

Country factsheet Netherlands

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the issues covered in the two reports.

1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

2009 Top 10 Nationalities		2008 Top 10 Nationalities	
Total	16,140	Total	15,255
Somalia	6,025	Iraq	5,310
Iraq	2,165	Somalia	3,960
Afghanistan	1,400	Afghanistan	705
Unknown	605	China (including Hong Kong)	600
Iran (Islamic Republic of)	585	Unknown	465
Eritrea	485	Iran (Islamic Republic of)	420
Georgia	425	Eritrea	250
Armenia	370	Armenia	240
China (including Hong Kong)	340	Sierra Leone	225
Guinea	265	Sri Lanka	225

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	695	3,270	3,940	8,455	16,355	7,905	48.3
Somalia	95	1,155	2,290	1,925	5,460	3,535	64.7
Iraq	200	985	655	2,505	4,350	1,845	42.4
Afghanistan	20	165	95	590	875	285	32.6
Unknown	25	100	145	270	540	270	50.0
Eritrea	20	195	30	150	390	240	61.5

Statistics on final decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	45	125	50	425	645	220	34.1
Iraq	10	30	5	105	145	45	31.0
Afghanistan	0	20	10	30	60	30	50.0
Somalia	0	15	10	30	60	25	41.7
Iran (Islamic Republic of)	10	10	5	30	50	20	40.0
Unknown	0	5	5	25	35	10	28.6

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can particularly be the case with statistics provided under 'humanitarian status'. For a more detailed understanding of the data, the reader is invited to consult national statistics at: <http://www.cbs.nl/nl-NL/menu/themas/bevolking/cijfers/default.htm>.

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available.

¹ Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

² The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: [Eurostat](#), Data extracted on 01 September 2010.

2. Background Information

Asylum legislation¹

[Aliens Act 2000](#)²

[Aliens Regulation](#) (*Voorschrift Vreemdelingen*) (in Dutch)

[Aliens Decree](#) (*Vreemdelingenbesluit 2000*) (in Dutch)

Asylum authorities

First instance authority

[Immigration and Naturalisation Service \(IND\)](#) – responsible for processing asylum applications and implementing the Aliens Act

Second instance authority

[District Court](#) (Rechtbank) – authority for appeals against decisions of the IND

3. Duty to inform asylum seekers

Article 3(43)(a) of the [Aliens Regulation](#) stipulates that the alien will be provided with a brochure in which he/she is informed of (i) the procedure, his/her rights and obligations during the procedure, (ii) the consequences of failing to fulfil the obligations and of not cooperating with the authorities, (iii) the time limits of the procedure, and (iv) the way he/she can meet the obligation to provide all the information, as required by the [Aliens Decree](#).

This brochure has to be provided in a language, which the alien may reasonably be assumed to understand. There are separate brochures for every general part of the procedure. The brochures can be downloaded or ordered from the [website of the IND](#). Information may also be provided orally to asylum seekers by the IND during the asylum interviews. The Dutch Council for Refugees, a non-governmental organisation, provides information on the procedure to asylum seekers on a systematic basis.

In August 2010, the Office of the Dutch Immigration and Naturalisation Service provided the following information to the FRA as regards written information materials.

Written information materials	Information brochure translated into 12 languages.
Provided when?	At the time of lodging the application and during the first instance interview.
Provided by whom?	At the time of lodging the application – by the alien police. During the first instance interview – by the public official.
Has an evaluation of information tools been carried out?	No.

¹ The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

² No official English translation of the law exists. This translation is provided by www.legislationonline.org, an online legislative database operated by OSCE. This translation does not include all changes to the law. The official Dutch text of the law: <http://wetten.overheid.nl/BWBR0011823>.

4. Effective Remedy

Type of procedures

Until 30 June 2010

Registration of the asylum seeker was a pre-condition for submitting an asylum application. Before being able to formally apply for asylum, the asylum seekers was placed in a reception centre for a waiting period, which varied depending on the overall amount of applications received. After the waiting period the asylum seekers were moved to one of the two application centres (AC centres) where the asylum procedure started.

The ‘AC procedure’ (or 48-hour procedure) started with a complete assessment, made within 48 processing hours (four to six working days). After the first interview the IND decided whether the asylum seeker would stay in the AC procedure or would be referred to the processing centre procedure (OC procedure). The OC procedure was used if the decision could not be taken within 48 hours. Generally, a decision on an asylum application had to be taken in six months. After the second interview, the asylum seeker was either recognised as a refugee or given a written notification of the intended decision to reject his/her application (so called ‘intention’). The asylum seeker could submit his/her ‘view’ on the intended decision on the basis of which the IND made a final decision. In the AC procedure, the view had to be given within 48 hours.

In Dublin cases, the asylum seeker does not get an assessment within the Dutch national procedure. In the Dublin procedure, both first and second interview take place within the AC procedure. After having received the written intention, the asylum seeker is referred to the OC procedure. During the OC procedure, the IND usually receives an approval of the Dublin claim by the responsible Member State after which the asylum seeker receives a negative decision on the application.

As of 01 July 2010

On 1 July 2010 a new asylum procedure has been introduced. After the registration, every asylum seeker is referred to one of the three processing centres. Asylum seekers have a period of at least six days rest in a reception centre nearby the processing centre pending the examination of the application; except for those processed at the Schiphol airport.

The IND examines the claim within eight days in so called “AA procedure”³. This procedure can be prolonged for maximum six days. In case the IND is not able to make a decision within AA procedure, the alien is transferred under the extended procedure (VA procedure). Pursuant to Article 42(1) of the [Aliens Act](#), a decision on the application shall be given within six months of receipt of the application, which can be extended in certain cases (Article 42(4) and Article 43, Aliens Act).

Upon the rejection of a first application, the asylum seeker has four weeks to depart. During this time he/she is provided shelter. Subsequent applications will only be considered if new relevant facts have come to light or the circumstances have changed (Article 4(6) [General Administrative Law Act](#)). For second and subsequent applications the alien will have to leave the Netherlands immediately after the negative decision by the IND. According to

³ “AA procedure” stands for Algemene Asielprocedure, meaning the general asylum procedure starting after the rest and preparation period.

Article 30(a) of the [Aliens Act](#), an application will be rejected if another country, which is party to the 1951 Convention is responsible for processing the application.

There is a separate Dublin procedure. As soon as the procedure starts, the IND will be informed whether a person has been to another Dublin country.

Duty to state reasons for rejection and procedure to appeal

The [General Administrative Law Act](#) puts an obligation on administrative bodies to state reasons when a decision is notified (Article 3:47(1)). If a decision is open to objection or appeal, this shall be mentioned when the decision is notified and communicated. It shall at the same time be stated by whom, within what time limit and with which authority or body the objection or appeal may be lodged (Article 3:45 [General Administrative Law Act](#)).

Pursuant to Article 39 of the [Aliens Act](#), if the authorities intend to reject an application for the issue or renewal of a residence permit, the alien shall be given written notice of this and of the reasons. The written notice shall normally include the supporting documents.

Time limits for appeal

Article 69(1) of the [Aliens Act](#) stipulates that the time limit for initiating review proceedings is four weeks. This time limit applies to the extended procedure.

Article 69(2) of the [Aliens Act](#) introduces a one week time limit from servicing to submit an appeal against the negative decision issued at the one of the three application centres.

Type of procedure	Time limits	Right to remain
Extended procedure	4 weeks	Automatic suspensive effect.
AC/AA procedure (normally including Dublin)	1 week	No suspensive effect, but there is a four week departure period. A right to stay pending the appeals decision can be requested by the individual.
Subsequent applications	1 week	No automatic suspensive effect. A right to stay pending the appeals decision can be requested by the individual.

Right to remain in the country during appeal

The submission of a complaint with an administrative authority shall not suspend the obligation of the asylum seeker to leave the Netherlands of his own volition (Article 61, [Aliens Act](#)). Pursuant to Article 62(1) of the [Aliens Act](#), an alien should leave the Netherlands of his/hers own volition within four weeks after his lawful residence has ended. Article 62(3)(c) stipulates that the alien shall leave immediately when his application has been rejected during the procedure at the application centre and when he has submitted a previous application for asylum.

Pursuant to Article 82(1) of the [Aliens Act](#), the operation of an order concerning a residence permit shall be suspended until the time limit for applying for judicial review has expired or, if an application for judicial review has been lodged, until a decision has been taken on it. This is applicable only in the extended asylum procedure. However, if an application is rejected in the procedure at the application centre – including in case of subsequent

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applications or Dublin decisions – the appeal does not have automatic suspensive effect (Article 82(2), [Aliens Act](#)). Asylum seekers have the right to submit a request for an interim measure to suspend removal before a decision has been taken on appeal (Article 78 [Aliens Act](#)).

Legal Aid

Every alien may be legally represented in legal and administrative proceedings (Article 18(1), [Constitution](#), Article 8:24(1), [General Administrative Law Act](#) and Article 10(2), [Aliens Act](#)). The [Legal Aid Act](#) allows access to free legal aid for all who are not able to afford legal assistance. However, Article 8(1)(a) of the [Decision on Legal Aid](#) states that a lawyer is not provided for the sole purpose of submitting an application under the Aliens Act, unless the alien is facing immediate removal or detention or the application concerns a request for asylum and the legal aid provided before the first hearing is not sufficient.

Pursuant to Article 3.113 of the [Aliens Decree](#), the alien will be informed timely of his right to counsel. The alien may consult with the Dutch Council for Refugees and his legal representative on the preparations of the procedure. Further legal aid is available during the procedure at the application centre to prepare the detailed interview and to be present at the interview; however the number of hours of legal assistance is limited by the law.

Language assistance

Pursuant to Article 38 of the [Aliens Act](#), the applicant shall be interviewed in a language which he may reasonably be assumed to understand. An independent and impartial interpreter is present during the interviews at the IND to assist the asylum seeker. Translators are also available to translate documents or declarations submitted by the asylum seeker. The [Implementing Guidelines](#) of the Aliens Act (*Vreemdelingencirculaire 2000*) further explain the right of asylum seekers to language assistance (C12/1.1 and C13/1.1). The lawyer can have documents translated free of charge by TVCN/Manpower (Article 2, [Implementation Regulation on Translation Services](#)) (*Uitvoeringsregeling subsidie vertaaldiensten 2009*).

Hearing

Article 71(1) of the [Aliens Act](#) states that the District Court of The Hague shall be competent to hear applications for judicial review of decisions given on the basis of this Act. Paragraph 2 of the same Article allows the District Court to hold session in alternative places, including outside the district. During the hearing the asylum seeker has an opportunity to address the court, but there is no official hearing anymore (Article 7:2, [General Administrative Law Act](#)).