



VU Migration Law Series No 5

Seeking Asylum Alone in the Netherlands

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Migration Law Series



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Working Paper Series

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This publication was made possible by the generous support of Plan Nederland.

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1. INTRODUCTION

1.1 AIM OF THE PROJECT

This paper investigates the problems separated minors seeking asylum alone face in the Netherlands. It is not intended to be an exhaustive research report. Instead, it is designed to serve as a tool to stimulate discussion at a comparative European roundtable to be held in Brussels in spring 2007. At the meeting, research and data regarding children and asylum in Europe, including the Seeking Asylum Alone project and other related work such as this paper, will be presented and discussed. The eventual goal of the roundtable is to influence and improve current policy.

This paper is funded by Plan Nederland, an NGO campaigning for children's rights. It was inspired by a study comparing policies and practices towards children seeking asylum alone in the United States, the United Kingdom and Australia. The Seeking Asylum Alone project is coordinated by Professors Jacqueline Bhabha of Harvard University and Mary Crock of the University of Sydney.

1.2 STRUCTURE OF THE PAPER

This paper begins in chapter one by outlining the methodology of the study. The second chapter gives an overview of unaccompanied and separated children in the Netherlands. The next two chapters examine asylum law and policy. Chapter three outlines historical policy in the period 1992-2004 and chapter four explores current policy. The fifth chapter deals with interview procedure for minors. Finally, the paper concludes with recommendations.

1.3 METHODOLOGY

The non-exhaustive empirical component of this paper was drawn over the period May-July 2005 by the main researcher, Said Essakkili, from the following information sources:

- files from the Nijmegen and The Hague branches of the organisation which acts as legal guardian of separated minors seeking asylum in the Netherlands (NIDOS Foundation);¹
- interviews with guardians at the NIDOS foundation;

¹ Note that this organisation was known at its inception as *Stichting de Opbouw*.

- files of the Dutch Refugee Council at the centre for the examination of asylum applications at Schiphol Airport (Schiphol Application Centre);²
- meetings at Schiphol Airport between lawyers and separated minors with Stichting Rechtsbijstand Asiel (SRA); and
- interviews with the Immigration and Naturalisation Service (IND).

² The Schiphol Application Centre deals with those aliens who have entered the Netherlands by airplane or by boat. It has a detention regime for unaccompanied minors seeking asylum alone, with minors being separated from adults. The asylum request of aliens (including minors who are older than 12) is dealt with within 48 procedural hours. See for more details about the accelerated procedure Lieneke Slingenberg: *The Dutch Accelerated Asylum Procedure in Light of the European Convention on Human Rights*, Vrije Universiteit Amsterdam, June 2006, www.rechten.vu.nl/documenten.

2. AN OVERVIEW OF UNACCOMPANIED AND SEPARATED CHILDREN IN THE NETHERLANDS

This chapter commences with definitions, followed by a presentation of statistics on the number, nationality and flight motive of unaccompanied minor applicants in the Netherlands.

2.1 DEFINITIONAL ISSUES

- **Separated children** are those separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.
- **Unaccompanied children** or **unaccompanied minors** are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

This paper will not use the term **separated children**, a concept which is studied in the wider framework of the Seeking Asylum Alone comparative study. This is not to limit the scope, but rather because Dutch policy uses a more specific and restrictive definition, namely, a **single** or **unaccompanied minor asylum applicant/seeker/alien**³ or a **single** or **unaccompanied minor**. The term **unaccompanied minor** or **minor** will be used interchangeably in this paper, in line with the term used in the special policy (which applies only to unaccompanied minors).

- A minor is qualified as an **unaccompanied minor** if:
 - s/he is under 18 years old;
 - s/he is not married or has a registered partnership, and has not been married or had a registered partnership;
 - there is no declaration of majority with regard to the minor in the sense of article 253ha *Burgerlijk Wetboek* (Civil Code), which opens the possibility of majority for a woman who wants to raise her child;
 - s/he is not accompanied by his/her parents, relatives or guardian;⁴
 - his/her parent is a minor as well.⁵

Note, however, that a minor whose parents or guardian are living in the Netherlands will not qualify as an unaccompanied minor.⁶

³ Please note the Dutch translation of the term 'unaccompanied minor asylum seeker or alien': *alleenstaande minderjarige asielzoeker of vreemdeling*.

⁴ Aliens Circular 2000 C2/7.1.2 en C2/7.1.3.

⁵ Aliens Circular 2000 C2/7.1.3.

⁶ Aliens Circular 2000 C2/7.1.3.

2.2 STATISTICS ABOUT UNACCOMPANIED MINORS IN THE NETHERLANDS

2.2.1 Number of unaccompanied minors (1994-2005)

Over the period 1994-2005, the number of unaccompanied minor applicants as a percentage of the total number of asylum seeker applicants increases until 2001, and then goes down (see *table 2.1, appendix 1*). Similarly, the absolute number of unaccompanied minor applicants increases steadily to reach a peak in 2000, and then decreases.

The decrease in applicants since 2000 is often explained by the restrictive measures introduced in 2001, both in general asylum policy (most notably the introduction of the *Aliens Act 2000* in April 2001) and in unaccompanied minors policy. However, the number of applicants decreased in all of the Western world in the same period, while the total number of refugees also went down. Given the Dutch statistics are consistent with global statistics, the decrease in applicants in the Netherlands since 2000 cannot necessarily be attributed to Dutch policy measures.

However, at the European level, a decrease in the relative number of unaccompanied minor applicants compared to other European countries suggests restrictive Dutch policy measures did influence the number of applicants. For example, in 2000, the Netherlands was the destination country for 51% of unaccompanied minors seeking asylum in the European Union. In 2001, this dropped to 40%, and in 2002, to 22%.

Again, the impact of recent tight Dutch policy has been queried in relation to decisions on asylum applications by unaccompanied minors. In 2003, Olde Monnikhof and Van den Tillaert published a study on final decisions on applications submitted by unaccompanied minors in 1995, 1997 and 2000.⁷ Of the applicants who submitted their application in 1995, 58% (962 people) had been granted some residence right; in 1997, 56% (920 people), and in 1999, 33% (1,744 people).⁸ Appeal procedures are currently pending for the 1999 cohort. To date, appeal decisions and decisions under administrative review in this cohort, are less positive than in the 1995 and 1997 cohort. Olde Monnikhof and Van den Tillaert attribute this trend to more restrictive decision-making practices.

2.2.2 Nationality and flight motive of unaccompanied minor applicants

Generally speaking, unaccompanied minors who apply for asylum in the Netherlands predominantly come from conflict zones, while in addition, a remarkable number are Chinese.⁹ To elaborate, nationality will first be discussed, followed by flight motive.

⁷ M. Olde Monnikhof and H. van den Tillaert: *Alleenstaande minderjarige asielzoekers in Nederland*, ITS, Nijmegen 2003, p. 42.

⁸ Ibid.

⁹ Adviescommissie voor Vreemdelingenzaken 2003: *Kinderen en de asielpraktijk. De positie van het kind voor, tijdens, en na de asielprocedure – tegen de achtergrond van het internationaal recht*, Den Haag: ACVZ, p. 53-55.

i) Nationality

Olde Monnikhof and Van den Tillaert conducted a study of the countries of origin of unaccompanied minors for the period 1998-2000 (see *table 2.2, appendix 1*). Based on their findings, the following points are of particular interest:

- For China, Togo and Guinea, the majority of the applicants are unaccompanied minors.
- The percentage of unaccompanied minors from Angola increased from 33% in 1998 to 48% in 2000, unlike other countries experiencing a marginal increase, decrease or a combination of both.
- Only a small percentage of applicants from Iraq and Afghanistan are unaccompanied minors, yet interestingly these countries of origin feature prominently in general asylum applicant statistics.
- Most unaccompanied minors (70-80%) were between 15 and 18 years old.¹⁰

ii) Flight motive

Based on the IND asylum files of unaccompanied minor applicants over the period 1998-2001, around 40% of unaccompanied minors state they fled death, maltreatment or arrest in the country of origin, while some 30% fled war and some 30% left because there was no one who could take care of them.

Further, there was no clear difference in the flight motive of male and female unaccompanied minors.¹¹ Gender is outside the scope of this paper. However, it is interesting to note that the gender breakdown in asylum applicants in general is two thirds male and one third female, yet with unaccompanied minor applicants, some three quarters are male and one quarter female (with considerable variation among: countries of origin, applicants in general and unaccompanied minors).¹²

¹⁰ Ibid, p. 35-38.

¹¹ Ibid, p. 63-65.

¹² Adviescommissie voor Vreemdelingenzaken 2003, supra footnote 9, p. 53-55.



3. PAST POLICY (1992-2004)

This chapter will concentrate on the development of Dutch policy towards unaccompanied minors since it came into existence in the early 1990s, through to late 2004.

BEFORE 1992

In 1990, a special reception centre was set up for unaccompanied minors seeking asylum. This was the first formal policy measure which was aimed specifically at unaccompanied minor asylum applicants. It was not until September 1992 that a special policy for asylum applications of unaccompanied minors was introduced.

Up until September 1992, the *Opbouw* foundation exercised guardianship and was responsible for submitting asylum applications on behalf of unaccompanied minors younger than 12.¹³ Unaccompanied minors who were older than 12 could submit the asylum application on their own behalf, but they were assigned a guardian as well. The asylum applications of unaccompanied minors were assessed in accordance with the normal asylum policy. If the unaccompanied minor did not qualify for refugee status or for a residence permit on humanitarian grounds, the asylum application was rejected.

However, at the beginning of the 1990s a practice developed under which the unaccompanied minor was not always expelled if adequate reception in their country of origin was not reasonably guaranteed. An investigation took place to determine whether there were relatives or other related people living in the country of origin. If it was not possible to find such related parties, or if the investigation in the country of origin was not possible because of the prevailing situation, a residence permit could be granted.¹⁴

SEPTEMBER 1992

In September 1992, a policy was introduced formalising the practice which had come into existence during the preceding years. This marked the official introduction of a special policy for unaccompanied minors seeking asylum.

¹³ Between the actual entry in the Netherlands and the assignment of *Stichting de Opbouw* as guardian a period of about three months elapsed, *Kamerstukken II 1995/96*, 19637, no. 143, p. 4.

¹⁴ *Kamerstukken II 1992/93*, 19637, no. 85, p. 2.

The asylum procedure for unaccompanied minors was basically the same as the asylum procedure for adults. However, the unaccompanied minor had an additional interview with an official of the Ministry of Justice as soon as possible after submission of an asylum application. The purpose of this interview was to gather information about the presence of the parents or other relatives in the country of origin. Subsequently, the Ministry of Foreign Affairs was able to carry out an inquiry as to the whereabouts of the parents or other relatives in the country of origin.

If after six months, it had not been established that adequate reception was reasonably guaranteed in the country of origin, a residence permit was granted. The residence permit was valid for a period of one year. The residence permit could be extended twice for a year. However, if new information about the parents or relatives became available and hence about the possibilities for reception in the country of origin, the residence permit could be withdrawn or not be extended. If during these three years (that is, the initial one year in addition to two one-year extensions), the minor turned 18, the residence permit as unaccompanied minor could be retained as long as no adequate reception was available in the country of origin. If after this period of three years, adequate reception was still not possible in the country of origin, the residence permit was converted into an unconditional residence permit.¹⁵

APRIL 1993

On 26 April 1993, the policy for unaccompanied minors was adjusted on two points.¹⁶

First, it had to be established whether the unaccompanied minor qualified for refugee status, *before* the special policy for unaccompanied minors could be applied. In this way, it prevented – in theory, at least – minors being granted a residence permit on the basis of the special policy *instead* of being granted refugee status.

Furthermore, the information about the parents and relatives in the country of origin was to be discussed during the detailed asylum interview, instead of during an additional interview occurring immediately after submission of the asylum application. The detailed interview took place four weeks after the intake. Because of this, the minor had time to recover and to prepare for the interview. Minors younger than 12 were not subjected to an interview. On the basis of the detailed interview, an investigation into the parents or relatives could be initiated.¹⁷

¹⁵ *Kamerstukken II 1992/93*, 19637, no. 85, p. 2.

¹⁶ Ministry of Justice, TBV 1993/79.

¹⁷ R.F.A. van den Bedem, H.A.G. de Valk and S.O. Tan, *Toelating en opvang van ama's*, Arnhem: Gouda Quint 1994.

MARCH 1996

The first restrictions on existing policy were introduced in March 1996. The restrictions were motivated by a want to combat abuse and improper use of the special policy for unaccompanied minors.¹⁸ The main new element was the introduction of an age assessment.¹⁹ Where there were serious doubts as to age, an asylum seeker could be subject to a medical examination. The age assessment was conducted by means of x-rays of the jaw, teeth, hand and wrist.²⁰ The asylum seeker would be informed about the content of the assessment and about the consequences of the results. The asylum seeker had to sign a certificate of cooperation, which constituted formal consent to the medical examination. Non-participation in an age assessment was considered a valid reason for applying the normal asylum policy for adults and led to exclusion from the special policy for unaccompanied minors.

The term of four weeks before an unaccompanied minor was subject to the detailed interview did not apply if there were doubts about the age of the applicant. In that case, the normal term of seven days between submission of the asylum application and the detailed interview applied.

An additional change in the policy for unaccompanied minors saw the denial of resident permits where the minor represented a danger to public order.²¹

APRIL 2000

Until 2000, the application of the policy for unaccompanied minors did not take place in the accelerated asylum procedure (accelerated procedure). The accelerated procedure allows for applications to be dismissed within 48 working hours (in practice four to five calendar days), while the applicant is detained.²² From April 2000, the age assessment was subject to the accelerated procedure.²³

Further, if there were doubts surrounding the age submitted by the applicant, the asylum seeker had to make their age plausible during the first interview. If they did not succeed, two alternative determinations would follow. It would be decided first, whether the minor was in fact adult, in which case no medical examination would follow; or second, whether the doubt justified giving the asylum seeker the opportunity to prove their age through a medical examination. This meant that the application of a purported minor could be dismissed without a medical examination on the ground that the applicant *appeared* to be an adult. Alarmingly, this could occur in the accelerated procedure.

¹⁸ *Kamerstukken II* 1995/96, 19637, no. 143, p. 4.

¹⁹ Decision of the State Secretary of Justice dd 12 March 1996, *Stert.* 1996, no. 54, p. 9 (TBV 1996/1).

²⁰ *Kamerstukken II* 1995/96, 19637, no. 143, p. 5.

²¹ Decision of the State Secretary of Justice of 12 March 1996, *Stert.* 1996, no. 54, p. 9 (TBV 1996/1).

²² See extensively Liene Slingenberg 2006, *supra* footnote 2. Since 2002, the forced presence of asylum seekers in the centres where the accelerated procedure takes place formally does not have the character of detention anymore.

²³ Decision of the State Secretary of Justice of 30 March 2000, *Stert.* 2000, no. 65, p. 14 (TBV 2000/6).

It should be emphasised that, although the initial interview of unaccompanied minors takes place in the application centre, the great majority of all unaccompanied minors is then referred to the normal procedure for the extensive interview about flight motives.

JANUARY 2001

The preceding slow trickle of restrictions culminated in a fundamental change in early January 2001.

On 24 March 1998, the State Secretary of Justice wrote to parliament, stating that the policy for unaccompanied minors had to be evaluated, since the administration was confronted with major problems, notably: abuse of the policy, suspicions of child trafficking in the framework of the special policy, and rising numbers of applicants.²⁴

On 24 March 2000, the State Secretary wrote in a memorandum on unaccompanied minor asylum seekers that the number of asylum applications from unaccompanied minors had more than doubled since 1997. The State Secretary announced an intention to change the policy on unaccompanied minors, in order to:

- combat the abuse of the special policy for unaccompanied minors by asylum seekers older than 18;
- accelerate the examination of applications for unaccompanied minors; and
- enable the guardianship and reception organisations to deal with under-age asylum seekers.²⁵

In January 2001,²⁶ the resulting changes meant that the personal scope of the special policy was reduced, and that a minor who was older than 15 at the time of arrival was to be expelled when he/she turned 18. From 4 January 2001, the most important changes were:

- The special policy for unaccompanied minors did not apply anymore to unaccompanied minors who turned 18. The residence permit as unaccompanied minor was granted until the age of 18. As a result, the minor had to arrive in the Netherlands before the age of 15, in order to have a prospect of prolonged residence after he/she turned 18. This meant that if the minor at the age of 18 had not been in the possession of a residence permit for three years, he/she had to leave the Netherlands. A minor older than 15 at the time of the granting of the residence permit as 'unaccompanied minor' therefore had no prospect of permanent residence in the Netherlands; he/she could only stay temporally in the Netherlands until the age of 18.

²⁴ *Kamerstukken II 1997/98*, 19637, no. 321.

²⁵ *Kamerstukken II 1999/00*, 27062, no. 2.

²⁶ Decision of the State Secretary of Justice of 29 December 2000, *Stert.* 2001, no. 2, p. 16 (*TBV 2000/30*).

- A minor asylum seeker was no longer considered to be ‘unaccompanied’ if there was an adult, who had, or was supposed to have, the responsibility for taking care of him/her, present in the Netherlands. It did not matter whether the residence of the adult in the Netherlands was lawful or not. Before 4 January 2001, this had to be a relative of the minor or a person related to the minor by marriage. After 4 January 2001, it could be *any* adult. Thus, if the minor was accompanied in the Netherlands, the special policy for unaccompanied minors did not apply. This meant that adequate reception in the country of origin was no longer necessary for the minor, although he/she was only accompanied *in the Netherlands*.
- A residence permit as unaccompanied minor was not granted if it was presumed that the minor aged 16 could maintain him/herself independently in the country of origin.
- The concept of ‘adequate reception in the country of origin’ was widened. Since 4 January 2001, ‘adequate reception’ is not only assumed if there is reception by parents or relatives, but also if there is reception by friends, neighbours, members of the tribe, clan or village or by reception centres in the country of origin.
- A minor who had exhausted all legal remedies and whose age was not doubted, would be granted reception. A minor who had exhausted all legal remedies and who turned 18 during the process or who did not succeed in proving their minority, no longer had a right to reception benefits.
- Asylum application of a minor whose age was not doubted could now be dealt with in the accelerated procedure. Before, only asylum applications from ‘minors’ who were evidently adult could be dealt with in the accelerated procedure.
- The term of four weeks before an unaccompanied minor could be subjected to the detailed interview no longer applied.

This new policy had prospective application based on applications submitted on or later than 4 January 2001.

APRIL 2001

On 1 April 2001, the *Aliens Act 2000* came into force. The changes which resulted from the introduction of the new Act are considerable, but are not directly related to the special policy for minors.

The most important change with regard to the policy for unaccompanied minors was that the residence permit as unaccompanied minor was no longer an asylum residence permit, but a regular

residence permit. From this point onwards, the regular residence permit as unaccompanied minor could only be granted *ex officio*, after the rejection of the asylum permit. The *Aliens Decree 2000* set out the criteria for granting *ex officio* a regular residence permit as unaccompanied minor.²⁷ This criteria the same as in the policy for unaccompanied minors as introduced in January 2001 (see above).

In addition, the *Aliens Act 2000* introduced the possibility to lodge an appeal against the judgement of a district court. The Judicial Review Division of the Council of State became the competent appeals court.

MAY 2001

In May 2001, another major policy change focused on the reception facilities of unaccompanied minors. The reception facilities were redesigned in order to make clear that minors who did not qualify for asylum were to return to their country of origin. Importantly, ‘double messages’ (i.e. reception facilities oriented to integration in Dutch society for minors who ultimately should return) were to be avoided during temporary stays in the Netherlands.

An explicit aim of these changes was to reduce the number of unaccompanied minors asking for asylum in the Netherlands by reinforcing return policies. This was supported by reception facilities which were oriented towards return.²⁸ Under the new policy, three types of reception facilities were distinguished: reception during the basic period, a ‘return type’ (*terugkeervariant*) and an ‘integration type’ (*integratievariant*), as detailed below.

i) Basic period

The basic period, ranging between six to nine months, is the period before the first decision about asylum has been made. During the basic period, the reception is aimed at returning the unaccompanied minor to the country of origin.

ii) Return type

After the basic period, the unaccompanied minor who is expected to stay no longer than three years in the Netherlands, received return type reception. This included a minor:

- whose asylum application had been rejected and for whom the special policy for unaccompanied minors did not apply (for instance, because there was supposed to be adequate reception in the country of origin and so he/she had to return as soon as possible); and/or
- who was 15 or older when he/she entered the Netherlands; even if he/she did qualify under the special policy but had to return to his/her country of origin at 18.

²⁷ Article 3.56 Aliens Decree 2000.

²⁸ *Kamerstukken II 2000/01, 27062, no. 14.*

In return type reception facilities, the focus is on returning to the country of origin, for example, through maintaining the language; keeping up-to-date with current affairs; and staying in touch with people from the home country. Contacts with Dutch society are minimised in order to prevent ‘double messages’. The program aims to stimulate the independence of the minor through a campus model where he/she would stay at a location with several units for unaccompanied minors with around-the-clock care facilities. The campus model was inspired by the ‘Glenn Mills’ view of boarding schools: the institution is strict and not for amusement, but the individual leaves having learnt something. Minors younger than 12 were housed in foster homes as much as possible.

iii) Integration

The reception under the integration model aims to support integration into Dutch society. A minor who is expected to stay in the Netherlands for more than three years, received reception of the integration type, after the basic period. This included a minor:

- who had been granted asylum;
- or who was younger than 15 when entering the Netherlands; and
- had been granted a residence permit as unaccompanied minor.

NOVEMBER 2001

In November 2001, additional changes were introduced.²⁹ This time, the personal scope of the special policy for unaccompanied minors was further restricted; and the categories of cases which could be dealt with under the accelerated procedure were expanded.

The most important changes were:

- Unaccompanied minors who frustrate the investigation into reception possibilities in the country of origin, no longer qualify for a residence permit as unaccompanied minor. Accordingly, an unaccompanied minor frustrates the investigation if:
 - he/she gives inconsistent, vague or brief statements;³⁰
 - he/she withholds information about his/her identity, nationality or reception (the so called ‘fibbing and silent unaccompanied minors’ (*jokkende en zwijgende amas*)); and/or

²⁹ *TBV* 2001/33, decision of the State Secretary of Justice dd 5 November 2001, *Stcrt.* 2001 No. 216, p. 15.

³⁰ E.g. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 19 May 2005, *Jurisprudentie Vreemdelingenrecht* 2005/260.

- the asylum application has been rejected on the ground that insufficient relevant documents were submitted.³¹ the case must then be considered inadmissible.³²

When deciding whether the minor is frustrating the investigation, attention will be paid to the pressure, trauma, mental development and age of the minor. Despite the caveat that a child is not expected to be as complete and detailed as an adult, a minor younger than 15 can still be considered to frustrate the investigation.³³

- Reception in a children's shelter or orphanage in the country of origin is from now on assumed to be adequate, if approved by the Minister of Foreign Affairs. This approval consists of a letter stating that general reception facilities are available and adequate in a particular country or that the authorities in that country can supervise the reception. In that case, no further investigation is necessary.
- An adult living in the Netherlands, who has or is supposed to have, responsibility for the minor, is expected to travel with the unaccompanied minor to the country of origin to arrange reception or to arrange alternate reception outside the Netherlands.
- The above duty exists irrespective of whether the adult has a residence permit in the Netherlands. This category of unaccompanied minors, referred to as 'accompanied single minor asylum seekers' (*begeleide alleenstaande minderjarige asielzoekers*) includes minors with relatives or acquaintances in the Netherlands. Notably, the change focused only on the presumed possibility, and not actual delivery, of the care.
- Unaccompanied minors under 12 have to apply for asylum in an application centre as well. Since they cannot sign the asylum application themselves, a caretaker manager (for example, an older sibling) signs on their behalf. This means that formal guardianship does not have to be arranged prior to the minor submitting an asylum application.
- Minors younger than 12 are to be subjected to the first interview as well, but only have to give personal particulars: language(s), last address in the country of origin, details of parents, family and/or the last companion or caretaker and travel route.

³¹ Article 31, paragraph 2, sub f Aliens Act 2000.

³² Aliens Circular 2000 C2/7.4.1 ; examples are Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 18 February 2004, *Jurisprudentie Vreemdelingenrecht* 2004/170, and Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 25 April 2003, *Jurisprudentie Vreemdelingenrecht* 2003/263.

³³ Aliens Circular 2000 C2/7.4.1.

- The option was created to subject minors younger than 12 to a detailed asylum interview. However, this has to be done by specially trained staff members of the IND and in child-friendly rooms. The interviewing of unaccompanied minors younger than 12 ultimately started in March 2002,³⁴ after the IND developed a protocol for the detailed interview of minors between 4 and 12.³⁵
- The asylum applications of unaccompanied minors could be dealt with in the accelerated procedure provided it was carefully determined that the minor did not qualify for a residence permit.

This new policy was applicable only to applications submitted on or later than 7 November 2001.

JUNE 2002

Since the major changes of January 2001, it had become crucial whether or not a minor was under 15, or older, when entering the Netherlands. Of course, this led to practical problems. Since June 2002, it has become possible to carry out an age assessment to determine whether the minor is younger or older than 15. This was already mentioned in January 2001, but was not practically possible until June 2002.³⁶

NOVEMBER 2002

On 11 November 2002, a pilot project, the so-called ‘campus model’ was introduced for a period of one year. This was a detention-like reception facility for unaccompanied minors of 15 or older. The minors had to follow a strict schedule. The education and activities in the campus were focused on return. The first pilot project was in Vught. In February 2003, another pilot project was started in Deelen. The new model was to be evaluated and if it appeared successful, it would be introduced everywhere.³⁷

Since not all unaccompanied minors could stay at these two campuses, only unaccompanied minors whose asylum application had been rejected in the accelerated procedure and who came from countries in which adequate reception was assumed to be available, were hosted in these campuses.

³⁴ Adviescommissie voor Vreemdelingenzaken 2003, supra footnote 9, p. 59.

³⁵ P.B. van Elk and Vos, *Protocol Horen Alleenstaande Minderjarige Asielzoekers*, IND, 18 December 2001.

³⁶ *TBV* 2002/23, decision of the State Secretary of Justice of 25 June 2002, *Stcrt.* 2002, no. 119, p. 11.

³⁷ Letter of the Minister of Aliens Affairs and Integration of 18 November 2002, *Kamerstukken II* 2002/03, 27062, no. 19.

JANUARY-MARCH 2003

Shortly after the roll-out of the campus model pilot project, numerous Non-Governmental Organizations (NGOs) issued reports about the situation on the campuses. They reported a serious limitation of freedom of movement of the minors. The minors were required to stay on campus, to comply with compulsory dress rules and exhausting activity schedules and to speak English.³⁸ In response to the unrest amongst minors and human rights organisations, the rules on campuses were relaxed in January 2003.³⁹

The unaccompanied minors of the pilot were themselves not satisfied with the campus model. At the end of January 2003, 59 minors were residing at a campus. Since the 11 November 2002 opening, 12 of them had absconded.⁴⁰ In February 2003, 46 minors who stayed at the campus in Vught left the campus, and were offered regular reception facilities. In late February 2003, 26 of the minors returned to the campuses.⁴¹ However, on 6 March 2003, a group of minors again left the campus at Vught. They were offered regular reception facilities and the minors who had remained on the campus were allowed to remain, or to go to regular reception facilities. They all opted for the latter.⁴² As a result, all unaccompanied minors who stayed at the campus in Vught, were transferred to other, non-campus reception facilities. In March 2003, new unaccompanied minors were received at the campus in Vught. However, the rules at the campus were loosened.⁴³ On 31 March 2003, 16 minors were residing in the campus in Vught, and 17 in Deelen.⁴⁴

APRIL 2003

In April 2003, following the incidents at the campuses, a coalition of human rights groups went to court to demand that the campuses be prohibited, or alternatively, that the unlawful aspects of the campuses be remedied by court order. The court summarily dismissed the demand, stating that the claim that the campuses were unlawful was too broad. It then went on to scrutinise the situation on the campuses (see *appendix 2* for a detailed account of the court's ruling).⁴⁵

In sum, the court ordered the State:

- to give minors on the campuses their entire weekly pocket money; and
- to install an independent complaints committee within a month.

38 Letter of Vluchtelingenwerk to the Second Chamber of Parliament, 12 February 2003, vluchtewb.nl.

39 Annex to a letter of the Reception authorities of 13 January 2003, available on vluchtewb.nl.

40 *Aanhangsel Handelingen II* 2002/03, p. 1543-1544.

41 *Kamerstukken II* 2002/03, 27062, nos. 21 and 22; *Aanhangsel Handelingen II* 2002/03, p. 2061-2062.

42 *Aanhangsel Handelingen II* 2002/03, p. 2061-2062.

43 *Kamerstukken II* 2003/04, 27062, no. 28; *Aanhangsel Handelingen II* 2002/03, p. 2249.

44 *Aanhangsel Handelingen II* 2002/03, p. 2061-2062.

45 Voorzieningenrechter Rechtbank 's-Gravenhage 23 April 2003, *Jurisprudentie Vreemdelingenrecht* 2003/274.

Please note that the detailed account of the court's ruling from the original text has not been edited. It is as set out in appendix 2.

Without giving binding orders, the court also held that:

- the activity schedule was too intense;
- the right to receive and pay visits could not be curtailed entirely;
- the regime aimed at preventing contact with Dutch society of minors whose asylum claim was still pending was too strict; and
- NIDOS had insufficient influence on the way the minors were being treated.

Interestingly, on the points where it rejected the demands of the human rights organisations, the court's scrutiny was unusually stringent. Judgements of this court, part of the civil jurisdiction and not the administrative jurisdiction, are not subject to appeal to the Council of State, which is quite conservative, but to the Appeals Court and the Supreme Court, which are more mainstream. Nevertheless, it is remarkable that the court was prepared to be so critical.

DECEMBER 2003

In September 2003, an interim evaluation of the campus model was presented.⁴⁶ The model was not successful on a resource utilisation basis. At the end of July, resident minors in Vught (which had a capacity of 360) and Deelen (which had a capacity of 180) totalled a mere 106 and 23 respectively. Only one minor had returned to their country of origin, 49 had absconded and 99 were transferred to other (probably regular) reception facilities.

The campuses were characterised by serious unrest. The reception facilities blame the minors for this, as evidenced by the following statements: 'they are unwilling to accept the message that they have to return'; 'persons who in fact are adults create a lot of unrest'. Other organisations emphasise the uselessness of the campuses. For example, NIDOS felt that unrest and instability led to an absence of attention on the actual return of minors. In addition, the International Organisation of Migration thought that much effort was wasted with the campuses; and the police thought that the problems were largely attributable to the fact that the campuses were not ready when opened.

In December 2003, the minister wrote that the pilot at the campus in Vught would be extended to 1 January 2005. This extension would bring with it several liberal changes which included a freer activity schedule; a loosening of the initial hierarchical structure; and a relaxing of campus rules. Furthermore, the minister concluded that the main aim of the campuses, namely increasing the number of minors who actually returned to their country of origin, had *not* been met. The main aim of the special policy on minors, namely limiting the number of minors applying for asylum, *had* been met.⁴⁷

⁴⁶ Powerpoint presentation of IND 29 September 2003, vluchtweb.nl.

⁴⁷ *Kamerstukken II* 2003/04, 27062, no. 28.

In January 2004, the Organisation for Unaccompanied Minor Asylum Seekers (SAMAH) issued a report, which listed objections to the campus model. SAMAH pointed out that experiences with minors in other locations (such as special parts of reception centres, or normal apartments shared by minors with regular social worker visits) led to much more positive results (in terms of education, well-being and even return), as opposed to the negative effects of the campuses.⁴⁸

APRIL 2004

By decision of 27 April 2004,⁴⁹ the minister established an ‘Age Assessment Committee’ (*Commissie Leeftijdsonderzoek*). Since the start of the age assessment, different bodies (such as the National Ombudsman) had asked for the establishment of such a medical-ethical committee. The Committee is charged with supervision of the quality of the methods and procedures for age assessment.

JULY 2004

On 14 May 2003, the Council of State handed down an adverse decision which contradicted the special policy in relation to accompanied minors.⁵⁰ This led the UN Committee on the Rights of the Child in 2004 to recommend a change to the definition of unaccompanied minors seeking asylum, to bring it into line with international standards.⁵¹ By letter of 20 July 2004, the minister abolished the rule concerning accompanied single minors, whereby a single minor was not considered single if he/she had relatives or acquaintances in the Netherlands who were presumed to take care of them.⁵² The minister announced that all minors who are not accompanied by (one of) their parents, will be treated as ‘unaccompanied’. As a consequence, it was no longer relevant whether there was another adult, who had or was supposed to have responsibility for taking care of the minor, present in the Netherlands. Transitional provisions for this policy change were introduced in April 2005.⁵³

⁴⁸ SAMAH: *De ama-campussen te Vught en Deelen*, January 2004.

⁴⁹ Decision of the Minister of Aliens Affairs and Integration of 27 April 2004, *Stert* 2004, no. 80, p. 18.

⁵⁰ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 14 May 2003, *Rechtspraak Vreemdelingenrecht* 1974-2003, 59, *Rechtspraak Vreemdelingenrecht* 2003, 52, *Jurisprudentie Vreemdelingenrecht* 2003/291, *Nieuwsbrief Asiel- en Vluchtelingenrecht* 2003/196. This decision was in great part dictated by the Council’s view on the system of the Dutch Aliens Act, and had little to do with the fact that the case concerned a minor. We will disregard this legal-technical aspect of the decision here.

⁵¹ CRC/C/15/Add.227, 26 February 2004, p. 11.

⁵² *Kamerstukken II* 2003/04, 19637, no. 844.

⁵³ *WBV* 2005/12.

OCTOBER 2004

In October 2004, an evaluation of the campus model carried out by the Ministry of Justice was published. Generally, the campus model had been criticised for its detention-like character. In part, this criticism focused on the fact a minor who was still waiting for a decision on his/her asylum application was housed together with a minor who had to return to his/her country of origin. Put simply, the approach towards both groups was based on the presumption of (forced) return. To combat this situation, the evaluation stated: “until it is established that these young people are not refugees, or that they cannot yet be sent back due to the lack of adequate care in the home country, these unaccompanied asylum seeking minors should not be continually confronted with the prospect of having to return⁵⁴.”

Moreover, the evaluation revealed many critical findings, which included the following:

- Barely any minors had returned, either voluntarily or forced, to their country of origin.
- The repressive atmosphere on the campuses ignited periodic disturbances, which were much more frequent than in other locations where minors were housed.
- The focus on return hindered the minors in dealing with their trauma and sometimes led to re-trauma. In effect, minors on campuses reported more anguish and depression than those in other locations.
- The number of unaccompanied minors applying for asylum decreased enormously, but it was unclear whether this was related to the campus model, or to the restriction of admission policy for unaccompanied minors.

The overall conclusion of the government evaluation of the campus model was that the main objective, namely increased actual return of unaccompanied minors, was not reached. Another conclusion was that the motivation to return could better be reached by an individual approach. As a result of the negative evaluation, the government decided that the campus model would not be introduced. Unaccompanied minors, 15 and older, whose asylum application had been rejected would from now on be hosted in special, small units at the new ‘return centres’ (*terugkeercentra*) for adults.⁵⁵

⁵⁴ Kinderrechtenkollektief: *Growing up in the Low Countries*, 2003, p. 27.

⁵⁵ *Kamerstukken II 2004/05*, 27062, no. 29.



4. CURRENT POLICY (2004-PRESENT)

In this chapter, the following policy areas will be outlined: the special policy, the residence permit of unaccompanied minors, the asylum procedure for unaccompanied minors and the return policy for unaccompanied minors.

The starting point for the examination of asylum applications of minors is general asylum law and policy. The asylum application of minors will be assessed in accordance with normal asylum policy. In general, the same rules and regulations apply to minors. Like adults, minors have to return to their country of origin (or to another country where they can reasonably go), if their asylum application has been rejected. However, this is not always feasible for minors due to their peculiar position. For that reason, special policy has been developed for unaccompanied minors.⁵⁶

4.1 THE SPECIAL POLICY

As mentioned, the special policy applies only to *unaccompanied minors*. Pursuant to article 3.56 *Aliens Decree 2000*, a minor can get a regular (i.e. non asylum) residence permit as unaccompanied minor if:

- his/her asylum application has been rejected pursuant to article 31 *Aliens Act 2000*; and
- the minister is of the opinion that s/he is not able to take care of him/herself independently in the country of origin (or in the country where s/he can reasonably go); and
- the minister is of the opinion that, according to local standards, adequate reception is not available in the country of origin (or in the country where s/he can reasonably go).

Before further detailing these requirements below, the earlier point must again be emphasised regarding unaccompanied minors who frustrate the process (see *Chapter 3*). Such minors who frustrate the investigation into reception possibilities in the country of origin (or third country) during the asylum procedure, do not receive a residence permit as ‘unaccompanied minor’. In this case, the special policy does not apply, and minors can be returned to their country of origin without investigation into the availability of shelter.⁵⁷

⁵⁶ Aliens Circular 2000 C2/7.2.

⁵⁷ E.g. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 4 September 2003, *Jurisprudentie Vreemdelingenrecht* 2003/527; Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 29 December 2004, *Jurisprudentie Vreemdelingenrecht* 2005/95

Indeed, factors surrounding pressure, trauma, mental development and age of the minor are taken into consideration to determine whether the minor is frustrating the investigation. However, rather restrictive case law prevails. First, if a minor claims their statements are inconsistent due to their mental state, this must be clear from the asylum interview report⁵⁸ (however, not being a requirement, the report does not necessarily contain such indications⁵⁹). Furthermore, the decision is subject only to marginal judicial review (a rationality test), instead of full judicial review (which takes into account the court's own opinion).⁶⁰

4.1.1 *Independent care*

When deciding if the minor can look after him/herself independently, which goes towards the decision of awarding a regular residence permit as unaccompanied minor, different circumstances are important. The primary one is age: a minor will only be considered to be self-sufficient if 16 or older. Therefore, the availability of adequate reception in the country of origin is always required for a minor under 16.⁶¹

In order to assess self-sufficiency, attention is paid to whether the minor took care of him/herself before coming to the Netherlands. Self-sufficiency can appear from the fact that the minor had a job or had lived alone in their country of origin. For example, the Council of State dismissed the appeal of a minor who had not attended school since she was eleven, kept house where she lived with her father, worked on the land and sold produce by herself.⁶² An example where self-sufficiency was *not* established was the situation of a minor who, during an earlier period of living alone, had developed serious medical problems due to a neglected infection.⁶³ Importantly, the minor must reasonably be expected to take up previous activities again, clearly excluding those in prostitution, the army or child labour.

⁵⁸ E.g. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 14 April 2005, *Jurisprudentie Vreemdelingenrecht* 2005/212.

⁵⁹ Nienke Doornbos: *De papieren asielzoeker*, Centrum voor Migratierecht, Katholieke Universiteit Nijmegen, Nijmegen 2003; Thomas Spijkerboer: *Gender and Refugee Status*, Ashgate, Dartmouth 2000, p. 45-106.

⁶⁰ See more extensively S. Essakili: *Marginal judicial review in the Dutch asylum procedure*, Vrije Universiteit Amsterdam, 2005, www.rechten.vu.nl/documenten; and more succinctly Thomas Spijkerboer: Stereotyping and Acceleration, in Gregor Noll (ed): *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, Martinus Nijhoff, Leiden/Boston 2005, p. 89-102.

⁶¹ Aliens Circular 2000 C2/7.4.2.

⁶² Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 30 september 2003, *Jurisprudentie Vreemdelingenrecht* 2003/508, *Nieuwsbrief Asiel- en Vluchtelingenrecht* 2003/311. Note that in this case the father of the minor must have died or disappeared, otherwise she would not have been considered a single minor.

⁶³ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 1 April 2004, *Jurisprudentie Vreemdelingenrecht* 2004/214.

4.1.2 Reception in the country of origin

Again, inadequacy of reception in the country of origin (or in a third country) forms a requirement in the decision to grant a regular residence permit as unaccompanied minor. The reception in the country of origin is adequate if the circumstances in which the unaccompanied minor will be sheltered do not differ substantially from the shelter given to children in a similar position in the country of origin (or in a third country where the minor can reasonably go). The reception can be given by parents, family, friends,⁶⁴ neighbours,⁶⁵ members of the tribe, clan or village or a (private) shelter.

Adequate reception is assumed if:

- there are relatives within the fourth degree present in the country of origin, or a spouse in a non-recognised customary marriage; and/or
- facts and circumstances show that an adult in the country of origin (or in a third country) has taken care of the minor before on a more than incidental basis.

As previously mentioned, reception in a shelter is adequate if the shelter is acceptable according to local standards. The ‘adequacy’ need only be evidenced through a letter from the Ministry of Foreign Affairs, stating that general reception facilities are available and adequate or that the authorities of that country have taken care of the reception and ensured that the reception facilities are adequate. In that case, it is not necessary to investigate whether there is an actual place in a shelter.⁶⁶

⁶⁴ E.g. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 18 February 2004, *Jurisprudentie Vreemdelingenrecht* 2004/170: shelter given by a friend of the applicant’s father.

⁶⁵ E.g. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 30 September 2003, *Jurisprudentie Vreemdelingenrecht* 2003/508.

⁶⁶ Aliens Circular 2000 C2/7.4.3 ; Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 22 January 2004, *Jurisprudentie Vreemdelingenrecht* 2004/102. Comp. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 13 October 2004, *Jurisprudentie Vreemdelingenrecht* 2004/466 :

A decision of the Council of State demonstrates the at times fictitious nature of the availability of shelter. In a Somali case, the applicant's residence permit under the special policy was refused because the asylum application of the applicant's adult brother had been rejected and it was held that the adult brother could provide for his younger siblings in Somalia. However, the adult brother subsequently received a residence permit. On appeal, the Council of State agreed with the minister that, because the permit was not granted based on the brother's inability to return to Somalia, but rather due to the lengthy duration of his asylum application, the minor siblings could return to Somalia together with their adult brother. Consequently, the refusal of a residence permit on the basis of the special policy was justified.⁶⁷ Incidentally, the decision to reject a residence permit on the basis of the special policy, is only subject to review when it has been objectively established that return is permanently impossible.⁶⁸ The decision as to the adequacy of reception in the country of origin is subject only to marginal, and not full, judicial review⁶⁹

4.2 THE RESIDENCE PERMIT

The residence permit for unaccompanied minors is granted *ex officio*,⁷⁰ for one year, but only until the minor turns 18. The validity of the residence permit can be renewed twice for one year, but only until the alien is 18. Renewal of the residence permit is possible if the alien still meets the requirements of the special policy.⁷¹

The request for an extension of the residence permit can be denied on the basis of article 18 paragraph 1 sub f *Aliens Act 2000* if it turns out that the special policy does not apply to the minor any more, for example because the parents have been located. The request for extension can also be rejected on the basis of article 18 paragraph 1 sub e *Aliens Act 2000*, if the minor is a threat to the public order or national security. According to article 19 *Aliens Act 2000*, the residence permit can also be withdrawn on these same grounds. This means that if it is subsequently revealed that the asylum seeker is not in fact a minor, the residence permit can be not renewed, or withdrawn.⁷²

⁶⁷ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 5 October 2004, *Jurisprudentie Vreemdelingenrecht* 2004/55. Comp. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 28 August 2003, *Jurisprudentie Vreemdelingenrecht* 2003/472: the mere statement that parents or relatives are unable or unwilling to take care of a minor does not do away with the principle that adequate shelter is presumed to be available when they are living in the country of origin. It may be that the emphasis in this consideration is on the evidence: the *mere statement* is insufficient; possibly, *evidence* that parents and relatives are unwilling or unable to provide shelter could be relevant.

⁶⁸ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 14 October 2004, *Jurisprudentie Vreemdelingenrecht* 2005/6.

⁶⁹ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 6 May 2004, *Jurisprudentie Vreemdelingenrecht* 2004/262; Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 18 February 2004, *Jurisprudentie Vreemdelingenrecht* 2004/170.

⁷⁰ Article 3.6 Aliens Decree 2000.

⁷¹ Aliens Circular 2000 C2/7.5.

⁷² Aliens Circular 2000 C2/7.6.

If the residence permit as unaccompanied minor has been extended twice, the minor can request a residence permit for ‘continued stay’ (*voortgezet verblijf*). According to article 3.51 paragraph 1 sub c *Aliens Decree 2000* the unaccompanied minor can obtain a residence permit under the limitation ‘continued stay’ if the minor:

- has been in the possession of a residence permit as ‘unaccompanied minor’ for three years;
- is still a minor at the moment the third year expires;
- also meets the other requirements for granting the residence permit on the basis of the special policy for unaccompanied minors seeking asylum; and
- there are no other reasons for rejection/denial.

This means that if an unaccompanied minor is older than 15 when s/he is granted a residence permit as ‘unaccompanied minor’, s/he will not qualify for continued stay in the Netherlands and must return to the country of origin when s/he turns 18.

According to article 3.52 *Aliens Decree 2000*, a residence permit for ‘continued stay’ can also be granted if the alien has stayed lawfully in the Netherlands and if the minister is of the opinion that s/he cannot leave the Netherlands, due to special individual circumstances. According to the policy, special individual circumstances can be assumed if the minor:

- was in the possession of a residence permit as ‘unaccompanied minor’ when turning 18;
- has been in the possession of a residence permit for three years; and
- has met the requirements for the special policy for unaccompanied minors during his/her whole stay in the Netherlands.

This is especially designed for minors who have been in the possession of an asylum residence permit which has been withdrawn/not extended and who subsequently have been granted a residence permit as ‘unaccompanied minor’.⁷³

The residence permit for ‘continued stay’ will be granted for five years. The validity can be extended once for another five years. This residence permit cannot be withdrawn if the minor turns 18 or otherwise no longer meets the requirements of the special policy for unaccompanied minors.⁷⁴ This permit is not based on the special policy for unaccompanied minors, but on policies regarding extended residence rights for aliens who have resided in the Netherlands for a certain time.

⁷³ Aliens Circular 2000 C2/7.7.3.

⁷⁴ Aliens Circular 2000 C2/7.4.

According to article 21 *Aliens Act 2000*, an alien who has been in the possession of a residence permit for five years can qualify for a permanent residence permit. This means that if the alien is in the possession of a residence permit under the limitation of ‘continued stay’ and has been in the possession of a residence permit (as a unaccompanied minor and/or continued stay) for five years, he/she can qualify for a permanent residence permit.⁷⁵

4.3 THE PROCEDURE

In general, the same rules apply to the asylum procedure of unaccompanied minors and to other asylum seekers. There are however some differences and special rules for unaccompanied minors. A first exception concerns Dutch domestic law on repeat applications, which bars judicial review of asylum decisions on repeat applications unless the asylum seeker has submitted events which happened after the decision on the first asylum application.⁷⁶ A minor who was represented by his/her parents during the first asylum procedure and who applies for asylum a second time can have the asylum decision subjected to full judicial review. However, in the second asylum procedure, the minor must undergo the asylum interview him/herself and submit new statements.

Specific examples where minors have successfully had their second asylum decision subjected to full judicial review include situations in which they stated for the first time that they: feared Female Genital Mutilation;⁷⁷ had conscientious objection to military service;⁷⁸ were gay;⁷⁹ their mother and adult brother – present during their first asylum procedure – had disappeared and undue hardship would result upon return to Angola.⁸⁰ Not entitled to a full second judicial review procedure was a minor who during the second procedure declared that his father died violently, as this had previously been surfaced in the first asylum procedure.⁸¹

⁷⁵ Aliens Circular 2000 C2/7.8

⁷⁶ See more extensively J. van Rooij: *Asylum Procedure versus Human Rights*, Vrije Universiteit Amsterdam 2004, www.rechten.vu.nl/documenten; and more succinctly Spijkerboer 2005, supra footnote 60, p. 89-102.

⁷⁷ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 24 June 2004, *Jurisprudentie Vreemdelingenrecht* 2003/355.

⁷⁸ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 12 October 2004, *Jurisprudentie Vreemdelingenrecht* 2004/463; Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 26 May 2005, *Jurisprudentie Vreemdelingenrecht* 2005/267.

⁷⁹ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 3 October 2003, *Jurisprudentie Vreemdelingenrecht* 2004/3.

⁸⁰ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 31 March 2005, *Jurisprudentie Vreemdelingenrecht* 2005/208.

⁸¹ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 25 september 2003, *Jurisprudentie Vreemdelingenrecht* 2003/506.

In addition, priority is given to make the decision on the application for a residence permit known to the unaccompanied minor as soon as possible.⁸²

The asylum procedure of unaccompanied minors includes the following aspects, each of which will be dealt with in turn: the application, the first interview, the process decision, the age assessment, the detailed interview, the letter of intention and the view, and legal remedies.

4.3.1 *The application*

Just like all asylum seekers, unaccompanied minors must report at an application centre (*aanmeldcentrum*) to file an application for asylum.⁸³ As mentioned earlier, if the minor is 12 or older, s/he signs the application him/herself. If the minor is under 12, the application is signed by a guardian. However, if the guardianship has not been arranged at the time of arrival at the application centre, which is often the case, a caretaker (*zaakwaarnemer*) may sign the application on his/her behalf.⁸⁴

Incidentally, the practice of having the asylum application of a minor under 12 signed by a caretaker is contrary to the *Aliens Act 2000*, which provides that an application is submitted by the alien or a legal representative (article 36). However, the Council of State has permitted this practice, arguing that the minor intended to submit an application, and that is what has been done on his/her behalf.⁸⁵ If the letter of the *Aliens Act 2000* was applied (and the application was submitted only once a guardian had been appointed), the minor under 12 would have more time to prepare for the asylum procedure. However, if a residence permit was granted on the basis of the special policy, it is issued only as of the date of the application, which means an earlier date where an application is submitted by means of a caretaker is accepted.⁸⁶

In addition, during the first registration, the need for an age assessment is considered.⁸⁷

⁸² Aliens Circular 2000 C5/24.2.

⁸³ There are two application centres in the Netherlands, one in Ter Apel and one at Schiphol Airport.

⁸⁴ Aliens Circular 2000 C5/24.3.3.

⁸⁵ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 28 October 2003, *Jurisprudentie Vreemdelingenrecht* 2003/560 : application submitted by an aunt of the minor; Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 9 July 2003, *Jurisprudentie Vreemdelingenrecht* 2003/389: application submitted by a Nidos person.

⁸⁶ E.g. Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 1 July 2005, *Jurisprudentie Vreemdelingenrecht* 2005/323.

⁸⁷ Aliens Circular 2000 C5/24.3.2.

4.3.2 *The first interview*

The first interview also takes place at an application centre. During the first interview, attention will be paid to the identity, nationality and travel route of the minor. Questions will be asked as well about assistance with coming to the Netherlands. At this stage, the asylum motives of the minor are not considered. Minors who are 12 and older are interviewed independently. Minors younger than 12 need only give information regarding: identity, nationality, language(s), the last address in the country of origin, ethnic origin, religion and the names of parents and potential (half) brothers and sisters.⁸⁸ A report is made of the first interview.⁸⁹

During the first interview, the minor has to make his/her age plausible. If s/he does not succeed, the minor is given the opportunity to prove his/her age by means of an age assessment.⁹⁰ However, this option is not open if the asylum seeker is considered to be clearly an adult. This is established by observing the external features, behaviour and statements of the asylum seeker.

If the asylum seeker refuses an age assessment and cannot make his/her age plausible by other means, it will be assumed that s/he is older than 18.⁹¹

4.3.3 *The process decision*

After the first interview, the process decision (*procesbeslissing*) takes place to determine whether the case will be assessed in accordance with the accelerated procedure. As mentioned, the accelerated procedure takes a maximum of 48 procedural hours,⁹² with short time limits applying for legal aid. Cases where the application can be carefully examined within 48 procedural hours fall under the accelerated procedure.⁹³ Cases of minors younger than 12 are (in principle) not eligible for the accelerated procedure.⁹⁴ In that case, the minor is sent to an investigation and reception centre and the normal procedure applies.

⁸⁸ Aliens Circular 2000 C5/24.4.1.

⁸⁹ Article 3.110, paragraph 2 Aliens Decree 2000.

⁹⁰ Aliens Circular 2000 C5/24.4.1.

⁹¹ Aliens Circular 2000 C5/24.4.3.

⁹² Article 1, paragraph 1, sub f Aliens Decree 2000 defines procedural hours as hours that are available for investigating the asylum application in an application centre, not including the hours from 6 p.m. to 8 a.m. and, except for the application centre Schiphol, the weekends and the legal holidays. See more generally Slingenberg 2006, supra footnote 2.

⁹³ Aliens Circular 2000 C3/12.1.1.

⁹⁴ Aliens Circular 2000 C5/24.6.

4.3.4 The age assessment

Age assessment takes place by means of x-rays, which are assessed by two different radiologists. The age assessment can yield four different results, as follows:

1. If the x-rays correspond with the stated age, the date of birth the minor has given is confirmed.
2. If the investigation shows that the alien is a minor, but that the mentioned age is too young, s/he will be assigned a new date of birth.
3. If the x-rays show that the asylum seeker is not a minor, s/he will be treated as an adult.⁹⁵
4. If the age assessment cannot lead to a definite conclusion, the asylum seeker will be called up again, possibly one or two years later, for a second age assessment. In the meantime, the stated age of the asylum seeker will be used except where inconsistent, vague or brief statements are given.⁹⁶

Specifically, if the clavicle is fully grown, the asylum seeker is presumed to be 21 or older. If not, the asylum seeker is presumed to be a minor.⁹⁷ If the hand and wrist bones are fully grown, the minor is presumed to be older than 15.⁹⁸ If the asylum seeker disagrees with the age assessment results, an expert of Leiden University can provide a second opinion. The initial IND x-rays are forwarded to the expert, who writes an opinion for a fee.

⁹⁵ Aliens Circular 2000 C5/24.5.2.

⁹⁶ Aliens Circular 2000 C5/24.5.3.

⁹⁷ Aliens Circular 2000, C5/24.5.2

⁹⁸ TBV 2002/23.

The age assessment takes place in the accelerated procedure as much as possible. If it is not possible to complete the age assessment within this framework, the asylum seeker will be referred to the normal procedure.⁹⁹ The age assessment has been highly controversial.¹⁰⁰ Extensive litigation has focussed on several topics, as follows:

1. *Consent.* When the administration deems that the applicant has not established that s/he is a minor (e.g. because s/he does not submit authentic identity documents), the special policy is not applicable, unless the minority of the applicant is established by other means, such as a medical examination. If the applicant wants to undergo such a medical examination, s/he should submit a request. Both the Council of State and the Regional Disciplinary Committee in Amsterdam found this to be informed consent as required for a legitimate medical investigation.¹⁰¹
2. *Anonymity of the radiologists.* Due to the controversial nature of age assessment, radiologists have historically participated in the process on an anonymous basis. This has been rejected by the Council of State. On the basis of Dutch administrative law, if the administration relies on an expert report, it must be aware of the expert's professed expertise and procedures followed. This means that the IND must be aware of the identity of the radiologist. However, the anonymity of the radiologist may be maintained vis-à-vis the alien.¹⁰²
3. *Belgian radiologists.* The controversial nature of age assessment among Dutch radiologists led to the use of Belgian radiologists. It was consequently submitted that Dutch medical disciplinary law is not applicable. However, the Council of State found this issue to be unproblematic due to an absence of argument that Belgium lacks disciplinary law comparable to that of the Netherlands.¹⁰³
4. *Reliability.* The Council of State held that the research method in the Dutch procedure, that is x-rays, can be used for age assessment. This decision was based heavily on an expert report by a leading Dutch radiologist.¹⁰⁴

⁹⁹ Aliens Circular 2000 C5/24.4.2.

¹⁰⁰ See for an overview Wilma Lozowski : Leeftijdsonderzoek: De twijfel blijft, *Nieuwsbrief Asiel- en Vluchtelingenrecht* 2004, p. 144-159.

¹⁰¹ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 3 March 2004, RV 2004, 50, *Jurisprudentie Vreemdelingenrecht* 2004/155, AB 2004, 128 ; Regionaal Tuchtcollege voor de Gezondheidszorg Amsterdam 26 August 2004, NAV 2004/294. The appeal against this decision, lodged by both the complainants and the radiologist concerned, has not yet been decided on its merits; see the decision on receivability Centraal Tuchtcollege voor de Gezondheidszorg 19 January 2006, case 2004/224, not reported.

¹⁰² Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 31 March 2004, *Jurisprudentie Vreemdelingenrecht* 2004/210.

¹⁰³ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 31 March 2004, *Jurisprudentie Vreemdelingenrecht* 2004/210.

¹⁰⁴ Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) 3 March 2004, *Jurisprudentie Vreemdelingenrecht* 2004/155, AB 2004, 128.

In March 2006, the minister reported to Parliament that, since the introduction of age assessment in 1999, 10,537 medical examinations had taken place.¹⁰⁵ In 2003, a study was conducted on examinations carried out in 2000 (see table 4.1, appendix 3). Interestingly, the data collected from this study only included cases where an age assessment was actually carried out (one would expect this to occur only if the IND suspects that the applicant is not a minor). In 2000, 6705 single minors applied for asylum, while in 1999, 5009 did so (note that some examinations carried out in 2000 will concern applications submitted in 1999). Roughly speaking, in 2000, an age examination was carried out in 35% of all cases, and of those, 42% were found not to be minors, which means that some 15% of all applicants claiming to be unaccompanied minors were found not to be minors.

Since 2004, the age assessment has been overseen by an independent commission,¹⁰⁶ charged with supervision of the protocol used for age assessment and production of an annual report. In the 2004¹⁰⁷ and 2006 reports,¹⁰⁸ the Commission confirms that the research method is adequate and applied properly in practice, and has not found notable problems on the point of informed consent. Interestingly, in the 2006 report, the Commission is critical about the criteria used in age assessment procedures in some other European countries. Below are some of the Commission's comments on the criteria which use examination of the hand-wrist, medical clavicle and teeth.

i) Hand-wrist

The Commission considers that the most commonly used criterion, that is, whether the bones in the hand-wrist area are mature, is unfit to decide whether people have reached the age of 18. With 50% of all males, there is a complete union of the epiphyseal disc of the distal radius (which leads to the conclusion that they are older than 18), when in fact they have not yet reached 18. For females, this occurs in 90% of all cases. The Commission finds that this method can only be used to decide whether a person has reached the age of 15, with an affirmative answer if there is a complete union, if not that conclusion is not justified and the person may be under 15.

ii) Medical clavicle

The Commission considers examination of the medial clavicle as fit to decide whether a person has reached the age of 20. Where there is a complete union, the person is assessed to be over 20.

¹⁰⁵ *Aanhangsel Handelingen II 2005-2006*, p. 2147.

¹⁰⁶ Decree of 27 April 2004, *Stcrt.* 2004, 80, p. 18.

¹⁰⁷ Commissie leeftijdsonderzoek, Rapport 14 december 2004.

¹⁰⁸ Commissie leeftijdsonderzoek, Rapport 31 Januari 2006.

iii) Teeth

Examination of the teeth¹⁰⁹ is considered unfit by the Commission for three reasons, as follows:

1. about a quarter of all people do not develop wisdom teeth and so do not qualify for this method;
2. the development of the root of wisdom teeth varies enormously; and
3. about 10% of females and 16% of males have fully grown wisdom tooth roots before the age of 18, and so would unjustifiably be considered as adults.

4.3.5 The detailed interview: normal versus accelerated procedure

All unaccompanied minors are subject to a detailed interview. Minors of 12 or older are interviewed independently. The detailed interview of unaccompanied minors is held only after the results of the age assessment are available.¹¹⁰ Interviewing procedure – an area of particular contention and importance – will be discussed in greater detail in *Chapter 5: Interviewing procedure for minors*.

In the normal (as opposed to the accelerated) procedure, the detailed interview can only take place six days after submission of the asylum seeker's application.¹¹¹ In the accelerated procedure, this condition does not apply. A time limit of two procedural hours applies to discuss the report of the first interview with a legal counsel and prepare for the detailed interview.¹¹²

If the detailed interview is conducted under the normal procedure, specific policy applies for interviews of minors younger than 12. A report is made of the detailed interview¹¹³ and in the normal procedure, the asylum seeker can submit corrections to the report and additional information within two weeks.¹¹⁴ In the accelerated procedure, a time limit of three procedural hours applies.¹¹⁵ However, there are considerable formal obstacles to correcting errors or omissions.¹¹⁶

¹⁰⁹ According to the Commission, this method is used in Denmark, Estonia, Finland, Luxemburg, Poland and Sweden.

¹¹⁰ Aliens Circular 2000 C5/24.7.

¹¹¹ Article 3.111, paragraph 1 Aliens Decree 2000.

¹¹² Aliens Circular 2000 C3/12.1.4.

¹¹³ Article 3.111, paragraph 2 Aliens Decree 2000.

¹¹⁴ Aliens Circular 2000 C3/13.4.3.

¹¹⁵ Aliens Circular 2000 C3/12.1.4.

¹¹⁶ Van Rooij 2004.

Concern surrounds the inappropriate use of the accelerated procedure for unaccompanied minors' cases. Examples from 2003 support this point:

- In 2003, a coalition of NGOs reported that 42% of unaccompanied minor asylum requests were processed in the accelerated procedure.¹¹⁷
- Human Rights Watch reported 30% in 2003, stating that: “The (accelerated) procedure by its nature is unlikely to ensure that unaccompanied children’s special characteristics and needs are taken into account. Given the special vulnerability of children and the state’s obligation to protect them and to act in their best interests, Human Rights Watch believes that unaccompanied children’s asylum claims should under no circumstances be processed via the accelerated procedure ... No children should be interviewed immediately after arriving in the Netherlands; children need and should have time to adjust to being in a new environment”.¹¹⁸

Criticism also came from the UN :

In 2004, the UN Committee on the Rights of the Child expressed its concern at the determination and rejection of a significant and increasing proportion of applications for refugee status through the 48-hour accelerated procedure, which it found not to be in keeping with article 22 of the *Convention on the Rights of the Child* and international standards.¹¹⁹

4.3.6 *The letter of intention and the view*

The *ex officio* decision to grant or reject a residence permit as ‘unaccompanied minor’ is conveyed in a letter of intention (*voornemen*) from the minister to the asylum seeker. The asylum seeker can submit a view with regard to this letter of intention. In the normal procedure, a time limit of four weeks applies.¹²⁰ In the accelerated procedure however, the asylum seeker has to submit corrections and additional information, as well as his/her view with regard to the letter of intention within three procedural hours after the report and the letter have been issued.¹²¹

¹¹⁷ Kinderrechtenkollektief, 2003, supra footnote 54, p. 25.

¹¹⁸ Human Rights Watch: *Fleeting refuge: the triumph of efficiency over protection in Dutch asylum policy*, New York, 2003, p. 18.

¹¹⁹ CRC/C/15/Add.227, 26 February 2004.

¹²⁰ Article 3.115, paragraph 2 sub a Aliens Decree 2000.

¹²¹ Article 3.117, paragraph 2 Aliens Decree 2000. In these three hours, he has to submit corrections and additional information to the report of the detailed interview as well (Aliens Circular 2000 C3/12.1.4).

4.3.7 *Legal remedies*

If the minister has rejected the asylum application, and/or has refused to grant a residence permit on the basis of the special policy, the asylum seeker can lodge an appeal with a district court against this refusal. Due to a legislative intricacy, the applicant must sometimes ask for administrative review before being able to address the court.¹²² If the administrative review is rejected, the asylum seeker can lodge an appeal against this decision with a district court. Both the asylum seeker and the minister can appeal against a ruling of the district court, which is decided by the Judicial Division of the Council of State.

4.4 RETURN

If the residence permit as ‘unaccompanied minor’ has been refused, the asylum seeker must return to the country of origin (or to another country to which s/he can reasonably go).

If there is no doubt with regard to the stated age and the asylum seeker is still a minor, s/he will qualify for reception facilities in the Netherlands until the return can take place.¹²³ If an asylum seeker has failed to show that s/he is a minor or if it has been established that s/he is of age, the normal return policy applies. This means that s/he has to leave the Netherlands within four weeks after rejection of the application and that, once those four weeks have expired, the asylum seeker has no further right to reception facilities.¹²⁴

If the asylum seeker is a minor and s/he is not considered to be able to take care of him/herself independently, admission to a shelter in the country of origin (or a third country) has to be arranged before the minor can be dismissed, unless the Ministry of Foreign Affairs has established that the authorities of the country of destination can ensure the reception of unaccompanied minors.¹²⁵

Minors of 16 or older are not escorted when they are returned, unless they are resisting return to the country of destination. For younger minors, for whom resistance is not expected, the airline company steward will treat the minor in accordance with the rules for ‘unaccompanied minors’. If the minor is expected to resist return, s/he will be escorted by specially trained personnel of the Royal Military Police (*Koninklijke Marechaussee*).¹²⁶

¹²² Aliens Circular 2000 C5/24.10.

¹²³ Aliens Circular 2000 C5/24.13 and article 6 Rva 2005.

¹²⁴ Article 62, paragraph 1 of the Aliens Act 2000 jo article 7, paragraph 1, sub b Rva 2005.

¹²⁵ Aliens Circular 2000 C5/24.13.

¹²⁶ Aliens Circular 2000 C5/24.14.

5. INTERVIEW PROCEDURE FOR MINORS

The procedure for the interviewing of minors stands out as an area of special importance. This chapter will focus on first the confusion surrounding the roles of numerous authority figures in the interview process. Examination of the method of contact by authority figures with unaccompanied minors will follow. In order to closely examine the policy in practice, this chapter is largely based on empirical examples, some of which are drawn from visits to the Schiphol Application Centre on or around June 2005 by the main researcher of this study, Said Essakkili.

5.1 CONFUSION SURROUNDING THE ROLES OF NUMEROUS AUTHORITY FIGURES

The typical applicant is exposed – somewhat confusingly – to numerous authority figures. Such authority figures, both in the asylum procedure generally and in the accelerated procedure specifically include lawyers, guardians, IND officials and translators.

For instance, during the accelerated procedure, an applicant could meet two IND civil servants and two IND translators (one of each for both the first and second interviews). S/he could also meet at least three different people giving (legal) assistance: a representative of the VluchtelingenWerk (Dutch Refugee Council) preparing him/her for the first interview; the lawyer preparing him/her for the second interview; and the lawyer who submits corrections and additions, as well as a view (in response to the letter of intention).

There are powerful reasons to argue that children be supported by one single person throughout the asylum process¹²⁷:

In the accelerated procedure, unaccompanied minors go through a very fast procedure. I have doubts about whether they really understand what is going on. Unaccompanied minors do not know who they are dealing with when they talk to the different people. For example, on two occasions, I have seen unaccompanied minors asking lawyers to please not send them back.

Applicants are confused as to who is a civil servant and who is their lawyer. The fact that lawyers and civil servants look alike, share the same office space, and use comparable security passes to unlock doors, adds to the confusion. This confusion is all the more strong with unaccompanied minors.

¹²⁷ Observations by Said Essakkili, June 2005.

Human Rights Watch supports this view:

Human Rights Watch has criticised this aspect of the Dutch asylum procedure in relation to minors, and recommends that children be supported by a single person, whether a representative of the Dutch Refugee Council, a guardian, or a lawyer, throughout the asylum process.¹²⁸

5.2 METHOD OF CONTACT BY AUTHORITY FIGURES WITH UNACCOMPANIED MINORS

Contention surrounds the issue as to whether an adjusted method of working is applied by authority figures – including lawyers, guardians and IND interview officials – in their interaction with unaccompanied minors seeking asylum alone.

5.2.1 Lawyers

To start, the numerous points in the procedure where the unaccompanied minor meets with a lawyer are as follows:

- The unaccompanied minor has a first interview with an IND official, for which s/he will be prepared (if at all) by a representative of the Dutch Refugee Council.
- After the first interview s/he will have roughly two hours for a meeting with a lawyer. In this meeting, the first interview will be discussed and the unaccompanied minor will be prepared for the second interview.
- After the second interview, which focuses on the flight motives, the unaccompanied minor again has a meeting with a lawyer. Most likely, this will not be the same lawyer. At this moment, the minor receives the interview report together with a letter of intention in which the minister expresses his/her intention to reject the asylum application.
- The unaccompanied minor has a further three hours with the lawyer. This meeting aims to make corrections and additions and to state objections to the intended rejection of the application (the view). After this view is submitted, the final decision is given.

¹²⁸ Human Rights Watch 2003, p. supra footnote 118, p. 18-19.

The lawyer has the role of advocate in the asylum procedure and is responsible only for the legal aspect. The lawyer must assess whether the IND has followed the procedure correctly and in accordance with (international) law and policy. Given the very tight time frame for legal assistance, the lawyer cannot exceed this mandate (for example, through discussion with minors about their best interests).

The interaction of the unaccompanied minor with his/her lawyer(s) plays a crucial role in the determination of his/her (refugee) status. Similarly, the way in which the unaccompanied minor is treated differs, as evidenced by the informal versus the formal approach of the lawyers, outlined in the examples below.

The following case reveals a lawyer's *informal* approach¹²⁹:

The lawyer introduced himself and asked whether the minor applicant had any objections to my presence at the meeting or to having the meeting with the lawyer who was a male. The lawyer made clear that she could have a meeting with a female lawyer if she wanted. The lawyer asked this because the report mentioned that the unaccompanied minor was sexually abused.

Lawyer: 'Is it hard for you to talk about it'?

Minor: 'Yes but I have to talk about it'.

Lawyer: 'Yes then I can help you better as a lawyer'.

Minor: 'Thank you'.

...

Lawyer: 'Tell her that we will bring the case in front of the court' (speaking to the interpreter)

Minor: 'Thank you very much (crying) I don't want to go back to Mongolia'!

Lawyer: 'Doesn't she have any uncles or aunts?' (speaking to the interpreter)

Minor: 'I have no family'.

Lawyer: 'How is it possible that the doctor has told that she is 20 years old. Have they made a mistake'? (speaking to the interpreter)

Minor: 'I don't understand that age assessment. I am not even 18 years old. I don't believe that assessment'.

¹²⁹ Observations by Said Essakkili, June 2005.

In contrast to the previous case, the following cases outline a very *formal* approach on the part of the lawyer:

- Doornbos has conducted extensive empirical research into the interaction of asylum seekers with IND officials, translators and lawyers. One research report contains a case in which the lawyer of an applicant claiming to be a unaccompanied minor informed the applicant about the asylum procedure by holding a short lecture which outlined issues including the difference between the *Refugee Convention* and article 3 *European Convention on Human Rights*. The lawyer was continuously oblivious to the hints of the translator who tried to point out that the applicant did not understand the information by interjecting “Sorry, I will check whether he understands this”.¹³⁰

- **Lawyer:** ‘After the first interview... there is doubt about your age, there is doubt whether you are a minor’.

Minor: ‘I am willing to undergo an age assessment’.

Lawyer: ‘You will have an age assessment; an x-ray will be taken. From this assessment preliminary conclusions will be drawn. If the x-ray shows that the clavicle is fully closed, this will lead to the conclusion that you are older than 18. We will have to await which conclusions will be drawn’.

...

Lawyer: ‘During the interview you have to tell exactly what has happened. You have heard from your mother that your father was killed, so that is what you have to tell. After the second, detailed interview, you will again talk to a lawyer. You will get a letter of intention in which the intended decision is written. Do you have any more questions?’

Minor: ‘I have one question: Please don’t send me back to India’.

Lawyer: ‘You mean the part of India where you come from?’

Minor: ‘Yes’.¹³¹

¹³⁰ N. Doorbos: *Op verhaal komen. Institutionele communicatie in de asielpcedure*, Wolf Legal Publishers, Nijmegen 2006, p. 260-261.

¹³¹ Observations by Said Essakkili, June 2005.

5.2.2 *Guardians*

The guardians act as guide and mentor to the unaccompanied minor in the asylum procedure, for example, discussion between the guardian and the minor is not limited to the asylum procedure, but extends to other subjects such as health. In addition, guardians make decisions that are in the best interests of the minor. In contrast to lawyers, the guardians (who usually do not have any legal experience), are with the minor for a longer period and so can build up more of a relationship. In addition, they are specially trained to deal with minors and so are more able to adjust their speech and behaviour to the minor's development level and age.

The following examples highlight the proximity of the guardian to the unaccompanied minor¹³²:

- One guardian told me that sometimes the unaccompanied minor has another story or does not give all the information at once. Only in some cases does the minor after getting to know the guardian, give them more information. For example, a Turkish boy once told one guardian that his story was not true and that his parents were still alive in Turkey. He admitted that he was in fact gambling: if he obtained a permit that would be fine and if not, he would simply return to his family.
- Another guardian pointed out that she is always very direct and tries to give the unaccompanied minor a realistic image of his/her future prospects. She felt that it was better to tell the unaccompanied minor what will or might happen in the future so that the minor could prepare him/herself for the return to their country of origin.

5.3 IND INTERVIEW OFFICIALS

In 2000, the plan of the Ministry of Justice to interview single minors under 12 met with considerable resistance. Partly in response, the Ministry of Justice commissioned a report on the topic.¹³³ The current special policy, outlined below, for the interviewing of minors younger than 12 is drawn from this report.

¹³² Interviews by Said Essakkili, March 2005.

¹³³ Meulink 2000, supra footnote 42.

5.3.1 *Special policy*

If the detailed interview is conducted under the normal procedure, the special policy which applies to interviews of minors younger than 12 is as follows:¹³⁴

- the interview must take place in child friendly rooms (containing lots of light and colour; blackboard for drawing, toys, low table, colour) by specially trained officials;
- the minor is not interviewed if psychological investigation has established that he/she has problems which could obstruct the detailed interview (for example, traumatisation);
- the interview must be completed within a two hour timeframe; and
- there is a camera present in the room and the unaccompanied minor is informed that the interview is being recorded.¹³⁵

5.3.2 *Criticisms of special policy*

During an expert meeting organised by the Adviescommissie voor Vreemdelingenzaken¹³⁶ in 2003, a coalition of NGOs expressed concerns about interviews conducted under the special policy. Notwithstanding the child friendly environment, the interviews were not always appropriate for children. Criticisms included the following, some of which are detailed further below:

- the age and mental development of the child were insufficiently taken into account (the NGOs additionally criticised the fact that no interviewing guidelines exist for minors older than 12);
- too little attention is being paid to age appropriate considerations, including child specific traumas and flight motives; and
- credibility concerns whereby IND officials appeared to be cross-referencing information received in interviews with younger siblings as a means of assessing the credibility of the whole family's application.

¹³⁴ Aliens Circular 2000 C5/24.9.3.

¹³⁵ *Protocol horen alleenstaande minderjarige asielzoekers tot 12 jaar*, 18 December 2001 (available at: www.vluchtweb.nl).

¹³⁶ Verslag van de Expertmeeting 'Kinderen in en na de asielprocedure, 25 June 2003, p. 1, in Adviescommissie voor Vreemdelingenzaken: *Bijlagen behorende bij het advies Kinderen in de asielpraktijk*, Adviescommissie voor Vreemdelingenzaken, The Hague, November 2003. Comp. Adviescommissie voor Vreemdelingenzaken 2003, supra footnote 9, p. 89

i) Unaccompanied minors with a development disorder

In the interview process, IND interview officials do not take into account development disorders of an unaccompanied minor. It is not until later that a development disorder is considered. As a result, any development disorder cannot be noted in the accelerated procedure, due to its speedy nature.

The following anecdote displays this point:

A single minor completed an intelligence test after her first and second interviews. The intelligence test produced an intelligence quota of 70, revealing that the girl was mentally challenged. Based on the result, the IND withdrew its first decision and allowed the girl to stay in the Netherlands, pending a further decision.

ii) Age concerns

Under official policy, minors of 4 or 5 can be interviewed. However, there is an “understanding” that they will not be interviewed.¹³⁷ Interestingly, this aspect of official policy does not follow the Ministry of Justice report which found that while it is possible to interview children from the age of 4, the child cannot interpret his/her experiences on an abstract level until the onset of puberty. This finding is backed by The Dutch Refugee Council who has consistently opposed the notion of interviewing children under 12, particularly due to the fact that children mix recent events and flight motives, which leads to the conclusion that their statements are not credible.¹³⁸

The following cases illustrate age concerns encountered, when interviewing young children:

Does a child friendly room make for a child friendly interview?

Some doubt as to the child friendly nature of the interviews of young minors is cast by the Dutch Refugee Council, who states: “The fact that the room looks child friendly does not make interviewing these young children child friendly.”¹³⁹ This statement is backed up with the following example: “The interview reports contain texts which could not have been spoken by children. For example, one report documents a 4-year-old child as having said: ‘I have never possessed an authentic passport in my own name’. Another such report quotes a 9-year-old as follows: ‘I have never been married. Apart from the aforementioned documents I do not possess other documents which substantiate my flight story’.”¹⁴⁰

¹³⁷ Interview with Toon van Dijk (Immigration and Naturalisation Service) on 7th march 2005. Cf Wilma Lozowski: Tien jaar Kinderrechtenverdrag in Nederland. Ook voor niet-Nederlandse kinderen? *NJCM-Bulletin* 30 (2005), p. 750-774, p. 760.

¹³⁸ Letter of VluchtelingenWerk to the IND of 23 Febraury 2003, p. 8.

¹³⁹ Letter of VluchtelingenWerk to the IND of 23 Febraury 2003, p. 10.

¹⁴⁰ Letter of VluchtelingenWerk to the IND of 23 Febraury 2003, p. 7.

Two unaccompanied brothers from Angola

The preoccupation with a tendency to disbelieve children's statements, in part because they are considered "silent and uncooperative", is demonstrated in the case of two unaccompanied brothers from Angola.¹⁴¹ In this case, the IND officials interviewed the two brothers, aged 8 and 13, whose father had been murdered and mother had died in a refugee camp. Both brothers failed to be treated in an age-appropriate manner.

After meeting with the 8-year-old, the interviewer concluded that his application for asylum lacked credibility. Further, because the boy was "frustrating a possible inquiry into care options in his country of origin," he should not be granted a permit for unaccompanied children, even pending further investigation into repatriation options. This child was only 2 at the beginning of the time period about which he was being questioned. He understandably had difficulty presenting the detailed information expected of an adult asylum seeker.

During the interview with the 13-year-old, the interviewer asked him repeatedly why his father had chosen for the family to live in a particular part of the country (IND believed this location indicated that the family could not have been at risk of persecution). The child was unable to answer, which is unsurprising given that he was only 8 at the time of the decision. Nonetheless, the child's inability to answer served as one of the grounds upon which IND established his lack of credibility. This in turn formed a primary reason for IND's decision that the child not be granted refugee status or a temporary permit for stay under the unaccompanied children's policy.¹⁴²

Insufficient investigation based on assumptions

Assumptions by the IND can lead to insufficient investigation, as evidenced in the following case. In this case, the IND refused an unaccompanied minor's asylum application and further deemed it impossible to investigate possibilities for shelter. This decision was made based on the inability of the unaccompanied minor and her sister to give their home country's address. On appeal, the unaccompanied minor, supported by the translator, argued that she could not give a more accurate address. The challenged decision was quashed with the court concluding that the rejection of the applicant's credibility was unfounded: the IND did not research whether the streets in the unaccompanied minor's home city had names.¹⁴³

¹⁴¹ Human Rights Watch 2003, supra footnote 118, p. 20.

¹⁴² Human Rights Watch 2003, supra footnote 118, p. 20.

¹⁴³ Based on an asylum file at the NIDOS office, studied by Said Essakkili, May 2005.

Geographical knowledge and personal document retention at 4 years old?

Disregard of age-appropriate considerations thwart credibility, as highlighted in the case of a 4-year-old child. In this case, IND officials conducted a separate interview with the 4-year-old child. This was despite the fact that the child had arrived in the Netherlands with an aunt. The aunt had applied for asylum and her story was meant to be taken into account by the IND in assessing the child's claim. After interviewing the 4-year-old, the interviewer concluded that he had not sufficiently cooperated in providing details about his travel route to the Netherlands. In addition, he further lacked credibility because he failed to provide documents with which his identity and nationality could be confirmed.¹⁴⁴

iii) Credibility issues

Concern is apparent in the NGO community that IND officials appear to be cross-referencing the information they receive in interviews with younger siblings as a means of assessing the credibility of the whole family's application for asylum.¹⁴⁵ Similarly, a coalition of NGOs has stated: "These interviews are used to attempt to uncover contradictions in the statements of the children themselves or those of their older siblings and/or the lack of documentation of the asylum seeking child, which could be used against him/her, and the discovery of personal information about adults in the Netherlands, instead of as careful preparation for a decision in the best interests of the child".¹⁴⁶ The Dutch Refugee Council has concluded likewise.¹⁴⁷ The case of the a family from Angola, outlined below, is an example of credibility cross-referencing concerns:

¹⁴⁴ Human Rights Watch 2003, supra footnote 118, p. 21.

¹⁴⁵ Human Rights Watch 2003, supra footnote 118, p. 20-21

¹⁴⁶ Kinderrechtenkollektief 2003, supra footnote 54, p. 25-26.

¹⁴⁷ VluchtelingenWerk: letter to IND of 26 February 2003, www.vluchtweb.nl, p. 3.

In this case, the IND officials interviewed the three youngest siblings aged 5, 7 and 10. This was in defiance of their lawyer's submission that they not be interviewed as the eldest sibling, a 21-year-old brother, could tell their story on their behalf. Based on the deemed lack of credibility drawn from these interviews, the IND did not grant the four family members an asylum permit. Some of the reasons for this determination included:

- the 10-year-old child could not remember the names of the men in Angola who beat him and made him steal and take drugs;
- the 7-year-old brother mentioned a best friend in the first interview but stated in the second interview that he did not have friends and only played with his little brother;
- the 5-year-old said during the first interview that he had travelled by plane with his brothers and mother, but failed to mention his mother in the second interview;
- the 7-year-old said he had lived in the same house his entire life but the eldest brother said the family had been moved to a UNITA camp six years ago; and the drawings the children were asked to make of their house in Angola differed.¹⁴⁸

iv) Age appropriate considerations

There is widespread apprehension that age appropriate considerations, including child specific trauma and flight motives, are not adequately taken into account. The 'Kinderrechtenkollektief', or Child Rights' Collective, supports this view:

In 2003, the Child Rights' Collective reported that practice showed very little trace of the purported application of the UNHCR principles about refugee status determination of children. "It is, for example, argued against even very young children that they are undocumented, that they have insufficiently demonstrated their reasons for requesting asylum or that their stories are not credible. All without...taking sufficient note of the fact that these children cannot be expected to give an account of their reasons for requesting asylum in as detailed and consistent a manner as adults. Likewise, in the assessment on whether a child must be admitted on humanitarian grounds, the trauma policy (*traumatabeleid*) also ignores the fact that the subject is a child".¹⁴⁹

¹⁴⁸ Human Rights Watch 2003, supra footnote 118, p. 20-21.

¹⁴⁹ Kinderrechtenkollektief 2003, supra footnote 54, p. 26-27.

6. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

This paper has made some progress towards addressing the difficult issues that unaccompanied minors seeking asylum alone face in the Netherlands. While it is hoped that this paper satisfies its aim to stimulate discussion for the European roundtable in Brussels in spring 2007, it remains very much a non-exhaustive piece of research. It is hoped that provoking discussions at the European roundtable will provide a basis upon which to build on this paper, with the eventual aim being to influence and improve current policies and practices towards children seeking asylum alone.

The following is a summary of conclusions and recommendations from this paper.

Chapter 3: Past policy

- The Dutch campus model for unaccompanied minors proved counter-productive in terms of its own policy aims. It did not motivate minors to return to their country of origin; it contained no incentives to cooperate with the Dutch authorities; and it failed to offer the minor a supportive environment. Instead, according to the Ministry of Justice's evaluation, the campus model proved harmful for minors and often led to new trauma.

Chapter 4: Current policy

- In the Netherlands, age assessment takes place by means of x-rays (hand and wrist-bone, clavicle). The validity and acceptability of such age assessment continues to spark intense medical, ethical and legal debate. The independent Dutch Age Assessment Committee is very critical about methods used in other Western countries. Based on the substantial disagreement both within and between states, an international committee of medical, ethical and legal experts should be convened. This committee should be charged with the mission of drawing up a best practice standard, concerning:
 - o appropriate methods and interpretation of the outcomes of medical investigation;
 - o the consent of the asylum seeker;
 - o legitimacy of medical personnel involvement where the health of a person is not at stake;
 - o possibilities of rebuttal of government age assessment procedures; and
 - o supervision of age assessment practices.
- Crucial in Dutch unaccompanied minor asylum policy is whether appropriate care is available in the country of origin. If so, the minor can be returned unless there are grounds for granting asylum; if not, the minor is entitled to a residence permit. It is not acceptable that a rather wide group of people be presumed to take care of the minor, upon return to the country of origin. Similarly, unless a comprehensive system of orphanages is in place in the country of origin, it cannot be presumed that the minor will be taken in.

In such cases, the individual relative or neighbour, or orphanage which will take care of the minor, should be clearly identified.

- Under present Dutch policy, the residence right of an unaccompanied minor who is 15 or older when he/she arrives expires at age 18. This policy is consistent with the rationale of the special policy for minors: a minor, as distinct from an adult, needs assistance because he/she cannot be presumed to look after him/herself in his/her country of origin. However, this predicament is likely to provoke developmental problems: the minor faces return to his/her country of origin or illegal residence in Europe, upon reaching majority. Therefore, the end of the residence right poses difficulties not only when it happens at age 18, but also before this time. For this reason, this part of the policy should be reconsidered.

Chapter 5: Interviewing procedure for minors

- Accelerated asylum procedures bring with them the risk of substantive errors; a risk all the more serious in the case of minors. The Dutch accelerated procedure is not fit for application to unaccompanied minors. The tight timeframe of the accelerated procedure means that:
 - o the minor is greatly confused by the roles of numerous authority figures and so is not afforded adequate legal representation; and
 - o often a guardian has not yet been appointed, or has not been able to establish a meaningful relationship with the minor, and so has a much more limited mentorship role.

A minor should not be subjected to an accelerated procedure. If the minor must be subjected to such a procedure:

- o a minor should have one single legal representative, unless s/he chooses to change representatives; and
 - o a guardian should be appointed immediately upon the minor's arrival.
- In the asylum procedure, the guardian is one of the few authority figures in a position to gain the confidence of the minor. One of the failures of the campus models lay in the sidelining of the guardian. A central role for the guardian is crucial. The guardians should retain full authority to represent the minor, and should have every possibility to discuss with the minor the asylum procedure.
 - Asylum interviews with minors should only take place if the minor concerned is able to be interviewed. The legal guardian should heavily influence this decision, especially where younger children are concerned. Minors should be interviewed by specialised interview officials, who have a background in child welfare rather than in the civil service. Interviews should be adapted to the age of the minor. Importantly, excessive formalism should be avoided.

- Interview officials and decision makers (including courts) should be mindful of age appropriate considerations, including child specific trauma and flight motives. Such decision making parties should be open to the development of a concept of child-specific forms of persecution to enlarge the scope of refugee child protection.



APPENDIX 1

TABLE 2.1 NUMBER OF UNACCOMPANIED MINOR APPLICANTS IN THE NETHERLANDS 1994-2005

	<i>Number of unaccompanied minors</i>	<i>Number of asylum seekers</i>	<i>Percentage of unaccompanied minors</i>
1994	1850		
1995	1939		
1996	1562	22857	7%
1997	2660	34443	8%
1998	3504	45217	8%
1999	5009	42729	13%
2000	6705	43559	15%
2001	5950	32579	18%
2002	3233	18667	17%
2003	1216	13402	9%
2004	594	9782	6%
2005	515	12347	4%

TABLE 2.2 NATIONALITY OF UNACCOMPANIED MINOR AND OTHER ASYLUM APPLICANTS 1998-2000¹⁵⁰

1998	<i>Unaccompanied minors</i>	<i>%</i>	<i>Other asylum applicants</i>	<i>%</i>	<i>All asylum applicants</i>	<i>%</i>
All countries	3.504	8	40.890	92	44.394	100
<i>Somalia</i>	534	19	2.268	81	2.802	100
<i>China</i>	477	58	346	42	823	100
<i>Iraq</i>	286	4	7.791	96	8.077	100
<i>Sudan</i>	255	14	1.581	86	1.836	100
<i>Sierra Leone</i>	225	47	253	53	478	100
<i>Afghanistan</i>	223	3	6.818	97	7.041	100
<i>Guinea</i>	218	62	132	38	350	100
<i>Angola</i>	192	33	398	67	590	100
<i>DR Congo</i>	136	17	647	83	783	100
<i>Ethiopia</i>	83	32	174	68	257	100
<i>Other</i>	875	4	20.482	96	21.357	100

¹⁵⁰ Source: Olde Monnikhof and Van den Tillaert 2003, supra footnote 7, p. 33-34

1999	<i>Unaccompanied minors</i>	<i>%</i>	<i>Other asylum applicants</i>	<i>%</i>	<i>All asylum applicants</i>	<i>%</i>
All countries	5.009	13	32.912	87	37.921	100
<i>China</i>	793	68	377	32	1.170	100
<i>Angola</i>	756	48	809	52	1.565	100
<i>Sierra Leone</i>	529	42	724	58	1.253	100
<i>Somalia</i>	496	18	2.225	82	2.721	100
<i>Guinea</i>	380	71	154	29	534	100
<i>Iraq</i>	335	9	3.255	91	3.590	100
<i>Afghanistan</i>	215	5	3.957	95	4.172	100
<i>Sudan</i>	195	12	1.427	88	1.622	100
<i>Togo</i>	119	68	55	32	174	100
<i>DR Congo</i>	87	15	483	85	570	100
<i>Other</i>	1.104	5	19.446	95	20.550	100

2000	<i>Unaccompanied minors</i>	<i>%</i>	<i>Other asylum applicants</i>	<i>%</i>	<i>All asylum applicants</i>	<i>%</i>
All countries	6,681	15	37.211	85	43.892	100
<i>Angola</i>	1.058	48	1.135	52	2.193	100
<i>China</i>	937	67	465	33	1.402	100
<i>Sierra Leone</i>	759	38	1.264	62	2.023	100
<i>Guinea</i>	818	59	576	41	1.394	100
<i>Somalia</i>	409	19	1.701	81	2.110	100
<i>Afghanistan</i>	303	6	4.752	94	5.055	100
<i>Iraq</i>	260	9	2.513	91	2.773	100
<i>Sudan</i>	217	15	1.209	85	1.426	100
<i>Togo</i>	166	44	209	56	375	100
<i>DR Congo</i>	110	20	429	80	539	100
<i>Other</i>	1.644	7	22.958	93	24.602	100

APPENDIX 2

Below is an summary of the Court's ruling in *Voorzieningenrechter Rechtbank 's-Gravenhage 23 April 2003*.

- The situation on the campuses was not to be considered as deprivation of liberty, because the campuses were not hermetically fenced off.
- On week days, the daily activity schedule started at 8.30 AM and lasted until 8.30 PM; during weekends, it lasted from 10.30 AM until 8.00 PM; on Saturdays and Sundays, there was no programme. They had to wake up one and a half hour before the programme started, and had to have breakfast in that period. The court ruled that this afforded the minors too little time for doing things of their own preference. The court held this to be a violation of Article 31 CRC, which entitles minors to rest and free time. The minors had to be free each evening as well as during the weekends. However, the court could not give a concrete court order, because it lacked sufficient information in order to decide which regime had to replace the existing one.
- The prohibition to wear their own clothing had been lifted before the court gave its decision. The court found that the minors were free to wear clothes of their own choosing, be it that they had little money to buy them (they received a pack of campus, clothes, as well as 36,- once , and no pocket money). This afforded them both the formal and the factual possibility to wear clothes of their own choosing, be it that the factual possibility was very limited. The court took notice of the fact that the minors were in the process of setting up their own second hands clothes shop on the campus.
- Because the toilets and showers had, by the time the court gave its decision, been provided with locks, the court dismissed the demand to put locks on the doors of toilets and showers.
- The court agreed with the human rights organisations that, in principle, the minors should be allowed to receive visitors and to pay visits outside the campus, it also noted that restrictions in this respect were needed.¹⁵¹ It found that it had insufficient instruments to decide which restrictions would be appropriate, and therefore refused to intervene.
- During the four week introduction phase (the so-called rookie-phase), minors were not allowed to leave campus unless accompanied by a minor in the senior phase. In light of the short duration of this phase, as well as on account of the responsibility of the Dutch State for the minors, the court found this arrangement not unacceptable.

¹⁵¹ Initially, the minors were prohibited to leave the campus unless they had permission to do so; permission was refused when it was asked for, H.M. Klaasen and R.M. de Prez: *Eindevaluatie ama-campus*, Ministry of Justice, October 2004, p. 13.

- The special form of education was not found unlawful (esp. not in violation of Article 28, 29 and 3 CRC, Article 10 and 18(1) EC Directive 2003/9, nor in violation of national legislation on education), because the State attorneys had convinced the court that the specific form education took on the campuses was in conformity with these provisions.
- As to the liberty of minors to leave the campus when there was no obligatory activity programme, the court stated that limitations to this right were justified. As with visits (see above), the court found it inappropriate to grant the minors a general right to leave the campus, but found it impossible as well to draw the line, and therefore declined to give a court order on this point.
- As to free access to their possessions, the court concluded that the minors could (but did not have to) give their personal possessions to youth workers, who would lock them away. The consequence of this was that they would have to ask youth workers for access to their personal belongings, but this was given immediately. Hence, the court found this not unlawful.
- The court concluded that it had not been established that minors had been deprived of their possessions, such as mobile phones, and hence found no reasons to give a court order on this point.
- Minors need permission of youth workers to make telephone calls. Because those calls are made at the expense of the State, the court found it not unreasonable for the State to supervise both whether phone calls were made, and how long they were. It held that only in concrete cases it could decide whether a refusal to allow a phone call was justified or not.
- Minors on the campus received a weekly pocket money of 12,71, which the court found to be equal to what other asylum seekers receive. A difference was that each week 8,- was withheld, the sum of which the minors would receive when they left the campus (i.e. when they did so in a regular way, departing to their country of origin). The State argued that this form of saving was in the best interest of the minors. The court found that there was no legal basis for this, and ordered the State to pay the minors their full weekly pocket money.
- The court found no legal ground for the claim that the minors were entitled to a room of their own, and refused to give a court order on this point.
- The court found that, for minors in their rookie-phase, the common room had a radio and a television, while each bedroom of minors in their senior-phase contained a television. Also, books, journals and games were available. In light of the fact that the day programme contained physical exercises and art education, the court did not find the recreational provisions insufficient.
- The court found that the access to the media of the minors was sufficiently covered by radio and TV. The demand that they be able to read daily newspapers was rejected.

- A next demand of the human rights organisations was that the court would prohibit all measures preventing contact between the minors and Dutch society. The court mentioned that not all contacts with Dutch society were prevented, as was clear from its earlier observations about the possibility to receive and pay visits and to leave the campus. It found that the situation of minors whose asylum application had been rejected, and who eventually would have to return to their country of origin, was acceptable. However, it held that a less stringent regime was required for those minors whose asylum application was still pending. However, the court found it impossible to indicate where to draw the line, and hence rejected the demand.
- The court rejected the demand to install an independent supervisory committee, because such a committee had no legal basis. The court indicated that minors could use general administrative law procedures to oppose concrete measures against individuals.
- The court ruled that dealing with complaints by means of an independent complaints committee was by far to be preferred over dealing with complaints by litigation in a formal court, which is less well placed to deal with such issues. It ruled that this observation, on the one hand, implied that the court itself had to exercise considerable judicial restraint; but that, on the other hand, it implied that the demand to install an independent complaints committee was justified.
- The court established that the minors only had to undertake household chores, which could not be considered as forced labour.
- The court found that the cooperation between the campus authorities and NIDOS, the guardian agency, had been insufficient, which was not in the best interest of the minors. The court stated that this had to change, but did not give any order in this respect, because it had insufficient points of departure for a concrete ruling.
- The court agreed with the human rights organisations that minors should be transferred from a campus to another location if NIDOS thought this to be in the best interest of the child. However, it has not been established that this did not happen in concrete cases, hence it refused to give a court order to that effect.
- The court refused to give a general order that minors at that moment residing on campuses should be treated as like minors. It held that there could be reasons to give such an order in individual cases, but not as a general court order.

APPENDIX 3**TABLE 4.1 OUTCOME OF AGE EXAMINATIONS CONDUCTED IN 2000¹⁵²**

	Male		Female		Total number of tests	Of which >18
	<18	≥ 18	<18	≥ 18		
China	386	254	22	6	668	39%
Angola	220	121	6	6	353	36%
Guinea	126	110	5	5	246	47%
Sierra Leone	114	107	7	5	233	48%
Togo	50	51	4	1	106	49%
Sudan	55	40	1	1	97	42%
Iraq	67	27	0	0	94	29%
Somalia	42	31	3	0	76	41%
DR Congo	16	18	3	1	38	50%
Ethiopia	15	18	0	1	34	56%
Afghanistan	11	19	0	0	30	63%
Other	213	166	9	3	391	43%
Total	1.315	962	60	29	2.366	42%

¹⁵² Source: Olde Monnikhof and Van den Tillaert 2003, supra footnote 7, p. 43