

NEWSLETTER, VOLUME 4 NO. 16

4 August 2014

Contents	page
1. BASIC RIGHTS.....	2
2. ADMISSION POLICY.....	2
3. CHECK AND DEPARTURE.....	3
4. WHAT CAN BE DONE?	3

ASSESSMENT IRAQI ASYLUM SEEKERS FROM ISIS TERRITORY POSTPONED

The state secretary has announced that Iraqi asylum seekers from the territory currently controlled by ISIS will not be assessed until further notice. A new ‘official country report’ is expected for September, describing the situation in Iraq anew. On the basis of that report, a new policy will be formulated. Should the individual asylum story of Iraqi asylum seekers from this territory give the Netherlands grounds for taking a positive decision regarding the application, it will of course still grant asylum. Asylum seekers from areas where ISIS is not active, such as the Kurdish territory, can be assessed in the regular way.

You can read the letter [here](#) (Dutch only; PDF format).

According to the Council of State, the highest judicial authority, people aiming for a regular residence permit can still go back to Iraq to apply for an authorization for temporary stay (entry permit) for the Netherlands. You can find the judgement [here](#) (Dutch only).

1. BASIC RIGHTS

State secretary S&J: shelter policy for asylum seekers who have exhausted all legal remedies in other European countries

The state secretary has commissioned a study into the support given in other European countries to asylum seekers who have exhausted all legal remedies. This study that six countries continue to supply shelter, even if the asylum seeker has exhausted all legal remedies. The facilities are adjusted, however, sometimes depending on each asylum seeker's willingness to collaborate on his or her return.

The state secretary does not consider it desirable to continue to supply shelter in the Netherlands. He fears it will become a pull-factor, entail high costs and reduce the readiness to return.

You will find the state secretary's letter [here](#) (in Dutch only); and the study [here](#) (in English).

CoE: A new Convention for combating domestic violence

The Convention sets out, and calls for the implementation of, legally binding standards to prevent violence against women, protect survivors and punish perpetrators. Requiring state parties to ensure availability of services such as hotlines, shelters, medical assistance, counselling, and legal aid, the Convention prohibits discrimination on the grounds of migration status (Article 4).

Now that the Convention is in force, the Group of experts on action against violence against women and domestic violence (GREVIO) will measure the extent to which state parties are adhering to it. In addition to reports received from national governments, these experts will rely on information from NGOs and national parliaments, and may also conduct field trips as part of their inquiry.

See: [Links page](#) (link) and [Full-text Convention](#) (PDF)

2. ADMISSION POLICY

Council of State and court on returning asylum seekers who travelled by way of Italy.

Last month, the state secretary replied to parliamentary questions, saying he will not send back asylum seekers who travelled by way of Italy if they have a child who is less than five years old. Denmark does not send anyone back to Italy, as the European Court of Justice opposes this. Before long, the European Court will take a decision regarding the circumstances of asylum seekers in Italy, the Tarakel case. This case involves a family with four children, one of whom is less than four years old.

Recently, the Roermond court (AWB 14/15286, 24.7.14) rules that families with children older than four are not to be returned to Italy either, as the Tarakel family includes older children as well. The [Council of State](#) (link to Dutch-only judgement) ruled that adults can be sent back to Italy.

Council of State: always assess whether return of converted Muslim entails a risk

In this case, the Council of State judged that the conversion was no new point of law, as the asylum seeker was already in the process of converting since her former asylum request. She should have mentioned it at that stage.

However, since returning as a convert does entail a risk for her, the Immigration and Naturalisation Service (IND) should still assess the risk she will run upon her return. This follows from European jurisprudence. Read the judgement [here](#) (in Dutch only).

European Court of Justice: right of permanent residence follows on 5-year-marriage to EU citizen

The European Court of Justice has decided that a right of residence on the grounds of marriage to an EU citizen ('Belgian route') becomes permanent after 5 years' legal residence, even if both partners have separated by then and have started new relationships. If it was clear from the start that it was not a marriage of convenience, and if the partners are still married and continued to meet the requirements of EU citizenship, the non-European partner is entitled to an independent residence permit after 5 years ([HvJEU, C-244/13 \(Ogierakhi\), 10.7.14](#))

3. CHECK AND DEPARTURE

Council of State judges on the entry ban

Entry bans were introduced in 2012, when the European Return Directive came into force. Since then, everyone forced to leave the Netherlands is issued with a 2-year entry ban, a so-called 'light entry ban'. People who have a criminal record may be issued with an entry ban for 5 to 10 years (a 'heavy entry ban'). Formerly they would be declared undesirable aliens. An entry ban makes it harder to become legal, while staying in the Netherlands is punishable once an entry ban has been issued. The entry ban holds for all of Europe.

Since 2012, a large number of entry bans have been issued. In practice, the consequences of an entry ban are not too serious; there are hardly any fines and most applications for residence permits result in dissolution of the entry bans. The consequences of heavy entry bans, however, are severe, especially since they make it next to impossible to ever become legal.

Last June, the Council of State ruled that heavy entry ban is to be based on recent offences. A criminal offence from 1994, punished by 2 weeks in prison, may no longer be used as grounds for a heavy entry ban. (ABRvS, 201306380/1/V4, 23.6.14)

State secretary S&J: Repatriation and Departure Service is authorized to impose alien detention

The state secretary is starting a pilot to authorize specific staff members of the Repatriation and Departure Service (DT&V) to impose alien detention independently. They no longer need to liaise with the Aliens police or the Royal Military Constabulary to do so. The state secretary holds that this is more efficient, and also holds that the DT&V staff members are better informed on the case in question. The pilot is to be evaluated after 1 year. Read [here](#) (Dutch only).

4. WHAT CAN BE DONE?

Ines Keygnaert: 'Sexual Violence and Sexual Health in Refugees, Asylum Seekers and Undocumented Migrants in Europe and the European Neighbourhood: Determinants and Desirable Prevention'

This PhD shows that refugees, asylum seekers and undocumented migrants fall victim to sexual violence more than other people. Professional relief workers constitute an important part of the perpetrators. The dominant image that a priori, women are considered as sole victims and men as sole perpetrators, turns out not to hold true for the group she studied.

Stichting LOS has moved!

In the meantime, we have moved. Our new address is Pauluskerk, Mauritsweg 20, 3012 JR in Rotterdam. Our telephone number has changed as well: 010 7470156 (not yet active).