Applicants with special needs - Netherlands

Overview

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Relevant EU legislation

The Netherlands is bound by the recast Asylum Procedures Directive and by the recast Reception Conditions Directive and has transposed their provisions through the Aliens Law 2000, Vreemdelingenwet 2000, Vw 23 November 2000

National legislation

23/11/2000: Aliens Law 2000, Vreemdelingenwet 2000, Vw 2000

23 November 2000: Aliens Decree 2000 | Vreemdelingenbesluit 2000, Vb 2000

2 March 2001: Aliens Circular 2000 (A) | Vreemdelingencirculaire 2000 (A), Vc, 2000

2 March 2001: Aliens Circular 2000 (B) | Vreemdelingencirculaire 2000 (B), Vc, 2000

2 March 2001: Aliens Circular 2000 (C) | Vreemdelingencirculaire 2000 (C), Vc, 2000

14 January 1993: Regulation on the border accommodation regime | Reglement regime grenslogies, BWBR0005848.

19/05/1994: Law on the Central Agency for the Reception of Asylum Seekers, COA Law, Wet Centraal Orgaan opvang asielzoekers, Wet COA

26/01/2005: Regulation on benefits in kind for asylum seekers and other categories of foreigners 2005, Regeling verstrekkingen asielzoekers en andere

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categorieën vreemdelingen 2005, Rva 2005, BWBR0017959

10/09/2015: Decision allowing COA to exclude certain categories of asylum seekers from benefits in kind Rva 2005, Besluit verlening bevoegdheid aan COA tot uitsluiting bepaalde categorieën asielzoekers van verstrekkingen Rva 2005

04/06/2014: Housing Act 2014, Huisvestingswet 2014

Competent authority and other stakeholders

The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers, COA) is an independent administrative body that falls under the responsibility of the Ministry for Asylum and Migration. It is the authority responsible for the reception of asylum seekers and is legally obliged to provide adequate support for applicants with special reception needs.

In collaboration with COA, the Nidos Foundation is also responsible for arranging accommodation for unaccompanied minors and for appointing legal guardians to assist them duration of the asylum procedure.

The Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst, IND) is the national authority responsible for examining/processing requests for international protection in the regular asylum procedure and in special procedures. It falls under the Ministry for Asylum and Migration. The IND is obliged to assess the need for special procedural guarantees throughout the duration of the procedure and provide appropriate guarantees as deemed necessary.

During the rest and preparation period, MedtAdvies performs a medical examination of applicants and provides medical advice to IND on the applicant's ability to attend the personal interview, and on any physical and psychological conditions that may require special procedural guarantees before the interview, during it, and when assessing the application.

Training initiatives

All employees who interview and take decisions receive the necessary training to identify special needs, define special procedural guarantees and treat cases of vulnerable applicants. Their tasks are comparable to those of specially

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commissioned case officers. They are required to follow the EUAA course on interviewing vulnerable persons and other training courses can be taken. As a result, all employees can handle applications from vulnerable groups. In addition, coordinators act as contact points for difficult cases and provide extra training, for example medical coordinators, LGBTI coordinators and coordinators for human trafficking. Their role is detailed in specific IND work instructions: WI 2021/5 Rol contactpersonen mensenhandel en gendergerelateerde zaken regulier [WI 2021/5 Role of contact persons on human trafficking and gender-related regular cases].

According to Article 9 (11) of the 'Regulation on benefits in kind for asylum seekers and other categories of foreign nationals 2005', the staff working for COA in the reception facilities must have appropriate training, including specialised training for working with unaccompanied minors. COA has also trained hundreds of employees on how to better address LGBTI applicants' needs. Furthermore, there is a COA LGBTI contact person in every reception centre who is responsible for coordinating the organisation of activities and information provision for LGBTI applicants.

Special needs in reception

Identification of special needs

In reception, Article 18a of the Regulation on benefits for asylum seekers and other categories of foreigners 2005 obliges COA to assess whether the applicant is vulnerable and to provide support and guidance for applicants with special reception needs. When an unaccompanied minor arrives in the country, the Nidos foundation is responsible for their accommodation and for providing legal guardianship. However, the COA may also be responsible for unaccompanied minors who are residing in facilities managed by COA, and thus share the responsibility to identify any special reception needs that they may require.

Referral of applicants with special needs

There is no specific mechanism in place for the systematic identification of vulnerable applicants. Article 18a(2) of the Regulation on benefits for asylum seekers and other categories of foreigners 2005 obliges COA to assess whether the applicant is vulnerable, but provides no further indication about the process.

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Reception and care of applicants with special needs and vulnerabilities

Article 18a of the Regulation on benefits in kind for asylum seekers and other categories of foreign nationals 2005 refers to vulnerable persons as referred to in Article 21 of the Receptions Directive. No specific list of the categories of vulnerabilities of persons with special reception needs is included in the legislation, outside of the reference to the Receptions Directive. However, a non-exhaustive list of categories of persons considered vulnerable is provided as an appendix to the IND work instruction WI 2021/19 Special Procedural Guarantees.

Article 18b refers to specific guarantees which must be ensured by the COA for certain categories of applicants, including that minor children must be housed with their parents, their unmarried siblings or with the adult who is recognised by law or practice of the Netherlands as being responsible for them, provided that it is in their best interest. Furthermore, it stipulates that dependent adult asylum seekers with special reception needs must be placed with close adult relatives who are already residing in the Netherlands and are responsible for them.

Article 18c provides that the COA must ensure access to rehabilitation services and qualified guidance for minors who have been victims of any form of maltreatment, neglect, torture, or cruel, inhuman or degrading treatment, or who are victims of armed conflict. Article 18c also obliges COA to provide access to appropriate medical and psychological treatment and care for victims of torture, rape or other serious form of violence.

Reception facilities and other housing arrangements

In general, most vulnerabilities are provided for within the mainstream reception facility structure and the mainstream health care services are used.

Asylum seekers who are not sufficiently capable of functioning independently in a reception center temporarily go to the reception center for intensive guidance and support (*intensief begeleidende opvang, ibo*) in Schalkhaar. They can only go here voluntarily. They could be people with a low intelligence quotient (IQ) or psychological and/or psychosocial problems. In the reception center, their behavior causes problems for staff and other asylum seekers. They stay in the reception center for intensive guidance and support for up to 3 months where they receive training to learn skills to function independently and increase their self-reliance, with the objective to move back as soon as possible to an asylum

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seeker centres. Ibos are open facilities. Habitants are under the duty to report once a week.

Detention of vulnerable persons and applicants with special reception needs

A distinction must be made between territorial detention and border detention. Territorial detention is ordered for the purposes of carrying out an applicant's removal when they have no legal right to stay in the Netherlands. The Aliens Act, Article 59c underlines that territorial detention can only be applied as a last resort, when no other, less coercive measures are available. The Aliens Circular (A), Article A5/2.4 specifically mentions that extra attention must be paid to families with minor children before issuing a detention order prior to departure. The provision stipulates that the detaining authority must take into account the individual circumstance of the case, including the medical backgrounds of the applicants, the age of the children and the family composition to provide a thorough justification for detention. Families with minor children can only be detained if the risk of absconding exists for all family members and the removal can be carried out within 2 weeks. This period can only be extended by 2 weeks if one of the family members physically resists removal or if a family member starts a procedure that he/she could have started earlier – such as lodging an asylum application. However, in the latter case the legal base for detention shifts and the grounds for detention has to be reassessed, with detention time limits starting again.

Border Detention is based on Article 6 and 6a of the Aliens Act and refers to the detention of an applicant whose application for asylum is being processed under the border procedure. Article 5.1a (3) of the Aliens Decree specifies that border detention cannot be imposed when the individual circumstances would make border detention particularly burdensome for the person based on special individual circumstances of the applicant. Additionally, based on article 3.198b of the Aliens Decree 2000, persons who are in need of special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured are exempted from the border procedure and are thus not detained. For these groups, exclusion is not automatic and is decided on a case by case bases.

Furthermore, families with minor children cannot be detained at the border, as a main rule, based on Article A1/7.3 of the Aliens Circular (A). Border detention for

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families can only be imposed when there are indications of possible risks for the mental or physical well-being of the minor child or when the relationship between the adult and the minor child needs to be further investigated: they are typically transferred to the detention facility for families in Zeist. if the risk for the minor child is established, the detention of the child is lifted, while the adult remains in detention and is transferred to the Schiphol complex.

Reception of unaccompanied minors

Article 18b (1)(c) of the Regulation on benefits in kind for asylum seekers and other categories of foreign nationals 2005 specifies that unaccompanied minors must be accommodated with their blood relatives, in a foster family, in special reception facilities for minors or in other accommodation suitable for minors. Article 18b (2) stated that unaccompanied minors who are at least 16 years of age may be provided shelter in reception facilities for adult asylum seekers if this is in their best interest.

Reception facilities and other housing arrangements

Housing arrangements

Unaccompanied minors under the age of 15 are generally in the care of Nidos, who takes on their guardianship and arranges for a foster family. Unaccompanied minors above 15 years are also assigned a guardian, as well as a COA mentor, who both support youngsters throughout the asylum procedure and with everyday issues. The child and the COA mentor, in coordination with the guardian, draws up a guidance plan which sets development goals to accompany each child to independence and adulthood. COA mentors are present 24/7 in reception centres and make sure youngsters good to school, take care of their room and belongings, follow healthy eating habits etc. Young people above 17.5 years are typically more independent already.

Unaccompanied minor under the age of 15 years old are placed in foster families. This is coordinated by Nidos. This programme is referred to as Shelter and Living in a Family Context (*Opvang en Wonen in Gezinsverband* OWD). Specialised guardians regularly visit the family and unaccompanied minor to check in.

For unaccompanied minors between the ages of 15-18, they are placed in a process reception location for unaccompanied minor foreign nations (

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procesopvanglocatie voor alleenstaande minderjarige vreemdelingen, Pol-amv). This facility is managed by COA. Minors will spend their rest and preparation in this facility and are housed here throughout the general asylum procedure. There is 24 hours supervision and applicants are provided with food and living allowances as well as activities. These facilities are located in centres where typically adults are accommodated as well, but with a separate section for unaccompanied minors.

In the case of unaccompanied minors aged between 13-14 years who are unable to be placed in a foster family, there are small scale residential facilities which are managed by Nidos.

Unaccompanied minors over the age of 15 who have been granted a residence permits reside in small scale reception (*Kleinschalige Opvang* – KSO). These are managed by Nidos, municipalities and contracted partners. There are different types of shelters varying in capacity and level of supervisions depending on the level of guidance needed by the minor.

Unaccompanied minors without a residence permit, for example those going through the extended asylum procedure or appealing a first rejection are housed in a small scale housing facilities (*kleinschalige woonvoorziening*, kwv) located outside of the asylum seekers' centre with a maximum capacity of 20 young persons. Mentors are available 24 hours a day.

Location

Unaccompanied minors are accommodated in the central reception location for unaccompanied minors (*centrale ontvangstlocatie voor jongeren, col-amv*) in Ter Apel for a few days for registering and lodging their application.

Specific needs and safety

There are special reception shelters for particularly vulnerable unaccompanied minors. The Perspective Reception Nidos (*Perspectief Opvang Nidos, PON*) is a small scale shelter managed by Nidos which provides personal attention and guidance for vulnerable young persons who are displaying nuisance-causing behaviour. There is also the Protected reception facility (*beschermde opvang*) for minors who are high risk of tracking, honour related violence and child marriage. Minors are referred to the shelter by Nidos which is managed by Xonar. There are special protection measures in place such as supervised internet access and not allowing phones.

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The COA provides professional shelter and support for unaccompanied minors (UAM), aimed at offering these young people a safe place. This also includes preparing them for their future, regardless of whether it lies in the Netherlands or elsewhere. Unfortunately, the COA encounters young people who exhibit concerning behavior, which negatively impacts group dynamics, resulting in unsafe and/or disruptive situations.

For these young people, who are reaching the limits of shelter and support in regular UAM locations, "intensive supervised shelter UAM" (IBA) offers a solution.

This is an UAM reception facility where a specific target group can be temporarily accommodated and where significant attention is paid to their development and behavior. The aim is to make them more resilient during their stay in (UAM) shelter and perhaps also provide them with valuable support for their lives afterward.

The goal of IBA is to organize small-scale reception facilities (approximately 10-12 places) with intensive support for unaccompanied minors (UAMs) with specific support or guidance needs. With intensive support, COA aims to prevent unaccompanied minors (UAMs) who exhibit worrying and disruptive behavior from further deteriorating. Intensive support promotes the healthy development of the unaccompanied minors themselves.

The target group consists of unaccompanied minors aged 13 to 17, who are being cared for by the COA where:

- there is worrying and possibly inappropriate behavior at their current location,
- it is estimated that there is a specific need for support or guidance,
- it is expected that positive behavioral change will be possible within three months.

The above is important to ensure that the IBA program is effective for the young person. It must be assessed in advance whether a young person is sufficiently receptive to support. AMVs who indicate that they are experiencing problems due to their own behavior and want to change this, but this is not possible in the setting where they are currently staying, are also eligible for the IBA.

Age assessments

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Every unaccompanied minor who cannot prove his stated minority with evidence will be examined upon entry. An inspection also takes place if submitted identity documents have not yet been examined for authenticity. Age assessments are conducted by three officers - from the IND, KMar or AVIM. In the case that a medical examination is needed, a referral from a doctor is required and two radiologists perform the examination. The detailed rules for implementing age assessments are laid down in a specific IND work instruction: WI 2023/6 Leeftijdsbepaling [WI 2023/6 Age Assessment]. The decision of an age assessment may be appealed.

Access to education

Children have the right to access the national education system soon after their arrival. The time limit to enrol applicant children is 3 months. Children in compulsory school age (5-15 years, between 16-18 there is a qualification obligation) are registered in school typically 6 weeks after arrival. Children at compulsory school age start in preparatory classes, which are typically organised separately within the mainstream school infrastructure. Nidos and COA mentors are responsible to ensure that unaccompanied minors attend school.

Access to healthcare

Unaccompanied minors are directly entitled to healthcare by the Asylum Seekers' Medical Care Regulation (Regeling Medische zorg Asielzoekers, RMA). This includes all basic health care treatments, such as consultation with a general practitioner or psychologist, hospitalisation, basic dental care, physiotherapy. The treatments covered are listed in detail here in Dutch. COA and Nidos ensure that unaccompanied minors are provided with access to healthcare.

Transition to adulthood

Currently, when unaccompanied minors are registered and identified with an age of 17 years and 9 months or older, they are immediately transferred to regular reception facilities.

Youngsters above 17.5 years are typically placed in a kwv on the territory of an azc to facilitate their transition to adulthood and independence.

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Nidos already starts preparing their transition to adulthood when the unaccompanied minor is about 17,5 years old, jointly with the guidance counsellor or the reception family, and in cooperation with the municipality which will become responsible for the housing, guidance and possible income supplements of when the unaccompanied minor turns 18 years old.

Since 1 January 2023, Nidos has began providing extended support for unaccompanied minors who turn 18 years old and have a residence permit, until they turn 21 years old. These young adult may now stay with their reception family or a small-scale reception facility where they can receive guidance.

Unaccompanied minors, who do not have a residence permit yet, have the same rights as any adult asylum applicant without a residence permit and are placed in regular COA reception centres. They are prepared by COA and Nidos for the transition to adulthood and independence mostly through personal conversations and so-called ‘future trainings’ tailored to their specific future prospects.

Detention of unaccompanied minors

The potential detention of an applicant for international protection is assessed in an individualised manner in the framework of a formal procedure, where the applicant’s specific needs and vulnerabilities need to be weighed against the authority’s interests. The Aliens Act, Article 59c underlines that territorial detention can only be applied as a last resort, when no other, less coercive measures are available. The Aliens Circular, Article A5/2.4 specifically mentions unaccompanied minors and families with minor children.

Based on Article A5/2.4 of the Aliens Circular, territorial detention of an unaccompanied minor is only possible for a very short period when there are very weighty reasons:

1. The unaccompanied minor convicted a crime or is suspected of having committed a crime;
2. A removal is foreseen within 28 days;
3. They have already absconded or did not comply with the duty to report.

As regards border detention, in accordance with Article 3.109b (9) of the Aliens Decree 2000, unaccompanied minors are exempted from the border procedure and thus not detained at the border.

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On the basis of the Aliens Circular A, A5/5, If an unaccompanied minor above the age of 16 causes nuisance at a reception location, a measure restricting freedom of movement on the basis of article 56 of the Aliens Act 2000 (on the basis public order or national security interests) may be imposed by ordering the minor to be transferred to an enforcement and supervision location (*handhaving en toezichtslocatie, htl*). A decision to impose such a measure must be made in coordination with the COA and the applicant's youth protector to ensure that the interests of the child are taken into account. Whilst the htl is not a closed centre, residents need to acquire permission to leave the premises.

Special procedural guarantees

First instance determination for applicants with special needs

In accordance with Article 3.108 of the Aliens Decree, the requirements for special procedural guarantees must be assessed before or during the examination of the asylum application, and appropriate support must be provided when required.

Furthermore, as stipulated in Article 3.109 of the Aliens Decree, applicants are offered a medical examination during the rest and preparation period which they must consent to in writing. Based on this examination, medical advice is offered to determine any functional limitations arising from medical problems of the applicant that could lead to an inability to properly explain the asylum application. The medical advice also serves the purpose of advising the IND on how the applicants limitations may impact the interview and affect the decision making on the asylum application, for example, whether physical and psychological factors may prevent the applicant from providing a coherent, consistent and complete statement to substantiate their claim for asylum.

The IND may request medical advice at a later time during the procedure if the need arises.

Article 3.115 of the Aliens Decree provides for the possibility of extending the regular asylum procedure in the case that the applicant requires special procedural guarantees or if more time is needed to complete the procedure based on the medical examination.

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Based on the medical advice provided following the medical examination, the IND must determine what appropriate support may be necessary. This may include that a personal interview cannot be held, the postponement of the start of the regular asylum procedure, that special arrangement are made during the personal interview , that the IND decided before the start of the regular asylum procedure to extend it, or a combination of the above.

Furthermore, the IND can initiate a forensic medical investigate in accordance with Article C1/4.6 of the Aliens Circular (C) in order to provide further evidence of past persecution or serious harm, that may influence the IND's decision on granting asylum. The IND may ask a third party to conduct the examination.

The IND has issued working instructions which provide guidance on how the IND identifies vulnerabilities and provides procedural support: WI 2021/19 Special Procedural Guarantees (includes an appendix with a non-exhaustive list of categories of vulnerable applicants) and WI 2024/9 Medical Problems and hearings and decisions in the asylum procedure.

Access to information

As is the case for all applicants, applicants with special needs receive information about the asylum procedure typically from the IND when registering their applications. Information is shared through a combination of written materials, oral explanations, and digital resources. The IND primarily provides oral explanations during interviews, and the Dutch Council for Refugees offers additional guidance. The IND and Dutch Council for Refugees also maintain websites that provide accessible information about the registration and asylum processes.

For applicants with specific needs, such as unaccompanied minors (UAMs) COA staff are trained to assess vulnerabilities and provide tailored information. Vulnerability focal points among COA staff ensure applicants with special needs receive adequate support. Furthermore, MyCOA platform provides hyperlinks to external partner organizations for additional assistance.

Personal interview

In the case where the medical advice specifies limitations that could impact the personal interview, the IND assesses whether it is possible for the interview to be

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held in a careful manner. If an interview is held, the IND case worker must indicate in the file which additional support is necessary, and contact can be made with the applicant's representative to see how best to support the applicant.

The work instructions provide the following examples of measures that can be taken in relation to the personal interview:

- The possibility of postponing the interview
- The possibility of having a confidant of family present
- The possibility of the authorised representative being present
- Dividing the interview over several days
- Holding the interview at a location other than and IND location
- Timing and planning the interview taking into account any interference from possible medications (example sleeping pills)
- Taking regular breaks
- Allowing the applicant to stand up/walk around during the interview
- Providing regular feedback on what has been explained
- Varying the degree of probing on specific topics of the story
- Taking into account reduced ability to provide coherent and consistent explanations (example by asking further questions, clarifying questions or rephrasing questions)

This list is non-exhausted and a customised approach to tailoring solutions is emphasised.

At the end of the interview, the interview report must demonstrate which procedural guarantees have been applied and how the applicant's special needs have been taken into account and any attempts to provide individualised solutions. In the case that it emerges during the hearing that the applicant has serious psychological problems which are limiting their ability to fully explain their asylum story, the caseworker may decide to discontinue the interview if it would not be possible to provide the necessary support at that time.

In the event that a personal interview cannot be held, alternative forms of information gathering are used. This may include information/hearings from family members, information from practitioners, through individual research by the Minister of foreign affairs, requesting information from another Dublin country where the applicant has previously applied for asylum, information from authorities representatives example Refugee work, Nidos etc, or even a written account by the applicant.

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Legal assistance

At first instance and on appeal, legal assistance is provided to all applicants, including those with special needs, and the general rules are applied.

Guarantees for unaccompanied minors

Article 3.109b (7) of the Aliens Decree 2000 exempts unaccompanied minors from their applications being processed in the border procedure.

Article 3.109d (1) provides that unaccompanied minors shall be immediately informed of the appointment of a legal guardian to assist and represent them.

Article 2.11. of Chapter C1 of the Aliens Circular (C) provides that an unaccompanied minor can only be interviewed from above the age of 6 years old and in the presence of their guardian. Furthermore, unaccompanied minors under the age of 12 must be interviewed in a specially equipped, child friendly space, and another solution may be found if a medical examination shows that the child may have circumstances which impede a further interview.

Making, registering and lodging an asylum application

An unaccompanied minor receives a minimum of three weeks to rest and prepare before the start of the procedure.

A team from NIDOS is present at the application centre in Ter Apel and a special team was also established at the IND location in Den Bosch. Mobil teams were set up to receive unaccompanied children at Schiphol airport and at the Rotterdam harbour.

Unaccompanied minors can lodge asylum applications on their own. When under the age of 12, the legal capacity to lodge the application stands with the guardians or legal representatives, and unaccompanied children younger than 12 do not undergo the application interview.

Information provision

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During the asylum procedure, including the Dubin procedure, brochures adapted specifically for unaccompanied minors are provided by the IND. Additionally, unaccompanied minors receive information on the asylum procedure through their legal guardian (Nidos), as well as the COA who provides individual support.

Best interests of the child in the Dublin procedure

There are no specific procedures or additional factors considered to assess the best interests of the child for outgoing transfers.

When an incoming request from another Member State is based on Article 8(2) of the Dublin III Regulation, the Child Protection Board | Raad voor de Kinderbescherming of the Dutch Ministry of Justice and Security investigates whether the relative can take care of the child and assesses the best interests of the child.

Personal interview

Unaccompanied children go through an interview when they are older than 6 years. The presence of an unaccompanied child is not required during the interview, when their age would not allow for communication - this is presumed to be under the age of 6 years. A legal guardian of an unaccompanied minor may be present but the representative is only allowed to observe (silent presence). Unaccompanied minors over the ages of 12 are joined by their guardian or VWN. Minors under the age of 12 are interviewed by a specially-trained IND employee in a child-friendly room. Video recording is available only for unaccompanied minors under the age of 12 years.

Legal representation during the asylum procedure

The law provides for a guardianship to be arranged for any unaccompanied minor coming to the Netherlands. The Nidos Foundation is the organisation responsible for organising this guardianship. Present during the registration/lodging phase, it officially applies for guardianship before a court for each unaccompanied child and appoints one of its staff members to act individually on behalf of Nidos once the court has assigned the guardianship to it.

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The minor has to give his/her own consent to it. Before the court appointment, Nidos staff acts as an advocate for the child. According to the Jaarverantwoording Nidos 2022 [Annual Report Nidos 2022] the average time between the Nidos intake interview in Ter Apel and the court decision was 24 days in 2022, up from 18 days in 2021.

Legal assistance and counselling

The Legal Aid Board | Raad voor Rechtsbijstand is responsible for providing legal to unaccompanied minors. In the case of unaccompanied minors, the legal adviser can be appointed as a legal guardian in addition to providing legal assistance and representation.

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