

Summary in English

This advisory report deals with the return of failed asylum seekers from the Netherlands to their countries or regions of origin or prior residence, and the terms ‘return’ and ‘return policy’ are used in this sense throughout. While the advisory report *Terugkeer: de internationale aspecten* (*Return: international aspects*), published in May 2004, addressed issues relating to return from an international perspective, this report focuses on national aspects. The central challenge is how to convince failed asylum seekers actually to leave the country. In that context, this report deals with administrative and societal issues, with maintaining and strengthening political and public support, and with the contextual factors that influence an alien’s decision to leave the Netherlands in preference to residing in the country illegally. The report also highlights the manner in which the various public authorities involved in the process play their roles, and the forms of cooperation that they have developed.

The Advisory Committee on Aliens Affairs (ACVZ) notes that the government has made an unequivocal choice to pursue the genuine departure of aliens illegally residing in the Netherlands. Greater efforts than in the past are being made to implement established policy consistently and to generate support for it. These efforts are necessary, given the general rule of public administration quality x acceptance = effectiveness.

This report focuses primarily on failed asylum seekers, but also takes the logical step of considering illegal aliens as a group, because failed asylum seekers who remain in the country become illegal aliens. The ACVZ thus also draws attention to weaknesses in return policy stemming from continuing uncertainty about the number of illegal immigrants present in the Netherlands. The ACVZ considers it unacceptable that many failed asylum seekers depart for unknown destinations, making it impossible to tell whether or not they have left the country. For effective implementation of return policy, more information is needed about where those failed asylum seekers go. Thorough investigation is required, both to obtain that information and to build support for an effective approach to issues of return, which remain as complex and intractable as ever. The ACVZ therefore recommends making greater and more probing efforts, in the near future, to investigate the size, composition, and way of life of the population of illegal aliens in the Netherlands.

Aliens without any legal basis for residing in the Netherlands are expected to ‘cooperate’ (*meewerken*) in the process leading up to their departure. Societal debates about this type of cooperation place great emphasis on the various aspects of *meewerken* and on the closely related issue of aliens who, ‘through no fault of their own’ (*buitenschuld*), cannot return. The ACVZ notes that there is a pressing need for unambiguous, coherent definitions of these terms. Unambiguous communication with individual aliens is likewise necessary, in order to make it clear to them what role they are expected to play in their return or departure. Of course, this is closely related to the question of whether or not to continue providing reception services to them.

Over the past 10 years, there has been a logical line of development in policy on return and related issues. The major steps have included putting greater energy into detention of illegal aliens, emphasising aliens’ personal responsibility to return, cutting off access to reception services, working with the International Organization for Migration (IOM), and clarifying such matters as the consequences of non-cooperation. In addition,

general societal developments have made it less difficult to implement return policy. Furthermore, the various organisations involved in implementation now work together better than in the past; the guiding role of the Aliens Affairs Coordination Department (*Stafdirectie Coördinatie Vreemdelingenketen*) is essential to this process. The ACVZ believes that, as a result, it is now truly possible to take an integrated, effective approach to return.

The ACVZ acknowledges the concerns that a number of municipalities have expressed regarding the threat to public order if failed asylum seekers whom it has not been possible to remove from the country are excluded from reception services and yet remain in the municipality, homeless. In the light of these concerns, it will be important to remain attentive to the problems of local authorities and the related role of civil society organisations, like NGOs. Attention to and discussion with these ‘partners’ can lead to further expansion of the support base for return policy. Reception centres should, however, remain under the management of central government.

Appropriate civil society organisations could play a supporting role in the framework of return policy (alongside their other activities, such as promoting aliens’ interests and providing reception services or support – with or without financial assistance from other parties – for asylum seekers, failed asylum seekers, and both legal and illegal aliens). However, issues of loyalty could arise for organisations that assisted an asylum seeker with an application for asylum at an earlier stage. In this context, the ACVZ recommends looking into whether the IOM – in addition to its current role in the return process – could become more active as a ‘broker’ or ‘financier’ for small-scale projects relating to return, to be carried out by civil society organisations.

Whether aliens choose to cooperate in bringing about their own departure from the Netherlands or to remain in the country illegally seems to depend only in part on aliens policy and the associated measures, whether supportive (financial assistance) or repressive (detention). It has become apparent that a number of contextual factors play a significant role in determining how attractive the Netherlands is as a place for aliens to reside illegally.

Against this background, the ACVZ considers the *Illegalennota* (a policy document on illegal aliens) published in spring 2004 to be a step forward. That document announced new policy and practical measures relating to return, the importance of which seems indisputable to the ACVZ. In particular, measures concerning access to work and housing could have an impact on return. But for that to take place, more effective efforts must be made to confront and fine those who make illegal residence possible, such as employers and landlords. While the current approach to such employers in criminal and administrative law represents an improvement over previous regimes, it is not yet a sufficient deterrent. Housing corporations and other major investors in housing should take proactive steps to ensure the proper use of their rented out property. The ACVZ refers in passing to its advisory report *Vreemdelingen in bewaring (Aliens in detention)*; some of that report’s recommendations have not yet been adopted, but remain relevant.

Municipal authorities must respond appropriately when failed asylum seekers remain in the Netherlands by choice, even though they could return. In order to ensure that return policy retains its compelling force, municipalities will then have to limit the assistance they provide to the bare minimum necessary to avoid socially unacceptable situations (in particular, minors living on the street).

The ACVZ wishes once again to underscore the need for a clearer understanding of the nature and extent of the problem of illegal aliens. The investigations already carried out into specific aspects of the problem, along with various other existing data sets, should be seen as the basis for in-depth research. This would be in harmony with a policy emphasising on consistency in implementation.

In the light of all these recommendations and conclusions, it is clear that the government and Dutch society in general are making focused efforts to bring about the actual departure of asylum seekers. Coordination among administrative bodies has improved; the emphasis is on getting results; and communication among societal actors is bearing fruit. Notwithstanding these positive developments, it is important to take measures with regard to the points and recommendations made above in order to arrive at an optimal return policy.

Recommendations and conclusions

Chapter 1 The societal and administrative framework

1.1 The ACVZ believes that the approach adopted by the government opens up the prospect of implementing return policy more effectively. The government's plans, as presented thus far, present the possibility of implementation to a satisfactory standard. However, the need for sustainable political and, most importantly, public acceptance of return policy cannot be overlooked. In short, the ACVZ notes that policy and implementation are now in greater harmony than in the past (i.e., quality has improved). In contrast, public support (i.e. acceptance), which is just as crucial for the ultimate effectiveness of return policy, requires special attention – it remains shaky, partly as a result of ongoing debate about a group of 26,000 asylum seekers who were rejected under the old Aliens Act (*Vreemdelingenwet*) and had not yet left the country. In the case of many asylum seekers, it is unknown whether they have left the Netherlands or not; this raises uncertainties as to the appropriateness of some aspects of return policy. The matter requires further investigation.

1.2 The ACVZ recommends carrying out an in-depth investigation of the size and composition of the group of illegal aliens in the Netherlands, particularly those who have been 'expelled' in official, administrative terms but have not yet actually left the country. The ACVZ notes that it may be possible to build on the data collected in recent research projects on work and home life. Quantitative data, from such sources as the national fund for essential medical care for illegal aliens (*koppelingsfonds*) and records of educational spending, could also be used.

1.3 The ACVZ advocates an early implementation of the earlier recommendations for a limited extension and improvement of the Application Centre procedures because such improvements are of great relevance for short and long term public support and sustainability of the policy on the return of failed asylum seekers.

Chapter 2 Policy

2.1 The ACVZ observes that, thanks to the instruments that have been devised, return policy can now have a real impact, and that a great deal of energy is being put into addressing the issue of illegal aliens. These two areas of policy (return and illegal aliens) are indivisibly linked, at least in the sense that effective policy on illegal aliens has a

positive influence on return policy. If confronted with measures that make illegal residence less attractive, aliens will be more inclined to leave the Netherlands.

2.2 With a view to testing the applicability of the criterion of inability to return ‘through no fault of one’s own’ (see next paragraph), the ACVZ emphasises the importance of regular consultations with the Ministry of Foreign Affairs on identifying countries and areas to which certain categories of failed asylum seekers can or cannot return. On the basis of these consultations and the experience of the IND, test protocols can be developed – and regularly updated – for individual countries, areas or categories of individuals, as an aid to decision-making. The ACVZ recommends consistently considering the applicability of the ‘no fault’ criterion at an early stage, whenever it is apparent that return is problematic for a particular alien as a result of factors beyond his or her control.

The ACVZ observes that implementation policy with regard to the application of the terms ‘cooperate’ (*meewerken*) and ‘through no fault of one’s own’ (*buitenschuld*), as described in the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*), is not clear enough. This applies to both the individual terms and the relationship between them. The ACVZ recommends:

- a. including a single, comprehensive provision in the Aliens Act Implementation Guidelines which incorporates the terms ‘cooperate’ and ‘through no fault of one’s own’ and makes it clear in what cases illegal aliens and failed asylum seekers may still be eligible for a residence permit because they cannot leave the Netherlands; and (in tandem with the first measure)
- b. explaining to illegal aliens and failed asylum seekers at an early stage, in concrete terms, what requirements they must meet to fall into the category of those who cannot leave ‘through no fault of their own’.

Chapter 3 Implementation

3.1 The ACVZ recommends further investigation into the advisability of a separate organisation for return and possible strategies for ‘marketing’ it.

3.2 The ACVZ proposes integrating the Vlagtwedde departure centre (now intended mainly for members of the ‘group of 26,000’ mentioned in section 1.1) into the general network of departure centres managed by the Central Reception Organisation for Asylum Seekers (*Centraal Orgaan opvang asielzoekers*; COA).

3.3 The ACVZ recommends pooling expertise and efforts relating to identification of aliens, determination of their nationality, and ‘presentation’ of aliens to embassies for the purpose of obtaining travel documents. The Return Facilitation Unit (*Unit Facilitering Terugkeer*; UFT) at the Immigration and Naturalisation Service (*Immigratie-en Naturalisatiedienst*; IND) should play a central role for the time being.

In the ACVZ’s opinion, the Ministry of Foreign Affairs should, as part of the standard procedure, be involved in the ‘presentation’ of aliens for the purpose of obtaining travel documents. One option that should be considered is to second a staff member from that ministry to the IND/UFT to ensure that ‘presentation’ takes place in the most effective and promising way.

3.4 The practicality and the use of the standard EU travel document for the expulsion of third-country nationals should be evaluated. If it is found that this document can be effective, then in the ACVZ’s opinion it should be used.

3.5 The ACVZ believes that effective communication and sufficient capacity at the IND to respond rapidly to questions and requests from municipal authorities are crucial, both for the implementation of return policy and, above all, for ensuring sufficient support from municipalities. The situation must be improved in the near future.

3.6 The ACVZ advocates that the IOM act as a 'broker', providing guidance and financing for small-scale projects relating to return to be carried out by non-governmental organisations (NGOs), often local ones, especially at or around the new departure centres. The advantages will be numerous: the IOM can keep track of the big picture and, as a direct participant in the process, gauge effectiveness. In addition, the NGOs involved will then be able to distance themselves from public authorities (as they often wish to do), and vice versa.

3.7 Given the influence that NGOs can exert on the attitude and cooperativeness of rejected asylum seekers, it is important to ensure optimal 'acceptance' of national return policy among NGOs. In the ACVZ's view, this can be accomplished by:

- where possible, ensuring the transparency of decision-making process and improving the relevant procedures so that decisions to reject asylum seekers inspire greater confidence;
- where possible, providing NGOs with greater access to the documentation available on the aliens with whom they are involved;
- giving NGOs the opportunity to participate in consultations on difficulties that arise.

Chapter 4 Contextual factors

4.1 The ACVZ believes that, given the role of the labour market, the emphasis (with regard to monitoring and sanctions) should be placed on employers and on the many temporary employment agencies, which often operate illegally. Specific measures should include:

- more frequent checks, increasing the chances of apprehending violators to such a degree that calculating employers will begin to consider the risks of employing illegal aliens too great, despite the low costs;
- imposing even tougher sanctions, as tough as those for other serious economic offences: if possible, both prison sentences and fines.
- consistently confiscating illegally obtained profits or advantages, on the basis of notional, standard profits, with the employer bearing the burden of proving that the actual profits or advantages were not as great.

4.2 The ACVZ recommends that the Minister for Immigration and Integration consult with the Minister of Housing, Spatial Planning and the Environment on the need for, and the potential impact of, effective action by housing corporations in coordination with municipal authorities. In connection with this point, the ACVZ urges that a requirement be introduced for these corporations to check their sublets and relets, and that a general understanding be obtained of illegal aliens' patterns of unofficial residence and general way of life.

4.3 In connection with issuing visas, the ACVZ recommends investigating potential ways of actually collecting the security pledged under the existing system by those who serve as referees. Currently, this collection does not as a rule take place.

4.4 The ACVZ deems it necessary to carry out in-depth research into how illegal aliens function in society (see chapter 1). In the ACVZ's view, this includes research relating to the personal identification numbers used in the educational system (*onderwijsnummers*). However, care should be taken not in any way to exclude children who are illegal aliens from the educational system as a result of such research. The Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*) is relevant in this context.

4.5 The ACVZ sees no reason to introduce stricter identification requirements for aliens or to enhance the relevant police powers (beyond current levels).

4.6 The ACVZ recommends continuing, in some manner, with current arrangements for financial support upon departure to certain groups of rejected asylum seekers.

4.7 De ACVZ recommends performing further research into ways of promoting return within the context of detention of aliens. Where appropriate, the probation service, the IOM, and NGOs should be involved in such efforts from an early stage.