



Implementation and reinforcement of the sliding scale

Summary

Research by order of WODC

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Summary

Introduction

Convictions of crimes can have implications for the lawful residence of aliens. In order to determine the consequences of the imposed convictions on the lawful residence of aliens, the principle of the sliding scale is used. The sliding scale is expressed in Article 3.86 of the Ministerial Decision on Aliens (Vreemdelingenbesluit 2000). In the principle of the sliding scale, a link is made between the duration of the imposed sentence and the duration of the lawful residence in the Netherlands. The longer the foreigner resides lawfully in the Netherlands, the more serious the sentence needs to be in order to result in an ending of a lawful residence.

Objective of the research

In this research, the implementation and reinforcement of the sliding scale is studied. This research was initiated by the State Secretary of Justice.

Research Approach

This research was carried out with the help of administrative data on aliens with a legitimate permission to reside in the Netherlands, who have been irrevocably convicted for crimes since the introduction of the current sliding scale in July 2002. The empirical basis consists out of two sources:

- administrative data from the period 2002-2008; this source forms the basis for quantitative analysis;
- investigation of digital files of convicted aliens; this source forms basis for the qualitative analysis.

Research population

The research population consists of aliens with the following characteristics:

- The alien is irrevocably convicted between July 2002 and July 2008;
- The alien lawfully resides in the Netherlands;
- The nationality of the alien is not one of the exceptions according to European laws, such as residents of the EU.

During the period investigated, 11,697 aliens met these characteristics. These 11,697 aliens form the research population, which has been used

to analyze two issues: (a) the results of the enforcement of the current sliding scale, and (b) the potential effectiveness of the proposed strengthened sliding scale.

The application of the current sliding scale

The following paragraphs define the 11,697 convicted aliens who are eligible for examination under the sliding scale during the period 2002-2008 by taking into account the relationship between duration of the legitimate residence permission and the gravity of the sentence imposed. Furthermore, attention is paid to the decision taken in regard to the permission of lawful residence.

How many aliens are eligible for examination under the sliding scale?

797 of the 11,697 irrevocably convicted aliens were eligible for examination under the sliding scale in the period 2002-2008. Most of these 797 aliens were already in 2002, 2003, and 2004 eligible for examination. In the latter years, this number decreased; in 2005, more than 300 aliens were still eligible for examination whereas in 2007 this number had shrunk to 32. This decrease was caused by the fact that during the period 2002-2008, few convicted aliens emigrated (left the Netherlands) or immigrated (entered the Netherlands), resulting in a longer duration of lawful residence among the entire research population. The longer the duration of lawful residence, the more severe the sentence needs to be before the sliding scales can be imposed. Most of the sentences imposed were not severe enough.

Of the 797 aliens who were eligible under the sliding scale, 73 % had a residence permit for an indefinite period of time and 72 % had a restricted residence permit for a limited time. Of the total population of 11,697 aliens, the percentage with a restricted residence permit was much lower, namely 19 %.

How many aliens were actually examined?

Of the 797 foreigners who were eligible for examination under the sliding scale, 257 aliens were actually examined by the IND. The remaining 540 aliens were not examined under the sliding scale. The main reason for the IND to proceed to examination is if a request has been made for extension or modification of the residence permit. Such a request may be submitted by the alien him- or herself or by the police. Of the 257 aliens actually examined under the sliding scale, 44 % has a resident permit for a limited time and 56 % has a residence permit for an indefinite time.

Why are some aliens not examined?

The main reason for not applying the sliding scale although it is possible is procedural. In procedures applying to aliens with a residence permit for an indefinite time, investigation of the past does not take place at a fixed moment in time. For aliens with a residence permit for a limited time, such investigations of the past are standard procedure when a request for extension or modification of the residence permit is being handled.

How often has examination led to the end of lawful residence?

Almost half of the examinations under the sliding scale (48%) did not lead to an end of lawful residence. The main reasons for not ending a lawful residence on the basis of the sliding scale are the:

- The sentence does not meet the requirements of the sliding scale, because a period of the sentence concerns the period in which the convicted was a minor;
- the alien is subject to an exception of the rule due to his or her minor age of residing;
- humanitarian grounds, in particular Article 8 of the European Convention of Human Rights.

How often is the decision to end a lawful residence permit based on other grounds?

540 aliens have not been examined under the sliding scale, although this would have been possible. Out of those, 351 had their residence permit terminated based on other grounds of the Act on Foreigners 2000. Examples are:

- the alien no longer meets a restriction of the residence permit and did not report this in due time;
- the alien failed to submit a request for renewal of residence permit on due time;
- the alien left for an unknown destination.

The proposed reinforced sliding scale

Under the cabinet Balkende II, the sliding scale was subject to a proposed reinforcement. In order to measure the difference between the current sliding scale and the proposed reinforced one, the latter has been hypothetically applied to the same research population as was investigated for the period 2002-2008.

Would the reinforced sliding scale more often result in examinations on the basis of the sliding scale?

Of the 11,697 aliens, which have been irrevocably convicted in the period 2002-2008, the IND – as was mentioned above- have examined 257 aliens on the basis of the current sliding scale. If the proposed rein-

forced sliding scale would have been applied on the same population in the same time period, 1, 024 aliens would have been examined by the IND.

In the current sliding scale, aliens with a residence permit for limited time are more often examined by the IND than aliens with a residence permit for an indefinite period. This difference between aliens with a limited and an indefinite residence permit would have been reinforced by the proposed sliding scale; the reason being that in the proposed sliding scale, only the standards are amended but not the procedures justifying the use of these standards.

Would the proposed reinforced sliding scale more often lead to an end of lawful residence?

For the entire period 2002-2008, it is estimated that the sliding scale could have resulted in the ending of 376 lawful residences, i.e. 3.2 % of the entire population of 11,697 aliens, irrevocably convicted in the period 2002-2008. The current sliding scale resulted in 134 endings in the same period.

Conclusions

Conclusion 1

The research shows that the current sliding scale is particularly effective in the case of convicted aliens who are lawfully staying in the Netherlands for a maximum of five years. These aliens often have a residence permit only for a limited time. These aliens are more often eligible for examination under the sliding scale because the criteria leading to examination are less favorable for these aliens and because their past is investigated at a fixed point in time.

Conclusion 2

The research shows that although a part of the convicted aliens are eligible for examination under the sliding scale, examinations do not always take place. This is mainly the case for aliens with a residence permit for an indefinite time. The outcome of the sliding scale is strongly influenced by the fact that there is no fixed time for investigation of the past of aliens with a residence permit for an indefinite time.

Conclusion 3

The role of the sliding scale instrument in the ending of residence permits is relatively limited. Of the 797 aliens who were eligible for examination under the sliding scale, 485 examinations resulted in ended residence permits. Of these 484 cases, 134 (28%) ended as a result of the use of the sliding scale and 351 cases (72%) ended on other grounds than the sliding scale.

Conclusion 4

The research shows that more examinations can be expected under the reinforced sliding scale. Its added value would mainly be noticeable in the first acts of the scale, i.e. in the case of persons residing lawfully in the Netherlands for a maximum of three years.

Conclusion 5

If the proposed reinforced sliding scale were to be introduced today, its added value would be limited, since in the years 2002-2008, less and less convicted aliens only recently obtained their residence permit.