



EMN - European Migration Network
Dutch National Contact Point

Policy Analysis Report 2005

Developments in Migration and Asylum policy in the Netherlands

1 July 2004 – 31 December 2005

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Immigratie- en Naturalisatiedienst

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1. Introductory summary

This report, 'Developments in the Dutch Migration and Asylum Policy, 1 July 2004 – 31 December 2005', gives an overview of developments and changes that have taken place in The Netherlands in the field of asylum and migration in the reference period.

The report is written under commission of the European Migration Network (EMN). The EMN is an initiative of the European Commission and was established to provide the Community, her Member-States and in the long run the public with objective, reliable and comparable information on migration and asylum in the European Union. National Contact Points were assigned in the Member-States to collect and analyse information on migration. Within The Netherlands, the section Information and Analysis Centre (INDIAC) of the Immigration and Naturalization Service (INS, Agency of the Ministry of Justice) was assigned National Contact Point for the EMN.

Every National Contact Point for the EMN provides for a national contribution to this so-called 'Policy Analysis Report'. These national contributions will be clustered and compared in a European synthesis report. This report that lie in front of you, is the Dutch contribution to the 'Policy Analysis Report' which has come about in commission of the EMN for the second time. The first 'Policy Analysis Report' presents the developments and changes in the field of asylum and migration in the participating Member-States in the period 1 January 2003 until 31 July 2004. This first round was set out on an optional basis and The Netherlands was one of the Member-States not to have contributed.

After the first summarizing chapter an overview of the migration flows and migration stocks for the reference period will be presented in chapter two 'General Trends in Migration and Asylum'. Although a positive migration balance, it is remarkable that in the last few years it is decreasing. The cause is that the emigration has slightly increased, however the immigration is decreasing with a faster pace. Of the number of immigrants especially the number of asylum seekers that filed an asylum application in The Netherlands in previous years has declined sharply. The appendix to this report gives a more detailed insight into the statistical information through charts and diagrams.

The third chapter gives an overview of the political developments that have taken place in the reference period in the field of asylum and migration. First, a concise review is presented of the Dutch political system. To continue, the general political developments in The Netherlands and the main institutions / actors in the field of migration will be discussed. Finally, this chapter contains a description of the most significant social debates and developments in the following field: managed migration, gates of entry and border control, integration and settlement, refugee protection and asylum, citizenship and naturalisation and return. A list of the discussed debates is entered at the end of the report. Remarkably, six of the total of twelve discussed social debates concern debates in the field of 'integration and settlement'. Among these are debates concerning the approach and prevention of honour related violence and the possibility / necessity to introduce a general ban to wear a burka in public areas and in specific cases to wearing headscarves. Furthermore, much of the social debates were pursued on proposals to amend a bill or policy. Examples are the proposal for a new Integration Act and the proposal for legislative amendment with regard to integration abroad.

The fourth chapter presents an overview of changes and developments during the reference period in Dutch legislation and jurisprudence (case law) in the field of asylum and migration. These are being presented for the

same subjects as in the previous chapters (managed migration, gates of entry and border control, integration and settlement, refugee protection and asylum, citizenship and naturalisation and return) focussing both on legislative amendments and on amendments of rules and policy.

A total of five amendments are being discussed. With respect to managed migration two amendments were made on which a social debate was also pursued. These were the sharpening of the conditions to obtain a residence permit under the condition of family reunification or family formation and the raise of fees for residence permit concerning managed migration in general.

With regard to Dutch case law the leading decrees of the Administrative Law Division of the Council of State have been examined, for example a case in which the 'Division' asked the EC Court of Justice a number of preliminary questions. Subsequently, the changes and developments in Dutch legislation that have taken place under the influence of EC legislation and case law are described here. Focus is on European regulations that have come into force during the reference period and on European directives that have been effected or have been implemented during this same period. Furthermore, the most important case law of the European Court of Justice EC will be discussed in this chapter, like case law that can lead to amendment of Dutch legislation. A list of subjects, amongst which the changes in legislation and case law, has been added to the report.

Finally, in chapter five, changes and developments that have come about during the reference period in Dutch policy in the following fields are being discussed: labour market and employment, housing and urban development, education, health care, family, youth and the elderly, gender, vulnerable groups and discrimination. Less changes in legislation and policy have come about during the reference period in these fields. Therefore especially the main national governmental initiatives in these fields are being described in this chapter. Most of them concern integration. Once again the reader is referred to the list of subjects at the end of the report.

As mentioned before, in the back of the report the Appendix, the List of Subjects and the Bibliography are entered.

2. General Trends in Migration and Asylum

This chapter shall give a brief overview of the migration flows and the settlement of migrants during the reference period.

The information in this chapter was sent by the Statistics Netherlands (CBS). At the time of preparation of this report, CBS was unable to issue details in respect of migration flows and migration stocks during the period 1 January 2005 to 31 December 2005. This information for 2004 (1 January 2004 to 31 December 2004) *are* available and shall be included in this chapter.

Paragraph 2.1 describes migration flows which are reported statistically. This paragraph discusses the number of migrants who have taken up residence in the Netherlands and the number of emigrants who have left.

Paragraph 2.2 describes the statistic migration stocks. This paragraph discusses the composition of the Dutch population. During this process the number of western and non-western persons of foreign heritage residing in the Netherlands is taken into consideration, among other things.

For sake of clarity, charts and diagrams of that which shall be detailed in this chapter have been included in the appendix.

Glossary:

- emigrants: persons who leave the Netherlands to take up residence in another country.
- immigrants: persons coming from abroad and taking up residence in the Netherlands.
- asylum requests: requests submitted by persons who, for varying reasons, have left their country to seek protection or asylum in another country (in this case the Netherlands).
- person of foreign heritage:
person of whom at least one of the parents was born abroad.
- non-western persons of foreign heritage:
persons originating from Turkey, Africa, Latin America and Asia, with the exception of the former Netherlands East Indies/Indonesia and Japan. On the basis of their social-economic position persons of foreign heritage from the former Netherlands East Indies/Indonesia and Japan are deemed western persons of foreign heritage.
- western persons of foreign heritage:
persons not originating from the Netherlands and who cannot be included within the definition of a non-western person of foreign heritage.
- migration balance:
the number of persons who have taken up residence in the Netherlands deducted by the number of persons who have taken up residence abroad coming from the Netherlands.

2.1. Migration flows, statistical information on immigrants, emigrants and asylum seekers

Prior to specifically discussing the number of migrants who have taken up residence in the Netherlands during the reference period and the number of emigrants who have left during the reference period, we shall briefly discuss the migration balance. This provides us with an overview of the relation of the number of migrants who

have taken up residence in the Netherlands to the number of emigrants who have left the Netherlands in the past years.

During the past years the migration balance has fallen substantially. This means that compared to previous years the number of emigrants in proportion to the number of immigrants is rising (sharply). During the period 1 January to 31 December 2004, the migration balance was 18,970. In 2003, the migration balance was 35,629 and in 2002 54,522. During the last decade, the migration balance was highest in 2000, viz., 71,649.

2.1.1. Immigrants¹

During the period 1 January to 31 December 2004, a total of 94,019 immigrants took up residence in the Netherlands; 46,200 of this figure were male and 47,819 female. Compared to previous years, the total number of immigrant has fallen and is currently the lowest number of the past decade. During the past decade, the number of immigrants was highest in 2001. In 2001, a total of 133,404 immigrants had taken up residence in the Netherlands. As of 2001, the number of immigrants taking up residence in the Netherlands has been falling. In 2001, the immigrants' main countries of origin were Germany, United Kingdom, Belgium, the Netherlands Antilles/Aruba and Poland.² In 2004, most immigrants were between 20 and 65 years of age (70,439), 21,938 immigrants were 20 years of age or younger and approximately 1,642 immigrants were older than 65.

- Migration motive

During the period 1 January to 31 December 2004, most immigrants³ applied for a residence permit stating carrying out labour (15,637 persons) and family formation (15,377 persons) as their purposes of stay. The main migration motives stated after those were family reunification (10,623 persons) and studying (10,194 persons). Despite the falling number of immigrants, the study migration motive rose. Applications for a residence permit submitted by non-Dutch immigrants based on the migration motives of labour, family reunification and family formation remained practically the same compared to previous years.

Statistics from previous years demonstrate that particularly the asylum migration motive (2,966 persons in 2004) has fallen drastically. When referring to migrations motives, CBS uses a definition of 'asylum applicants' that counts the number of asylum seekers who are registered in the municipal personal records database (Gemeentelijke Basisadministratie, GBA). This is the case when an asylum seeker is granted a residence permit and leaves the reception centre; in addition, asylum seekers residing in the reception centre for a period of more than six months are also eligible to be registered in the municipal personal records database. This group therefore is a subset of the group of persons who have submitted an asylum application.

- Submitted asylum applications

According to CBS, the definition of asylum requests includes all requests submitted by persons who, for varying reasons, have left their country to seek protection or asylum in another country (in this case the Netherlands). Only part of this group will belong to the group who, according to the CBS, has asylum as its migration motive (see also above at 'migration motive').

¹ Website Statistics Netherlands www.cbs.nl, visited on 10 January 2005.

² In 2004, the immigrants' main countries of origin were Germany (8,671), United Kingdom (5,405), Belgium (5,303), the Netherlands Antilles/Aruba (5,157) and Poland (5,037). Website Statistics Netherlands www.cbs.nl, visited on 10 January 2005.

³ This refers to the migration motive of immigrants who do not have Dutch nationality. Website Statistics Netherlands, www.cbs.nl, visited on 10 January 2005.

During the period 1 January to 31 December 2004, a total of 9,780 asylum applications were submitted; 5,800 asylum requests were submitted by men and 3,700 by women.⁴

The main countries of origin of persons having submitted an application for asylum in 2004 were Iraq, (1,040 asylum requests, Somalia (790 asylum requests), Afghanistan (690 asylum requests), Iran (450 asylum requests) and Serbia and Montenegro (400 asylum requests). The CBS website lists the number of asylum applications that have been submitted as of 1998. In 1998, the number of asylum applications was highest; a total of 45,220 asylum applications were submitted in that year. In 2000, the number of asylum applications was again high. A total of 43,560 asylum applications were recorded in that year. As from 2000, the number of asylum applications has fallen. Of all persons having applied for asylum in 2004, 2,840 persons are younger than 15, 850 persons are 15 to 18 years of age and 6,080 persons are older than 18.

2.1.2. Emigrants

During the period 1 January to 31 December 2004, the total number of emigrants was 75,094; 39,504 of this figure were male and 35,545 female. The main countries of destination were Germany, Belgium, United Kingdom, Belgium, the Netherlands Antilles/Aruba and the United States.⁵ Compared to previous years, the total number of emigrants has risen. During the past decade, the total number of emigrants was lowest in 1999 (59,023); since then the number of emigrants has only risen. Most emigrants are between 20 and 65 years of age (54,174 emigrants), the largest group, followed by those aged 0-20 (18,497 emigrants) and 2,378 emigrants are older than 65.

2.2. Statistic migration stocks

Prior to specifically discussing the number of western and non-western persons of foreign heritage residing in the Netherlands, we shall briefly discuss the composition of the Dutch population. This includes an overview of the total number of persons of native Dutch heritage and persons of foreign heritage (divided in the total number of western and non-western persons of foreign heritage) residing in the Netherlands on 1 January 2005. On 1 January 2005 the Netherlands totalled 16,258,032 residents, of which 13,169,880 residents are persons of native Dutch heritage and 3,088,152 of foreign heritage. Of the total number of persons of foreign heritage residing in the Netherlands, 1,419,855 are western and 1,668,297 non-western persons of foreign heritage.⁶

- Western persons of foreign heritage

The five largest groups of western persons of foreign heritage come from the Netherlands East Indies/Indonesia (395,800 persons), Germany (368,200 persons), Belgium (112,600 persons), United Kingdom (76,000 persons) and former Yugoslavia (76,100 persons). Therefore, nearly half of the total number of western persons of foreign heritage consists of Indonesians and Germans.

Since the average age of the Indonesian and German groups of origin is generally high, the number of Indonesian and German persons of foreign heritage has fallen during the past decade. The number of Belgians, which is the third-largest western group of persons of foreign heritage, remained practically the same. The

⁴ For 280 asylum requests the sex is unknown. Website Statistics Netherlands, www.cbs.nl, visited on 10 January 2005.

⁵ Germany (9,552 emigrants), Belgium (9,467 emigrants), United Kingdom (8,887 emigrants), the Netherlands Antilles (6,752 emigrants) and the United States (4,218). Website Statistics Netherlands, www.cbs.nl, visited on 10 January 2005.

sharpest rise in number was recorded among persons of foreign heritage from the former Soviet Union (particularly persons from Lithuania, Azerbaijan, Estonia, Ukraine and Armenia).⁷ On average, the Belgian and German groups of origin are the oldest of the western persons of foreign heritage. Within these groups there are more people aged 65-plus compared to the native Dutch population. For example, approximately 26 per cent of Germans is 65 years of age or older. Among the native Dutch population approximately 15 per cent is 65 or older. Of the five largest western population groups, the western persons of foreign heritage from former Yugoslavia and the Soviet Union are relatively the youngest.

- Non-western persons of foreign heritage

The five largest groups of non-western persons of foreign heritage come from Turkey (357,900 persons), Surinam (328,000 persons), Morocco (314,700 persons), the Netherlands Antilles/Aruba (129,700 persons) and China (43,900 persons). Of the non-western foreign groups of origin the Moroccan group has shown the largest rise since 1996, whereas the relatively sharpest rise was recorded within the Afghan group. The number of Turks, Moroccans and Surinamese rose reasonably gradually, whilst the annual growth of the Antillean/Aruban groups of origin rose mainly under the influence of the economic developments in the Netherlands Antilles. On average, non-western persons of foreign heritage are younger than the native Dutch population. On average, the Somalis are youngest, followed by the Afghans and then the Moroccans. For example, approximately 47 per cent of the Somali population is 0-19 years of age, whereas approximately 23.5 per cent of the persons of native Dutch heritage is between 0-19. Also, on average, the non-western persons of foreign heritage are considerably younger than the native Dutch population and western persons of foreign heritage.⁸

⁶ Website Statistics Netherlands, www.cbs.nl, visited on 8 February 2005.

⁷ Garssen, J., Nicolaas, H. and Sprangers, A., 2005, Demography of the persons of foreign heritage in the Netherlands', Trends in demography: Statistical quarterly magazine on demographics in the Netherlands, third quarter 2005, p.96-121, Website Statistics Netherlands, www.cbs.nl, visited on 10 January 2005.

⁸ Garssen, J., Nicolaas, H. and Sprangers, A., 2005, Demography of the persons of foreign heritage in the Netherlands', Trends in demography: Statistical quarterly magazine on demographics in the Netherlands, third quarter 2005, p.96-121, Website Statistics Netherlands, www.cbs.nl, visited on 10 January 2005.

3. Political Developments

This chapter shall give an overview of the political developments in the immigration policy during the reference period. First a brief overview shall be given of the general structure of the political system. Within that framework firstly the constitutional order and secondly the main institutions / players in the field of migration in the Netherlands shall be described. Subsequently, the general political development in the Netherlands shall be discussed, followed by the main social debates and developments in the field of migration in the last section. These are broken up into the following fields of interest: managed immigration, gates of entry and border control, integration and settlement, refugee protection and asylum, citizenship and naturalisation and return.

3.1. The general structure of the political system

3.1.1. Constitutional order

The Netherlands has a parliamentary system. The parliament comprises two Houses, the Lower House and the Upper House (together referred to as the States General). The Provincial Council elects the members of the Upper House. The tasks of the Upper House mainly involve adopting or dismissing legislative proposals from the Lower House. If the Lower House adopts a legislative proposal, it shall be passed to the Upper House for further debate. However, the Upper House is not allowed to make any amendment to the proposal. It either adopts or dismisses the proposal. In addition, the Upper House fulfils an important role in monitoring the activities of the government. The Lower House is the House of Representatives elected by the population directly.⁹ Important tasks of the Lower House are co-legislation and monitoring the government. The government consists of all Ministers and State Secretaries supervised by the Minister-President. A State Secretary, if so deemed necessary by the Minister, acts on behalf of the Minister with due observance of his instructions.¹⁰ Each Minister has certain responsibilities or portfolio, e.g., there is a Minister of the Interior and Kingdom Relations, a Minister of Foreign Affairs and a Minister of Justice. The Minister is responsible for his Ministry. Within some Ministries multiple Ministers are active; these Ministers are each responsible for their own field of activity. The Minister of Justice and the Minister of Immigration and Integration are both part of the Ministry of Justice. Ministers and State Secretaries must render account for the policies pursued and to be pursued. This responsibility entails that a Minister and/ or State Secretary (or the whole government, if so required) must resign if parliament has indicated to have lost its confidence in them. In addition, the Ministers are politically responsible for the Queen's actions. She is inviolable.¹¹

The government is represented by the following political parties, Christian Democratic Appeal (CDA), a Christian party, the People's Party for Freedom and Democracy (VVD), a liberal party, and Democrats 1966 (D66) a (progressive) social-liberal party.¹² 150 members constitute the Lower House. The following opposition parties can be found in the Lower House, the Dutch Labour Party (PvdA), a social-democratic party, SP, a socialist party, GroenLinks, a progressive socialist ecology party and Lijst Pim Fortuyn (LPF). Lijst Pim Fortuyn

⁹ Tasks and Position of the Upper House, Website Upper House, <http://www.eerstekamer.nl/>, visited on 30 January 2006.

¹⁰ Prof. Mr. De Meij, J.M; Prof. Mr. Van der Vlies, I.C. (eds.): 2000, *Inleiding tot het Staats en Bestuursrecht* Kluwer b.v./Deventer

¹¹ Prof. Mr. De Meij, J.M; Prof. Mr. Van der Vlies, I.C. (eds.): 2000, *Inleiding tot het Staats en Bestuursrecht* Kluwer b.v./Deventer and Website of parliament, <http://www.parlement.com/>, visited on 1 November 2005.

(LPF) was formed in 2002 following the split between leading candidate Pim Fortuyn and the party Leefbaar Nederland. In addition, there is the National Reformed Party (SGP) and ChristenUnie, both Christian reformative parties. Finally, there are two single person parliamentary parties. Geert Wilders has been an independent member of the Lower House since 2 September 2004; prior to that he was part of the VVD. Up to 2 February 2004 Ali Lazrak was part of the SP.

3.1.2. Important institutions in the field of migration and asylum

- Immigration and Naturalisation Service (IND)

The Minister of Immigration and Integration has at his disposal an agency, IND, to implement the immigration policy. The IND is responsible for the implementation of the Aliens Act. That means that IND assesses all applications of aliens who wish to reside in the Netherlands or who wish to become a Dutch national. The IND is part of the Ministry of Justice and the Minister of Immigration and Integration is politically responsible for the implementation of the policy of IND.¹³

- Central Agency for the Reception of Asylum Seekers (COA)

COA is an independent administrative body, which is financed by the Ministry of Justice. The Minister of Immigration and Integration is politically responsible. The Central Agency for the Reception of Asylum Seekers is responsible for the reception of asylum seekers. It provides accommodation for the asylum seekers during the asylum procedure, prepares asylum seekers for residency in the Netherlands, a return to their country of origin or further migration.¹⁴

- Royal Netherlands Military Constabulary (Kmar)

Kmar can be best defined as a police organisation with military status. Kmar is part of the Ministry of Defence, but also provides services for the Ministry of Justice and the Ministry of the Interior and Kingdom Relations. The Kmar has, among other things, a number of tasks within the framework of enforcing the Aliens Act in the field of border control and surveillance, such as carrying out ID inspections at the border and the mobile supervision of aliens.¹⁵ The Minister of Immigration and Integration is responsible for the execution of the tasks within the framework of enforcing the Aliens Act in the field of border control and surveillance and defines the objectives in the field of border control and surveillance. The Minister of Defence is responsible for providing men and means to carry out the tasks within the framework of the Aliens Act.¹⁶

- Aliens Police (VP)

In brief, the general tasks of the police are maintaining a safe and liveable society and rendering assistance to people who require help. The police also have a number of specialist tasks including alien care. This specialist task is carried out by the Aliens Police. The main tasks of the Aliens Police are monitoring people who reside in the Netherlands and supervise compliance with procedures, particularly the obligation of aliens to report.¹⁷ In

¹² Website of parliament, <http://www.parlement.com/>, visited on 1 November 2005.

¹³ Website of IND, www.ind.nl, visited on 2 November 2005, and Kuijjer, A. (eds.): 2002, *Nederlands vreemdelingenrecht*. Boom Juridische uitgevers, The Hague.

¹⁴ Website of COA, <http://www.coa.nl/NED/website/home.asp>, visited on 1 November 2005.

¹⁵ Website 'Vreemdelingenketen' ("Aliens chain": chain of institutions active in the field of policy and implementation with regard to the Aliens Act 2000), http://www.vreemdelingenketen.nl/deketen/partners/Koninklijke_Marechaussee.asp, visited on 14 November 2005.

¹⁶ Aliens Circular 2000, parts A1, A2, A3, A4, A5 and articles 46 to 48 of the Aliens Act 2000.

¹⁷ Asylum seekers' obligation to report: Each week asylum seekers must report to the Aliens Police, mostly present at the reception centre. Website COA, <http://www.coa.nl/NED/website/page.asp?menuid=37#Meldplicht>, visited on 18 January 2005.

addition, the Aliens Police fulfil a role in the deportation of aliens whose requests have been denied without the possibility to appeal.¹⁸

The Minister of Immigration and Integration and the Minister of the Interior together are responsible for the execution of the tasks of the Aliens Police. The mayor (and as such the Minister of the Interior and Kingdom Relations) is responsible if these tasks are carried out within the field of public order. In addition, the Minister of the Interior and Kingdom Relations is responsible for the Dutch police as a whole.¹⁹

- Advisory Committee on Alien Affairs (ACVZ)

The ACVZ is an independent advisory body formed by virtue of the Aliens Act 2000. The tasks of ACVZ are described in the Aliens Act 2000. The main task of the ACVZ is issuing general advice on Aliens Law and the immigration policy. Since the immigration portfolio has been assigned to the Minister of Immigration and Integration, in practice most advice is aimed primarily at this Minister.²⁰

- Aliens section of the courts

The Aliens section is part of the administrative law division of the District Court of The Hague and engages solely in the proceedings of disputes involving aliens. Formally, only the District Court of The Hague engages in the proceedings of disputes involving aliens. However, in addition to court hearings taking place in The Hague, cases are also heard in so-called sub-court locations. All nineteen district courts in the Netherlands dispose of an Alien section. Appeals in proceedings involving aliens are heard in the Aliens section.²¹

- Council of State

The Council of State is an independent advisor of the government on matters concerning legislation and administration. In the field of Aliens Law, the Administrative Law Division of the Council of state is the highest general administrative tribunal in the country. Here the appeals of cases involving aliens are heard.²²

- Ministry of Foreign Affairs

The Ministry of Foreign Affairs co-ordinates and implements the foreign policy of the Dutch government. The Ministry operates from the department in The Hague as well as from the embassies, permanent establishments and Consulates General across the world. The Ministry of Foreign Affairs fulfils a role in the granting and issuing of visas, among other things. There are different types of visas. A visa must be applied for, depending on the nationality and/or the period and/or the purpose in respect of which the alien wishes to stay in the Netherlands.²³

- Ministry of Justice

The Ministry of Justice engages in law enforcement (including fighting crime) and monitoring the quality of legislation. The Ministry is responsible for legislation in the fields of Private Law, Administrative Law, alien affairs, legal assistance, youth protection and delinquent care.

¹⁸ The deportation of asylum seekers and other aliens who have exhausted their appeals , November 2005. Website Ministry of Justice, http://www.justitie.nl/publicaties/brochures_en_factsheets/factsheets/terugkeer_asielzoekers.asp, visited on 31 January 2005.

¹⁹ Article 172 of the Municipalities Act, articles 3, 12 and 54 of the Police Act and articles 47 and 48 of the Aliens Act.

²⁰ Website ACVZ, <http://www.acvz.com/>, visited on 1 November 2005.

²¹ Article 8:7, paragraph 2 of the General Administrative Law Act and article 71 of the Aliens Act 2000 and Kuijer, A. (eds.): 2002, *Nederlands vreemdelingenrecht*. Boom Juridische uitgevers, The Hague and Website "Aliens chain", http://www.vreemdelingenketen.nl/deketen/partners/Vreemdelingenkamer_van_de_Rechtbank_Den_Haag.asp, visited on 26 Nov.2005.

²² Website Council of State, <http://www.raadvanstate.nl/>, visited on 1 November 2005.

²³ Short-stay visa for the Netherlands, May 2002, http://www.vreemdelingenland.com/vkv_n2.pdf, visited on 10 February 2006.

The Ministry of Justice accommodates two ministers, the Minister of Justice and the Minister of Immigration and Integration.²⁴

- Association of Netherlands Municipalities (VNG)

VNG is an association by and for all municipalities. VNG engages in the representation of interests and service provision and also fulfils a platform function for the municipalities in the Netherlands. In addition, VNG (often in conjunction with Ministries and social organisations) carries out projects, which serve a municipal interest. Municipalities have a task in the field of accommodation and integration of aliens who have been admitted. Also, when an alien who has been admitted claims social assistance benefit or housing benefit, it runs through a municipal institution.²⁵

- A number of important non-governmental organisations in the field of asylum and Aliens Law.

The International Organisation for Migration (IOM), Amnesty International, United Nations High Commissioner for Refugees (UNHCR), Dutch Refugee Council, NIDOS Foundation (renders assistance to young refugees who, for various reasons, are (temporarily) not under the supervision of their parents) and the Asylum Seekers Legal Aid Centre (SRA).

- Other important institutions

In addition, there are a great number of other institutions which play a role in the field of migration and asylum, and/or where it involves integration. They are the Tax and Customs Administration, the Health & Safety Inspectorate, the Centre for Work and Income, the social security institutions, the Ministry of the Interior and Kingdom Relations, the General Intelligence and Security Services, the Ministry of Social Affairs and Employment, the Ministry of Education, Culture and Science and the Ministry of Defence.

3.2. General Political developments

After the Balkenende I government offered its resignation after 87 days in office, early general elections were held on 22 January 2003. On 27 May 2003, the new Balkenende II government took office. As indicated earlier, the government comprises three parties, CDA, VVD and D66. It is a centre-right government.

The tightening of the migration and asylum policy was an important objective of the Balkenende I government, e.g. the government ensured that the Ministry of Justice would include a separate Minister of Immigration and Integration. The Balkenende II government too regards the tightening of the migration and asylum policy an important objective. Improved integration of newcomers, stimulating integration of ethnic minorities, tightening the conditions for family reunification and formation, effectuating an effective return policy for rejected asylum seekers and improved reception of asylum seekers in the region of origin are important items on the agenda in the coalition agreement²⁶ and the budgets of the year 2004²⁷ and 2005²⁸. In addition, illegal

²⁴ On 22 July 2001, the Balkenende I government took office and included a Minister of Immigration and Integration for the first time. Prior to this government, only State Secretaries of Immigration and Integration had been appointed. On 27 May 2003, the Balkenende II government took office. The Balkenende II government governed during the reference period and this government too includes a Minister of Immigration and Integration. Website parliament, <http://www.parlement.com/>, visited on 31 January 2005.

²⁵ Website "Aliens chain", <http://www.vreemdelingenketen.nl/deketen/partners/index.asp>, Association of Netherlands Municipalities, visited on 1 November 2005.

²⁶ 'Taking part, more work, fewer rules, CDA, VVD and D66, 16 May 2003, Website of the government, <http://www.regering.nl/regeringsbeleid/bronnen/regeerakkoord/index.jsp>, visited on 18 October 2005.

²⁷ Annual report of the Ministry of Justice (VI), Lower House documents, Kamerstukken II, 2004- 2005, 30 100 VI, no.1

²⁸ Budget for 2005, 'The plans for 2005', CDA, VVD and D66: 21 September 2004, Website government, http://www.regering.nl/regeringsbeleid/bronnen/begroting2005/migratie_integratie.jsp, visited on 18 October 2005.

stays and taking advantage of illegal aliens must be combated, whilst a European asylum and migration policy must be pursued as well as a strengthening of the position of the *United Nations High Commissioner for Refugees (UNHCR)* through an expansion in the Geneva Convention on Refugees.

The asylum and migration policy also took a prominent position within the activities of the Dutch EU chairmanship of 1 July 2004 to 31 December 2004. During the EU chairmanship, the Hague Programme was adopted. The Hague Programme sets out ten priorities for the space of freedom, safety and justice. The adoption of the Hague Programme means that the continuation of the *Tampere* programme of December 1999 has been secured. In addition, during the Dutch chairmanship the European return policy was enhanced, preparations for the implementation of a univocal asylum procedure were made and the Dutch chairmanship advocated the importance of European commitment to integration policy and to further cooperation within outer border control operations.²⁹

3.2.1. Institutional Changes

- Transfer of tasks of the former Aliens Department to IND

Since 2001, the government has used different channels to urge that turnover times for applications for authorisations for a temporary stay (MVV) must be reduced. Aliens who wish to travel to the Netherlands for long-term stays (three months or longer) need an MVV depending on their nationality. Early 2002, it was decided to transfer the administrative tasks of the former Aliens Department (current Aliens Police) to IND and the municipalities. This would enable the former Aliens Department to concentrate on the implementation of alien supervision, and IND and the municipalities on the admission tasks. As a result, procedures would be more efficient and turnover times for MVV applications would be reduced. During the course of 2003 and 2004 the transfer was completed. Afterwards, the preparation and execution of the transfer tasks proved to be insufficient in order to secure a smooth transfer. The tasks were underestimated and time schedules appeared to be unrealistic. In a report published by the Netherlands Court of Audit in September 2005 regarding the functioning of IND, it is stated that the transfer has led to problems, which prevent IND and the municipalities from functioning properly. Partly due to the implementation of a new computer system not proceeding smoothly long delays in the processing of applications and the issuing of residence permits were caused.³⁰ Thousands of aliens were disadvantaged as their residence permits could not be printed. Without a permit they were unable to claim accommodation, work or benefits.³¹

29 Annual report of the Ministry of Justice (VI), Lower House documents, Kamerstukken II, 2004- 2005, 30 100 VI, no.1 (page 12) and 'Dutch EU chairmanship 2004' Lower House documents, Kamerstukken II, 2004-2005, 29 361, no.11.

30 Court of Audit : 15 September 2005, Immigration and Naturalisation Service, Lower House, session year 2004-2005, 30240, nos.1-2

31 Computer error prevents new immigrant to integrate, 15-09-2004, Website buitenlandse partner ("Foreign partner"),

<http://www.buitenlandsepartner.nl/forum/viewtopic.php?p=14144> (this article was retrieved by 'buitenlandse partner' from deVolkskrant of 15-09-2004), visited on 10 February 2006.

3.3. Central policy debates³²

3.3.1. Managed migration

- tightening of the conditions for family formation and reunification

On 1 November 2004, the conditions for family reunification and family formation were tightened. As a result the minimum age has been raised as have income requirements, whilst a number of exemptions were removed. In addition, the policy with regard to aliens who constitute a danger to public order has been tightened. The government parties VVD and CDA and the right-wing opposition party LPF agreed with the measures. D66 too believes that requirements may be set to the circumstances of migrants who wish to bring over a partner as well as the migrants themselves. After all, these requirements increase their social opportunities in the Netherlands. When acquiring a position age, education and income play a role. D66 does believe, however, that due to the measure certain groups shall be disadvantaged disproportionately. Development aid workers, for instance, often reside abroad for long periods of times and generally earn little. If they find a partner abroad and wish to bring him or her to the Netherlands on the basis of family formation, the raise in (particularly) the income requirement shall make this a difficult proposition. The left-wing opposition parties GroenLinks, PvdA and SP dispute the effectiveness and proportionality of the measure. PvdA believes that the educational level would form a better criterion as a condition for entry. The Minister of Immigration and Integration points out that also in the event of family formation or reunification its discretionary powers can be used at all times should a person be disadvantaged disproportionately.³³

- New fees system

As from 1 July 2005, the administrative charges for applying, amending and extending residence permits have been adjusted. Prior to the introduction of the new fees system the extent of the charges were debated. The extent of the fees is determined by IND, based on cost-effectiveness. The proposal, which formed the basis of the new fees system, implied that the fees for shortened procedures and the fees for aliens who have been staying in the Netherlands for a longer period of time were in general lowered. The fees for the application for an MVV have increased considerably. Prior to the introduction of the new fees system the proposal was discussed in respect of the starting point of cost-effectiveness and the effects of the previous fees increases. The government parties CDA and VVD believe that cost-effectiveness is a fair starting point, provided that the costs are transparent and kept under control. In addition, they are of the opinion that up to now the fees increase has hardly had any effect on the efficiency of the IND working method. The left-wing opposition (PvdA, GroenLinks and SP) are of the opinion that the previous fees increase was unreasonable, wrong and ill-advised. They believe that the extent of the fees need not be cost-effective if the extent of the charges to be passed on is disproportionate to the interests to be served. They also believe that the IND working methods are inefficient. In addition, they wonder if the increase is in violation of article 8 of the European Convention on Human Rights (ECHR), the right to have family life respected. In a court ruling of 16 February 2005, the District Court of The Hague found that in special individual cases levying fees can represent a violation of article 8 of ECHR. They want a hardship clause to be included in the new fees system which aliens who, due to special circumstances, cannot meet the fees requirements can invoke. The Minister for Immigration and Integration points out that the new fees system is based on the actual costs. The extent of the fees is in first instance based on 100 per cent cost-effectiveness and currently approximately only 69 per cent of these costs are covered. The costs are highest upon entry as the conditions need to be tested first. The longer aliens reside in the

³² The political debates are dealt with up to 1 November 2005.

Netherlands, the lower the costs become. In addition, a reduced rate applies for shortened procedures, e.g. in the case of skilled workers. The Minister for Immigration and Integration cannot see reason for including a hardship clause in the new fees system. However, the Minister would consider granting exemption of the fees requirement in the event of special individual circumstance related to article 8 of ECHR. She further believes that the IND working methods are not inefficient.³⁴

3.3.2. Gates of entry and border control

No political debates worth mentioning in the framework of this report were held in this field during the reference period.

3.3.3. Integration and settlement

- Legislative amendment with regard to integration abroad

During the last year, the Lower House paid a lot of attention to tightening integration requirements in order to stimulate the integration of persons of foreign heritage. On 21 July 2004, a proposed legislative amendment of the Aliens Act 2000 was prepared.³⁵ This legislative amendment implies that in order to obtain an ordinary temporary residence permit an additional condition must be met.³⁶ The additional condition means that aliens must have basic knowledge of the Dutch language and society prior to coming to the Netherlands. This is tested by doing exams in the country of origin. The test is held via the telephone. The legislative amendment will take effect on 15 March 2006.³⁷

The Lower House agrees on the objective of the law, viz. better integration and emancipation of marriage migrants. The Lower House (except the left-wing opposition party of GroenLinks) also widely supports the principle that integration, where possible, must take place abroad. The contents of the exams, the level of difficulty as well as speech recognition when carrying out the telephone test have been discussed at length.³⁸ The Lower House adopted the proposal on 5 April 2005. PvdA, Groep Wilders, D66, VVD, ChristenUnie, SGP, CDA and LPF all voted in favour. The Upper House adopted the proposal on 20 December 2005. GroenLinks and SP voted against.³⁹

- The new Integration Act

A legislative proposal for a new Integration Act has been submitted to parliament. Core of the legislative proposal is the implementation of a result-oriented integration obligation for all aliens (newcomers and settled migrants) residing (or who wish to reside) in the Netherlands permanently (plus certain categorised naturalised

³³ Report of a General Consultation, Lower House documents, Kamerstukken II, 2004-2005, 19 637, no. 873.

³⁴ Adoption of the budget statement of the Ministry of Justice (VI) for the year 2005, Lower House documents, Kamerstukken II, 2004-2005, 29 800 VI, no.142.

³⁵ 'Integration Abroad Act' (29.700), Website Upper House, <http://www.eerstekamer.nl/9324000/1f/j9vvgh5ihkk7kof/vgxun70y4d51>, visited on 18 January 2005.

³⁶ Aliens need a temporary residence permit (depending on their nationality) to reside in the Netherlands for a period exceeding three months. Aliens subject to the MVV requirement only qualify for a temporary residence permit if they have an MVV.

³⁷ Website Ministry of Justice, http://www.justitie.nl/themas/meer/wetsvoorstel_inbu_buitenland/wetv_inburgbuit.asp, 11 April 2005, visited on 24 October 2005.

³⁸ Continuation of the debate of the legislative proposal to amend the Aliens Act 2000 in connection with introducing an integration requirement when admitting certain categories aliens (Civic Integration Abroad Act), Lower House proceedings, Handelingen II, 2004-2005, 29 700, no. 62, p. 4002-4041.

³⁹ Website Upper House, <http://www.eerstekamer.nl/9324000/1f/j9vvgh5ihkk7kof/vgxun70y4d51>, visited on 18 January 2005.

Dutch nationals) and ranging in age from 16 to 65, as a means to bridge a lack in integration among ethnic minorities and to prevent the need to do so. Aliens who have resided in the Netherlands for a minimum of eight years of the school age, or who dispose of certain diplomas, certificates or other (similar) qualifications, are exempt. The obligation to integrate implies that the necessary knowledge of the Dutch language and society must be obtained and that the integration exams are passed. Newcomers are (particularly) those aliens admitted to the Netherlands on a permanent basis after the integration system took effect. They are obliged to attend the integration course if they want to apply for an independent residence permit or if they want to apply for a permanent residence permit. Both permits can be applied for after five years of lawful residence. Currently the Newcomers Integration Act applies; it shall cease to exist once the new Integration Act comes into force. Settled migrants are those persons who resided in the Netherlands from the time this Act came into force (either as an alien with a residence permit or as a Dutch national) and who on the day prior to this Act coming into force were not newcomers within the meaning of the Newcomers Integration Act.⁴⁰ Asylum qualifiers shall only receive a residence status after having passed the exams.⁴¹

The Minister for Immigration and Integration aims to implement the Act in the summer of 2006. The implementation of the legislative proposal has been discussed at length. ACVZ and the Council of State have been asked for advice. ACVZ endorses the urgent necessity of integration of large groups of persons in Dutch society as indicated by the government. However, ACVZ concludes that part of the proposed legal system cannot be sustained and is also very problematic. Particularly because she feels that the distinction between who is and who is not subjected to the obligation to do an integration test is made in a legally impermissible manner.⁴² ACVZ makes a number of recommendations as a result of which the distinguishing criteria as to who is and who is not subjected to the integration test can be legally sustained. The Council of State recommended, among other things, to exempt all Dutch nationals from the obligation to integrate equal to residents in other EU member states. In first instance the obligation to integrate would apply to all migrants and Dutch nationals born outside the European Union. However, after the Council of State judged that the set-up was too broadly based, the government opted for a system with a general integration obligation for aliens. In addition, certain specific groups of naturalised Dutch nationals (those who receive benefits, spiritual leaders or those raising young children) are still obliged to do the integration test, if socially required. The Lower House has adopted the essence of the legislative proposal of the new Integration Act.

- Ban on headscarves and burkas in education and during job interviews

Partly as a result of the developments in the surrounding countries, wearing headscarves (covering the hair or face) has become subject of renewed discussion in the Netherlands. Only in special denominational schools (in which lessons are taught based on certain religious ideologies) it is allowed to reject students wearing headscarves if this is contrary to school policy. Dress codes in other schools are only possible subject to the presence of an objective justification or legitimate purpose; this purpose must be substantial and non-discriminatory.⁴³

In addition, during the past year banning headscarves among civil servants has been extensively discussed in the Lower House and media. The Lower House parties agree that with a view to the role of civil servants, security reasons, functionality or exercising authority impersonally can lead to the necessity to introduce a

⁴⁰ In brief, newcomers within the meaning of the Newcomer Integration Act are aliens who legally reside in the Netherlands by virtue of a temporary residence permit, are eighteen years of age or older and admitted to the Netherlands for the first time, bar those residing here for a temporary purpose (article 1 of the Newcomers Integration Act).

⁴¹ Regulations on the subject of integration in Dutch society (Integration Act); explanatory memorandum, Lower House documents, Kamerstukken II, 2005–2006, 30 308, no. 3.

⁴² According to ACVZ, there is a contradiction between the principle of legal certainty and the distinction of origin. 'From an outline policy memorandum to the Integration Act: legal possibilities for a more obligatory integration system, November 2004', Website ACVZ, <http://www.acvz.com/publicaties/Advies-ACVZ-NR11-2004.pdf>, visited on 28 December 2005.

dress code. This, for example, is the case among members of the judiciary and the police. Within these capacities wearing religious symbols, such as headscarves, may be banned. In addition, most parties deem a legal ban on headscarves in other capacities too rigorous a measure. Members of the right-wing opposition party LPF believe that all civil servants must be banned from wearing headscarves. In their opinion civil servants must be neutral.⁴⁴ In October 2005, an Islamic woman was refused a job as she wanted to teach in an Islamic school in Amsterdam without a headscarf. The school obliges all female teaching staff to wear a headscarf in school. Only (female) non-Islamic teaching staff can be granted exemption from the obligation to wear a headscarf. Subsequently, the Islamic woman submitted the case to the Equal Treatment Committee.⁴⁵ On 15 November 2005, the Equal Treatment Committee ruled that an unlawful distinction based on religion was made, since the requirement of wearing a headscarf is not as strict for female non-Islamic teachers. After all, contrary to female Islamic teaching staff, non-Islamic teaching staff can be granted exemption from the obligation to wear a headscarf.⁴⁶

The ban on burkas (a veil that covers the face whilst the eyes are covered with a type of netting) also received media and political attention. On 10 October 2005, in consultation with the Lower House, the Minister of Immigration and Integration instructed to start an investigation into whether security considerations can be a reason to ban burkas in specific situations, at certain moments or during certain occasions.⁴⁷ On 10 October 2004, Lower House member Wilders submitted a motion to ban the public use of burkas in the Netherlands.⁴⁸ On 20 December 2005, the Lower House called for an agreement to ban burkas in public places.⁴⁹ The media reported that the Minister of Education, in response to the investigation on the instructions of the Minister of Immigration and Integration, pleaded in favour of a ban on wearing burkas in educational institutions.⁵⁰ The educational institutions responded to the plea of the Minister of Education by saying that a national ban on wearing burkas in schools is not needed. In 2003, the Equal Treatment Committee ruled in favour of a school, which had banned wearing veils covering the face only leaving the eyes uncovered, using the main argument that it hinders communication and identification in school.⁵¹ If schools wish to ban burkas they can invoke this ruling. In addition, in October 2005, the media reported that women receiving social assistance benefit in the municipality of Utrecht must abandon wearing their burkas if it makes finding a job impossible. If they do not, their benefits may be cut.⁵²

- The murder of Theo van Gogh

On 2 November 2004, film director and columnist Theo van Gogh was murdered. A threatening letter, addressed to Ayaan Hirsi Ali, member of the Lower House for the VVD, was pinned to his body with a knife. Theo van Gogh was known for his critical comments about Islam and, together with member of the Lower House Ayaan Hirsi Ali he had made a controversial film about battered Muslim women. The murderer was a Muslim fundamentalist born and raised in the Netherlands with dual nationality. Together with the other detainees he is suspected of being a member of a terrorist organisation called the

⁴³ Website of the Ministry of Education, Culture and Science, <http://www.minocw.nl/brief2k/2003/doc/25011b.pdf>, April 2003, Clothing guideline in schools.

⁴⁴ Debate with the Government on the report 'Building bridges', Temporary Committee 'Research Integration Policy' (28 689), 31 August 2004, Lower House proceedings, Handelingen II, 2003-2004, no. 92, p. 5931-5978, and 'Fundamental rights in a multiform society', 7 June 2004, Lower House documents, Kamerstukken II, 2003-2004, 29 614, no. 2.

⁴⁵ Volkskrant: 12 October 2005, 'Woman refused as she wants to teach without a headscarf in an Islamic school', and ANP: 15 October 2005, 'School refuses female teaching staff without headscarves'.

⁴⁶ Website Equal Treatment Committee, http://www.cgb.nl/home_detail.asp?ID=108, Ruling 2005-222, visited on 16 November 2005.

⁴⁷ ANP: 11 October 2005, 'Verdonk: Possible ban facial veil in certain situations, and Study on ban on burkas'. And Report on memorandum consultation on prevention of radicalisation held 10 October 2005, Lower House documents, Kamerstukken II, 2004-2005, 29 754, no. 53.

⁴⁸ Motion from MP Wilders, Lower House documents, Kamerstukken II, 2005-2006, 29 754, no. 41.

⁴⁹ 'Lower House wants a ban on burkas', 20 December 2005', Website Volkskrant, <http://www.volkskrant.nl/denhaag/1135058765813.html>, visited on 18 January 2005.

⁵⁰ De Volkskrant: 14 October 2005, 'Burkas must not be banned at schools, Institutions can already ban the facial veil'

⁵¹ Website of the Equal Treatment Committee, <http://www.cgb.nl/opinion.php?id=453055174>, Ruling 2003-40, visited on 2 November 2005.

⁵² ANP: 12 October 2005, 'Utrecht bans burka during job interview'

'Hofstadgroep'.⁵³ The murder of Theo van Gogh led to outrage both in the Netherlands and abroad, not only because of the way in which the murder was committed and the probable motive of the act, but especially because of the fact that some Dutch citizens are extremely radicalised and because of how this affects quality of life within society and the mutual relationship of population groups therein.⁵⁴ In the weeks following the murder there was a lot of unrest in the Netherlands; various churches, mosques and Islamic schools were the target of attacks, usually in the form of arson.⁵⁵

As a result of the murder, the debate surrounding the integration of persons of foreign heritage, the safety of politicians and the right of having dual nationality intensified. On 11 November 2004 the Lower House held a debate about the murder of Theo van Gogh.⁵⁶ During this debate, the tightening of the conditions for obtaining a residence permit on religious grounds (particularly the tightening of the admissions policy regarding spiritual leaders and clerics), relaxing deportation possibilities of radicalising persons and the possible ban on radical mosques were discussed. A better approach of combating terrorism was also discussed. The subjects combating terrorism and tackling radicalising persons remained an important talking point throughout the entire reference period.

- Abandoned women

Since August 2004, politics and the media have been paying a lot of attention to the problem of women, whether or not together with their children, often being abandoned against their will and without proof of identity and residence permits in their country of origin by their spouse/father during the summer holidays.⁵⁷ Following a request made by the Minister for Immigration and Integration, the ACVZ made recommendations on this issue. In these recommendations the ACVZ concludes that abandonment occurs frequently and that the nature of the issue is a complicated one. Abandonment occurs most often in relationships that are subject to marital and educational problems. In that respect it is important that in the traditional relationship between men and women in the country of origin, the man has more room to manoeuvre than the woman. The emancipation process in the Netherlands breaks through this sex stereotyping, causing the balance of power between men and women to shift. The ACVZ report makes various recommendations about how to prevent abandonment. For instance, the ACVZ advises that abandonment must be tackled by giving advice and that cooperation between various bodies such as the police, the judiciary, officials from the municipal personal records database and counsellors at schools must be realized in order to tackle the problem. Furthermore, relief agencies must be involved in the fight against abandonment. The ACVZ proposes to draw up a protocol for the various bodies, aimed at tackling the issue.⁵⁸ Government adopted a large number of those recommendations. The problem has been highlighted to diplomatic representative bodies and the municipality has been requested to be on the alert when a husband wishes to deregister his wife (from the municipal personal records database GBA). Government agrees that the return to the Netherlands of abandoned women who are entitled to stay in the Netherlands must be sped up. Members of the Lower House of government party VVD and the left-

⁵³ Dossier Volkskrant: 'Murder of Theo van Gogh', Website Volkskrant, <http://www.volkskrant.nl/binnenland/1099379534690.html>, visited on 18 October 2005.

⁵⁴ Website of the government, http://www.regering.nl/Images/briefplusbijlagen_tcm42-50573.doc: 10 November 2004, 'Letter from the Minister of Justice, the Minister of the Interior and Kingdom Relations and the Minister for Immigration and Integration to the chairman of the Lower House,' (2003-2004, 29 754, nr.1), visited on 24 October 2005.

⁵⁵ NRC Handelsblad: 'Dossier on Muslim terror: Murder of Theo van Gogh', Website of NRC: www.nrc.nl/dossiers/moslimterreur/artikel/1101708632780.html, and 'Wave of attacks since death of Van Gogh', Website RTL news 15 November 2004, [http://www.rtl.nl/\(actueel/rtlnieuws\)/components/actueel/rtlnieuws/2004/11_november/14/binnenland/1114_golf_van_aanslagen_1700.xml](http://www.rtl.nl/(actueel/rtlnieuws)/components/actueel/rtlnieuws/2004/11_november/14/binnenland/1114_golf_van_aanslagen_1700.xml).

⁵⁶ Debate on the murder of Mr Th. Van Gogh, Lower House proceedings, Handelingen II, 2004-2005, no. 22.

⁵⁷ It is not exactly clear whether this concerns women who come to the Netherlands via family reunification or family formation, or women who were born here and are then abandoned after having married. In any case, it mainly concerns Moroccan women. This information was derived from a telephone interview with the project leader of the report: 'Tegen de wil achtergelaten' (Left behind against their will), on 15 November 2005.

⁵⁸ 'Tegen de wil achtergelaten': a recommendation about women abandoned in their country of origin, Website ACVZ, <http://www.acvz.com/publicaties/Advies-ACVZ-NR13-2005.pdf>, visited on 15 November 2005.

wing opposition parties PvdA and GroenLinks wanted to go even further and issue an independent permanent residence permit to women who are a demonstrable victim of abandonment and who care for a child with Dutch nationality. This was not adopted by the Minister for Immigration and Integration; she feels each case must be judged on its own merits whether or not a permanent residence permit shall be issued.⁵⁹ 16 December 2005 an information campaign about abandoning was started which will continue until July 2006 and a manual was developed. After the first phase there will be attention for consciousness-raising among men about negative cultural related practices.

- Honour related violence

In the fall of 2003, a renewed debate on honour killings developed in Dutch society as a result of the murder of a Turkish-Dutch young woman by her father. The first goal of the government in respect to this issue, was to enhance the insight in the nature and scope of the problem.⁶⁰ To this end, in October 2004, a pilot project was started in the police regions South Holland and Haaglanden. The project also had the objective of reinforcing the police approach. It runs until the spring of 2006 and will be prolonged and extended to other police regions after this period. The Haaglanden police corps already backs up other police regions with operational tasks (analysis, interrogation), training and information campaigns. The first police reports covering the months October 2004 to March 2005 has shown that the helpdesk set up for the pilot project dealt with 79 cases where family honour may have played a role. In 11 cases it concerned fatal incidents, 26 cases concerned violence and in 30 cases people were threatened with physical violence or put under psychological pressure.⁶¹ These 79 include cases from both inside and outside the participating police regions.

In 2005, the Institute for Safety, Security and Crisis Management (COT) has done research in 20 cases of honour related violence by order of the ministry of Justice. The aim was to get an impression of the course of the cases, the way in which the authorities concerned work together and the way of criminal investigation and trial of the offenders. Furthermore, Consultancy and Research Bureau Beke has developed a work definition in co-operation with professionals in this field. They consulted the government on the basis of their research not to define the phenomenon as honour killings anymore, but to use the definition of honour-related violence. The argumentation for this shift is that the broader approach (honour-related violence) offers more leads to pointing out incidents than the definition of honour killings does.

In reaction to the researches and the first results of the police project the minister of Immigration and Integration in June 2005 announced a number of measures to combat honour related violence. The goal of the approach is to enhance the safety of the victims, to prevent homicide and manslaughter and to make better use of the possibilities to prevent incidents.⁶²

This approach has not yet led to legal measures like for instance amendment of the penal code. The government does stimulate better use of existing authorizations and jurisdictions by police, the Public Prosecutor and women shelters, among others. One of the means for doing so is to include co-operation in the protocol. The minister of Immigration and Integration has designated financial means to these activities mentioned above.

The combat of honour-related violence, has within two years grown to be a big political and social debate and also has the special attention of Dutch parliament. In December 2005 the Lower house has pointed out honour-related violence and the linked issues as honour-related domestic violence and female genital mutilation as 'Big

⁵⁹ Interpellation regarding abandoned women and children in Morocco, 14 September 2004, Lower House documents, Kamerstukken II, 2004-2005, 29 742, no.5.

⁶⁰ 'Tackling domestic violence', 10 August 2005, Lower House documents, Kamerstukken II 2004-2005, 28 345, no. 40.

⁶¹ 'Government devotes itself to strict dealings with honour killings', 6 June 2005, Website of the Ministry of Justice, visited on 18 January 2006 http://www.justitie.nl/pers/persberichten/archief/Archief_2005/50606Kabinet_zet_in_op_stevige_aanpak_van_eerwraak.asp.

⁶² Lower House documents, Kamerstukken II, 2004-2005, 29 203 / 28 345, no. 25.

project'.⁶³ This is a special status that the Lower house can designate to a policy area to be able to monitor and audit the proceedings of a project better.

3.3.4. Refugee protection and asylum

- Debates on harrowing cases, 26,000 faces

The new Aliens Act came into force in April 2001. Upon implementation of this act, the asylum procedure was significantly shortened. In 2003 the Lower House agreed to the proposal of the Minister for Immigration and Integration to set about the return policy for aliens who have exhausted all legal remedies in a more structured way.

When the decision was made in 2003, a one-off arrangement was drawn up with the objective of letting a group of asylum seekers, who had been waiting since 27 May 1998 for a final decision on their first request for asylum, stay in the Netherlands on certain conditions.⁶⁴ The date of 27 May 1998 was chosen, because the target group for this arrangement had been staying in the Netherlands for (more than) five years when the government took office on 27 May 2003. The asylum seekers do not have to make a new application in order to qualify for the one-off arrangement. The dossiers are assessed as a matter of course.

On 27 January 2004, government declared that within the framework of the one-off arrangement, 2,097 persons received an announcement that they qualified for a residence permit. They met the criteria of the one-off arrangement, which criteria can be objectively verified. After having studied the dossiers of those who are not subject of the one-off arrangement, 220 persons who were earmarked as 'extremely harrowing cases' were granted a residence permit after all on urgent humanitarian grounds.⁶⁵ Furthermore, in January 2004 government announced that asylum seekers who entered under the old Aliens Act (prior to 1 April 2001) and unconditionally do not qualify for a residence permit, shall be deported. The Minister for Immigration and Integration states that it concerns a group of approximately 26,000 people. This group of people shall have to leave the country if they have exhausted all legal remedies.⁶⁶

The decision not to grant all asylum seekers who entered the country prior to 27 May 1998 a residence permit, led to a lot of criticism. From a letter from the chairman of ACVZ it follows that many social organisations and local authorities do not agree with the policy. On the one hand because of the conclusion that part of the group that does not qualify for residence permits claims they cannot leave the Netherlands through no fault of their own. On the other hand, people feel that a (partly overlapping) group of foreign nationals have been staying in the Netherlands for such an extraordinary length of time, that the humanitarian consequences of a (forced) return cannot be considered acceptable, especially not for children born and/or raised in the Netherlands.⁶⁷ The population too organised various activities during the past year, in protest against the policy. The project '26,000 faces' is an initiative of a group of film directors who aspire to show short cinematic portraits on television each day about the group of asylum seekers who shall leave our country over the next three years.⁶⁸ Furthermore, the campaign 'A Royal Gesture' was started. In celebration of the 25th anniversary and sixty years of liberation day, the queen has been requested to extend a pardon to those asylum seekers who have been

⁶³ Lower House documents, Kamerstukken II, 2005-2006, 30.388, no. 1.

⁶⁴ Interim announcements Aliens Act implementation guidelines 2003/ 38.

⁶⁵ 'Residence permit for more than 2300 foreign national s', 23 January 2004, Website of the Government, visited on 20 October 2005, http://www.regering.nl/actueel/nieuwsarchief/2004/01January/23/0-42-1_42-25385.jsp.

⁶⁶ If foreign national s in their procedure have not yet exhausted all legal remedies it means that it is not certain at that moment that they shall not be granted a residence permit. They are still involved in the procedure.

⁶⁷ 'One-off special measure with appendices, letter advice 3', *mr J.P. Van Os van Abelleen* (chairman of the ACVZ): 9 February 2004.

⁶⁸ Website 26,000 faces, <http://www.26000gezichten.nl/>, visited on 20 October 2005.

staying in the Netherlands for more than five years and who are threatened with deportation.⁶⁹ More than 185,000 people, including many famous Dutchmen, have signed the petition.⁷⁰ The media reported that in reply to the campaign 'A Royal Gesture', the Minister of Justice said that the queen herself is not authorised to issue a general pardon. According to the Minister of Justice, the queen can only exercise her influence to urge the Minister for Immigration and Integration to draw up more lenient pardon regulations. The Minister of Justice is also of the opinion that government would be guilty of arbitrariness if a pardon is issued for an isolated group of asylum seekers.⁷¹

In the Lower House too, a considerable number of MPs of left-wing opposition parties⁷² in particular (also with a view to the nationwide reactions to the proposed deportation and return policy) tabled a motion for a more lenient pardon policy for the one-off arrangement with regard to asylum seekers (who have exhausted all legal remedies) who have been staying in our country for a long period of time.

Teachers and educational organisations started a signature campaign on 15 October 2005 against the government's deportation policy for asylum seekers who have exhausted all legal remedies. According to them the government is violating children's rights as contained in international treaties. They are of the opinion that children of asylum seekers who have exhausted all legal remedies must be given the chance to finish their academic year at their own schools.⁷³ In addition, some asylum seekers who have exhausted all legal remedies went on hunger strike out of protest with the policy.⁷⁴ As a result of the hunger strikes, some members of the opposition parties in the Lower House asked the Minister for Immigration and Integration a number of questions.⁷⁵

On 5 March 2005 it was announced that out of the 8,700 dossiers (of the 26,000 asylum seekers) which were looked into after all because the appeal of the asylum seekers was declared valid, the asylum seekers requested residence on other grounds (such as family reunification, medical grounds) or because they were unable to leave the Netherlands through no fault of their own, 3,503 persons were granted a residence permit on the ground of the old Aliens Act (prior to April 2001). Of these persons, 1,949 received an asylum permit.⁷⁶ On top of that, 349 permits were issued on the basis of so-called 'harrowing situations'. By the time of establishing this report, not all dossiers were processed yet.⁷⁷

- Congolese asylum seekers

On 10 February 2005 the current affairs programme 'Netwerk' reported that the Netherlands passed on information to the authorities of the Democratic Republic of Congo (DR of Congo) about asylum seekers who have exhausted all legal remedies and who have been deported. It was alleged that a so-called 'Return document Congo' would contain the instruction to provide the Congolese authorities with the 'follow-up interview report'⁷⁸ in order to enable a forced return of Congolese people who have exhausted all legal remedies. The UNHCR 'Handbook on procedure and criteria for determining refugee status under the 1951 Convention

⁶⁹ Website PvdA, <http://www.denhaag.pvda.nl/nieuwsbericht/594>, visited on 24 October 2005.

⁷⁰ 'Poor turnout for campaign Royal Gesture', Website Elsevier, <http://www.elsevier.nl/nieuws/politiek/nieuwsbericht/asp/artnr/41050/>, 16 April 2005, visited on 24 October 2005 and <http://www.marionbloem.com/royaalgebaar/>, visited on 24 October 2005.

⁷¹ Website Elsevier, <http://www.elsevier.nl/nieuws/nederland/nieuwsbericht/asp/artnr/37187/versie/1/index.html>, 4 April 2005 and <http://www.elsevier.nl/nieuws/politiek/nieuwsbericht/asp/artnr/39143/>, 15 April 2005, visited on 3 November 2005.

⁷² Motion of MP Klaas de Vries et al., Lower House documents, Kamerstukken II, 2003-2004, 29 344, no. 4 and no. 914.

⁷³ 'Educational organisations against hurried deportation of pupils', 11 October 2005, Website Trouw, visited on 20 October 2005, <http://www.trouw.nl/hetnieuws/nederland/article25828.ece/Onderwijsorganisaties+tegen+overhaast+uitzetten+leerlingen>.

⁷⁴ 'Hunger strike/ on the 40th day you cross a vital limit', and 'Iranian hunger strikers allowed inspection of dossier', 10 August 2005, Website www.nu.nl, visited on August 2005 and 'Iranian hunger strikers suspend campaign etc.', visited on 24 October 2005 and Website SP, http://wagningen.sp.nl/050705_hongerstakingen_Ter_Apel.stm, visited on 19 October 2005.

⁷⁵ Questions MP Dijsselbloem (PvdA), MP Vos (GroenLinks), Lower House proceedings, Handelingen II, 2004-2005, no. 2227, 2228, 2287

⁷⁶ 'No pardon but return: An evaluation of the implementation of the Pardon regulation and the Return policy of asylum seekers who have exhausted all legal remedies', par. 5.2, 7 March 2005, Website Refugee Council, www.vluchtelingenwerk.nl/, visited on 4 January 2005.

⁷⁷ Thus, the media has given the wrong impression that all 26,000 asylum seekers were to be deported. They were still in the process, which means that there was still a possibility for them to receive a residence permit. See also Refugee Council report here above.

⁷⁸ Follow-up interview report: a report of the interview in which an asylum seeker tells his entire asylum story.

and the 1967 Protocol relating to the Status of Refugees' states that the confidentiality of the asylum procedure must be guaranteed and that asylum-related information must not be disclosed to countries of origin.⁷⁹ Furthermore, the asylum background of a foreign national who is sent back to his country of origin must not be mentioned according to the Aliens Act implementation guidelines 2000.⁸⁰ During a debate in the Lower House on 23 February 2005, the Minister for Immigration and Integration declared among other things that no 'follow-up interview reports' were sent to the Congolese authorities.⁸¹ In a broadcast of the current affairs programme 'Netwerk' on 23 June 2005, 'Netwerk' alleged that the Congolese authorities had indeed received Dutch government documents, containing confidential information about Congolese asylum seekers who had exhausted all legal remedies. To prove this, documents were shown during the programme which, they said, had been obtained from the Congolese 'Direction Générale de Migration' (DGM). On 18 July 2005, the Minister for Immigration and Integration – in reply to the 'Netwerk' programme of 23 June 2005 and a debate in the Lower House – decided to let a (Lower House) Havermans Committee investigate this issue.⁸² During the period that the Havermans Committee carried out its activities, 'Netwerk' showed a third programme on 18 October 2005. During this programme it was stated that in the period from 1999 to 2001, the Netherlands had also provided the Congolese authorities with asylum-related information in the form of fingerprint sheets.⁸³ The sheets were alleged to have been sent together with the application for a replacement travel document, while still showing a visible reference to the asylum procedure. The Minister for Immigration and Integration subsequently asked the Havermans Committee to investigate this as well.⁸⁴ Furthermore, the obligatory return of ex asylum seekers from the DR of Congo after 23 June 2005 was suspended in anticipation of the results of the Havermans Committee investigation.⁸⁵

The investigation report was presented on 6 December 2005. The Havermans Committee concludes that within the framework of the instruction, no substantive information from asylum dossiers was disclosed to the Congolese authorities by the Dutch government. The Committee also concludes that the current affairs programme 'Netwerk' did not find any substantive asylum-related information in the Democratic Republic of Congo (DRC). The Committee Havermans furthermore concludes that a number of investigated documents contain information from which it could be deduced that the person referred to in the documents was an asylum seeker who had exhausted all legal remedies. Examples include the word 'asylum' being ticked and the title 'asylum office'.⁸⁶

On 14 December 2005, a large opposition of the PvdA, SP, GroenLinks, Christenunie and the Groep Lazrak tabled a motion of censure. The reason for this was that the Minister for Immigration and Integration advised the Lower House incompletely and incorrectly, since she issued repeated guarantees that no information from the asylum dossier, in whatever form, had been sent to the authorities of the country of origin. A majority of the Lower House (CDA, VVD, LPF, D66 and SGP) did not want to support the motion of censure; in their opinion the fact that, during the emergency debate on the Congo case, the Minister for Immigration and Integration

⁷⁹ Havermans Committee: 'Report from the committee re factual investigation into deportations to the Democratic Republic of Congo', Website IND, http://www.ind.nl/nl/Images/RapportKongo_tcm5-98925.pdf, visited on 16 January 2006.

⁸⁰ Aliens Act implementation guidelines A4, 6.2.

⁸¹ Debate on the deportation of asylum seekers to Congo, 23 February 2005, Lower House debate, Handelingen II, 2004-2005, no 51, p. 3324-3346.

⁸² Letter from the Minister of Immigration and Integration re findings 'Netwerk' TV programme of 21 June 2005 about the return to the Democratic Republic of Congo (DRC), 30 June 2005, Lower House documents, Kamerstukken, 2004-2005, 19 637, no 951.

⁸³ Fingerprint sheets: sheets containing fingerprints made within the framework of a request for asylum.

⁸⁴ The reference period for the investigation started on 1 January 2001. On 29 November 2005, the decision establishing the tasks and responsibilities of the committee was changed. As a result, 1 January 1999 was regarded as the start date for the reference period for the investigation into the fingerprint sheets. Havermans Committee: 'Report from the committee re factual investigation into deportations to the Democratic Republic of Congo', Website IND, http://www.ind.nl/nl/Images/RapportKongo_tcm5-98925.pdf, visited on 16 January 2005.

⁸⁵ Havermans Committee: 'Report from the committee re factual investigation into deportations to the Democratic Republic of Congo', Website IND, http://www.ind.nl/nl/Images/RapportKongo_tcm5-98925.pdf, visited on 16 January 2005.

⁸⁶ 'No substantive asylum-related information provided to Congo: Cabinet adopts significant recommendations from Havermans Committee.', 9 December 2005, Website Ministry of Justice, visited on 16 January 2006. http://www.justitie.nl/pers/persberichten/archief/Archief_2005/51209Kabinet_neemt_belangrijke_aanbevelingen_Commissie_Havermans_over.asp.

acknowledged that she had informed the Lower House incorrectly and factually incompletely and showed her regret about the state of affairs was enough to let the minister stay on.⁸⁷

3.3.5. Citizenship and naturalisation

- Fast-track naturalisation of football player Kalou

On 14 October 2004 football player Kalou, who has Ivory Coast nationality, submitted a request for fast-track naturalisation so that he can participate in the 2006 World Cup as a Dutchman.

Dutch citizenship can be obtained if the person making the request has been issued with a residence permit and has had his main residence here for at least five years, and holds a naturalisation test certificate.⁸⁸ These conditions can be deviated from (via fast-track naturalisation) if it concerns an essential Dutch interest.⁸⁹ This may be an interest in the field of sports. The State Secretary for Sports and the IND advised that in this case it concerns a sports interest. Despite the positive advice, the Minister for Immigration and Integration has decided not to speed up the naturalisation process for Kalou. The main reasons for this are the fact that Kalou has been living in the Netherlands for only two continuous years and that he does not hold a naturalisation test certificate. The Minister for Immigration and Integration argues that the requirements for (ordinary) naturalisation were tightened upon the introduction of a naturalisation certificate on 1 April 2003, and more value is attached to the extent of integration.⁹⁰

This decision has led to a debate in the Lower House; various MPs (particularly the left-wing opposition parties, PvdA, GroenLinks and the right-wing opposition party LPF) do not agree with the decision of the Minister for Immigration and Integration. They do not understand why the advice given by the State Secretary for Sports and the IND was not adopted and asked for clarification as to when the conditions of a sport interest are met.⁹¹ On 26 September 2005, Kalou lodged an appeal against the decision not to fast-track his naturalisation. The main reasons he presents against the decision are that he has been staying in the Netherlands for nearly three years now, that he has integrated to a reasonable extent (follows on from the advice by the IND among other things) and that he feels the principle of equal treatment has been violated.⁹² The court passed judgement on 9 December 2005.⁹³ It ruled that the rejection had been prepared inaccurately and that it was not based on a sound motivation. In respect of this the court argues, among other things, that the purpose of the professional athletes scheme is that one or more ordinary conditions of naturalisation can be deviated from. Neither was an explanation given why the two-year term would be too short. In addition, without a further investigation into the extent of integration, the minister could not have arrived at the opinion that the claimant was not sufficiently integrated. Furthermore, the minister's contested decision ignored the claimant's invocation on the principle of equal treatment. This is important, because the conditions for fast-track naturalisation and the professional athletes policy have not changed.

⁸⁷ 'House accepts apologies from Verdonk in Congo case', 15 December 2005, Website Elsevier, visited on 16 January 2006, <http://www.elsevier.nl/nieuws/politiek/nieuwsbericht/asp/artnr/78121/index.html>, and 'Verdonk gives in and can stay on', 15 December 2005, Website Volkskrant, <http://www.volkskrant.nl/denhaag/1134540331051.html>, visited on 16 January 2006.

⁸⁸ A person has integrated once he has a command of the Dutch language as well as knowledge about Dutch politics and society - the extent of which is to be stipulated by order in council - and if he has allowed himself to be integrated in Dutch society (article 8 Netherlands Nationality Act).

⁸⁹ Article 10, Netherlands Nationality Act and the Manual to the Netherlands Nationality Act: paragraph 1 of the explanation under article 10 of the Netherlands Nationality Act.

⁹⁰ District court of Rotterdam, no. AWB 05/4447.

⁹¹ Debate on naturalisation procedures, Lower House proceedings, Handelingen II, 2005-2006, no. 6, p. 329-341.

⁹² District court of Rotterdam, no. AWB 05/4447.

⁹³ District court of Rotterdam, no. AWB 05/4447. Since the application of fast-track naturalisation is founded on discretionary powers of the Minister for Immigration and Integration, the court is obliged to verify the authority for fast-track naturalisation marginally, i.e. for reasonableness (see explanation in paragraph 4.3.2).

On 22 December 2005, the Minister for Immigration and Integration appealed to the Administrative Law Division of the Council of State.⁹⁴

3.3.6. Return

In this field no social or policy debates worth mentioning in the framework of this report were held during the reference period. However, there is some overlap with the subjects discussed in paragraph 3.3.4 (refugee protection and asylum) with regard to the debates on the harrowing cases and the Congolese asylum seekers, and paragraph 3.3.7 (other) with regard to highlighting the sliding scale.

3.3.7. Other

- Tightening the 'sliding scale'

The proposal to tighten the 'sliding scale' creates the opportunity of terminating residence during the first three years of a foreign national's lawful residence if the judge has convicted him of a crime that is punishable by a prison sentence.⁹⁵ Currently⁹⁶, a foreign national can be deported if he has been convicted of (a) crime(s), but it depends on the seriousness and severity of the criminal offence and the time someone has been lawfully residing in the Netherlands. In general, the longer a foreign national's lawful residence in the Netherlands has continued, the more serious the violation of public order must be -and punished more severely - in order to be able to terminate his residence. Also on the basis of the new proposal, this principle shall remain applicable to foreign nationals who have been lawfully residing in the Netherlands for more than three years.⁹⁷ However, on the basis of the new proposal it is also possible to terminate a foreign national's residence sooner if he has been staying in the Netherlands for more than three years. Pursuant to current legislation for instance, a foreign national who has been staying in the Netherlands for more than seven but less than eight years can be deported when committing a crime punishable by a prison sentence of at least 36 months. Based on this proposal, a foreign national who has been staying in the Netherlands for more than seven but less than eight years can be deported when committing a crime punishable by a prison sentence of at least nine months.⁹⁸

The main purpose of the new policy is to be able to deal with criminal foreign nationals sooner under the law concerning aliens.

On the basis of the current policy, the punishment imposed is often not sufficient enough to have any consequences for the law concerning aliens, this according to the Minister for Immigration. By tightening it, a

⁹⁴ The appeal was dealt with on 26 January 2006. On 15 February 2006, the Administrative Law Division of the Council of State delivered its judgement and with that it confirmed the judgement delivered by the court, i.e. that the Minister for Immigration and Integration did not state sufficient grounds as to why Kalou does not qualify for fast-track naturalisation. The Minister for Immigration and Integration shall have to make a new decision about Kalou's request for fast-track naturalisation. Council of State, 200510426/1. (This does not mean it is now certain that Kalou's naturalisation will be fast-tracked. The Minister for Immigration and Integration shall have to come to a new decision about Kalou's request, thereby observing the court decisions).

⁹⁵ 'Public Order and termination of residence', Website ACVZ, <http://www.acvz.com/phpwcm/index.php?id=16,146,0,0,1,0>, (30 September 2005), visited on 24 October 2005.

⁹⁶ Currently: this refers to legislation in force until the end of the reference period. Pursuant to the current policy, a foreign national who has been lawfully resident in the Netherlands for less than a year can be deported if he is convicted of a crime punishable by a prison sentence of at least one month. If the foreign national was lawfully resident in the Netherlands for more than one but less than two years, he could be deported if he was convicted of a crime punishable by a prison sentence of three months. In the proposal, a foreign national can be deported during the first three years of his lawful residence for each conviction of a crime punishable by a prison sentence (regardless of the term).

⁹⁷ During the first three years of a foreign national's lawful residence, his residence can, according to the proposal, be terminated if the judge has convicted him of a crime punishable by a prison sentence.

⁹⁸ 'Public Order and termination of residence', Website ACVZ, <http://www.acvz.com/phpwcm/index.php?id=16,146,0,0,1,0>, (30 September 2005), visited on 24 October 2005.

foreign national's residence in the Netherlands can be terminated sooner both upon short and long lawful residence.

The Minister for Immigration and Integration asked the ACVZ for advice about this tightening procedure. The ACVZ was of the opinion that, since the 'sliding scale' was tightened in June 2002, only three years have passed, making it impossible to oversee the effects of that tightening. Also, the ACVZ is not sure whether tightening the 'sliding scale' violates European directives and case law. The ACVZ therefore advises to adjust the current sliding scale only to a limited extent, i.e. only with regard to multiple offenders. In addition, it proposes to realise the execution of the policy in a more consequent and faster way than is currently⁹⁹ the case.¹⁰⁰ The right-wing government parties CDA, VVD and the right-wing opposition party LPF support the plans of the Minister for Immigration and Integration. They are of the opinion that tightening the sliding scale shall reduce crime and nuisance and shall improve safety. Furthermore, it shall enable them to deal with non-Dutch multiple offenders who regularly commit a crime.¹⁰¹ The left-wing opposition parties (PvdA, GroenLinks and SP) and government party D66 criticized the proposal. They feel the tightening is out of proportion, it lacks necessity and has not been substantiated. Also, like the ACVZ, they are of the opinion that the effects of the tightening of the policy in June 2002 must be awaited first.¹⁰²

⁹⁹ The policy applicable until 31 December 2005 (end of the reference period)

¹⁰⁰ Processing the letter from the Minister for Immigration and Integration about new policy framework regarding tightening the public order policy under the Aliens Act, Lower House proceedings, *Handelingen II*, 2004-2005, no.10, p. 582-607.

¹⁰¹ 'Support for faster deportation of criminal foreign national', Website Parool <http://www.parool.nl/nieuws/2005/OKT/11/bin4.html>, (12 October 2005) visited on 18 January 2005.

¹⁰² Processing the letter from the Minister for Immigration and Integration about new policy framework regarding tightening the public order policy under the law concerning aliens, Lower House proceedings, *Handelingen II*, 2004-2005, no.10, p 582 – 607.

4. Legislative Developments in the area of migration and asylum

This chapter shall give a brief overview of the changes and developments during the reference period to national legislation and case law in the fields of asylum and migration. First, paragraph 4.1 describes the general structure of the legal system in the fields of migration and asylum. Subsequently, paragraph 4.2 describes the changes and developments on the national level in the following fields, again on the basis of the following division into subjects: managed immigration, gates of entry and border control, integration and settlement, refugee protection and asylum, citizenship and naturalisation and return. Furthermore, paragraph 4.3 discusses the most significant Dutch case law. Finally, paragraph 4.4 describes the changes and developments in Dutch legislation, which were made under influence of the legislation and case law of the European Union.

4.1. The legal system

Dutch Aliens Law has a hierarchic structure. The Dutch Constitution is at the top, followed by the acts (in a formal sense). The acts are enacted by parliament (the Upper and Lower Houses) on a proposal of the government or a member of the Lower House. The most important acts in the fields of migration and asylum are the Netherlands Nationality Act, the Aliens Employment Act, the General Administrative Law Act and the Aliens Act 2000. The Netherlands Nationality Act regulates the conditions for obtaining and losing Dutch citizenship. The Aliens Employment Act regulates the admission of foreign nationals from outside the European Union (EU) to the Dutch labour market. The General Administrative Law Act contains the general rules of administrative law. In special acts such as the Aliens Act, the conditions of the General Administrative Law Act are sometimes deviated from.¹⁰³ Whenever the Aliens Act 2000 deviates from the General Administrative Law Act, the conditions of the Aliens Act 2000 take precedence over those of the General Administrative Law Act, on the basis of being specific law. The Aliens Act 2000 stipulates the conditions for admission and deportation for asylum and ordinary (non-asylum) grounds. In general, the act only contains the main features of that which must be regulated in a certain field. The acts are worked out in detail in a lower regulatory framework. There are different types of lower regulatory frameworks. The orders in council (AMvBs) are at the top. These are adopted by government, following a recommendation from the Council of State. The most important AMvB in the field of Aliens Law is the Aliens Decree 2000. The Aliens Decree 2000 sets out the substantive and procedural regulations of the Aliens Act 2000. These are followed by the ministerial regulations. The ministerial regulations are stipulated by a minister. Government is not involved in this and the Council of State does not give any recommendations. The Regulations on Aliens 2000 is a ministerial regulation, containing the administrative stipulations and the models to be used by civil servants. The Aliens Act implementation guidelines 2000 contain the policy rules in the fields of asylum and migration. The policy rules of the Aliens Act implementation guidelines 2000 are general and special instructions for all civil servants responsible for the execution of legislation in respect of aliens. They are signed by the Directorate-General for International Affairs and Immigration on behalf of the Minister for Immigration and Integration. Finally, there are operational

¹⁰³ Kuijer, A. (eds.): 2002, *Nederlands vreemdelingenrecht*. Boom Juridische uitgevers, The Hague.

instructions which in general are not public. In the field of Aliens Law for instance, these include (internal) operational instructions issued by the director of the Naturalisation and Immigration Service to his officials.¹⁰⁴

The Aliens Act 2000, the corresponding implementation act and the Aliens Decree 2000 came into force on 1 April 2001. The Aliens Act 2000 replaces the Aliens Act of 1965, which was revised in 1994. Upon implementation of the Aliens Act 2000, a lot has changed, particularly in the field of asylum. The asylum procedure has been changed and abridged drastically. For example, every asylum seeker can qualify for one and the same residence permit (the permit for a limited period) with the accompanying claims to provisions. The granting grounds for the permit, and as such also the grounds to revoke it, however can differ. In addition, the review procedure has been abolished and the possibility of appeal has been introduced.¹⁰⁵ The amended Aliens Decree contains the largest section of the new regulations regarding ordinary residence permits. As a result of the introduction of the new Aliens Act 2000, the Aliens Act implementation guidelines and the Regulations on Aliens have changed dramatically.

4.2. Legislative developments

Partly because legislation changed drastically in 2001, few (drastic) changes were made to especially higher legislation during the reference period. This paragraph, (4.2.) shall highlight the changes to legislation on the basis of the national policy and the next paragraph (4.3.) on the basis of national case law. A conscious decision was made not to discuss all changes to lower legislation and in the field of Aliens Law, since this legislation is often renewed and very specific. The main substantive changes to the Aliens Decree 2000, the Regulations on Aliens 2000 and the Aliens Act implementation guidelines shall be briefly discussed.

4.2.1 Managed Migration

- Skilled worker regulation

On 1 October 2004, the skilled worker regulation came into force. To this end, the Aliens Employment Act, the Aliens Decree 2000, the Regulations on Aliens 2000 and the Aliens Act implementation guidelines were amended. A skilled worker is a migrant who comes to the Netherlands in order to work in paid employment, receiving a certain income.¹⁰⁶ In addition, PhD students – regardless of their age – employed by educational or research institutes and university lecturers and postdocs younger than thirty are also regarded as skilled workers.¹⁰⁷ In order to comply with the skilled worker regulation, the employer for whom the skilled worker shall work must have signed a declaration and submitted certain documents to the IND. For aliens who meet the conditions of the skilled worker regulation, obtaining a residence permit is easier and can be done quicker than for aliens who apply for a residence permit via the regular procedure based on paid employment. For instance, when having complied with the conditions of the skilled worker regulation, the employers do not require a work

¹⁰⁴ Idem.

¹⁰⁵ In addition, the revision of the act related to the operational supervision of aliens and the return policy was tightened. Aliens Act 2000, a brief explanation, The Hague, July 2000 (reference from the website of the Ministry of Justice, http://www.justitie.nl/Images/vreemdwetbeknoptetoel_tcm74-30374.doc, visited on 20 december 2005.

¹⁰⁶ The amount is stipulated by the Minister of Social Affairs and Employment on an annual basis. For 2005, this is a gross salary starting at EUR 45,000 per year. If a person is younger than 30, the gross salary starts at EUR 33,000 per year. Aliens Act implementation guidelines 2000 book B, chapter 15, 5.1.

permit for non-EU subjects when employing skilled workers, while a decision about the application for a residence permit is taken within fourteen days through a separate procedure. There is no need for the residence permit to be renewed each year: it is granted for the term of the employment contract, with a maximum of five years.¹⁰⁸ After this period the skilled worker shall in principle qualify for a permanent residence permit if he still meets the income requirement.¹⁰⁹ Furthermore, the family members of the skilled worker are subject to a relaxed procedure when applying for a residence permit.

The background of the skilled worker regulation is the Lisbon Strategy, adopted by the European Commission in March 2000. In the Lisbon Strategy, the heads of government of the EU countries agreed to turn the European Union into the most dynamic knowledge economy in the world.¹¹⁰

- Amendments to the conditions for family formation and family reunification

The amended conditions to be met when applying for a residence permit when the purpose of a stay is family formation or family reunification came into force on 1 November 2004. In order to implement the amendments, the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000 were amended. Before explaining the amendments, we shall explain the difference between family formation and family reunification. This is necessary in order to be able to understand the amendments. Family formation means that a foreign national applies for a residence permit in order to take up residence with a (marriage, registered or cohabiting) partner in the Netherlands, while the relation started when the principal person (the person with whom residence is applied for) had his main residence in the Netherlands.¹¹¹ Family reunification means that the foreign national applies for a residence permit in order to take up residence in the Netherlands with a family member whereby the family relationship already existed before the principal person had his main residence in the Netherlands (e.g. a child who wishes to live with a parent). The following conditions for the application of a residence permit when the purpose of stay is family formation were amended with effect from 1 November 2004. The minimum age at which the residence permit can be applied for has been raised from 18 to 21; this minimum age applies to both the person forming the family and the migrating partner. In addition, the standard amount the principal person is required to earn in order to qualify for a permit when the purpose of stay is family formation has been increased from 100 per cent to 120 per cent of the minimum wage.¹¹² The amendment of legislation with regard to the application of the permit when the purposes of stay were family reunification and family formation was subject to an exemption of the means requirement¹¹³ for the single parent looking after a child under 5 and persons of 57.5 years of age or older. As a result of the amendment of legislation of 1 November 2004, those persons are no longer exempted from the means requirement. However, persons of 65 or older are still exempted from the means requirement.¹¹⁴ In this legislative domain, the legislation with regard to aliens who pose a danger to public order has also been tightened. This tightening means that when an alien who has been convicted of a crime applies for a permit when the purposes of stay are family formation and family reunification, the application is treated in the same way as other applications. Prior to the amendment of legislation, these persons were subject to a more relaxed

¹⁰⁷ PhD students, university lecturers and postdocs are not subject to a wage criterion. Aliens Act implementation guidelines 2000 book B, chapter 15, 5.1.

¹⁰⁸ Article 3.59a Aliens Decree 2000 and Aliens Act implementation guidelines, book B, chapter 15, 4.3.

¹⁰⁹ Aliens Act implementation guidelines, book B, chapter 15, 4.3 and Decree of 17 September 2004 re the amendment to the Aliens Act in connection with skilled workers, Law Gazette 2004, 482.

¹¹⁰ Summary Explanatory memorandum on the Ministry of Economic Affairs budget 2001: 'On to an enterprising knowledge economy', Website of the Ministry of Economic Affairs, <http://www.ez.nl/content.jsp?objectid=12314>, visited on 20 December 2005.

¹¹¹ Article 1.1 under r, Aliens Decree 2000.

¹¹² The minimum wage is determined on the basis of the Minimum Wage and Minimum Holiday Allowance Act, including the holiday allowance. This concerns (currently, in December 2005) the following net amounts: EUR 1382.18, including holiday allowance and EUR 1318.60, excluding holiday allowance.

¹¹³ Exemption of the means requirement means that the income requirement does not have to be met.

regulation. Furthermore, when assessing whether an alien poses a danger to public order, sanctions are involved which were not included in the amendment of legislation, such as juvenile detention and the measure of placement in a young offenders institution.

Finally, legislation in respect of family formation and family reunification for persons who came to the Netherlands as a minor has been changed. Prior to the amendment of legislation of 1 November 2004, the condition was that the principal person who had a residence permit himself as a minor under the restriction family reunification, was obliged to have had lawful residence¹¹⁵ in the Netherlands for at least three years in order to be able to let a partner move to the Netherlands. As a result of the amendment of legislation of 1 November 2004, this condition has lapsed.¹¹⁶

- New fees system

On 1 July 2005, the new fees system came into force. In order to implement this amendment, the Regulations on Aliens 2000 and the Aliens Act implementation guidelines 2000 were amended.¹¹⁷ The authority to issue and grant temporary and permanent residence permits is based on the Aliens Act 2000.¹¹⁸ Pursuant to the Aliens Act 2000, the alien owes fees for the processing of an application or the extension of a residence permit in cases to be determined and rules to be stipulated by the Minister for Immigration and Integration. The authority to issue visas, such as MVV s (authorisations for temporary stay) is based on article 7 of the Sovereign Decree of 1813. The fees for an MVV are the responsibility of the Minister of Foreign Affairs and are laid down in the Regulation for Consular Rates. This regulation has also been amended and came into force on 1 July 2005, at the same time as the amendment to the Regulations on Aliens 2000 and the Aliens Act implementation guidelines 2000.¹¹⁹

The basic principle of the new fee system is that the costs incurred by the Immigration and Naturalization Service (IND) for processing applications for residence permits are passed on to the fees. The fees for shortened procedures and the fees for aliens who have been staying in the Netherlands for a longer period of time were in general lowered upon implementation of the new fees system. The fees for the application for an MVV have increased considerably. The fees for the application for an MVV when the purposes of stay are family reunification and family formation have increased from € 50 to € 830, while the fees for the application for an MVV when the purposes of stay are study and labour increased from €50 to € 433. As a result of the fact that the costs for assessing the aliens' right of residence are mainly incurred within the framework of an MVV application, the fees for an application for a residence permit in the new fees system are lower than the rate which applied until 1 July 2005. The fees for the application of an ordinary temporary residence permit by aliens who already hold an MVV has been changed from € 285 or € 430 (depending on the purpose of stay) to € 188. The fees for the application for a temporary residence permit when the purposes of stay are family reunification or family formation, made by aliens who are not obliged to hold an MVV, have increased considerably. Prior to the change, the fees amounted to € 430; as from 1 July 2005 they are € 830. The fees for the application for a residence permit when the purposes of stay are study and labour, made by aliens who are not obliged to hold

¹¹⁴ There is a relaxed rule for persons who apply for a residence permit on the basis of family formation or family reunification and who are older than 65, and persons who are permanently occupationally disabled. They are exempt from the means requirement (article 3.22, paragraph 3, Aliens Decree 2000).

¹¹⁵ Lawful residence: a temporary residence permit, a permanent residence permit if right of residence is exercised under the Association Decree 1/80 of the Association Council EU/Turkey, or as a Dutchman (see article 3.15 paragraph 2 for the amendment of the Aliens Decree 2000 as of 1 November 2004).

¹¹⁶ Aliens Act implementation guidelines 2000, book B chapter 2: Family reunification and family formation.

¹¹⁷ Government Gazette: 30 June 2005, Decree of the Minister for Immigration and Integration of 25 June 2005, no. 2005/53, relating to the amendment of the Aliens Act implementation guidelines 2000, no. 124, p.21.

¹¹⁸ Article 24, paragraph 2, Aliens Act 2000.

¹¹⁹ Kuijer, A. (eds.): 2002, *Nederlands vreemdelingenrecht*. Boom Juridische Uitgevers, The Hague and Government Gazette: 30 June 2005, Decree of the Minister for Immigration and Integration of 25 June 2005, no. 2005/53, relating to the amendment of the Aliens Act implementation guidelines 2000, no. 124, p.21. (The fees for the MVV are laid down in the Regulation for Consular Rates. The fees payable

an MVV, have hardly changed during the policy amendment. Prior to the change, the fees amounted to € 430; as from 1 July 2005 they are € 433. The fees for the application for ordinary temporary and permanent residence permits have dropped considerably compared to the rates applicable until 1 July 2005. For instance, the fees for the application for an ordinary permanent permit changed from € 890 to € 201.¹²⁰

4.2.2. Gates of Entry and Border Control

- Accession of 10 new member states and transitional law Dublin procedure

As a result of the accession of ten new countries to the European Union, the Aliens Act implementation guidelines 2000 were amended as from 13 July 2004. The Aliens Act implementation guidelines 2000 explain that Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia and the Czech Republic acceded to the European Union on 1 May 2004. Furthermore, the Aliens Act implementation guidelines 2000 contain the fact that these countries, who acceded on 1 May 2004, are bound by Regulation 343/2003/EC regarding the determination of the criteria and tools to stipulate which member state is responsible for the processing of a request for asylum made by a third-country subject to one of the member states (Dublin procedure).

The Commission of the European Union has also stipulated what transitional law means for the member states who were a party before 1 May 2004 and the ten member states who acceded on 1 May 2004.¹²¹ In short, for the Netherlands this transitional law means that a request for the return or takeover of asylum seekers can be made by or passed to the new member states when the date of the request for asylum in the Netherlands falls on or after 1 May 2004. The fact that the reason for making a so-called Dublin claim is based on facts and/or circumstances prior to 1 May does not detract from that.

Also, the newly acceded countries had to ratify the Dublin Agreement, since Denmark was not (yet) bound by Regulation 343/2003/EC on 13 July 2004.¹²² By signing the Dublin Agreement, it was also possible to make a request to Denmark for the return or takeover of asylum seekers. For all other member states who are party to the Dublin Agreement, Regulation 343/2003/EC replaces the Dublin Agreement.

4.2.3. Integration and Settlement

No amendments worth mentioning in the framework of this report were made in this field during the reference period.

for the processing of an MVV application are paid by the alien into a bank account of the IND in the Netherlands. The IND settles the fees received with the Ministry of Foreign Affairs).

¹²⁰ 'Changes to costs for stay in the Netherlands', Website IND, http://www.ind.nl/en/Images/30983_leges_%20NL_tcm6-45255.pdf, visited on 22 December 2005, and Government Gazette: 30 June 2005, Decree of the Minister for Immigration and Integration of 25 June 2005, no. 2005/33, relating to the amendment to the Aliens Act implementation guidelines 2000, no. 124, p.21.

¹²¹ Decree of the Minister for Immigration and Integration of 13 July 2004, no. 2004/45, relating to the amendment to the Aliens Act implementation guidelines 2000, Government Gazette 2005, 190, p.11.

¹²² The negotiations regarding participation in the directive had not been completed at the time of the amendment to the Aliens Act implementation guidelines, i.e. 13 July 2004.

4.2.4. Refugee Protection and Asylum

- Change to the temporary asylum residence permit: from three to five years

As of 1 September 2004, the temporary asylum residence permit for the first five years is granted for one year at the time. The validity of the permit has thus changed from three years in one piece to five times one year in a row. In order to implement these changes, the Aliens Act 2000, the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000 were amended. The change means that the temporary asylum residence permit is now valid for five years instead of three. As a result, a permanent permit can be obtained after five years instead of three.

The main reason for the legislative amendment is that the asylum residence permit can be revoked during that five-year period (instead of three) if the legal ground for granting the residence permit has lapsed. Government felt that the three-year term was too short and is of the opinion that it can be reasonably expected of an alien who has obtained a residence permit on asylum-related grounds that he shall return to his country of origin after five years if the basis for the stay has ceased. This is also in accordance with the policy in other European countries. In Denmark and Germany for instance, the term on the basis of which an asylum residence permit can be obtained is seven years, while in Spain it is five years.¹²³ In respect of regular cases (i.e. managed migration cases) too, a permanent residence permit can be obtained only after five years of lawful residence.¹²⁴

- Abolition of the Supervised Solitary Underage Asylum Seeker Policy (BAMA policy)

On 20 July 2004, the Minister for Immigration and Integration notified the Lower House of the fact that the BAMA policy shall be abolished.¹²⁵ To this end, the Regulations on Aliens 2000 and the Aliens Act implementation guidelines 2000 had to be amended.¹²⁶

The Aliens Decree 2000 stipulates that an ordinary temporary permit is granted to solitary underage asylum seekers.¹²⁷ The following conditions must be met in order to qualify for a residence permit as a solitary underage asylum seeker. The asylum seeker is underage, solitary, not able to look after himself in his country of origin or another country while his country of origin has no suitable reception facilities. These conditions are cumulative.¹²⁸ In addition, prior to the change of 20 July 2004, the BAMA policy was in place. This policy was applicable to supervised underage asylum seekers. By virtue of the BAMA policy, an underage asylum seeker was not or no longer regarded solitary if at any time during the procedure it emerged that an adult was staying in the Netherlands who could be regarded responsible to look after the minor or who could be expected to undertake to look after the solitary underage asylum seeker. In the event of a supervised underage asylum seeker, the application for the residence permit was rejected. No further separate investigation into whether adequate reception facilities were available in the country of origin would be held, because supervision and further care would be the responsibility of the adult person. Thus, at the moment of admission no checks would be made as to whether the foreign national could be deported.

In its judgement on 14 May 2003, the Administrative Law Division of the Council of State took the grounds that, upon admission of the underage alien, there must be an insight into whether there are adequate reception

¹²³ Amendment to the Aliens Act 2000, relating to extension of the temporary nature of the temporary asylum residence permit, Explanatory Memorandum, Lower House documents, Kamerstukken II, 2003-2004, 29 224, no. 3.

¹²⁴ Article 21, Aliens Act 2000.

¹²⁵ Refugee policy: letter from the Minister for Immigration and Integration, Lower House documents, Kamerstukken II, 2003-2004, 19 637, no. 844.

¹²⁶ Decree of the Minister for Immigration and Integration 8 March 2005, no. 2005/12, relating to the amendment to the Aliens Act implementation guidelines 2000, 63, p.18.

¹²⁷ Articles 3.5, 3.6 and 3.56, Aliens Decree 2000.

¹²⁸ 'Conditions for granting a permit to solitary underage aliens', Website IND: http://www.ind.nl/en/Images/Publiek_NL_Algemeen_tcm6-17832.pdf, visited on 20 December 2005.

facilities upon a potential return, since a return is inextricably linked with the rejection of a residence permit.¹²⁹ This also applies to supervised underage asylum seekers. The result of this judgement is that in the case of supervised underage asylum seekers, as with solitary underage asylum seekers, it must be checked upon admission whether adequate reception facilities are available and if deportation is therefore possible. Because further balancing of interests is so closely related for both arrangements by virtue of this judgement, it was decided to abolish the BAMA policy.¹³⁰

- Widening of the 'no fault criterion'

On 15 March 2005, the Aliens Act implementation guidelines 2000 were amended with regard to the widening of the 'no fault criterion'. The Aliens Decree 2000 states that an alien whose application for admission has been rejected and who cannot leave the Netherlands through no fault of his own, on certain conditions qualifies for a residence permit with the purpose of stay being 'residing as an alien who cannot leave the Netherlands through no fault of his own'. Prior to the amendment to the Aliens Act implementation guidelines on 15 March 2005, it was stipulated that this residence permit could be granted to stateless aliens. The basic principle was that all aliens with a nationality could return to their country of origin.

Upon amendment of the Aliens Act implementation guidelines 2000 on 15 March 2005, the 'no fault criterion' was widened. It has been laid down that aliens with a nationality can also qualify for the residence permit with the purpose of stay 'residing as an alien who cannot leave the Netherlands through no fault of his own if they have proven they cannot leave the Netherlands despite their willingness. This is the case if the alien can prove by means of objectively verifiable documents that the relevant authorities of the country of origin or the country where the person has been residing does not permit him to return. This usually concerns obtaining replacement travel documents enabling the alien to leave the Netherlands.¹³¹ Furthermore, the policy can be applicable to family members of different nationality who, despite their willingness, cannot obtain joint admission to one of the countries of origin through no fault of their own. Therefore they are not deported separately.¹³²

4.2.5. Citizenship and Naturalisation

- Equal treatment of marriage and a partnership registered outside the Netherlands

On 1 January 2005, the Registered Partnership (Conflict of Laws) Act came into force. By virtue of this Act a partnership registered outside the Netherlands is treated equally compared to marriage.¹³³ On 25 January 2005, as a result of the Registered Partnership (Conflict of Laws) Act coming into force, the Netherlands Nationality Act was amended. The amendment to the Netherlands Nationality Act means that, equal to that in the case of a

¹²⁹ Administrative Law Division of the Council of State: 14 May 2003, Decision to appeal, no. 200301352/1) and Refugee policy: letter from the Minister for Immigration and Integration, Lower House documents, Kamerstukken II, 2003-2004, 19 637, no.844.

¹³⁰ Refugee policy: letter from the Minister for Immigration and Integration, Lower House documents, Kamerstukken II, 2003-2004, 19 637, no.844.

¹³¹ This is the case if a number of conditions are cumulatively met. In short, the alien has independently tried to realise his departure, the International Organisation for Migration is unable to realise the departure for the alien and a request was made to the IND for mediation in obtaining the documents, but which was unsuccessful. Finally, facts and circumstances must form a coherent entity on the basis of which it can be established that the person involved cannot leave the Netherlands through no fault of his own, that the alien is staying in the Netherlands without having residence status and does not meet other conditions for a residence permit. Aliens Act implementation guidelines 2000, C2.

¹³² Act of 2 December 2004 to amend the Aliens Employment Act with regard to introduction of administrative enforcement, and Government Gazette 1 April 2005, Decree by the Minister for Immigration and Integration of 15 March 2005, no. 2005/11, relating to the amendment to the Aliens Act implementation guidelines 2000, no. 63, p.11.

¹³³ This concerns a partnership registered outside the Netherlands which by virtue of articles 2 and 3 of the Registered Partnership (Conflict of Laws) Act, qualifies to be recognised. For instance, the fact that a partnership entered into and registered abroad must be legally valid

spouse, the partner of a Dutch National in respect of which the partnership is registered abroad and recognised in the Netherlands by virtue of the Registered Partnership (Conflict of Laws) Act, qualifies to become a Dutch National.¹³⁴

- Introduction of the telephone test in the event of part exemption of the naturalisation test

On 1 March 2005, the manual of the Netherlands Nationality Act was amended and a telephone test introduced for those who prior to the amendment qualified for (part) exemption of the naturalisation test.

The Netherlands Naturalisation Act stipulates that a person who has submitted a request to naturalisation is obliged to do a naturalisation test. The naturalisation test decree states that when a person, who requested to be naturalised, but is not able to do one or more elements of the test due to a disability, shall be exempted from doing those test elements. The explanatory note to this decree states that a person who has a visual disability shall not be tested on his speaking and reading skills, but his speaking and listening skills as well as his knowledge of politics and society *are* tested. However, as a result of the set-up of the naturalisation test prior to the amendment of 1 March 2005, the minimum condition to do the test was that the applicant had to be able to read.

Within the framework of the intended legislative amendment to 'Integration Abroad' (see chapter 3)¹³⁵, a civic integration examination has been developed which is conducted via a telephone connection (which responds to speech recognition). Therefore, in order to do this civic integration examination, you need not be able to operate a computer or keyboard. This legislative amendment is likely to be implemented in the summer of 2006. On 1 March 2005, this basic exam was already introduced for those who are not able to read or write (in the usual manner). This particularly concerns visually disabled and illiterate persons and those who, due to a physical disability, are not able to operate a keyboard or mouse.¹³⁶ Since the amendment, therefore, this group of persons too is no longer exempted from doing the civic integration examination.

4.2.6 Return

No amendments worth mentioning in the framework of this report were made in this field during the reference period.

4.2.7. Other

- Legislative amendment to the Aliens Employment Act

On 2 December 2004, the Aliens Employment Act was amended in connection with the implementation of an administrative enforcement. On 1 January 2005, the amendment came into force.¹³⁷ The Aliens Employment Act regulates the admission of aliens from outside the European Union (EU) to the Dutch labour market. Together

pursuant to the law of the state in which the registered partnership was entered into and that a partnership registered outside the Netherlands is not recognised, if this recognition would not be consistent with public order.

¹³⁴ Interim Statement Nationalities (TBN), The Government Gazette, 2005/1, 23, p.14

¹³⁵ The proposed legislative amendment Integration Abroad implies that in order to obtain an ordinary temporary residence permit (which aliens in certain cases require depending on their nationality) an additional condition must be met. The additional condition implies that aliens, prior to coming to the Netherlands, must have basic knowledge of the Dutch language and society. This is tested by doing an exam in the country of origin. This exam is taken via the telephone. The amendment is likely to be implemented in or around the summer of 2006.

¹³⁶ Interim Statement Nationalities (TBN), The Government Gazette, 2005/2, 31, p.11.

¹³⁷ Decree of 13 December 2004 stipulating the date the Administrative Penalty Aliens Employment Act takes effect, Law Gazette 2004, 706.

with the amendment to the Aliens Employment Act the administrative penalty¹³⁸ was introduced as a new instrument to deal with employers who contract aliens illegally sooner and more efficiently.

The law applies different penalties depending on natural or legal persons. In the event of a natural person the penalty for employing aliens illegally shall not exceed € 11,250 and in the event of a legal person it shall not exceed € 45,000. These amounts are considerably higher than the criminal penalty which could be imposed prior to the legislative amendment; these penalties averaged € 984.¹³⁹

Reasons for this tightening of the rules include fighting unfair competition, the elimination of the legal labour force, fighting the exploitation of employees and the deportation policy of illegal aliens.¹⁴⁰

- Amendment judicial verification system of custodial orders

On 24 June 2004, the Aliens Act 2000 was amended with regard to the verification system of custodial orders.¹⁴¹ This amendment came into force on 1 September 2004.

The amendment of the Aliens Act 2002 extends the period within which the court must be notified of custodial orders to be imposed. The period has been largely restored to the period as it was prior to the implementation of the new Aliens Act 2000. The new notification period implies that after the announcement of the decision to impose a custodial order, the Minister for Immigration and Integration must inform the court accordingly no later than 28 days. This does not apply if the alien himself appealed. Prior to the legislative amendment the period was set to three days. In addition, the legislative amendment stipulates that the period within which the hearing must take place following receipt of the notice of appeal and/or the notification from the Minister for Immigration and Integration has been extended from 7 to 14 days.¹⁴² As a result of the legislative amendment, the provision stipulating that the court must be informed of the continued deprivation of liberty no later than four weeks after the ruling of the first follow-up appeal, ceased to have effect.

The reason for the legislative amendment was that the judicial verification system had put too great a strain on the capacity of the Alien section, which created backlogs in dealing with other (residence) appeal proceedings. In addition, the explanatory memorandum of the legislative amendment states that as a result of the intensified supervision of aliens, the number of custody cases is likely to increase therefore causing an even greater strain on court capacity and increasing current backlogs and turnover times.¹⁴³

- Expanding the scope of penalisation of human smuggling and trafficking

On 9 March 2005, the Aliens Act implementation guidelines 2000 were amended with regard to expanding the scope of penalisation of human smuggling and trafficking.¹⁴⁴ This amendment relates to the fact that as of 1 January 2005 penalisation of human trafficking is regulated through article 273A of the Penal Code instead of article 250A. The Aliens Act implementation guidelines prior to the amendment of 9 March 2005 stipulated that victims and reporting witnesses were deemed part of the following categories aliens: aliens found during a police inspection in a sex establishment, aliens who have worked in prostitution in the Netherlands, who do not dispose of a valid residence permit and who contact police themselves, aliens who have not yet worked in prostitution in the Netherlands, who do not dispose of a legal residence permit, but who are potential victims of

¹³⁸ An administrative sanction imposing an unconditional obligation to pay the State a certain sum.

¹³⁹ The penalties which could be imposed prior to the legislative amendment were on average € 984. Amendment of the Aliens Employment Act in connection with the implementation of the administrative enforcement. Explanatory memorandum, Lower House documents, Kamerstukken II, 2003-2004, 29 523, no.3.

¹⁴⁰ Administrative Penalty Aliens Employment Act (29.523), Website Upper House, visited on 7 November 2005, <http://www.eerstekamer.nl/9324000/1fj9vvgh5ihkk7kof/vgr6gsahys9d>.

¹⁴¹ Act of 24 June 2004 to amend the Aliens Act 2000 in connection with the amendment to the judicial verification system of custodial orders, Law Gazette 2004, no. 298.

¹⁴² Amendment to the Aliens Act 2000 in connection with the amendment to the judicial verification system of custodial orders, Explanatory memorandum, Lower House documents, 2003-2004, 28 749, no 3.

¹⁴³ Idem.

human trafficking and finally reporting witnesses of human trafficking. On 9 March 2005 another category aliens was added. This is the category of 'victims of other human trafficking offences as detailed in article 273A of the Penal Code'. They are understood to mean various forms of exploitation, such as being compelled to carry out labour or services, slavery or practices comparable to slavery or providing services. In addition, it has been decided that victims who have reported human smuggling can apply for a residence permit for the duration of the criminal investigation and prosecution. Victims of human trafficking can extend their residence permits as long as the criminal prosecution and investigation in or adjudication in the fact-finding instance of the suspect of the offence, which has been reported, is underway. During that time they are free to carry out labour. It has furthermore been decided that they shall be exempted from the means requirement to enable family reunification.

4.3. Case Law

This paragraphs will discuss the main and prominent case laws of the period 1 July 2004 to 31 December 2005. Paragraph 4.3.1. discusses the case law of the Administrative Law Division of the Council of State. Paragraph 4.3.2 details an important case of the European court of Human Rights. Finally, in paragraph 4.3.3. the prominent case law of the European Court of Justice shall be discussed.

4.3.1. Dutch Case Law from the Administrative Law Division of the Council of State

- Administrative Law Division of the Council of State, 15 July 2005, 200504770/1

The case is as follows. By order of 1 May 2005, an alien (community subject) was declared undesired since he constituted an actual threat to public order. Subsequently, with a view to deporting the community subject he was detained. The community subject registered a notice of objection against the detention order. The objection was dismissed, as was the appeal that the alien had subsequently lodged against this order. On 31 May 2005, an appeal was lodged with the Administrative Law Division of the Council of State.

The Administrative Law Division of the Council of State takes the following grounds. The Aliens Decree 2000 stipulates the conditions under which a community subject can be deported and within which period. For example, the Aliens Decree 2000 stipulates that a community subject shall not be deported after having granted him a minimum period of four weeks to leave to a destination outside the Netherlands where his admission is guaranteed.¹⁴⁵ However, the four-week period can be deviated from in urgent cases. This, for example, is the case if the community subject constitutes an actual threat to public order.

The Administrative Law Division of the Council of State holds that in view of the seriousness, nature and frequency of the criminal convictions, there was ground to rule that the appellant, by acting as he did for which he was convicted, displayed personal behaviour which constituted an actual threat to public order. Since there was an actual threat to public order, the appellant's right of residence had expired, paving the way for his deportation.¹⁴⁶

¹⁴⁴ Decree by the Minister for Immigration and Integration of 9 March 2005, number 9, relating to the amendment of the Aliens Act implementation guidelines 2000, the Government Gazette, 2005, no. 53, p.15.

¹⁴⁵ Article 8.13, paragraph, 2 of the Aliens Decree 2000.

- Administrative Law Decision of the Council of State, 8 September 2004, 200304168/1 (also 200303055/1)

The case is as follows. By order of a letter of 19 April 2001, a decree absolute as well as a marriage certificate was refused legalisation on behalf of the Minister of Foreign Affairs.¹⁴⁷ By order of 25 September 2001, the Minister declared the objection lodged against it unfounded. By ruling of 14 May 2003, the district court dismissed the appeal lodged against it. On 25 June 2003, an appeal was lodged with the Administrative Law Division of the Council of State against the ruling of the district court. According to the Administrative Law Division of the Council of State, legalisation can only serve to confirm the formal authenticity of a document and not provide a definite answer in respect of the correctness of its contents. Legislation and verification fulfil a supporting role for the assessment and decision-making process by the competent authorities within the framework of varying procedures in which documents must be produced as evidence, yet are not independent and isolated from the outcome of those procedures aimed at legal consequences. Before this change, legalisation was seen as an autonomous decision and as a starting point in procedures under Alien Law. So as a result of the decision of the 'Division' the assessment of the document on behalf of the Minister of Foreign Affairs is not decisive. It is the competent authority (with regard to Aliens Law, IND) which must decide whether the legal fact has been confirmed or made plausible by means of the document. However, in the event that the Minister of Foreign Affairs has furnished the relevant authority with an advice by means of a verification report in respect of the correctness of the contents of the document or parts thereof, this can be taken into consideration during the assessment.

- Administrative Law Decision of the Council of State, 13 July 2005, 200409356/1

The case is as follows. In 2000, the Dutch father (reference) of the claimant (the Surinamese daughter) travelled from the Netherlands to the United Kingdom, where he worked. Subsequently, the claimant left for the United Kingdom for family reunification with the reference. In 2001, the Immigration and Naturalisation Services in the United Kingdom announced that the reference, as a community subject, had a right of residence in the United Kingdom and that the claimant, as a family member of the reference, enjoyed the same rights on the same grounds. Subsequently, reference and claimant travelled to the Netherlands on 17 October 2001 and the claimant submitted an application to be granted an ordinary temporary residence permit with a purpose of stay to remain with reference. By order of 2 January 2002 this application was rejected, stating as reason that the claimant did not dispose of a valid MVV which corresponded with the purpose of stay for which the residence permit was applied for and that she was not part of a category of aliens exempted from the MVV requirement. In addition, the claimant could not be deemed a family member of a community subject since he, although the reference did reside as a community subject in an EU member state other than that as the Netherlands, did not carry out any real or relevant work upon return to the Netherlands or is deemed economically not active within the meaning of the EC treaty, so that the reference can no longer be considered a community subject. The claimant registered a notice of objection, which was subsequently declared unfounded. Subsequently, the claimant lodged an appeal against this decision with the district court. This appeal was upheld, the decision reversed and in addition it was decided that the Minister for Immigration and Integration had to re-decide on the objection. The Minister for Immigration and Integration appealed against this ruling to the Administrative Law Division of the Council of State. In an interim ruling of 13 July 2005, the Administrative Law Division of the Council of State asked the EC Court of Justice a number of preliminary questions with regard to the interpretation of Community Law. A request was made to e.g. answer the following preliminary question. If a receiving member state deems a third-country subject a family member of an employee, as referred to in article

¹⁴⁶ Council of State, Administrative Law Division: 15 July 2005, no. 200504770/1.

¹⁴⁷ Legalisation is understood to mean the formality during which the diplomatic or consular agents of the country on whose territory the document must be produced, must submit a confirming declaration regarding the authenticity of the signature, the capacity in which the signatory of the document acted and, in this case, the identity of the seal or stamp on the document.

10 of Council Regulation (EEC) 1612/68 of the Council of European Communities of 15 October 1968 regarding the free movement of employees within the Community, and the validity of the residence permit issued by that member state has not yet expired, does this therefore mean that the member state, of which the employee is a subject, cannot reject this third-country subject the right of access and residence upon return of that employee? The Administrative Law Division of the Council of state has suspended appeal proceedings until the preliminary questions have been answered by the EC Court of Justice.

4.3.2. Case law of the European Court of Human Rights (ECHR)

- European Court of Human Rights, 5 July 2005, no.2345/02

The case is as follows. An alien from Eritrea claims that he, during an evaluation meeting after a war campaign yet prior to the demobilisation of the Eritrean army, criticised the abuse of the army unit in which he served. Four months later he is said to have deserted following an arrest. Subsequently, he fled to the Netherlands and applied for asylum. This application for asylum was rejected by the AC procedure (an accelerated procedure in which a decision is taken within a maximum period of 48 hours) because the asylum story was considered to be implausible, whilst both appeals were dismissed. Afterwards, the alien submitted an individual petition to the European Court of Human Rights (ECHR), in which he, among other things, invokes violation of article 3 of the European Convention on Human Rights (ECHR), viz. the ban on torture. ECHR holds that, despite the fact that his escape from the army is remarkable, his desertion is nevertheless plausible. Sources and documents demonstrate that deserters are treated inhumanely. It must therefore be assumed that deserters are on record and thus known with the authorities. ECHR holds that there are substantial grounds that the applicant runs the risk of being treated in violation of article 3 of ECHR. As such, ECHR did not verify the viewpoint of the Dutch authorities, but issued its own opinion on whether the statements of Said are plausible. ECHR weighs the various arguments and draws the conclusion that the asylum seeker does run a real risk of falling victim of torture and inhumane treatment upon his return to Eritrea¹⁴⁸. This is a fundamental difference with Dutch administrative law in which the court tests the decision of the Minister of Immigration and Integration on plausibility of the asylum desertion only marginally (in Dutch administrative law the judge judges a decision¹⁴⁹ marginally, i.e. for reasonableness, or in full).

4.3.3. Case law of the European Court of Justice

- EC Court of Justice, 17 February 2005, C-215/03

The district court in The Hague (the Netherlands) asked the EC Court of Justice a number of preliminary questions about the explanation of directive 73/148/EC.¹⁵⁰ This directive relates to the free movement of services.

The EC Court of Justice was asked whether the right to residence of a community citizen can be made subject to showing a valid ID card or valid passport and whether a community citizen can be detained with a view to deportation if this obligation is not observed.

¹⁴⁸ European Court of Human Rights, 5 July 2005, nr. 2345/02.

¹⁴⁹ A decision is understood to mean a written decision by an administrative body, holding a juristic act under public law. (article 1:3 General Administrative Law Act) Within Aliens Law decisions are generally taken by or on behalf of the Minister for Immigration and Integration.

¹⁵⁰ In brief, directive 73/148/EC relates to the free movement of services. Directive 2004/38/EC shall replace this directive. However, the EC Court of Justice emphasises that the conditions contained in directive 2004/38/EC shall not change.

The EC Court of Justice rendered (in brief) the following decision. First, article 4, paragraph 2 of directive 73/148/EC must be explained as follows. In respect of acknowledging the lawful residence of a service recipient who is a subject of another member state, a member state cannot expect a subject to submit a valid ID card or valid passport when proof of his identity and nationality can be unequivocally given by other means. Second, article 49 EC opposes the fact that a subject of a member state must submit a valid ID card or valid passport in another member state in order to prove his nationality, when the subjects of that other member state themselves are not subject to general compulsory identification, but can prove their identity by means of every means permitted under national law. (Please note that at the time of this case, the Netherlands did not yet have general compulsory identification). Third, a measure to detain a subject of another member state with a view to deportation, taken because of the failure to show a valid ID card or a valid passport (without public order being disturbed) is an unfair impediment to the free provision of services and therefore fails to recognize article 49 EC. Fourth, the subject of a member state residing in another Member State as a service recipient must submit proof on the basis of which it can be concluded that his stay is lawful. Failing this proof, the recipient Member State can take deportation measures within the limits imposed by community law.¹⁵¹

- EC Court of Justice, 2 June 2005, C-136/03

The Higher Administrative Court (Verwaltungsgerichtshof) asked the European Court of Justice a preliminary question whether the legal protection in which the Austrian legal system provides is consistent with the requirements of article 8 and 9 of directive 64/221/EC and whether these requirements apply to the Turkish employees whose legal status is determined by decree no. 1/80 of 19 September 1980 regarding the development of the Association Council (decree no. 1/80). The law in respect of the Verwaltungsgerichtshof stipulates (in brief) that a complaint does not have suspensive effect by operation of law, but that a complainant can make a request to that purport.

This relates to the following, Mr Dórr is a married German subject. Following a criminal conviction, the administrative body of first instance in Klagenfurt imposed an area injunction order of 10 years. Mr Ünal is a Turkish subject and following criminal convictions the administrative body of first instance in Dornbirn has ordered him to be deported. The aliens' appeals lodged at the Constitutional Court (Verfassungsgerichtshof) were dismissed. The aliens both appealed to the Verwaltungsgerichtshof.

The European Court of Justice found that the Verwaltungsgerichtshof (and the Verfassungsgerichtshof) can only rule on the legitimacy of the disputed administrative actions and not on the suitability thereof. In the opinion of the Court, the application of national legislation does not offer the subjects of other member states the guarantee of an exhaustive judicial review on aspects of suitability in respect of the intended measure. On the basis thereof this legislation does not meet the requirements of a sufficiently efficient protection. With regard to the lack of a suspensive effect, the EC Court of Justice rules that a regulation of a member state which does not assign a suspensive effect to court appeals with regard to decisions to terminate residencies of subjects of other member states, does not meet the requirements of directive 64/221/EC, unless a competent body within the meaning of article 9, paragraph 1, of this directive is engaged. In addition, the EC Court of Justice ruled that the procedural guarantees of articles 8 and 9 of directive 64/221/EC apply to Turkish subjects whose legal status are determined by article 6 or article 7 of decree no. 1/80.¹⁵²

As a result of this ruling the Dutch policy shall need to incorporate that Turkish subjects able to derive rights from articles 6 and 7 of decree 1/80 must be heard by ACVZ subject to objection when their right of residence is going to be terminated on the basis of the public order. The Aliens Decree must be adjusted. As of 30 April 2006,

¹⁵¹ EC Court of Justice, 17 February 2005, C-215/03.

¹⁵² EC Court of Justice, 2 June 2005, C-136/03.

the new directive 2004/38/EC must be implemented. Article 31 of this directive includes procedural guarantees which also apply to this group.

- EC Court of Justice, 14 April 2005, no. C-157/03¹⁵³

In this decision, the EC Court of Justice ruled that Spain has not fulfilled its obligations by virtue of a number of directives. First it has been ruled that directives 68/360/EEC, 73/148/EEC and 90/365/EEC were incorrectly incorporated in national law. Particularly because Spain compels third country citizens who are a family member (e.g. partner or child) of a community citizen who has exercised his right to free movement, to submit an entry visa in order to obtain a residence permit.

Furthermore, this decision ruled that, in accordance with the general structures of directive 64/221/EEC¹⁵⁴ (and in particular with a view to article 5 of directive 64/221/EEC), a member state must take the decision relating to granting a residence permit as soon as possible, and no later than six months after the application for the residence permit was submitted. On the understanding that this maximum term of six months only applies when, during examination of the application, consideration as to public order are taken into account.¹⁵⁵ This is already contained in Dutch legislation.

- EC Court of Justice, 30 September 2004, C-275/02¹⁵⁶

A request was submitted by Land Baden-Württemberg (Germany) to the European Court of Justice for a preliminary decision with regard to the explanation of article 7, paragraph one, of Association Council decision no. 1/80 dated 19 September 1980 relating to the development of the association (decision no. 1/80"). The preliminary question is (briefly) this: is the under 21-year-old stepson of a Turkish employee, who is part of the legal labour market of a member state, a family member within the meaning of article 7, section one of decision no. 1/80? The EC Court of Justice has ruled as follows. Article 7, paragraph one of decision no. 1/80 must be explained as follows: the stepson of a Turkish employee who is part of the legal labour market of a member state and whose stepson is under 21 or the employee's responsibility, is a family member of the employee within the meaning of this stipulation and enjoys the rights awarded to him by this decision when he was lawfully granted permission to join that employee in the recipient member state.¹⁵⁷

So in addition to the conclusion that stepchildren also fall within the scope of article 7, paragraph one of decision no. 1/80, the *Ayaz* ruling is also significant, because the European Court of Justice explicitly states that, in respect of the application of this stipulation, it concerns a child under 21 or under his responsibility. This ruling is also in line with the provisions in the European regulation no. 1612/68, relating to the free movement of employees within the European Community.¹⁵⁸ This is an important ruling in respect of how article 7, paragraph one of decision no. 1/80 must be explained.

¹⁵³ EC Court of Justice, 14 April 2005, no. C-157/03.

¹⁵⁴ Council Directive 64/221/EEC of 25 February 1964 relating to the coordination of the special measures applicable to aliens in respect of relocation and residence, justified by virtue of public order, public safety and public health. Website EUR-Lex, <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31964L0221:NL:HTML>, visited on 10 February 2006.

¹⁵⁵ EC Court of Justice, 14 April 2005, no. C-157/03.

¹⁵⁶ EC Court of Justice, 30 September 2004, C-275/02.

¹⁵⁷ *Idem*.

¹⁵⁸ Is his responsibility: in this case it means that the employee provides for his stepson.

See also: Council Decision (EEC) No.1612/68, dated 15 October 1968, relating to the free movement of employees within the Community (PB L 257 of 19.10.1968). Article 10 of this decision states: *'The following persons, regardless of their nationality, can take up residence with the employee who is a subject of a member state and who is employed in the territory of another member state:*

a) his spouse and blood relatives in the descending line who are under 21 or his responsibility;

b) this employee's and his spouse's blood relatives in the ascending line who are his responsibility'.

4.4. Implementation of EU legislation

This paragraph shall highlight the changes to and developments in Dutch legislation, which took place on the basis of EU legislation and case law (during the reference period). In 4.4.1. the European regulations adopted during the reference period are discussed. In 4.4.2 the European directives adopted or introduced during the reference period are described. The adoption and implementation of the European directives have been examined up to 30 September 2005.¹⁵⁹

4.4.1. Council Regulations

Council Regulation (EC) No 2133/2004: on the requirement for the competent authorities of the member states to systematically stamp the travel documents of third country nationals when they cross the external borders of the member states and amending the provisions of the Convention implementing the Schengen agreement and the common manual to this end.¹⁶⁰

(EC) regulation no. 2133/2004 of 13 December 2004 of the Council of the European Union came into force on 1 January 2005. By virtue of this regulation the travel documents of third-country subjects must be systematically stamped when they cross the external borders of the Schengen area. In addition, conditions have been set on the basis of which the absence of an entry stamp in the travel documents of third-country subjects can generate the suspicion that the permitted short stay period within the territory of the member states has been exceeded.¹⁶¹ A European regulation is binding in all its components and is directly applicable in each member state. Thus Dutch legislation does not apply if contrary to the provisions of the European regulation.¹⁶²

4.4.2. Council Directives

- Council Directive 2001/51/EC: supplementing the provisions of article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.¹⁶³

Directive 2001/51/EC of 28 June 2001 of the Council of the European Communities had to be implemented in Dutch legislation before 28 February 2002. To this end, the Aliens Act 2000, the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000 had to be amended.¹⁶⁴ On 15 September 2004, the amendments of the Aliens Act 2000 and the Aliens Act implementation guidelines 2000 came into force.¹⁶⁵

The directive is a supplement to the Convention implementing the Schengen agreement. The directive stipulates that member states can force the carrier of illegal immigrants to take them back onboard and to return them and/or pay for their return trip. In addition, it has been decided that member states must impose efficient and deterrent penalties on carriers transporting persons illegally.¹⁶⁶

¹⁵⁹ Implementation of EC Directives, quarterly survey, September 2005, Lower House documents, 2005-2006, 21 109, no. 158.

¹⁶⁰ Council Regulation (EC) No 2133/2004 of 13 December 2004, Official Journal of the European Union, 16.12.2004, L 369/5.

¹⁶¹ *Idem.* (articles 1-6).

¹⁶² Article 249 of the EC Treaty.

¹⁶³ Council Directive 2001/51/EC of 28 June 2001, Official Journal of the European Union, 10.7.2001, L 187/5.

¹⁶⁴ Act of 13 May 2004 to amend the Aliens Act 2000 in accordance with Council Directive 2001/51/EC of the European Union of 28 June 2001, supplementing the provision of article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, Law Gazette 2004, 212 (see also Law Gazette 2004, 440 in connection with amendment to Aliens Decree 2000).

¹⁶⁵ Decree of 31 August 2004 stipulating the date the Act of 13 May 2004 to adjustment of the Aliens Act 2000 in accordance with directive 2001/51/EC takes effect, Law Gazette 2004, 439.

¹⁶⁶ Council Directive 2001/51/EC of 28 June 2001, 10.7.2001, L187/5.

In respect of the implementation of this directive part of the current national laws and regulations sufficed. The main amendment to the Aliens Act 2000 is that the fine, which can be imposed on carriers of illegal immigrants, has been increased. The main amendment to the Aliens Decree 2000 is that the costs of stay of an alien during the period after the carrier (transporter) has been instructed by a border control official to return the alien to a place outside the Netherlands can be recovered from the carrier.¹⁶⁷

- Council Directive 2001/55/EC: on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof.¹⁶⁸

Directive 2001/55/EC of 20 July 2001 of the Council of the European Communities had to be implemented prior to 31 December 2002. The Aliens Act 2000 and the Aliens Act implementation guidelines 2000 had to be amended in order to implement this directive.¹⁶⁹ The amendments came into force on 15 February 2005. On 26 March 2003, the Minister for Immigration and Integration announced that it had been agreed with the European Commissioner that the directive shall be declared applicable, if so required, even though it had not yet been implemented in Dutch legislation.¹⁷⁰

The directive stipulates the minimum standards for providing temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin. In addition, the directive intends to promote a balance of efforts between member states for the relief of displaced persons and the consequences thereof.¹⁷¹

During the formulation of the Aliens Act 2000, it was decided that in the event of a mass influx of displaced persons who do not qualify for an asylum residence permit, postponed deportation can be granted via a deportation moratorium. The amendment of the Aliens Act 2000 in connection with the implementation of the directive is in line with that. Temporarily displaced persons who do not qualify for an asylum residence permit or of whom it has not yet been determined whether they shall qualify for a residence permit, enjoy the same status as an asylum seeker during the period of temporary protection. Temporarily displaced persons who are convention refugees, who run a real risk of being tortured or who cannot return in connection with their departure from their countries of origin for compelling reasons of a humanitarian nature, shall be granted asylum residence permits. The permit shall be granted with retrospective effect to the day on which the application was submitted or so much later equal to when the conditions were met. Prior to the legislative amendment the decision with respect to the content of an asylum application was postponed up to after temporary protection expired, whilst no retrospective effect was granted.¹⁷²

- Council Directive 2003/9/EC: laying down minimum standards for the reception of asylum seekers.¹⁷³

Directive 2003/9/EC of 27 January 2003 had to be implemented prior to 6 February 2005. The directive stipulates minimum standards for the reception of asylum seekers in the member states. The implementation took place by means of an adjustment of the Ministerial Regulation Provisions Asylum Seekers and Other Categories Aliens 2005, which was announced on 3 February 2005.¹⁷⁴ In general, little needed to be amended

¹⁶⁷ Article 6.3, paragraph 2 under c Aliens Decree 2000.

¹⁶⁸ Council Directive 2001/55/EC: 20 July 2001, Official Journal of the European Union, 7.8.2001, L 212/12.

¹⁶⁹ Act of 16 December 2004 to amend the Aliens Act 2000 for the implementation of Council Directive no. 2001/55/EC of 20 July 2001, regarding the minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof (PbEG L212), Law Gazette 2004, 691 (see also Law Gazette 2004, 25 in connection with amendment to Aliens Decree 2000).

¹⁷⁰ Directive Temporary Protection, last updated 01-02-2005, Website European Office for the Upper House, www.europapoort.eerste.kamer.nl, visited on 7 January 2005.

¹⁷¹ Council directive 2001/55/EC: 20 July 2001, Official Journal of the European Communities, 7.8.2001, L 212/12 (article 1).

¹⁷² Explanatory memorandum, Lower House documents, Kamerstukken II, 2002-2003, 29 031, no.3.

¹⁷³ Council directive 2003/9/EC: 27 January 2003, Official Journal of the European Communities, 6.2.2003, L 31/18.

¹⁷⁴ Implementation of EC Directives: Letter of the State Secretary with quarterly survey of implementation of EC Directives (situation as at 31 March 2005), Lower House documents, Kamerstukken II, 2004-2005, 21 109, no. 155.

and the conditions of the directive had already been included in the Ministerial Regulation Provisions Asylum Seekers and Other Categories Aliens 2005. The main amendment was amending the articles concerning the approval of receiving asylum seekers and the termination of receiving asylum seekers.¹⁷⁵

- Council Directive 2003/86/EC: on the right to family reunification.¹⁷⁶

On 22 September 2003, directive 2003/86/EC was adopted by the Council of European Communities. The directive had to be implemented prior to 3 October 2005. The directive stipulates the joint conditions for exercising the right to family reunification by third-country subjects who legally reside within the territory of the member states.¹⁷⁷ In order to implement the directive, the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000 had to be amended with regard to the conditions of family reunification and formation.¹⁷⁸ The rules for family reunification and formation with admitted underage refugees had to be partly amended also. The directive further stipulates that a request for admittance and (extension of the) stay of family members can be rejected for public order reasons. In addition, with a view to the compliance of a request of family reunification or formation, requirements can be set regarding accommodation, healthcare insurance, income and integration.¹⁷⁹ In order to implement the directive, the conditions of the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000 in respect of age, income and public order have been tightened, see above (paragraph 4.2.1 tightening of the conditions for family reunification and formation). On 1 November 2004, the amendments came into force. In addition, integration conditions have been adopted in the proposed legislative amendment of 'Integration Abroad' and the legislative proposal 'Integration Act'.

- Council Directive 2003/109/EC: concerning the status of third-country subjects who are long-term residents.¹⁸⁰

On 25 November 2003, directive 2003/109/EC was adopted by the Council of European Communities. The directive must be implemented prior to 23 January 2006. The directive stipulates the conditions on the basis of which a member state can grant and revoke the status of long-term resident to third-country subjects who legally reside within its territory. The directive further stipulates what rights are attached to the status of long-term residents. In order to implement the conditions in the directive, the Aliens Act 2000, the Aliens Decree 2000 and the Aliens Act implementation guidelines 2000 must be amended. The amendment to the Aliens Act and the Aliens Act implementation guidelines are being drafted.¹⁸¹

-Council Directive 2004/38/EC: on the rights of citizens of the Union and their family members to move and reside freely within the territory of the member States.¹⁸² (This directive replaces Decree 1612/687 EC; also, a number of directives shall be rescinded.)

In order to implement the conditions in the directive, the Student Finance Act, the Aliens Decree 2000, Aliens Regulations 2000 and the Aliens Act implementation guidelines 2000 must be amended. Directive 2004/38/EC of the Council of the European Communities and the European Parliament came into force on 30 April 2004. The directive must be implemented prior to 30 April 2006. The directive emphasises that citizenship of the European Union must be the fundamental status of member state subjects exercising their right to move and

¹⁷⁵ Regulation concerning asylum seekers and other categories aliens 2005 (RVA 2005).

¹⁷⁶ Council Directive 2003/86/EC: 22 September 2003, Official Journal of the European Union, 3.10.2003, L 251/12.

¹⁷⁷ *Idem.* (article 1).

¹⁷⁸ Decree of 29 September 2004, to amend the Aliens Decree 2000 in connection with the implementation of Council Directive 2003/86/EC of 22 September 2003 on the subject of the right to family reunification (PbEG L 251) and a number of other subjects regarding family reunification, family formation and public order, Law Gazette 2004, 296.

¹⁷⁹ Council Directive 2003/86/EC: 22 September 2003, Official Journal of the European Union, 3.10.2003 L 251/12 (articles 2-12).

¹⁸⁰ Council Directive 2003/109/EC: 25 November 2003, Official Journal of the European Union 23.1.2004, L 16/44.

¹⁸¹ Implementation of EC Directives; quarterly survey September 2005, Lower House documents, 2005-2006, 21.109, no.158.

¹⁸² Council Directive 2004/38/EC: 29 April 2004, Official Journal of the European Union, 29.6.2004, L 229/35 (amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC).

reside freely. The directive further stipulates that current laws and regulations in which separate regulations have been adopted for employees, self-employed persons, students and non-active persons must be revised with the objective to enhance and simplify exercising the right of citizens of the European Union to move and reside freely.¹⁸³ The directive is mainly codifying in nature. The greater part of the articles of the directives, which must be implemented, shall therefore not generate any amendments to the laws and regulations. The draft decisions to amend the Aliens Decree 2000 and the Student Finance Act are being prepared.¹⁸⁴

-Council Directive 2004/81/EC: on the residence permit issued to third-country subjects who are victims of human trafficking or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.¹⁸⁵

Directive 2004/81/EC was adopted by the Council of the European Communities on 29 April 2004. The directive must be implemented prior to 6 August 2006. The directive contains conditions for granting temporary residence status to third-country subjects who are victims of human trafficking or who have been the subject of an action to facilitate illegal immigration, and who cooperate in the fight against human trafficking or facilitation of illegal immigration. Third-country subjects who fall under the above category and render their cooperation must receive help from the relevant member state. For instance, they must dispose of sufficient means in order to be able to provide for themselves and must be offered medical or psychological assistance, legal aid, linguistic assistance or protection if so required. Furthermore, they must have access to the labour market and given the opportunity to follow professional training or education.¹⁸⁶ That which has been stipulated in the Aliens Act implementation guidelines 2000 is contained in the directive, in the chapter concerning victims and reporting witnesses. Legislation need not be amended.¹⁸⁷

-Council Directive 2004/82/EC: on the obligation of carriers to communicate passenger data¹⁸⁸

Directive 2004/82/EC was adopted by the Council of the European Communities on 29 April 2004. The directive must be implemented prior to 5 September 2005.

The objective of the directive is to improve border controls and fight illegal immigration by forcing carriers (a natural or legal person who transports persons by air in a professional capacity) to report passenger data to the border control authorities (prior to the flight).¹⁸⁹ The Aliens Act 2000 and the Aliens Decree 2000 shall have to be amended in order to implement the conditions of the directive in Dutch legislation. The draft proposals for changing the law and the directive are being prepared.¹⁹⁰

-Council Directive 2004/83/EC: on minimum standards for the qualification and status of third-country subjects or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.¹⁹¹ The directive was adopted by the Council of the European Communities on 29 April 2004. The directive must be implemented before 10 October 2006. To this end, the Aliens Act 2000 and the Aliens Decree 2000 shall have to be amended.¹⁹² The directive contains the minimum standards for the recognition of third-country subjects and stateless persons as refugees or as persons who otherwise need

¹⁸³ Directive 2004/38/EC of 29 April 2004, Official Journal of the European Union, 29.6.2004, L229/35 (articles 1 to 15).

¹⁸⁴ Implementation of EC Directives: quarterly survey September 2005, Lower House documents, 2005-2006, 21.109, no.158.

¹⁸⁵ Council Directive 2004/81/EC of 29 April 2004, Official Journal of the European Union, 6.8.2004, L 261/19 (articles 1 to 12).

¹⁸⁶ Council Directive 2004/82/EC of 29 April 2004, Official Journal of the European Union, 6-8-2004, L261/24.

¹⁸⁷ Implementation EC Directives, quarterly survey September 2005, Lower House documents, 2005-2006, 21.109, no.158.

¹⁸⁸ Council Directive 2004/82/EC of 29 April 2004, Official Journal of the European Union, 6-8-2004, L261/24.

¹⁸⁹ *Idem.* (art. 1).

¹⁹⁰ Implementation EC Directives, quarterly survey September 2005, Lower House documents, 2005-2006, 21.109, no.158.

¹⁹¹ Council Directive 2004/83/EC of 29 April 2004, Official Journal of the European Union, 30.9.2004, L 304/12.

¹⁹² Implementation EC Directives, quarterly survey September 2005, Lower House documents, 2004-2005, 21.109, no.158.

international protection. It also stipulates what protection of these persons is taken to mean.¹⁹³ The draft proposals for changing the law and the directive are being prepared.¹⁹⁴

Council Directive 2004/114/EC: on the conditions of admission of third-country subjects for the purposes of study, pupil exchange, unremunerated training or voluntary service.¹⁹⁵

Directive 2004/114/EC was adopted by the Council of the European Communities on 13 December 2004 and has to be implemented prior to 12 January 2007.¹⁹⁶ This directive contains conditions on the basis of which third-country subjects can be admitted to the territory of the member states for a period exceeding three months for the purposes of study, pupil exchange, unremunerated training or voluntary service, and it stipulates the procedural rules for this. The draft proposal for implementing the directive in Dutch legislation is being prepared.¹⁹⁷

¹⁹³ Council Directive 2004/83/EC of 29 April 2004, Official Journal of the European Union, 30.9.2004, L 304/12 (article 1).

¹⁹⁴ Implementation EC Directives, quarterly survey September 2005, Lower House documents, 2004-2005, 21.109, no 158.

¹⁹⁵ Council Directive 2004/114/EC of 13 December 2004. Official Journal of the European Union, 23.12.2004, L 375/12.

¹⁹⁶ Implementation EC Directives, quarterly survey September 2005, Lower House documents, 2005-2006, 21 109, no. 158.

¹⁹⁷ Idem.

5. Other Issues

This chapter provides a brief overview of the changes and developments in the national policy with regard to asylum, integration and taking up residence, which changes and developments took place in the following fields during the reference period. The subjects Labour market and employment, Housing and urban development, Education, Healthcare, Family, youth and the elderly, Gender, Vulnerable groups and Discrimination will be discussed in separate paragraphs.

5.1. Labour market and employment

During the reference period - apart from the amendments to the Aliens Employment Act (see chapter 4) - nothing was changed to Dutch legislation in the fields of employment and labour for aliens. Government, in cooperation with various organisations, *does* take measures in order to improve the situation of persons of foreign heritage in the labour market. The situation of persons of foreign heritage in the labour market does to a large extent mirror the unfavourable economic circumstances in the Netherlands. Particularly youth unemployment among persons of foreign heritage has risen sharply during the past years. The difference between unemployment among persons of foreign heritage and persons of native Dutch heritage is big. In the year 2003-2004, unemployment among non-western persons of foreign heritage was approximately three times as high as unemployment among persons of native Dutch heritage.¹⁹⁸

A number of national government initiatives to improve the situation of persons of foreign heritage in the labour market shall be briefly explained below.

5.1.1. National government initiatives

- Social Cohesion Initiative

In November 2005 the government initiated the Social Cohesion Initiative (BIMB). During the first BIMB meeting representatives of employers', employees' and minorities organisations and social and religious organisations came together with the objective of improving the ties between persons and groups and Dutch society. De different departments of ministries have concluded agreements with their social partners about the way in which these ties could be improved. For example, the minister of Immigration and Integration and so-called self organisations for minorities agreed on making an effort to tackle radicalisation by strengthening their 'fighting spirit' (in the sense of not being vulnerable). Already, this resulted in many initiatives by the self organisations for minorities. One of the results of the BIMB is that the Dutch Refugee Council receives three million Euros. Together with the Centre for Work and Income, the Council for Refugee Students and the 'Emplooi' Foundation, the Refugee Council set up 'Banenoffensief Vluchtelingen' (job initiative for refugees). The objective is to employ 2,600 additional admitted refugees with a residence status between 1 July 2005 and

¹⁹⁸ 'Annual Integration Policy Document', SCP / WODC / CBS: The Hague, September 2005, p. 85.

31 December 2008.¹⁹⁹ A second BIMB meeting was mostly devoted to make active citizens the centre of attention and to show that a lot of initiatives and projects intending to strengthen ties take place at the local level. An evaluation meeting between the members of government concerned, is on the agenda for February 2006.

- National Diversity Network

In 2004, the Ministry of Social Affairs and Employment set up a National Diversity Network. This network encourages employers to pursue a diverse composition of their staff. Diverse staff composition means that a company/institution is represented by various types of employees, such as women, men, persons of foreign heritage, persons of native Dutch heritage, young and old people. By order of the Minister for Immigration and Integration, the National Diversity Network set up the 'Ambassador Network for Diversity'. The Ambassador Network consists of a committee of managers from the business sector and government institutions, and its objective is to encourage business owners from (in particular) SMEs to create more diversity in the workplace. The emphasis is on the promotion of ethnic diversity in the workplace.²⁰⁰ The project started on 24 May 2005.

- Improving participation of foreign women in the labour process

A relatively small number of women from ethnic minority groups in the Netherlands are in paid employment. Also, relatively few women from ethnic minority groups participate in social activities. This particularly applies to unskilled women who do not have a (sufficient) command of the Dutch language. Government is of the opinion that by 2010 at least 65% of women must be in paid employment. More than 60% must be economically independent by then.

In order to be able to achieve this, the authorities encourage men to take on more care duties (such as the household and bringing up the children), so that women can work outside the house. One example of a social initiative in this field is the Schedule project by the Coordination of the Emancipation Policy Executive Board. The Schedule project tries to find solutions for improving the combination of work and home life. Using resources from the European Social Fund (ESF-3 fund) Schedule subsidises organisations in the Netherlands which develop and implement solutions.²⁰¹

In addition, the Centre for Work and Income (CWI) has set up a coaching procedure for foreign women, whereby more than 60 foreign CWI employees voluntarily act as a coach for foreign women. This initiative has been taken up by a number of large companies.

The committee Participation of Women from Ethnic Minorities (PaVEM) was set up in July 2003 for a two-year period. The objective of the PaVEM committee was to support municipalities in their attempt to let more foreign women participate in society. In the two years of its existence, the committee made agreements with 29 large cities to encourage foreign women to fully participate in society. Among other things, it made agreements with municipalities, the Centres for Work and Income (CWIs), the Employed Persons' Insurance Administration Agencies (UWVs) and employers to devote themselves to more employment for foreign women.²⁰² A press release dated 24 June 2005 on the government's website states that the steering group 'Foreign women and employment' shall be set up by government. The steering group shall monitor the agreements made by the PaVEM committee to improve the proportion of foreign women in employment. Also, the steering group shall ensure coordination of the activities between the municipalities, Centres for Work and Income (CWIs) and the

¹⁹⁹ Letter from the State Secretary of Social Affairs and Employment, Lower House documents, Kamerstukken II, 2005-2006, 27 223, no.74 and 'Employment among persons of foreign heritage', Website of the Ministry of Social Affairs and Employment, visited on 7 December 2005.

²⁰⁰ Website Ministry of Social Affairs and Employment (see above) and Website Landelijk Netwerk Diversiteit, <http://www.div-management.nl>, visited on 28 December 2005.

²⁰¹ Employment and Economic Independence, Website Ministry of Social Affairs and Employment, http://home.szw.nl/navigatie/rubriek/dsp_rubriek.cfm?rubriek_id=5&subrubriek_id=390477&link_id=76265, visited on 28 December 2005.

²⁰² Idem.

Employed Persons' Insurance Administration Agencies (UWVs), and to connect networks of employers and foreign women.²⁰³

- Taskforce Youth Unemployment

The Taskforce Youth Unemployment encourages employers to make jobs for youngsters available and to report vacancies for young people. In addition, the objective of the Taskforce Youth Unemployment is to prevent school dropout. In that sense, the Taskforce Youth Unemployment does not specifically focus its approach on foreign youngsters, but it provides customized services. This means that, in a region where many foreign youngsters are looking for work, the additionally created jobs are also made available to this target group. The Taskforce Youth Unemployment has also set up a number of campaigns, which reach foreign youngsters in particular. For instance, in cooperation with the business sector, and the *Siemens* company in particular, the campaign 'adopt a CV' was set up in order to improve the intake of foreign youngsters into the labour market.²⁰⁴

5.2. Housing and Urban Development

During the reference period, no amendments were made to legislation in the fields of housing and urban development. A number of important national policy plans with regard to improving the living conditions/housing position of persons of foreign heritage shall be briefly explained below. Compared to a number of decades ago, the housing position of non-western persons of foreign heritage has improved considerably. Nevertheless, currently (during the reference period of this report) they still lag behind persons of native Dutch heritage, also when compared to similar persons of native Dutch heritage. For instance, persons of foreign heritage are over-represented in smaller houses and, compared to the native Dutch population, they hardly ever live in single-family homes. Furthermore, persons of foreign heritage often live in single specific districts, migrant districts.

Research has shown that living in migrant districts in particular has an impeding effect on structural integration (education and labour market position) and cultural integration (command of a language and position in relation to western standards and values).²⁰⁵

A number of national policy plans with regard to improving the living conditions of persons of foreign heritage shall be briefly explained below.

5.2.1. National policy plans to improve the living conditions of persons of foreign heritage

- Government policy plans

Early in 2004, the Blok Committee (a temporary Lower House committee) carried out an investigation into the integration policy of the Netherlands over the past three decades. This investigation devoted attention to the living conditions and accommodation of persons of foreign heritage, among other things.²⁰⁶ In a reply to the report from the Blok Committee, government has drawn up three action items which also affect accommodation of persons of foreign heritage, since they are relatively often part of the lower income groups

²⁰³ 'The plans for 2006, Employment', Website government, <http://www.regering.nl/regeringsbeleid/bronnen/begroting2006/werk.jsp>, visited on 2 January 2006.

²⁰⁴ 'Annual Integration Policy Document 2005', Lower House documents, Kamerstukken II, 2005–2006, 30 304, no. 1–2 and Website Taskforce Youth Unemployment, http://jeugdwerkloosheid.szw.nl/index.cfm?fuseaction=dsp_rubriek&rubriek_id=190000, visited on 2 January 2005.

²⁰⁵ 'Annual Integration Policy Document 2005', Lower House documents, Kamerstukken II, 2005–2006, 30 304, no. 1–2.

²⁰⁶ 'Investigation into integration policy', Lower House documents, Kamerstukken 2003-2004, 28 689, no. 8-9.

and live in migrant districts. These action items relate to increased differentiation of one-sided housing stocks in migrant districts, to the participation of neighbouring municipalities in accommodating lower income groups, and the regulation of the intake of lower income groups into certain migrant districts. The objective of these action items is to reduce the concentration of low incomes in residential areas and to fight the negative effects of concentrations of persons of foreign heritage on their integration.

Integration takes place mainly on a local level. For that reason municipalities in particular have developed projects to improve the living conditions of persons of foreign heritage. The 30 big cities for instance have drawn up a local integration agenda in order to improve the living conditions of persons of foreign heritage. This integration agenda stipulates, among other things, to what extent municipalities pursue a coherent integration policy, what the current policy is and what their future plans are. The local integration agenda shall be further developed over the coming years, while it also forms a basis for further discussions between government and municipalities about the integration policy.²⁰⁷

5.3. Education

During the reference period, no amendments were made in legislation in the field of education. However, a number of significant government initiatives and policy plans have been developed in the field of education, which relate to reducing educational disadvantages. A number of pupils in primary and secondary education have an educational disadvantage. A large section of this group is formed by (non-western) foreign pupils. Its foundation is often laid at the start of primary education. There, Turkish and Moroccan infants in particular (and Antilleans increasingly so) start their school life with a considerable disadvantage, especially in languages.²⁰⁸ In order to increase their chances for the best possible school life, various means are used. A number of national initiatives with regard to reducing educational disadvantages of persons of foreign heritage shall be briefly explained below.

5.3.1. National initiatives re reducing educational disadvantages of persons of foreign heritage

- Subsidies to tackle educational disadvantages

Via the joint arrangement and the CUMI-VO arrangement, additional money is awarded to schools within the framework of tackling educational disadvantages among pupils in (special) primary and secondary education. This arrangement applies to all pupils with an educational disadvantage and thus to all persons of foreign heritage with an educational disadvantage. In addition, the municipalities can claim a subsidy by virtue of the Education for Aliens Decree of 17 July 2003 in order to finance the initial reception of new aliens of school age. Among other things, this decree enables municipalities who organise education for foreign nationals for the first time to claim an initial subsidy with regard to the preparation of that education.²⁰⁹

- The Decree National Policy Framework Municipal Policy for Educational Disadvantages

²⁰⁷ 'Annual Integration Policy Document 2005', Lower House documents, Kamerstukken II, 2005–2006, 30 304, nos. 1–2.

²⁰⁸ 'Annual Integration Policy Document', SCP / WODC / CBS: The Hague, September 2005, p. 85.

²⁰⁹ Decree of 17 July 2003, relating to the arrangement of specific payment to municipalities with regard to the initial reception of aliens to a school as referred to in the Primary Education Act, Expertise Centres Act and the Secondary Education Act (Decree education for aliens), Law Gazette 2003, no. 307.

Furthermore, municipalities receive a specific payment to execute specific tasks within the framework of educational disadvantages. The municipalities have received financial resources from the state in order to implement the Decree National Policy Framework Municipal Policy for Educational Disadvantages, 2002-2006 (LBK). By virtue of the educational disadvantages policy, municipalities are obliged to draw up a municipal educational disadvantages plan every four years. The educational disadvantages policy 2002-2006 aims to prevent or fight the educational disadvantages among pupils, caused by social, economic or cultural factors. Of the more than 1.5 million children of school age in primary education, approximately 400,000 fall within the target group of the educational disadvantages policy. Of this figure, about 200,000 pupils are of foreign heritage.²¹⁰ The national objectives of the policy in the field of fighting educational disadvantages for the school years 2002-2006 are as follows: first, increasing the amount of preschool and early-school education for children between two and five who are part of that target group; second, supporting the school life of children of foreign and of native Dutch heritage at risk; third, reducing the number of drop-outs, and lastly, developing a local policy to fight disadvantages with regard to the Dutch language. In addition, the local educational disadvantages plan must stipulate how the resources intended for fighting the disadvantages are used by the municipalities, while a school-specific development plan must be drawn up for the schools, containing specific, measurable and timed result agreements. At the end of the term, the results and effects of the educational disadvantages policy shall be evaluated.²¹¹

5.4. Healthcare

In the field of healthcare a number amendments were made to the Aliens Act implementation guidelines 2000. These amendments are described below. In addition, some of the national initiatives in the field of healthcare and persons of foreign heritage are described.

5.4.1 Policy changes in healthcare

- Study of the National Committee Medical Aspects of the Aliens Policy

In order to be able to understand the amendments to the Aliens Act implementation guidelines 2000 below, we shall first briefly discuss the study of the National Committee Medical Aspects of the Aliens Policy (the Committee). The Committee was set up in 2001 by the then State Secretary of Justice and the Minister of Health, Welfare and Sports. The Committee was instructed to investigate whether aliens misuse the opportunities to gain entrance to the Netherlands on medical grounds, and if so, how this affects the admission policy and healthcare in the Netherlands. In order to be able to investigate this, the committee had to check which medical criteria apply to the admission of aliens in the Netherlands and how Dutch legislation relates to legislation in other European countries. On the basis of the results of this investigation, recommendations were made about the invocation of medical grounds, applying medical criteria to the admission procedures, granting residence and deportation of aliens, and the meaning of the medical advice given in that respect. As a result, a number of policy amendments were made, the most important ones of which shall be briefly discussed below.²¹² In

²¹⁰ Amendment to the Primary Education Act, Expertise Centres Act and the Secondary Education Act with regard to changes to the educational disadvantages policy, Lower House documents, Kamerstukken II, 2005-2006, 30 313, no. 3.

²¹¹ Decree of 18 September 2001, relating to the adoption of the national policy framework with regard to the municipal educational disadvantages policy (Decree National Policy Framework Municipal Policy for Educational Disadvantages), Website of the Government, <http://wetten.overheid.nl>, visited on 10 February 2006.

²¹² 'Medical Aspects of Aliens Policy', National Committee for the medical aspects of Aliens Policy: March 2004, Website Ministry of Justice, <http://www.justitie.nl>, visited on 26 January 2006.

addition, a number of important social initiatives in the field of healthcare and persons of foreign heritage are discussed.

- Amendment to the Aliens Act implementation guidelines 2000 (with regard to medical treatment)²¹³

On 4 August 2004, the Aliens Act implementation guidelines 2000 were adjusted and amended with regard to the conditions to be met upon application of a residence permit with the purpose of 'medical treatment'. The background to this amendment is the report from the National Committee Medical Aspects of the Aliens Policy (the Committee). The report states that the Netherlands is generally stricter with regard to admission on the grounds of medical treatment than most of the other European countries studied.²¹⁴ All countries studied set two requirements with regard to admission to undergo medical treatment: it must concern urgent medical treatment and the financial resources required for treatment must be guaranteed. In addition to the above, the Aliens Decree 2000 contains an additional condition, i.e. that the Netherlands must be 'the most appropriate country' for treatment.²¹⁵ However, according to the Committee it is unclear when exactly the conditions of 'the most appropriate country' are met.²¹⁶ The most important amendment to the Aliens Act implementation guidelines 2000 therefore related to a clarification of the conditions under which it can be assumed that the Netherlands is the most appropriate country for an alien to undergo medical treatment.

- Amendment to the Aliens Act implementation guidelines 2000 (conditions medical discrimination and convention refugee)

On 17 December 2004, the Aliens Act implementation guidelines 2000 were amended with regard to the introduction of the policy relating to discriminatory exclusion of medical care. The background to this amendment is the government reply to a recommendation in the report from the National Committee Medical Aspects of the Aliens Policy (the Committee). The Committee is of the opinion that it must be laid down that discriminatory exclusion of medical care in the country of origin, which may have serious medical consequences, can be a reason to grant the status of refugee or could otherwise be reason to grant residence or not to deport an alien.

Upon amendment of the Aliens Act implementation guidelines 2000 on 17 December 2004, this recommendation was adopted. The Aliens Act implementation guidelines 2000 stipulate that aliens, who fear discriminatory exclusion of medical care when returning to their country of origin to such an extent that it could lead to serious medical consequences, are regarded as convention refugees. They therefore qualify for a temporary asylum residence permit.²¹⁷ In practice, this reason for concession was already used when issuing a residence permit on the grounds of medical discrimination.²¹⁸

5.4.2. Important national initiatives with regard to persons of foreign heritage and healthcare

²¹³ Decree of the Minister for Immigration and Integration of 4 August 2004, no. 2004/48, relating to the amendment to the Aliens Act implementation guidelines 2000, Government Gazette, 2004, 150, p.7.

²¹⁴ The report compares the situation to seven other European countries: Belgium, Spain, Sweden, Germany, France, the United Kingdom and Switzerland.

²¹⁵ Article 3.46 Aliens Decree 2000.

²¹⁶ 'Medical Aspects of Aliens Policy', National Committee for the medical aspects of Aliens Policy: March 2004, Website Ministry of Justice, <http://www.justitie.nl>, visited on 26 January 2006, p.24.

²¹⁷ By virtue of article 29, paragraph one, introduction and under a, Aliens Act 2000.

²¹⁸ Decree of the Minister for Immigration and Integration of 17 December 2004, no. 2004/69, relating to the amendment to the Aliens Act implementation guidelines 2000, Government Gazette, 2004, no. 246, p.13.

The Minister of Health, Welfare and Sports has made EUR 600,000 (EUR 150,000 per year) available for the period 2004-2007 in order to encourage organisations to solve the problems in healthcare with regard to persons of foreign heritage. With that, the Minister of Health, Welfare and Sports made a conscious decision not to give the money to government institutions. Healthcare organisations must decide for themselves how they can improve the care provided to persons of foreign heritage (e.g. improved exchange of knowledge).²¹⁹ Research institution ZonMw was asked to use most of this amount (a maximum of EUR 300,000 in the period 2005-2007) for a practical programme aimed at exchanging and improving the practical healthcare knowledge about persons of foreign heritage and their healthcare requirements.²²⁰ This must involve the implementation of all available scientific and practical knowledge. Furthermore, the programme should not be aimed at equipping the healthcare providers, but equipping those who require healthcare. ZonMw is an important organisation in the field of persons of foreign heritage and healthcare. Among other things, it aims to improve healthcare by encouraging and financing research and development.²²¹ In addition, the mental healthcare inter-culturalisation knowledge centre, *Mikado*, shall be financed by the Minister of Health, Welfare and Sports from 1 July 2002 to 1 July 2007. This knowledge centre develops expertise, offers refresher courses, advice and consultation and improves expertise in the field of mental healthcare for persons of foreign heritage.²²²

5.5. Family, Youth and the Elderly

5.5.1. Important national initiatives for young persons of foreign heritage

- Project 'Crime in relation to the integration of ethnic minorities'

Compared to native Dutch youngsters, more youngsters of foreign heritage and young adults are registered as a suspect with the police. For 12-17 year-olds the percentages are 1.3% and 3.1% respectively, for 18-24 year-olds they are 2.2% and 4.4% respectively. Dutch youngsters of Moroccan origin (persons of foreign heritage of the first and second generations) are represented relatively highly, in addition to youngsters of Antillean origin among others.²²³

The programme 'Crime in relation to the integration of ethnic minorities II' (CRIEM II) aims to improve the integration of youngsters with a Moroccan, Turkish, Surinamese and Antillean background in Dutch society. Unsuccessful integration (as stated on the website of the Ministry of Justice) is one of the reasons why they are involved in crime relatively often.²²⁴

The Ministry of Justice mainly focuses on the development and introduction of individual guidance for youngsters from ethnic minority groups who come into contact with the law. They have set up the CRIEM individual guidance system. This guidance is intended for underage delinquents (12-17 years old) of foreign heritage (Moroccan, Turkish, Surinamese, Antillean) who are guilty of lighter forms of crime or who have a

²¹⁹ 'VWS encourages care for persons of foreign heritage', news report 17 March 2004, Website Ministry of Health, Welfare and Sports, http://www.minvws.nl/nieuwsberichten/gvm/vws_stimuleert_zorg_aan_allochtonen.asp, visited on 29 December 2005.

²²⁰ 'Inter-culturalisation of healthcare', letter from the Minister of Health, Welfare and Sports, Lower House documents, Kamerstukken II, 29 484, no. 11.

²²¹ Website ZonMw, <http://www.zonmw.nl/nl/organisatie/missie.html>, visited on 29 December 2005.

²²² 'Persons of foreign heritage in healthcare', letter from the Minister of Health, Welfare and Sports, 16 March 2004, and: Website Ministry of Health, Welfare and Sports, http://www.minvws.nl/kamerstukken/gvm/allochtonen_in_de_gezondheidszorg.asp, visited on 28 December 2005 and Website Mikado, <http://www.mikado-ggz.nl/zoek.php>, visited on 28 December 2005, and Ministry of Justice, 'Annual Integration Policy Document 2004' http://www.justitie.nl/Images/jaarnota_integratiebeleid_2004_tcm74-38880.pdf, visited on 10 February 2006.

²²³ 'Preventing criminal careers among foreign youngsters', Website Ministry of Justice, http://www.justitie.nl/nieuws/60117Voorkomen_criminele_loopbaan_allochtone_jongeren.asp, visited on 17 January 2006.

²²⁴ CRIEM, Website Ministry of Justice, <http://www.justitie.nl/themas/jeugdcriminaliteit/themas/preventie/CRIEM.asp>, visited 22 Jan 2005

relatively light criminal past and live in one of the big cities. The individual guidance is characterised by the emphatic involvement of parents and schools. The guardianship, family supervision and juvenile rehabilitation institutions are responsible for its execution.²²⁵

In addition, various municipalities were given financial resources by the Government to set up projects that help to prevent foreign youngsters getting involved in crime. Some municipalities have set up one or two projects, others fifteen.

- Grants Scheme Antillean Municipalities (2000-2004)²²⁶

In the period January 2001 - 31 December 2004, Government made EUR 10,890,725 available to seven so-called Antillean municipalities through the 'Grants Scheme Antillean Municipalities'. This concerns the municipalities of Amsterdam, Dordrecht, The Hague, Den Helder, Groningen, Nijmegen and Rotterdam. These municipalities distinguish themselves from other municipalities in the Netherlands by a large concentration of Antilleans within their borders and by growing nuisance caused by a relatively small group of disadvantaged youngsters from this population group.²²⁷ The scheme is intended to supplement the municipalities' own efforts to comprehensively tackle the issue of Antillean youngsters at risk.

- The Experimental encouragement scheme for the reception and integration of Antillean youngsters (Direkshon)

On 24 April 2002, the Experimental encouragement scheme for the reception and integration of Antillean youngsters came into force, intended to support local projects which offer a combination of facilities for youngsters of Antillean origin in order to advance their integration (process). This involves facilities to promote the command of the Dutch language, training or access to the labour market, in combination with accommodation and personal guidance. The intention is to offer the facilities only in a coherent package on the one hand and to compel the youngsters to use all facilities on the other. The available budget for granting subsidies for the 2002-2004 period totalled EUR 10,890,725.²²⁸

- The 'Administrative Arrangement 2005-2008'

The term of the 'Administrative Arrangement 2005-2008' runs from 1 January 2005 until 31 December 2008. The objective of the arrangement is to reduce the school dropout rate and crime among Antillean and Aruban youngsters. Also part of this 'Administrative Arrangement 2005-2008' is the fact that the municipalities exchange knowledge and experiences and consult intensively with Government about the allocation of responsibilities and the bottlenecks within the Antillean approach. The 'Administrative Arrangement 2005-2008' was signed by 21 municipalities. Two-thirds of all Antilleans/Arubans in the Netherlands live in these 12 municipalities. The Minister for Immigration and Integration has made a total of 20 million Euros available for the execution of the 'Administrative Arrangement'. The Minister for Immigration and Integration did set the condition that the municipalities must pay 50 per cent of the government contribution to the Antillean approach through co-financing.²²⁹

²²⁵ Idem.

²²⁶ 'Grants Scheme Antillean Municipalities', Government Gazette 2001, no. 96, p.8.

²²⁷ 'Annual Integration Policy Document 2004', Website Ministry of Justice, http://www.justitie.nl/Images/Jaarnota%20Integratiebeleid%202004_tcm74-33864.pdf, visited on 26 January 2006.

²²⁸ 'Experimental encouragement scheme for the reception and integration of Antillean youngsters', Government Gazette 2002, no. 84, p.7., and 'Migration of Antillean youngsters', Lower House documents, Kamerstukken II, 2004-2005, 26 283, no.26.

²²⁹ 'Administrative Arrangement Antillean young people at risk 2005-2008. Between the municipality of Amsterdam and the Government of the Netherlands'. Website http://www.satarkos.nl/downloads/documents/BA_Antill_Risicojongeren_2005-2008.pdf, visited on 1 February 2006 (This is an example).

5.6. Gender

There were no amendments in Dutch legislation in this field during the reference period. A number of important national initiatives in this field were discussed in previous paragraphs. Other than that, compared to the initiatives referred to in previous paragraphs, no national initiatives are extensive enough to mention here.

5.7. Vulnerable Groups

There were no amendments in Dutch legislation in this field during the reference period. A number of important national initiatives in this field were discussed in previous paragraphs. Other than that, compared to the initiatives referred to in previous paragraphs, no national initiatives are extensive enough to mention here.

5.8. Discrimination

There were no amendments in Dutch legislation in this field during the reference period. Neither have there been any large-scale national initiatives specifically aimed at preventing discrimination among persons of foreign heritage. A number of seminars *were* presented on this subject. Compared to the initiatives referred to in previous paragraphs however, they are too specific to mention here.

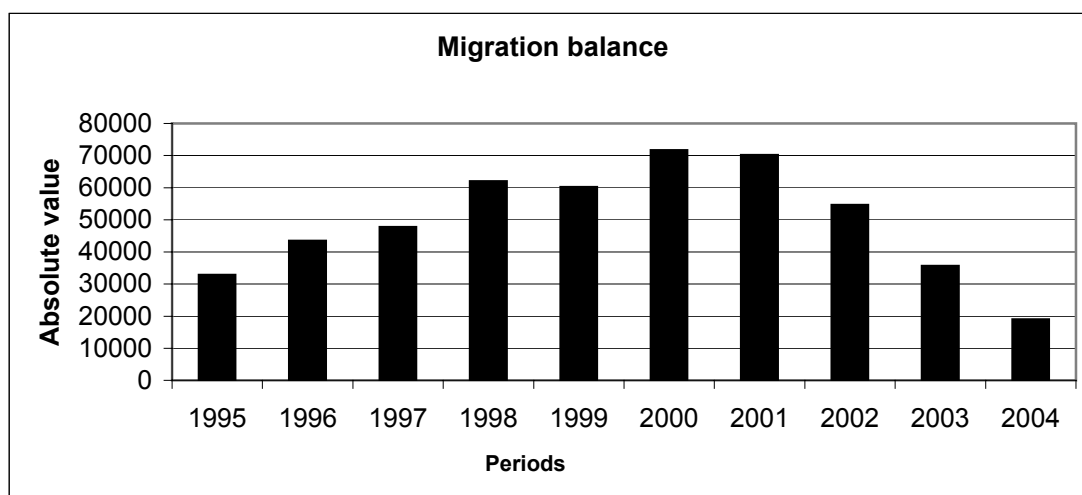
Appendix

A. Migration Flows

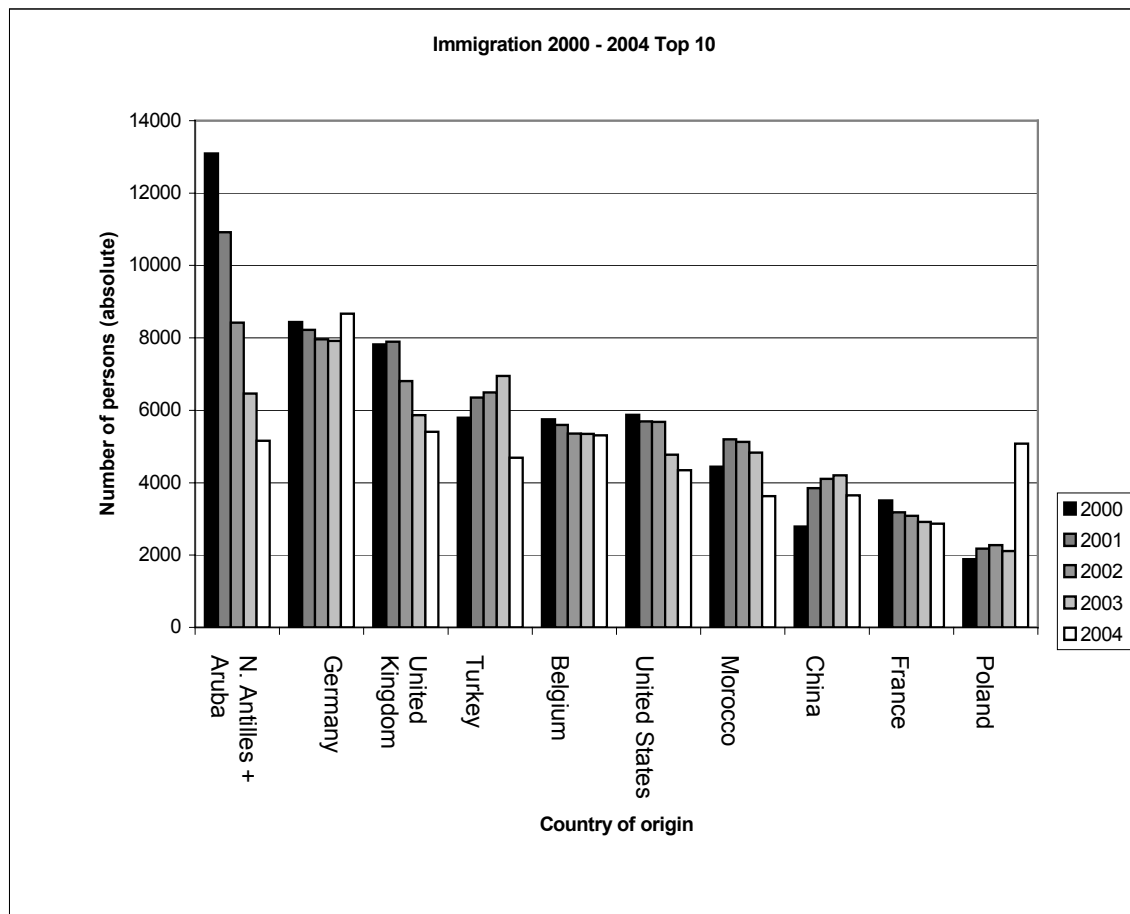
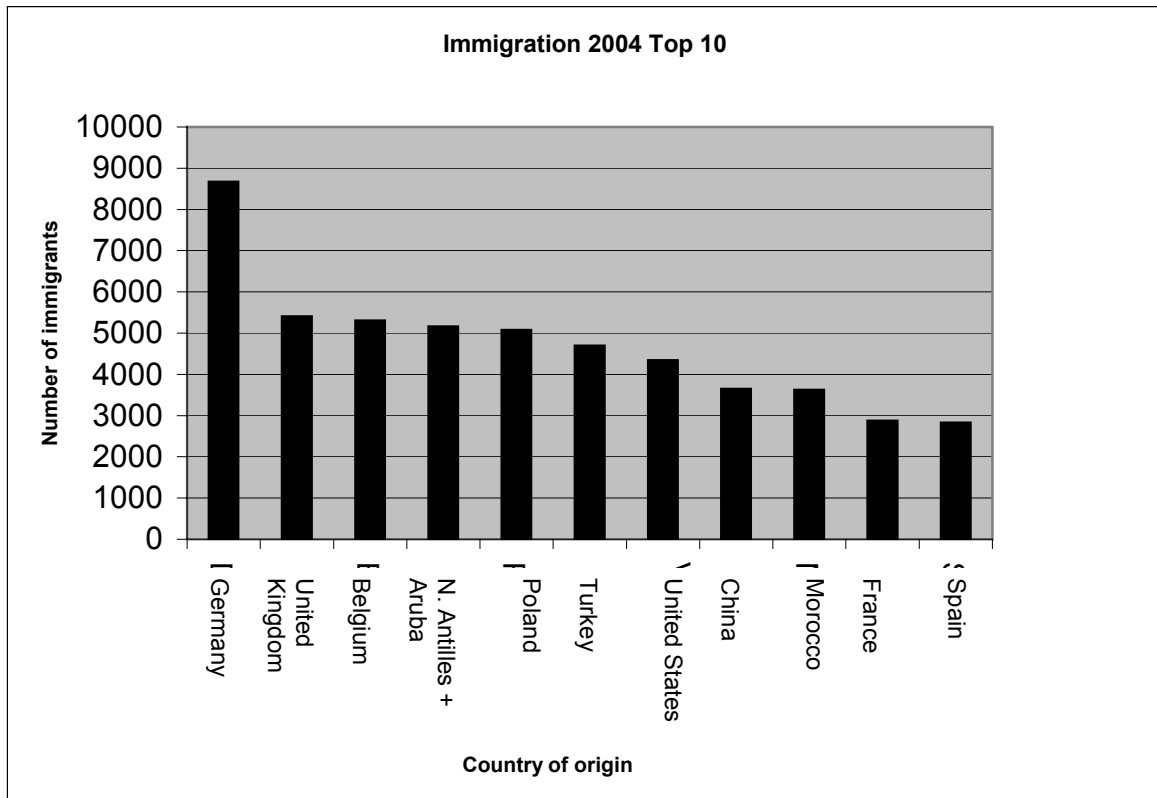
- Migration balance* (see paragraph 2.1 Migration flows, statistical information on immigrants, emigrants and asylum seekers)

PERIODS	MIGRATION BALANCE* (absolute values)
1995	32778
1996	43424
1997	47642
1998	61966
1999	60128
2000	71649
2001	70086
2002	54522
2003	35629
2004	18970

* Migration balance: the number of persons who have taken up residence in the Netherlands minus the number of persons who have taken up residence abroad coming from the Netherlands.



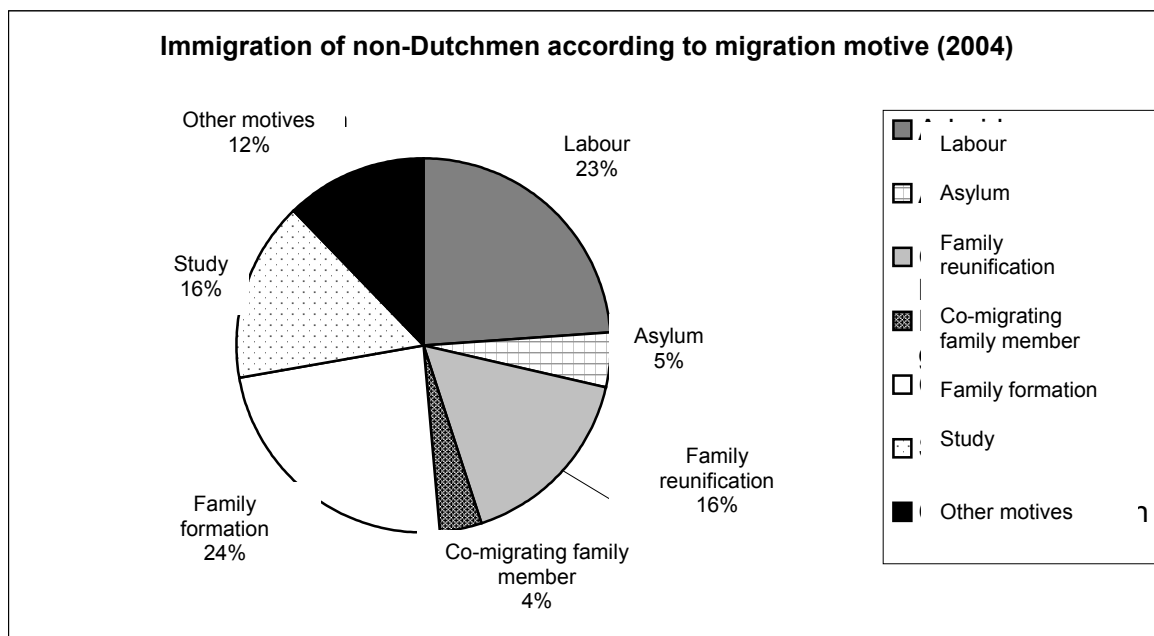
- Number of immigrants according to country of origin (see paragraph 2.1.1 'Immigrants')



- Migration motive: (see paragraph 2.1.1 under 'migration motive')

Periods	Labour	Asylum*	Family reunification*	Co-migrating family member*	Family formation*	Study	Other motives
2000	19025	27347	14492	4350	15004	6361	4803
2001	19937	25967	12045	3233	20241	7778	5309
2002	18535	18789	11757	2743	20725	9136	4935
2003	16621	9272	11372	2325	20654	8773	4549
2004	15637	2966	10623	2350	15377	10194	7961

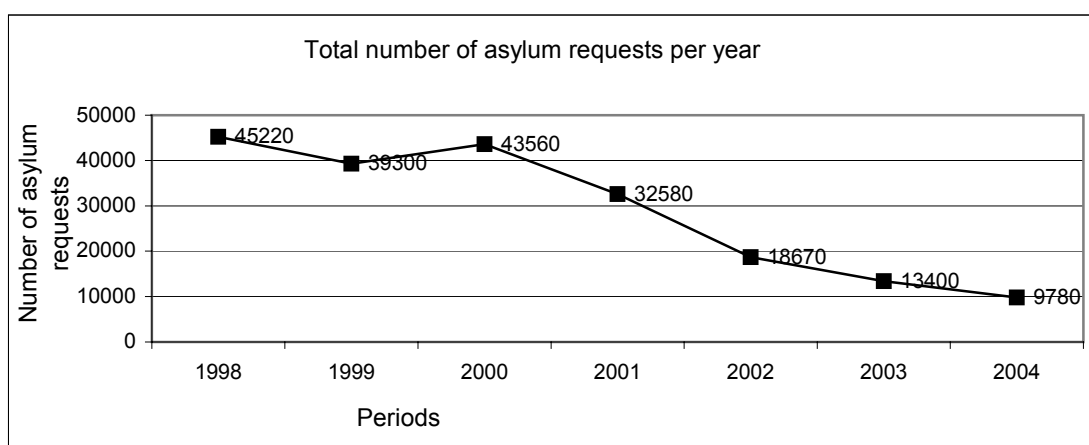
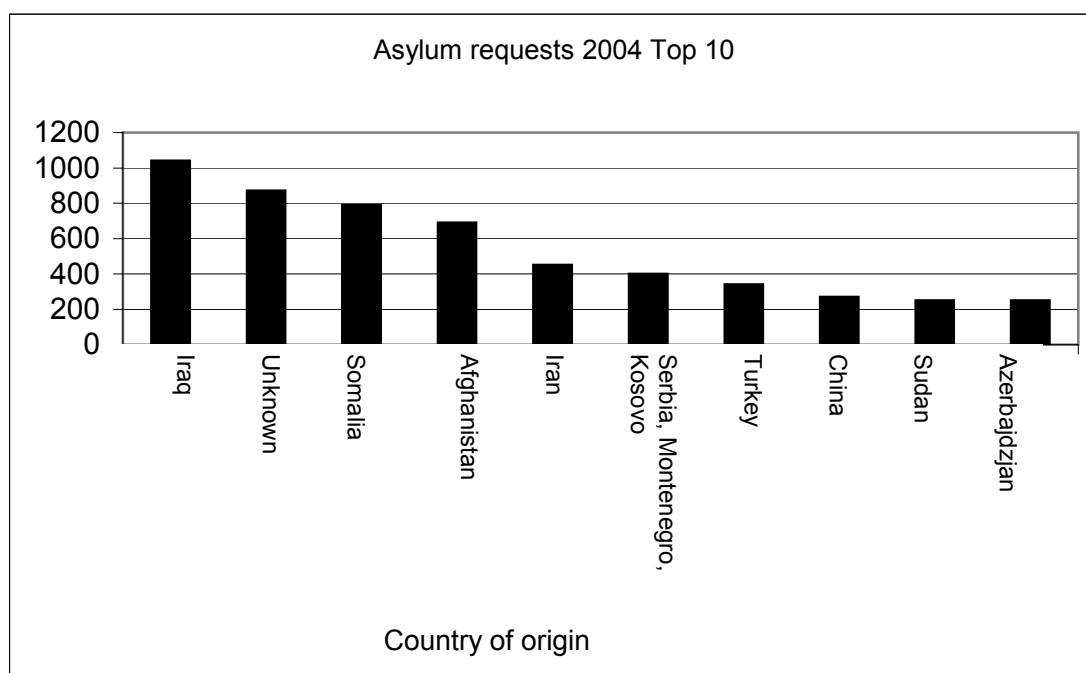
- **Asylum:** This motive does not refer to the number of asylum applications that have been submitted, but to the number of asylum seekers who are registered in the municipal personal records database. This happens when the asylum seeker is given residence status and leaves the central asylum reception facilities. In addition, asylum seekers who have been staying in central reception facilities for more than half a year also qualify for registration in the municipal personal records database.
- **Family reunification:** Migration on the grounds of family reunification concerns families that already existed prior to immigration and with regard to which one or more family members join the family members who came to the Netherlands in a previous year.
- **Co-migrating family member:** Family members (e.g. a migrant worker) who immigrate in the same year as the migrant worker are regarded as co-migrating family members.
- **Family formation:** Migration on the grounds of family formation concerns persons who settle in the Netherlands with a view to a marriage or non-married cohabitation.



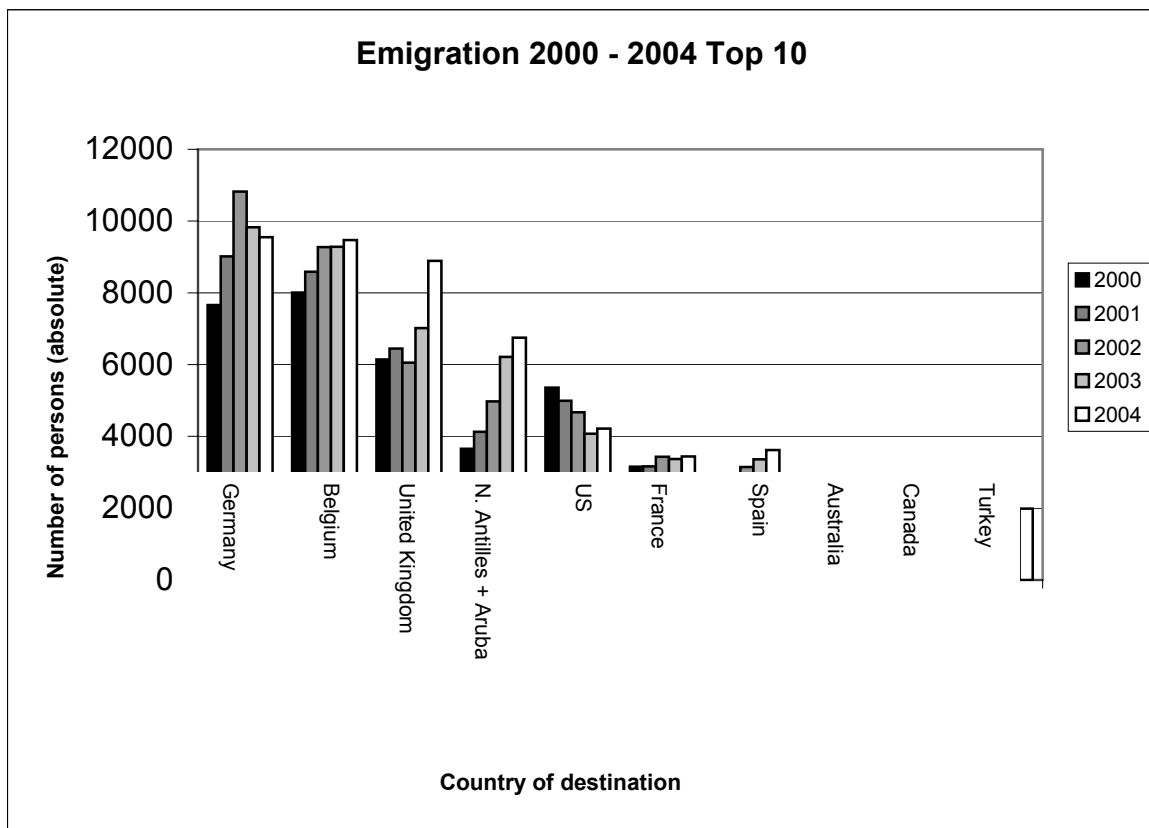
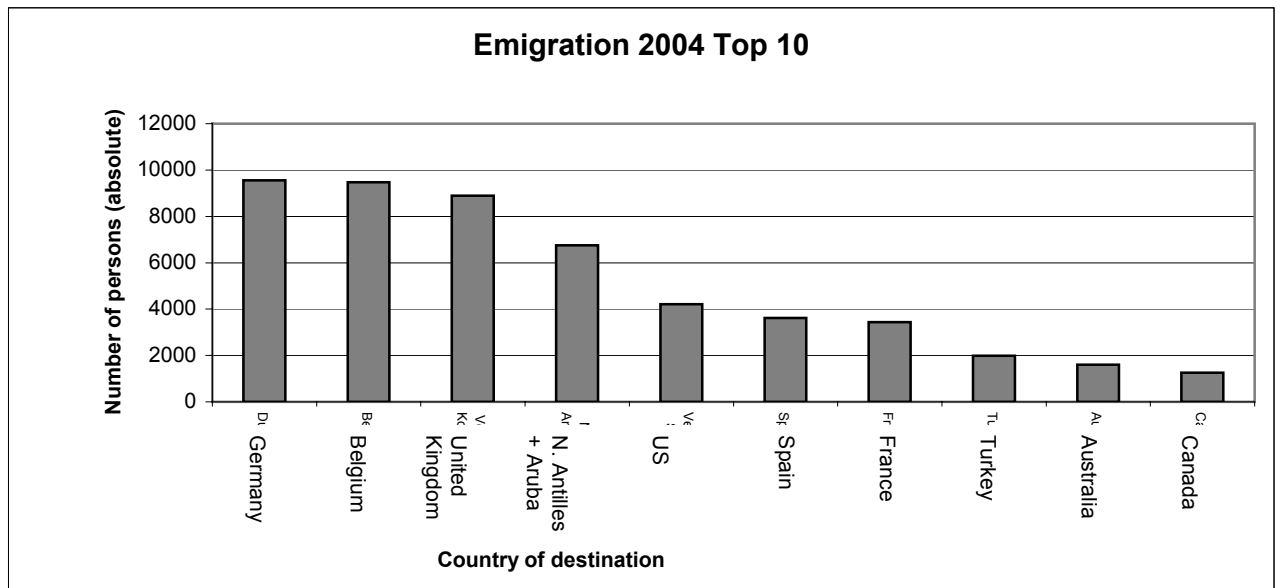
- Asylum requests* (see paragraph 2.1.1 Immigrants, under 'submitted asylum applications')

Number of asylum requests (2000-2004): Top 10 *					
Country of origin	2000	2001	2002	2003	2004
Iraq	2750	1330	1020	3470	1040
Unknown	420	470	190	510	870
Somalia	2100	1100	540	440	790
Afghanistan	5030	3630	1080	490	690
Iran	2530	1520	670	550	450
Serbia, Montenegro and Kosovo	3810	910	520	400	400
Turkey	2250	1400	640	410	340
China	1390	710	540	300	270
Sudan	1410	870	510	290	250
Azerbaijan	1150	640	340	280	250
Other	20720	20000	12620	6260	4430
Total	43560	32580	18670	13400	9780

* Asylum requests: all requests submitted by persons who, for varying reasons, have left their country to seek protection or asylum in another country (in this case the Netherlands).



- Number of emigrants and country of destination (see paragraph 2.1.2 'Emigrants')



B. Migration stocks:

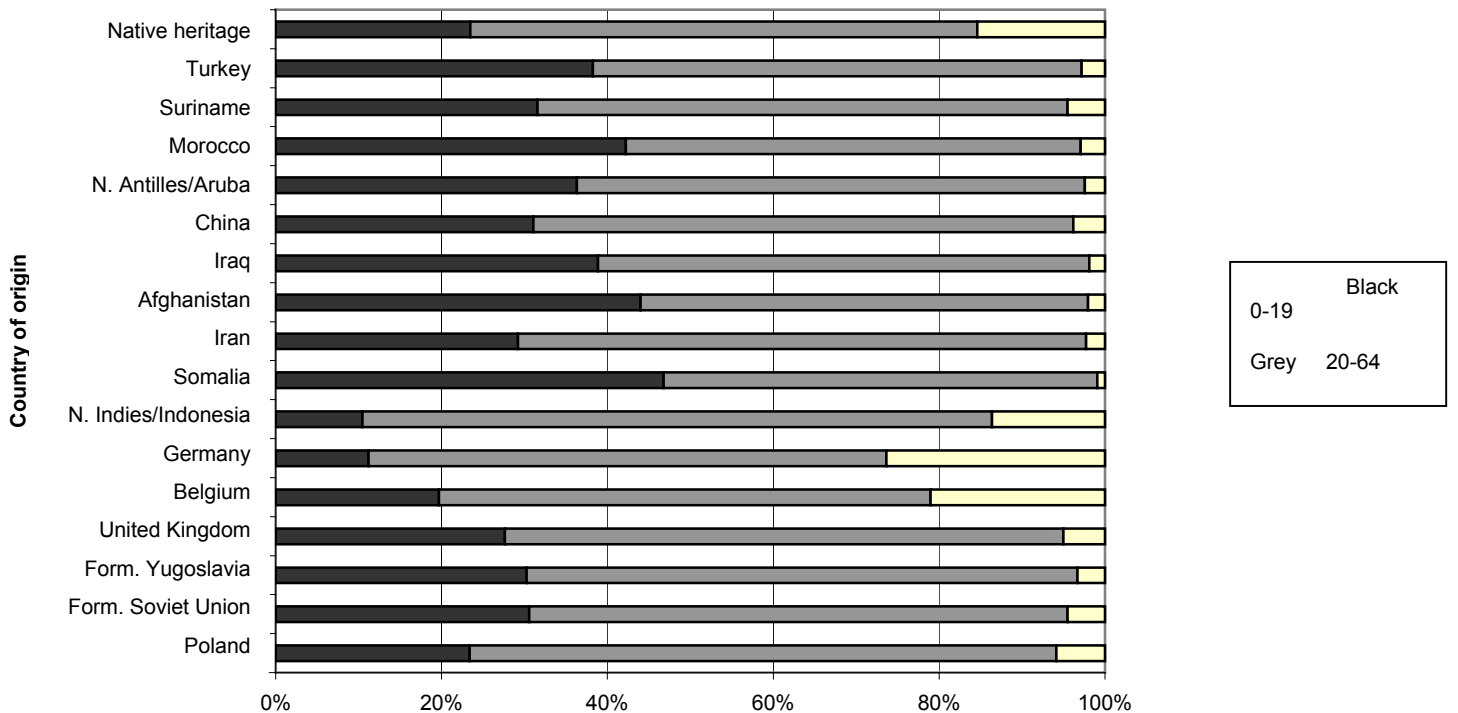
Composition of origin groups according to age (see paragraph 2.2 'Migration stocks')

Diagram 5

Composition of origin groups according to age, 1 January 2005

	0-19	20-64	65+
Poland	23.38	70.76	5.86
former Soviet Union	30.58	64.89	4.53
former Yugoslavia	30.27	66.43	3.30
United Kingdom	27.63	67.36	5.01
Belgium	19.67	59.30	21.03
Germany	11.20	62.46	26.34
N. Indies / Indonesia	10.47	75.89	13.64
Somalia	46.77	52.30	0.94
Iran	29.21	68.50	2.29
Afghanistan	44.00	53.96	2.04
Iraq	38.85	59.24	1.91
China	31.08	65.10	3.83
N. Antilles / Aruba	36.32	61.24	2.43
Morocco	42.21	54.87	2.93
Suriname	31.58	63.89	4.53
Turkey	38.24	58.92	2.84
Persons of Dutch native heritage	23.47	61.11	15.42

Composition of origin groups according to age, 2005



List of subjects

3.3.1. Managed Migration

- Tightening of the conditions for family formation and reunification
- New fees system

3.3.2. Gates of entry and border control

-

3.3.3. Integration and settlement

- Legislative amendment with regard to integration abroad
- The new Integration Act
- Ban on headscarves and burkas in education and during job interviews
- The murder of Theo van Gogh
- Abandoned women
- Honour related violence

3.3.4. Refugee protection and asylum

- Debates on harrowing cases, 26,000 faces
- Congolese asylum seekers

3.3.5. Citizenship and naturalisation

- Fast-track naturalisation of football player Kalou

3.3.6. Return

-

3.3.7. Other

- Tightening the 'sliding scale'

4.2.1. Managed Migration

- Skilled worker regulation
- Amendments to the conditions for family formation and family reunification
- New fees system

4.2.2. Gates of Entry and Border Control

- Accession of 10 member states and transitional law Dublin procedure

4.2.3. Integration and Settlement

-

4.2.4. Refugee Protection and Asylum

- Change to the temporary asylum residence permit: from three to five years
- Abolition of the Supervised Solitary Underage Asylum Seeker Policy (BAMA policy)
- Widening of the 'no fault criterion'

4.2.5. Citizenship and Naturalisation

- Equal treatment of marriage and a partnership registered outside the Netherlands
- Introduction of the telephone test in the event of part exemption of the naturalisation test

4.2.6. Return

-

4.2.7. Other

- Legislative amendment to the Aliens Employment Act
- Amendment judicial verification system of custodial orders
- Expanding the scope of penalisation of human smuggling and trafficking

4.3. Case Law

4.3.1. Dutch Case Law from the Administrative Law Division of the Council of State

- Administrative Law Division of the Council of State, 15 July 2005, 200504770/1
- Administrative Law Decision of the Council of State, 8 September 2004, 200304168/1 (also 200303055/1)
- Administrative Law Decision of the Council of State, 13 July 2005, 200409356/1

- 4.3.2. Case law of the European Court of Human Rights (ECHR)
 - European Court of Human Rights, 5 July 2005, no.2345/02
- 4.3.3. Case law of the European Court of Justice
 - EC Court of Justice, 17 February 2005, C-215/03
 - EC Court of Justice, 2 June 2005, C-136/03
 - EC Court of Justice, 14 April 2005, C-157/03
 - EC Court of Justice, 30 September 2004, C-275/02
- 4.4. Implementation of EU legislation
 - 4.4.1. Council Regulations
 - Council Regulation (EC), No 2133/2004
 - 4.2.2. Council Directives
 - Council Directive 2001/51/EC
 - Council Directive 2001/55/EC
 - Council Directive 2003/9/EC
 - Council Directive 2003/86/EC
 - Council Directive 2003/109/EC
 - Council Directive 2004/38/EC
 - Council Directive 2004/81/EC
 - Council Directive 2004/82/EC
 - Council Directive 2004/83/EC
 - Council Directive 2004/114/EC
- 5.1. Labour Market and Employment
 - Social Cohesion Initiative (BIMB)
 - National Diversity Network
 - Improving participation of foreign women in the labour process
 - Taskforce Youth Unemployment
- 5.2. Housing and Urban Development
 - Government policy plans
- 5.3. Education
 - Subsidies to tackle educational disadvantages
 - The Decree National Policy Framework Municipal Policy for Educational Disadvantages
- 5.4. Healthcare
 - 5.4.1. Policy changes in healthcare
 - Study of the National Committee Medical Aspects of the Aliens Policy
 - Amendment to the Aliens Act implementation guidelines 2000 (with regard to medical treatment)
 - Amendment to the Aliens Act implementation guidelines 2000 (conditions medical discrimination and convention regugees)
 - 5.4.2. Important national initiatives with regard to persons of foreign heritage and healthcare
 - Research institution ZonMw
 - Mikado, the mental healthcare inter-culturalisation knowledge centre
- 5.5. Family, Youth and the Elderly
 - Project 'Crime in relation to the integration of ethnic minorities'
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