

pro facto

Summary

Shelter provided by the Dutch central government and municipalities to foreign nationals who have been ordered to leave the Netherlands and the impact on their return to the country of origin

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Summary

This report presents the results of the research on shelter provided by the Dutch central government and municipalities to foreign nationals who have been ordered to leave the Netherlands and the impact of this on their return to the country of origin. The research was conducted by Pro Facto, a research institution in Groningen, in collaboration with the department of Constitutional Law, Administrative Law and Public Administration of the Faculty of Law at Groningen University.

Background

Since January 2007, the Dutch Repatriation & Departure Service (DT&V) has been responsible for arranging the departure of foreign nationals who are not entitled to stay in the Netherlands. Foreign nationals who have to leave the Netherlands and who no longer have the right to receive shelter from the state can be accommodated in one freedom-restricting location (VBL) and five family locations (GLs) in preparation for their departure.¹ These types of shelter provided by the central government are not always unconditional and can therefore be terminated at any time. Various municipalities have set up emergency shelter facilities for foreign nationals without a right of residence, including foreign nationals who no longer have access to the facilities provided by the central government. This emergency shelter is also referred to as 'bed-bath-bread' (hereafter also: BBB).

Despite 'a long (negotiation) process' in the period 2015-2016, the Association of Dutch Municipalities (hereafter: VNG) and the Dutch government did not succeed in concluding an administrative agreement on providing shelter to foreign nationals who have exhausted all legal procedures, other than and in addition to VBL, GL or municipal emergency shelter. The government's aim was to set up eight national centres for foreign nationals (hereafter: LVV) where basic shelter would be provided, and trajectories (would be) made available aimed at motivating and facilitating departure.¹ The State Secretary wanted the municipal BBBs terminated, but the municipalities held the view that there is 'too much room to continue to provide municipal shelter to foreign nationals who have exhausted all legal remedies alongside the LVV's.'² An important difference of opinion between the central government and the municipalities concerned the answer to the question of whether providing municipal emergency shelter reduces the effectiveness of the return policy or, on the contrary, in-

¹ The situation on 12 January 2018

² Parliamentary Papers II 2016/17, 19 637, No. 2259.

creases it. The question of whether the type and content of shelter influences return has led to this research. The coalition agreement 2017-2021 stipulates that the central government and the municipalities will try to make joint agreements for setting up LVVs. The outcomes of this research can serve as input for the development of a partnership between the central government and municipalities in the LVVs, including the organisation of these facilities and the forms of guidance provided.

Main research questions

This research focuses on the relationship between shelter and shelter facilities provided by the central government and by municipalities on the one hand and the outflow from these facilities of foreign nationals who have been ordered to leave the Netherlands. The research's main question reads as follows:

What types of shelter and shelter locations exist for foreign nationals who have to leave the Netherlands (1), what is the situation with regard to the return of foreign nationals and other forms of outflow from these locations (2), to what extent does the provision of shelter influence this and what are the experiences of the foreign nationals themselves in relation to that (3)?

The three components of the main question have been developed in sub-questions. These are explained below.

Accommodation and shelter locations

This section provides a description of the accommodation and shelter locations in the period from 2015 to February 2018. The following sub-questions were leading:

Which municipalities provide facilities for the emergency accommodation of foreigners and since when?

How is the municipality involved in this facility?

How is the emergency accommodation organised?

Who is given shelter?

What is the relationship between the shelter organisations and the (central) government?

How are the central government's shelter facilities VBL and GL organised and which target group goes there?

Return and other forms of outflow of foreign nationals from these locations

The second part of the main question deals with the question of the situation with regard to the outflow of foreign nationals from the municipal shelter locations and central government shelter locations.

The following sub questions were asked in this section:

What forms of outflow can be identified?

How does the outflow from municipal shelter facilities and government-funded locations take place?

How can this outflow be subdivided into return to the country of origin, obtaining a (temporary) residence permit and other departure?

Influence of shelter and guidance on outflow

With regard to the influence of shelter and guidance on the outflow, the following sub-questions are leading:

Which mechanisms play a role in the relationship between forms of (emergency) shelter

and return?

What are the experiences of foreign nationals in various facilities for (emergency) shelter and what role do these play in return considerations?

Are the factors that promote return or other forms of outflow transferable?

Structure of the research and accounting

To answer the main question formulated above, various methods of data collection and analysis were used:

- Literature and document research was conducted to identify previous scientific insights as input for the current research. The same applies to findings published in reports by various organisations active in the field.
- To further refine the analysis framework, exploratory interviews were held with experts regarding the shelter and return of foreign nationals at involved government organisations and NGOs.
- At ten municipalities (Amsterdam, The Hague, Deventer, Eindhoven, Emmen, Groningen, Nijmegen, Rotterdam, Smallingerland, Utrecht) in the context of a case study several interviews were held with civil servants, coordinators and managers at shelter organisations and organisations that were locally involved in providing social and/or legal guidance to the target group. In addition, discussions were held with a number of foreign nationals who were given shelter by these municipalities.
- At two family locations and the VBL interviews were held with employees of DT&V and the Central Agency for the Reception of Asylum Seekers (COA) and a number of residents were also interviewed about their experiences in the central government shelters.
- The municipalities that have not been selected for a case study but that do offer relevant shelter (shelter for more than five people, organisational involvement of municipalities) have been questioned by telephone about a number of aspects of shelter.
- Information was requested from the municipalities (both from the case study municipalities and those contacted by telephone) about the group of foreign nationals given shelter in the period 2015-2017. These data were then analysed, during which, if possible, extra information about the group was requested from DT&V and the Immigration and Naturalisation Service (IND) on the basis of a foreigner national's number (v number).
- On completion of the research an expert meeting was organised, in which an academic expert and professionals from DT&V, shelter organisations and the International Organisation for Migration (IOM) were invited to share their experiences and opinions on the subject and to reflect on the research findings.

Return: definition and factors

The European Returns Directive (RD) defines the term return and describes how return follows a return decision, and that a return order can be effected through a 'deportation' or 'voluntary departure'. The RD contains binding provisions and is implemented in the Dutch Aliens Act 2000, which has been further detailed in the Aliens Decree 2000 and the Aliens Act Implementation Guidelines 2000. Based on the provisions set out in this legislation and regulations, a categorisation of return and departure can be made. Basically, return can be

subdivided into remigration (outside the scope of this research) and departure. The latter may involve departure to the country of origin, to a country of transit, to a third country (resettlement), or transfer to an EU Member State under the Dublin Regulation. Another distinction can also be made here between independent and forced departure, and between demonstrable and non-demonstrable departure (also called departure 'with unknown destination' or 'without supervision').

From previous research³ we know that in the context of return four types of foreign nationals can be defined, based on whether or not the foreign national *wants* to leave, and whether or not they *can* leave. Based on exploratory interviews and literature, it appears that the will and the ability to leave can be influenced by various factors:

- A good medical and psychological condition is considered conducive to foreign nationals' cooperation with their return. Instability here makes it hard for the foreign national to think about the future and actively work towards a future.
- The future prospect in the return country is also a factor. Good prospects (for example with regard to safety and economic circumstances) are conducive to cooperation; feelings of shame and disappointment in the event of a return, are obstructive.
- There being a chance of permanent (legal) residence in the Netherlands is often seen as an obstacle to foreign nationals' cooperation with their return.
- Long-term residence in the Netherlands, long application and objection/appeal procedures and incorrect/mixed signals about opportunities in the Netherlands (rumours about policy plans, pardon schemes, incorrect explanation of policy rules) can be obstructive.

Municipal shelter

The municipal shelter has no (legally) defined target group. At the very least municipal shelter provides some basic services, hence the name bed-bath-bread locations.

Many municipalities have been providing some form of (emergency) shelter for some time to foreign nationals who have been ordered to leave. The number of municipalities organising shelter has fluctuated, also depending on government policy with regard to the target group, and was set at 39 in an inventory in May 2017. The withdrawal of funding from the central government, based on the judgments of the Administrative Law Division of the Council of State and the Central Council of Appeal (CRvB)⁴ and published by the State Secretary on 21 November 2016⁵, did not cause municipalities to stop providing emergency shelter; nor has the number of places been reduced. Municipalities argue that this shelter has to be provided both with a view to maintaining public order and based on humanitarian considerations. Political support for continuation and funding is generally large.

There are major differences in terms of organisational design and the facilities offered. In a few cases shelter is combined with existing shelter for homeless people, but usually separate facilities have been set up. In many, but not all, municipalities, a living allowance is paid with which people can do their shopping. In Amsterdam, Rotterdam and Nijmegen, this can

³ Klaver, Telli en Witvliet (2015), *Terugkeer van vertrekplichtige vreemdelingen*. A. Leerkes, M. Galloway, M. Kromhout (2010), *Kiezen tussen twee kwaden. Determinanten van blijf- en terugkeerintenties onder (bijna) uitgeprocedeerde asielmigranten*. *Europees Migratie Netwerk (2006), Research Study III – Terugkeer*.

⁴ Rulings available under ECLI:NL:RVS:2015:3415, ECLI:NL:CRVB:2015:3803 and ECLI:NL:CRVB:2015:3834. See too: Terlouw (2016), *Een sluitend systeem van opvang?*

⁵ Parliamentary Papers II 2016/17, 19 637, No. 2259.

vary per type of shelter or target group; no living allowance is paid in The Hague. There are municipalities that only offer night shelter, while many municipalities offer 24-hour shelter, or a combination of both forms depending on the target group. Significant differences also exist in the guidance and activation of foreign nationals. A number of municipalities (Utrecht, Groningen, Eindhoven) have made structural work of providing programmatic guidance to all foreign nationals receiving shelter, offering guidance aimed at a permanent stay in the Netherlands or a permanent return. Other municipalities offer this to a limited group, less structured, or not structured at all.

There are also important similarities. Nearly all municipalities apply the so-called INLIA criteria (or comparable criteria) during the intake of foreign nationals. These are the criteria applied by the municipalities that are members of the Municipalities' National Consultation Committee on Shelter and Return Policy. A foreign national should belong to one of the following groups:⁶

1. Foreign nationals legally residing in the Netherlands who have no access to central government facilities for shelter, income and insurance.
2. Foreign nationals who actively and controllably cooperate with their departure but cannot realise this within 28 days and are therefore excluded from the central government facilities.
3. Foreign nationals in respect of whom, on humanitarian grounds, the municipal authorities believe it to be unacceptable that they have no access to any form of shelter.

This means that foreign nationals in the shelter generally have a v-number and that they are not entitled to these facilities. In all case study municipalities with the exception of The Hague, connection with the region is also mandatory. In practice, the criteria are often interpreted generously. A second important agreement is that structured consultation takes place in all case study municipalities between the municipality, chain partners and shelter organisations. Only in Utrecht and Eindhoven do chain partners and shelter organisations not consult.

With regard to the target group receiving shelter, we note that the most important regions of origin are West Africa, the Middle East, North and East Africa and the Caucasus. Many foreign nationals have been living in the Netherlands for a long time; inquiries at the IND show that a foreign national who applied for a residence permit (of 93% known), did so on average 8.3 years ago. About four of every five people are male. Although no complete figures are known, during conversations with foreign nationals and interviews with people in the field it has, however, been observed that relatively many people are having to deal with medical and/or psychological problems.

During conversations with 27 foreign nationals who use BBB facilities, it appeared that the people interviewed who only have access to night shelter found it almost impossible to think about their future prospects. The people with access to 24-hour shelter were more open to this, especially when there is also active guidance. It was noted, however, that everyone was primarily focused on staying in the Netherlands, and that only when people were convinced that this could not be an option did they start to think about return. Even then, feelings of insecurity or concerns about the loss of medical facilities often prevented people from cooperating with their return to the country of origin.

⁶ INLIA, Aim and criteria, most recently consulted on 1 March 2018 via: www.inlia.nl/Doelstelling-en-criteria.html

Central government shelter locations

For people with a departure order, DT&V provides shelter in the VBL in Ter Apel. This was set up in 2004 and has a capacity of 450 people. For families with children under the age of 18, GLs have been set up since 2011. On 12 January 2018 there were five GL locations.⁷

At both facilities, the shelter and guidance is provided by DT&V with a view to return. At the VBL, a maximum residence period of 12 weeks applies in principle, which can be extended when there is a realistic prospect of return. For families, there is a right to shelter as long as the youngest child has not yet reached the age of 18. Both target groups can be deported forcefully, provided the country of origin cooperates.

COA is responsible for the practical provision of the shelter; the placement within family locations and houses, the management of the private rooms and the shared facilities (such as classrooms, washrooms, recreation rooms etc.), as well as access to medical care. The layout of the houses is the same as that for asylum seekers. People share a house with kitchen, shower and toilet with two families (GLs) or with ten people divided over five bedrooms (VBL). A living allowance is paid depending on the family situation.

Residents of the shelter locations are limited in their freedom in three ways. Firstly, there is a duty to report, which means that residents must report to the Aliens Police, Identification and Trafficking Unit (AVIM) once a week. In addition, there is a daily in-house registration obligation at COA, where absenteeism can lead to a reduction of the living allowance. Thirdly, residents are not allowed to go outside the boundaries of the municipality in which the shelter location is located.

Both DT&V and COA offer guidance. Both parties recognise the importance of coordination here. It must also be taken into account that the Dutch Council for Refugees, IOM and in some cases local NGOs also provide guidance, in coordination with the supervisor. DT&V considers it important that foreign nationals are activated, but that no indication can be derived from the activities that there is still a chance of a permanent stay in the Netherlands.

The origin of the population in the VBL and to a lesser extent in the GLs differs strongly from that in the BBBs. More than half of the foreign nationals in the VBL originate from European countries outside the EU. In the GLs, the largest group comes from Asia (including the Caucasus) and the Middle East. On average it is 2.7 (VBL) and 5.9 (GLs) years ago that people applied for a residence permit.

Twelve conversations with foreign nationals who stayed in a VBL or GL, produce a mixed picture. None of the people who stayed in the VBL made a passive impression and were very actively considering their future prospects, in three of the four cases in the country of origin. Amongst people who stayed in the GL, a passive attitude was, however, often found; they did not think too much about the future and were reinforced in this by the fact that in all likelihood it was possible for them to stay in the GL for several years more.

⁷ The number of locations and the technical capacity is subject to change. On 20 June 2017 there were six locations with a technical capacity varying from 169 to 511 people.

Analysis

Different origins

For analysing the countries of origin, a distinction was made on the basis of two criteria: firstly, whether or not a country was included by the central government in the list of so-called 'safe countries of origin'⁸, secondly whether forced return to a country is, according to the Dutch Council for Refugees, difficult in practice without a passport or other identity document. On the basis of these two criteria, four groups can be defined (how these are written is indicated in brackets):

- Safe, difficult forced return (Safe-Difficult)
- Safe, not-difficult forced return (Safe-Not-difficult)
- Not on safe countries list, not-difficult forced return (Not-safe-Not-difficult)
- Not on safe countries list, difficult forced return (Not-safe-Difficult)

	Average municipalities ⁹	Family locations	VBL
Safe-Difficult	7 %	1 %	6 %
Safe-Not-difficult	7 %	18 %	66 %
Not-safe-Not-difficult	54 %	55 %	15 %
Not-safe-Difficult	31 %	26 %	12 %

The division of the populations of the types of shelter in these four categories is shown in the table above. With regard to differences between types of shelter, it is striking that the VBL shows a deviating picture. Here we see that almost three quarters of the population comes from a country that has been declared safe. This is in line with the nature of the shelter type: the VBL is pre-eminently the facility where people from safe countries end up. Their chances of being granted a residence permit are very small and this is also relatively easy to explain to the foreign national. This clarity probably leads people to indicate that they want to cooperate with their return more quickly, which makes them eligible for a stay in the VBL. In the GLs, the group of foreign nationals from a 'safe country of origin' constitutes only 19% of the total and in BBB's 14%. Among the BBBs, 31% of the population comes from a country that is not included in the safe countries list and where forced return without an identity document can be difficult. In the GLs this group is 26% of the total. The differences between the municipalities are smaller, although there is not yet a homogeneous picture.

Length of stay in the Netherlands, DT&V departure procedures among the BBB target group

On the basis of IND data, it can be concluded that 18% of the people in the BBBs applied for a residence permit before 2006. For the VBL and the GLs this is 2% and 5% respectively. On the other hand, we see that 9% of the people in the BBB population applied for the first time after 2015, compared to 67% and 9% for the VBL and GLs. So a relatively large number of people have been accommodated in the BBBs with a long residence history in the Netherlands, while relatively many people stay in the VBL who have only been in the Netherlands for a short time.

⁸ See <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/lijst-van-veilige-landen-van-herkomst>, the situation in February 2018 is used.

⁹ Case study municipalities: Amsterdam, The Hague, Eindhoven, Emmen, Groningen, Rotterdam, Smallingerland, Utrecht
Not case study municipalities: Almere, Doetinchem, Heerlen, Helmond, Maastricht

Enquiry at DT&V shows that about one third of the people staying in the BBBs have never had any contact with DT&V with regard to a stay in a GL or VBL. So there are some partly, but certainly not completely overlapping target groups.

Differences in types of municipal shelter

The analysis of the different types of shelter produces a broad-based classification based on whether or not 24-hour shelter was offered (in the period 2015-2017) and whether there was programmatic, systematic guidance for all the people who were given shelter.

- Three municipalities offered 24-hour shelter and programmatic, systematic guidance (Utrecht, Eindhoven, Groningen). This means, among other things, that in these municipalities all foreign nationals are guided on the basis of a programme towards a permanent future perspective, be it in the form of an asylum or residence permit, or in the form of return.
- In Amsterdam, The Hague and Nijmegen there is no 24-hour shelter and/or systematic, programmatic guidance (or this is only available for a limited group of foreign nationals).
- In Emmen, Smallingerland and Deventer 24-hour shelter is provided but no programmatic support.
- Rotterdam offers various forms of shelter and guidance, depending on the shelter organisation.

Outflow

The analysis of outflows was done at the government shelter locations on the basis of DT&V registrations. The results are presented in the table below:

	GL	VBL
Independent departure from the Netherlands	13 %	38 %
Independent departure without supervision (with notice)	0 %	5 %
Independent departure without supervision (without notice)	20 %	44 %
Forced departure from the Netherlands	6 %	3 %
Other outflow	8 %	3 %
Permit granted	13 %	1 %
No departure	39 %	7 %

This shows that almost 50% (44% + 5%) of the group that was accommodated in 2015-2017 left the VBL without supervision. 38% left independently from the Netherlands under the supervision of DT&V. At the GLs we see a group of 20% who left without supervision, and only 13% who left independently from the Netherlands under the supervision of DT&V.

There is no uniform registration at municipalities. Of the case study municipalities, only Groningen, Utrecht and Eindhoven (all in the group with intensive guidance and 24-hour shelter) have full registration of the outflow, whereby it should be noted that these registrations are not uniform with regard to the registered group and the applied characterisation of the outflow. The link with IND data does, however, provide a picture of the current status of foreign nationals (as of the beginning of March 2018). Here we see that, on average, 11% of foreign nationals in BBBs were allowed to stay in the Netherlands, while another 9% were in a procedure for an asylum permit or a regular residence permit. With regard to the VBL, 2% of the group receiving shelter can stay in the Netherlands, while another 2% are involved in a procedure on the reference date. With regard to the GLs 20% can stay and 10% are still involved in a procedure.

Final analysis

In the final analysis, it must be noted that a quantitative analysis cannot provide a definitive answer. The information on return and outflow from BBB facilities is in many cases poorly comparable and often proved to be incomplete. Moreover, there is a systematic asymmetry in the availability of data between the various municipalities: especially municipalities where intensive guidance is provided to all foreign nationals receiving shelter also have a good registration of the outflow.

In addition, it can be concluded, on the basis of the origin of the groups receiving shelter, that a much larger proportion of the population in the municipal shelter comes from countries that the government has not classified as being safe countries (85%) and that there are also large differences in the proportion of people from countries where return may be difficult in the populations of BBB facilities, GLs and the VBL. As a result, the outflow results for these types of shelter are also incomparable.

However, it has been established that there is consensus among practically all those involved in the municipal shelter (civil servants, shelter coordinators, counsellors) about the factors that influence the return. The main points on which there is consensus are:

- In order to enable foreign nationals to cooperate with a permanent future prospect (permanent residence or return), a stable life situation is a precondition. They should be in good physical and mental health. Night shelter alone will not achieve this. People are too preoccupied with living in the present and as a result are generally unable to work towards long-term goals.
- Activation and guidance during the day (including in the form of training or voluntary work) can help to get people to cooperate with a permanent solution. If they are given shelter during the day but are not activated, this can still cause boredom and be demotivating.
- With regard to guidance, it is observed that foreign nationals generally only want to cooperate with a possible return if the legal possibilities for a stay in the Netherlands have been exhausted.
- They are often convinced that their application for an asylum permit or Regular Residence Permit (VVR) has been wrongly rejected. That is why it is important that the foreign national fully trusts the party that provides the legal support and perhaps conveys the news that there are no more possibilities for legal residence in the Netherlands.
- And yet the granting of a residence permit has proven to be a viable option for part of the BBB population. It is plausible that this fact does not stimulate foreign nationals to cooperate when being guided towards return.
- If return proves to be the only option, then the foreign national must be convinced that a permanent future prospect is possible in the country of origin. Barriers created by the economic situation can often be eliminated by DT&V, IOM or other NGOs (for example in the form of start-up capital or training), but this often proves to be more difficult with regard to health and safety.

These views are mainly based on experiences gained by the group of municipalities that provide systematic, programmatic support (Utrecht, Eindhoven, Groningen). In some cases, a start had already been made on this before the advent of the BBB facilities in 2015 and experience has therefore been gained over a long period of time. The experiences in the state shelter locations are also consistent with the above points (although the option of forced departure in DT&V guidance might influence cooperation with return). The views, however, are more widely supported; in other municipalities (including Amsterdam and

Rotterdam), plans have also been conceived (or are currently being implemented) to organise shelter and guidance more systematically and programmatically.

Conclusions

With this research, an attempt has been made to form the best possible picture of how shelter and guidance affect the return of foreign nationals with an order to depart. To this end, an attempt was made to carry out a quantitative analysis on the basis of data from municipalities, DT&V and IND, as well as a qualitative analysis based on interviews with ten municipalities, DT&V, COA and various NGOs.

The quantitative analysis cannot be conclusive, mainly because of the incomplete, inconsistent and, above all, asymmetrical data collection at municipalities. As a result, it has not been possible to map out the outflow from BBB facilities, or to make a comparison between municipalities that have organised shelter and guidance in different ways.

The main lessons with regard to factors that influence the outflow and return of foreign nationals from the BBB facilities and the central government shelter locations are therefore based on experiences in systematic and programmatic guidance provided by shelter organisations and DT&V. The consensus on these points is very great, both at municipalities that have long been applying these lessons and at municipalities that have recently started to do so or have plans for this.

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