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Committee on Civil Liberties, Justice and Home Affairs

Report
from the Committee on civil liberties, justice and home affairs on the delegation to the Netherlands

RAPPORTEUR: Simon BUSUTTIL

Introduction

A delegation of four MEPs (see list of participants - annex 1) travelled to the Netherlands on the 19th of December 2007. The delegation was chaired by Martine ROURE (PSE) and the designated Rapporteur was Simon BUSUTTIL (EPP-ED)[1].

The object of the delegation was to ascertain directly the situation regarding the reception of asylum seekers and irregular migrants in the Netherlands, to analyse the current situation of the Schiphol Detention Centre for Illegal Migrants and to make an evaluation as to how the relevant EU directives and regulations are being implemented in that country.

The abovementioned Directives referred to the following:

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standard for the reception of asylum seekers (Reception Directive);
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status[2] (Procedure Directive);
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [3] (Dublin II Regulation).

This visit to the Netherlands followed similar delegations to Italy (Lampedusa), Spain (Ceuta and Melilla, Canary Islands), France (Paris), Malta, Greece (Samos and Athens), Belgium, and

[1] See List of Participants, Annex 1
[2] *Official Journal L 326, 13&12&2005 P. 0013 - 0034*
[3] *Official Journal L 050 , 25/02/2003 P. 0001 - 0010*

the UK.

The agenda of the delegation included a visit to the Schiphol Detention Centre[1], a meeting with the Dutch Secretary of State for Justice, Mrs Nebahat ALBAYRAK at the Ministry of Justice (The Hague) and a meeting with several organisations involved in visiting detainees in detention centres or otherwise locally active in the field of asylum and immigration (see List of organisations - Annex 3).

Before travelling to the Netherlands, the delegation received information from organisations and NGOs active in the field of immigration and asylum, such as Amnesty International, the Dutch Council for Refugees, the European Council for Refugees and Exiles, Dutch League of the Human Rights, BLinN (Bonded Labour in the Netherlands), Defence for Children International, Kerkinactie and from Professor Van Kalmthout.

The members were also given documents from NGOs and Government agencies concerning the modalities of asylum and immigration in the Netherlands, as well as specific information regarding the procedure for minors and administrative detainees.

The delegation was accompanied by the Audiovisual Service of the European Parliament working with a local TV crew. The idea was to present that activity of the LIBE Committee through Europe by Satellite (EbS). The visit received good press coverage. The MEPs gave a press conference together with the Secretary of State for Justice, after the meeting with her at the Ministry of Justice in The Hague.

Background

2.1 Legislation and services responsible for the implementation of the immigration policy

The 2000 Aliens Act, which came into force in April 2001, simplified asylum procedure and made it more efficient.

The agency responsible for implementing the Aliens Act is the Immigration and Naturalisation Service (IND - Immigratie- en Naturalisatiedienst). The agency reports to the Ministry of Justice and is responsible for processing all applications for entry and stay in the Netherlands, including those for asylum.

Other parties involved in the implementation of aliens policy are the:

- **Royal Marechaussee**
  In charge of:
  - Reception of foreign nationals at the Dutch/Belgian and Dutch/German borders, sea ports and airports (primarily at Schiphol Airport).

[1] Detentiecentrum Noord-Holland, Ten Pol 64, 1438 AJ OUDE MEER

- Escort of foreign nationals that have exhausted all legal remedies and are not allowed to stay in the Netherlands and the escort of anyone denied access at the Dutch border

- **Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers (COA))**
  In charge of:
  - Providing housing for asylum seekers, making sure that asylum seekers use existing social and health-care institutions.
  - Offering activities that increase the asylum seekers' chances of an independent life, both in their country of origin and in the Netherlands.

- **Repatriation and Departure Service (Dienst Terugkeer & Vertrek)**
  - Since 1 January 2007 the return of foreign nationals who are not entitled to stay in the Netherlands has been dealt with by the Repatriation & Departure Service. This is an executive organisation of the Ministry of Justice.

- **International Organisation for Migration (IOM)**
  In charge of:
  - Offering support for foreign nationals who voluntarily return to their country of origin.

2.2 Dutch Asylum Legislation and Application for Asylum

Under Dutch Asylum law, there are six cases under which asylum may be granted. These are the following:

(a) in case of refugees under the terms of the Convention;

(b) when a person makes a plausible case that he has good grounds for believing that if he is expelled he will run a real risk of being subjected to torture or to inhuman or degrading treatment or punishment;

(c) when a person cannot, for pressing reasons of a humanitarian nature connected with the reasons for his departure from the country of origin, reasonably be expected, in the opinion of the Minister, to return to his country of origin;

(d) when return to the country of origin would, in the opinion of Our Minister, constitute an exceptional hardship in connection with the overall situation there;

(e) when the person belongs, as husband, wife or minor child, to the family of an alien as referred to at (a) to (d), has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a residence permit for asylum;

(f) when a person, as the domestic partner or adult child, is dependent on the alien referred to at (a) to (d) to such an extent that he belongs for this reason to the family of this alien, has the

same nationality as this alien and has entered the Netherlands either at the same time as this alien or within a period of three months of the date on which the alien referred to at (a) to (d) has been granted a residence permit for asylum.

A person wishing to apply for asylum can submit an application to one of the Immigration and Naturalisation Service (IND)'s three application centres: Ter Apel, Zevenaar or Schiphol. The application may be made either at the time of entry, usually after the alien has been intercepted by the authorities whilst attempting to enter the country illegally, or subsequently, after entry has been gained.

If the asylum seeker asks for asylum after entry (landside), they should make a claim at the Application Centre Ter Apel. Such a person is usually put in a temporary reception centre and would return to the application centre either in Ter Apel or in Zevenaar for interview purposes.

If the asylum seeker asks for asylum before entry (airside), the person is taken to the application centre at Schiphol within a few hours. Subsequently they will be denied entr into the country and will be placed in a detention centre.

Almost none of the asylum seekers at Schiphol Detention Centre are in possession of a valid travel document or a valid travel document with the required visa and sufficient means to defray both the costs of the stay in the Netherlands and the costs of the journey to a place outside the Netherlands where the entry is guaranteed.

The procedure for seeking asylum begins at the moment the application is signed.

a) Initial interview

The first stage is an initial interview, which serves to establish the identity, nationality and itinerary of the foreign national.

It is here that the application is screened to determine whether, in accordance to the Dublin Procedure, the Netherlands is responsible for processing the application or whether it is actually incumbent on another Member State to do so. If another Member State is responsible, the IND requests the State in question to take over the application. As soon as the other State agrees to take this over, the asylum seeker would travel to that State within a six month period. Nevertheless, IND can always opt for treating the application itself, even in cases where other Member States are responsible.

Following the initial interview, the IND looks into whether the asylum application merits further processing in the application centre (Accelerated Procedure), or if the asylum procedure should be continued in the screening office (Normal Procedure).

This gives rise to 2 possibilities:

- Accelerated Procedure: the IND expects to reach a decision within 48 hours (four to six working days). The asylum seeker then receives a second, detailed interview in the application centre.

- Normal procedure: the investigation requires more time. The asylum procedure continues in a processing office of the IND. The asylum seeker usually goes to a reception centre of the Central Agency for the Reception of Asylum Seekers (COA). This application for asylum must be dealt with within six months. This has been laid down by law.

A six-month treatment term commences as soon as an application has been submitted. It can be extended with another 6 months if more research, for example by a third party, is needed.

b) Detailed interview

i) Case of Accelerated Procedure:

The asylum seeker whose claim is dealt with in an accelerated procedure has two hours to submit corrections in the transcripts of the first interview, for which he receives legal assistance and, if required, an interpreter.

The two hours are also used to prepare for the next interview, where the asylum seeker must give all relevant information and raise all relevant issues. Before rejecting an asylum claim, the IND has to notify the applicant of its intended decision to reject the application. The asylum seeker has the opportunity to comment and respond within three hours. Only at this stage, the IND can decide on the asylum application.

Again, the IND can reject the asylum application, in which case the applicant may ask for a judicial review. Alternatively, the IND can refer the asylum seeker to the regular determination procedure.

ii) Case of the Normal Procedure:

If an application for asylum cannot be dealt with within 48 hours, the application will be taken over by a Screening Office. In the meantime, the asylum seeker would be at a reception centre provided by the COA (Central Reception Organization for Asylum Seekers), at least until a decision has been taken on the application.

A legal advisor and, if necessary, an interpreter would assist the applicant during the detailed interview. A report of the interview is given to the asylum seeker, who can check it together with their lawyer. The asylum seeker has the option to submit corrections and additional information to the authorities.

Before rejecting an asylum claim, the IND has to notify the applicant of its intended decision to reject the application. The asylum seeker has the opportunity to comment and respond within four weeks. Only at this stage, the IND can decide on the asylum application. The first instance decision must be made within six months.

c) Judicial Review

i) Appeal before the District Court

In both types of procedures, accelerated as well as normal, the asylum seeker has the right to appeal against a negative decision before the District Court. In the accelerated procedure, the appeal has no suspensive effect, but the asylum seeker may ask the court to allow him/her to remain in the country while awaiting the outcome of the appeal. In most cases, before the applicant is removed, the authorities await the outcome of the Court's decision.

In the case of a positive decision on either the request to stay in the country, or on the appeal, the applicant is then referred to the normal determination procedure. The District Court usually decides on both requests at the same time.

ii) Appeal before the Council of State

If the first appeal, against the rejection of the asylum claim, is rejected, the applicant can appeal at the Administrative Jurisdiction Division of the Council of State (AJD). This appeal also does not have suspensive effect. The applicant can however request a positive decision from the AJDC regarding his/her right to remain in the country whilst awaiting the outcome of the appeal. Removal is nonetheless possible before the AJD's decision on the request.

d) Final Decision

Following a final negative decision on their application in the accelerated procedure, rejected asylum seekers are ordered to leave the country immediately. People under the normal procedure are usually given 28 days to leave the country voluntarily. If they fail to do so, they can be forced to return.

2.3 Statistics

According to latest IND statistics, a total of 9,731 applications for asylum were recorded in the Netherlands in 2007. Most asylum applicants came from Somalia, Iraq, China, Nigeria, Iran, Afghanistan, Burundi, Sierra Leone and Eritrea. In 2007, 1,063 persons were granted asylum.

2.4 Detention

The Aliens Act allows the detention of irregular migrants on the basis of two provisions:

1. **Section 6**[1] - concerns foreign nationals who have been refused entry at the border. The main purpose of the detention is to prevent them from entering the country illegally.

[1] *Section 6*
1. An alien who has been refused entry into the Netherlands may be required to stay in a space or place designated by a border control officer.

They can be put in a police cell for a maximum of 15 days after which they must be transferred to an institution with a lighter regime than normal in an ordinary penitentiary institution.

2. **Section 59**[1] - this section applies to the majority of the foreign nationals who have already entered the Netherlands, whether legitimately or not, but whose stay is not or no longer valid. The main purpose of the detention is to facilitate their forced removal and to prevent them from absconding.

Every person who is refused entry to the Dutch territory can be detained. Rejected asylum seekers, whose repatriation travel documents are either on hand or are soon expected to be on hand, can also be detained. If after interrogation by the Aliens Police, a reasonable suspicion exists that a foreigner indeed has no valid residence permit, he/she is usually confined to police cell (for a maximum of 10-15 days), followed by transfer to a detention centre or another penitentiary institution. The asylum seekers are deprived of their liberty and taken to the AC at Schiphol where their asylum application is assessed.

2.5 Appeal against deprivation of liberty

After 28 days of detention, the IND is obliged to notify the detention to the District Court, if the person detained has not already appealed against the decision himself.[2] This notification is considered to be an appeal. The court session would take place not later than 14 days after the notification or the appeal have been received. The Court will then reach a decision within

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2. A space or place as referred to in subsection 1 may be secured against unauthorised departure.
3. Rules relating to the regime applicable to the secure space or place referred to in subsection 1, including the requisite administrative measures, may be laid down by Order in Council.
4. An Order in Council adopted pursuant to subsection 3 shall be laid before both Houses of the States General. It shall enter into effect on a date to be fixed by royal decree, being more than four weeks after it is laid before the States General, unless at least a fifth of the constitutional number of members of one of the Houses expresses a wish within such period that the subject be regulated by statute. In such a case a Bill to this effect shall be introduced as soon as possible. If the Bill is withdrawn or is defeated in either of the two Houses of the States General, the Order in Council shall be withdrawn.

[1] *Section 59*
1. If necessary in the interests of public policy (ordre public) or national security, Our Minister may, with a view to expulsion, order the remand in custody of an alien who:
(a) is not lawfully resident;
(b) is lawfully resident on the grounds of section 8 (f) and (g).
2. If the papers necessary for the return of the alien are available or will shortly become available, it is deemed to be in the interests of public policy (ordre public) that the alien be remanded in custody, unless the alien has been lawfully resident on the grounds of section 8 (a) to (e) and (l).
3. An alien shall not be remanded in custody or the remand shall be ended as soon as the alien has indicated that he wishes to leave the Netherlands and also has the opportunity to do so.
4. Remand in custody pursuant to subsection 1 (b) or subsection 2 shall in any event last for no longer than four weeks. If section 39 has been applied prior to the decision on the application, the remand in custody pursuant to subsection 1 (b) shall in any event not exceed six weeks.

[2] Previously, the Aliens Act foresaw an automatic periodic review every 28 days of detention, but this provision was amended in 2004 so that only one automatic review is made after the first 28 days, and all subsequent reviews have to be specifically asked for by the detainee or his lawyer.

another 7 days. Both the IND and the detained person can appeal against this decision of the court to the Administrative Justice Division of the Council of State. The detained person can appeal against the prolongation of the detention at any time. This decision of the District Court is not open to appeal at the AJDC.

2.6 International Conventions and European law

The Netherlands are a state party to most of the core human rights conventions, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the European Convention on Human Rights and the Geneva Convention on the Status of Refugees of 1951 and its Protocol.

The Netherlands adhere to the Convention on the Rights of the Child with the reservation that a child who has been detained will not always be accommodated separately from adults, as well as that the provisions of the Convention shall not prevent the application of adult law to a child who has attained the age of 16 years.

The European directives and regulations on asylum apply to the Netherlands. However, according to a European Commission's report of November 20071, the Netherlands is among the EU Member States mentioned by the Commission which do not consistently apply the Reception Directive in detention centres, and that withdraw reception conditions in situations not authorised by the Directive. Furthermore, with respect to detained minors, the Report notes an unsatisfactory level of educational facilities. The Commission recalls that the Directive does not allow for exceptions concerning its applicability and that its provisions should apply to all types of premises, including detention centres.

Meeting with organisations and NGOs

The meeting took place at the World Meeting Centre BIMS at Schiphol Airport, on the 19th of December 2007, and preceded the visit to the detention centre. The invitees consisted of organisations that visit the detention centers regularly, or that are otherwise active in the areas of asylum and immigration. (see Annex 3)

The organisations were very efficient in delivering their presentation. The members of the delegation listened carefully to the NGOs, with the reservation that the information given by the NGOs could not be verified by the delegation.

It is interesting to note here that most of the concerns raised by the NGOs pertained to provisions of Dutch asylum law, rather than to the conditions prevailing in the detention centres, even though the latter were also criticised.

[1] Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, COM(2007) 745 final

The main concerns of the NGO identified during the meeting as well as in the written submissions to the delegation, can be outlined as follows **:**

3.1 Nature of detention

NGOs claimed that:

a) The persons who are being detained did not commit any criminal offence. Many of them fled persecution and wars and most of them left their countries with the hope of escaping poverty and building a future in the Netherlands or elsewhere. Nevertheless they are being treated like criminals. Detention has also been on the increase in the past years.

b) The mindset on migrants is also worrying. Once they are in detention they are deemed to be illegal and criminal.

c) Unnecessary detention is occurring often even though it would be sometimes be clear that the removal of the immigrant is unlikely anyway (due to lack of documents, refusal of the country of origin to cooperate, etc.). They claim that this goes contrary to the rule that a rejected asylum-seeker may be detained only if there is a realistic prospect for his removal.

d) In the case of irregular migrants discovered after they have gained access to Dutch territory, the mere fact of not having reported themselves, leads to a presupposition that they will abscond, without there even being a clear definition of what constitutes 'absconding'. This leads to unnecessary cases of detention.

e) Alternatives to detention are not being explored. Such alternatives would for example consist of regular reporting or else in applicable cases letting migrants stay with their relatives in the Netherlands.

f) In the ambit of Article 6 of the Aliens Act concerning border detention by sea and by air, a 48 hour procedure commences and a decision has to be taken as to whether a migrant is to be transferred to a detention centre or not. From this point onwards an investigation has to take place within 6 weeks. Although this procedure is widely applied, it is not clear on what basis it is triggered off. [1] Migrants end up staying in detention for approximately 100 days on the basis that such a prolongation would be justified upon a 'need for investigation'. Nevertheless, even when this happens there is no justification as to why detention lasts for more than 6 weeks.

g) The Dublin Regulation also has the effect of increasing detention. Migrants are transferred to a detention centres and stay there for approximately 86 days. During this period of time their cases are usually not looked into.

h) NGOs claimed that migrants with a "B9" permit should never be held in detention.

3.2 Duration of detention

NGOs claimed that:

a) The lack of a time-limit for detention is a problem. They noted that the Netherlands is one of the EU countries which does not provide a time limit for detention. The Aliens Act 2000 contains no limitation on the detention of irregular migrants. Nevertheless NGOs acknowledged that the judiciary developed a six-month 'maximum' period for detention. In practice, after six months of detention, the Courts tend to give weight to the rights of the detainee, rather than to the considerations of the State.

b) The duration of administrative detention of irregular migrants can in practice sometimes last from 12 months up to a year and a half when public order aspects are involved. Here there has been a rise in the practice of increasing detention periods by invoking public order aspects.

c) With the entry into force of the new Immigrants Act, there has been the abolishement of judicial review terms due to the backlog in cases. Unfortunately not all immigrants have good lawyers. There was a specific case whereby a migrant was held in detention for 16 months and was only released after the Refugee Council brought this case to light.

d) A statutory limitation by law for the administrative detention of asylum seekers and irregular migrants must be established.

3.3 Detention conditions

NGOs claimed that:

a) Detention conditions are far worse than those of "ordinary" Dutch criminals.

b) In many cases, four to six people are being detained in one cell. Besides the lack of privacy, people of different languages and cultures are being placed together, giving rise to unnecessary tensions.

c) There is bad access to medical services, including physical as psychological services. Persons who had serious disease-complaints, were denied access to a medical doctor and were only given tranquillizers. This is especially the case in "Kamp Zeist" and in the Rotterdam detention boats.

d) Detainees are not being given any work and recreation facilities are very poor. This is leading them to an unsound psychic state of mind.

e) There are many complaints about the quality of the food and the lack of hygienic conditions, especially on the Rotterdam detention-boats.

f) Migrants at the "Kamp Zeist" centre are only allowed out of their cells for a three-hour period.

g) There are also many complaints concerning general treatment by the guards, who tend to be non-qualified for the job. Some NGOs reported several accounts of harsh punitive sanctions against detainees. It was stated that there is physical violence against detainees – for example beating is a regular occurence, especially by the 'Royal Marechausee'.

h) They fear that accidents, such as the fire that took place at the Schiphol detention centre, are prone to happen again. Despite such risks, there are still a number of detention centres, like the Rotterdam detention boats and Kamp Zeist, where conditions have only been improved superficially or else not improved at all. On the night of 27 October 2005, 11 irregular migrants perished in a fire that broke out in the removal facility at Schiphol Oost, 15 others (including guards) were injured.

i) There is no detainees commission or other entity which safeguards the collective rights of migrants in these detention centres.

j) There are also serious doubts about the observation of the Reception Directive. Moreover the Istanbul Protocol is not in place and is not being applied.

3.4 Detention of Vulnerable groups

NGOs claimed that:

a) Victims are not being singled out from other migrants. For example as a consequence of this, following the outcome of entry procedure into the Netherlands, a number of Nigerian girls ended up in the hands of prostitution rings in Germany and Italy.

b) The detention of vulnerable persons, especially children has been a matter of considerable concern for NGOs. There is no statutory prohibition in law to detain vulnerable migrant groups such as victims of human rights violations, including victims of human trafficking, traumatized migrants, unaccompanied minors and migrant children and their families.

c) In 2006, a campaign against the detention of migrant children and their families took place, with the consequence that the number of migrant children and their families in detention decreased significantly. The Dutch government also announced more structural policy improvements. However concrete proposals are still pending.

i) Victims of human trafficking

NGOs claimed that:

a) Victims of human trafficking can be arrested on the basis of being 'irregular' and placed into detention as aliens. This happens especially in cases of border detention. The purpose of these forms of detention is to arrange for their return to their country of origin. However NGOs estimate that only half of all detainees can actually be sent home. The rest are eventually released without their illegal status being resolved. This makes their detention futile in the first place.

b) Victims of human trafficking who are not recognized as such in detention end up either being sent back to their countries of origin or else released. In both cases they risk running into their traffickers and being put back to work under exploitative conditions. Nevertheless NGOs acknowledged that victims recognized as such can make use of a three month reflection period. If they decide to cooperate with the police they are entitled to special witness protection based on the "B9" Regulation, temporary residence, housing in a shelter, medical insurance, legal aid and social assistance.

c) It is a matter of concern that although the Netherlands signed the Council of Europe Convention on Action against Trafficking in Human Beings (2005), its ratification was still pending.

ii) Children and Minors

NGOs claimed that:

a) Of all refugees who come to the Netherlands, more then a quarter are under 15 years old. Although many young people flee with one parent or both, there is also a fair percentage of unaccompanied minors.

b) More than 30% of child asylum seekers in the Netherlands have their applications considered under the accelerated procedure. Moreover child asylum seekers as young as four are frequently interviewed without a lawyer or guardian present.[1]

c) Some interviews with children focus on questions that are inappropriate considering the childrens' age and maturity.

d) There have also been violations of international and regional standards in the current policies and practices for determining whether a child is unaccompanied and therefore in need of care and protection, including state supported efforts to trace families and repatriate them. In many cases government assigns responsibility for the care of unaccompanied children to distant relatives resident in the Netherlands, even where those relatives may be unwilling or unfit to assume that responsibility.

e) There are minors who are being held at the Schiphol detention centre to await an age test. This test consists of taking photos of certain bones and involves no psychological evaluation. The reliability of this test is very controversial as it is can qualify many minors as adults.

f) The detention of children with their parents, goes contrary to the International Convention on the Rights of the Child, which was ratified by the Dutch government in 1995. Children from early ages, ranging from infants to teenagers are being incarcerated, especially at Heerhugowaard, Kamp Zeist and Zestienhoven centres.

g) Children in detention are being denied the right on free movement, education and play-facilities. This can be very traumatic.

h) With regard to detention, Dutch authorities are not applying the last resort principle for all minors, but only for the age group up to 16 years. As a result minors over 16 years of age may be detained with adult detainees.

i) Children are being handcuffed and put into isolation cells.

j) Guards are trained to deal with criminals rather than with children.

k) Unaccompanied persons between 15-25 years should be given more care. When minors turn 18 years, they are being given a train ticket and put out on the street.

l) Overall, Dutch treatment of child asylum seekers raises questions about its commitment to pursue asylum policies that serve the best interests of these children as required under the UN Convention on the Rights of the Child.

3.5 The accelerated procedure

NGOs claimed that:

a) Efficiency triumphs over protection in Dutch Asylum Policy. According to NGOs accelerated procedures have become the rule in the Netherlands and the aim is to increase this trend as much as possible.

b) Generally vulnerable and traumatized asylum-seekers, including children, require time to establish trust and confidence in the person(s) responsible for determining their claim, before they can explain the reasons for their flight or the cause of their trauma. Persons raising gender-related claims and survivors of torture or severe trauma in particular, require a supportive environment where they can be reassured of the confidentiality of their claim. The accelerated procedure does not permit the time required to establish the necessary confidence and trust.

c) The mechanism intended to speed the processing of asylum applications – the accelerated procedure in the *aanmeldcentra* (reception centres) or the "AC procedure"- is being used inappropriately and with little opportunity to remedy errors through a meaningful judicial review.

d) The accelerated procedure also does not allow enough time for the asylum seeker to rest, to be informed on the asylum procedure, to consult with his lawyer and to gather evidence to support his asylum claim, nor does it have set criteria for rejection. The consequences are worse in the cases of unaccompanied minors, traumatised people and people from countries with widespread human rights abuses.

e) The procedure may also lead to a violation of the *non-refoulement* principle, as it does not allow the asylum seeker adequate time to substantiate his claim and could therefore lead to his repatriation to a country where he is open to persecution. The lack of judicial review opportunities aggravates this point.

f) An appeal against a decision taken in an accelerated procedure does not have an automatic suspensive effect, even though this may be requested specifically. Case law has made it extremely difficult in practice to obtain such a suspensive effect which leads protection against unjustified expulsions. Here NGOs recommend that appeals against negative decisions in the first instance should generally be granted automatic suspensive effect.

3.6 Limited access of NGOs to the centres

NGOs claimed that:

a) Dutch organizations may be listed by the Ministry of Justice as non-judiciary organizations with access to detention centres. However access is limited to official visits in separate visiting rooms. A visit may be scheduled only after the persons who have to be visited are determined. This is proving to be an obstacle to reach potential victims and other target groups such as minors. NGOs need broader and more flexible access to migrants in detention centres.

b) There are also problems for church and humanitarian groups who would like to make regular visits in centres.

c) Only specific groups of 'irregular' migrants can be reached. In cases of border detention only those who have applied for asylum are accessible. Those who arrive at the airport and do not apply for asylum are placed in a separate wing in the detention centre where, they have no access to legal aid, or help from NGOs. Amongst them there may well be minors, victims of trafficking and refugees who should be informed of the possibility they have to apply for asylum.

d) Information to the general public about what goes on in these centres is scant. NGOs also claimed that there is also a lot of pressure to prevent parties who have access from speaking about issues of suspected inhuman treatment.

3.7 Other Concerns expressed by NGOs

NGOs claimed that:

a) The increase in expulsion orders is worrying. This order treats a person as if they were a criminal and is being used on persons who have not committed any crimes. Over 1000 persons are being subjected to this treatment. The situation is aggravated when other family members are included in the order. 40% of the persons who are detained, are subsequently expelled.

b) The Aliens Act 2000 provides for the possibility of imposing an exclusion order on an irregular migrant by declaring him an undesirable alien. As a consequence, a migrant's right to legal residence ends or is prevented and as long as the order lasts, a migrant cannot successfully apply for a residence permit or asylum. The return or continued presence in the Netherlands following an exclusion order constitutes a crime punishable with a maximum of six months imprisonment.

c) Those who are expelled with a notice to leave the country, following the rejection of their application, are left out in the streets. They are destitute and cannot make a living. There is also grave concern about women who are released in this manner. They do not have any right for proper living arrangements, housing and medical services.

d) The Border Detention Regime and the Penitentiary Principle Act are based upon a criminal regime. Nevertheless, migrants cannot benefit from a number of criminal regime rights.

e) Politicians are giving irregular immigrants and asylum seekers a negative image, labelling them as economic refugees and sometimes as criminals. This is resulting in a serious lack of human rights considerations in the public opinion and also in political debates concerning asylum seekers, irregular immigrants and other migrants.

f) At the time of the visit, ratification of some international instruments was still pending. Like a number of other European countries, in December 2007 the Netherlands had still not signed the International Convention on the Rights of all Migrant Workers and Members of their Families (the 'Migrant Workers Convention', 1990) In addition while the Netherlands did sign the Council of Europe Convention on Action against Trafficking in Human Beings (2005), its ratification was still pending.

g) Asylum is being used as a tool to control migration flows and to dissuade potential asylum seekers. The right to asylum cannot be derogated, since it is not an additional right given by Member States, but a right that each human being can claim pursuant to the Geneva Convention.

h) Insufficient time is given to the asylum seekers to have their papers arranged in preparation for their return. By forcing rejected asylum seekers, sometimes with children, out of the reception system, the Dutch authorities are forcing people to live out on the streets.

i) There are also issues concerning the availability of data on immigration. Reports on immigration developments were recently shortened and limited to main developments only. They are also being published less frequently (once every half year, instead of three times a year). Moreover specific detailed data on vulnerable groups in detention, such as migrant children and their families, is not being published.

Visit of the centre

The agenda of the mission included a visit to the Schiphol detention centre. During the visit delegates were given a presentation and a guided tour of the centre with the Director of the Detention Centre, the Deputy Director Immigration Policy Department as well as officials from the Application Centre and from the Repatriation and departure service. The delegation also had the opportunity to speak to a number of migrants staying at the centre and to subsequently ask questions to the representatives of the centre.

The presentation was given at the beginning of the visit by Mr HP SCHREINEMACHERS who is Deputy Director Immigration Policy Department.

The following representatives were available to answer questions:

- Alfons MOOREN - Director of the Detention Centre
- HP SCHREINEMACHERS - Deputy Director Immigration Policy Department
- Vincent VUIJK - Repatriation and Departure Service
- Michiel MEINARID - Unit manager Application Centre
- Theo THIJM - Deputy Unit manager Application Centre
- A Representative of the Royal Marechaussee (border police)

4.1 Introductory Presentation

During the first presentation the Deputy Director mainly made the following points:

1) Asylum seekers apply in an application centre. 75% of applications are made in places other than Schiphol, whilst the other 25% are made there. Those who apply in other centres are not detained. Those detained are the ones who are refused entry at the border.

2) If a person who has been refused entry at the border, applies for asylum, the person is placed in the closed application centre at Schiphol and the procedure is triggered off. If possible the claim will be dealt with within 48 working hours. If the claim cannot be dealt with within this time, there is a 6 week period for this to take place, and they will be transferred to a detention centre.

3) Aliens found with an irregular status in the Netherlands are also taken into detention. If they request asylum, there is the 6 week period for their application to be processed. These persons are not kept at Schiphol, but in other centres. Their food, care and educational needs are met.

4) A Commission report gave an indication of how the Netherlands was respecting guidelines.[1] For the 25% being kept in Schiphol, the report concluded that the centre was adequate. Nevertheless there was some criticism on the material needs of the migrants.

[1] COM (2007) 745 final

4.2 Tour of the Detention Centre

1) Delegates were shown a room where the belongings of migrants are stored as soon as they arrive. When migrants arrive at the airport they have baggage and other belongings. Sometimes they also have money with them. This baggage is safely stored in these rooms, which are guarded by cameras. Two persons have keys to these rooms.

2) During the intake period, staff enquire about eating habits, medical needs and take in migrants' luggage and any other money / papers they might have. A photo of the person and other data are taken and a free telephone card is given to them.

3) Delegates were told that around 10,000 persons per year go through the Schiphol detention centre. There are 308 places in all. The logistics become complicated at times leading to personal effects being lost around 3 to 4 times a year.

4) The delegates were shown the reinforced reception cells in which migrants are put in when they first arrive at the centre and before they leave. These cells are only used for the purposes of transit and one of their purposes is to identify drug traffickers. The rooms are plain, tidy and contain a bench. The doors appear to be reinforced.

5) Delegates were shown a 'Pilot Machine'. The Pilot Machine uses a fingerprint database to bring up details about persons staying at the detention centre, including specific information such as food requests. The purpose of this machine is to avoid confusion between different persons in the centre.

6) The representative stated that sports opportunities (such as basketball) and other recreational activities are available. Medical assistance is also available 24 hours a day. The services of a psychiatrist are also provided. The Dutch Refugee Council has an office in the centre and lawyer / client relations are maintained.

7) Rooms for males and females are separate and overall everyone feels secure. However in the wing visited, there were two women who said that they were intimidated by being only with men. There are no families, minors or children kept at the centre. Minors are kept in the 'Zestienhoven' centre. The criminal section in the centre is separate from the place where other asylum seekers are held.

8) Cell doors are kept open all day and they are closed at 21.00 hrs. The yard /open space outside can be used at leisure for fresh air. Even though food is provided, there are also cooking facilities for the migrants. Sometimes persons staying in the centre order specific food so that they can cook.

9) A board containing the names, dates of birth and photos of the migrants indicated that some of the migrants were young. The representative of the centre stated that the data on the board illustrates the age that the migrants claim be. It became apparent that two persons, including one women, were involved in an age dispute. They were however in detention despite the fact that the representative stated that when there was an age dispute the benefit of the doubt would be given to the claimant. In these cases an

investigation is carried out and they are sent to a clinic in Eindhoven for a bone test to be carried out. The representative acknowledged that there can be some margin of error with such tests and said that in such cases the migrant is always given the benefit of the doubt.

10) Delegates were also shown a number of cells in which the migrants stay. The cells were small and each cell was made to cater for 2 persons. The cells contained a bathroom with a door, a TV set and a set of bunk beds. Some delegates claimed that they had seen some toilets without any doors.

11) Delegates were told that the stay at Schiphol can reasonably last 6 months. However detention can be extended during the appeals procedure. Under these circumstances, detention may extend to 12 months.

4.3 Meeting with the Migrants

Delegates were given the opportunity to speak to the migrants staying at the Schiphol detention centre. The following comments were received by the rapporteur:

1) An Iraqi person stated that he had been at the centre for a month and a half. He claimed to be 67 years old and sick. He had asked for asylum. The problem was that to arrive to the Netherlands, he had transited through Hungary. He said he was in Hungary for less than an hour and he just changed aircraft there. He asked for asylum at the airport in the Netherlands and he was subsequently brought directly to the Schiphol detention centre. He said that the Netherlands had put a claim to Hungary about his case and that now his asylum application depended on Hungary's reply. In the meantime he complained of being stuck in the centre.

2) A Sudanese stated that he had come to the Netherlands with a fake passport via Syria. He said that he was put in an 'open camp' for 4 years. He claimed to be suffering from a hernia and malaria. After entering the Netherlands, he had travelled onwards to Ireland. However Ireland sent him back to the Netherlands. He claimed to have been in the Schiphol centre for 9 months in total.

3) A Nigerian person stated that he had also been in the centre for 9 months. He had a Namibian passport. He was deported to Namibia, but Namibia sent him back to the Netherlands. He applied for asylum in the Netherlands, but his asylum was rejected. He stated that his future was now unpredictable. In the meantime he was being kept in the centre.

4) Another Iraqi person stated that he had been in Schiphol centre for 6 months. He had gone to England, but was sent back to the Netherlands, also due to the Dublin regulation. He also said that he had an uncertain future

5) Some delegates met a young man who claimed that he was under 18 years of age. He claimed that when caught he was only transiting through Schiphol with his school sports

team and complained about the procedure concerning his age dispute and the fact that he was being held in detention.

6) A woman stated that although she did not feel threatened where she was, she still felt that being only a few women was intimidating at times. Moreover the specific needs of women were not being taken into consideration.

7) A number of immigrants complained about the lack of medical services. They stated that for whatever medical complaint they had, they were just given paracetamol.

4.4 Discussion Session

Following the tour at the centre, the delegation had the opportunity to discuss and put questions to the representatives of the centre. The following answers were given:

1) The applications of 25% of migrants in Schiphol are rejected immediately through the accelerated proceedings.

2) There is an independent committee which listens to the migrants' complaints.

3) On accelerated procedure, new instructions were expected which would render the procedure more fair and efficient.

4) If a person's request is rejected in Schiphol, they can appeal on 4 counts. The procedure takes about two weeks. In the meantime they stay at the detention centre. Where an appeal is deemed to be unfounded, a decision is irreversable and steps are taken to send relevant person back to their country of origin.

5) Detention continues until it is reasonable. However the rule is that of 6 months, Courts will take into consideration whether the alien is responsible for the delay. However in cases of detention of 14 to 15 months, freedom outweighs the interest of the State and migrants are released. A release means that they will be put on the street with a document saying that they have to leave the Netherlands.

6) There is a specific office which deals with Dublin claims. If there is a situation which falls under the Dublin convention, a request is made to the Member State in question. Pending the reply, the person stays in the Netherlands. If the other Member State does not accept the claim, that person would be entitled to apply for asylum in the Netherlands.

Meeting with the Dutch Secretary of State for Justice, Mrs Nebahat Albayrak

The meeting with the Dutch Secretary of State, Mrs Nebahat ALBAYRAK took place at the Ministry of Justice. The meeting was followed by a press conference.

During the meeting, matters relating to the Dutch immigration and asylum law were discussed, together with issues encountered during the discussion with NGOs and at the Schiphol detention centre. The following points were brought out by the Secretary of State:

1) The Netherlands has a tradition in protecting persons. The aim is to continue this tradition and to improve the system.

2) Detention is usually limited to 6 months. However in certain cases this time period needs to be extended. The length of detention is also subject to the cooperation of the person in question. The Secretary of State claimed that if migrants cooperate they can be out in 6 days.

3) If the child accompanied by their family illegally crosses the border, it is currently possible to detain them. If they arrive into the Netherlands in a legal manner, the families are taken to a reception centre. Families are detained only in cases where there are serious suspicions that they will disappear. The idea would be to detain them up to maximum of 2 weeks, but this is a proposal that still has to be still adopted by Parliament. Another possibility would be to detain one of the parents only.

4) The Ministry has also been working on improving conditions for children (notably the ones detained in Rotterdam) and for other vulnerable persons, such as pregnant women.

5) It is not envisaged to stop detaining accompanied children, as there would be an inherent risk of the parents abusing the system. The Secretary of State confirmed that there are children in detention, but that children who are accompanied by their parents and those children who not accompanied are distinguished as much as possible. Detention is always limited as much as possible.

6) When families are found and they apply for asylum, they are held in open centres. It is recognized that the environment in which children are held should be different from that of normal prisons. The Secretary of State said that the utmost is done to create a suitable environment for children. Delegates were shown a number of photos of improvements that were made in a centre.

7) Sometimes the option is taken to detain one parent, whilst releasing the other parent with the child.

8) Minors can sometimes be detained in order to avoid the risk of them falling into the hands of traffickers. Judges usually stop their detention after 6 months, but they can be kept for more time when the identity of the person is not clear or when the consulate of the country of origin does not cooperate for their return.

9) Children are sometimes handcuffed, but this is only done under exceptional circumstances, such as when a child becomes uncontrollably violent. The Secretary of State pointed out a case where this measure was taken, specifically when a minor in one of the centres triggered off the fire extinguishing system with a lighter. Following these incidents, work is being done not to make the fire system sensitive to such foul play.

10) The authorities do take into consideration the situation of vulnerable persons. However there are no plans for doing away with detention for these groups.

11) During return proceedings, the rights of the migrants are observed. The Secretary of State explained that medical checks are held before return takes place and that measures are taken to confirm that the person is fit to take a flight.

12) Having open centres for the persons who have been expelled and put out in the streets would give the wrong message that the state will take care of them under any circumstance. This will make expulsions ineffective.

13) With regards the content of the Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers[1], the Netherlands would like to have some clarifications on what the remarks of the report are based. In January 2008 a meeting with the Commission was foreseen and sometime in 2008 the Netherlands had to issue a formal reaction.

14) Reception and detention centres are open for scrutiny, as was the case with this delegation of the European Parliament. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out visits.

15) Staff and authorities in the centres are all adequately trained.

16) There should be no major reform in the Dublin Regulation. The necessary improvements should be brought about through the Common European Asylum System.

Conclusions and Recommendations of the Rapporteur

The rapporteur would like to note that the Dutch authorities and the Secretary of State were very cooperative, open and available to answer the questions put forward by the delegation.

Overall and in comparison with other detention centres visited in other countries, it can be seen that the conditions at the Schiphol detention centre appear to be satisfactory.

In conclusion the rapporteur would like to raise the following points:

1) Even though the conditions at the Schiphol detention centre appear to be satisfactory, NGOs emphasized the Rotterdam detention boats and the "Kamp Zeist" centre, when referring to unacceptable conditions. More information needs to be given about these centres, especially in the light of claims put forward by NGOs.

[1] COM(2007) 745 final

2) The services available at the Schiphol detention centre as described, should be made available in all detention centres. These include a good medical and psychiatric services and offices to maintain lawyer / client relations.

3) NGOs should be given full access to all detention centres in order to enable them to carry out their work within the regulations stipulated by the Dutch authorities.

4) Allegations of abuse, violence or improper behaviour by the authorities should be taken seriously and measures must be taken to investigate and take action.

5) There should be full transparency concerning what goes on in detention centres.

6) Other measures, rather than handcuffing, should be explored in order to control unruly minors.

7) Although the maximum period for detention has been established at six months through custom, a specific period should be entrenched in the law and implemented.

8) Alternatives to detention should be explored and applied in the case of vulnerable groups and especially for children and minors.

9) Special effort has to made to single out vulnerable migrants in order that they get special treatment, so as not to allow cases whereby their vulnerabilities can be exploited.

10) More information is required as to how the Netherlands is observing the Reception Directive.

11) Accelerated procedures should be used with caution and should as much as possible be avoided for cases of migrants who appear to be vulnerable. The facility of judicial review should not be prejudiced through accelerated proceedings.

12) Persons in age disputes should be considered as minors and only retained accordingly until the age dispute is settled.

13) Women should be provided with separate retention facilities in order to provide for their specific needs.

ANNEX 1



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
PARLEMENT EUROPÉEN PARLAIMINT NA hEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

Parlement Européen
Commission des libertés civiles, de la justice et des affaires intérieures
Délégation aux Pays-Bas
19 Décembre 2007

LISTE DES PARTICIPANTS 7

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Jeanine HENNIS PLASSCHAERT
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QUAMMAR S.	SIMONS K.	ENNIS M.	MARCU M.
			OLSZEWSKI M.

ANNEX 2



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
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EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

European Parliament
Committee on civil liberties, justice and home affairs
Delegation to the Netherlands
19 December 2007

Draft Programme 6

7:52	**Travel** by Thalys *9307* from Gare du Midi, Brussels, to the Schiphol Airport

10:19	Arrival at the Schiphol Airport
10:45 – 12:00	**Briefing meeting with NGOs and organisations** active in the field of asylum and immigration (location: World meeting center BIMS (at the airport), meeting room Vasco da Gama)[1]
12:00 – 13:00	**Lunch** offered by the Dutch Ministry of Justice, Immigration Policy Department - Location: Hotel Schiphol, Rijksweg A4 Nr.3, 2132 MA Amsterdam - Schiphol
13:00 – 13:15	Bus to the Schiphol detention centre
13:15 – 15:00	**Visit of the Schiphol detention centre**[2] *Welcome by Mr HP SCHREINEMACHERS - Deputy Director Immigration Policy Department; Tour in the detention centre; Questions and answers session* *The following representatives will be guiding the tour and will be available for answering questions:* *- Alfons MOOREN - Director of the Detention Centre* *- HP SCHREINEMACHERS - Deputy Director Immigration Policy Department* *- Vincent VUIJK - Repatriation and Departure Service* *- Michiel MEINARID - Unit manager Application Centre* *- Theo THIJM - Deputy Unit manager Application Centre* *- Representative of the Royal Marechaussee (border police)*
15:00 – 16:30	Bus to The Hague
16:30 – 17:15	**Meeting with the State Secretary for Justice**, Mrs Nebahat ALBAYRAK (location: Ministry of Justice, The Hague[3]) and *possibly*: **doorstep press conference**

Free **return to Brussels**

Our proposal:

17:45 – 18:00	Bus to the station Den Haag HS (Holland Spoor)
18:36	Return from Station Den Haag HS to Brussels *(IC 9260 train)* Arrival in Brussels: 20:36 Bruxelles Nord; 20:41 Bruxelles Central; 20:45 Bruxelles Midi

[1] **World Meeting Center BIMS**, Westelijke Randweg 43, 1118 CR LUCHTHAVEN SCHIPHOL
T +31 (0) 20 658 0658, F +31 (0) 20 658 0671, www.worldmeetingcenter.nl

[2] **Address of the Schiphol Detention Centre:**
Detentiecentrum Noord-Holland, Ten Pol 64, 1438 AJ OUDE MEER
Tel. (020) 82 22 300, Fax (020) 82 22 324

[3] **Address of the Dutch Ministry of Justice:**
Schedeldoekshaven 100, 2511 EX DEN HAAG
General telephone number: +31 (0)70 3 70 79 11

Other possibility:
19:06 – 21:08 Thalys *9362* from Station Den Haag HS to the Station Bruxelles Midi (booking in advance needed)

*The **purpose of the visit to the Netherlands** is to ascertain directly the situation of the asylum seekers and irregular migrants in the Netherlands, to check the implementation European Directives such as the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, as well as to exchange views with government authorities and representatives of civil society.*

*This visit to the Netherlands is part of a **whole series of visits** by members of the LIBE Committee to various EU Member States. Since 2005, similar delegations have been organised to Italy, Spain, France, Malta, Greece, Belgium and UK.*

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ANNEX 3

ORGANISATIONS AND NGOS THAT WERE PRESENT AT THE MEETING WITH THE LIBE DELEGATION ON THE 19 DECEMBER 2007

Amnesty International-Dutch Section
Association for Dutch asylum lawyers

BLinN (Bonded Labour in the Netherlands)

Defence for Children International
Drs. J.J.F. van Melle
Dutch League of the Human Rights

Kerkinactie

LOS (Knowledge Centre for Undocumented Migrants)

SAMAH

Stichting LOS

VluchtelingenWerk Nederland / Dutch Council for Refugees