

NEWS LETTER, VOLUME 2 NR 24

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THE SUPREME COURT OF THE NETHERLANDS: NO CHILD BENEFIT FOR UNDOCUMENTED CHILDREN

On 23 November the Supreme Court (nr 11/03891) decided that parents of children without residence permit are not entitled to child benefit after all. Previously the Central Court of Appeal had decided that this right was applicable to parents of children who had resided in The Netherlands for a long time, the larger part of which with the consent of the authorities. Recently the Supreme Court has reversed this ruling. According to the Supreme Court the Dutch law is clear and the International and European directives offer no reasons to deviate from this decision (Child Rights and European treaty on human rights, respectively).

1. BASIC RIGHTS

Minister Asscher: students without residence permit are allowed to do work placement

Last year the court of appeal decided that work placement is part of training and that students who are allowed to study are entitled to do work placement as well. Asscher, then alderman of Amsterdam, supported these students at the time. Kamp, then Minister, lodged an appeal. Now that Mr Asscher has become minister he has decided to withdraw this appeal and to draw up a law to permit work placement. This law will only apply to students who started their MBO training before their 18th birthday and who will not be remunerated for their work placement (Parliamentary Document 8.12.12).

2. ADMISSION POLICY

Minister Teeven: New legal dues

After rulings of the European Court minister Teeven has decided to adjust the legal dues for residence permits, which are regulated by European law as of January.

The new amounts are mentioned below:

- for applications pertaining to long-term residents: € 150;
- for applications in the context of family unification: € 225;
- for scientific research and study: € 300;
- for applications in the context of other residence objectives: these will remain unchanged.

Refunds may be requested for current applications (Parliamentary document 31549: k, 28.11.12).

Council of State: converted asylum seekers do not need to adjust their behaviour on return

Up to now the IND was of the opinion that converted asylum seekers should exercise restraint in their religious expression so as not to get into trouble with the authorities. Earlier the European Court had decided that this cannot be demanded from religious people. Recently the Council of State confirmed this point of view (201205451/1/V2 and 201202404/1/V2, 30.11.12).

Court of Appeal: integration requirement cannot be imposed according to the family reunification directive

This Court of Appeal is of the opinion that it is not allowed to impose an integration requirement to migrants in the case of family reunification according to the European directive on family reunification. The Court of Appeal has ruled that an authorisation for temporary stay (mvv machtiging voorlopig verblijf) should be issued to applicants so that they can come to the Netherlands (Court of Appeal the Hague Awb 12/9408, 23.11.12).

Family life for Dutch or EU children

Approximately eighteen months ago the European Court decided in the Zambrano case that undocumented parents should be entitled to residence with their child if they are EU citizens, so that the child can stay in the EU. Since this ruling many court cases have been brought about similar cases. In the Dereci case the European Court has ruled that one undocumented parent can be evicted if the child can stay with the documented parent.

Last weeks some new decisions came out.

The European Court decided that also a new partner and his children is allowed to stay with the formerly illegal parent of the child who is EU-citizen, in order to allow EU-child to stay (C-356/11, C-357/11 (O. en S. en L.), 6.12.12).

The IND has ruled that an undocumented father can stay with his Dutch child whose mother is mentally retarded (270.103.9524 (bob 2) 15.11.12).

The Amsterdam Court of Appeal has ruled that the parent who lodges the application is entitled to a sticker that will entitle him to employment (AWB 12/28879 & 12/30324, 19.11.12).

Motions about generous application of the Child's pardon rejected

Voordewind, Member of Parliament for the CU (Dutch Christian party), submitted motions requesting a more generous application of the Child's pardon so that children over 21 years of age and adult siblings also are granted the opportunity to obtain this pardon. These motions have been rejected (Parliamentary document 33 400-VI, nr 55 and 56, 4.12.12).

3. CHECK AND DEPORTATION

Penalization illegal residence will come into effect

A motion by the Members of Parliament Schouw (D66) and Voordewind (CU) to NOT turn illegal residence into a criminal offence has been rejected by the Dutch Lower House (33 400-VI, nr. 47, 4.12.12).

Last week the European Court has ruled in a case brought by Italy that penalization of illegal residence by means of house arrest is not allowed, because this will interfere with the return (HvJEU, C-430/11 (Sagor) 6.12.12).

4. WHAT CAN BE DONE?

Symposium Tackling Human Trafficking in Europe: 30 January 2013 Brussels

Human trafficking is an increasingly disturbing phenomenon in Europe with terrible consequences for victims, the majority of whom are forced into prostitution, street crime, domestic servitude and other forms of labour exploitation. The recently adopted EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 sets out concrete and practical measures to be implemented over the next five years, placing victims at the forefront.

This special International Symposium will facilitate policy discussion and provide a timely opportunity to explore comprehensive and integrated solutions to fighting the 'hidden' crime of human trafficking.

Info: <http://publicpolicyexchange.co.uk/events/DA30-PPE2.php>