

NEWS LETTER, VOLUME 3 NR 2

28 January 2013

Table of contents	page
1. BASIC RIGHTS.....	2
2. ADMISSION POLICY.....	2
3. CHECK AND DEPORTATION	3
4. WHAT CAN BE DONE?	3

LEGISLATIVE PROPOSAL CRIMINALISATION 'ILLEGAL' RESIDENCE ISSUED

The legislative proposal criminalisation Illegal Stay was issued on the 14th of January. This legislative proposal makes it possible to penalize people without residence permits who had not yet been in contact with the authorities. The fine ranges from € 130.- for two weeks illegal residence to € 1200.- for illegal residence of 2 years or longer. If the duration of the illegal residence is unknown the fine will be € 390.-. The fine will be upheld for four years. An entry ban will also be issued. People with an entry ban who stay in this country are already committing a criminal offence. People with illegal residence who have been discovered twice will be issued a strict entry ban.

Helping people without residence permits is not a criminal offence, but in principle helping people with a strict entry ban is a criminal offence. The minister has promised to observe restraint when issuing strict entry bans and when imposing fines for residence on people with a strict entry ban.

1. BASIC RIGHTS

Court of Appeal: crisis care for Chinese ill woman

In November this woman was evicted from her house and since then she could only find accommodation in night shelters. She had brought forward reports by physicians. The Court of Appeal Utrecht decided that this concerned a vulnerable woman and that night shelter was not appropriate. She will be given crisis care awaiting a decision by the COA (Court of Appeal Utrecht 12/4362, 21.12.12).

2. ADMISSION POLICY

Court of Appeal: risk of return women to South Somalia

The Court of Appeal Haarlem decided that the minister has to re-assess whether it is safe for women who have to return to South Somalia. With respect to this he should take into account whether it is possible to meet basic needs, he needs to assess the risk of abuse and the prospect of improvement of the situation within a reasonable term (Court of Appeal Haarlem AWB 12/21519, 18.12.12).

Court of Appeal: after 18 months in hiding in the Netherlands, this country will be responsible for the asylum application

This concerns a man who had entered the Netherlands through Italy. The Netherlands decided that Italy was responsible for the asylum application. The man went into hiding. Two years later he applied for asylum in Sweden. Sweden held Italy accountable and Italy accepted this. Subsequently the man went to the Netherlands and stated that the Netherlands was responsible because he had been in hiding here for 18 months. The Court of Appeal ruled in the man's favour (Court of Appeal the Hague AWB 13/58. 10.1.13).

Court of Appeal: the Netherlands has to grant an entry visa to Turkish woman with Dutch child whose father is in prison

According to the Zambrano decree illegal parents of Dutch children will be granted a residence permit if they are required to stay in the Netherlands in order to give the child the opportunity to stay in this country. In this situation a Turkish mother of a Dutch child asked for entry into the Netherlands because her husband is detained in Turkey and therefore he cannot care for the child. The Court of Appeal decided that she should be granted an entry visa (Court of Appeal the Hague AWB 12/22699, 18.12.12).

Council of State: revoke residence permit stay with partner only until date of relationship break-up

This case concerns a couple that had failed to notify the IND that the relationship had ended. Once the IND had discovered this, it wanted to revoke the status with retrospective effect. According to the Council of State this is only allowed until the date on which the relationship actually ended (Council of State 201108958/1/V2, 11.1.13).

Court of Appeal: no humanitarian permit for child who lived in the Netherlands from her 7th until her 18th

The Court of Appeal are of the opinion that the mother is responsible for leaving the Netherlands once the asylum application has been rejected. Long-term illegal residence and familiarization do not form a reason for issuing a residence permit. With respect to this case Defence for Children and the remedial educationalist Kalverboer have written an expert report but this was to no avail (Court of Appeal Den Bosch AWB 12/25844 en 12/25846, 14.1.13).

3. CHECK AND DEPORTATION

Council of State: police are allowed to detain domestic worker who had been reported to the police as a burglar by the neighbours

This case concerns a Ghanaian domestic worker. The neighbours had called the police because they had seen a 'black man in the neighbour's house' and they thought that he was a burglar. The police arrived and asked the man to identify himself. It became clear that he did not have a residence permit. For this reason he was placed in detention of aliens. According to the Council of State the police were allowed to ask the man for his identity papers and to detain him after this (Council of State 201205275/1/V3 en 201205900/1/V3. 21.12.12).

Secretary of State Teeven: shortly mobile check biometric characteristics everywhere in the Netherlands

Last year an experiment with mobile devices to check and compare fingerprints was conducted in Rotterdam. The experiment was successful and this spring the system will be implemented everywhere in the Netherlands (debate Dutch Lower House 23.1.13).

Council of State: employer will not be fined for illegal labour if he does not pay wages or in case of spontaneous help

According to the EU unpaid labour is not considered to be employment for which reason the employer cannot be fined if the employees do not receive payment (Council of State 201201869/1/V6, 16.1.13). The Council of State are also of the opinion that employers should not be fined if the employer is providing 'spontaneous help' (Council of State 201203690/1/V6, 16.1.13).

4. WHAT CAN BE DONE?

Debate illegal residence in the Netherlands, 2 February 18.45 De Balie Amsterdam

During the Human Rights Weekend a debate about illegal residence in the Netherlands will take place in De Balie. There will be a short documentary about the life of undocumented aliens in the Netherlands followed by a panel discussion with Dorine Manson (Director Vluchtelingenwerk) and Jelle Klaas (lawyer refugee rights) among others. Information: <http://www.debalie.nl/artikel.jsp?articleid=471440>.

PICUM international workshop: "Children First and Foremost": 26 Feb. Brussels

This international conference seeks to consolidate both PICUM's work on undocumented children and PICUM's two-year capacity-building project entitled "[Building Strategies to Improve Protection of Undocumented Children in Europe](#)." The conference will highlight the difficulties undocumented children face in accessing rights such as education, health-care and housing, and the good practice strategies that have been developed to surmount the practical and administrative barriers to accessing rights. The draft agenda is available [here](#).

EMN synthesis report: 'Practical measures against illegal migration in the EU'

The report provides a survey of existing practices and measures applied by the member states to tackle illegal migration. It was drawn up on the basis of national reports of 22 EU member states and Norway.

Click here for the [complete report](#).

Stichting LOS (Landelijk Ongedocumenteerden Steunpunt) is sinds 2003 het kenniscentrum voor mensen en organisaties die hulp bieden aan migranten zonder verblijfsvergunning ('ongedocumenteerden'). Stichting los zet zich in voor de basisrechten van deze migranten en hun kinderen.