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Quality in Dutch asylum law: from ‘strict but fair’, to ‘fast but good’?¹

H.B. Winter
K.F. Bolt

1. Introduction

The quality of primary decision-making in Dutch aliens law has been a bone of contention for many years, especially with regard to asylum cases. There are many sources which testify to problems in this branch of law. The problems were particularly severe under the revised Aliens Act which came into force in 1994. Case law, evaluation studies² and other literature³ all provide evidence that the quality of aliens law decisions in the Netherlands left much to be desired. One of the two main objectives of the Aliens Act 2000 was to raise the quality of decisions relating to applications for asylum. The other main objective was to speed up the administrative decision-making process. To this end the objection procedure, which provided asylum seekers whose applications had been rejected with an opportunity to ask the administrative body concerned to reconsider the decision, was abolished. In the course of this objection procedure, the asylum seeker in question often had a chance to explain his or her objections at greater length at a hearing. It was thought that doing away with this review procedure would lead to faster decision-making with respect to individual files; the bureaucratic capacities of the Immigration and Naturalization Service (Immigratie- en Naturalisatiedienst = IND) could be used for the primary decision-making process and disputes would be brought before a court sooner, so that both the administrative body and the asylum seeker would have a clear and definite answer sooner. However, it was thought possible that doing away with the administrative review would have a significant disadvantage, namely that the quality of the asylum decisions presented to the court would be poorer. In order to limit this possible reduction in quality, a ‘notification of intent’ was introduced into the application procedure. The administrative body first issues an intended decision to which the asylum seeker and his or her legal aid lawyer can respond by submitting their view of the situation. Then a definitive primary decision is made, which can be appealed to the district court.

The Aliens Act 2000 aimed to speed up the decision-making process and at the same time to improve quality.⁴ There seems to be a certain tension between these two goals. Faster decision-making may well have a negative impact on the care taken in preparing decisions. In this contribution we will examine which factors apart from the speed of decision-making may influence the quality of decision-making in asylum cases. These factors can be divided into

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¹ In the 1990s a large-scale government campaign presented Dutch asylum policy as ‘strict but fair’ and ‘austere but humane’. The slogan ‘fast but good’ would have been fitting for the introduction of the Aliens Act 2000.
⁴ See the explanatory memorandum to the bill and the memorandum in response to the report, TK (Lower House) 2998/99, 26 732, nos. 3 and 7 respectively.
legal and non-legal factors. In section 2 we will focus on the legal factors, which are mainly connected with interventions by the legislator. But not only legal factors are relevant – especially in asylum law. In section 3 we will address the structure of the decision-making process and other non-legal factors which determine the outcomes of that process. In many cases the factors or variables we discuss do not stand alone, since they in turn are influenced by other variables. For example, the Aliens Act 2000 cannot be seen in isolation from the general administrative law framework; nor can the Aliens Act remain unaffected by European harmonization of asylum policy since the Treaty of Amsterdam. It is clear that we have to limit ourselves in our exploration of potentially relevant factors.

In section 4 we will analyse recent developments on the basis of generalized figures relating to decision-making in asylum cases during the past few years. Using reports by the National Ombudsman, annual reports from the Immigration and Naturalization Service (IND) and the district courts, and the detailed evaluation study of the effects of the Aliens Act 2000, we will discuss the influence of factors which may be relevant to decision-making in practice. In section 5 we will focus on the evaluation of the Aliens Act 2000, which was completed in 2006. On the basis of these data we will attempt to analyse the relationship between legal and non-legal factors and the quality of decision-making in asylum cases. This contribution is mainly exploratory in nature; it leads to the formulation of a number of research questions and conjectures. Some of these conjectures may be found in the concluding section – section 6.

2 Legal factors: changes in the asylum system

2.1 Fast but good

In the early 1990s Dutch authorities responsible for dealing with asylum cases were swamped with huge numbers of asylum applications. The IND and the judiciary were unable to deal with these applications quickly enough. As a result, asylum seekers got caught up in procedures which often lasted for years. This led to situations of uncertainty, especially for the asylum seekers involved, but also for the community. On 1 January 1994 an amendment of the Aliens Act came into force; its goal was to speed up the procedures. In order to achieve this goal, the admissions policy was tightened. This did not help: the number of asylum applications continued to grow and the attempt to cut down processing times failed. The government, which from 1998 to 2002 consisted of a coalition of social democrats and liberals, decided to try again, announcing in its coalition agreement that the procedures regulated in the Aliens Act would be improved and curtailed. Speed and austerity were supposed to be the key features of the adapted policy. Five changes aimed at achieving this result were listed in the agreement. The quality of the first decision regarding the asylum application was to be improved considerably. Secondly, a rejection would mean that by law the authorities were entitled to give notice that the asylum seeker had to leave, and housing and support services would be terminated. Thirdly, the administrative review stage would be abolished. A fourth alteration was that in future asylum seekers would be allowed to remain in the Netherlands while waiting for decisions in appeals to the district court. Finally, the possibility of appeal to a higher court would be introduced. Whereas only appeal to the district court had been possible previously under aliens law, in future asylum seekers would be able to appeal to the Administrative Division of the Council of State against the district court’s decision.

5 TK (Lower House) 1997-1998, 26 024, no. 9, pp. 86-87.
6 In the past separate decisions had had to be made about both the termination of housing and support services and the deportation of an asylum seeker. These decisions could then be contested in separate legal proceedings.
These amendments were in fact implemented. Improvement in the primary decision-making process was expected to result from the introduction of the ‘notification of intent’ procedure which was to become part of that process, replacing the administrative review stage. The Aliens Act 2000, which was introduced in April 2001, also included other changes. One significant change was the introduction of the ‘two-step system’ for granting residence permits: an asylum seeker is first given a residence permit for a limited period and then after being in the Netherlands for five years may apply for a permit for an unlimited period. As well as amendments to the Act there were also important policy changes which were not based on the Aliens Act 2000. One of these was the introduction and later tightening up of a quick decision-making procedure in asylum cases; according to this procedure, a request for asylum could initially be processed within 24 hours and later within 48 hours. This accelerated decision-making procedure has always come in for a great deal of criticism, precisely because it entails a high risk of carelessness.

2.2 Notification of intent as opposed to objection procedure

In the Aliens Act 2000 many improvements were made to the procedural provisions which applied to granting residence permits. A strict distinction was made in the Act between residence permits for asylum seekers and standard residence permits – i.e. residence permits granted in connection with work or family reunification. The objection stage of the asylum procedure was abolished. It was replaced by the ‘notification of intent’: the asylum seeker was to be given an opportunity to respond to an intended decision by submitting his or her point of view, after which a final decision would be made.

What is the difference between the objection procedure in the old Act and the notification of intent procedure which now applies? Under the old Aliens Act, after receiving notification of the decision, the asylum seeker had four weeks – in derogation from the time limit of six weeks pursuant to Article 6:7, General Administrative Law Act – to lodge an objection. In some cases the IND was obliged to seek the advice of an external body – the Advisory Committee on Alien Affairs. By virtue of Article 7:2, General Administrative Law Act, the interested party had to be heard before a decision could be made with regard to the objection.

By virtue of Article 39 of the Aliens Act 2000, if the Minister intends to reject a request for a residence permit for asylum or for the extension of a residence permit, the asylum seeker in question must be notified in writing of this intention and the reasons must be given. The asylum seeker may respond in writing to this notification by submitting his or her point of view. The time limit for this response is four weeks in the case of the rejection of a permit for a limited period or six weeks in the case of an intention to reject an application for extension of a permit for a limited period, to refuse a permit for an unlimited period, or to withdraw a permit. However, this time limit is considerably shorter if the application is dealt with in the framework of the registration centre procedure, in which case only three processing hours are available to submit a point of view. In the final decision rejecting the request the minister must respond to the point of view submitted.

The abolition of the objection procedure was a remarkable step. While on the one hand it was a way of speeding up the procedure, on the other hand it is questionable whether the...

7 According to Art. 1.1f, Aliens Act 2000, processing hours are the hours available at the registration centre for investigation of the request. The hours from 6 p.m. to 8 a.m. and – except at the Schiphol registration centre – the hours during weekends and public holidays do not count.
9 See section 3.2 for a more detailed description of the Registration Centre procedure.
The substantive quality of the decisions can be guaranteed without an objection stage. After all, in administrative procedural law in general the objection stage is held in high regard. This preliminary procedure provides the administrative body with a second chance in the event that mistakes have been made in an initial decision. The procedure works like a filter: many conflicts are subsequently not brought before the court. If a case is in fact referred to the administrative court, a preliminary procedure means that a solid file has been built up, which facilitates the work of the court. Admittedly, this filter function is not as effective in asylum law as in other administrative areas. In a relatively high percentage of adverse decisions in response to objections, appeals were lodged all the same. When the Aliens Act 2000 was introduced, more importance was attached to accelerating the procedures than to the advantages offered by the objection procedure. There have even been suggestions that the objection stage might be abolished in other areas as well.\footnote{TK (Lower House) 1998-1999, 26 732, no. 3, p. 10: ‘The abolition of the objection stage is acceptable only if the quality of decisions on applications can be assured by including sufficient safeguards in the procedure. On the basis of the results of quality improvement in the various aliens departments and further decision-making as to the transfer of authority concerning the issue of permits for temporary residence from the Minister of Foreign Affairs to the Minister of Justice, it will be considered later whether the objection procedure should eventually also be abolished in standard cases’. Various comments were made in response to this; see for example H.B. Winter, T.H.G. Schuringa, ‘Afschaffen bezwaar in reguliere zaken: bezint eer ge begint!’, in Migrantenrecht, 2005/9.}

All in all it seems as though the objection stage – which had become something of a sacred cow in administrative procedural law – is being demolished piece by piece. According to the ‘direct appeal’ regulation (Article 7:1a General Administrative Law Act) the compulsory objection procedure can be dispensed with if the administrative body consents to a request from the party with the objection to appeal directly to the administrative court.\footnote{This regulation came into effect on 1 September 2004.}

The reasoning is that an objection procedure may mean an unnecessary, time-wasting duplication of work if consultation between the administrative body and the objecting party proves unable to settle the dispute. It seems that when a potential substantive improvement of a decision on the one hand is weighed against the speed at which that decision is reached, the first aspect is not always the one that wins out.

2.3 ‘Decisions with multiple consequences’ and ‘two-step residence permits’

Other means used to accelerate the procedure were to simplify it and to attach various legal consequences to rejections. Simplification of the procedure was achieved by introducing a system of ‘two-step residence permits’. According to this system, when a residence permit for asylum is granted it is initially always a temporary permit, which can only be converted to a permit for an unlimited period after five years.\footnote{Originally this period was three years, but it has now been extended to five years in the Act passed on 24 June 2004 to amend the Aliens Act 2000, which provided for extension of the period for which the temporary residence permit for asylum is valid, Stb. (Bulletin of Acts and Orders) 2004, 299. This Act came into force as of 1 September 2004 (Stb. 2004, 430).} There are various grounds on which a residence permit for asylum may be granted, but they all lead to the same permit. This prevents the asylum seeker continuing with proceedings, even after receiving a permit, to try to procure a ‘stronger’ permit, as was customary under the older Aliens Act. Another aim of the new Act was to accelerate asylum procedures by ensuring that the rejection of an application for admission had various legal consequences relating to housing and support services and deportation. The decision is therefore referred to as a ‘decision with multiple consequences’. A rejection also means that the asylum seeker may no longer lawfully remain in the Netherlands, that he or she must leave the Netherlands, that housing and support services will no longer be provided and that the competent authority may remove individuals.
who fail to leave the Netherlands of their own accord. Here again there is tension between speed and quality. The ‘decision with multiple consequences’ means that the IND has fewer decisions to make, which promotes speed. Moreover, the asylum seeker is not compelled to seek separate legal remedies to challenge separate decisions. On the other hand, splitting the decisions means that each point can be assessed separately. But under the old Aliens Act it was already difficult for people to stay in the Netherlands if they had been refused residence permits. The ‘decision with multiple consequences’ seems to save time while the loss of quality may be limited. An important point is that under the Aliens Act 2000 lodging an appeal in the first instance has suspensive effect, so that the asylum seeker may remain in the Netherlands while awaiting the outcome.

2.4 Appeal to a higher court

An appeal to a higher court leads to prolongation of the procedure. But this may mean that across the board the quality of the decisions is increased, since the possibility of lodging an appeal to a higher court provides greater legal unity and legal certainty in legal protection. In spite of these advantages, appeal to a higher court was not introduced into the whole of administrative procedural law. Under the old Aliens Act of 1994 further appeal was not possible either. This was compensated by the institution of a three-judge court at the competent district court of The Hague – the so-called Legal Uniformity Division, which was charged with settling the most important cases. The decisions of the Legal Uniformity Division were then regarded as indicative. Judges from various branches of the district court of The Hague alternated as members of this three-judge court. In itself this was an appropriate solution, but there is something to be said for introducing appeal to a higher court so that a different, higher judicial body can monitor uniformity. It is difficult to judge what the best solution is in asylum law, where time plays such an important role. At any rate, the legislators opted to introduce appeal to a higher court. In practice this does not take much more time because the Administrative Division works very quickly. Figures relating to this may be found in section 4.5.

3 Non-legal factors determining legal quality

3.1 Introduction

Factors which influence the legal quality of a decision in an asylum case are determined not only by legislation but also by administrative policy, management decisions or the number of requests. In this section we will discuss a number of these factors which are not – or not directly – determined by the Aliens Act 2000.

3.2 The structure of the decision-making process: accelerated procedures at the registration centres

For quite some time – since 1994 to be exact – there has been a distinction in asylum cases between a ‘normal’ procedure and an accelerated procedure. The accelerated procedure takes place at a registration centre, of which there are two at present: at Schiphol and in Ter Apel.\footnote{Due to over-capacity the registration centre in Zevenaar was closed in the autumn of 2003 and converted into a processing office. Then the registration centre at Rijsbergen was closed in the spring of 2004. At present (early 2007) plans are under discussion for an adaptation of the registration centre procedure which might lead to the registration centre in Zevenaar being opened again.}
At these registration centres the decision-making process is focused on making quick decisions. Initially the registration centre procedure was intended for applications which were ‘certain to fail’ – ‘foreign nationals who claim to be “asylum seekers”, but actually have flimsy stories (asylum tourism)’ and ‘other asylum seekers whose applications can be disposed of as inadmissible or manifestly unfounded without time-consuming investigation’. Reference was made to the ‘registration centre criterion’. In the late 1990s the member of the government responsible for Alien Affairs tried to stretch this criterion to cover all cases for which no time-consuming investigation would be necessary. However, legal aid workers raised strong objections to this. The compromise reached was basically that the interpretation of the registration centre criterion in the case law of the mid-1990s would be taken as the point of departure in practice. Agreements were also reached about the eligibility of several categories of cases for the registration centre procedure. These agreements were laid down in the Aliens Circular (old). The Aliens Act 2000 did not aim to make any changes to the way things were done at the registration centres; nothing was regulated in the Act with respect to the registration centre procedure. However, the Aliens Decree did include a certain measure of time – 48 processing hours – to be allocated to dealing with an application at a registration centre (Article 3.112, para 1b, Aliens Decree 2000). According to case law from the Administrative Division of the Council of State, this means that no content-related criterion can be set – as had previously been the case – to determine which cases can be dealt with at a registration centre. Any asylum application can be ‘dealt with’ at a registration centre provided a decision regarding that application can be produced within 48 processing hours. In the past a case ‘dealt with’ in a registration centre would by definition lead to a negative decision. Since April 2005 positive decisions have also been made at registration centres. If an application is rejected at a registration centre the decision can be brought before a district court, which examines the case to assess whether the minister has taken due care in reaching the negative decision.

Dealing with asylum applications at registration centres leads to fast decisions, but as far as the quality of the decisions is concerned it is very controversial.

3.3 Quality and size of implementation system

If the regulations are satisfactory and the decision-making process is structured adequately, then some of the prerequisites for taking high-quality decisions have been met, but not enough. The implementation system must also be adequately equipped, both qualitatively and quantitatively, to perform the tasks assigned to it. In other words, there must be sufficient public servants who meet high standards. Under the ‘old’ Aliens Act the system was deficient in both respects – as is now acknowledged. Within the judiciary there were also backlogs which have only been converted to reasonably normal workloads since 2006. Staff shortages at the IND were compensated by hiring agency staff or at least temporary employees, as a result of which the quality of the decisions declined. This gave rise to a self-reinforcing effect: because a significant number of decisions on asylum applications were reversed (see Table 2), the number of appeals to the court increased, so that backlogs also built up, as did the pressure on various ‘links in the chain’.

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15 Letter from the Secretary of State for Justice to the President of the Lower House of the States-General, 7 June 1994, NAV 1994/6, p. 2.
16 Processing hours are the hours between 8 a.m. and 10 p.m.; see Article 1.1f, Aliens Decree 2000.
Of course, the quality and size of an administrative implementation organization can be influenced. Investments can be made both in the size of an organization and in its quality – for example by providing additional training. Moreover, if these investments are structural in character, an administrative organization can build up experience and hold on to it. Just as an administrative organization can be improved by ‘management decisions’, certain measures may also lead to changes for the worse in the implementation organization. As a rule the quality of decisions will rise if more resources are made available and those resources can in fact be used for careful preparation of decisions. But the reverse is also true: the quality of decision-making may also decline rapidly due to deliberate management choices. It may be assumed that neither politicians nor senior civil servants strive towards poorer decisions. Nevertheless, government organizations also aim for an optimal mix of costs and benefits – for cost-effectiveness. Is this a goal which does not allow for concessions, in other words does it also apply to the legal quality of decision-making? Seen from a normative, rule-of-law point of view, it might be expected that the lawfulness of a decision is regarded as a more or less absolute quantity. Lawyers like to stress that there is no such thing as ‘a bit more lawful’ or ‘a bit less lawful’. Nonetheless, it remains a relevant question whether in the everyday practice of decision-making – including decisions on asylum cases – the investments required to guarantee the quality of a decision are weighed against other factors. Obviously the assessment of lawfulness made by the court should be taken as the point of reference in determining the boundaries of this balancing process. In this respect strange things have been observed in aliens law in recent years. Since the introduction of the Aliens Act 2000 it seems as though the assessments of lawfulness made by the Aliens Section have changed. For further discussion of this topic see section 4.5.

3.4 Quality and the number of applications

Management decisions may influence the quality of the handling of applications. The number of applications is a factor which influences the capacity needed. This number is not stable: asylum seekers leave their countries of origin as a result of events that are taking place there, and undeniably there are peaks in these developments. For example, the number of asylum applications from former Yugoslavia has dropped off considerably since the end of the war there (to three per cent of the total number of applications in 2003, from Serbia and Montenegro). Apart from changes in the countries of origin which affect the number of applications, there is also incontrovertible evidence of ‘rivalry’ between the various reception countries in Europe. While the total number of applications within Europe has been declining since 2004, the applications are distributed across the countries in a different way each year. In the Netherlands the number of applications has dropped sharply since 2001. If the number of applications drops while capacity remains the same, more time is available to deal with the applications, which might mean an improvement in the quality of the decisions. Of course, in itself the quality of a decision says nothing about the outcome of the decision-making process. The relative numbers of applications granted and rejected may remain constant even though the overall quality of the decisions rises.

3.5 Speed and the number of applications

The size and quality of the administrative organization affect the quality of the decisions made. They also determine the speed with which the applications are processed. There seems to be a curious relationship between the number of asylum applications and the processing
speed. It is thought that for many years the number of applications in the Netherlands was significantly higher because of the refusal to increase staff numbers in the late 1980s and early 1990s. The explanation of this relationship may be that for asylum seekers – and probably for their travel agents in particular – one of the attractions of the Netherlands was that the lengthy decision-making process at least guaranteed shelter for a substantial period. When staff was in fact later expanded, around 2000 the average processing times dropped as a result. The number of asylum applications started to fall as of 2000/2001.

3.6 Quality policy

Administrative organizations may establish policy with regard to the quality of service delivery. They may formulate objectives which are focused on the desired quality level of the decisions made. As part of this quality policy, standards may be set for the decision-making process; for example, a maximum acceptable number of judicial reversals may be laid down. Administrative bodies sometimes also lay down decision-making time limits for themselves in citizens’ charters. Within the IND and the Aliens Department, in recent years policy focused on improving the quality of decision-making has been pursued on the basis of a quality assurance programme. The quality of decision-making can be influenced at the management level by adopting quality policy.

4 Decision-making in practice

In this section we will provide some initial insights into the effects of the Aliens Act 2000 as regards its two most important objectives: speed and quality. To this end we will present figures relating to developments in asylum law, including the number of applicants, the registration centre procedure, the duration of the decision-making process and the appeal procedures.

4.1 Number of applications

When the Aliens Act 2000 was being prepared, the annual number of asylum seekers was estimated at 50,000. In reality, even in the first year the Aliens Act 2000 came into effect – 2001 – the number of applications submitted was lower than had been expected and it declined further in the succeeding years (see Table 1). The figures for 2003 show a clear drop (c. 30%) in the number of applications in comparison with 2002. In 2002 the drop was over 40% as compared with 2001 and in 2001 the drop was 25% as compared with 2000. The trend continued unabated in 2004 with a total of 9,780 applications. In 2005 and 2006 the numbers rose again. According to the figures this was mainly as a result of the rise in numbers of second and consecutive applications by over 50%. The numbers of first applications were 4,550 and 5,850 in 2005 and 2006 respectively. The decline in the number of applications seems to be good news as far as the expected quality of the decisions is concerned, since it

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20 As of 1 May 2002 the IND’s staff size was over 3,700 FTEs. Practically all of these positions were filled. As a result of the strongly declining influx of asylum seekers an external recruitment halt has been announced for the IND and a project has begun to allocate some staff appointed for asylum cases to standard cases or deploy them as legal representatives.
21 For comprehensive numerical prognoses see the appendix ‘kwantitatieve uitgangspunten’ (quantitative points of departure) in the ‘ex-ante uitvoeringstoets’ (ex ante implementation test). To be found at www.justitie.nl
22 See www.cbs.nl.
may be assumed that if capacity remains the same there is more time to deal with each application so that the quality of the decisions made will increase.

Table 1: numerical overview of decision-making regarding asylum applications, 1999-2006

<table>
<thead>
<tr>
<th>year →</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>number of applications</td>
<td>39,300</td>
<td>43,560</td>
<td>32,579</td>
<td>18,667</td>
<td>13,400</td>
<td>9,780</td>
<td>12,350</td>
<td>14,465</td>
</tr>
<tr>
<td>% RC settlements</td>
<td>12%</td>
<td>16%</td>
<td>22%</td>
<td>45%</td>
<td>40%</td>
<td>42%</td>
<td>50%</td>
<td>42%</td>
</tr>
<tr>
<td>positive decisions</td>
<td>13,490</td>
<td>9,730</td>
<td>10,580</td>
<td>8,820</td>
<td>6,552</td>
<td>-</td>
<td>17,030</td>
<td>-</td>
</tr>
</tbody>
</table>

4.2 The percentage of registration centre (RC) procedures

The percentage of applications dealt with according to the RC procedure fluctuates between 40% and 50%. The fluctuation in the figures can be attributed to asylum applications – including repeated applications – to which a moratorium on decisions applied. Under the old Aliens Act a lower percentage of applications were dealt with according to the RC procedure. In 1999, 12% were dealt with at the registration centres, in 2000 16%. It cannot be denied that the decision-making procedure followed at the registration centres has led to a considerable acceleration of decision-making in asylum cases. Within 48 processing hours (a maximum of five days) the asylum seeker receives a decision regarding his or her application. The outcome is not always the desired one, but at least there is a maximum of clarity and this promotes speed, which is a component of the quality concept. It is also interesting to note that the rest of the applications – the great majority – are dealt with according to the ‘normal’ procedure, which has not been accelerated. In the framework of the evaluation of the Aliens Act 2000 research was done on the processing times of the asylum procedure. The results showed that the median processing time of decisions on asylum cases which are not affected by any moratorium on decisions and which have not been investigated in further detail was 137 days. However, within the population the times vary widely: one quarter of the decisions are made within 35 days, while one quarter requires a processing time of 206 days or more. These figures correspond with those in the Aliens Chain Report, which show that in 2002 and 2003 in 20% to 40% of the applications no decision was made within the legal time limit of six months. In the meantime criticism has been expressed from all sides regarding the

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23 These data are from Statistics Netherlands; see www.cbs.nl (from the StatLine database). The percentages of registration centre settlements come from IND annual reports and from www.ind.nl. The figures relating to applications and accepted applications in 2003 come from the Aliens Chain Report (TK (Lower House) 19 637, no. 805, p. 39). It should be noted that this report gives a lower number of positive decisions than that given by Statistics Netherlands. According to the Aliens Chain Report 3,748 residence permits were granted in 2002.
24 Since April 2005 positive decisions have also been made at the registration centres. According to the IND annual report for 2005, that year 13% of the applications dealt with at the registration centres were granted and 37% rejected. In 2006 these percentages were 13% and 29% respectively.
25 A moratorium on decisions is an order by the Minister of Alien Affairs and Integration that no decision is to be made regarding an asylum seeker’s application in view of the situation – expected to be temporary – in the asylum seeker’s country of origin.
26 The 1999 percentage cannot be properly compared with the other figures because in 1999 the time available in the registration centre procedure was raised from 24 to 48 processing hours.
accelerated decision-making procedure at the registration centres. Legal aid workers say that due to the long opening hours (from 8 a.m. to 6 p.m.) they do not have a chance to build up relationships of trust with their clients. Quite often an asylum seeker has contact with as many as three legal aid workers during the 48 processing hours. An additional factor is the very short period of three processing hours available to a legal aid worker to submit a point of view. According to reports, in a large proportion of cases this pressure of time leads to legal aid workers deciding not to submit a point of view. In these cases the notification of intent procedure can hardly be seen as raising quality.

It was not the legislators who suggested that more asylum applications should be dealt with at registration centres; this was in fact an administrative decision. Because the Administrative Division of the Council of State determined that no content-related criterion applied for settlement at a registration centre, administrative efforts were concentrated on the accelerated asylum procedure. The Minister even formulated a target figure – although it never made it into the parliamentary documents – of 80%. As a result the persistent tension between speed and due care was intensified. There is no doubt that the RC procedure is fast; but whether the decisions are made with due care is disputed. In response to this criticism the minister pointed out that the court upheld nine out of ten of the RC decisions. However, it must be borne in mind that a considerable number of cases do not culminate in substantive assessments because by that time the asylum seeker in question has left for an unknown destination and in many cases contact with the legal aid worker has also been broken.

Previously the number of reversals was significantly higher. This undoubtedly also has to do with the case law from the Administrative Division of the Council of State; see section 4.5.

4.3 The number of positive decisions

Table 1 shows that the numbers of applications granted have fluctuated throughout the years. In the years prior to 1999 the number of positive decisions was higher (in 1998 15,100, in 1997 17,000 and in 1996 23,590). This is not surprising in itself in view of the larger number of applications submitted in the 1990s. In absolute figures, the number of permits granted has fallen. But if the number of positive decisions is compared with the number of applications submitted in the same year, we see that a relatively high number of applications were granted. However, this does not mean anything, because in most cases positive decisions apply to asylum requests submitted in a previous year. Moreover, the positive decisions also include residence permits granted for a limited period by virtue of Article 29.1, heading and under d, Aliens Act 2000 – the protection policy applying to all applications submitted by people from certain countries. In recent years, during certain periods this kind of policy has applied to asylum seekers from Somalia, Afghanistan and Iraq among other countries. Nevertheless, it will be interesting to keep track of future developments. It would be revealing if it turns out that there is an increase in the number of positive decisions in the future. Should this be the case, various hypotheses could be formulated to explain the phenomenon.

A first hypothesis might be that the acceleration of procedures leads to the availability of more capacity for the applications dealt with outside the registration centres. As a result greater care can be devoted to investigation, which leads to more positive decisions. A

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[29] In the accelerated procedure appeal against a rejection does not have suspensive effect. The asylum seeker loses his or her rights to housing and support services and has to turn to emergency provisions.
competing hypothesis is that the drop in the number of asylum requests has led to a rise in the more serious requests as a proportion of the total number. Specifically, asylum seekers who do not have a serious story to back up their claim for asylum relocate to other countries because they want to avoid the accelerated procedure in the Netherlands. It is precisely a slow decision-making procedure that appeals to an asylum seeker without a strong case, because then at least he or she is guaranteed accommodation and other facilities for a certain period. This period in an asylum seekers’ centre provides an opportunity to find out if it might be possible to remain in the Netherlands on other grounds or to stay in some other country in Europe or elsewhere. This hypothesis draws attention to a number of striking potential connections. If a larger proportion of asylum applications are ‘dealt with’ according to the accelerated procedure, the number of applications drops. If speed is seen as a component of quality in decision-making, then increased quality has been realized by the acceleration itself. If this leads to a drop in the number of applications, the rise in quality may be further enhanced by the fact that there is then more time left for a thorough investigation of the motives for seeking asylum.

4.4 Complaints and the duration of the decision-making process

It can be deduced from the complaints submitted to the IND that in general the length of processing is perceived as a major problem. In 2003 a total of 8,198 complaints were submitted, of which 1,200 had to do with asylum procedures. The vast majority of the complaints (81%) were about processing times. In 2003 the National Ombudsman observed that the asylum procedure was doing better and better on this score: ‘Since the introduction of the new Aliens Act the number of petitions about the processing time of asylum applications has dropped off considerably. Reference was already made to this in the annual report 2002. This trend has continued in 2003. However the National Ombudsman has observed bottlenecks with respect to the duration of asylum procedures in which advice was requested or a closer investigation was set up’. In 2004 8,496 complaints were submitted to the IND. According to the IND’s figures, three-quarters of these complaints were about the processing time of applications or letters of objection. In 2005 this number rose to 13,205, but in 2006 the number of complaints dropped again, to 9,842. According to the IND, this drop was caused by the reduction in the number of applications and the fact that backlogs had been cleared, so that in recent years the processing times have been shortened.

In response to a report issued by the Netherlands Court of Audit about compliance with the legal time limits for making decisions and about possible explanations for and solutions to existing violations of time limits, the Cabinet observed that ‘keeping to decision-making time limits must even be seen as one of the quality aspects of a soundly operating public administration’.

4.5 Appeals

The ex ante implementation test carried out during the preparation of the Aliens Act 2000 assumed that only 10% of the IND decisions against which an appeal was lodged in the first instance would be reversed. This is a considerably lower percentage than had previously been the case. However, it was assumed that a significant number of cases were dismissed on technicalities, for example because they were not eligible for the objections stage. It was expected that under the Aliens Act 2000 this would occur less frequently, especially in view

30 www.ind.nl
32 TK (Lower House), 2003-2004, 29 495 (Beslistermijnen: waar blijft de tijd?), nos. 1-2, appendix, p. 52.
of the concentrated efforts made to improve the IND decision-making process. Surprisingly
enough, this very optimistic prognosis seems to be proving more and more correct, as can be
seen in Table 2. One might conclude that the quality of the decisions has risen. A rival
hypothesis might explain the drop in the percentage of appeals upheld by suggesting that the
Aliens Section, under the influence of case law from the Administrative Division, is more
reserved – more ‘marginal’ – in its review. In the opinion of the Administrative Division,
the credibility granted by the minister to the asylum seeker’s story may only be marginally
reviewed by the Aliens Section. This means that the administrative body’s position is now
more easily defensible than previously, when there was a much more compelling judicial
review; and this must have direct consequences for the number of judicial reversals.

As has already been pointed out, the introduction of further appeal prolongs the
procedure. The figures show that the Administration Division deals with aliens cases quickly:
average processing times well under two months are excellent. Not a single decision
overstepped the 23-week standard referred to in Article 89 para 2, Aliens Act 2000. In 2001
few cases were presented because the Aliens Act 2000 only came into force as of 1 April that
year. In 2002 and 2003 a distinct rise in the number of cases could be observed. The Council
of State expected that 80% of the principal actions would be able to be settled out of court. As
Table 2 shows, this expectation was far exceeded.

Table 2: numerical overview of appeals, 2000-2003

<table>
<thead>
<tr>
<th>year →</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>% upheld in first instance</td>
<td>32%</td>
<td>39%</td>
<td>20%</td>
<td>13%</td>
<td>21%</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td>asylum cases appealed</td>
<td>n/a</td>
<td>494</td>
<td>1,855</td>
<td>3,838</td>
<td>5,120</td>
<td>5,199</td>
<td>4,559</td>
</tr>
<tr>
<td>processing time in days</td>
<td>n/a</td>
<td>-</td>
<td>41</td>
<td>58</td>
<td>91</td>
<td>98</td>
<td>63</td>
</tr>
<tr>
<td>% out of court</td>
<td>n/a</td>
<td>92%</td>
<td>87%</td>
<td>85%</td>
<td>94%</td>
<td>95%</td>
<td>96%</td>
</tr>
</tbody>
</table>

5 Evaluation of the Aliens Act 2000

In 2006 the Aliens Act 2000 was evaluated by an independent committee. The committee
concluded – on the basis of an external study – that there were significant differences between
the processing times of applications initially dealt with at registration centres on the one hand
and the processing times of applications decided according to the ‘normal’ procedure at the
processing offices on the other. This is hardly surprising in view of the fast procedure at the
registration centres, but the committee argues that the difference is so great that it is better to
refer to the short procedure – which takes a very short time – and the long procedure – which
takes a very long time. There are all sorts of reasons for the big differences in the processing
times. The number of applications is certainly not one of these reasons, since that number has
only dropped during recent years. The committee draws attention to the composition of the
influx from certain countries of origin, which was thought to contribute to the delays in

33 EAUT, p. 7 (to be found at www.justitie.nl)
34 The standard judgment is Administrative Division of the Council of State 27 January 2003, RV 1974-2003, 57,
with note by TS.
35 See the Council of State’s annual report 2003. Unfortunately the Council of State does not refer to the number
of cases upheld, classified according to the sort of case.
processing. In addition, the committee observes that in recent years capacity at the IND has declined considerably. There are also numerous disruptions which have undermined effective progress in implementation. The committee refers to the time spent answering the so-called 14/1 letters, which are actually applications for admission on the grounds of leniency, the assumption of the standard admission tasks of the aliens police and efforts to get rid of backlogs such as large quantities of detention cases and old objection files. The committee calls for the backlogs to be cleared so that normal workloads can be realized, which would eventually considerably curtail processing times. The committee also suggests that measures should be taken to merge the fast RC procedure and the slow ‘normal’ procedure to some extent.

The committee also made a few comments about the quality of the asylum decisions. The findings of the study show that at present – in accordance with the objective of the Act – decisions on asylum cases are of better quality than the decisions in the first instance under the old Act. This is also true of decisions in the ‘normal’ procedure in comparison with the old decisions regarding objections. However, it was impossible to compare the quality of the present RC decisions with those made prior to the Aliens Act 2000. With some reservations, the committee concludes that as far as due care is concerned present decisions are comparable with the old decisions regarding objections. In other words, the abolition of the objection stage does not seem to have led to a deterioration in the quality of the decisions brought before the court. Whether this is relevant to other sections of migration law or of administrative law, as was suggested during parliamentary proceedings, is questionable. Discussions relating to asylum cases tend to include a lot of to-ing and fro-ing. It may well be easier to objectify disputes in other areas, so that an objection stage is less of a ritual and can really contribute something to the considerations which have to be made.

According to the committee, less care is taken over the decisions made according to the RC procedure than over those made according to the normal procedure. The committee therefore suggests that the minister should consider adapting the time limits in the RC procedure in such a way that the gains in quality which seem to have been realized in the normal procedure can also be achieved in the registration centre procedure.

6. Decree

The Aliens Act 2000 aimed to speed up and improve decision-making in asylum cases. To what extent were these objectives attained and what can be said on the basis of the available data about the factors which determine the quality of asylum decisions? Acceleration of the asylum procedure has certainly been partly realized. However, this is not so much due to the Act as to shifts in emphasis in the decision-making process which are a result of the policy adopted by the Minister of Alien Affairs and Integration. These shifts were made possible partly by case law from the Administrative Division of the Council of State concerning the ‘RC criterion’. At the same time, the evaluation study of the operation of the Aliens Act 2000 showed that in a significant proportion of cases the processing time of asylum applications dealt with according to the normal procedure exceeds the legal time limit. In a large number of cases – up to almost 50% for the cohorts submitting asylum applications in the last quarter of 2003 – the legal time limits are exceeded by six months.

On the basis of the evaluation study conclusions can also be drawn about the quality of the decisions involved in asylum cases. It seems that initial decisions are of higher quality than they were under the previous Act and comparable in quality to the old decisions.

39 These 14/1 letters were submitted to the IND between 14 January 2003 and 18 March 2005, appealing for residence permits in view of the special circumstances of the foreign national in question.
regarding objections. The percentage of judicial reversals is sometimes referred to as a measure for the quality of asylum decisions. While this percentage has been dropping in recent years, it should be borne in mind that this may be partly attributable to changes in the judicial review of asylum decisions. According to the Administrative Division, the Aliens Section should only marginally review the administrative body’s assessment of the facts in asylum cases, which is a radically different approach in comparison with the way the Aliens Section in the first instance used to see its task. The Administrative Division of the Council of State is in fact less critical of the quality of the IND’s work than the old Legal Uniformity Division. The result is that fewer asylum decisions are reversed and lawfulness has thus increased, although this does not necessarily mean that the legal quality of decision-making in asylum cases has risen. Doubts about this are borne out by the criticism of legal aid workers, human rights organizations, the Advisory Committee on Alien Affairs and the Evaluation Committee on the Aliens Act 2000 with regard to the settlement of asylum applications.

It has become clear that sufficient information is available about the speed of decision-making in asylum cases. Reports are issued regularly about the percentages of applications dealt with at the registration centres. Information is also available about the processing times of primary decisions and decisions concerning objections. It is therefore all the more disappointing that the information available about how cases are actually handled is so fragmentary. While statistics do show how many residence permits are issued per year – also per category –, strictly speaking no relationship can be ascertained between these figures and the number of applications submitted, because of the relatively long processing times of decisions taken outside the registration centres. The IND should collect cohort figures on decision-making and legal protection procedures in relation to the applications submitted during a certain period.

It is also remarkable that so little information is available about the quality of the decisions. The committee which evaluated the Aliens Act 2000 could only comment – with reservations – on the quality of asylum decisions on the basis of file review. Unfortunately, file review did not provide clarity as to the quality of registration centre decisions – and it is the degree of care taken with these decisions that is so controversial. As we have seen, the assessments of lawfulness made by the Aliens Section certainly do not provide conclusive answers as to the quality of the decisions. It is not even certain whether the reserved review currently carried out by the Aliens Section keeps the implementation of the Aliens Act 2000 on the right track. The Minister of Alien Affairs and Integration should keep the Lower House informed not only about statistical trends in this area but also about the progress of the quality improvement programme initiated at the IND. Along the way, investigation of the legal quality aspects relevant to asylum decisions should shed more light on the development of the decision-making process in asylum cases.

In the policy area of immigration law speed is an important aspect of high quality in regard to decision-making – possibly more important than in other special sections of administrative law. Prompt action is particularly crucial when deciding whether or not protection should be given in the form of a residence permit. It is important for the community as a whole, but also for the asylum seeker in question. It is not implausible that when asylum seekers are thinking about which country to apply to for asylum, one of the factors that determines their choice is the processing time of applications, in the sense that a fast decision-making procedure has a certain deterrent effect. A question which is still to be examined is whether this may also lead to changes in the nature of the requests. One factor not previously referred to in this article is the return of rejected asylum seekers to their countries of origin. The sooner an application is dealt with, the sooner a return can be arranged. At that point no ties with the Dutch community have been built up and the asylum seeker has not become demotivated as a result of years of living in refugee centres.
Discussions about the ‘one-off amnesty’, particularly distressing cases and the ‘return policy’ show how difficult it is to ensure that failed asylum seekers return to their countries of origin after spending years in the Netherlands. At the same time, the accelerated asylum procedure has its drawbacks; but we should take care not to throw out the baby with the bathwater. Research is needed to find ways of overcoming the present drawbacks within the context of a fast procedure.