

Summary

This is a summary of a report entitled 'Left behind against their will; a report on women and children abandoned in the country of origin'. For some time now both media and politicians have shown interest in the problem of women abandoned by their husbands in their country of origin without identity documents or residence entitlement. This usually occurs in the summer holiday period, and children are often left behind with their mothers. At the request of the Minister for Aliens Affairs and Integration, the Advisory Committee on Aliens Affairs (ACVZ) sets out in this report a number of recommendations on ways of dealing with this problem. The Minister asked the ACVZ to focus on three specific areas: (1) the nature and extent of the problem; (2) how the return of women who find themselves in this situation can be expedited and (3) what measures, under both criminal law and aliens law, can be taken against the men involved.

In its report, the ACVZ has therefore concentrated on these three areas, which are either directly connected or closely related to its field of operation. Abandonment in country of origin is not a new phenomenon, but to date, no specific study of the issue has been carried out. Only a rough estimate can be made of the extent of the problem, partly due to the lack of appropriate registration. As a result, the report is of an exploratory nature.

To place the problem in a broader context and to obtain a deeper insight into its nature, the ACVZ asked Dr E. Bartels, cultural anthropologist at Amsterdam Free University, to conduct a study. Her considerations and conclusions are attached as Annexe 3. The ACVZ itself briefly examined internal files at the Immigration and Naturalisation Service (IND) and conducted interviews with a range of interest groups, organisations offering assistance and experts. It also conducted a research of literature.

Nature, extent and basic premises

This is a complex and multi-faceted problem. Many factors play a role in abandonment. It usually occurs where there are relationship issues and problems concerning raising children. A significant factor is that in the traditional role patterns in the country of origin the husband had much more scope for going his own way than the wife. Developments in the Netherlands in terms of equal rights have disrupted this role pattern and shifted the balance of power between spouses. A group of migrant men seem to be unwilling or unable to go along with this shift. On the contrary, they seem to be demanding even more freedom to go their own way in order to compensate for the loss of authority and even to increase that authority. In addition, they put pressure on their wives by, for example, threatening to abandon them. The result can be that women find themselves in an increasingly isolated position. Protests on their part have not proved particularly effective. Actual abandonment is the most extreme way of shifting the balance of power in the husband's favour. And abandonment of children reflects this situation. The balance of power between children and parents in the Dutch context seems to be shifting towards greater equality, which also disrupts traditional patterns. It has proved impossible to provide a reliable estimate of the number of women and children left behind against their will in their country of origin. The report contains a number of suggestions on the basis of which more information could be generated. To date, it has been known to occur largely in Morocco and Turkey, although there

are indications that women are left behind in Egypt, Pakistan and Iran. In view of the limited time available for research, Bartels' study and that of the ACVZ focused primarily on the Moroccan and Turkish situation.

The ACVZ takes the view that the lack of figures regarding abandonment and the threat of abandonment must not present an obstacle to appropriate measures. It believes that, taken as a whole, the information and signals received make it reasonable to assume that abandonment is a problem that should be taken seriously and which calls for a consistent approach. Nevertheless, not knowing the real extent of the problem makes it necessary to exercise a degree of caution in formulating recommendations. It is in principle undesirable to adopt possibly highly costly measures with far-reaching implications to combat a problem that is perhaps an infrequent one. Improved registration will probably give a better picture of the numbers involved. The desirability of more radical measures can then be reviewed. At the same time, it is possible that measures taken now will have a preventive effect, leading to a reduction in cases of abandonment or threatened abandonment.

The guiding principle of this report is that women and children should not end up in a less favourable situation with regard to residence rights as a result of being abandoned. On the other hand, abandonment should not help them obtain residence rights for which they would not have been eligible otherwise. The ACVZ is referring here to the fact that the three-year time limit applying to dependent residence permits cannot be set aside in the event of abandonment.

Recommendation 1

The ACVZ does not consider it advisable to carry out a large-scale study of the incidence of abandonment in the past because there are no reliable data available. What is needed is reliable, centrally organised registration of cases where women and children are left behind in their country of origin against their will. Both the IND administration and the embassies would be sources of useful information in this respect.

Conclusions and recommendations in relation to prevention, identification and assistance

Prevention and identification

For an adequate response to this problem, the first requirement is an approach that focuses on prevention, identification and assistance. In this context, the ACVZ would argue for coordination with existing initiatives and formalised cooperation between institutions. Effective measures to combat abandonment start with the development of a preventive policy. A major tool for this purpose is appropriate and targeted information provision. In its report the ACVZ lists the elements that any information campaign should cover. If serious threats of abandonment are to be identified in time, those working in this area will have to develop a sensitivity to the issues through training and the drafting of work protocols. The main actors are the police, justice authorities, officials working at the municipal personal records database (GBA), confidential advisors at schools and school attendance officers. The education sector has a specific role to play. Both central government and local authorities should play a major part in prevention and identification and should indeed take the lead.

Recommendation 2

The ACVZ advocates a preventive policy based on information targeting migrant women and organisations providing assistance. Central government and local authorities should take the lead in this context.

Recommendation 3

To ensure prompt identification of cases of threatened abandonment, the ACVZ recommends sensitivity training and the development of work protocols. Cooperation should be promoted in order to respond appropriately to signals. The main actors are the police, justice authorities, officials working at the municipal personal records database, confidential advisors at schools and school attendance officers. In view of the specific role to be played by the education sector, the ACVZ recommends that independent confidential counsellors within educational establishments should be specially trained to identify the relevant signals.

Assistance in the Netherlands

Assistance can and must be offered in the Netherlands and in the countries of origin. Organisations in this country that are active in this area are not or are not adequately equipped to deal with the problem of abandonment. Lack of knowledge is the main stumbling block. Coordination, knowledge, promptness, capacity and the presence of an adequate safety net are the major conditions for effective assistance. Different forms of assistance may be offered, ranging from mediation and intervention to emergency accommodation.

Recommendation 4

The ACVZ would note that an adequate response from the organisations offering assistance requires a coherent, coordinated array of services. In this context, it recommends the development of a protocol tailored to the problem to be used by the different services and agencies concerned. As many as possible of the organisations currently active (e.g. the TransAct expertise centre) should be involved in drafting this protocol.

Assistance abroad

At present only Dutch citizens (i.e. holders of Dutch passports) can obtain consular assistance from Dutch embassies abroad. However, diplomatic missions do not always strictly apply this rule. The ACVZ would advocate relaxing the formal rules in this context. Whether assistance is provided depends to a large extent on the number of staff at a mission and knowledge of the applicable rules. The ACVZ is in favour of a study on the way in which consular officials can be deployed in a broader context with regard to this issue, as well as to forced marriage and kidnapping. It would argue for closer cooperation between the missions and local women's and human rights organisations, since these bodies can play an important role in providing assistance and information in the language of the country concerned. Such contacts have proved extremely valuable in practice. In this context, the ACVZ would recommend continued cooperation with the *Stichting Steunpunt Remigratie* (SSR – an organisation in Morocco offering support to returning migrants). This organisation and others should receive funding to enable them to offer help to abandoned women and children.

Recommendation 5

In the view of the ACVZ, the rules governing consular assistance should be amended, so that some form of assistance may be offered to persons who have (allegedly) resided legally in the Netherlands for a long period of time and are unable to return to the Netherlands within the official time limits.

Recommendation 6

In order to provide rapid, effective assistance to victims of abandonment in their country of origin, the ACVZ would recommend developing a protocol for consular assistance. Furthermore, it would advise:

- designating a central contact point at the relevant consular missions in the countries of origin for problems (including legal status issues) experienced by these women;
- developing and stepping up contacts and cooperation with women's and human rights organisations in the countries of origin with a view to providing assistance and information.

Recommendation 7

The ACVZ proposes continuing cooperation with the SSR and providing funding to enable this organisation – and other similar organisations – to offer assistance to abandoned women and children.

Conclusions and recommendations relating to aliens law issues

Women's status under aliens law

If a woman enters the Netherlands for the purpose of residence with her husband or partner, she will initially receive a residence permit that is linked to the existence of the relationship. This is known as a dependent residence permit. After three years, she may be eligible for an independent residence permit. However, if she does not apply for this permit, her residence continues on the basis of the dependent permit. This construction is open to abuse by men wishing to keep their spouses in a precarious position with regard to residence rights. In this situation (where the dependent permit is extended) the woman continues to be dependent on the existence of the relationship and therefore, in a sense, on her husband for a long period of time, although the existing rules do not actually require this. The ACVZ believes that this situation is undesirable, and that the relevant legislation should be amended. This could strengthen the position of such women.

The ACVZ is not in favour of a *reduction* to less than three years of the term of validity of the dependent residence permit on account of the risk of an increase in marriage migration based on improper grounds.

Recommendation 8

The ACVZ recommends amendments to current legislation in order to limit the duration of dependent residence permits for a maximum of three years, after which the only option is to apply in person for continued, independent residence.

Bartels' study revealed that abandoned women and the Dutch missions frequently assume that their residence rights have lapsed because they have spent too long a period abroad. This is not, however, necessarily the case. Many of these women have not voluntarily spent such a long period outside the Netherlands and cannot be blamed for the situation. Missions should therefore be careful not to assume too readily that residence rights have lapsed. In such circumstances, the woman (if she is not a Dutch citizen) should in any event apply for a change to her residence permit or an extension. In this context the extent to which women can be held responsible for exceeding time limits should be carefully considered. The ACVZ advocates the strict observance of established time limits for issuing decisions.

Recommendation 9

It may be concluded that the existing rules for continued residence (inter alia in the case of loss of a dependent residence permit when a relationship breaks up) as well as the exceptions to those rules should apply in the event of abandonment. In principle, the legislation requires no amendment in this respect. However, in the ACVZ's view, it would be preferable – for reasons of clarity – to include a specific reference to abandonment in the Aliens Act implementation guidelines (Vreemdelingencirculaire), stating, in addition, that current policy applies. It is after all important not to conclude too hastily that women have lost their residence rights by residing for too long abroad.

Right to family life

If children are involved, a right to residence in the Netherlands on the basis of the right to family life may arise. Three situations are possible:

- 1 The child resides with the father in the Netherlands and the mother wishes to reside in the Netherlands in order to maintain contact with her child.
- 2 The child is entitled to reside in the Netherlands and the mother applies for residence in order to reside with and care for her child (in the event that the father does not desire contact with the child and is unwilling to care for him/her).
- 3 The mother is entitled to reside in the Netherlands and the child applies for residence to live with the mother and be cared for by her (in the event that the father does not desire contact with the child and is unwilling to care for him/her).

Denying a mother the right to have access to her child is incompatible with article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). On the other hand, it is possible that the mother's residence here is incompatible with the interests of the Netherlands as the receiving state, for example if she is dependent on public funds. In deciding whether there is a right to family life the question is always whether: (1) the state has an active obligation to admit the alien (known as a 'positive obligation') or (2) the state has a passive obligation to refrain from expelling one of the alien's family members (a 'negative obligation'). In deciding whether there is a positive or negative obligation, an equitable balance needs to be struck between the interests of the individual invoking the right to respect for family life, on the one hand, and the collective interest of the receiving state on the other. In this the government has a certain margin of appreciation. This margin is broader when deciding if a positive obligation is present than if the presence of a negative obligation is at issue. In other words, the likelihood of unjustified interference (incompatible with article 8) in family life is greater when the issue is the expulsion of family members.

If an abandoned woman has lost her right of residence, for example because the exceeding of time limits was not excusable, a new residence permit for the purpose of enjoying family life in the Netherlands will have to be applied for. Legally speaking, this should be regarded as an initial application for admission (and therefore the question of whether there is a positive obligation to grant admission will arise). In view of the distressing circumstances – these women have already enjoyed a family life in the Netherlands with their children and have subsequently been abandoned against their will in their country of origin – the ACVZ takes the view that these cases must not be assessed as if they were initial applications. The authorities should ascertain whether there is a passive obligation not to interfere in family life (and that a negative obligation is therefore present).

Recommendation 10

The ACVZ recommends that the various forms of abandonment should be described in relation to family reunification policy in the Aliens Act implementation guidelines. It should be explicitly stated that the balancing of the interests involved in deciding whether interference in family life is justified is based on the assumption that a negative obligation exists.

Possession of identity and residence documents

The fact that these women may not have any identity or residence documents remains an intractable problem. In addition, women who have been abandoned, or have been threatened with abandonment in the Netherlands, are often poorly informed of their residence status and associated rights and obligations. It is not unusual for an abandoned woman (or a woman threatened with abandonment) to lose her right of continued residence in the Netherlands because her husband, either intentionally or otherwise, fails to arrange on her behalf for the extension of her residence permit or to convert it into an independent permit.

Recommendation 11

The ACVZ recommends only issuing identity and residence documents to the holder in person, at the same time providing clear information regarding:

- **procedures relating to the issue and extension of residence permits;**
- **the date on which an independent residence permit for a specific period may be applied for;**
- **what the consequences of spending a long period outside the Netherlands are.**

Measures to be taken under aliens law against men

On the basis of the current legislation, it is doubtful whether measures can be taken under aliens law against the men involved. In order to do this, the person in question must have been convicted of a criminal offence. Abandonment is not itself a criminal offence and other offences that may have been committed in connection thereto, such as duress, are difficult to prove or prosecute. The ACVZ therefore considered whether abandonment should be included in the legislation as a specific ground for withdrawal of residence rights. The question then arises why this should be done in this specific instance and not in others, some of which are much more serious than abandonment. In this light, the ACVZ regards including abandonment as a specific ground for withdrawal as disproportionate and therefore inadvisable.

Recommendation 12

The ACVZ considers it undesirable to include abandonment in the legislation as a separate category and ground for withdrawal of residence rights.

Conclusions and recommendations regarding measures under criminal law in respect of men

Abandoning one's wife in one's country of origin is not at present a criminal offence under Dutch law. There seems to be little point in making it an offence. Nor is there much point in prosecuting other criminal offences relating to abandonment, particularly if they have been committed abroad. It emerges from the reports to the ACVZ and its own research into the problem at hand that virtually all abandoned women are no longer in possession of their identity or residence documents. It is an established fact that only the holder of a identity and/or residence document has the right to have it in

his/her possession. That applies in the Netherlands and abroad. In the case of abandoned women, not having these documents in their possession has a considerable impact on their position.

Recommendation 13

The ACVZ would therefore recommend that a provision be incorporated in the Dutch Criminal Code making it an offence to perform any act whose aim or effect is to prevent an entitled person in the Netherlands or abroad from having possession of his/her identity and/or residence documents.

It emerges from case law that psychological violence may be sometimes be covered by the description of certain crimes of violence. The case law in question is fairly scanty and relates to specific, serious forms of psychological violence. From the information received by the ACVZ it can be concluded that situations arise in which men break the spirit of their wives and children to such an extent that these women regard being taken abroad and abandoned as something they are powerless to prevent.

Recommendation 14

In the view of the ACVZ it needs to be investigated whether the provisions making acts of violence a criminal offence can be amended in such a way that the description of the offence specifically includes this form of psychological violence.