

NEWSLETTER, Volume 11 no. 24
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CONTENTS

BASIC RIGHTS.....	2
ADMISSION POLICY	2
CHECK AND DETENTION	3
ACTIVITIES.....	3

DEBATE: HUMANE POLICY FOR UNDOCUMENTED MIGRANTS

A debate will be held on Amsterdam’s policy for undocumented migrants, on 7 December, from 20:00 to 22:00 hrs, in Pakhuis De Zwijger. The programme will be as follows:

20:00–21:00 hrs LIVECAST, panel discussion and speech about the current situation of undocumented migrants

21:00–22:00 hrs Brainstorm sessions in various groups about policies that can improve the situation of the undocumented migrants.

Topics for the brainstorm sessions:

- 1) Access to work & the labour market for undocumented migrants
- 2) Undocumented youths and access to education
- 3) Undocumented elderly & access to healthcare
- 4) Access to the digital world (e.g. the Corona app, Digi-d, a bank account)
- 5) Access to basic services (shelter, food, sanitary facilities)
- 6) Safety for undocumented women, children & families

<https://dezwijger.nl/programma/menswaardig-beleid-voor-ongedocumenteerden>

BASIC RIGHTS

District Court: Tax Department to investigate lawful residence based on 'Chavez-Vilchez' case

This case is about allowances for which a woman had applied as the mother of a Dutch child. This type of residence permit is 'declaratory', i.e. the right exists when preconditions are being met, even though no formal decision has yet been made.

The right to allowances also depends on the residence permit. Therefore, the Tax Department needs to also investigate this residence permit. In its ruling in this case, the court has made clear that the Tax Department cannot simply rely on code 98 of the Dutch Municipal Personal Records Database (GBA) on illegal stay, because this is frequently incorrect. Moreover, in this case, there were strong indications of this being so, in the form of a letter from the Dutch Immigration and Naturalisation Service (IND) (District Court of The Hague, SGR 20/6712 – Interlocutory Decision, 27 October 2021)

ADMISSION POLICY

District Court: no dispensation for civic integration requirements illiterate Moroccan women

To obtain a residence permit with a partner in the Netherlands, the foreign partner must pass the citizenship course exam abroad. Dispensation is a possibility if the foreign partner is able to show that they have made every effort to pass the exam but have nevertheless not succeeded in doing so. In three recent cases, the court ruled that older, illiterate Moroccan women could not simply be exempted from the civic integration requirements. The efforts made by these women had been insufficiently proven. See [here](#), [here](#) and [here](#).

District Court: independent residence permit after stay with EU partner

Residence permits for people with an EU partner are granted on the basis of less stringent requirements: no citizenship course exam abroad is required, nor does an application need to be filed abroad. The residence permit is no longer valid if the relationship is terminated, unless it has lasted for more than 3 years and the foreign partner has sufficient income.

The question in this case is about when the relationship can be considered to have ended. In cases of marriage, the termination date is that of the divorce. In this case, the partners had been living together without being married. The foreign partner stated that the relationship had not ended, despite the fact that the EU partner had moved out of the home. The judge agrees with this statement. See [here](#).

State Secretary for Justice and Security: supplementary regulation au pairs in preparation

The State Secretary plans to make the au pair regulation more stringent by adding two supplementary preconditions:

- 1) The au pair must be unmarried and have no children or foster children;
- 2) The au pair is 25 years of age or younger at the time of submitting the application.

The target date by which the regulation will come into effect is 1 July 2022 (with 1 October 2022 as the latest commencement date). The new policy will not be retroactive.

<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2021/11/08/tk-wijziging-au-pairbeleid/tk-wijziging-au-pairbeleid.pdf>, 8 November 2021.

CHECK AND DETENTION

Dutch Council of State: no detention possible after submitting application for residence permit with Dutch child

The Council of State has decided in this detention case that an application for a residence permit with a Dutch child (so-called *Chavez* or *Chavez-Vilchez application*) results in a residence permit being granted, and that therefore there are no legal grounds for immigrant detention. This does not apply to application that have already been processed. See [here](#).

ACTIVITIES

Immigration and Naturalisation Service (IND): civic integration requirement also for newcomers from Turkey

As from 1 January 2022, the civic integration obligation abroad also applies to Turkish migrants and their family members who want to come to the Netherlands for a long-term stay. The IND will check whether such migrants have passed the basic citizenship course exam abroad when assessing the migrants' application for a provisional residence permit (mvv) or residence permit. This group was previously exempt from this obligation.

<https://ind.nl/nieuws/Paginas/Inburgeringsplicht-Turkse-nieuwkomers-vanaf-1-januari-2022.aspx>

International Labour Organization (ILO): Extending Social Protection to Migrant Workers, Refugees, and their Families

The idea of adapting social protection policies and schemes to make them more inclusive of migrant workers is gaining momentum at the global level. This Guide seeks to provide policymakers, practitioners, migration specialists, social protection specialists and other stakeholders with practical guidance on how to extend social protection to migrant workers, refugees and their families.

https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_826684.pdf, November 2021.