

NEWS LETTER, volume 6 nr 16

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EUROPEAN COURT OF HUMAN RIGHTS: NO SHELTERED ACCOMMODATION FOR MIGRANTS WHO HAVE EXHAUSTED ALL LEGAL REMEDIES IS NOT INHUMAN TREATMENT

The European Court of Human Rights ruled in the case of a Somali man who had stayed in the *Vluchthaven* in Amsterdam for two years. Lawyer Pim Fischer stated that life in the *Vluchthaven* is tantamount to ‘inhuman treatment’ and that this means that The Netherlands is therefore in violation of article 3 of the European Convention on Human Rights.

The Court has rejected the case. The Court does acknowledge the earlier ruling of the European Committee for Social Rights concerning the entitlement to food, clothing and shelter, but has stated that a more severe criterion should be applied for article 3 of the European Human Rights Convention. According to the Court health care was available, and shelter was available in the freedom-restriction shelter (with return obligation) and it was possible to apply for a medical status or for a temporary residence permit for migrants who are still in The Netherlands through no fault of their own. The fact that municipal authorities are creating shelters, means that the authorities are working towards a solution.

1. BASIC RIGHTS

Central Appeals Tribunal: municipal reception policy does not come under the Social Support Act [WMO]

This case concerns the support of a married couple who have exhausted all legal remedies. Currently they have been given shelter by the municipality of Amsterdam and they have brought an action about the quality of this sheltered accommodation. According to the Central Appeals Tribunal since November 2015 this type of accommodation is no longer covered by the Social Support Act but by the Aliens Act. Therefore the case should be brought to a different court. You will find more information [here](#).

Council of State: in case of a change of lawyer a personal contribution should be due

In this case the Council of State has made it clear that a personal contribution of 193.- may be required if an alien asks for a different lawyer without good reason. You will find more information [here](#).

2. ADMISSION POLICY

Court of Appeal: legal fees for regular application

Legal fees are the expenses that have to be paid for a residence permit.

The Court has decided that an exemption of the legal fees can be granted in case of an application for residence because of medical treatment, providing the applicant has done everything possible to raise the money. Friends, acquaintances, caregivers and organizations have to be approached for help as well. You will find more information [here](#).

In another case the Court has decided that the applicant should be given more time to put up the money due for the legal fees. Only after the notification form has been sent in will it become clear how high the legal fees are and then they have to be paid within two weeks. You will find more information [here](#).

Council of State: policy safe countries of origin

The Council of State has given a judgment about the policy that some countries are considered to be a 'safe country of origin'. This policy renders it more difficult to acknowledge asylum seekers from these countries.

According to the Council of State The Netherlands, after careful investigation, are allowed to consider certain countries to be 'safe country of origin'. The Netherlands are also allowed to make exceptions to this concept for certain groups such as homosexuals or women or people from certain regions. You will find more information [here](#).

Court of Appeal: insufficient accommodation for vulnerable people in Italy, no transfer to Italy

An asylum seeker has to apply for asylum in the first country where he has entered Europe. Therefore many asylum seekers are being sent back to Italy. However, Italy has not enough capacity to provide shelter and support. For this reason Italy has to guarantee that there is suitable accommodation

available in the country particularly for vulnerable persons who are to be returned. However, the number of people sent to Italy exceeds the number of places. Therefore the Court has rejected the transfer of this mother and her child. You will find more information [here](#).

Council of State: investigation marriage of convenience with EU citizen only after individual indications of improper use

These cases concerned migrants who apply for residence as partners of EU citizens. The Council of State are of the opinion that The Netherlands are only allowed to investigate the genuineness of the relationship when there are indications of improper use, but the fact that this relationship only started after a negative ruling in admission proceedings is sufficient indication. During the subsequent investigation it became clear that the partners had not enough knowledge about each others' lives. You will find more information [here](#) and [here](#).

Court of Appeal: new partner of mother of children with French nationality will not be granted right of residence in the EU

This mother of three French children was granted a residence permit in The Netherlands because of her children. But her new partner does not have a relationship with these children and therefore does not come under the rule concerning relatives who will be granted right of residence under EU law, according to the Court. You will find more information [here](#).

3. CHECK AND RETURN

Council of State: individual assessment required for a long-term entry ban

A long-term entry ban is issued to migrants who have criminal records. With a long-term entry ban you will have to leave Europe and you cannot enter Europe for a certain period of time (5 to 10 years). Currently the Council of State are of the opinion that entry bans come under EU law. This means that a consideration will always be required as to whether the migrant in question is really a 'current and severe threat to public order'.

The migrant in this case had a criminal record but only for petty crimes; most of these cases occurred a long time ago. The most recent opium case dated from 2007 and for this offence he was issued a community service of 120 hours. Earlier cases dated from 1990, 1993, and 2001.

Therefore currently there is no longer a threat and so there is no reason for an entry ban. You will find more information [here](#).

4. ACTIVITIES

Change of address Stichting LOS

Last week Stichting LOS moved to Hang 14, 3011 GG Rotterdam.
The telephone number and e-mail address remain the same.