Access to procedures and non-refoulement - Netherlands

Overview

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Relevant EU legislation

The Netherlands is bound by the Procedures Regulation.

National legislation

The relevant national legislative provisions transposing the Asylum Procedures Directive are the following:

- Article 3 of the Aliens Act 2000 | Vreemdelingenwet 2000
- Aliens Decree 2000, Vreemdelingenbesluit 2000
- Chapter A1, A6 and A7 of the Aliens Circular 2000 (A), Vreemdelingencirculaire 2000 (A)
- Chapter C1 of the Aliens Circular 2000 (C), Vreemdelingencirculaire 2000 (C)
- Regulation on the border accommodation regime | Reglement regime grenslogies

Competent authority and stakeholders

Area	Competent national authority	Assistance to competent authority by (if applicable)

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Screening at the external border	Royal Netherlands Marechaussee | KoninklijkeMarechaussee (KMar) Screening on the territory is carried out by the Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND)	Not applicable
Biometric data	**At the border:** Royal Netherlands Marechaussee | Koninklijke Marechaussee (KMar) **On the territory**: Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND) **In detention:** Aliens Police, Identification and Human Trafficking Department | Afdeling Vreemdelingenpolitie Identificatie en Mensenhandel (AVIM)	Not applicable

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Making an application	**At the border:** Royal Netherlands Marechaussee | KoninklijkeMarechaussee (KMar) **On the territory:** - Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND) - Royal Netherlands Marechaussee | Koninklijke Marechaussee (KMar) - Aliens Police, Identification and Human Trafficking Department | Afdeling Vreemdelingenpolitie Identificatie en Mensenhandel (AVIM) **In detention:** Custodial Institutions Agency | Dienst Justitiële Inrichtingen (DJI)	Not applicable
Registering an application	**At the border:** Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND) **On the territory**: Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND) **In detention:** Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND)	Not applicable

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Lodging an application	Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND)	Not applicable
Information provision	Immigration and Naturalisation Service | Immigratie- en Naturalisatie Dienst (INS | IND) Royal Netherlands Marechaussee | KoninklijkeMarechaussee (KMar)	Dutch Council for Refugees | VluchtelingenWerk Nederland (VWN) NIDOS Foundation

Access to the territory

Official external border crossing points

The Netherlands has 11 air border-crossing points: Amsterdam Schiphol, Breda, De Kooy, Eindhoven, Enschede Twente, Groningen Eelde, Kempen, Lelystad, Maastricht Aachen, Midden Zeeland and Rotterdam.

The Netherlands has 2 external land border-crossing points: Amsterdam Central Station and Rotterdam Central Station.

The Netherlands has 12 external sea border-crossings points: Amsterdam IJmond, Den Helder, Dordrecht, Eemshaven, Gent-Terneuzen, Harlingen, Hoek van Holland/Europoort, Moerdijk, Rotterdam-Havens, Scheveningen, Vlissingen and Ijmuiden.

Emergency measures in cases of mass arrivals

On the basis of Article 111 of the Aliens Act, a Royal Decree on the recommendation of the Prime Minister can implement measures allowing for a derogation of Chapter 1–7 of the Aliens Act in the case of extraordinary circumstances. This article has not yet been entered into force.

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The principle of protection from *non-refoulment* is assessed within the asylum procedure by the Immigration and Naturalisation Service (IND) (Aliens Act, Article 29).

Asylum seekers may express their wish to apply for asylum either at the border, to the border authority/police (Royal Netherlands Marechaussee) or within the national territory before the authorities. All asylum applications are forwarded to the relevant authority (IND) ex officio, including applications made in detention (at the border to the KMar or on the territory in immigration detention to the Custodial Institutions Agency). A border procedure exists to process asylum applications received at the border.

Protection from *refoulement* at air borders

If the asylum seeker enters through the external borders (either airports or harbours), he/she may apply for asylum with the border guards, most often this is the Royal Netherlands Marechaussee. Applicants first undergo screening at the border by KMar. The applicants are then transferred to the Schiphol Application Centre, located in the Schiphol Judicial Complex, for further processing and registration/lodging of the asylum application by the IND. If the asylum border procedure does not apply, for example for applicants whom are too vulnerable to be placed in detention, KMar refers the applicant to the IND in Ter Apel for further screening and registration and lodging of the application.

Protection from *refoulement* at land borders

The Netherlands does not have external land borders. When asylum seekers enter the Netherlands through one of the internal borders, they need to go to Ter Apel within 48 hours to file an application.

Protection from *refoulement* at sea borders

The same process applies for applicants arriving at sea borders and applicants arriving by plane. Applicants arriving at sea borders can make their request for asylum to the border guard and will be transferred to AC Schiphol or AC Ter Apel to continue the procedure.

Protection from *refoulement* in cases of emergency measures related to mass arrivals

In cases of mass arrivals, the focus lies on proper identification and registration. Different measures could be taken depending on the specific situation. As long as

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a (basic) identification and registration process is followed, access to the asylum procedure is guaranteed. Also in the case of mass arrivals, a basic asylum process that adheres to the minimum European requirements is guaranteed. In the case of a negative decision, the asylum seeker is always able to appeal the decision.

Border procedure

The asylum border procedure is mandatory for applicants who apply for international protection at the border and come from a country with less than 20% recognition rate, if they are a danger to public order or national security, or if they have deliberately misled the Dutch authorities by providing false information or documents.

The border procedure is also generally applied to asylum seekers arriving by plane or boat and coming from outside the Schengen area.

The maximum time limit for the border procedure is 5 weeks. If 5 weeks elapse without a decision, then the applicant will automatically gain access into Dutch territory, will be transferred to the accelerated asylum procedure and no longer have to reside in the closed reception centre. The border procedure may only be extended by four weeks if the applicant is relocated pursuant to Article 67(11) of the AMMR.

Article 5.9 of the Aliens Decree specifies that when detaining in immigration detention pursuant to Article 59a or 59b of the Aliens Act, or in the case of a deprivation of liberty at the border pursuant to Article 6 and 6a of the Aliens Act, account shall be taken of visible signs, statements or behaviors that indicate that the foreign national has special reception needs. If an asylum application has been submitted but the assessment of special reception needs has not been completed, it must be completed without delay and the results must be taken into account when deciding whether the immigration detention or detention at the border should be continued or whether the conditions of detention should be adjusted. Detention is not imposed if it would seriously endanger the physical or mental health of a foreign national with special reception needs. If persons with special needs are detained, they are subject to regular monitoring and shall receive, in a timely manner, the necessary assistance in view of their specific situation and their physical and mental health.

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Procedural Aspects

The asylum process begins with the ‘Reception and Preparation of Asylum Application’ (OVA) phase for those applying for international protection within the territory, which lasts a maximum of three days. The screening and registration take place within the same stage, following by the lodging of the application form. Both phases are conducted by the Immigration and Naturalisation Service if the applicant is registered on the territory. During the OVA, the IND conduct performed by medical staff at the screening location. A vulnerability test to assess whether additional support is required is also carried out based on observations by employees and statements from the applicant. Additionally, security risks are identified through a search in the European databases to determine if the applicant is a danger to public order or national security. While the statutory period for the OVA is 3 days, the IND aims to complete the phase in one day. At the border, after screening by Kmar, the applicant is transferred to the IND which is responsible for registering and lodging the application.

Making an application

Responsible authority and place

Asylum seekers in the Netherlands may express their wish to apply for asylum either at the border to the Royal Netherlands Marechaussee or within the national territory before the Immigration and Naturalisation Service. Applications can also be made before the Aliens Police or Custodial Institutions Agency, after which applicants are referred to the appropriate place for registration and lodging. All asylum applications are forwarded to the relevant authority (IND) ex officio, including applications made in detention.

Possibility to apply from outside the territory

It is not possible to apply for asylum in the Netherlands from abroad, including from Dutch embassies or diplomatic representations. Any Dutch diplomatic mission though can offer protection on a temporary basis for people facing situations of acute emergency according to the Dutch authorities. There is no scheme for issuing humanitarian visas.

Formal requirements for making an application

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It is not possible to apply for asylum through post or email, applicants must be physically present. It is not possible to apply on behalf of family members, unless they are children under the age of 15 years old. In this case they are included in their parents' application form. Children also need to be physically present to apply.

Registering an application

Responsible authority and place

Asylum applicants must report in person to an IND Application Centre (AC) in order to be registered. The IND has 5 ACs. The AC in Ter Apel (near Groningen) and at the Amsterdam Schiphol airport [which is a closed centre – Border Detention Centre (Justitieel Complex Schiphol)] work as first application desks for spontaneous applicants. The AC in Den Bosch, Zevenaar and Budel are open application centres but can be visited by applicants only on appointment.

Asylum seekers arriving by plane or boat must apply for asylum immediately. Applications from people entering the country by land must be reported for registration as soon as possible, but within 48 hours, to the AC in Ter Apel.

Practical steps to register the application

Applicants may use a self service application at the IND location to provide the required details by filling out a questionnaire for parts of the application procedure. Other parts are always led by an IND employee. Unaccompanied minors receive help from a guardian from the NIDOS foundation. The questionnaire is available in the eleven most common languages, and is designed to be as user friendly as possible. For applicants who speak a different language or are unable to use the self service application due to other reasons the questions are asked orally by an IND employee assisted by an interpreter. The start of the application process, the taking of biometric data, and the end of the application process including signing and lodging of the application for international protection, are always handled by an IND employee.

Data collection

The following information is collected at this stage: Personal data, nationality, documents, passport photo, fingerprints and signature (biometrics), data about the applicant’s living environment, information about family members, travel and

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stay in other countries, the main reason for the asylum application.

The IND has an asylum database (INDiGO) where all asylum applications and subsequent decisions are registered. This database is linked to the Central Shared Database, which contains basic information on applicants, which is the central system used by government authorities. In this way, asylum seekers can be quickly processed also by the local authority they will be assigned to following the registration/lodging procedure.

Documentation

After the application has been lodged, applicants receive a temporary procedure document. As soon as possible, after the start of the asylum procedure applicants are given a Foreign Nationals Identity Document Type W. This document is not a resident permit but is a proof of lawful residence in the Netherlands for applicants during their asylum procedure.

Lodging an application

Responsible authority and place

The IND is the responsible authority for lodging an application, which takes place in the same application center where the registration occurred. The lodging takes place shortly after the registering, usually on the same day, with a maximum statutory time limit of 3 days after.

Formal requirements to lodge an application for international protection

- **On the territory:** The OVA phase ends with a final interview carried out by an IND employee, during which they will sign the asylum application. During this interview, the applicant also receives the screening form and is given the opportunity to correct any wrong information. The applicant also receives a confirmation of receipt of the documents taken in for investigation, information about the continuation of the asylum procedure, and a form stating that the applicant must be present during the asylum procedure.
- **At the border:** After screening is concluded by the KMar, the applicant is asked to fill in and sign the asylum application. After which the application for international protection has been lodged.

Documentation

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As stipulated by the Aliens Circular C1/2.2, the following documents are provided with a copy of the following documents: the signed asylum application, an acknowledgment of receipt of the submitted documents (if applicable), the imposed instruction to be available, leaflets with information provision and (if applicable) the screening form. The applicant receives a form which serves as temporary proof that they are asylum seekers in the Netherlands. This form is valid until the Foreign National Identity Document type W is ready. The applicant receives a letter when this document is ready for collection.

Information provision

During the screening and registration/lodging the applicant is given information on several forms. This may be oral information, leaflets, or information provision in the self-service application. At the start of the registration/lodging procedure, the IND provides the applicant with several brochures which provide general information about the asylum procedure.

Passport and other documents

Obligation to surrender original documents

Requirement to submit original documents

The Aliens Act, Article 31 and the Aliens Act Implementation Guidelines, paragraph C1.4.3 state that the applicant must surrender his/her national passport to the authorities.

Consequence of refusal to surrender documents

If an applicant is not in possession of a passport, no legal consequences are foreseen. If the applicant is in possession of his/her passport but refuses to surrender it to the authorities, this may have negative consequences for the outcome of the procedure.

Return of original documents to the applicant

An applicant can request the national passport back while the asylum process is still ongoing. The IND then decides if the passport is returned or not. Original documents are returned once the applicant is granted international protection or, if the application is rejected or withdrawn, when the applicant is returning to the country of origin.

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Other documents

National law does not specify the requirement for the submission of other documents/items besides identity documents. The applicant does have an obligation to provide all relevant information regarding the application, this may include documents. There may be negative consequences if the applicant refuses to provide relevant documents.

Requirement to read digital data

The authorities can only search applicant's digital devices if the applicant consents.

Guarantees for applicants

Confidentiality principle

On the basis of Article 1 of the Aliens Circular 2000 C, the IND treats the elements provided by the applicant in support of their application with strict confidentiality, in accordance with the Personal Data Protection Act. This information is not provided to third parties, other than on the basis of legal obligations or after obtaining the applicant's consent.

Information provision

Representatives of the Dutch Council for Refugees are present at every stage of the asylum procedure to inform and assist asylum seekers on their rights/obligations and the procedure itself. Information is systematically provided through leaflets and brochures, available in 33 different languages.

The IND also has information leaflets on the different types of procedures available, which are provided systematically. The IND also continuously updates information on their website about the asylum procedure. UNHCR checks the content of the leaflets by the IND and the Dutch Council for Refugees. Asylum seekers detained at the border equally have access to NGOs and UNHCR.

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Authority/Agency: The Immigration and Naturalisation Service

Title: Asylum

Type: Website

Hyperlink: https://ind.nl/nl/verblijfsvergunningen/asiel

Authority/Agency: Centraal Orgaan opvang asielzoekers

Title: Reception and guidance during the asylum application process

Type: Website

Hyperlink: https://www.coa.nl/en#:~:text=The%20Dutch%20Council%20for%20Refugees%20(VWN)

Authority/Agency: The Dutch Council for Refugees

Title: Information leaflets on the Asylum procedure and the Family reunification procedure

Type: Information Leaflets

Hyperlink: https://www.vluchtelingenwerk.nl/nl/voorlichtingsfolders-over-de-asielprocedure-en-de-gezinsherenigingsprocedure

Interpretation

Interpretation is provided at the registration and lodging stage, sometimes by phone.

Legal assistance and representation

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During OVA, legal counsellors who are employees of the IND are present in Ter Apel and recognisable through a green lanyard that they must wear. Legal counsellors can be approached directly by applicants, or, if the counsellors are not available, they can be given an appointment for a later time. Applicants who have a lawyer cannot make use of the legal counselling. Legal counsellors do not give personal advice and cannot access the asylum application or any other information in the IND case management application, but can provide information concerning the different asylum procedures, rights and obligation, and legal questions about the procedure.

During the asylum procedure, every asylum seeker is appointed a lawyer free of charge by the state-funded Legal Aid Board (Raad voor de Rechtsbijstand). The lawyer is appointed during the asylum procedure, depending on the specific procedure this may be at the start of the procedure or at least before the personal interview. Therefore, legal counselling by the IND is only provided up until the point that an applicant is linked with a lawyer. Asylum cases are distributed to lawyers according to a roster of availability as scheduled by the Legal Aid Board. Legal assistance is also provided by the Dutch Council for Refugees.

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