



EMN - European Migration Network
Dutch National Contact Point

Policy Analysis Report 2006

September 2007

Developments in Migration and Asylum Policy in the Netherlands

1 January '06 - 31 December '06



Immigratie- en Naturalisatiedienst

The European Migration Network (EMN) is an initiative of the European Commission. Its objective is to provide the Community, its Member States and in the longer term the general public, with objective, reliable and comparable information on the migration and asylum situation on a European and national level.

The EMN's mission is to facilitate communication between decision-makers, government institutions, non-governmental organisations and the scientific community by bringing together people who deal with migration and asylum on a professional basis.

To that end, the EMN has a network of National Contact Points (NCPs), who on their part, have set up networks of national partners. In the Netherlands, the designated NCP is the department INDIAC (Immigration and Naturalisation Service Information and Analysis Centre) of the Dutch Immigration and Naturalisation Service (IND).

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Immigration- and Naturalisation Service (IND),
Staff Directorate for Implementation and Policy,
section Information- and Analysis Centre (INDIAC)
Dutch National Contact Point for the European Migration Network (EMN)

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1. Executive summary

The Policy Analysis Report 2006 provides an overview of developments in Dutch migration and asylum policy for the period 1 January 2006 to 31 December 2006. The Policy Analysis Report 2005, which appeared at an earlier stage, described developments in Dutch migration and asylum policy from July 2004 to December 2005.

This report has been prepared on the instructions of the European Commission by the European Migration Network (EMN). The EMN is made up of various member states who also contribute towards this study from their own national perspective. Through a synthesis report, based on the national reports, an analysis will be made of the divergences and coincidences in the European context.

The Policy Analysis Report 2006 consists primarily of a description of political developments, developments in primary and secondary legislation and the implementation of European legislation in the area of migration and asylum.

Following this introductory summary, Chapter 2 "Political developments" explains the political system. The Netherlands can be classified as a constitutional monarchy with a parliamentary system. In addition to the political system, the institutional context in the field of migration and asylum will also be dealt with. A number of Ministries play an important part at the national level. For example, the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Defence are responsible for implementing aliens policy in relation to their respective portfolios. At the regional level, only the police are involved in aliens policy, being charged with supervisory duties, amongst other matters. At the local level, municipal authorities are in charge of arranging for accommodation and integration for those foreign nationals who are admitted to the country.

Next, an outline of the general political developments is provided. The parliamentary elections which took place on 22 November 2006 are worth mentioning here. At that time, the Netherlands was being governed by the second Cabinet led by Prime Minister Balkenende. This Cabinet fell on 30 June 2006 as a result of a crisis surrounding the Dutch citizenship of the prominent Member of Parliament for the VVD, Ayaan Hirsi Ali. Following the elections, the outgoing Cabinet was faced with a period of unrest as a result of a conflict between the majority in the new House of Representatives and the Minister for Immigration and Integration. This conflict related to a provisional prohibition against removal of foreign nationals who might be eligible for a possible arrangement for a pardon.

This chapter also covers the most important debates and political developments. There were many debates on migration and asylum issues during 2006.

The most important development with regard to Managed migration was the Cabinet proposal to modernise the admissions policy. The new admissions model had to provide a more transparent statutory framework for admission to the Netherlands. The model does not include primary and secondary legislation relating to asylum and does not discuss the free movement of Union citizens and migrants from the Antilles and Aruba.

In the area of Integration and Settlement, many of the political/social debates dealt with the integration of Muslims in the Netherlands. The discussions covered such matters as the possible introduction of a prohibition of the burka, Muslim radicalisation and the associated issue of counterterrorism, and an election campaign in which the discussion over an acknowledgement of the Armenian genocide of 1915 came into focus with respect to the position of Parliamentary candidates of Turkish origin on this subject. There were also many debates during 2006 in relation to the new Integration Act, which became law in 2007, particularly as regards the target group, the conflict with international rules on equal treatment, and the implementation methods of the new Act.

In the field of Refugee protection and Asylum, and in addition to debates concerning state policy for Iran and Iraq and the disappearance of unaccompanied minor refugees, possible arrangements for a pardon became a regular topic of discussion.

The subjects of Naturalisation and Return were covered regularly in the media, with particular reference to the passport controversy concerning the Member of Parliament Ayaan Hirsi Ali, and the forced repatriation of the minor foreign nationals Taïda Pasic and Hui Chen.

Finally, the debates in relation to institutional changes are reviewed. Pursuant to the report by the Netherlands Court of Audit (*Algemene Rekenkamer*) concerning the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst (IND)*) and the immigration process, as well as the Cabinet's reaction to this, all of the steps in connection with applications for regular (non-asylum) residence permits were undertaken by a single organisation, namely the IND, rather than having the implementation duties spread across a range of different organisations. Work was also underway in 2006 on setting up a separate repatriation organisation, the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek (DT&V)*), so as to be in a position to achieve a range of different opportunities for improving the repatriation process.

In addition to an explanation of the Dutch legal system, Chapter 3 provides an overview of the changes and developments in Dutch primary and secondary legislation during the reference period.

Most of the changes were associated with Managed migration. The Civic Integration Abroad Act came into effect on 15 March 2006. This Act obliges foreign nationals between the ages of 16 and 65, who are coming to the Netherlands for family reunification or family formation purposes, or to reside here as spiritual leaders or religious teachers, to pass the basic integration examination in their country of origin. In the regular admission procedure, changes were also made with regard to residence applications in the context of working, studying and obtaining medical treatment.

As regards the category of Refugee protection and Asylum, the rules were changed in relation to the reception of asylum seekers. From the start of 2006, in contrast to the period before this, asylum seekers were entitled to reception on the occasion of a second or subsequent asylum application. Other developments dealt with in this category were the moratoria on decisions and departures, which had been amended as a result of official notices from the Ministry of Foreign Affairs.

On the subject of Citizenship and Naturalisation, the "naturalisation ceremony" was brought into being. Foreign nationals who intend to accept Netherlands citizenship are hereby obliged, as from 1 October 2006, to attend the naturalisation ceremony before being granted Dutch nationality.

In the context of Return, the new implementation and financing agreement for the International Organisation for Migration (IOM) – the REAN programme is discussed. As a supplement to the REAN programme, the Repatriation Reintegration Rules also came into effect, which can now be relied upon by a larger target group of those wishing to leave the Netherlands.

Finally, this chapter mentions the leading case law in the area of asylum and migration. As far as Dutch case law is concerned, an examination is made of leading judgments issued by the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State (RvS)*) - for example, a judgment where the Division submitted pre-judgment questions to the European Court of Justice. This chapter will also deal with three judgments issued by the European Court of Human Rights on the right to private and family life.

Chapter 4 deals with implementation of European legislation. It covers the changes and developments in Dutch primary and secondary legislation influenced by European primary and secondary legislation. Amongst other matters an examination is made of the European regulation on establishing a Community code relating to border crossing by individuals, and also of the European Directives resulting in changes to Dutch primary and secondary legislation during the reference period, such as the right to free movement for Union citizens and their family members and the status of long-term resident third-country nationals.

2. Political developments

This chapter provides an overview of the political developments which took place during the reference period in the area of asylum and migration. First, in order to outline the background to these developments, a brief overview will be provided of the general structure of the political system in the Netherlands and of the most important institutions/players in the area of migration in this country. Subsequently, the general political developments in the Netherlands in 2006 will be dealt with. Finally, the most important social debates and developments will be described.

2.1. General structure of the political system

2.1.1. Constitutional overview

The Netherlands is a constitutional monarchy, with the current Head of State being Her Majesty Queen Beatrix. The Ministers are politically responsible for the actions of the Queen, who is invested with the immunity of the Crown. The Netherlands has, in addition, a parliamentary system. The right to take decisions on the policy that will be implemented ultimately rests with Parliament. This means that the Ministers, who prepare and implement this policy, must enjoy the confidence of the Parliament. The Parliament consists of two chambers, the Senate and the House of Representatives (jointly referred to as the 'States General').

The House of Representatives is the directly elected representative body and numbers 150 members. They are elected under a system of proportional representation, with the de facto election threshold being the number of votes required for a single seat (about 0.67%). The House of Representatives, along with the government, forms the legislature. It votes on all legislative proposals, or bills, helps determine the text of bills and members of the House of Representatives may submit bills for consideration themselves. The House of Representatives also operates as a check on government.

The 75 members of the Senate are elected indirectly by the directly elected members of the Provincial Councils of the 12 Dutch provinces. The Senate also partakes in legislative functions. Once a bill has been accepted by the House of Representatives, it is passed to the Senate for consideration. The Senate may not, however, introduce any changes to the bill. It can either accept or reject the bill. The Senate also has an important part to play in checking the work of the government.¹

The government consists of the Queen and the Ministers. The Cabinet consists of the Ministers and State Secretaries together, led by the Prime Minister. The government holds executive implementation power and also has legislative competency. Most legislation is brought into being as a result of Cabinet bills. Each Minister is politically responsible for a defined area of policy, meaning that he or she is also usually responsible for the Ministry in question. Some Ministries, however, have several Ministers, each responsible for his or her own field of policy. Ministers may be assisted by State Secretaries who are in turn responsible for a specific area of policy. They act in the Minister's place in cases where the Minister considers it necessary, and subject to the Minister's directions. The Prime Minister is chairman of the Council of Ministers, or Cabinet, and in this capacity coordinates government policy.² Ministers and State Secretaries must be accountable to Parliament for current and proposed policy. If it becomes

¹Senate. (2006) *Taken en Positie Eerste Kamer* [Duties and Position of the Senate]. Consulted 30 January 2006 from www.eerstekamer.nl.

²De Meij, J.M & Van der Vlies, I.C. (Eds.). (2000) *Inleiding tot het Staats en Bestuursrecht* [Introduction to State and Administrative Law]. Deventer: Kluwer b.v..

apparent that Parliament has lost confidence in a Minister and/or State Secretary (or even in the entire Cabinet) then he or they are obliged to resign.³

2.1.2. Institutional context in the field of migration and asylum

This section includes a description of institutional framework for the area of migration and asylum as existing in 2006. There have been some changes to this in 2007 resulting from the accession of a new Cabinet.

National level

At the national level, the Ministry of Justice is the most important player in the field of migration and asylum. In 2006, the Ministry of Justice had two Ministers, the Minister for Immigration and Integration and the Minister of Justice.⁴ The Minister for Immigration and Integration was responsible for legislation in the area of alien affairs. This included access and border control, admission (both managed immigration and asylum), supervision and naturalisation. She was also responsible for developing policy to promote integration of ethnic minorities in the Netherlands. The responsibilities of the Minister of Justice in 2006 included prison institutions.

The Minister of Justice is responsible for a number of organisations with parts to play in relation to policy on asylum and migration:

- the Immigration and Naturalisation Service (IND), an agency of the Ministry of Justice, is responsible for implementing the Aliens Act and the Netherlands Nationality Act. It assesses all applications by foreign nationals who reside or wish to reside in the Netherlands or who wish to acquire Dutch citizenship. The IND also has duties on behalf of the Minister of Foreign Affairs in connection with the assessment of visa applications;⁵
- the National Agency of Correctional Institutions (*Dienst Justitiële Inrichtingen (DJI)*), also an agency of the Ministry of Justice, is responsible for implementing penalties and measures involving the deprivation of liberty, including measures of this nature for the purpose of the removal of foreign nationals from the Netherlands, which in turn include detention (aliens' detention);
- the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang Asielzoekers (COA)*) is an independent administrative body funded by the Ministry of Justice. The Minister for Immigration and Integration is politically accountable for the policy and actions of this body. The COA is responsible for the reception of asylum seekers. It arranges accommodation and facilities for asylum seekers during the asylum procedure and prepares them for their residence in the Netherlands, repatriation to their country of origin or onward migration.⁶

In addition, an independent advisory body, the Advisory Committee for Foreign Nationals Affairs (*Adviescommissie voor Vreemdelingenzaken (ACVZ)*), was set up under the Aliens Act 2000, which also describes its duties. It offers solicited and unsolicited advice to the government and Parliament on matters relating to the law and policy on foreign nationals.⁷

³De Meij, J.M & Van der Vlies, I.C. (Eds.). (2000) *Inleiding tot het Staats en Bestuursrecht* [Introduction to State and Administrative Law]. Deventer: Kluwer b.v.; Parlementair Documentatie Centrum. (2005) *Ministeriële verantwoordelijkheid* [Ministerial responsibility]. Retrieved 1 November 2005 from www.parlement.com.

⁴The Balkenende I Cabinet took office on 22 July 2001 and included, for the first time, a Minister for Immigration and Integration. Previous cabinets had only had State Secretaries for Immigration and/or Integration. The Balkenende II Cabinet took office on 27 May 2003. This Cabinet was in power during the reference period and also had a Minister for Immigration and Integration. Parlementair Documentatie Centrum. (2005) *Historische ontwikkeling kabinetten* [Historical development cabinets]. Retrieved 31 January 2005 from www.parlement.com.

⁵Kuijjer, A. (Eds.). (2002) *Nederlands vreemdelingenrecht* [Dutch Law with respect to Foreign Nationals]. The Hague: Boom legal publishers.

⁶COA. (2005) *Over COA* [About COA]. Retrieved 1 November 2005 from www.coa.nl.

⁷ACVZ. (2007) *De Adviescommissie voor Vreemdelingenzaken* [The Advisory Committee on Aliens Affairs]. Retrieved 4 June 2007 from www.acvz.com.

The Ministry of Foreign Affairs also has a part to play with regard to the policy on foreign nationals. First of all, the Ministry is responsible for the granting and issuing of visas. The overwhelming majority of this work is carried out at foreign diplomatic posts. The Ministry is also responsible for the creation of general official notices, which describe the situation for asylum seekers in significant countries of origin, and individual official notices, used to check the accuracy and authenticity of facts or documents presented by an asylum seeker.⁸

Finally, at the national level, the Ministry of Defence also plays a part in implementing policy on foreign nationals, through the Royal Marechaussee (*Koninklijke Marechaussee (KMar)*). This can best be typified as a police organisation with military status. The KMar's duties include border control and supervision, such as carrying out personal checks at the Borders as well as mobile supervision of foreign nationals.⁹ The Minister for Immigration and Integration is responsible for the implementation of KMar duties in the context of enforcing the Aliens Act and in the area of border control and supervision, and sets the targets and priorities for those areas. The Minister of Defence is responsible for supplying people and resources to fulfil the duties in the context of the Aliens Act.¹⁰

Regional level

The police are involved in aliens policy at a regional level. The force is organised at a regional level in the Netherlands and is subject to the direction of the mayor of the largest municipality in the region. One of the specialist duties of the police involves dealing with foreign nationals, which is carried out by the Aliens Police (*Vreemdelingenpolitie*). The most important duties of the Aliens Police are maintaining supervision over individuals residing in the Netherlands as well as supervising compliance with procedures, particularly registration requirements for asylum seekers¹¹. The Aliens Police also become involved in the removal of foreign nationals whose applications have been finally rejected.¹²

The Minister for Immigration and Integration and the Minister of the Interior and Kingdom Relations are jointly responsible for the work carried out by the Aliens Police. If these duties encroach on the area of public order, then the mayor (and, accordingly, also the Minister of the Interior and Kingdom Relations) is responsible. This Minister is also responsible for the Dutch police as a whole.¹³

Local level

The municipal authorities have a duty in relation to accommodation and integration of foreign nationals who are admitted. In addition, the municipalities operate as service points for applications for residence permits in the Netherlands (excluding asylum applications) and for naturalisation applications. If, having been admitted, a foreign national claims assistance benefit payments or rental assistance, this will also be dealt with through an agency of the municipal authority.¹⁴

Administration of law

The following bodies within the judicial system are involved in case law relating to foreign nationals. The Aliens Chamber (*Vreemdelingenkamer*) is part of the administrative law division of the District Court in The Hague and its activities are confined exclusively to dealing with disputes under the law relating to

⁸Nationale Ombudsman. (2007) *Factsheet individuele ambtsberichten in asielzaken* [Fact sheet on individual official notices in asylum cases]. Retrieved 2 March 2007 from www.ombudsman.nl.

⁹KMar. (2007) *Taak en Organisatie – taakvelden* [Duties and Organisation]. Retrieved 17 August 2007 from www.kmar.nl.

¹⁰Vc 2000, part A1, A2, A3, A4, A5, and articles 46-48 Vw 2000.

¹¹Asylum seekers must register each week with the Aliens Police, usually at the reception centre. COA. (2005) *Rechten en Plichten* [Rights and Obligations]. Retrieved 18 January 2005 from www.coa.nl.

¹²Ministerie van Justitie. (2006) *Factsheet: Terugkeer van uitgeprocedeerde asielzoekers en andere vreemdelingen, november 2005* [Fact sheet: Repatriation of asylum seekers who have exhausted all legal remedies and of other foreign nationals, November 2005]. Retrieved 31 January 2006 from www.justitie.nl.

¹³Article 172, Municipalities Act (*Gemeentewet*), article 3, 12 and 54, Police Act (*Politiewet 1993*) and article 47 and 48 Vw 2000.

¹⁴Ministerie van Justitie. (2007) *Uitvoering - De gemeenten en haar frontofficetaken* [Policy execution – The municipalities and her front office duties]. Retrieved 17 August 2007 from www.justitie.nl.

foreign nationals. In formal terms, only the District Court in The Hague deals with disputes under the law relating to foreign nationals. The hearings are not, however, confined to The Hague, but also take place in 'branch' locations. All 19 of the District Courts in the Netherlands have an Aliens Chamber, dealing with appeals in cases involving foreign nationals.¹⁵

The Council of State is an independent adviser to the government concerning legislation and administration. The Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State (ABRvS)*) is the supreme general administrative court in the country as regards the law relating to foreign nationals. It deals with appeals in relation to cases concerning foreign nationals.¹⁶

Other

There are also a number of non-governmental organisations actively involved in the area of the law dealing with asylum and foreign nationals. The most important of these are the International Organisation for Migration (IOM), Amnesty International, United Nations High Commissioner for Refugees (UNHCR), the Dutch Council for Refugees (*VluchtelingenWerk Nederland*), the NIDOS foundation (providing assistance to young refugees who, for a variety of reasons, are (temporarily) not subject to parental control) and the Foundation for Legal Aid for Asylum (*Stichting Rechtsbijstand Asiel (SRA)*).

2.2. General political developments

The Netherlands was governed from 27 May 2003 until 30 June 2006 by the second Cabinet led by Prime Minister Jan-Peter Balkenende (the Balkenende II Cabinet). This Cabinet was assembled from three parties: the Christian-Democratic Appeal (*Christen-Democratisch Appèl (CDA)*), a Christian-democratic party; the People's Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie (VVD)*), a liberal party; and Democrats 1966 (*Democraten 1966 (D66)*) a (progressive) social-liberal party.¹⁷ These parties jointly held 77 of the 150 seats (CDA 44, VVD 27, D66 6). The largest opposition party, with 42 seats, was the Labour Party (*Partij van de Arbeid (PvdA)*), a social-democratic party.

As indicated in the previous Policy Analysis Report, a sharper delineation of the migration and asylum policy was one of this Cabinet's important aims. Significant agenda points in the coalition agreement¹⁸ and the budgets for 2004¹⁹, 2005²⁰ and 2006²¹ included ensuring better integration of newcomers, promoting minority integration, tightening up the conditions for family reunification and family formation, arranging an effective repatriation policy for asylum seekers whose requests had been rejected, and arranging for a better reception of asylum seekers in their regions of origin. There was also to be a campaign against illegal residence, and profiting from illegals, along with efforts towards securing a European asylum and migration policy and towards strengthening the position of the United Nations High Commissioner for Refugees (UNHCR) through enhancement of the Refugee Treaty.

¹⁵ Article 8:7, section 2 Awb, article 71 Vw 2000 and Kuijer, A. (Eds.) (2002), *Nederlands vreemdelingenrecht* [Dutch Law with respect to Foreign Nationals]. The Hague: Boom legal publishers.

¹⁶ Raad van State (RvS). (2005) *Raad van State in het kort* [Council of State in short]. Retrieved 1 November 2005 from www.raadvanstate.nl.

¹⁷ Parlementair Documentatie Centrum. (2005) *Kabinet-Balkenende II (2003-2006)* [Cabinet balkenende II (2003-2006)]. Retrieved 1 November 2005 from www.parlement.com.

¹⁸ CDA, VVD en D66. (2003) *Meedoen, meer werk, minder regels. Hoofdilijnenakkoord voor het kabinet CDA, VVD, D66*. [Cooperation, more work, fewer rules: Outline Agreement for the CDA, VVD, D66 Cabinet]. Retrieved 18 October 2005 from www.regering.nl.

¹⁹ Parliamentary Papers II, 2004/05, 30 100 VI, no.1 (Annual Report).

²⁰ CDA, VVD en D66. (2004) *Begroting 2005, De plannen voor 2005* [Budget 2005, The plans for 2005]. Retrieved 18 October 2005 from www.regering.nl.

²¹ CDA, VVD en D66. (2005) *Begroting 2006, De plannen voor 2006* [Budget 2006, The plans for 2006]. Retrieved 7 February 2007 from www.regering.nl.

There were a number of important general political developments in 2006. Municipal council elections took place on 7 March 2006, with the governing parties suffering major losses. The main winners were the PvdA and the Socialist Party (*Socialistische Partij (SP)*). The leader of the governing VVD party in the House of Representatives, Mr. Van Aartsen, resigned following his party's losses.

The Balkenende II Cabinet fell on 30 June 2006 as a result of a crisis surrounding the Dutch citizenship of the prominent VVD Member of Parliament, Ms. Hirsi Ali (section 2.3.5 examines this crisis in further detail). The Cabinet consequently lost the confidence of its coalition partner D66, and hence its majority in the House of Representatives. Early elections, moved forward because of the crisis, were planned for 22 November 2006, and a minority Cabinet was formed from the VVD and CDA (Balkenende III), with the 2007 budget being its main priority. On 21 September 2006, this Cabinet lost two Ministers because of the conclusions of an investigation report into a fire at the detention centre for illegal aliens at Schiphol airport. The Minister of Justice, Mr. Donner (CDA) and the Minister for Housing, Spatial Planning and Environment, Ms. Dekker (VVD), both felt obliged to resign as a result of this report (this will be covered in more detail in section 2.3.7).

The House of Representatives election on 22 November resulted in a substantial victory for the Socialist Party. Other successes were scored by the Freedom Party (*Partij Voor de Vrijheid (PVV)*), a conservative right-wing party²², the Christian Union (*ChristenUnie*), a protestant Christian party and the Animal Rights Party (*Partij voor de Dieren*). The main losses were sustained by the opposition party, the PvdA, and the governing VVD and D66 parties. The CDA also lost seats but remained the largest party. The *Lijst Pim Fortuyn (LPF)* disappeared from the House of Representatives altogether. The CDA, as the largest party, was in a position to take the initiative towards forming a new Cabinet. When exploratory discussions on 11 December towards forming a Cabinet from the CDA, PvdA and SP proved fruitless, similar discussions got underway on 15 December towards the possible formation of a Cabinet from the CDA, PvdA and Christian Union.

Following the election, on 12 December, the outgoing Cabinet encountered political difficulties as a result of a conflict between the majority in the new House of Representatives and Ms. Verdonk (VVD), the Minister for Immigration and Integration. Parliament wanted to draw a halt to removals, in anticipation of a possible pardon to be granted by a new government for asylum seekers who had lodged their asylum applications prior to 1 April 2001²³ and who were still in the Netherlands. The Minister was not, however, prepared to agree to this, as a matter of principle. The motion of censure against an outgoing Minister, resulting from this, led to a unique constitutional situation. The solution ultimately arrived at involved an exchange of several portfolios between the Minister of Justice and the Minister for Immigration and Integration, whereupon the motion for a halt to removals was carried out.²⁴ This crisis will be explored in greater detail in Section 2.3.6.

2.3. Central policy debates and political developments

This section will examine the most important debates and political developments in the areas of migration, integration and asylum. Where possible, attention will also be given to the position and role played by the most important political parties and social organisations.

2.3.1. Managed migration

Modern migration policy

The most important development in the area of managed immigration in 2006 was the Cabinet proposal of 19 May 2006 to modernise the admission policy. A new admission model has to ensure a more

²² De Koning, P. (2006, 15 July) Geert Wilders noemt tien zetels reëel [Geert Wilders says 10 seats is realistic]. *NRC Handelsblad*, Binnenland.

²³ The date on which the new, current Aliens Act (the Aliens Act 2000) came into operation.

²⁴ Peperkorn, M. (2006, 15 December). Binnen een dag is het CDA Verdonk zat [The CDA has had enough of Verdonk in a single day]. *De Volkskrant*, p. 1 and p. 3.

transparent statutory framework for admission to the Netherlands. The proposal is to start working with five 'residence columns', as they have been termed:

- Residence column 1: Exchanges and temporary workers;
- Residence column 2: Students and (low) skilled workers;
- Residence column 3: Highly skilled workers;
- Residence column 4: Family;
- Residence column 5: Humanitarian reasons.

In fact, the new admission policy will only actually change primary and secondary legislation for managed migration. Asylum-related primary and secondary legislation is not changed and does not fall within these five columns. Nor does the free movement of Union citizens and migrants from the Antilles and Aruba.

According to the Cabinet, the new model combines the existing restrictive admission policy with a larger element of selectivity, whereby the need for migrants in Dutch society will play a larger part. There is, for example, a proposed talent scheme, based on a points system, for innovative entrepreneurs, independent researchers or creative top talents. There is also a proposal for a new non-extendable permit for one year, for the purpose of temporary employment, such as seasonal work. Another important aspect of the new admission model is the obligation for companies, universities and other institutions that wish to act as sponsors in the framework of labour migration, a study or exchange to have entered into a covenant with the Immigration and Naturalisation Service, which will result in them assuming more responsibility in the admission procedure and which will accelerate this procedure.²⁵ This proposed review of admission policy did not result in any extensive social debate during 2006. The matter was, however, discussed in Parliament, where one of the issues raised was the risk of brain drain. Some parties also indicated the preference to deployment of potential labour resources already present in the Netherlands had to be upheld. Attention was also drawn to the correlation with European legislation.²⁶ The Cabinet also asked the Social Economic Council (*Sociaal-Economische Raad (SER)*) for its opinion on the policy to be pursued in connection with employment migration. The SER is an advisory body to the government set up by statute, comprising employer and employee organisations along with independent experts.²⁷

Sliding scale

Within Dutch policy on foreign nationals, applications for residence permits may be rejected and residence permits may be withdrawn if the applicant/holder poses a risk to public order and security. The withdrawal of residence permits is based on the principle of the "sliding scale". This means that the longer a foreign national has enjoyed lawful residence in the Netherlands, the more serious the breach of public order - and therefore the more heavily punished the foreign national - has to be to lead to the termination of his residence rights. The measures to be applied for this are set out in the "sliding scale"²⁸. The issues of public order, the application of the sliding scale and its tightening up have long been topics of social and political debate. The House of Representatives has pressed for an exploration of the options for proceeding to rescind residence rights sooner in cases of public order infringements. The Cabinet adopted a proposal to toughen up the sliding scale on 15 September 2006.²⁹ The proposal involves measures whereby foreign nationals who are sentenced for an offence during the first three years of their lawful residence could lose their residence permits, and then could be forcibly removed from the country. This proposal concerns all offences that entail a prison sentence in terms of the Dutch Penal

²⁵ Ministerie van Justitie. (2006) *Persbericht 19 mei 2006, Introductie van een nieuw migratiebeleid* [Press release 19 May 2006, Introduction of a new migration policy]. Retrieved 2 April 2007 from www.justitie.nl.

²⁶ Parliamentary papers II 2005/06, 30 573, no. 2 (Report of written consultation); Parliamentary papers II 2006/07, 30573, no. 4 (Report general consultation).

²⁷ Sociaal-Economische Raad (SER). (2007) *Welkom bij de SER* [Welcome at the SER]. Retrieved 2 May 2007 from www.ser.nl.

²⁸ Article 3.86 Vb 2000.

²⁹ Ministerraad. (2006) *Persbericht ministerraad 15 september 2006. Aanpak criminele vreemdelingen aangescherpt* [Press release Council of Ministers 15 September 2006, Toughening up the approach to criminal foreign nationals]. Retrieved 25 May 2007 from www.regering.nl.

Code, irrespective of the duration of the penalty imposed. Residence for foreign nationals who have resided in the Netherlands for between 3 and 5 years can be terminated:

- in the event of offences with unconditional sentences of at least one month. This used to be nine months; or
- if there are three convictions for offences.

The proposal has been sent to the Council of State for its consideration.

2.3.2. Gates of entry and Border control

The most significant political developments in the area of Gates of entry and border control during 2006, resulted from a report by the Court of Audit published in September 2005, addressing the question whether, in terms of both organisation and operation, and in the light of current counterterrorism activities, the Netherlands' external borders are completely covered by border controls.³⁰ In the report the Court of Audit found bottlenecks and also made recommendations. Partly in response to this, the Cabinet put forward a package of measures to improve the external border controls.³¹ The following goals are pursued:

- obtaining a picture as complete as possible of the total transport flow, both of people as of good, crossing the border;
- determining and enforcing the desired level of external border controls;
- more focussed surveillance and enforcement by more co-ordinated controls and by, when deemed useful, combining controls.

To achieve these goals amongst other things, a pilot has been carried out in 2006 with joint patrols by the Seaport Police (*Zeehavenpolitie*), the Royal Marechaussee (KMar) and Customs (*Douane*) along the seashores, in the harbours and on the small airports. At the end of 2006 the Cabinet decided this form of patrols would be carried out structurally.³²

2.3.3. Integration and Settlement

Many political/social debates in 2006 dealt with issues of integration and settlement. The most important on this subject have been included here.

Integration of Muslims in the Netherlands:

This issue was again the subject of frequent debate in the Netherlands during 2006. What this often involved was the issue of how to deal with manifestations of fundamental factions within Islam, such as clothing that covers the face and the refusal to shake hands with people of the opposite sex. A great deal of attention was also paid to Muslim radicalisation and the resulting threat of terrorism.

The ban on the Burka

There was further discussion during 2006 on the possible introduction of a ban on the burka, as mentioned in the previous Policy Analysis Report. The motion of 20 December 2005 by the House of Representatives to introduce a prohibition against the burka in public³³ has not yet been implemented and has aroused substantial debate in Parliament and elsewhere. A committee set up by the Minister for Immigration and Integration set out its views on the issue at the end of 2006. Following its opinion that a prohibition against the burka alone would be an unauthorised infringement of the freedom of religion and the principles of equality, the Cabinet decided on 17 November 2006 to formulate a Bill in order to achieve a general ban against clothing that covers the face in (semi-) public spaces.³⁴

³⁰Parliamentary papers II 2005/06, 30 315, no. 2 (Report).

³¹Parliamentary papers II 2005/06, 30 315, no. 3 (Letter).

³²Parliamentary papers II 2006/07, 30 315, no. 4 (Letter).

³³Proceedings II 2005/06, no. 36, p. 2546-2546.

³⁴Parliamentary Papers II 2006/07, 29 754, no. 91 (Letter).

Shaking hands

On 7 November 2006, the Equal Opportunities Commission (*Commissie Gelijke Behandeling (CGB)*) held that the suspension in September 2006 of an Islamic teacher at a public school in Utrecht, because she no longer wanted to shake hands with men as a result of her personal beliefs, amounted to an infringement of the Equal Opportunities Act (*Algemene wet gelijke behandeling*).³⁵ The CGB is an independent commission which may be approached by individuals who consider themselves to have been treated unequally. The CGB determines whether the Equal Opportunities Act has been breached, but its opinion is not binding.

This CGB opinion, the third in 2006 in such a case, resulted in condemnations in the political and media spheres. The school's argument – to the effect that shaking hands just happens to be the normal way of life in the Netherlands and that it is important for a teacher to set an example, particularly at a public school with many students of foreign heritage – found considerable resonance. A great deal of attention was devoted to this decision, which was issued in the middle of the House of Representatives election campaign, both in the media and in Parliament. All political parties represented in the House, with the exception of GreenLeft (*Groenlinks*, a left-wing ecologist party), distanced themselves from the CGB decision, and the governing VVD party even raised the possibility of scrapping the Commission in the light of this and earlier decisions.³⁶

Radicalisation/terrorism

Much attention was paid in 2006 to the radicalisation of Muslims and the consequent threat of terrorism. There were also court decisions in two notorious terrorism cases. The members of the 'Hofstad group' were sentenced on 10 March to prison sentences of up to 15 years for membership of a criminal terrorist organisation characterised by subversion, incitement to hatred and threatening behaviour. On 1 December, the group associated with Samir A., a 20 year old from Amsterdam of Moroccan origin, was sentenced to imprisonment of between three and eight years for activities preparatory to a terrorist attack.³⁷ This kept radical Islam and counterterrorism at the forefront of political and public debate during 2006.

WRR report 'Dynamiek in islamitisch activisme' (Dynamics in Islamic activism)

On 12 April 2006, the Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid (WRR)*) presented its report entitled "Dynamics in Islamic activism. Points of contact for promoting democracy and human rights" [*"Dynamiek in islamitisch activisme. Aankopingspunten voor democratisering en mensenrechten"*]. The WRR is an independent advisory body to the government whose purpose is to advise on future developments that might be of major social significance. The scientific approach takes precedence in its opinions.³⁸ The Report investigates how Islamic activism has developed in the Muslim world since the seventies, whether this development offers any points of contact for promoting democracy and improving human rights in the Islamic world, as well as how the Netherlands and Europe can support processes designed to that end. The WRR concluded that there were sufficient points of contact within Islamic activism for promoting democracy and improving human rights in the Islamic world, and that the EU and the Netherlands could make a contribution towards this. "A climate of confrontation and stereotypical thinking" in the Netherlands and the EU in relation to Islamic activism does not, according to the WRR, provide a stable climate for this. When presenting its report, the Council was also particularly critical about the manner in which the subject of Islam was addressed in Dutch politics and the media. The WRR even charged a number of

³⁵CGB. (2006) *Oordeel 2006-51: Onderscheid op grond van godsdienst door voor toelating op de opleiding voor onderwijsassistent de voorwaarde te stellen dat een moslimleerling personen van het andere geslacht in voorkomende gevallen begroet door het geven van een hand* [Ruling 2006-51: Distinction based on religion by stipulating the condition for access to the training for educational assistant that a muslim student must greet persons from the other sexe by shaking hands in occurring situations] . Retrieved 10 April 2007 from www.cgb.nl; Doorduyn, Y. (2006, 18 November) Kabinet verbiedt boerka op straat [Cabinet bans burka on the street]. *De Volkskrant*, p. 4.

³⁶Islamitische docente moet wel hand geven [Islamic teachers must shake hands]. (10 November 2006). *De Volkskrant*, p. 1.

³⁷ANP. (2006) *Samir A. krijgt 8 jaar cel* [Samir A. is sentenced to 8 years in jail]. Retrieved 10 April 2007 from www.alloctonen.web-log.nl.

³⁸WRR. (2007) *Over de WRR* [About the WRR]. Retrieved 10 April 2007 from www.wrr.nl.

politicians with "Islam bashing" in some interviews. Not surprisingly, this led to some robust responses and debate, with the report itself also being a topic of discussion. Both the report and the WRR criticism of the tone adopted by politicians and the media were debated in the opinion pages of national newspapers and topical weekly magazines³⁹ and on radio and television⁴⁰. Various politicians and opinion makers charged the WRR with being naive and adopting an unscientific approach, while others praised the report as being a necessary refinement with respect to the finer points in the debate. The Cabinet has not yet officially responded to the report.

House of Representatives election

The integration debate also played its part in the campaign for the House of Representatives elections, particularly in relation to Muslim integration. Geert Wilders' Freedom Party [*Partij voor de Vrijheid*] in particular provided extra fuel for this debate. Thus, in October, Wilders warned in an interview with the newspaper *de Volkskrant* of a "tsunami of Islamification" threatening the Netherlands.⁴¹ Putting a stop to non-Western immigration was an important point in the party's manifesto.

Another topic relating to integration during the election campaign dealt with acknowledgement of the Armenian genocide of 1915. There was a similar debate going on at about that time in other EU member states, particularly in France. At the end of September 2006 in the Netherlands, the debate focused on the position held in relation to the genocide debate by House of Representatives candidates of Turkish origin. The Netherlands Federation of Armenian Organisations (*Federatie van Armeense Organisaties Nederland (FAON)*) raised the point with the CDA and in the media that two CDA candidates of Turkish origin had allegedly previously denied the genocide. The CDA, however, accepted the position that genocide had indeed taken place in Armenia, and also lent its support to a motion dating from 2004, accepted by the House of Representatives, asking Turkey to press for acknowledgement.⁴² A candidate from the PvdA also came under fire in relation to his position, as that party also acknowledged the events in 1915 as amounting to genocide.

In response to the commotion, the CDA candidates appeared initially to back the party line when asked the question. A few days later, however, in an interview with the Turkish newspaper *Sabah*, they made it clear that they did not acknowledge the events of 1915 as being genocide. They were then removed from the candidate lists at the end of September. The PvdA candidate also refused to explicitly subscribe to the party position on the Armenian genocide and was taken off the election list. The opinion of other Parliamentary candidates of Turkish origin were also questioned. These other candidates did however in the end remain on the lists. The debate attracted a good deal of media attention and also resulted in considerable outrage among Dutch citizens of Turkish descent. Some of them felt that their loyalty was being called into question on this matter.⁴³

Integration Act (*Wet Inburgering*)

The debates surrounding the new Integration Act were explored thoroughly in the previous Policy Analysis Report. The Integration Act for Newcomers (*Wet inburgering nieuwkomers (WIN)*) was introduced in 1998, obliging newcomers to take lessons in Dutch, to acquire knowledge of Dutch society and to undertake some vocational training. 'Old-comers' (individuals who had arrived in the Netherlands before 1998) had also been able to participate in this programme on a voluntary basis since 1999. The Integration Act was designed to replace this old Act.

³⁹See, for example, Trouw (2006). *Vrijplaats voor schrijvers* [Sanctuary for writers]. Retrieved 4 May 2007 from www.trouw.nl; De Volkskrant (2006). *Opinie* [Opinions]. Retrieved 4 May 2007 from <http://www.volkskrant.nl/opinie/>; Elsevier (2006). *Opinie* [Opinions]. Retrieved 4 May 2007 from <http://www.elsevier.nl/opinie/index.asp>.

⁴⁰See, for example, NOS. (2006) *NOS Forum*. Retrieved 4 May 2007 from www.nosforum.nl; NOVA. (2006) *WRR bepleit positieve bejegening van Islam* [WRR argues positive treatment of Islam]. Retrieved 4 May 2007 from www.novatv.nl.

⁴¹Ten Hoove, S. & Du Pré, R. (2006, 18 November). Wilders vreest 'tsunami' moslims [Wilders fears 'tsunami' Muslims]. *De Volkskrant*, p. 1.

⁴²Parliamentary Papers 2004/05, 21 501-20, no. 270 (Motion).

⁴³*Tweede-Kamerverkiezingen 2006* [House of Representatives elections 2006]. (n.d.) Retrieved 4 May 2007 from nl.wikipedia.org; Elsevier. (2006) *Dossier: Verkiezingen 2006* [Dossier: Elections 2006]. Retrieved 4 May 2007 from www.elsevier.nl; Kandidaten weg om mening over genocide [Candidates scrapped because of opinion on genocide]. (2006, 27 September). *De Volkskrant*, p.2.

The original bill resulted in a good deal of debate during 2005, primarily in relation to the integration obligation on Dutch citizens born outside the European Union and immigrants who had already been residing in the Netherlands for a lengthy period. The bill was amended following a negative opinion from the Council of State on the integration obligation for Dutch citizens born outside the European Union. The new bill proceeded on the basis of a general integration duty for foreign nationals. In addition, there was also a facility for obliging some specific groups of naturalised Dutch citizens (those in receipt of benefit payments, spiritual leaders, or those raising young children) to pass the integration examination if this was regarded as necessary from a social perspective. This new bill, which the Minister for Immigration and Integration hoped to become law in the summer of 2006, also encouraged a great deal of debate.

In particular, the obligation with respect to specific groups of naturalised Dutch citizens was a controversial issue. It was argued, both in Parliament and elsewhere, that this was discriminatory, since individuals of native Dutch heritage were exempted from any obligatory integration. The duty of integration for specific groups of naturalised Dutch citizens was submitted to the Council of State, which found on 3 August 2006 that this obligation was indeed in conflict with "general provisions on equal treatment, but also with more specific international rules prohibiting any unjustified distinction according to origin or ethnicity".⁴⁴ This opinion and the debates surrounding the issue ultimately led to a further limitation of the target group for the Integration Act.

Other aspects of the Act were also criticised. For example, 18 professors sent an open letter to the Senate in October 2006⁴⁵ in which they expressed their opposition to the Act. It was alleged to be unnecessarily complicated and likely to result in disadvantage to the most poorly educated foreign nationals in particular. The municipalities, responsible for implementation, also got involved in the debate. A primary area of criticism by the Association of Netherlands Municipalities (*Vereniging voor Nederlandse Gemeenten* (VNG)) was the introduction date of 1 January 2007. There followed extensive consultation, and solutions were found for some of the bottlenecks. The VNG continued to protest against the introduction date, however.⁴⁶ The Act was finally passed, with support from an overwhelming majority in the Senate, on 28 November 2006, with an introductory date of 1 January 2007.⁴⁷

Nuisance from juveniles of foreign heritage

Another integration topic debated during 2006, partly because of certain incidents, was the nuisance caused by certain groups of juveniles of foreign heritage, particularly in the larger cities. A number of incidents hit the national press during 2006. At the start of the year, a series of minor incidents in Amsterdam drew national media attention and resulted in questions in Parliament. Around the turn of the year, a group of Moroccan youngsters smashed dozens of car windscreens in the 'De Pijp' area. During the New Year celebrations, a group of Moroccan youths allegedly threw a box of fireworks through the window of a Jewish resident in the Amsterdam neighborhood called the Diamantbuurt. On Wednesday 11 January, dozens of Moroccan youths in the Amsterdam district of Slotervaart stirred up trouble following a fatal scooter accident. The mayor of Amsterdam held hasty consultations with city leaders of the various Amsterdam districts as a result of this trouble. The House of Representatives and the government also became involved in the debate. At the request of Parliament, the Cabinet produced a more detailed analysis in July 2006 of the wider problem areas surrounding Moroccan youths and possible solutions.⁴⁸ There was also an incident in September 2006, involving Moroccan youths in Amsterdam, which reached the national media and again focused attention on the whole issue. Following a stabbing incident, Moroccan youths in the Amsterdam neighbourhood called the Indische

⁴⁴RvS. (2006) *Nieuwe adviesaanvraag inzake het wetsvoorstel houdende regels inzake inburgering in de Nederlandse samenleving (Wet inburgering)* [New request for an opinion in connection with the bill containing rules on integration into Dutch society (Integration Act)]. Retrieved 5 April 2007 from www.raadvanstate.nl.

⁴⁵Entzinger, H.B. et al. (2006) *Open brief inzake voorstel Wet inburgering* [Open letter concerning Integration Act]. Retrieved 5 April 2007 from <http://www.nrc.nl/opinie/article508742.ece>.

⁴⁶Vereniging van Nederlandse Gemeenten (VNG). (2006) *Brief over de Wet inburgering aan de leden van de Eerste Kamer* [Letter on the Integration Act to the members of the Senate]. Retrieved 1 June 2007 from www.vng.nl.

⁴⁷Proceedings I 2006/07, no. 10, p. 407.

⁴⁸Parliamentary Papers II 2005/06, 28 684, no. 89 (Cabinet position).

buurt in Amsterdam sought out a confrontation with Surinamese youths and the police, and the windows of some Surinamese cafes were smashed.⁴⁹ Crime and nuisance among Antillean youths also hit the news in 2006. A number of municipalities in the Netherlands had for some time been reporting problems with immigrants from the Dutch Antilles. In January, the Minister for Immigration and Integration launched a plan to address these problems.⁵⁰ One element of this was to send criminals back to the Dutch Antilles and Aruba and to introduce compulsory integration for Antilleans and Arubans settling in the Netherlands. Aruba and the Dutch Antilles are, however, part of the Kingdom of the Netherlands, which raises certain legal complications. The proposed measures also seemed to be quite controversial, but they were supported by the majority in Parliament and also a majority of the most directly involved municipalities. There was harsh criticism of the proposals from the Dutch Antilles. A number of opposition parties and some of the municipalities involved were also critical.⁵¹

2.3.4. Refugee protection and Asylum

Debates on country-specific policy

Politicians and the media paid a good deal of attention to the position of homosexuals and Christians in Iran during 2006. Following the execution of two homosexual men in Iran in July 2005, a case that drew international attention, a moratorium on decisions and departures was announced in 2005 in anticipation of a new official notice from the Ministry of Foreign Affairs, dealing with the position of homosexuals in Iran. At the start of 2006, the House of Representatives also invoked a motion for a similar moratorium for Christian asylum seekers from Iran.⁵² When, on 28 February 2006, the Minister then announced that she saw no reason for continuing the moratorium for homosexuals or the pronouncement of such a moratorium for Christian asylum seekers, the result was a great deal of political-social debate. After widespread debate and publicity, the Cabinet finally bowed on 12 April to pressure from a majority of the House of Representatives and decided to extend the moratorium on decisions and departures for homosexual asylum seekers from Iran and to pronounce a moratorium on decisions and departures for Christian asylum seekers from Iran, pending a more detailed official notice in September.⁵³ The Minister for Immigration and Integration finally decided in October that homosexual asylum seekers from Iran would be eligible for residence permits on humanitarian grounds. The moratorium on departures was extended for Christian asylum seekers, since there was as yet inadequate information on the dangers to which they might be exposed.⁵⁴ Further details will be provided on this in section 3.2.4.

There was also discussion during 2006 on the country-specific policy for Iraq, particularly on whether or not to maintain a policy of categorial protection for asylum seekers coming from Central Iraq (the part of Iraq not controlled by the two Kurdish parties, the PUK and KDP). This policy was terminated in February by the Minister for Immigration and Integration (for more on this, see section 3.2.4). This decision encountered a great deal of resistance from part of the opposition in the House of Representatives and from organisations such as Amnesty International and the Dutch Council for Refugees. A number of Courts also issued negative opinions on this, but the highest Court in the country, the Council of State, approved the abolition of the categorial protection in July 2006 (this judgment will

⁴⁹Butter, E. (2007) *Jaaroverzicht Integratie 2006* [Year survey Integration 2006]. Retrieved 29 May 2007 from www.allochtonen.web-log.nl.

⁵⁰Ministerie van Justitie. (2006) *Persbericht 30 januari 2006: Aanvullende maatregelen Antilliaanse- en Arubaanse risicojongeren* [Press release 30 January 2006: Supplementary measures riskful youngsters from the Dutch Antilles and Aruba]. Retrieved 14 August 2007 from www.justitie.nl.

⁵¹Kruijt, M en Remarque, P. (2006, 28 March). Discriminerend wetsvoorstel wekt scepsis [Discriminatory bill arouses scepticism]. *De Volkskrant*, p. 2.

⁵²Parliamentary papers II 2005/06, 19 637, no. 1010 (Motion).

⁵³Koel , T. en Kruijt, M (2006, 13 April). Asielzoekers uit Iran niet weggestuurd [Asylum seekers from Iran not to be turned away]. *De Volkskrant*, p. 3.

⁵⁴Koel , T. en Kruijt, M (2006, 18 October). Homo's uit Iran mogen toch blijven [Homosexuals from Iran can stay after all]. *De Volkskrant*, p. 1; Parliamentary Papers II 2006/07, 19 637, no. 1094 (Letter).

be examined in more detail in section 3.3).⁵⁵ Following the elections at the end of 2006, however, the new majority in the House of Representatives approved a motion on 20 December 2006 to reintroduce the categorial protection.⁵⁶

Disappearance of unaccompanied minor foreign nationals

A great deal of commotion was caused in April 2006 when a human trafficking network was wound up by the police and the Royal Marechaussee. Seven individuals were arrested who had been involved in an international network bringing Indian youngsters into Europe illegally for payment. The reason behind the police investigation had been the disappearance without a trace of some of the unaccompanied Indian minor foreign nationals, which had been occurring since October of 2004. Five of the accused were given (suspended) prison sentences in July.

The arrest of the smugglers resulted in a great deal of debate and media attention. There was widespread lack of comprehension at the long gap between the first signs of the disappearance of Indian minors and the start of the police investigation resulting in the network being wound up.⁵⁷ The issue was explored thoroughly in the House of Representatives, where the fear was also expressed that these disappearing youngsters would end up on the illegal circuit, where they might be exposed to abuse. There was accordingly an urgent call for measures to prevent the disappearance of unaccompanied minor foreign nationals from reception facilities.⁵⁸ During the debate, the Minister for Immigration and Integration indicated that a number of measures had already been set in motion. This meant that all Indian unaccompanied minor foreign nationals were received at a single location, where additional measures had also been put in place in order to prevent disappearances. The suggestion was made during the debate to move to more private/enclosed forms of reception, where it would be impossible to leave the reception facilities freely.

Media attention was aroused once again in August 2006 as a result of the disappearance of Nigerian minors from asylum seekers' centres,⁵⁹ with further questions being asked in Parliament.⁶⁰ In December 2006, the Minister for Immigration and Integration indicated that she would be setting up a pilot study with a form of closed reception, so that reception of unaccompanied minor foreign nationals in risk categories would take place in a small-scale setting with intensive and personal attention. In this situation, youngsters can only leave the reception centre with permission and accompanied if necessary. They may, however, remove themselves from the procedure and the reception facility, because these reception facilities will not be locked, detention-type facilities.⁶¹

2.3.5. Citizenship and Naturalisation

There was again much to be done in relation to Naturalisation during 2006, following the commotion in 2005 concerning Minister Verdonk's refusal of accelerated naturalisation for the Feyenoord footballer Salomon Kalou.

Salomon Kalou

The Salomon Kalou case reared its head again in 2006. Under section 10 of the Netherlands Nationality Act 2003, Dutch citizenship can be awarded in certain cases without all of the relevant statutory

⁵⁵Van Keken, K. (2006, 6 July) Terugsturen naar Centraal-Irak mag [Returns to Central Iraq are possible]. *De Volkskrant*, p. 2.

⁵⁶ANP. (2006) *Grote groep Irakezen beschermd tegen uitzetting* [Large group of Iraqis protected against removal]. Retrieved 5 April 2007 from www.nu.nl; Proceedings II 2006/07, no. 29, p. 1981.

⁵⁷Including TV broadcast Netwerk. (2006) *Verdwijningen uit asielzoekerscentra* [Disappearances from reception centres for asylum seekers]. Retrieved 29 May 2007 from <http://mmbase.netwerk.tv>; Kruijt, M (2006, 21 April). Politie wachtte op IND met onderzoek Indiase jongens [The police waited for the IND for its investigation into Indian youths]. *De Volkskrant*, p. 4.

⁵⁸Parliamentary Papers II 2005/06, 27 062, no. 54 (Report of general consultation).

⁵⁹ANP. (2006) *Jonge Nigeriaanse asielzoekers verdwenen* [Young Nigerian asylum seekers disappeared]. Retrieved 29 May 2007 from www.nu.nl; Kamer: sluit minderjarige asielzoekers op voor hun veiligheid [House of Representatives: shut minor asylum seekers away for their own safety]. (2006, 4 August). *De Volkskrant*, p. 3.

⁶⁰Parliamentary questions 2006/07, no. 231 (Reply).

⁶¹Parliamentary Papers 2006/07, 27 062, no. 56 (Letter).

conditions having been met. The appropriate secondary legislation indicates that these special circumstances might include a Dutch interest in the field of sport. One of the examples mentioned is when the applicant for naturalisation will be in a position to take part in international contests or competitions as a representative of the Netherlands following his naturalisation. This, however, is a discretionary power, so there is no right to naturalisation under this section.

In 2005, the Minister for Immigration and Integration held that there was no Dutch sporting interest involved in an accelerated naturalisation of Kalou, despite the large amount of support from the world of football (team coach Marco van Basten and football legend Johan Crujff both spoke up in favour of the idea). In February 2006, the Council of State held on appeal that this rejection of the application was insufficiently reasoned.⁶² Shortly thereafter, the Minister indicated that she would once again reject the application unless Kalou could demonstrate that he wanted to settle in the Netherlands by exhibiting a Dutch employment contract and unless he passed the integration test required in connection with the standard naturalisation procedure (the naturalisation test). The application was then finally rejected in March. The footballer did obtain a further opportunity to take the naturalisation test in May, but this was too late to obtain a temporary passport for the football World Cup in Germany which started on 9 June 2006, and which had been the most important reason behind the accelerated application for naturalisation. Once the Minister had won in the District Court in May 2006, however, the footballer signed a contract abroad, bringing the naturalisation procedure and the debate on it to an end.⁶³ The whole issue focused a great deal of attention, in the media and among politicians, on the statutory possibility of accelerating the naturalisation process for top sportsmen. The House of Representatives focused in particular on the significance of section 10 of the Netherlands Naturalisation Act and on the question of whether the Minister's additional requirements were not in fact a breach of the section, incorporating a *de facto* policy change. The majority of the House of Representatives supported the Minister's actions in the matter, however.⁶⁴

Ayaan Hirsi Ali

A Zembla TV documentary broadcast on 11 May 2007⁶⁵, about the prominent VVD Member of Parliament Ms. Ayaan Hirsi Ali, resulted in a new debate about naturalisation. This MP, of Somali descent, had been very prominent in the Netherlands for some time in connection with the public debate on Islam and integration of Muslims, and had often expressed controversial opinions on the matter. Her actions led to a great deal of resistance, particularly in Islamic circles. For some time, she had enjoyed personal protection from the government in connection with the many threats made against her.

The TV documentary disclosed that, when she had lodged her request for asylum in the Netherlands in 1992, the MP had given a false name and date of birth. Case law seemed to indicate that, if incorrect personal data had been provided, Dutch citizenship would be deemed never to have been granted. The Minister for Immigration and Integration felt obliged, partly as the result of publicity and questions in Parliament, to instigate an investigation into the naturalisation of the MP, who was one of her party colleagues.

Although the MP made it known on 15 May that she would be leaving the House of Representatives and the Netherlands on 1 September to start work for an American neo-conservative think tank, the American Enterprise Institute for Public Policy Research, the Minister announced on the same date that Ayaan Hirsi Ali "was for the time being considered not to have acquired Dutch nationality". The MP thereupon decided to leave Parliament immediately. During the ensuing controversy, many public figures expressed their support for Ayaan Hirsi Ali in the media, and the decision by the Minister for Immigration and Integration also encountered considerable resistance in political circles. The discussion focused on the question of whether the Minister had any scope for deviating from the case law of the Dutch Supreme Court, the highest Dutch judicial institution, in relation to naturalisation based on false personal data. After a long and arduous debate on 16 May, broadcast live on television, Minister Verdonk

⁶²Van Keken, K. (2006, 16 February) Weer verlies Verdonk in zaak-Kalou [Verdonk loses again in the Kalou case]. *De Volkskrant*, p. 17.

⁶³Van der Chijs, I. (2006) *Salomon Kalou gaat weg uit Nederland* [Salomon Kalou leaves the Netherlands]. Retrieved 29 May 2007 from <http://www.elsevier.nl/nieuws/sport/artikel/asp/artnr/100210/index.htm>.

⁶⁴See among others Proceedings II 2005/06, no. 56, p. 3631.

⁶⁵Zembla. (2006) *De heilige Ayaan* [The holy Ayaan]. Retrieved 29 May 2007 from zembla.vara.tv.

decided to observe two motions⁶⁶ adopted by an overwhelming majority of Parliament (including her own party, the VVD), so that she would enquire over the following six weeks whether there was scope for her to revise her position, on the basis of existing and new information.

The Ministers concerned finally decided on 27 June 2006, during an overnight consultation, that Ayaan Hirsi Ali could retain her Dutch passport. The arguments given for this decision included that the VVD politician's official name was indeed Hirsi Magan, but that, as Hirsi Ali, she had adopted her grandfather's name. Apparently this was permissible according to Somali law. On the same date, and allegedly under pressure from Minister Verdonk, Hirsi Ali issued a statement in which she said that she had misled Minister Verdonk. This statement led to a new lengthy debate on the actions of Minister Verdonk in relation to the entire issue. The smallest governing party, D66, eventually withdrew its support from the Cabinet following the rejection of a motion of no-confidence it had lodged in relation to VVD Minister Verdonk.⁶⁷ This in turn meant that the parties represented in the Cabinet lost their majority in Parliament and therefore the Cabinet as a whole was forced to resign.⁶⁸

2.3.6. Unauthorised immigration and Legalisation

Much attention in 2006 in this field has been given to the possible legalisation of a certain category of asylum seekers who had exhausted all legal remedies. The previous report explored at length the political and social debates prior to and during 2004 and 2005 concerning a possible pardon scheme for asylum seekers, still residing in the Netherlands, who had submitted their request for asylum before the new Aliens Act (2000) came into operation on 1 April 2001, and whose applications had not been approved. A limited scheme was set up in 2003 to allow asylum seekers who had been waiting for a final decision on their initial asylum request since 27 May 1998 to stay in the Netherlands, subject to certain conditions. This did not, however, put an end to the political and social debates.

A wider-ranging pardon scheme was also the subject of lengthy debate in 2006. During the general members' meeting of the Association of Netherlands Municipalities (VNG) in June 2006, an overwhelming majority of the members voted for a motion instructing the VNG to argue the case with the Cabinet and the House of Representatives for a more generous pardon for asylum seekers who had lodged their initial request prior to 1 April 2001 and who were still resident in the Netherlands. 7 out of the 265 municipal authorities present there voted against the proposal.⁶⁹ There was also, for example, a national demonstration organised in The Hague on 4 November 2006 by Defence for Children International, Amnesty International and the Dutch Council for Refugees, among others.⁷⁰

The Cabinet, supported in this by a majority in the House of Representatives, adopted the view that an even broader scheme was undesirable. One of the issues referred to was the inequality of rights that this would involve. The scheme would, after all, be detrimental to asylum seekers who had either left the Netherlands or been deported following a negative decision. In addition, according to the Cabinet, a new pardon scheme would have a run-off impact on asylum seekers who had left for unknown destinations or who had independently returned to their countries of origin. A new pardon scheme would also make the Netherlands more attractive to new asylum seekers.⁷¹

Following the House of Representatives elections on 22 November, however, there was a majority in Parliament in favour of a wider ranging pardon. As indicated above in section 2.2, this majority submitted a motion asking the outgoing Cabinet to suspend the removal of asylum seekers who had exhausted all legal remedies and who might be covered by any pardon arrangement to be agreed by a new Cabinet. The outgoing Cabinet had great difficulty with this motion and the Minister for Immigration and Integration emphatically refused to implement it. As stated above, this gave rise to a unique constitutional situation, with the House adopting a motion of censure against the Minister. This

⁶⁶Proceedings II 2005/06, no. 78, p. 4836.

⁶⁷Proceedings II 2005/06, no. 96, p. 5976.

⁶⁸Ayaan Hirsi Ali. (n.d.) Retrieved 4 May 2007 from http://www.wikipedia.org/wiki/Ayaan_Hirsi_Ali.

⁶⁹VNG. (2006) *Pardonregeling uitgeprocedeerde asielzoekers* [Pardon scheme failed asylum seekers]. Retrieved 2 May 2007 from www.vng.nl.

⁷⁰Steunpunt Vluchtelingen. (2006) *Manifestatie generaal pardon voor de 26.000 vluchtelingen!* [Manifestation general pardon for the 26,000 refugees!]. Retrieved 2 May 2007 from www.pardonnu.nl.

⁷¹Parliamentary Papers II 2006/07, 19 637, no. 1109 (Letter).

did not however result in the resignation of the Minister (the usual consequence of such a motion). Instead, after crisis consultations between the government parties CDA and VVD a compromise was achieved, in terms of which the VVD Minister for Immigration and Integration transferred her portfolio for immigration affairs to the CDA Minister of Justice, Mr Hirsch Ballin, who implemented the House motion. This solution proved to be acceptable to a majority in the House.⁷²

2.3.7. Return

Taida Pasic

The case of the Serbian-Kosovan student, Taida Pasic, made a considerable fuss at the start of 2006. The Pasic family had voluntarily left the Netherlands at the start of 2005 after their asylum application, lodged in 2000, had been rejected and once Kosovo was regarded as being safe enough to return to. The family also received a financial contribution to help bridge them through the initial period after their departure from the Netherlands. In June 2005, however, the daughter, Taida, returned to the Netherlands under a French tourist visa to continue her pre-university (VWO) education at her old school. Various applications were rejected, before and after her return, for a provisional residence permit (a Schengen D visa) so as to be able to lodge an application for study residence in the Netherlands. Having lived temporarily in France, she came back to the Netherlands in November 2005 and applied for a residence permit there. In the meantime she continued her studies in the Netherlands, in order to be able to take her final exams in 2006. The rejection of her application on 12 January 2006 resulted in a decision to take her into aliens' detention pending her removal. The reason given for this by the IND was that there was a suspicion that she might evade removal from the Netherlands. She was accordingly arrested by the Aliens Police at her school in Winterswijk on 18 January 2006.

This course of events caused a great stir in the media and among politicians. Taida Pasic used every available review and appeal procedure, in terms of which she succeeded in having the aliens' detention lifted, and was permitted to stay in the Netherlands pending the outcome of these proceedings. There was extensive media coverage of the case in the meantime, as well as campaigns run by her school, classmates and the municipal council of Winterswijk, and various parliamentary debates on the case. The majority of the House of Representatives supported the government line on the case, however. The final judgment on the appeal against the refusal was issued on 21 April, in terms of which her application was finally rejected. Taida Pasic then decided to leave the Netherlands voluntarily and was given the opportunity to sit her final examination at the Dutch embassy in Bosnia, where her family was living at that point. She did in fact pass the exam and was granted a provisional residence permit in July 2006 to come to the Netherlands and pursue her legal studies there.⁷³

Syrian asylum seekers

From February 2006 onwards, there was an issue surrounding the repatriation of a group of 181 Syrian asylum seekers. Asylum seekers who have exhausted all legal remedies and other foreign nationals who have to be repatriated and who have no identity documents require a *laissez-passer* from the country of origin to be able to return there. This can be issued by the embassy of the country of origin. In such cases, there has to be a meeting between the authorities of the country of origin and a potential citizen of that country, in order to establish the identity and nationality of the country's own citizens. These meetings, also called presentations, usually take place at the Embassy of the country of origin. With this purpose in mind, meetings had taken place in February at IND offices between two Syrian officials and 181 Syrians who had exhausted all of their legal remedies. This rapidly led to agitation in the press when it became clear that the Syrians had not been warned in advance of the presence of the Syrian government officials. They had not been alerted to their right to remain silent, either. Nor were there any IND officials present at most of the presentations, and there were speculations about the job

⁷²Peperkorn, M. en Kruijt, M. (2006, 14 December) Van beraad tot alomvattende gijzeling [From consultation to comprehensive kidnap]. *De Volkskrant*, p. 2; Kalse, E. & Valk, G. (2006, 14 December). Ongekende crisis met een ongekend slot [Unprecedented crisis with unprecedented end]. *NRC Handelsblad*, Binnenland.

⁷³Taida Pasic. (n.d.) Retrieved 4 May 2007 from http://nl.wikipedia.org/wiki/Taida_Pasi%C4%87; Taïda gaat studeren in Leiden [Taïda will be studying in Leyden]. (2006, 20 July). *De Volkskrant*, p. 2; Sligter, A. (2006, 22 April) Zaak-Pasic: Verdonk krijgt gelijk [Pasic Case: Verdonk gets her way]. *De Volkskrant*, p. 3.

descriptions of the Syrian officials who, according to some press sources, were working for the intelligence services.⁷⁴

The Minister came under heavy criticism from an element within the House of Representatives, primarily because of the absence of IND officials and the lack of information provided to the Syrian asylum seekers.⁷⁵ An earlier crisis, in 2005, concerning the repatriation of Congolese asylum seekers, had resulted in the specific conclusion that this information must be provided, including information on the right to remain silent (please refer to the previous Policy Analysis Report). It also eventually came to light that the asylum history of these Syrians had been discussed during the meetings, information that the IND only managed to pass to the Minister at a late stage, so that the Minister was not initially in a position to provide complete information to the House of Representatives.⁷⁶ The fact that the Minister had been unable in the first instance to provide complete information to the House on the course of events during the presentations actually led to a motion of no confidence during the debates on the matter, although this was only supported by a minority in the House.⁷⁷

Children in aliens' detention

There was a great deal of commotion in September relating to the detention of the 8-year-old Chinese boy Hui Chen. His mother, a single parent, was held in a removal centre because of her refusal to collaborate in her removal. The woman did not want her child to be held separately from her, so the child was detained alongside her. Commentators in the media agitated against the fact that there was a child in the cell, and the issue was also raised in Parliament. Social organisations also made themselves heard on this issue. The majority in the House of Representatives supported the Cabinet policy, however, in terms of which it is important to prevent children ending up in aliens' detention, but where, if the parent refuses to collaborate towards repatriation, detention of the parent and child may be the ultimate result. On this point the Cabinet stated that the parent always had the choice to place the child temporarily in a foster home or with acquaintances.⁷⁸

The subject had though already been on the political agenda earlier. Already in 2005 there had been much debate on children in aliens' detention, resulting in a motion by PvdA MP De Vries asking the government to reflect on alternative forms of accommodation of parents with minors in aliens' detention.⁷⁹

Responding to this, in June 2006 a letter had been sent to the House of Representatives, in which it was announced that an accommodation would be established where under certain preconditions, families with children who co-operated actively with their return could be placed, preventing detention.⁸⁰

A number of social organisations, specifically Amnesty International, Defence for Children International Nederland, Stichting INLIA, Kerkinactie, Stichting Alleenstaande Minderjarige Asielzoekers Humanitas (SAMAH), the Netherlands Council of Churches (*Raad van Kerken*), UNICEF Netherlands and the Dutch Council for Refugees had also already been waging lengthy campaigns against aliens' detention for children. They had called on the Dutch population to sign a petition against this earlier in 2006. This petition, containing nearly 138,000 signatures, was handed over to members of the House of Representatives on 21 June 2006.⁸¹ These organisations also opposed Cabinet policy during the debate concerning Hui Chen. At the end of the day the young lad and his mother were both released in October on the basis of new information that the mother had provided to the IND.⁸² The policy was not, however, amended.

⁷⁴Heijmans, T. (2006, 24 February) Syrische beampten helpen bij uitzetting [Syrian officials help with removal]. *De Volkskrant*, p. 3.

⁷⁵Proceedings II 2005/06, no. 68, p. 4296.

⁷⁶Parliamentary Papers II 2005/06, 19 637, no. 1030 (Letter).

⁷⁷Proceedings II 2005/06, no. 68, p. 4296.

⁷⁸Proceedings II 2006/07, no. 4, p. 185.

⁷⁹Parliamentary Papers II 2005/06, 29 344, no. 54, (Motion).

⁸⁰Parliamentary Papers II 2005/06, 29 344, no. 57, (Letter).

⁸¹Unicef. (2006) *Organisaties achter 'Geen kind in de cel' verzamelen voor petitie 138.000 handtekeningen* [Organisations behind 'No child in cell' collect 138.000 autographs for petition]. Retrieved 29 May 2007 from www.unicef.nl.

⁸²ANP. (2006) *Chinees jongetje Hui blijft in detentie*. [Chinese boy Hui remains in detention] Retrieved 29 May 2007 from <http://www.nu.nl/news/837045/10>.; Hui (8) en zijn moeder weer op vrije voeten [Hui (8) and his mother free once more]. (2006, 16 October). *De Volkskrant*, p. 3.

The Schiphol fire

Fire raged through a cell complex at Schiphol airport on Thursday 27 October 2005. The cell complex was a detention and removal centre for illegal aliens residing in the Netherlands. Eleven illegal immigrants detained there lost their lives in the fire, and the 15 wounded included some guards. The results of an investigation into this fire by the independent Safety Investigation Council (*Onderzoeksraad voor Veiligheid*) became available in 2006. In the conclusions, presented on 21 September 2006, the responsible government organisations were strongly criticised. The Council established that the National Agency of Correctional Institutions (*Dienst Justitiële Inrichtingen (DJI)*), (the client for the building and also responsible for management of the cell complex), the State Building Agency (*Rijksgebouwendienst*) (responsible for constructing the cell complex) and the municipal authority of Haarlemmermeer (responsible for issuing the building permit and checking on it, as well as checking for fire safety) had all paid too little attention to fire safety within the complex. There had been insufficient compliance with and enforcement of existing rules. As a result of the report, the Ministers with political responsibility resigned. These were Minister Donner (Minister of Justice), responsible for the DJI, and Minister Dekker (Minister of Housing, Spatial Planning and Environment), responsible for the State Building Agency. The mayor of the municipality of Haarlemmermeer also resigned.⁸³

2.4. Institutional developments

No major institutional changes took place in 2006 in the field of asylum, migration and integration, but two such changes were set in motion whose impact will be felt in 2007. Both of the changes are the result of the critical report from the Netherlands Court of Audit (*Algemene Rekenkamer*)⁸⁴ on the position of the IND in the immigration process,⁸⁵ which were dealt with extensively in the previous Policy Analysis Report. The preparation of this report resulted from major backlogs in the issue of residence documents in 2004. The investigation focused primarily on the criteria of promptness and care in the assessment of applications for provisional residence permits and regular (non-asylum) residence permits, and assessment of applications for review.

The Court of Audit made a recommendation for improvement of the management of the various bodies involved in handling applications for residence permits. The Cabinet inferred from this that, with respect to the granting of regular (non-asylum) residence permits, the transfer of front office duties from the Aliens Police to the municipal authorities, as described in the previous Policy Analysis Report, had not had the desired result. It was accordingly decided to entrust these duties to the IND. In this way, every step in the application process for regular residence permits is now undertaken by a single organisation, under the direct supervision of the Minister. A start was made on preparations for this transfer of duties during 2006, and it is expected to be completed by the end of 2007.

The Court of Audit also established that the achievement of policy targets in the area of return was inadequately safeguarded in the organisational structure of the return process. The Cabinet accordingly decided in October 2005 to create a separate repatriation organisation. The realisation of various opportunities for improvement should be (more) feasible using a separate repatriation organisation. During 2006, work continued on the establishment of this repatriation organisation; it became operational on 1 January 2007 and is called the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek (DT&V)*). The purpose of the DT&V is to ensure the actual departure of all illegal aliens held in

⁸³ *Schipholbrand*. (n.d.) Retrieved 29 May 2007 from http://nl.wikipedia.org/wiki/Onderzoeksraad_voor_Veiligheid. (2006). *Brand Cellencomplex Schiphol-Oost: Eindrapport van het onderzoek naar de brand in het detentie- en uitzetcentrum Schiphol-Oost in de nacht van 26 op 27 oktober 2005* [Fire at Schiphol-East cell complex: Final report of the investigation into the fire in the Schiphol East detention and removal centre on the night of 26 and 27 October 2005]. Den Haag: Onderzoeksraad voor Veiligheid.

⁸⁴ The Netherlands Court of Audit is one of the High Committees of State and is independent of the government. Its function is to investigate the operation and performance of public administration and to provide its opinion on this (www.rekenkamer.nl).

⁸⁵ Parliamentary Papers II 2004/05, 30 240, no. 1-2 (Letter-Report).

the context of the supervision of foreign nationals or border control, and of all asylum seekers who have to leave the country. The DT&V's priority is to encourage the foreign nationals to leave independently. The DT&V also wants to operate cautiously, with respect for the dignity of the foreign nationals in question, even in cases of compulsory departure. This involves applying a person-oriented and multi-disciplinary approach.⁸⁶ The Aliens Police, the Royal Marechaussee and the IND are the agencies principally involved in the repatriation process, and will make staff available to the DT&V.⁸⁷

⁸⁶IND, afdeling Informatie- en Analysecentrum, nationaal contactpunt Europees Migratie Netwerk (EMN). (2006) *Research Study III: Terugkeer/ Return*. Rijswijk: IND.

⁸⁷Ministerie van Justitie. (2007) *Introductiedossier* [Introduction File]. Retrieved 12 April 2007 from www.justitie.nl.

3. Legislative developments in the area of migration and asylum

This chapter describes the changes and developments in national primary and secondary legislation and case law during 2006 in relation to asylum and migration. Section 3.1 briefly describes the legal system as pertaining to migration and asylum. Section 3.2 goes on to describe the changes and developments at the national level during the reference period. Section 3.3 in turn contains an overview of the most important Dutch case law.

3.1. The Dutch legal system

The Dutch legal system is structured hierarchically. At the pinnacle stands the Dutch Constitution. Next come the Acts (in a formal sense). The Acts are established by the Parliament (Senate and House of Representatives) on proposals made by the government or a member of the House of Representatives. These Acts may not contain any provisions in conflict with the principles of the Constitution. In addition, the General Administrative Law Act [*Algemene wet bestuursrecht*] sets down rules of administrative law to serve as guidelines for administrative bodies. "Special" Acts can deviate from the General Administrative Law Act⁸⁸.

The most important Acts in the field of migration and asylum are as follows:

- the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*). This regulates the conditions for acquiring and losing Dutch nationality.
- the Aliens Employment Act (*Wet arbeid vreemdelingen (Wav)*). This Act regulates the admission of foreign nationals to the Netherlands employment market.
- the Administrative Penalties for Aliens Employment Act (*Wet bestuurlijke boete arbeid vreemdelingen*). This Act provides that administrative penalties can be imposed on employers if they employ foreign nationals illegally.
- the Aliens Act 2000 (*Vreemdelingenwet 2000 (Vw 2000)*). The Aliens Act 2000 stipulates the conditions imposed on foreign nationals with respect to permission to enter the Netherlands, the issue of residence permits and removal, for both the asylum and non-asylum (regular) categories.
- the Integration Act (*Wet inburgering*) and the Civic Integration Abroad Act (*Wet inburgering buitenland*). These Acts prescribe obligatory integration in the Netherlands or in the country of origin, in principle only for foreign nationals who are here for a non-temporary residence purpose.

The Aliens Act 2000 is a "special" Act. Where the Aliens Act 2000 deviates from the terms of the General Administrative Law Act, the provisions in the Aliens Act will take precedence.

Generally speaking, the Acts only contain the general principles of the rules in any particular area. The Acts are elaborated in a range of different types of secondary legislation.

- Orders in Council (*Algemene Maatregelen van Bestuur (AMvBs)*) take precedence. These are established by the government on advice from the Council of State. The most important AMvB in the area of the law pertaining to foreign nationals is the Aliens Decree 2000 (*Vreemdelingenbesluit 2000 (Vb 2000)*). This contains the elaboration of substantive and procedural rules in the Aliens Act 2000. The Aliens Employment Act Implementation Decree (*Besluit uitvoering Wet arbeid vreemdelingen*) provides the same service for the Aliens Employment Act.
- Then come the ministerial regulations. The ministerial regulations are established by a Minister. The government is not involved and the Council of State provides no advice on these. The Regulations on aliens 2000 (*Voorschrift vreemdelingen 2000 (Vv 2000)*) are ministerial regulations containing the administrative provisions and model documents to be used by government officials. The Aliens

⁸⁸Kuijer, A. (Eds.) (2002). *Nederlands vreemdelingenrecht* [Dutch Law with respect to Foreign Nationals]. The Hague: Boom legal publishers.

- Employment Act Delegation and Implementation Decree (*Delegatie- en uitvoeringsbesluit Wet arbeid vreemdelingen*) contains rules on powers and implementation of the Aliens Employment Act (Wav).
- Then, in the Aliens Act implementation guidelines 2000 (*Vreemdelingencirculaire 2000 (Vc 2000)*), there are the policy rules in the field of asylum and migration. The policy rules in the Aliens Act implementation guidelines 2000 are general and special instructions to all government officials involved in implementing legislation concerning foreign nationals. They are signed, on behalf of the Minister of Justice and the Minister for Immigration and Integration, by the Director-General of International Affairs and Immigration at the Ministry of Justice.
 - Finally there are operating instructions which are not generally made public. As far as the law relating to foreign nationals is concerned, these include, for example, (internal) operating instructions issued by the head of the IND to internal staff.

3.2. Legislative developments

This section explores changes to primary and secondary legislation in the area of asylum and migration during 2006. Those amendments that came into effect after 31 December 2006 are not included. When describing the changes, a description will also be given of the situation prior to the change, if this is relevant.

3.2.1. Managed migration

During 2006, the Civic Integration Abroad Act came into effect in relation to managed migration. There were also a range of policy amendments introduced, along with implementation of some EU Directives with consequences for primary and secondary legislation in the area of managed migration. These are briefly summarised below and dealt with in greater detail in Chapter 4 in relation to the implementation of European legislation.

General

Civil Integration Abroad Act

The Civil Integration Abroad Act (Wib) came into effect on 15 March 2006.⁸⁹ In terms of this Act, foreign nationals between the ages of 16 and 65 coming to the Netherlands for family reunification or family formation purposes, or to reside here as a spiritual leader or religious teacher, must sit the civic integration examination in the country of origin if they lodge a request for a provisional residence permit (*Machting tot Voorlopig Verblijf (MVV)*)⁹⁰ on or after 15 March 2006. A more detailed description of this Act can be found in section 3.2.3, relating to integration and establishment. The Act also has radical consequences for admission policy. Passing the civic integration examination abroad is, after all, a new condition for admission for foreign nationals whose nationality makes them subject to a duty to obtain a MVV in the Netherlands, if they wish to come to the Netherlands for the reasons specified above. The Civic Integration Abroad Act therefore also resulted in amendments to primary and secondary legislation relating to foreign nationals.

When assessing an application for family reunification, family formation or residence as a spiritual leader or religious teacher, consideration must first be given to whether the applicant is obliged to sit an integration exam. The exceptions are applicants who:

- have lived in the Netherlands for at least eight years during the ages of compulsory education, i.e. between the ages of 5 and 15;
- have a diploma, certificate or other document showing that he/she is already sufficiently familiar with the Dutch language and society⁹¹;

⁸⁹Parliamentary Papers 2003-2004, 29 700, no. 1 (Royal message).

⁹⁰A MVV is a national long-term stay visa (a D Visa in the sense of the Schengen Convention) which is to be applied for at a Dutch embassy or consulate in the country of origin or long-term residence. Through this visa requirement, the authorities can consider whether a foreign national meets the requirements without being confronted with a *fait accompli* because of the foreign national's presence in the Netherlands.

⁹¹These diplomas are summarised in the Aliens Act implementation guidelines 2000, part B, chapter 1, paragraph 4.10.

- are nationals of Suriname and can prove that they have undertaken basic education in the Dutch language either in Suriname or the Netherlands;
- are not required to obtain a MVV;
- are members of the family of someone who holds an asylum-related residence permit; and/or
- are long-term resident third-country nationals as defined in Directive 2003/109⁹², if they have already fulfilled the integration conditions in the country where they were granted the status of EU long-term residents.

A check is then to be made as to whether the applicant has passed the exam. If this is not the case, consideration must be given to whether there are special circumstances in terms of which the applicant must nonetheless be admitted.

Improper use of procedures

In May 2004, the Cabinet issued a memorandum presenting measures to combat illegal residence by foreign nationals in the Netherlands.⁹³ One of the points established in the memorandum was that there was an increasing prevalence of applications being made for a regular (non-asylum) temporary residence permit in the Netherlands although the application had virtually no prospects of success, because the applicants were not in possession of the requisite provisional residence permit (MVV). Holding a MVV is a statutory requirement which is only waived in very exceptional circumstances in the context of these applications.

The Cabinet felt that the reason for lodging these applications, even in these circumstances, was that the foreign national would be residing lawfully in the Netherlands while the application was being processed. Also, making an application just before the date of removal to the country of origin can allow the foreign national to prevent such a removal at the last moment, even when it is under way. Including time for applications for review and appeals, the processing of these applications can take up to one and a half years.

The Minister finally opted for an organisational solution to this problem. After a number of pilot projects in 2005, she decided that all future applications by foreign nationals who did not possess the requisite MVV would have to be lodged directly at an IND office.⁹⁴ This proposal was introduced in phases during 2006. Primary and secondary legislation was amended accordingly with effect from 30 January.⁹⁵ In principle, an application for a regular temporary residence permit must be lodged with the mayor of the municipality where the foreign national lives or has a place of residence. There are a few exceptions to this guiding principle. These exceptions now include cases where an application is lodged and the foreign national does not possess a valid MVV. Of course this only applies to foreign nationals from countries for which a MVV is required.

A permanent residence permit was also introduced in 2006 for long-term EU citizens, to implement Directive 2003/109/EU. This will be discussed in further detail in Chapter 4.

Family reunification and/or formation

The means requirement

Dutch admission policy also includes the facility, subject to certain conditions, for admitting to the Netherlands family members other than the spouse, partner or minor child of an individual residing lawfully in the Netherlands in the context of family reunification. This is termed "extended family reunion". One of the conditions for eligibility, just as with "usual" family reunification, is that the individual residing in the Netherlands must have permanent and independent net income at least equivalent to the standard under the Employment and Assistance Act for married couples/families (the

⁹² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

⁹³ Parliamentary Papers, 2003/04, 29 537, no. 2 (Memo).

⁹⁴ Parliamentary Papers 2005/06, 29 537, no. 28 (Letter).

⁹⁵ Besluit van de Minister voor Vreemdelingen zaken en Integratie van 30 januari 2006 houdende wijziging van het Voorschrift Vreemdelingen 2000 (42e wijziging) [Decision of the Minister for Immigration and Integration of 30 January 2006 on the amendment of the Regulations on aliens 2000 (42nd change)], *Stcrt. [State Bulletin]* 22, p. 10.

means requirement). One of the exceptions to this requirement (already applicable to usual family reunion) also became applicable to extended family reunion with effect from 27 January 2006⁹⁶:

- If the individual residing in the Netherlands possesses an asylum-related residence permit and lodges the application within three months after receiving it, and if family reunion in another country is not possible, then it will no longer be necessary to meet the means requirement for extended family reunion.

The actual family tie

The judgment of the European Court of Human Rights (ECHR) on 1 December 2005 in the case of “Tuquabo-Tekle and others versus the Netherlands”⁹⁷ required an amendment of the policy for family reunification with effect from 8 September 2006.⁹⁸ For decades, one of the conditions for children being eligible to reside with their parents in the Netherlands was that they actually had to belong to the family of those parents. If the child had lived apart from his or her parents for more than five years, it was assumed that the family tie had been broken, with some exceptions. There would still, of course, be a test as to whether the refusal of residence would breach article 8 of the European Convention on Human Rights, guaranteeing respect for family life.

The judgment by the European Court of Human Rights on 1 December 2005, combined with earlier judgments, meant that it was no longer possible to apply the time limit of five years for determining the existence of an actual family tie. Instead of this, it is necessary to follow more closely the case law in relation to the expression “family life” as defined in article 8, European Convention on Human Rights. In principle, there is always family life in this sense between parents and their biological or legal children, which only ends in very exceptional situations. If there is family life as defined in article 8, European Convention on Human Rights, there is an assumption of an actual family tie unless the child:

- provides for its own maintenance;
- independently forms its own family by entering into a marriage or other relationship;
- is responsible for looking after extra-marital children.

Employment

A residence permit with the aim of working in the Netherlands generally involves obtaining a work permit. The Aliens Employment Act (Wav) regulates who is eligible for a work permit and who is exempted from the requirements. The Centre for Work and Income (*Centrum voor Werk en Inkomen* (CWI)), an independent administrative body, is responsible for implementation of the Aliens Employment Act (Wav) on instructions from the Ministry of Social Affairs and Employment, and assesses applications for work permits.

The following changes took place in this area during 2006.

One of the conditions for obtaining a work permit is that the CWI has to test whether the vacancy can be filled from what is termed “priority supply”: the supply of labour either present or reasonably anticipated in the Netherlands, or the supply of labour from the EU member states or states who are party to the European Economic Area agreement, insofar as covered by the free movement of workers. In addition, the vacancy has to be intimated to the CWI.

In March 2006, employers in the arts sector indicated that this was leading to difficulties in hiring specific artists in a number of areas, namely ballet, classical music, opera, musicals, theater, stage and other cultural work environments. It was therefore decided that the conditions mentioned above could

⁹⁶ Besluit van de Minister voor Vreemdelingen zaken en Integratie van 27 januari 2006, nr. 2006/8, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 27 January 2006, no. 2006/8, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 26, p. 12.

⁹⁷ European Court of Human Rights, Tuquabo-Tekle and Others v. the Netherlands, 1 December 2005, no. 60665/00.

⁹⁸ Besluit van de Minister voor Vreemdelingen zaken en Integratie van 23 november 2006, nr. 2006/41, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 29 November 2006, no. 2006/41, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 233, p.9.

be bypassed if the musician or artist involved was in the top ranks of his or her profession. This is determined on the basis of gross monthly income.⁹⁹

With reference to the motion from the House of Representatives MP Bakker and others in November 2005¹⁰⁰ on bottlenecks in relation to internationalisation and science (the "Bakker motion"), it was determined in October 2006 that the CWI could abandon the obligatory five week period for reporting vacancies if it was clear in advance that there was no priority supply available. This is possible if it is clear that reporting the vacancy makes no sense, for example because of the specific and often temporary nature of the work, so that using the domestic supply of labour is inappropriate. What this means is that a significant shortening of the work permit procedure is possible for this category of foreign nationals.¹⁰¹

There was an amendment to the rules in December 2006, relating to a covenant concluded for the admission of cooks from China for the Chinese-Indian and associated catering industry, between the employers in this sector, the trade unions and the CWI. This covenant replaced an earlier one concluded in 2000. The covenant provides the facility for secondment of cooks from China on a temporary basis, via an official Chinese secondment bureau. The qualifications and remuneration for the cook must be in line with the agreements in the Collective Employment Agreement for the catering (*horeca*) and associated industries. The principal amendment relates to the duration of the permit. This is now initially issued for 34 months (it used to be one year with a possibility of extension). After this, the cook must return to China for at least three months before a subsequent permit can be obtained (this used to be one year).¹⁰²

Study

One of the purposes for which foreign nationals can be admitted to the Netherlands is to pursue full-time study at an institution for higher, secondary or vocational education. A number of policy changes were implemented in this area during 2006.

In the context of processing European Directive 2004/114/EU of 13 December 2004, relating to conditions for admission of third-country nationals with a view to study, educational exchanges, unpaid training or voluntary work, a decision was made on 16 May 2006 to simplify the method of determining which institutions would qualify as places where foreign students could study.¹⁰³ This is in line with the

⁹⁹ Besluit van de Staatssecretaris van Sociale Zaken en Werkgelegenheid van 13 maart 2006 tot wijziging van de Uitvoeringsregels Wet arbeid vreemdelingen behorende bij het Delegatie en uitvoeringsbesluit Wet arbeid vreemdelingen [Decision of the State Secretary of Social Affairs and Employment of 13 March 2006 to amendment of the Aliens Employment Act implementation guidelines, belonging to the Aliens Employment Act Delegation and Implementation Decree], *Stcrt. [State Bulletin]* 54, p. 20.

¹⁰⁰ Parliamentary Papers II 2005/06, 30 300 XIII, no. 30 (Motion).

¹⁰¹ Besluit van de Staatssecretaris van Sociale Zaken en Werkgelegenheid van 18 oktober 2006 tot wijziging van de Uitvoeringsregels Wet arbeid vreemdelingen behorende bij het Delegatie- en Uitvoeringsbesluit Wet arbeid vreemdelingen [Decision of the State Secretary of Social Affairs and Employment of 18 October 2006 to amendment of the Aliens Employment Act implementation guidelines, belonging to the Aliens Employment Act Delegation and Implementation Decree], *Stcrt. [State Bulletin]* 208, p. 17.

¹⁰² Besluit van de Raad van bestuur van het Centrum voor Werk en Inkomen van 12 december 2006 tot wijziging van de Beleidsregels van het Centrum voor Werk en Inkomen inzake de uitvoering van de wet arbeid vreemdelingen [Decision of the Board of the Centre for Work and Income to amend the Policy Rules for the Centre for Work and Income concerning the execution of the Aliens Employment Act], *Stcrt. [State Bulletin]* 242, p. 21.

¹⁰³ Besluit van 2 oktober 2006 tot wijziging van het Vreemdelingenbesluit 2000 ter implementatie van de richtlijn 2004/114/EG van de Raad van 13 december 2004 betreffende de voorwaarden voor de toelating van onderdanen van derde landen met het oog op studie, scholierenuitwisseling, onbezoldigde opleiding of vrijwilligerswerk (PbEG 2004 375/12) [Decision of 2 October 2006 on the amendment of the Aliens Decree 2000 for the implementation of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service], *Stb. [Statute book]* 2006, 458; Besluit van de Minister voor Vreemdelingenzaken en Integratie van 26 april 2006 houdende wijziging van het Voorschrift Vreemdelingen 2000 (46e wijziging) [Decision of the Minister for Immigration and Integration of 26 April 2006 to the amendment of the Regulations on aliens 2000 (46th change)], *Stcrt. [State Bulletin]* 84, p. 15; Besluit van de Minister voor Vreemdelingenzaken en Integratie van 16 mei 2006, nr. 2006/21, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the Minister for Immigration and Integration of 16 May 2006, no. 2006/21, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 100, p. 13.

aim of the Directive to achieve an accelerated and simplified admission procedure for students from third countries. Further details on the implementation of the Directive are contained in Chapter 4, dealing with the implementation of EU Directives.

The following institutions were also categorised as educational institutions with effect from 1 May 2006:

- Institutions providing educational programmes in the context of the Ministry of Foreign Affairs development cooperation policy;
- Cultural institutions offering participants in certain programmes the opportunity to develop their artistic skills during a specified period. The cultural institutions were carefully selected on the basis of artistic merits, and they focus on local and foreign participants who have already undertaken qualified training in the relevant artistic discipline, or who are otherwise sufficiently qualified.

Foreign nationals can now also be admitted to undertake training with these organisations, following their designation as educational institutions.

Medical treatment

A foreign national residing in the Netherlands and who is afflicted by an acute and life-threatening medical condition can obtain a temporary residence permit for treatment. Any of his dependent family members may also be eligible for such a residence permit. This must involve a medical emergency situation. This is the case if a failure to offer treatment would result in death in the short term. If treatment lasts for less than one year, no residence permit will be issued but any removal/departure of the foreign national will be postponed.

Previously, a residence permit of this type could only be issued for a maximum of one year.

With effect from 3 March 2006, it has become possible for foreign nationals and their dependent family members, who have held a residence permit on medical emergency grounds for three successive years, to apply for a permit for continued residence.¹⁰⁴ This only applies if medical treatment is necessary for at least one more year. Such residence permits have a number of benefits. They are, for example, valid for 5 years and provide an entitlement to work provided that a work permit is granted by the Centre for Work and Income (*Centrum voor Werk en Inkomen (CWI)*).

Human trafficking

Victims of human trafficking residing illegally in the Netherlands, who report this fact to the police, are eligible for temporary residence for the purpose of detecting and trying the perpetrator(s). Once the criminal procedure is completed, the victim can apply for continued residence on humanitarian grounds. The primary issue here is whether the victim would be safe in his/her country of origin, despite the fact that an official report has been made. The rules for this type of continued residence were clarified in November 2006.¹⁰⁵ A distinction was consequently drawn between victims whose official report had resulted in a conviction against the perpetrator(s) and victims where this was not the case. If the report results in a conviction of the perpetrator(s), then the victim will be awarded continued residence unless there are any general contra-indications (e.g. public order). If there is a legal case but no conviction, and if the victim has resided in the Netherlands for at least three years on the basis of the official report, then continued residence is also awarded in principle. In all other cases, the determining factor is the likelihood of reprisals in the country of origin.

EU

The Aliens Act and its regulations were amended in 2006 in order to implement Directive 2004/38/EU, relating to the right of free movement and residence in the territory of the member states for citizens of the Union. Further details of these changes are explored in Chapter 4.

¹⁰⁴Besluit van de Minister voor Vreemdelingen zaken en Integratie van 3 maart 2006, nr. 2006/14, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 3 March 2006, no. 2006/14, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt.* [State Bulletin] 53, p. 10.

¹⁰⁵Besluit van de Minister voor Vreemdelingen zaken en Integratie van 8 november 2006, nr. 2006/36A, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 8 November 2006, no. 2006/36A for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt.* [State Bulletin] 225, p. 14.

Diplomats

In order to increase the attractiveness of the Netherlands as a place for international organisations to establish themselves, a final report was issued on 15 November 2002 by the working group of the "Inter-departmental policy investigation (*Interdepartementaal Beleidsonderzoek (IBO)*) on the acquisition and reception of international organisations". It contained a number of recommendations in relation to improving the position under residence law of privileged individuals working for international organisations in the Netherlands. The Cabinet subsequently adopted a position in relation to this opinion.¹⁰⁶ As a follow-up to this, there is a relaxation in the conditions to be met by diplomats for eligibility for a permanent residence permit.

Previously, accredited staff members of international organisations, who had resided for 10 years in the Netherlands, could only obtain a permanent residence permit in the event of involuntary termination of employment. In addition, the residence status of his/her children above the age of majority was entirely dependent on the status of the accredited family member. Children above the age of majority could only be eligible for a permanent residence permit if the principal individual in the Netherlands was also eligible for such a permit. This was amended with effect from 18 January 2006¹⁰⁷:

- A permanent residence permit can also now be obtained, following 10 years' residence as an accredited staff member of an international organisation, on voluntary departure from that organisation.
- Family members above the age of majority can also now apply for a permanent residence permit following 10 years' residence in the Netherlands if the principal individual continues to work for an international organisation or leaves the Netherlands.
- If the accredited family member leaves the international organisation within 10 years, but continues to stay in the Netherlands for other reasons, then the period of work for the international organisation will count towards the required residence period, including the relevant period for family members above the age of majority.

Highly skilled migrants

Since 1 October 2004, the Netherlands has had a 'highly skilled migrant' scheme in place with regard to the admission of highly educated immigrants. A salary criterion was chosen to determine who would qualify as a highly skilled migrant. The salary criterion did not apply to doctoral workers, irrespective of the age, employed by educational or research institutions, nor to university lecturers and post-doctoral individuals below the age of 30. The employer in question, who would accept such individuals into his employment, has to be admitted to the highly skilled migrant scheme on the strength of a signed declaration.

The salary criterion for highly skilled migrants is reviewed annually on 1 January, using the percentage change of the most recent index figures for collective employment agreement wages as published by Statistics Netherlands (Centraal Bureau voor de Statistiek (CBS)). This also occurred at the start of 2006, when the indexation figure was 1.1%. The salary criterion for 2006 for highly skilled migrants aged 30 and above was € 45,495, and for 2007 the figure was set at € 46,541. The salary criterion for highly skilled migrants below 30 years of age was € 33,363 in 2006 and € 34,130 for 2007.¹⁰⁸

Some bottlenecks in relation to the rules on highly skilled migrants were also resolved in November 2006. This had been called for by the House of Representatives in the Bakker motion, mentioned previously. To answer the call in this motion, the category of migrants excluded from the salary criterion was extended. From 1 November 2006, every foreign national working in the Netherlands as a scientific researcher, or as a doctor training as a specialist, is exempt from the salary criterion. At the same time, the age limit of 30 for university lecturers and post-doctoral workers was scrapped. A facility was also introduced to allow start-up companies to use the highly skilled migrant scheme. This was regulated through an amendment

¹⁰⁶Parliamentary Papers II 2004/05, 30 178, no. 1 (Cabinet position).

¹⁰⁷Besluit van de Minister voor Vreemdelingen zaken en Integratie van 18 januari 2006, nr. 2006/6, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 18 November 2006, no. 2006/6 for the amendment of the Aliens Act implementation guidelines 2000], *Stcr.* [State Bulletin], 21, p. 12.

¹⁰⁸Besluit van de Minister voor Vreemdelingen zaken en Integratie van 13 januari 2006, nr. 2006/2, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 13 January 2006, no. 2006/2, for the amendment of the Aliens Act implementation guidelines 2000], *Stcr.* [State Bulletin] 16, p. 10.

of the Implementation Decree on the Aliens Employment Act on 20 October 2006¹⁰⁹, and an amendment to the Aliens Act implementation guidelines on 15 November 2006¹¹⁰.

Continued residence

The amendments which concern continued residence have already been dealt with above. As indicated above, continued residence is now available following residence based on an emergency medical situation, and the conditions for continued residence based on an official report of human trafficking have also been amended.

Residence as (an economically inactive) long-term resident

In the context of implementing Directive 2003/109/EU, it is also possible to apply for a permit for residence as an EU long-term resident from another member state. Further information will be provided on this in Chapter 4.

3.2.2. Gates of entry and Border control

Legislation in the area of Gates of Entry and Border control (including the granting of visas for short-term residence) has been predominantly European in nature since the Schengen Agreement came into operation in 1995. The primary and secondary legislation in relation to border control was changed in 2006 particularly because of the coming into effect on 30 October 2006 of Regulation (EU) 562/2006 of the European Parliament and Council to establish a community code in relation to border crossings by individuals, the so-called Schengen Border Code (SBC). The SBC collates the pre-existing and new Schengen legislation in the area of border control into a single regulation.

There are also consequences for national primary and secondary legislation. When the SBC came into effect, there was a change to the legal basis for refusal of permission to enter the Netherlands. Entry can now be refused on the basis of article 3 of the Aliens Act and article 5 in conjunction with article 13 SBC. These amendments flowing from the SBC (which are, in fact, directly operable) were incorporated into the Aliens Act implementation guidelines 2000 in November 2006¹¹¹.

Following the decision on 29 April 2004 by the Council to amend the Community Handbook (2004/574/EC) and in anticipation of adoption of the SBC, it had already been established in the Aliens Act implementation guidelines 2000, on 26 March 2006, that refusal of permission to enter the Schengen Territory would henceforth have to be issued in writing using a standard form that had been established in the EU context¹¹². Moreover, in the context of the Benelux there have been some changes in the list of people who require a visa. For example, the requirement to have a visa for being in the international transitzone of an airport (the so-called A-visa) for Nepal and Colombia has been introduced. Also, the

¹⁰⁹Besluit van 20 oktober 2006 tot wijziging van het Besluit uitvoering Wet arbeid vreemdelingen teneinde de in dat besluit opgenomen vrijstelling van het verbod voor een werkgever om een vreemdeling in Nederland arbeid te laten verrichten zonder tewerkstellingsvergunning op een aantal nieuwe categorieën van vreemdelingen van toepassing te doen zijn [Decision of 20 October 2006 on the amendment of the Aliens Employment Act Implementation Decree in order to apply to a number of new categories of aliens the rules for exemptions that are stated in that decision concerning the prohibition for an employer to employ an alien in the Netherlands without a working permit], *Stb. [Statute book]* 2006, 521.

¹¹⁰Besluit van de Minister voor Vreemdelingen zaken en Integratie van 15 november 2006, nr. 2006/37, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the Minister for Immigration and Integration of 15 November 2006, no. 2006/37 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 229, p. 42.

¹¹¹Besluit van de Minister voor Vreemdelingen zaken en Integratie van 8 november 2006, nr. 2006/34A, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the Minister for Immigration and Integration of 8 November 2006, no. 2006/34A for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]*, 224, p. 15.

¹¹²Besluit van de Minister voor Vreemdelingen zaken en Integratie van 15 maart 2006, nr. 2006/16, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the Minister for Immigration and Integration of 15 March 2006, no. 2006/16 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]*. 60, p. 15.

visa requirement for holders of a Macedonian diplomatic passport has been abolished on 1 October 2006.

2006 also saw the provision of a more detailed explanation of the expression "solvent third party", connected with the grant of visas for short-term residence¹¹³, partly as a result of some Court judgments. In order to be eligible for a short-term visa, the applicant must demonstrate that he or she has adequate means of support (article 5, section 1, SBC). As is also mentioned in article 5, section 3 of the SBC, a surety and guarantee statement from the host individual as defined in national legislation can also serve as proof of adequate means of support. Dutch legislation defines this host as a "solvent third party". Solvency involves the individual who provides the guarantee having independent, permanent and adequate means of support. "Adequate" in this context means net monthly income at least equal to the minimum subsistence levels for the category of married couples and families, as defined in the Employment and Assistance Act (*Wet Werk en Bijstand*). In addition, a more detailed definition of "independent, permanent and adequate means of support" was also tied in to the appropriate provisions in the Aliens Decree as regards the means required to obtain a regular (non-asylum) residence permit.

3.2.3. Integration and Settlement

As stated in section 3.2.1, the Civic Integration Abroad Act came into effect on 15 March 2006¹¹⁴. This is in fact an adjustment of the Aliens Act 2000. For those subject to compulsory integration (see 3.2.1) a basic level of knowledge of the Dutch language and Dutch society are conditions for admission. The intention underlying these conditions is to allow the integration process to run more smoothly after the immigrants' arrival in the Netherlands.

The required knowledge of the Dutch language and society are tested by means of the civic integration examination abroad. The content of the examination is covered more thoroughly in article 3.98a of the Aliens Decree. As far as knowledge of language is concerned, the test is whether applicant, at a level less than level A1 of the European Framework for Modern Foreign Languages:

- can listen to announcements and instructions;
- can understand simple questions and answers relating to his/her personal life;
- can provide basic information about himself/herself; and
- can carry out simple linguistic transactions.

As far as knowledge of Dutch society is concerned, the test is whether the applicant has basic practical knowledge of:

- the Netherlands, including topography, history and political system;
- accommodation, education, employment, health care and integration in the Netherlands;
- his rights and obligations after arrival in the Netherlands;
- the rights and obligations of others in the Netherlands; and
- common rules of conduct in the Netherlands.

The examination is taken in Dutch. The contents of the examination are worked out in greater detail in the Regulations issued by the Minister for Immigration and Integration on 14 February 2006, no. 5403489/06 to adopt the examination programme for the civic integration examination abroad (the Civic Integration Examination Programme)¹¹⁵.

¹¹³Besluit van de Minister voor Vreemdelingen zaken en Integratie van 22 november 2006, nr. 2006/39, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 22 November 2006, no. 2006/39 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 234, p. 13.

¹¹⁴Parliamentary Papers II 2003/04, 29 700, no. 1 (Royal message); Parliamentary Papers II 2003/04, 29 700, no. 2, (Bill); Parliamentary Papers II 2003/04, 29 700, nr. 3 (Explanatory memorandum).

¹¹⁵Besluit van de Minister voor Vreemdelingen zaken en Integratie van 14 februari 2006 tot vaststelling van het examenreglement voor het basisexamen inburgering (Examenreglement basisexamen inburgering) [Decision of the Minister for Immigration and Integration of 14 February 2006 for the examination regulation for the basic civic

3.2.4. Refugee protection and Asylum

There were no radical changes to primary and secondary legislation in the area of refugee protection and asylum during 2006. There were, however, changes in relation to the law on reception during the asylum procedure and the policy for particular countries of origin of asylum seekers.

Reception on repeated applications

The Netherlands has an accelerated procedure for asylum seekers (48 hour procedure) in terms of which decisions are taken on requests for asylum. This involves requests which, "subject to the requirements of care, and without a time-consuming investigation, may be completed within 48 processing hours". In practice, this means that the procedure must be completed within about five working days. If the decision cannot be made within 48 hours, the asylum seekers are entitled to reception by the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang Asielzoekers (COA)*). If, however, this was a second or subsequent request on which no decision could be made within 48 hours, then in principle there was no right to reception before the start of 2006. These applicants are also now entitled to reception, since the start of 2006¹¹⁶.

Afghanistan

Following on a new official notice from the Dutch Ministry of Foreign Affairs concerning the situation in Afghanistan¹¹⁷, asylum policy for that country was amended with effect from 2 June 2006¹¹⁸. The official notice warned that the group of asylum seekers made up of unaccompanied women was vulnerable. If there is no spouse or other male family member above the age of majority present or travelling with the asylum seeker when she is being returned, with whom the person concerned had lived in a family context before leaving Afghanistan, and with whom she would be able to live again, asylum seekers of this type would be eligible for an asylum seeker's residence permit. What this means is that this group cannot reasonably be required to return to the country of origin, based on compelling reasons of a humanitarian nature associated with the reasons for leaving the country of origin in the first place. This is the first time that use has been made of the policy option to designate a group of individuals, within the policy of compelling reasons of a humanitarian nature, who are entitled to make a claim for a residence permit on these grounds.

Burundi

Because the situation in Burundi had improved, according to a new official notice of March 2006¹¹⁹, partly as a result of the presence of the UN peacekeeping force (*l'Opération des Nations Unies au Burundi*) the categorial protection policy for asylum seekers from Burundi was brought to an end on 19 June 2006¹²⁰. The nature of the violence in large parts of Burundi is no longer such that returning there

integration examination (Examination Regulation basic civic integration examination)], *Stcrt. [State Bulletin]* 51, p. 13.

¹¹⁶Besluit van de Minister voor Vreemdelingen zaken en Integratie van 3 januari 2006, nr. 2006/1, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 3 January 2006, no. 2006/1, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 10, p. 11.

¹¹⁷Ministerie van Buitenlandse Zaken, Directie Personenverkeer, Migratie en Vreemdelingen zaken Afdeling Asiel- en Migratie zaken. (2006) *Ambtsbericht Afghanistan*, februari 2006 [General official notices Afghanistan, February 2006]. Retrieved 27 June 2007 from www.minbuza.nl.

¹¹⁸Parliamentary Papers II 2005/06, 19 637, no. 1057 (Letter); Besluit van de Minister voor Vreemdelingen zaken en Integratie van 2 juni 2006, nummer 2006/22, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 2 June 2006, no. 2006/22, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 119, p. 10.

¹¹⁹Ministerie van Buitenlandse Zaken, Directie Personenverkeer, Migratie en Vreemdelingen zaken Afdeling Asiel- en Migratie zaken (DPV/AM). (2006) *Algemeen Ambtsbericht Burundi, maart 2006* [General official notices Burundi, March 2006]. Den Haag.

¹²⁰Besluit van de Minister voor Vreemdelingen zaken en Integratie van 19 juli 2006, nr. 2006/24, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 19 July 2006, no. 2006/24, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]*. 146, p. 7.

would pose a particular hardship in the context of the overall situation. A number of other EU member states also have no particular admission and returns policy for asylum seekers in relation to Burundi, and regard returning those asylum seekers who have exhausted the legal remedies to Burundi as being safe enough.

Iraq

The Netherlands had a categorial protection policy in relation to Central Iraq (the part of Iraq not controlled by the two Kurdish parties, the PUK and the KDP) until 24 February 2006. Because of the general situation, asylum seekers from that part of Iraq could claim a temporary asylum permit. The reasons for ending the categorial protection policy were twofold. The security situation in Central Iraq is admittedly just as bad as ever, but in northern Iraq it is still relatively secure. It also transpires that neither Belgium, Denmark, the United Kingdom nor Switzerland have any special policy in relation to Iraq. It is also known that Germany has no special policy in relation to Iraqi asylum seekers. Because the Netherlands attaches considerable significance to aligning Dutch policy with the policy in other European countries, it was decided, taking all things into consideration, to bring the categorial protection policy for Central Iraq to an end¹²¹. Northern Iraq is not a domestic refugee or settlement alternative for individuals who have a well-founded fear of persecution, or of treatment in conflict with article 3 of the European Convention on Human Rights in Iraq.

Iran

There was a moratorium on decisions and removals in place, from 28 September 2005, in relation to homosexual asylum seekers from Iran. On 28 February 2006, the Minister for Immigration and Integration announced that this moratorium was being terminated on the basis of information in a new official notice about Iran from the Minister of Foreign Affairs¹²². As a result of debates on this decision in the House of Representatives, however, the Minister decided on 12 April 2006 to extend the moratorium on decisions and removals for homosexual asylum seekers from Iran, and also to put in place a decisions and removals moratorium for Christian asylum seekers from Iran, including Christians who had converted from Islam¹²³.

As a consequence of information in a new official notice from the Minister of Foreign Affairs in August 2006, it was subsequently decided, on 17 November 2006, that homosexual, trans-sexual and bisexual asylum seekers from Iran would be eligible for an asylum residence permit. They cannot reasonably be required to return to the country of origin, based on compelling reasons of a humanitarian nature associated with the reasons for leaving the country of origin in the first place. The decision and removal moratorium for Iranian Christian asylum seekers was extended until 19 May 2007¹²⁴.

Liberia

In light of the poorer general security and human rights situation in Liberia, there was an assumption until 11 August 2006 that there were no internal flight or settlement alternatives in the country. An official notice from the Ministry of Foreign Affairs¹²⁵ confirmed, however, that the general situation had improved significantly by then. For this reason, and since 11 August 2006, a check is made to see whether

¹²¹Parliamentary Papers II 2005/06, 19 637, no. 1003 (Letter); Besluit van de Minister voor Vreemdelingen zaken en Integratie van 14 februari 2006, nr. 2006/10, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 14 February 2006, no. 2006/10, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 38, p. 13.

¹²²Parliamentary Papers II 2005/06, 19 637, no. 1021 (Letter).

¹²³Parliamentary Papers II 2005/06, 19 637, nr. 1047 (Report of general consultation).

¹²⁴Parliamentary Papers II 2006/07, 19 637, nr. 1094 (Letter); Besluit van de Minister voor Vreemdelingen zaken en Integratie van 17 november 2006, nr. 2006/38, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 17 November 2006, no. 2006/38 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 231, p. 19.

¹²⁵Ministerie van Buitenlandse Zaken, DPV/AM. (2006) *Ambtsbericht Liberia, mei 2006* [General official notices Liberia, May 2006]. Den Haag.

the asylum seeker, in fear of persecution or inhumane treatment, might nonetheless have a internal flight or settlement alternative in Liberia available to him¹²⁶.

Libya

A moratorium on decisions and removals for Libyan asylum seekers was put in place on 17 July 2006, to last until 1 January 2007¹²⁷. This meant that, during the period in question (and with some exceptions, such as Dublin claims), no decision should be taken on Libyan asylum requests, but also that no Libyan asylum seekers would be sent back to Libya. This moratorium resulted from a lack of clarity pointed out in a judgment of 5 October 2005 by the District Court in The Hague, sitting in Rotterdam, concerning the official notice about Libya dating from 2002 on the risk of detention and possible mistreatment and torture of asylum seekers deported to Libya¹²⁸. The moratorium was initiated in anticipation of clarification by the Minister of Foreign Affairs.

Pakistan

As a consequence of information in the official notice concerning Pakistan dated 8 August 2006 from the Ministry of Foreign Affairs, on the position of Pakistani members of the Ahmadiyya Muslim community (viewed as heretics by other Muslims) and Christians¹²⁹, the policy was amended with effect from 31 October 2006¹³⁰. If it is concluded that there is ongoing persecution in terms of refugee law and/or (threatened) infringement of article 3, European Convention on Human Rights, by the Pakistani authorities and third parties internal flight and settlement alternatives will not be invoked against Ahmadi Muslims and Christians. Such alternatives can however be invoked against other Pakistani asylum applicants.

Russia

Until 3 August 2006, the procedure when dealing with Russian asylum seekers of (ethnic) Chechen origins - who had satisfied the authorities that they feared persecution as defined in article 1A of the Refugee Convention, or infringement of article 3, European Convention on Human Rights, if they were to return - was to see whether there was any internal flight or settlement alternative. A new official notice in May 2006 showed, however, that this was no longer available for (ethnic) Chechens¹³¹. The policy of invoking the availability of flight or settlement alternatives against individuals from Chechnya or of Chechen origin was accordingly abandoned with effect from 3 August 2006¹³².

¹²⁶Besluit van de Minister voor Vreemdelingen zaken en Integratie van 11 augustus 2006, nr. 2006/27, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 11 August 2006, no. 2006/27 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 165, p. 11.

¹²⁷Parliamentary Papers II 2005/06, 19 637, no. 1066 (Letter); Besluit van de Minister voor Vreemdelingen zaken en Integratie van 16 augustus 2006, nr. 2006/28, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 16 August 2006, no. 2006/28 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 169, p. 14.

¹²⁸Rechtbank 's-Gravenhage zittingsplaats Rotterdam 5 oktober 2005 [District Court 's-Gravenhage sitting in Rotterdam 5 October 2005] Awb 04/48272.

¹²⁹Ministerie van Buitenlandse Zaken, DPV/AM. (2006) *Ambtsbericht Ahmadi's en christenen in Pakistan, augustus 2006* [General official notices Ahmadi's and Christians in Pakistan, August 2006]. Den Haag.

¹³⁰Besluit van de Minister voor Vreemdelingen zaken en Integratie van 31 oktober 2006, nr. 2006/35, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 31 October 2006, no. 2006/35 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 225, p. 15.

¹³¹Ministerie van Buitenlandse Zaken, DPV/AM. (2006) *Algemeen ambtsbericht noordelijke Kaukasus, mei 2006* [General official notices northern Caucasus, May 2006]. Den Haag.

¹³²Besluit van de Minister voor Vreemdelingen zaken en Integratie van 3 augustus 2006, nr. 2006/26, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 3 August 2006, no. 2006/26 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 155, p. 7.

Somalia

Asylum policy in relation to Somalia was changed with effect from 26 September 2006¹³³. The changes were (partly) based on the general official notice from the Minister of Foreign Affairs, dated July 2006¹³⁴, and two pronouncements made by the Administrative Jurisdiction Division of the Council of State on 4 May 2006 (numbers 200510270/1 and 200510255/1).¹³⁵

There had already been a categorial protection policy in place for Somalia since 27 June 2005. This policy did not apply to asylum seekers from Puntland or Somaliland (excluding the provinces of Sool and Sanaag). It was decided to amend the categorial protection policy for Somalia in 2006. Under reference to the official notice from the Ministry of Foreign Affairs of July 2006, the categorial protection policy for individuals arriving from the provinces of Sool and Sanaag was brought to an end.

Also, as a consequence of the pronouncements by the Council of State mentioned above, the policy in relation to (objections of) alternative residence possibilities was restricted with effect from 26 September 2006. The reason for this restriction is that the Council of State held, in its pronouncements, that it was only reasonable to object on the basis of availability of alternative residence to a Somali foreign national from the point in time when the camps for the homeless were set up (in Somaliland and Puntland). What this means is that Somali asylum seekers, who in the period from 1991 onward had lived in Puntland (excluding North Galkayo) for at least six months in what would be regarded locally as reasonable circumstances, would not be eligible for categorial protection. The same applies to Somali asylum seekers who, in the period from 1997 onward, had lived in Somaliland for at least six months in what would be regarded locally as reasonable circumstances. In these cases the alternative residence objection can be made.

3.2.5. Citizenship and Naturalisation

The most important development in 2006 in the area of nationality law was the introduction of the naturalisation ceremony as an element of the procedure for obtaining Dutch citizenship. There were also some other minor amendments to primary and secondary legislation, for example in implementation of Directive 2004/38/EU issued by the European Parliament and Council relating to the right of free movement and residence within the territories of the member states for Union citizens and their family members.

The naturalisation ceremony

In a letter of 24 June 2005, the Minister for Immigration and Integration informed the House of Representatives that she would develop a compulsory ceremony for the acquisition of Dutch citizenship by foreign nationals¹³⁶. Municipal authorities had been free since 2002 to organise a ceremony on the occasion of acquisition of Dutch citizenship, but this was only happening to a limited extent. The Cabinet felt that the ceremony should express the conviction that acquiring Dutch citizenship was the pinnacle of the integration process and should confirm the fact that the new State citizen was accepting all of the rights and obligations associated with becoming a Dutch citizen. Enhancing this new legal status with an element of cachet, through the implementation of the official ceremony, would also provide for a suitable expression of unity and involvement with the Netherlands. This proposal was supported by a broad majority in the House of Representatives.¹³⁷

The Cabinet accordingly decided to introduce the naturalisation ceremony in three phases. First of all, with effect from 1 January 2006, an amendment to the Regulations on the acquisition and loss of Dutch

¹³³ Besluit van de Minister voor Vreemdelingen zaken en Integratie van 26 september 2006, nr. 2006/32, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 26 September 2006, no. 2006/32 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 196, p. 13.

¹³⁴ Ministerie van Buitenlandse Zaken, DPV/AM. (2006) *Algemeen ambtsbericht Somalië, juli 2006* [General official notices Somalia, July 2006]. Den Haag.

¹³⁵ Parliamentary Papers II, 2005/06, 19 637, no. 1072 (Letter); Afdeling Bestuursrechtspraak van de Raad van State [Administrative Jurisdiction Division of the Council of State] 4 May 2006, no. 200510270/1; Afdeling Bestuursrechtspraak van de Raad van State 4 May 2006, no. 200510255/1.

¹³⁶ Parliamentary Papers II 2004/05, 28 689, no. 34 (Letter).

¹³⁷ Parliamentary papers II 2004/05, 28689, no. 37 (Report of general consultation).

citizenship (*Regeling verkrijging en verlies Nederlanderschap (RvvN)*) meant that municipal authorities were obliged to organise a naturalisation ceremony to which those individuals who had become Dutch citizens would be invited. The ceremony had to take place after acquisition or grant of Dutch citizenship, and failure by the person involved to attend the ceremony did not at that stage have any legal consequences¹³⁸.

Then, with effect from 1 October 2006, through an amendment of the Decree on acquisition and loss of Dutch citizenship (*Besluit verkrijging en verlies Nederlanderschap (BvvN)*) the attendance at the naturalisation ceremony became a condition for acquiring Dutch citizenship¹³⁹. Since that date, the applicant must attend the naturalisation ceremony within one year after the decision is taken, or else the decision lapses automatically. In cases where the applicant is not in a position to attend the ceremony for compelling reasons, the matter can be dealt with by post, however. Municipal authorities must in any event hold a ceremony on 24 August (unless none of its residents became Dutch citizens during the previous year). This is now National Naturalisation Day. The choice of this particular date was not made lightly, as the Dutch Constitution came into effect on 24 August 1815.

It is also the intention, at the end of the day, that the applicant will make a declaration of commitment to the Netherlands during the ceremony. If he/she is not prepared to do so then the application for naturalisation will be rejected. If the declaration is not made during the ceremony, then the decision will not come into operation and the applicant will not become a Dutch citizen. The House of Representatives started the legislative changes required to implement this obligation in the course of 2006¹⁴⁰.

Privileged individuals working for international organisations in the Netherlands

In section 3.2.1, mention has already been made of the opinion of the "IBO acquisition and reception of international organisations" working group, and the Cabinet's position on this. As regards naturalisation, it was recommended that the period of residence built up under the international legal regime should be allowed to count in certain cases towards the period required for admission in the context of naturalisation. This recommendation was adopted on 18 January 2006 by means of an amendment to the Handbook for the Netherlands Naturalisation Act (*Handleiding Rijkswet op het Nederlanderschap*)¹⁴¹.

Naturalisation test

Since 1999, the Cabinet had been supporting municipal authorities in offering integration courses to members of ethnic minority groups who had already been resident in the Netherlands for some time ("old-comers"), who had either no mastery of the Dutch language or at least not enough to be able to function independently and/or to support their children adequately during their school careers within the Dutch educational system. Ultimately there was also a test element added to the integration course, in terms of which an integration test measured the results achieved by the participants at the end of the course. In September 2005, the Minister for Immigration and Integration introduced an "old-comer's certificate", issued if the old-comer had passed the NT2 Profile Test as a final test.¹⁴²

¹³⁸ Besluit van de Minister voor Vreemdelingen zaken en Integratie van 29 september 2005 tot wijziging van de Regeling verkrijging en verlies Nederlanderschap van 13 maart 2003 [Decision of the Minister for Immigration and Integration of 29 September 2005 on the amendment of the Scheme acquisition and loss Dutch citizenship of 13 March 2003, *Stcrt.* [State Bulletin] 198, p. 10

¹³⁹ Besluit van 19 mei 2006 tot wijziging van het Besluit verkrijging en verlies Nederlanderschap [Decision of 19 May 2006 on the amendment of the Decree acquisition and loss Dutch citizenship], *Stb.* [Statute book] 2006, 250; Besluit van de Minister voor Vreemdelingen zaken en Integratie van 16 augustus 2006 tot wijziging van de Regeling verkrijging en verlies Nederlanderschap van 13 maart 2003 [Decision of the Minister for Immigration and Integration of 16 August 2006 on the amendment of the Regulation acquisition and loss Dutch citizenship of 13 March 2003], *Stcrt.* [State Bulletin], 167, p. 8.

¹⁴⁰ Parliamentary papers II 2005/06, 30 584, no. 2 (Kingdom Bill); Parliamentary papers II 2005/06, 30 584, no. 3 (Explanatory memorandum).

¹⁴¹ Tussentijds Bericht Nationaliteiten (TBN 2006/1) van de Minister voor Vreemdelingen zaken en Integratie van 18 januari 2006 [Interim Notices Nationalities 2006/1 of the Minister for Immigration and Integration of 18 January 2006, *Stcrt.* [State Bulletin], 21, p. 15.

¹⁴² Besluit van de Minister voor Vreemdelingen zaken en Integratie van 7 september 2005 tot vaststelling van de Regeling certificaat inburgering oudkomers [Decision of the Minister for Immigration and Integration of 7 September 2005 on the establishment of the Regulation certificate civic integration old-comers, *Stcrt.* [State Bulletin] 195, p. 7.

In order to become a naturalised citizen, an applicant has to demonstrate that he is sufficiently integrated into Dutch society. This can be done by passing the naturalisation test, which checks on knowledge of Dutch language and society. The applicant is exempted from this test in some cases. Some naturalisation applicants will also have an old-comer's certificate after September 2005. As from 1 May 2006, an amendment to the Decree on the Naturalisation Test (*Besluit Naturalisatietoets*) and the Handbook for application of the Netherlands Nationality Act means that whoever has obtained a certificate is exempt from the language element of the naturalisation test¹⁴³. This sort of partial exemption was not available previously.

Implementation of Directive 2004/38/EU

As mentioned earlier, the primary and secondary aliens legislation has been amended in order to implement Directive 2004/38/EU from the European Parliament and Council, relating to the right of free movement and residence in the territories of the member states for Union citizens and their family members. The Directive also has led to amendments in the area of naturalisation. More about this subject can be found in Chapter 4.

Obligation to renounce original nationality

In order to obtain Dutch nationality, the applicant is obliged to renounce his/her original nationality (after receiving Dutch nationality). This involves a signed statement being given, in which the applicant confirms his readiness to do so. It is not required if:

- it is not possible to renounce the original nationality; or
- the original nationality is automatically lost on acquisition of a new nationality.

The IND maintains a list of nationality legislation on this matter in different countries. The list was brought up to date again in September 2006, incorporating changes to nationality legislation in a large number of countries¹⁴⁴.

3.2.6. Unauthorised immigration and Legalisation

There were no significant amendments to primary or secondary legislation in this area during 2006.

3.2.7. Return

The new implementation and financing agreements between the Netherlands and the Dutch mission of the International Organisation for Migration has come into effect on 1 May 2006 for the programme "Return and Emigration of Aliens from the Netherlands" (REAN)¹⁴⁵. These replace an earlier agreement dating from 1991. The REAN programme has been in existence for some time and is aimed at

¹⁴³Besluit van 27 februari 2006 tot wijziging van het Besluit naturalisatietoets [Decision of 27 February 2006 on the amendment of the Decree naturalisation test, *Stb. [Statute book]* 2006, 131; Besluit van 13 april 2006, houdende vaststelling van het tijdstip van inwerkingtreding van het Besluit van 27 februari 2006 tot wijziging van het Besluit naturalisatietoets [Decision of 13 April 2006 on the establishment of the point of coming into force of the Decision of 27 February 2006 on the amendment of the Decree naturalisation test, *Stb. [Statute book]* 2006, 203; Tussentijds Bericht Nationaliteiten (TBN 2006/2) van de Minister voor Vreemdelingen zaken en Integratie van 21 maart 2006 [Interim Notices Nationalities 2006/2 of the Minister for Immigration and Integration of 21 March 2006], *Stcrt [State Bulletin]*, 63, p. 13.

¹⁴⁴Tussentijds Bericht Nationaliteiten (TBN 2006/5) van de Minister voor Vreemdelingen zaken en Integratie van 19 september 2006 [Interim Notices Nationalities of the Minister for Immigration and Integration of 19 September 2006], *Stcrt [State Bulletin]*, 185, p. 40.

¹⁴⁵Verklaring van de Staat der Nederlanden en de Nederlandse missie van de Internationale Organisatie voor Migratie van 11 april 2006 van het van kracht worden per 1 mei 2006 van de Return and Emigration of Aliens from the Netherlands (REAN) uitvoeringsregeling 2006, inclusief bijlagen; en de Return and Emigration of Aliens from the Netherlands (REAN) financieringsregeling 2006, inclusief bijlagen [Declaration of the Netherlands and the Dutch mission for the International Organisation for Migration of 11 April 2006 of the coming into force as of 1 May 2006 of the execution regulation for 2006 of the Return and Emigration of Aliens from the Netherlands (REAN), including annexes; and the Return and Emigration of Aliens from the Netherlands (REAN) finance regulation 2006, including annexes], *Stcrt. [State Bulletin]* 84, p. 12.

implementing a humane and effective policy for the independent return or resettlement of certain categories of foreign nationals. Starting point is the voluntary choice to leave the Netherlands. It has been agreed for this purpose with the IOM mission in the Netherlands that it will provide explanations on the matter, and deal with applications for departure, arrange travel and assist in the departure. IOM also arranges for the payment of financial contributions for independent return or resettlement in a third country. IOM can also make specific arrangements for certain categories of departing individuals, such as unaccompanied minor foreign nationals.

The new rules contain a different system for contributions to foreign nationals who are returning. In the new regulation there are two types of support payments: a standard contribution and a (lower) limited contribution. There is also a more limited package available for individuals who have never enjoyed lawful residence rights, those subject to public order considerations and those who have been held under aliens' detention. The new rules also deal with the situation of victims of human trafficking.

As a supplement to the REAN programme, which is financed by the Ministry of Justice, the Return and Reintegration Regulation (*Herintegratieregeling Terugkeer (HRT)*) has come into effect on 15 June 2006. This scheme, financed by the Ministry of Foreign Affairs, offers an additional financial incentive to foreign nationals for leaving the country. The scheme was introduced as a result of positive experience with the temporary Assisted Return and Reintegration Programme (*Herintegratieregeling Project Terugkeer (HRPT)*), which had been in force since 22 June 2004 and which had been implemented by IOM. It had been aimed at foreign nationals who had lodged an initial application for asylum under the previous Aliens Act, prior to 1 April 2001. Setting up the HRT, which is also implemented by IOM, means that the reintegration contribution is made available to a larger target group, i.e. all (former) asylum applicants who had lodged an initial application for an asylum residence permit before 15 June 2006, if they meet the criteria in force.¹⁴⁶

3.3. Case law

This section deals with the most important and influential case law from 2006. Section 3.3.1 deals with the case law from the Administrative Jurisdiction Division of the Council of State (ABRvS). Section 3.3.2 reports important cases from the European Court of Human Rights (ECHR). There were no judgments from the Court of Justice of the European Communities in 2006 with any major impact on Dutch migration policy.

3.3.1. Dutch case law from the Administrative Jurisdiction Division of the Council of State

Dublin claims and the time limit for lodging a request for a reconsideration of a failure to approve the claim

Administrative Jurisdiction Division, Council of State, 15 July 2006, 200605061/1

Under article 17, section 1 of Regulation (EC) 343/2003, a member state where an application for asylum is lodged and which considers that another member state is responsible for dealing with that application can ask for the application to be taken over as soon as possible and in any event within three months after the application is lodged¹⁴⁷. In this case, the foreign national had lodged an application for asylum on 27 May 2005. On 23 June 2005, the Netherlands asked Portugal to take over the application. Portugal rejected the application, however, because it considered that Greece was responsible for dealing with the asylum application. Greece also refused the request to take over the asylum application.

This meant that the Netherlands was unable to ask Portugal to take over the asylum application again until November 2005. Portugal finally agreed to do so on 18 November, at which point the asylum application was rejected in the Netherlands.

¹⁴⁶Parliamentary Papers 2005/06, no. 9 (Letter).

¹⁴⁷Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ EU 2003 L50/1).

According to the Council of State, however, the Netherlands was too late with its new request to Portugal to take over the application. In terms of article 5, section 1 and 2 of Regulation (EC) no.1560/2003¹⁴⁸ the Netherlands ought to have asked Portugal to reinvestigate the case within three weeks after receiving the negative response from Portugal. Through its failure to do so within three weeks, the Netherlands retained responsibility for dealing with the application. The Council of State held that it made no difference that the Netherlands could not have responded within three weeks, as it was not until the response had been received from Greece that the Netherlands became aware of an assessment error with Portugal's rejection of the first transfer request.

Directive 2003/86 and its application to Union citizens

Administrative Jurisdiction Division of the Council of State, 23 November 2006, 200604478/1

The applicant applied for a provisional residence permit (MVV), to reside with a Dutch partner, on 14 April 2005. The application was rejected because the partner did not have sufficient means for existence (the means requirement). In order to be eligible for a residence permit to reside with the partner, the partner had to be earning at least 120% of the minimum wage, which was not the case here. On appeal, the applicant stated that the means requirement was in conflict with Directive 2003/86/EC on the right to family reunification¹⁴⁹. Admittedly this did not apply to family members of Union citizens, but the Aliens Act implementation guidelines 2000 (Vc 2000) stated that the Directive would be applied by analogy to family reunification with Dutch citizens.

On the appeal lodged on 15 June 2006, however, the Administrative Jurisdiction Division of the Council of State held that the implementation guidelines could not be followed. In terms of a Decree of 29 September 2004, the Aliens Decree 2000 (Vb 2000) was amended partly in connection with implementation of Directive 2003/86/EU. In the explanatory memorandum accompanying this amendment it was clearly stated that the Directive only covered family reunification between subjects of third countries¹⁵⁰. This meant that the Vc 2000 was in conflict with the Vb 2000; the foreign national was accordingly unable to invoke this policy as the Decree had the status of legislation and the Guidelines merely contained policy rules.

Directive 2003/86 and the reference period

Administrative Jurisdiction Division of the Council of State, 12 July 2006, 200601302/1

Eligibility for family reunification with parents has for some years been subject to the condition in the Netherlands that the child actually belongs to the family of the parent residing in the Netherlands. If the separation between parent(s) and child has lasted for more than five years, it is assumed that the actual family tie has been broken unless one of the list of specific circumstances in the policy is applicable. As indicated in section 3.2.1, this principle has now been abandoned as a result of judgments from the ECHR, but the judgment under consideration here predates that policy amendment.

The case can be summarised as follows. On 17 August 2004, the Minister of Foreign Affairs rejected an application from the foreign national to be granted a provisional residence permit for the purpose of "family reunification with his mother". The application was rejected because the separation between the child and his mother had lasted for more than five years and also because there was no other evidence that the actual family tie should still be regarded as unbroken. The mother and child had in fact been separated since 20 November 1997. The separation was not interrupted by the fact that the foreign national's mother had stayed in Colombia from 15 August 2000 until 1 March 2001, because the length of her stay in Colombian had been relatively brief.

¹⁴⁸ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ EU 2003 L222/3).

¹⁴⁹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ EU 2003 L251/12).

¹⁵⁰ Besluit van 29 september 2004 tot wijziging van het Vreemdelingenbesluit 2000 in verband met de implementatie van de Richtlijn 2003/86/EG van de Raad van 22 september 2003 inzake het recht op gezinshereniging (PbEG 2003 L 251/12) en enkele andere onderwerpen betreffende gezinshereniging, gezinsvorming en openbare orde [Decision of 29 September 2004 on the amendment of the Aliens Decree 2000 in connection with the implementation of Directive 2003/86/EC of the Council of 22 September 2003 on the right to family reunification and some other subjects regarding family reunification, family formation and public order (OJ EU 2003 L251/12)], *Stb. [Statute book]* 2004, 496.

One of the points raised for debate in this case was whether this method of assessing an actual family tie might not be in conflict with article 16, section 1, preamble and subsection b, of Directive 2003/86/EC on the right to family reunification. According to the Directive, family reunification can be refused if the applicant does not maintain any actual married or family life with the other family member or members. This implies an individual test of this factor, and the debate concerned whether the assessment of the actual family tie by reference to the length of the separation between parent(s) and child could qualify as an individual test. The Administrative Jurisdiction Division of the Council of State held that this method of testing merely amounted to a reversal of the burden of proof, but that it was nonetheless an individual test. Accordingly, the method by which the above-mentioned policy is applied, to see whether there is an actual family tie, is not in conflict with article 16, section 1, preamble and subsection b, of Directive 2003/86/EC.

Extremely distressing cases and grounds given for use of discretionary powers

Administrative Jurisdiction Division, Council of State, 21 December 2006, 200605794/1

On 14 January 2003, the then Minister for Immigration and Integration gave an address in which he mentioned, in general terms, that he was prepared to deviate in "extremely distressing cases" from established policy in relation to asylum seekers who had exhausted all legal remedies, and to use discretionary powers¹⁵¹. The Aliens Decree 2000 (Vb 2000) established in relation to these powers that the Minister was permitted, when applying these powers, to regard the individual circumstances of the foreign national as being central. This meant that the Minister had scope not to specify the criteria leading up to a particular decision.

Following the promise made by the Minister in his address, many thousands of asylum seekers lodged a further application to be granted a residence permit. In this legal action, the Minister informed the foreign national that his case would not be reassessed. The foreign national's situation was accordingly not classified as "extremely distressing". The Administrative Jurisdiction Division of the Council of State decided, however, that the Minister had to provide some explanation of the grounds on which he had refrained from using his discretionary powers, because a not insignificant number of residence permits had been granted for "extremely distressing" circumstances in furtherance of the 2003 address. The Council of State indicated that the Minister had a choice, when justifying the decision, between basing the decision on more or less general standards of interpretation of the expression "extremely distressing", or basing it on a comparison of factors in a relatively comparable case where he had made use of her discretionary powers, or justifying the decision in some other way.

Decision 1/80 EEC-Turkey Association Agreement, Additional Protocol and double nationality

Administrative Jurisdiction Division of the Council of State, 12 July 2006, 200601302/1

On 4 March 2005, the Minister of Foreign Affairs rejected an application from a foreign national to grant her a provisional residence permit for the purpose of "residing with her spouse", because the spouse had inadequate means of support and had not yet reached the age of 21 required for family reunification. The spouse, however, had Turkish and Dutch nationalities and the applicant alleged that he was therefore a Turkish worker in the sense of the EEC-Turkey Association Agreement. In such cases, article 41, section 1 of the Additional Protocol to the EEC-Turkey Association Agreement (which came into effect on 1 January 1973) was also applicable. No new restrictions could be introduced in relation to him as regards freedom of establishment and the free provision of services. The means requirement was, however, toughened up and the age limit for family reunification was increased in November 2004, thus involving a new restriction.

The Administrative Jurisdiction Division stated that the applicant and her spouse could not derive any rights from the Association Agreement, as the foreign national's spouse also had Dutch nationality and was not therefore a Turkish worker as defined in that Agreement. Decision 1/80¹⁵², and particularly article 13 of the Decision, also had no significance for the contemplated family formation, because it

¹⁵¹Parliamentary Papers II 2002/03, 19 637, no. 720 (Letter).

¹⁵²Association agreement EEC-Turkey; Decision No. 1/80 of the EEC-Turkey Association Council of 19 September 1980.

contemplated the admission of Turkish workers and their family members, so that there must first of all be family reunification¹⁵³.

Categorical protection policy, Iraq

Administrative Jurisdiction Division of the Council of State, 3 July 2006, 200602864/1

As indicated previously in section 3.2.4, the categorical protection policy for Central Iraq was terminated with effect from 24 February 2006¹⁵⁴. The Minister for Immigration and Integration rejected an asylum application from an Iraqi foreign national on 17 March 2006. The ensuing proceedings included a discussion of the abolition of the categorical protection policy. In the appeal case, the District Court concluded that the Minister ought to have looked into the deteriorated situation in Iraq after March 2006, as argued by the applicant in the application for review. On further appeal, however, the Administrative Jurisdiction Division of the Council of State held that the Minister was not obliged to draw the conclusion from the documents lodged by the foreign national that the information contained in the general official notice on Iraq, issued by the Minister of Foreign Affairs on 15 December 2005¹⁵⁵, was no longer accurate or up-to-date. The Minister was still entitled to rely on the official notice for her decision to refrain from applying categorical protection to Iraq. The Minister was entitled to be definitively guided by the policy of other countries in the EU. The Minister was also entitled to take the view that other countries in Europe were not applying any policy for asylum seekers from Iraq that was comparable with the Dutch categorical protection policy. The foreign national was wrong in alleging that the House of Representatives had agreed with the Minister's decision - not to apply any categorical protection policy in relation to asylum seekers from Central Iraq - on the basis of inaccurate or incomplete information. It was up to the House of Representatives to assess whether or not they had been adequately informed before considering a decision by the Minister to refrain from applying any categorical protection policy for asylum seekers in any particular country. It was not the duty of the Courts to investigate whether the House of Representatives had adequately discharged its duties.

Administrative Jurisdiction Division of the Council of State, 3 July 2006, 200602792/1

The abolition of the categorical protection policy was also discussed in this case, in which the District Court had declared that the appeal was well-founded because the abolition had not been adequately justified. Here, too, the Administrative Jurisdiction Division of the Council of State took a different view on further appeal. The decision to refrain from pursuing a categorical protection policy for asylum seekers from Central Iraq any longer was set out in a letter to the House of Representatives, debated in consultation with House of Representatives and approved by that House. The Court should therefore accept this decision in principle in the form in which it had been intimated. The Court was not entitled to impose any further requirement for a justification of this decision.

Administrative Jurisdiction Division of the Council of State, 22 November 2006, 200607561/1

Finally, the judgment issued by the Council of State on 22 November 2006 also explored the abolition of the categorical protection policy. The policy of categorical protection for asylum seekers from Central Iraq was terminated on the basis of policy in other countries within the European Union (see also section 3.2.4). This, in addition to the nature, extent and proliferation of violence, and the activities of international organisations, is one of the indicative factors for deciding to adopt such a policy. The fact that this indicator had determinative significance did not, in the view of the Administrative Jurisdiction Division of the Council of State, detract from the fact that the other indicators specified in article 3.106 of the Aliens Decree 2000 also had to be taken into account in any reconsideration of a categorical protection policy. The appeal did not however result in the challenged judgment being quashed. When

¹⁵³A distinction is drawn in the Netherlands between family formation and family reunification. The essential difference is that, in contrast to family reunification, the partners in family formation cases are not married at the time of the residence application.

¹⁵⁴Besluit van de Minister voor Vreemdelingen zaken en Integratie van 14 februari 2006, nr. 2006/10, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 14 February 2006, no. 2006/10 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 38, p. 13.

¹⁵⁵Ministerie van Buitenlandse Zaken, DPV/AM. (2006) *Algemeen Ambtsbericht Irak, april 2006* [General official notices Irak, April 2006]. Den Haag.

compared with earlier official notices, the official notice of 27 April 2006¹⁵⁶ did not offer any reasons for assuming that a policy of categorial protection should be resumed, as this official notice, regarding the situation in the country of origin, did not contain grounds to allow stay in the Netherlands.

Pronouncement of undesirability for reasons of a threat to national security

Administrative Jurisdiction Division of the Council of State, 4 July 2006, 200602107/1

Foreign nationals can be pronounced undesirable in the Netherlands if they pose a threat to national security (article 67, section one, subsection c, Aliens Act 2000). What this means is that from the moment of the pronouncement of their undesirability onwards, they are liable to punishment when being on Dutch territory. In this case, the Minister for Immigration and Integration rescinded the regular (non-asylum) residence permit that had been granted to the foreign national in terms of a decision of 9 December 2004, and in a decision of 5 January 2005 went on to pronounce the foreign national to be an undesirable. This was done in terms of an individual official notice from the Dutch General Intelligence and Security Service (*Algemene Inlichtingen en Veiligheidsdienst (AIVD)*). The District Court took the view that the facts and circumstances in the official notice were insufficiently transparent and could not unambiguously lead to the conclusion that the foreign national posed a threat to national security. On further appeal, the Administrative Jurisdiction Division of the Council of State held that the District Court had failed to appreciate that the term "threat to national security" was not described in any greater detail in the law, and that the policy dictated that a threat to national security would be assessed on a case-by-case basis. The District Court also failed to appreciate that the AIVD¹⁵⁷ was the competent authority for investigating whether or not there was a threat to national security, and that it was apparent from the individual official notice prepared by the AIVD, in an objective, impartial and comprehensible manner, which facts and circumstances the AIVD had used for its conclusion that the foreign national posed a threat to national security. Nor did this conclusion require further explanation to be transparent. There was no requirement to report the sources underlying the official notice, because of confidentiality considerations. It was also significant that the foreign national had not provided any further explanation for his denial of the facts as stated in the official notice.

The Minister was therefore entitled to use the official notice as the basis for the decisions challenged at the District Court without being required to exhibit the documents underlying that notice.

Pronouncement of undesirability and article 13, European Convention on Human Rights

Administrative Jurisdiction Division of the Council of State, 18 September 2006, 200602661/1

This case, as well, involved a discussion on a pronouncement of undesirability (issued on 14 September 2004), based on a threat to national security, with an underlying individual official notice from the AIVD. What was special in this case was that the European Court of Human Rights (ECHR) had imposed an "interim measure" on 15 July 2005 resulting from a complaint lodged by the foreign national with respect to a threatened infringement of article 3 of the European Convention on Human Rights in the event of removal, so that removal had to be temporarily suspended.

In this case, the foreign national alleged that:

- the expression "national security" had to be crystallised on the basis of the case law of the ECHR, which had not been done in Dutch primary or secondary legislation;
- the individual official notice from the AIVD ought to have been investigated more closely;
- there was an infringement of article 13, European Convention on Human Rights (the right to an actual legal remedy), because neither the foreign national nor his attorney had been able to examine the documents underlying the official notice, resulting in a failure to fulfil the condition of "adversarial proceedings" emanating from the ECHR case law.

On appeal, the Council of State referred to the *Lupsa* judgment¹⁵⁸ of the ECHR and held that the term "national security" required no more detailed crystallisation. The *Lupsa* judgment acknowledged the special nature of assessing a threat to national security, thus offering scope for the argument that no more detailed elaboration of the expression was required.

¹⁵⁶ Ministerie van Buitenlandse Zaken, DPV/AM. (2006) *Algemeen Ambtsbericht Irak, april 2006* [General official notices Irak, April 2006]. Den Haag.

¹⁵⁷ In terms of article 6, section 2, preamble and subsection a, Intelligence and Security Services Act 2002 (*Wet op de Inlichtingen- en Veiligheidsdiensten 2002*).

¹⁵⁸ European Court of Human Rights, *Lupsa vs. Romania*, 8 June 2006, no. 10337/04.

The Council of State also held that there was no obligation to instigate a more detailed investigation into the documents underlying the official notice from the AIVD, because the official notice was sufficiently objective, impartial and transparent, and also because no arguments had been made to justify any doubts as to its accuracy.

The Council of State did not consider that there had been an infringement of article 13, European Convention on Human Rights. The Council of State did in fact have, in accordance with article 8:29 of the General Administrative Law Act [*Algemene wet bestuursrecht (Awb)*], an opportunity to examine the underlying documents for the official notice, which had not been shown to the foreign national, and to assess the Minister's consideration of the case on the basis of those documents. According to the Administrative Jurisdiction Division, this fulfilled the requirement of "adversarial proceedings". Finally, the Administrative Jurisdiction Division held that it could not be inferred from the interim measure that the foreign national faced the risk of an infringement of article 3, European Convention on Human Rights, since there was not as yet any final opinion from ECHR. Nor did the Administrative Jurisdiction Division uphold the foreign national's allegation that the interim measure meant that the pronouncement of undesirability ought not to have been issued. The legal duty to leave the Netherlands did not, in fact, stem from the pronouncement of undesirability, but rather from the rejection of the application for a residence permit. The interim measure was accordingly only a temporary barrier to removal.

Pronouncement of undesirability and article 8, European Convention on Human Rights

Administrative Jurisdiction Division of the Council of State, 6 July 2006, 200600853/1

The foreign national was pronounced undesirable on 2 December 2003, on the basis of his criminal record. During his stay in the Netherlands, he established a family with his spouse and children. The central issue was the extent to which the interference to his family life, which would be caused by the pronouncement of undesirability, could be justified. The Administrative Jurisdiction Division of the Council of State concluded that this interference was justified. The following points arose from its consideration of this issue:

- The criteria set out in the *Boultif* judgment¹⁵⁹ were applicable in circumstances where the foreign national had arrived in the Netherlands as an adult and established his family life here. The Administrative Jurisdiction Division reverted on this point to its judgment dated 27 October 2003 in which, under reference to the Benhabba judgment of the European Court on Human Rights¹⁶⁰, it had stated that the first three criteria in the *Boultif* judgment¹⁶¹ would apply if the foreign national had not been born in the host country or had not gone to live there when still young, and had subsequently set up a family. Now, however, it held that the first three criteria in the *Boultif* judgment were aimed at foreign nationals who had been born in the host country or had gone there to live while still young and who had not set up any family.
- In the decision on the pronouncement of undesirability, dated 26 September 2005, the Minister for Immigration and Integration argued that interference in family life was justified in the interests of public order and the prevention of criminal offences. This was because the foreign national had been prosecuted several times for being involved in serious offences, other offences and misdemeanours. Nor was there any fixed and lasting family life, and the foreign national had barely made any contribution towards financially supporting his family. It was also held that the foreign national could continue his family life as it existed prior to his arrival in the Netherlands. In the circumstances, the general interest could take precedence over the interests of the foreign national and his family members.

¹⁵⁹ European Court of Human Rights, *Boultif vs. Switzerland*, 2 August 2001, no. 54273/00.

¹⁶⁰ European Court of Human Rights, *Benhabba vs. France*, 10 July 2003, no. 53441/99.

¹⁶¹ The ECHR considered the following criteria in the *Boultif* judgment: the duration of residence of the foreign national in the country from which he was to be removed; the amount of time that had passed since the commission of the criminal offence and the conduct of the foreign national during that period; the nationalities of the individuals involved; the foreign national's family situation; other factors demonstrating the actual family ties; whether or not the spouse was aware of the foreign national's criminal record at the point when the marriage was entered into; whether any children had been born of the marriage; and how far the spouse could be required to follow the foreign national to his country of origin if she wanted to do so.

3.3.2. Case law from the European Court of Human Rights (ECHR)

Üner, ECHR 18 October 2006, no. 46410/99

The foreign national had Turkish nationality and arrived in the Netherlands in 1981 at the age of 12 in the context of family reunification with his father. The foreign national embarked on a relationship with a Dutch woman in 1991, and started living with her in the same year. They had a son in 1992. The foreign national left his partner's home in November 1992 because of tensions within the relationship, but he maintained close contact with both his partner and his son.

Between 1989 and 1992, the foreign national had been convicted for successive local breaches of the peace (involving fines of 200 guilders), acts of public violence (with a fine of 350 guilders and a suspended two-week prison sentence) and again acts of public violence (with 80 hours of community service).

In May 1993, during a disturbance in a cafe, the foreign national shot one man in the leg and shot another man dead. On 21 January 1994, the foreign national was sentenced to seven years' imprisonment for manslaughter and serious assault; he served this sentence between 17 May 1993 and 14 January 1998. His partner and son visited him at least once each week. A second son was born in June 1996, and the foreign national also saw him regularly. Both children enjoyed Dutch nationality and were acknowledged by their father. Neither his partner nor his children spoke Turkish.

In a decree of 30 January 1997, the State Secretary for Justice revoked the foreign national's permanent residence permit in connection with the conviction on 21 January 1994, and pronounced him to be an undesirable for a period of 10 years. When he was released from prison on 14 January 1998, the foreign national was placed in aliens' detention.

In a judgment of 18 October 2006, the Grand Chamber held that article 8, European Convention on Human Rights, had not been breached. One of the Divisions of the ECHR had already reached the same conclusion in this case on 5 July 2005. The Grand Chamber held that the Netherlands had an interest in maintaining public order and security, and was entitled to place greater weight on the prevention of criminal activities than on the foreign national's interest of respect for his family life. In its opinion, the Grand Chamber considered the gravity of the crimes for which the foreign national had been convicted on 21 January 1994, and particularly the fact that the foreign national had been in possession of two loaded weapons. The Grand Chamber also referred to the foreign national's previous convictions. It was also significant that the foreign national had spent the first 12 years of his life in Turkey and had thus built up some links with that country. The Grand Chamber also held that the foreign national had only lived with his partner and first child for a brief period and had never lived together with the second son, and that it had to be assumed that these two very young children would be able to adapt to life in Turkey. The Court appreciated that the pronouncement of undesirability had more serious consequences than the rescission of a permanent residence permit, because the pronouncement of undesirability also meant that the foreign national would also be unable to stay in the Netherlands for a short period of time. In light of the nature and gravity of the crimes that had been committed and the fact that the pronouncement of undesirability had been limited to 10 years, the Court felt, however, that the Dutch state had not attached excessive weight to its own interests when the decision was made. In this context, the Court pointed out that when the pronouncement of undesirability was eventually lifted, the foreign national would be able to return to the Netherlands, subject to certain conditions.

The Court felt that it did not have to offer any opinion in relation to the complaint that three years had elapsed between the criminal conviction and the date when the pronouncement of undesirability was made, but did point out that the foreign national was still serving his prison sentence when the pronouncement of undesirability was issued. In the opinion of the Court, the Dutch State had balanced the interests correctly.

Rodrigues da Silva, ECHR 31 January 2006, no. 50435/99

This case involved a Brazilian woman who came to the Netherlands in 1994, leaving her two children behind with her parents. She cohabited with her partner in the Netherlands. Because the woman alleged that she had no documents in relation to his income, she never applied for residence with her partner. In 1995, the woman's younger son came to live with his mother in the Netherlands. A further child (a daughter) was born in 1996 with Dutch nationality. The relationship between the parents broke up in 1997, at which point the father obtained custody of her. In the same year, the mother applied for a residence permit to stay with her or at least to maintain her relationship with her daughter.

The Court decided that the primary consideration in this case was the issue of admission, so the case had to be viewed in the light of the positive obligation. In this context, the Court pointed out that the woman only came to the Netherlands when she was 22 years old, so that it could be assumed she still has ties with Brazil. If she were compelled to return there, it would mean that she would have to leave her daughter behind in the Netherlands as she did not have custody. The Court also pointed out that a report from the Dutch Child Protection Agency (*Raad voor de Kinderbescherming*) had been involved in the decision to award custody of the daughter to her father, from which it seemed that it would be traumatic for this child if she had to leave the Netherlands, particularly because of the strong links she had formed with her paternal grandparents. The Court also noted that she had been raised by her mother and grandparents from a very young age, with her father only playing a very limited part. She spent between three and four days each week with her mother. This meant that she had strong links with her mother. Although individuals whose illegal residence presents the authorities with a *fait accompli* are not generally in a position to rely on a residence permit being issued, the Court regarded it as significant that the Dutch government had indicated that at the time lawful residence had been a possibility. Notwithstanding the fact that serious objections could be made about the woman's lax approach to Dutch immigration rules, this case had to be distinguished from other cases in which the Court had held that the foreign national was not entitled to any residence rights. In light of the far-reaching consequences that the removal would have had for the woman's responsibilities as a mother and also for the family life, and bearing in mind that it was clearly in the daughter's interest for the mother to stay in the Netherlands, the Court held that economic welfare in the Netherlands did not outweigh the woman's interests, despite the fact that she was staying in the Netherlands illegally at the point when her daughter was born. More than that, by placing such emphasis on this last-mentioned element, it could be said that the Dutch government was guilty of an excessive type of formalism.

Sezen, ECHR 31 January 2006, no. 50252/99

This case involves a Turkish man who had come to the Netherlands in 1989 and who was sentenced to four years in prison in 1992 in connection with the possession of 52 kg of cocaine. In 1990, the man married a lady of Turkish origin who had come to the Netherlands when she was seven years old. Two children were born from this marriage (1990 and 1996). In 1997, the application for extension of the residence permit was rejected because of an interruption to the cohabitation arrangements and the man was pronounced an undesirable alien. The pronouncement of undesirability was lifted in 1999. While a serious offence had been involved, and while the man had only come to the Netherlands when he was 23, the Court expressed its concern at the fact that neither the Minister for Immigration and Integration nor the District Court had apparently paid any attention to the potential impact of a refusal of continued residence on the man's family life. In this context the Court pointed out that the woman, unlike her husband, had to be regarded as a second-generation immigrant. It was not disputed that all her family members resided in the Netherlands. The Court also felt it was important that both children had been born in the Netherlands and went to school there. This meant that they had no or only minimal ties with their parents' country of origin, and they spoke no Turkish. The Court also pointed out that while the cohabitation arrangement had been interrupted temporarily, it had not brought an end to the marriage. While the man was in a position to call on his family from time to time, the Court pointed out that this was not a case of a separated father with access arrangements, but rather of a functional family where the parents and children lived together. The Court had previously held that national measures obstructing family members from living together amounted to an infringement of article 8 of the European Convention on Human Rights. Bearing in mind the fact that the children and the wife could not be required to follow the man back to Turkey, the family would remain separated as long as the husband was not in possession of a residence permit. The Court conceded in this context that the Dutch government had stated that, in the context of article 8 of the European Convention on Human Rights, the question to be asked was whether the conviction could still be used as an objection, but the government did not seem to have indicated when or in what circumstances such an assessment might lead to a positive decision.

4. Implementation of EU legislation

This chapter will describe developments in Dutch primary and secondary legislation arising from the implementation of European legislation. The developments that took place during the reference period will be reported on in greater detail.

4.1. Regulations

Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code, SBC).

This regulation was published on 13 April 2006 in the official Journal of the European Union (OJ L 105) and came into operation on 13 October 2006, with the exception of article 34, which came into effect on 14 April 2006. This regulation qualifies the most important provisions in the context of border crossing within the Schengen framework. This means that a range of provisions from the Schengen Agreement, the Community Handbook, and also some decisions and decrees by the European Council were incorporated into the SBC and thereby superseded.

The Aliens Act implementation guidelines 2000 (Vc 2000) were amended in connection with the fact that this Regulation would become into operation¹⁶². The most important substantive amendments to the Dutch policy are mentioned earlier on in this report in section 3.2.2, under the heading "Gates of entry and Border control". Most of the amendments involve adjusted references to provisions in the Schengen legislation that were superseded when the SBC came into operation.

4.2. Directives

4.2.1. Asylum

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

This Directive is primarily intended to introduce a minimum framework for procedures in the European Community for the grant and withdrawal of refugee status.

Mutual alignment of the rules leading to procedures for granting and withdrawing refugee status is designed to help towards limiting the secondary flows of asylum seekers between the member states if these are caused by differences in legislation.

The transitional measures must be intimated to the European Commission not later than 1 December 2007. The Aliens Act 2000 and the Aliens Decree 2000 will have to be amended in order to implement this Directive. An implementation plan has been prepared for this purpose. The legislative bill to implement this Directive was submitted to the Council of State in 2006¹⁶³.

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

The main aim of this Directive is to ensure that a minimum level of protection is offered in all member states to persons who require actual protection, because they cannot reasonably have confidence that

¹⁶²Besluit van de Minister voor Vreemdelingen zaken en Integratie van 15 maart 2006, nr. 2006/16, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 15 March 2006, no. 2006/16 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 60, p. 15; Besluit van de Minister voor Vreemdelingen zaken en Integratie van 8 november 2006, nr. 2006/34A, houdende wijziging van de Vreemdelingen circulaire 2000 [Decision of the Minister for Immigration and Integration of 8 November 2006, no. 2006/34A, for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 224, p. 15.

¹⁶³Parliamentary Papers II 2006/07, 21 109, no. 167 (Letter).

their country of origin or country of usual residence offers such protection. The mutual alignment of provisions in relation to acknowledgement and content of refugee status, and the subsidiary protection, are designed to contribute to a limitation of secondary migration of asylum seekers between the member states, to the extent that this migration is caused simply by differences in legislation.

This Directive ought to have been implemented not later than 10 October 2006. The Aliens Act 2000 and the Aliens Decree 2000 have to be amended in order to implement this Directive.

This Directive resulted in a range of judgments in 2006 from the District Courts¹⁶⁴, on the following points in particular:

- the question of whether this Directive had to be viewed as a relevant amendment of the law;
- the question of how article 15, subsection c of the Directive had to be interpreted, and its precise scope. This relates to a condition of eligibility for subsidiary protection if there is serious jeopardy, consisting of serious individual threats to the life or person of a citizen as a result of arbitrary violence in the context of an international or domestic armed conflict;
- the question of when there is a domestic or international armed conflict as specified in article 15, subsection c of this Directive.

At the request of the Minister for Immigration and Integration the Advisory Committee on Aliens Affairs (ACVZ) issued an opinion on the draft proposal to amend the Aliens Act 2000 in order to implement the Directive¹⁶⁵. In December 2006, the Council of State issued an opinion in relation to the required amendments to primary and secondary legislation¹⁶⁶.

4.2.2. Migration

Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

This Directive is intended to contribute towards the realisation of the aim of the European Council of Barcelona, in March 2002, to achieve an investment of 3% of GDP in research. This involves the facilitation of admission and mobility of third-country nationals for residence periods in excess of three months to carry out research, so that the Community becomes more attractive to researchers from across the world and strengthens its position as a global centre for research.

This Directive has to be implemented not later than 12 October 2007.

The Regulations for Highly Skilled Migrants (*Kennismigrantenregeling*) came into effect in the Netherlands on 1 October 2004. These are aimed at a relaxation of the admission conditions for highly educated migrants. One of the most important requirements for reliance on the Regulations for Highly Skilled Migrants is meeting the salary criterion. For 2006, the salary criterion for highly skilled migrants above the age of 30 was € 45,595, and € 33,363 for highly skilled migrants below that age. This salary criterion did not apply to doctoral students, irrespective of the age, employed by educational or research institutions, nor to university lecturers and post-doctoral workers below the age of 30, in accordance with the provisions in the Directive. This category was replaced in 2006 by foreign nationals who would be working in the Netherlands as scientific researchers or as doctors in training towards specialisms (for more on this, see section 3.2.1). This widened the target group who can rely on the Regulations for Highly Skilled Migrants. Further investigation is required to establish whether national primary and secondary legislation in relation to highly skilled migrants now meets the requirements of this Directive.

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

One of the aims of the Community's activities in relation to education is to turn in Europe into a top quality world centre for general and vocational education. The promotion of mobility for third-country

¹⁶⁴Rechtbank 's-Gravenhage zittingsplaats Almelo 30 november 2006 [District Court 's-Gravenhage sitting in Almelo 30 November 2006], Awb 06/54963; Rechtbank 's-Gravenhage zittingsplaats Arnhem 7 december 2006 [District Court 's-Gravenhage sitting in Arnhem 7 December 2006], Awb 06/55749.

¹⁶⁵ACVZ. (2006) *Advies inzake concept-wetsvoorstel tot wijziging van de Vw2000 ter implementatie van richtlijn 2004/83/EG van de Raad van 29 april 2004 (PbEG 2004 L304/12) (Kwalificatierichtlijn)* [Advice in the matter of the draft bill on the amendment of the Vw 2000 for the implementation of the Council directive 2004/83 EC of 29 April 2004 (OJ EU 2004 L304/12)(Qualification Directive)]. Den Haag.

¹⁶⁶Parliamentary Papers II 2006/07, 30 925, no. 4 (Advice Council of State and further report).

nationals who want to come to the Community for study purposes is an essential element of this strategy. Part of this involves the harmonisation of legislation within the member states on conditions for access and residence. Directive 2004/114/EC had to be implemented by 12 January 2007.

The vast majority of the provisions within the Directive have no consequences for the existing system in connection with admission for study purposes, as these already coincide with existing primary and secondary legislation. Some provisions within the Directive do require amendment to current primary and secondary legislation. Thus, for example, the period of validity for the travel document as specified in the Directive is shorter than in the Dutch national primary and secondary legislation. This Directive also provides that member states should facilitate the admission procedures for third country nationals participating in Community programmes, in order to promote mobility to or within the European Union. There was no provision for this in the Dutch statutory framework prior to implementation of this Directive. These elements of the Directive were implemented on 10 October 2006 by means of an Order in Council to amend the Vb 2000¹⁶⁷.

In fact, and as previously indicated in section 3.2.1, on 16 May 2006 the method of determining which institutions would qualify as places where foreign students could study was simplified. To that effect a Code of conduct international student in Dutch higher education (*Gedragscode internationale student in het Nederlands hoger onderwijs*) came into effect, as a supplement to the existing statutory framework (relating to foreign nationals). As stated in section 3.2.1, this is in line with the aim of the Directive to achieve an accelerated and simplified admission procedure for students from third countries. In light of the aims of this Directive, the government no longer considers which institutions qualify for admission of foreign students, but rather the vocational group itself, through a system of self-regulation. The code of conduct does oblige the educational institutions to check, in advance of the admission for educational purposes, whether the international student has the requisite level of linguistic skills for the educational programme.

The Directive has a large number of optional provisions in addition to the imperative ones. These include provisions relating to admission policy for exchange students and for the category of voluntary workers. The provisions on the admission of unremunerated trainees are also optional in nature. The Netherlands has chosen not to implement these points within the Directive.

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

This Directive emphasises that citizenship of the Union ought to be the fundamental status of subjects of the member states exercising their rights of free movement and residence. Existing Community instruments containing separate schemes for employees, self-employed, students and other non-active individuals should therefore be codified and revised in order to simplify and fortify the rights of free movement and residence for citizens of the Union. The Directive had to be implemented in national legislation by 30 April 2006.

Council Directive 2004/38/EC was indeed implemented in Dutch legislation on 30 April 2006 with the introduction of the amended Vw 2000 and the amended Vb 2000¹⁶⁸. Rules for practical implementation were included in the Vc 2000¹⁶⁹.

¹⁶⁷ Besluit van 2 oktober 2006 tot wijziging van het Vreemdelingenbesluit 2000 ter implementatie van de richtlijn 2004/114/EG van de Raad van 13 december 2004 betreffende de voorwaarden voor de toelating van onderdanen van derde landen met het oog op studie, scholierenuitwisseling, onbezoldigde opleiding of vrijwilligerswerk (PbEG 2004 L375/14) [Decision of 2 October 2006 on the amendment of the Aliens Decree 2000 for the implementation of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ EU 2004 L375/14)], *Stb. [Statute book]* 2006, 458.

¹⁶⁸ Besluit van 24 april 2006, houdende wijziging van het Vreemdelingenbesluit 2000 in verband met de implementatie van Richtlijn 2004/38/EG van het Europees Parlement en de Raad van 29 april 2004 betreffende het recht van vrij verkeer en verblijf op het grondgebied van de lidstaten voor de burgers van de Unie en hun familieleden (PbEG 2004 L158/77 en L229/35) [Decision of 24 April 2006 on the amendment of the Aliens Decree 2000 in connection with the implementation of Directive 2004/38/EC of the European Parliament and Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ EU 2004 L158/77 and L229/35)], *Stb. [Statute book]* 2006, 215; Wet van 7 juli 2006 tot wijziging van de Wet werk en

The Directive proceeds on the basis of three types of residence rights:

- residence rights for a maximum of three months;
- residence rights for more than three months;
- permanent residence rights.

The Directive permits compulsory registration for individuals who are nationals of an EU or EEA member state or Switzerland who stay (or want to stay) in the Netherlands for more than three months. The Netherlands accordingly introduced a registration duty to implement the Directive. Registration takes place with the IND in the Netherlands. It was previously necessary in such cases to lodge an application for a test of residence rights against European Community law. Family members who are not themselves nationals of an EU or EEA country or Switzerland are still obliged to lodge an application for testing against European Community law.

The Directive also states when citizens of the Union (thus also including nationals of the new accession states) and their family members (irrespective of their nationality) will acquire permanent residence rights. In such cases the member states should issue a supporting document. For this purpose, the Netherlands has created the facility for citizens of the Union and their family members, who fulfil the conditions in the Directive, to lodge an application for the grant of a permanent residence document for citizens of the Union¹⁷⁰.

The implementation also has consequences for primary and secondary naturalisation legislation. One of the conditions for naturalisation is that, at the point of naturalisation, there must be no objections to permanent residence. As a result of the implementation of the Directive, the certificate of registration or a permanent residence document is available to support the right of residence. The Handbook for the Netherlands Naturalisation Act (*Handleiding Rijkswet op het Nederlanderschap*) now states¹⁷¹ that it will be assumed that there are no objections against the right of permanent residence of citizens of the Union and family members if they submit either one of both documents. There will be no further investigation as to whether or not there is a right of residence. For citizens of the Union and their family members the existence of this right is the basic assumption. After all, this is also assumed when the certificate of registration and/or the residence document for permanent residence as a Union citizen are granted. Finally, there were also amendments to the Employment and Assistance Act (*Wet Werk en Bijstand*), the Student Finances Act 2000 (*Wet Studiefinanciering 2000*) and the Grants for Educational Contributions and School Costs Act (*Wet tegemoetkoming onderwijsbijdrage en schoolkosten*)¹⁷². The Directive did, in fact, also state that the host country was under no obligation to grant any right to social assistance during the first three months of residence, nor was it obliged – prior to the acquisition of a permanent

bijstand, van de Wet studiefinanciering 2000, van de Wet tegemoetkoming onderwijsbijdrage en schoolkosten en van de Vreemdelingenwet 2000 in verband met de totstandkoming van richtlijn 2004/38/EG betreffende het recht van vrij verkeer en verblijf op het grondgebied van de lidstaten voor de burgers van de Unie en hun familieleden, alsmede goedkeuring van een daarmee samenhangend voorbehoud bij het Europees verdrag inzake sociale en medische bijstand [Law of 7 July 2006 for the amendment of the Social Security Act, Education Credit Facilities Act 2000, the Education Reimbursement Act and of the Aliens Act 2000 in connection with the passing of the Directive 2004/38/EC on the right of citizens of the European Union and their family members to move and reside freely within the territory of the EU, also the approval of a provision linked up with that on the European Convention on Social and Medical Assistance], *Stb. [Statute book]* 2006, 373.

¹⁶⁹ Amongst others Besluit van de Minister voor Vreemdelingenzaken en Integratie van 8 november 2006, nr. 2006/34A, houdende wijziging van de Vreemdelingenwet 2000 [Decision of the Minister for Immigration and Integration of 8 November 2006, no. 2006/34A for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt. [State Bulletin]* 224, p. 15.

¹⁷⁰ As of 1 January 2007, nationals of the member states who gained accession on 1 May 2004 and 1 January 2007 were not yet completely free in the employment market, and employers were obliged to have a work permit for the work to be done by those individuals.

¹⁷¹ Tussentijds Bericht Nationaliteiten (TBN 2006/3) van de Minister voor Vreemdelingenzaken en Integratie van 8 juni 2006 [Interim Notice Nationalities (TBN 2006/3) of the Minister for Immigration and Integration of 8 June 2006, *Stcrt [State Bulletin]*, 109, p. 25.

¹⁷² Wet van 7 juli 2006 tot wijziging van de Wet werk en bijstand, van de Wet studiefinanciering 2000, van de Wet tegemoetkoming onderwijsbijdrage en schoolkosten en van de Vreemdelingenwet 2000 in verband met de totstandkoming van richtlijn 2004/38/EG betreffende het recht van vrij verkeer en verblijf op het grondgebied van de lidstaten voor de burgers van de Unie en hun familieleden, alsmede goedkeuring van een daarmee samenhangend voorbehoud bij het Europees verdrag inzake sociale en medische bijstand, *Stb. [Statute book]* 2006, 373.

residence right – to make any maintenance payment for studies, including vocational studies, in the form of student grants or loans, to anyone other than employees or the self-employed or to individuals who had retained such status and their family members. This was all regulated by amending the Acts specified above.

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

The integration of third-country nationals who are long-term residents is essentially important to promoting economic and social cohesion, a fundamental aim of the Community, as included in the Treaty. The most important criterion for acquiring the status of long-term resident is the length of residence in the territory of a member state. This must be a long-term and uninterrupted residence, showing that the individual concerned has acquired strong ties with the country. This also necessitates a certain element of flexibility, so as to be able to take account of circumstances that might result in the individual concerned having to leave the member state territory on a temporary basis.

Implementation of the Directive in national primary and secondary legislation required amendments to the Vw 2000, the Vb 2000 and the Vc 2000. The amendments that ought to have been completed by 23 January 2006 were not ready in time. The factors that caused the delay included the lengthy process of obtaining advices and other legislative projects with greater priority. The temporary Regulation for third country nationals who are long-term residents (*tijdelijke regeling langdurig ingezetenen derdelanders*) was published in the State Bulletin of Acts and Decrees on 3 October 2006¹⁷³, and the Directive was finally implemented in Dutch legislation on 1 December 2006¹⁷⁴. These are the most important amendments:

- under the Dutch system of residence permits, residence is permitted on the basis of a residence right of a temporary nature or on the basis of a residence right of a non-temporary nature. A foreign national residing in the Netherlands on the basis of a residence right of a non-temporary nature (for example for family formation or reunification) can in certain circumstances obtain a permanent residence permit. In implementation of this Directive, a new permanent residence permit has been added: every national of a third country who has resided lawfully in the Netherlands for at least five years on the basis of a residence right of a permanent nature may apply for a new EU residence permit for long-term residents. In contrast to the "regular" permanent residence permit, this also allows residence in other EU member states.
- This status offers the foreign national the opportunity of residing for a period in excess of three months in a different EU member state from the one in which he has his principal residence, in order to obtain a temporary residence permit there on certain conditions. This may be to work, to study or to reside on an economically inactive basis (for example in retirement). This accordingly applies to nationals of non-EU member states with their principal place of residence in the Netherlands, but who wish to reside in a different EU member state; it also applies to those who have their principal residence in a different member state and who wish to reside in the Netherlands. This last-mentioned category does not then require a valid temporary residence permit (MVV). This has also been incorporated into national primary and secondary legislation.

4.2.3. Unauthorised immigration and Return

Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data. In order to effectively combat illegal immigration and to achieve better border controls, it is of essential importance that all member states should introduce regulations establishing obligations that apply to airline carriers transporting passengers to the territory of member states. In order to enhance the

¹⁷³ Besluit van de Minister voor Vreemdelingenzaken en Integratie van 25 september 2006, nummer 2006/31, houdende wijziging van de Vreemdelingen-circulaire 2000 [Decision of the Minister for Immigration and Integration of 25 September 2006, no. 2006/31 for the amendment of the Aliens Act implementation guidelines 2000], *Stcrt.* [State Bulletin] 129, p. 29.

¹⁷⁴ Wet van 23 november 2006 tot wijziging van de Vreemdelingenwet 2000 ter implementatie van de richtlijn nr. 2003/109/EG van de Raad van de Europese Unie van 25 november 2003 betreffende de status van langdurig ingezetenen onderdanen van derde landen (PbEG 2004 L16/44) [Law of 23 November 2006 on the amendment of the Aliens Act 2000 for the implementation of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ EU 2004 L16/44)], *Stb.* [Statute book] 2006, 584.

achievement of this aim, the financial penalties imposed in the member states for failure by the carriers to fulfil their obligations should be harmonised as far as possible, taking into account the differences in legal systems and legal practice across the different member states.

This Directive ought to have been implemented not later than 5 September 2006, but that date was not achieved. In terms of this Directive national primary and secondary legislation should offer the facility of imposing on carriers (airline companies) an obligation to pass passenger data to the border control authorities. The legislative bill to implement this Directive was submitted to the House of Representatives in December 2006¹⁷⁵. It is expected that the Directive will be converted into legislation during the first half of 2007.

¹⁷⁵Parliamentary Papers II 2006/07, 30 897, no. 2 (Bill).

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