Asylum determination in the Netherlands

Based on research for the asylum project conducted by JUSTICE, ILPA and ARC

Supplementary report 3

JUSTICE
Immigration Law Practioners' Association (ILPA)
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ASYLUM DETERMINATION IN THE NETHERLANDS

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Background to the research

This supplementary report forms part of the research for the asylum law project conducted in 1996-97 by JUSTICE and ILPA (Immigration Law Practitioners' Association) and supported by the Asylum Rights Campaign. The main report from that project, *Providing protection: towards fair and effective asylum procedures*, critically assesses asylum determination procedures used in over ten countries, and identifies the principles which should underlie a fair and effective process. Other supplementary reports which were produced as part of the research include:

- *Article 3 ECHR and UNCAT and humanitarian protection in selected countries*, supplementary report 1
- *Asylum determination in Canada*, supplementary report 2
- *Asylum determination in selected European countries: Germany, Austria, Hungary, Poland and Switzerland*, supplementary report 4
- *Asylum determination in Australia*, supplementary report 5

The research in *Providing protection* and the supplementary reports was based on sources available in the UK, and on information collected by researchers during visits to the Netherlands, Germany, Austria, Hungary, Poland, Canada and Australia during 1996 and 1997. Additional material from other states was provided by refugee agencies and lawyers working in those countries. The supplementary reports were revised in August 1997.

Copies of *Providing protection* and of the supplementary reports are available from JUSTICE (tel: +44 171 329 5100; fax: +44 171 329 5055; email: justice@gn.apc.org) and ILPA (tel: +44 171 251 8383; fax: +44 171 251 8384; email: ilpa@mcr1.poptel.org.uk).

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Introduction

This report contains a summary of research conducted during two visits to the Netherlands in 1996 and 1997. The first visit took place on 24-27 July 1996 and was supplemented by discussions, correspondence and further material gathered between July and September 1996. That visit took the researchers to a reception centre ('AC' or *aanmeldcentrum*) in Zevenaar in the eastern part of the Netherlands, to meet with lawyers and Immigration and Nationality Service officials and observe a 24-hour asylum process being conducted there. The visit also included a processing centre (*onderzoeks- en opvangcentrum* or 'OC') in Oisterwijk, in the south of the Netherlands.

The second visit was to Schiphol, to the Netherlands' main airport near Amsterdam. That visit was conducted to find out how and why the AC (24-hour) decision-making process operated differently at the Schiphol centre by comparison with the Zevenaar and Rijsbergen ACs. It also aimed to explore further some queries which had arisen out of the earlier visits and research.

The purpose of the July 1996 visit was threefold:

- to examine fast-track (AC) determination procedures in operation since 1994
- to examine a pilot scheme for substantive determination of asylum claims, which was operative in two (OC) processing centres at Oisterwijk and Schalkaar for an experimental period in 1995-6
- to look at criteria, procedures, status and justiciability in cases involving protection on humanitarian or Article 3 ECHR grounds

A fourth issue was raised during the course of the visit

- the position of those whose claims for protection are rejected, but who either cannot be, or are not, expelled from the territory.

We also touched on the issues of pre-entry clearance and social support during an asylum claim.

1. GENERAL AND BACKGROUND: THE 1994 ASYLUM LAW

In 1994, over 52,000 people applied for asylum in the Netherlands. This was unprecedentedly high, particularly in view of the size of the country, and in part was a consequence of increasingly restrictive laws and policies in other countries, eg Germany and the UK. A new asylum law was therefore passed in October 1994, mainly in order to restrict or deter refugee arrivals. That Act had three main features

- it instituted a regime of mandatory pre-entry visas, backed by fines on carriers bringing in those without visas (a regime already in operation in almost all other European countries).

- it brought in accelerated 24-hour procedures to identify and refuse manifestly unfounded cases

- it created a formal temporary status (VVTV) for groups of people whose presence had been informally 'tolerated' because in practice it was impossible to return them for humanitarian or practical reasons.

By 1995, the number of asylum-seekers had dropped to 29,000 (the 1996 total reached just under 23,000). Government and legal practitioners link this fall to the 1994 Act, both in terms of the direct effect of the visa regime and the indirect deterrence of the manifestly unfounded procedure.

The Netherlands system of control is also governed by the Schengen Convention (of which all mainland EU countries are signatories). Asylum applicants can be returned to the Schengen country responsible for determining their claim (on the grounds that this was the country which issued a visa, or where a claim has already been lodged, or (if it can be proved) through which the asylum-seeker first entered the Schengen area). Under the EU Dublin Convention, which has now been signed by all EU states and will take effect in September 1997, a similar system is established for all EU countries.

Structure and statuses

Before the 1994 Act, there were three asylum statuses in the Netherlands:

A 1951 Convention status
B a lower status, but one given for political reasons (originally for draft evaders in 1970s)
C humanitarian status

All three were granted on individual grounds. By 1994, B status had virtually disappeared, the courts having held that it was indistinguishable from A status.

In practice, however, there were groups of people whom it was not safe or practicable to return to their countries of origin, but who were unable to show individual C status grounds. They were largely from ten countries, including Iraq, Somalia, Afghanistan and Sri Lanka, where there was generalised civil disorder. In 1989, a Minister went on the record as saying that people from those ten countries would not in practice be removed. They were not, however, given a status, but were left in limbo in what was commonly referred to as 'G' status (the Dutch equivalent of the German *Duldung*, or 'tolerated' status).

The 1994 act created a formal, but temporary, status for such people: VVTV (temporary permission to remain). It is granted, one year at a time, for a three-year period. Extension of status can be refused, and the person returned, if it is considered that the country is now safe. At the end of the three-year period, if it is still deemed unsafe to return a person, he or she must be granted C status.

The criteria for and justiciability of these statuses are considered further in section 4 below.

Applications

Following the 1994 Act, all asylum claims must be registered at one of three reception centres or *aanmeldcentra* (ACs). Originally, there were two ACs, one (Zevenaar) near

the German border and one (Rijsbergen) near the Belgian border. There is now a third at Schiphol airport, Amsterdam (discussed further in section 2.2 below). Those arriving by air are referred directly to the Schiphol AC. Those arriving by land will typically make their own way to one of the other ACs, though some may be brought there by police if arrested during a police raid.

At the ACs, there is an initial sift by officials of the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*, 'IND') of the Ministry of Justice. This is designed to identify manifestly unfounded cases (see section 2 below for details and criteria). In such cases, there is a fast-track (24-hour) procedure during which officials must decide whether to refuse the applicant or refer the asylum claim for substantive consideration. The 24-hour procedure is carried out at the ACs. There is also a fast-track (seven-day) appeal for those challenging a refusal on manifestly unfounded grounds.

Those whose cases are to be considered substantively are sent to *onderzoeks- en opvangcentra* (OCs) to await determination of their claims, which can take up to two years to final appeal. These are open reception camps, where asylum-seekers are fed and housed. At two of those camps, an experimental determination procedure operated for a year in 1995-6 (see section 3 for details).

There is also a special OC for applicants who are returnable to Schengen countries. Such removals will normally take weeks or months to effect. They are not carried out unless there is an agreement that the country of return will accept the applicant and deal with the application.

2. THE FAST-TRACK (AC) PROCEDURE

This procedure applies to those whose claims are initially designated as manifestly unfounded after an assessment interview conducted at the point when an asylum claim is made.

Criteria

Manifestly unfounded cases may include

- people from so-called white list countries (such as Ghana) which have no unusual features; and
- cases where the claim does not relate to any criteria for protection under Dutch asylum law.

This second criteria excludes a relatively small group of people, given that the criteria for protected status in the Netherlands are much broader than A status (i.e. refugee status under the 1951 Convention), and include C status and VVTV status, as well as any other recognised reason for not requiring the claimant to leave Holland.

In addition, cases may be dealt with under the manifestly ill-founded process in other circumstances, such as where nationality is disputed for good reason, where there has been significant delay with no good explanation, or where repeat claims have been made. (For further discussion of the expanded application of the manifestly ill-founded criteria, see 'criteria' in section 2.2 below).

Other than the Schengen procedure, where there is a Treaty obligation on the first state to accept qualifying asylum applicants back to its frontiers for determination, the Netherlands in practice rarely applies the safe third country principle (though the 1994 act makes provision for removals on this basis). There have been isolated, controversial cases where it has been invoked, notably in 1997 in respect of a group of Sri Lankan Tamils who had travelled via Bulgaria. It may occur more frequently after the Dublin Convention comes into effect. Schengen cases will be identified at the AC (at Zevenaar there is a German immigration officer in attendance) but the claimant will be referred to the special OC while a decision is made by the Dutch whether to refer to another state and that other state decides whether or not to accept the referral.

The AC procedure is not designed for any case where the facts or the protection issues are complex; nor is it meant to examine the merits of a *prima facie* asylum claim.

Outline of procedures

The main characteristics of the AC procedure are:

- an initial assessment by the IND that a claim should be dealt with within the 24-hour procedure
- the immediate involvement of lawyers, through the Legal Aid Board, once such a decision has been taken
- a full interview of the applicant by IND officials, after which the applicant is either referred to the OC procedure for substantive determination of the claim, or a preliminary decision is taken to refuse on manifestly unfounded grounds and a written reasoned minded to refuse notice is issued
- in the latter case, a process of representations and discussion between the lawyer and the IND during which the facts or the reasons for a minded to refuse decision can be challenged orally and in writing
- a decision either to uphold the refusal, or to refer to the OC procedure
- the possibility of an expedited appeal against a refusal decision.

The October 1994 law requires that a decision is taken on a manifestly ill founded claim within 24 hours of the claim being recorded at the centre. This is a decision either to refuse the claim or to refer the case into the full OC procedure. All the participants are governed by this time discipline, although court decisions and in certain cases executive discretion require or permit the clock to be stopped in some circumstances.

The involvement of lawyers was seen as an integral part of the process when the legislation was drawn up; indeed, Parliament considered the question of whether the lawyer should have a veto over a refusal on manifestly unfounded grounds (as, for example, the Danish Refugee Council has in the equivalent Danish procedure). This was rejected; but the Legal Aid Board secured an assurance that the advice and opinions of lawyers would be seriously considered and taken account of during the decision-making process. The accelerated procedure which was developed to implement the provisions of the 1994 act was agreed after consultation with the bar, lawyers and jurists, the legal aid board and the Vice-President of the district court.

2.1 Zevenaar AC, July 1996

The description of the AC procedure that follows is taken from a visit to Zevenaar AC from 10.30am to 2.00pm on Friday 26 July 1996, where the researchers were given a guided tour of the centre, spoke to Legal Aid lawyers and administrators, together with an official from the immigration and nationality service within the Ministry of Justice (IND), which takes the substantive decision.

The centre and personnel

Zevenaar AC is a complex of buildings adapted from an old auction site close to the village's railway station. There is a secure perimeter fence and security is provided by a private security company. Inside the complex there is a reception desk where new arrivals are documented; a fingerprinting and property recording centre where they are next taken; interview suites where up to nine interviewers and interpreters are on duty at any one time, and answers recorded straight on to a computer; decision making rooms where panels of three experienced officials per session examine the interview notes to come to an initial decision; an administrative centre where the data generated by the procedure is logged; and a complex of waiting rooms for different stages in the procedure. These include two dormitories for men and women in the case of overnight stays, although the maximum time any person spends in the AC is 32 hours. It is understood that if a case cannot be determined in this time (including any stopped clock periods that apply) the case is transferred to the OC.

The buildings at Zevenaar have a light and airy appearance, and give the impression that considerable resources have been spent on them in the conversion to make them reasonably comfortable. The feature that is central to the working of the system is that the decision takers of the IND are located in the premises and can be readily contacted by the legal aid lawyers. Indeed, such contact is an important part of the procedure. The contact is perhaps exemplified by the communal dining room where IND staff and lawyers both eat. Video consoles overhead inform the diners of the existence of the latest policy circulars on particular countries from the Dutch Ministry of Justice.

What is remarkable about the AC is that the arrangements for the immigration service are mirrored by those for the state-funded legal aid lawyers who assist the applicants. The legal aid side also has its reception desk and administrator (an experienced employee of the Dutch Refugee Council (VVN)). The reception area is a large room well equipped with computers, phones, faxes and a small library mostly consisting of materials relating to the countries from which asylum seekers come. The administrator is responsible for logging in cases referred by the IND, and assigning case workers and lawyers. Both the IND and the legal aid side work the same shifts: 7.00am to 3.00pm; 3.00pm to 11.00pm, and an overlapping shift from 10.00am to 6.00pm. Case law from the appeal court has established that the clock stops from 11.00pm to 7.00am when the claimant cannot be interviewed, and must be permitted to rest.

To service these shifts the administrator can call on a pool of 30 trained case workers (usually legally trained but not qualified practitioners, often described as 'jurists') and 50 practising lawyers who may either be full time employees of the Legal Aid Board or local lawyers qualified in asylum law who work duty rosters. Both jurists and lawyers have rights of audience before the court under the new law. At times of particularly

high demand, the administrator can call on reserves of lawyers. She will allocate the more difficult cases to the more experienced lawyers. In addition there are volunteer workers from the Dutch Refugee Council who may be asked to sit in on interviews or otherwise assist in the practical aspects of the centre.

The lawyers and jurists have their own rooms to study the cases, each of which has a computer linked to the Ministry of Justice database, where all publicly available material on the law, policy, and country reports can be rapidly downloaded (they include the Foreign Ministry assessments, reports by Amnesty International, UNHCR, Dutch Refugee Council, State Department and others and case law) . The lawyers can also make contact with Amnesty in Amsterdam during weekdays to assist with particularly difficult issues of asylum law. An example was given of a Somali national who spoke Arabic and whom the IND were minded to reject on grounds that they were not satisfied of nationality because she claimed to speak a Somali language or dialect that was not recorded as existing in the general literature. Amnesty was able to confirm that this language did exist in very small numbers and the case proceeded to the OC procedure. The weekends remain working hours at the Centre and outside assistance may be more difficult to obtain during this time.

The procedure

Having been logged in at the IND reception, photographed, fingerprinted and assigned a reference number, the claimant is sent for a preliminary interview (during the permitted hours) which is designed to elicit nationality, previous immigration history and details of movements from place of persecution. There is a one line description of the nature of the asylum claim. The interviewer is not permitted to conduct a more detailed interview on the merits of the claim at this stage, and the legal aid lawyers would protest if this was conducted. Nobody from the Refugee Council or Legal Aid attends this preliminary interview; they did not consider that this was necessary or that it disadvantaged the asylum seeker at this stage.

On the basis of the preliminary interview, the IND may decide to send the case to the OC straight away: usually on the basis of a credible claim of a nationality which is recognised as raising serious issues. Legal Aid does not become involved in such cases, though the fact of the referral is made known to the Legal Aid administrator who records it on a computerised log of events and has a copy of the preliminary interview.

The procedure comes into play when the initial interview is marked AC to indicate that the claim will be determined under the manifestly ill founded procedure. Unless the claimant specifically declines assistance or has made alternative arrangements, the file is referred to the Legal Aid administrator who notes the start time, enters it into the Legal Aid system and refers it to a jurist or lawyer. The legal adviser then has 60 minutes to interview the client to ascertain the nature of the asylum claim or any issue that is likely to arise as to the allegedly manifestly ill founded nature of the case. The period can be extended for good reason in cases of particular difficulty. The interview is conducted by using a pool of independent interpreters available on telephone link (IND interpreters can be used, but it is preferred not to; see further discussion of this issue in relation to the Schiphol centre in section 2.2). Temporary unavailability of interpreters would be a reason to stop the clock.

While awaiting a response from the IND, the administrator is able to assist in gathering necessary data and can receive by computer or telephone past immigration details of clients who have come to previous attention. (Because of the peculiar nature of expulsion procedures in rejected cases (see section 5 below), clients who were previously rejected may be making fresh claims without having been removed to another country).

After the legal adviser has interviewed the client, the IND conducts the asylum interview proper. This will probe either the claim itself or the reasons why it may be considered manifestly unfounded. The lawyers do not usually attend these interviews, but will have advised the claimant on the presentation of the case. They may be involved in the next case, or conducting further background research on this one. Trained Refugee Council volunteers are available to attend interviews where particular difficulties or concerns are expressed. This would include unaccompanied minors and others who appeared vulnerable. At the conclusion of the interview the notes are printed and sent both to the IND for decision and to Legal Aid for examination to enable any further research to be conducted.

At this point, the IND can decide that the criteria for manifestly ill founded are not met and can refer the case for substantive consideration to the OC. Alternatively, they can make a provisional decision to reject the claim as manifestly ill-founded. If so, a reasoned minded to refuse decision is drawn up and forwarded to the lawyer. The lawyer examines the decision, conducts any necessary further research and decides whether to make a formal response. This takes the form of direct oral representations to the IND official: it is sometimes informally referred to as negotiation, though formally is called 'legal advice'. The object is to persuade the official to abandon the provisional decision and refer to the OC. If the oral advice is rejected, the lawyer may provide formal written advice which is put on the IND file. If the IND maintains its decision, the lawyer has one hour in which to decide whether to appeal and 24 hours in which to lodge the appeal with the district division of the immigration court.

The above model is applied flexibly. The lawyer may in fact contact the IND decision-taker at any stage in the procedure. The time for response to a provisional decision varies according to the nature of the case within the overall discipline of the clock. If the IND mismanage the case and only make a decision shortly before the expiry of the time limit, the case will go to the OC. If the lawyers are considered to be stalling for time without good reason, time limits may be more rigidly applied so the procedure can be concluded. There is no set time limit for the second (main) interview, which can last from one to eight hours. Part of the oral advice the lawyer may give will be for a re-interview of the client by the decision-taker to clarify factual or credibility questions. If the lawyer decides not to press the client's case with the IND, he or she will usually consult with colleagues and may advise the client to seek a second opinion, which is arranged by the administrator.

On 26 July, one Legal Aid lawyer who spoke with the researchers had started his shift at 7.00am and by 11.00am had conducted three interviews with clients, which he considered a busy day. One of these concerned a Yugoslavian national who did not want to return to perform military service in the Federal Republic of Yugoslavia. The IND considered this a pure draft evasion case which raised no protection issues. The lawyer disagreed because the client was Muslim and had previous mine sweeping experience; he came from a village near the border of the Republika Srpska (the Bosnian

Serb-controlled entity within Bosnia) and feared he would be seconded into minesweeping in Bosnia or would face a staged accident. The IND had rejected the oral opinion, and at 2.00pm was considering the written opinion. The lawyer was confident that the court would overturn a manifestly ill founded decision if the written opinion was rejected. Meanwhile the Legal Aid jurist was dealing with a Yemeni national who had returned to the Yemen after a previous claim had been rejected and who had now lodged a fresh claim in the Netherlands claiming that he had converted from Islam to become a Jehovah's Witness during his previous stay in the Netherlands. This was also a case likely to end in appeal as the credibility of the new claim would probably be contested by the IND.

The statistics

IND statistics for 1995 and the first half of 1996 showed that overall between 10% and 13% of refugee applications were dismissed as manifestly unfounded under the AC procedures.

Detailed statistics collected by Legal Aid for Rijsbergen and Zevenaar for the first half of 1995, and for Zevenaar for the first half of 1996 show the way in which the processes described above led to that outcome.

Initial assessment and first decision

January-June 1995

Total applicants	*Initially referred to AC*	*Dealt with as AC*
11337	3519 (31%)	1392 (12%)
	of which, referred back to OC : 2058 (58%)	

The initial categorisation of manifestly unfounded was therefore genuinely open to change and reappraisal by the IND decision-takers, without the necessity of an appeal. At the stage of first decision, over half such cases were referred for full consideration in the OC procedure.

The process by which this happens is illuminated in the legal aid statistics for three months (March-June 1995) for Rijsbergen and Zevenaar, and for six months (January-June 1996) for Zevenaar.

Altered decisions

	transferred to OC	***dealt with in OC***	*Lawyers' formal intervention*	*Intervention successful*	*Appeal lodged*	*Appeal successful*
March-June 1995						
Rijsbergen	*848*	*373*	*176*	*119*	*58*	*14*
Zevenaar	*338*	*391*	*134*	*not known*	*13*	*11*
Jan-Jun 1996						
Zevenaar	*346*	*309*	*118*	*not known*	*13*	*not known*

Over 80% of referrals during the four-month period at Rijsbergen, and 60-65% of referrals in both periods at Zevenaar, were made without lawyers formally intervening to seek to change the decision. The first filter is therefore the IND's own decision, without formal legal intervention, to refer cases back for full consideration in the OC process. Lawyers stress, however, that informal contacts happen during this process.

Lawyers' formal interventions, either oral or written, are selective, but largely successful. They appear to intervene in only between 25% and 30% of cases where the IND do not themselves reverse the AC designation. However, if lawyers do intervene, they are usually successful in reversing a preliminary decision: this appears to be the case in 75% of cases in the Rijsbergen sample (and the Zevenaar lawyers would claim that their interventions are more likely to be successful, as they intervene more selectively). If lawyers follow up an oral intervention by a written intervention, they will expect either to succeed or to appeal a negative decision.

There are differences of emphasis and approach between the three centres. At Zevenaar, there are fewer formal interventions, and many fewer appeals than Rijsbergen. There is a closer working relationship with IND, and the Legal Aid service has a more directly managerial role: they say they 'do more with words and less with procedures'. At Rijsbergen, lawyers run their own cases, and rely more on formal intervention and challenge. At the far end of the spectrum, at Schiphol, the attitude on both sides was perceived by observers initially to be much more aggressive and adversarial. This was conditioned by the knowledge that refused asylum-seekers arriving by air can in fact be removed (compared with the voluntary departure described in section 5 of this report for those arriving by land). This, it was said, 'casts a dark shadow over the consultation model'. Partly because of this, and partly because of what is claimed to be the more aggressive attitude of the Amsterdam Bar, lawyers at first sought to challenge a majority of refusals, as far as appeal, thus effectively undermining the system. Nearly all their appeals were lost. Over time, therefore, both interventions and appeals decreased, so that those which were made had an impact. (See further discussion of the Schiphol operations, based on a visit and discussions with its personnel, in section 2.2 below)

The role of 'negotiations'

The critical element in the system is the process by which the IND reviews its initial decision to categorise a case as manifestly unfounded. This is informed by a process of discussion and negotiation between lawyers and the IND decision-makers, which takes place both by informal contacts and by formal oral and written advices. Even though each centre uses the procedures and the opportunities for intervention differently, there is in all cases direct face to face contact between the lawyer and the decision-taker, which results in a gradual narrowing down of the facts and issues in the ill-founded procedure.

The procedure encourages the lawyer to give a candid assessment of the merits of the case to the IND. If the facts of the case are so clear that the lawyer cannot make any oral representations against the decision, s/he is not obliged to withdraw the case or make a formal admission, but the absence of representations will result in the appropriate conclusion being drawn. Alternatively, if a lawyer goes so far as to submit a formal advice against refusal and this is disregarded, he or she is almost bound to appeal the decision. An inadequately reasoned decision can be exposed by both sides, but the overall responsibility rests with the IND. If a lawyer, or group of lawyers, is felt to be contesting dubious cases, this will lead to less regard being given to their representations. The high success rate, and relatively low intervention rate, does however mean that lawyers are effectively acting as the gatekeepers of the system: their decision not to intervene will normally be fatal to a case, and they will more often than not decline to intervene.

Equally, the system depends on the IND's readiness to regard its initial assessment and preliminary decision as genuinely open to review and argument, rather than as something which is there to be defended; and on its acceptance that it is not the merits of the claim, but whether a claim exists, which is being tested at this stage. In some cases it is clear that the IND itself decides to refer cases for substantive consideration, without formal legal intervention, whether because of informal contacts with lawyers, the way the client performed in interview after having received legal advice, or the knowledge that effective formal representations would be made against any different decision.

Appeals

There are two immediately evident characteristics of the appeal process. First, there are by UK standards very few appeals: at Rijsbergen, 124 appeals were lodged in the first six months of 1995 (this is said to have decreased in the intervening period); at Zevenaar in the first half of 1995, legal aid supported only 13 appeals, and in the same period in 1996 lodged appeals in only 18 cases. Second, those appeals are dealt with within the expedited time-frame, and are started within two weeks of refusal.

The low appeal rate is a consequence of the reliance on interventions prior to the decision being taken. This is particularly the case at Zevenaar, where we were told that they 'do more with words and less with procedures'. During this process, the parties are applying the judicially developed criteria without recourse to formal appeals; this is in marked contrast to the UK system, where increasingly the appeal process becomes the real decision-making stage. Lawyers do not therefore use appeals, or indeed pre-appeal legal interventions, as a routine card to challenge clear cases or delay the procedure.

The rapid timescale for appeals is partly the result of the small number, and partly of the speed with which each appeal can be determined, as the critical issues have already been identified during the decision-making procedure.

Twelve judges are assigned to the Zwolle Court which deals with substantive and upgrading decisions as well as with manifestly ill founded appeals. A hearing on an AC appeal will usually take 20 minutes, but can take longer if the point turns on the credibility of an applicant and oral evidence should be heard. The judge will have the file from the IND including a summary of the oral opinion and the written opinion of the lawyer. The judge can quash a rejection under the AC procedure with the effect that the claimant must be admitted to the OC and the full procedure.

As with all other asylum appeals, there is no further appeal from the decision of the court in an AC case. There is therefore a tendency for different divisions of the Court and different judges to develop distinct criteria: Zwolle and Haarlem, it was suggested apply strictly threshold criteria, and will not permit the IND to make substantive decisions in arguable cases. By contrast, it was said, the court for Schiphol cases may give a greater margin of appreciation because of the benefits to the state of early detection and hence removal of applicants whose cases are unfounded.

Comment

The AC procedures raise a number of questions in the UK context, both for the government and for lawyers. It must be remembered that the relationship between the governmental and non-governmental sectors in the Netherlands is much less adversarial than that which exists in the UK. It is not uncommon for leading NGO activists to work for a time in a government department; and NGO groups such as the Meijers Committee are able to exert considerable influence in the development of policy. Those relationships do not exist, certainly not in asylum and immigration work, in the UK.

The procedures are not, however, uncontroversial even in the Netherlands. In particular, the less litigious and less interventionist approach of Zevenaar lawyers, compared to those at Rijsbergen, caused some concern to the Dutch Refugee Council and to Amnesty International. However, research has not shown any collusive relationship between lawyers and the IND, and the outcome, in terms of successful appeals, appears to be largely the same. Over time, lawyers and IND staff at all three centres (even in the more polarised atmosphere at Schiphol) appear to have decided that a more consultative approach yields better results.

The key factors which have to exist to make such a system fair and effective are:

- the allocation of considerable resources to the process, and an equitable division of those resources between the decision-maker and the legal aid system
- a decision which is taken on the spot, with the opportunity of direct contact between the decision-taker and the lawyer to define the issues prior to decision
- a narrow definition of manifestly unfounded, which does not seek to determine the merits of a case
- substantive decision-making criteria which go wider than those now used under

the 1951 Convention, and therefore are capable of granting protection on broad humanitarian grounds

- the willingness of IND officials to alter preliminary decisions on the basis of further information and argument

- the willingness of lawyers to make effective representations on strong cases, but to decline to pursue cases where there are no arguable points on the broad criteria which are used to identify manifestly unfounded cases; even though such decisions will almost invariably be fatal to a case.

These elements, and the difficulties which can emerge in seeking to create them, are considered in relation to the Schiphol AC below.

2.2 SCHIPHOL AC, MARCH 1997

Legal assistance in the 24 hour process

At Schiphol, Legal Aid employs 55 staff, including 30 jurists (legally qualified advisers who do not actually appear in court); and 25 administrative staff. In addition, a body of about 100 independent lawyers are employed part-time by Legal Aid, paid on a commercial basis. They generally work one day per week. At times of high demand, additional lawyers from Legal Aid's list can be called in. This means they need never be under or overstaffed.

The part-time Legal Aid lawyers consider their independent position is important for several reasons.

- It means they retain a measure of independence from government, notwithstanding that they receive some funding from the state. (This independence was demonstrated recently by the lawyers' threats to 'strike' when the IND' practices became unacceptable. Fully salaried Legal Aid lawyers could not have afforded to take this risk, in their view).
- They have broad experience and knowledge gained from their private legal practices; they do not become bored or jaded from unrelieved asylum work.
- There is pressure to keep up standards: if they are not performing, they will not be retained on the Legal Aid rota.
- Numbers are flexible - Legal Aid can call in more or less staff, depending on the demand for assistance.

According to one clear view expressed within Legal Aid, assisting lawyers are not interested in pursuing hopeless cases. To do so would damage their own credibility, with Legal Aid and with the IND officials; and would be unsatisfying professionally and personally for them. It was said that they will generally advise their clients in realistic terms about the prospects for success. If, however, the applicant wishes at all costs to appeal as far as possible, the lawyer will be bound professionally to represent him or her.

It can be difficult advising AC clients. The first challenge, according to the lawyers, is

to win their trust. Many think the Legal Aid lawyers are linked to the government, because they are at the airport and clients are sent to them by the border officials. A crucial first step is making it clear that 'you, as their lawyer, are independent'.

The strenuous and demanding nature of the work was emphasised. Lawyers must always be alert and concentrate from the first minute; their role requires rapid analysis and action. It was described as 'like working in a pressure cooker'. Once one has the necessary experience and confidence, assisting in the ACs can be satisfying. This is only the case, however, when the system works well.

There are reasonable resources available to lawyers working at Schiphol. Hearing rooms and amenities are adequate. However the lack of interpreters is a problem. Research materials are also not plentiful (unlike some other centres, Schiphol lawyers do not seem to have access to computers or any extensive library). However, it was noted ruefully, even if research materials were more extensive, there is little time to lose in the 24 hour process, including in chasing materials. This restriction on the scope for investigation can be a serious problem, particularly if the IND does not accept that the case is complex and more time/resources for research are needed.

Background to the AC system at Schiphol

As in other parts of the Netherlands, the 24-hour procedure have been controversial in Amsterdam. Many lawyers disagree with it in principle, arguing that all asylum seekers should have a detailed investigation of their claim. However even its opponents have been prepared to work reluctantly in the AC system, to try and assist the people who fall into it.

The AC system was first used in the other centres in 1995, and introduced at Schiphol in January 1996. The Schiphol centre now deals with all 'manifestly unfounded' claimants who come to Netherlands by air or sea (via Rotterdam). It was set up very hastily at Schiphol, in a period of less than two months.

The system requires everyone who is placed in the short procedure to be dealt with in 24 hours. It is not clear why the 24 hour figure was chosen; it has been suggested that a longer period could be used (such as three or seven days) which would still achieve an earlier decision, but would allow more detailed consideration of the claims. One possible explanation for the choice of the 24 hour period is that in theory, a process which concludes within a day will not require the state need to provide accommodation. It was anticipated that if decisions could be made within 24 hours, those accepted or admitted to the substantive procedure would be accommodated in the community or OC facilities respectively, while in theory, those refused can be removed.

One commentator suggested that the government's move to a short procedure was based originally on the assumption that a certain proportion of asylum seekers coming to the Netherlands have no claim. For that reason, it was suggested that it is not necessary or resource-effective to put them into an extensive procedure. The problem which then arose was: how can these people 'without claims' be identified quickly, fairly and effectively? According to Schiphol lawyers, the AC process was formulated as a 'compromise' solution to the problem, and agreed between the government, the Refugee Council (VVN) and the lawyers' organisation or Bar Council. The terms of the

arrangement have since become disputed, and the disagreement led to last year's breakdown in the system at Schiphol in 1996.

Under the terms of the compromise, lawyers explained that

- lawyers agreed to participate in and advise applicants in an accelerated process; *provided*
- the process would aim *only* to find out whether they are among this group of those 'without claims'. (In other words, no substantive decisions or claim assessments would be made).
- In return for their agreement to participate, the lawyers received a 'guaranteed' right to intervene with a 'weighty advice' (or persuasive recommendation) before a final refusal decision was made. This was to be used if they disagreed with a decision to refuse someone as manifestly unfounded. The IND would be bound to accord significant weight to the intervention.

This final element, the intervention right, was seen as essential by the lawyers. Briefly put, their position was: in an accelerated system, where clients' rights to a substantive investigation are curtailed, there must be some protective safeguard in this form. Otherwise, the lawyers considered they could not be said to be representing their clients' interests to the extent that their ethical duties demand.

Disagreements arose, however, about the terms of the compromise. Two major areas of dispute were:

- the nature of IND's obligation to have regard to LA's view (In Parliament, the Secretary of State said that IND was merely obliged to 'take (the lawyer's intervention) into consideration'. The Bar Association had perceived that IND was 'bound to follow' it)
- the criteria for deciding to deal with people through the AC process in the first place. Lawyers perceived that it was applied to too many people (in general terms, more than 20% of claimants at Schiphol were reportedly being placed into the AC process.) Further, it was felt that IND was not being sufficiently transparent about the application of its criteria.

In this context, lawyers were using their persuasive intervention or 'weighty advice' rights in over 50% of cases. IND in response began to disregard the interventions (accepting only about 20% of those made). The system clearly was not working. In November 1996, the lawyers threatened to strike. The IND agreed to discuss the operation of the system, and in December 1996, a new method of organising the process was negotiated.

Criteria

As explained by the lawyers, the original criteria for dealing with a person via the 24 hour process were two:

(1) that the person comes from a safe country of origin; or

(2) that the claim does not raise any of the grounds for protection recognised in Dutch law; in other words, that the claim for asylum is unfounded or 'paper-thin'.

It was argued that as soon as a decision-maker were to go beyond these criteria, he or she is already considering whether a claim has substantive merit. On this basis, it was argued, it was becoming a *substantive* consideration which should not be done within

the AC phase.

The Schiphol lawyers reported that the IND had begun categorising people into the 24 hour process on a third ground (which was *not* included in the original compromise agreement about how the process would work). This was

(3) 'that the claim is one which *can be dealt with within 24 hours'.*

Such a test was seen as self-defining and potentially limitless.

One difficulty with defining and clarifying the criteria is that the agreed terms and parameters of the AC process were never formalised in Dutch law. They were simply laid down as part of a (non-contractual) agreement between the authorities and lawyers. This agreement has since been activated by decree (i.e. notification in Parliament); but it is not referred to in legislation or other binding written instrument.

The effect of this unformalised arrangement is that decisions under the procedure - and the process generally - are difficult effectively to challenge in the courts. Under judicial review, in deciding if a decision was made lawfully, the courts have no legislative criteria or written agreement to consider (apart from the Parliamentary decree). Thus prima facie, it has not been possible to show that IND decisions based on these allegedly 'impermissible' criteria should be set aside.

Difficulties emerging with the 24 hour process at Schiphol

The following account of problems which arose with the Schiphol AC process in late 1996 is based on explanations from lawyers at the Schiphol AC on the day of the visit.

When the 24 hour process was introduced in January 1996, all asylum seekers and undocumented applicants were interviewed, as previously, by border officials on arrival. Where an asylum request was made, the border officials were permitted only to ask about the person's route, nationality and identity. From there, the case was passed on to the IND at the AC centre for consideration.

After a person was referred to the AC, the IND would interview him or her on a preliminary basis. The purpose of the interview was to consider whether the person satisfied the criteria for processing under the 24 hour procedure. In assessing this, the IND was *not* supposed to address the substantive grounds for the claim. If it was decided to deal with him or her in the short process, the applicant would have access to legal advice. A full IND interview then followed. If a preliminary decision were taken to refuse the claim, it was delivered to the lawyers as part of the intended 'consultation' *(kof)* process.

As discussed in 2.1 above, the aim was that the lawyer would then have an opportunity discuss the preliminary decision with the IND officer. However after about six months of the process at the Schiphol centre, Legal Aid lawyers felt that this was not occurring as planned. It was perceived that IND was frustrating this intended 'consultation' process, firstly by refusing to disclose the reasons in the preliminary decision (*kof*). The reasons were 'not (made) transparent', and were thus impossible to challenge in discussion. Secondly, it was said that the decision-makers were refusing to consult until very late in the day, i.e. when the 24 hour limit was nearly up.

In response to this perceived non-cooperation by IND, the lawyers were using their

'persuasive intervention' power in well over 50% of cases. Lawyers argued they felt obliged to attack decisions, because it *appeared* that the criteria had not correctly been applied. The decision itself did not clearly reveal if this were so; based on the record alone, the lawyer had no means of knowing what the reasoning behind the decision was. In turn, in 80% of cases where interventions were made, the IND would disregard them. This was seen by the lawyers as contrary to the terms of the AC system compromise; but they had no means of compelling the IND to accept their interventions (and alter the substantive decision). Although lawyers could (and in the majority of cases, did) challenge the refusals in court, they would invariably lose. In essence, the lawyers felt that this model was fundamentally tilted against them, with no openness about decisions, and a refusal to consult or 'negotiate' on individual cases.

The system reached crisis point in November 1996, when Legal Aid wrote to the Secretary of State calling for negotiation, and no response came. Some Legal Aid lawyers went on strike at that stage. The Legal Aid administration declined to endorse this, saying it preferred to resolve the problem through less confrontational means.

In December 1996, the IND agreed to meet with Legal Aid, the Bar Council and the Refugee Council. There, it was conceded that the AC system had to be changed, in all parties' interests. According to Legal Aid, the most constructive advance was that 'IND agreed to open up'. Major changes agreed on 5 December 1996 included an increase in the 'transparency' of the the initial sift of cases into the 24 hour process; and reactivation of the consultation system.

In looking to increase transparency, it was decided that at the point where cases were 'sifted' into the 24 hour process, a standard written format would be used for decisions. This required the IND officials to formulate all of their reasons and arguments on paper, and list them under specific heads. This was intended to open up the decision-making process at the sift stage, and reveal the criteria which were being applied. To facilitate more effective and open consultation in cases placed in the AC stream, a specific obligation was created to consult *early*. This required the IND and lawyer to meet face-to-face as soon as the AC decision form was completed. Thus the basis of the decision to deal with a case in the fast track could be discussed before any second interview took place.

In addition, the length of the IND main interview was curtailed; a strict limit of one hour was imposed. Previously, interviews would last around three or four, or sometimes up to eight hours. Legal Aid representatives felt strongly that this new limit was justified, given that the purpose of the interview was only to determine *whether* a claim exists. Under the new arrangements, the one hour time limit can be extended, but only in exceptional cases where Legal Aid consents. To win an extension, the IND must identify a particular issue on which it seeks to ask a question.

An agreement was also made about the use of interpreters. Legal Aid has its own list of independent interpreters (who are funded by the state), but they are fewer in number than the IND interpreters, which cover 25 languagues. Interpreters are often needed at short notice, as interviews can be conducted any time between 7:00am and 11:00pm. In previous cases, where no suitable Legal Aid interpreter had been available, Legal Aid had argued the applicant should go straight to OC. IND had contended that in such cases, the Legal Aid should make use of interpreters offered by IND, to allow the sifting process to go ahead. Legal Aid had refused on the grounds that the interpreter

used for a lawyer-client interview should be wholly independent of IND (in particular where it was proposed to use the same interpreter later in the formal IND interview). However in cases rejected after Legal Aid had refused to accept an IND interpreter's services, where Legal Aid later appealled, the appeals were dismissed. The courts took the view that Legal Aid should accept the offer of IND interpreters.

Under the compromise agreement, Legal Aid agreed to accept IND interpreters (and let the 24 hour process go ahead) where necessary. This was on condition only that the same interpreter could not be used both for legal advice and for IND interview for the same client (i.e. no conflict of interest could arise.)

Finally, the IND agreed to change its practices to allow Legal Aid a realistic possibility to obtain a 'second opinion' from one of its lawyers before deciding not to press a refused 24-hour case on appeal. Previously, IND decisions were being made very late in the process (sometimesat hour 22). Thus if the Legal Aid lawyers decided not to appeal, there was no opportunity to get another view (before Legal Aid dropped the case). Now, efforts are made to ensure IND decisions are made and notified earlier. In practice, if there is still no time for a second opinion before 24 hours is up, and Legal Aid is in doubt, they will lodge an appeal as a precaution. If the second opinion from a Legal Aid lawyer is unfavourable, they will withdraw the appeal. (This effectively distorts the figures for appeals lodged).

On 15 January 1997, the renegotiated AC process was first used. Major cultural change was needed on both sides to prepare for it. Both IND and Legal Aid have invested much time and effort in it. IND has brought a new and well-reputed manager in to run the Schiphol centre. Some Legal Aid lawyers are still mistrustful of IND, but the Legal Aid management hopes that time will change that.

Evaluating the changes to the Schiphol AC system

After the reorganised procedure had been running for about six weeks, a critical evaluation was conducted jointly by Legal Aid and IND. This aimed to assess the changes both on a quantitative and qualitative basis. In terms of the statistical data, some comparisons were available at the time of the research visit.

For 1996, approximate figures had shown a total of around 6,000 applicants. Of these, roughly 30% (just over 1900 applicants) were dealt with through the short process. Around 75% (1470) of those were sent to an OC for substantive determination, and the remaining 15% (just under 300) were refused after the 24 hour process.

In 1997 figures compiled for the purposes of the evaluation showed that approximately 15% of applicants have been going into the AC process (178 out of a total 1,067 applicants), by comparison with the 30% in 1996. This suggested that the short process criteria have been applied more narrowly. Within the short procedure itself, there is said to be more consultation and fewer persuasive interventions (IND figures showed lawyers intervened in 34 out of 158 cases, or 21.5%). Interestingly, there was no indication that IND was accepting the interventions in more cases; but Legal Aid considered that intervention was necessary less frequently, because the IND was more receptive to informal consultation, and sending more cases to OC at an earlier stage. At the end, some 7% (89 out of 1245) of cases were finally refused after the 24 hour

process (plus an additional number after court appeal is rejected), leading to a drop of around 50% in total refusals.

A qualitative appraisal of the new approach is also being prepared. It is expected that a different reaction will emerge from the Legal Aid lawyers on the one hand, and the IND on the other. Among Legal Aid lawyers, there is still a significant group who object to the entire principle of an AC process, and to giving any applicant a less than exhaustive investigation. They are still unlikely to applaud the changes. It was suggested that around half are likely to agree that the newer model is working better.

Among IND officials, there is a group which is clearly opposed to the new application of the short procedure. In particular, there is some dissatisfaction with the new time limit of 1-2 hours for interviews. Some IND representatives feel that 2 hours is 'too short' , and that they 'cannot do [their] job properly within such a short procedure. LA's view is that no more than 2 hours should be necessary, because the interview is designed only to find out *if there is a claim to be considered.* If any longer is needed, it is argued that either the decision maker is erroneously straying into consideration of the substantive merits; or the case should be put into the substantive process, because there is enough suggestion of a story to warrant more detailed investigation.

After the full evaluation of the reorganised Schiphol AC process is put to the Secretary of State, it will be up to Parliament to decide on its future. It is not clear when this decision will be made, or what the likely outcome will be.

It appears that the government is committed to maintaining some form of sift and two-track system. This is based on three considerations:

- the government is looking for simpler and quicker procedures which can deal expeditiously with as many applicants as possible;
- the Schengen agreement provides for some applicants to be dealt with by other partner states, and a system is needed to identify these people (without having to make a substantive decision on the claim in the Netherlands first);
- the costs of the long procedure are too great, and the state is reluctant to pay them for all unfounded cases.

Differences between the process at Schiphol and elsewhere

It was suggested that there are two main reasons why the systems operate so differently in Schiphol, by comparison with the other two AC centres.

First, in Rijsbergen and Zevenaar, if an applicant is refused, he or she is simply placed on the street. In law, refusal should result in expulsion, but the likelihood of physical removal is far less. From Schiphol, by contrast, unsuccessful applicants can be and are removed. Second, different nationalities and ethnic groups are represented among the Schiphol applicants and those seen at the two land border centres. The suggestion is that many nationalities applying at Schiphol are less likely to have successful claims.

The apparent success of the AC sift and short procedure models in the other centres have led to consideration of their use nationwide (see discussion of the experimental process in section 3). Some of those at Schiphol, however, ask if 'we are going too far with the consultation model'. It seems there is a general movement in Dutch law towards 'informal' and alternative dispute resolution methods.This approach is said to

influence the Ministry of Justice in relation to asylum determination as well, and is seen now in the calls for use of the '*kof*' process throughout the asylum system. But some maintain that it is not clear that a negotiation or consultation approach is appropriate for asylum determination.

Other possibilities for better procedures have also been floated. These have included:

- a three-stream process, rather than two. Claims would be divided into those which (i) appear to have no basis; (ii) those which are clearly well-founded, and (iii) those which do not fall into either category (and need further investigation).
- an AC process of five days, rather than 24 hours. This would allow for proper rest for applicants, and for full legal advice and more detailed consultation.

Comment

There are two major outstanding questions for the Dutch system at present. These are:

- what is the future of the AC system and short process?
- should the consultation procedure be introduced into the OC system nationwide?

In Legal Aid's view, there are fundamental problems with any sifting process. It creates the perennial danger that genuine cases will not be identified, and will not get the detailed attention they need.

It appears that greater consultation is a good thing in any decision-making model. It facilitates communication, and thus removes the risk of basic factual and other errors. It can improve trust and relations generally between advocates and decision-makers. It compels preconceptions and negative attitudes (on both sides) to change. It can be achieved through personal contact between the decider and applicant/lawyer; and through greater openness and transparency in decision-making. It is generally felt in the Netherlands that it should be encouraged at all levels, in whatever model is used in the longer term.

3. EXPERIMENTAL PROCEDURE USING THE CONSULTATION MODEL IN SUBSTANTIVE DECISION-MAKING

Oisterwijk, July 1996

By 1995, following the introduction of the new Act, both lawyers and IND decision-takers apparently believed that the process of direct contact prior to a final decision in the AC process made for better and more sustainable initial decisions. As a result of 'bottom up' pressure from those directly involved in the AC procedure, the Ministry of Justice agreed to a pilot scheme, for one year (May 1995-April 1996), in two OC centres, Oisterwijk and Schalkhaar, using the same technique in full asylum decisions. This is referred to as the '*overleg*' ('consultation') model, in contrast to the normal adversarial process. During the scheme, 9% of substantive asylum decisions were dealt with under the experimental procedure.

The pilot scheme shares most of the characteristics of the AC scheme, save that it does not operate within the same tight timescale. Like the AC scheme, its central feature is a process of direct contact and discussion between the lawyer and the IND decision-taker, after the latter has produced a reasoned decision.

The scheme was internally evaluated by the local IND officials who operated it during the period 15 May to 1 December 1995; independent evaluations from a statistical bureau and from the University of Nijmegen were also conducted and published in March 1997. The Nijmegen study was originally commissioned as an independent evaluation by the Dutch Refugee Council and the Legal Aid Board. The Ministry of Justice in the Hague later agreed to incorporate the Nijmegen findings into their own assessments.

The scheme at Oisterwijk

The researchers visited one of the OC centres where the pilot scheme had operated: Oisterwijk, near Tilburg, in southern Holland.

We were introduced to the project by a lawyer who had acted as legal co-ordinator during the experiment, who also worked in private practice. We met the local Ministry of Justice IND team co-ordinator, together with a public relations official from the Ministry, and a number of lawyers and jurists involved in the scheme (and still providing legal advice to asylum-seekers in this and other camps). We also discussed the scheme Nijmegen University representatives and with Ministry of Justice officials responsible for immigration and asylum policy in The Hague.

Oisterwijk is a reception camp, converted from a holiday camp, in a wooded area surrounded by apparently expensive private houses and extensive recreational activities (sailing lakes, cafes and rambles). It is not a closed camp: asylum-seekers live in cabins among the trees, turn up for regular meals and report weekly (or sometimes daily) to the police office on site. All asylum-seekers awaiting substantive decision are housed and fed in such camps or hostels. There are separate (but nearby) huts for the border police and IND, and for Legal Aid.

The procedure

Under the normal determination procedure, an official from the nearest IND office (here Den Bosch) conducts an assessment interview with the asylum-seeker at the camp. A volunteer from the Dutch Refugee Council can be present, if available (this cannot always be arranged); no lawyer is present at this stage. Following the interview, a substantive decision is taken by IND officials in Den Bosch, based on the interview and any corrections later sent in by, or on behalf of, the asylum-seeker. If full refugee (A) status is refused and the asylum-seeker appeals, a lawyer is assigned to the case. In practice, nothing more is done on the file until the case comes up for *bezwaar* (the internal administrative review of the decision which is the first stage of an appeal). During this process, the lawyer will usually also seek a preliminary ruling from a judge to suspend deportation proceedings pending the review. If the *bezwaar* decision is unfavourable, a formal appeal to the court can be lodged. According to the Immigration Department, the procedure takes on average two years (including appeal).

The experimental scheme was designed to ensure a good quality of initial decision-making which took all relevant factors into account at an early stage, based on procedures which were seen to have succeeded in the 24-hour procedure. The aim was to produce well-argued initial decisions, thus shortening the total process and minimising appeals.

The initial assessment interview, as conducted in the experiment, remained the same as in the standard procedure. However, the IND official (and the case file) remained on the site. In all cases, the official (who was also the decision-taker) produced a preliminary written reasoned decision, referred to as a *kof (kernoverwegingenformilier)*. In cases where A status was not granted, this amounted to a 'minded to refuse' notice. In such cases, the Legal Aid Board was informed, and a lawyer assigned. The lawyer then interviewed the asylum-seeker and consulted the Refugee Council volunteer (if available), in order to obtain further information and take instructions. There was the opportunity for informal contact with the IND decision-taker to clarify issues or check information. In some cases, especially at Schalkhaar, the lawyer would also produce a written response to the preliminary decision; at Oisterwijk, contact was more likely to be made by telephone.

There followed a meeting between the lawyer and the IND decision taker (ideally within 30 days of a preliminary decision) to discuss the decision, and for the lawyer to present any contrary information or argument. The timescale was more flexible than the 24-hour procedure, and allowed for time for medical examination, further information from the country of origin, or interpreters to be obtained. It was said to be more important to reach a good decision than a quick one.

According to the local IND co-ordinator, the aim of the meeting was

- to agree a complete set of facts
- to establish the IND's and the lawyer's opinion on those facts
- to discuss those opinions
- to identify what was agreed or not agreed.

The lawyer's advice did not have the same status as had been agreed with the Legal Aid Board in the 24-hour procedure (where the IND had agreed to take it seriously into account in decision-making). This could not be conceded in substantive decision-making.

The outcome of the meeting would either be a confirmation of the preliminary decision; a grant or upgrading of status (which could be authorised directly by the official involved); a remission of the case for further inquiries; or a refusal. After the meeting, the IND would make a written record, though this was not shown to or agreed by the lawyer at this stage. In the event of an internal review or an appeal against refusal, it would form part of the dossier. The lawyer might make his or her own note of the meeting and send it in as a record. There remained the opportunity of further contact by telephone or in person to clarify any areas of disagreement about what had been said or meant, during the process of internal administrative review. Second opinions, on both sides, were available, but always from those involved in the project, who understood the ground rules of the experimental procedure.

Statistics

Statistics were provided to us by the local IND officials operating the scheme, and are also available in the Nijmegen report. In some cases, the statistics (and the conclusions drawn from them) differ. Where this is so, we indicate the source of the material (IND; NIJ).

Grants of status at first instance under experimental and normal procedures, 1995/6 (NIJ)

	Total	*A*	*C*	*VVTV*
Experiment	**48%**	*25%*	*11%*	*12%*
Normal	**34%**	*15%*	*6%*	*13%*

IND figures for total statuses granted are slightly different, but similarly related: 44% and 31%).

Both IND and Nijmegen show a substantial increase in grants of status in first instance decisions. The Nijmegen figure shows an even more noticeable rise in the quality of status, particularly as between full refugee status and C status (VVTV decisions presumably altered less as they are country-specific, rather than individually determined).

The Nijmegen report also attempts to assess the effect of the *kof* process of negotiation, using figures supplied by the Legal Aid Board at Schalkhaar.

Altered decisions as a result of lawyers' interventions: Schalkhaar

	Total	A	C	VVTV
IND preliminary decision	**41%**	17%	5%	19%
Decision after intervention	**48%**	24%	11%	13%

Preliminary decisions by the IND to grant some kind of status were already 7% above the national average. After negotiation, only 7% more grants of status were given in the *kof* process, but officials were persuaded to upgrade the status in a further 7% of cases. What appears to have happened is a process by which more considered views are initially taken (in the knowledge that they will have to be defended) and there is a limited, but significant, willingness to alter those decisions after discussion with the lawyer.

What is more surprising is the Nijmegen study's finding about the next stage in the process, *bezwaar* (internal administrative review of the first instance decision).

Altered decisions following IND review (bezwaar)

	Decision changed at bezwaar	***Total statuses post-bezwaar***	*A*	*C*	*VVTV*
Experiment	38%	**54%**	28%	12%	14%
Normal	21%	**37%**	16%	7%	14%

The Legal Aid figures show an even greater success rate in *bezwaar* at Schalkhaar, of 45%. The process of internal IND review therefore appears to have been as successful in challenging initial decisions as the *kof* process (the percentages are larger, but the number of decisions smaller). *Bezwaar* was also much more likely to lead to a change of decision in cases dealt with in the experiment than under normal procedures. This is probably because, at least at Oisterwijk, the review is carried out by the same team of IND officials involved in the experiment. Initially, they did not take the *bezwaar* stage seriously, on the grounds that issues had already been considered during the *kof* process. However, the courts held that they must conduct a proper review, with reasoned decisions. Overall, therefore, the *bezwaar* process further increases the number, and the quality, of statuses granted without any recourse to the courts (except to stay removal).

From the applicants' point of view, the outcome of the experimental scheme appears encouraging. It is less clear whether the government's aims - to reduce the length of process and the number of appeals - have been met. The IND's initial assessment was that cases were reaching the appeal stage on average nearly 12 months earlier than in normal procedures. However, the method used - comparing normal cases and experimental cases decided within a 9-month period - necessarily excluded the more difficult experimental cases which took more than 9 months to decide. Figures were also compiled at a time when considerable resources were being devoted to clearing the backlog of undecided cases, the Minister having threatened to resign if it were not cleared by the beginning of 1997.

The Nijmegen research, using the yardstick of cases still awaiting decision after a year, found that there were slightly more such cases under the experimental than under normal procedures. However, what is clear from both research studies is that the experimental procedures produce better decisions earlier in the process. This benefits those granted status: it also benefits governments, by making it more likely that refused applicants are removable.

The Nijmegen research initially considered that it was too early to gauge either the percentage or the result of cases going to appeal, and that there was no significant drop in the percentage of *bezwaar* cases (though the number dropped as there were more favourable pre-*bezwaar* decisions. The IND, by contrast, believed that there was a significant drop (of up to 25%) in cases going to *bezwaar*. Once again, however,

there is agreement that the process reduces the necessity of appeal. In the past, the government would not reconsider a negative decision until forced to do so by an impending appeal; in many cases, it would then concede, either because of the length of time which had elapsed, because of new material made available or because it was clear from the papers that the refusal decision would not be upheld in court. In the consultation model, decisions are continually subject to review and intervention on the basis of new arguments or information.

The final Nijmegen report, *Het overlegmodel in de asielprocedure,* was released in March 1997. Its broad conclusion was that the experiment at Oisterwijk and Schalkaar was generally successful, although it was found *not* to lead to a significant 'reduction in the [appeals] procedures' invoked after the primary decision. There was some controversy about some of its findings. In particular, the finding on the experiment's failure to show a 'reduction in procedures' was questioned; and some critics have asked if the researchers assessed the figures in the most appropriate way.

Based on the Nijmegen Report and experience in the ACs, the major question now is: will the consultation model be adopted for nationwide use in OC centres? Parliament is expected to consider this late in 1997.

The Ministry's view

In July 1996, the local IND co-ordinator was generally in favour of the scheme; as were, he claimed, all the IND officials who had been involved in it on a rolling programme. None of them wanted to move back to the old system. He quoted one of the officials: 'working at Den Bosch is like being a mechanic on a VW Beetle; working here is like working on a Jaguar'. The Nijmegen report confirmed this impression of greater work satisfaction among participants. The co-ordinator also believed that the greater degree of interaction between legal and IND staff at a low level resulted in better understanding, and a change in culture on both sides, to produce a less adversarial system (lawyers did not necessarily share this view).

However, Ministry of Justice officials in the Hague were somewhat more cautious. They pointed out that the new system is resource-intensive: it requires both a greater amount of time, and a higher quality of official capable of negotiating directly with lawyers. It was acknowledged that IND officials were not normally good communicators. There was some concern that officials might become too close to lawyers and asylum-seekers. The Nijmegen report considered this, but found it not to be the case (see below).

It was clear that the Ministry was looking for some pay-off: a shorter overall time-frame and fewer appeals (therefore lower costs at later stages). IND officials had anticipated that lawyers and clients were less likely to challenge hopeless cases, once the facts and arguments had become clear. Ministry officials in The Hague were clear that this was a key factor in their support for the system: it depended on lawyers 'accepting when they are beaten'.

The statistical report and the final Nijmegen report did not find that this outcome was achieved. Despite the absence of a quantitative reduction in appeals, however, some observers feel that the experiment was vindicated by the more careful consideration of cases, better analysis and improved quality of decisions which resulted.

The lawyers' view

All the lawyers we spoke to who had been involved in the scheme were in favour of it: though it was said that the national lawyers' organisations were divided, principally because of the danger that lawyers might become involved in judging the merits of a case.

Those involved in the scheme supported it because it was short, it identified clear areas of disagreement, it resulted in better and better argued decisions and it narrowed the issues. Communication was good and it was possible to deal directly with the decision taker: as compared with the normal system, which involved many fruitless telephone calls to the Department's offices in Den Bosch. It was said that the new procedure (in the 24-hour and experimental schemes) was 'the only way to make the [1994] law work for us' - by forcing IND officials to give well-reasoned decisions and defend them. The preliminary minded to refuse decision was often inaccurate on the facts or conclusions, and could be corrected at an early stage.

The view of some of the lawyers (particularly those in private practice) was however somewhat different from that of the local Ministry officials. One lawyer claimed that her advice on appeal in experimental cases was no different from that in normal cases. All were surprised at the Ministry's claimed 25% drop in appeals. Lawyers were clear that they were not negotiating or making deals, but putting their clients' case; they would not concede that a negative decision was right. However, it was acknowledged that the discussion might starkly reveal hopeless cases, as well as assisting in the promotion of strong ones. There were some complaints that the Ministry's record of a meeting often implied agreement with, rather than acceptance of, a decision to refuse and an internal departmental review of that decision.

The Nijmegen report supports the view that no symbiotic relationship had developed in the course of the experiment: lawyers resisted IND pressure to agree not to appeal or to accept review; IND, for its part, resisted special pleading in individual cases. However, it does confirm a change of culture on both sides. Previously, IND would behave in an adversarial manner, making poorly reasoned decisions and refusing to concede on cases until forced to do so by the threat, or the actuality, of appeal. The only direct contact with lawyers was in the context of a formal complaint lodged with the chief immigration service. In the experiment, they took professional pride in making good, defensible decisions.

Equally, lawyers did not, and sometimes could not, argue each case. The research confirms that a lawyer who always argues for A status will lose credibility; and that some lawyers, at least, will acknowledge to IND that a case is 'hopeless'. It records two cases where lawyers did not ask for A status, even though that possibility had been fiercely debated within IND.

Lawyers at Oisterwijk were concerned at the pressure which might be put on less experienced (or less strong) colleagues to concede points at interview, to discuss the strength of their case, or to comment on its weak points. The issue of quality control of lawyers was raised: in order to qualify for asylum legal aid work, a lawyer had only to take three post-qualification courses in aliens' law and to have done some cases (which is more than is required in the UK). A new Commission would be looking into this soon.

They also pointed out that the meeting between the lawyer and the IND official was not conducted on a level playing field. Lawyers did not see the IND file, and the IND might withhold favourable jurisprudence. More importantly, IND decisions were in fact constrained by secret instructions from the Ministry on policy for different groups and categories (eg cross-religious marriages in former Yugoslavia; the safety of various parts of Sri Lanka). Lawyers could therefore win the argument with the local official, only to find that a negative decision was sustained after further consultation with the Ministry. This, however, could have benefits: first, it enabled lawyers to identify the outlines of the secret instructions; secondly, if the case came to appeal, it would be clear that the decision had been made, not on the facts of the case, but under general policy directions. Appeals were therefore less likely to turn on the credibility of the applicant, and more on the credibility of Ministry policy and decision-making.

One feature in evaluating the scheme following the Nijmegen report will clearly be the extent to which the appellate (and the internal review) system benefits from a narrowing of the issues and a more reasoned decision-making process at first instance.

Comment

One of the main aims of this research project is to examine alternative procedures and structures for fair and workable decision-making. There are two critical stages: the initial decision and the appeal. The Canadian system concentrates resources (and effective decision-making) on an independent review of an initial IND sifting process (see JUSTICE/ILPA/ARC, *Asylum determination in Canada*, supplementary report 2). The Dutch experimental system prioritises the IND's own decision-making stage, in the hope that decisions will be better made and that the appeal stage will be less necessary and speedier.

It is clear that the quality of decision-making is greatly improved by the process of direct contact with the decision-taker and the need for him or her to defend and provide reasons for decisions. The contrast with the UK system, where most IND decisions are unsupported by reasoned argument and rest on undisclosed internal instructions, or assertions as to credibility, is very marked; as is the difference in the percentage of statuses, and of 1951 Convention status, granted. The experiment raises the same questions as those which apply to the 24-hour scheme: the level of resources required, the need for a degree of trust between the parties and for preliminary decisions to be genuinely negotiable and well-founded.

There is the same tension for lawyers: the possibility of effective intervention at an early stage depends on an understanding that the lawyer will be discriminating in the cases he or she pursues both in the *kof* process and at appeal. The critical stage in the process is a private meeting between lawyer and decision-taker. On one view, this can be collusive and undermine the lawyer/client relationship. It requires the lawyer to indicate some opinion of the merits of the case, even if implicitly. On another, early intervention may concentrate the mind of the decision-maker at every stage, and may be more effective than a later judicial challenge to a decision already made, particularly one which turns on issues such as credibility. It may also clarify the real issues before review or appeal.

The integrity of the initial decision, and of the process by which it has been reached, are clearly fundamental. This goes to the quality of the legal and IND staff. On both

sides, the need for training and proper support and supervision structures would be paramount if the scheme were to be more generally applied.

4. CRITERIA AND STATUS FOR HUMANITARIAN PROTECTION OUTSIDE THE 1951 CONVENTION

The protection statuses available in the Netherlands have already been outlined: A status for 1951 Convention refugees, C status for individual protection on humanitarian grounds and, since 1994, VVTV status for groups needing temporary humanitarian protection. The last two provide a statutory framework for protection *inter alia* against violations of Article 3 ECHR and Article 3 of the UN Convention against Torture. A and C statuses are directly justiciable in the courts. The criteria for the grant and removal of VVTV status in respect of particular countries are also justiciable.

C status

This is granted to individuals who can show an individual need for protection: the Ministry of Justice prefer to call it a 'residence permit on humanitarian grounds' (VTV). According to the Ministry, it is granted on criteria which reflect the European Court of Human Rights decision in *Vilvarajah*. However, in fact it appears to go wider than those who face a substantial likelihood of future ill-treatment, and to cover those who have suffered traumatic experiences eg the death of relatives or rape.

It is also settled in law and practice that C status gives permanent residence: it is therefore ironically more secure than A status, which can technically be withdrawn under the cessation provisions of the 1951 Convention.

VVTV status

This is a temporary status, granted one year at a time, for a three-year period. The relevant act defines it as being granted 'if in the judgment of the Minister, forced expulsion to the country of origin would be of extreme hardship to the alien in relation to the general situation in the country'. It is therefore country-specific, rather than person-specific.

Extension of status can be refused, and the person returned, if it is considered that the country is now safe. At the end of the three-year period, if it is still deemed unsafe to return a person, he or she must be granted C status. During the three-year period there are no rights to family reunion.

VVTV status cannot be applied for (asylum-seekers apply for A and/or C status); but it can be granted on appeal. There have been recent attempts in Parliament to extend the duration of VVTV status to five years; this was narrowly defeated by the government (the Minister having resisted pressure from her Cabinet colleagues and her officials, many of whom supported the proposed extension).

A decision to remove a country from the VVTV list is initially the result of a Ministry of Foreign Affairs assessment that the country is safe. This is passed to the Ministry of Justice, and can then be debated in Parliament: but this happens rarely. Amnesty

complains that Parliament does not take its responsibility seriously enough: these are essentially political and ethical decisions. There was considerable embarrassment, for example, because of a recent Council of State decision which declared that Somalia was safe, as there was no government capable of persecuting. As well as the substantive flaw in the judgment - that there was no government capable of protecting people persecuted by others - it ignored complex socio-political questions such as inter-clan marriages, regions to which people could or should be returned, whether there should be financial assistance etc. After a fiasco of attempted return, there were debates and questions in Parliament (and there has been a fresh Council of State hearing).

It was pointed out to us that, following the creation of VVTV status for those left in limbo, there is now a 'sub-limbo' category of people who are in practice not returned, where no status is given, but no final decision to refuse and remove is made. At present, Algerians fall into this category, and their appeals against refusal are deferred with no enforcement action taken. It is thought that eventually they will be admitted into VVTV status, as some decision will have to be taken.

Statistics

In the first full year of operation of the 1994 Act, grants of status were:

7980	A	(4880 at first decision, a further 3,100 after appeal)
6200	C	(3520 at first decision, a further 2680 after appeal)
4320	VVTV	(3160 at first decision, a further 1160 after appeal)

On first decision, therefore 42% of statuses granted were A; 30% C; 27% VVTV. Final percentages, after appeal were 43%; 34%; 23%. Lawyers, however, say that these figures are not an accurate guide to the way the new law will operate, as many 1995 decisions were on old cases. They believe that the VVTV percentage has increased, and the C status percentage decreased. This appears to be borne out by the IND statistics collected in the Nijmegen report. Between May 1995 and May 1996, on first decision, grants of A status remained much the same (43%); whereas C status had noticeably declined (18%) and VVTV status increased (38%).

Appeals

Appeals against refusal of status are to five district courts (technically all part of The Hague court). They all have the same level of competence. Attempts to harmonise the judicial criteria can only be done by a 'chamber of unity': an expanded sitting of The Hague court which can gave a decision to which greater weight ought to attach, but which does not bind an individual judge. The administration at The Hague issues a fortnightly bulletin of important cases from the five divisions. At present the Dutch government itself (having pressed for the removal of higher appeal rights) is in discussion with Parliament about the possibility of restoring a further tier of appeal, having become dissatisfied by cases which it has lost without further opportunity for remedy.

Refusals to grant A and C status are directly justiciable; the courts have given substantive meaning to the concepts of 'humanitarian' and 'real risk' (of torture or inhuman treatment), though there is no text. The courts can also review the criteria

(and therefore indirectly the grant of status) for VVTV. In terms of the initial grant of status, the courts use equal treatment arguments as between one national of a country and another. The courts can also review a policy decision to end VVTV status for a particular group or country on the grounds that it is safe to return. Even if Parliament debates and approves a government policy that a particular country is now safe, the courts can overrule this, on the grounds that the country report is incomplete. For example, in March 1996, the chamber of unity decided this in respect of the country report on Sri Lanka, approved by Parliament. However, they did not do so in respect of the policy decision that it was possible to return people to Iran and Somalia; following the attempted returns and the expected policy change, no decisions are being made on Somali cases. Lawyers expect to renew appeals on those cases which were decided during the seven months when it was held that return to Somalia was possible.

Comment

The statutory basis, and the justiciability, of humanitarian protection has clear advantages, particularly with regard to C status.

VVTV status raises more concerns:

- that the criteria are too imprecise, leading to fears that it will be used instead of C status, thus downgrading protection
- that the group nature of decision-making and appellate jurisdiction makes it susceptible to unfairness (eg the attempted return of Somalis)
- that the temporary nature of the status offered is fragile, and liable to be further eroded (e.g. the almost-successful attempt to extend it to 5 years)
- that there is no provision for family reunion

It is, however, at least a recognisable status, with rights to employment and social security, with an expectation of residence rights after a given period, and with some form of judicial and parliamentary control over its use.

Compared with the UK, the Dutch system therefore provides significantly greater opportunities for democratic and judicial control of Article 3 and humanitarian protection. (For more detail, see JUSTICE/ILPA/ARC, *Article 3 ECHR and UNCAT and humanitarian protection in selected countries*, supplementary report 1).

5. EXPULSION AND READMISSION

Determination procedures, however costly and lengthy, have a habit of producing bottle-necks: points in the system where *de facto* problems of implementation risk undermining the integrity of the procedures themselves. In the Netherlands, this is becoming the case in the post-determination phase for those refused protection.

The emphasis in the Netherlands is on voluntary return. This is partly a matter of public policy: the Dutch government does not wish to be seen to forcibly expel, or to detain, most of those whose applications are refused. It partly a matter of law: those arriving by land, through Schengen states, are only expellable to those states if it can be shown that another Schengen state is responsible for dealing with the application. It would, in any event, be pointless to conduct asylum-seekers across an unmanned border which they could immediately recross.

Rejected applicants are therefore by and large required to remove themselves from the Netherlands in a specified time. Only in a very few cases are they detained in a remand centre pending expulsion. Specific grounds such as criminal conduct, or lack of co-operation in the expulsion procedure are needed before detention can be ordered. A lawyer can make representations on such a decision. Where detention is ordered it is for a maximum of three months to effect removal. Those refused in the AC procedure who indicate that they will co-operate with the expulsion decision are invited to make their own way to a detention centre in a remote part of the north of the country at Apel, and are given funds to get there. Needless to say a significant number do not attend to be removed. Those refused in the OC procedure will be given a laissez-passer to the border if they co-operate. Those who do not co-operate will simply be turned out of the AC or OC.

Many applicants in the Dutch system are refused, but in practice cannot be returned. Extensive efforts are made by IND to find ways to return such people. For example, a person may be required to visit his or her home country embassy up to 7 times and attempt to get a passport. The person may need to do this to show that s/he 'cooperated' with attempts to effect removal. If that degree of effort is shown, and return still proves impossible, the person in theory should be tolerated.

The effective sanction for non-departure is the withdrawal of any legal means of support. Rejected asylum-seekers cannot remain in the camps, claim social benefits or work legally. Many remain in this limbo, unable or unwilling to remove themselves, and subject to harassment and exploitation. Some make repeat applications, which are automatically categorised as manifestly unfounded, under decisions which are by definition unlikely to be enforceable. The problem of this floating illegal population is one which troubles both the Ministry of Justice and asylum practitioners and organisations. The problem of expulsion was identified by the Ministry spokeswoman as the main problem for the future. The long-term presence of such people is not only legally and morally unacceptable; it will also be seen to undermine the determination procedures themselves.

There are three categories of persons who may fall into this category. At one end of the spectrum are rare individual cases where status, but not residence, is given. This is not uncommon in France (where Article 3 ECHR persecution can block deportation, but gives no parallel right to acquire any legal residence status). It is very uncommon in the Netherlands, but was raised recently and acutely in the case of *Sison*, a Filipino politician granted full refugee status by the courts, but refused a residence permit on national security grounds (which are very broadly defined in the 1994 law). The second, more numerous, group will be those from countries to which it is morally or practically impossible to return them: for example, the Somalis refused since the change in Somali policy. The third group will be those who do not wish to return, for a variety of social, economic and political reasons.

The first two categories arguably require a realignment between law and reality: when it is recognised that a person or group cannot be refouled or safely returned, some kind of legal status, permanent or temporary, should follow. The third category may require a more proactive detention and expulsion policy.

The Dutch government is exploring positive links with countries of return, which may assist expulsion and readmission. There is growing co-operation between the

Development Corporation, the Ministry of External Affairs and the Ministry of Justice. This links human rights, development aid and readmission treaties, and is seen to be one of the biggest political issues for the future. The Development Corporation and Ministry of Justice are focusing on the Maghreb and Turkey. Formal readmission treaties are being negotiated at Schengen level with Slovenia, Poland and Romania (this was one of the priorities of the Dutch Presidency of Schengen). Union treaties will also include clauses linking trade co-operation and measures against illegal immigration.

The readmission treaty with Vietnam (1994) set a precedent for the Netherlands. The Dutch Meijers Committee has linked the safeguards required in such agreements to the safe country of origin criteria agreed by the EU in December 1992; by arguing that readmission treaties with countries which do not satisfy those criteria must contain additional safeguards and guarantees. These should include: protection against prosecution for previous actions and against Article 3 violations; identical treatment for voluntary and non-voluntary returnees; elementary human rights guarantees; and conditions of life which are normal in the country of return. Such agreements should run only for short periods, and should include provisions for a national implementing body and the intervention of international human rights agencies, and set out the consequences of the country of origin's failure to comply (including a right of readmission for the returnee).

There is also concern about the implications of third country removals, even within Schengen. The Meijers Committee have always been concerned about the underlying proposition in Schengen (and also Dublin) that a state can safely cede its responsibility for decision-making and its international obligations to another state. The principle of confidence needs to apply: and the Committee is not confident that all Schengen countries apply Article 3 criteria consistently and fairly.

The Dutch government also have concerns about the implementation of Schengen and Dublin. They would like to see ECJ competence in Dublin, to establish jurisprudence, and a common policy on removal (for example to Iraq). At present, they will not return asylum-seekers under either convention except by agreement.

Comment

If the question of expulsion is not faced, it will have damaging consequences both for social policy and for the determination system. If a government is unable to enforce refusal decisions, it will have less interest in financing expensive and fair procedures, and will increasingly seek to prevent access to the procedures themselves.

Expulsion is always, in practice, going to be problematic for a country with permeable land borders in respect of applicants without documentation. A fair expulsion policy at the end of a proper determination process might recognise the following:

- states have a responsibility to remove those whose claims have been rejected after fair procedures and according to proper criteria, because of the adverse consequences for public policy of failing to implement such decisions;
- readmission agreements, with adequate safeguards and resources and some form of standard documentation, are an effective way of enabling such removals to take place;
- in cases where no substantive determination is made, on safe third country

grounds, there should be an assurance of admission to safe determination procedures in the third country before removal is effected;

- short-term detention is acceptable for those who might abscond, pending states' initiatives to effect removal;
- those who are in law or in fact not removable should be granted some form of status, even if temporary, and not left in limbo or in detention.

6. OTHER ISSUES

Visas and carrier fines

We did not consider the effect of the pre-entry controls introduced in the 1994 Act. The Netherlands came late, and reluctantly, to mandatory visas and carrier fines. Any extension of pre-entry control (for example, moves towards a quota system) were said to be wholly politically unacceptable at present.

Support while claims are processed

The Dutch system provides state support, in reception camps, for asylum-seekers during the determination process. On the basis of what we saw, the facilities and environment in those camps are considerably better than any hostel or centre in the UK. The political climate in the Netherlands appears to support, if not demand, decent accommodation. Not only is there no public outcry against open and expensive facilities in attractive areas; it was also said by the Ministry that there *had* been an outcry when it was revealed that some asylum-seekers had been sleeping 'in cornfields' in the absence of proper facilities.

The only point at which an asylum-seeker drops out of state support is if he or she is appealing a manifestly unfounded decision. In those cases, support is available only from the Dutch Refugee Council. It is, however, a much more limited burden than that now placed on NGOs and asylum-seekers in the UK: it applies only to the approximately 10% eventually designated as manifestly unfounded, and only for the week or ten days between decision and appeal.