Master Thesis International and European Public Law

The Return of Unaccompanied Minor Asylum Seekers

Author: Juliette Rosalie Pauline Verhagen
ANR: 477900
Supervisor: mr. dr. H. Oosterom – Staples
Second Supervisor: mr. dr. A.K. Meijknecht
Department: Law School, Tilburg University
Date: May 2012
# Table of Contents

**Abbreviations**

**Introduction**  

## I What comprises the International Legal Framework concerning the Policy on Unaccompanied Minor Asylum Seekers?  

1.1 Introduction  
1.2 International Legal Framework  
1.2.1 United Nations Convention relating to the Status of Refugees  
1.2.2 United Nations Convention on the Right of the Child  
1.2.4 International Convention on Economic, Social and Cultural Rights  
1.2.5 International Convention on Civil and Political Rights  
1.3 European Union Law Framework  
1.3.1 European Convention of Human Rights  
1.3.2 The Reception Directive  
1.3.2 The Return Directive  
1.3.3 The Qualification Directive  
1.4 Conclusion

## II What comprises the Dutch Legal Framework concerning the Policy on Unaccompanied Minor Asylum Seekers?  

2.1 Introduction  
2.2 General Asylum Application Procedures  
2.3 Special Rules for Unaccompanied Minor Asylum Seekers  
2.3.1 Asylum Application Procedures for Unaccompanied Minors  
2.3.2 Alternative Avenues for Unaccompanied Minors  
2.4 Reassessment of the Policy on Unaccompanied Minors  
2.4.1 State Services for Unaccompanied Minors  
2.5 Process of Return of Unaccompanied Minor Asylum Seekers  
2.6 Conclusion

## III Which obstacles in the Dutch Return Policy on Unaccompanied Minors have occurred during the Last Decade?  

3.1 Introduction  
3.2 Return Policy prior to 2001  
3.3 Problems identified in the 1999 Memorandum
3.4 Solutions offered by the Return Policy of 2000
3.5 Specific Modifications of the Policy on Unaccompanied Minors
3.6 Evidence of Adequate Reception in Country of Origin
3.7 Different Models of Reception in the Netherlands
3.8 Effects of the Measures
3.9 Results of the New Return Policy
3.10 Conclusion

IV Do the proposed Reform Measures of the Dutch Government correspond with the Guarantees of International and European Law?
4.1 Introduction
4.2 The Broader Picture in the 2010 Coalition Agreement
4.3 Recent Developments in Specific Measures
4.4 Realization of the Proposed Return Policy
  4.4.1 Stimulation of Sustainable Return and Reintegration
  4.4.2 Strategic Country Approach
4.5 Compliance of proposed Reform Measures with International and European Law
4.6 Counter Proposals
  4.6.1 Protection of Fully Integrated Unaccompanied Minors in the Netherlands
  4.6.2 Objections against Kinderasielwet
  4.6.3 Immediate Discontinuation of Expulsion of Unaccompanied Minors
4.7 Conclusion

V Which lesson(s) can the Dutch Government learn from the United Kingdom and Sweden concerning the Policy on Return of Unaccompanied Minor Asylum Seekers?
5.1 Introduction
5.2 UK Policy on Unaccompanied Minors
  5.2.1 Institutional Framework
  5.2.2 Legal Framework
  5.2.3 Asylum Procedures
  5.2.4 Possible Outcomes of Asylum Applications made by Unaccompanied Minors
  5.2.5 Statistics on Unaccompanied Minors
5.3 Swedish Policy on Unaccompanied Minors
  5.3.1 Institutional Framework
  5.3.2 Legal Framework
Abbreviations

AC Registry Office
ACVZ Advisory Committee on Migration Affairs
CITT Committee for Comprehensive Supervision of Return
CRC Convention on the Rights of the Child
COA Central Agency for the Reception of Asylum Seekers
DGWIAW Directorate-General for Legislation, International Affairs and Immigration
DL Discretionary Leave
DRC Democratic Republic of Congo
DT&V Repatriation and Departure Service
ECHR European Convention on Human Rights
ERPUM European Return Platform for Unaccompanied Minors
HP Humanitarian Protection
ICCPR International Convention on Civil and Political Rights
ICESCR International Convention on Economic, Social and Cultural Rights
IND Immigration and Naturalization Service
IOM International Organization for Migration
OECO Organization for Economic Cooperation and Development
REAN Return and Emigration of Aliens from the Netherlands Scheme
UASC Unaccompanied Asylum Seeking Children
UNHCR United Nations High Commissioner for Refugees
WODC Research and Documentation Centre
Introduction

For a long time, Dutch immigration policy and treatment of non-nationals has been open and tolerant. However, in recent years the Netherlands has moved towards a restrictive immigration policy. For example, the Netherlands was the first country in the world to demand that permanent residents complete a pre-arrival integration course.¹

In the area of return, the Dutch policy is aimed at realizing – to the greatest extent possible – a procedure in which non-nationals who must leave the country actually do leave the Netherlands.² The Aliens Act 2000 marks an important change in Dutch immigration policy. It allows immediate expulsion of aliens in certain circumstances, for instance when an alien has not obeyed the obligation to return to his or her country of origin within four weeks of the decision. The core objectives of the new policy were to realize a decrease in the number of asylum applications and more returns of minors who are not entitled to asylum.³ The return of rejected asylum seekers and irregular migrants has been a priority of the Dutch government since 1998.⁴ Particular attention has been given to the facilitated return of unaccompanied minors. However, though a key policy goal, it is not certain whether, in practice, the rejected asylum seekers actually leave the country or remain in the Netherlands as illegal immigrants. This is the case for both rejected asylum seekers and unaccompanied minors. There are clear indications that a significant proportion of non-nationals who have been not granted permission to remain on Dutch territory, do not leave the Netherlands as requested, but stay on an illegal basis.⁵ The increasing number of rejected applications and political pressure to intensify deportation has led to an increase in the absolute numbers of non-nationals awaiting expulsion, but has not resulted in a higher percentage of people actually leaving the country.⁶

The national return policy aims to discourage and avoid residence of non-nationals who were not given permission to reside in the Netherlands. For unaccompanied minor asylum seekers this means that a decision is taken whether they are eligible for an asylum status. If this is not the case, it is assessed if there is adequate reception in the country of origin. The basic

² INDIAC – NL EMN NCP, Unaccompanied Minors in the Netherlands, February 2010, p. 49.
³ INDIAC – NL EMN NCP, Unaccompanied Minors in the Netherlands, February 2010, p. 49.
⁴ International Organization for Migration, Overview Migration in the Netherlands, April 2009.
principle is that the country of origin should provide reception for young persons. For both Angola and the Democratic Republic of Congo, the government presumes that there is, indeed, adequate reception because of the presence of reception centers. For other countries of origin, the decisive requirement is the availability of any form of reception of which the circumstances are not substantially different from the circumstances, including care, provided to peers who are in a comparable position as the minor concerned.\footnote{Parliamentary Papers II, 2002/2003, 27 062 nr. 23, p. 1.}

However, a State cannot refuse to admit each and every asylum seeker. According to Article 33 of the Convention on the Status of Refugees, which enshrines the principle of non-refoulement, refugees who would be subjected to persecution if returned to their home country must be admitted. Article 3 of the European Convention on Human Right (ECHR) as well, though implicitly, enshrines a similar obligation not to return those who run the risk of inhuman or degrading treatment. The jurisprudence of the European Court of Human Rights has held that non-refoulement is an inherent obligation under Article 3 ECHR in cases where there is a real risk of exposure to torture, inhuman or degrading treatment of punishment.\footnote{Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, UNHCR, p. 9}

On 15 December 2009, the Dutch 2\textsuperscript{nd} Chamber agreed to amend the Aliens Act 2000 for the purpose of modifying the asylum procedure. With this Bill\footnote{Wijziging van de Vreemdelingenwet 2000 in verband met het aanpassen van de asielprocedure, Kamerstukken II, 2009/2010, 31994, nr. 32.}, the Balkendende IV-Cabinet implemented the agreements of the 2007 coalition agreement. The modification of the asylum procedure aimed at providing newly arriving asylum seekers clarity on the outcome of the procedure more quickly and to ensure increased prudence. A second important intention of the former Cabinet was the reassessment of the asylum procedure regarding unaccompanied minors. The main proposal of this reassessment entailed the abolition of a special residence permit for unaccompanied minors, which will be further discussed in Chapter 2.4. Another proposal entailed the possibility to grant unaccompanied minors a longer recovery period to allow them to prepare for the asylum application, with a target period of three weeks.\footnote{INDIAC – NL, EMN NCP, Annual Policy Report 2010, May 2011, p 54.}

During this period, unaccompanied minors are offered advice on the medical aspects that might have consequences with regard to alien law\footnote{H.D.C. Roscam-Abbing, Medisch (forensisch) Onderzoek Asielzoekers: Enkele Fundamentele Tekortkomingen, T.v.Gr., 2010/7, p. 1.} and the identity of the minor is investigated. This part of the reassessed asylum procedure applies to unaccompanied minors since July 2010.
The reconsideration of the policy on unaccompanied minors was the result of several reports stating that the treatment of (unaccompanied minor) asylum seekers who await their asylum application, fails to comply with a number of international obligations, for instance the 2008 final report of the United Nations Human Rights Committee included comments on the Dutch asylum procedure in general. This Committee expressed its concerns about the accelerated procedure at the application centre as well as the proposal to implement a procedure of eight days which applies to asylum seekers in general. According to the UN Human Rights Committee, this period does not provide asylum seekers the opportunity to adequately submit their substantial claims. This could result in them being removed to a country that constitutes a risk for them. Furthermore, the Netherlands was urged to respect the principle of non-refoulement in all cases.\textsuperscript{12} In 2008, the European Committee on Social Rights concluded that the situation in the Netherlands regarding unaccompanied minors constituted a violation of Section 31 §2 of the Revised European Social Charter, that obliges States Parties to provide adequate reception to children unlawfully present in their territory for as long as they are in their jurisdiction.\textsuperscript{13} According to the Committee there was no legal requirement in the Dutch asylum policy to provide shelter to children unlawfully present in the Netherlands for as long as they are in its jurisdiction.\textsuperscript{14}

Notwithstanding these negative conclusions with regard to the Dutch asylum policy, the new Cabinet of the Conservative VVD and the Christen Democratic CDA proposed amendments to the Dutch asylum policy in their coalition agreement\textsuperscript{15} that could conflict with provisions of international law. The Return and Expulsion policy, so it was envisaged, would be tightened up and illegal residence in the Netherlands will amount to a criminal offence, were just two examples that are illustrative of future developments. According to the coalition agreement, every effort should be made to effect the return of unaccompanied minor refugees, if reception is available for them locally. For that purpose, funds from the development aid-budget will be used to invest in additional local reception facilities, including orphanages. This is not entirely new as the Dutch government started to finance reception houses in Angola and Congo in 2005 with a view to be able to return unaccompanied minor asylum

\textsuperscript{13} European Committee of Social Rights, \textit{Defence for Children International vs. the Netherlands}, nr. 47/2008.
\textsuperscript{14} European Committee of Social Rights, \textit{Defence for Children International vs. the Netherlands}, nr. 47/2008, p. 4.
\textsuperscript{15} Regeerakkoord VVD-CDA \textit{Vrijheid en Verantwoordelijkheid}, September 2010, p. 21.
seekers to these countries of origin. An orphanage in Sierra Leone was opened in 2009. Although this practice has been followed by the UK, Norway, Denmark and Sweden, no official data is available on the return of these children to reception houses.

A further development regarding returns is the adoption of Directive 2008/115/EC. The deadline for transposition of the Return Directive into national law was 24th December 2010. In September 2011, the European Commission ordered the Netherlands to implement the Directive within two months. In the absence of a satisfactory response, the Commission may refer the Netherlands to the EU’s Court of Justice and request that Court to impose financial sanctions for non-compliance with EU obligation. Two months later, on 15 December 2011, the government transposed the Return Directive, as it is an important legal instrument in offering unaccompanied minors additional protection.

The problematic return of unaccompanied minor asylum seekers can be explained by the tense relation between, on the one hand, the international legal obligations relating to the reception of unaccompanied minors and, on the other hand, the ‘risk’ of this leading to integration instead of returns. Examples of international obligations that contribute to the protection of unaccompanied minors are the obligations to provide access to reception, education, health care and benefits from social security. As a result of these requirements, unaccompanied minors have the opportunity to reside in the Netherlands until the age of 18 years. Prolonged residence of minors is also caused by the possibility of starting several appeal procedures. During the period of residence in the Netherlands, unaccompanied minors lose their roots or at least a connection with their country of origin and some minors even become fully integrated in Dutch society. In 2011, two cases on the subject of return of minors received a lot of attention from both the media and the 2nd Chamber. The first case concerned Sahar Hbrahimgel, a 14-year old girl who arrived in the Netherlands 10 years ago with her parents and siblings. The family’s asylum application was denied; though the family resided for 10 years in the Netherlands due to numerous procedures against the ruling. During this period, the children attended school and became fully integrated in Dutch society. According to the Court, a return to Afghanistan would constitute a violation of Article 3 ECHR which prohibits the extradition of a person to a foreign state if there is a real risk of inhuman treatment or

punishment. Based on policy documents from the Minister of Foreign Affairs, Minister Leers drew the conclusion that Sahar was ‘too westernized’ to be repatriated to Afghanistan. Girls with a westerned lifestyle are at risk in Afghanistan, in particular the situation at schools causes psychological pressure. The age of the girl in combination with the length of residence in the Netherlands are now taken into account in the assessment of the level of a westernized lifestyle. As a result of this assessment, Sahar and an unknown number of other westernized girls have not been expelled to Afghanistan.

A couple of months later, in October 2011, another case received a significant amount of publicity. Mauro Manuel came to the Netherlands at the age of 10, while his mother (and other family members) stayed behind in Angola. Given that there was, and still is, adequate reception in his country of origin, Mauro’s asylum application was denied. Not only the presence of his mother was taken into account, the availability of reception houses in Angola which are financed by the Dutch government played a role as well. For that reason, the Immigration and Naturalization Service (IND) issued neither a residence permit, nor a temporary permit for unaccompanied minor asylum seekers. Mauro had, therefore, no right to reside on Dutch territory and had to return to his mother in Angola. However, due to very long procedures concerning a possible adoption by his foster parents, Mauro lived in the Netherlands for a period of 8 years. During that time, he learned the language, made friends and basically had become fully integrated. He did, however, remain in touch with his mother who still lived in Angola. Defence for Children, an organization representing him, brought the case under the attention of the media which created a debate between political parties. The Minister of Immigration and Asylum, Leers, decided not to make use of his discretionary powers after political debate, because he found Mauro’s situation not poignant enough to make an exception. He did allow Mauro to await the result of his application for a study visa in the Netherlands, while this is normally done in the country of origin.

These examples illustrate that return is not always in the best interest of the child, if residence in the Netherlands, for any reason, has been prolonged. The cases beg the question whether the proposed policy regarding unaccompanied minor asylum seekers, to create a more effective return policy, will be compatible with international obligations as it stimulates return to the country of origin by providing less support, which, as the examples illustrate, might be

---

20 Parliamentary Letter, Beleidsconsequentie nieuw thematisch ambtsbericht Afghanistan, 8 april 2008.
qualified as ‘in the best interests of the child’, but simultaneously challenges compliance with other international obligations designed to protect minors in general, by ensuring appropriate forms of reception, education, health care and legal assistance.

**Research goal**

I am studying the Dutch asylum policy regarding the return of unaccompanied minor asylum seekers in relation to international human rights law, because I want to find out what the potential legal impact is of the proposed policy on international rights of unaccompanied minor asylum seekers in the Netherlands, in order to form an opinion about possible human rights violations by the Dutch government.

**Theoretical Framework**

As I will research a proposed policy which will be executed in the years to come, there are no theories in literature on this matter available yet. However, several NGOs\(^\text{21}\) and other organizations have already expressed their concern that the policy could be in violation of international treaties, in particular Articles 3, 20 and 22 of the Convention on the Rights of the Child.

**Research Question**

Is the policy of the VVD-CDA Cabinet with regard to the return of unaccompanied minor asylum seekers in compliance with fundamental rights, guaranteed by international and European treaties and legislation?

- What comprises the legal framework concerning the policy on unaccompanied minor asylum seekers?
- Which obstacles in the Dutch return policy have occurred over the last decade?
- Do the proposed reform measures of the Dutch government correspond with the guarantees of international and European law?
- Which lesson(s) can the Dutch government learn from the United Kingdom and Sweden concerning the return of unaccompanied minor asylum seekers?

\(^{21}\) Amnesty International, Vluchtelingenwerk Nederland, Kerk in Actie, Stichting LOS and other organizations have send the note: *Geen Kind op Straat* to the House of Representatives to show their concern regarding the return-policy, October 2010
Approach and Methods of Research

In order to answer these questions, I will first discuss the international legal framework concerning the obligations of States regarding unaccompanied minor asylum seekers in Chapter 1. Chapter 2 deals with the Dutch legal framework on the general asylum procedure as well as the specific procedure for unaccompanied minors. This will be followed by an overview of the obstacles that have occurred in the asylum policy of the Netherlands over the past decade (2000-2010) in Chapter 3. There I will look specifically at the current procedures concerning unaccompanied minor refugees and the obstacles that occur during the process of returning by reviewing reports of the government, committees and NGOs. Subsequently, in Chapter 4, I will give an overview of the proposed return policy of the Dutch government by looking at the 2010 Coalition Agreement, a number of Parliamentary Letters as well as the international and European obligations. This is followed by a comparative law study of two other European Union Member States, the United Kingdom and Sweden in Chapter 5 with the intention of examining whether the Netherlands can draw a lesson from these countries in relation to the return of unaccompanied minors. Finally a conclusion will be drawn and possible recommendations will be made.
I What comprises the International Legal Framework concerning the Policy on Unaccompanied Minor Asylum Seekers?

1.1 Introduction
In principle, unaccompanied minor asylum seekers fall within the scope of general (international) rules regarding the processing of asylum applications. However, as a result of their vulnerable position, an additional special policy has been designed to protect their interests. I will briefly discuss the general provisions insofar as they are relevant to the problems caused by the implementation of the return policy. The international legal framework with regard to the return of unaccompanied minor asylum seekers is defined by five internationally legally binding Conventions and three European Union Council Directives. The International framework consists of the Convention Relating to the Status of Refugees, the Convention on the Rights of the Child, the European Convention on Human Rights, the International Convention on Economic, Social and Cultural Rights and the International Convention on Civil and Political Rights. The EU rules on unaccompanied minors are found in the Qualification Directive, the Reception Directive and the Return Directive. I will briefly discuss the most important and relevant provisions of these international and European instruments to the extent that they deal with the protection of unaccompanied minors. The purpose of this analysis is to pinpoint the obligations of States in respect of unaccompanied minor asylum seekers.

1.2 International Legal Framework

1.2.1 United Nations Convention relating to the Status of Refugees

The 1951 Convention on the Status of Refugees entered into force on 22 April 1954. It was supplemented by the Protocol relating to the Status of Refugees of 31 January 1967. The 1951 Convention was drafted in the light of the events of WWII. It was designed to provide a legal status for those who found themselves outside their country of nationality or habitual residence and in fear of persecution as a consequence of “events occurring in Europe before 1 January 1951”. Due to the mainly male refugee populations originating from Eastern Europe, no attention is given to unaccompanied minors as an independent holder of rights in

---

this Convention. Although none of the provisions reveal specific consideration of additional protection to children, minors are not excluded from the protection provided by this Convention as they are captured in the overall definition of refugee in Article 1A that provides:

‘As a result of events occurring before 1 January 1951 and owing to well-founded fear of being prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’

Article 33 also covers unaccompanied minors if they qualify as refugee within the meaning of Article 1D. This provision prohibits expulsion or return (refoulement). It stipulates that no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where the life or freedom of a refugee would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The principle of non-refoulement provided for in Article 33 does not, as such, entail a right of the individual to be granted asylum in a particular state. Consequently, when the principle of non-refoulement applies to an individual, this person may not be returned to the country of origin. As a result, however, this person will reside in the host country without a residence permit. Article 7(1) of the 1967 Protocol lists Article 33 as one of the provisions to which no reservations are permitted. Therefore, State Parties cannot exclude or limit the legal obligation and its effects that result from Article 33.

According to statistics provided by the IND, 21% of the applications for residence made by unaccompanied minors are based on asylum. However, a large number of unaccompanied minors are not recognized as a refugee. When an (unaccompanied minor) asylum seeker does not belong to one of the grounds mentioned in Article 1A of the Refugee Convention, he is not entitled to appeal for the protection offered by the Convention.

1.2.2 United Nations Convention on the Right of the Child

With the exception of the United States and Somalia, the 1989 United Nations Convention on the Rights of the Child (CRC) has been ratified by all UN Member States. The Netherlands ratified the Convention in November 1995. It sets out a full range of human rights, including civil, cultural, economic, political and social rights which have to be ensured to children. The Convention is the only general treaty in which specific provisions concerning the protection of minor refugees and asylum seekers are laid down, namely Articles 9, 10 and 22 which will be discussed presently.

In 2006, the ECJ, for the first time, explicitly acknowledged that the CRC should be taken into account in determining the compatibility of EU measures with fundamental rights. In the case of European Parliament v. Council, the Court observed that the Member States are specifically required, when weighing competing interests, to have due regard to the best interest of minor children on a case-by-case basis when applying Directive 2003/86/EC.

The main principle of the Convention is laid down in Article 3, which states that all actions concerning children ought to have the best interests of the child as their primary consideration. The Dutch government is of the opinion that Article 3 serves as a guideline for the explanation and implementation of the Convention. Although the interest of the child is not given absolute precedence over other interests, it is, however, with the objective of the Convention, seen as a rule decisive.

Articles 28-36 are, with the recognition of the general right to health care, education and social security, indirectly related to the matter of unaccompanied minors. As said before, several provisions in the Convention are directly connected with the situation of unaccompanied minor asylum seekers, for instance Articles 9, 10 and 22. According to Article 9, States Parties shall ensure that a child is not separated from his or her parents

---

29 Adopted by General Assembly resolution 44/25 of 20 November 1989.
36 Nota van Toelichting bij de Ratificatiewet van het Internationaal Verdrag van de Rechten van het Kind, Parliamentary Papers II 22 855, nr. 3, p. 15.
against their will, unless it is necessary in the interests of the child. Article 10 is closely connected herewith. Both articles uphold the principle of family unity and protect children against separation from their parents. Article 10 is directly related to Article 22(2) which concerns the co-operation of States Parties to protect and assist a child and to trace the parents or other family members in order to allow for reunification with his family.

1.2.4 International Convention on Economic, Social and Cultural Rights

The International Convention on Economic, Social and Cultural Rights obliges State Parties to take measures in order to realize a number of rights, for example with regard to accommodation, health care, education and food. However, these are general rights, applying to everybody, nationals, lawfully residents, asylum seekers and unaccompanied minor asylum seekers. A number of provisions of the ICESCR are of special significance for minors: Article 13 provides the right to education, Article 11 requires an adequate standard of living including food, clothing and housing and Article 10(3) stipulates that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.

1.2.5 International Convention on Civil and Political Rights

Similar to the ICESCR, the International Convention on Civil and Political Rights applies to everyone with the jurisdiction of a Contracting Party and does not contain specific provisions with regard to the situation of unaccompanied minors. Its relevance for unaccompanied minors is found in Article 2 (prohibition of discrimination), Article 13 (legal representation in case of expulsion) and Article 24 (right to protection of the child) are relevant to unaccompanied minors.

1.3 European Union Law Framework

1.3.1 European Convention of Human Rights

The European Convention of Human Rights (ECHR), which is signed by all Member States of the EU, entered into force in 1950. While it was intended to provide legal regional recognition of most of the rights set out in the Universal Declaration of Human Rights, the ECHR does not contain any express provisions that reflect Article 14 of the Declaration of Human Rights. However, many of the principles enshrined in the ECHR, such as the prohibition of discrimination, the right to education, and the right to protection of the child, are indirectly relevant to the situation of unaccompanied minors.


which guarantees the right to seek and enjoy asylum from protection.\textsuperscript{39} The ECHR contains few provisions explicitly relating to children or unaccompanied minor asylum seekers. These articles are Article 5(1) (d) and Article 6(1) which provides special guarantees with regard to the detention of a minor by the authorities for the purpose of educational supervision or for the purpose of bringing him before the competent legal authority and ensuring a fair legal hearing.

As mentioned above, Article 3 provides the principle of non-refoulement, although it is an implicit reference. When the other international instruments regarding human rights were drafted, it was thought that the 1951 Convention related to the Status of Refugees would constitute a lex specialis which fully covered the need and no express provision on asylum was thus included in the ECHR.\textsuperscript{40} Article 3 prohibits the expulsion of a person to a foreign state if there is a real risk of inhuman treatment or punishment and also covers the medical situation of an individual.\textsuperscript{41} Other Articles relevant to unaccompanied minors are Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

1.3.2 The Reception Directive\textsuperscript{42}

The Reception Directive, adopted in 2003 and which had to be implemented by 6 February 2005 (Article 26), establishes minimum standards for the reception of asylum seekers in the European Union, which are deemed sufficient to ensure ‘a dignified standard of living and comparable living conditions in all Member States’.\textsuperscript{43} Its goal is to prevent asylum seekers from traveling as a result from different types of reception facilities in throughout the EU Member States.

The Reception Directive contains two provisions specifically related to unaccompanied minors. Article 19 stipulates that Member States ought to take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organization which is responsible for the care and well-being of minors. Article 19(2) requires that unaccompanied minors who make an application for asylum shall

\textsuperscript{40} N. Mole, \textit{Asylum and the European Convention on Human Rights}, Council of Europe, 2010, p. 11.
\textsuperscript{41} J.B.A. Goos, \textit{De Asielprocedure}, Kluwer 2008, p. 16.
be placed with adult relatives; with a foster family; in accommodation with special provisions for minors; or in other suitable accommodation. In addition, the Reception Directive takes notice of the obligation to trace family members, found in Article 22 of the ICRC. According to Article 19(3), Member States ought to trace the family members of unaccompanied minors as soon as possible with a view to protect the minor’s best interests. Further, the Reception Directive takes into account the best interests of the child and requires Member States to ensure access to rehabilitation centers for minors who have been victims of any form of abuse and requires appropriate health care (Article 18).

1.3.2 The Return Directive

The Return Directive, that had to be implemented by 24 December 2010 (Article 20), contains several binding legal safeguards relating to the expulsion of minors. Thus it brings significant improvements in several Member States. The Return Directive is applicable to all Member States, except Ireland and the United Kingdom who have ‘opted-out’ of its provisions. It stipulates the conditions for expulsion measures (Article 6), detention proceeding the execution measure (Article 15) and the imposition of an entry ban. Article 12 provides that expulsion measures should be accompanied by procedural guarantees, i.e. The Directive is a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfill the conditions for entry, stay or residence in a Member State.

In line with the Convention on the Rights of the Child, the ‘best interests of the child’ should be a primary consideration of Member States when implementing the Directive. Article 10 is a lex specialis with regard to the return and removal of unaccompanied minors. It stipulates that before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted. Furthermore, it requires that minors are returned if there is a member of their family, a nominated guardian or adequate reception facilities in the State of return. Finally, Article 17 stipulates that the detention of minors shall be a measure of last resort.

With the implementation of the Return Directive on December 15, 2011 the Dutch government made two important adjustments to the Aliens Act 2000. Two sub-sections have been added to the list of definitions found in Article 1, concerning the explanation of

provisions. First of all, the Return Directive introduces the principle of the *return decision*. This means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return. Secondly, depending on the follow-up of the return decision, a third-country national can be subject of an *entry ban*. As a consequence of the ban, the receiver will not be allowed to travel within the entire Schengen-area during a period of maximum five years. An entry ban is imposed when third-country nationals have not met the obligation to return within the period of 28 days. The number of voluntary returning asylum seekers is expected to increase as well as an improved enforcement of the obligation to return. More pressing consequence follow the refusal to depart which creates an additional motivation to voluntary return. However, certain groups are excluded from the entry ban on the basis of humanitarian grounds. The exceptions are formed by unaccompanied minor asylum seekers, victims of human trafficking and former asylum seekers who cannot return to their country of origin through no fault of their own.

1.3.3 The Qualification Directive

The Qualification Directive, which entered into force on 20 October 2004 and had to be implemented by 10 October 2006, was the first supranational instrument binding on EU Member States to cover those in need of international protection as well as those who fall outside the scope of the provisions of the 1951 Convention and its 1967 Protocol. The purpose of the Directive is to harmonize the criteria by which Member States define who qualifies as a refugee, and who deserves protection because he or she faces serious risks in their country of origin (subsidiary protection). The close relationship between the 1951 Convention and the Directive 2004/83 has been determined by the European Court of Justice (ECJ) in a number of cases. The *Bolbol-case* dealt with the extent to which decisions on refugee status are effected by EU law in addition to domestic and international law. According to the Court, the Qualification Directive must be interpreted in the light of ‘its general scheme and purpose’. This purpose is to set out minimum standards with respect to the Geneva Convention ‘as the cornerstone of the international legal regime for the protection

---

of refugees’. The same observations had been used by the ECJ in the case of Salahadin Abdulla, which concerned the conditions under which classification as a refugee may cease. In order to ensure compliance and contribute towards its full application, several provisions of the 1951 Convention have been replicated in the Directive almost identically. For instance, Article 12(1)(a) of the Qualification Directive refers explicitly to Article 1D RC, while Article 2(c) QD is a reproduction of Article 1A of the 1951 Convention. However, it has a less broad application scope than the Convention, as it is only applicable to third country nationals or stateless persons. Although it does not cover an asylum claim by a national of an EU Member State, it does cover Article 3 situations.

1.4 Conclusion

The international obligations for the Netherlands with respect to the rights of unaccompanied minor asylum seekers are defined by five core documents. Article 1A of the 1951 Convention relating to the Status of Refugees determines the conditions that need to be met in order to qualify as a refugee and thus the enjoyment of the right to protection. Article 33 of the 1951 Convention and Article 3 ECHR prohibit the expulsion of individuals when there is a real risk of persecution respectively inhuman treatment or punishment. Three articles, i.e. Articles 9, 10 and 22, of the Convention on the Rights of the Child are directly relevant for unaccompanied minors. The principle of the best interest of the child in Article 3 is protected through the operation of these provisions by imposing on States to act where children are separated from their parents; one of these obligations is that States have to trace parents and other relatives in order to achieve reunification. The International Convention on Economic, Social and Cultural Rights lays down in Articles 11 and 13, the obligation for States to provide education, health care and accommodation.

The European Parliament and the Council have adopted three Directives concerning the reception and return of asylum seekers, namely the Qualification Directive, the Reception Directive and the Return Directive. These Directives which provide minimum standards for the determination of the status of asylum seekers, the reception and return of asylum seekers

51 Salahadin Abdulla and Others v. Bundesrepublik Deutschland, C-175/08; C-176/08; C-178/08 & C-179/08, European Union: European Court of Justice, 2 March 2010, available at: http://www.unhcr.org/refworld/docid/4b8e6ea22.html
reflect and supplement international obligations, amongst which the principle of ‘in the best interest of the child’. The impact of these Directives on the national legal systems, however, goes beyond that of international law, as the general principles of EU law directly effect and oblige Member States to amend conflicting national law.
II What comprises the Dutch Legal Framework concerning the Policy on Unaccompanied Minor Asylum Seekers?

2.1 Introduction

The legal framework for the Dutch asylum policy is defined by the international treaties, which have been discussed in Chapter 1, implemented into national legislation. The foundations of the framework are the human rights obligations. Children are recognized as a vulnerable category within the asylum policy who deserve special attention. The starting point for applications made by minor asylum seekers in the Dutch asylum policy is the necessity of a thorough review framework which is set out in the Aliens Act 2000 (further referred to as Vw 2000) and the Bill concerning the improvement of the asylum procedure. The current policy on unaccompanied minor aliens was introduced by means of a policy document in May 2001 following the introduction of the Vw 2000. The State Secretary of Justice, Kalfsbeek, intended to achieve a decrease in the number of asylum applications by minors as well as an improvement in the return of unaccompanied minors who did not qualify for a residence permit. The introduction of the Vw 2000 and the Aliens Decree 2000 (Vreemdelingenbesluit 2000, further Vb 2000) led to the drafting of the Aliens Act Implementation Guidelines 2000 (Vreemdelingenencirculaire 2000; hereafter referred to as Vc 2000) which replaced the earlier version of 1994. The Vc 2000 provides policy guidelines and general indications to all civil servants who are empowered with the execution of the asylum policy. In addition, it regulates when the Minister can depart from the policy by granting a rejected asylum seeker a residence permit by way of exception. However, these discretionary powers are currently only exercised in exceptionally distressing cases when it is a matter of compelling reasons of a humanitarian nature. Local authorities as well as the Advisory Committee on Migration Affairs (ACVZ) have pleaded for an additional independent criterion in assessing cases, specifically the Dutch interest. The alien will have to demonstrate on the basis of objective information that his admission will serve a specific Dutch interest, for example an economic or cultural interest. In 2004, Chapter C8 of the Vc 2000 was revised. For a number of third countries, such as Eritrea, Vietnam and Yemen, the general conclusion was drawn that, based on policy documents of the Ministry of Foreign Affairs, adequate reception arrangements for

---

unaccompanied minors are available. As a result, unaccompanied minor asylum seekers from these countries were no longer eligible for a residence permit.\textsuperscript{57}

Based on parliamentary papers and several coalition agreements\textsuperscript{58}, which contain specific objectives, the following general benchmarks in the asylum policy on unaccompanied minors can be established:

- Children who do not qualify for protection ought to return to their country of origin as soon as possible. Illegal residence in the Netherlands or elsewhere in Europe is not in the interest of the child.
- In reception facilities and during guardianship, the specific needs of minors are to be taken into account. In preparation for return, it is possible for minors to be placed in detention. However, this is a means of last resort which can only be applied for the shortest period of time possible.
- Prevention of maltreatment of unaccompanied minor asylum seekers. Abuse of children in any form is combated. Special attention is given to minors who are victims of human trafficking.

These basic principles have been translated into policy measures in order to improve the position of unaccompanied minor asylum seekers. In the next paragraph I will discuss the general asylum procedure, which applies to both adult asylum seekers and unaccompanied asylum seeking children. This is followed by the specific criteria relevant for asylum applications made by unaccompanied minors.

\textbf{2.2 General Asylum Application Procedures}

The asylum residence permit can be granted on the basis of Article 29(1), under (a) up to and including (f) of the Vw 2000. Asylum applications submitted by both adult asylum seekers and unaccompanied minors are covered by this Article. Its aim is to protect a person against irresponsible risks when returning to the country of origin or against a return which would generate an extraordinary risk in connection with the general situation in that country. The first two grounds of Article 29 concern so-called Convention refugees and individuals who run the risk of inhuman treatment or punishment (Article 3 ECHR), both discussed in Chapter 1.2. The grounds in Article 29(1), under (c) and (d) of the Vw 2000 refer to compelling

\textsuperscript{57} Staatscourant 16 April 2004, nr. 73 / pag. 10.
\textsuperscript{58} Coalitieakkoord februari 2007; Bestuursakkoord tussen Rijk en VNG Mei 2007; Beleidsnota inzake de Herijking van het Beleid voor (Alleenstaande) Minderjarige Vreemdelingen, December 2009.
humanitarian grounds and protection for certain categories (the so-called categoriaal beschermingsbeleid). These sections have been based on considerations regarding situations where the persons concerned cannot reasonably be required to return to their countries of origin. The latter ground is included without an international obligation to do so.

2.3 Special Rules for Unaccompanied Minor Asylum Seekers

For a large part, the asylum policy for unaccompanied minors mirrors that of concerning adult asylum seekers. However, due to the minor age, the government has an extra responsibility to offer additional protection, which is reflected in special policy rules governing the procedures to be followed when an application for asylum is made by a minor.

In order to create a well-organized process of protection, the government has delegated the task of representation of unaccompanied minors to Nidos; an independent guardianship and supervision agency. This agency is authorized to look after the interests of unaccompanied minors during the asylum procedure by appointing guardians for unaccompanied minor asylum seekers. For this purpose, the foundation receives an allowance provided by the Minister of Justice. Nidos submits an application for legal representation to the court on behalf of the minor. According to Article 1:336 of the Dutch Civil Code, Nidos takes care of the upbringing of the minors. The legal basis for the guardianship of unaccompanied minors is provided in Article 38 of the Act on Childcare. Unaccompanied minors younger than 12 years are placed in foster families, while minors older than 12 years are placed with the Central Agency for the Reception of Asylum Seekers (COA). The guardianship ends when the minor becomes 18. At that time, the lawful basis for the granting of a subsistence allowance expires from that moment. The policy amendments with regard to the fostering and guidance of unaccompanied minors will be discussed in Chapter 3.6.

2.3.1 Asylum Application Procedures for Unaccompanied Minors

As a general rule, applications made by unaccompanied minors have to be assessed as quickly as possible with due regard to the development of the minor. Therefore, he will need to receive a fast clearance regarding the possibility of further residence in the Netherlands or return to the country of origin. After entering the Netherlands, the unaccompanied minor

---

59 INDIAC – NL EMN NCP, Unaccompanied Minors in the Netherlands, February 2010, p. 27.
61 Wet houdende regeling van de aanspraak op, de toegang tot en de bekostiging van jeugdzorg, 24 april 2004.
asylum seeker needs to apply for asylum at the registry office (AC) either at Schiphol or in Zevenaar. Subsequently, the identity, nationality and the age of the minor is assessed during a so-called Initial Interview which is conducted by the Immigration and Naturalization Service (IND). The authorities are confronted with several practical problems in determining the age. A birth certificate may have never been issued or registered and identity documents never issued. For that reason, the assessment is often based on the physical appearance of the unaccompanied minor. If the authorities doubt the correctness of the age as stated by the applicant, an age test is conducted by means of X-ray photo graphs to be made of the wrist joints and collarbones. On the basis of these scans, a radiologist assesses the maturity of the wrist area and, if necessary, the maturity of the collarbones. Although this method of age assessment is a well-known practice in other Member States, the procedure has been contested because of the lack of medical grounds to determine the age of minors. If the unaccompanied minor asylum seeker refuses to cooperate, maturity is presumed.

This procedure is practically always followed by a second hearing (the Detailed Interview) where the minor’s travel motives are discussed, as well as the reasons for applying for asylum. In addition, both the level of self-sufficiency as the level of sufficient reception in the home country is assessed. On the basis of the report of the hearing and earlier inquiries, a decision on the application is made by the IND within approximately five working days. An asylum application can be granted, denied or postponed for further inquiry.

2.3.2 Alternative Avenues for Unaccompanied Minors

If the unaccompanied minor does not qualify under one of the subsections of Article 29 Vw 2000 as mentioned in §2.3.1, the application for an asylum residence permit is refused. In most cases, the asylum application of unaccompanied minors is denied on the lack of irresponsible risks when returning to the country of origin. In that case, it is possible for the minor to apply for an alternative temporary permit; ‘regular’ rather than ‘asylum’. This permit

64 UNHCR, Refugee Children Guidelines on Protection and Care, 1994, p. 102.
66 In certain cases, however, this is a breach of § 3 of Article 9 Council of Europe Convention against Human Trafficking, which stipulates that State Parties must presume a victim is a child, when there is uncertainty about the age. Until the age is verified, special protection must be offered to the victim.
is subject to a restriction related to a stay as unaccompanied minor. Four cumulative conditions have to be met:

1. The asylum seeker is a minor.
2. The minor is unaccompanied.
3. The minor has no means to take care of himself independently in the country of origin or another country he could reasonably go to.
4. There is no adequate form of reception according to local standards in the country of origin or another country he could reasonably go to.

Minority is defined by Dutch civil law; Article 233 of Book 1 of the Dutch Civil Code lays down that ‘persons who have not yet reached the age of 18 years and who are not married or who have not been married’ are considered to comply with the term minority. Secondly, whether or not the minor is accompanied is regulated by Vc 2000, C2/7.1.3. This section states that this is the case when he is not accompanied by his adult parent(s) or when he has already been assigned a representative abroad. The third condition, regarding the means of existence, takes the age of the minor and personal circumstances into account. When the minor is 16 years old or older, it is of importance whether it is reasonable to assume that the minor will be able to take care of himself in another country based on local standards. For example, when the minor has had a job in the country of origin or when he had his own accommodation, the requirement of subjective independence is fulfilled. This is not the case when the job concerned child labor, child prostitution or work as a child soldier. Finally, adequate reception is any form of reception of which the circumstances are not substantially different from the circumstances including care provided to peers who are in a comparable position as the minor concerned.

The residence permit ‘regulier/asylum’ is issued for a certain period of time. As said before, this is an alternative for unaccompanied minors when the initial asylum request has been rejected. As a consequence, the unaccompanied minor has the right to residence reception in the Netherlands until he turns 18. Residence is aimed at the eventual return to the country of origin. Although assumed by many parties, Mauro Manuel did not receive this regular residence permit after he failed to qualify for one of the general grounds of Article 29 Vw

---

68 INDIAC – NL EMN NCP, Unaccompanied Minors in the Netherlands, February 2010, p. 28.
69 Article 3.56(1) under (b) of the Aliens Decree 2000.
70 Article 3.56(1) under (c) of the Aliens Decree 2000.
2000. As both his mother and father had been traced in his home country Angola and were able to provide an adequate form of reception, Mauro did not fulfill the four cumulative conditions as mentioned above. As a result, Mauro was obliged to return to his country of origin. However, due to a delayed decision on his asylum application, several appeal procedures and a failed adoption procedure by his foster parents, Mauro has spend ten years in the Netherlands which has led to him becoming fully integrated.

2.4 Reassessment of the Policy on Unaccompanied Minors

The case of Mauro demonstrates the importance of a fast asylum procedure. From the 1st of July 2010 onwards, a new asylum procedure\(^{73}\) applies to unaccompanied minors who have filed a request for asylum. It aims at achieving a faster and more accurate decision on applications. As part of the reassessment of the policy, the State Secretary of Justice, Albayrak, made two proposals in order to improve the asylum process, in particular the discarding of the regular residence permit for unaccompanied asylum seeking children and a modification in the ‘through no fault of their own’-policy.

The core proposal entailed the discarding of the regular permit for unaccompanied minors. According to the State Secretary, it was not in the interest of the minor to reside in the Netherlands whilst having to leave at the age of 18. Unaccompanied minors, like other asylum seekers, have the right to start an appeal procedure against a negative ruling in their case. Consequently, they spend a fair amount of time in the Netherlands prior to the ending of the procedures and return to their country of origin. As a result of the assigned residence permit, though despite its temporary character, the future perspective of unaccompanied minors changes from return into integration. According to the State Secretary, this possibility should therefore be discarded.\(^{74}\)

The second proposal of the State Secretary of Justice held a modification of the residence permit issued to (unaccompanied minor) asylum seekers who are unable to return, despite their own efforts. In order to create a more clear perspective, the residence permit will be issued after a maximum period of three years instead of a minimum period of three years. The requirements for such a residence permit will be discussed in Chapter 3.2.1.

\(^{73}\) Parliamentary Papers II, 2009/2010, 27 062, nr. 64.

Due to the fall of the Balkenende IV-Cabinet, the reassessed proposals of the asylum policy could not be executed at that time, as the intended abolition of the residence permit was declared controversial by the 2\textsuperscript{nd} Chamber in March 2010. However, in December 2010, Minister Leers of Immigration and Asylum announced that the original reviewing document showed a large resemblance with the measures in the coalition agreement of the VVD-CDA Cabinet. Therefore, the proposals will be developed further and implemented.\footnote{Parliamentary Papers II, 2009/2010, 27 062, nr. 67.}

2.4.1 State Services for Unaccompanied Minors

The idea underlying the proposal to discard the temporary residence permit is connected with the core rule in the Benefit Entitlement (Residence Status) Act\footnote{Parliamentary Papers II, 1997/1998, 24 233, nr. 149.} which stipulates that unlawful residing aliens cannot apply for services of the Dutch welfare state. When the IND negatively decides on an asylum application, the alien, regardless of his age, will become an illegally residing person in the Netherlands. Therefore, unaccompanied minor asylum seekers whose application has been denied will automatically receive an unlawful status. This proposal is hard to reconcile with Article 10 (2) of the Aliens Act 2000, which states that States have to provide certain services of protection to unaccompanied minors despite their unlawful status. These services concern education, medical care and legal assistance.

The right to education is laid down in the Compulsory Education Act of 1969\footnote{Parliamentary Papers II, 1998/1999, 19 637, nr. 397.}. In the Netherlands, every child aged between 5 – 16 years old is obliged to attend school. The purpose is to offer the youth a good education in order to succeed on the labor market. Therefore, the compulsory school attendance applies to unaccompanied minor asylum seekers as well. The Lowac (Landelijke Onderwijsgroep voor Asielzoekerskinderen in Centra) looks after the interests of the asylum seekers in education. The COA contributes to the costs of education by not only offering accommodation, but study facilities, materials and school transport as well. This has been laid down in the so-called Regeling Verstrekkingen Asielzoekers (RVA) which is a regulation as a result of the implementation of the Reception Directive.

The proposal is also problematic as it also breaches (international) obligations regarding health care. The government is obliged to provide health care facilities to asylum seekers.\footnote{H.D.C. Roscam-Abbing, \textit{Medisch (forensisch) Onderzoek Asielzoekers: enkele fundamentele tekortkomingen}, T.v.Gr. 2010/7, p. 1.}
Unaccompanied minor asylum seekers have access to the regular health care system, e.g. general practitioners, specialists and the GGZ. Nidos takes care of the youth protection for unaccompanied minors who have been placed under its supervision. For that reason, the minors are insured under the Regulation concerning Health Costs for Asylum Seekers (Ziektekosten Asielzoekers Regeling). If the proposal becomes law this will mean that unaccompanied minor asylum seekers are not insured for health care. In principle, non-insured asylum seekers have to pay for medical emergencies themselves. When this is not possible, an appeal can be made to the department of the health facility in order to cover unpaid bills. In case the facility does not provide these services, the Stichting Koppelingsfonds is the last solution.

The proposal will not affect the right of unaccompanied minor asylum seekers to legal assistance throughout the asylum application as well as during a possible appeal procedure. Advice and legal aid by a professional Bar-registered lawyer is made available by the Legal Aid Board (Raad voor Rechtsbijstand) which provides, if necessary, financial assistance.79 The lawyer’s practice location and the place of residence of the unaccompanied minor are taken into account in order to limit the travel distances for the minor as much as possible. If the minor is relocated, the appointed lawyer remains his legal representative.

As a result of the fall of the VVD-CDA Cabinet in April 2012, the proposal of discarding of the regular residence permit for unaccompanied minors no longer has a majority of votes in the 2nd Chamber. At this moment it is unclear whether the execution of the proposal will be postponed until the next Cabinet gives its formal opinion on this matter.

2.5 Process of Return of Unaccompanied Minor Asylum Seekers

When an unaccompanied minor does not qualify for a residence permit, an individual assessment will be made to enquire whether a responsible and guided return to the country of origin can take place or not. This review framework consists of two elements.

First of all, it could be in the interest of the child to restore the relations with its parents, family and/or social environment in its country of origin. When children have been the victim of human traffickers, the journey to the host country obviously did not take place on a voluntary basis. In this case, it is in the best interest of the minor to be returned with his parents or other relatives as soon as possible. However, when the unaccompanied minor has

79 Legal Aid Board, Brochure Legal Aid in the Netherlands, 2011, p. 1.
been sent to the Netherlands by his parents and has become fully integrated in Dutch society, it is doubtful whether it is in his or her best interests to return to the country of origin. A number of NGOs and politicians are of the opinion that the latter consideration should have applied to the case of Mauro Manuel. According to these parties, the situation of Mauro has demonstrated that the process of weighing conflicting requirements by the government does not place the best interests of the child-principle as a primary consideration, which can be viewed as a violation of Article 3 of the CRC.

Secondly, it is determined whether the minor is sufficiently independent to provide for himself. If this is not the case, it is assessed by the IND whether or not there is adequate reception available in the country of origin. According to Article 3.56(1) under (c) of the Vw 2000, the term ‘adequate’ reception is understood to mean each form of reception under circumstances that do not materially differ from the circumstances under which peers are accommodated who are in a comparable position as the unaccompanied minor. Adequate reception will be assumed present in the country of origin when a parent or family member is able to provide reception for the unaccompanied minor. However, the government also includes reception by friends, fellow villagers and public or private welfare organizations.

The return process of unaccompanied minor asylum seekers can be characterized as follows:

*The actions, other than legal actions, as well as the transfer of aliens by civil servants, aimed at the return of the aliens to the country of origin or a safe third country due to: the unlawful residence in the Netherlands, the expectation of the loss of the right of residence at short notice or the refusal of admission to the Netherlands.*

The procedure to return unaccompanied minors to their country of origin can be divided into three categories:

- Independent or voluntary return of the minor;
- Forced return by the government; and
- Departure with an unknown destination of the minor.

This distinction is relevant as different organizations are involved in arranging return of unaccompanied minors. For instance, when a minor intends to voluntary return to his country

---

of origin, the International Organization for Migration (IOM) offers (financial) assistance. However, when the minor refuses to obey the obligation to return, the Repatriation and Departure Service (DT&V) will execute forced return. In the last category, the minor departs while his destination is unknown. As a result, the government is not aware of his location, whether it is unlawfully on Dutch territory or abroad. This lack of knowledge is reflected in the statistics on return of unaccompanied minors, which shows a very low number of actually returned unaccompanied minors compared to the number of unaccompanied minors who have not been issued a residence permit.

A fourth group is formed by unaccompanied minors who, ‘through no fault of their own’ cannot return to their country of origin. According to the so-called Buitenschuldbeleid, these minors, while having exhausted all legal remedies, could qualify for a residence permit. In order to do so, the minor has to fulfill four conditions (B14/3.2.2 of the Vc 2000).83 Most importantly, to qualify as a member of the fourth group, the minor is required to have actively co-operated during the investigation concerning his identity, nationality and with regard to the assessment whether there is adequate reception in the country of origin.84 The minor has to prove, by means of objectively verifiable documents, that the relevant authorities of the country of origin do not permit him to return.85 In addition, the minor is required to request assistance from both the IOM as well as the IND to facilitate return. When return appears impossible despite the fact that these no fault-requirements have been met, unaccompanied minors are issued a temporary residence permit.86 Although this permit expires when the minor becomes of age, he or she could be eligible for a prolongation.

An intensive guidance aimed at return is one of the main points in the procedure on unaccompanied minor asylum seekers. It takes place before the minor has reached the age of 18. This method is based on the notion that prompt return is the best way in order to prevent disappearance in illegality. As the right to reception is terminated when the minor becomes of age, the actual departure may be accomplished before this takes place. For this purpose, the minor is encouraged to start preparations in order to return to the country of origin as soon as the asylum application has been refused. As a result, following the final decision refusing the asylum application, the unaccompanied minor has a period of 28 days to voluntarily realize

86 Article 3.4(w) of the Aliens Decree 2000.
return. During this period of 28 days, the unaccompanied minor receives intensive guidance by the DT&V, which assigns a specialized supervisor to the minor, while providing information about aid agencies. When this is desired, the IOM can offer (financial) assistance and advice. On the basis of the Return and Emigration of Aliens from the Netherlands Scheme (REAN), the IOM may assist unaccompanied minors in arranging a return to the country of origin if certain conditions are met. However, the return to the country of origin remains the personal responsibility of the minor.

2.6 Conclusion

Current national legislation and regulations, in particular the Vw 2000, the Vc 2000 and the Dutch Civil Code, include provisions on the training of employees engaged in the implementation of asylum policy, and subjects related to representation, attention for child-specific problems and possible return of unaccompanied minor asylum seekers. Other important regulations are the Benefit Entitlement (Residence Status) Act which excludes foreign nationals residing illegally in the Netherlands from entitlement to social security benefits. However, some exceptions apply: all unaccompanied minor asylum seekers, with or without legal residence status, have the right to services such as education, necessary medical assistance and legal aid.

The national review framework in relation to the return to the country of origin of unaccompanied minor asylum seekers consists of the following features. The IND, DT&V, Nidos and the COA hold intensive consultations with regard to this matter before deciding on the return of unaccompanied minors. The essential element of the return process is the availability of adequate reception in the country of origin. The level of adequate reception is measured through local standards and will be accepted when it is provided by parents, family members, friends or institutions assigned with reception facilities.

88 INDIAC – NL EMN NCP, Unaccompanied Minors in the Netherlands, February 2010, p. 27.
III Which obstacles in the Dutch Return Policy on Unaccompanied Minors have occurred during the Last Decade?

3.1 Introduction

With the implementation of international obligations into national legislation, the Dutch government provides protection to unaccompanied minor asylum seekers. Within this legal framework, the underlying assumption in the asylum policy on unaccompanied minors is their return to the country of origin rather than of integration in Dutch society. Throughout the last decade, factors frustrating a successful realization of the return process of unaccompanied minors frequently occurred despite a hands-on approach of the government. These key factors concerning these problems are the absence of identity and travel documents and the reluctance of the minor to co-operate to realize his / her departure.

In this chapter I will discuss the difficulties in the return procedure with which consecutive cabinets were confronted with. The starting point is 1999, as this is a significant year with regard to Dutch asylum policy. The Aliens Act of 1994 was reassessed in 2000 as a result of the problems occurring in the period in between. This reassessment resulted in important modifications to the policy on unaccompanied minor asylum seekers.

3.2 Return Policy prior to 2001

The 1999 return policy contained one basic assumption: a decision which held the refusal of entrance was to be followed by the departure of the person against whom the decision was taken.\textsuperscript{90} Voluntary return was the most desired option.\textsuperscript{91} The asylum seeker was given a certain period of time in order to realize his return. Already, in the period prior to the return policy of 1999, it had been established that not many unaccompanied minor asylum seekers actually voluntarily left the Netherlands for their country of origin. Therefore, the government decided to improve the process of voluntary return, as it was felt that this would help prevent illegal residence in the country by decreasing the number of asylum seekers in the Netherlands whose procedure had completed and no residence permit granted. A distinction could be made between aliens who refused to return and groups that were unable to return. The former category was able to slow things down by starting all sorts of legal proceedings.\textsuperscript{92}

\textsuperscript{91} Ministry of Justice, Research and Documentation Centre (WODC), \textit{Commission Evaluation Aliens Act 2000}, 2004, p. 16.
\textsuperscript{92} M. Olde Monninkhof, J. de Vreede, \textit{Terugkeerbeleid voor Afgewezen Asielzoekers}, WODC 2004, p. 53.
The latter group consisted of asylum seekers who were stateless and, therefore, could not depart to a country of origin.

To improve voluntary return figures the government’s main objective was to stimulate voluntary return of aliens who were not (any longer) permitted to reside on Dutch territory. Simultaneously, measures were adopted to prevent illegal residence in the Netherlands. In order to achieve these objectives, a number of sub-goals were defined in the Return Memorandum of 1999 which provided a detailed outline of the intentions of the 1998 Coalition Agreement. First of all, the government intended to make the actual realization of return possible by making use of the IOM-scheme and specific return-agreements concluded with countries of origin. Cooperation measures were supplemented with a funding of the development aid budget in order to increase the possibilities of return to certain countries of origin.

The second goal, to stimulate asylum seekers to cooperate to realize their departure, was to be realized, to the greatest extent possible, through four instruments. First of all, the final departure-period was determined at 28 days. Within these 4 weeks, asylum seekers who received a rejected claim had to prepare their departure in order to realize a voluntary return. This included obtaining identity and travel documents. Secondly, personal conversations in this departure-period with rejected asylum seekers were held to provide them with a clear perspective regarding return. When this period had passed, every governmental service was ended, including reception facilities and health care insurance. Thirdly, the end of this period opened the way for forced return by the Repatriation and Departure Service. Fourthly, the government aimed at improving the practical execution of the return policy.

The pre-1999 return policy contained two requirements which were removed in the 1999 Memorandum. The first requirement was the ending of reception services. The government no longer needed an order to be able to end these services. The second removed requirement concerned the burden of proof with regard to the non-cooperation of asylum seekers. Prior to the modification, the government was obliged to demonstrate this non-cooperation.

The return policy vis-à-vis unaccompanied minors prior to 1999 provided the following additional protection. An unaccompanied minor could only be considered for deportation if adequate reception was guaranteed in the country of origin. Adequate reception is measured

---

by local standards. It is understood to mean each form of reception under circumstances that do not materially differ from the circumstances under which peers are accommodated who are in a comparable position as the unaccompanied minor.\textsuperscript{95} This includes the reception by parents, family members or other relations or reception organizations in the country of origin. When this was not the case, the minor was issued a residence permit. This permit was subject to a limitation by the title of ‘an unaccompanied minor asylum seeker’. The minor was required to extend the permit annually. After three years, the minor could apply for a residence permit based on humanitarian grounds. If the child was 16 years old or if his parents were capable of independently providing for him in the country of origin, the minor had to return as well. The return-rule also applied to cases where the minor had frustrated the investigation to adequate reception by providing false or incomplete information.

3.3 Problems identified in the 1999 Memorandum

It can be concluded from the 1999 Memorandum that the government aspired to reach solutions for the following problems with regard to the return of unaccompanied minor asylum seekers\textsuperscript{96}:

- Too few minors returned voluntarily to the country of origin after an unsuccessful asylum application.
- The realization of forced return was restrained due to technical obstacles.
- Unaccompanied minors possessed an abundance of possibilities to take legal proceedings against the Dutch government on all kinds of decisions.
- Before the return could actually be realized, many unaccompanied minors disappeared with an unknown destination.
- The practical execution of the return policy could be improved.

During the years prior to 1999, the main problem concerned the ever increasing in the number of unaccompanied minor asylum seekers who did not return to their country of origin. This was regarded to be problematic since it was felt that the separation from their parents and environment did not contribute to a good development of a child. Return to the country of origin, so it was argued, would benefit the minors as well as the Netherlands, because it would be possible to restore the relation with their parents, family and social surroundings, which

\textsuperscript{95} INDIAC – NL. EMN NCP, \textit{Unaccompanied Minors in the Netherlands}, February 2010, p. 28.

would be in the best interest of the child. An additional benefit would be that the basis of the return policy would gain more support in Dutch society.  

In relation to the reluctance to return to the country of origin, two other problematic developments were ascertained. The first was that a large percentage of asylum applicants claimed to be minor asylum seekers which allowed them to take advantage of services which had been placed at the disposal of minors. These ‘children’ were later identified as adults through age-inquiry. The second development was that minors who did not want to return did all they could to hinder the obtaining of travel documents, for example by losing them on purpose. As a result, diplomatic agencies became less willing to provide these documents, which meant that forced return of unaccompanied minors before they reached the age of 18 years was difficult to accomplish.

3.4   Solutions offered by the Return Policy of 2000

In order to solve the problems identified in the 1999 Memorandum, the government announced several policy measures aimed at increasing the number of returned unaccompanied minors and less abuse of the public services for unaccompanied minors. The idea was that this would create an unattractive migration image of the Netherlands. This reasoning was based on the assumption of the government that the youth in countries of origin were acquainted with the Dutch asylum policy. However, results from previous research showed that many minors did not choose their destination themselves. This was done by travel agents or human traffickers who bring the children to the Netherlands. However, as their only interest is money, the business would not be affected by an unattractive image with regard of the asylum policy.

The intention of the government remained the same when the Vw 2000 entered into force on April 1\textsuperscript{st} 2001. As a result of this new legislation, instruments were available to realize shorter and faster asylum procedures. For this purpose, the Dutch government developed a specific return policy for three categories:

- Asylum seekers who filed their application prior to April 1\textsuperscript{st} 2001;

\textsuperscript{98} Alleenstaande Minderjarige Vluchtelingen, Rol Dienst Terugkeer en Vertrek, Hoorzitting amv’s, Maart 2011, p. 2.
- Asylum seekers who filed their request after the Aliens Act 2000 entered into force; and
- Former unaccompanied minor asylum seekers.

In a Policy Document of May 2001\textsuperscript{100}, the State Secretary announced new measures to limit the inflow of unaccompanied minor asylum seekers and to improve the return policy.\textsuperscript{101} Minors, who are expected not to reside in the Netherlands longer than three years, were placed in the return procedure. The amendments to the return policy were supposed to result in a fast return of most of the unaccompanied minor aliens. The moment the minor became of age, was the latest moment when return had to take place. From that point on (at the age of 18 years), the minor no longer has any right to reception, or to social services. Therefore, the reception facilities of unaccompanied minors had to be aimed at the best possible preparation on the return instead of integration in the Dutch society. The reception was characterized by a central setting combined with a day program focused on return.\textsuperscript{102}

### 3.5 Specific Modifications of the Policy on Unaccompanied Minors

The new return policy, envisaged in May 2001, contained three important adjustments with respect to unaccompanied minor asylum seekers.

First of all, the definition of unaccompanied minor aliens was amended. Prior to 2001, a minor could only be considered as unaccompanied when he was unaccompanied by a parent or another relative. This was changed to ‘any adult who can be regarded to carry the task of providing care for the child’.\textsuperscript{103} This meant that fewer minors qualified for protection as an unaccompanied minor asylum seeker.

Secondly, the unaccompanied minor asylum seeker is obliged to return to his / her country of origin when it can be reasonably assumed that the minor is 16 years or older and is able to support himself. This assumption is based on personal circumstances, for instance whether the minor has had a job prior to his journey to the host country. The means of support will need to be achieved in a manner in order to fulfill the so-called criterion of subjective independence, as will be explained in the next section.

\textsuperscript{103} Aliens Act Implementation Guidelines 2000.
Thirdly, the context of adequate reception in the country of origin was broadened. The presence of parents or relatives used to be assessed as adequate. Since 2001, this is also regarded to be the case when reception is provided by friends, neighbors, or authorities and other institutions that are concerned with shelter, for example orphanages.

3.6 Evidence of Adequate Reception in Country of Origin

The level of sufficient reception as mentioned in the previous paragraph, which is measured through local standards, is determined on the basis of several instruments. To begin with, the asylum policy of the relevant country is taken into account. When this provides a provision that the authorities of the country of origin take care of the reception and guidance of minors, this provides the required level of adequacy. The IND may then presume the presence of sufficient reception in that country. Further, the presumption of adequate shelter can also be based on the personal information provided by a minor during interviews with the Immigration Service. In this case, it is not necessary that the reception is already thoroughly realized in the country of origin. Finally, the Vc 2000 contains a specific list of countries which are defined as an exception regarding protection of the unaccompanied minor. When the IND receives a policy document of the Ministry of Foreign Affairs on one of these countries, this is considered to be a satisfactory document to determine adequate reception. With respect to those countries, it is not necessary to conduct a factual study in the country of origin which is focused on the individual unaccompanied minor.

As mentioned earlier, parents of unaccompanied minors are seen as the first (and best) form of reception. The tracing of parents or other relatives is executed by the DT&V in combination with Immigration Liaison Officers. In individual cases, a request for tracing is presented to the Ministry of Foreign Affairs which passes it on to the Dutch embassy in the relevant country of origin. For the purpose of tracing, it is essential to establish the identity and nationality of the unaccompanied minor as early as possible, so as to provide sufficient leads to make an investigation possible. The United Nations High Commissioner for Refugees (UNHCR) and the Red Cross have been prepared to make their network available for tracing, in order to reunite unaccompanied minors with their parents and family members. However, these two organizations have announced that they are not prepared to trace relatives

105 For example, in 2005 this list included the Democratic Republic of Congo, Iran and Angola.
106 INDIAC – NL EMN NCP, Unaccompanied Minors in the Netherlands, February 2010, p. 49.
on the instruction of the Dutch government without a request from and cooperation by the unaccompanied minor himself.\textsuperscript{107}

### 3.7 Different Models of Reception in the Netherlands

A successful return of unaccompanied minors to the country of origin is related to the reception facilities in the Netherlands. A new admission model was introduced in 2001 which was for reaching implementing for the reception of unaccompanied minor asylum seekers in the Netherlands. Admission of unaccompanied minors is either aimed at return or its object is integration. Minors, who should return to their country of origin, receive reception which is designed to give them the best possible preparation for their return (the return procedure).\textsuperscript{108}

The integration model was designed for minors who were expected to reside in the Netherlands for a period over three years. They are offered reception and guidance in order to accomplish integration in Dutch society. During the period of six to nine months, which the IND needs to decide on the application, minors are admitted to the return model unlike adult asylum seekers; during the period of the first hearing, they are given shelter in a center for orientation and integration.\textsuperscript{109} This difference was based on the understanding of the Cabinet of that time that most of the unaccompanied minors eventually have to return to their country of origin.\textsuperscript{110} The immediate confrontation with the perspective of return, so it was thought, would prevent the children from transfers to another reception facility.

### 3.8 Effects of the Measures

In practice, the proposed structure of reception did not achieve the desired results. In November of 2002, so-called pilot-campuses were established in both Vught and Deelen. Newly arriving unaccompanied minors between 15-18 years of age, who had to return, were admitted to these sites. An intensive structured day program was offered to these unaccompanied minors, which was aimed at preparing the return as well as preventing integration in society. However, in reality, this reception model resulted in a negative effect on the minors. The strict regime caused unrest among the accommodated minors which eventually led to departures with unknown destinations before the actual return could be realized. It was uncertain which organization carried the primary responsibility to motivate the unaccompanied minors to return. Moreover, the supervisors were too busy executing their

\textsuperscript{107} INDIAC – NL EMN NCP, \textit{Unaccompanied Minors in the Netherlands}, February 2010, p. 49.
authority as a result of which the guidance and upbringing of the minors became less of a priority. The main objective, the stimulation of return, was barely accomplished. Therefore, the campuses were closed at the end of 2004. Following the closure of these campuses, a new reception model was put into practice. All the 15-17 year old minors with a perspective of return were admitted to 5 different COA’s; including the minors who had not received a final decision on their asylum application. The positive elements of the pilot-campususes were continued to remain a feature at these COA’s, i.e. the 24-hours guidance as well as the day-and educational program.

In 2005, the Minister decided that no distinction would be made with regard to the reception of unaccompanied minors, in contrast with the policy letter of May 2001. As proposed, children who were allowed to integrate would be given shelter by Nidos. The COA would be the institution to take care of the minors who had to return to their country of origin. This would have meant that Nidos had to transfer its foster care system to the COA, including knowledge and experience. Therefore, the Minister has chosen for a model consisting of the following structure. Nidos remained responsible for the guidance of all unaccompanied minors of 12 and younger who were placed into foster care. All other minors were admitted by the COA in housing communities or units suitable for children. It was possible for the guidance to include both the return and integration model. As long as it remained unclear which future perspective needs to be put into practice, the guidance was focused on preparing the minor for both possible results.111

3.9 Results of the New Return Policy

As said before, the reception of unaccompanied minors was relocated to units near the centers for asylum seekers, due to the problematic conditions at the campuses. This took effect as of January 1st, 2005. The government expected that this and earlier amendments would result in an increase in return to the country of origin and less departures with unknown destination by unaccompanied minors. Based on statistics from the IND112, it can be concluded that the new policy in the area of return appears to be unsuccessful.

Influx of unaccompanied minors 2001 – 2009 related to the total asylum influx

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>5,590</td>
<td>3,230</td>
<td>1,220</td>
<td>590</td>
<td>520</td>
<td>410</td>
<td>430</td>
<td>730</td>
<td>950</td>
</tr>
<tr>
<td>Percent</td>
<td>18%</td>
<td>17%</td>
<td>9%</td>
<td>6%</td>
<td>4%</td>
<td>3%</td>
<td>6%</td>
<td>5%</td>
<td>7%</td>
</tr>
</tbody>
</table>

Departure of unaccompanied minors by voluntary and forced departure: 2003 – 2006

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntary departure from the Netherlands</td>
<td>50</td>
<td>100</td>
<td>40</td>
<td>40</td>
<td>230</td>
</tr>
<tr>
<td>Forced departure from the Netherlands</td>
<td>50</td>
<td>50</td>
<td>30</td>
<td>15</td>
<td>145</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>150</td>
<td>70</td>
<td>55</td>
<td>375</td>
</tr>
</tbody>
</table>

Compared to 2000, when a total of 6,705 unaccompanied minor aliens applied for asylum, the aim to create less inflow in the Netherlands was indeed achieved. In 2005, a total of 515 asylum applications by unaccompanied minors were registered. This means a decrease of 92%, which could be seen as a direct result of the implementation of the 2001 policy on unaccompanied minors aimed at fewer asylum applications. This success, however, did not extent to returns, as the return of rejected minors to the country of origin still did not take place as often as desired. A number of reasons can be given for the relatively low percentage of returned unaccompanied minor asylum seekers. The absence of identity or travel documents in combination with a lack of preparedness to cooperate with departure, either by the minor or the country of origin, creates a situation in which return is difficult to realize. Moreover, return with unknown destination did occur frequently, in particular from the unaccompanied minors-campuses. In the period 2003-2006, only 375 unaccompanied minors returned to their country of origin. 230 minors returned voluntary, while in 145 cases it was a matter of forced return. Moreover, in the years following 2007, the number of asylum applications of minors again increased, even reaching 1,039 in 2009. Thus, a tightening of procedures has not led to a noticeable increase in returns.

3.10 Conclusion

This Chapter has focused on the development of the Dutch return policy, starting at the beginning of the last decade with the 1999 Memorandum and the 1999 Return Report which reflected the acknowledgment of the government that too few unaccompanied minors

---

voluntary returned to their country of origin following a failed asylum application. The new policy concerning the reception and return of unaccompanied minors, which came into effect in 2001, contained a number of important modifications in comparison with the situation prior to 2001. This included an amendment of the definition of sufficient reception in the country of origin as well as a form of reception which is aimed at returning to the country of origin.

The Policy Document of 2001 reflected the central aim of the government to increase the return to the country of origin while creating less inflow in the Netherlands. However, compared to 2004, when the pilot-campuses were introduced, return to the country of origin still does not occur in the majority of the cases, while the number of departures with unknown destination has slightly decreased.\textsuperscript{116} It frequently occurs that efforts to realize the departure of unaccompanied minors finally do not have the desired result, as a result of which the number of unaccompanied minors that have been removed continues to be relatively small.\textsuperscript{117} It can be concluded that over the last decade a number of obstacles have occurred with respect of the return of unaccompanied minor asylum seekers.

\textsuperscript{116} M.H.C. Kromhout, Y.H. Leijstra, \textit{Terugkeer en MOB bij Alleenstaande, Minderjarige Vreemdelingen}, 2006, p. 44.

\textsuperscript{117} INDIAC – NL EMN NCP, \textit{Unaccompanied Minors in the Netherlands}, February 2010, p. 57.
IV Do the proposed reform measures of the Dutch government correspond with the guarantees of International and European Law?

4.1 Introduction

As concluded in Chapter 3, return, and in particular voluntary return, of unaccompanied asylum seeking children has been hard to realize due to extended asylum procedures which have slowed down the intended return. Long procedures are not the only reason return statistics have remained low. Unaccompanied minors can be found eligible to receive a regular residence permit when no adequate reception is available in the country of origin. Effectively, this means that an unaccompanied minor has the right to reside in the Netherlands until the age of 18 years. As a result of this prolonged residence on Dutch territory, unaccompanied minors have more and more often become integrated in Dutch society. Consequently, eventual return to the country of origin is more difficult to accomplish, as a result of the stronger connections with the Netherlands compared to the original bond with the social environment in the country of origin. In order to offer solve these problems, the VVD–CDA Cabinet proposed several reform measures with regard to the return of unaccompanied minors. In the fall of 2010, a number of NGOs and other bodies dealing with children’s rights expressed a major concern towards the announced measures as they considered the measures at odds with international obligations. Partly due to the big emphasis on possible and even probable children’s rights violations, I decided to examine the proposed policy in the light of International and European obligations regarding the rights of unaccompanied minors. Therefore, I will discuss the Coalition Agreement in paragraph 2, the recent developments concerning the Cabinet’s objectives in paragraph 3, the execution of the proposed policy in paragraph 4 and test the incompliance with the guarantees of International and European law in the final paragraph of this chapter.

4.2 The Broader Picture in the 2010 Coalition Agreement

The chapter on Immigration and Asylum in the 2010 Coalition Agreement contains the largest number of pages of all the topics in the agreement, six to be precise. The proposal was aimed at limiting and forcing back the arrival of (unaccompanied minor) migrants with a lack of perspective in the Netherlands. Hence, the policy was based on a ‘strict, but justified’ premise.118 For this purpose, the Cabinet intended to make the maximum use of the

118 Coalition Agreement VVD-CDA, October 2010, p. 21.
possibilities with regard to a strict and selective general asylum policy within the existing legal frameworks.

It will attempt to achieve this aim through several measures. The main tools are legislative proposals and a more intense manner of controlling, enforcing and executing of existing regulations, which include new information systems, the exchange of data and techniques relating to ID-determination. The Coalition intended to cooperate with other countries, in particular with EU Member States and countries of origin, for which purpose the return policy will be tightened.

With regard to unaccompanied minor asylum seekers, maximum effort will be made to create a situation in which return to the country of origin takes place as soon as possible. In order to realize this, it is, according to the Coalition Agreement, necessary to use the Development Aid budget to invest in additional local reception facilities, like orphanages. In the realization of the proposed policy, initiatives are being developed to amend EU Directives; in particular the Qualification Directive and the Return Directive. When it appears that no other alternatives are available in relation to important measures, other States will be consulted to modify certain treaties. However, it is still unclear which specific treaties in relation to the return of unaccompanied minors this might concern. In relation to the return of unaccompanied minors, no further concrete intentions were mentioned in the Coalition Agreement.

4.3 Recent Developments in Specific Measures

The proposed policy in the Coalition Agreement contained general benchmarks with regard to a more effective return policy. In a Parliamentary Letter of July 1, 2011, Minister Leers of Immigration and Asylum announced which specific measures would be taken in order to realize these goals. As stated in Chapter 3, the basic assumption of the Dutch return policy is voluntary return. With a view to stimulate this, five measures can be concluded from the Parliamentary Letter.

First of all, the Cabinet aspires to expand the support of voluntary return. As a result of a negative outcome of the funding of *Stichting Duurzame Terugkeer*, which concerned support of sustainable return and reintegration in the country of origin, a new framework has been developed by the Ministries of Immigration and Foreign Affairs. The REAN program\(^{119}\),

---

\(^{119}\) The program ‘Return and Emigration of Aliens from the Netherlands’ consists of assistance by the IOM to aliens who like to return to their country of origin or resettle in a third country. The financial contribution applies
executed by the IOM since 1992, will be continued in combination with a new system, consisting of both financial assistance and help in kind, for instance assistance in finding appropriate accommodation, education and work. The idea underlying the framework is that more detailed support will lead to an improved perspective of re-integrating and less obstacles in the return process. It will be financed from the budget of Migration and Development.

The second measure is to step up efforts to develop European initiatives on return. Although experiences in other EU Member States show a large diversity with regard to the support of voluntary returning unaccompanied minor asylum seekers, the reasons for offering assistance do correspond with one another. Voluntary return is regarded to be less expensive than forced return or residence, while the willingness of asylum seekers and the country of origin to cooperate in the return process is important as well. The Cabinet, therefore, aims at a common approach of countries of origin and cooperation with several EU Member States in order to realize adequate reception for unaccompanied minor asylum seekers along with joint flights as part of the forced return program.

Thirdly, the cooperation with countries of origin will be strengthened. The Balkenende IV-Cabinet aimed at a stronger embedding of return in the Dutch foreign policy. This was considered necessary in order to achieve the cooperation of countries of origin to realize actual return of minors. As said before, this did not lead to increasingly positive results in the area of (voluntary) return. A strategic country-approach has therefore been developed by the Ministries of Foreign and Internal Affairs. The strategic approach consists of actively developing a cooperative relationship with countries of origin on the subject of all features of migration. Readmission of nationals will be broadly deployed in international contacts as well as in bilateral traffic with such countries, as it is a customary international law obligation. Other, non-migration related, aspects play an important part as well, for instance the area of (economic) development. The purpose of this strategic country-approach is the establishment of a sustainable relationship in order to improve agreements relating to return of (unaccompanied minor) asylum seekers.

Fifthly, the Cabinet aims at a more efficient method of procedures regarding the acquisition of (replacement) travel documents issued by the diplomatic representatives of countries of origin. The DT&V will adopt a more flexible attitude towards information provided by the

to unaccompanied minors who are still in a procedure under the Aliens Act 2000 or to those whose departure period has not yet expired and who have stayed in the Netherlands for a period of more than three months.
(unaccompanied minor) asylum seeker, by no longer screening every document to examine the possibility of a safe return. This will not apply to individuals from a high-risk country. In addition, more information with regard to the procedural background of the asylum seeker will be provided to diplomatic representatives in view of consular protection. The process will be simplified in cases in which this will not involve risk for the respective asylum seeker.

4.4 Realization of the Proposed Return Policy

In November 2011, the State Secretary of Foreign Affairs determined policy guidelines in order to execute the Policy Memorandum on Migration and Development of 2008 as well as the measures announced in the Parliamentary Letter of July 1, 2011 on return in the immigration policy. Although the 2008 Memorandum remains the point of departure for the policy of the Coalition Agreement, the emphasis in the guidelines will be placed on themes like protection of refugees and return, including reception and reintegration of unaccompanied minor asylum seekers in countries of origin.

4.4.1 Stimulation of Sustainable Return and Reintegration

As mentioned as the first measure in § 4.3, (unaccompanied minor) asylum seekers who voluntary returned to their country of origin were either entitled to a financial contribution by the government or request assistance in services, for example with regard to arrangements in education, health care or accommodation in their country of origin. The sustainability of return is in particular expressed in the latter option. Henceforth, it is possible for asylum seekers to utilize both options in order to create the best sustainable return possible.

The financial support used to be based on the Return and Reintegration Regulation, which has been executed by the IOM since 2004. This will be replaced in October 2012 by the general financial component in the proposed framework. The stimulation of voluntary return additionally affects a number of sub-goals. By exchanging best practices and knowledge with NGOs, the understanding in the field of voluntary return will be increased. Moreover, it is important to gain more insight in the effects of assistance in services. This, it is thought, can be accomplished by temporary monitoring the reintegration of former asylum seekers (including unaccompanied minors) after they have returned to their country of origin. Furthermore, by improving cooperation with NGOs and authorities of countries of origin, the local communities where returners settle, will be developed as well. Finally, in order to limit
the influx of migrants with no integration perspective in the Netherlands, information needs to be provided in countries of origin with regard to the Dutch asylum policy.

4.4.2 Strategic Country Approach

In order to give meaning to the strategic country approach, as discussed in § 4.3 as the third measure, the government has decided to make nine million euro’s available for projects contributing to a sustainable return and reintegration of refused asylum seekers, in particular local reception of unaccompanied minors. Although the government has limited the number of development aid-countries to 15, the budget for development aid has been made available to all countries that meet the criteria of the Organization for Economic Cooperation and Development (OECD). However, the support via the means of development aid is subject to the condition that the countries must cooperate constructively with the Netherlands in the area of return. When countries refuse to cooperate or do so at an unsatisfactory level, both the development aid as well as bilateral cooperation in other areas will be reduced.

The Policy Document did not deal with the four other proposed measures on return of unaccompanied minors, as a result of which it remained unclear how the government intended to execute these goals in a more concrete way.

4.5 Compliance of proposed Reform Measures with International and European Law

Although the VVD-CDA Cabinet remained rather vague during the one and a half year of government with regard to concrete measures in relation to the return policy on unaccompanied minors, certain proposals have received a great deal of criticism. Based on the overview of the international and European obligations in Chapter 1 and the proposed return policy in this Chapter, the following paragraph will discuss whether and which measures could violate the rights of unaccompanied minors.

The disapproval of NGOs mainly focuses on the problematic execution of the best interests of the child-principle within the return policy on unaccompanied minors, which already existed prior to the installment of the VVD-CDA Cabinet. Foremost, the criticism has been manifested in position papers on the subject of the concept of financed orphanages in countries of origin. As mentioned before, the Dutch government has realized this model in Angola and the Democratic Republic of Congo. Unaccompanied minor asylum seekers from these States who have received a refusal as a final decision on their asylum application will be returned to one of these reception centers, as this facility fulfills the Dutch requirement of
adequate reception in the country of origin. However, the IND is familiar with only one case in the past six years of a returned unaccompanied minor to the orphanage in Congo. A number of NGOs have expressed their concern that many unaccompanied children may not arrive at these facilities due to child traffickers who wait for them at the airport. Despite this low ratio of effectiveness, the Cabinet continues to finance the orphanages and even aims at setting up another center in Afghanistan because of the high number of Afghan unaccompanied minors who apply for asylum in the Netherlands. The question is whether it is indeed in the best interest of the child to be returned to this type of reception arrangement. Particularly in African countries, social environments vary greatly in different areas of the country. The fact that unaccompanied minors return to the orphanages in either Luanda (Angola) or Kinshasa (DRC), which is not necessarily geographically their social environment to which they return, is not to say that a sustainable reintegration is guaranteed. In addition, it is contrary to the notion of life projects defined by the Council of Europe in Recommendation CM/REC (2007)9 §8.vii, which states that every life project should take account of the situation in the host country, including the availability of opportunities in terms of integration in the country of origin. Thus it can be concluded that the placing of unaccompanied minors in reception centers constitutes a violation of Article 3 CRC, considering the fact that the best interests of the child are not covered.

A second point of criticism by NGOs concerns the definition of adequate reception in the country of origin. According to Defence for Children and UNICEF, the characterization covers a too broad area of reception arrangements. Not only care by parents or other family members have been included, but acquaintances, members of the village and either public or private reception facilities run by the State are included in the definition as well. As a consequence, it is not always in the best interest of the unaccompanied minor to be ordered to return to the country of origin. Especially after a long procedure following an asylum application in the Netherlands, children have often lost any connection with the country of origin, in particular with their social environment and a possible future perspective. The Dutch government, including the IND and the Ministry of Foreign Affairs, should make use of an individual assessment in each case of an asylum application by an unaccompanied minor. The following elements should be taken into account: the family composition and situation, the educational background of the child in the country of origin, the journey motives

---

120 Institute for Rights, Equality and Diversity, *The reception and care of unaccompanied minors in eight countries of the EU*, Synthesis October 2010, p. 49.
and the personal development of the minor. The mere fact that any type of adequate reception exists in the country of origin does not automatically justify the conclusion that the unaccompanied minor can be returned, which could also be seen as a violation of the best interests of the child-principle as stipulated in Article 3 CRC.

4.6 Counter Proposals

To a large extent, the proposed measures in the Policy Memorandum do not deal with the core problems of the return policy. Apart from the additional reception possibilities in countries of origin, the Cabinet does not offer solutions for unaccompanied minors who have resided for a considerable number of years in the Netherlands and because of that, despite an obligation to return, are (fully) integrated in society and do not wish to return to their country of origin. Partly due to this reserved and strict attitude from the Coalition, a number of persons have called for a more humane policy on unaccompanied minors.

4.6.1 Protection of Fully Integrated Unaccompanied Minors in the Netherlands

Two parties from the opposition (the Labour Party and Christian Union) have introduced a Bill concerning asylum seeking children (the so-called Kinderasielwet). According to the proposal, failed asylum seeking children (both children from failed asylum seekers and unaccompanied minors) who have become fully integrated (‘geworteld’) in Dutch society should be given a residence permit. In order to be eligible for such a permit, these children need to have lived in the Netherlands for over 8 years. In case of a child who arrived on Dutch territory as an unaccompanied minor and resided here until the age of 18, the minimum length of stay has been determined at 5 years. The two parties are of the opinion that the length of time in these cases should be shorter because children without parents settle more quickly into Dutch society.\footnote{RNW News Desk, Bill proposes allowing young asylum seekers to stay, 25 October 2011.}

Moreover, in order to prevent illegally staying children from receiving a residence permit, the residence authorization will only be issued when the children have remained ‘in sight’ of the government. An additional condition stipulates that wrong decisions or a lack of decision taking by the government should have (partly) caused the long length of asylum procedures.\footnote{In Nederland gewortelde minderjarige vreemdelingen, Nederlands Juristenblad, 9 March 2012, Afl. 10, p. 717.}
4.6.2 Objections against Kinderasielwet

However, the Council of State, the Parliament’s advisory body, is of the opinion that important legal objections can be raised against the Bill as well as remarks with respect to the content of the proposal. From a legal point of view, the Council observes that a specific Bill regarding asylum seeking children is unnecessary due to the existing discretionary power of the Minister of Immigration and Asylum. Besides, the Vw 2000 already contains the possibility of granting a residence permit to certain categories of failed asylum seekers, based on the ‘through no fault of their own’ policy.

Furthermore, the Council of State made three contextual observations. First of all, the Council states in its advice that the proposal offers no solution for the causes of long asylum procedures, as a result of which the problem continues to exist. It is preferable to aim efforts at the quickening and/or the improving of procedures, in order to prevent unnecessary long asylum procedures. Furthermore, the advisory body points out that the Bill creates legal inequality compared to those children who did return to their country of origin after receiving a refusal of their asylum application. The proposal rewards those who remain in the Netherlands despite an obligation to return, which will lead to arbitrariness. The final point of criticism concerns the fact that the main condition of ‘geworteldheid’ has not been given a clear definition, but will be drawn from the length of stay of 8 or 5 years in the Netherlands. A criteria merely based on a time period will not only create another pull factor for new asylum seeking children, but will also cause a difficult practicality.123

4.6.3 Immediate Discontinuation of Expulsion of Unaccompanied Minors

In May 2012, the Children’s Ombudsman of the Netherlands, Marc Dullaert, called upon the 2nd Chamber to declare the expulsion of unaccompanied asylum seeking children a controversial matter. If the 2nd Chamber acts upon this call, the subject of expulsion will become a sensitive matter on which the current outgoing Cabinet no longer may decide.124 A couple of months earlier, in March 2012, the Children’s Ombudsman made a number of recommendations in the report ‘Wachten op je Toekomst’125, on the position of and admission

124 I have tried to include the most recent (political) developments regarding the return policy on unaccompanied minors in this thesis. However, due to the final deadline, results of the meeting of the 2nd Chamber on Wednesday, 16 May 2012 on possible declarations of controversial matters could not be included.
125 De Kinderombudsman, Wachten op je Toekomst: Adviesrapport over de positie van en toelatingscriteria voor vreemdelingenkinderen, 8 March 2012.
criteria for asylum seeking children. The core recommendation entails the development of a general instrument to measure the (mental) health and well-being of unaccompanied minors in order to justify the best interests of the child. In addition, the Ombudsman is of the opinion that Article 3 CRC is too little reflected in the decision taking by the IND.

4.7 Conclusion

The 2010 Coalition Agreement aimed at an as fast as possible return of unaccompanied minors subject to the condition that local reception is guaranteed. Preferably, the minor returns to his parents or other relatives, though alternative reception facilities are utilized as well. Therefore, the tracing of family members of unaccompanied minors in countries of origin will be stimulated by cooperating with the UK, Sweden and Denmark. The Dutch government finances reception houses (orphanages) in Angola and the Democratic Republic of Congo. In cooperation with other EU Member States, attempts will be made to realize new reception locations. In particular, possibilities to create adequate reception in Afghanistan are being examined. When this initiative will be executed, it could be in breach with Article 3 CRC, as the best interest of unaccompanied minors will probably be violated due to a lack of sufficient child protection standards.

As a reaction to the ‘strict’ policy of the VVD-CDA Cabinet, the opposition introduced a Bill in order to offer protection to asylum children who have reside on Dutch territory for at least eight years. Despite the good intentions of the Labour Party and Christen Union, the requirements for a residence permit have not been thought through. The Bill could lead to legal inequality and will reward those unaccompanied minors who did not obey the obligation to return to their country of origin.

Despite all the commotion created by human rights organizations and political parties, the 2010 Coalition Agreement as well as the Parliamentary Letter of 1 July 2011, does not contain concrete measures that offer specific solutions to the low number of voluntary returned unaccompanied minors. The proposals that could be in breach with international obligations, specifically Article 3 CRC concern the ‘best interests of the child’-principle, have not been developed properly. However, with the fall of the VVD-CDA Cabinet in April 2012, the question is whether it will be possible to execute these proposals as the coalition parties no longer have a majority of votes in the 2nd Chamber. Thus it can be concluded that the proposed reform measures of the Dutch government correspond with the guarantees of international and European law.
V Which lesson(s) can the Dutch government learn from the United Kingdom and Sweden concerning the policy on return of unaccompanied minor asylum seekers?

5.1 Introduction

Along with the Netherlands, a number of EU governments are struggling how best to implement return policies. The aim of this comparative study is to see whether the United Kingdom (UK) and Sweden are confronted with the same problems with regard to the return of unaccompanied minors and, if so, how these governments handle the difficult situation with respect to the obligation to comply with international and European law and returning unlawfully residing unaccompanied minors.

Given the fact that the same laws apply to the UK and Sweden as other EU Member States, the comparison with the Netherlands is easy to draw. Furthermore, I have chosen these two countries due to the resemblances with the Netherlands. Besides the corresponding development as a western country, these three states show great similarity with regard to the nationalities of unaccompanied minors who apply for asylum. Afghanistan, Iraq and a couple of African nations form the main countries of origin in the Netherlands, as well as in the UK and Sweden. Moreover, in cooperation with Norway, the three governments have created the European Return Platform for Unaccompanied Minors (ERPUM), which aims to find new, practical methods for the return of unaccompanied minors who need to return home after receiving a final rejection of their asylum application. The project is financed by the European Return fund and started in 2011. The UK and the Netherlands have also joined forces with the Scandinavian countries in order to strengthen their collaboration with regard to the tracing of parents or guardians in the countries of origin. The forum was created to exchange knowledge and experience relating to different solutions and possibilities in countries of origin, with a primary focus on Afghanistan and Iraq. Given that both the UK and Sweden have the tendency to cooperate with the Dutch government in relation to unaccompanied minors, their national policies are of significance for the Netherlands as well. Therefore, I will discuss the institutions responsible for the policy in Sweden and the UK (§1), the legal framework (§2), the asylum procedure and its possible outcome (§3/4), finally some

---

127 European Council on Refugees and Exiles in strategic partnership with Save the Children, A Comparative Study on Best Practices in the field of Return of Unaccompanied Minors, November 2011, p. 3, p. 16
statistics relating to the return of unaccompanied minors to their country of origin are presented and discussed in paragraph 5.

5.2 UK Policy on Unaccompanied Minors

5.2.1 Institutional Framework

The Home Office bears, in cooperation with the Secretary of State for Immigration, the responsibility for the immigration and asylum policy in the UK. Within the Home Office, the UK Border Agency regulates entry and stay of non-nationals through the presence of Immigration Officers. Based on information provided by the individual during the initial interview, the Immigration Officer decides whether or not to grant leave to enter the UK.

After an asylum application has been submitted, case owners (employees of the UK Border Agency) deal with the claim. In the case of unaccompanied minors, the case owner will be a specially trained person qualified to work with children. The social services departments of the local authorities are responsible for providing support, including accommodation, to unaccompanied minors during the entire asylum procedure. Unaccompanied minors under the age of 16 are normally placed with a foster parent or in residential care. Housing for children aged between 16 and 18 is provided in shared flats or supervised accommodation.

5.2.2 Legal Framework

The UK Immigration Act 1971 and its Immigration Rules govern the asylum and immigration system. Several provisions are specifically related to unaccompanied minors. The Immigration Rules contain specific provisions for asylum seeking children. Paragraph 350 requires that, in view of their potential vulnerability, particular care and priority should be given to applications made by minors.

The Children Act 1989, which is only applicable in England and Wales, is the main Bill with regard to unaccompanied minors. Articles 17 and 20 place a duty on all local authorities for all children in their area to safeguard and promote the welfare of children who are in need and to meet these needs by providing a range of services, including accommodation. The

---

131 Immigration Act 1971, UK ST 1971 c.77
132 Immigration Rules 1971, HC 251
133 Children Act 1989, UK ST 1989 c.41
requirement to safeguard and promote the welfare of children has also been included in Article 55 of the Borders, Citizenship and Immigration Act 2009 which replaced the Code of Practice for Keeping Children Safe from Harm.

Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 requires the Secretary of State to attempt to trace the child’s family as soon as possible after the child makes an asylum application. In practice, this usually takes place after the asylum claim has been determined.

Prior to September 2008, the UK held a reservation to Art 22 UN Convention of the Rights of the Child that states ‘the best interest of the child’ has priority when dealing with asylum applications from unaccompanied minors. This State applied the best interests of the child-principle as a subsidiary principle in immigration issues. The obligation to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration can be demonstrated by adherence to section 55 of the Borders, Citizen and Immigration Act 2009.135

With regard to the national implementation of the European Directives and Council Decisions related to return, the UK is party to 4 of the 6 existing Council Directives and Decisions. The UK is not a party to the Return Directive, as a result of the British government’s overall policy of retaining control over conditions of entry and stay, including the returns procedure.136 Furthermore, the British government has not implemented the Directive on assistance in cases of transit for the purposes of removal by air (2003/110/EC).

5.2.3 Asylum Procedures

The policy and practice of the British government towards unaccompanied minors is characterized by a tension between the UK’s preventative and deterrent asylum policies and its government’s increasingly explicit commitment to child-centered policies.137 However, the UK does not detain or send children back to the border if their minority is confirmed at the initial identification.138 Although the UK has implemented welfare restrictions on minors, the government provides aftercare in terms of accommodation and financial assistance to

unaccompanied minors. Unaccompanied minors are entitled to several rights during the asylum procedures. They have the right to receive legal aid, the right to be accompanied during interviews and to be assessed by a medical specialist. In order to take account of the vulnerability of children, the asylum procedures for minors are slightly different compared to the regular asylum procedures for adults. When the New Asylum Model entered into force in 2007, a couple of amendments were made to improve the process for unaccompanied minors. Children over the age of 12 are now interviewed about their asylum claim. In addition, unaccompanied minors are given a designated case owner who serves as a guide during the entire application process. Unlike the Netherlands, the UK is not familiar with a system of guardianship for unaccompanied minors. According to the British government the care given to unaccompanied minors by the local authorities fully complies with the Reception Directive, although Article 19 of that Directive requires Member States to ensure the necessary reception of unaccompanied asylum seeking children by legal guardianship or, where necessary, representation by an organization responsible by their care and wellbeing.

5.2.4 Possible Outcomes of Asylum Applications made by Unaccompanied Minors

- **Recognition of refugee status and a grant of asylum**

  The (unaccompanied minor) asylum seeker is recognized as a refugee when he meets the requirements of the 1951 Convention and its 1967 Protocol as well as Paragraph 334 of the Immigration Rules. Consequently, he will be granted asylum and receive the protection as set out in the Convention. In order to qualify for asylum, the applicant is required to show a ‘reasonable degree of likelihood’ (a real and substantial danger) of persecution. However, not all situations are covered by the 1951 Convention. Therefore, the UK provides subsidiary and complementary protection to (unaccompanied minor) asylum seekers.

- **Humanitarian Protection (HP)**

  When the criteria for asylum are not fulfilled, it is possible for the asylum seeker to be granted Humanitarian Protection on the grounds of Paragraph 339C and D of the Immigration Rules. In that case, the applicant must run a real risk of serious harm in

---

the country of origin. This harm can be caused by the death penalty (Article 2 ECHR) or another form of execution, unlawful killing, torture or inhuman and degrading treatment or a serious and individual threat to a person, as stipulated in Article 3 ECHR.

- **Discretionary Leave (DL) under general policy**
  Both adult asylum applicants as unaccompanied minors, who do not qualify for either refugee status or humanitarian protection, could apply for a grant of Discretionary Leave. Under general policy, this means, that if return to the country of origin would breach certain rights covered in the ECHR, Discretionary Leave will be granted for a limited period of three years.\(^{142}\) These infringed rights usually concern those mentioned in Article 3 and 8 of the ECHR, namely the principle of non-refoulement and the right to respect to private and family life when it has been established in the UK. Case owners then have to take into account the best interests of the child as part of the balancing exercise that needs to be conducted under Article 8(2) of the Convention.\(^{143}\)

- **Discretionary Leave (DL) under Unaccompanied Asylum Seeking Children (UASC) policy**
  When the general criteria for Discretionary Leave are not met, unaccompanied minors could be eligible for DL protection under the unaccompanied asylum seeking children’s policy. This status is directly linked to the UK’s commitment not to return a child if safe and adequate reception provisions cannot be guaranteed in the country of origin.\(^{144}\)

In order to qualify for DL, three requirements must be fulfilled. To begin with, the family of the child cannot be traced. In general, family reunification is regarded to be in the best interests of the child. Secondly, adequate reception and care arrangements are not available in the country to which they would be returned. Adequate reception is assumed to be present in the country of origin when the UK Border Agency has

---


\(^{144}\) Institute for Rights, Equality and Diversity, *The reception and care of unaccompanied minors in eight countries of the EU*, Synthesis October 2010, p. 32.
made arrangements with NGOs or other organizations to provide specific assistance on return. Finally, the option of voluntary return has been explored and rejected by the child.145

DL is either granted for three years or until the minor has reached the age of 17 and half years old, whichever is the shorter period. Those who qualify for DL under both the general policy and the UASC policy must benefit from the more generous grant.146 If a refusal decision is followed by a grant of Discretionary Leave for less than 1 year, the unaccompanied minor has no right to appeal. A request for prolonging the leave is often denied, unless this means a breach of Article 3 or 8 of the ECHR. This is based on the notion that a young adult is not in the need of care and has not yet established family life in the UK.

- **Refusal**

When none of these four options are the outcome of the case, the asylum application is denied. The refusal will be either outright or based on non-compliance with the duty to submit information when requested. In the latter case, the applicant has failed, without reasonable explanation, to make a prompt and full disclosure of material facts to assist the Secretary of State in establishing the facts of the application.147 The refusal will be outright when adequate reception and care arrangements are available in the country of origin. The Home Office will then provide information on the obligation to return as well as practical assistance in cooperation with the IOM in order to realize return.

### 5.2.5 Statistics on Unaccompanied Minors

Since 2005, there has been a slow but steady increase in applications by unaccompanied minors, with the greatest increase coming for children with the Afghan nationality.148 In 2008, the National Register for Unaccompanied Children suggested that legislative restrictions placed on single adult asylum applicants and families have introduced new incentives for

---

adults to claim to be children and for families to present their children as unaccompanied.\textsuperscript{149} In 2008, 4258 unaccompanied minors submitted an asylum application in the UK. In 24.6\% of these cases the age of the minors was disputed and they were treated as adults.

<table>
<thead>
<tr>
<th>Year</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of UASC applications</td>
<td>6,200</td>
<td>3,180</td>
<td>2,990</td>
<td>2,965</td>
<td>3,450</td>
<td>3,645</td>
<td>4,285</td>
</tr>
</tbody>
</table>


In 2009, in 55\% of the cases of unaccompanied minors seeking asylum DL was granted. Many unaccompanied asylum seeking children remain unlawfully within UK borders without any care or support. It should be noted that unaccompanied minors are not subject to forced return in practice. When unaccompanied seeking children do not voluntary return to their country of origin, the UK Agency Border does not execute forced returns as a result of which many unaccompanied minors reside on British territory on an unlawfully basis.

5.3 Swedish Policy on Unaccompanied Minors

5.3.1 Institutional Framework

Within the area of asylum and immigration, the Swedish Migration Board is the responsible administrative institution. It carries the main responsibility for the reception of asylum seekers, from the date on which an asylum application has been submitted until the person has been granted a residence permit or has left the country.\textsuperscript{150} According to Article 716 of the Swedish Aliens Act 2005\textsuperscript{151}, the Swedish police are authorized to conduct border controls, assisted by customs and the coast guard. Another important agency within the asylum policy is the Social Welfare Committee, located in each of the 290 municipalities. When unaccompanied minors are granted a residence permit, the municipalities are responsible for appropriate housing and care arrangements. County councils are obliged to offer health, medical and dental care which is regulated in the Health and Medical Care for Asylum Seekers and Others Act (2008:344).\textsuperscript{152}

In 2010, due to the problematically low number of accommodation facilities for unaccompanied children, several actions were undertaken by the Migration Board, Save the


\textsuperscript{151} Aliens Act 2005 [2005:716]

\textsuperscript{152} Government Offices of Sweden, Reception of asylum seekers, January 2011
Children Sweden and the Swedish Association of Local Authorities and Regions. The Migration Board signed agreements on the number of places and raised the state compensation for the care provided by municipalities. The authorities of the municipalities were urged to show a greater commitment and involvement in affording reception and housing places for unaccompanied minors.

Furthermore, a special coordinator was appointed to work alongside the Migration Board in order to improve the realization of an increase in the number of reception places. The number of staff has also been doubled to create enhanced working conditions. In addition, the number of asylum application offices has been increased, from 4 to 9 offices located over the whole country. The Migration Board and the Migration Courts (3) independently examine and handle applications for asylum and all other applications related to immigration.\textsuperscript{153}

5.3.2 Legal Framework

Like in the Netherlands, the return policy in Sweden is viewed as central for an effective asylum and immigration policy. The Swedish Aliens Act, which entered into force in March 2006, regulates the national migration system. It was recently revised in order to comply with the EU Directives that have to be implemented into Swedish legislation. The legislative amendments necessary to comply with the obligation to implement the Asylum Procedures Directive and the Qualification Directive came into force on 1 January 2010. In addition, the asylum procedures are governed by the Reception of Asylum Seekers and Others Act\textsuperscript{154} and the Reception of Asylum Seekers and Others Ordinance.\textsuperscript{155} With regard to other European obligations, Sweden has implemented all 6 of the Council Directives and Decisions related to return of unaccompanied minors. This includes the Return Directive, the Directive on the mutual recognition of decisions on the expulsion of third country nationals (2001/40/EC) and Decision 2004/573/EC on the organization of joint flights for removals of third country nationals who are subjects of individual removal orders.

In relation to unaccompanied minors, a number of provisions of the Aliens Act are of importance. Article 716 of the Aliens Act requires that a child is able to express its views in resident permit cases. Statements made by the child must be taken into account with due

\textsuperscript{154} Reception of Asylum Seekers and Others Act, 1994
consideration of the child’s age and maturity. Sweden has signed and ratified the UN Convention on the Rights of the Child without any reservation. Primary consideration must, therefore, be given to the best interests of the child within the meaning of Article 3 of that Convention. Section 10 of the Aliens Act requires that the Migration Board must pay particular attention to the interests of children.

5.3.3 Asylum Application Procedures

In Sweden, minority of a person does not result in a dispensation from the obligation to possess a residence permit. The asylum application procedure is the main possibility for a minor to gain a status and thus rights. Unaccompanied minors are authorized to enter the territory in order to be issued with the application of general procedures. Prior to the asylum application of an unaccompanied minor, a guardian is appointed who is required to sign the application. In order to fulfill the criteria of Article 3 CRC, to give priority to the best interests of the child, the Migration Board ensures that all its actions during the asylum process meet the needs of children. For instance, the personal reasons of minors are assessed and reported in a decision, and the staff is specifically trained to work with children during interviews and in reception facilities. The examination of the asylum application is adapted to the personal circumstances of the child, e.g. age, health and maturity. The investigation includes determining the identity and nationality of the minor and his or her reasons for coming to Sweden. The Migration Board also tries to establish the names of the parents or relatives, as this is an important element in the realization of return to the country of origin. During the asylum procedure, unaccompanied minors have the right to accommodation, schooling and health care, although school attendance is not compulsory for them.

5.3.4 Possible Outcomes on Asylum Applications made by Unaccompanied Minors

The Aliens Act offers protection to two categories: refugees and persons otherwise in need of protection. Unaccompanied minors have the same rights as adult asylum seekers and could be qualified as either refugees or persons otherwise in need of protection. Asylum applicants who fulfill the criteria for refugee status determined by the 1951 Convention and its 1967 Protocol are entitled to a permanent residence permit. Applicants who cannot be recognized

as a refugee could still be eligible for international protection and a permanent residence permit if one of the following situations occurs:

- A well-founded fear of suffering the death penalty, torture or other inhuman or degrading treatment or punishment (as stated in Article 3 ECHR);
- An external or internal armed conflict in the country of origin causes a well-founded fear of being subjected to serious abuses (Article 15(c) ECHR)\(^{159}\); or
- An environmental disaster prevents a return to the country of origin.\(^{160}\)

Unaccompanied minors have one additional option in order to receive a residence permit, for reasons other than protection. On the basis of family ties in Sweden, the minor can file a request with the Division for Migration and Citizenship of the Migration Board. Other than this supplementary possibility, no protection is offered to unaccompanied minors.

A refusal of the asylum application may be appealed to a Migration Court or to the Migration Court of Appeal, the supreme instance which only accepts cases which are of significance to case law. When the appeal is not legitimate, the applicant (being an adult or a minor) is required to leave the Swedish territory within a specific period of time, usually two or three weeks. The Migration Board, in cooperation with the reception unit, provides assistance in order to realize the required preparations for voluntary return under humane and dignified conditions. In the case of unaccompanied minors, the return will only take place when it is ensured that the child is received by parents, relatives or other appropriate recipients in the country of origin.\(^{161}\) In order to stimulate voluntary return initiatives, the Swedish government has launched a financial support program, the so-called Return Fund. During 2010, approximately 1500 individuals, mainly Iraqi nationals, were granted an allowance.\(^{162}\) Unaccompanied children who do not comply with the order to return are not entitled to education.

5.3.5 Statistics on Unaccompanied Minors

The number of unaccompanied minor asylum seekers in Sweden has increased gradually over the last couple of years. In 2008, 2774 unaccompanied minors arrived in Sweden; an increase

---


of 19 percent compared with the previous year.\textsuperscript{163} Between 2007 and 2009, 53 unaccompanied minors returned to 29 States. In 2010, 2392 unaccompanied minors submitted an asylum application, which accounts for approximately 7 percent of all asylum applications in Sweden. Of the 1937 cases involving unaccompanied minors processed by the Migration Board in 2010, 66 percent of applicants were granted a residence permit.\textsuperscript{164}

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total applications</strong></td>
<td>398</td>
<td>820</td>
<td>1264</td>
<td>1510</td>
<td>2250</td>
<td>2392</td>
</tr>
<tr>
<td><strong>from Iraq</strong></td>
<td>69</td>
<td>337</td>
<td>621</td>
<td>464</td>
<td>110</td>
<td>93</td>
</tr>
<tr>
<td><strong>from Afghanistan</strong></td>
<td>27</td>
<td>98</td>
<td>160</td>
<td>347</td>
<td>780</td>
<td>1153</td>
</tr>
<tr>
<td><strong>from Somalia</strong></td>
<td>33</td>
<td>101</td>
<td>189</td>
<td>345</td>
<td>913</td>
<td>533</td>
</tr>
<tr>
<td><strong>Others</strong></td>
<td>269</td>
<td>284</td>
<td>294</td>
<td>354</td>
<td>447</td>
<td>614</td>
</tr>
</tbody>
</table>

Source: European Migration Network, 2011

In 2010, twenty unaccompanied minors returned to their country of origin, mainly Iraq and Serbia. No distinction was made in voluntary and forced return, but in practice very few unaccompanied minors are the subject of forced return.

5.4 Conclusion

This Chapter has focused on the situation in Sweden and the UK on the return of unaccompanied minors, to examine whether these two countries have to deal with the same difficulties as the Dutch government. The essential problems, as established in the Chapter 3, in the Dutch return policy on unaccompanied minors are:

- No adequate reception arrangements are available in the country of origin as a result of which temporary residence in the Netherlands is necessary.
  - The temporary residence may lead to a prolonged stay of a number of years, due to long procedures and appeals. The minor becomes fully integrated in society (‘worteling’) and loses all connection with the country of origin, like in the case of Mauro Manuel.
  - Unknown figures of unaccompanied minors, who have no right to reside in the Netherlands, disappear in illegality after turning 18, when the temporary residence is brought to an end. In addition, a number of unaccompanied minors decide to leave with unknown destination prior to this moment.

\textsuperscript{163} Policies on Reception, Return, Integration Arrangements for and Numbers of, Unaccompanied Minors - Sweden Report for a Comparative Study, 2009, p. 4.
- Although adequate reception facilities are available in the country of origin, no responsibility is taken with regard to care of the unaccompanied minor. For example, family members fail to meet them at airports and the minor is likely to end up with traffickers.

With regard of the length of asylum procedures, both the UK and Sweden aim at a fast processing of the asylum applications of unaccompanied minors. In Sweden, the objective is to process within three months, whereas the procedural timeframe is theoretically six months.\(^{165}\) However, in practice the processing usually takes more than five months, which is also the case in the UK.

In relation to the (negative) consequences of the temporary residence permit in the Netherlands, the two countries handle the additional protection of unaccompanied minors in a different way. The UK has, compared to the Dutch policy, a similar way of offering additional protection to their vulnerability by setting out the criteria for DL under UASC policy. Minors with a temporary residence authorization specific to unaccompanied minors cannot be returned to their country of origin due to a lack of adequate reception conditions.\(^ {166}\) However, the process following differs from one another. Unlike the Netherlands, where the minor is obliged to return to the country of origin when the age of 18 years has been reached, the UK reviews the decision to grant DL under UASC policy in order to see whether a change has occurred in the personal circumstances. When the age of 17.5 years is reached, the situation of the minor is assessed to ensure the criteria of the status are still being met. This assessment can result in a grant of a temporary residence permit based on DL under general policy, Humanitarian Protection or even in a refugee status. When the minor no longer meets the criteria of neither DL under UASC policy nor any other status, he will be refused further leave in the UK and will be obliged to return to the country of origin or another third country.

Based on this process, it is fair to state that the UK’s policy with regard to unaccompanied minors offers more attentive care and consideration of the best interests of the child-principle of Article 3 CRC compared to the Dutch policy, especially in the light of the Cabinet’s intention to discard the regular residence permit for unaccompanied minors.

\(^{165}\) Institute for Rights, Equality and Diversity, The reception and care of unaccompanied minors in eight countries of the EU, Synthesis October 2010, p. 68.

\(^{166}\) Institute for Rights, Equality and Diversity, The reception and care of unaccompanied minors in eight countries of the EU, Synthesis October 2010, p. 32.
The Swedish Migration Board, on the other hand, assesses the asylum application on the criteria under the 1951 Convention and Article 3 of the ECHR, specifically whether the applicant (adult or minor asylum seeker) can be recognized as a refugee or whether humanitarian protection should be offered in case of a well-founded fear of inhuman treatment, a well-founded fear of suffering serious abuses or a natural catastrophe preventing a return to the country of origin. Unaccompanied minors are merely offered one additional possibility for a residence permit, based on family ties in Sweden. This is in fact an odd element in the policy, considering the fact that most unaccompanied minor asylum seekers do not have any relatives in the country where they file their asylum application. Furthermore, Sweden withholds the right to education from unlawfully residing children, which constitutes a violation of Article 22 CRC. The Swedish policy does, however, contain a better provision with respect of the best interests of the child-principle of Article 3 CRC in relation to the ending of a minor’s status. An unaccompanied minor’s status will not change strictly on the basis of coming of age. Perhaps the Dutch government should revise the strict stipulation that unaccompanied minors have to return to their country of origin when they reach the age of 18 years, considering that an immediate change of living circumstances is not always in the best interest of the young adult, especially not when the child has become fully integrated in society.

With regard to the two final problems (the large figures of unaccompanied minors who depart with unknown destination and the problematic conditions in the country of origin), it can be concluded that both countries are confronted with these matters. However, neither the UK nor Sweden has found an appropriate solution for these problems.

Overall, the conclusion can be drawn that the situation in EU Member States regarding the problematic realization of the return of unaccompanied minor asylum seekers corresponds with one another. Although, the UK’s and Sweden’s policy on unaccompanied minors may have a more humane character, it has thus far not led to better results in the number of voluntary returned unaccompanied minor asylum seekers.

---

167 Institute for Rights, Equality and Diversity, *The reception and care of unaccompanied minors in eight countries of the EU*, Synthesis October 2010, p. 34.
Conclusion

Under international public law, States have the exclusive competence to establish laws governing the conditions relating to the entry and residence of foreign nationals on their territory.\textsuperscript{168} The Dutch legal framework on the asylum policy, and specifically the return policy on unaccompanied minors, is based on the Aliens Act 2000, the Aliens Degree 2000 and the Aliens Act Implementation Guidelines 2000. However, States must also obey a number of legal instruments regarding the rights and protection of (unaccompanied minor) asylum seekers. These instruments consist of the Convention Relating to the Status of Refugees, the Convention on the Rights of the Child, the European Convention on Human Rights, the International Convention on Economic, Social and Cultural Rights and the International Convention on Civil and Political Rights. The core obligations in relation to the protection of unaccompanied minors are Article 1A of the Refugee Convention on the status of refugee, Article 3 CRC regarding the best interests of the child-principle, Article 22 CRC and Article 3 ECHR. Besides these conventions, three Council Directives offer additional protection to unaccompanied minors, specifically the Directive on Qualification and Status, the Reception Directive and the Return Directive.

Despite or for the reason of these international obligations, the Dutch government has been confronted with a large number of unaccompanied minors who have not returned to their country of origin. The following problems regarding return of unaccompanied minors can be established:

- Despite intentions to create a fast asylum procedure, long procedures are still the main cause of a prolonged residence of unaccompanied minors in the Netherlands. Two other reasons for the long residence on Dutch territory can be concluded from Chapter 2 and 3. As a result of a lack of adequate reception in the country of origin, unaccompanied minors receive a temporary residence permit. Although the permit expires when the minor becomes of age, return is difficult to realize due to the attitude of the former unaccompanied minors who have lost connections with their country of origin. They either departure with unknown destination or reside unlawfully on within Dutch borders.

With regard to realizing actual return to country of origin, two problems occur frequently. First of all, parents or other relatives who have promised to arrange adequate reception facilities do not take responsibility, for example at the airport, which increases the risk of traffickers picking up the minors. Secondly, it has also occurred that while unaccompanied minors were supposed to return to the orphanage in Angola, ‘family members’ arrived at the airport to take them home.

It can be concluded from the statistics given in Chapter 3 that the vast majority of unaccompanied minors who apply for asylum in the Netherlands are economic refugees. Compared to many countries of origin, the Dutch economic position creates better circumstances with regard to health care, social services and employment. Unlike Convention refugees, who will receive international protection due to their well-founded fear of persecution, the State does not grant protection to those who come here for economic reasons. The Dutch government offers financial and material assistance to unsuccessful unaccompanied minor asylum seekers who voluntary return to their country of origin. This support (a sum of €1500 and assistance in realizing accommodation, education and health care) is provided to ensure a sustainable return and comes to an end when the minor turns eighteen.

However, it is unclear whether and how these young adults actually reintegrate in the country of origin. Western countries have different standards with respect to the upbringing of children and adolescents compared to African and Arabic countries. In order to enhance the living conditions and economic perspective of unaccompanied minors in their countries of origin, the Netherlands should put more effort and money into projects regarding education, health care and accommodation. This will allow the government of the country of origin to offer more possibilities to unaccompanied minors which will lead to less economic asylum seekers in the Netherlands. This is, however, not a legal obligation, but a moral obligation which the Netherlands should continue to live up to. The proposed plan to cut the budget of development aid and additionally make use of the amount that is left over for the construction of orphanages in countries of origin should, therefore, be reconsidered.

The other core proposal of the 2010 Coalition Agreement held the intention to continue the financing the orphanages and setting up another center in Afghanistan because of the high number of Afghan unaccompanied minors who apply for asylum in the Netherlands. When this proposal will be executed, it will constitute a violation of Article 3 CRC, as it is
questionable whether these centers achieve sustainable return of unaccompanied minors and whether they hold sufficient child protection standards.

Furthermore, it seems to be the case that the ‘best interests of the child’-principle of Article 3 CRC is taken into account at the start of the asylum procedure. Unaccompanied minors are given the possibility to express their thoughts as well as the possibility to execute their right to education, legal assistance and health care. Nevertheless, when the decision on return to the country of origin is taken, the best interests of the minor are often related to the best interests of the Dutch State, which are aimed at an increase of voluntary return of unaccompanied minors.

Traditionally, other Member States face a number of challenges in considering the return of unaccompanied minors. It can be concluded from Chapter 5 that both the UK and Sweden are confronted with the questions how to assess the situation and circumstances in both the Member State and the country of origin, and how to assess the best interests of the child.\textsuperscript{169} The Swedish government aims at a short waiting period (3 months) to increase the number of voluntary returns by unaccompanied minors. The average length of decision taking in their asylum applications, however, is estimated at five and a half months.

Similar to the Netherlands, the UK as well as Sweden has a reception centre in a country of origin (Afghanistan) which, according to the governments, qualifies as adequate in order to send unaccompanied minors with that nationality back to their country of origin. Though the authorities impose an examination of the guarantees in the country of origin, the assessment of the best interests of the child seems to be incomplete.\textsuperscript{170} Little evidence is available concerning the suitability of orphanages for the protection of unaccompanied minors.\textsuperscript{171} International research has shown that placement in an orphanage leads to serious development threats in the cognitive, social and emotional fields of a returned unaccompanied minor due to a lack of a family environment.\textsuperscript{172} Therefore, the three countries should continue to exchange best practices and knowledge as part of the ERPUM, in order to find a solution for not only shorter asylum procedures, but improved return policies on unaccompanied minor asylum

\textsuperscript{169} European Council on Refugees and Exiles in strategic partnership with Save the Children, \textit{A comparative study of best practices in the field of return of minors}, December 2011, p. 190.
\textsuperscript{170} Institute for Rights, Equality and Diversity, \textit{The reception and care of unaccompanied minors in eight countries of the EU}, Synthesis October 2010, p. 42.
\textsuperscript{171} European Council on Refugees and Exiles in strategic partnership with Save the Children, \textit{A comparative study of best practices in the field of return of minors}, December 2011, p. 16.
\textsuperscript{172} European Council on Refugees and Exiles in strategic partnership with Save the Children, \textit{A comparative study of best practices in the field of return of minors}, December 2011, p. 199.
seekers as well. At this moment, the Dutch government cannot learn any lessons from the United Kingdom and Sweden in relation to a more effective policy on return of unaccompanied minor asylum seekers.

The attention given by media and public to the case of Mauro Manuel showed, once again, the growing concern of the Dutch society that the existing return policy on unaccompanied minors is condemnable. In my opinion, however, NGOs and political parties have taken advantage of the hype surrounding Mauro to attack the VVD-CDA Cabinet on its proposals, while the possible violations of international obligations are the consequence of the policy created by the several Balkenende-Cabinets. Within the period October 2010 – April 2012, no concrete measures have been developed on the return of unaccompanied minors to countries of origin. For that reason, the main conclusion can be drawn that a greater part of the proposed policy of the VVD-CDA Cabinet with regard to the return of unaccompanied minor asylum seekers is in compliance with fundamental rights, guaranteed by international and European treaties and legislation.
Bibliography


**Reports**


Legal Aid Board, *Brochure Legal Aid in the Netherlands*, 2011


Rapportage Vreemdelingenketen Juli – December 2009

Rapportage Vreemdelingenketen Januari – Juni 2008


**Case Law**


*Salahadin Abdulla and Others v. Bundesrepublik Deutschland*, C-175/08; C-176/08; C-178/08 & C-179/08, European Union: European Court of Justice, 2 March 2010, available at: http://www.unhcr.org/refworld/docid/4b8e6ea22.html


International and European Legislation


Dutch Legislation
Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000)

Besluit van 23 november 2000 tot uitvoering van de Vreemdelingenwet 2000 (Vreemdelingenbesluit 2000)

Wet houdende regeling van de aanspraak op, de toegang tot en de bekostiging van jeugdzorg, 24 april 2004

Wet van 30 mei 1968, houdende vaststelling Leerplichtwet 1969

British Legislation
Children Act 1989, UK ST 1989 c.41
Immigration Rules 1971, HC 251
Immigration Act 1971, UK ST 1971 c.77

Swedish Legislation
Aliens Act, Swedish Statute 2005:716
Reception of Asylum Seekers and Others Act, 1994
Reception of Asylum Seekers and Others Ordinance, 1994

Parliamentary Papers
Parliamentary Papers II, 2009/2010, 27 062, nr. 67
Parliamentary Papers II, 2009/2010, 27 062, nr. 64
Parliamentary Papers II, 2006/2007, 27 062, nr. 59
Parliamentary Papers II, 1998-1999, 26 732, nr. 3
Parliamentary Papers II, 1998-1999, 26 646, nr. 1

Aanhangsel Handelingen II, 2007/2008, nr. 1778

Besluit van de Staatssecretaris van Buitenlandse Zaken 17-11-2011, Beleidsregels en Subsidieplafond Migratie en Ontwikkeling Programma 2012, nr. DCM/MO – 188/11


Staatscourant 16 April 2004, nr. 73 / p. 10.

Parliamentary Letters

Toezeggingen uit het AO herijking amv-beleid, September 2011

Terugkeer in het Vreemdelingenbeleid: Nadere uitwerking van de maatregelen, Juli 2011

Beleid voor Migratie en Ontwikkeling, June 2011

Opsluiting van alleenstaande minderjarige asielzoekers, November 2010

Notitie Opvang Uitgeproceederde Gezinnen, Oktober 2010

Herijking beleid (alleenstaande) minderjarige vreemdelingen, December 2009

Beleidsconsequentie nieuw thematisch amtsbericht Afghanistan, April 2008