for a different reception regime for asylum seekers whose request is dealt with in [Track 1 \(Dublin\)](#) and [Track 2 \(‘safe country of origin’ and ‘international protection in another EU Member State’\)](#).⁶⁶⁴ Article 9(7) excludes these asylum seekers from financial allowances, which means that they are only entitled to frozen microwave meals. Article 19(3) states that these asylum seekers have to report their presence daily. However, this only needs to be applied to asylum seekers who are staying at reception centres that are suited for this scheme, ‘**austere**’ reception centres (*sobere opvang*).⁶⁶⁵ The austere reception aims to make the Netherlands less attractive for individuals with a low-prospect asylum application and also serves to alleviate the overload on the asylum system.⁶⁶⁶

During the pilot period of 1 October 2020 up until 1 August 2021, 261 asylum seekers whose request was dealt with in Track 2 stayed at an ‘austere’ reception centre.⁶⁶⁷ This is a separate fenced building on the same site of normal reception centres in **Ter Apel** and **Budel** with extra security personnel that carries out room checks and checks upon entry and departure of the building. Asylum seekers also needed to stay in these facilities when they appealed the rejection of their asylum request.

After the pilot period asylum seekers whose request was dealt with in Track 2 were moved out of the fenced buildings in **Ter Apel** and **Budel** when their asylum request was dealt with by IND.⁶⁶⁸ Vulnerable asylum seekers whose request is dealt with in Track 2 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,⁶⁶⁹ 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.⁶⁷⁰

In July 2023, COA opened another ‘austere reception’ centre at **Ter Apel**, which is called the being-available-during-the-procedure-location (*Procesbeschikbaarheidslocatie*, PBL).⁶⁷¹ It has space for 50-100 asylum seekers and is aimed at asylum seekers who cause disturbances and have a low-prospect

⁶⁶¹ RTV Noord, ‘Noodopvang locatie Marnewaard bij Zoutkamp sluit zoals gepland in maart’, 2 February 2023, available in Dutch at: <https://bit.ly/3RXcfNR>.

⁶⁶² NOS, ‘Evenementenhal in Assen wordt ‘wachtkamer’ voor aanmeldcentrum Ter Apel’, 24 May 2023, available in Dutch at: <https://bit.ly/4217KGv>.

⁶⁶³ Parool, ‘Amsterdam-Zuidoost opent extra opvangplek voor asielzoekers wegens druk op Ter Apel’, 20 September 2023, available in Dutch at: <https://bit.ly/3HhJbvJ>; Omrop Fryslân, ‘Opnieuw vluchtelingen opgevangen in WTC in Leeuwarden’, 2 October 2023, available in Dutch at: <https://bit.ly/421aeEP>.

⁶⁶⁴ Strct 2020, 48688, available in Dutch at: <https://bit.ly/3vEwHeX>; and Strct 2023, 26411, available in Dutch at: <https://bit.ly/3O3Jk9C>.

⁶⁶⁵ Strct 2023, 26411, available in Dutch at: <https://bit.ly/3O3Jk9C>.

⁶⁶⁶ Ibid.

⁶⁶⁷ Rijnconsult, Evaluation of the pilot ‘austere reception’ Track 2, 13 September 2021, available in Dutch at: <https://bit.ly/3vqKsOE>, 18.

⁶⁶⁸ See COA website, <https://bit.ly/3Sj9w2J>.

⁶⁶⁹ Council of State, ECLI:NL:RVS:2021:1626 and ECLI:NL:RVS:2021:1627, 28 July 2021, available in Dutch at: <https://bit.ly/4btJzoD>.

⁶⁷⁰ E.g. Regional Court Haarlem, 18 August 2021, ECLI:NL:RBDHA:2021:9028, available in Dutch at: <https://bit.ly/4btTPgH>.

⁶⁷¹ KST 19637, nr. 3110, available in Dutch at: <https://bit.ly/3S6Ttns>.

asylum application.⁶⁷² Apart from the exemptions in the RVA 2005 for asylum seekers whose request is dealt with in Track 1 or Track 2 that were discussed above, there are no public regulations as to who is supposed to be housed in the PBL.

Concerns on the restrictions of the Freedom of Movement and the lack of a specific legal basis for these austere reception regimes have been raised by legal experts from the Dutch Council for Refugees.⁶⁷³

1.2 Emergency locations (Noodopvang)

Emergency locations are temporary locations, managed by COA. Locations differ from sport and event halls, boats, cruise ships, pavilions, hotels, former schools former office buildings and in former COVID-19 test locations. Many of these locations house more than 500 people. For example, in 2022, two cruiseships in **Amsterdam** and **Velsen** both housed over 1000 people. The ship in Velsen was moved to Rotterdam in July 2023, the cruiseship in Amsterdam remains at the same location.⁶⁷⁴ The reception capacity of both ships was increased from 1,000 to 1,500 people.⁶⁷⁵

In 2021, Afghan evacuees were 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 Ombudsperson and the Human Rights Committee went to visit **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.⁶⁷⁶ The State Secretary finally moved Afghan evacuees still living in tents at Heumensoord to another site at the end of January 2022 placing them in other emergency locations. At another site where 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.⁶⁷⁷ The protest was ended by the police that same evening. The reception centre in Harskamp was open for 100 days, after which it was closed to resume its original function as a military training location.⁶⁷⁸ Since March 2022 the Harskamp location has been used for reception of displaced persons from Ukraine, with no known protests from the village residents.⁶⁷⁹

Regarding living conditions, see [Conditions in \(crisis\)emergency locations](#).

1.3 Crisis Emergency Locations (Crisisnoodopvang, CNO)

The first Crisis Emergency Locations opened in May 2022. Crisis Emergency Locations are managed by municipalities or Security Regions (*Veiligheidsregio's*), they are even more temporary than emergency locations and may sometimes only house people for up to 2-3 days. This means that people have to move from place to place.

⁶⁷² Ibid.

⁶⁷³ Anna Chatelion Counet, Sofia D'Arcio and Lianne Hooijmans, *Tien juristen, elf meningen?*, JNVR 2023-4, p. 17 and further on austere reception centres.

⁶⁷⁴ COA, 'Ferry Silja Europa vaart 1 juli van Velsen naar Rotterdam', 1 July 2023, available in Dutch at: <https://bit.ly/48ufB1J>; COA, 'Amsterdam Westerhoofd', available in Dutch at: <https://bit.ly/4aULYsj>.

⁶⁷⁵ COA, 'Ferry Silja Europa vaart 1 juli van Velsen naar Rotterdam', 1 July 2023, available in Dutch at: <https://bit.ly/48ufB1J>; NOS, 'Amsterdam wil opvang asielzoekers op cruiseship met half jaar verlengen', 3 February 2023, available in Dutch at: <https://bit.ly/3vsHI30>.

⁶⁷⁶ National Ombudsperson, 'Close emergency location Heumensoord and fix other accommodation for Afghan evacuees', 10 November 2021, see: <https://bit.ly/3HF2KMp>.

⁶⁷⁷ NOS, 'Politie grijpt in bij protest in Harskamp tegen komst Afghanen', 24 August 2021, available in Dutch at: <https://bit.ly/3rqgzSP>.

⁶⁷⁸ Omroep Gelderland, 'Noodopvang Harskamp sluit na 100 dagen de deuren', 1 December 2021, available in Dutch at: <https://bit.ly/3vvAWcC>.

⁶⁷⁹ COA, 'Eerste vluchtelingen Oekraïne in Harskamp', 4 March 2022, available in Dutch at: <https://bit.ly/47pzgyE>.

The COA provided a guide for municipalities on managing CNOs.⁶⁸⁰ This guide states that very vulnerable people such as pregnant women, babies and elderly people should not be placed in CNOs – however, vulnerable people are still placed at these locations. A report from the Dutch Council of Refugees, for which 22 (crisis)emergency locations were visited, concluded that on 17 locations vulnerable people whose (medical) needs could not be taken care of were present.⁶⁸¹ This concerns individuals with severe physical or mental conditions, chronically ill individuals, and pregnant women. A particularly distressing case involves a man with cancer undergoing chemotherapy while staying in a (crisis) shelter in an event hall.

1.4 Process Reception Centres (POL)

After this stay at the COL, the asylum seeker would normally be transferred to a Process Reception Centre (Proces Opvanglocatie, POL). However, this is not always the case since the start of the reception crisis. Asylum seekers can stay at all kind of locations during their asylum procedure, they might even be interviewed at the reception centre.

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, they receive 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.⁶⁸² Additionally, The Dutch Council for Refugees and the Ombudsperson 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.⁶⁸³

1.5 Centres for Asylum Seekers (AZC)

An asylum seeker remains in the POL if the IND decides to examine the asylum application in the Regular Procedure 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.

As discussed above, many beneficiaries of international protection are staying at AZCs: for more information on the housing backlog for BIPs, see [Content of International Protection: Housing](#).⁶⁸⁴

The COA continuously requests municipalities to provide more AZCs that are available for long term.⁶⁸⁵

⁶⁸⁰ COA (and other organisations), *Handreiking Crisisnoodopvang*, 2 December 2020, available in Dutch at: <https://bit.ly/3CzLMix>.

⁶⁸¹ VWN, *Gevlucht en vergeten?*, August 2023, available in Dutch at: <https://bit.ly/4205TBR>.

⁶⁸² Dutch refugee Council, *Gevangen in een vastgelopen asielsysteem: Gevolgen en verhalen uit de praktijk*, November 2019, available in Dutch at: <https://bit.ly/2vSP2pW>.

⁶⁸³ See for example: NOS, “Ombudsman: zakgeld en privacy voor asielzoekers vanwege lange wachttijden”, 10 March 2020, available in Dutch at: <https://bit.ly/33OOIL1>.

⁶⁸⁴ COA, *Bezetting*, available in Dutch at: <http://bit.ly/2E95a6F>. And KST 19637, no. 2992, Appendix to letter decision-making on the reception crisis, available in Dutch at: <https://bit.ly/3lmJjdc>.

⁶⁸⁵ E.g. Letter to the King's Commissioners and the councils of the Mayor, 6 October 2023, available in Dutch at: <https://bit.ly/3VzERQB> and Letter to Parliament, 10 November 2023, available in Dutch at: <https://bit.ly/3wybNP1>.

1.6 Enforcement and Supervision Location (HTL)

The Enforcement and Supervision Location (*Handhaving en Toezichtlocatie, HTL*) was set up 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.⁶⁸⁶

One HTL in **Hoogeveen**, opened in December 2017 as an Extra Guidance and Supervision location (*Extra Begeleiding- en Toezichtlocatie, EBTL*) and became an HTL in February 2020. The location has a capacity of 50 places.⁶⁸⁷

The Inspection of the Ministry of Justice and Security concluded in 2018 that the EBTL 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 and the HTL was opened.⁶⁸⁸ The difference between the EBTL and the HTL is that the HTL objective is no longer to change the behaviour of the applicant. Applicants placed in the HTL will get a stringent area ban and a compulsory day programme.

The number of people placed in the EBTL and the HTL over the last few years were as follows:⁶⁸⁹

Year	Number of persons placed
2019	250
2020	210
2021	210
2022	220
2023	Not yet available

Asylum seekers staying at the HTL 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.⁶⁹⁰ 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.⁶⁹¹ This was mostly due to the possibility to leave the HTL, even though leaving means that one loses their right to reception.

In August 2022, the Inspection Department of the Ministry of Justice and Security paid an unannounced visit to the HTL following the report of a 'whistleblower' who notified eight incidents in the twenty days that he worked at the HTL. During this visit, employees and asylum seekers were interviewed. Observations were also made and supervision plans were examined in the information system of COA. Finally, the Inspection requested documentation and camera images. The findings are alarming.⁶⁹² The Inspection established that housing supervisors, who work for the COA and the DJI, use coercion and

⁶⁸⁶ Article 1(n) RVA, Decision of State Secretary, No 69941, 3 December 2018

⁶⁸⁷ COA, *Verschillende soorten opvang*, available in Dutch at: <https://bit.ly/3lKH8kb>.

⁶⁸⁸ State Secretary, Letter KST19637 2572, 18 December 2019.

⁶⁸⁹ WODC, 'Incidenten en misdrijven door COA-bewoners 2017-2021', 22 June 2022, available in Dutch at: <https://bit.ly/46MAAd3A>.

⁶⁹⁰ For example in the case: Regional Court Den Bosch, ECLI:NL:RBDHA:2020:4558, 25 May 2020, available in Dutch at: <https://bit.ly/3usuLWA>.

⁶⁹¹ Regional Court Groningen, ECLI:NL:RBDHA:2020:6252, 10 July 2020, available in Dutch at: <https://bit.ly/49oRcuC>. For a more recent judgement see: Regional Court Groningen, Case nos. AWB 22/6262 en NL22.21029, 11 November 2022.

⁶⁹² Inspection of the Ministry of Justice and Security, 'Letter on the investigation of the HTL in Hoogeveen', 13 October 2022, available in Dutch at: <https://bit.ly/3jOns5O>. See also this report from newspaper NRC, 'Wat gebeurt er achter de muren van het 'aso-azc' in Hoogeveen?', 11 November 2022, available in Dutch at: <https://bit.ly/3vzymz9>.

violence. For example, housing supervisors pushed, slapped or kicked asylum seekers and made unauthorized use of handcuffs.

In his response, the State Secretary indicated not having recognised any pattern of disproportionate violence in the HTL. According to the State Secretary, these cases were isolated and COA always investigates thoroughly when this happens. However, the daily programme will be examined.⁶⁹³

1.7 Administrative placing and hosting arrangement

Administrative placement makes it possible for asylum seekers to live with (first-degree) relatives while receiving allowances and health insurance. Previously, the administrative placement was regulated in Article 13 Rva (old), but this basis has disappeared. However, practice shows that it is still possible in exceptional cases to be placed administratively at the nearest AZC from the place of residence of the family member. The asylum seeker must report to the AZC on a weekly basis. According to the COA's Provisions Policy, an income check is carried out during administrative placement. If the family member earns too much, the asylum seeker will not receive allowances. Administrative placement of an asylum seeker who is still in the pre-pol is not yet possible. VWN has often pointed out that this practice could be expanded, because more and more people are requesting it and it could be a way to make up space for new asylum seekers.⁶⁹⁴

BIPs staying at a reception centre while waiting to be housed, can stay at a host family for up to three months using the 'hosting arrangement' (logeerregeling). The organisation Takecarebnb connects and guides host families and BIPs.⁶⁹⁵

At the end of 2023, the hosting arrangement was also extended to asylum seekers.⁶⁹⁶ Their application needs to be dealt with in Track 4 and they need to be 18 years or older. Asylum seekers using the hosting arrangement receive an extra financial allowance of 25 euros a week if they are between 18 and 21 years old. The COA has temporarily increased this extra allowance for asylum seekers using the hosting arrangement who are older than 21 to 75 euros. The hosting arrangement is in principle for three months. As the arrangement has only been introduced at the end of 2023, there is no information yet on the success of it.

In a debate in parliament on 19 October 2022 the State Secretary stated that 1,000 people were using either the administrative placing or the hosting arrangement in 2022.⁶⁹⁷

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? 10,89 months (01-01-2022)⁶⁹⁸
3. Are unaccompanied children ever accommodated with adults in practice? Yes No
4. Are single women and men accommodated separately? Yes No

The instances of asylum seekers not having access to reception accommodation are addressed under [Criteria and restrictions to access reception conditions](#).

⁶⁹³ KST 19637, no. 2995, 19 October 2022, available in Dutch at: <https://bit.ly/3jNuw2y>.

⁶⁹⁴ E.g. VWN, 'Brief VluchtelingenWerk Nederland t.b.v. het commissiedebat Vreemdelingen- en asielbeleid 22 juni 2022', 17 June 2022, available in Dutch at: <https://bit.ly/3GrK2sl>, 5.

⁶⁹⁵ See their website here: <https://takecarebnb.org/>.

⁶⁹⁶ This information comes from the website of COA, available in Dutch at: <https://bit.ly/3HkHuNP>.

⁶⁹⁷ Minutes of the Committee Debate on 19 October 2022, available in Dutch at: <https://bit.ly/42So3Gh>, 40.

⁶⁹⁸ Ministry of Justice and Security, *State of Migration 2022*, 30 June 2022, available in Dutch at: <https://bit.ly/3r2SiYD>, 109.

2.1 Conditions in (crisis)emergency locations

As is made clear in [Types of accommodation](#), half of the asylum seekers in the Netherlands are housed in (crisis)emergency locations. In both 2023 and 2022, reception conditions provided to these asylum seekers did not meet the minimum legal standards. The Dutch Council for Refugees (VWN) published three *Quickscans* on the conditions in (crisis) emergency locations.⁶⁹⁹ The living conditions in emergency reception centres for refugees and asylum seekers are seriously inadequate. Many locations do not ensure that basic needs - such as privacy, security and warmth – are fulfilled. There are also concerns about health care, access to education and other activities for children and the fact that asylum seekers are forced to frequently move from one facility to the other.⁷⁰⁰

After almost a year of witnessing said conditions, the Dutch Council for Refugees (VWN) formally announced that it holds the State and COA responsible for the current circumstances which violate the Receptions Conditions Directive, and that if the situation would not improve, within a month, it would take the matter to court in a tort procedure.⁷⁰¹ The situation did not change, therefore VWN summoned the State and COA in front of the Regional Court of the Hague on 17 August 2022.⁷⁰² On 6 October 2022, the court of first instance confirmed that the State has an obligation of result to take appropriate measures to guarantee dignified reception facilities for asylum seekers. In fulfilling these obligations, the State must take into account the EUAA reception guidelines, as they are widely supported scientific insights and internationally accepted standards.⁷⁰³ Furthermore, the court established that COA and the State needed to improve reception conditions in a timely manner, detailing different terms for various situations in the country:

- ❖ In Ter Apel, every asylum seeker who wants to register their application must immediately be offered a safe covered sleeping place, food, water and access to hygienic sanitary facilities.
- ❖ All asylum seekers must be given immediate access to any form of necessary health care.
- ❖ The vulnerable asylum seekers mentioned in the Crisis Emergency Locations Guide (including babies and their families and heavily pregnant women) may no longer be placed in crisis emergency shelters, with immediate effect.⁷⁰⁴
- ❖ All asylum seekers must be medically screened before being placed in a crisis emergency location within two weeks.
- ❖ Additional reception for unaccompanied minors must be realized within two weeks, in particular for the unaccompanied minors currently residing in Ter Apel.
- ❖ A maximum of 55 unaccompanied minors may stay in Ter Apel for a maximum of five days, within two weeks.
- ❖ Minor asylum seekers must be given access to play facilities and education within four weeks.
- ❖ All asylum seekers residing in (crisis) emergency reception locations must receive a financial allowance, within four weeks.
- ❖ Vulnerable asylum seekers may no longer be placed in an emergency reception location in four weeks' time, unless their specific special reception needs are met in that location.

The overall situation had to be improved within nine months. The State and COA appealed the court decision and asked for the judgment to be suspended. This request was not allowed, meaning that the

⁶⁹⁹ VWN, First Quickscan, 14 December 2021, available in Dutch at: <https://bit.ly/3QzQimT>, VWN, Second Quickscan, 9 March 2022, available in Dutch at: <https://bit.ly/3iubcHC> and VWN, Third Quickscan, 19 October 2022, <https://bit.ly/3ZseCuT>.

⁷⁰⁰ Ibid.

⁷⁰¹ VWN, 'VluchtelingenWerk takes legal action against the government and COA over shelter crisis', 7 July 2022, available at: <https://bit.ly/3ZphJnh>. See also a more detailed explanation on the situation and reasons for VWN to summon COA and the State plus an inspection of a few (crisis)emergency locations by VWN in Dutch at: <https://bit.ly/3GSaiOp>.

⁷⁰² VWN, VluchtelingenWerk spant kort geding aan tegen het Rijk en het COA vanwege opvangcrisis, 17 August 2022, available in Dutch at: <https://bit.ly/3lBnulz>.

⁷⁰³ Regional Court The Hague (civil department), ECLI:NL:RBDHA:2022:10210, 6 October 2022, available in Dutch at: <https://bit.ly/3wikDjE>, para. 7.4.

⁷⁰⁴ Guide for Crisis Emergency Locations, 2 December 2020, available in Dutch at: <https://bit.ly/3XSRbJi>.

State and COA needed to fulfil the obligations that were imposed within a short time period.⁷⁰⁵ On 20 December 2022, the Hague Court of Appeal upheld the essence of the earlier ruling: the reception conditions in which thousands of asylum seekers are forced to live and do not meet minimum legal requirements.⁷⁰⁶ The ‘reception crisis’ is a self-made crisis caused by the government’s policies.⁷⁰⁷ Therefore, the State and COA could not invoke the *force majeure* situation of article 18(9) Reception Conditions Directive. However, although the Court expects the State and COA to fulfil their legal obligations as soon as possible, the deadline given to the State to improve all reception conditions was revoked. The State and COA still need to provide with immediate effect that:

- ❖ Asylum seekers are no longer left in the streets or sleeping outdoors in Ter Apel.
- ❖ Vulnerable asylum seekers should not be placed in (crisis) emergency locations unless their special needs are met there.
- ❖ The State and COA must make every effort to screen asylum seekers medically as far as possible before they are transferred from Ter Apel to another reception centre – especially if that other facility is an (crisis)emergency location; if the screening could not take place immediately, it should take place as soon as possible thereafter.
- ❖ Access to necessary health care is to be provided.
- ❖ Asylum seekers in crisis emergency locations must be provided with a weekly financial allowance in accordance with Article 14 Rva 2005.
- ❖ Children in (crisis) emergency locations should have access to playing facilities and education. An exception can only be made if there is no way to meet this condition immediately due to a shortage of teachers, and then only as long as the State continues its efforts to make education accessible to minor asylum seekers.

Moreover, the Court ruled that the State treats displaced persons from Ukraine and asylum seekers from other countries unequally. The Court rejected VWN’s request to order the State and COA to treat all asylum seekers equally, based on the fact that the goal of ensuring that reception conditions meet the State’s minimum legal obligations, was deemed impossible to achieve within a short period of time. The Court also does not consider it their role to instruct the State on how to ensure that the State ensures equal treatment of all asylum seekers. None of the parties appealed this decision, so the judgement is final.

In August 2023, one year after the start of the tort procedure, the Dutch Council for Refugees investigated the extent to which the living conditions in the (crisis) emergency locations align with European obligations as explained in the court ruling.⁷⁰⁸ In the months of June and July 2023, 22 (crisis) emergency locations were visited, and 92 residents were interviewed. The report concluded that the majority of the (crisis) emergency locations still largely fail to meet the State’s obligations under European law. While some (crisis) emergency locations have adequate facilities, these are exceptions, and conditions elsewhere are equally distressing, if not worse than last year. Additionally, the (social) safety and self-sufficiency of residents in (crisis) emergency locations need improvement. This can make a significant difference in how residents experience their stay. Without structural measures, the dire situation in which residents find themselves at the (crisis) emergency locations continues to be without a foreseeable resolution. The Dutch government thereby violates its obligation to provide adequate and humane accommodation for asylum seekers in the Netherlands. Other conclusions from this report were the severe suffering experienced by asylum seekers due to a lack of privacy, tranquility, and suitable nutrition. Sanitary facilities are inadequate and particularly unhygienic in too many places. Problems with healthcare accessibility exist in almost half of the (crisis) shelters. Additionally, the majority of the (crisis) shelters have proved detrimental to children, who experience a decline and weight loss due to a lack of activities, safe play areas, and healthy food. Finally, residents at three-quarters of the (crisis)

⁷⁰⁵ The Hague Court of Appeal (civil department), ECLI:NL:GHDHA:2022:2078, 17 October 2022, available in Dutch at: <https://bit.ly/3Ozwn7V>.

⁷⁰⁶ The Hague Court of Appeal (civil department), ECLI:NL:GHDHA:2022:2078, 20 December 2022, available in Dutch at: <https://bit.ly/3li2iX0>.

⁷⁰⁷ This has also been confirmed by the ACVZ and ROB (*Raad voor het Openbaar Bestuur*). In their report they state that the reception crisis is a self-made crisis by the Dutch government: ‘Asielopvang uit de crisis’, 14 June 2022, available in Dutch at: <https://bit.ly/3ik1OGw>.

⁷⁰⁸ VWN, *Gevlucht en vergeten?*, August 2023, available in Dutch at: <https://bit.ly/4205TBR>.

emergency locations indicate that the living conditions affect their well-being and sense of human dignity. Large differences between (crisis) shelters also reveal that whether asylum seekers experience decent reception in the Netherlands is subject to arbitrariness .

Other organisations also reported on the conditions in the (crisis) emergency locations. The National Ombudsperson and the National Children's Ombudsperson concluded in a report that human rights and children's rights are put under pressure.⁷⁰⁹ The whole situation keeps being handled in crisis mode, whereas it is a long lasting issue. Moreover, the government does not sufficiently take into consideration the necessity for asylum seekers to be able to exercise self-determination and autonomy. Finally, as DCR also concluded, the Ombudsperson highlighted the arbitrariness of the reception system and concluded that the principle of non-discrimination is not respected.

Pharos, the Dutch Red Cross and Doctors of the World (Dokters van de Wereld) also published a report on the lack of sufficient medical care (see [Reception conditions - Health Care](#)).⁷¹⁰

2.2 Conditions in AZCs

Residents of a regular 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.⁷¹¹ 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.⁷¹² 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.⁷¹³ 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 10 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.

⁷⁰⁹ Nationale ombudsman en Kinderombudsman, *De crisis voorbij*, June 2023, available in Dutch at: <https://bit.ly/3vIrr2V0>.

⁷¹⁰ Pharos, Rode Kruis en Dokters van de Wereld, *Zorgen in tijden van crisis*, available in Dutch at: <https://bit.ly/3TUvbiW>.

⁷¹¹ For more information, see COA, available in Dutch at: <https://bit.ly/41XxH9U>.

⁷¹² Article 18(1) and (3) RVA.

⁷¹³ Article 19(1)(e) RVA.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

The Aliens Labour Act and other regulations lay down the rules regarding access to the labour market for asylum seekers. 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:⁷¹⁴

- ❖ 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 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,⁷¹⁵ in practice, it is hard for an asylum seeker to find a job. However, as of 2023, this seems to be slowly changing. Due to factors such as a lack of labour forces and long waiting times in the reception centres, there is an increasing attention to early access to work for asylum seekers in the Netherlands. On behalf of the Ministry of Social Affairs and Employment, Regioplan researched the legal and practical barriers for asylum seekers to access the labour market.⁷¹⁶ Regioplan concluded that the limitation allowing asylum seekers to work only 24 weeks per year (in effect from 1998 to 2023)⁷¹⁷ was the primary obstacle, along with the employment-licence and the employers' unfamiliarity with the application procedure. Additionally, it often takes months for asylum seekers to register in the Municipal Personal Records Database (*BRP*), which is necessary to open a bank account in order to receive wages and to pay taxes. Other identified barriers include a lack of support for job placement, limited knowledge of the Dutch language, refugee-related psychological problems and cultural differences. *Regioplan* states that most of these obstacles fall within the sphere of influence of the central government, making it their responsibility to take action.⁷¹⁸ In response to this report, the minister indicated a willingness to explore possible solutions. Unfortunately, due to the current political situation and the outgoing government, this issue is on hold.⁷¹⁹

⁷¹⁴ Article 6.2 Aliens Labour Decree and paragraph 8.2 Annex I Aliens Act Implementing Regulation 2022.

⁷¹⁵ Article 6.2 Aliens Labour Decree and paragraph 8.2 Annex I Aliens Act Implementing Regulation 2022.

⁷¹⁶ Regioplan, *Belemmeringen asielzoekers bij het toetreden tot de arbeidsmarkt*, 11 April 2023, available in Dutch at: <https://bit.ly/3uu1Wco>.

⁷¹⁷ See previous updates to this country report available at: <https://bit.ly/3SMHHji>.

⁷¹⁸ Regioplan, *Belemmeringen asielzoekers bij het toetreden tot de arbeidsmarkt*, 11 April 2023, available in Dutch at: <https://bit.ly/3uu1Wco>, 1.

⁷¹⁹ Ministry of Social Affairs and Employment, KST 29544, nr. 1213, 14 July 2023.

Nevertheless, by the end of 2023 one of the key barriers to effective access to work for asylum seekers was removed. Until then, asylum seekers in the Netherlands were only allowed to work 24 weeks per year. As a result, it was not attractive for employers to hire an asylum seeker. However, in November 2023, the Council of State determined in an onward appeal that this time restriction is contrary to Article 15 of the Reception Directive⁷²⁰. This means that the provision of the 24-week limitation is null and void, and the Dutch government must adjust its policy. Since this ruling, asylum seekers with a valid employment-licence are allowed to work as long as their asylum procedure is ongoing and they have lawful residence in the Netherlands. The legal provision has not been updated yet as of March 2024.

Despite this significant breakthrough, employers still face administrative hurdles because a valid employment-licence is still required. The employer applies for the licence. It is valid specifically for the employee, the nature of the work the employee will perform and the place where it will be performed. Since the abolition of the 24-weeks limitation, the employment-licence remains valid until the asylum seeker receives a permit or has exhausted all legal remedies. The procedure for applying for an employment licence at the Dutch Employees Insurance Agency takes in practice about 2 weeks, which is within the time limit foreseen in law.⁷²¹ Moreover, although access to the labour market is granted 6 months after the application has been lodged, before the employer can apply for the employment-licence, 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 they 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, regardless of how little or how much they earn. Asylum seekers are allowed to keep 25% of their income with a maximum of € 249 per month.⁷²² In case their monthly income exceeds the required contribution to accommodation costs, they can keep any surplus income.⁷²³ This depends on how much they earn and it can never exceed the economic value of the accommodation facilities. Once an asylum seeker surpasses such threshold, the financial allowance can be withdrawn. Another issue that arises is that beneficiaries of international protection receive the reclamation by the COA after they have been housed in a municipality. As a result, these beneficiaries start with a debt to the COA.

Good practices

A good practice is the "Meedoenbalies" (Participation Desks) established by the COA in collaboration with the Association of Dutch Volunteer Organizations (Vereniging Nederlandse Organisaties Vrijwilligerswerk (NOV)). Asylum seekers and refugees in reception centres can register at a Meedoenbalie for activities such as volunteering, sports, recreation, and paid employment. The goal is to enable people to participate in society, as this improves the well-being and health of the residents. Additionally, it helps them enhance their knowledge of the Dutch language and culture, gain work experience, and interact with Dutch citizens. This, in turn, may contribute to increasing support for newcomers in society. Out of nearly 180 COA locations, 38 have a *Meedoenbalie*, and the COA aims to expand this to at least 60 locations. According to the Ministry of Social Affairs, more than 56,000 matches have already been made.⁷²⁴

Another good practice is the platform RefugeeWork. This initiative was launched by the Dutch Council for Refugees in collaboration with the Start Foundation. RefugeeWork is a national platform that connects employers with refugees by making matches based on skills. On this platform, asylum seekers, refugees, and Ukrainians can register. In addition to providing practical information for employers and

⁷²⁰ Council of State, ECLI:NL:RVS:2023:4418, 29 November 2023, available in Dutch at: <https://bit.ly/3OzSmLS>.

⁷²¹ Article 6 Aliens Labour Act.

⁷²² Article 5, lid 3 Reba 2008 jo. article 31, lid 2 sub n Participation Act.

⁷²³ Article 5(4) Regeling eigen bijdrage asielzoekers met inkomen (Reba).

⁷²⁴ Ministry of Social Affairs and Employment, KST 32824, nr. 389, 11 July 2023 and the COA website: <https://bit.ly/49tiakP>.

job seekers, a guidance tool is being developed and will be added to the platform in the future. RefugeeWork also allows municipalities and other social organisations to join.⁷²⁵

Voluntary Work

Asylum seekers are also allowed to take part in voluntary work. This is possible from the moment the asylum application has been lodged. 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.⁷²⁶ A few years ago the government simplified the procedure to acquire a volunteering permit. Since then, 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.⁷²⁷

Internships for minors

Minor asylum seekers are allowed to do an internship when this is an obligatory part of their study path. The rules explained above (after six months in procedure and with a permit (“*tewerkstellingsvergunning*”) do not apply to them. The internship is allowed directly after lodging the asylum application and a permit is not required.⁷²⁸

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.⁷²⁹ 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.⁷³⁰ 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.⁷³¹

According to the RVA, the COA provides access to educational programmes for adults at the AZC.⁷³² Depending on the stage of the asylum application, the COA offers different educational programmes, focused on the language training and classes about Dutch society and the labour market. Refugees who have been granted a residence permit can still be offered an educational programme.⁷³³

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, instead of professional teachers volunteers provide them

⁷²⁵ Ministry of Social Affairs and Employment, KST 32824, nr. 370, 28 September 2022 and the RefugeeWork website: <https://bit.ly/3UyPeDI>.

⁷²⁶ Article 1a(b) Aliens Labour Decree.

⁷²⁷ Paragraph 3.6 Annex I Aliens Act Implementing Regulation 2022.

⁷²⁸ Article 3.2 Aliens Labour Decree.

⁷²⁹ Law of 30 May 1968 houdende vaststelling Leerplichtwet 1969, available in Dutch at: <http://bit.ly/2kKXQpV>.

⁷³⁰ Available at: <http://www.lowan.nl/>.

⁷³¹ 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/2IBa5Ht>.

⁷³² Article 9(3)(d) RVA.

⁷³³ Article 12(1) RVA.

with language courses, while refugees with a permit living in reception centres receive Dutch classes from a professional language teacher. Nevertheless, eligible asylum seekers⁷³⁴ can participate in a language programme of 24 hours of Dutch classes, given by a professional 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.

D. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

The COA is responsible for the provision of health care in the reception centres. As any other person in the Netherlands, an asylum seeker can visit a general practitioner, midwife or hospital. The Arrangement for Medical Care for Asylum seekers deals with the rules on medical insurance for asylum seekers (*Regeling Medische zorg Asielzoekers (RMA) Healthcare*).

As addressed above, issues connected to the lack of accessible health care services in emergency locations and crisis emergency locations emerged in 2022. On 3 August 2022, the Inspection of the Ministry of Health Care and Youth warned the Minister of Health Care and Youth and the State Secretary of Justice and Security about the alarming situation with regard to access of health care in crisis emergency locations.⁷³⁵ The Inspection saw that medical care for asylum seekers in crisis emergency locations is seriously suffering under the current crisis conditions. The care is sometimes limited to emergency care. That is less than the normal medical care to which everyone is entitled. It is also less than the medical care that asylum seekers' centres and 'ordinary' emergency reception locations offer. In crisis emergency locations, care providers often cannot work according to the usual standards and guidelines, no matter how hard they try. This is due to the rapid growth of crisis emergency locations, to a lack of personnel and to the fact that many of the asylum seekers staying at these locations have not yet been registered – making it difficult to arrange the health insurance.

In 2023, many of these problems remain. In March, the Inspection of the Ministry of Health Care and Youth warned that crisis emergency locations are not suited for long term stay, but are being used as such, resulting in urgent risks for the individual health of asylum seekers, public health, and the continuity of health care.⁷³⁶ Among other things, the Inspection identified a lack of medical intake and tuberculosis screening before placement in crisis emergency locations, thus risking the placement of vulnerable people in unsuitable locations and the spread of infectious diseases, a lack of an electronic patient record and thus insufficient transfer of information between health care professionals, and a delay of necessary health care due to the limitation of health care to emergency care, leading to worsening health care problems.⁷³⁷ A report from three prominent health care NGOs from June contains similar findings.⁷³⁸ In September, the Dutch Council for Refugees (VWN) published a report on both emergency locations and crisis emergency locations which confirms regular absences medical screening to identify

⁷³⁴ 'Eligible' asylum seekers are those who, based on their nationality, have at least 70% chance to be granted a residence permit and are originally from a country of origin with more than 50 asylum seekers a year that are granted a permit in the Netherlands, see: <http://bit.ly/3YcDtS0>.

⁷³⁵ Inspection Health Care and Youth, 'Medische zorg in crisisnoodopvang asielzoekers onder enorme druk', 3 August 2022, available in Dutch at: <https://bit.ly/3Qp954k>.

⁷³⁶ Inspection Health Care and Youth, 'Factsheet Urgente risico's voor gezondheid asielzoekers in crisisnoodopvang', 9 March 2023, available in Dutch at: <https://bit.ly/3vtviYy>, 1.

⁷³⁷ Ibid, 1-2.

⁷³⁸ Dokters van de Wereld, Pharos, Rode Kruis, *Zorgen in tijden van crisis*, June 2023, available in Dutch at: <https://bit.ly/422N5Cc>.

vulnerable people, and highlights the physical absence of health care services at some locations, forcing residents to travel long distances to other locations to access health care.⁷³⁹

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 Medische 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.⁷⁴⁰ 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 government-mandated organisation, the Centraal Administratie Kantoor (CAK) which then pays up to 80 percent of the costs, or 100 percent in case of pregnancy-related care.⁷⁴¹

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.

There is no publicly available information about gender-sensitive healthcare opportunities for victims of violence, except for the general availability of prenatal health care and psychological support.⁷⁴² There is a possibility to make use of a translator, usually by phone, during health care visits.⁷⁴³ In 2022 the Inspection of the Ministry of Health Care and Youth noted a lack of use of translators by hospitals as an obstacle to information provision to the patient.⁷⁴⁴ The main obstacles in access to health care for asylum seekers lie in the situation at (crisis) emergency locations, as described above.

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 regard to the (crisis)emergency locations, the problem with fulfilling special reception needs of vulnerable groups was that medical screening was not consistently and adequately offered in Ter Apel. Therefore, many cases of vulnerable people being placed in non-sufficient emergency locations have taken place. For example, someone who had recent breast surgery and back problems and for whom it is not suitable to sleep on a stretcher, a girl with severe kidney disease who needed urgent treatment and heavily pregnant women.⁷⁴⁵ The Hague Court of Appeal judgement of 20 December 2022 states

⁷³⁹ VluchtelingenWerk, *Gevlucht en vergeten?*, August 2023, available in Dutch at: <https://bit.ly/4205TBR>.

⁷⁴⁰ Article 10(2) Aliens Act.

⁷⁴¹ CAK, 'Regeling onverzekerbare vreemdelingen', available in Dutch at: <https://bit.ly/41XA0id>.

⁷⁴² Regeling Medische zorg Asielzoekers, 'Geboortezorg', available in Dutch at: <https://bit.ly/41UUhJy>; Regeling Medische zorg Asielzoekers, 'Geestelijke Gezondheidszorg', available in Dutch at: <https://bit.ly/47w3ccr>.

⁷⁴³ GZA healthcare, 'Veelgestelde vragen', available in Dutch at: <https://bit.ly/3vF2MDb>.

⁷⁴⁴ Inspection Health Care and Youth, *Bevlogen medewerkers houden zorg aan asielzoekers overeind onder zorgelijke omstandigheden*, May 2022, available in Dutch at: <https://bit.ly/41TXFLs>.

⁷⁴⁵ VWN, *Third Quickscan*, 19 October 2022, available at: <https://bit.ly/3ZseCuT>.

that medical screening always needs to be offered and that special needs of vulnerable groups need to be provided.⁷⁴⁶

In the night between 23 and 24 August 2022, a three-months old baby, staying with his family in a sport hall at **Ter Apel**, died.⁷⁴⁷ The Netherlands Forensic Institute (NFI) conducted neuropathological research but was unable to determine the cause of death.⁷⁴⁸ The Public Prosecutor did not find indications that the death was a result of any criminal offense, and the Inspections of the Ministry of Justice and Security and Health Care and Youth concluded that the available information showed no identifiable relationship between the living conditions in the sports hall at Ter Apel and the death of the baby.⁷⁴⁹ According to the Inspections, the COA-location in Ter Apel was insufficiently prepared for the large amount of people that required reception, but despite being ill-equipped, the COA-staff did what lay in their abilities from a humanitarian perspective.⁷⁵⁰

With the exception of specialised accommodation for unaccompanied children, the COA does not provide separate reception centres for women, LGBTQI+ persons or other categories – although there have been calls for their creation. An investigation into the treatment of LGBTQI+ persons and of converts and apostates has been completed in 2021. The researchers concluded that COA does not pursue a target group policy, but that the organisation does pay structural attention to vulnerable groups in reception.⁷⁵¹ With regard to LGBTQI+ 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 LGBTQI+ 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 LGBTQI+ 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 LGBTQI+ units, but the COA does not consider it a priority. Additionally, were the COA willing to consider their wishes (e.g. having a room for themselves or living in the same building as other LGBTQI+ persons), it is impossible to address them given the current reception crisis.⁷⁵²

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.⁷⁵³ 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

In 2023, UAMs were especially affected by the reception crisis. In the COL location in **Ter Apel** there is space for 55 UAMs and capacity for guidance of 120 UAMs.⁷⁵⁴ Throughout the year this location generally hosted 100-300 UAMs with a peak of approximately 370 UAMs in October.⁷⁵⁵

⁷⁴⁶ The Hague Court of Appeal (civil department), ECLI:NL:GHDHA:2022:2078, 20 December 2022.

⁷⁴⁷ NOS, 'Geschokte reacties in Den Haag op dood baby Ter Apel, inspecties doen onderzoek', 24 August 2022, available in Dutch at: <https://bit.ly/3XfCAYw>.

⁷⁴⁸ Openbaar Ministerie, 'OM: definitief geen aanwijzingen voor een strafbaar feit bij overlijden baby in Ter Apel', 13 June 2023, available in Dutch at: <https://bit.ly/3RX0GGv>.

⁷⁴⁹ Ibid; Inspectie Gezondheidszorg en Jeugd en Inspectie Justitie en Veiligheid, 'Het overlijden van een baby in augustus 2022 op de COA-locatie in Ter Apel, May 2023, available in Dutch at: <https://bit.ly/3tPtyIB>, 11.

⁷⁵⁰ Ibid, 5.

⁷⁵¹ Regioplan and Free University, 'LGBTIs, converts and apostates in asylum reception, 6 October 2021, available in Dutch at: <https://bit.ly/3nhpc6K>.

⁷⁵² 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>.

⁷⁵³ Article 3 Reception Act.

⁷⁵⁴ Inspection Health Care and Youth, 'Inspecties: Situatie in Ter Apel is uiterst kritisch' 31 October 2023, available in Dutch at: <https://bit.ly/3HngRrv>.

⁷⁵⁵ Ibid.

The overcrowding of UAM facilities in Ter Apel was already alarming in 2022. The Ombudsperson for children raised concern on the situation of UAMs in Ter Apel multiple times.⁷⁵⁶ After her visit in October 2022, she reported the following:

“During our working visit last Monday, 300 unaccompanied minors were staying in **Ter Apel**, while there is room for 55. We encountered a group of about thirty boys and two girls who had been staying in the waiting room of the IND for three days. There was no place for them at the centre. They wait all day in their plastic chair and sleep in another identical waiting room at night on a stone floor or on a chair with a sheet and something that passes for a blanket. They look grey with fatigue. They do not have a bed, nor are there sanitary facilities. They don't eat enough. They brush their teeth with their fingers in the toilet and there is no shower. And what is stress-increasing, there is no one who can tell them how long it will take before there is room for them.”⁷⁵⁷

Both Inspections of the Ministries of Justice and Security, and Healthcare and Youth set an ‘urgent letter’ with concerns to the Ministry on the situation of the children staying in **Ter Apel** and on emergency locations, stating that health damage, especially mentally, will occur if the situation will not be improved.⁷⁵⁸

In June 2022, the Working Group ‘Child in AZC’ also published a report on the reception conditions of children in emergency locations, titled ‘Emergency at the emergency locations’.⁷⁵⁹ The report shows that children cannot find a safe living environment in the emergency shelters or in Ter Apel, neither physically nor socially. Accessibility of health care and education is often lacking and nutrition became a problem since children are not familiar with the provided Dutch food.

Reports of overcrowding continued in 2023. Stichting Nidos, the guardianship agency, published a joint letter with the COA urgently requesting all municipalities to provide reception places for UAMs.⁷⁶⁰ Additionally, the Inspections of the Ministries of Justice and Security, Healthcare and Youth and Education as well as the Dutch Labour Inspection sent another letter to the Ministry on the situation of the children staying in Ter Apel and in emergency locations, in which they conclude that the reception for children does not meet minimal quality requirements. Access to education and health care are insufficiently guaranteed, the child’s individual best interests receive inadequate attention and the overcrowding of locations leads to safety issues.⁷⁶¹ UAMs are residing in Ter Apel for longer than intended, leading to a delayed start of education.⁷⁶² Several months later the Inspections recounted their concerns about UAMs in Ter Apel, detailing amongst other things that the housing of UAMs in Ter Apel is structurally full over capacity, and that under these conditions the physical and emotional wellbeing of the UAMs cannot be guaranteed.⁷⁶³

⁷⁵⁶ Kinderombudsman, ‘Nog steeds sprake van kinderrechtenschendingen in Ter Apel’, 7 november 2022, available in Dutch at: <https://bit.ly/3Qq9B1U>; Kinderombudsman, ‘Brief aan staatsecretaris Van der Burg over onveilige en stressvolle opvang amv's in Ter Apel’ 10 October 2022, available in Dutch at: <https://bit.ly/3GNMzOj>; Kinderombudsman in newspaper NRC, ‘Kinderen in Ter Apel worden verwaarloosd’, Andreas Kouwenhoven, 14 april 2022, available in Dutch at: <https://bit.ly/3GQWvVt>.

⁷⁵⁷ Kinderombudsman, ‘Brief aan staatsecretaris Van der Burg over onveilige en stressvolle opvang amv's in Ter Apel’, 10 October 2022, available in Dutch at: <https://bit.ly/3GNMzOj>.

⁷⁵⁸ Inspectie JenV en Inspectie Gezondheidszorg en Jeugd, ‘Signaalbrief Kinderen in de opvang’, 16 June 2022, available in Dutch at <https://bit.ly/3Qqel7I> and Factsheet Emergency Locations asylum seekers, available in Dutch at: <https://bit.ly/3k2tjVw>.

⁷⁵⁹ Werkgroep kind in AZC (o.a. UNICEF en VWN), ‘Noodsituatie op Noodlocaties – Quicksan naar de leefomstandigheden van kinderen in de (nood)opvang’, 20 June 2022, available in Dutch at: <https://bit.ly/3GRXesl>.

⁷⁶⁰ Nidos, COA, ‘Oproep COA en Nidos voor AMV Opvang’ 28 June 2023, available in Dutch at: <https://bit.ly/3STWs4e>.

⁷⁶¹ Inspection Justice and Security, Inspection Health Care and Youth, Inspection Education, Dutch Labour Inspection, ‘Kinderen in de noodopvang en crisisnoodopvang’ 19 April 2023, available in Dutch at: <https://bit.ly/3O07tOr>, 2.

⁷⁶² Ibid, 4.

⁷⁶³ Inspection Health Care and Youth, *Inspecties: Situatie in Ter Apel is uiterst kritisch*, 31 October 2023, available in Dutch at: <https://bit.ly/4bySvsG>.

In first instance at the court proceeding on the reception conditions initiated by VWN, the court ruled that COA and the government needed to make sure that no more than 55 UAMs would stay in Ter Apel within two weeks.⁷⁶⁴ Following this judgement, the State Secretary made (another) special request to the municipalities to provide locations for the reception of UAMs.⁷⁶⁵ Only one municipality responded, providing a hotel that could house 60 UAMs. The municipality stated that it provided the accommodation because of the court ruling.⁷⁶⁶ Although confirming the seriousness of the situation of UAMs and the responsibility (and blame) of the government, the court in second instanced decided to squash the time limits that were given to the government in first instance.⁷⁶⁷

Due to the shortage of reception places for unaccompanied minors, UAMs from the age of 17.5 are placed among adults in regular AZC's or emergency locations.⁷⁶⁸ There might also be minors placed among adults if the IND does not believe that they are underage (see also [section 2.1.1. Application of the Dublin criteria](#)).

Unaccompanied minors from the age of 16 can be placed in the Enforcement and Supervision location (see section above) if they broke the rules.

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.⁷⁶⁹ If unaccompanied children receive a residence permit, Nidos is responsible for their accommodation.

The COA had accommodated 5,557 unaccompanied children by the end of 2023, almost twice the number registered at the end of 2022 (3,246) and more than quadruple the number registered at the end of 2021 (1,305).⁷⁷⁰

In December 2023, the Directorate-General on Migration published a quantitative analyses of the high number of UAMs arrivals since the summer of 2021.⁷⁷¹ The analysis was based on figures from EUROSTAT, IND figures and the answers to an EMN-questionnaire, and it was accompanied by a qualitative report on the reasons for (increased) arrival UAMs in the Netherlands.⁷⁷² In 2023 (until

⁷⁶⁴ Regional Court The Hague (civil department), ECLI:NL:RBDHA:2022:10210, 6 October 2022, available in Dutch at: <https://bit.ly/3wikDjE>, para. 7.4.

⁷⁶⁵ State Secretary, Letter to municipalities relating to the reception of UAMs, 6 October 2022, available in Dutch at: <https://bit.ly/3GSIT00>.

⁷⁶⁶ Leeuwarder Courant, 'COA start noodopvang voor minderjarige jongeren in Hotel Aan de Vaart in Appelscha', 1 November 2022, available in Dutch at: <https://bit.ly/3QpUaqC>.

⁷⁶⁷ Court The Hague (appeal; civil department), ECLI:NL:GHDHA:2022:2078, 20 December 2022, available in Dutch at: <https://bit.ly/3Ozwn7V>.

⁷⁶⁸ This was the case from November 2021 – May 2022 and from November 2022 on, see KST 30573, nr. 195, available in Dutch at: <https://bit.ly/3VGp9Qb>.

⁷⁶⁹ COA, 'Alleenstaande jongeren', available in Dutch at: <https://bit.ly/3O2gwhL>.

⁷⁷⁰ COA, "Personen in de opvang uitgesplitst naar leeftijd en land van herkomst", available in Dutch at: <https://bit.ly/3KiETqB>, accessed at 11 January 2024.

⁷⁷¹ Directoraat-Generaal Migratie, Kwantitatieve analyse alleenstaande minderjarige vreemdelingen (amv), December 2023, available in Dutch at: <https://bit.ly/3HFTvnL>.

⁷⁷² WODC, *Kennisbericht Alleenstaande minderjarige vreemdelingen naar Nederland*, December 2023, available in Dutch at: <https://bit.ly/3RXluO1>.

September), the Netherlands received 13% of the arriving UAMs in the EU. Other member states also saw a high influx of UAMs with an even bigger jump compared to previous years than the Netherlands – for example Germany. The qualitative research identified no clear overarching reason for UAMs to come to the Netherlands as opposed to other EU countries.⁷⁷³

In 2022, the Ombudsperson for children also published a report on the duration of asylum procedures of UAMs following a complaint of a UAM whose asylum procedure lasted for 4 years, and recommended that the IND prioritise asylum requests from UAMs.⁷⁷⁴

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 live in small locations, with 24/7 professional guidance available. When a child arrives at **Ter Apel**, the organisation Nidos decides whether they 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.⁷⁷⁵ 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.⁷⁷⁶ More recently, the investigative journalist platform *Argos* reported that at least 360 UAMs had left reception centres without reason between January 2022 and March 2023, of which 237 disappeared from Ter Apel and 36 from (crisis) emergency locations.⁷⁷⁷ Counting from January 2018 to March 2023, a total of 1,807 UAMs have disappeared from reception locations.⁷⁷⁸

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.⁷⁷⁹

⁷⁷³ Ibid; Directoraat-Generaal Migratie, *Kwantitatieve analyse alleenstaande minderjarige vreemdelingen (amv)*, December 2023, available in Dutch at: <https://bit.ly/3RXIuO1>.

⁷⁷⁴ Kinderombudsman, 'Rapport 'Onderzoek naar een tijdige asielpcedure voor amv's bij de IND'', 15 June 2022, available in Dutch at: <https://bit.ly/3CwgHvV>.

⁷⁷⁵ Jeugdzorg, *De kwaliteit van de beschermde opvang voor alleenstaande minderjarige vreemdelingen Hertoets*, September 2017, available in Dutch at: <http://bit.ly/2DCmlw0>.

⁷⁷⁶ APM (*Analyseproeftuin Migratieketen*) Report on UAMs leaving reception locations without reason, February 2020, available in Dutch at: <https://bit.ly/3HR9yXs>.

⁷⁷⁷ Argos, 'Opnieuw honderden vluchtelingen kinderen spoorloos verdwenen uit opvang', 26 May 2023, available in Dutch at: <https://bit.ly/3O1EucW>.

⁷⁷⁸ Ibid.

⁷⁷⁹ COA, *Infosheets*, available in Dutch at: <http://bit.ly/2lfnQXG>.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

Article 9(3)(b) RVA states that, during a stay in the reception centre, the asylum seeker must have the opportunity to communicate with family members, legal advisers, representatives of UNHCR and NGOs. There are no major obstacles in relation to access of UNHCR representatives or other legal advisers at reception centres known to the author of this report.

G. Differential treatment of specific nationalities in reception

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

Detention of Asylum Seekers

A. General

Indicators: General

1. Total number of persons detained in 2023:	3,710
2. Number of detention centres:	3
3. 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	2022	2023
Total	2,550	3,190	2,920	3,710

Source: Repatriation and Departure Service, Inflow and departure figures, available in Dutch at: <https://bit.ly/3CuZi6Y>.

Border detention: Pursuant to Article 6(1) and (2) of the Aliens Act, the third-country national who have been refused entry when they wanted to enter the Schengen area at the Dutch border, are obliged “to stay in a by the border control officer designated area or place, which can be protected against unauthorised departure.”⁷⁸⁰ 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.⁷⁸¹

If an asylum seeker makes an asylum application at an external border of the Netherlands, their 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.⁷⁸² Following the *Gnandi* judgement of the CJEU,⁷⁸³ the grounds for detention during the appeal procedure have been altered in the Aliens Act, see [Border Procedure](#).

⁷⁸⁰ Article 6 Aliens Act.

⁷⁸¹ Article 6a Aliens Act.

⁷⁸² Regional Court Haarlem, Decision NL18.16477, 19 September 2018; Decision NL18.19950, 6 November 2018.

⁷⁸³ CJEU, Case C-181/16 *Sadikou Gnandi v Belgium*, Judgment of 19 June 2018, available at: <https://bit.ly/3wi2O4e>.

Territorial detention: Asylum seekers may also be detained in the course of the asylum procedure on the territory, in accordance with Article 59b of the Aliens Act, which transposes Article 8 of the recast Reception Conditions Directive. Article 59a of the Aliens Act foresees the possibility to detain an asylum seeker for the purpose of transferring them 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.⁷⁸⁴

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

1.1 Border detention

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

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

Does not possess a valid document to cross the border, or does possess a document to cross the border but lacks the necessary visa;

Is a danger to the public order or national security;

Does not possess sufficient means to cover the expenses of a stay in the Netherlands as well as travel expenses to a place outside the Netherlands where their access is guaranteed;⁷⁸⁵

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.⁷⁸⁶ 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

⁷⁸⁴ State Secretary of Justice and Security: *Memorie van antwoord Wet terugkeer en vreemdelingenbewaring*, 13 December 2018, available in Dutch at: <https://bit.ly/21580Po>, 7. There was also a decision from the Regional Court of the Hague, Decision NL18.11194, 26 June 2018, with the same conclusion.

⁷⁸⁵ 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.

⁷⁸⁶ 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](#)).⁷⁸⁷

Courts have recently been discussing whether beneficiaries of protection from other Member States can be detained at the border. According to the 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.⁷⁸⁸ 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. 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).⁷⁸⁹

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 Aliens Act); and (c) the detention of asylum seekers (Article 59b Aliens Act). 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:

Return decision

Risk of absconding / hampering return procedure

A reasonable prospect of removal

Removal arrangements are in progress and executed with due diligence

No other sufficient but less coercive measures can be applied

Return decision

The Council of State ruled on 2 June 2021 that, as established by the CJEU judgements that a country of return must be mentioned in the return decision.⁷⁹⁰ The country of return can also be deduced from the asylum decision and it is possible to add several countries of return. This is mostly relevant for

⁷⁸⁷ Article 5.1a(3) Aliens Decree. See IND, *Work Instruction 2017/1*, available in Dutch at: <http://bit.ly/2IZGp2X>.

⁷⁸⁸ E.g. Regional Court Amsterdam, ECLI:NL:RBDHA:2021:12551, 7 October 2021, available in Dutch at: <https://bit.ly/48edFcV>.

⁷⁸⁹ Council of State, ECLI:NL:RVS:2021:1648, 28 July 2021, available in Dutch at: <https://bit.ly/49xbbrh>; based on ECLI:NL:RVS:2016:1452, 3 June 2016, available in Dutch at: <https://bit.ly/49xbgez>; see also Council of State, ECLI:NL:RVS:2021:2870, 22 December 2022, available in Dutch at: <https://bit.ly/3SwKXOM>.

⁷⁹⁰ Council of State, ECLI:NL:RVS:2021:1155, 2 June 2021, available in Dutch at: <https://bit.ly/3SSStGRm>. This follows from CJEU, *FMS, FNZ (C-924/19 PPU)*, *SA, SA junior (C-925/19 PPU) v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, Országos Idegenrendészeti Főigazgatóság*, 14 May 2020, available at: <https://bit.ly/49r9Kug> and CJEU, *C-673/19, M, A, Staatssecretaris van Justitie en Veiligheid v Staatssecretaris van Justitie en Veiligheid, T*, 24 February 2021, available at: <https://bit.ly/3HV1p6A>.

asylum seekers whose claim of holding a certain nationality was not believed, leaving them with no country to return to.

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.⁷⁹¹ 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 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'. In the detention case of a Moroccan national, for example, the Regional Court Den Bosch ruled that to assess the risk of absconding it was sufficient to establish the factual occurrence of his illegal entry into the Netherlands.⁷⁹² With that, one of the serious grounds had been met, which is enough to accept the risk of absconding. The fact that he once illegally crossed the border as an asylum seeker is not relevant, according to the court in this matter. These grounds are formulated in a generic and open way, which, in practice, makes it easy to meet enough grounds for any situation of third country nationals who have no legal stay.⁷⁹³

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. If forced deportations are not at all foreseeable for the future, such in the case of Eritrea, there is no prospect of deportation, and as such, detention is not possible. 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 removal to Algeria, because the Embassy had not issued any laissez passers for 26 months.⁷⁹⁴ As no laissez passers are issued by the Guinean authorities, no reasonable prospect of removal exists for third country nationals from Guinea, the Council of State ruled on 14 September 2023.⁷⁹⁵

On 14 November 2022, the Council of State ruled that there is a reasonable prospect of removal to Morocco, after having been ruled out since 2 April 2021.⁷⁹⁶ The Council of State considered that a reasonable prospect of removal can be envisioned due to a political process between the Netherlands and Morocco that was expressed in an Action Plan made public on 29 November 2022.⁷⁹⁷ One of the agreed statements is as follows: 'Both countries are bound to respect each other's sovereignty and

⁷⁹¹ CJEU, C-673/19, *M, A, Staatssecretaris van Justitie en Veiligheid v Staatssecretaris van Justitie en Veiligheid*, T, 24 February 2021, available at: <https://bit.ly/3HV1p6A>.

⁷⁹² Regional Court Den Bosch, ECLI:NL:RBDHA:2023:8257, 5 June 2023, available in Dutch at: <https://bit.ly/42ycWly>.

⁷⁹³ See also Annemarie Busser, Revijara Oosterhuis en Tineke Strik, 'Vreemdelingendetentie (II) Gronden getoetst aan wetsvoorstel en aan Europees en internationaal recht', A&MR 2019, nr. 9, available in Dutch at: <https://bit.ly/47DWpNL>.

⁷⁹⁴ Council of State, ECLI:NL:RVS:2022:1276, 4 May 2022, available in Dutch at: <https://bit.ly/4bAOK7W>.

⁷⁹⁵ Council of State, ECLI:NL:RVS:2023:3490, 14 September 2023, available in Dutch at: <https://bit.ly/4863uap>.

⁷⁹⁶ Council of State, ECLI:NL:RVS:2022:3269, 14 November 2022, available in Dutch at: <https://bit.ly/3wifLeo>, overruling Council of State, ECLI:NL:RVS:2021:695, 2 April 2021, available in Dutch at: <https://bit.ly/3UAVBGK>.

⁷⁹⁷ Action Plan Netherlands-Morocco, 8 July 2021, available in Dutch at: <https://bit.ly/3vv1WfV>.

institutions and not to interfere in internal affairs.’ According to Moroccan experts interviewed by the newspaper NRC, the Action Plan shows that the Netherlands will no longer openly criticize the human rights situation in Morocco in exchange for being able to deport and detain Moroccan nationals.⁷⁹⁸

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.⁷⁹⁹

Detention of Dublin applicants

Dublin claimants can be detained for the purpose of transferring them to the responsible Member State.⁸⁰⁰ 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:⁸⁰¹

- a. Detention is necessary for ascertaining the identity and nationality of the asylum seeker. This is the case when the identity or nationality of the asylum seeker are insufficiently known to the authorities and at least two of the grounds for detention are applicable.
- b. Detention is necessary for acquiring information that is necessary for the assessment of the asylum application, especially when there is a risk of absconding. This condition is fulfilled when information that is necessary for the assessment of the asylum application can be obtained and at least two of the grounds for detention are applicable.
- c. The asylum seeker has already been detained in the context of a return procedure, has previously had the chance to make an asylum application and has only made the asylum application to delay the return procedure. This assessment considers all circumstances.
- d. The asylum seeker is a threat to public order or national security. This condition is in any case fulfilled if Article 1F of the Refugee Convention is probably applicable.

The above-mentioned 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 submits 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 (1)(b) of the

⁷⁹⁸ NRC, The Netherlands can again deport migrants to Morocco — but may no longer criticize the country, 1 October 2022, available in Dutch at: <https://bit.ly/3lcBMOI>.

⁷⁹⁹ E.g. Council of State, ECLI:NL:RVS:2020:1546, 1 July 2020, available in Dutch at: <https://bit.ly/3Uzdqpk>.

⁸⁰⁰ Article 59a Aliens Act.

⁸⁰¹ Article 59b Aliens Act.

Aliens Act can no longer be used as a basis for the detention measure on appeal, but only in the administrative phase.⁸⁰²

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.⁸⁰³ This is also laid down in policy rules.⁸⁰⁴ 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](#)).

According to an EMN report on Alternatives to Detention, the following alternatives to detention are used in the Netherlands: (1) Reporting obligations, (2) Requirement to reside at a designated area, (3) Obligation to surrender a passport, travel document or identity document, (4) Deposit or financial guarantee, (5) Accommodation in return and asylum facilities.⁸⁰⁵ Other alternatives to detention, such as electronic monitoring or return counselling are not used.

Clear data on such practices are however often not available, as it is impossible to determine whether the measure is used as an alternative to detention, or just used in general. This has been criticised by the Advisory Council on Migration (Adviesraad Migratie), that recommended in 2021 that the government should start registering the use of alternatives to detention and should also experiment more with lighter alternative methods to detention.⁸⁰⁶ An important 'alternative to detention' as discussed in the EMN report is the 'Requirement to reside at a designated area'. The period 2015-2020 saw between 450 and 2,890 persons each year subject to reside at the Freedom Restricted Location (VBL) in the return procedure, see [Freedom of Movement](#).⁸⁰⁷ However, the question is whether residing at the Freedom Restricted Location can really be viewed as an alternative to detention. Rejected asylum seekers who are willing to cooperate in their return procedure can stay at this location for a maximum period of 12 weeks. As these people are already willing to cooperate in their return procedure, they would probably not have been detained as they do not qualify for the condition of risk of absconding/ hampering the return procedure. The same goes for 'Obligation to surrender a passport', travel document or identity document as all asylum seekers need to surrender their passport, which will only be given back upon return or if a residence status is granted.⁸⁰⁸

A draft Decree relating to a Bill regarding return and detention of aliens, specifies the circumstances in which alternatives to detention can be applied.⁸⁰⁹ 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.

⁸⁰² Council of State, ECLI:NL:RVS:2021:230, 4 February 2021, available in Dutch at: <https://bit.ly/3Sr3awQ>.

⁸⁰³ Article 59c Aliens Act.

⁸⁰⁴ Paragraph A5/1 Aliens Circular.

⁸⁰⁵ EMN, 'Detention and alternatives to detention in international protection and return procedures', May 2022, available at: <https://bit.ly/3HVgOng>.

⁸⁰⁶ ACVZ, *Advice: Working together on Return*, April 2021, available at: <https://bit.ly/3HsoxHP>.

⁸⁰⁷ EMN, 'Detention and alternatives to detention in international protection and return procedures', May 2022, available at: <https://bit.ly/3HVgOng>, 19.

⁸⁰⁸ Par. C1/2.1 Aliens Circular.

⁸⁰⁹ Bill regarding return and detention of aliens (2015-2016), 34309/2, available in Dutch at: <https://bit.ly/3SPU8uW>.

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.⁸¹⁰

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

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,⁸¹¹ whose detention is only possible when doubt has risen regarding their minority;⁸¹²
- ❖ Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;⁸¹³
- ❖ Persons for whose individual circumstances border detention is disproportionately burdensome;⁸¹⁴
- ❖ 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.⁸¹⁵

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 2022/15 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.⁸¹⁶ The only other circumstance systematically taken into consideration, according to what DCR sees in practice, is the age of asylum seekers. Asylum seekers might be exempted if they are over 70 or 80 years old – but cases of 70+ asylum seekers detained at the border have occurred in the past. Other vulnerable groups such as traumatised asylum seekers, transgenders or pregnant women (they will be transferred to the Detention Centre in Zeist) do often not meet the level of "special individual circumstances". Also the CPT noted that initial screening at border detention does not include a standard procedure for identifying vulnerabilities or assessing any signs of mental disorders, or previous experience of traumatising, violence or abuse.⁸¹⁷

⁸¹⁰ E.g. Council of State, ECLI:NL:RVS:2022:1667, 13 June 2022, available in Dutch at: <https://bit.ly/49v4Rjl> (Dublin case), Regional Court Haarlem, Decision No NL21.19757, 28 December 2021; Regional Court Den Bosch, Decision No NL21.5216 and NL21.5248, 21 April 2021.

⁸¹¹ Article 3.109b(7) Aliens Decree.

⁸¹² Also in paragraphs A5/3.2 and A1/7.3 Aliens Circular.

⁸¹³ Also in paragraph A1/7.3 Aliens Circular.

⁸¹⁴ Article 5.1a(3) Aliens Decree.

⁸¹⁵ Article 3.108b Aliens Decree.

⁸¹⁶ IND, *Work Instruction 2022/15*, available in Dutch at: <https://bit.ly/48UAT8R>.

⁸¹⁷ *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022*, CPT/Inf (2023) 12, 23 June 2023, available at: <https://bit.ly/3vnTE65>, 32.

The DCR does not know of any cases in which children who are awaiting or undergoing age assessment continue to be detained during this process.

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.⁸¹⁸ 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**.

Territorial detention of minors and families with minor children takes place at the closed family detention centre in Zeist (*Gesloten gezinsvoorziening*, GGv). 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. Territorial detention is also possible for unaccompanied minors when there is a prospect of removing the minor within 14 days.⁸¹⁹ Territorial 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.⁸²⁰ Defence for Children strongly opposes detention of children on these grounds and in general.⁸²¹ Amnesty International and LOS have also pointed out that detention of children with insufficient balancing of interest has occurred several times.⁸²²

In 2019, 30 unaccompanied children were placed in detention, compared to 40 unaccompanied children in the whole of 2018.⁸²³ From 2020 to 2023, there were less than 5 UAMs detained per year. Their average stay was 7 days in 2020, 9 days in 2021, 14 days in 2022 and 9 days in 2023.⁸²⁴ Children are detained at the closed family location in **Zeist**. In 2020, 50 families were detained at Zeist, their average stay was 9 days. In 2021, 75 families were detained at Zeist, their average stay was 8 days. In 2022, 55 families were detained at Zeist, their average stay was 9 days. In 2023, 40 families were detained at

⁸¹⁸ Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016, available at: <http://bit.ly/2f5t3Ql>.

⁸¹⁹ Paragraph A5/2.4 Aliens Circular.

⁸²⁰ Paragraph A5/2.4 Aliens Circular.

⁸²¹ Defence for Children, *Vreemdelingenbewaring*, available in Dutch at: <http://bit.ly/2jTIOyZ>.

⁸²² Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016.

⁸²³ Ministry of Security and Justice, *Rapportage vreemdelingenketen: January-December 2018*, 42; *January-June 2019*, 32.

⁸²⁴ Statistics in this paragraph from 2020 on are based on questions answered by Repatriation and Departure Service (DT&V), received on 6 February 2024.

Zeist, their average stay was 9 days.⁸²⁵ However, in 2022, there was one case of an Iranian family with a 9-year old daughter, detained for more than five weeks in Zeist.⁸²⁶

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 to 15 months |
| 2. In practice, how long in average are asylum seekers detained in 2023? | |
| ❖ Border detention: | 25 ⁸²⁷ |
| ❖ Territorial detention: | 35 days ⁸²⁸ |

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

- ❖ The general time limit for border detention is 18 months.⁸²⁹
- ❖ 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 their further asylum procedure.⁸³⁰ 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.⁸³¹
- ❖ 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.⁸³²
- ❖ 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.⁸³³

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.⁸³⁴ The average duration for territorial detention was 41 days in 2019, 34 days in 2021 and 29 days in 2022.⁸³⁵

⁸²⁵ Idem.

⁸²⁶ Meldpunt Vreemdelingendetentie, 'Gezin ruim vijf weken in detentiecentrum Zeist', 11 November 2022, available in Dutch at: <https://bit.ly/3VFnhHw>.

⁸²⁷ This concerns asylum seekers detained in border detention who were not continued to be detained after the border procedure, for example based on the Return Directive. Their average stay is 40 days. These figures are based on questions answered by Repatriation and Departure Service (DT&V), received on 6 February 2024, the figures only reflect cases that were part of the caseload of DT&V.

⁸²⁸ These figures are based on questions answered by Repatriation and Departure Service (DT&V), received on 6 February 2024, the figures only reflect cases that were part of the caseload of DT&V.

⁸²⁹ Article 59(7) Aliens Act

⁸³⁰ Article 3(7) Aliens Act.

⁸³¹ Article 59(5)-(6) Aliens Act.

⁸³² Article 59b(2)-(3) Aliens Act.

⁸³³ Article 59b(4)-(5) Aliens Act.

⁸³⁴ 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>.

⁸³⁵ DJI, *Vreemdelingenbewaring* 2019, available in Dutch: <https://bit.ly/3inAiTO>; the figures of 2022 are based on questions answered by Repatriation and Departure Service (DT&V), received on 18 January 2023.

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 sole purpose of their asylum procedure. Asylum seekers may be detained during their procedure.

(Rejected) asylum seekers with psychological problems can be transferred to a specialised institution called **Veldzicht**, which offers psychological care.⁸³⁶ The transfer can be carried out voluntarily because the asylum seeker wants intensive psychological help, or involuntarily as a crisis measure. This option is also included in the Bill regarding the return and detention of aliens, which is still in the legislative process.⁸³⁷ This is only possible when the detention or the asylum seekers centre cannot offer adequate care and at the condition that the asylum seeker is kept separate from (foreign) 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. At Schiphol, detained women and men are accommodated together. In its 2023 report on the periodic review of the Netherlands, the CPT considered that women should, as a matter of principle, be accommodated in an area which is physically separate from that holding men at the same establishment.⁸³⁸ The Minister did not adopt this recommendation because he believes that segregating men and women only makes the regime stricter and because the 'common areas' are already essentially separated.⁸³⁹

Territorial detention takes place in **Rotterdam** for men and in **Zeist** for women, families with children and UAMs.

In November 2020 and July 2022, 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.⁸⁴⁰ The underlying intention of article 16 is to ensure that immigrants are separated from criminal detainees in detention. In its 2011 visit report, the CPT was critical of the fact that immigration detention in the Netherlands was not covered by specific rules reflecting the administrative nature of immigration detention. Instead, deprivation of liberty of foreign nationals in detention centres was governed by the same rules and restrictions as those applicable to persons detained under criminal law in prisons. More than a decade later, in its 2023 periodic review, this situation remains unchanged, and the same prison legislation still applies to persons held in territorial detention: the Penitentiary Principles Act (*Penitentiare beginselenwet*) continues to regulate all aspects of detention, notably when it comes to the applicable regime and restrictions.⁸⁴¹ Moreover, in its 2023 report on the periodic review of the Netherlands the

⁸³⁶ For more information see the website of Veldzicht: <https://www.ctpveldzicht.nl/>.

⁸³⁷ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁸³⁸ *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022*, CPT/Inf (2023) 12, 23 June 2023, available at: <https://bit.ly/3vnTE65>, 28.

⁸³⁹ Response of the Kingdom Authorities to the Report of the European Committee for the Prevention of Torture (CPT), 8 June 2023, available at: <https://bit.ly/3H5SMFC>.

⁸⁴⁰ Council of State, ECLI:NL:RVS:2020:2795, 25 November 2020, available in Dutch at: <https://bit.ly/3OCrOK7> and ECLI:NL:RVS:2022:2103, 21 July 2022, available in Dutch at: <https://bit.ly/3wfg2IA>.

⁸⁴¹ *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or*

CPT recalled its position, according to which a prison is – by definition – not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence. With regard to the use of the same legal framework this regard, the CPT has made it clear that care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment.⁸⁴²

The three centres have the following capacity:

Average detention capacity in the Netherlands: Sept – Dec 2023			
Detention centre	Maximum capacity	Maximum capacity immediately available	Occupancy
Schipol	470	323	242
Rotterdam	641	532	462
Zeist	370	166	59

Source: DJI.⁸⁴³

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
 ❖ If yes, is it limited to emergency health care? Yes No

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.⁸⁴⁴ In 2022, the file was still pending because an addition to the Bill had been presented to Parliament and because the Bill is already outdated so it needs a revision that still has not been presented.⁸⁴⁵ 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. In 2023, the Bill was still pending because of the outgoing government.

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. In March 2022, newspaper *Trouw* reported that due to a lack of qualified personnel and the right resources, the men detained in the Rotterdam immigration detention centre have been receiving poor medical care for years.⁸⁴⁶ In one example a detainee needed to wait four months in order to see a doctor for a growing bump on his chin, because the nurse recorded his request as ‘no emergency’. The Custodial Institutions Agency replied in the newspaper and denied the lack of access to adequate care, neither physical nor mental.⁸⁴⁷

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.

Detained asylum seekers and migrants are normally held in a cell with another detainee. Only upon medical recommendation, an individual can obtain a cell of their own. Detainees are allowed to leave their cells to stay in the living areas within the detention centre between 8 am and 10 pm, with the

Punishment (CPT) from 10 to 25 May 2022, CPT/Inf (2023) 12, 23 June 2023, available at: <https://bit.ly/3vnTE65>, 25.

⁸⁴² Ibid, 26.

⁸⁴³ DJI, Capacity and occupancy statistics, May – August 2023, available in Dutch at: <https://bit.ly/3k76hgw>.

⁸⁴⁴ 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>.

⁸⁴⁵ KST 35 501, nr. 29, 11 April 2022, available in Dutch at: <https://bit.ly/3vM4Ru0>.

⁸⁴⁶ *Trouw*, ‘Gezond erin, ziek eruit: de gebrekkige zorg in de vreemdelingendetentie’ (Healthy in, sick out: the lack of care in immigration detention), 14 March 2022, available in Dutch at: <https://bit.ly/3VUj5nd>.

⁸⁴⁷ Ibid.

exception of two hours during which meals are to be consumed in the cell. During these hours, activities are offered. Detained asylum seekers are able to make phone calls, go outside in a small 'playground', go to 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. All units have access to the internet but detainees are not allowed to go on social media websites, e-mail or any other website with chat functions. 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.⁸⁴⁸ This regime ended at the beginning of April 2022.⁸⁴⁹ Article 44 of the Penitentiary Principles Act (that applies to all detainees in the Netherlands, including third country nationals) states a duty for the State to make sure that detainees are able to properly take care of one's appearance and physical hygiene. Article 4.4 of the Regulation Model House Rules for Penitentiary Institutions stipulates that an inmate is allowed to shower a minimum of two times per week. Additionally, it is determined that the institution must provide at least: shampoo, soap, toothpaste, toothbrush, comb, toilet paper, shaving equipment for male detainees, and sanitary pads for female detainees.

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

Isolation

A report from Amnesty International, Doctors of the World and Immigration Detention Hotline (*Meldpunt Vreemdelingendetentie*) shed light on the frequent use made of isolation cells in detention centres.⁸⁵⁰ According to the report, detainees were put in isolation 1,176 times in 2019. In response to questions of a regional court, DJI said that in 2021, isolation measures have been carried out 504 times in total.⁸⁵¹ Isolation is an order measure for the safety of the personnel, other detainees or the detainee themselves, but also a punishment. Detainees are put in a cell with nothing but a mattress, a stool, and an iron toilet wearing a 'non-tearable dress' for 23 hours a day, up to 14 days in a row (with possibility to prolong). The organisations 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 less and for a shorter period. A following report from the Immigration Detention Hotline from 2021 shows that the isolation measure is still being used as punishment for minor violations, such as refusing to stay in a multi-person cell.⁸⁵² Isolation is also used as a 'protective measure' in cases of hunger strike, self-mutilation and based on potential risk of committing suicide.

In its 2023 report on the period review of the Netherlands 'the CPT recommends that the Dutch authorities carry out a review of the policy and legal framework on the use of segregation as a measure and as a disciplinary sanction in immigration detention centres. While the 14-day maximum period should never be exceeded, the aim should be to reduce the resort to solitary confinement as a public order/security measure and no longer apply solitary confinement as a disciplinary measure in an immigration detention context. The house rules and the applicable disciplinary rules should be amended accordingly. Further, the CPT recommends that, at Rotterdam DC, segregation and disciplinary sanctions be applied proportionately in practice and that staff are provided with training in this regard.'⁸⁵³ In response the Minister stated that 'current practice follows these recommendations, in so far as it aims

⁸⁴⁸ Meldpunt Vreemdelingendetentie, 'Covid in migrant detention', 1 December 2021, available in Dutch at: <https://bit.ly/3JZKJun>.

⁸⁴⁹ Newsflash Detention Hotline, 'Hopelijk Geen 1 April Grap: Celdeuren in April weer Open', 4 April 2022, available in Dutch at: <https://bit.ly/3CB0XI6>.

⁸⁵⁰ Amnesty International, Doctors from the World, Meldpunt Vreemdelingendetentie (2020): *Isolatie in Vreemdelingendetentie*, available in Dutch: <https://bit.ly/3nQgkCh>.

⁸⁵¹ Regional Court Den Bosch, ECLI:NL:RBDHA:2022:5970, 22 June 2022, available in Dutch at: <https://bit.ly/42C5x4A>.

⁸⁵² Meldpunt Vreemdelingendetentie (2021): *Gebroken in vreemdelingendetentie*, available in Dutch at: <https://bit.ly/3WJMIOM>.

⁸⁵³ *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022*, CPT/Inf (2023) 12, 23 June 2023, available at: <https://bit.ly/3vnTE65>, 35.

to avoid as much as possible the need to resort to measures or disciplinary punishments within detention centres. To minimise the use of disciplinary powers for ensuring order, peace and safety in the facility, the living environment and the taking of de-escalating action by staff are essential. In immigration detention, the principle of minimum restrictions always applies: this means that detainees have as much independence, freedom and autonomy as possible.⁸⁵⁴

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 (which still has to enter into force, as previously specified), contact with the outside world is guaranteed through certain people, amongst which the National Ombudsperson, the legal counsellor of the alien, members of parliament and relevant NGOs.⁸⁵⁵

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.

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. 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, but legal assistance and information to asylum seekers is normally provided by phone.

Moreover, Stichting LOS visits the detention centres. Stichting LOS is an NGO that strives for improving immigration detention conditions.⁸⁵⁶ They support 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 they can give their opinion about the (intended) detention.⁸⁵⁷

⁸⁵⁴ Response of the Kingdom Authorities to the Report of the European Committee for the Prevention of Torture (CPT), 8 June 2023, available at: <https://bit.ly/3H5SMFC>.

⁸⁵⁵ Bill regarding return and detention of aliens (2015-2016), 34309/2.

⁸⁵⁶ Full name: Stichting Landelijk Ongedocumenteerden Steunpunt. See <http://www.stichtinglos.nl/> and <https://bit.ly/2WMaB4g>.

⁸⁵⁷ 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, available in Dutch at: <https://bit.ly/4bteSQL>; and Council of State, Decision No 201801240/1/V3, 2 May 2018, available in Dutch at:

According to Article 93 of the Aliens Act, an asylum seeker is entitled to lodge an appeal at any moment they are 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 themselves. The hearing takes place within 14 days after the notification or the application for judicial review by the migrant,⁸⁵⁸ and the decision on the detention is taken within 7 days.⁸⁵⁹ 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 migrant detention on 23 December 2020 (C-704/20).⁸⁶⁰ The Council questioned 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. In January 2021, the Regional Court of Den Bosch added some questions to the ones raised by the Council of State.

The CJEU ruled that it follows from CEAS provisions on detention, which give concrete form to the right to effective judicial protection safeguarded in Article 47 of the Charter, that Member States must provide for a 'speedy' judicial review, either ex officio or at the request of the person concerned, of the lawfulness of that detention.⁸⁶¹ Since the EU legislation requires, without exception, that supervision that the conditions governing the lawfulness of the detention are satisfied must be effected 'at reasonable intervals of time', the competent authority is required to carry out that supervision of its own motion, even if the person concerned does not request it.

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.⁸⁶²

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.⁸⁶³ 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 them available for the return procedure. This is stressed in the specific context of the detention of asylum seekers.⁸⁶⁴ 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.⁸⁶⁵ 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

<https://bit.ly/3uwCZnt>. The Council of State referred to EU law, including to the CJEU's judgment *Mukarubega* of 5 November 2014 (Case C-166/13).

⁸⁵⁸ Article 94(2) Aliens Act.

⁸⁵⁹ Article 94(5) Aliens Act.

⁸⁶⁰ Council of State, ECLI:NL:RVS:2020:3061, 23 December 2020, available in Dutch at: <https://bit.ly/3usJKjn>.

⁸⁶¹ CJEU, *Staatssecretaris van Justitie en Veiligheid v C, B (C-704/20)*, and *X v Staatssecretaris van Justitie en Veiligheid (C-39/21)*, 8 November 2022, available at: <https://bit.ly/3OCsclz>.

⁸⁶² Article 96 Aliens Act.

⁸⁶³ Article 94(5) Aliens Act.

⁸⁶⁴ Paragraph A5/6.3 Aliens Circular.

⁸⁶⁵ Article 5.3 Aliens Decree.

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.⁸⁶⁶

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.⁸⁶⁷ 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. For the communication between migrant detainees and their lawyer, an “interpreter telephone” is used, through which interpretation is provided by phone. This service is provided by *AVB Vertaaldiensten* and Global Talk and paid for by the Legal Aid Board.⁸⁶⁸ Because of the existence of these state funded lawyers, NGOs in general do not intervene in such cases before the Regional Court.

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.

⁸⁶⁶ Paragraph A5/6.6 Aliens Circular.

⁸⁶⁷ Article 100 Aliens Act.

⁸⁶⁸ Legal Aid Board, information on interpretation services, available in Dutch at: <https://bit.ly/3HUJvkg>.

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.⁸⁶⁹ Material rights are the same. The residence permit also has a validity of 5 years.⁸⁷⁰

Regardless of the ground on which the permit is granted, the permit entitles the status holder to the same rights and entitlements.

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 should be 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 this procedure itself, but there is a backlog in registration at the BRP-*straat*.

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.

There is a backlog in registration at the BRP-*straat*. This problem continues in 2023, having gone on for a few years, since the period of COVID-19. The "BRP-*straat*" was temporarily closed on several occasions in 2020 and from that time on there has been always a backlog.⁸⁷¹ Due to limited capacity, logistical problems (the COA must transport people from the reception centres to the "BRP-*straat*", but the service is not functioning well, so people cannot reach the "BRP-*straat*" for their appointments), the duration of the asylum procedure (people are waiting longer so the identification process of the IND takes place at a later moment than before), the backlog was still present at 2023. The Dutch authorities are trying to reduce the backlog by increasing the capacity of the BRP-*straat* and by presenting a better process of planning the appointments.⁸⁷² It is not known if the backlog has already decreased.

Due to the backlog, priority is given to the registration of beneficiaries with a permit, who will be entitled to a house in a municipality. There is an emergency procedure for beneficiaries in need of a BSN-number for medical reasons or for people that have found a job. Priority is also given to family members of beneficiaries who came to the Netherlands through family reunification. No priority is given to asylum seekers who want to be registered, unless they provide a specific reason. For example, medical reasons or if they have found a job and the employer has asked for a permission to work for them.

In 2023 there were no big delays in the issue of residence documents by the IND.

⁸⁶⁹ Article 28(2) Aliens Act.

⁸⁷⁰ Article 4.22(2) Aliens Decree.

⁸⁷¹ For more information see the previous updates from 2020, 2021 and 2022 available at: <https://bit.ly/3SMHHji>.

⁸⁷² Kamerstuk 19 637, nr. 3114, available in Dutch at: <https://bit.ly/3TZGhmC>.

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.⁸⁷³ 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 € 154 for an adult and € 41 for a child.

2. Civil registration

Every person who is legally present in the Netherlands is registered in the Persons Database (*Basisregistratie personen*, BRP).⁸⁷⁴ That means that asylum seekers and beneficiaries of international protection also have to be registered in the BRP. Normally, the registration takes place in the municipality where the person resides. Asylum seekers and beneficiaries of international protection are registered at the BRP-*straat* as mentioned before.

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.⁸⁷⁵ However, it is not possible to register a person's nationality with a sworn statement. A person's nationality can only be registered based on an identity document.

Sometimes asylum seekers do not exactly know when they were born, because no registration of the date of birth takes place in the country of origin. In that case, the IND uses a (partly) fictitious date of birth in the asylum procedure based on the information that was known at that time. For the registration at the BRP, 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 their 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.⁸⁷⁶

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 and beneficiaries of international protection takes place at the so called BRP-*straat* at Application Centres. 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. Currently, organisations contributing to the BRP-*straat* are IND, COA, Royal Netherlands

⁸⁷³ Article 4.22 Aliens Decree; Article 3.43c(1) Aliens Regulation.

⁸⁷⁴ Persons Database Act, available in Dutch at: <http://bit.ly/2Bx1IFu>.

⁸⁷⁵ Article 2 (8) Persons Database Act.

⁸⁷⁶ Article 2(17) Persons Database Act.

Marechaussee (KMar) and the aliens Police Department (AVIM). Currently, there are five locations of the BRP-*straat*, in the municipalities Westerwolde, Gilze-Rijen, Arnhem, Budel-Cranendonck and Haarlemmermeer.

The BRP-*straat* is working well in practice. Refugees with a permit as well as asylum seekers are registered. The only problem is, again, the backlog.

There are a few conditions asylum seekers must meet before they can be registered. The identity of the asylum seeker must be determined. As soon as the identity of the asylum seeker is determined, the IND notifies the municipality stating that this person can be registered.⁸⁷⁷ If there are any doubts about the identity the IND will not send a notification to the municipality. First the identification must be clearly determined. Further, 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. People falling under the Dublin Procedure can register at the BRP-*straat* once the Dublin Procedure is finished, the person can stay in the Netherlands and they will be accepted to the Dutch asylum procedure.

Childbirth registration

When a child of an asylum seeker or beneficiary of international protection is born in the Netherlands, the child will be registered at the BRP even if the parents are not registered at the BRP. The child can obtain a birth certificate.

Marriage registration

The registration of a marriage is based on a marriage certificate. Some applicants and beneficiaries do not have a marriage certificate from their country of origin. In this case the instrument of sworn statement can provide a solution, provided that: (a) a marriage certificate cannot be produced; and (b) it is very clear for the municipality that the person concerned will not be able to obtain a marriage certificate within six months.⁸⁷⁸

Dutch authorities do not, as a rule, recognise a traditional/ religious marriage. However, a traditional/ religious marriage contracted in the country of origin can be recognised 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 2023: Not available

EU long term residence permit

Pursuant to Article 45b(1)(d) and (e) of the Aliens Act, beneficiaries can obtain an EU long-term residence permit if they meet 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 their 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 them and their family members; and

⁸⁷⁷ Article 24a Persons Database Decree.

⁸⁷⁸ Article 2(10) Persons Database Act.

- ❖ 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 (*verblijfsvergunning onbepaalde tijd asiel*). This status gives basically the same rights and entitlements as the EU long-term resident status with regard to a stay in the Netherlands. The permanent asylum status is obtainable without proving that sufficient means are available.

Permanent asylum residence permit

After five years of holding a temporary asylum permit in the Netherlands, 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 their permit. This means that the ground for asylum must still exist. This is examined on a case by case basis.
6. The status holder has fulfilled the integration requirement.
7. The status holder must be registered in the Personal Records Database (BRP) of their place of residence (municipality).
8. The status holder must pay legal fees. The legal fee for adults is € 228 and for children € 76.⁸⁷⁹

If the IND finds that the status holder no longer meets the conditions of the asylum permit (condition number 5 above), revocation of the temporary residence permit will also follow (see [Cessation and review of protection status](#)). As only 110 temporary asylum permits have been revoked in total in 2023, this condition is not often an issue for the application of permanent asylum residence permits.⁸⁸⁰

The integration condition is often the most difficult condition to meet, as it takes considerable time to pass all the integration exams. However, when it is already clear that the status holder is not going to meet the integration condition, 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 2022: | Not available |

The conditions for obtaining Dutch citizenship are to be found in Articles 8 and 9 of the Act on Dutch Citizenship.⁸⁸¹ When a holder of an asylum residence permit wants to obtain Dutch citizenship, they 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:

⁸⁷⁹ Article 3.43b and 3.43e Aliens Regulation.

⁸⁸⁰ KST 36410-VI-27, no. 27, List of questions and answers for the determination of the budget of the Ministry of Justice and Security 2024, available in Dutch at: <https://bit.ly/3P3eajd>. These figures are partly based on questions answered by IND, received on 27 February 2024.

⁸⁸¹ Act on Dutch Citizenship, available in Dutch at: <http://bit.ly/2lfqBbe>.

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 their 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, they 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 they can read, write speak and understand Dutch. In order to show that sufficient integration, the beneficiary had 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, listening, writing and speaking skills in Dutch, knowledge of Dutch society and orientation in 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.⁸⁸² 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.⁸⁸³ The conditions remained the same in 2022 and 2023. Early 2024, it was announced that there will be changes in 2025.⁸⁸⁴ The rules of the new Civic Integration Act, that was introduced in 2022, will be incorporated into the legislation for naturalisation. It is still unknown if the language level will be raised at a B1 level.

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, they 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 they made sufficient efforts to pass the civic integration examination. As of 1 July 2018, the following elements are considered:

⁸⁸² Stb. 2021, 35, Wet inburgering 2021.

⁸⁸³ 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).

⁸⁸⁴ It was announced at the Q&A on the establishment of the budget of the Ministry of Justice and Security for 2024: Vaststelling van de begroting van het Ministerie van Justitie en Veiligheid (VI) voor het jaar 2024, Verslag houdende een lijst van vragen en antwoorden, 36410V! nr. 27, available in Dutch at: <https://bit.ly/49pcMQ6>.

- ❖ Showing participation for at least 600 hours in a civic integration course; a combination of a civic integration course and a (adult) literacy course and at least 200 hours of attending 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 34 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 a (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 of attending 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 having 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 their 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, they do not have to renounce their 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.⁸⁸⁵ This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. Children of holders of a permanent asylum residence permit must have the same permit or an asylum residence permit dependent on the permanent asylum residence permit of the parents.

Children of the age of 16 or 17 years old must have been living uninterruptedly in the Netherlands for at least 3 years with a valid residence permit. This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. Children of holders of a permanent asylum residence permit must have the same permit or an asylum residence permit dependent on the permanent asylum residence permit of the parents. The child must be present for the application and they must indicate that they agree 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 they live. 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

⁸⁸⁵ Article 11 Act on Dutch Citizenship.

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	2022	2023
A single stateless person or a holder of an asylum residence permit	€670	€688	€703	€722
Plural application stateless persons or holders of an asylum residence permit (e.g. married couples)	€920	€945	€965	€991
A request for a child younger than 18 years-old obtaining the Dutch citizenship together with their parents	€133	€137	€139	€143

There are no data available on the number of people who obtained Dutch citizenship in 2023. According to the CBS (Centraal Bureau voor de Statistiek), in 2022 33,878 adults obtained the Dutch nationality via an independent application. 13,357 minors obtained the Dutch nationality via “*medenaturalisatie*” (obtaining Dutch nationality together with their parents). In total, 47,235 people obtained Dutch nationality.⁸⁸⁶ It is unknown how many of the applications were issued by beneficiaries of international protection.

In 2023, 43,930 applications for naturalisation were submitted.⁸⁸⁷ The IND took 53,590 decisions on applications for naturalisation of which 97% was positive.⁸⁸⁸ The top 3 nationalities applying for naturalisation were Syria, Eritrea and India.⁸⁸⁹ It is unknown how many of the applications were sent by beneficiaries of international protection. In 2022, 45,090 applications for naturalisation were submitted. The IND took 51,480 decisions on applications for naturalisation of which 97% were positive.⁸⁹⁰

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

⁸⁸⁶ CBS, available at: <https://bit.ly/3DFqQpG>.

⁸⁸⁷ IND, Annual figures 2023, available in Dutch at: <https://bit.ly/3TTfeJw>.

⁸⁸⁸ Ibid.

⁸⁸⁹ Ibid.

⁸⁹⁰ IND, *Annual report 2022*, available in Dutch at: <https://bit.ly/48VhXGG>.

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,⁸⁹¹ as will be the case for temporary asylum status of a beneficiary of subsidiary protection.⁸⁹²

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 permit means that the status is automatically revoked.

Temporary asylum statuses/permits revoked ⁸⁹³	
Year	Number
2019	250
2020	170
2021	190
2022	Not available*
2023	110

Permanent asylum statuses/permits revoked ⁸⁹⁴	
Year	Number
2020	20
2021 (Jan-Sept)	30
2022	Not available*
2023	10

* In 2022, a total of 360 asylum statuses/permits were revoked, it is unknown how many temporary or permanent statuses this number entails.

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 their 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. This is also reflected in the Aliens Circular, which states that moving the main residence outside the Netherlands does not constitute a ground for withdrawal of asylum statuses.⁸⁹⁵ Given this policy,

⁸⁹¹ Article 3.105d Aliens Decree.

⁸⁹² Article 3.105f Aliens Decree.

⁸⁹³ KST 36200-VI, no. 12, List of questions and answers for the determination of the budget of the Ministry of Justice and Security 2023, 2 November 2022, available in Dutch at: <https://bit.ly/48aE0Zp>. KST 36410-VI-27, no. 27, List of questions and answers for the determination of the budget of the Ministry of Justice and Security 2024, available in Dutch at: <https://bit.ly/3P3eajd>. These figures are partly based on questions answered by IND, received on 27 February 2024.

⁸⁹⁴ KST 36200-VI, no. 12, List of questions and answers for the of the budget of the Ministry of Justice and Security 2023, 2 November 2022, available in Dutch at: <https://bit.ly/48aE0Zp>. These figures are partly based on questions answered by IND, received on 27 February 2024

⁸⁹⁵ Paragraph C2/10.5 Aliens Circular.

this revocation ground is no longer used in practice. Nevertheless, when a beneficiary of international protection moves their main residence outside the Netherlands, according to policy, the Dutch authorities assess whether the legal ground for granting protection has ceased to exist. This is laid down in paragraph C2/10.5 of the Aliens Circular.

❖ False information

The withdrawal ground of false information is applicable to both temporary (article 32 Aliens Act) and permanent statuses of international protection (article 35 Aliens Act). This means that this ground can be invoked as a reason of withdrawal even after living over 20 years in the Netherlands.⁸⁹⁶

After receiving reports of fraud, the IND started to reassess statuses from homosexual status holders from **Uganda** in 2018.⁸⁹⁷ The IND had reasons to believe that there were organisations helping the Ugandans to get asylum in the Netherlands. Of the 253 inspected cases, one status was withdrawn, while 35 cases were still pending as of November 2020. There was no public serious follow up on these cases.

On 25 January 2023, the Council of State ruled that not all omissions of facts lead to revocation. Asylum permits do not have to be withdrawn if incorrect identity details, were provided, if they were not decisive for granting asylum.⁸⁹⁸ Subsequently, on August 2 2023, the Council of State ruled that the State Secretary, in revocations based on 'false information' (that was decisive for granting asylum), must examine within the revocation decision whether the person is entitled to a new permit.⁸⁹⁹ It is not allowed to simply refer to the possibility of a subsequent asylum request. What the start date of the new permit would be is still unclear.

❖ 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.

In 2019, the status and residence permit of 30 persons with international protection had been revoked, in 2020 there were also 30 revocations and in 2021 and 2022 there were 20 revocations.⁹⁰⁰

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.⁹⁰¹

However, the 'sliding' scale only applies if a minimum threshold of '(particularly) serious crimes' is reached. The asylum status and permit of a refugee can be revoked when the refugee commits a 'particularly serious crime' (article 14(4)(b) QD). In Dutch policy, a crime is considered 'particularly serious' when the refugee received a prison sentence for at least 10 months. On 6 July 2023, the CJEU

⁸⁹⁶ For example Council of State, ECLI:NL:RVS:2020:2953, 14 December 2020, available in Dutch at: <https://bit.ly/497ohvz> (the applicant had an asylum status for over 14 years).

⁸⁹⁷ KST 19637, nr. 2670 and appendix, LGBTI in the asylum procedure.

⁸⁹⁸ Council of State, ECLI:NL:RVS:2023:248, 25 January 2023, available in Dutch at: <https://bit.ly/3STiPGX>.

⁸⁹⁹ Council of State, ECLI:NL:RVS:2023:2922, 2 August 2023, available in Dutch at: <https://bit.ly/3UASEpQ>.

⁹⁰⁰ Ministry of Justice and Security, *De Staat van Migratie 2022*, 7 July 2022, available in Dutch at: <https://bit.ly/3Z6t8Zf>, 135 and Ministry of Justice and Security, *De Staat van Migratie 2023*, available in Dutch at: <https://bit.ly/3RUo0FO>.

⁹⁰¹ Work Instruction 2020/12 *De toepassing van de glijdende schaal*, available in Dutch at: <https://bit.ly/3wiiym0>.

ruled on a preliminary reference by the Council of State on 15 June 2022,⁹⁰² about the interpretation of 'particularly serious crimes'.⁹⁰³ The CJEU ruled firstly that the degree of seriousness cannot be attained by a combination of separate offences, none of which constitutes per se a particularly serious crime by itself. Secondly, while it is in particular open to the Member States to establish minimum thresholds intended to facilitate the uniform application of that provision, such thresholds must necessarily be consistent with the degree of seriousness and must not, under any circumstances, make it possible to automatically establish that the crime in question is 'particularly serious' without the competent authority having carried out a full examination of all the circumstances of the individual case concerned. In response to this ruling, the policy (Aliens Circular) has been adjusted.⁹⁰⁴ However, the Aliens Circular still states that the assessment of 'a (particularly) serious crime' is based on whether the *total sum* of imposed sentences is at least the applicable norm. Additionally, the 10-month prison sentence for a particularly serious crime is still being applied.

The asylum status and permit of persons with subsidiary protection can be revoked if a 'serious crime' (article 17(1)(b) QD) is committed. In Dutch policy, a crime is considered 'serious' when the person received a prison sentence of more than 6 months.

Moreover, unique in the public order policy, only for subsidiary protection statuses also suspended sentences have to be calculated.⁹⁰⁵

❖ 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.⁹⁰⁶ 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 their nationality or their former place of residence.⁹⁰⁷ 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.⁹⁰⁸

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:⁹⁰⁹

- ❖ 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 their country of origin.

If at least one of these conditions applies, the IND does not revoke temporary asylum status.

⁹⁰² Council of State, ECLI:NL:RVS:2022:1703, 15 June 2022, available in Dutch at: <https://bit.ly/3w5JBmi>; and CJEU, C-402/22, *Staatssecretaris van Justitie en Veiligheid v M.A.*, 6 July 2023, available at: <https://bit.ly/3STghbS>.

⁹⁰³ CJEU, C-402/22, *Staatssecretaris van Justitie en Veiligheid v M.A.*, 6 July 2023, available at: <https://bit.ly/3STghbS>.

⁹⁰⁴ WBV 2023/25, available in Dutch at: <https://bit.ly/3S3k3Pi>.

⁹⁰⁵ Paragraph C2/10.3 and C2/10.7 Aliens Circular.

⁹⁰⁶ Article 3.37g Aliens Regulation.

⁹⁰⁷ Article 3.37g Aliens Regulation.

⁹⁰⁸ Paragraph C2/10.4 Aliens Circular.

⁹⁰⁹ 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.⁹¹⁰

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 within the meaning of article 3.37g Aliens Regulation.⁹¹¹ The reassessment project terminated in 2021. According to the Evaluation of the IND, the reassessment resulted in 0 revocations on the ground of ceased circumstances.⁹¹² 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 exists since 2018.⁹¹³ Before, if the 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 employment contracts. In practice, people who do not renew their residence permit timely are also often homeless, which means that they are treated as if they have left the Netherlands, see next paragraph.

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 they have 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.⁹¹⁴ 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.⁹¹⁵ The court then ruled that the IND could not revoke the status merely because the person 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 their own free will, returned to their country of origin, the IND will conduct an interview concerning this journey. It is then up to the status holder to prove that they are still in need of protection.

⁹¹⁰ Article 35 Aliens Act.

⁹¹¹ Decree WBV 2020/1 of 12 January 2020, Stb. 2020, 3262, amending the Aliens Circular 2000, available in Dutch at: <https://bit.ly/3i9r1yB>.

⁹¹² *Evaluatierapport Herbeoordelingen Soedan*, October 2021, available in Dutch at: <https://bit.ly/3VPy7uh>, 21.

⁹¹³ Decree WBV 2018/10 of 20 September 2018, Stb. 2018, 52887, available in Dutch at: <https://bit.ly/38FLDLM>.

⁹¹⁴ Regional Court Den Bosch, 21 July 2021, Decision No NL20.18837 and Regional Court Utrecht, 14 September 2020, ECLI:NL:RBDHA:2020:9086, available in Dutch at: <https://bit.ly/3wdJBRu>.

⁹¹⁵ Regional Court Den Bosch, 21 October 2021, Decision No NL20.22228.

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 they request and receive a passport from the authorities of the country of origin. Temporary asylum status is not revoked in case the recognised refugee can prove that Article 1C of the Refugee Convention does not apply.⁹¹⁶

5.2 Cessation procedure

The Aliens Act provides that the intention procedure is applicable in case a temporary asylum status is revoked.⁹¹⁷ Under the intention procedure, the status holder is informed in writing of the intention to revoke their temporary asylum status. The letter of intention will not be sent to the previous asylum lawyer, only to the status holder.⁹¹⁸ Within 6 weeks, the status holder can put forward their view on the intention to revoke temporary asylum status.⁹¹⁹ In case the IND still intends to revoke temporary asylum status, the status holder will be allowed an interview.⁹²⁰ During the interview, the status holder will be given the opportunity to react on the intention to revoke temporary asylum status and explain their 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.⁹²¹

The cessation decision states that there is an obligation to leave the country within 4 weeks.⁹²² Within 4 weeks the status holder can appeal the decision to revoke the temporary asylum status before the Regional Court.⁹²³ In case a timely appeal has been made, the status holder retains their right to lawful residence in the Netherlands based on Article 8(c) of the Aliens Act. This means that the status holder retains their 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 their status or apply for a permanent asylum residence permit. At that time, the IND systematically reviews protection statuses.

6. Withdrawal of protection status

See [Cessation and review of protection status](#).

⁹¹⁶ Paragraph C2/10.4 Aliens Circular.

⁹¹⁷ Article 38 Aliens Act and Article 41(1) Aliens Act.

⁹¹⁸ The legality of this practice has been confirmed by the Council of State, ECLI:NL:RVS:2022:2203, 1 August 2022, available in Dutch at: <https://bit.ly/3HWKWPb>.

⁹¹⁹ Article 3.116(2)(b) Aliens Decree.

⁹²⁰ Article 41(2) Aliens Act.

⁹²¹ Article 64 Aliens Act.

⁹²² Article 62(1) Aliens Act.

⁹²³ Article 69(1) Aliens Act.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification? Yes No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting an application? Yes No
❖ If yes, what is the time limit? 3 months
3. Does the law set a minimum income requirement? Yes No

Refugees and subsidiary protection beneficiaries can apply for family reunification under the same conditions.

Family members that are eligible for family reunification are the spouse and registered or unregistered partner, if there is a sustainable and exclusive relationship. Minor children and young adult children (aged between 18 and circa 25 years old) who still belong to the family of the parents are also eligible for family reunification.⁹²⁴ 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.⁹²⁵

The judicial framework that is laid down in the Alien's Act and policy rules is supplemented by a large number of so-called Work instructions and Internal information messages. These are not policy rules, but instructions for employees of the IND to effectuate policy in an unambiguous matter.⁹²⁶ In 2023, the IND made public the general instructions for handling applications for family reunification by holders of an asylum permit, in order to become more transparent.⁹²⁷

Three-month time limit

Beneficiaries/holders of an asylum residence permit can make use of a more favourable framework for family reunification. This framework contains less strict conditions for family reunification in comparison to the regular framework. In order for an application to be considered within this framework, the beneficiary has to apply for family reunification within 3 months after being granted asylum. In the favourable framework there is – for example - no income requirement.⁹²⁸

If the beneficiary fails to apply for family reunification within 3 months, they will have to apply for regular family reunification, meaning they will have to meet stricter requirements like a minimum income.⁹²⁹ To secure/ safeguard this three-month-term the application should be filed timely, even if it is incomplete.

⁹²⁴ There is no strict age limit, in each case the immigration service has to make an individual assessment whether or not the person involved is still a 'young adult', see e.g. Council of State, 21 November 2022, ECLI:NL:RVS:2022:3343, available in Dutch at: <https://bit.ly/3SSTyMW>.

⁹²⁵ CJEU, Case C-550/16, A, S v *Staatssecretaris van Veiligheid en Justitie*, 12 April 2018, available at: <https://bit.ly/3HV87cM>.

⁹²⁶ The majority of these work instructions are publicly available. IND, *Werkinstructies, informatieberichten en landeninformatie van de IND openbaar*, available in Dutch at: <https://bit.ly/4bUhSpf>.

⁹²⁷ IND, *WI 2023/2 Instructies behandeling nareisaanvragen (asiel)*, available in Dutch at: <https://bit.ly/3SzuJov>, 7-8.

⁹²⁸ The application is free of charge. Also, there are no integration requirements for family members of refugees.

⁹²⁹ In the regular framework there are no integration requirements for family members of refugees. However, there is an application fee.

An application can be completed after it has been filed. However, after the sponsor receives a 'rectification of omission' letter stating what information and supporting documents are missing, the application must be completed within 4 weeks.⁹³⁰

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.⁹³¹ 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 dated 23 September 2016 which involved extending the time limit for applying for family reunification from 3 to 6 months and the decision period from 6 to 9 months, was been withdrawn after the ruling of the Court.⁹³²

A new legislative proposal was submitted in April 2023.⁹³³ This proposal extends the decision period from 6 to 9 months and lays a legislative basis to determine a late submission of an application objectively excusable. The aspects of the Court ruling have been included in Works instructions:

- ❖ Work instruction 2023/2 includes that a late submission may be considered excusable. Factors taken into account are: the number of days of exceedance (less than two weeks is excusable), the efforts the sponsor has demonstrated to file the application and the exceptional circumstances causing the late submission.⁹³⁴
- ❖ Work instruction 2022/7 includes that when the sponsor holds an asylum residence permit, proving family and identity ties in the regular family reunification procedure is the same as in the more favourable procedure for asylum status holders.⁹³⁵
- ❖ Work instruction 2021/7 includes that if beneficiaries of international protection submit a regular application for family reunification within the three month time limit, they have to be exempted from the income requirement.⁹³⁶

In practice, there can be difficulties in applying for family reunification within the three-month-time limit due to misinformation or a high influx of asylum seekers, and relocations between numerous accommodation centres. 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.⁹³⁷ 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.⁹³⁸ In the Dutch context this proposed flexible approach is being applied.

⁹³⁰ Due to huge backlogs at IND it can take up to 6-12 months after submission before the sponsor receives the 'rectification of omission' letter.

⁹³¹ CJEU, Case C-380/17, ECLI:EU:C:2018:877, *K and B v. the Netherlands*, 7 November 2018, available at: <https://bit.ly/48gJS3g>.

⁹³² KST 19 637 nr. 2492, Announcement to withdraw legislative proposal, 17 April 2019, available in Dutch at: <https://bit.ly/3UATsLo>, and final withdrawing: KST 34544, nr. 6, Letter withdrawing the legislative proposal adjusting the terms in the family reunification procedure for refugees, 12 July 2019, available in Dutch at: <https://bit.ly/42vdY1T>.

⁹³³ KST 36349, nr. 2, Wijziging van de Vreemdelingenwet 2000 in verband met verlenging van de beslistermijnen in asiel- en nareiszaken, Voorstel van wet, 2 May 2023, available in Dutch at: <https://bit.ly/3w8SgVc>.

⁹³⁴ IND, *WI 2023/2 Instructies behandeling nareisaanvragen (asiel)*, available in Dutch at: <https://bit.ly/3SzuJ0v>, 7-8.

⁹³⁵ IND, *WI 2022/7 Nader onderzoek in de nareisprocedure, inclusief DNA-onderzoek in de asielprocedure*, available in Dutch at: <http://bit.ly/3HJGpQC>, 1.

⁹³⁶ IND, *WI 2021/7 Middelen van bestaan*, available in Dutch at: <http://bit.ly/3Rj7LAe>, 21.

⁹³⁷ 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.

⁹³⁸ *Ibid*, 71.

Young adult children policy

The Alien's Act and policy rules contain a provision for family reunification of a parent (sponsor) with their young adult child.⁹³⁹ This means that a young adult is eligible for family reunification if they (1) are a young adult, (2) live/lived with the family at the time the sponsor entered the Netherlands, (3) do not provide for their own income and (4) have not formed a family of their own or take care of a child. If one of these conditions are not fulfilled, the young adult policy does not apply, unless this is caused by reasons beyond control, such as a forced flight of the person involved.⁹⁴⁰ However, the Council of State ruled that the State Secretary may also consider a family tie to be broken if a young adult child – who was forced to flee – has been living separately for a long time and has demonstrated to 'shape' their life independently.⁹⁴¹

Proof of identity and family ties

In its judgment of 26 January 2022,⁹⁴² the Council of State set out a new integral assessment framework for proving identity and family ties in family reunification cases. Until this judgment, identity and family ties had to be proven or at least made plausible by official documents, and in absence thereof, with sufficient unofficial documents or explanations as to why no official documents were available. Only if there were sufficient unofficial documents or plausible explanations, DNA-research would be done and/or interviews would be held. However, if unofficial documents were not sufficient and/or explanations were not considered plausible, the immigration service would reject the application without further research. In an earlier judgment, the Council of State ruled that this policy was in accordance with the ruling of the CJEU of 13 March 2019.⁹⁴³ However in its judgment of 26 January 2022 the Council of State set out a new assessment framework, entailing the followings:

- ❖ The State Secretary can no longer differentiate between official and unofficial documents. All documents, regardless of their nature or status, must be included in the assessment. However, the State Secretary may, with motivated reasons, assign a different probative value to the documents submitted and attach different importance to explanations given for the lack of documents.
- ❖ The State Secretary has to make an integral assessment of all the documents submitted and statements made, and other relevant elements of the case like for example the age and gender of the family member and the administrative practice in the country of origin. The requirements set by the IND for the evidence provided, must be proportional to those elements.
- ❖ Unlike before, the IND has to make a motivated assessment whether there is reason to give the sponsor the benefit of the doubt. Like for example in a situation where there is only a beginning of evidence, but there are no contraindications (like a false document) and other relevant elements are in favour of the sponsor. The benefit of the doubt can lead to two outcomes: the approval of the application or further investigation of the application (such as DNA research or an interview).
- ❖ The ***interests of minor children*** plays an important role in this. This means that unlike before, if the application cannot be approved, further investigation (such as DNA research or an interview) is indicated. National policy was adapted to this judgement,⁹⁴⁴ and a new Work instruction has been published.⁹⁴⁵

⁹³⁹ C2/4.1.2.1 Vc and IND, *WI 2023/2 Instructies behandeling nareisaanvragen (asiel)*, available in Dutch at: <https://bit.ly/3SzuJ0v>, 15.

⁹⁴⁰ Council of State, ECLI:NL:RVS:2019:4122, 9 December 2019, available in Dutch at: <https://bit.ly/3Sxuzxi>.

⁹⁴¹ Council of State, ECLI:NL:RVS:2023:1417, 13 April 2023, available in Dutch at: <https://bit.ly/3wbCTvn>.

⁹⁴² Council of State, Decision no. 202006519/1/V1 ECLI:NL:RVS:2022:245, 26 January 2022, available in Dutch at: <https://bit.ly/3SSw7U0>.

⁹⁴³ CJEU, Case C-635/17, ECLI:EU:C:2019:192, *E v Staatssecretaris van Veiligheid en Justitie*, 13 March 2019, available at: <https://bit.ly/3SWgNpC>.

⁹⁴⁴ Decree WBV 2022/11 of 1 April 2022 Amending the family reunification policy, available in Dutch at: <https://bit.ly/49akptt>.

⁹⁴⁵ IND, *WI 2022/7, Nader onderzoek in de nareisprocedure, inclusief DNA-onderzoek in de asielprocedure*, available in Dutch at: <http://bit.ly/3WOKVSo>.

There are still issues in cases where the documents submitted are considered as most likely not real, not originally issued, not authentic, false or falsified. Documents are examined by the office of the immigration service specialised in document research, the Identity and Document Investigation Unit (*Bureau Documenten*).

In line with the new integral assessment, the negative outcome of document examination is taken into account as a contraindication in the assessment of all elements. How much weight is given to this contraindication depends upon, inter alia, the conclusion of the Identity and Document Investigation Unit (which established whether the document is real, false, falsified, issued unauthorized etc.) and the administrative practice in the country of origin. In principle, a false or falsified document heavily weights in detriment of the sponsor.

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 Regional Court Zwolle,⁹⁴⁶ 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 had to perform an ID-interview to compensate for the imbalance between the two parties. However, this decision was overruled by the Council of State.⁹⁴⁷

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.

Secondly, a way to 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.⁹⁴⁸ This sets the threshold to oppose the conclusion at a very high level. The sponsor has to provide a detailed and plausible explanation that they have 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 State Secretary has the obligation to verify how the Identity and Document Investigation Unit drew the conclusion on the authenticity of the document, by 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 is limited, and the final decision is difficult to oppose.

⁹⁴⁶ Rechtbank Zwolle, 8 June 2020, AWB 19/3561, not published on a publicly available website.

⁹⁴⁷ Council of State, ECLI:NL:RVS:2021:598, 17 March 2021, available at: <https://bit.ly/48dlxvp>.

⁹⁴⁸ IND, *Werkinstructie 2020/13, Nader onderzoek in de nareisprocedure, inclusief DNA-onderzoek in de asielpcedure*, available in Dutch at: <http://bit.ly/3HJGpQC>, 4.

Family reunification procedure continues even if the family member enters the Netherlands during the procedure

The Council of State has ruled that the mere fact that a family member has entered and stays in the Netherlands during the family reunification procedure, is not a ground to reject the application.⁹⁴⁹ In other words, the family reunification procedure continues and may lead to approval and issuance of the derived asylum permit to the family member.

Measure of cabinet on family reunification in response to the reception crisis

On 26 August 2022 the [Secretary of State](#) announced several measures in response to the reception crisis.⁹⁵⁰ One of the measures concerned a waiting time to issue a visa to the family member, even if the application for family reunification was already approved.⁹⁵¹ It entailed that if housing (other than an accommodation centre) was not available for the family member in the Netherlands, the IND would suspend visa issuance to the family member until housing became available, or at the latest until six months had passed since the approval of the family reunification request. The maximum waiting time was set at 15 months, from the date of application for family reunification to the date of visa issuance. . After announcing this measure, several organisations pointed out that it was in violation of the Aliens Act, the Family Reunification Directive and the EU Charter of fundamental human rights.⁹⁵² The Council of State finally ruled on 8 February 2023 that the measure was indeed unlawful.⁹⁵³ The measure, which was already suspended since January 11th, was finally abolished.

Visa issuance

In 2023 problems regarding waiting times for visa issuance at the Dutch embassies did not occur to the same extent as the years before. The waiting period at the embassy in Lebanon (which was damaged in the bomb blast of August 2020) had already been reduced in 2022. However due to the Gaza war, the embassy has suspended its services as of October 2023. An exception was made for family members that were already in Lebanon, however family members that were still in Syria were requested to go to Dutch embassies in Jordan, Iran or UAE for visa issuance.

Visa issuance at the Dutch embassy in Sudan is also suspended due to the security situation since April 2023.

Positive news is the pilot set up by the Ministry of Foreign Affairs to issue visas at the Dutch consulate in Erbil, Irak. As of September 2023, a limited number of family members can go to the consulate. Although the pilot is applicable to any nationality, it mainly concerns Syrian nationals.⁹⁵⁴ The waiting time at Erbil has however increased up to several months, due to its limited capacity.

Also positive news are the efforts of the Dutch Ministry of Foreign Affairs to get family members out of Gaza. The ministry started preparations for about 10 cases (around 35 family members) in December 2023. At the beginning of January 2024, the first families were admitted to cross the border into Egypt by the Israeli/Palestine/Egyptian authorities. Within 72 hours from the moment of entry, the family members had received their travel documentation and had left Egypt for the Netherlands. In this context

⁹⁴⁹ Council of State, ECLI:NL:RVS:2023:3886, 20 October 2023, available in Dutch at: <https://bit.ly/3UAKDpj> and Information message *IB 2023/59 Nareiziger is tijdens de nareisprocedure Nederland ingereisd*, available in Dutch at: <https://bit.ly/3HRizOC>.

⁹⁵⁰ KST 19637, nr. 2992, Letter Ministry of Justice and Safety about the reception crisis, available in Dutch at: <http://bit.ly/3wSuWld>.

⁹⁵¹ Specified in the Information message: IB 2022/90, *Uitwerking maatregel huisvesting bij nareis*, available in Dutch at: <https://bit.ly/3ThFdK5>.

⁹⁵² See e.g. Commissie Meijers, September 2022, *Reactie op kamerbrief inzake besluitvorming opvangcrisis*, available in Dutch at: <https://bit.ly/3jq4in9>.

⁹⁵³ Council of State, ECLI:NL:RVS:2023:506, ECLI:NL:RVS:2023:507 and ECLI:NL:RVS:2023:508, 8 February 2023, available in Dutch at: <https://bit.ly/3HRIQkC> and see the press release (linking to all three decisions), available in Dutch at: <https://bit.ly/4c0Rfiz>.

⁹⁵⁴ Practice-based observation of the Dutch Council for Refugees, January 2024.

it is noteworthy that IND gave priority treatment to the applications for family reunification of Gazan beneficiaries of international protection, because of the security situation in Gaza. The applications were approved by IND within 1-2 months after the war started.

Total number of family members arriving in 2023

The following numbers of persons were granted 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: 2023	
Country of origin	Number
Syrian Arab Republic	6,694
Türkiye	1,144
Eritrea	822
Yemen	256
Stateless	195
Iran	190
Afghanistan	119
Unknown	91
Pakistan	91
Iraq	74
Others	331
Total	10,125

Source: Asylum Trends, December 2023 main report, available at: <https://bit.ly/3lhNM1p>.

Subsequent application: If family reunification could not take place during the first application

For adult sponsors it is possible to file a subsequent application for family reunification with their core family members if the first application was either rejected or approved, but for some reason could not take place. The IND applies the concept of ‘securing’ the set time limit for family reunification as long as the sponsor holds an asylum permit. However, a UAM’s subsequent application for family reunification can be problematic. This is the case when the UAM at the time of the subsequent application has reached the age of majority or is no longer considered to be unaccompanied. The Council of State ruled that unaccompanied minors cannot lodge a subsequent application for family reunification within the favourable framework if they no longer meet the age condition or unaccompanied condition. The Council ruled that a former UAM can only file an application within the *regular* framework, in which the circumstances as to why family reunification could not take place during the first application should be taken into account.⁹⁵⁵

Other situations in which the regular framework applies

Apart from the abovementioned subsequent applications by (former) UAMs, there are other situations in which a sponsor needs to submit an application for their family member within the regular framework,

⁹⁵⁵ Council of State, ECLI:NL:RVS:2020:2780, 23 November 2023, available in Dutch at: <https://bit.ly/3wkhEqX> (about the age requirement) and ECLI:NL:RVS:2020:2779, 23 November 2020, available in Dutch at: <https://bit.ly/49uJ9wA> (about requirement: unaccompanied).

even though they are beneficiaries of international protection. This applies for example to the UAM who submits applications for not only their parents, but also for their siblings. 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 their 'independent' asylum status, not derived from their 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 within the first year after reunification (e.g. because the child forms a family of their own or lives independently), this may lead to withdrawal of the dependent family member's permit (either the child itself or the parent of the unaccompanied minor). After this first year, disruption of the family tie has no consequences for the residence permit.⁹⁵⁶ In practice, these asylum permits are rarely revoked. In accordance with EU ruling XC,⁹⁵⁷ a reunited child is not obliged to cohabit with the parent. Regular contact or occasional visits are sufficient to maintain family life.

There are also no consequences for dependent family members, if a child lives separately from its parents for study reasons or due to a lack of suitable options to house an entire 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

⁹⁵⁶ This is laid down in paragraph C2/10.6.1 Vc and *Working instruction WI 2022/21 Herbeoordelen asiel*, 24. (not publicly available).

⁹⁵⁷ CJEU, C-279/20, ECLI:EU:C:2022:618, *Bundesrepublik Deutschland v XC*, 1 August 2022, available at: <https://bit.ly/3UAKXzH>.

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 their 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 € 63.42. 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?
Until housing is available (no set time)
2. Number of beneficiaries staying in reception centres as of 8 January 2024: 15,342

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. When COA makes an offer for a house, 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.

Since beneficiaries are allowed to stay in the reception centre until housing is available, the law does not state a maximum period for the stay of beneficiaries in reception centres. The aim of the Dutch government is to have a maximum stay of 3.5 months in the reception centre after the granting of a residence permit.⁹⁵⁸ Unfortunately, many BIPs wait longer than 3.5 months in the reception centre for housing. In 2022 half of the people waited longer than 3.5 months and still a lot of people are waiting longer than 3.5 months. There is a backlog in housing for beneficiaries of international protection. During the first half of 2023, the backlog consisted of 5,100 BIPs waiting in COA facilities to be housed by a municipality.⁹⁵⁹

On 8 January 2024, there were 15,342 refugees with a permit residing in COA reception centres.⁹⁶⁰

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.⁹⁶¹ Together with municipalities, the COA has the obligation to arrange housing for beneficiaries.⁹⁶² 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;

⁹⁵⁸ Kamerstuk II, 2017-2018, 34775 VI, No 17, answer 595, available in Dutch at: <https://bit.ly/3tSWkrN>.

⁹⁵⁹ Kamerstuk 19637, nr. 1121, 3 October 2023, available in Dutch at: <https://bit.ly/3U1urlJ>.

⁹⁶⁰ COA, *Bezetting*, available in Dutch at: <https://bit.ly/3rJ3vhk>.

⁹⁶¹ Article 7(1)(a) RVA.

⁹⁶² Article 3(1)(c) RVA; Articles 10(2) and 12(3) Housing Act.

2. Work, provided that the beneficiary can prove that they have a labour contract with a duration of minimum 6 months and for 20 hours of more per week;
3. Medical and/or psychosocial indications, provided that the beneficiary can prove that the medical treatment can only be done by the current care provider, or that a customized home is necessary;
4. The presence of first-degree family in the Netherlands.

If one of these indications occurs, the COA tries to place the beneficiary in a radius of 50km of the municipality concerned. If the COA does not take into account the aforementioned indications and the beneficiary refuses the house on justifiable grounds, then a new offer will be done.

A beneficiary can refuse an offer for placement. The COA will assess within 14 days whether the refusal is justifiable. If the COA is of the opinion that the accommodation is suitable and the refusal unjustified, then the beneficiary is awarded a 24 hour to reconsider its position and to accept the accommodation. If the beneficiary continues to refuse the housing, then COA does not provide for a new offer. As a consequence, the beneficiary is summoned to leave the centre and the benefits granted by COA are terminated.

The country experienced a first reception crisis in 2015, due to the high number of asylum applications. It was therefore decided that beneficiaries who were awaiting housing could also temporarily stay at families and friends. The so-called Hosting Arrangement ("*Logeerregeling*") was introduced. The scheme is still in place, being renewed during the last years. The Arrangement was last renewed in December 2023. The scheme is extended and besides status holders also asylum seekers in the general asylum procedure or the prolonged asylum procedure can make use of the Hosting Arrangement 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 agreement ends when the status holder obtains a house. The arrangement gives status holders aged 21 years and over an additional payment of, in principle, € 25 per week. However, as of 22 March 2021, the additional payment of the COA temporarily increased to € 75 per week, to encourage more status holders to access the Scheme. During 2023, the additional payment still consisted of € 75 per week (when a whole family makes use of this scheme, the first person receives €75, the second person of the family receives €25, the third €12,50 up to a maximum of €125 for a whole family). The conditions for making use of the Hosting Scheme ("*Logeerregeling*") can be found in English in a short version on the site of COA.⁹⁶³

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 Accomodation Arrangement) was introduced.⁹⁶⁴ 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. First the arrangement was 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 (€ 8,280 plus € 1,000 for guidance) for every status holder participating in this arrangement.

As previously described, in 2022 and 2023 there also was shortage of places at reception centres. In May 2022, "*Hotel- en accommodatieregeling*" (HAR), was therefore prolonged for 3 months, and the target group covered by the measure was extended.⁹⁶⁵ The arrangement is now also open for status holders

⁹⁶³ Explanation of the Logeerregeling available in Dutch at: <https://bit.ly/3INAulj>.

⁹⁶⁴ Stcrt. nr. 45592, 2021.

⁹⁶⁵ Stcrt. nr. 12550, 2022.

with children, status holders who still wait for family reunification and status holders who received a positive decision about their request for family reunification. The status holder still receives an additional payment of € 75 per week from the COA. If it concerns a whole family, the first person receives € 75, the second person of the family receives € 25, the third € 12,50 up to a maximum of € 125 for a whole family. The municipality still receives a payment (€ 8,280 plus € 1,000 for guidance) for every status holder participating in this arrangement. The arrangement was prolonged again throughout 2022. The HAR was supposed to continue up until 1 July 2023 only. Until then it was arranged that the HAR would continue until 2,500 status holders had left the reception of the COA by means of this arrangement. However, on 1 July 2023 the HAR was again prolonged and this time until 1 January 2025. It is now arranged that until 1 January 2025, every six months up to a maximum of 5,000 people can be placed in this arrangement.⁹⁶⁶ The COA has the supervision. There are no figures available.

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.⁹⁶⁷ This law is based on international and European legislation.⁹⁶⁸ 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.⁹⁶⁹ Although legal access to labour participation is granted, the effective access is limited as they face practical obstacles, such as psychological and physical distress, lack of documentation proving qualifications, lack of a social network, low educational levels, lack of language proficiency, etc. Therefore, beneficiaries are in a more disadvantageous position than other immigrants or Dutch nationals.⁹⁷⁰ The number of beneficiaries with paid employment increased in 2022 compared to the previous year. Among the beneficiaries who were granted residence permits in 2014, 45 percent had a job by mid-2022. Looking at the characteristics of the most recent jobs, the majority of beneficiaries have part-time employment (53 percent) and a temporary contract (79 percent). Among those employed, 5 percent work as self-employed individuals.⁹⁷¹ 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.⁹⁷² The decrease in number of beneficiaries actively working during the pandemic seems to be resolved, this is mainly because they also benefit from the high labour demand in the Netherlands at the moment.⁹⁷³

⁹⁶⁶ Stcrt nr. 16727, 2023.

⁹⁶⁷ Aliens Labour Act.

⁹⁶⁸ 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.

⁹⁶⁹ KIS and Divosa, KIS-Monitor 2023, *Gemeentelijk beleid arbeidstoeleiding en inburgering statushouders en gezinsmigranten*, September 2023.

⁹⁷⁰ 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.

⁹⁷¹ CBS, *Cohortonderzoek asielzoekers en statushouders, Asiel en integratie 2023*, April 2023, see in Dutch : <https://bit.ly/4bzIzpe>.

⁹⁷² 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>, 4.

⁹⁷³ KIS and Divosa, Factsheet statushouders: rapportage werk, onderwijs en inburgering 2021, Octobre 2022.

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 Dutch integration courses, assistance in obtaining recognition of professional qualifications and housing assistance.⁹⁷⁴ Employment services find their legal basis in the Participation Act (*Participatiewet*).⁹⁷⁵ 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 in the reception centres who are likely to receive international protection (at this moment only for Syrians, Eritreans, Turks, Yemeni and stateless persons).⁹⁷⁶

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.⁹⁷⁷ 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.⁹⁷⁸

Good practices

Part of the integration requirement for beneficiaries of protection is the MAP module (Training Module Labor Market and Participation). The purpose of the MAP is to familiarise and prepare those obliged to integrate with the Dutch labour market. A good practice is the MAP module developed and provided by the Dutch Council for Refugees (DCR) in close cooperation with the municipality of Hilversum and so called 'employer service points'. Six weeks after housing in the municipality of Hilversum, refugees receive an intake, where their work and educational background, language level, family situation, motivation, interests and ambitions are discussed with an employee of the municipality and the DCR. After that, the person is placed in a group training MAP Start or MAP Deepening. In addition, refugees receive an individual employment coach; a carefully recruited and trained volunteer. This MAP module aims to contribute to the empowerment of the target group and offers appropriate support for early participation and employment.

2. Access to education

According to the Compulsory Education Act,⁹⁷⁹ all children in the Netherlands from the age of 5 to 16 should have access to school, education is compulsory for them. The abovementioned right to education is applicable to Dutch children as well as to children with refugee status or with subsidiary protection under similar conditions.⁹⁸⁰

Since the implementation of the Civic Integration Act 2021, municipalities are obligated to consider the family composition and the potential need for pre-school or early childhood education (*voorschoolse- of vroegschoolse educatie (VVE)*) during the intake process that determines the integration course. Pre-school education is provided for children aged two and a half to four years old who could benefit from extra attention and support in their development, such as language skills. The aim is to ensure that they can start primary school as well-prepared as possible. The Dutch government has established the frameworks, and municipalities are responsible for ensuring an adequate supply of pre-school

⁹⁷⁴ *Ibid*, 4.

⁹⁷⁵ 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>.

⁹⁷⁶ Ministry of Social Affairs, KST 32 824, nr. 303, 4.

⁹⁷⁷ See website of *Internationale Diplomawaardering IDW*, available in Dutch at: <https://bit.ly/3TR81ta>.

⁹⁷⁸ 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>, 4.

⁹⁷⁹ Law of 30 May 1968, houdende vaststelling Leerplichtwet 1969, available in Dutch at: <http://bit.ly/2kKXQpV>.

⁹⁸⁰ Article 27 recast Qualification Directive.

education. Municipalities receive funding from the central government for this purpose. Early childhood education is not an independent form of education but rather a term for the additional support that primary schools provide to children in groups 1 and 2 who require it. Many primary schools, for instance, offer extra attention to language and reading. Furthermore, it is good to mention that municipalities are not obligated to arrange childcare, but they recognise that childcare is a prerequisite for enabling parents to participate in integration activities.⁹⁸¹

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.⁹⁸² 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 in education programmes. 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.⁹⁸³ A recent research shows that, looking at the percentage of studying beneficiaries and their period of time having a permit, a higher amount of younger beneficiaries start an education, and the start occurs sooner after the obtention of their permit when compared to previous years.⁹⁸⁴

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 make their own living and cannot rely on other social facilities until a job has been found;⁹⁸⁵
- ❖ Benefits (*toeslagen*), which have a different aim from the social benefit; and
- ❖ Child benefit (*kinderbijslag*).

⁹⁸¹ Answers from the Minister of Social Affairs and Employment to question Parliamentary Questions, KST 35483-51, 19 September 2023.

⁹⁸² Ministry of Education, Informatiedocument onderwijs aan asielzoekerskinderen, May 2016, 6.

⁹⁸³ KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2020*, November 2020, available in Dutch at: <https://bit.ly/3tYN3d8>.

⁹⁸⁴ Ibid.

⁹⁸⁵ Article 11(2) Participation Act.

There are four types of benefits (*toeslagen*), each contributing towards specific costs. Beneficiaries of international protection can apply for:

1. Health care benefit,⁹⁸⁶
2. Rent benefit,⁹⁸⁷
3. Child care benefit,⁹⁸⁸
4. Supplementary child care benefit.⁹⁸⁹

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, the Civic Integration Act 2021 entered into force.⁹⁹⁰ 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 that is called 'ontzorgen' (or relieve) 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.⁹⁹¹ Now, after almost two years, it has become evident that for municipalities, the mandatory *ontzorgen* is challenging to organise in practice, and as a result, they either do not execute it or only do so partially. Part of the reasons for this is that the group that needs to be supported is not homogeneous and therefore requires a different approach. Additionally, the amount of social benefit is often insufficient to cover the fixed expenses. Sometimes *ontzorgen* even proves counterproductive, leading to unpaid or double-paid bills. The Ministry of Social Affairs and Employment is currently collaborating with municipalities to explore ways to enhance the support system.⁹⁹²

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.⁹⁹³ 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. If the spouse lives outside the EU there is no right to childcare benefit.⁹⁹⁴
- ❖ **Rent benefit:** The person concerned must: (a) rent a house; (b) have a signed rental contract; (c) be registered in the Municipal Persons Database (BRP) of the municipality where the property is located; and (d) have a rental contract of durable nature. Since the first of January 2022, having a minor child without a residence permit does no longer affect the right to receive rent benefit for the rest of the family.⁹⁹⁵

⁹⁸⁶ Articles 8-15 Rent Benefit Act.

⁹⁸⁷ Articles 2-2a Healthcare Benefit Act.

⁹⁸⁸ Article 2(1) Supplementary Child Care Act.

⁹⁸⁹ Article 1.6(1)(g) Child Care Act.

⁹⁹⁰ Stb 2021, nr. 38.

⁹⁹¹ Ministry of Social Affairs, KST II 2019/20, 35483, nr. 3.

⁹⁹² KIS and Divosa, KIS-Monitor 2023, *Gemeentelijk beleid arbeidstoeleiding en inburgering statushouders en gezinsmigranten*, September 2023.

⁹⁹³ See Council of State, Decision No 201800817/1/A2, 12 December 2018, available in Dutch at: <https://bit.ly/3SQqKoo>.

⁹⁹⁴ Article 1.6 (1) Child Care Act.

⁹⁹⁵ Article 9 (3) Algemene Wet inkomensafhankelijke regelingen [Staatsblad 2021, nr. 651, 22 December 2021].

- ❖ **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 them 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 can be even longer for young adults below the age of 27, who are subject to a statutory waiting period of 4 weeks if the municipality requires so. In these 4 weeks the young adult has to try to find a paid job. If they are not successful, the municipality starts processing the application. In this situation, after these 4 weeks, municipalities have 8 weeks to process the allocation and payment of the social benefit.

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 27 to 67.⁹⁹⁶ 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 present itself 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 residing abroad cannot be recorded in the computer system of the Tax Office as spouses cannot be registered in the Municipal Personal Records Database (BRP) at that particular stage.

⁹⁹⁶ Staatsblad 2022, nr. 500, 6 december 2022, available in Dutch at: <https://bit.ly/3Tjqrnj>.

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. Due to this modification, it is now possible for this group of beneficiaries to preemptively waive the ALO-kop, thereby preventing a reclamation after family reunification. Although the offered solution entails an improvement, it does not address the entire issue. Not all beneficiaries and their advocates are aware of the option to waive the ALO-kop, resulting in the automatic allocation of the ALO-kop. Additionally, for many families, the supplement is a crucial source of income that they would have to forego if they opt out of the ALO top-up. 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 compensation is not obligatory for municipalities, differences in practice exist. This issue is therefore still under the attention of the DCR (Dutch Council for Refugees), the Tax Office, and the central government.

G. Health care

Beneficiaries are required to be insured for health care as of the moment the permit is granted.⁹⁹⁷ 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 in 2024, provided that their income does not reach a threshold of an annual income of € 34,496 per year. The threshold for a household (2 partners) is € 47,368 per year.

⁹⁹⁷ 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)