Raad van State

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Administrative Jurisdiction Division

Ruling on the appeal by:

the asylum seeker
appellant

against the ruling of the district court of The Hague, hearing location Zwolle, (hereinafter: the District Court) of 14 October 2015 in case no. 15/173828 in the action between

the asylum seeker

and

The State secretary of Security and Justice.

Course of the proceedings

In a decision of 23 September 2015, the State Secretary, in so far as is of interest at present, rejected an application from the asylum seeker to grant him a temporary asylum residence permit.

In a ruling dated 14 October 2015, the District Court declared the appeal lodged by the asylum seeker against that decision to be well-founded, annulled that decision and ruled that the State Secretary make a new decision on the application, taking into account the information which was considered in the ruling.

The asylum seeker has appealed against this ruling.

The asylum seeker has submitted an additional document.

The Division heard the case at the same time as case number 201506502/1/V2 at the hearing held on 15 December 2015, in which the asylum seeker, represented by E.P.A. Zwart, lawyer in Purmerend, and the State Secretary, represented by R.A. Visser, employee of the Ministry of Security and Justice, appeared.

Considerations

1. The legal framework has been included in Annex 1. Annex 2 consists of a description of the broad outlines of the asylum procedure in the Netherlands. Both Annexes are part of this ruling.

Context

2. In the present case, and in the case number 201506502/1/V2 that was examined simultaneously in the hearing, the grounds for appeal concern the judicial review of the State Secretary's assessment of the credibility of the statements made by the asylum seeker in question. In both cases, the District Court applied Article 83a of the 'Vreemdelingenwet 2000' (Aliens Act 2000, hereinafter referred to as Vw 2000), that entered into force on 20 July 2015, on the submitted appeals. This Article implements Article 46(3) of Directive 2013/32/EU (hereinafter referred to as: the Procedures Directive). Pursuant to that Article, the judicial review by the District court shall encompass a full and *ex nunc* examination of both facts and points of law, including, if applicable, an examination of the need for international protection.

2.1. In this ruling and in today's ruling in case number 201506502/1/V2 (www.raadvanstate.nl), the Division has explained the consequences of Article 83a of the Vw 2000 for the manner in which a administrative judge in first instance reviews an assessment of the State Secretary of the credibility of an asylum seeker's statements.

The ruling in this case concerns the meaning of the aforementioned Article 83a with regard to the intensity of the judicial review exercised by the District court of an assessment of the State Secretary of the credibility

of an asylum seeker's statements. The ruling in case number 201506502/1/V2 concerns the question whether Article 83a of the Vw 2000 requires that, in derogation from the general principles of Dutch administrative law, a Dutch administrative judge has the authority to give his own assessment of the facts as asserted by an asylum seeker in his or her asylum request and therefore, on the credibility of an asylum seeker's statements, and accordingly, to substitute its own assessment of the credibility of the asylum seeker's statements for that of the State Secretary.

These rulings implement the legislator's wish, that is apparent from legislative history, that the Division provides guidance in the interpretation of the aforementioned Article 83a, from the perspective of unity of law, development of law and legal protection in a general sense (Parliamentary Papers II 2014/15, 34 088, no 3, page 22).

Order of examination

3. The Division will first provide an interpretation of the consequences of the full and ex nunc investigation into the factual and legal grounds, as stipulated by Article 83a of the Vw 2000, for the intensity of the judicial review by the administrative judge in first instance of the State Secretary's assessment on the credibility of an asylum seeker's statements. After that, the interpretation provided will be applied to the examination of the grounds for appeal in this case.

Opinions of the parties

4. At the hearing before the Division, the asylum seeker took the position that, in reference to the case law of the Court of Justice (hereinafter: the Court) and the European Court of Human Rights (hereinafter: the ECtHR) and a memorandum of the 'Commissie Strategisch Procederen' initiated by 'VluchtelingenWerk Nederland', Article 83a of the Vw 2000 means that the administrative must review the State Secretary's assessment of the credibility of an asylum seeker's statements in full. This means that the administrative judge must review as a standard for assessment, whether the State Secretary rightly took the position that the asylum seeker's statements lack credibility. The asylum seeker has requested that for the interpretation of Article 46(3) of the Procedures Directive, a preliminary referrence be made for to the Court.

The State Secretary argued, in reference to legislative history of Article 83a of the Vw 2000, that in applying Article 83a of the Vw 2000, the administrative judge, should, in principle, review his assessment of the credibility of an asylum seeker's statements in full. According to the State Secretary, the intensity of the judicial review of his assessment of the credibility of an asylum seeker's statements, is set to increase as a result of Article 83a of the Vw 2000 (Parliamentary Papers II 2014/15, 34 088, no 3, page 20). However, the State Secretary is also of the opinion that, with regard to certain components of his decision regarding an asylum claim judicial restraint remains unavoidable, as he has specific knowledge about asylum claims, greater research possibilities and he has at his disposal a larger quantity of comparative material than the administrative judge, also in relation to positive decisions in other asylum cases (Parliamentary Papers II

2014/15, 34 088, no 6, pages 28 and 29). If the reasoning by the State Secretary in a decision relies on knowledge that only he possesses and cannot be available to the administrative judge, then the administrative judge must take this into account. This will therefore require the administrative judge to display a certain restraint in the intensity of his judicial review, according to the State Secretary.

Intensity of judicial review exercised under EU law

5. Article 46(3) of the Procedures Directive was implemented in Article 83a of the Vw 2000. The meaning and scope of the full and *ex nunc* examination of both facts and points of law stipulated in Article 83a must therefore be determined in the light of Article 46(3) of the Procedures Directive. That interpretation must take place in accordance with the method described by the Court in its case law (see paragraph 28 of the Judgment of the Court of 24 October 1996, C-72/95, Kraaijeveld, ECLI:EU:C:1996:404; paragraph 42 of the Judgment of the Court of 11 June 2015, C-554/13, Z. Zh. and I.O., ECLI:EU:C:2015:377; and paragraph 58 of the Judgment of the Court of 24 June 2015, C-373/13, H.T., ECLI:EU:C:2015:413). For that reason, the interpretation of the text of the aforementioned Article 46(3) requires a comparison of the different language versions. Furthermore, the interpretation of that Article must take into account the other provisions, the context and the objectives pursued by the Procedures Directive. The interpretation may also draw on the legislative history of the Procedures Directive (see paragraph 12 of the Judgment of the Court of 13 December 1989, C-342/87, Genius Holding BV, ECLI:EU:C:1989:635). This means that the interpretation made by the legislator of Article 83a of the Vw 2000, and therefore of Article 46(3) of the Procedures Directive is not, in itself, leading.

5.1. The phrase “volledig en ex nunc onderzoek van zowel de feitelijke als juridische gronden” in Article 46(3) of the Procedures Directive, reads “un examen complet et ex nunc tant des faits que des points d’ordre juridique”, “full and *ex nunc* examination of both facts and points of law” and “eine umfassende Ex-nunc-Prüfung (vorsieht), die sich sowohl auf Tatsachen als auch auf Rechtsfragen erstreckt” in the French, English and German versions respectively. It follows from this wording in the different language versions that a full and *ex nunc* examination must include both points of fact and law, and that no single aspect or element of a decision may be omitted from judicial review. The text of Article 46(3) of the Procedures Directive does not seem to indicate, however, a standard that determines the intensity of judicial review an administrative judge must apply when reviewing asylum cases in general, and in cases involving the credibility of an asylum seeker's statements, in particular.

5.2. As the text of Article 46(3) of the Procedures Directive does not provide a definite answer with regard to the intensity of judicial review that the administrative judge is required to carry out, the meaning and scope of Article 46(3) must also be determined with due regard to the other provisions, the context, objective and legislative history of the Procedures Directive. As evidenced by Article 1 and paragraphs 11 and 12 of the

preamble to the Procedures Directive, the purpose of the Directive is to establish common procedures for the granting and withdrawing of international protection pursuant to Directive 2011/95/EU (hereinafter referred to as the Qualifications Directive). The Procedures Directive primarily provides clear and detailed provisions regarding the administrative proceedings (in Sections I, II and II, amongst others, and in Articles 4, 10 to 19 inclusive, 21, 24 and 25). Paragraphs 16, 17, 25 and 29 of the preamble also confirm the fact that the emphasis lies on the administrative phase. In the case of appeal proceedings, the Procedures Directive lays down fewer detailed procedural safeguards (notably in Article 10(4), Article 12(2), Article 20 and Article 46).

5.2.1. It follows from the system laid down in the Procedures Directive, that it is the task of the determining authority, with the required degree of expertise and subject to the procedural safeguards that apply in relation to the administrative procedure, to make a decision regarding a request for international protection. In that system, the judicial review consists of an examination of the administrative decision-making, and should be able to cover all findings of both points of fact and law (see paragraph 57 of the Judgment of the Court of 28 July 2011, C-69/10, Samba Diouf, ECLI:EU:C:2011:524). However, the system of the Procedures Directive does not require the administrative judge to assess a request for asylum by himself, similar to how the determining authority assesses it in accordance with that Directive. Rather, in that system, an administrative judge assesses the decision taken by the determining authority in terms of its lawfulness (see also paragraphs 50 and 60 of the preamble in the Procedures Directive). As such, neither the system of the Procedures Directive nor the text of Article 46(3), provides an answer to the required intensity of judicial review in asylum cases in general, and in particular in cases involving the credibility of an asylum seeker's statements.

5.3. It follows from the aforementioned paragraphs of the preamble that the intention of Article 46(3) of the Procedures Directive is to also concur with the case law of the Court with regard to the right to an effective remedy before a court or tribunal, as laid down in Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter: the Charter), and therefore to also reflect the case law of the ECtHR on Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR). That also follows from the legislative history of the Procedures Directive (see COM(2009) 554 final, pages 6, 8 and 9). The intensity of judicial review exercised by the courts that is laid down in Article 46(3) of the Procedures Directive must therefore be determined in accordance with the aforementioned case law and with Article 47 of the Charter.

5.3.1. It does not follow from the case law of the Court in relation to Article 47 of the Charter that the intensity of administrative judicial review must be the same in all situations. Based on that case law, it can be established that the Court recognises that an administrative body may enjoy some discretion (in Dutch legal terminology: 'beslissingsruimte') (see paragraphs 52 and 58 of the Judgment of the Court of 6 October 2015,

C71/14, East Sussex County Council, ECLI:EU:C:2015:656). Amongst other situations, this will apply in cases in which the administrative body makes political, economic or social choices or carries out complex evaluations (paragraphs 33 and 34 of the Judgment of the Court of 21 January 1999, C-120/97, Upjohn, ECLI:EU:C:1999:14; paragraphs 74 to 79 inclusive of the Judgment of the Court of 9 June 2005, C-211/03, C299/03 and C-316/03 to C-318/03 inclusive, HLH Warenvertriebs GmbH, ECLI:EU:C:2005:370; paragraphs 41 and 42 of the Judgment of the Court of 19 February 1998, C-4/96, NIFPO and Northern Ireland Fishermen's Federation, ECLI:EU:C:1998:67; and paragraph 39 of the Judgment of the Court of 15 February 2005, C-12/03 P, Tetra Laval, ECLI:EU:C:2005:87). That discretion influences the intensity of the judicial review that is exercised by a District court.

5.3.2. The case law of the ECtHR on Articles 6 and 13 of the ECHR gives rise to the same conclusion regarding the intensity of judicial review (see paragraphs 151 to 157 inclusive and the case law referred to therein, of the Judgment of the ECtHR of 21 July 2011, Sigma Radio Television versus Cyprus, nos 32181/04 and 35122/05, ECLI:CE:ECHR:2011:0721JUD003218104; paragraph 78 of the Judgment of the ECtHR of 6 March 2001, Hilal, no 45276/99, ECLI:CE:ECHR:2001:0306JUD004527699; and paragraphs 121 and 122 of the Judgment of the ECtHR of 7 July 1989, Soering, no 14038/88, ECLI:CE:ECHR:1989:0707JUD001403888). It also follows from the case law of the ECtHR on Article 6 and 13 of the ECHR that administrative bodies in Contracting States may enjoy some discretion, which has consequences for the intensity of judicial review of decisions carried out under administrative law.

5.3.3. From the above, the Division concludes that it is in keeping with European Union law for there to be a national system in which the intensity of judicial review under administrative law dependents on whether the administrative body enjoys some discretion, as a result of the nature and subject-matter of a decision. An administrative judge will review a component of a decision that contains certain choices as referred to in 5.3.1. or that is factually complex or complicated, or that requires expertise that is available within the administrative body as a result of which the administrative body enjoys some discretion, differently than a component of a decision for which this is not the case.

5.4. As a result, Article 46(3) of the Procedures Directive does not impose a general intensity of judicial review under administrative law in asylum cases in general and in cases regarding the credibility of an asylum seeker's statements in particular. The intensity of judicial review depends on the aspects and components of the decision in question. As follows from the considerations in 5.2.1. to 5.3.3. regarding the context and objectives and design of the Procedures Directive, interpreted in accordance with Article 47 of the Charter and the case law of the Court and the ECtHR, this interpretation of Article 46(3) of the Procedures Directive is without prejudice to an effective application of that Directive (see paragraph 63 of the Judgment of the Court of 5 June 2014, C-146/14 PPU, Mahdi,

ECLI:EU:C:2014:1320) and as such does not impede the attainment of the objectives pursued by the Procedures Directive (see paragraph 41 of the Judgment of the Court of 8 May 2014, C-604/12, H.N., ECLI:EU:C:2014:302).

Intensity of judicial review in the Dutch system

6. It follows from consideration 5.4. that Article 46(3) of the Procedures Directive does not require the administrative judge to review all aspects and elements of a decision in asylum cases in the same way. The judicial review of asylum decisions under administrative law depends on whether the State Secretary has discretion in his decision-making as a result of the nature and subject-matter of the decision appealed against, but is also dependent on the consequences of a decision. This corresponds to the interpretation adopted by the national legislature, which is reflected in the legislative history of Article 83a of the Vw 2000 referred to under paragraph 4. This conclusion, applied to the system of administrative law in the Netherlands, leads to the following framework for the intensity of judicial review of a decision by the State Secretary regarding the credibility of an asylum seeker's statements.

7. The administrative judge assesses, within the scope of Article 8:69 of the General Administrative Law Act ('Algemene wet bestuursrecht', hereinafter Awb) and Article 83 of the Vw 2000 whether the decision-making process leading to a decision that an asylum seekers' statements or part thereof lack credibility, satisfies all legal requirements and procedural safeguards, in particular with regard to the requirements of due care and accuracy, its merits, and the contents and sufficiency of reasoning in that decision.

7.1. Furthermore, the administrative judge examines whether the State Secretary was right (in Dutch legal terminology: 'terecht') in his assessment of which elements (as stipulated in Articles 4(1) and 4(2) of the Qualifications Directive and implemented inter alia in Article 31 of the Vw 2000) are relevant and material to his overall assessment of the credibility of the asylum claim. The State Secretary enjoys no discretion in this aspect of his decision-making that an administrative judge should respect when reviewing a decision on this aspect. The administrative judge also reviews whether the State Secretary rightly took the position that inconsistencies, vaguenesses and doubtful explanations that the State Secretary refuted against the asylum seeker, relate to essential elements of his statements (see the judgment of the Division of 15 March 2012 in case no 201103691/1/V1; www.raadvanstate.nl). That same intensity of judicial review is applied by the administrative judge to the decision of the State Secretary as to whether the statements of an asylum seeker that were made during the interviews carried out, contradict one another. There is no reason why an administrative judge cannot examine whether the transcripts of those interviews reveal that an asylum seeker has actually given contradictory statements. Finally, to the extent that an asylum seeker has substantiated his statements in his asylum claim with evidence, the administrative judge reviews whether the decision of the State Secretary of

the credibility of those statements is in keeping with the principles of Dutch general administrative law.[1]

8. However, asylum seekers are frequently not in a position to substantiate their asylum claim with the evidence usually required under general administrative law. The events asserted by an asylum seeker in his asylum claim often took place in another country. In some cases, the asylum seeker will have had to flee that country in a situation of urgent need, and as such it is frequently impossible for him to collect evidence of what has occurred and bring it with him (compare paragraphs 196, 197 and 203 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees). As a result of this lack of evidence, neither the State Secretary nor the administrative judge can be certain whether the events asserted by an asylum seeker actually have taken place. The State Secretary will assess whether the statements made by an asylum seeker are cohesive and plausible and whether they correspond to general and specific information about matters such as the social and cultural situation in his alleged country of origin. In doing this, the State Secretary seeks to align his assessment with the relevant modules as issued by the European Asylum Support Office regarding the assessment of credibility. Furthermore, the State Secretary will carry out his assessment on the basis of the Procedures Directive and in accordance with Article 4 of the Qualifications Directive and the procedural requirements of due care, as laid down in the Vw 2000, the 'Vreemdelingenbesluit 2000 (the Decree on foreign nationals of 2000), the 'Vreemdelingencirculaire 2000 (Guidelines on the Implementation of the Law on foreign nationals of 2000) and the Voorschrift Vreemdelingen 2000 (Regulation on Foreign Nationals 2000). In the absence of any evidence, the statements and assertions of an asylum seeker can only be assessed by taking into account the origin and personal background of the asylum seeker himself. For that reason, the State Secretary, in making his assessment, compares the asylum claim with comparable asylum claims from other asylum seekers, whose applications he has previously granted or rejected (see also Annex 2 to this ruling).

8.1. In view of the fact that it is frequently impossible to verify the statements and assertions of an asylum seeker, the credibility assessment by the State Secretary of such statements and assertions can be described as a comparative assessment, based also on previous experiences, as to whether the events asserted by the asylum seeker actually took place. This influences the position of the administrative judge in such asylum cases. Since, an administrative judge in in asylum cases is unable to require that an asylum seeker provides legally acceptable evidence confirming his statements, his position differs from the one normally associated with that of an administrative judge in other cases. As neither the State Secretary, nor the administrative judge has or can obtain certainty about the degree of truthfulness in the statements made by an asylum seeker, assessing such statements in asylum cases is not a "simple matter of fact" (see

[1] This means that the State Secretary enjoys no discretion on this part of his assessment.

paragraph 46 of the Judgment of the ECtHR of 14 November 2006, Tsfayo versus United Kingdom, no 60860/00, ECLI:CE:ECHR:2006:1114JUD006086000). The administrative judge is in no better position than the State Secretary when it comes to carrying out this assessment. Furthermore, due to its position within the system of administrative law, the administrative judge will get to see a significantly smaller number of asylum cases and will generally only get to review those cases in which the State Secretary has rejected an application. Therefore, due the nature of this area of asylum law, namely the assessment of the credibility of asylum claims that are not substantiated by evidence, it follows that – other than with regard to the aspects referred to in 7. and 7.1 – the State Secretary enjoys some discretion in his assessment of the credibility of statements and assertions that are not substantiated with evidence. The fact that, in asylum cases, it is a matter of investigating whether an asylum seeker requires international protection and that fundamental human rights are at stake does not in itself mean that an administrative judge is in a better position than the State Secretary to conduct the investigation into and the assessment of unverifiable statements by an asylum seeker, and accordingly does not mean that the State Secretary does not need to have some discretion in parts of his decision-making.

8.2. The fact that the ECtHR sometimes chooses a different approach and substitutes its own opinion for that of the national authorities on the basis of its own investigation and assessment (see, for example, paragraphs 70 to 80 of the Judgment of the ECtHR of 18 December 2012, F.N. and Others v. Sweden, no 28774/09, ECLI:CE:ECHR:2012:1218JUD002877409) does not lead to a different conclusion regarding the issue as to whether the State Secretary has some discretion. The position of the ECtHR is not comparable to that of a national court. Where appropriate, the ECtHR arrives at an independent conclusion as to whether, given the latest state of affairs, there exists a genuine risk of a violation of Article 3 of the ECHR (compare paragraph 133 of the Judgment of the ECtHR of 28 February 2008, Saadi v. Italy, no 37201/06, ECLI:CE:ECHR:2008:0228JUD003720106; paragraph 61 of the Judgment of the ECtHR of 10 September 2015, R.H. versus Sweden, no 4601/14, ECLI:CE:ECHR:2015:0910JUD000460114; and paragraphs 110 to 127 inclusive of the Judgment of the ECtHR of 23 March 2016, F.G. versus Sweden, no 43611/11, ECLI:CE:ECHR:2016:0323JUD004361111). Unlike an administrative judge in the Netherlands, it does not have the ability to nullify a decision due to a lack of grounds or due care, and to require a Contracting State to make a new decision in observance of his ruling. However, that different position does not detract from the fact that the case law of the ECtHR is the guiding principle for the Division when assessing whether an asylum seeker is at genuine risk of a violation of Article 3 of the ECHR.

8.3. The fact that the State Secretary enjoys some discretion when carrying out this part of his credibility assessment is without prejudice to the fact that, as follows from 7. and 7.1 and in the light of Article 3:46 of the Awb, the manner in which he makes use of this discretion must be

accompanied with proper reasoning that can be verified by the administrative judge, in keeping with his policy as laid down in the Decision of 12 December 2014, number WBV 2014/36, in amendment of the Aliens Act Implementation Guidelines 2000 (Dutch Government Gazette 2014, no 36910), and the Work Instruction of 1 January 2015 (2014/10; www.ind.nl). As follows from the ruling of the Division of 18 November 2015 in case number 201504912/1/V2 (www.raadvanstate.nl), the judicial review of such decisions requires that special importance is given to the interrelationship of the elements in the statements of an asylum seeker, and the importance attached by the State Secretary to the elements that he regards as credible or not, and how the credibility of those elements affects his final decision on the credibility of an asylum seeker as a whole (see also Parliamentary Papers II, 2014/15, 34088, no 3, page 17). This corresponds with the intention of the Dutch legislature according to the legislative history (Parliamentary Papers II 2014/15, 34 088, no 3, pages 16 and 17; and no 6, pages 22 and 23) and enables an administrative judge review the lawfulness of the decision made by the State Secretary even in cases in which the State Secretary has some discretion and, where appropriate, with use of the judicial investigative powers laid down in Section 8 of the General Administrative Law Act (compare the rulings of the Division of 9 April 2015 in case numbers 201501445/1/V2 and 201501148/1/V2, and the rulings of the Division of 8 July 2015 in case numbers 201208550/1/V2, 201110141/1/V2 and 201210441/1/V2; all of which may be consulted at www.raadvanstate.nl).

9. It follows from the above that the intensity of judicial review, under administrative law, of the assessment of the State Secretary with regard to the credibility of that asylum seeker’s statements is mixed if the asylum claim of an asylum seeker is partly based on statements and assumptions that are not substantiated by evidence. In most aspects and components of a decision of the State Secretary, the administrative judge is able to review whether the State Secretary has rightly arrived at his position. In those situations, the State Secretary enjoys no discretion. However, if the State Secretary enjoys some discretion with regard to particular aspects or components of his decision, that is when assessing the credibility of statements and assumptions not substantiated by evidence, the administrative judge will respect that discretion and review whether the State Secretary has not wrongfully (in Dutch legal terminology: 'niet ten onrechte') taken the position that an asylum seeker’s statements lack credibility. However, even in that situation, the administrative judge must review whether the decision-making process meets the requirements of due care and is based on a proper reasoning. The intensity of judicial review of the assessment of the State Secretary of the credibility of an asylum seeker's statements will therefore increase, compared to the situation prior to the entry into force of Article 46(3) of the Procedures Directive.

Reference for a preliminary ruling

10. In view of the state of EU law at present and the aforementioned judgments of the Court, there is no reason to refer questions for a preliminary ruling. The legal question that has been raised can be answered in light of the case law of the Court (see paragraphs 13 and 14 of the Judgment of the Court of 6 October 1982, C-283/81, Cilfit, ECLI:EU:C:1982:335, and paragraphs 57 to 62 of the Judgment of the Court of 9 September 2015, C-72/14 and C-197/14, X and Van Dijk, ECLI:EU:C:2015:564). The aforementioned interpretation of Article 46(3) of the Procedures Directive, and therefore of Article 83a of the Vw 2000, is in line with the purpose and objective of the Procedures Directive and the case law of the Court and the ECtHR. The Netherlands' system of legal protection under administrative law in asylum cases as a whole safeguards that an asylum seeker is given the protection to which he is entitled on the grounds of EU law and the ECHR.

11. Up to the present, the majority of the supplemental seats of the Court of The Hague have also ruled that Article 83a of the Vw 2000 does not preclude the possibility that the State Secretary may enjoy some discretion in parts of his credibility assessment, as is shown in the rulings of the full-bench judgements of the Court of The Hague in its respective hearing locations of Groningen of 24 August 2015 (ECLI:NL:RBDHA:2015:9942), Arnhem of 1 October 2015 (ECLI:NL:RBDHA:2015:11350), Rotterdam of 5 November 2015 (ECLI:NL:RBDHA:2015:12713), and Utrecht of 26 November 2015 (ECLI:NL:RBDHA:2015:14568). The fact that two seats of the Court of The Hague appear to uphold a different interpretation is not sufficient to refer the case for a preliminary ruling (compare paragraphs 41 and 42 of the Judgment of Court of 9 September 2015, C160/14, Ferreira da Silva e Brito et.al., ECLI:EU:C:2015:565).

Assessment of the appeal

12. The asylum seeker based his application for asylum on the fact that in Afghanistan, he had maintained a long-term, prohibited relationship with his female cousin. The family of his cousin became aware of that relationship. When they were caught together near her family's home, the asylum seeker was shot at by a member of her family. After he fled, he was sought out by members of her family and his own family was repeatedly threatened and mistreated.

12.1. In his first ground for appeal, which was outlined in more detail during the hearing at the Division, the asylum seeker complained that the District Court wrongfully and with insufficient reasoning upheld the conclusion of the State Secretary that his statements lack credibility.

12.2. The District Court considered that the State Secretary wrongfully took the view that the statement by the asylum seeker, that he attended a mixed school in Afghanistan and came into contact with his cousin in that way, contradicted with information that was available from a public source.

The District Court carried out that part of its assessment in the manner as described above in 7.1.

12.3. The District Court furthermore carried out its review of the assessment of the State Secretary with regard to the statements made by the asylum seeker that were not substantiated with evidence, in accordance with the method described in 8.3. The District Court rightly included the different elements the statements of the asylum seeker in its judicial review, and has examined whether the State Secretary had arrived at his decision based on a proper reasoning. Contrary to the grounds for appeal put forward by the asylum seeker, the disputed ruling does not give reason to conclude that the District Court had not taken account, in its ruling, of the statements by the asylum seeker or the grounds for appeal relating thereto.

12.3.1. Furthermore, the District Court reviewed the assessment of the State Secretary of the credibility of the asylum seeker's statements with regard to the relationship between him and his cousin, and took into account the discretion that the State Secretary enjoyed in that regard (see 8.1). This concerned, inter alia, the part of the statements relating to the duration of the relationship, the ability of the asylum seeker to elucidate about this and about his cousin, the location in which they were caught and the circumstances in which this occurred. The District Court has also considered the statements by the asylum seeker about the reasons why, after the shooting episode in the orchard, he no longer gave a second thought about his cousin or enquired after her, even though they were supposed to have maintained a loving relationship for a long period of time.

12.4. The District Court rightly concluded that the State Secretary has not wrongfully come to his decision that the statements of the asylum seeker lack credibility. The first ground for appeal is therefore unsuccessful.

13. What was put forward by the asylum seeker in a further document dated 9 December 2015 regarding the right to a personal hearing was submitted after the deadline for submitting an appeal. In view of Article 85(3) of the Vw 2000, this argumentation cannot be considered in the assessment of the appeal.

14. The items submitted by the asylum seeker in his second to fifth ground for appeal are insufficient to cause the annulment of the disputed ruling. As the arguments have not raised any questions that require answers in the interests of unity of law, development of law or legal protection in a general sense, that judgment shall suffice in view of Article 91(2) of the Vw 2000.

Conclusion

15. As the grounds for appeal do not lead to the annulment of the ruling, the appeal is unfounded. The contested ruling must be upheld. Due to the fact that the ruling of the District Court that the State Secretary had provided improper reasons for his viewpoint regarding the alleged conversion of the asylum seeker has not been disputed on appeal, and the annulment of

the State Secretary's decision by the District Court therefore remains, the State Secretary, must, as required by the District court, review his decision on the application by the asylum seeker for the granting of a temporary asylum residence permit, and therefore also his decision regarding the credibility of the asylum seeker's alleged conversion.

16. There is no reason to issue an order in respect of legal costs.

Decision

The Administrative Jurisdiction Division of the Council of State hereby:

upholds the contested ruling.

As determined by H.G. Lubberdink, Presiding Judge, and H. Troostwijk and N. Verheij, judges, in the presence of M.M. Bosma, Clerk of the Court.

signed Lubberdink	signed Bosma
Presiding Judge	Clerk of the Court

Delivered in open court on 13 April 2016

572/284-791.
Sent: 13 April 2016

ANNEX 1 – Legislative framework

Charter of Fundamental Rights of the European Union

Article 47
Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 52
(...)
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
(...)

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of asylum seekers or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ 2011 L 337; the Qualifications Directive)

Article 4
1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.
2. The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.
3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:
a) the applicant has made a genuine effort to substantiate his application;
b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
e) the general credibility of the applicant has been established.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ L 180/60, the Procedures Directive)

Preamble
(11) In order to ensure a comprehensive and efficient assessment of the international protection needs of applicants within the meaning of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content

of the protection granted, the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a single procedure.
(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.
(16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.
(17) In order to ensure that applications for international protection are examined and decisions thereon are taken objectively and impartially, it is necessary that professionals acting in the framework of the procedures provided for in this Directive perform their activities with due respect for the applicable deontological principles.
(25) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.
(29) Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary in order to gain effective access to procedures and to present the elements needed to substantiate their application for international protection.
(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the

decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.
(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.

Article 1
The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.

Article 4
1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.
2. Member States may provide that an authority other than that referred to in paragraph 1 shall be responsible for the purposes of:
a) processing cases pursuant to Regulation (EU) No 604/2013; and
b) granting or refusing permission to enter in the framework of the procedure provided for in Article 43, subject to the conditions as set out therein and on the basis of the reasoned opinion of the determining authority.
3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. To that end, Member States shall provide for relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Member States shall also take into account the relevant training established and developed by the European Asylum Support Office (EASO). Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.
4. Where an authority is designated in accordance with paragraph 2, Member States shall ensure that the personnel of that authority have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.
5. Applications for international protection made in a Member State to the authorities of another Member State carrying out border or immigration controls there shall be dealt with by the Member State in whose territory the application is made.

Article 10
1. Member States shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.
2. When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees

and, if not, determine whether the applicants are eligible for subsidiary protection.
3. Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

a) applications are examined and decisions are taken individually, objectively and impartially;
b) precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
c) the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law;
d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

4. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 3(b), necessary for the fulfilment of their task.
5. Member States shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article 11
1. Member States shall ensure that decisions on applications for international protection are given in writing.
2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.
Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with such information at an earlier stage either in writing or by electronic means accessible to the applicant.
3. For the purposes of Article 7(2), and whenever the application is based on the same grounds, Member States may take a single decision, covering all dependants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity and/or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.

Article 12
1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

a) they shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. they shall be informed of the time-frame, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2011/95/EU, as well as of the consequences of an explicit or implicit withdrawal of the application. That information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 13;
b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds;
c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;
d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;
e) They shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;
f) They shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).

Article 13

1. Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95/EU. Member States may impose upon applicants other obligations to cooperate with the

competent authorities insofar as such obligations are necessary for the processing of the application.
2. In particular, Member States may provide that:
a) applicants are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
b) applicants have to hand over documents in their possession relevant to the examination of the application, such as their passports;
c) applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he or she indicated accordingly;
d) the competent authorities may search the applicant and the items which he or she is carrying. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Directive shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity;
e) the competent authorities may take a photograph of the applicant; and
f) the competent authorities may record the applicant's oral statements, provided he or she has previously been informed thereof.

Article 14
1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).
(...)
Where a person has lodged an application for international protection on behalf of his or her dependants, each dependent adult shall be given the opportunity of a personal interview.

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

Article 15
1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.
2. A personal interview shall take place under conditions which ensure appropriate confidentiality.
3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

a) ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;
b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
c) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
d) ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform;
e) ensure that interviews with minors are conducted in a child-appropriate manner.

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

Article 16

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive 2011/95/EU as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant's statements.

Article 17

1. Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.
2. Member States may provide for audio or audio-visual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.
3. Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarification orally and/or in writing with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time

limit before the determining authority takes a decision. To that end, Member States shall ensure that the applicant is fully informed of the content of the report or of the substantive elements of the transcript, with the assistance of an interpreter if necessary. Member States shall then request the applicant to confirm that the content of the report or the transcript correctly reflects the interview.

When the personal interview is recorded in accordance with paragraph 2 and the recording is admissible as evidence in the appeals procedures referred to in Chapter V, Member States need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. Without prejudice to Article 16, where Member States provide for both a transcript and a recording of the personal interview, Member States need not allow the applicant to make comments on and/or provide clarification of the transcript.

4. Where an applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in the applicant's file.

Such refusal shall not prevent the determining authority from taking a decision on the application.

5. Applicants and their legal advisers or other counsellors, as defined in Article 23, shall have access to the report or the transcript and, where applicable, the recording, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the personal interview, Member States need not provide access to the recording in the procedures at first instance referred to in Chapter III. In such cases, they shall nevertheless provide access to the recording in the appeals procedures referred to in Chapter V.

Without prejudice to paragraph 3 of this Article, where the application is examined in accordance with Article 31(8), Member States may provide that access to the report or the transcript, and where applicable, the recording, is granted at the same time as the decision is made.

Article 18

1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive 2011/95/EU, Member States shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

The medical examinations referred to in the first subparagraph shall be carried out by qualified medical professionals and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

Medical examinations carried out in accordance with this paragraph shall be paid for out of public funds.

2. When no medical examination is carried out in accordance with paragraph 1, Member States shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.
3. The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.

Article 19
1. In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information — in addition to that given in accordance with Article 11(2) and Article 12(1)(f) — in order to clarify the reasons for such decision and explain how it can be challenged.
2. The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

Article 20
1. Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.
2. Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.
3. Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.
4. Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

Article 21
1. Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.
2. Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

a) only to those who lack sufficient resources; and/or
b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provided for under national law, including rehearings or reviews of appeals.
Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).
3. Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.
4. Member States may also:

a) impose monetary and/or time limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and representation;
b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

Article 23
1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised. In such cases, Member States shall:

a) make access to such information or sources available to the authorities referred to in Chapter V; and
b) establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU.

3. Member States shall allow an applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4. Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

Member States may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

Article 24

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.

2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive 2013/33/EU and need not take the form of an administrative procedure.

3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43

cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).
4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25
(...)
3. Member States shall ensure that:
a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.
4. Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.
5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.
Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.
(...)

Article 46
1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:
a) a decision taken on their application for international protection, including a decision:
I. considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;
II. considering an application to be inadmissible pursuant to Article 33(2);
III. taken at the border or in the transit zones of a Member State as described in Article 43(1);
IV. not to conduct an examination pursuant to Article 39;
b) a refusal to reopen the examination of an application after its discontinuation pursuant to Articles 27 and 28;
c) a decision to withdraw international protection pursuant to Article 45.
(...)

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 6
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
(...)

Article 13
Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

'Vreemdelingenwet 2000'

Article 31
1. An application for the issue of a residence permit for a fixed period as referred to in section 28 shall be rejected as unfounded in the sense of Article 32(1) of the Procedures Directive, if the alien has not made a plausible case that his application is based on circumstances which, either in themselves or in connection with other facts, constitute a legal ground for the issue of the permit.
2. The alien shall produce all items in support of his application at the earliest possible opportunity. Our Minister shall assess the relevant elements in cooperation with the alien.
3. The elements referred to in paragraph two shall include the statements made by the alien and all relevant documentation in his or her possession.
4. In the assessment of the application, the following aspects, among others, shall be taken into account:

a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

b) the statement made and documents submitted by the alien, together with information relating to the question of whether he or she has been or could be exposed to persecution in the sense of the Convention Relating to the Status of Refugees or serious harm in the sense of Article 29(1)(b);
c) the individual position and personal circumstances of the alien, including factors such as background, gender and age, so as to assess whether, on the basis of the alien's personal circumstances, the acts to which the alien has been or could be exposed would amount to persecution in the sense of the Refugee Convention, or serious harm in the sense of Article 29(1)(b);
d) the question of whether his or her activities since leaving the country of origin or a country of previous residence were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the alien to persecution in the sense of the Convention Relating to the Status of Refugees or serious harm in the sense of Article 29(1)(b), if returned to that country;
e) whether the alien could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

5. The fact that an alien has already been subject to persecution, in the sense of the Refugee Convention, or to serious harm in the sense of Article 29(1)(b), or has received direct threats of the same is a clear indication of the alien's well-founded fear of persecution and of a genuine risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
6. In the event that the alien is unable to provide documentary evidence for his statements or for part of his statements, those statements shall be regarded as credible and the alien granted the benefit of the doubt, whenever the following conditions have been fulfilled:

a) the alien has made a genuine effort to substantiate his application;
b) all relevant elements at the alien's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
c) the alien's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the alien's application;
d) the alien has applied for international protection at the earliest possible time, unless he is able to demonstrate good reasons for not having done so; and
e) the overall credibility of the alien has been established.

7. An application will not be rejected on the basis of a previous negative decision, in the event that the elements stated by the alien in his application and any findings constitute grounds to assume that these take the form of specific facts and circumstances that relate to the individual case concerned and would prevent such rejection.
8. Rules may be imposed by, or by order of a General Government Decree, regarding the application of paragraphs one to seven inclusive.

Article 83
1. When assessing the appeal, the court shall take account of:
   a) facts and circumstances that have been submitted subsequent to the contested decision, and
   b) policy changes promulgated subsequent to the contested decision.

Article 83a
The review by the Court shall encompass a full and *ex nunc* examination of both facts and points of law, including, if applicable, an examination of the need for international protection.

Article 85
(...)
3. In the event that the stipulations in paragraph one or two, in Article 6:5 of the General Administrative Law Act or any other legal requirement governing the admissibility of an appeal is not fulfilled, an appeal shall be declared inadmissible. Article 6:6 of the General Administrative Law Act shall not apply in the event that the requirements in Article 6:5(1)(c) and (d), or in the first and second paragraphs of this Article, have not been fulfilled.

Article 91
(...)
2. In the event that the administrative law division of the Council of State rules that a complaint submitted is insufficient to proceed with annulment, it shall restrict itself to this ruling when stating the grounds.

General Administrative Law Act

Article 8:69
1. The court shall give judgment on the basis of the notice of appeal, the documents lodged, the proceedings during the preliminary examination and the examination in court.
Article 8:72
(...)
3. The administrative court may direct that:
   (...)
   b) its judgment takes the place of the quashed order or the quashed part thereof.

ANNEX 2 – The system in the Netherlands

The asylum procedure in the Netherlands is set up as follows.

Administrative phase

1. The State Secretary is designated to investigate and assess an application for international protection. The State Secretary is the national determining authority in the sense of Article 2(1), the preamble and item f of the Procedures Directive. The administrative phase, in which the State Secretary investigates an request for asylum by an asylum seeker and reaches a decision about that application, is set up as follows.

1.1. The State Secretary carries out the investigation into the credibility of the grounds stated by an asylum seeker in his request for asylum, based on the statements made by that asylum seeker during the interviews conducted with him. During those interviews, an asylum seeker can state the reasons for which he is requesting protection and will provide information in relation thereto. The interviews are conducted by civil-servants who have been specially trained for that purpose. They will take account of the personal circumstances, background and age of the asylum seeker. A report is drawn up of every interview and made available to the asylum seeker. The asylum seeker will be given an opportunity to make corrections or additions to that report.

1.2. In addition to the requirements laid down in the Procedures Directive, the state must provide all asylum seekers in the administrative phase with a legal adviser, free of charge. During the interviews, an interpreter will be present and the asylum seeker will be able to be accompanied by a legal adviser or a third party. Prior to these interviews, an asylum seeker may undergo a medical examination in order to examine whether he is suffering from any limitations that may affect his ability to make state his case. Furthermore, the State Secretary may assist the asylum seeker by carrying out an independent investigation in support of the application submitted by the asylum seeker. One example of this is to carry out an examination of the documents submitted by the asylum seeker. During the course of the investigation carried out by the State Secretary, the asylum seeker will be permitted to remain in the Netherlands.

1.3. During the administrative phase, the State Secretary will investigate whether the statements made by the asylum seeker are cohesive, plausible and non-contradictory and how these relate to any evidence that was submitted. The manner in which the State Secretary examines the credibility of an request for asylum is laid down in the Work Instruction of 1 January 2015 (2014/10; hereinafter: WI 2014/10). While carrying out that investigation, the State Secretary will seek to ensure that his decision is in keeping with the relevant modules issued by the European Asylum Support Office regarding the assessment of credibility (hereinafter: EASO). In his investigation, the State Secretary will bring to bear his knowledge obtained from official reports and other sources, such as information from the United Nations High Commissioner for Refugees, and non-governmental

organisations such as Amnesty International and Human Rights Watch, and all other knowledge in his possession regarding the political, social and cultural situation in the country of origin of the asylum seeker, including the Country of Origin Information Reports issued by the EASO. During his investigation, he will take into account any medical limitations of the asylum seeker, in so far as these prevent him from making clear statements. An additional aspect of importance during this investigation is a comparison of the statements made by the asylum seeker with comparable requests for asylum of other asylum seekers from the same country of origin.

If the statements of an asylum seeker are not accompanied by evidence, but do correspond to publicly-available information concerning his country of origin, amongst other things, and in the event that those statements are largely credible, the State Secretary will regard the statements as credible, in accordance with WI 2014/10.

1.4. If the State Secretary intends to reject the application due to the fact that in his opinion, the asylum seeker is not credible, he will set out in writing a provisional viewpoint, with reasons, regarding his decision on the credibility, in the form of a written intention to reject the application. The asylum seeker is permitted to submit a written response to this, expressing his opinion. If desired, this may be drawn up by the legal adviser. That opinion may form grounds for the State Secretary to re-interview the asylum seeker, to carry out a more detailed investigation, to issue a new notice of intention or to grant the application.

1.5. The State Secretary will set out his final viewpoint regarding the credibility of the asylum seeker in the form of a decision, in which he will also address the items expressed by the asylum seeker in his written response and during the remainder of the administrative phase. That decision shall include a viewpoint relating to the particular asylum seeker concerned, shall relate to the credibility of his request for asylum and shall be accompanied by reasons. This decision states the elements that the State Secretary took into account when formulating his decision, what importance he attached to those elements and therefore what effect those elements had upon the credibility of the request for asylum as a whole. In formulating his viewpoint, the State Secretary will include both national and international regulations and case law, including case law from the European Court of Human Rights and the Court of Justice of the European Union.

Appeal and higher appeal phase

2. An asylum seeker is entitled to submit an appeal to the court against a decision taken by the State Secretary. No court fees are due. Submitting an appeal will, in principle, suspend the execution of the contested decision. The asylum seeker is entitled to be assisted by a legal adviser.

2.1. The appeal will generally be handled in a public session, which the asylum seeker will be permitted to attend, and at which he can be questioned in person. If the asylum seeker so desires, he will be granted the services of an interpreter. At the session, the asylum seeker will be permitted, with the assistance of his legal adviser, to explain the grounds of

his appeal and to provide additional information in the form of evidence. Even at this stage of the proceedings, an asylum seeker is still entitled to support his request for asylum with evidence, within the limits of the rules of procedure determined by the court. The court will assess the decision in the light of the grounds for appeal submitted by the asylum seeker and also on an official level in relation to the regulations governing public order. An *ex nunc* assessment will be carried out. The court will then issue a ruling, accompanied by reasons.

3. Finally, an asylum seeker shall be entitled to initiate an appeal against the ruling of the court. No court fees are due for this appeal either. Even when submitting an appeal, the asylum seeker is entitled to receive free legal support. In the case of an appeal and based on the complaints submitted, the Division will assess the ruling issued by the court. In so doing, it will issue a judgment of the facts under dispute and the application of the law. During the assessment of the case during a higher appeal, both legal and factual issues may be taken into account.