

NEWSLETTER, Volume 13 no. 8
11 April 2023

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MEETING: RETURN POLICY PURE FICTION, 20 APRIL, 18:00 HRS A'DAM

'Return policy needs to be stricter!' 'Rejected asylum seekers should leave the country as soon as possible, by force if necessary.' This is what we hear and read about, constantly, in the media coverage of Dutch admission policy. But practice paints a very different picture: around two thirds of 'mandatory departures' do not leave at all. They stay here. And they are paying the price for a policy based on the fiction that return is a real option. They are living on the streets, undocumented, homeless, disenfranchised.

Venue: Pakhuis de Zwijger, Amsterdam
<https://dezwijger.nl/programma/terugkeer-eeen-fictie/>

1. BASIC RIGHTS

Central Appeals Court: [no healthcare insurance obligation in cases of retroactive status](#)

This case concerns a woman who was fined for not being insured in the period during which her residence permit was pending. That residence permit was eventually granted retroactively from the date of application. But during the time of the procedure, the woman did not know that it would be granted and, therefore, was unable to take out health insurance. The Central Appeals Council agrees with the woman and has annulled the fine.

NB: this case concerns the Belgium route. The woman had moved to Belgium with her Dutch partner and then returned to the Netherlands. Not until two years later it was confirmed that she had (declaratory) right of residence from the time she had returned to the Netherlands.

2. ADMISSION POLICY

Council of State: [no naturalisation under outstanding criminal case](#)

This case shows that a naturalisation application may be rejected if the applicant has outstanding criminal cases that may affect naturalisation.

District Court: [No exemption from citizenship course exam abroad for middle-aged illiterate Moroccan woman](#)

This case concerns an illiterate Moroccan woman aged 54 who applied for a residence permit to stay with her 64-year-old husband in the Netherlands. To be eligible for a residence permit with a partner, the foreign partner must pass the citizenship course exam before coming to the Netherlands. This woman asked for exemption because, over a period of four years, she had not managed to pass the exam. She presented a statement from her teacher and a physician. However, according to the IND, this statement did not show any medical problems. She has not sought to follow other courses that are especially for illiterates. As she did not hand over an income statement, the costs of such courses are not a valid argument. The judge agreed.

District Court: [8 ECHR consideration mandatory when rejecting a residence application on other grounds](#)

If the IND rejects an application for a residence permit for, say, medical reasons or residence with Dutch child, and the applicant asks if the IND also wants to consider their private and family life (Article 8 of the European Convention on Human Rights = 8 ECHR), the IND should consent to do so, according to the judges.

The IND objects to this, because a separate 8 ECHR application is more expensive and, in this way, costs would be avoided. But judges are of the opinion that a quick judgement is more important than those costs.

Note: until January 2023, the cost for a separate 8 ECHR application were over 1,000 euros but have since been reduced to 210 euros.

District Court: [Decision not to prosecute human trafficking victim must be assessed by the IND](#)

If someone wishes to file a police report about being a victim of human trafficking, they will be issued with a residence permit, which will be revoked again if this proves to be untrue. This is shown, for

example, in a decision not to prosecute by the public prosecutor. But the Netherlands Public Prosecution Service (OM) can also decide to dismiss charges for other reasons: for example, if there is insufficient information to start prosecution. In such cases, however, the decision is not sufficient to revoke someone's status as a victim of human trafficking, the court has ruled.

3. CHECK AND DETENTION

District Court: [care for a small child taken into account when imposing immigrant detention](#)

This case shows that the immigration police must consider the personal situation of an undocumented person before putting them into immigration detention. This case involves a Colombian man who had been caring for his 9-year-old daughter for the past seven years, and who was in the process of applying for a residence permit for that daughter. The immigration police should have given greater consideration to the care for his daughter before deciding on immigrant detention, the court finds.

4. ACTIVITIES

Call: EU legislation cases for VU EU-Citizen Right Corner

Five talented and enthusiastic master's students of law from the VU University are available to advise organisations dealing with EU citizens and their former family members on issues such as access to welfare benefits, social services and the residence permit. Examples include social welfare benefits and homeless shelters (under the Social Support Act (Wmo)).

The students are eager to work on case studies, which is why we can guarantee the provision of high-quality legal advice in the very short term. Submit your question via: migrationlawclinic@vu.nl.

Information for refugees: [Refugee Help](#)

The online platform [RefugeeHelp.nl](#) provides 24-hours-a-day practical and up-to-date information for refugees. The platform was developed using the input of 500 refugees and is available in 11 languages.

Premiere of the film [HARRAG](#), 23 April 19:00 hrs at the LantarenVenster in Rotterdam

HARRAG is a pilot documentary about the lives of the harragas, undocumented North African young adults who burn their ID papers and come to Europe to become illegals. The story is told by actor Nizar El Manouzi whose cousin decided to survive living in Europe as a harrag. After the 30-minute documentary, there will be a discussion with aid workers.

Study by Significant: [Approach to human trafficking in municipalities](#)

Significant, commissioned by the VNG (Association of Netherlands Municipalities), investigated what municipalities have been doing to find and help victims of human trafficking. The study's conclusion is that most municipalities have made policies and set up hotlines, but as yet have not been very successful in reaching out to victims.

Founded in 2003, the LOS national foundation for undocumented migrants (Landelijk Ongedocumenteerden Steunpunt) is the knowledge centre for people and organisations providing assistance to undocumented migrants. The LOS foundation is devoted to the basic rights of these migrants and their children.