

Child Friendly Justice in Action

National report The Netherlands 2020



Hart voor Kinderrechten

Funded by:



Erasmus+



General information

This project is cofunded by the Erasmus+ programme of the European Union



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Child Friendly Justice National Report The Netherlands

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1. Introduction

The Child-Friendly Justice in Action project (CFJ in Action) is a European project co-financed by the European Union's Erasmus+ programme and aimed at promoting the adaptation of administrative procedures to the specific needs of children, as set out in the Guidelines of the Committee of Ministers of the Council of Europe for Child-friendly Justice.

The CFJ in Action project is one of the projects of the Child-Friendly Justice European Network (CFJ EN), coordinated by Defence for Children International (DCI) Belgium and currently including 15 members among which the European sections of DCI. This network aims to promote the fundamental principles of child-friendly justice, by improving the visibility of expertise in this field, and by promoting the exchange of good practices between European partners.

This project, coordinated by DCI-Belgium and the DCI-World Service Foundation, was carried out jointly in seven Member States of the European Union, in partnership with DCI-Spain; DCI- France; DCI- Greece; DCI- Italy; DCI-Netherlands and DCI- Czechia.

This report presents the results of the Dutch national research carried out within the framework of the CFJ in Action project. This report will be combined with the national reports of the other six project partners to produce a European report that will be used to develop a practical information tool for professionals in contact with children. This tool aims to promote the principles of child-friendly justice to professionals.

The Council of Europe has created various standards and guidelines in the field of child-friendly justice. These standards aim at improving the justice system and adapting it to the specific needs of children. Child-friendly justice is justice that is accessible, age appropriate, speedy, diligent, adapted and focused on the needs of the child, respecting the right to due process, respecting the right to participate in and to understand the proceedings, respecting the right to private and family life and respecting the right to integrity and dignity. The most extensive set of standards on child-friendly justice are contained in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, better known as the Child-Friendly Justice Guidelines.

The Child-Friendly Justice Guidelines were created after an extensive consultation with almost 3800 children throughout Europe. The guidelines are intended to enhance children's access to and their treatment in justice. They set out basic rules for European Union Member States to follow when adapting their justice systems to the specific needs of children. The guidelines apply to all circumstances in which children are likely to be in contact with the criminal, civil or administrative justice system.

The Child-Friendly Justice in Action Project focuses on the implementation (or non-implementation) of the Child-Friendly Justice Guidelines in European Union States. Moreover, it explores the ways in which the guidelines are taken into account by professionals working with children. The focus issue of this project is administrative proceedings. This national report reviews the Dutch asylum procedure. A special emphasis is given to the procedure for unaccompanied minor asylum seekers, but also covers aspects regarding accompanied children. In 2018, in total 30.380 asylum applications were submitted in the Netherlands. Among these applications, 1.225 were submitted by unaccompanied minor asylum seekers.¹

The first section of this national report (II) contains an outline of the Dutch asylum procedure. It describes the path followed through the asylum procedure by both accompanied children and

¹ IND, december 2018, Asylum Trends: Monthly Report on Asylum Applications in The Netherlands December 2018, <[https://ind.nl/en/Documents/Asylum%20Trends%20\(Hoofdrapport\)%20December%202018.pdf](https://ind.nl/en/Documents/Asylum%20Trends%20(Hoofdrapport)%20December%202018.pdf)>

unaccompanied children. The path starts with the arrival of the child in the Netherlands and ends (formally) with the allocation of a residence permit or the return to the country of origin. However, there are multiple phases in between.

The second section (III) provides an analysis of the fieldwork. On the one hand, it outlines the actual implementation of the Child-Friendly Justice Guidelines in the Dutch asylum procedure. On the other, it identifies the different obstacles that prevent the implementation thereof. The analysis is based on multiple semi-structured interviews, the results from an expert meeting and the outcomes of a survey as well as the voice of children themselves.

To conclude, the final section (IV) consists of recommendations abstracted from the fieldwork analysis. The recommendations concern improvements with regard to the implementation of the Child-Friendly Justice Guidelines in the Dutch asylum procedure. The recommendations regard *inter alia* the right to information, the right to participation and the (implementation of the) principle of the best interest of the child.

2. Desk Research

The desk research addresses the asylum procedure in the Netherlands. The research is based on a review of literature and reports about the Dutch asylum procedure. Furthermore, it encompasses an examination of legislation, policy documents, parliamentary documents and case law. This section consists of three parts. The first part sets out the relevant organisations and/or actors involved. The second part outlines the different steps and phases in the procedure from a child's perspective. In the third part attention is paid to the position of unaccompanied minor asylum seekers in the Dutch asylum procedure.

2.1 Organisations

The following organisations are involved in the asylum chain in the Netherlands.

- **Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang Asielzoekers*)**

The Central Agency for the Reception of Asylum Seekers is responsible for the reception and support of asylum seekers in the Netherlands. If the unaccompanied minor asylum seeker is under the age of 15, he or she is placed in a foster family during the asylum procedure (under responsibility of Nidos). Unaccompanied minor asylum seekers between 15 and 18 years of age will be housed in a special reception center for young asylum seekers.

- **Dutch Council of Refugees (*VluchtelingenWerk Nederland*)**

The Dutch Council of Refugees is an independent human rights organisation that aims to protect the rights of asylum seekers. The Dutch Council of Refugees provides the asylum seeker with information and explains the procedure. The Dutch Council for Refugees is present at each reception centre and act like a kind of intermediary. Also they can assist the asylum seeker with retrieval of documents.

- **Forensic Medical Society Utrecht (*Forensische Medische Maatschappij Utrecht*)**

The Forensic Medical Society Utrecht conducts medical research. The primary aim of the research is firstly, to identify medical problems that may limit the asylum seeker's ability to make complete,

coherent and consistent statements. Secondly, it aims to establish whether the asylum seeker has medical problems which require immediate treatment.

- **Healthcare for Asylum Seekers (*GezondheidsZorg Asielzoekers*)**

Healthcare for Asylum Seekers is a healthcare organisation in or near a reception centre. The asylum seeker can go to the Healthcare for Asylum Seekers for an appointment with a healthcare professional or for questions concerning their health.

- **Legal Aid Board (*Raad voor Rechtsbijstand*)**

The Legal Aid Board arranges a lawyer if the asylum seeker cannot pay for one.

- **Nidos Foundation (*Stichting Nidos*)**

Under Dutch Law, a guardianship must be arranged for unaccompanied minor asylum seekers. Nidos is the responsible organisation for the guardianship. The guardian supports the unaccompanied minor asylum seeker with decision making, finding a suitable place to live and arranging education. The guardian also supports the unaccompanied minor asylum seeker during the asylum procedure, but has no direct influence on the final decision.

- **Immigration and Naturalisation Service (*Immigratie en Naturalisatiedienst*)**

The Immigration and Naturalisation Service is part of the Dutch ministry of Justice and Security. The members of staff of the Immigration and Naturalisation Service conduct the interviews and examine the asylum application. They decide whether the asylum seeker is granted asylum.

- **International Organization for Migration (*Internationale Organisatie voor Migratie*)**

The International Organization for Migration is an independent organisation that supports migrants throughout the world. This organisation assists asylum seekers that want to leave the Netherlands on their own initiative. They provide practical information about returning and reintegrating in the asylum seeker's country of origin.

- **Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*)**

The Repatriation and Departure Service is also part of the Dutch Ministry of Justice and Security. If the asylum application is rejected by the Immigration and Naturalisation Service, a staff member of the Repatriation and Departure Service will assist the asylum seeker in arranging the repatriation to the asylum seeker's country of origin.

2.2 Asylum procedure

In the Netherlands, parents file an asylum application on behalf of their children younger than 15 years of age.² It is established policy that children from the age of 15 file their own asylum application.³ Children above 12 years of age can submit their own asylum application if they have individual asylum motives besides their parents' asylum motives.⁴

² Parliamentary Papers II 2003/04, 19637, number 824, p. 14.

³ Parliamentary Papers II 2003/04, 19637, number 824, p. 14.

⁴ Parliamentary Papers II 2003/04, 19637, number 824, p. 14.

After arriving in the Netherlands, asylum seekers have to report themselves in the Central Reception Centre (*Centrale Ontvangstlocatie*) in Ter Apel.⁵ The Immigration and Naturalisation Service will register their personal information and ask questions about the travel route, previous asylum applications and family members. After the registration, the asylum application is formally filed.⁶

The Immigration and Naturalisation Service carries out a research to assess what the chances are of being granted asylum. The Immigration and Naturalisation Service applies the 'tracks policy'. Although the 'tracks policy' consists of five different tracks, only three asylum tracks are currently in effect.⁷ Tracks 3 and 5 are not in effect at the moment, and can be activated at the discretion of the minister for Migration.⁸ The result of the research determines which asylum 'track' the asylum request will follow.

Track 1: Asylum applications which should be handled by another European country fall under this track (Dublin cases). Asylum seekers falling under this track have little chance of being granted asylum in the Netherlands.

Track 2: Asylum seekers coming from safe countries of origin or asylum seekers who have already received international protection in another European country fall under this track. They have little chance of being granted asylum in the Netherlands.

Track 4: This is the General Asylum procedure (*Algemene Asielprocedure*). Asylum seekers who have a good chance of admission to the Netherlands fall under this track. Is more time needed to make a careful decision on an asylum application? Then the Immigration and Naturalisation Service processes the asylum application under the Extended Asylum procedure (*Verlengde Asielprocedure*).

Thereafter, the asylum seeker has an initial interview with the Immigration and Naturalisation Service.⁹ During the interview, an employee of the Immigration and Naturalisation Service asks questions about, among other things, identity, origin, family, education, work, life history, living environment, documentation and journey.¹⁰ During the initial interview the asylum seeker will not be asked about his or her asylum motives.¹¹

The Immigration and Naturalisation Service will interview children above the 15 years of age apart from their parents, since they apply for asylum independently.¹² The child's legal representative, legal adviser or other counsellor can be present during the second interview.¹³ At the end of the second interview, he or she has the opportunity to ask questions or to make comments.¹⁴ Children under 12 years of age are interviewed in a child-friendly room.¹⁵ In case psychological or pedagogical research indicates that a child under the age of 12 has problems that will hinder him or her during the second interview, no second interview will be held.¹⁶ The application of an unaccompanied minor asylum seeker under the age of 12 is always processed in the extended asylum procedure.¹⁷

⁵ Para. C1/2.1 Aliens Circular 2000

⁶ Para. C1/2.1 Aliens Circular 2000

⁷ Para. C1/2.1 Aliens Circular 2000

⁸ The reason for this I will leave undiscussed in this report.

⁹ Para. C1/2.1 Aliens Circular 2000

¹⁰ Para. C1/2.1 Aliens Circular 2000

¹¹ Para. C1/2.1 Aliens Circular 2000

¹² Parliamentary Papers II 2003/04, 19637, number 824, p. 14.

¹³ Art. 3.109d (4) Aliens Decree 2000

¹⁴ Art. 3.109d (5) Aliens Decree 2000

¹⁵ Art. 3.45a Aliens Regulation 2000

¹⁶ Para. C1/2.11 Aliens Circular 2000

¹⁷ Para. C1/2.4 Aliens Circular 2000

After the reporting interview, the asylum seeker will go to the Process Reception Location (*procesopvanglocatie*). This is another reception centre of the Central Agency for the Reception of Asylum Seekers and is often near the office of the Immigration and Naturalisation Service. For unaccompanied minor asylum seekers above the age of fifteen there is a separate section of a regular asylum reception centre (further discussed in paragraph 2.3).

From this moment on, the asylum seeker is entitled to a Rest and Preparation Term (*rust en voorbereidingstermijn*) of at least six days.¹⁸ During the Rest and Preparation Term the asylum seeker has multiple appointments. The asylum seeker is assigned a lawyer.¹⁹ This is free of charge if the asylum seeker cannot pay for the lawyer. Additionally, the asylum seeker is medically examined by the Forensic Medical Society Utrecht (*Forensische Medische Maatschappij Utrecht*). The goal of this medical screening is, first of all, to identify medical problems, which may limit the asylum seeker's ability to make complete, consistent and coherent statements about their asylum motives. Secondly, it aims to establish whether the asylum seeker has medical problems which require immediate treatment. On the basis of the medical screening, the Immigration and Naturalisation Service is advised how it should take into account such limitations during the interview. The Immigration and Naturalisation Service can also be advised to cancel or postpone the interview. However, the Immigration and Naturalisation Service remains responsible for the decision whether and when an asylum seeker will be subjected to an interview.²⁰ Furthermore, the Dutch Council for Refugees will inform the asylum seeker about the asylum procedure.²¹

After the Rest and Preparation Term, the General asylum procedure starts. The General asylum procedure is scheduled as follows:

Day 1: Initial interview with the Immigration and Naturalisation Service on topics as identity, nationality, family and travel route.

Day 2: Appointment with the lawyer to check whether the report of the initial interview is correct. The lawyer passes on errors and additions (*correcties en aanvullingen*) to the Immigration and Naturalisation Service. The lawyer also prepares the asylum seeker for the second interview.

Day 3: Second interview with the Immigration and Naturalisation Service. This is a detailed interview about the asylum motives of the asylum seeker.

Day 4: Appointment with the lawyer to check whether the report of the second interview is correct. The lawyer passes on errors and additions to the Immigration and Naturalisation Service.

Day 5: The Immigration and Naturalisation Service decides on the asylum application. There are 3 possible decisions:

- The asylum seeker receives a temporary asylum residence permit (valid for 5 years).
- The Immigration and Naturalisation Service needs more time to make a decision. The asylum seeker is directed to the extended asylum procedure.
- The asylum seeker receives an intended decision to reject (*voornemen*) in which the Immigration and Naturalisation Service explains why it intends to refuse the asylum application.

¹⁸ Art. 3.109 (1) Aliens Decree 2000

¹⁹ Art. 3.109 (2) Aliens Decree 2000; Para. C1/2.2 Aliens Circular 2000

²⁰ Marcelle Reneman, VU Migration Law Series No 16: Identification of asylum seekers with special reception and procedural needs in the Dutch asylum procedure, 2018. p. 53.

²¹ Para. C1/2.2 Aliens Circular 2000

Day 6: Appointment with the lawyer about the provisional rejection of the asylum application. The lawyer can send a viewpoint (*zienswijze*) to the Immigration and Naturalisation Service. The viewpoint explains why the asylum seeker disagrees with the provisional rejection.

Days 7 and 8: The Immigration and Naturalisation Service decides whether the provisional decision must be changed. There are 3 possible decisions:

- The decision changes. The asylum seeker receives a temporary asylum residence permit (valid for 5 years).
- The Immigration and Naturalisation Service needs more time to make a decision. The asylum seeker is directed to the extended asylum procedure.
- The decision does not change. The asylum seeker does not receive an asylum residence permit. In consultation with the lawyer, the asylum seeker may appeal against this decision in court. The asylum seeker has one week to file an appeal at court.

In the extended asylum procedure, the Immigration and Naturalisation Service has to decide within 6 months after the submission of the asylum application.²² The law makes it possible to extend this period up to 18 months.²³ Subsequently, the asylum seeker has 4 or 6 weeks to respond to the intended decision to refuse the asylum application.²⁴

2.3 Unaccompanied minor asylum seekers

Unaccompanied minor asylum seekers are asylum seekers under the age of 18 who, on their arrival in the Netherlands, were not accompanied by a parent or other relative by blood or marriage aged 18 or over. Because of their age, a number of special measures apply.

Upon submitting the asylum application, an unaccompanied minor asylum seeker is immediately informed about the appointment of a guardian.²⁵ Unaccompanied minor asylum seekers are assigned a guardian until their 18th birthday. In the Netherlands the foundation Nidos is entrusted with the guardianship of unaccompanied minor asylum seekers. The guardian supports the unaccompanied minor asylum seeker during the Rest and Preparation Term and decides together with the Central Agency for the Reception of Asylum Seekers where the child will stay. Unaccompanied minor asylum seekers under the age of 15 are placed with foster families. Unaccompanied minor asylum seekers aged 15 and over – and those under 15 who cannot be placed with foster families for instance when there's a risk to become victims of human trafficking.– are housed in small-scale reception centres with 24-hour supervision.

Unaccompanied minor asylum seekers are entitled to a Rest and Preparation Term of at least three weeks.²⁶ During the Rest and Preparation Term, they are prepared for the asylum procedure by staff members of the Dutch Council for Refugees.²⁷ Moreover, they are offered a medical examination by the Forensic Medical Society Utrecht, on a voluntary basis.²⁸ The primary aim of the examination is to determine whether or not the child can be interviewed about his or her asylum application and if the child needs any further medical support.

²² Art. 42 (1) Aliens Act 2000

²³ Art. 42 (4) en (5) Aliens Act 2000

²⁴ Art. 69 (1) Aliens Act 2000

²⁵ Art. 3.109d (1) Aliens Decree 2000

²⁶ Art. 3.109 (1) Aliens Decree 2000; Parliamentary Papers II 2009/10, 27062, nr, 65, p. 2.

²⁷ Art. 3.109 (2) Aliens Decree 2000; Para. C.1/2.2 Aliens Circular 2000

²⁸ Art 3.109 (6) Aliens Decree 2000

An asylum seeker who claims to be a child but is unable to prove his or her age with official documents or make this credible in another way, may in case of doubt be subjected to an age inspection (*leeftijdsschouw*).²⁹ The Immigration and Naturalisation Service, the Royal Military Police and the Aliens Police Department, Identification and People Trafficking conduct the inspection independently from one another. The officers assess whether the asylum seeker is *evidently* over or under 18 based on his or her appearance and behaviour. If they cannot come to unanimous conclusion, a medical age assessment takes place, for which the permission of the child is necessary. The test is carried out on the basis of X-rays of the clavicle, the hand and the wrist of the asylum seeker. In case there remains doubt about the age after the medical age assessment, the asylum seeker is considered to be a child.³⁰

Unaccompanied minor asylum seekers under the age of 12 are interviewed in a child-friendly room by a special Unit of the Immigration and Naturalisation Service.³¹ Certain staff members are specially trained to interview children and to question them in a manner appropriate to their age.³² During the interviews, unaccompanied minor asylum seekers can be accompanied by a guardian, another representative or a staff member of the Dutch Council of Refugees.³³ An unaccompanied asylum seeker under the age of 12 does not have an initial interview.

Unaccompanied minor asylum seekers who are granted a residence permit are placed in foster families by the Nidos Foundation. If the unaccompanied minor asylum seeker is not granted a residence permit, he or she must return to their country of origin. However, they may only be sent back if the Dutch authorities are certain that they will be adequately cared for in their country of origin, for instance by family or in a children's home. Unaccompanied minor asylum seekers who were aged 15 or younger at the time of arrival and whose asylum application was rejected, but for whom no adequate care is present in the country of origin, are eligible for a 'no-fault' (*buiten schuld*) residence permit after three years.³⁴

²⁹ Art. 3.109d (2) Aliens Decree 2000

³⁰ Para. C1/2.2. Aliens Circular 2000

³¹ Art. 3.45a Aliens Regulation 2000

³² Stcrt. 2015, 20705, Toelichting onderdeel F.

³³ Art. 3/109 (2) Aliens Decree 2000

³⁴ Para. B8/1 Aliens Circular 2000, Para. B8/4 Aliens Circular 2000; B8/6 Aliens Circular 2000

3. Field research

This section consists of three parts. The first part provides a short and schematic overview of the national implementation of the child-friendly justice principles. It outlines the legal guarantees in place for children in the Dutch asylum chain. The second part indicates the obstacles that impede the implementation of these principles. Finally, the third part maps the good practices abstracted from the desk and/or field research.

The fieldwork consists of both quantitative and qualitative research aspects. The research encompasses questionnaires, an expert meeting and interviews with professionals and children.

The anonymous questionnaires were filled in by professionals working with children in the field of migration law. In total, 15 questionnaires were returned. The respondents work at non-governmental organisations (3), the Dutch Council for Refugees (3), social work organisations (3) and residential care facilities (1). Moreover, they work as a jurist (1) and a coach/representative (1). Three respondents have not responded to this question.

In addition, qualitative data was gathered through an expert meeting and interviews. Defence for Children organised an expert meeting about the identification of vulnerability of children involved in immigration proceedings and juvenile justice procedures. The expert meeting was held on the 3th of July 2019 in Utrecht and gathered 18 professionals working with children. Participants included: a senior child protection assistant at UNHCR; a researcher at the Study Centre for Children, Migration and Law of the University of Groningen; a senior advisor of the Immigration and Naturalisation Service; a senior interviewer of children of the Immigration and Naturalisation Service; an employee of Nidos Foundation; an assistant professor at the Child Law Department at Leiden University; three (legal) officers of the Child Care and Protection Board; a juvenile attorney; the head of the National Psychotrauma Center; a clinical psychologist, and; three professionals from the police/Police Academy. The expert meeting provided a forum for intensive exchanges of knowledge and experience relating to children in administrative proceedings, in particular the Dutch asylum procedure.

The field research is furthermore based on three interviews with professionals working with children affected by migration. In order to see how the Child-Friendly Justice Guidelines are implemented in practice, interviews were held with different actors in the asylum process. One interview is held with a volunteer at the Dutch Council for Refugees.³⁵ The volunteer, age 59, prepares children for their hearings with the Immigration and Naturalisation Service. Moreover, he attends the hearings in case the legal guardian is not able to attend. Another interview is held with a team leader of the Dutch Council for Refugees.³⁶ The employee, age 44, works at an office of the Dutch Council for Refugees at a reception center of the Central Agency for the Reception of Asylum Seekers. Her team prepares accompanied children for their hearings with the Immigration and Naturalisation Service by making a so-called “Vluchtverhaalanalyse”. Accompanied children between the 15 – 17 years of age are also prepared separately of their parents. In addition, an interview is held with a paralegal representing children in asylum proceedings.³⁷

A second step in the project consists of establishing an analysis of the needs and recommendations coming directly from children who have been or are in contact with the judicial system in The Netherlands. The aim was to get children to talk about their experiences, the obstacles they have encountered, and the positive aspects they have found in their legal proceedings. It will then be a

³⁵ Interview Dutch Council for Refugees 1

³⁶ Interview Dutch Council for Refugees 2

³⁷ Interview Law Firm

question of identifying the good practices, the elements to be improved, the expectations of the young people themselves.

In order to hear the voices of the children themselves we organised a participatory workshop with four children. The interviews were conducted in a round table setting. Also conducted a separate interview was conducted with an adolescent girl from Palestine, with the same questionnaire used for the workshop.

Due to the Covid-19 measures another planned session could not be held. Since we hadn't met the children beforehand we did not find it feasible to conduct online interviews without having met in person beforehand. We managed to interview five youngsters in total, who were all between the ages of 7 and 17 years of age at the time of the interview by the authorities.

A legal advisor of Defence for Children the Netherlands conducted the interviews together with Dr. S.E. Rap, Assistant Professor at the Department of Child Law, Institute for Private Law Leiden University. Stephanie Rap is an expert on juvenile justice, children's rights and child participation in legal and administrative proceedings. Also present at the workshop was the Child Protection officer of Defence for Children the Netherlands who played a role in maintaining the ethical considerations involved in interviewing children and youngsters. The participants in the workshops were all above 18 years of age and came from various countries such as Syria, Armenia, Russia and Iraq. They were all children under the age of eighteen when the hearings with the authorities took place. The interviews all took place in the Dutch language

3.1 National implementation

3.1.1 Accompanied children

- In Para. C1/2.11 Aliens Circular 2000 it is laid down that the Immigration and Naturalisation Service interviews children below 12 years of age in a special child-friendly room.
- In Para. C1/2.11 Aliens Circular 2000 it is laid down that the Immigration and Naturalisation Service does not subject a child younger than 12 years old to an asylum interview if pedagogical or psychological examinations show that the child has problems, which impede such an interview.
- In Para. 3.45a Aliens Regulation 2000 it is laid down that the hearing of a child, relating to the asylum application, should be conducted in a child-friendly manner.
- The Parliamentary Papers state that accompanied children from the age of 15 file their own asylum application.³⁸ Children under the age of 15 can file their own asylum application if they have individual asylum motives.
- The Parliamentary Papers state that the Immigration and Naturalisation Service interviews children above the 15 years of age apart from their parents.³⁹
- The Parliamentary papers state that the Government will adopt a recommendation of the Van Zwol Committee to personally consult children aged between 12 and 15 as much as possible, while the IND will offer increased clarity into weighing the interests of the child in question when deciding on the asylum application.⁴⁰

- In Parliamentary Papers it is laid down that accompanied minor asylum seekers are heard by employees of the Immigration and Naturalisation Service who are specially trained to take into account the special needs of children.⁴¹

³⁸ Parliamentary Papers II 2003/04, 19637, number 824, p. 14.

³⁹ Parliamentary Papers II 2003/04, 19637, number 824, p. 14.

⁴⁰ Parliamentary Papers I 2019/20, 35300, number VI, p. 9.

⁴¹ Stcrt. 2015, 20705, Toelichting onderdeel F.

3.1.2 Unaccompanied minor asylum seekers

- In Art. 3.109d (1) Aliens Decree 2000 it is laid down that the unaccompanied minor shall be informed immediately of the appointment of a guardian.
- In Art. 3.109d (4) and (5) Aliens Decree 2000 it is laid down that the legal representative, legal advisor or other counsellor legally representing the unaccompanied minor asylum seeker can be present during the second interview. Moreover, the legal representative, legal advisor or other (legal) counsellor present at the second interview is given the opportunity to ask questions or to make comments at the end of the interview.
- In Para. C1/2.2 Aliens Circular 2000 it is laid down that, if an asylum seeker, who claims to be an unaccompanied minor, lodges an asylum application, the Immigration and Naturalisation Service, the Royal Military Police and the Aliens Police Department, Identification and People Trafficking can conduct an age inspection (*leeftijdsschouw*). Additionally, in Para C1/2.2 Aliens Circular 2000 it is laid down that in particular situations the Immigration and Naturalisation Service can conduct a medical age assessment. In Art. 3.109d Aliens Decree 2000 it is laid down that the unaccompanied minor should give a written permission for the medical age assessment.
- In Para. C1/2.4 Aliens Circular 2000 it is laid down that the Immigration and Naturalisation Service processes the asylum application of an unaccompanied minor asylum seeker under the age of 12 in the extended asylum procedure.
- In Para. C2/3.2 Aliens Circular 2000 it is laid down that the Immigration and Naturalisation Service has to take into account paragraphs 213 – 219 of the UNHCR Handbook when assessing the asylum application of an unaccompanied minor asylum seeker.
- In the Parliamentary Papers it is laid down that unaccompanied minor asylum seekers are entitled to a Rest and Preparation Term of at least three weeks.⁴²
- In the Parliamentary Papers it is laid down that an unaccompanied minor asylum seeker under the age of 12 is heard in a special child-friendly room by an employee of the Immigration and Naturalisation Service who is specially trained to take into account the needs of unaccompanied minor asylum seekers.⁴³ Unaccompanied minor asylum seekers of 12 years and older are also heard by specially trained employees.⁴⁴

3.2 Obstacles

There are multiple obstacles that impede the implementation of the child-friendly justice principles in the Dutch asylum procedure. In the following section, an overview is given of the four main obstacles indicated by the interviewees, the participants of the expert meeting and the respondents of the survey.

3.2.1 Education and training

In the Child-Friendly Justice Guidelines it is laid down that all professionals working with children should receive interdisciplinary training on the rights and needs of children of different age groups.⁴⁵ Moreover, professionals having direct contact with children should be trained in communicating with them at all ages and stages of development, and with children that are in situations of particular vulnerability.⁴⁶ Likewise, the Committee of the Rights of the Child stresses that particular attention should be paid to the training of officials working with separated and unaccompanied children and dealing with their cases. Specialised training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children.⁴⁷

⁴² Art. 3.109 (1) Aliens Decree 2000; Parliamentary Papers II 2009/10, 27062, nr, 65, p. 2.

⁴³ Stcrt. 2015, 20705, Toelichting onderdeel F.

⁴⁴ Stcrt. 2015, 20705, Toelichting onderdeel F.

⁴⁵ Para. 14 Child-Friendly Justice Guidelines

⁴⁶ Para. 15 Child-Friendly Justice Guidelines

⁴⁷ Para. 95 UN/C/CRC/No. 6.

In the Parliamentary Papers is stipulated that the interviews of children – whether they are accompanied or unaccompanied – should be carried out by an interviewer who has special training and knowledge regarding the needs of (unaccompanied) children. Although the employees of the Immigration and Naturalisation Service are specially trained, other professionals working – directly or indirectly – with minor asylum seekers are often not.

One employee of the Dutch Council for Refugees, who is directly in contact with children in the course of his work, mentioned that he did not receive any specialised training.⁴⁸ He did not receive training about working with children, neither about children's rights. However, the employee noted that he receives help from his supervisor regarding his interaction with children. Likewise, one paralegal, who represents children in the asylum procedure and has client meetings, among others with unaccompanied minor children, did not receive any special training to work with children.⁴⁹ During her Masters in International Migration and Refugee Law attention was drawn to children's rights, although only as a side note.

Another employee of the Dutch Council for Refugees, however, did follow a training about interviewing children.⁵⁰ The training was organised by the Dutch Council of Refugees and was not mandatory, but was, however, highly recommended. Besides this training, she also attended various trainings in which the rights of children were touched upon. She noticed that in most trainings the focus is on unaccompanied minor asylum seekers and to a lesser extent on accompanied children.

The mixed picture that emerges from the interviews is comparable to the picture that emerges from the survey. Although it is important to note, that the data obtained from the survey is not sufficient to draw hard and reliable conclusions. The results show that slightly more professionals working with children in the asylum process have had some form of specialised training. They followed *inter alia* internal trainings which addressed children's rights. However, it must be noted, that about thirty percent of the respondents received no special training, due to various reasons. For example, because they were not aware of the existence of specialised training, they did not have time for an (extra) training or a training addressing children's rights was not part of the (internal) trainings curriculum.

3.2.2 Child-friendly language

In the Child-Friendly Justice Guidelines it is laid down that in all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have.⁵¹ Particular important is the language used. The language should be appropriated to the children's age and understanding.⁵²

Multiple sources indicate that the language used by the Immigration and Naturalisation Service during interviews is not appropriate to the children's age and understanding. Children have difficulties understanding the questions asked and what kind of answers the Immigration and Naturalisation Service is seeking.

One employee of the Dutch Council for Refugees noticed that the questions asked to children do not differ from the questions asked to adults.⁵³ The questions are (almost) not adjusted to the age and

⁴⁸ Interview Dutch Council for Refugees 1

⁴⁹ Interview Law Firm

⁵⁰ Interview Dutch Council for Refugees 2

⁵¹ Para. 54 Child-Friendly Justice Guidelines

⁵² Para. 56 Child-Friendly Justice Guidelines

⁵³ Interview Dutch Council for Refugees 2

understanding of the children. Another employee of the Dutch Council for Refugees remarked the same.⁵⁴ He explained that the questions asked are not specifically designed for children. For instance, children are asked about their religion and sexual orientation, while they often do not understand these concepts due to their age and/or cultural background.

One employee of a NGO suggested that the questionnaire of the Immigration and Naturalisation Service should be adjusted by a multidisciplinary team of professionals, involving for instance an orthopedagogue and an anthropologist.⁵⁵ In reaction to this suggestion, an employee of the Immigration and Naturalisation Service remarked that the organisation has experienced with different questioning forms and has tried to make the questions more culture-sensitive.⁵⁶ This turned out to be complex, partly due to the large number and variety of countries and cultures.

An employee of the Dutch Council for Refugees noted that children tend to answer questions with a simple “yes” or “no” and are inclined to answer what they think the Immigration and Naturalisation Service would like to hear.⁵⁷ They are used to confirm to any form of authority. In addition, they seem not aware of the (far-reaching) consequences of their incomplete and/or untruthful answers.

Both employees of the Dutch Council for Refugees noticed that children tend to finish the hearing as soon as possible. One employee explained that children between the age of 15 and 17 get bored easily.⁵⁸ She suggested that the Immigration and Naturalisation Service should ask more questions during the interview, in order to keep the attention of the children.

One paralegal questioned whether the interviewing method of the Immigration and Naturalisation Service is suitable for children.⁵⁹ She doubted if children understand the purpose of the hearing – truth finding – and the various ways in which the Immigration and Naturalisation Service asks questions in order to find the truth.

One orthopedagogue remarked that the hearing of a child comes too soon after his or her arrival in the Netherlands.⁶⁰ At this point in time, the child is too occupied by his or her journey to the Netherlands and therefore not able to adequately present his or her refugee story to the Immigration and Naturalisation Service. In line with this, one employee of the Nidos Foundation suggested that the hearings should be held later in the procedure.⁶¹

Most children told us that they felt they were not properly informed about the procedure, or they felt were not informed at all. The question whether the children felt prepared for appointments with IND differs from case to case.

“As a child you are often not informed about what will happen during such a conversation. The questions that are asked are very detailed. Often the questions were also complicated. If I did not know certain answers, I referred them to my lawyer, but this is not allowed. I had to answer the question.”

“Yes I feel like I was sufficiently prepared. It's about you, so who knows the answers better than you? It may be up to me personally, but I've never had much trouble with it.”

⁵⁴ Interview Dutch Council for Refugees 1

⁵⁵ Expert meeting, NGO

⁵⁶ Expert meeting, Immigration and Naturalisation Service 1

⁵⁷ Interview Dutch Council for Refugees 1

⁵⁸ Interview Dutch Council for Refugees 2

⁵⁹ Interview Law Firm

⁶⁰ Expert meeting, Researcher Study Centre for Children, Migration and Law of the University of Groningen

⁶¹ Expert meeting, Nidos Foundation

The difference in experience of an interview spells out the importance of attention for the specific child in question with respect for their age, their special needs, their maturity and level of understanding, and being aware of any communication difficulties they may have.⁶²

Another thing that was confirmed by the sessions with children is that the right to be heard indeed is quite precarious. We believe it is in the interest of children that they are being heard during administrative procedures. The children tend to agree that it is nice and important that their opinion is taken into account but also being heard in a procedure by an immigration professional can be extremely stressful on them. The right to be heard must be a right of the child, not a duty of the child.⁶³ One of our participants *"I'm glad I was never heard. I would be afraid and stressed that I would say something wrong and that my family will not get a residence permit because of my fault."* And another *"I asked: what kind of questions are we going to get? Do I need to prepare? So yes, I was under stress, because I thought: if it has to do with it, with me and I say something that should not be. That it will have negative effects on us or something."*

It is important that children know as precisely as possible what will happen hearing and what the status of their given opinion or statement will be. As the guidelines state hearings of children should be transparent and informative, voluntary, respectful, relevant, child friendly, inclusive, carried out by trained staff, safe and sensitive to risk and, finally, accountable.

Most children found the information that was provided quite abstract and the way the professionals posed their questions to them as not very child appropriate. *"I noticed that as a child I was questioned in the same way as an adult. This can be done differently! Now I study to work later in education and it is important to approach children in a good way. The IND and the government must ask their questions in a different way. They should ask the questions so that the child does not shut down. This is a win-win situation. The manner of questioning and the attitude of the officers must be adjusted."*

Several children noted problems with interpreters. For instance issues with not being able to understand the interpreters due to a different dialect or having the feeling that the translation is not correct or felt wrong.⁶⁴ However on a positive note one of the youngsters mentioned that the interpreter was changed when asked for and the situation improved.⁶⁵

3.2.3 Child-friendly environment

As mentioned before, in the Child-Friendly Justice Guidelines it is laid down that in all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings⁶⁶ and interviewing and waiting rooms should be arranged for children in a child-friendly environment.⁶⁷

Contrary to the Child-Friendly Justice Principles, in which is stipulated that the hearings of *all* children should be conducted in a child-friendly room, the Dutch migration law (only) lays down that children below 12 years of age should be heard in a special child-friendly room.⁶⁸ One employee of the Dutch Council for Refugees, however, noted that from his experience all children below the 16 years of age are interviewed in a child-friendly room.⁶⁹

⁶² Para. 54 Child-Friendly Justice Guidelines

⁶³ Para. 46 Child-Friendly Justice Guidelines

⁶⁴ Workshop with children, 27 February 2020 and interview Dr. Rap.

⁶⁵ Interview Dr. Rap.

⁶⁶ Para. 54 Child-Friendly Justice Guidelines

⁶⁷ Para. 62 Child-Friendly Justice Guidelines

⁶⁸ Para. C1/2.11 Aliens Circular 2000

⁶⁹ Interview Dutch Council for Refugees 1

Multiple sources indicate that the child-friendly (waiting) rooms are not appropriate for children of all ages. The interview rooms are for example equipped with toys and are therefore considered as childish by the older children. Also, the waiting rooms are not very child-sensitive. One employee of the Dutch Council for Refugees noticed that the older children get often bored while waiting for the hearings.⁷⁰ In the waiting room for the older children there is merely a television with one sports channel, which often broadcasts a sport that does not interest the children. The employee noticed that, on the other side, the care for younger children is very well organised. They are cared for in a childcare center.

Half of the respondents of the survey indicated that if a child exhibits his or her emotions during the interview, the interviewer does not always pay attention to this. According to the respondents, the reaction/empathy varies depending on the specific interviewer. Notwithstanding, in all cases the hearing is interrupted if the child starts crying.

One respondent noticed that some interviewers try to comfort/reassure the child while walking from the waiting room to the interview room. An employee of the Dutch Council for Refugees noticed the same.⁷¹ He explained that some interviewers already begin connecting with the child in the waiting room by asking them casual questions. For instance: "Nice football shoes! Do you like football? Did you also play football in [your country of origin]?" Sometimes the interviewer also enables the interpreter to connect with the child. Although this is not standard practice, since the interpreter is formally only permitted to translate the exact words used by the participants, it is a way to put children at ease, in particular because the child and interpreter often share the same culture.

In our sessions with the children we asked them how they felt during the interview and how satisfied they were with the way they were treated throughout the procedure. Most children told us that the professionals who interviewed them were mostly nice to them. However the nature of the questions often made the children feel unsafe and confused. *"Yes, during the conversation, when they started, it was ... I thought, okay, it's okay, Because they asked me, are you okay? Do you feel fine? And after that, so when they went deep with the questions, For example, I told them about a potential situation, then they go deep into that situation. I told something about a man. I walked down the street one time and I ran into a man and he did something, and then they said, okay, what kind of man was it? What did he look like? And I thought, how should I know? What was he wearing? So they wanted to know such details. And I was confused... I don't know all that, should I know this?"*⁷²

Another participant said to us: *"When someone asks a question, I always think in retrospect: I would have liked to add that. It is not pleasant to be heard. There is a lot of pressure.... You still think: did I want to say something else?"*⁷³ Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.⁷⁴

Also it was noted by several children that the interviews were very long, stressful and emotionally intense. *"I cried a lot a lot at the time, because I told far too intense things. So I just wanted to sit*

⁷⁰ Interview Dutch Council for Refugees 1

⁷¹ Interview Dutch Council for Refugees 1

⁷² Interview by Dr. Rap.

⁷³ Workshop with children, girl from Armenia.

⁷⁴ Para. 48 Child-Friendly Justice Guidelines

down, do nothing, sort of just really don't talk to anyone. I have talked enough for today, nothing now."⁷⁵

Despite most children telling us that the interviewers are mostly friendly they feel the weight and importance of the interview. "Yes, they said you have plenty of time just to think about it, but I thought, yes, I just want to answer a question as soon as possible. And because I just want to get rid of it quickly and because I was thinking, if I keep thinking about it for a long time, maybe they think, okay, she's thinking about her answer now, so she's going to lie."⁷⁶

*"I was never asked if I wanted to stop for a moment. Afterwards you find out that it took a few hours. You are very conscious in the moment, you think about each word 80 times. Time passes quickly, afterwards it took much longer than you thought. I don't think I would have liked a break, it will take even longer. Ultimately, it takes even longer to think about it, which makes you even crazier."*⁷⁷

"I think that at least one of those persons should be a pedagogical employee or someone who knows how to handle children. He or she can anticipate to stress or a child's body language. This can be anyone. If only he / she has had training."

3.2.4 Child-friendly Information

The Child-Friendly Justice Guidelines prescribe that children and their parents should, from their first involvement with the immigration authorities, be promptly and adequately informed of *inter alia* their rights and the system and procedures involved.⁷⁸ This information and advice should be provided to children in a manner adapted to their age and maturity.⁷⁹

The collected data shows that children are usually informed about their rights in the Dutch asylum procedure. The survey shows that children are best informed about their right to have access to a lawyer and their right to be informed on the different steps of their procedure. However, children are often not able to translate these 'abstract' rights to their own, individual situation. In other words, they do often not comprehend the 'concrete' meaning or consequences of their rights. One employee of the Dutch Council for Refugees suggested that there is a difference between telling and understanding.⁸⁰ Another employee of the Dutch Council for Refugees noticed the same.⁸¹ She mentioned that not only children, but also their parents do often not understand the (content) of the children's rights.

Both employees of the Dutch Council for Refugees explained that children receive all the information concerning their rights at the same time.⁸² They suggested that it would be helpful to receive this information step by step, in bits and pieces. One employee also recommended to repeat the information.⁸³ Another obstacle preventing children from understanding their rights, is the nature of the information. As a rule, very general information is provided. Children do often not understand what these rights on paper mean for *them*. One employee of the Dutch Council for Refugees suggested that the rights "must be made personal".⁸⁴

⁷⁵ Interview by Dr. Rap.

⁷⁶ Interview by Dr. Rap.

⁷⁷ Workshop with children, girl from Armenia.

⁷⁸ Para. 1 (1) Child-Friendly Justice Guidelines

⁷⁹ Para. 1 (2) Child-Friendly Justice Guidelines

⁸⁰ Interview Dutch Council for Refugees 1

⁸¹ Interview Dutch Council for Refugees 2

⁸² Interview Dutch Council for Refugees 1 and 2

⁸³ Interview Dutch Council for Refugees 2

⁸⁴ Interview Dutch Council for Refugees 2

Several children relied on their lawyer for information *“The whole procedure depends on the quality of your lawyer. I have had several lawyers. They can reassure you and inform you about court proceedings. That gave me a sense of confidence.”*⁸⁵

The children we have spoken to tell us that they didn’t receive information about the interview from the authorities. Most of the children told us they asked their lawyer or their parents what to expect. The Child Friendly Justice Guidelines state that, as a rule, both the child and parents or legal representatives should directly receive the information. Provision of the information to the parents should not be an alternative to communicating the information to the child.⁸⁶

*“The provision of the information about the decision could be better. Parents have a harder time learning language than a child. As a child it was difficult to understand.”*⁸⁷

“The questions were logical and clear. Not everyone can stay. It was never explained clearly why the questions were necessary, I thought of it myself.”

*Yeah, well, I felt like you weren't supposed to be prepared. These are questions about your life, so you should know. So you are not going to prepare answers for the questions. You already know and you are going to tell.*⁸⁸

3.3 Best practices

This part maps the informal good practices abstracted from the desk and/or field research, in addition to the formal good practices listed in paragraph a. Various good practices are brought forward by the interviewees, the participants of the expert meeting and the respondents of the survey.

- Some interviewers of the Immigration and Naturalisation Service enable the interpreter to connect with the child. Although this is not standing practice, since the interpreter is formally only permitted to translate the exact words used by the participants, it is a way to put children at ease, in particular because the child and interpreter often share the same culture.
- Some interviewers of the Immigration and Naturalisation Service try to comfort/reassure the child while walking from the waiting room to the interview room. For instance by asking them casual questions about sports.

⁸⁵ Workshop with children, girl from Russia.

⁸⁶ Para. 3 Child-Friendly Justice Guidelines

⁸⁷ Workshop with children, girl from Russia.

⁸⁸ Interview by Dr. Rap.

4. Recommendations

General asylum procedure

The General asylum procedure is an extremely fast procedure. It puts a lot of pressure on asylum seekers as they have to go through two interviews with the Immigration and Naturalisation Service and several appointments with their lawyer within just a few days. This especially holds for children, both unaccompanied children and accompanied children of 15 years and older. The UN Committee on the Rights of the Child has criticised the eight-day asylum procedure in the Netherlands in the latest Concluding Observations on The Netherlands and recommended a review of this procedure, as it places constraints on procedural safeguards.

Best interest of the child

It is not included in the Dutch Alien Act that the best interest of the child should be a primary consideration in the asylum procedure. This principle of Article 3 of the CRC is frequently brought to the fore by lawyers in asylum cases in the Netherlands. The Administrative Division of the Council of State (*de Afdeling Bestuursrechtspraak van de Raad van State*), the highest court in migration cases, however, is reluctant in applying this principle in individual cases, repeatedly stating that “when the weight to be attached to the best interest of the child in a concrete case is concerned, Article 3 (1) of the CRC, given the wording of the provision, does not contain a norm which is, without further elaboration, directly applicable by a judge.”

Education and training

Adequate education and training on children’s rights and child-friendly justice should be secured. In order to improve the competences of professionals working with children, it is recommended that education and training for all professionals working with children in the migration context is mandatory. Defence for Children suggests that education and training should become a formal part of the curriculum in facilities training social workers, lawyers, police officers and other professionals working with children.

Interview questions

The interview questions of the Immigration and Naturalisation Service should be more adjusted to the age and understanding of children. Therefore, prior to the hearing, a case-by-case analysis of the child’s level of maturity and understanding is indispensable. In addition, a more culture-sensitive adjustment of interview questions is required. In order to obtain a culture-sensitive interview guideline, a multidisciplinary approach is encouraged. Defence for Children promotes a close co-operation between different professionals for designing an interview guideline for children.

Postponing interview

The hearings with the Immigration and Naturalisation Service should be postponed to a later moment in the asylum procedure, to avoid that the child is still too occupied by his or her journey to the Netherlands and therefore not able to adequately present his or her refugee story.

Interview- and waiting rooms

The interview- and waiting rooms should be appropriate for children of all ages. The rooms should be designed for the different ages and stages of development of the child. Defence for Children suggests that at least two child-friendly interview rooms are required; one for young children and another designed for teens.

Child-friendly information

Particular attention needs to be paid to the provision and delivery of child-friendly information. The information should be in a format appropriate to the age and capacities of the child. In order to secure the transmission of the given information, relevant information should be i) divided into small portions; 2) repeated again at another time, and; iii) made personal.