



Overview of Dutch asylum and immigration system

Dutch methods of regulating migration

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About the author

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Introduction

1. In contrast to the United Kingdom, Dutch migration control mechanisms are not limited to the nation's borders. Instead, the country has a long history of administrative measures by which to regulate entry and residence of foreign nationals. Indeed, with progressive integration into the European Union the significance of borders and their controls has decreased to the extent that it is now Schengen partners who control their territory's borders on behalf of the Dutch government. What is left in terms of old-fashioned border control is now concentrated in the seaports (notably Rotterdam) and the national airport (Amsterdam Schiphol) which are gates of entry to Dutch territory and, of course, the Schengen area at large. Administrative controls within the Dutch state meanwhile have been intensified.

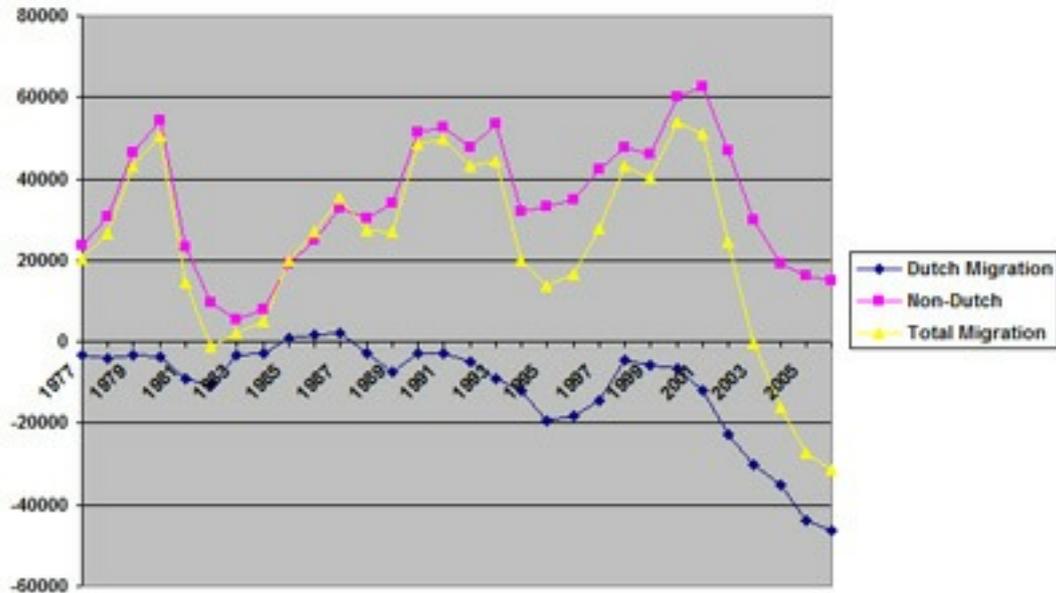
2. After a brief historical overview, we look at Dutch (and Schengen) controls at borders and gates of entry; internal controls; and at measures by which to address the failings of these controls (regularizations of irregular residents and the application of penal law).

Overview

3. Until the mid 1970s, migration to the Netherlands was only minimally regulated.[1] Even though both a residence permit and labour permit were required for a foreign worker to be in the Netherlands, the enforcement of these provisions was limited and ex post facto regularization was common (Penninx et al 1994). Once such regularization had taken place, access to rights and entitlements on an equal footing with Dutch nationals followed. Moreover, the 'guest worker' policy pursued at the time contained little to actually enforce the temporary nature of this labour migration. In other words, there was no government desire to curtail or restrict labour migration and the 'regulation' amounted to the absorption capacity of the economy.

4. From 1975 on, it was no longer the employee who needed to have permission to work in the Netherlands. Instead it became the employer's responsibility to demonstrate the need for foreign

workers. This was the first step towards control and this principle ' designed to protect the interests of the labour force already legally present in the country (gradually extended to include labour migrants from other EU member states) ' has remained in place until the present day.



5. Even though further labour immigration was restricted, migration on other grounds continued or even increased. At first family reunification with the former guest workers ' many of whom had prolonged their presence ' was an important form of further immigration. Few hurdles for this secondary migration were created, nor were policies developed that aimed to actively stimulate the return of (unemployed) guest workers as was done, for instance, in Germany. Also, further labour migration took place, partly according to the rules but when it occurred undocumented and irregularly it was not met with great concern throughout the 1980s (Engbersen & Van der Leun 2001, 54).

6. Meanwhile, despite the fact that the Dutch government deemed it necessary to restrict labour immigration from the mid-1970s, this did not mean ' as it did in Germany ' that all such migration was made impossible. Instead a system was put in place that aimed to guarantee privileged access to vacancies for the national labour force. A law was drafted which currently goes by the name *Wet Arbeid Vreemdelingen (WAV)* which stipulates the conditions an employer has to meet before he can employ a third country national. Simply put, he needs to actively look for privileged workers (these days all legal residents of the EU member states except Rumania and Bulgaria) and needs to be able to demonstrate having done so with sufficient determination. Employment is usually restricted to one or two years and the worker must remain abroad until all paperwork has been processed. This can take five weeks. Together with the period during which the employer needs to advertise his vacancy, the period between the vacancy and its fulfilment may take some months. In the case of seasonal work, this may encourage employers to hire irregularly. All workers fall under this rule unless there are good political (read: economic) reasons to be more generous. This is currently the case with what are referred to as 'knowledge workers'.

7. The admission of skilled workers is by two mechanisms. The first is an ad hoc liberal use of the WAV. For certain sectors and for longer or shorter periods relaxed conditions apply ' the employer does not need to go to great lengths to prove the need for a particular type of employee. In recent years it was thus relatively easy to attract ICT and health care workers. The second mechanism is

one of almost complete openness. If an employer is willing to pay a substantial salary, or if the migrant is a scientist, admission is unconditional. [2]

8. The fundamental change in policy approach came during the 1990s, coinciding with an unprecedented influx of asylum seekers and refugees in most EU-member states, most notably in Germany but also in relatively large numbers in the Netherlands. The measures taken were of three broad types: physical interventions, tightening of administrative law and practices, and changes in penal law. These first and foremost sought to address asylum seekers and irregular labour immigration. To this end in 2001 a new aliens law was introduced. But also more restrictions were imposed on family migration, among them the requirement to obtain a visa before being allowed to apply for a residence permit as a spouse; previously this could follow from an in situ change in residence permit.[3] Most recently measures have been taken to increase the costs of family formation and integration testing.

Border Controls

9. In 1994, as a consequence of Dutch ratification of the Schengen Agreement, border controls with Belgium and Germany were abolished. This was not the case with the ports of Amsterdam and Rotterdam nor with Schiphol international airport, as these are the Schengen Area's outer borders. However, formal abolition of border controls does not mean that the land borders are unguarded. Directly 'behind' the border, spot-checks of incoming traffic are regularly taking place. These spot-checks are performed by the Military Police (guarding the borders is one of their traditional tasks) and are referred to as Mobile Supervision of Aliens (Mobiel Toezicht Vreemdelingen, MTV). As long as officials can observe that a vehicle has come across the border immediately before it is inspected, missing, incomplete or invalid travel documents may authorize the removal of aliens from the country or the person to be taken into custody.

10. The implementation of the Schengen Agreement includes the development of a common visa policy, whereby each member states can issue a visa on behalf of the others. Even if the criteria for issuing a visa can be uniform the administrative practice can differ. Dutch administrative law, for instance, is based on the principle that the state needs to demonstrate why it refuses to grant a certain privilege or service. The burden of proof lies with the state, not with the applicant. In this case this means that if the refusal of a visa application is appealed, the chances are considerable that it will be granted. A new visa law 'addressing this issue among others - has been in the making for a number of years but to date has not been passed by parliament.

Detention

11. During recent years the detention of irregular migrants has become a commonly used instrument in those instances when expulsion of an alien cannot immediately be effected but is expected to be feasible within a limited number of days, or when it can be expected that the detention might be an appropriate instrument for the establishment of an alien's identity and nationality. Even though detention can be for prolonged periods (in some cases for up to a year or even longer), if expulsion cannot be effected the alien will be released onto the street. In that case the assumption is that (s)he will leave the territory or face attrition. According to the Minister of Aliens Affairs and Integration[4] in 2006, the average period for which an alien is detained is 50 days.

12. Of all aliens who are taken into detention, about forty percent are finally deported. In almost all cases this happens within the first three months of detention. Of those who leave the country approximately ten percent comes back to the Netherlands at some point (Van Kalmthout et al 2004).

13. Prolonged detention thus apparently fails to increase the readiness among inmates to cooperate in their own return. Overall each expulsion costs forty thousand euros. Those who cannot be expelled sooner or later have to be released onto the streets and instructed to leave the country immediately (Op. cit.). In spite of these findings, during the past few years, detention capacity has steadily been increased from room for less than a thousand detainees in 2002, to close to triple that number at present (3,100). In view of the average detention time, this capacity suffices to hold approximately 16,000 aliens per annum.

14. According to the planning of the Ministry of Justice, the number of places is to grow further and should reach 3,600 by the year 2010 (see Table 1). This number comes close to twenty percent of the overall capacity of the Dutch detention system.

Table 1: alien detention needs 2005 - 2010

	2005	2006	2007	2008	2009	2010
Detention places needed	3,100	3,356	3,442	3,423	3,516	3,609

Proposed budget of the Ministry of Justice for 2006, Source: Tweede Kamer vergaderjaar 2005-2006, 30300, hoofdstuk VI, nr.2, p.22

Illegals

15. Dutch migration statistics are highly reliable and updated on a daily basis by virtue of centralized population and aliens registers.^[5] Every legal resident is included in this register and thus statistically enumerated. However, persons who are not legal residents are by definition not in the population statistics. It is generally conceded that a considerable number of illegal aliens 'a substantial percentage resulting from failed asylum requests' are residing in the country. Estimates made by Engbersen et al (2002) put the number somewhere between 120,000 and 160,000, the Minister of Aliens Affairs and Integration recently even invoked a higher number (200,000). It is also recognized that many 'removals' are actually just administrative removals (see also further down) and simply no longer residing at the last known address. Whether aliens who are then removed from the administration have left the country, is unknown until such a moment when the police catch the alien. If (s)he is still present at this address and is a rejected asylum seeker (s)he is encouraged to move to a removal centre (vertrekcentrum) where another four weeks of accommodation and support are available in preparation of 'voluntary' return. The Ministry of Justice's 2008 budget has EUR53.821,000 for these centres. If the irregular alien is not a former asylum seeker it is likely that (s)he will be immediately taken into custody.

16. Late October 2005, a fire swept through the vertrekcentrum at Schiphol airport, killing eleven aliens awaiting expulsion. In this drama's aftermath the Minister of Justice and the Minister for Housing, both responsible for prison buildings, resigned from their offices. It also caused a journalist of the weekly Vrij Nederland to go undercover as a guard at one of the detention centres created on ships docking in the Rotterdam harbour. His reports showed a further lack of fire safety, and also poor living conditions and meagre medical and social care. The general picture was one of quick fixes and improvisation on a low budget (Van de Griend 2006).

17. From January 2007 the Ministry of Justice established an organization that is solely focussed on the return of irregular and undesirable aliens (Dienst Terugkeer & Vertrek). It brings together expertise previously divided between: the authority that is responsible for asylum seekers (COA); the aliens' police; the military police; the immigration and naturalization services (IND); the detention services (DJI); the International Organization for Migration (IOM); and the minister's policy makers. The improvement hoped for from this new service is that at any given moment it is clear where a deportable alien is located, and that each of these aliens has a manager who is familiar with the circumstances of each case. As yet no evaluations of the effectiveness of this new body are available.

Failed Asylum Seekers

18. What we do have are the figures provided by the Immigration and Naturalization Services (IND) on repatriations. It is striking that close to three-quarters of the rejected asylum seekers depart administratively (a figure that has been at or about this level for the past decade). As we saw, this means that the police have established nothing else than the fact that an alien is no longer residing at his last known address. This percentage is considerably lower among those who have not applied for asylum but have been arrested for being irregularly in the country. In their case approximately forty percent are removed administratively and sixty percent are known to have left (see table 2).

Table 2: registered departures of failed asylum seekers and regular[6] foreign nationals

	2006	2005
Departure of asylum seekers		
Forced departure	900	1,400
Voluntary departure	1,550	2,000
Administrative departure	7,750	9,100
Total	10,200	12,500
Departure of regular foreign nationals		
Forced departure	12,400	14,400
Voluntary departure	4,000	4,600
Administrative departure	13,700	13,400
Total	30,100	32,400

Source: A Focus on the IND. Annual results 2006. The Hague: IND, p. 12

19. It is important to note that in cases of rejected asylum seekers the local authorities often have to evict people from their homes, thus giving rise to policy dilemmas. For the local authorities are also responsible for maintaining public order. As a consequence past years have seen considerable discussion between the larger cities and the Association of Netherlands Municipalities (VNG) on the one hand and the Minister - demanding full compliance with government policies - on the other. The growing number of homeless aliens, including approximately 4,000 unaccompanied minors, was of great concern (Letter of the VNG to parliament, 5 December 2005). In effect, many local governments openly refused to implement the strict rules set by the central government, for instance by subsidizing additional accommodation for the homeless. In spite of the occasional rebuke by subsequent Ministers, the general trend seemed to be that this is tolerated. A compromise was reached between the municipalities and the present government. It was agreed that a) a substantial number of former asylum seekers whose return had become virtually impossible would be pardoned (see further down), b) the government would take full responsibility for those who should be returned to their country of origin (through the *Dienst Terugkeer & Vertrek*) thus lifting this burden from the municipalities, c) the municipalities in return would discontinue assistance to irregular residents.

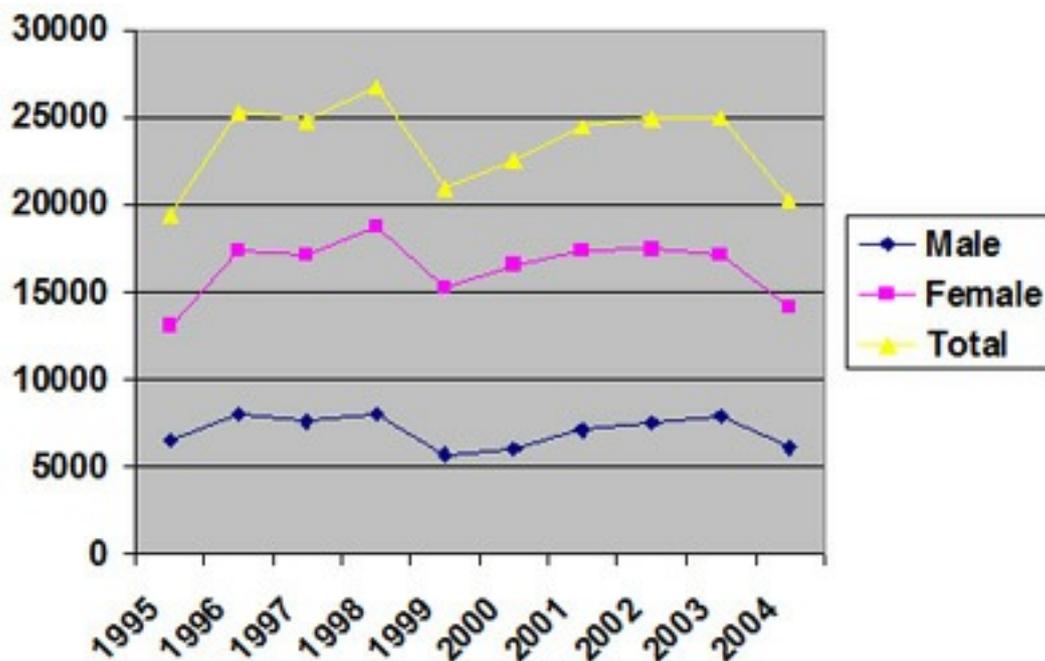
Tests for immigrants

20. Other measures that, strictly speaking, are not of a physical nature but which are aimed^[7] at reducing the number of immigrants in general and those with low skill levels in particular are high transaction costs imposed on unsolicited migrants seeking regular entrance: high visa and residence permit fees, and language tests for migrants who seek to (re)unite with a spouse already legally residing in the Netherlands. First admissions of a spouse or a child are charged at EUR830. Other permits, too, tend to be costly.^[8] The argument for imposing these costs ' which are relatively high in European comparison - is that they reflect the real cost of processing applications.

21. Language tests^[9] prior to being granted a visa have become mandatory from mid-2006. They are generally considered not to be very difficult to pass. The newspaper Trouw (19 October 2006) reported that out of 1,500 aliens who by then had done the test 1,384 managed to pass. Doing the test, however, is not free of costs: each attempt costs EUR350. In order to be granted a permanent residence status a further exam needs to be passed at a later stage (within five years of residence) which requires a good command of the Dutch language. Failing to pass this exam implies that the migrant will remain a 'temporary resident' who needs to renew his permit on an annual basis. Until recently the necessary language courses were funded by the authorities, under the new rules this is to be the responsibility of the migrants concerned.

Minimum age for spouses

22. Already earlier (from November 2004) the minimum age for bringing in a spouse was raised from 18 to 21 years. Moreover, the partner resident in the Netherlands needs to have an income that is equivalent to 120% of the Dutch minimum wage (approximately EUR1,400 net per month). According to the Minister for Aliens' Affairs and Integration this substantially reduced the number of applications for marriage and family reunification (from 42,000 per annum to 30,000 in 2005) (Trouw 19 October 2006). This development, however, is in line with a general reduction in the numbers of newcomers in the Netherlands. Since 2002 net-migration has been negative for migrants from Western countries and from 2005 this holds also true for migrants with a non-western background (Statistics Netherlands ' StatLine 2007-10-25). More significant thus is a decrease in the percentage of marriages contracted with partners from Turkey and Morocco from 61 to 59 and 36 to 29 respectively from 2004 to 2006 (Trouw 22 November 2007).



Bilateral Return Agreements

23. Return agreements with a number of countries of origin have also been reached. In those instances where aliens refuse to reveal their nationality or otherwise do not cooperate with the authorities (e.g. when detained) this instrument obviously remains rather blunt. This is reflected in the low percentage of aliens who can be coaxed into cooperating in their return during their stay in a detention centre and in the high percentage eventually put on the street (Van Kalmthout et al. 2004).

Carrier Sanctions

24. As is common in other EU countries, carrier sanctions are also pursued by the Dutch government. Meanwhile they have become part of EU community actions (guideline 2004/82/EC), including the option of increased fines and the obligation to copy travel documents before boarding. Dutch fines are from EUR3,000 per inadmissible passenger (first offenders) to a maximum of EUR16,750. Like many European countries, the Netherlands dispatches liaison officers to 'problematic' countries and airports to assist airlines and authorities with their knowledge about appropriate travel documentation.

Internal controls

25. Internal controls are greatly assisted by the existence of a comprehensive population and aliens register, and a Social Fiscal (SoFi) number for those who are regularly (self) employed.^[10] However, it should be noted that these registers are aimed at identifying those who have rights and not those who have none. In effect, aliens who are irregularly present are not enumerated.

26. The following measures have been taken since the early 1990s:

- 1991: from then on only aliens who are in the possession of a residence permit and are allowed to be economically active are given a SoFi number. This number is reproduced on all relevant documents, and is included in the employer's administration. Previously, SoFi numbers could also be obtained by irregular migrants which lead to a situation in which aliens worked, paid taxes and National Insurance but were actually not supposed to do so because it would fuel the illusion of legality among the migrants concerned.
- 1994/2005: the Compulsory Identification Act requires all employers to be able to identify all their employees. To this end, photocopies of passports and/or other ID documents must be held in the employer's administration. Moreover, the Act obliges persons under certain conditions to be able to identify themselves in public places/transport. Since 1 January 2005 it has been obligatory for all persons over the age of 13 at all times to carry an ID. Officials can only demand to inspect this document under specific circumstances (what these are is only broadly sketched and will become clear through jurisprudence), and not at random.
- 1994: the Marriage of Convenience Act outlawed marriages contracted for the (sole) purpose of gaining access to a residence permit. The registrar is under an obligation to assess the intentions of the prospective spouses before him if there is a reason to suspect such a motive. In case of manifestly fraudulent intentions, the marriage should not be concluded. As Jessurun d'Oliveira (1998) notes, this law is not unproblematic in nature because marriages of convenience have been known at many times and in many societies and have in the past withstood the scrutiny of judges who have decided that the motives people have for entering a marriage are of no concern to the state. This law has a corresponding article in the alien's law where a residence permit can be withheld in cases where the authorities doubt the "reality" of a relationship (marriage or otherwise). The number of cases in which restrictions on either ground have been imposed, however, is small even though the general perception is that "abuse" of marriages in order to secure a legal residence is common (De Hart 2003). Whether marriages are arranged or concern relatives - as seems to be relatively common among second generation Turks and Moroccans (Eldering 2002, p.12) - is no longer a Dutch policy concern after the age at which family formation is permitted was raised from 18 to 21.
- 1998: the Linkage Act aims to exclude all access to benefits for those without a residence permit, and limiting access to some rights for some categories of regularly present aliens. Simply put, this is achieved by linking the population and aliens registers and all who provide services (social security, child benefits, rent support, health care) are supposed to check whether a claimant is entitled to these. Emergency medical care and education for those of school age (which is mandatory) are exempt. A special fund has been created from which doctors and hospitals can get a refund for their expenses. During a first evaluation done one year after the implementation of the Law it transpired that the number of aliens unjustifiably benefiting from such services was rather small - at any rate much smaller than parliament had supposed.

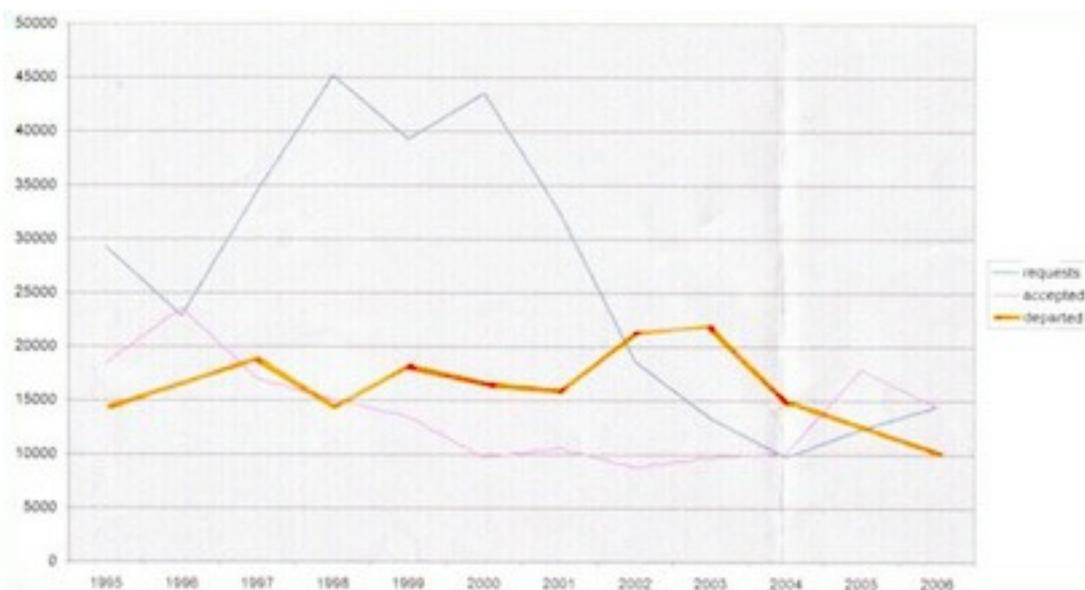
27. In 2004, a new division of labour between the police and the Immigration and Naturalization Services (IND) came into being. Where previously most applications for a residence permit were processed by the local Alien's Police - the main exception being applications for asylum - now all applications are processed by the IND. An important argument for this restructuring was to free up police capacity for the detection, detention and expulsion of irregular aliens. Approximately 1,300 police officials are thus available for internal migration controls.

Asylum

28. In 2001 a new aliens law came into force, considerably speeding up the adjudication of asylum requests. Asylum had been the main political concern during most of the previous decade (Doomernik et al 1997) and several attempts at curtailing the influx of new applicants within the framework of the then current law had failed to bring the expected results. In the view of the government this was mainly due to lengthy appeal procedures. The new law allowed the authorities to reject many applications at the first instance, leaving the asylum seekers little opportunity to appeal this decision. The percentage of such first rejections reached seventy percent, leaving lawyers to question the accuracy of these new procedures and their compatibility with obligations following from the Geneva Convention (Doomernik 2004). In 2007 the Advisory Committee on Aliens Affairs^[11] published an advisory report in which it suggests ways towards a more accurate procedure (ACZV 2007). Whether the current government wants to follow-up on this, presently is an open question.

29. The new law did have the desired effect in that the number of asylum requests dropped dramatically during the subsequent years. In 2004, the number even dropped to under 10,000 which was the same number as in 1988. In 2000, there had still been 44,000 requests for asylum. ^[12] Incidentally, it is hard to know to what extent this means that migrants who might previously have requested asylum now opt to remain unknown.

Asylum in The Netherlands 1995-2006



30. What we do know is that the costs have decreased together with the falling numbers. To a large extent this is a consequence of the Dutch reception system. All aliens awaiting a first decision on their asylum request are taken care of by the authorities: i.e. they are accommodated (not interned) in hostels, given food, medical care, and pocket money. At the same time they are kept from integrating into Dutch society until they are granted a refugee status. This means they are not supposed to be economically active.

31. The Dutch government is showing confidence in the effectiveness of the present asylum policies as is clear from the Justice Ministry's budget for 2008. It shows a general reduction in expected aliens related expenditure, notably for the reception of asylum seekers. In 2007 the Central Agency for the Reception of Asylum Seekers (**Centraal organ Opvang Asielzoekers**) (COA) is costing 412,9 millions euros whereas the estimated expenses for 2012 are down to 151,1 million.

Regularizations

32. After the 1970s, the Dutch government became very reluctant to offer amnesties to irregular labour migrants. The main exception to this rule was in 1995, when it was deemed appropriate to regularize those migrants who had already been working for six consecutive years while in the possession of a SoFi number. These migrants were referred to as "white illegals" because every aspect of their employment had been above board apart from their missing residence permit. Judging from discussions in parliament the numbers of people who qualified under this amnesty cannot have been large. From 1995 until August 1997 a total of 1,225 cases were dealt with, leading to 1,119 rejections (Tweede Kamer, vergaderjaar 1996-1997, 25453, nr.2, p. 2). Not all of those who were granted amnesty qualified according to the criteria. In some cases it was exceptional hardship that gave the State Secretary of Justice reason to make an exception. The discretionary powers of the Secretary to grant a pardon subsequently gave reason for protest to those irregular migrants who failed to meet all the criteria but still felt fully integrated. During the Winter of 1998/1999 a number of those migrants went on hunger strike to draw attention to their plight. They tended to find an open ear with the mayors of the four largest cities (Amsterdam, Rotterdam, the Hague and Utrecht) who recognized the potential threat to the public order and - as far as we can judge from media coverage at the time - showed sympathy for these migrants' claims of belonging to their cities and their inhabitants. This forced government to devolve some of its discretionary powers to the local level. On the one hand government listed a further set of criteria that migrants should meet but on the other hand it offered a committee of these mayors the possibility to suggest which of those aliens should be allowed to stay because - on top of meeting these criteria - they were particularly well integrated into society (Tweede Kamer, vergaderjaar 1999-2000, 19637, nr.482).

Regularizing old asylum cases

33. Under the previous law a long backlog of applications and - especially - appeals had developed leading some in parliament and interest groups like the Dutch Refugee Council to argue in favour of a one time pardon for all those who had applied under the old regime and had been waiting for the final outcome for a considerable number of years. Moreover, in many instances this concerned people whose grounds for applying for asylum were not accepted but whose removal to their country of origin was not feasible: either because such a removal would mean a violation of the European Convention on Human Rights (notably article 3)[13] or because of major practical impediments.

34. The subsequent Balkenende governments categorically refused to consider such a general policy.[14] The main arguments were that it might attract new and previously rejected asylum seekers and that it would be unfair on those who had left once they had been first turned down (and had not appealed or not awaited the outcome of such an appeal). Moreover, it would be rewarding those asylum seekers who had been using all legal means possible to postpone departure. At the same time the Minister did promise parliament to review all cases with a sharp eye for cases of extraordinary hardship. Of those old cases, 43 percent were recognized as refugees or otherwise granted a residence status.[15] The elections of 2006 created a parliamentary majority in favour of a more generous solution. Even before a new government was formed, parliament already demanded the regularization of all those who had applied for asylum before 1 April 2001 and who had been residing in the country ever since. The precise number of eligible persons is not known but is estimated to lie close to thirty thousand.

Penal Law

35. It is somewhat ironic to note that with the outlawing of human smuggling in late 1993, the perception of assisting a migrant to cross a border illegally fundamentally changed. Only a few years earlier human smuggling had the ring of heroism rather than that of a criminal act - at any rate from the Dutch viewpoint.

36. According to article 197a of the Dutch penal code human smuggling - for profit - became punishable with a maximum imprisonment of two years or a fine. Only a few years later, in 1996, the maximum sentence was raised to four years, or eight years for organized or habitual crime. Apart from the deterrent effect, these more serious offences would permit more invasive police investigation methods (telephone taps, house searching, observations and infiltrations) (Pieters 2005). Since 1 January of 2005, people smuggling has been made a crime regardless of pecuniary or other motives.

37. From this date until August 2005 a total of 114 cases were brought to the attention of the authorities. In 92 instances this has led to people being summoned to appear before the courts. Since then in 15 cases people have been convicted and in three cases the defendants have been acquitted (Tweede Kamer, vergaderjaar 2005-2006, 29537, nr.28, p.14).

38. To dissuade employers from hiring irregular migrants, fines for that have also been raised, also as of January 2005. Previously fines averaged EUR 1,000, while presently fines are EUR8,000 per employee. In the past problems arose when during work place checks employees refused to show their documents to the labour inspectors (only police officials can demand they be shown). Under the current rules the employers are held responsible for the proper documentation of their workers, and failing this, fines will be levied as if the employees were at work illegally (see Table 3 for an overview of the work place checks for the first eight months of 2005, grossing close to EUR 8 million in collected fines).

Table 3: Results of workplace controls January-September 2005

	Results of workplace controls January-September 2005
Number of checks	6,200
Number of instances where fines were in order	1,600
Percentage of instances where fines were in order	25%
Detected nationals of central and eastern European countries	1,400
Detected aliens with another nationality	2,100
Total amount of fines collected in Euro	7.750,000

Source: Tweede Kamer, vergaderjaar 2005-2006, 29537, nr.28, p.12

39. Employment in private households is punished with a EUR 4.000 fine. In practice, it appears not to be easy for a private individual to establish whether an alien can be legally employed or not, especially in the case of workers from the new EU-member states whose residence is legal, but not always their employment.

40. In line with international developments, exploitation of illegal aliens has become a crime under Dutch law, even more so when this happens under force or threat thereof in which case it is considered to be trafficking. Traffickers can be sentenced to six years imprisonment. The *Volkscrant* (28 February 2007) reports however that the average sentence in 2006 amounted to one year and seven months. At the same time, we have reason to believe that labour exploitation generally is "voluntary" in nature because migrants who are denied benefits simply have no alternative but to work for whatever remuneration is offered to them (Garcé s-Mascareñ as & Doomernik 2007).

41. Several proposals have been launched in parliament to outlaw illegal residence per se. The Cabinet never adopted such suggestions, one reason being that this would put considerable strain on the public prosecutor and the penitentiary system (Tweede Kamer, vergaderjaar 2004-2005, 29537, nr. 23, p.3-4). This would appear to be paradoxical in view of the increasing detention capacity discussed above. It is less so if one realizes that detention centres for aliens are run on the basis of a light regime and dormitories, whereas ordinary prisons have a higher level of security and detainees are locked in single cells (increasingly in double cells). Locking up criminals, in other words, is a much more costly affair.

Conclusion

42. Over the past three decades a clear trend in Dutch migration controls has become apparent. From a situation in which migration was regulated by the absorption capacity of the labour market

and government actions hardly went beyond formalizing a de facto situation, we entered a prolonged process in which governments have attempted to gain control over migration processes. Each such attempt has led to spill over effects: labour migration made way to family based migration and, with growing global integration, asylum and refugee migration. Governments have sought to adopt policy measures in adjacent areas; from pure administrative measures, through labour market sanctions, the formal exclusion of all irregular aliens, and finally into the domain of penal law. In addition, monetary hurdles are also being tested as a possibly suitable means of dissuading unsolicited migrants from choosing the Netherlands as a destination for settlement.

43. The Netherlands has clearly lost some attraction to newcomers as we can read from the migration statistics, which currently show a negative net migration rate. It is difficult to assess this. Anecdotal evidence suggests that it is the better skilled who leave the country and the poorer skilled who still seek to settle in the Netherlands. Whether this is related to migration rules, hostility towards migration in general and Muslims in particular, the economic cycle, or rising cost of living, we do not know.

44. Lastly, what has become evident from this short excursion through Dutch restrictive migration measures is that removal is the hardest element of control. Migrants who end up working in the country, and even more so those who have sought asylum, are difficult to expel if they fail to cooperate. Detention, a costly instrument, has some effect but a majority of detainees sooner or later return to the streets.

15 April, 2006

NOTES

[1] This overview leaves out migration and its regulation as far as (post) colonial flows are concerned. Even though one could argue that encouraging Surinamese independence in 1975 aimed to reduce migration from that country to the Netherlands - all Surinamese until then had been Dutch nationals - the extent to which migration controls were exerted towards colonial migrants has been modest.

[2] The criteria that have been formulated to define knowledge workers are the following:

- if a person is under the age of 30 and is going to earn at least EUR32,600 per annum (before taxes);
- those over 30 are deemed to be knowledge workers if they are going to earn over EUR45,000;
- if the migrant is a scientist, (s)he is welcome even if the wages fall below the EUR35/45,000 limit.

The spouse of a knowledge worker has free access to the labour market. The workers, moreover, qualify for a generous tax reduction (30 percent of the gross wage is not taxed during the first ten years) (De Lange et al 2003).

- [3] E.g. someone in an irregular position or as asylum seeker could apply for permission to stay with a spouse without leaving the country. Presently this alien has to return to the country of origin and apply for a temporary leave to reside (***Machtiging tot voorlopig verblijf***) (MVV).
- [4] Until 2002 the policy areas ***integration*** and ***admission*** where the domain of the Ministries of Home Affairs and of Justice respectively. Between 2002 and 2007 both policy fields were the responsibility of the Minister for Aliens Affairs and Integration (Ms Rita Verdonk) whose department was part of the Ministry of Justice. The present government again has separated these responsibilities and has a minister for Housing, Communities and Integration (Ms Ella Vogelaar) and a State Secretary for Justice (Ms Nebahat Albayrak), who is responsible for asylum and immigration.
- [5] Containing such characteristics as nationality, legal status, data and country of birth, and country of parents' birth.
- [6] Regular here refers to aliens who have not applied for asylum, not to their legal status.
- [7] The Dutch government has always maintained that this is not the reason for imposing these measures. In its opinion they serve to enhance the (prospects of) integration of newcomers in Dutch society.
- [8] For an overview of fees provided by the Immigration and Naturalization Service (IND), see: http://www.ind.nl/nl/Images/Leges06_ENG_tcm5-76140.pdf
- [9] Strictly speaking the tests are not only about language but also aim to examine some basic knowledge of Dutch society. A DVD is available for all prospective migrants in which they are instructed about all the do's and don't's of living in the Netherlands. This DVD and a booklet with all questions that are part of the exam costs EUR64,50.
- [10] And for children who are regularly present and become of school going age. Schools are required to register this number for all pupils but are not to deny access to children without it as long as they are of school age (until the age of 16).
- [11] This Committee is an independent body created by law in order to provide parliament and government with advice on matters related to migration policy and law. Website: www.acvz.com
- [12] CBS Webmagazine, 18 April 2005 'Asielverzoeken in EU met eenvijfde gedaald'
- [13] Article 3 ECHR, together with the Refugee Convention, is the basis under Dutch refugee law. An alien qualifying for protection or non-removal under either instrument is granted a refugee status. This status remains open to review for the first five years. After that period it becomes irrevocable.
- [14] In a press release (http://www.ind.nl/nl/inbedrijf/actueel/Minister_Verdonk_misverstanden_terugkeerbeleid.asp) the Minister states that upon being appointed she pardoned over 2,300 cases of asylum seekers who applied more than five years previously and were still waiting for a first judgement by the IND.
- [15] Press release from the Minister of Aliens Affairs and Integration (<http://www.justitie.nl/actueel/nieuwsberichten/archief-2006/60620Verdonk-voldoet-aan-motie-dittrich.aspx>)

References

- Adviescommissie voor Vreemdelingenzaken (ACVZ) (2007) **Secuur en Snel. Voorstel voor een nieuwe asielprocedure** Den Haag: ACVZ
- De Hart, Betty (2003) 'Gemengde Relaties. Vreemdelingenrecht leidt tot vervreemding.' In **Demos** Vol.19, August
- Lange, T. de, S. Verbeek, R. Cholewinski & J. Doomernik (2003) **Arbeidsimmigratie naar Nederland. Regulering en demografische en economische aspecten in internationaal vergelijk** Den Haag: ACVZ
- Doomernik, Jeroen Rinus Penninx & Hans van Amersfoort (1997) **A Migration Policy for the Future. Possibilities and Limitations** Brussels: MPG
- Doomernik, Jeroen (2004) 'Nederland als immigratieland' in W. Asbeek Brusse, D. Broeders & R. Griffith (red.) **Immigratie en asiel in Europa. Een lange weg naar gemeenschappelijkheid?** Utrecht: Lemma, pp. 163-176
- Engbersen, Godfried, et al. (2002) **Illegale vreemdelingen in Nederland : omvang, overkomst, verblijf en uitzetting** Rotterdam: RISBO Contractresearch, Erasmus Universiteit
- Engbersen, Godfried & Joanne van der Leun (2001) 'The Social Construction of Illegality and Criminality' in **European Journal on Criminal Policy and Research** 9: 51-70.
- Garcé s-Mascareñas, Blanca & Jeroen Doomernik (2007) **Exploratory Study on trafficking and labour exploitation of West African immigrants in the Netherlands** Geneva: International Labour Office (Special Action Programme to Combat Forced Labour, Working paper 55)
- Jesserun d'Oliveira, U. (1998) **Het migratierecht en zijn dynamiek: Het artefact van het 'schijnhuwelijk'** Deventer: Kluwer
- Penninx, R., J. Schoorl & C. van Praag (1994) **The Impact of international Migration on receiving Countries: the case of the Netherlands** The Hague: NiDi
- Pieters, Bregje (2005) **Veranderende wetgeving mensensmokkel en gevolgen voor opsporing en vervolging**, paper for the CIROC seminar on mensensmokkel en georganiseerde misdaad, 12 October, Vrije Universiteit Amsterdam
- Van de Griend, Robert (2006) 'Undercover op de illegalenboot' in **Vrij Nederland** 25 March
- Van Kalmthout, A., A. Graft, L. Hansen, and M. Hadrouk (2004), **Terugkeermogelijkheden Van Vreemdelingen in Vreemdelingenbewaring. Een Onderzoek Naar Verhinderende, Bemoeilijkende of Vergemakkelijkende Factoren Van Terugkeer Van Vreemdelingen in Vreemdelingenbewaring**. Deel 1: De vreemdelingenbewaring in Tilburg en Ter Apel. Het dossieronderzoek, Wolf Legal Publishers, Nijmegen.