

Asylum Procedures in the Netherlands

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The problem

Asylum procedures last eight days in the Netherlands, and eight months in Germany. This is one reason why so many Balkan refugees came to Germany. This was the judgment rendered by European Commission Vice President Frans Timmermans on German television on 9 September 2015. Rob van Lint, head of the Dutch immigration authority, showed a similar degree of confidence. On the question of whether the Netherlands could learn anything from other countries, he responded with the statement that above all, other countries had a lot to learn from the Netherlands. "In comparison, we have a very rigorous process," he said.²

Our analysis of the Dutch asylum system will do more than simply ascertain whether this Dutch self-confidence is justified. The aim is to identify exemplary elements in the Dutch system as it is practiced. Is the asylum-admittance system in the Netherlands faster and better? How does the speed of the procedure affect accuracy and the quality of the application review? Was the Dutch system able to cope with the increased number of applications in 2015? What effect has been produced by the Netherlands' provision of legal representation to all asylum applicants during the asylum procedures? Has the practice influenced the country's growing populism? These are questions that are naturally raised through such a comparison. The aim of the comparative analysis is to present in detail elements and procedural methods that are transferable from one to the other country, and that might enable the optimization of asylum-admission systems that is so keenly sought in the European Union.

What must an asylum-admission system provide? It is intended to offer protection to the oppressed, and give them a start in a new life as quickly as possible. A quick procedure is of great importance for refugees, because they often come from traumatic conditions. Quickly achieving a secure position in the admitting country makes a new beginning possible, and is in both a psychological and material sense a precondition for integration and a new normality. It enables a start in new professional and economic activity, and thus also acceptance in the social environment and a new life with dignity and self-esteem. If refugees are able to establish an independent existence in a foreseeable future, they will also no longer be perceived as a burden, and will be granted public recognition. In contrast, long stays in temporary housing facilities complicate integration. A new beginning is difficult to achieve when independent initiative has long been impossible.

At the same time, every recognition process is selective. If the review is of poor quality, persecuted individuals will be sent back to oppressive countries, as often happened to German refugees under the Nazi regime. In recent decades too, there have repeatedly been refugees who have been sent back to face torture or death, or have avoided this fate through suicide. On the other hand, if many non-persecuted individuals are given recognition, a pull effect emerges, particularly when no other migration paths are open, and asylum becomes a substitute for economic migration. There is then a danger that the legitimacy of accepting refugees in general will decline in the public eye.

For this reason, it is important to develop procedures that combine speed and quality. Given the current backlog in Germany, estimated by the current BAMF president as reaching 660,000 unprocessed cases by the end of 2015, procedural improvements in Germany are an urgent desideratum. Can we learn from the Netherlands in this regard?

² Thomas Rueb, "We moeten nu alles uit de kast trekken," NRC Handelsblad, 25.09.2015.

1 The reformed Dutch Refugee-admission system

1.1 Fast procedure? Slowdown 2015

On 1 July 2010, the Netherlands introduced the “Improved Asylum Procedure,” with many procedural changes (*Programma Invoering Verbeterde Asielprocedure*, PIVA). The change was intended to speed up the process, while at the same time adding a new layer of diligence. Rejected asylum seekers would be required to leave the Netherlands instead of continuing to submit applications or remaining in the cities as homeless residents. The new procedure has now been running for six years. In 2014, it was evaluated in detail in order to ascertain whether the intended goals were being attained.³

In 2013, the concept successfully resulted in an acceleration of the process. In 2014 and the beginning of 2015, it additionally contributed to the fact that extremely few applications from the southeastern European states were submitted. In Germany, these applications represented a third to a half of all applications at the end of 2014 and the beginning of 2015, in waves initially from Serbia, then from Kosovo and subsequently from Albania. Nearly all of these individual applications were rejected, but they produced a significant burden within the admissions system. In Germany, the processing backlog grew rapidly, even before the chancellor opened the borders in September 2015 (Figures 1 – 3).

Table 1: Comparison of asylum applications in the Netherlands (including repeat applications and family reunifications) and decisions

	Decisions	Total applications	First applications/family reunifications	Repeat applications
2013	18,570	16,720	13,460	3,260
2014	26,950	29,890	27,170	2,720
2014 Jan-June	10,120	13,420	12,280	1,140
2015 Jan-June	11,330	14,460	13,430	1,040

Source: *Rapportage-vreemdelingenketen-eerste-helft-2015*. Table: Anita Böcker.

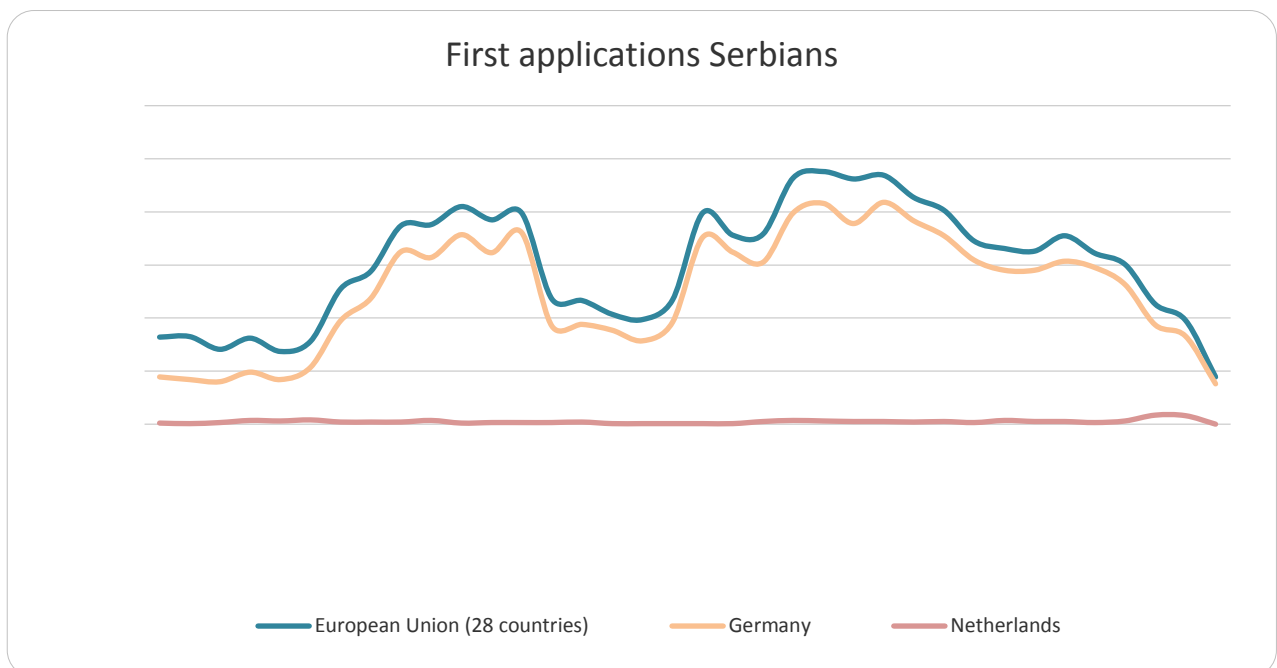
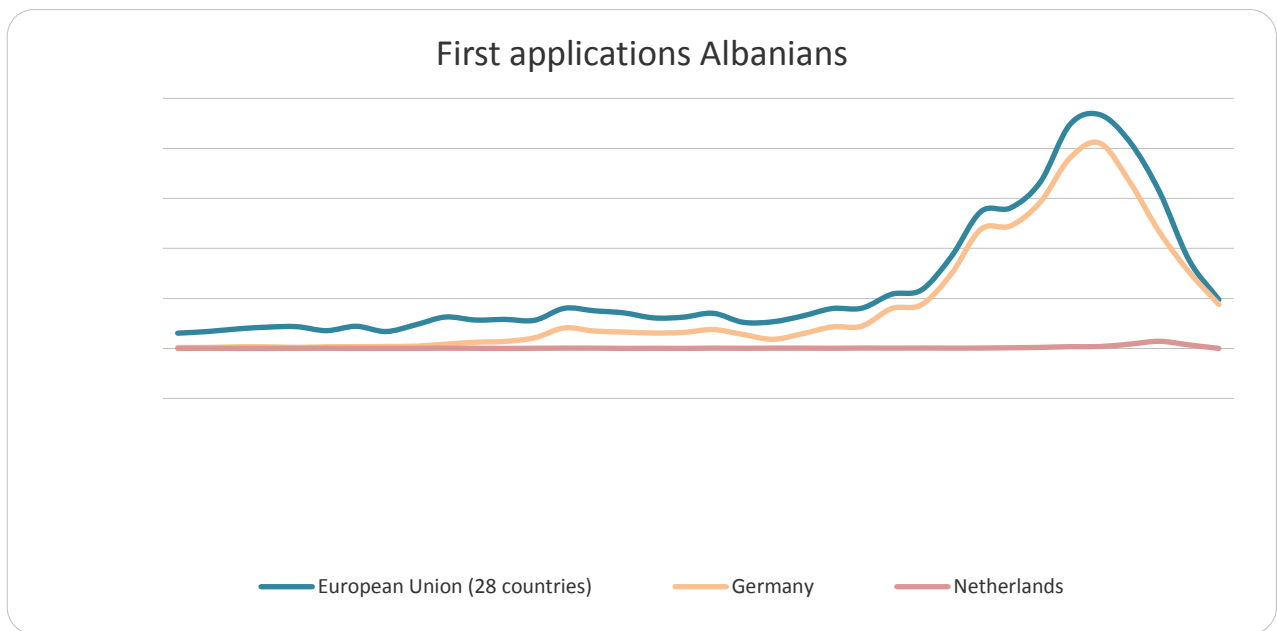
The primary reason for the success in the Netherlands was the relatively greater utilization of staffing resources, with the Immigration and Naturalisation Service (IND) having around 3,000 employees. Between 2010 and 2013 the system worked well, ultimately taking pressure off the agency’s processing and admission capacities. In 2013, there were more decisions than new applications. However, by 2014, the number of agency decisions had fallen behind the number of applications. In 2015 too, a deficit emerged. The proposal to retain spare capacity in order to be ready for times of increased application volume had been rejected.⁴

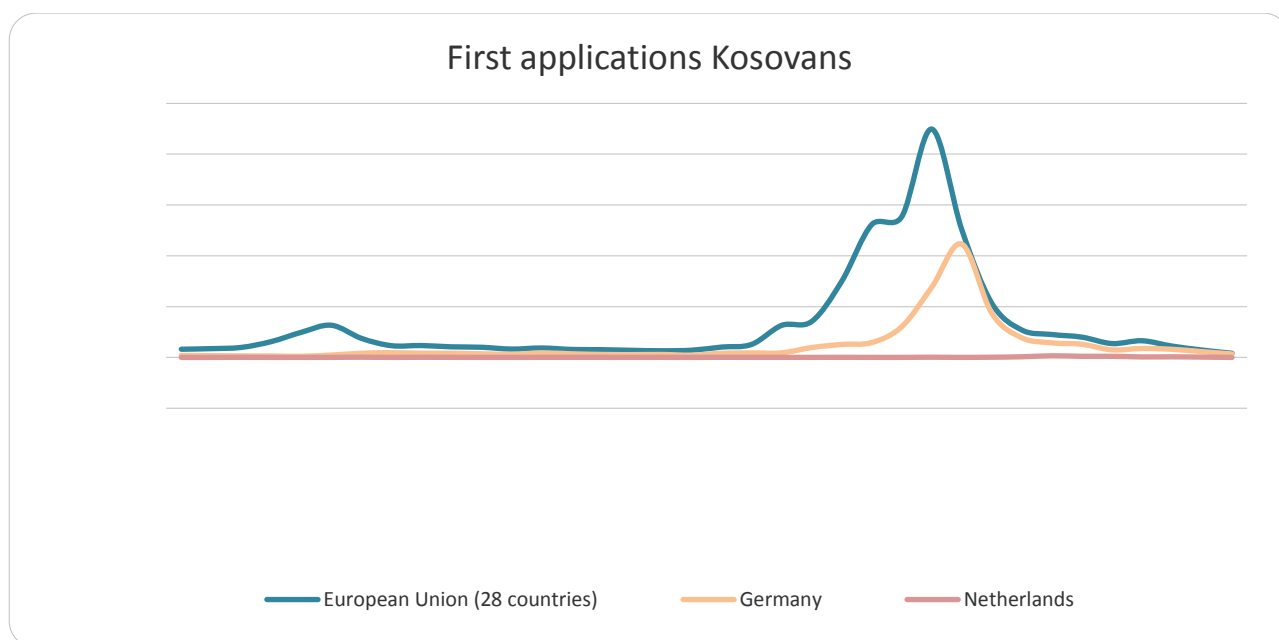
³ A.G.M. Böcker/C.A.F.M. Grütters/M.T.A.B. Laemers/M.H.A. Strik/A.B. Terlouw/K.M. Zwaan, *Evaluatie van de herziene asielprocedure*. Eindrapport, Nijmegen, 2014. This study contains very precise and detailed information about the procedure in the Netherlands, to which reference is made in the following sections; <http://bit.ly/1MSFDtI>.

⁴ Böcker et al., p. 31, 132 (see also footnote 3).

The processing time itself remains short. However, before processing begins, a waiting time has been added that has become increasingly long. In the summer of 2015, this was two months; by November, it was already six months. All asylum applicants submitting a new application now receive a letter from the state secretary for security and justice, in which he informs them that they will initially have to wait a half year before the procedure can begin (see box text). However, at least waiting times in the Netherlands can be identified, while in Germany, 300,000 to 400,000 people have not even been able to submit an asylum application, and thus do not appear in the BAMF statistics.

Figures 1 – 3: Asylum applications from Albania, Serbia and Kosovo in Germany, the Netherlands, and the EU





Source: Eurostat. Figures: Anita Böcker.

Letter from the State Secretary of Security and Justice to all new asylum seekers:

<p>Concerning Asylum in the Netherlands</p> <p>Dear Sir/Madam,</p> <p>Many asylum seekers like you are currently coming to the Netherlands. As a result, the reception system is very busy and the asylum procedures take a long time. I understand that you want to get a clear picture of your future as soon as possible. I will gladly describe what you can expect in this letter.</p> <p>Austere reception</p> <p>Currently, the Netherlands does not have enough room for asylum seekers at the regular reception centres. That is why you are receiving an austere reception, such as in sports centres or tents, where many people share the same lodgings.</p> <p>Longer waits</p> <p>Unfortunately, it is impossible to tell you on short notice whether you will be granted an asylum residence permit with which you can temporarily stay in the Netherlands. At present, it takes almost half a year before your application can be processed. Only then will the procedure serving to reach a decision on your application be initiated. This is assessed carefully for each person. Moreover, further investigation will be required. This can take an additional six months or longer. Once it is decided that you cannot stay, you must leave the Netherlands immediately. In that case, we can assist you in your departure.</p> <p>If you are permitted to stay, you will be granted a temporary residence permit. At this moment, there are not enough houses for everyone. It is therefore possible that you will have to remain in asylum seekers' residence centre, even if you have already been granted a temporary residence permit. Available accommodations can also consist of a container house or a converted office building. It is possible that you will have to share these accommodations with other people.</p>	<p>Date 19 October 2015</p>
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Family

As long as you do not have a temporary residence permit, you cannot submit an application to have your family members to join you. You can only submit an application for your family once you have a permit. We cannot offer you any advance assurances that your family will be allowed to join you. It can take a long time before you will gain clarity in this regard and before your family effectively joins you in the Netherlands. Unfortunately, I cannot specify how much time this will take at this moment. I trust that the above provides you with sufficient information.

Yours sincerely,

Dr. K.H.D.M. Dijkhoff

The State Secretary of Security and Justice

Source: <https://www.rijksoverheid.nl/ministeries/ministerie-van-veiligheid-en-justitie/documenten/brieven/2015/10/20/brief-van-de-staatssecretaris-van-veiligheid-en-justitie-aan-asielzoekers-engels>.

However, the processing backups have had consequences for the admittance system. The asylum applicants must be provided with housing before they can begin the process. Asylum-application processing capacities are therefore insufficient. Unrest in the population is emerging, and indeed has been increasingly reported in recent months. In Germany, the refugee housing system has run smoothly in most federal states and municipalities, and in public information events the population has overwhelmingly shown a readiness to accommodate refugees. By contrast, open resistance has very often been evident in the Netherlands, a phenomenon that is increasingly becoming an issue of public debate.

An additional consequence of the processing backups is a certain increase in the number of applications from countries from which asylum applications have little chance of success, although not to the extent seen in Germany. In the last months of 2015, the number of asylum applications in the Netherlands from Albania increased from ten in February to 76 in August, 172 in September and 285 in October.⁵ Small increases in application figures were also seen from Kosovo and Serbia (Figures 1 – 3). In this regard, the same effect occurring in Germany was evident at a lower level: Processing backups lead to more applications with little chance of success, which in turn further burden the processing system. This effect was particularly evident after the Balkan route was closed. In March 2016, Albanians were for the first time the largest group of asylum seekers in the Netherlands.⁶

Also worrisome was a further 2015 development that can be read from the Eurostat data, but was not communicated in the Netherlands. The number of asylum decisions sank precipitously from the first to the second quarter of 2015, from 6,400 to 3,055, while they increased sharply in Germany. Between the first and second quarter, a halving is evident, followed by a rise back to 4,530 in the third quarter. At the same time, new staff members were hired, although they had yet to be trained and integrated. This development and the forbidding tone of the letter reproduced above from the state secretary to all asylum seekers suggest that the government wanted to diminish the Netherlands' attractiveness as a country of asylum. This apparently did not take place through spectacular new laws, as in Denmark, but rather through bureaucratic slowdown. In the extensive

⁵ Immigratie en Naturalisatiedienst, Asylum Trends. Monthly Report on Asylum Applications in The Netherlands and Europe, November 2015; <https://ind.nl/Documents/AT%20November%202015.pdf>.

⁶ Joost Pijpker, Albanen nu koploper bij aanvragen asiel. In: NRC.NL, 15 April 2016.

interview cited above, the head of the migration agency did not mention these developments, but instead praised – as cited – the “strong procedures” in his agency.

Overall, the number of asylum applications doubled (+97%) in 2015, while the number of decisions remained about the same (+4%).⁷ While in Germany, the processing backlogs in asylum applications became a scandal, and the president of the Federal Office for Migration and Refugees resigned in autumn 2015, the Netherlands created a processing backlog out of a favorable starting position – despite the addition of new staff.

At the same time, there are new deliberations regarding an overall system reorganization as long as there are so many asylum applications. In November 2015, the state secretary overseeing the area made the following proposal:

The new emergency plan

In a letter dated 27 November 2015 to the president of parliament, the state secretary for security and justice proposes to reorganize the asylum-admittance system due to the high number of applicants. The formation of five “tracks” is intended to let clear-cut cases be handled more quickly, even without legal counsel, with the current system subsequently applying only to a portion of the applicants. The following is planned, but has not yet been put into effect:

1. Applications that are clearly without prospect of success should be quickly decided and rejected, particularly if they are Dublin cases.
2. Applications that are clearly without prospect of success should be quickly decided and rejected, particularly if the applicant is from a safe country of origin.
3. Applications that clearly have good prospects of success should be quickly handled and approved. This particularly includes Syrians, stateless Palestinians from Syria and Eritreans.
4. Remaining asylum applications should be dealt with under the present system.
5. Finally, applications in which an investigation of identity or nationality is necessary should be given further review, for example in the case of Syrian applications lacking strong documentation.”

Source: Tweede kamer der Staten-Generaal, Vergaderjaar 2015-2016, 19637 Vreemdelingenbeleid, Nr. 2085.

Overall, it can be said that the positive statements regarding the expeditious procedure in the Netherlands were indeed accurate for the quiet years of 2010 – 2013, but that in 2015, a substantial processing backlog built up, precisely in the time period that the above-quoted interview was given. To all appearances, this processing backlog was brought about without being publicly communicated. The restructuring proposal shows that the system is in crisis. Meanwhile, the emergency plan has been approved, but not yet applied, which again provokes questions regarding the government’s political preferences for refugee policy. Compared to Germany, the application and population numbers remain much lower.

⁷ Ministerie van Veiligheid en Justitie, Rapportage Vreemdelingenketen. Periode januari-december 2015, Den Haag 2016, p. 20 and 23

1.2 The one-week structured recognition procedure

At the core of the improved regulations that have been in place since 2010 is the General Asylum Procedure (*algemene asielprocedure, AA*). Under its terms, the large majority of asylum procedures are meant to be completed within two weeks. To this end, there are strict time-management provisions on the one hand, and continuous counseling provided to the asylum applicant by an attorney and the refugee service on the other. The compression of the process is intended to lead to an intensification. The involvement of a legal-aid counselor throughout the entire procedure is also meant to ensure that all necessary information is integrated into the process in a timely manner, rather than being first introduced during the ruling or follow-up procedures. For this reason, it is particularly important that the legal adviser provide counsel to the asylum applicant both before and after the two hearings. In this way, corrections and additional information can be incorporated, and the legal adviser can put the asylum applicant's information and responses into legal language. This also contributes to mitigate asylum seekers' structural inferiority vis-a-vis authorities within the asylum process.

Before the beginning of the week-long intensive procedure, a week for rest and preparation (*rust- en voorbereidingstermijn*) is scheduled. On the one hand, this gives asylum seekers the opportunity to collect themselves before the beginning of the process. On the other, the military police (*Koninklijke Marechaussee*) use this time to clarify any security issues. An independent medical service, contracted by the IND, carries out medical examinations and ascertains whether the asylum seekers are physically and psychologically up to the questioning that will be carried out by IND in the following weeks. Finally, the IND uses this time to compare the asylum seeker's data with the Eurodac system. If an entry is found, a request even during the preparation week can be made to the competent state to exercise its responsibility under the Dublin rules. In this case, the repatriation and departure service (*Dienst Terugkeer en Vertrek*) is responsible.⁸

In two places within the General Procedure, on days four and seven, the option is provided to transfer the application into the expanded procedure, and thus review it using an increased expenditure of time. The extended process should take no more than half a year. If other authorities are involved, such as the foreign ministry with an investigation in the country of origin, an additional extension of up to a further six months is possible. About 80 percent of applications are today processed using the new General Procedure. Thus, only a minority of applications goes through the expanded procedure. The capacities corresponding to this system have been built up over the years. In 2007 – 2009, only 20% of applications were handled through what was then the “short” procedure; in 2011, 50% were in the structured procedure, followed by 60% in 2012 and then 70% in 2013.⁹

With the reform, the “shortened procedure,” previously used for only a small share of applications, was made the “General Procedure,” and at the same time expanded from 48 hours to one week with the addition of the preceding week for rest, preparation, investigation and medical care.

⁸ Asylum Information Database (AIDA), Country Report – The Netherlands, November 2015, p. 14 f; http://www.asylumineurope.org/sites/default/files/report-download/aida_nl_update.iv_.pdf.

⁹ Böcker et al., p. 50 (see footnote 3); <http://bit.ly/1MSFDtl>.

Schematic representation of the general asylum procedure (AA)

Preparation week	Before the beginning of the process, there is a week for rest and preparation. A medical examination also takes place. Security questions are clarified, and the Eurodac system is consulted. During this week, the asylum seeker meets with his lawyer, and together they prepare for the procedure.
Day 1	Start of the asylum procedure, first hearing. The Immigration and Naturalisation Service (IND) questions the asylum seeker regarding name, nationality and travel route from country of origin to the Netherlands. This is relevant for the Dublin procedure.
Day 2	The asylum applicant and his lawyer go through the report on the first hearing. They can enter corrections and additional information. These are often related to misunderstandings deriving from translation problems. The applicant and lawyer prepare for the second hearing.
Day 3	Second and more intensive hearing, with questioning focusing on the reasons for the asylum application.
Day 4	The asylum applicant and his lawyer go through the report on the second hearing. They can enter corrections and additional information. Subsequently, the IND undertake an evaluation of the asylum application. It can decide to grant asylum; in this case, the procedure is completed. Otherwise, the regular procedure is continued or the extended procedure initiated.
Day 5	If the IND decides to reject the asylum application, it formulates a written verdict containing the grounds for refusal.
Day 6	In consultation with the asylum seeker, the attorney formulates a written statement on the refusal.
Day 7	Decision. After the attorney has submitted a written statement, the IND decides to grant asylum, refuse asylum, or handle the asylum application using the expanded process.

Source: Schema based on AIDA 2015, 18-19; Böcker et al., 2014.

In individual cases, the standard procedure may be extended up to six days, but this is rare. According to the Foreigners Circular 2000 (*Ausländerzirkular 2000*) C1/2.3, the IND is not to rely on extensions.

A number of state and non-state organizations were involved in preparing the reform, including the judiciary. An agreement was made with the Council for the Judiciary (*raad voor de rechtspraak*), which is responsible for judicial organizational questions, that courts would deal with appeals to General Procedure refusals within four weeks. In general, this time limit is respected. In the case of appeals to the second instance, the Supreme Administrative Court tries to address the process (*hoger beroep*) within five weeks.¹⁰

1.3 The legal-advisory service

Along with the new General Procedure, the Netherlands institutionalized an accompanying legal-advisory service that begins before the first hearing and ends with the announcement of a decision. Legal representatives can also join appeals against negative decisions or follow-up applications.

¹⁰ Böcker et al., pp. 54-55 (see footnote 3).

While EU Directive 2005/85 EC (Art. 15) only regulates the right to legal representation, Dutch law guarantees legal counsel for all applications, paid for by the Dutch state. Switzerland reproduces this idea in a modified manner. Unlike in Switzerland, the institution of free legal advice is not contested within Netherlands' political sphere. This has a long tradition, and is available even to people who are residing "illegally" in the country.

The remuneration for attorneys takes place at a level similar to that in Switzerland, but only if the full one-week process is carried out. In this case, 12 units of work are compensated at €106.40 apiece, for a total of €1,276.80 in 2015.¹¹ One unit represents about an hour of work. In Dublin cases, four units are paid; in the case of fast approvals issued on the fourth day, six units, for a total of €638.40. While in Switzerland, a single institution is contracted to provide the entire legal-advisory service, as well as its organization and coordination, this is provided by individual lawyers in the Netherlands. They register with the *Raad voor Rechtsbijstand*, the legal-aid institution. This council allocates asylum applications to the attorneys, and takes on the job of planning. It ensures quality control and distributes mandates among the lawyers that have registered. First consultations take place in the law offices. Here, the attorneys make it clear that their advice is independent of the IND, and thus build trust.

An analysis of the system¹² finds structural discrepancies between the economic interests of the attorneys and their role as representatives of the asylum seekers. If a refugee is quickly recognized (day 4), the attorney will be reimbursed six units. However, if the refugee goes through the entire procedure, successfully or not, 12 work units result. A further discrepancy arises when applying for mandates. With three mandates, an attorney reaches the limits of his capacity. But if he applies only for two mandates, there is a danger of getting less than two mandates, because the allocation process depends on factors outside of his control. If he receives a mandate for a Dublin case, this is completed with only four per diem units. His economic interest may thus lead to him to apply for three mandates, with the consequence that there can be difficulty in paying sufficient attention to multiple mandates under conditions of tight deadline. Most attorneys prefer three mandates.¹³ At the same time, the attorneys are entrusted with communicating the authorities' negative decisions to the applicants.¹⁴ Under tight time pressures, there will be little scope for calming emotional reactions following a disappointment.¹⁵

The fact that all asylum seekers in the Netherlands are provided with legal aid is a significant humanitarian step toward improving the process and providing support, especially for applicants with limited language skills but good grounds for asylum. The mechanisms of implementation relativize these positive effects. The attorneys must have a certain moral balance (and sufficient financial resources) in order to ignore the negative incentives, work day after day against the prevailing mechanisms, and seek the optimum outcomes for their clients. A Dutch author speaks of a "morality vs. market dilemma for lawyers"¹⁶ "Namely, that it incited doing a bad job, since it is financially more

¹¹ Raad voor Rechtsbijstand, Indexering vergoeding 2015; <http://www.rvr.org/nieuws/2014/december/indexering-vergoeding-2015.html>.

¹² The following section draws on Tamara Butter, *Providing Legal Aid in Asylum Procedures in the Netherlands: A Challenging Business?*, Chapter 7, in: Bernard Hubeau and Ashley Terlouw (eds.), *Legal Aid in the Lowlands*, Cambridge 2014. The statements are based on an analysis of the process and interviews with asylum lawyers.

¹³ Böcker et al., p. 109 (see footnote 3).

¹⁴ Butter, p. 7 (see footnote 10).

¹⁵ Butter, p. 10 (see footnote 10).

¹⁶ de Groot-van Leeuwen, 1998. Quoted in Butter, p. 12 (see footnote 10).

profitable to deliver poor work than to do a good job.” “Coping strategies” thus include putting in less work in clear cases – both clearly positive and clearly hopeless cases – as well as omitting the consultation with the applicant before the procedure in order to save time, or failing to enter the refugee’s entire history of flight into the record, because it does not fit in the given time frame.¹⁷ The non-representative survey in the evaluation report showed that an interview before the beginning of the procedure took place in three-quarters of cases.¹⁸ The lawyers are entitled to be present at all hearings. However, they do not always take advantage of this right.¹⁹

The institutionalization of the accompanying legal counsel is an important qualitative contribution with regard to the improvement of the asylum process in the Netherlands. Although it is anchored in the Netherlands’ legal culture, the government is planning to abolish this legal aid for large groups (see above). In this regard, the quality of the asylum process for these groups would be substantially reduced.

1.4 The Dutch Council for Refugees (VluchtelingenWerk Nederland)

The Dutch Council for Refugees (*VluchtelingenWerk Nederland*) is an independent NGO. It was created in 1979 through the union of several ecclesiastical and political organizations engaged with providing support to refugees. It has a presence throughout the country, and particularly at the asylum locations. It provides information, carries out campaigns and focuses especially on direct support of refugees. About 700 full-time employees and 7,000 volunteers are active with the refugee council. In the most recent refugee crisis, many new supporters have come forward. The organization has a budget of €4 million, financed 65% through state resources and 35% through donations and grants, including lottery resources.²⁰

The Council for Refugees provides asylum seekers with information regarding the asylum procedure and their right to choose an attorney registered with the *Raad voor Rechtsbijstand*. Lawyers provide the refugee council with telephone-based aid, a database and publications. All asylum lawyers are obliged to be members of the *Werkgroep Rechtshulp aan Vluchtelingen* (WRV).

According to its own estimates, the Council for Refugees prepares 95% of asylum seekers for the procedure. In a third of cases, the documents are discussed with those involved. This aid leads to better preparation for the asylum seekers, and a clearer understanding that it is necessary to assemble all relevant documents before the beginning of the procedure. This makes the attorney’s job simpler.

1.5 Rejected asylum applicants

With regard to the treatment of rejected asylum applicants, the differences between the Netherlands and Germany have become considerable. The Dutch experience is interesting in this regard, because cuts in support are again being increasingly discussed in Germany too. In Germany, the Federal Constitutional Court ruled in 2012 that the minimum subsistence level for social-welfare benefits also applied to asylum applicants and “tolerated persons.” “Human dignity may not be relativized by migration-policy considerations,” wrote the court in its ruling.

¹⁷ Butter, p. 15 (see footnote 10).

¹⁸ Böcker et al., p. 92 (see footnote 3).

¹⁹ Butter, footnote 30 (see footnote 10).

²⁰ VluchtelingenWerk Nederland: <http://www.vluchtelingenwerk.nl/wat-wij-doen/begeleiding-van-asielzoekers>.

In the Netherlands, however, policymakers have vigorously sought to force departure through the cessation of benefits. Previously, benefits were cut off immediately following rejection of the asylum application, and the rejected applicant sent on his or her way. After protests by local authorities and the refugee assistance organizations, benefits are now paid for four weeks following rejection of the application, and then cut off. The rejected asylum applicant can also stay for four weeks in the asylum-application center. This is intended to enable him or her to prepare for his or her departure. In the asylum center, they are provided with support from the *Dienst Terugkeer en Vertrek* (DT&V), a special governmental organization providing help with preparing and carrying out departures from the country. The service's presence in the asylum center also makes it easier to determine whether the rejected asylum applicant is in fact leaving.²¹

However, the cessation of support did not produce a situation in which most asylum-seekers simply left. In many cases, they remained in the country, especially in the four large cities of the "Randstad Holland." Many of them lived on the street. The cities then implemented emergency measures and provided support on humanitarian grounds, which in turn provoked criticism. In 2007, the national government and the municipal authorities agreed on a "*Pardonregeling*" or pardon program, through which about 26,000 people were regularized. The government committed itself to taking responsibility for the rejected asylum applicants. For their part, the municipalities promised to reduce the amount of emergency aid provided. Since that time, fewer people have been affected by the departure problem.²² However, with the new high numbers of asylum applications, the number of rejected asylum seekers may once again climb.

In August 2010, on the basis of a court decision, the deportation of homeless families with children was prohibited. The government subsequently established special family centers (*gezinslocaties*) for families with children. There, they are meant to prepare for their departure. Thus, families with children no longer are placed immediately on their way or in pre-deportation detention facilities. In November 2015, the highest administrative court ruled that the government and cities are not obliged to provide rejected asylum applicants with aid if they refuse to cooperate in their own departure. These problems sparked intensive political debate, and led to a coalition crisis between the neoliberal VVD and the social-democratic PvdA.

Today, emergency aid is provided, publicly known as "bed, bad, brood" or "bed, bath, and begone" in English.²³ Minimal needs are provided for – primarily food, washing facilities, and a place to sleep – but no more. Despite the harshness of these measures, they have not succeeded in inducing the rejected asylum applicants to repatriate. These accommodations are closed during the day. Rejected asylum applicants still have the ability to try to obtain repatriation support from the IOM.

²¹ Dienst Terugkeer en Vertrek: <https://english.dienstterugkeerenvertrek.nl/>.

²² Böcker et al., p. 149 ff (see footnote 3).

For a comparison of the Dutch "Pardonregling" with the contemporaneous German right-to-remain regulation, see: Anita Böcker and Carolus Grütters, *Slepende asielzaken. Enkele rechtsvergelijkende notities bij de Duitse Bleiberechtsregelung en den Nederlandse pardonreling*, in: Anita Böcker et al., *Migratierecht en rechtssociologie. Migration Law and Sociology of Law. Collected essays in honour of Kees Groenendijk*, Nijmegen 2008, pp. 11–26.

²³ The Economist, Dutch asylum policy: bed, bath, and begone, 23 April 2015; <http://www.economist.com/news/europe/21649614-netherlands-stumped-rejected-asylum-seekers-who-refuse-leave-bed-bath-and-begone>.

Evaluation of the Center for Migration Law on the achievement of reform goals (2014, English summary):

The most successful realisation of the five goals is the abbreviation of the asylum procedure. This can be ascribed to the AA having become the general asylum procedure. This goal also turns out to have been prioritised in practice (indeed it still is), and it was aided by conditions during the first three years after the introduction of the revised procedure: there were relatively few first applications. Thanks to the abbreviation of the procedure, the asylum seeker's position is speedily made clear (this was a significant objective of the revised procedure); and a shorter time is spent in reception.

The answer to the question whether the second goal has been achieved (increasing the quality of the short procedure) is less unequivocal. According to the number of decisions upheld on appeal, there has been no loss of quality. There is a broad consensus among the actors involved that the AA (thanks to the RVT, the longer duration of the AA and the continuity of legal aid) offers better guarantees of care than the old 48-hour procedure. However, particularly attorneys emphasise that there is so much pressure to dispose of cases in the AA that complex cases are also decided upon in the AA, even though they are not appropriate for the AA.

The third goal of the revised procedure (cutting down on the number of continuing applications) has not been achieved. This can be ascribed to factors outside PIVA, but the large percentage of cases disposed of in the AA also seems to have adversely affected the number of continuing applications, since the AA is generally too short for a parallel review on regular grounds and also often too short to gather evidence.

It may be concluded that speed and more care, and speed and fewer continuing applications, are difficult to achieve at the same time. This inquiry therefore confirms the concerns that were voiced beforehand.

The fourth goal (ensuring that more rejected asylum seekers actually leave the Netherlands) was achieved to some extent. The PIVA measures intended to contribute to this goal have had some effect, but all actors involved agree that this remains a very difficult part of the asylum policy.

The fifth goal (preventing rejected asylum seekers from ending up on the streets) was also achieved to some extent, but that can only be ascribed in small measure to PIVA.

Source: Böcker u.a. 2014; <https://www.wodc.nl/onderzoeksdatabase/2347-evaluatie-vw2000.aspx>.

2 The political and administrative context

2.1 The Dutch integration and asylum debate and the political atmosphere

Since the 1970s, the Netherlands has confidently promoted itself as a leading country (gidsland) of multiculturalism that serves as a role model in achieving the tolerant coexistence of people with diverse cultural backgrounds. Pointing in 1994 to the growing international recognition and attention afforded the Netherlands in this regard, the government noted that the country was ahead of other European countries.²⁴ In Germany, for example, the Dutch model of multiculturalism was held in high regard, making it an “ideational export product” from the Netherlands.²⁵ In the wake of the Solingen arson attack on a Turkish family in Germany in 1993, a morally outraged Dutch radio DJ gathered 1.2 million Dutch signatures for a postcard sent to then-Chancellor Helmut Kohl with the statement “I’m outraged” (Ik ben woedend).

Dutch multiculturalism policy clearly brought about several gains. The introduction in 1986 of the right to vote in local elections for foreigners marked a milestone in cultural openness. The Netherlands’ high naturalization rate occasionally exceeded that of all other European countries.²⁶ Dutch parties began recruiting candidates with a migrant background and, a few years later, saw several “allochtoon” (a term officially denoting people with at least one parent who was born outside the Netherlands and often perceived as having a weak socioeconomic position) successfully elected into all levels of office. These achievements continue, despite the current tensions. In January 2016, Khadija Arib – a Moroccan-born Dutch citizen who arrived in the Netherlands at the age of 15 as a result of family reunification policy – was elected president of the Dutch parliament. Dutch multiculturalist policy also had the effect that migration support organizations received financial support, and Muslim and Hindu rites and institutions were recognized by the state in the same way it recognizes those of the Christian Church. However, there were major economic problems to be addressed as many migrants lost their jobs in the 1970s and 1980s and suffered thereby social exclusion.

In 1991, the gentlemen’s agreement among Dutch politicians to avoid polemics at the cost of migrants was broken. With a speech and an article in the *Volkskrant*, the leader of the neoliberal VVD party Frits Bolkestein drew attention to himself by warning against too much lenience toward minorities with regard to specific cultural issues. He demanded greater assimilation efforts among minorities and expressed doubts about the compatibility of Western and Muslim values.²⁷ Bolkestein’s speech unleashed a series of “new realism” narratives in which Islam was depicted as dangerous, different and not capable of integration into Dutch society.²⁸

²⁴ Integratiebeleid etnische minderheden, TK 1993–1994, 23 684, Nr. 2, pp. 14.

²⁵ Rudolf Leiprecht/Helma Lutz, *The Dutch Way: Mythos und Realität der interkulturellen Pädagogik in den Niederlanden*, in: Georg Auernheimer/Peter Gsetzner (Hg.), *Jahrbuch für Pädagogik*, Frankfurt/New York 1996, S. 239–262.

²⁶ Anita Böcker/Dietrich Thränhardt, *Einbürgerung und Mehrstaatigkeit in Deutschland und den Niederlanden*, in: Dietrich Thränhardt/Uwe Hunger (Hg.), *Migration im Spannungsfeld zwischen Globalisierung und Nationalstaat*, Wiesbaden 2003, S. 117–134.

²⁷ Frits Bolkestein, *Address to the Liberal International Conference at Luzern*, 6. September 1991, Den Haag: VVD, Tweede-Kamerfractie.

²⁸ Baukje Prins, *How to Face Reality. Genres of Discourse within Dutch Minority Research*, in: Dietrich Thränhardt/Michael Bommers (ed), *National Paradigms of Migration Research*, Osnabrück 2010, p. 81–108. For more on the shift from optimism toward pessimism, see Leo Lucassen/Jan Lucassen, *The Strange Death of Dutch Tolerance. The Timing and Nature of the Pessimist Turn of the Dutch Migration Debate*, in: *The Journal of Modern History*, 87. Jg. 2015, S. 72–101.

In 2002, Pim Fortuyn radicalized the populist-xenophobic narrative. His “List Pim Fortuyn” party, which he established in February 2002, garnered enough votes in the May 2002 general elections to win the second-largest number of seats in parliament. Fortuyn dominated the Dutch political discussion and fundamentally altered the atmosphere with his amalgam of islamophobic, politically incorrect, unusual and entertaining public appearances and statements. He spoke out against the equal rights article in the constitution and advocated an end to Muslim immigration. He presented himself as a people’s representative speaking out against a “leftist church” and its “politically correct” attitudes that have made it impossible for average citizens to speak freely in expressing their opinions. As an articulate mouthpiece for populist frustrations, Fortuyn propagated the sense that Dutch multicultural policy and the political establishment that promoted it, had failed.

Although Fortuyn’s party quickly dissolved following his assassination by an animal-rights activist just days before the general elections in 2002, the issues he raised have remained in the public eye. Following the murder in 2004 of Theo van Gogh, whose provocative “Submission” film waged a strong criticism of Islam, Islamophobia reached its apex in the Netherlands. Dozens of mosques were attacked with attacks on Christian churches following just days afterwards.²⁹ Since then, there has been ongoing debate in the Netherlands over Islam and its compatibility with the Enlightenment and modern values. The consensus on multiculturalism has been replaced by an assimilationist view, while the sense of a unique Dutch quality has remained. Claims of Islamic backwardness and intolerance are confronted with a Western definition of freedom, gender equality, and the recognition of LGBT rights.

Since the electoral success of the List Pim Fortuyn party, Dutch politics have been challenged by a series of populist leaders who aggressively promote xenophobic and anti-Islam sentiments through their media-savvy tactics. In response, successive governments have introduced a growing number of measures designed to limit immigration and require greater assimilation among migrants in order to calm populist fervor. Many of these measures target in particular reductions to social benefits, the economic activation of migrants, westernization and re-education efforts, and preventing the continued inflow of migrants believed to be very difficult to integrate. Further issues include integration courses, “integration contracts” involving economic sanctions, restricting naturalization, limiting legal and de facto asylum status, reducing migration through family reunion by increasing the legal age for marriage and income requirements, and introducing a fee-based language test for migrants from “non-western” countries. The ad hoc approach of these measures – introduced in a context of anti-Islam sentiments and the growing demand to strengthen Dutch “norms and values” – has made sustainable governance increasingly difficult.

With the radical shift in Dutch public discourse under way since 2000, the once-heralded concept of multiculturalism has since fallen into considerable disfavor. In recent years, however, Dutch policy has once again become a model – for its emphasis on assimilation. The Netherlands is the first country to introduce obligatory integration courses in which migrants are to acquire both the language and knowledge of the destination country’s culture and demonstrate successful acquisition through a test.³⁰ Whereas the discussion during the multiculturalism era focused on “educating”

²⁹ Landelijk Bureau ter bestrijding van Rassendiscriminatie/Landelijke Vereniging van Anti Discriminatie Bureaus en Meldpunten/Anne Frank Stichting/Universiteit Leiden, Monitor Rassendiscriminatie 2005, Rotterdam 2006.

³⁰ For more on this, see: Ines Michalowski, Integration als Staatsprogramm. Frankreich, Deutschland und die Niederlande im Vergleich, Münster 2007.

native-born Dutch, the emphasis today is placed on requiring “non-western” migrants to internalize “Dutch values and norms.”

Two authors writing in 1994 referred to the mood in the Netherlands at the time as “democratic impatience,”³¹ a characterization that has since proved prophetic. In recent years, each change of government has brought changes to the institutions tasked with integration. Each change has been introduced in a climate of extreme political polarization, thereby undermining the long-term effectiveness of policy instruments and measures. Pointing to this, the Staatsrat criticized the fact that new regulations were being introduced before the impact of previous reforms could be evaluated.³² A major report conducted by a parliamentary commission of inquiry was thrown out before publication because it ran counter to the prevailing pessimism in the country.³³

Asylum, immigration and integration remain prominent issues in Dutch politics. Geert Wilders’ Party for Freedom (Partij voor de Vrijheid, PVV) has led election polls almost non-stop since October 2014. Elected in 2015 for the third time as the Dutch “Person of the Year,” Wilders has outspokenly agitated against Muslims, refugees, immigrants and the EU. According to a January 10, 2016 election poll, the PVV was the most popular party and would receive 41 out of 150 seats in parliament. The liberals would receive 18 seats, the Christian Democrats 19 and the social democrats would receive only nine seats. Currently, the PVV has the fifth-largest share of seats in parliament with 12 representatives. However, in the last elections (2012), the PVV did not win as many votes as forecasted and lost the most votes of all parties. In recent years, Dutch parties have been subject to considerable voter volatility. For example, the Christian Democrats, like their counterpart in Germany, were once a leading party. However, they received only 8.5% of votes in the 2012 elections.

Advocating a “closing of the borders” and the Netherlands’ exit from the Schengen system, Wilders, like Fortuyn, seeks to prevent more Muslims from entering the country. Public debate is deeply influenced by these issues and repeatedly inflamed by populist-driven remarks. Anti-islamic and xenophobic sentiments and slogans resonate broadly across the public, often prompting a defensive response by the government. In 2015 and 2016, the issue of asylum repeatedly captured public attention because of its increased relevance during the refugee crisis and because – unlike other forms of migration – it is legally guaranteed. Dutch authorities and institutions tasked with asylum policy and administration are subject to aggressive criticism and are under constant pressure to demonstrate a justification for existence and their efficiency. The 2015/2016 New Years’ Eve events in Cologne have resonated among Dutch populists.

If we turn to an analysis of the Dutch media landscape and its operational capacity, the findings of a study of reporting in the Dutch media from 2011 to 2015 by Decker and Scholten are noteworthy. Distinguishing four “Master Frames” of human interest, threat, governance and economy, Decker and Scholten found that the majority of reporting addressed issues associated with human interest

³¹ Hans Vermeulen/Rinus Penninx (ed.), *Het democratisch ongeduld*, Amsterdam 1994.

³² Kees Groenendijk, *Kroniek inburgering 2010–2011: van integratiebeleid naar immigratiebeleid*, in: *Asiel- en Migratierecht 2012*, Nr.1, p. 36–48.

³³ *Parlementair onderzoek integratiebeleid 2002–2004*; http://www.parlement.com/id/vhn-nmt7j2wxh/parlementair_onderzoek_integratiebeleid.

stories and governance.³⁴ Whereas the number of news reports framed by “threat” issues were small, they drew considerable attention and potential to trigger emotions.

An opinion poll study conducted by the Netherlands Institute for Social Research (Sociaal en Cultureel Planbureau) has delivered a fascinating analysis of Dutch public opinion regarding multiculturalism. The study shows that in the past ten years, Dutch attitudes toward Muslims have grown increasingly more tolerant and open,³⁵ though these views are not manifest in political debates. Similar discrepancies have been noted in years past.³⁶ The constructive positions continued to be held by moderate parties and several civil servants in ministries can count on support within the population even though tensions in political debates and the volatility manifest in polls and elections might suggest otherwise.

Table 2: Tolerance toward Muslims and positive attitudes toward Muslim immigration increasing among Dutch population (in %)

	2004	2008/09	2012/13	2014/15
Most Muslims show respect for others	33	41	52	55
European and Muslim lifestyles are not compatible	45	39	44	44
Too many foreigners in the Netherlands	47	39	32	36

Source: SCP 2015, p. 81, Table 3.9.³⁷

2.2 The Immigration and Naturalisation Service IND

The Immigration and Naturalisation Service (Immigratie en Naturalisatiedienst, IND) is tasked with managing all issues associated with immigration and naturalization in the Netherlands. Located within the Ministry for Security and Justice (Ministerie van Veiligheid en Justitie), the agency implements on behalf of the Dutch state secretary for justice aliens policy, the Aliens Act (Vreemdelingenwet) and the Netherlands Nationality Act (Rijkswet op het Nederlanderschap), including all applications for asylum. As a unitary centralized state, the Netherlands has no other organizations within the government tasked with these responsibilities.

In its presentation of its tasks and duties, the IND emphasizes its focus on clear rules, rapid procedures, and an “objective assessment of applications” (“Snel en zorgvuldig; duidelijke regels; orde procedures; een objectieve beoordeling van de aanvraag”). It also emphasizes the need to prevent a misuse of procedures and identify fraud. The IND works with the police (computer support),

³⁴ Rianne Dekker/Peter Scholten, *Tsunami of tragedie? Media-aandacht en beeldvorming rond het vreemdelingenbeleid*, Rotterdam 2015; <http://wodc.nl/onderzoeksdatabase/2554-framing-en-narratives-betreffende-nederland-als-immigratieland-2008-2013.aspx#publicatiegegevens>.

³⁵ Sociaal en Cultureel Planbureau (SCP), *De sociale staat van Nederland 2015*, Den Haag 2015, S. 81; http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2015/De_sociale_staat_van_Nederland_2015.

³⁶ Anita Böcker/Dietrich Thränhardt, *Paradoxen en paniekattacken*, in: *Migrantenstudies*, 26. Jg. 2010, S. 80–100; Dietrich Thränhardt, *Integrationsrealität und Integrationsdiskurs*, in: *Aus Politik und Zeitgeschichte*, 46–47, 15.11.2010, p. 16–21.

³⁷ Original Dutch phrasing: “vindt dat de meeste moslims respect hebben voor anderen. Vindt dat de leefwijze van West-Europeanen en moslims onverenigbaar. Vindt dat er te veel buitenlanders in Nederland wonen.”

the military police, the repatriation and departure service (Dienst Terugkeer en Vertrek, DT&V), the Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers, COA) and the IOM.³⁸ The registration of asylum seekers is efficient, and local governments receive the relevant data. In short, there are no coordination problems in the Netherlands comparable to those witnessed in Germany.³⁹

The current institutional order in which the Ministry of Social Affairs is responsible for integration and the Ministry for Security and Justice is responsible for asylum and immigration has been in place since the reformation of the Rutte cabinet in the wake of the 2012 general election results which resulted in a minimal winning coalition. Since 2010, asylum procedures were redesigned in order to improve them and make them more efficient. Among other reforms, this involved replacing a 48-hour procedure with the aforementioned one-week intensive procedure. In 2014, this procedure was subject to a thorough evaluation.⁴⁰

Given the volatile state of affairs and charged public mood, it is unclear whether the current asylum procedures and measures will continue to receive the necessary political support after the 2017 elections. Should they lose the requisite political backing, the new emergency plan discussed here might take effect. However, the esteemed Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid, WRRR) is also working constructively on formulating a refugee policy for the government. The advisory body has also published a study titled “No time to lose: from reception to integration of asylum migrants,” providing actionable recommendations for integrating the new refugees.⁴¹

³⁸ Immigratie- en Naturalisatiedienst, Het werk van de IND; <https://ind.nl/organisatie/Paginas/ind.aspx>.

³⁹ Information provided by Prof. Kees Groenendijk, Universit t Nimwegen, 22.01.2016.

⁴⁰ B cker et al (see footnote 3).

⁴¹ Godfried Engbersen et al., Geen tijd verliezen: van opvang naar integratie van asielmigranten, WRR-policy brief 4, 16.12.2015; <http://www.wrr.nl/publicaties/publicatie/article/geen-tijd-verliezen-van-opvang-naar-integratie-van-asielmigranten-4/>.

3 Conclusions and recommendations for Germany

The readiness for experimentation in the Netherlands has the benefit for Germany that several different measures have been taken that are of potential relevance for efforts to improve procedures in Germany. The strategy of providing structured procedures together with legal-advisory services has been taken up in Switzerland and is now implemented in a modified form.

Despite the government's initial confidence, the Netherlands has not succeeded in expediting procedures. Although the backlog faced by Dutch agencies was considerably less severe than that faced by German agencies, the personnel resources required to expedite the application process have been considerably higher than expected. Since the second quarter of 2015, the decision procedure has slowed significantly. In the meantime, the Netherlands has now built up a backlog that has precipitated problems with housing which, in turn, have prompted reactions within the public. Because the government has not publicly communicated its data, rendering the data accessible only through Eurostat, developments remain unclear. To some extent, the backlog in processing applications has attracted applications by those without hope of receiving asylum, though this problem is not as relevant in the Netherlands as it is in Germany. As a result, the current Dutch government has admitted that its oft-upheld reform model is grappling with a growing backlog of applications. Alternative procedures are under consideration and have been made legally feasible, though not implemented. Overall, the political situation remains unclear, which will only complicate matters in the future.

Cessation of social assistance to refugees and reductions to emergency aid also did not bring about the intended effects.

However, the strategy of a structured procedure in which applicants receive legal assistance offers a way forward. Structuring the process more clearly makes it easier to verify applications. Involving a legal adviser in the procedure also makes the process more efficient and improves application oversight. A reform of the asylum-application process in Germany would benefit from a consideration of the Netherlands' experiences in this regard. In terms of resolving procedural bottlenecks by quickly identifying those looking to emigrate for primarily economic and social reasons, Germany would be well advised to consider the two points where the Netherlands has failed: ensuring quick procedures and sufficient personnel and resources. Quick procedures make it easier for an applicant to return to his or her country of origin without the state having to resort to draconian measures. The Dutch experience with these matters is instructive, even though it did not achieve all of its objectives. The Dutch experience and model – which may be implemented in Switzerland with greater consistency – remain relevant to any discussion of how to optimize a European asylum procedure.

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