

## “Amsterdam in the Mediterranean”

### How a Dutch-style asylum system can help resolve the Mediterranean refugee crisis

26 January 2018

“Only with Europe can we effectively protect our borders, take in those eligible for asylum decently, truly integrate them, and at the same time quickly return those not eligible for such protection.

So long as we leave some of our partners submerged under massive arrivals, without helping them manage their borders; so long as our asylum procedures remain slow and disparate; so long as we are incapable of collectively organizing the return of migrants not eligible for asylum, we will lack both effectiveness and humanity ... we need to do that without leaving the burden to the few, be they countries of first entry or final host countries, by building the terms for genuine, chosen, organized and concerted solidarity.”

(Emmanuel Macron, Sorbonne, 26 September 2017)

Like French president Emmanuel Macron, leaders across the EU are looking for a fast, effective and humane asylum system; a system which determines quickly, but thoroughly, who needs protection; creates disincentives for people to get into boats; and manages to return those who are found not to need protection within a short period of time.

The question is how to make this happen. One place to look to for concrete inspiration is the Netherlands. There most asylum claims are decided *within less than two months including appeals* in a procedure fully respecting the rights of refugees. Asylum seekers are supported from the beginning by a lawyer paid for by the state and can state their claim in at least two comprehensive interviews.

A similar system, fully funded by the EU, is needed in Italy, Greece and elsewhere along Europe’s Mediterranean borders. An EU-supported pilot project in 2018 (“Amsterdam in the Mediterranean”) would, in combination with the 2016 EU-Turkey statement for Greece and take-back agreements to be concluded with countries of origin for Italy, allow for the swift processing of claims and the prompt return of rejected claimants. It could lead to a sharp reduction in irregular arrivals, prevent deaths at sea and restore control. It would also quickly provide refugees and migrants with certainty about their future.

In Greece, such a pilot project would help address the overcrowding of the Aegean islands. *All* applicants on the Greek islands would go through a fast and fair process to determine whether

they need protection in the EU or can be returned to Turkey. As a result, almost nobody would stay on the Aegean islands longer than two months. Those who get a positive first instance decision would stay less than two weeks. In addition, the establishment of an independent mechanism verifying that reception and asylum conditions in Turkey are ECtHR-compatible could increase the number of those sent back to Turkey. This could reverse the trend of rising numbers of irregular arrivals.

### **How the Dutch system works in practice**

Since 2010 the Netherlands has had an asylum system that achieves a high quality of decisions in fast procedures. It is a combination of quality and speed at both the first instance and the appeals level, which is unique in Europe.

In the Netherlands, a refugee can receive the first-instance decision in 17 days (currently it takes 25 days) after entering. A court appeal against a negative first-instance decision extends this period by a maximum of another 35 days (currently around 21-28 days). Nowhere else in the EU are asylum decisions including appeals delivered so fast. And no other system has the same focus on quality: asylum seekers are provided with free legal aid from the outset and can make their claim in at least two long interviews. A similar system should be built up at the EU's external borders, beginning with pilot projects in Italy and Greece, under Italian and Greek law, but fully funded by the EU.

These are the various steps of the procedure in the Netherlands:

**Registration – 3 days:** Refugees arriving by land are taken to the registration centre Ter Apel in northern Netherlands where they are identified, registered, fingerprinted, debriefed, and undergo security and medical checks (contagious diseases). Here they also express their intention to claim asylum and have a first short interview with the asylum authority, the Immigration and Naturalisation Service (IND). In potential Dublin cases, the IND starts investigations. Citizens from safe countries of origin are slated for a special procedure that is even shorter than for other claimants. Refugees arriving by air (at Schiphol airport) are registered at the closed Schiphol application centre.

**Rest and preparation – 6 days minimum, currently 14 days:** Asylum seekers rest and prepare for the asylum procedure. Each claimant is briefed and supported by the Dutch Refugee Council, an independent NGO, and has a first meeting with their lawyer who is free of cost to them and who will support them throughout the procedure. The claimants have time to obtain documents they might need (scans are accepted). They undergo a medical check to confirm that they are mentally and physically fit for the asylum procedure. During this time, Dutch police also continue to check the authenticity of the documents they initially submitted.

**General asylum procedure – 5 to 8 days:** The Dutch describe it as an 8-day procedure, but a procedure with a positive outcome takes only 5 days, and one with a negative 7-8 days. During this process, the claimant is interviewed twice. Both times, the IND interviewer types simultaneously a transcript, which the lawyer can amend afterwards (the lawyer usually does not sit in on the interviews, but the Dutch Refugee Council sends somebody at the request of the claimant or in sensitive cases). During the interviews, the interviewer has online access to researchers who can verify/follow up on information provided by the claimant.

The procedure day by day is as follows:

- **Day 1:** Interview on identity, nationality, itinerary; submission of relevant documents; transcript.
- **Day 2:** The lawyer checks and amends the transcript and prepares the claimant for the main interview the next day.
- **Day 3:** Interview on the substance of the asylum claim (1-4 hours); transcript (20-25 pages).
- **Day 4:** The lawyer checks and amends the transcript. On this day, the IND also decides whether it has enough information to make a well-founded decision; if it feels that this is not the case, it sends the case into the “Extended Procedure” (more below).
- **Day 5:** The IND issues either a positive decision in which case the process ends here; or it issues a *preliminary* negative decision. (The decisions are explained in detail on typically 8-10 pages. The IND decision-maker is usually, but not always, different from the interviewer.)
- **Day 6:** The lawyer provides comments on the preliminary negative decision, explaining why the claimant does deserve protection.
- **Day 7/8:** The IND issues the final decision.

**Court appeal – 3-5 weeks:** A rejected asylum seeker has 1 week to appeal the negative decision before a court. The court has to make a decision within 4 weeks after the appeal was lodged, but often does so already after 2-3 weeks. An appeal has a suspensive effect, except in cases of safe countries of origin, other manifestly unfounded decisions and inadmissibility. In these cases, the claimants can still ask for a court injunction to be allowed to stay. (If an extended procedure results in a negative decision, the deadline for an appeal is 4 weeks and the appeal always has a suspensive effect.)

The responsible courts are the Migration Chambers of 11 District Courts in the Netherlands. Usually only one judge makes the decision, in complicated cases it is a panel of three judges. In most cases, the judges only examine the documentation, hearings are rare, but it is possible to present new evidence.

**Onward court appeal – max. 27 weeks:** The next and final court instance is the Council of State. The deadline for an appeal is 4 weeks. Then the court has 23 weeks to make a decision, but usually it delivers it much faster. It examines whether procedures were correctly followed or clarifies points of law. There is no suspensive effect unless the Council of State is requested to issue an injunction and does so. However, the Council of State hardly ever grants a suspensive effect, and it rarely overturns a negative lower-court decision.

**Safe countries of origin:** Citizens from safe countries of origin are not given any rest and preparation period, and the IND conducts only one interview with them. They are still entitled to a lawyer.<sup>1</sup>

**Extended asylum procedure – up to 6 months:** Currently some 15-20 percent of cases are sent to the extended procedure. The extended procedure lasts up to 6 months and can be further extended. The IND currently makes its decision close to the 6-month deadline. The case remains with the original IND decision-maker since s/he is already familiar with it.

**Accommodation:** There is an elaborate system of accommodation: registration takes place in Ter Apel (people arriving by land) and Schiphol (for those arriving by plane), then people are

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<sup>1</sup> [Safe countries of origin in the Netherlands](#): Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Kosovo and Serbia; Georgia, Ukraine; Mongolia; Algeria, Ghana, Morocco, Senegal, Tunisia; India; Brazil; Jamaica, Togo, Trinidad and Tobago; all other EU member states, the four Schengen-associated countries (Iceland, Liechtenstein, Norway, Switzerland), and Andorra, Monaco, San Marino and Vatican City; and Australia, New Zealand, Canada, the United States and Japan.

moved to a reception centre (except for Schiphol arrivals who are kept there); the asylum procedure takes place in a dedicated application centre and after the procedure people are moved again to other types of centres, depending on whether they have been recognised and are waiting for private accommodation; whether they have been rejected and are to be returned; or whether they have gone into an extended procedure. There are family centres for families that cannot be returned, and centres with limited freedom of movement for people that are to be returned home but where this process takes time.

**Protection status:** There are two protection statuses in the Netherlands – refugee status and subsidiary protection – but the associated benefits are the same. The differences are the reasons based on which a refugee qualify for one or the other,<sup>2</sup> and in the procedures concerning withdrawal of protection. An IND worker always first examines if a refugee qualifies for refugee status, and only then if the claimant qualifies for subsidiary protection. People who receive subsidiary protection cannot appeal in order to obtain refugee status. In rare cases, the Netherlands also grants humanitarian protection.

**Training of the IND case workers:** IND case workers are required to have a university degree. Most are lawyers, some studied anthropology or specific cultures. Their training is based on EASO curricula and lasts at least 9 months (during the 2015 refugee crisis when the IND was under pressure to hire), but usually longer. The trainees receive a theoretical foundation, but soon begin to learn by monitoring and doing.

Each beginner has a coach and first sits in on interviews; later they do interviews under supervision; and then on their own, but with feedback provided afterwards. This is similar for decisions: first the trainees formulate decisions together with their coach, then they draft them on their own after discussing them with the coach, who also proof-reads them; and for a long time they continue to consult with senior decision-makers before they issue their decisions. IND case workers are expected to be able to deal with any asylum case, but many develop certain specialisations of a geographic or thematic nature (e.g. LGBT cases).

An IND interviewer is expected to do at least two interviews per day. If she/he deals with straight-forward cases (Syrians, safe countries of origin), then they do more.

**Asylum lawyers:** The lawyers are reimbursed based on a point system, with each point currently corresponding to 105 Euro. A regular procedure with a positive outcome is worth 8 points (840 Euro). If the preliminary decision is negative and the lawyer submits counter arguments, the lawyer receives an additional 2 points (in total 1,050 Euro). An extended procedure adds another 2 points. Safe country of origin and Dublin cases are worth 5 points. Lawyers wishing to participate in the asylum system must meet a few minimum requirements and accept a certain number of cases per year. They are then put on a roster run by the Legal Aid Board.

**Assessment:** The Dutch asylum procedure is assessed positively by all stakeholders: the refugees themselves, NGOs, UNHCR, asylum lawyers, academics and mainstream Dutch policymakers.

**The 2015 challenge:** The 2015 refugee crisis put pressure on the Dutch asylum system since the number of applications rose (see table below). The IND reacted, amongst other things, by

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<sup>2</sup> Refugee status: persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Subsidiary protection: threat of death penalty, torture, inhumane and degrading treatment, indiscriminate violence in cases of armed conflicts.

increasing the rest and preparation period to several months. Today it is 14 days. The legal minimum is 6 days.

*Asylum applications in the Netherlands (Eurostat)<sup>3</sup>*

| <b>Year</b>      | <b>Nr.</b> |
|------------------|------------|
| 2010             | 15,100     |
| 2011             | 14,600     |
| 2012             | 13,100     |
| 2013             | 13,095     |
| 2014             | 24,535     |
| 2015             | 44,970     |
| 2016             | 20,945     |
| 2017 (Jan.-Nov.) | 15,845     |

**Return/readmission:** The Netherlands strives to motivate rejected asylum seekers to leave the country as soon as possible. A negative decision acts simultaneously as a return decision, informing the failed claimant that they must leave the country within 28 days; or immediately, in cases of safe countries of origin, a risk of absconding and possible public danger. All benefits including accommodation cease after these 28 days, except for families with children. A special governmental organisation, the Return and Departure Service, helps failed asylum seekers prepare the return, obtain the necessary documents if needed, and depart. Most rejected asylum seeker can obtain financial assistance for voluntary return.

### **Inspiration for the Mediterranean**

Imagine a Dutch-style system operating in 2018 for all applicants in Greece as a European pilot project. *All* applicants would go through this process to determine whether they are safe in Turkey or need to be offered a full asylum procedure in Greece. In case of the former – and with credible and verifiable guarantees from Turkey – those who are found to be safe in Turkey could be returned within a few weeks. The same would be true for those whose claims are rejected on substance.

Credible appeals panels with qualified (ex-)judges would play the role of the first instance courts in the Netherlands. There would still be a possibility of onward appeals to courts. A court appeal would have no suspensive effect, but the claimant would be able to request an injunction to suspend readmission until the court’s decision on substance. Given that the first and second instance decisions would be comprehensive and that the claimant would have had legal advice all along, the court should be able to decide on the injunction within a week.

Within two months (almost) all decisions would be made. Only few – those appealing to courts and being granted injunctions against readmission – would stay on the Aegean islands longer than two months. Those who receive a positive first instance decision would stay less than two weeks. This would resolve the problem of overcrowding on the Greek islands.

In return for sending more people back to Turkey, the EU should increase the voluntary transfers from Turkey to EU member states as part of the humanitarian resettlement foreseen in the EU-Turkey statement (point 4).<sup>4</sup>

<sup>3</sup> [Eurostat](#), “Asylum and first time asylum applicants by citizenship, age and sex, Annual aggregated data (rounded)”, [migr\_asyappctza], as of 4 October 2017; and for 2017, [Eurostat](#), “Asylum and first time asylum applicants by citizenship, age and sex, Monthly data (rounded)”, [migr\_asyappctzm], as of 17 January 2018.

<sup>4</sup> [EU-Turkey Statement](#), 18 March 2016.

Such a process would help Greece and the Greek islands. It would prevent deaths at sea and quickly resolve the status of refugees and migrants in a thorough and serious process, allowing them to start planning their future. It would stabilise the EU-Turkey statement. In parallel there should be a strategy to establish fully funded pilot EU RICs (Reception and Identification Centres) on the Greek islands that would meet all Greek and EU reception standards. Obtaining verifiable guarantees from Turkey that Syrians, Iraqis and others are treated in accordance with Turkey's laws would allow more and faster returns, which in turn could reduce arrivals on Greek islands back to the level of early 2017 (or lower).<sup>5</sup>

Now imagine that the EU would succeed to persuade Turkey of extending the EU-Turkey statement to Bulgaria; and that in Bulgaria there would be a similar pilot EU RIC and Dutch-style asylum operation funded by the EU, which would raise reception standards and reduce irregular arrivals. Those who receive protection in Bulgaria might qualify for (voluntary) relocation to other EU member states as a further incentive to border states to make this work.

This is an achievable vision for an effective European approach to asylum and border policy. Sending more border police or EASO officials will not reduce arrivals; having fast and quality asylum processes in conjunction with functioning agreements/statements with Turkey and, in the case of Italy, African countries of origin would. It would combine control with empathy and respect for legal obligations.

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The information about the Dutch asylum system is based on many interviews with IND officials including caseworkers, the Dutch Refugee Council, the Dutch association of asylum lawyers ([VAJN](#)), academic asylum experts, political decision-makers and UNHCR Netherlands, as well as a recent visit of the Schiphol reception and application centre in December 2017. Recommended written sources in English include the following:

Dutch Council for Refugees, "[Country Report Netherlands](#)", AIDA (Asylum in Europe Database), March 2017.

ICG (Intergovernmental Consultations on Migration, Asylum and Refugees), [Asylum Policies. Report on Policies and Practices in IGC Participating States 2015](#), September 2015, chapter on the Netherlands, pp. 255-280.

The websites of the Government of the Netherlands on [Asylum Policy](#); the [Dutch Council for Refugees](#); the [Repatriation and Departure Service \(DT&V\)](#); and the [Central Agency for the Reception of Asylum Seekers \(COA\)](#).

For further reading, we recommend the material on ESI's website "[Combining border control with compassion. Proposals for the refugee crises in the Mediterranean](#)".

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<sup>5</sup> See ESI Core Facts: [Refugees and asylum in the Aegean – The impact of the EU-Turkey statement](#), 26 January 2018.