

# The revised asylum procedure: An evaluation

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## *Summary*

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## Summary

### Background and research design

The PIVA programme [Programme for the introduction of the Improved Asylum Procedure: Programma Invoering Verbeterde Asielprocedure] was implemented on 1 July 2010. It introduced a large number of measures to improve the asylum procedure, the intention being to speed up and simultaneously improving the quality of the procedure. Supplementary goals were that rejection of an application would lead to the unsuccessful applicant's departure from the Netherlands, rather than yet further proceedings or the applicant ending up on the street. The research reported here was undertaken to evaluate the revised procedure. The data were collected between November 2013 and June 2014.

The principal research question is:

*To what degree have the goals of the revised asylum procedure been achieved, and how and to what degree have the various measures contributed to the outcome?*

The most important method for collecting information was the collection and analysis of statistical data, interviews, and a questionnaire. A total of 44 interviews were held with 58 respondents, working for the Ministry of Security and Justice [ministerie van Veiligheid en Justitie] (4 respondents), the Immigration and Naturalisation Service [IND] and other executive agencies (18), attorneys (6), the judiciary (5), the Dutch Council for Refugees [VluchtelingenWerk] (7), the Legal Aid Board [Raad voor Rechtsbijstand] (4), local authorities (3) and other organisations involved with the asylum procedure, or the housing or repatriation of (ex-) asylum seekers (11). The respondents were selected for their involvement in the preparation or implementation of the PIVA programme, or else their involvement with and knowledge of its practical implementation. An on-line inquiry was also held among asylum attorneys, asking them about their experience with the revised asylum procedure. The questionnaire was completed by 84 attorneys.

### Research outcomes

Six research questions were formulated to help answer the principal question. The research outcomes for each question are summarised below.

1. *What were the expected effects of the revised asylum procedure and the associated measures? How and why should the measures (either individually or as a combined package) contribute to the various goals? Was any attention paid to (were any warnings sounded about) obstacles and unintended consequences?*

This question was answered after an analysis of policy documents followed by interviews with the responsible officials and other actors involved in framing the policy.

PIVA envisioned five goals: (1) shortening the asylum procedure; (2) improving the quality of the short procedure in the reception centre; (3) reduction in the number of continuing applications; (4) fewer rejected asylum seekers on the streets; (5) increased repatriation of asylum seekers whose applications had been finally rejected. A large number of measures were adopted to achieve these goals, which can be classified as measures related to the rest and preparation period, the actual asylum procedure, judicial review, reception, and repatriation.

Prior to the asylum procedure, all asylum seekers are granted a period for rest and preparation [rust- en voorbereidingstermijn, RVT] of at least six days, during which time they have a medical check, an investigation is started into the asylum seeker's identity and nationality, and the asylum seeker is informed of and prepared for the asylum procedure. These measures are intended to improve the quality of the procedure.

The abbreviated procedure in the reception centre [aanmeldcentrum, AC] became the general asylum procedure [algemene asielprocedure, AA]. The AA takes longer than the old AC procedure (8 days rather than 48 hours), which means that more asylum applications can be decided upon in the reception centre. Only if this cannot be done with care will the application progress to the extended asylum procedure [verlengde asielprocedure, VA]. This measure is intended to contribute to two goals: shortening the procedure and ensuring careful consideration. During the procedure the IND also checks as far as possible whether the applicant qualifies for a residence permit or else delayed deportation on the ground of several criteria unrelated to asylum. This parallel check is intended to eliminate continuing applications.

The Courts have been given a wider range of options for ex nunc assessments. This too is intended to help prevent continuing applications.

Asylum seekers whose first application is rejected in the AA receive support during the four weeks scheduled for their departure. This measure should cut down on the number of rejected asylum seekers who end up on the streets, but it should also assist repatriation, since it facilitates the (supervised) preparation for departure. Another measure intended to prevent rejected asylum seekers from ending up on the streets and to aid their repatriation is that after the period scheduled for their departure has expired, rejected asylum seekers may be housed for 12 weeks in a dedicated facility with restrictions placed on their freedom [vrijheidsbeperkende locatie, VBL]. Moreover, the repatriation of rejected asylum seekers is also assisted by expanding the extant options for assisted voluntary repatriation, while the already existing strategic approach to countries of origin is intensified.

Preliminary discussions mainly concerned measures that affect the RVT and the AA. There was a broad consensus that the RVT and the AA could offer better guarantees of care than the old 48-hour procedure. In the main the discussion concerned the general application of the AA to all asylum applications, including more complex ones. There was also some doubt whether planning in the RVT and the AA would be able to cope with a sudden increase in the number of applicants. Doubts were also raised about the feasibility of reducing the number of continuing applications.

*2. Which criteria and indicators can be used to measure whether the goals of the revised procedure have been achieved, and to determine the measures that helped achieve them?*

The policy documents and the interviews with officials and others involved in formulating the policy led to the creation of a list of objectively measurable indicators to evaluate goal achievement and

the effect of the measures intended to contribute to it. The table below lists the most important indicators of PIVA's five general goals.

Goal	Indicators
Shorter asylum procedure	<ul style="list-style-type: none"> <li>• Duration of procedure to decision in first instance (in AA or in VA)</li> <li>• Percentage applications decided upon in AA</li> <li>• Duration of VA (compared with previous OC procedure)</li> <li>• Time spent in reception centre (especially AZCs)</li> </ul>
More careful procedure (AA)	<ul style="list-style-type: none"> <li>• Percentage of appeals in AA cases admitted / denied (compared with past appeals in AC cases)</li> <li>• Assessment of various actors involved in the asylum procedure (who are able to compare the old and the new procedure)</li> </ul>
Fewer continuing applications	<ul style="list-style-type: none"> <li>• Number (percentage) of second and subsequent asylum applications</li> <li>• Number (percentage) of regular applications submitted by ex-asylum seekers, classified by grounds cited</li> </ul>
Fewer (ex-) asylum seekers ending up on the streets	<ul style="list-style-type: none"> <li>• Number of receptions terminated without placement in another type of reception or proven departure from the Netherlands</li> <li>• Number of (ex-) asylum seekers requesting emergency relief from local authorities or NGOs</li> </ul>
More rejected asylum seekers leaving the Netherlands	<ul style="list-style-type: none"> <li>• Number of ex-asylum seekers proven to have departed or been extradited from the Netherlands (under supervision)</li> </ul>

Other factors besides PIVA may have an influence. Changes in the numbers and characteristics of asylum applications, for example, may influence the percentage disposed of in the AA and (relatedly) on the duration of the asylum procedure.

*3. To what extent can the quantitative data needed for the evaluation be obtained from sources of information available in organisations in the asylum chain or elsewhere?*

Most of the indicators that can be derived from the logic of intervention were also recorded in the Improved Asylum Procedure Monitor [Monitor verbeterde asielpcedure], which was assembled in the preliminary phase while the policy was being prepared. The idea of the Monitor was that all organisations in the chain would record relevant data for the indicators that are important to them. It turned out that this was not done, partly for lack of direction and partly because some data were either difficult or impossible to collect (in part because the IND adopted a new records system during the research period). This last issue also impeded data collection for the present research. Problems stemming from the lack of adequate record keeping could not be resolved after the fact. A large amount of quantitative data was gathered in the end, but it could not always be classified as the researchers had requested, and data for different years were not always comparable.

*4. What are the quantitative results of the revised asylum procedure and the individual measures? Has the duration of the asylum procedure been shortened? Are there fewer continuing procedures? Are fewer (ex-) asylum seekers ending up on the streets? Are more asylum seekers whose case has been finally disposed of leaving the Netherlands? What can the quantitative data ob-*

*tained tell us about the quality of the decisions taken in the AA? What do the quantitative data tell us about the effectiveness of individual measures?*

The quantitative data permit the conclusion to be drawn that the primary goal of PIVA – shortening the asylum procedure – has been achieved and that this can be ascribed in large part to PIVA. The time taken for the IND to process asylum applications is clearly shorter. The percentage of asylum applications decided in the AA has grown considerably. This is an effect of PIVA, but other factors probably also played a part, especially the size of the applicant stream (which was relatively low and stable until the end of 2013), and the composition of the inflow, which also contributed to the large percentage of disposals during the AA.

The goal of greater care being taken with the procedure in the reception centres was more difficult to quantify and translate into objectively measurable indicators than PIVA's other goals. Officials regarded the percentage of AA decisions that are upheld on appeal (compared to the number of AC decisions upheld under the old procedure) as the most important quantitative indicator of the quality of (decisions taken in) the AA. According to the available (but incomplete) figures on this indicator, there has been no loss of care in the procedure.

The quantitative data obtained show that PIVA's third goal – cutting the number of continuing applications – was not achieved. In fact, the number of second and subsequent asylum applications actually increased during the first two years of the revised asylum procedure. The increase can be traced in part to changes in nation-specific asylum policy and other developments unrelated to PIVA. One can also query how effective those PIVA measures are that are intended to render continuing applications unnecessary.

In regard to the fourth goal – ensuring that more rejected asylum seekers actually depart from the Netherlands – the quantitative data showed that the number of proven departures did increase during the first two years of the revised procedure. To what degree that can be ascribed to PIVA (and how large the number would have been in the absence of PIVA) could not be established with any certainty. What is clear is that many other factors exert an influence on the return figures, including developments in the countries of origin, nation-specific asylum policy, and other policies.

Turning now to the fifth goal – preventing as far as possible that rejected asylum seekers (with lawful residence) end up on the streets – the quantitative data combined with information obtained in interviews show that the envisioned effect was obtained to a degree, but it could only partially be ascribed to the PIVA measures.

*5. Were the measures implemented smoothly? Were there problems and/or bottlenecks? If so, did they lead to a failure to implement measures, or incomplete implementation?*

To answer this and the next research question, interviews were held in organisations involved with the asylum procedure, or the reception or repatriation of (ex-) asylum seekers. The interviews revealed that most measures were implemented without difficulty. There were a few issues surrounding the central intake, which persisted for some time. The preparatory consultation with an attorney on 'day 1' has been moved forward to give the attorney and the asylum seeker more time to prepare for the AA. Stubborn problems arose in connection with parallel review and the medical advice in the RVT. Partly due to the focus on decisions in the AA, it seems that the parallel review never really got off the ground. Partly in response to complaints from the legal profession, the Medical Advice Proto-

col has been revised several times, but it is clear that there are still several problems related to asylum seekers with medical issues.

6. *How is the experience in practical implementation? How do those involved judge the quality of (decisions taken in the) the AA procedure? How do they assess the other goals of the revised asylum procedure and the way the individual measures are working? Have there been practical obstacles and/or side-effects, so that certain goals were only achieved in part or not at all?*

In general, opinions on the RVT were positive. Once again in general, the respondents were of the opinion that thanks to information provided by VluchtelingenWerk and the attorney's preparation during 'day -1', asylum seekers are better prepared for the procedure when the AA starts. The attorneys state that the added value of 'day 1' was partly negated by the introduction (on 1 January 2014) of the so-called reception interview [aanmeldgehoor], conducted by the IND. It is also the attorneys' experience that the RVT is not always long enough to acquire the relevant information and documents to permit a complete presentation and substantiation of the asylum narrative in the AA.

While there are no exact figures on the duration of the RVT, it is clear that it often lasts several weeks longer than six days. It can last even longer for Dublin claimants and a few other categories. The disadvantage here is that facilities in the reception centres used in proceedings are only suitable for a stay of approximately three weeks. This can be a problem, especially for vulnerable asylum seekers.

The medical advice in the RVT is seen as an improvement, but it also attracts a great deal of criticism, mainly from attorneys, as does the way the advice is followed up by the IND. The IND staff have come to value the medical advice over time.

Most respondents are reasonable happy with the course taken by the AA, praising its clear structure. Many attorneys, however, experience rather severe time pressure. They also point out that they can devote far fewer hours to a case than the IND. Both the IND and the attorneys complain that they are assigned more and more tasks during the AA, without being granted extra time. This may adversely impact both the quality of the procedure and the number of continuing applications, since the parallel review procedure is not followed in many cases. In cases where there is tension between a speedy decision and a more comprehensive assessment, then according to interviews with IND respondents and attorneys, the IND staff will commonly opt for a speedy decision.

Virtually everybody is satisfied with the continuity of legal aid: the continuity increases confidence between the asylum seeker and the attorney, the attorney is more aware of all facets of the case, and all the organisations in the chain know which attorney to contact in a given case. A few attorneys do stress the disadvantage of less peer supervision, however.

Nearly all asylum seekers undergo a detailed interview in the AA, while in principle there are no detailed follow-up interviews in the VA. The attorneys criticise the keenness with which the IND seek out inconsistencies and the way the interviewers deal with more vulnerable asylum seekers, who may not be in a position to immediately tell their complete story. These criticisms are lent additional weight by the short time available to submit addenda and corrections.

According to both IND staff and attorneys, time is the main governing factor in the AA. As a result, even complex cases are disposed of in the AA, and the IND is reluctant to approach external experts. Many attorneys feel that the IND is excessively rigid in its response to requests to pass the case on to the VA, attaching strict demands to any such request. If the case concerns an asylum

seeker who is suffering from trauma or some other psychological issue, or if the applicant is too ashamed to tell his/her full story in the AA, then the short time involved makes it difficult for an attorney to present documentary evidence. Since an appeal after rejection in an AA is often dealt with within four weeks of the rejection, it is frequently difficult or impossible in such cases to submit additional information or evidence to the Court. It is the attorneys' view that pressure of time and inflexibility, caused by the focus on disposal during the AA, leads to a lack of care while increasing the number of continuing applications.

Two PIVA measures relate to the judicial review of asylum decisions. First, the Courts dealing with AA cases must hand down their decision on temporary relief and an appeal against the rejection within four weeks of the asylum request's rejection. This is generally successful, according to the judges interviewed, but disposing of AA appeals in good time sometimes disadvantages other alien cases. The problems that the judges experience relate to uncertainty in scheduling (it is quite common for the respondent to withdraw the decision the day before a hearing, after the judge has already prepared for the case), and the increasing complexity of cases that are rejected in the AA, which come before them to hear. This was also a matter of concern to the judges beforehand.

The second measure was the amendment to article 83 Vw 2000 [Vw = Aliens' Act], which expanded the possibility for ex nunc assessment in appeals. The interviews revealed that the amended article 83 Vw scarcely plays a part in AA cases because appeals are dealt with so speedily (there is no new evidence or policy). The short time intervals here limit the effect of the more expansive ex nunc assessment.

Four measures were intended to contribute to a better integrated reception and repatriation policy for rejected asylum seekers. The first, offering shelter (for the new departure term of four weeks) to asylum seekers who have been rejected in the AA, was assessed positively by practically all respondents who have to do with this category of asylum seekers. Most of them, however, believed that the time period of four weeks is too short for most asylum seekers to take the decision to return. The respondents were unable to estimate with any accuracy whether asylum seekers in this category (whose application for asylum has been rejected in the reception centre) end up on the streets less frequently than in the past, with more of them returning whence they came.

The second measure permits rejected asylum seekers to be placed in a VBL, in principle for at most 12 weeks after expiry of the time allowed for their departure. This was assessed as positive in principle by most respondents. At the same time, however, many were sceptical about the actual contribution the VBL makes to the asylum seekers' repatriation; the view of respondents involved with emergency shelter was that ex-asylum seekers in the VBL were given far too little assistance to organise their departure. By contrast, the respondents from DT&V [Dienst Terugkeer en Vertrek: Repatriation and Departure Service] emphasised that the key to departure commonly lies in the hands of the alien him/herself. Since 2012, the number of asylum seekers placed in the VBL has been far smaller than the available capacity. Why that should be so is not entirely clear.

The intensification of the strategic approach to countries of origin is supposed to improve cooperation with such countries in respect of enforced repatriation. The DT&V respondents emphasised that a strategic approach to such countries is a long-term process. This is why the DT&V does not just measure the results of the strategic approach in terms of numbers of returnees, but also in terms of the attention paid to repatriation in relations with the countries of origin. Measured in these terms, progress has certainly been achieved.

Voluntary repatriation is supposed to be improved by continuing and expanding programmes and projects that support repatriation. The respondents in the repatriation organisations were positive in their assessment of the possibility (created in 2012) to combine the financial support offered by the HRT [Return and Reintegration Regulation: Herintegratie Regeling Terugkeer] with support in kind from another project. It is partly thanks to these projects that repatriation has increased among certain target groups. The respondents in the local authorities were less positive about the results obtained by the repatriation organisations and projects. In their view the only ones to benefit by this facilitated repatriation were those aliens who had already decided they wanted to return. Respondents in the repatriation organisations emphasised that they could only act when 'the penny has dropped' for the alien concerned.

## Conclusion

The most successful realisation of the five goals is the abbreviation of the asylum procedure. This can be ascribed to the AA having become the general asylum procedure. This goal also turns out to have been prioritised in practice (indeed it still is), and it was aided by conditions during the first three years after the introduction of the revised procedure: there were relatively few first applications. Thanks to the abbreviation of the procedure, the asylum seeker's position is speedily made clear (this was a significant objective of the revised procedure); and a shorter time is spent in reception.

The answer to the question whether the second goal has been achieved (increasing the quality of the short procedure is less unequivocal. According to the number of decisions upheld on appeal, there has been no loss of quality. There is a broad consensus among the actors involved that the AA (thanks to the RVT, the longer duration of the AA and the continuity of legal aid) offers better guarantees of care than the old 48-hour procedure. However, particularly attorneys emphasise that there is so much pressure to dispose of cases in the AA that complex cases are also decided upon in the AA, even though they are not appropriate for the AA.

The third goal of the revised procedure (cutting down on the number of continuing applications) has not been achieved. This can be ascribed to factors outside PIVA, but the large percentage of cases disposed of in the AA also seems to have adversely affected the number of continuing applications, since the AA is generally too short for a parallel review on regular grounds and also often too short to gather evidence.

It may be concluded that speed and more care, and speed and fewer continuing applications, are difficult to achieve at the same time. This inquiry therefore confirms the concerns that were voiced beforehand.

The fourth goal (ensuring that more rejected asylum seekers actually leave the Netherlands) was achieved to some extent. The PIVA measures intended to contribute to this goal have had some effect, but all actors involved agree that this remains a very difficult part of the asylum policy.

The fifth goal (preventing rejected asylum seekers from ending up on the streets) was also achieved to some extent, but that can only be ascribed in small measure to PIVA.