Immigration and Naturalisation Service
Ministry of Justice and Security

Has the complexity of making an asylum decision changed?

Experiences, causes, and available solutions

Publication details

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Contents

List of abbreviations

A&B	Directie Asiel en Bescherming	Asylum & Protection Department
AA	Algemene Asielprocedure	General Asylum Procedure
AA+	Algemene Asielprocedure Plus	General Asylum Procedure Plus
AAEB	Afdeling Advies Asiel en Bescherming	Asylum and Protection Advise Unit (IND)
ABRvS	Afdeling Bestuursrechtspraak van de Raad van State	Administrative Jurisdiction Division of the Council of State
ACVZ	Adviesraad Migratie	Advisory Council on Migration
UAM		Unaccompanied minors
AMvB	Algemene Maatregel van Bestuur	Order in Council
AO&T	Afdeling Asiel, Opvang en Terugkeer	Asylum, Reception and Return Department (J&V)
GDPR		General Data Protection Regulation
Awb	Algemene wet bestuursrecht	General Administrative Law Act
AZC	Asielzoekerscentrum	Reception centre
BDoc	Bureau Documenten	Identity and Document Investigation Unit (IND)
BIC	Business Informatie Centrum	Business Information Centre (IND)
BIS		Business Innovation & Support Unit (IND)
BZK	Ministerie van Binnenlandse Zaken en Koninkrijksrelaties	Ministry of Interior and Kingdom Relations
BMA	Bureau Medische Advisering	Medical Assessment Section
BOA	Basisopleiding Asiel	Basic Asylum Education Programme (IND)
COA	Centraal Orgaan opvang Asielzoekers	Central Agency for the Reception of Asylum Seekers
DEA	Directie Eigenaarsadvisering	Owner Advice Department
DEC	Team Data Expertise Centrum	Data Expertise Centre Unit (IND)
DG IND	Directeur Generaal IND	IND Managing Director
DGM	Directoraat Generaal Migratie	Directorate-General for Migration
DMB	Directie Migratiebeleid	Migration Policy Department (J&V)
DRM	Directie Regie Migratieketen	Migration Coordination Department (J&V)
DT&V	Dienst Terugkeer & Vertrek	Repatriation and Departure Service
ECtHR		European Court of Human Rights
EU		European Union

EUAA		European Union Agency for Asylum
EU-VIS		European Visa Information System
ECHR		European Convention on Human Rights
EY	Ernst & Young Global Limited	Ernst & Young Global Limited
FBI	Afdeling Financiën en Business Informatie	Finance and Business Information Unit (IND)
HASA	Herhaalde asielaanvraag	Subsequent asylum application
HIK	Handhaving Informatie Knooppunt	Enforcement Information Hub (IND)
CJEU		Court of Justice of the European Union
IB	Informatiebericht	Information message
IK	Informatie & Kennis	Information & Knowledge
IND	Immigratie- en Naturalisatiedienst	Immigration and Naturalisation Service
INDiGO	IND Informatie Systeem	IND Information System
IOM		International Organisation for Migration
IV	Informatievoorziening	Information Provision
J&V	Ministerie van Justitie en Veiligheid	Ministry of Justice and Security
JAZ	Afdeling Juridische en Algemene Zaken	Legal Affairs Department (DMB)
JZ	Directie Juridische Zaken	Legal Affairs Department (IND)
KMar	Koninklijke Marechaussee	Royal Netherlands Marechaussee
KS	Afdeling Ketensturing	Immigration System Governance Department (J&V)
LGBTIQ+		Lesbian, gay, bisexual, transgender, intersex, queer + other (non-cis) gender persons and (non-hetero) sexualities
MT	Management Team	Management Team
NFI	Nederlands Forensisch Instituut	Netherlands Forensic Institute
NGO		Non-Governmental Organisation
Nidos		Guardianship foundation
NIFP	Nederlands Instituut voor Forensische Psychiatrie en Psychologie	Netherlands Institute of Forensic Psychiatry and Psychology
NPD	Netwerk Publieke Dienstverleners	Network of Public Service Providers
NSOB	Nederlandse School voor Openbaar Bestuur	Netherlands School of Public Administration
O&A	Afdeling Onderzoek en Analyse	Research and Analysis Unit (IND)

PIVA	Programma Invoering Verbeterde Asielprocedure	Improved Asylum Procedure Implementation Programme
POK	Positieve Overtuigingskracht	Positive Persuasion
PST	Programma Stroomlijning Toelating	Streamlining Admissions Programme
RVN	Afdeling Regulier Verblijf en Nederlanderschap	Regular Residence and Dutch Citizenship Department (IND)
SUA	Directie Strategie- en Uitvoeringsadvies –	Strategy and Implementation Advice Department (IND)
TCU	Tijdelijke Commissie Uitvoering	Temporary Implementation Committee
TK	Tweede Kamer	House of Representatives
TOELT	Team Onderzoek en Expertise Land en Taal	Country Information and Language Analysis Team (IND)
UNHCR		United Nations High Commissioner for Refugees
VA	Verlengde Asielprocedure	Extended Asylum Procedure
VAJN	Vereniging Asieladvocaten en -Juristen Nederland	Dutch Association of Asylum Lawyers
Vb	Vreemdelingenbesluit 2000	Aliens Decree 2000
Vc	Vreemdelingencirculaire 2000	Aliens Act Implementation Guidelines 2000
UN		United Nations
VV	Voorschrift Vreemdelingen 2000	Aliens Regulations 2000
Vw	Vreemdelingenwet	Aliens Act
VWN	VluchtelingenWerk Nederland	The Dutch Council for Refugees
WaU	Programma Werk aan Uitvoering	Work on Operations Programme
WBV	Wijzigingsbesluit Vreemdelingencirculaire	Aliens Act Implementation Guidelines (Amendment) Decree
WI	Werkinstructie	Work instruction
WODC	Wetenschappelijk Onderzoek- en Datacentrum	Research and Data Centre
WOO	Wet Open Overheid	Open Government Act

1 Introduction

1.1 Reason for the study

'We need support from the House of Representatives in its capacity of legislator to ensure that the operational practices activities do not become too complex.' This is what the Immigration and Naturalisation Service (IND) indicated in the 2022 Performance Update,[1] a document in which the IND gives insight into important bottlenecks, challenges and dilemmas. Other implementing organisations also indicate that their work is becoming increasingly complex.[2] However, there has been little research into complexity among implementing organisations.

Complexity is experienced in the operational practices of both regular migration policies and asylum policies, but the consequences of the migration and integration system are the greatest for the implementation of asylum policies. The IND has indicated to be reaching the limits of feasibility of the asylum policy and to find it increasingly difficult to take decisions within the available period.[3] Therefore, the Managing Director of the IND (DG IND) has asked the Research & Analysis Unit (*Onderzoek & Analyse*, O&A) to study the developments in the extent to which employees experience complexity when assessing asylum applications and the causes of complexity. This study also aims to take a first step towards available solutions.

In its Performance Update publication, the IND communicated about signs from employees that the complexity of the activities of the IND has increased. However, this research is not based on this assumption. After all, it is not possible to support this assumption with research yet. The purpose of this research is to establish whether this assumption is correct or not. In the research, the developments in complexity are investigated with an open mind, with as much scope for experiences of an increase as for a reduction or no change in the level of complexity. The interviewees have also been approached in this way. Hence, when we talk about the causes of complexity, we refer to all elements that influence complexity and its increase or reduction.

The start of the Implementation Improved Asylum Procedure Programme (*Programma Invoering Verbeterde Asielprocedure* or PIVA) in 2010 has been adopted as the starting point of the research period. Since then, (large-scale) changes have taken place in legislation, policy, operations and case law with respect to asylum migration. There have also been changes in the asylum procedure, of which the implementation of the track policy has been the most important. Central to this study is the way in which all these changes have impacted the complexity of the assessment of asylum applications.

1.2 Definition of complexity

Prior to data collection, literature was used to form a picture of what is already known about complexity. The findings of this literature review are presented in appendix 1. Appendix 1 shows how complexity is defined in other sources, what is known about complexity at implementing organisations, which causes of complexity emerge from other sources, and what is known about the reduction of complexity.

1 IND (2022). *Stand van de uitvoering. (Performance Update)*.
2 *Stand van de uitvoering. (Performance Update)* (2022)
3 IND (2022). *Stand van de uitvoering. (Performance Update).*

After the literature review, it was decided to create an own definition of complexity for this study, which is in line with complexity as it is discussed in policy documents:

Complexity refers to the required time, actions, considerations, knowledge and/or cooperation.

In this study, the experiences of IND staff, and cooperation organisations within and outside of the asylum system will serve as guideline. Hence, it usually concerns *experienced* complexity. We only point out experiences that relate to one or more of the five elements in the definition (time, actions, considerations, knowledge, cooperation). Where possible, we include supplementary sources to assess whether experiences are in line with other sources.

1.3 Objectives

The objectives of this study are three-fold. First, through this study we want to give insight into how complexity of the assessment of asylum applications has developed in the period of 2010 to 2022 inclusive in the experience of professionals in the migration domain: has complexity decreased, remained the same or increased according to them?

Second, the objective is to develop a picture of the experienced causes of any increase or decrease in complexity. Never before has it been studied systematically why complexity of operations changes. Experienced causes of complexity can cover a wide range of factors and play out at different levels. In addition, the causes can be interrelated. To give insight into this, we present a categorisation of the causes of complexity.

This study also aims to take a first step towards available solutions. An overview of the possible causes of complexity can provide a starting point to address these causes in order to reduce complexity. Hence, the purpose is to develop a picture of the causes within the sphere of influence of the IND. If causes are outside the sphere of influence of the IND, we find out which other party (for example policy makers, or the national or EU legislator) can exercise any influence on the cause in question. We will also make a first step to identify what the IND and/or another party could do to reduce complexity by way of these causes. This third component is expressly exploratory; to be able to apply the available solutions, further research and coordination on a policymaking level are required.

1.4 Research questions

The central question of this study is: *Did professionals in the migration domain experience a change in the complexity of the assessment of asylum applications between 2010 and 2022 (inclusive); what are the causes of any change; and how can complexity be reduced?*[4]

The central question has been elaborated into subsidiary questions, which we divide into the themes of general experiences, causes of complexity and available solutions.

<u>General experiences</u>

4 The outcome of the first part of the central question (change in complexity) determined the extent to which the second (causes of complexity) and third part (reduction of complexity) were relevant. If it had become clear that the interviewees did not experience any change in the level of complexity, the study would have ended there. However, it did indeed become apparent that changes were experienced, so with that it was relevant to examine the causes of this change. Because most interviewees experienced an increase in complexity, it also turned out to be relevant to examine how complexity can be reduced.

1. To which extent do the professionals in the migration system experience complexity in their work?
    a. Did complexity decrease, remain the same or increase between 2010 and 2022 (inclusive)?

Causes of complexity

2. What has made the assessment of asylum applications more complex between 2010 and 2022 (inclusive) according to professionals in the migration system?
    a. To which extent are the reported factors in line with findings from other sources?
3. What has made the assessment of asylum applications less complex between 2010 and 2022 (inclusive) according to professionals in the migration system?
    a. To which extent are the reported factors in line with findings from other sources?
4. How can the causes of the decreased or increased complexity be categorised?
    a. How do they interrelate?

Available solutions

5. Which of these causes are within the sphere of influence of the IND?
    a. What can the IND do to address these causes in order to reduce complexity?
6. Which of these factors are outside the sphere of influence of the IND?
    a. Which other party can influence this cause (or is there no party that can exert any influence)?
    b. What can any other party do to address this cause in order to reduce complexity?

1.5 Scope

This study focuses on experienced complexity in reaching (final) decisions on asylum applications. Attention will be paid to all activities that are necessary to reach an asylum decision, so for example also the work of legal representatives to defend decisions in court, the translation of policy into practical implementation by the advisory unit, enforcement, and the activities of supporting units. Applications for asylum family reunification also come within the scope. In this study, we do not look into the consequences of the complexity (such as required capacity, costs and effects on the immigration system).

The research period is from 2010 to 2022 inclusive. From some sources, data are not available for the full period, for example because a new registration system was adopted in the interim. For these analyses, we opt for the maximum number of years available.

1.6 Research methods

A combination of qualitative and quantitative methods has been applied in this study. The core of the report is qualitative and consists of findings from interviews. Where possible, we compare these findings to findings from other qualitative and quantitative sources. The following methods have been used in this study (for some of the methods we refer to a more extensive explanation in the appendices):

- **Interviews:** To gain a complete picture of the experiences with complexity, we held 24 interviews with 50 persons. Sixteen interviews were held with various IND departments, units and locations with an operational (interviewing applicants and taking decisions on applications), supportive or

policy-forming role . In addition, eight interviews were held with representatives from cooperating organisations within and outside of the immigration. At the end of the interview period, it became clear that data saturation had been reached: so many interviews had been held that hardly any new elements emerged from the final interviews. See appendix 2.1 for extensive methodological justification. Here, information can be found about the role of the interviewed parties in the establishment of asylum decisions.

- **Literature study:** Prior to the study, a literature study was conducted. The findings from this literature study have been shown in appendix 1 and are meant to outline the context of this report.
- **Case-law analysis:** In the case-law analysis, changing requirements have been examined based on judgments by the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*, or ABRvS) and the Court of Justice of the European Union (CJEU). The Legal Affairs Department of the IND has played an important role in this by compiling an overview of the most important case law for certain topics that were associated with complexity in the interviews. The researchers subsequently translated the case law into its relevance for the IND by comparing case law with internal work instructions and information messages. The outcomes of these analyses have been integrated into the case studies (see appendix 4).
- **Document analysis:** In the document analysis, legislation, policy documents, work instructions, information messages,[5] the descriptions from the INDiGO system and process descriptions have been examined. The purpose of this is to investigate how the internal processes have developed across time. For example, it was examined whether the length of system and process descriptions has changed and for some themes, the changes in the work instructions and information messages during the research period have been mapped out and related to the case law. The findings of these analyses have been described in the boxes in chapters 3 and 4.
- **Registration data analysis:** Registration data have been requested from the Business Information Centre (BIC) of the IND, focusing on two components: asylum and asylum family reunification cases, and legal proceedings. These data have been used to paint a picture of the broader context based on the findings. As such, a picture is painted of whether this experience matches a broader trend that also emerges from the registration data. See appendix 2.2 for the methodological justification.
- **Textual data analysis:** Because some data that were relevant for this study could not be retrieved from registration data, the Data Expertise Centre (DEC) of the IND analysed textual data using text mining. Based on these data, an indicative picture was painted of trends in the extent to which LGBTIQ+[6] and conversion/apostasy were put forward as reasons to apply for asylum, granting the benefit of doubt and the length of interview reports and notes of interviews ('minutes'). See appendix 2.3 for the methodological justification.
- **Media analysis:** To illustrate the findings about external influences (see chapter 5), a media analysis was conducted in Lexis Nexis (Nexis Newsdesk). In doing so, the attention for the IND in online and offline news items (combined with the human dimension/LGBTIQ+/conversion) has been mapped out. See appendix 2.4 for the methodological justification.

5 In addition to broad IND work instructions and information messages, the A&B department itself also makes working arrangements on logistics. These documents have not been included in this study because this study focuses more on general trends. Hence, a higher level of detail has been adopted.

6 LGBTIQ stands for lesbian, gay, bisexual, transgender, intersex, queer. The + represents all other ways in which persons can refer to their gender or sexuality other than cis gender or heterosexual.

1.7 Supervisory committee and review

This study was supervised by a supervisory committee that provided the study with feedback at four points in time: upon commencement of the study to discuss the research proposal; in the interim to discuss the first draft report of the qualitative findings; towards the end of the research period to discuss the second draft report with qualitative and quantitative findings; and in an extra expert session to brainstorm about available solutions.

From the IND, representatives from the following departments were involved:

- Strategy and Implementation Advice (*Strategie en Uitvoeringsadvies*, SUA)
- Asylum and Protection (*Asiel en Bescherming*, A&B)
- Legal Affairs (*Juridische Zaken*, JZ)

From outside the IND, representatives from the following parties were involved:

- Migration Policy Department of the Ministry (*Directie Migratiebeleid*, DMB):
    - Unit Asylum, Reception and Return (*Asiel, Opvang en Terugkeer*, AO&T);
    - Unit Legal and General Affairs (*Algemene Zaken*, JAZ).
- Migration Coordination Department (*Directie Regie Migratieketen*, DRM):
    - Unit Immigration System Governance (*Ketensturing*, KS).
- Research and Data Centre (*Wetenschappelijk Onderzoek- en Datacentrum*, WODC)

The WODC was asked to give input on methodology in particular.

Towards the end of the research period, the Netherlands School of Public Administration (*Nederlandse School voor Openbaar Bestuur*, NSOB) was asked to review the report. In a session, business and legal scientific researchers gave the IND input on available solutions.

1.8 Structure of the report

The central theme of this report is the experiences of interviewed professionals in the asylum domain. Where possible, these experiences have also been compared to findings from other sources (see section 1.6).

This report consists of seven chapters. After this introduction, we describe the extent to which interviewees experience a change in complexity when reaching asylum decisions and we categorise the causes of changes in complexity according to them (chapter 2). This categorisation forms the basis for the structure of the subsequent chapters, where we go into the causes in legislation and policy (chapter 3), in the operational practices (chapter 4), by external influences (chapter 5) and applicants (chapter 6). We conclude the report with the most important conclusions and give first suggestions for available solutions (chapter 7).

This report contains five appendices. In appendix 1, a literature study has been included. In appendix 2, methodological justification can be found of the interviews, analysis of registration data and textual data, and the media analysis. Appendix 3 contains supplementary figures and tables. In appendix 4, a detailed description of the case studies has been included. Appendix 5 contains a description of the asylum procedure.

2 Experiences with complexity

In this section, we describe the experiences interviewees have with complexity. We first paint a general picture of their experiences with complexity, indicating the extent to which parties experience a change in complexity (section 2.1). Next, we go into the causes of an increase or decrease in complexity that follow from the interviews (section 2.2). We present a categorisation of all causes mentioned in the interviews. Using this categorisation, the causes are explained further per category in chapters 3 to 6.

2.1 General picture of complexity

Each interview started with the open question whether interviewees have the idea that complexity increased, decreased or remained the same between 2010 until 2022 (inclusive). Respondents were also asked to indicate in their own words (before we shared our definition) how they notice any change in complexity. If interviewees only listed elements that had become more complex, they were also asked for verification whether there had also been elements that had become less complex at the same time, or vice versa. In this section we describe the extent to which the interviewees experience a change in complexity when reaching an asylum decision. An overview of the experiences is shown in table 2.1.

Table 2.1 Overview of the general experiences with complexity according to interviewed party*

Interviewed party	Experiences with complexity		
	Increased	Increased for specific components	Remained the same
IND sections			
A&B BOA	*Staff in BOA are not aware of an increase/decrease in complexity considering that they have recently started to work at A&B. They did indicate that they find the work complex.*		
A&B Den Bosch	✓		
A&B The Hague (1F unit)	✓		
A&B Dublin unit	✓		
A&B Schiphol	✓		
A&B Ter Apel	✓		
A&B Zevenaar	✓		
A&B Zwolle	✓		
A&B Zwolle (family reunification team)	✓		
BDoc	✓		
BIS	✓		
HIK	✓		
IV	✓		
JZ	✓		
SUA	✓		
TOELT			✓
External parties			
DRM		✓	
DMB		✓	
DMB-JAZ	✓		
Judge	✓		
Lawyer	✓		
DT&V	✓		
VWN			✓
Nidos			✓

Source: Interviews.
**None of the interviewees indicated that complexity has decreased.*

2.1.1 *Experiences of IND staff members*

Out of the sixteen interviewed units within the IND, all interviewed units think that their tasks have become more complex since 2010, with the exception of the Country and Language Investigation and Assessment Team (*Team Onderzoek en Expertise Land en Taal*, TOELT). In particular, interviewees note that they had to carry out more *actions* than before, so that it takes up more *time* to make an asylum decision. In addition, more *considerations* play a role, and the substance of the work has become more complex, or in other words, it requires more *knowledge*. From the definition used in this study, the element *cooperation* is mentioned the least.

The interviewees of TOELT indicate that they do notice in their contact with decision officers that their activities have become more complex, but that country-specific information and the questions they receive about this have largely remained the same. The extent to which their work is subject to the fluctuating number of applications is also limited because the number of countries does not change considerably as a result of this.

2.1.2 *Experiences of cooperating organisations in and outside the immigration system*

The experiences of the interviewed professionals outside the IND are more diverse. The Legal and General Affairs Department (J*uridische en Algemene Zaken*, JAZ) of DMB, the Repatriation and Departure Service (*Dienst Terugkeer & Vertrek*, DT&V) and the interviewed judge and lawyer are of the opinion that the assessment of asylum applications has become more complex (legally).

DRM and DMB are less unanimous and think that the work has become more complex for certain components, but that this cannot be said across the board. DRM sees a particular increase in complexity for the assessment of cases of LGBTIQ+ applicants and converts. DMB primarily singles out the credibility assessment as more complex. This assessment comes back in each decision and forms an important part of the decision. That this assessment has become more complex, has therefore created a lot more work for the IND.

However, both parties also see several elements that have made the assessment of asylum applications less complex. The most important element is that they indicate that the number of applications likely to be granted has increased since 2010. The so-called target-group-oriented approach, that has been in use since 2020, ensures that applications for specific nationalities that are likely to be granted asylum (Syrian, Yemeni and Turkish), are relatively simple to process. In addition, various IND staff members indicate that this has made their work less complex (see 4.4.3). In addition, cases that are evidently unlikely to result in asylum are easier to process, with less procedural steps, because of the introduction of the track policy in 2016. Together, this concerns a large portion of the influx. In section 6.4, statistics are presented on the composition of the group of applicants. Between 2017 and 2022, the findings from registration data are in line with the experiences from the interviews: in this period the portion of applications that are likely to be granted increases. It is expected that these more recent years have had a greater influence on interviewees because they can still remember them best. Across the entire period, however, we see that the portion of applications that are likely to be granted fluctuates.

The merging of the registration and first interview, and the creation of the subsequent asylum applications (*herhaalde asielaanvraag*, HASA) division have also simplified reaching an asylum decision (see chapters 3.4 and 4.4). Because of these

simplifications, DMB and DRM cannot state that it has become more complex across the board to make an asylum decision.

Finally, the Dutch Council for Refugees (*VluchtelingenWerk Nederland*, VWN) and guardianship organisation Nidos indicate that they do not consider making an asylum decision more complex than in 2010. These parties indicate that the legal and policy frameworks in which applications are assessed have not changed crucially. However, they do notice that IND staff consider the work more complex, but rather see the cause of this in the way in which the IND handles changes in legal and policy frameworks. For example, the interviewee of VWN mentioned that because of many exceptions with respect to the type of procedure, it can possibly be difficult for IND employees to keep track of which process applies to which applicants. Nidos suspects that the IND itself can achieve less complexity by converting policy changes or case law into clearer work instructions. However, both parties indicate their insight into how IND processes have been organised is only to a certain level. DRM and DMB also think that the work has primarily been complicated by internal IND processes. They point to the large proportion of new staff, reducing the level of experience among staff (and managers), combined with a lack of unequivocal direction. DRM indicates that the Directorate-General for Migration (*Directoraat Generaal Migratie*, DGM) and the Owner Advice Department (*Directie Eigenaarsadvisering*, DEA) also play a role in this.

2.2 Categorisation of experienced causes of complexity

The second part of the interviews went into the experienced causes of an increase or decrease in complexity. In this section, we present a categorisation of the causes of an increase/decrease in complexity that emerged from the interviews (see section B2.2.1.2 of appendix 2 for the method behind this categorisation).

All listed causes can be divided into four main categories: 1) Legislation and policy, 2) Operational practices, 3) External influences, and 4) Applicants (see figure 3.1). In the following sections, we will explain these categories in brief. We will conclude the chapter with a short explanation of the interrelatedness of the categories.

2.2.1 Causes in legislation, policy and case law

In legislation, policy and case law, we include all mentioned causes that are related to legislation and policy on both national and European level. This does *not* include the mentioned causes that pertain to internal work agreements, such as work instructions and information messages within the IND. It does, however, include case law. Because the factors at a national and European level are often closely intertwined (because of the national implementation of European rulings and directives), it has been chosen not to make separate categories for these levels. The three most frequently mentioned causes in this category are an increase in the influence of case law on policy (mentioned in 14 interviews), the influence of the European Union (EU) and its case law and Dutch legislation (12) and the transition from the credibility assessment using the Positive Persuasion (*Positieve Overtuigingskracht*, POK) to the integral credibility assessment (9). The mentioned causes pertaining to legislation and policy will be explained further in chapter 3.

2.2.2 Operational practices

All mentioned causes pertaining to the working method and process organisation of the IND are categorised under operational practices. This also includes causes that pertain to the activities of staff and the operational practices and causes that rather pertain to direction from the management. In addition, aspects emerge that relate to the way in which the asylum procedure has been organised. The most frequently mentioned causes are the knowledge of staff (mentioned in 8 interviews), the long

processing times at the IND (and the court of law) (8), the higher requirements for reasoning decisions (7), the amount of information to be considered (including work instructions and information messages) (7) and the administrative burden (7). The causes in the operational practices are explained further in chapter 4.

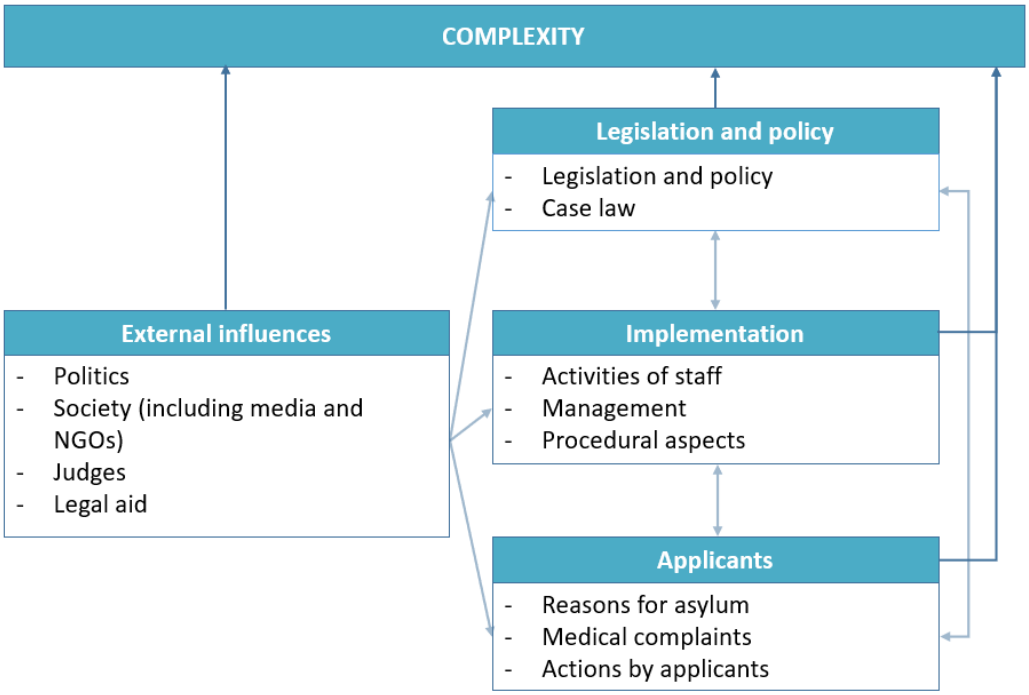
2.2.3 *External influences*

External influences can contribute to the complexity of the assessment of asylum applications because external parties influence policymaking and also influence IND staff directly. The most frequently mentioned causes are influence from politics (mentioned in 12 interviews), society (9), the court, and the lawyers (6). Influence from the target group, the applicants themselves, is not included here because we use a separate category for this group. More about external influences can be read in chapter 5.

2.2.4 *Applicants*

All mentioned causes that are about characteristics or actions by applicants are addressed under applicants. The most frequently mentioned causes in this category are LGBTIQ+/conversion/political opinion more commonly occurring as reasons for asylum (mentioned in 8 interviews), a better preparation of applicants for the interviews (7) and more commonly occurring medical issues (3). More on characteristics and actions of applicants can be read in chapter 6.

Figure 3.1 Schematic overview of the categorisation of experienced causes of complexity



2.2.5 *Interrelation and cause and effect*

Time after time, it emerged from the interviews how strong the interrelation between the various mentioned causes is. The various causes cannot be seen separately from one another and often amplify each other. If these experienced causes are addressed to reduce complexity, it is also important to examine which influence this action has on the remaining causes. When doing this, the volatile context in which the IND operates must also be taken into consideration, for example as a result of changing security situations in third countries.

In addition, it happens that a mentioned cause is also the effect of complexity. An example of this is the processing times of asylum cases. Longer processing times can be an *effect* of complexity because increased complexity in taking asylum decisions leads to more time being required to reach a decision. At the same time, longer processing times can also be a *cause* of complexity because cases that remain pending for a longer period of time can become more complex if the legislation or the situation of the applicant changes in the interim. In the following chapters we will continue to focus on the mentioned causes of complexity by always relating the cause to the definition of complexity: does the cause influence the required time, actions, considerations, knowledge and/or cooperation to reach a final asylum decision?

3 Causes in legislation, policy and case law

This chapter goes into the legal and policy changes since 2010 that have affected complexity according to the interviewees. Because it is difficult to distinguish between legislative and policy aspects for several subjects, these two themes will be addressed in conjunction in section 3.1. In section 3.2, the effects of European and Dutch case law are discussed. Section 3.3 addresses components of legislation and policy that are experienced as complex, in part under the influence of case law. Factors that make the activities of the IND less complex are covered in section 3.4.

The results of this chapter are based on the experiences of staff based on the interviews that were conducted. In addition, it is examined whether these findings are in line with the conclusions of case law and policy analyses.

Legislation refers to the legislation of the Aliens Act 2000 (*Vreemdelingenwet 2000*, VW) and regulations in the Aliens Regulations 2000 (*Voorschrift Vreemdelingen 2000*, VV) and Aliens Decree 2000 (*Vreemdelingenbesluit 2000*, VB). In this report, policy refers to the policy rules as described in the Aliens Act Implementation Guidelines 2000 (*Vreemdelingencirculaire 2000*, VC). Instructions refer to the internal instructions by SUA to the staff that are described in the work instructions (WI's) and information messages (*informatieberichten*, IBs). See box 3.2 for a further explanation. Although the instructions fall under the IND's responsibility (and will therefore be addressed in chapter 4), in some cases they need to be seen in conjunction with legislation and policy. Where the instructions are relevant to mention in this context, they will thus be included in this chapter, for example in the case studies that come back in this chapter.

Because the IND implements legislation and policy on behalf of the Minister for Migration, the IND is referred to below, although in case law reference is often made to the implementation by the Minister.

3.1 Impact legislation and policy

3.1.1 EU legislation

In twelve of the interviews (A&B Zwolle, Zevenaar, Den Bosch and Ter Apel, 1F unit, SUA, JZ, BIS, JAZ, VWN, the lawyer and the judge), the impact of EU legislation is mentioned as a factor that has increased the complexity of the asylum procedure. EU legislation, such as regulations, has priority over Dutch legislation. EU regulations have direct effect and do not need to be implemented into national legislation. EU directives do need to be implemented into national legislation. EU directives are often formulated somewhat broadly. As a result, Member States need to transpose the legislation further into their national legislation.

Box 3.1 EU directives

The Procedures Directive: 2013/32/EU of 26 June 2013 establishes norms for the procedure to grant and withdraw international protection. This directive has replaced the previous Procedures Directive (Directive 2005/85/EC of 1 December 2005). The revised Procedures Directive was implemented in the Netherlands on 20 July 2015 simultaneously with the revised Reception Directive (2013/33/EU).

The amended Procedures Directive addresses inter alia changes with respect to the following subjects:

- guarantees for the asylum seeker;
- requirements for the processing of applications;
- medical examination into substantiating evidence;
- second or subsequent applications;
- the change of the grounds for rejection.

Several of the changes has affected the complexity. For example, a consequence of the revised Procedures Directive has been that a large number of grounds to reject an asylum application as manifestly unfounded or inadmissible on have been changed and added. These grounds for rejection brought new concepts, including 'safe country of origin', 'safe third country' and 'new elements and findings'. Moreover, the Procedures Directive contains conditions for the use of the grounds for rejection, against which decisions must be assessed. The introduction of 'safe country of origin' and 'safe third country' as grounds for rejection also resulted in the need for more investigation into the safety of these countries. This investigation must be conducted regularly because the situation in safe (third) countries can change, and an up-to-date picture is required. The Strategy and Implementation Advice department of the IND (SUA is responsible for the policy assessment of safe countries of origin and also conducts these analyses. The introduction of new grounds for rejection also led to discussions about which situation would arise if the application was justly unfounded but had been declared manifestly unfounded. This makes rejecting cases for these grounds substantively more complex.

The Qualification Directive: 2011/95/EU of 13 December 2011 provides common criteria for the assessment of asylum applications and grants certain minimum rights to acknowledged persons. This Directive has replaced the previous Qualification Directive (Directive 2004/83/EC of the Council of 29 April 2004). The revised Qualification Directive was implemented in Dutch legislation on 1 October 2013.[7]

The Directive comprises inter alia the following subjects:

- the credibility assessment;
- the assessment of the request for international protection;
- the reasons for persecution, actors of persecution, domestic protection alternative;
- the withdrawal of a granted asylum status;
- the grounds for subsidiary protection;
- rights and obligations after granting a permit for refugee or subsidiarily protection.

A number of the changes has affected complexity. The introduction of the credibility assessment can be taken as an example of the impact on complexity. According to Article 4 (5) of the Qualification Directive, clarity must be given about what the IND has considered in the balancing. Article 4 (5) of the Qualification Directive has been implemented into Section 31 (6) of the Aliens Act. In addition, WI 2014/10 was published in 2015, by which the comprehensive credibility assessment was introduced. It came in the place of the Positive Persuasion (*Positieve Overtuigingskracht*, POK) assessment. The comprehensive credibility assessment does not follow literally from the Qualification Directive, but is, according to JZ, organised in a way that best reflects the Qualification Directive. Since its introduction, the credibility of asylum accounts is assessed (comprehensively), which means that implausible statements on one part of the account do not automatically affect other parts of the account. The obligation to cooperate that has been laid down in the Qualification Directive, and the allocation of the burden of proof associated with it, also entail that the assessment of credibility by the IND has become more complex. This results in additional considerations, time and actions.

In the most direct sense, EU legislation has contributed to the complexity of the asylum procedure through various (revised) directives and regulations that have

7 Regulation by the Minister for Migration of 24 September 2013, number 480838, pertaining to the amendment of the Aliens Regulations 2000 (one hundred and twentieth amendment) (Government Gazette, 2013, 27196).

become effective during the research period, such as the new Procedures, Qualification and Return Directives and the Dublin Regulation.[8] See box 3.1 for an explanation of the impact of these directives and the regulation on the operational practices of the IND. In section 3.3, subjects that were mentioned the most as complex subjects to carry out are discussed, including those from these directives.

Staff from A&B, JZ and SUA indicate that the EU legislation results in more complex legal considerations because it can be substantively more complex. This is because EU legislation is often a compromise reached in negotiations by the Member States and the European Parliament, who each have different interests and positions. In addition, staff indicate that there is often a lack of flexibility in EU legislation since EU legislation is often less easy to amend than national legislation. After all, this must be done in consultation with the Member States and the European Parliament according to the EU legislative process in which the European Commission has the right to introduce legislation. As a result, bottlenecks in the legislation can be resolved less easily than in national legislation.

The implementation of EU directives in national legislation creates challenges. SUA notes that because EU directives are often formulated more generally and there is a lot of room for own interpretation, preliminary rulings[9] are often necessary for clarification. Hence, when the directive is being implemented it remains uncertain whether the national implantation agrees with the view of the CJEU or the ABRvS. Neither are rulings by the CJEU always clear, in turn resulting in case law on the correct explanation of rulings by the CJEU. This way, there is more and more case law to take into consideration. Consequently, IND staff regularly have to deal with changes in national implementation or its expansion (for example the addition of exceptional situations).

3.1.2 Dutch legislation

In addition to EU legislation, there is also national legislation to consider (see box 3.2 for an explanation of national legislation and policy). Interviewees indicate that the national legislation does not always align with EU legislation. The interviewed judge states that it is often tried to apply EU legislation and case law within the current Dutch rules from a political perspective. This does not benefit practicability, resulting in an increase in the complexity of implementation of policy. According to the judge, EU legislation should be taken as a starting point more often.

Several interviewees (A&B, VWN, judge, DT&V) moreover indicate that (EU or national) legislation and case law are applied too narrow in national legislation, policy and instructions. On the one hand, interviewees (A&B Zwolle and A&B Zevenaar, VWN and a judge) mention that case law is interpreted too narrow in the policy-making process. On the other hand, interviewees (1F unit and A&B Zevenaar) indicate instead that the way in which the IND itself interprets instructions is too narrow (also see chapter 4.1.2.1). According to interviewees, legislation, policy or instructions are only adapted to a specific target group or as an exception, instead of applying the ruling or legislation broadly. Applying rulings and legislation too narrow can result in policy, regulations and instructions continuously being expanded since they are continuously adjusted only in minor parts. SUA, JZ and DMB additionally indicate that when it comes to case law, it is not always immediately clear to which extent a court passes judgment for the greater whole and that this is difficult to determine for the IND or DMB. According to them, this

8 See for an overview of relevant European asylum regulations and its effect on the Netherlands: Parliamentary Papers II, 2022-2023, 19637, no. 3035.

9 Through preliminary rulings, courts can ask the Court of Justice of the European Union to explain certain provisions in EU legislation.

only becomes clear as case law gradually accumulates. SUA and JZ would like to see clearer rulings by courts on this. Narrow application of case law leads to a large number of changes in policy and regulations. In the report *Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht* (Long-term foreign nationals without sustainable right of residence),[10] it is indicated that there are many changes in policy and legislation which pressurise staff.

Box 3.2 Explanation of national legislation, policy, and their application in IND instructions

Aliens legislation has a layered structure. The basis is the Aliens Act 2000, which is made in cooperation between the government and parliament. The Aliens Act is elaborated further in the Aliens Decree 2000 (order in council), which does not undergo direct interference by parliament, but which is presented to the Council of State for advice. Further elaboration takes place in the Aliens Regulations 2000, for which the Minister for Migration (DGM) himself is authorised without direct involvement of the parliament or the Council of State. Policy rules are in the Aliens Act Implementation Guidelines 2000, which is established by the DGM, but where the IND is responsible for drawing up the text of the Aliens Act Implementation Guidelines (in consultation with DMB). This makes the IND (partially) responsible for the development of policy. When regulations are elaborated at a lower level, there must be authority for this on a higher level.

A work instruction (WI) is an instruction that is used within the IND. Some work instructions pertain to legislation, policy or case law, for example when it explains policy rules from the Aliens Act Implementation Guidelines. In a work instruction, no new (policy) rules should be included that have not been laid down in the Aliens Act Implementation Guidelines. In principle, work instructions are directed internally. However, most of them are public, allowing the court to also use them to assess whether the IND has followed its own instructions in a decision. Work instructions offer the opportunity to combine policy topics that are addressed in various places in the Aliens Act Implementation Guidelines and higher legislation conveniently together in one document. Work instructions also provide the option to give examples to paint a picture of the context in which the policy (in the Aliens Act Implementation Guidelines) has been established. In chapter 4.1.2.1 it will be explained how the WIs are experienced in practice.

An information message (*informatiebericht*, IB) is used within the IND to make an announcement to IND staff. Some information messages pertain to legislation, policy or case law, for example if it is communicated that there will be a new policy (for example in response to a letter to the House of Representatives). It can also be communicated in information messages how to act while awaiting a work instruction or amendment of the policy rules laid down in the Aliens Act Implementation Guidelines. In nature, the information messages should only be temporary, and therefore their validity is limited. However, in practice it can happen that information messages are extended repeatedly, making them valid for a longer period.

DT&V, A&B and the Business Information and Support unit (BIS) note that according to them the effects on the operations are not always taken into consideration when establishing legislation. This applies to both European and Dutch legislation. On a European level, the fact that legislation is a result of negotiations of various Member States who all have other interests can also contribute to this. On a national level, this can be the result of the interference of external influences (see chapter 5).

3.2 Impact of case law

From the interviews, it becomes apparent that case law is seen as a cause of increased complexity by many parties. In 17 interviews (A&B Schiphol, A&B Zwolle, A&B Zevenaar, A&B Den Bosch and A&B Ter Apel, 1F unit, family reunification unit, SUA, JZ, HIK, DMB AOT, JAZ, DRM, the lawyer, VWN, DT&V and Legal aid), this theme is discussed. Again, it concerns both Dutch and European developments. For example, case law has contributed to the complexity because according to the interviewees as a result of case law more elements must be included in the

10 IND (2019). *Onderzoekscommissie langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht (Investigation Committee on long-term residing foreign nationals without sustainable right of residence)*.

assessment and more requirements are imposed on the motivation for the rejected decisions (see section 3.3.4.1). For this, the reasoning must be given in more detail, and more is required from the substantiation (for example with respect to investigation). Several interviewees consequently experience that the burden of proof has shifted more to the IND instead of the foreign national. JZ states that there is no actual shift of the burden of proof, but that more explanation is required for the same proof. Besides this, additional assessments have been added to a potential rejection because of case law (see 3.3.4.2). All of this results in more considerations, time, knowledge and actions.

Not all case law results in an increase in complexity in itself, because rulings can also result in the implementation becoming less complex. However, according to the interviewees court judgments that impact the IND have occurred more often over the years and case law increasingly leads to adaptation or expansion of regulations, policy or instructions. Because the amount of case law is increasing and pertains more often to exceptional situations, more specific situations are being enshrined in regulations policy and instructions. This makes legislation, policy and instructions in their entirety complex and makes that time and knowledge of staff are needed to keep track of changes and expansions and retain an overview. This experience is in line with the findings from case studies (see appendix 4), in which insight is created on how the accumulation of case law for several specific subjects complicates the practical implementation of policies for the IND. In addition, there are concerns about the interrelation of work methods that are adapted as a result of case law.

In eleven interviews (A&B Zwolle and Schiphol, family reunification unit, SUA, BIS, lawyer, judge, JAZ, VWN, DT&V, Nidos) EU case law is mentioned as a cause of increased complexity. Because the Netherlands is bound to the rulings by the CJEU, rulings on asylum applications in the Netherlands have a direct impact on the processing of asylum applications by the IND. In addition, other EU case law also results in amendment of the Dutch policy.[11] As described in chapter 3.1, the substantive complexity of EU legislation results in much case law, which leads to amendment and expansion of the national application of laws and legislation. This leads to more complexity because as a result of this, a decision requires a more extensive legal analysis. Both DT&V and BIS note that according to them, appeals more often reach the European Court of Human Rights (ECtHR), but that there is also an increase in requests for preliminary rulings to the CJEU. In box 3.3, an example is shown of a ruling by the CJEU.

11 See for an overview of relevant European asylum regulations and its effect on the Netherlands: Parliamentary Papers II, 2022-2023, 19637, no. 3035.

Box 3.3 Example of CJEU ruling: subsequent asylum applications[12]

An example of a ruling by the CJEU is a ruling of 10 June 2021[13] on the assessment of subsequent asylum applications pertaining to article 33 (2) (d) of the Procedures Directive. To illustrate the importance of this ruling: of the asylum applications that flowed out between 2013 and 2022, 8 percent were subsequent asylum applications.

It follows from this ruling that if the foreign national introduces documents in a subsequent asylum application of which the authenticity cannot be established (by the Royal Netherlands Marechaussee (KMar) or Identity and Document Investigation Unit or in any other way), that not directly and not only for that reason the conclusion can be drawn that these documents do not form new elements or findings. Neither can it be considered that document copies are no new element or finding for the mere reason that the document is a copy. This also applies to non-objectively-verifiable sources. The inability to establish the authenticity of a document or the inability to establish whether the document originates from an objectively verifiable source cannot justify that the document is therefore excluded from the assessment of the subsequent application. The consequence of this ruling is that submitted documents (copies and originals) must often be considered as new elements and that substantive assessment is required as well as further reasoning as to why they cannot lead to a different decision.

According to the interviewees, rulings by Dutch courts and the ABRvS also have an impact on the complexity. Multiple interviewees (A&B, SUA, JZ, VWN, JAZ, judge) indicate that judges are becoming stricter and that high-impact rulings succeed one another at a rapidly increasing rate. According to the interviewees, Dutch case law also increasingly leads to amendment and expansion of policy or new instructions. In some cases, the ABRvS even overrules a formerly established practice in case law. In box 3.4, an example is shown of a ruling by the ABRvS.

Boz 3.4 Example ruling ABRvS: lack of evidence (asylum family reunification)

In an interview, the asylum family reunification team of A&B Zwolle indicated that as a consequence of rulings by the ABRvS, the assessment of an application for asylum family reunification have become more extensive. There has been rather much case law on reunification cases that have affected the policy over the years. Below, an example of this that specifically concerns cases where documents are lacking. To illustrate the impact of this ruling: of the asylum and asylum family reunification applications that flowed out between 2013 and 2022, 43% is an application for reunification.

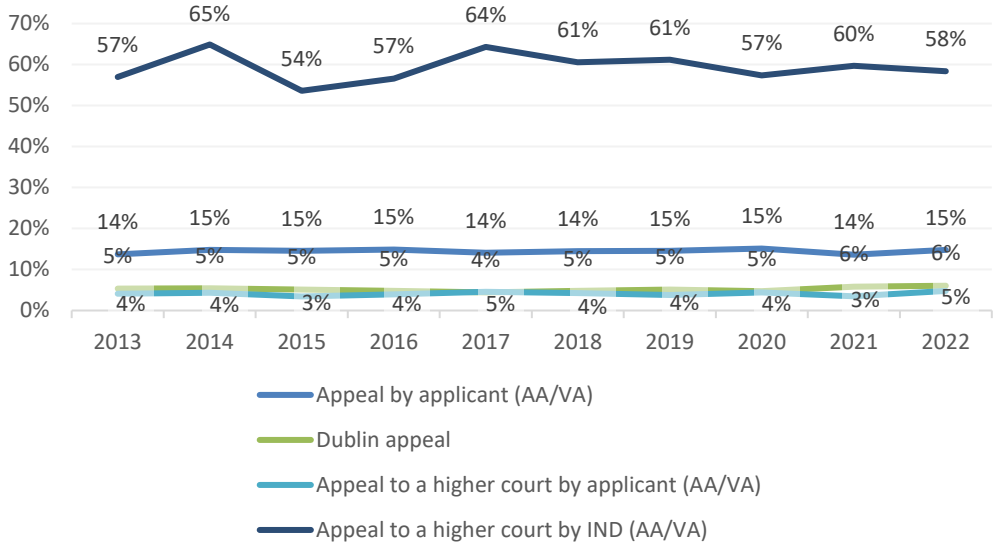
Om 26 January 2023, the ABRvS passed judgment in an Eritrean family reunification case.[14] In this ruling, the ABRvS overruled its earlier established case law practice in relation to documents and lack of evidence. The assessment of lack of evidence holds that when documents are lacking and there is a plausible reason for this, the identity will be established using a DNA test or interviews. Through this ruling, the ABRvS takes the view that for this purpose the IND must include all documents submitted in an application and/or statements by the foreign national comprehensively and in conjunction in the decision whether or not the identity and family relationship have been made plausible. This must be done irrespective of the nature or status of the documents. In doing so, the IND may no longer claim that certain documents are official or indicative but must assess these documents and/or statements (including those on the absence of the documents) comprehensively. The evidentiary value of the documents and statements may still be pointed out. In addition, all other relevant elements of the case in question must be included, where the requirements for the provided evidence must be in proportionate to these elements. The difference between official documents issued by the authorities and supportive, unofficial, documents will remain important for this. In addition, it must be reasoned as a result of this ruling whether the foreign national can be given the benefit of the doubt. This can, for example, be in question if there only is some evidence, but there are no contraindications and the other relevant elements speak in favour of the foreign national. This ruling has led to an amendment of the policy in the Aliens Act Implementation Guidelines (Amendment) Decree (*Wijzigingsbesluit Vreemdelingencirculaire*, WBV) 2011/11 and the instruction in WI 2022/7, and has resulted in more actions, time and considerations.

12 A subsequent asylum application (*herhaalde asielaanvraag*, HASA) refers to a new asylum application after previous rejection.
13 ECLI:EU:C:2021:478
14 ECLI:NL:RVS:2022:245

To put the claim that judges have become stricter in context, we looked at the percentage of first-instance appeals and second-instance appeals that were considered founded (versus unfounded and other). In figure 3.2, it can be seen that the percentage of well-founded (Dublin) first-instance appeals and second-instance appeals lodged by applicants has remained relatively consistent over time. No rising trend can be seen in the share of appeals that were decided in the applicant's favour (and where the IND lost). Conversely, we see no decrease in the share of well-founded proceedings in appeals lodged by the IND. Some fluctuations over time can be observed, but no consistent trend. All in all, it does not become evident from registration data that rulings are increasingly in favour of the applicant and against the IND.

That there are differences between the images from the interviews and the registration data can have different reasons. For example, it can be the case that IND staff experience that judges impose higher requirements, making them provide more extensive substantiation and as a result prevent the IND from losing appeals (to higher courts). In this example, it can still be the case that demanding judges contribute to complexity: because of the higher requirements for substantiation, it takes more work to reach a final asylum decision. In addition, it also happens that in response to a ruling by the ABRvS, ongoing appeals pertaining to similar cases are withdrawn by the IND and are reassessed without the appeals being presented to court. No data are available on the withdrawal of appeals. That courts have started to impose higher requirements on the careful preparation for and substantiation of a decision is also recognised by the interviewed judge.

Figure 3.2 Percentage of well-founded first-instance appeals and second-instance appeals in response to asylum cases * according to the year of the asylum decision 2013 to 2022 inclusive (N=131,636)



Source: INDiGO registration data, provided by BIC, reference date 8/9/2023
*First asylum applications, subsequent asylum application and lateral entry.

JZ also indicates that the ABRvS has demanded more insight in the decision-making method of the IND, because of which more has been laid down in IND instructions and other documents (also see box 3.5). DMB also notes that instructions have become more extensive (also see chapter 4.1.2). These instructions are also used as a basis by the court to see whether the IND has assessed the case correctly. According to JZ and DMB this contributed to the higher requirements imposed by the court on the assessment of credibility of the asylum account. Through this, a legalization of the process is originates because an increasingly large part of the process is established in legislation, policy and instructions.

3.3 Complex components in legislation and policy

According to the interviewees, a number of specific components in legislation and policy have, partially under the influence of case law, resulted in increasing complexity. This concerns the Dublin Regulation (section 3.3.1), the credibility assessment (section 3.3.2), complex assessments of certain reasons for requesting asylum, (section 3.3.3), the increased number of actions in case of rejection (section 3.3.4) and the assessment method of subsequent applications (section 3.3.5) and applications for asylum family reunification (section 3.3.6).

In addition to these components, the interest of the child and the *sur place* assessment[15] are also mentioned in the interviews. The consideration of the interest of the child will be addressed in this chapter in the context of Dublin (section 3.3.1), ex-officio assessment (3.3.3.2), imposing a return decision (section 3.3.3.3) and applications for asylum family reunification (section 3.3.6). *Sur place* assessment comes back in the section of the credibility assessment (for example when conversion or development of religious belief is involved[16] that took place while the foreign national was in the Netherlands) and in the section of a subsequent application when it comes to political activities that are only conducted in the Netherlands and are put forward as a new reason for asylum.

3.3.1 The Dublin Regulation

The staff of the Dublin Unit indicate in the interview that case law and preliminary rulings have made the implementation of the Dublin Regulation increasingly complex. In figure B3.4 in appendix 2, it can be seen what the percentage of Dublin cases is. Because the Dublin Regulation is not always clear, there are differences between how Member States interpret the Dublin Regulation. Hence, according to the interviewees, many preliminary rulings are requested, which each affects the policy in the Netherlands. For instance, according to the interviewees, there have been various rulings that have affected how the interest of the child must be assessed, because of which, for example, further investigation must be conducted into the situation in the other Member State concerning the child's reception and family situation.[17] These assessments pertain to the personal situation of the applicant and their family members, which often makes them complex to carry out. It requires more time, actions and coordination to do this.

In addition, according to the interviewees, there are increasingly more Member States (for example Hungary and Greece) to which, as per court judgments, no transfer can take place because of the requirements imposed on the asylum procedure and reception. The Netherlands must more frequently conduct investigations into the procedure and reception in the other Member State, which results in a lot of work for the decision officer. In addition, there are more reports by non-governmental organisations (NGOs) that make statements about the interstate principle of legitimate expectations.[18] If doubt is cast upon this by the NGOs, a response is required in the decisions. Because of the aforementioned problems, but also because of case law,[19] transfers are less often effected. It requires a lot of time,

15 *Sur place* pertains to the emergence of problems at the time the foreign national has already left the country. Hence, asylum is not requested for problems that were already there when that person left, but for problems that arose later.

16 This means that it must be assessed whether someone can return without this person having to abstain from expressing their beliefs.

17 ECLI:NL:RVS:2020:1281, ECLI:NL:RVS:2020:3043; ECLI:NL:RVS:2020:3044, ECLI:NL:RVS:2021:1256, ECLI:NL:RVS:2022:586, ECLI:NL:RVS:2022:1671

18 The principle in Dublin transfers is that Member States should be able to trust that other Member States will treat the foreign national in compliance with the European Convention on Human Rights (ECHR), the Refugee Convention and Union law. This is the so-called 'interstate principle of legitimate expectations'.

19 For example, a recent judgment imposes that if a Member State has not responded to a request for reconsideration, the foreign national must be accepted in the national procedure.

actions and coordination for the staff of the Dublin Unit to try and effect the transfer. If the Dublin transfer is not effected, the asylum application must still be processed in the national procedure. Hence, the increased complexity of the Dublin Regulation requires more time and actions from decision officers in the general asylum procedure because they have to process more cases.

3.3.2 Credibility of the asylum account

With the implementation of the Procedures Directive and the Qualification Directive, the comprehensive credibility assessment was introduced. The Aliens Act Implementation Guidelines were amended for this. Although the comprehensive credibility assessment was introduced with the implementation of these two Directives (See box 3.1), the assessment does not follow directly from these directives. However, the assessment has been shaped in such a way that best reflects the Qualification Directive. DMB indicates that at the time, the initiative for this assessment was taken by the IND, in consultation with DMB. Since the implementation of the assessment, the IND has been working with the comprehensive credibility assessment according to the IND work instruction, involving all relevant circumstances of the case and balancing them in conjunction (see box 3.5). Previously, the assessment of credibility of relevant facts and circumstances was based on so-called 'positive persuasion'.

Box 3.5 Comprehensive credibility assessment

The tenet of positive persuasion was replaced by a comprehensive credibility assessment in 2015. This was no new assessment framework as such, but a new method for substantiating the asylum decision. In the comprehensive credibility assessment, all relevant circumstances of the case are looked into and balanced. Looking at the content of the elements, it is determined to which extent they influence credibility. Before the amendment, the tenet of 'positive persuasion' was applied. With this the IND used a more stringent framework for the burden of proof, by which it was established beforehand how certain elements had to be weighed for the assessment of credibility. There was, for example, specific emphasis on the lack of travel or identity documents. If the applicant was unable to supply these and did not have a plausible explanation for this, this would undermine the credibility of their statements beforehand, and the applicant would be subject to a larger burden of proof. In that case, the applicant's statements were expected to achieve positive persuasion.

The comprehensive credibility assessment has been laid down in the Aliens Act Implementation Guidelines and has been elaborated in WI 2014/10. In the WI, it has been described that the implausibility of one event does not automatically result in a subsequent event also being considered implausible: this must be assessed separately. And 'exonerating circumstances' must be taken into account, such as age, level of education or trauma, which could explain a lack of credibility.

The most important reason for the abolition of the tenet of positive power of persuasion given in the explanatory memorandum to the amendment of the Aliens Act (for implementation of the Procedures Directive) is that the line of reasoning was not always equally clear in the assessment for positive power of persuasion. For example, according to the legislator, very dissimilar situations were disposed of and reasoned under the same stringent burden of proof. It is clearer if all elements that are to the disadvantage of credibility are balanced comprehensively against those that are in favor of the credibility. This leads to a better balanced and clear substantiation of the decision. The main advantage is in the greater clarity of the considerations, which also serves the assessment of credibility.[20]

Article 4 (5) of the Qualification Directive (2011/95/EU), which was implemented in the Netherlands on 1 October 2013,[21] pertains to credibility. The Article provides that if the foreign national is unable to support his or her statements or part of his or her statements with documents, these statements must be deemed credible and the foreign national is granted the benefit of the doubt if the following conditions are met:

- the applicant has made genuine efforts to support the request;
- 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.

20 Parliamentary Paper, 2014, 34088 no. 3

- the applicant's statements are coherent and plausible; they are not contrary to other information that is known;
- the applicant has applied for international protection at the earliest possible moment, unless the applicant can demonstrate good reason for not having done so;
- the general credibility of the applicant has been established.

Here, it must be noted that the term 'the benefit of the doubt' is only included so explicitly in the Dutch translation of the Directive.

Case law

Since the implementation of the comprehensive credibility assessment, there has been case law that has affected its application. For example, the ABRvS passed a judgement on 13 April 2016 on the intensity with which the administrative court must assess the decisions made by the IND.[22] It holds that as a result of the implementation of article 46 of the Procedures Directive (implemented in 83s VW), the administrative court must be less reserved when considering the credibility assessment. If an asylum application is assessed as implausible, the administrative court must see if the substantiation given by the IND offers sufficient reason to judge as such.

The ruling results in higher requirements imposed on the substantiation of the credibility principle. This follows from a statement in a ruling by the ABRvS on 15 November 2016.[23] In it, the court is of the opinion that the IND did not sufficiently provide substantiation in a 'way that is proper and verifiable for the administrative court' by assessing the foreign national's behaviour in a specific situation as implausible. It also becomes clear from the ruling that the court itself can decide by means of hearings whether statements are contradictory. This did not happen previous to this ruling, before it was only assessed whether the IND had decided 'reasonably' that statements were contradictory. The result of this case law is that the factual substantiation of why certain behaviour or certain statements are considered implausible requires asks more from the IND because it requires more considerations and time.

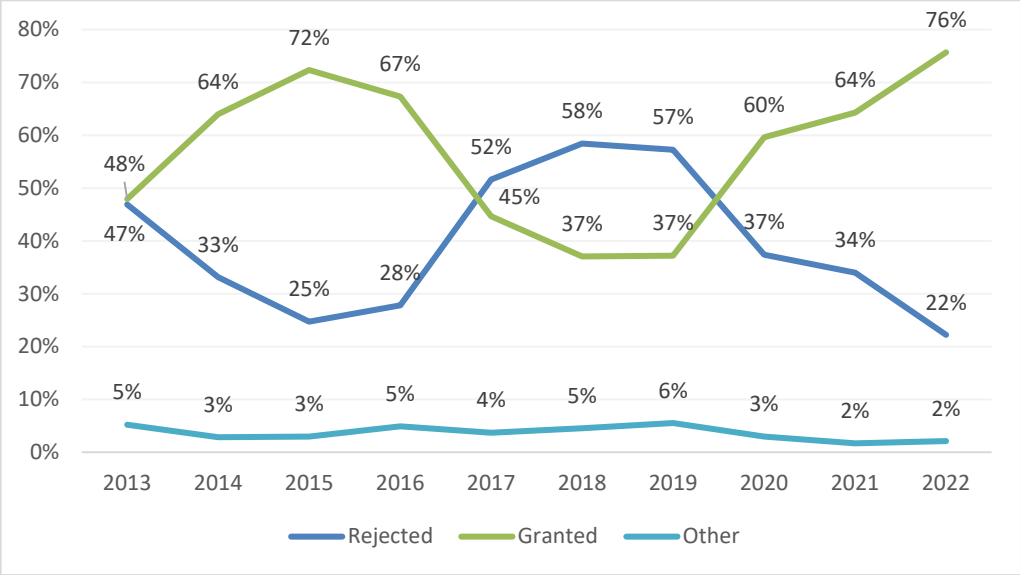
That the comprehensive credibility assessment has led to more complexity, particularly for the *rejection* of asylum applications or when it is decided to give *the benefit of doubt* is mentioned by several interviewees within the IND (A&B Schiphol, A&B Zwolle, A&B Zevenaar, A&B Den Bosch, A&B Ter Apel, 1F,[24] SUA and JZ) and by DMB. Between 2013 and 2022, 44 percent of asylum applications were rejected (see box 3.6). Additionally, it can be seen in box 4.5 that in 6 percent of the cases in the examined sample, it was indicated explicitly that the case was granted because of the benefit of the doubt.

22 ECLI:NL:RVS:2016:890
23 ECLI:NL:RVS:2016:3009
24 The 1F unit investigates cases in which the foreign national can possibly be connected to serious crimes, including those that are not entitled to asylum, based on Article 1F of the UN Refugee Convention.

Box 3.6 Percentage of rejections

Between 2013 and 2022, 44 percent of the asylum applications were rejected, but this percentage fluctuates considerably over time (see figure 3.3). No consistent upward or downward trend can be seen in this. The trend in percentages of applications granted is largely similar with the percentage of nationalities likely to be granted asylum (see figure 6.2), so as less applications are made by nationalities likely to be granted asylum, the IND has more rejecting decisions to issue. A similar trend can be seen for the disposal of family reunification applications (see figure B3.2 in Appendix 3).

Figure 3.3 Disposal of asylum cases* (excl. Dublin procedure) according to the year of the asylum decision. 2013 to 2022 exclusive (N=242.109)**



Source: INDiGO registration data, provided by BIC, reference date 8/9/2023
*First asylum applications (excluding Dublin procedure), subsequent asylum application and lateral entry.
**Disposal by withdrawal (4), non-withdrawal (6) and missing values for withdrawal (11) have been left out because they concern administrative errors.
Note. The category 'other' contains withdrawal of the application by the client, cases where substantive processing is no longer opportune, cases where the applicant has died, cases where the applicant has left for an unknown destination, decisions that are disregarded and some administrative errors.

Currently all elements of the full asylum account must be assessed separately for credibility: even if it has already been established for certain elements that they are implausible, the other elements must still be assessed for credibility. This takes more time and is substantively more difficult because it requires more considerations. Because decision officers must provide a more extensive substantiation, this also requires more considerations and time from legal affairs, which must check the decisions for more elements than before there is an appeal against the decision. In addition, it is experienced that there is less consensus among judges and the IND on what can and what cannot be considered credible, which strengthens the impression among those making decisions that better and more extensive substantiation must be provided. Box 3.7 shows the conclusions of the case study of the most important developments regarding the assessment of applications where conversion or apostasy plays a role. In this analysis, it can also be seen how the introduction of the comprehensive assessment has also led to a change in the judgments by courts (see subparagraph with text in bold), in this case judgments in cases of converts and apostates.

Box 3.7 Case study 1: Converts and apostates

This box contains a description of the most important developments around the assessment of applications where conversion or apostasy plays a role. For this purpose, relevant case law, legislation and policy, and instructions have been studied. An extensive description of the developments per year can be found in appendix 4 (case study 1).

Most important trends

The development begins with a judgment by the CJEU from 2012 in which the Court rules that a foreign national cannot be expected to be reticent when practicing their new religion if this practice is important for them and the inability to practice this religion affects the foreign national in their personal life. The policy and practical implementation had to be amended in accordance with this judgment.

In the analysis of the policy and case law, it can be seen that in the following years, the ABRvS supported the policy and the method of investigation and assessment of conversion cases laid down therein. However, the ABRvS sometimes indicates that the IND must better substantiate elements that are laid down in its own policy,[25] for example where statements by third parties are concerned.

In addition, the introduction of the c**omprehensive credibility assessment** has had the result that the court also imposes more requirements on the substantiation of the reasoning that declaration is not plausible. For instance, with the positive persuasion the emphasis was on the foreign national's statements and the case could already be deemed implausible in case of one single contradiction. With the arrival of the comprehensive credibility assessment, this is no longer possible and statements and submitted documents must be assessed both independently and in conjunction.

Moreover, the assessment has been expanded over time because in addition to conversion, atheism and apostacy have also been included as reasons for asylum in the work instruction on conversion. In this context, the ABRvS has ruled that if the time of the apostacy is clearly different from the conversion, apostacy and conversion must be assessed separately from one another.

On top of this, the fact is added that even if conversion is not considered credible, the foreign national can possibly still be alleged conversion or apostacy upon return (by the authorities or their surroundings). This aspect must also be assessed. Social media are increasingly playing a role in this, because applicants sometimes make statements on social media that can be seen as signs of conversion or apostacy in their country of origin.

And concerning subsequent applications of foreign nationals of whom it was established justly in an earlier procedure that conversion was implausible, it must be assessed whether there is credible conversion/development of religion after all.[26] The ABRvS has imposed a more stringent duty to provide reasons on the IND. The IND may not consider only the statements in the subsequent procedure but must also include the statements in the earlier procedure or procedures and assess them in conjunction. In addition, the assessment of religious tattoos does not suffice in the opinion of the ABRvS, and here too, the ABRvS imposes an obligation to provide further reasons on the IND.[27]

The case study also makes it apparent that politics and interest groups are increasingly influencing the policy. In response to a motion, the policy is sometimes adjusted in a way that contributes to complexity, for instance the addition of the conversion coordinator, which requires more actions and coordination.

3.3.3 Complex assessment of certain reasons

According to seven interviewed parties (A&B Schiphol, A&B Zwolle, A&B Ter Apel, A&B Den Bosch, 1F, SUA and DMB), the assessment framework has become more extensive and substantively more complex for several (personal) grounds for asylum. The examples that are mentioned most often are cases of applicants claiming to be LGBTIQ+, converts and apostates, and applications based on a political opinion. In chapter 6.1, it is described how often these reasons occur in a

25 In the ruling, reference is made to the Minister for Migration. The Minister is politically responsible, but the IND implements the aliens policy on behalf of the Minister. For the sake of readability, the choice has been made to refer to the IND in this report.
26 ECLI:NL:RVS:2022:2714
27 ECLI:NL:RVS:2018:1802

sample. In boxes 3.7, 3.8 and 3.10, it is described per reason for asylum how the assessment of applications for these grounds has changed over time. In general, it can be said that over time an increasing number of elements must be included in the assessment of applications for these grounds. In addition, it becomes evident from the interviews that the comprehensive credibility assessment (see 3.3.1) of these grounds is experienced as particularly difficult because the emphasis is less on objective facts and more on motives, feelings and thoughts. All of this requires more considerations, knowledge and time from decision officers.

It is also mentioned that these types of grounds have come to play a larger role in subsequent asylum applications. For instance, it may be that a conversion was deemed implausible in an earlier asylum application, but that in a subsequent application it is put forward that there is conversion, or it is put forward that there is development of religion. In response to a ruling by the ABRvS[28], all statements from earlier procedures must be included in that case, and assessed in conjunction with the statements that were made in the context of the subsequent asylum application. This way, it can be established whether there is credible conversion after all. The statements in the first procedure are established under law, but new statements or statements about development of religion must be assessed in conjunction with the earlier statements. If a subsequent application is rejected, it frequently happens that another subsequent application is submitted that is again founded on development of religion. The statements made in this procedure must also be assessed in conjunction with the statements made in the previous procedures.

28 ECLI:NL:RVS:2022:2713

Box 3.8 Case study 2: LGBTIQ+

This box contains a description of the most important developments around the assessment of applications where LGBTIQ+ plays a role. For this purpose, relevant case law, legislation and policy, and instructions have been studied. An extensive description of the developments per year can be found in appendix 4 (case study 2).

Most important trends

In 2012, only little has been laid down in instructions on how to handle LGBTIQ+ cases. However, in response to case law more is laid down in instructions. The development of instructions provides staff guidelines for their work. However, over time, the implementation of the credibility assessment in LGBTIQ+ cases by the IND have been debated regularly, in response to which the instructions have been adjusted and supplemented. In 2020, two information messages are issued in response to questions from staff members of the primary process of A&B, which is a sign that it is not always clear for staff how to act.

In addition, courts also interfere more often in the method in which the IND makes decisions. Courts desire increasingly more from the IND where it substantiates that sexual orientation is not considered credible. Hence, this becomes increasingly prominent in the instructions. On the one hand, staff are asked to be creative and to ask further questions about personal meaning in case of 'standard' answers; on the other hand, it is mentioned that according to the guidelines, the foreign national themselves is responsible for making their story plausible. The work instructions contain two opposites between which the staff member must navigate. It is expected that the foreign national is asked why they are unable to explain certain matters, but it is also asked to take into consideration that it is difficult for some persons to prove sexual orientation and that it cannot always be expected from the foreign national that they can give detailed statements about this. In addition, requirements are imposed by the court on the balancing of various elements in the credibility assessment of LGBTIQ+ cases and the IND is expected to substantiate how, for example, the foreign national's young age or cultural background was taken into account.

It is also apparent that the court desires increasingly more insight into the method of assessment. The IND is expected to use a standard investigation method that is transparent for the court. It can be seen in case law that the IND is expected to lay down its method in instructions or policy so that the court can assess whether the IND follows its policy.

In addition, it is apparent that politics and interest groups are increasingly influencing the policy. In response to motions, the policy was amended several times, for example through addition of the LGBTIQ+ coordinator. How the IND assesses is also under debate. For instance, interest groups criticise the IND for its view on a process of development of awareness of sexual orientation, and how statements by third parties are weighed. By now, the IND no longer askes about awareness or self-acceptation.

3.3.4 *More actions in case of rejection of the asylum application*

Between 2013 and 2022, on average 44 percent of asylum applications were rejected (see box 3.6). For a rejecting decision, more actions need to be carried out. This is because increasingly more is demanded from the IND in terms of explanation of evidence, ex-officio assessments have been added and the Return Directive has resulted in additional actions. These topics are discussed consecutively below.

3.3.4.1 *Burden of proof*

Interviewees (A&B Schiphol, SUA, JZ and TOELT) note that in their opinion, the burden of proof in case of rejecting decisions has shifted increasingly to the IND under the influence of case law. JZ nuances that this does not concern a shift of the burden of proof as such, but that there is a greater burden of proof and higher requirements for investigating the risks upon return and the substantiation of decisions. According to European directives, it is up to the applicants to give their accounts as completely as possible. However, lawyers note that staff are increasingly approaching interviews as if the IND is responsible. Such a shift of burden of proof can, for example, be seen in the application of the duty to cooperate

from Article 4 of the Qualification Directive, as illustrated in box 3.9. TOELT also sees that decision officers want to support and investigate more because they ask more extensive questions. This requires more considerations, but investigations must also be initiated more often, which takes more actions and time.

Box 3.9 Duty to cooperate

From the interviews, it emerges that courts impose more requirements on how much weight is given to the risks upon return, and the burden of proof to substantiate that nothing will happen to the foreign national is shifting increasingly to the IND. For this, the court refers to the duty to cooperate as stated in article 4 of the Qualifications Directive. The duty to cooperate provides that the IND has the task to assess the relevant elements of the asylum application in cooperation with the applicant. If relevant, the IND can use expert research for this purpose. To illustrate how the duty to cooperate is reflected in case law and how this causes those taking decisions to increasingly have the impression that the burden of proof and the duty to substantiate are assessed stringently, a number of examples are given below of case law in this context.

In two cases from 2022 pertaining to Iranians, it was claimed that the IND had to conduct further investigation into how the hearings by the Iranian authorities upon return to the airport in Teheran are conducted concretely and what this means for the risks a returning Iranian would be exposed to. It concerns a case where conversion or apostacy was considered implausible[29] and a case where the foreign national stated not to want to express this upon return.[30] The problem is that it cannot be investigated by the IND (in collaboration with BZ) how such a hearing takes place concretely. However, there are no signs that returning Iranians experience problems. Hence, the ABRvS demands something from the IND that the IND cannot really comply with. Through these judgments, the ABRvS imposes a duty to investigate and substantiate on the IND.

In another case from 2017,[31] the ABRvS ruled that although in principle it is the duty of the foreign national to make it plausible that they are at risk upon return, it cannot be expected from the foreign national that they provide further evidence for the risks they would be at in a military prison. Here, the ABRvS considers among other things that the IND is often better able than a foreign national to obtain country-specific information, for example by having official reports drawn up.

In 2021, two cases[32] of Sudanese nationals resulted in a postponement of decisions and departures being announced for foreign nationals who conducted political activities against the Sudanese authorities. After this, they were designated as a risk group by BZ. In the cases, it was claimed that there is a lack of clear information about the circumstances that are important to determine the return risk for political activists who have participated in demonstrations in the Netherlands. This applies to the way in which the security services act, which authority they have and to which extent they still monitor the diaspora abroad. The ABRvS points out to the IND that it has a duty to cooperate, according to which the IND must investigate what the attitude of the Sudanese rulers is towards political activists abroad and to which extent this results into a risk upon return.

Box 3.10 shows the conclusions of the case study of the most important developments with respect to the assessment of applications where political opinions and westernisation play a role. In this analysis, it can also be seen how the duty to substantiate is reflected in case law. In it, the assessment for fear upon return is further expanded over time.

29 ECLI:NL:RVS:2022:3267
30 ECLI:NL:RVS:2016:1450
31 ECLI:NL:RVS:2017:632
32 ECLI:NL:RVS:2021:2793, ECLI:NL:RVS:2021:2793

Box 3.10 Case study 3: Political opinion and westernisation

This box contains a description of the most important developments in the assessment of applications where political opinion and/or westernisation play a role. For this purpose, relevant case law, legislation and policy, and instructions have been studied. A detailed description of the developments per year can be found in appendix 4 (case study 3).

Most important trends

Until 2018, how to handle applicants with a political opinion was primarily laid down in country-specific policy. In response to developments in case law, the method and its explanation – in addition to the existing policy – was supplemented in instructions. Based on case law, this assessment of fear upon return was expanded further: foreign nationals with western behaviour and foreign national who had become politically active in the Netherlands may also have to fear upon return. It is up to the IND to assess how fundamental the westernisation and political opinion is and which risks are associated with it in the country of origin.

For staff, it seemed unclear how they had to assess this. SUA receives many questions from which it becomes evident that the assessment is not always carried out correctly and/or is unclear. The ABRvS ruled in 2019, in a case in which political activities were developed in the Netherlands, that it must be investigated and assessed first of all whether these activities follow from a fundamental political opinion. If this is the case, no abstinence may be expected from the foreign national upon return. Based on this judgment by the ABRvS and the many questions from A&B received by SUA, an information message was developed in 2020, in which the assessment framework that was laid out by the ABRvS was adopted and expanded to a broader target group than the one for whom the assessment framework was intended. The assessment framework does not apply only to asylum seekers who have become politically active once in the Netherlands, but also to foreign nationals who were already politically active in the country of origin before the departure to the Netherlands. This entails more work: more questions are needed about the political opinion and the assessment requires more considerations.

The ABRvS itself also seems to struggle with the assessment of political opinion as a ground for persecution. For example, it requested a preliminary ruling from the CJEU on the explanation of the assessment method of a political opinion. The CJEU issued a ruling on 21 September 2023 (ECLI:EU:C:2023:688). The CJEU indicates that there is a political opinion if a foreign national claims that he or she has or expresses those opinions, thoughts or beliefs. Furthermore, according to the CJEU, the degree of the conviction the foreign national claims to have and the activities they have conducted must be taken into account, among other things, when assessing fear upon return. It can, however, not be required that the opinion must be so deeply rooted in the asylum seeker that they could not refrain from manifesting it. The consequences of this ruling are still being studied more closely.

3.3.4.2 Ex-officio assessment

The interviewed IND staff indicate that in the research period, increasingly more ex-officio (regular) assessments have been added (see box 3.11) to prevent subsequent procedures. Where previously only assessment of the Refugee Convention and Article 3 of the European Convention on Human Rights (ECHR) were conducted, today, in case of an (intended) rejection, also an assessment of Article 8 ECHR (right to private and family life, home and correspondence), Chávez (residency with Dutch child),[33] Section 64 Aliens Act (medical reasons for postponement of departure) must be conducted, as well as whether there is are destressing circumstances situation or that victimhood of trafficking in human beings is applicable. In addition, the assessment against article 8 ECHR became more elaborate in 2022 because in all cases a balancing of interests must be made, also if family life is not established.[34] Part of this is the consideration of the interest of the child, a topic that is given more attention in jurisprudence. These assessments pertain to the personal situation of the applicant and their family members, which often makes them complex to carry out. The addition of the aforementioned ex-

33 ECLI:EU:C:2017:354, ECLI:EU:C:2022:639

34 This is in response to a ruling by the ABRvS ECLI:NL:RVS:2022:2006.

officio assessments requires more time as well as more actions, more coordination and more considerations when processing the asylum applications. Here, it is important to mention that currently a large majority of the applications is granted and that this does not apply to these cases; and likewise in many other cases, the foreign national's individual file does not give reason for further substantive assessment by way of these ex-officio assessments and can therefore often be handled in a standardised way. Only if there is a reason, the staff member must conduct further investigation. This is now investigated in the first (asylum) procedure, whereas before this would take place in a subsequent procedure. How great the share of cases is where the ex-officio assessments are conducted cannot be extracted from the system.

Box 3.11 Ex-officio assessment

The Streamlining Admissions Programme (*Programma Stroomlijning Toelating*, PST)[35] is responsible for implementation of ex-officio assessment in asylum applications. On 17/12/2013, the Aliens Decree was amended in the sense that sections were added based upon which the Minister is authorised to assess ex-officio an ordinary purpose of stay of residence (in descending order of importance and to stop at granting)after rejection of a (first) asylum application , namely:

- 8 ECHR (3.6a Aliens Decree)
- victim-reporter, victim or witness-reporter of trafficking in human beings (3.61 Aliens Decree)
- postponement of departure based on Section 64 Aliens Act (for medical reasons)

The assessment against 8 ECHR and section 64 Aliens Act are both seen as complex assessments because of the many considerations needed for them and, in case of Section 64 Aliens Act, the investigation by the Medical Assessment Section (*Bureau Medische Advisering*, BMA) that must be started.

See for an example of the complexity of an ex-officio assessment the case study of ex-officio assessment of section 64 in Appendix 4 (case study 4).

3.3.4.3 Imposing return decisions and entry bans

If a rejection is made, the rejecting decision also applies as a return decision and in some cases an entry ban must be imposed. According to a DT&V staff member, issuing the return decision has become more complex as a result of case law. Where, previously, a return decision merely involved the establishment of irregular residence and imposing an obligation and period to return, since a judgment by the ABRvS from 2021[36], it has also become obligatory to specify a country to which return should take place.[37] However, the country of return is not evident for foreign nationals whose nationality has not been established, which makes drawing up the decision more difficult. In addition, an A&B staff member notes that the process for imposing an entry ban,[38] which is imposed in some cases, has also become more complex and requires more actions from the decision officer. See box 3.12 for a further explanation of the complexity of issuing a return decision and an entry ban.

35 The Streamlining Admissions Programme (*Programma Stroomlijning Toelating*, PST) was introduced to implement measures from the Coalition Agreement of 2010. The PST had consequences for the IND for the following topics: ex-officio assessment, introduction General Asylum Procedure, Periodic Penalty Payments Act (*Wet dwangsommen*), Return Directive, the recalibration of the UAM policy and the Reception Directive.

36 ECLI:NL:RVS:2021:1155

37 Government Gazette, 2021, no. 41948

38 In some cases, a return decision can be imposed simultaneously with an entry ban. Under it, the foreign national may not stay in or enter the Netherlands and other countries of the EU/EEA (excluding Ireland) and Switzerland for a certain period.

Box 3.12 Complexity imposing return decisions and entry bans

After its introduction, several adjustments were made to the policy in response to case law, including explanation of the suspensive effect of the return decision, situations in which the return period can be reduced or withheld, clarifications of exceptional situations, explanation of imposing the entry ban and the obligation to specify the country of return. The final three aspects in particular have contributed to complicating the enforcing of the return decision.

Exceptions
In the Return Directive, several exceptional situations are mentioned. In the case law, this has been specified further. Some rulings complicate imposing an entry ban because more considerations must be made and actions carried out. The following rulings are important for this.

A. **The interest of the child.** In 2021, the CJEU issued a judgment[39] from which it follows that no return decision may be imposed if after the investigation into adequate reception for unaccompanied minors (UAMs) it becomes clear that this reception is not available. Conducting an investigation into these reception possibilities is experienced as complex. It varies per country which information is available about the reception and whether an investigation is possible at all.
B. **Family life.** In 2018, the CJEU[40] rules that family life may preclude the establishment of a return decision in itself. This also includes private life. This means that A&B must first consider this when imposing the return decision.
C. **Breach of 3 ECHR.** In 2022, the CJEU[41] rules that no return decision may be imposed if there is a threat of breach of Article 3 ECHR medical.

Entry ban
In 2012, the ABRvS[42] expressly considered that prior to the imposition of the entry ban, the foreign national must be given the opportunity to put forward special individual circumstances based whereupon there would, in his opinion, be a reason for (further) reduction of the duration of the entry ban. If such circumstances are put forward, the IND must give reasons if it does not see reason to further reduce the entry ban in these circumstances. This demands additional actions and considerations from the IND.

Specifying country of return
In 2021, the ABRvS[43] determined that in a return decision, the country to which the foreign national must return must be specified explicitly. This followed from rulings by the CJEU.[44]

The ABRvS rules that if no country of return is specified, there is no return decision. This is only not applicable if it becomes unambiguously apparent from the decision which country a person has to return. In that case, the foreign national has been able to give their view on the illegality of their stay and their interest has not been damaged. This, for instance, can be an asylum decision where substantive assessment of a country of origin has been made and it has been determined that the foreign national has no reason to fear persecution.

Supplementary to this, the ABRvS ruled in 2022[45] that it is not possible for the IND to state in the intended decision and/or decision that a supplementary return decision shall be made at a later time (when nationality and origin are clear) when the nationality and country of origin are deemed implausible . This is because there is no exception to the obligation to specify a country of origin. For this, the IND must carry out some investigation so that it can include one or more countries in the decision. Nonetheless, it is not required that nationality and origin are established and several countries of return may be specified. As a result of this ruling, IB 2022/87 had to be adapted with instructions about the countries which could be specified in a situation where the nationality is deemed implausible.

In response to this case law by the CJEU and the ABRvS (based on the Return Directive), the country of return must be specified in the return decision in the asylum decision. In most cases, the country of return is clear and no further investigation is necessary. If the country of origin is unclear, however, further investigation will have to be conducted, which requires additional actions. From registration data, it becomes apparent that between 2013 and 2022

39 ECLI:EU:C:2021:9
40 ECLI:EU:C:2018:308
41 ECLI:EU:C:2022:913
42 ECLI:NL:RBDHA:2014:13031
43 ECLI:NL:RVS:2021:1155)
44 ECLI:EU:C:2020:367 and ECLI:EU:C:2021:127
45 ECLI:NL:RVS:2022:2506

the nationality was still unknown at the time of outflow for 3 percent of the applications; for another 3 percent of the applications, the applicant was stateless.

3.3.5 Subsequent applications

In figure B3.4 in appendix 2, it can be seen how many subsequent applications are submitted per year. Before the introduction of the Procedures Directive, the principle of 'ne bis in idem'[46] and chapter 4 article 6 of the General Administrative Law Act were applied rather strictly by the Dutch courts. Therefore, (put briefly) only the question whether there were new facts and circumstances played a role in case of a subsequent application. If this was not the case, no further assessment took place. Thereby, a subsequent application could be rejected more easily than after the introduction of the Procedures Directive. If asylum seekers had been able to submit documents or make statements in the context of the earlier asylum procedure, but did not do so, these were not considered as new facts or altered circumstances. Since the introduction of the Procedures Directive in 2015, asylum applications which are not based upon so-called new elements or findings are declared non-admissible. For this, the imputability assessment was used, as was done previously in the assessment of book 4 section 6 General Administrative Law Act. It was seen whether new elements or findings could already have been submitted in the earlier procedure. This interpretation of the Article from the Procedures Directive was applied by the ABRvS.[47]

In a judgment of 9 September 2021,[48] the CJEU determined that the concept 'new elements or findings' as defined in Article 40 Procedures Directive does not only comprise those elements or findings that arose after a previous final decision on an asylum application, but also the elements or findings that already existed before conclusion of the asylum procedure, but which the applicant did not rely upon.

The CJEU also rules in a judgment of 9 September 2021 that the Procedures Directive does provide the option to invoke the imputability criterion, but that it must then have been implemented explicitly in the national legislation and may not be derived from general administrative law. Because the Netherlands has not implemented the imputability criterion explicitly, it can no longer be invoked since this ruling. The Minister for Migration has refrained from implementing this criterion after all because as it was, it was not being applied in the practical implementation in a large number of cases.

In a judgment of 10 June 2021, the CJEU rules that if documents are submitted in a subsequent asylum application, these must be considered as a new element, even if their authenticity cannot be established. Hence, the assessment of these documents cannot be different depending on whether it concerns a first or subsequent application.
Under the influence of case law by the Court, the assessment of a subsequent application must, in addition, also comprehensively include the statements from the first procedure even if they were deemed implausible at the time.[49] The new elements and findings must be assessed in conjunction with what was put forward in the previous procedure. This has made dealing with subsequent applications

46 Literally: not twice for the same. This term refers to the legal principle that someone may not be tried and punished for the same fact twice.
47 ECLI:NL:RVS:2017:2718
48 ECLI:EU:C:2021:710
49 ECLI:NL:RVS:2022:2713

considerably more labour intensive. More matters must be looked into and more must be included in the assessment (also elements considered implausible in the earlier asylum application).

In addition, according to SUA and JZ, an increasing number of asylum seekers request reconsideration in the context of a *second* subsequent application. The purpose of this is to have an asylum status granted in a subsequent asylum procedure with the effective date of the first asylum application. This way, the applicant is entitled earlier to naturalisation or a permanent residence permit. For a long time, the starting point for this was that pursuant to section 44 Aliens Act, the residence permit could only be granted starting from the date on which the application was received. Initially, the position was that only if it became apparent during reconsideration that the earlier rejecting decision was manifestly incorrect based on the information known at the time, the effective date of the asylum status could be adjusted to an earlier date than that on which the subsequent application was submitted.

From the above, it followed that for example iMMO reports[50] that were invoked in a subsequent procedure could not lead to a status being granted with an earlier effective date. However, by the ruling of 7 July 2021,[51] the ABRvS has deviated from this line. The ABRvS rules that a request for administrative reconsideration can lead to a residence permit being granted with an effective date before the date of that request even if the earlier decision was not manifestly incorrect. Information that became known later from which it follows that a foreign national already met the requirements for granting of a residence permit earlier can also lead to the IND being required to revise an earlier decision. After this ruling, a de facto ex-nunc assessment must take place of new facts and circumstances that were submitted in a later application or the request for reconsideration. If it is subsequently concluded that the foreign national has made it plausible that he or she requires protection under asylum law, it must additionally be assessed separately from which moment this is the case.

3.3.6 Applications for asylum family reunification

The asylum family reunification unit of A&B in Zwolle has also indicated that their work has become more complex. In figure B3.4 in appendix 2, it is shown how many asylum family reunification applications are submitted per year. In the period to which this report pertains, the court issued judgments that made the assessment against conditions for asylum family reunification more complex and/or time consuming. For example, contradictory statements can only be invoked if they pertain to the claimed family relationship, cohabitation is no longer a requirement for the actual family relationship, and the IND must take more account of the best interest of minor children, especially if they run the risk of being left behind in harrowing circumstances. The court has also come to impose more stringent requirements on the definition of the duty to cooperate. As a result of this, the IND already adjusted its own method earlier according to the so-called established line of conduct, in which in addition to official documents, the value of indicative evidence is also considered more, which could in conjunction still lead to further investigation or a request being granted. Afterwards, the ABRvS put an end to this method in its judgment of 26 January 2022 and ordered the IND to assess all evidence and statements in conjunction from then on with attention for the context in which the applicants may have submitted them. Next, it must be balanced and substantiated to which extent the benefit of the doubt can be given so that granting or further investigation is still possible (see box 3.4). Courts have also come to view the way

50 Report in which the findings of a forensic medical examination are recorded.
51 ECLI:NL:RVS:2021:1432

the IND performs its legal obligation to conduct interviews in objection cases more stringently, as a result whereof an interview must be conducted in almost every family reunification case, unlike before.

In addition, the asylum family reunification unit is confronted with 8 ECHR applications. If the applicant is not eligible for asylum family reunification, this person can, under certain circumstances, submit an application for family reunification with the beneficiary of an asylum status based on article 8 ECHR. Furthermore, there are the so-called 'combined applications': an unaccompanied minor who requests asylum reunification for their parents combined with 8 ECHR applications for brothers or sisters. This 8 ECHR assessment is experienced as complex. For example, by now a balancing of interests must always be made, whereas previously this was only required if family life had been demonstrated. Consequently, staff must carry out an additional assessment, and must often conduct interviews for this purpose. Part of this balancing of interests is the best interest of the child. Staf experience that the court also gives additional attention to this. For instance, it must be investigated under which circumstances children remain behind in the country of origin, something that is difficult to investigate for the IND. These assessments pertain to the personal situation of the applicant and their family members, which often makes them complex to carry out. The young-adult policy, which also comes under this assessment, is experienced as complex. In addition, the applications for family life outside the core family are complex and time consuming, for example an adult sponsor who is no longer a young adult but does request to bring over their parent (whether ill or not) or for example a grandmother or aunt. Often, medical or social-economic issues play a role, causing the staff to feel that rejection of these applications is not sympathetic. The court is also becoming more critical according to JZ; more requirements are imposed on the substantiation and it is assessed whether everything has been included (adequately), particularly when a vulnerable foreign national is concerned.

3.4 Legislation and policy changes that reduce complexity

Two legislative changes and one policy change are mentioned by interviewees as factors that have made making an asylum decision less complex.

The reclassification of the grounds for asylum was mentioned by four parties (A&B Zwolle, JZ, DMB and VWN). In 2014, the reclassification of the grounds for asylum became effective. By this, the two grounds for asylum that had become obligatory under European/international law were retained, whereas the two grounds for asylum based on national law expired (see box 3.13 for a further explanation). Through this amendment, the options to obtain a residence permit were not limited. Medical or humanitarian grounds can still lead to a permit, however, only for on ordinary purposes of stay. Because there are less different grounds for asylum, policy was simplified. However, according to JZ this does not make the application of the current two grounds for asylum less complex. The assessment against category-based protection, which was used before the amendment, is considered as easier to apply than the newly introduced subsidiary ground for protection. This subsidiary ground for protection actually contains two separate components against which separate assessment must take place, namely an individual assessment and an assessment against the security situation in the country of origin. The latter assessment follows from article 15 © of the Qualification Directive and its application is considered complex by the implementing parties.

Box 3.13 Grounds for asylum

Grounds for asylum still applicable in 2014:

- **A-ground: Convention refugee**[52] (based on United Nations Refugee Convention)
  A foreign national who has a founded reason to fear for persecution in the country of origin because of their race, religion, nationality or political opinion or because they belong to a certain social group.
- **B-ground: Subsidiary protection**[53] (based on article 3 ECHR)
  A foreign national who has made it plausible that they have a founded reason to assume that in case of removal they are at a real risk of serious damage consisting of:
  - death penalty or execution;
  - torture, inhumane or humiliating treatment or punishment; or
  - serious individual threat to life or person as a result of random violence in the context of an international or domestic armed conflict.

Asylum grounds that expired in 2014 are:

- **C-ground: Medical or humanitarian reasons:**[54]
  This included three categories:
  - the traumata policy;
  - the national asylum policy on designated specific groups; and
  - the policy on special individual pressing reasons of a humanitarian nature.
- **D-ground: Category-based protection policy**
  Temporary emergency measure based on the general situation in the country of origin.

Four parties (DRM, DMB and A&B Den Bosch) mention the changes in the Aliens Decree in 2021, reducing **the asylum procedure** in its complexity. By this, the first interview ceased to exist, shortening the asylum procedure. As a result, this saves actions (planning interviews, arranging lawyers and interpreters, conducting interviews, drafting reports, giving feedback to lawyers, processing corrections and additions), reducing the time it takes to process the asylum application. A caveat is that the reporting interview was only introduced officially in 2014, which means that in the research period, an interview was first added before another ceased to be. In addition, the changes in the asylum procedure of 2021 provide the option to, based on the questions about the reason for asylum, deploy a specialisation or focused preparation, and to process cases in the General Asylum Procedure + to prevent forwarding to the Extended Asylum Procedure.[55]

The **track policy** is mentioned by three parties (IV, 1F and DMB) as something that has made the asylum procedure less complex (in figure B3.4 in appendix 3 it has been shown how many cases there are per track on average). Track 2 in particular, the track for persons presumed to be from safe countries, has contributed to the ability to process this type of applications efficiently. Because specific procedures have been organised per track, actions that are not relevant for the type of work are prevented from being carried out. Consequently, an application requires less time, considerations and actions. However, according to the interviewees, there are a number of aspects in the operational practices of the track policy that contribute to complexity. See chapter 4.3.1 for an explanation of this.

52 IND (2023). *Applying for asylum in the Netherlands.*
53 Section 29 Aliens Act.
54 Judex (2018). *Asiel aanvragen: wat zijn de voorwaarden? (Asylum applications: what are the requirements?)*
55 IND (2023). Evaluation of changes to the General Asylum Process.

4 Causes in operational practices

From the interviews, a number of aspects have emerged that pertain to the operational practices within the IND. Therefore, we describe complexity at the level of the organisation in this chapter. First, we explain how, according to the interviewees, the activities of the staff have become more complex and how the staff members themselves influence this (section 4.1). Next, we discuss how management by the IND contributes to the complexity experienced by staff (section 4.2). Subsequently, it is explained which procedural aspects increase complexity of the practical implementation of the asylum procedure (section 4.3). Finally, factors are addressed that have made the operations less complex (section 4.4).

This chapter focuses on the mentioned causes in the operation of the IND. The staff within the IND have the best insight into this. Professionals in the field of asylum from outside the IND are, however, aware of some aspects in the operational practices through the art they play in the process and their cooperation with the IND. Hence, experiences from professionals in the field of asylum from outside the IND have also been included, just like they were in other chapters.

4.1 Staff activities A&B, DV and JZ

4.1.1 More extensive interviews and decisions

Staff of various units of the IND (A&B Ter Apel, 1F, JZ, the Enforcement Information Hub (*Handhaving Informatie Knooppunt*, HIK)), DMB-JAZ and the interviewed judge indicate that interview staff ask for increasingly more information and decision officers increasingly include more elements in a decision. Consequently, taking a decision requires more time and more considerations than in 2010. In line with this experience, it becomes apparent that interview reports and notes by staff on cases have become more extensive (see box 4.1). In addition, the interviewed lawyer mentions that interviews are shorter in other Member States.

Interviewees give various reasons to why the interviews and decisions have become more extensive. For example, actions by applicants (see chapter 6) and a more extensive assessment framework and higher requirements for substantiation (see chapter 3) can contribute to the length of interviews and decisions.

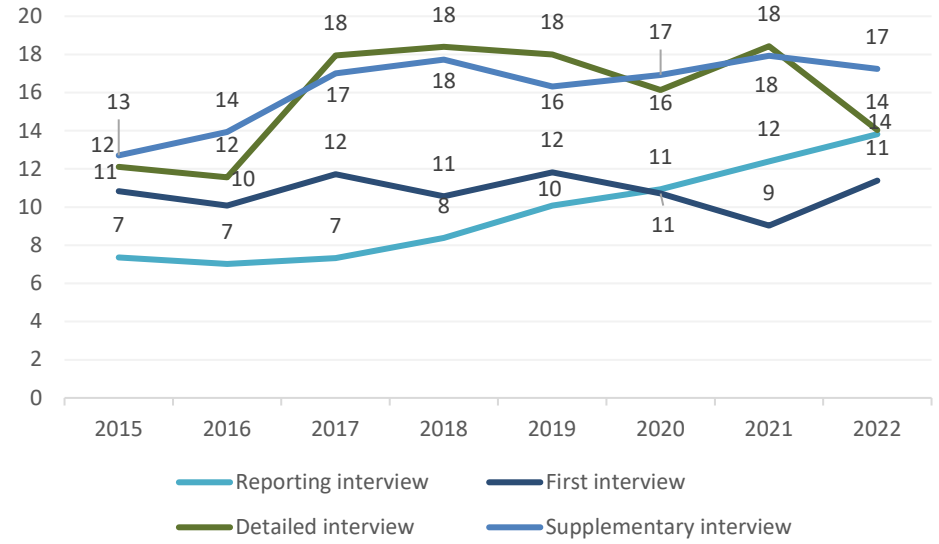
Box 4.1 Length of interviews and notes by staff

From the interviews it becomes apparent that interviews and decisions have become more extensive over the years. This experience seems to be supported by the results from a text mining analysis. Data on interviews and notes by staff were only available from 2015.

In figure 4.1 it can be seen that the average number of pages of the reporting interviews (+7, 100%), detailed interviews (+2, 17%) and supplementary interviews (+4, 31%) increased between 2015 and 2022. The number of pages of the first interview has not increased. This can be explained because over the years a lot of questions have been moved from the first interview to the reporting interview, whereby the first interview served to verify the reporting interview. Hence, the reporting interview and the first interview were combined in 2021, causing the first interview to lapse.[56] This contributes to a strong rise in the number of pages of the reporting interview.

56 Data are based on the outflow, resulting in the inclusion of cases that flowed out in 2022 but where a first interview was held before the amendment became effective in 2021. The average is based on a smaller number of cases than the preceding years.

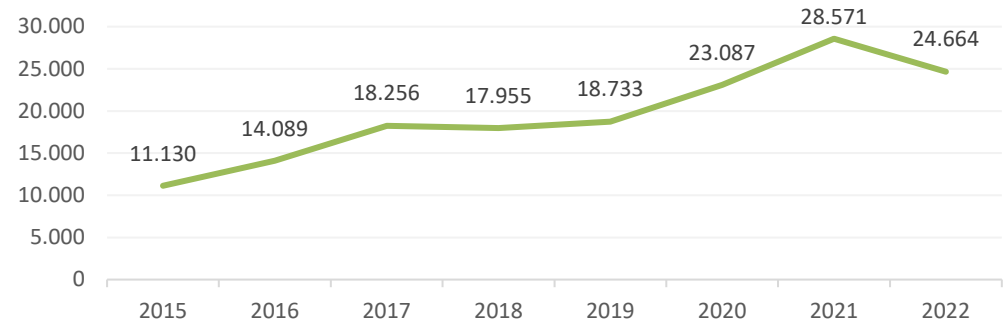
Figure 4.1 Average number of pages of different types of interviews according to the year of the asylum decision, 2015-2022 (N=40.000, 5.000 per year)



Source: Results of text mining analysis of a sample, obtained by DEC; see appendix 1.2 for an explanation of the methods.

In figure 4.2, the number of characters of the notes by staff is shown. A record is an internal document in which the IND staff keep record of the data of the case, such as the substantiation of the case, relevant information from other documents and the number of investigations and their outcomes. So, this provides an indicative picture of wat has been considered and balanced for the decision on a case. It can be seen that the number of characters has increased considerably since 2015 (+13,534, 122%).

Figure 4.2 Average number of characters of the notes by staff per the year of the asylum decision, 2015-2022 (N=40,000, 5,000 per year)



Source: Results of text mining analysis of a sample, obtained by DEC; see appendix 1.2 for an explanation of the methods.

In addition, according to different parties (A&B units, the HIK, SUA, a lawyer and the Ministry) the length of the interviews and decisions is influenced by a lack of decisiveness among decision officers. In the interviews, this is often mentioned as the *guts to take decisions*. By a gut to take decisions, the interviewees mean that case workers are less confident to make a decision and so find it more difficult to come to a conclusion. This is because they are afraid to fully rely on their skills to efficiently make a correct and accurate legal analysis and a well-supported decision. In this report, we choose to use the term *decision-making skills*.

According to the interviewees, *interview staff* consequently asks more in interviews than before so as not to miss out on relevant information. Also, when making a decision, the interviewees have the idea that *decision officers* more often include unnecessary elements in a decision out of fear that they might miss elements.

Especially the cases where there is a high chance of rejection (55% of the outflow of 2013 to 2022 inclusive is a rejection), a lack of decision-making skills is a bottleneck, because in case of a rejection the requirements for substantiation are higher than for the granting of an application.

According to the interviewed lawyer, the lack of decision-making skills causes some staff members to be more inclined to conduct additional interviews. This leads to more information, because of which making an asylum decision requires more time and actions. However, two specialist units of the IND (1F and TOELT) indicate instead that they have the idea that due to the acceleration measures for certain target groups, staff members act less accurately and are less inclined to conduct supplementary interviews or initiate less investigations. To carry out their task, the lack of information creates more complexity because as a result making a decision requires more knowledge. In 2020 and 2021, for example, the *Task Force* was deployed to clear backlogs. The Inspectorate for Justice and Security (*Inspectie Justitie & Veiligheid*, IJ&V) concluded about the performance of the task force that the emphasis on swiftness was at the expense of the assurance of accuracy when processing the asylum applications.[57] The deployment of knot-cutting teams since 2021 can also have played a role in the experience of the two specialist units, because the knot-cutting teams are deployed to decide based on the available information (so without additional interviews or investigation) on so-called 'headache files' (cases that are difficult to process).

In the interviews, two causes of the lack of decision-making skills are mentioned. Firstly, the lack of decision-making skills is strongly associated with the lack of experience, according to the interviewees (see box 4.2). A lack of decision-making skills is attributed more often to less experienced staff than to more experienced staff. For example, standardised sample questions have been drawn up for the interview staff. Not nearly all questions are relevant for the case concerned; the relevance of the question depends on the case. Interviewees notice that less experienced staff are more likely to ask a lot of questions because they do not yet have sufficient knowledge of the relevance of the questions for the specific case. In addition, it can instead be that critical questions (that are not included on the standardised list of questions) are not asked. As a result, a supplementary interview is more often required, or making a decision becomes more difficult because relevant information is lacking. In the interview with staff members who have been in the Basic Asylum Education Programme (*Basisopleiding asiel*, BOA)[58] of the IND for a year, it was also indicated that they find it difficult to determine what they have to ask. A lack of experience among decision officers also results in more work for the supporting units, such as TOELT and the Identity and Document Investigation Unit (*Bureau Documenten*, BDoc). They notice that they are more often receiving (unnecessary) questions from the employees who handle the asylum applications, or are supplied with information that is insufficient.

57 Inspectorate for Justice and security (2021). Brief Taskforce IND (Letter Task Force IND).
58 Staff that are newly recruited at A&B attend the Basic Asylum Education Programme in the first two years.

Box 4.2 Capacity and experience within the IND

New staff

Because the influx of asylum cases is increasing and the workforce is not growing at the same pace, the IND has developed undercapacity. Because of the undercapacity, the IND is recruiting a lot of staff in a short period. In table 4.1 it can be seen that from 2018 to 2022inclusive, around 20 percent of the A&B staff newly started. This excludes staff transferred to A&B from inside the IND or J&V; so, the actual proportion of new staff is even higher than this. No data are available from before 2018.

Table 4.1 Capacity of Asylum and Protection (A&B) department

Year	Number of A&B staff members on 31 December of the year	New A&B staff members[59]	Percentage of new A&B staff of the total A&B staff
2018	934	19	2%
2019	1426	556	39%
2020	1514	225	15%
2021	1400	210	15%
2022	1578	334	21%

Source: HR data of the IND

Secondly, the increasing number of work instructions (see box 4.3) contributes to the lack of decision-making skills according to the interviewees. The interviewees point out a contradiction here: on the one hand, the instructions provide guidance and ensure that less is required from a staff member's own knowledge; on the other hand they contribute to a lack of decision-making skills. SUA staff note that they are increasingly receiving questions about the explanation of policy or certain exceptional situations. In response to this, SUA has started to provide more information by drawing up instructions for an increasing number of different situations. Potentially, laying down many exceptions has eventually resulted in a surplus of information, according to the interviewees.

Although the specific instructions may make the work easier for new staff, the totality of work instructions contributes to the lack of decision-making skills according to them. This is because if everything is laid down in instructions, decision officers are more reluctant to decide themselves on exceptional specific situations for which no instructions are available yet. The development of the experience required to become more decisive also decreases as a result. After all, the result is that decision officers spend more time ticking off the criteria in the provided instructions than assessing the case based on the staff member's own professionality. It can happen that boxes are ticked, but a decision is still incorrect in its totality because the staff member found it difficult to distinguish between relevant and irrelevant aspects. When ticking boxes, irrelevant information is also asked and included and relevant information may be missed instead. After all, it depends on the case what is relevant for the case. Thereby, staff are not being trained to find their way independently in the regulations and reach a decision independently.

On top of this, more is demanded from staff (see sections 4.1.2 and 4.1.3). For instance, instructions on national security and requests from other services impose additional demands on decision officers because they must record and consider more than before. Because of all these additional actions, staff loose track and are relying even more on the instructions and lists of boxes to tick. The experienced time pressure and an unclear body of policy, legislation, case law and instructions, in which a staff member must somehow find their way, makes it even more complex for the staff member to gain experience.

59 NB: inflow is from outside Justice and Security, no insight can be given into transfer within Justice and Security.

According to interviewees, the emphasis on the human dimension (see box B1.2 in appendix 1) also results in more information being included in a decision (see box 1.1). On the one hand, staff is expected to closely follow the instructions relevant for the case, but on the other hand they are also expected to take into consideration the applicant's personal circumstances in the context of the human dimension and to deviate from instructions if necessary. Moreover, it is not always clear for staff how the human dimension must be applied, which results in a grey area. After all, an asylum decision cannot be fully objectified: it involves an assessment of credibility that cannot always be substantiated with objectifiable elements. There is always a certain extent of tailoring, where the individual consideration of the person making the decision plays a role. From the report *Eindrapportage doorlichting IND* (final report on the assessment of the IND),[60] it becomes evident that it often feels contradictory for staff to have to decide consistently (using the same method in different cases) on the one hand whereas they must take the human dimension into consideration on the other.[61] This creates a certain tension between providing tailored decisions and to ensure legal equality at the same time, by which deviation from an established procedure is not considered just in an individual case.

The transfer of the discretionary authority from the minster for migration to the IND[62] also places more responsibility on the decision officer who processes the first procedure. Before this transfer, it was also up to the decision officer to present cases to the minister where the policy would turn out disproportionally stringently for the applicant. However, it was the minister who eventually decided what needed to be done with such a case.

4.1.2 Provision of information

The amount of information made available to the staff by the IND has also increased, according to the employees. Resulting in staff having to spend more time and actions on finding and consulting information, and, moreover, requiring more considerations. This aspect also emerges from the report *Tijd voor kwaliteit* (time for quality),[63] in which it is indicated that information is communicated in different ways and can therefore be difficult to find for staff members. According to the interviewees, there is a multitude of fragmented information: a decision officer must (depending on the case) look at work instructions, information messages, country-specific messages, country-specific information from TOELT for individual cases, fact sheets, case law, legislation, or official reports. These sources were always experienced as extensive and complex, but this increased over time (see sections 4.1.2.1 and 4.1.2.2).

In addition, information has become more fragmented across various source locations, according to staff, making staff members to lose sight of the overall picture. For example, different case law or country-specific information is available at different source locations for one single topic. Staff in different locations also receive information via different channels. Moreover, the information is also highly susceptible to change under the influence of case law (see chapter 3) and reports (by NGOs, for example). Interviewed staff members in training indicate that there are so many changes that it is difficult for them to keep track of everything. This means that each time they handle a case they must look up whether there has been

60 EY (2021). *Eindrapportage Doorlichting IND (Final Report on the Assessment of the IND)*.
61 EY (2021). *Eindrapportage Doorlichting IND (Final Report on the Assessment of the IND)*.
62 Per 1 May 2019, the discretionary power was replaced by the ex-officio assessment during the first application procedure in the Netherlands whether a harrowing situation is in play.
63 Inspectorate for Justice and security (2022). *Tijd voor kwaliteit, een onderzoek naar de algemene asielprocedure (Time for quality: a study of the general asylum procedure).*

a change in the method or case law. Consequently, it requires more knowledge and time to keep knowledge up-to-date and search information.

Because there are different source locations, there is an additional risk that the used information is not the correct or the most recent version. It can also be that it differs between staff from different locations to which information they have access. In the past two years, there have been some developments that contribute to better findability of information (see chapter 4.4.1), but in general the interviewed staff members think that the findability has deteriorated since 2010.

4.1.2.1 Expansion and complication of instructions

According to the interviewees, the IND is laying down increasingly more details and exceptional situations in work instructions and information messages (hereinafter: instructions), which has resulted in a complex totality of instructions. As mentioned in section 4.1.1, the lack of decision-making skills has also contributed to this. In this sense, experienced staff and less experienced staff have different needs. Adjustments in instructions that give the staff member more professional space (such as the option to ask open questions in LGBTIQ+ and conversion cases) are experienced positively by experienced staff members, but are less likely to address the needs of inexperienced staff, who often benefit form a standardised method (also see chapter 4.1.1).[64]

In addition, the complexity in case law, legislation and policy (see chapter 3) also contributes to the complexity of the instructions that pertain to the application of policy. According to some interviewees (1F unit and A&B Zevenaar), the IND interprets case law, legislation or policy too literally in the instructions, and as a result, more details are established in instructions (also see chapter 3.1.2). DMB states that instructions that pertain to policy have, in some cases, not been elaborated as intended in the policy. Work instructions should provide an objective description of the method in which policy must be exercised in the operational practices in a more practical sense. However, according to DMB, part of the instructions of the IND pertain to the assessment and balancing of interests, making them no longer policy neutral. According to them this has, on the one hand resulted in the legal nature and (legal) bindingness not always being clear for the IND employees themself, and, on the other hand, this has resulted in 'established lines of conduct' becoming legally binding because decisions by the IND can be assessed against the line of conduct and then thereby become policy. By this, a factual policy is created according to DMB, without the usual administrative/political accountability. SUA indicates that the policy does not always provide an adequate framework or guidelines for the IND operations and that further explanation is then required in a work instruction. Moreover, is the IND is asked more often to provide insight into how the IND makes certain considerations, resulting in lines of conducts which the IND is then called to account for. This amplifies the above mechanism. It is further noted that most instructions are coordinated with DMB in advance.

In box 4.3, it can be seen that the number of instructions has increased since 2010. In addition to an increase in number, instructions are also experienced as substantively complex, and as a result, making a decision based on the instructions requires more time and knowledge. In addition to the fact that laying down more details in instructions (as described above) contributes to this, the instructions and their interpretation are also not always clear in their explanation, according to interviewees. This can also be noticed in court: according to the interviewees,

64 BBSO (2021). *Geloof en liefde onder het vergrootglas van de IND (Religion and love under scrutiny by the IND).*

judges more often make the IND redo the decision because a work instruction would not have been followed properly.

Box 4.3 Number of work instructions and information messages

To gain insight into the expansion of work instructions and information messages, InformIND was consulted to see how many work instructions and information messages were valid per year. For this, a selection was made of work instructions for the themes 'asylum' and 'process transcending'.[65]

In table 4.2, it can be seen that the number of work instructions has increased compared to 2010, but that there was a peak in the number of work instructions in 2015. In addition, the number of information messages has increased considerably, from 54 in 2010 to 246 in 2022.

Table 4.2 Number of work instructions per year in which they were valid

Year	Number of work instructions	Number of information messages	Total
2010	44	54	98
2011	48		
2012	50		
2013	53		
2014	50		
2015	57		
2016	43		
2017	29		
2018	41	144	185
2019	47	162	209
2020	48	254	302
2021	57	268	325
2022	60	246	306

Source: IND database InformIND

Work instructions valid in 2010, 2016 and 2022 were viewed manually for the number of pages. The average number of pages per work instruction did not turn out to be higher in 2022 than in 2010 and 2016 (see table 4.3). However, in 2010 and 2016 there were fewer work instructions, because of which the effect of work instructions with more pages was higher on the average. The number of work instructions with more than 5 and 10 pages is higher in 2022 than in 2010 and 2016. In 2016 and 2022, the work instruction with the most pages was on how to handle Article 8 ECHR. In 2010, the subject of the work instruction with the most pages was on the application of the Personal Data Protection Act.

Table 4.3 Average number of pages of instructions for 2010, 2016 and 2022

Year	Average number of pages per WI	Number of WIs with more than 10 pages	Number of WIs with more than 5 pages
2010	13	23	34
2016	12	17	29
2022	12	29	50

Source: IND database InformIND

4.1.2.2 *Length of process descriptions*

Just like the work instructions, the process descriptions[66] have also become more elaborate according to the interviewees (A&B Den Bosch, SUA and BIS).[67] According to the process description, the staff member must carry out more actions than before and, accordingly, has to spend more time on following the established processes. This is the effect of a process that is becoming increasingly complex, with more types of work and methods (see chapter 4.2), partially under the influence of case law, legislation and policy (see chapter 3).

65 Before 2018, the number of work instructions and information messages had to be searched manually because a selection for validity date can only be made from 2018. For the work instructions, the number was only retrieved manually for 2010.

66 The process description contains the process steps that a staff member must take per type of work.

67 In the interviews, it was indicated by staff from Den Bosch, of SUA and BIS, that the process descriptions have become longer. Within the IND, no old process descriptions are available. Hence, this claim could not be verified.

4.1.3 More steps to reach an asylum decision

4.1.3.1 More process steps

In the interviews, IND staff indicated that they must take increasingly many steps to reach an asylum decision. For example, components were added to the procedure, such as drawing up a return decision and an entry ban in case of rejection of an asylum application. In addition, more is expected from decision officers with respect to detection (war crimes, human trafficking, risks for national security, fraud and abuse), which also requires specific knowledge and actions. For example, since a couple of years, a screening must be carried out in the context of detection, additional questions have been added to the interviews and in some cases the staff member is expected to notify the enforcement unit of the IND or other parties. In addition, there are quality measurements. To comply with the quality measurements, staff take steps that are not relevant for the decision at hand in their opinion. This concerns information that must be recorded for other purposes than making a decision, for instance management information. This information does not have to be recorded because of the quality measurement, but the quality of this information is also measured in the quality measurement. Finally, staff must also make an ex-officio assessment before they can reject an application (see chapter 3.3.4.2) to prevent subsequent procedures. All these elements form extra steps that decision officers must take in addition to conducting interviews and making decisions.

In addition, the IND staff members experience that the system description for using INDiGO has become more complex. The system description has grown over the years and has become more substantive (see box 4.4). A longer system description is not necessarily more complex as a rule, because more explanation in a manual can also further a better understanding of the system. However, interviewed staff members indicate that they experience the actions in the system as more complex. Because of the administrative burden, staff spend less time on the substance and more on entering everything correctly into the system. The expansion of the system description, and thereby the administrative tasks, is related to an increasingly complex assessment (see chapter 3). Because increasingly more is required for a decision, more administrative acts must be carried out, which requires more time.

Box 4.4 Expansion of actions in system description

To gain insight into the expansion of actions in the systems, the system descriptions of 2013, 2016 and 2019 were viewed. No system descriptions are available form before 2013.

Length system description

In table 4.4, an overview is shown of the page numbers per component of the system description. In 2013, the system description was divided into a general and a specific part. In 2016 and 2019, the system description consisted of a separate part for the A&B and Regular Residence & Dutch Citizenship (RVN) Department and a process transcending part. The components of the 'specific part' of the system description from 2013 return in both the asylum and the process transcending part in 2016/2019. The components that pertain to RVN have not been considered for this. Especially the general part has increased in size, particularly in recent years.

Table 4.4 Size of components of the system descriptions in 2013, 2016 and 2019

Component of system description	2013	2016	2019
General part	56 pages	94 pages	157 pages
A&B	0	124	139 pages
Subsequent procedures, process transcending and other	0	75 pages	162 pages
Specialized part on A&B	170 pages	0	0
Total	226 pages	293 pages	458 pages

Source: Manual page count of previous system descriptions

Content expansion system description
If we further disaggregate according to sections, it becomes apparent that there are also changes in the content of the system descriptions between 2013 and 2016; between 2016 and 2019 there were few changes in the topics. Themes for which the number of pages increased the most between 2013 and 2019 are processing plans (+64 pages), correspondence (+17 pages), investigation (+29 pages) and the instructions on measures (+39 pages). Between 2016 and 2019, the instructions on subsequent procedures also increased (+51 pages).
The increase of the number of steps for processing plans and correspondence supports the claim in the interviews that the number of administrative acts has increased considerably, or that more has been laid down. The expansion of the remaining topics is more associated with an expansion of policy and assessment.

A. **Investigation.** The size of the instructions on investigation has increased because new topics were added. There are more types of investigations that can be conducted. For example, having an investigation conducted by the United Nations High Commissioner for Refugees (UNHCR) or the European Visa Information System (EU-VIS) has been added, which is indicative of more European cooperation in this field. Also, having a medical examination conducted has been added, which is a consequence of the expansion of medical assessment. Finally, several investigations pertaining to enforcement have been added. That there are more investigations indicates that are more actions and time are required. This is also in line with the finding that there are higher demands on investigation and substantiation.
B. **Measures.** The length of the instruction for **withdrawals** and measures has increased considerably, particularly because withdrawal procedures are different in 2019 for different types of permits. The descriptions for withdrawals have become longer (+17 pages in 2019 compared to 2013 for the same topics concerning withdrawals) and more topics have been added. For example, the termination of the protection status based on case law has been added as an additional action. The expansion of the chapters on measures and withdrawals seems to indicate that the policy on withdrawals and measures has expanded and has become more specific and the processes have consequently become more complex. However, it has not been examined whether this is really the case.
C. **Subsequent procedures.** The size of the instruction on subsequent procedures has increased considerably, predominantly because of the addition of descriptions of ex officio assessment, dealing with the General Data Protection Regulation (GDPR) and dealing with interventions by the national ombudsman. As discussed in chapter 3, the description for the ex officio assessment has been added because of case law and amendments of policy and legislation, and the addition of this assessments has had the result that the number of considerations in a decision has increased. The addition of a process description for intervention by the national ombudsman indicates that society is increasingly keeping an eye on the practical implementation of the asylum policy (see chapter 5).

Substantive decrease of system descriptions
Between 2013 and 2019, only the size of the instructions on 'other work types' and 'special categories' in A&B decreased, but this is probably the result of a change in structure, where parts from these chapters were discontinued. In addition, the size of the Dublin instructions also decreased somewhat between 2016 and 2019.

Changes in system descriptions
It is noticeable that in the system descriptions, more references are made to case law, laws, work instructions and information messages. In 2013, 2 references were made to work instructions; in 2019 24 references were made to work instructions or information messages. In 2013, there are no references to case law in the system description, whereas in 2019 there are 15 references to case law.

4.1.3.2 Registration system

Staff from A&B, SUA, BDoc and IV indicate that the information system of the IND complicates their work. The registration system INDiGO, which was introduced in 2011, is experienced as more complex than its predecessor INDIS. With the arrival of INDiGO, more administrative acts must be carried out by decision officers

themselves, whereas this was previously done by supporting staff.[68] Many steps must be taken and what these steps are differs per case. According to the interviewees, the system of qualification lists in INDiGO does not align well with the asylum procedure. Besides, there are many 'workarounds' because not everything has been built into the system yet, and there are often changes. Moreover, errors are not always reported in the system. According to the interviewees, the system contains many small impracticalities, such as a questionnaire of which part of the questions have been formulated using double negations, components that are difficult to find or no pop-up messages if components have been forgotten. Staff in training indicate that it requires experience to know how everything has to be filled in correctly.

In June 2023, IV and A&B at Schiphol held a session in which it was counted how many mouse clicks had to be made in INDiGO for an employee to grant a residence permit. On average, a staff member has to spend one hour and 200 mouse clicks to enter a positive asylum decision into INDiGO. This despite the fact that a large proportion of the asylum decisions requires the same actions, so it should be possible to computerise this process much more. At the time of drafting this report, the Acceleration Asylum Processing (*Bespoediging Afdoening Asiel*, BAA) project was being carried out within the IND, in which an e-processing procedure is built to tackle this.

4.2 Management of the organisation

Parties involved from within the IND (1F staff, TOELT, BDoc, BIS, A&B location Schiphol, A&B location Zwolle and SUA) indicate that the management of the IND is strongly driven by efficiency.[69] This focus can make processing a certain type of cases less complex, for example processing cases using a target-group-oriented approach (see chapter 4.4.3). However, according to the interviewees this also entails a number of aspects that make the work more complex. These aspects are explained below.

4.2.1 Faster decision-making using less information

Interviewees indicate that a focus on efficiency has the result that staff are more likely to have to make decisions with less information. They experience that from the management, the emphasis is on basing as many decisions as possible on information gathered within the General Asylum Procedure (AA). In doing so, staff are also expected to give the benefit of the doubt more often (see box 4.5). In the report *Tijd voor Kwaliteit* (Time for Quality)[70] it is claimed that staff do not always get round to a proper preparation of interviews and are unable to enquire into all topics of complex applications because of the pressure they are under to work quickly and efficiently. Multitasking during the interview (writing a report, conducting an interview with the foreign national and asking the correct questions and asking follow-up questions) blurs the focus of the interview. This results in the risk that the foreign national's full account cannot be mapped out fully.[71] Because of the aforementioned pressure, there is also a risk that an appeal against the case is considered founded and the case must be reassessed, according to the interviewees. A focus on efficiency may therefore be efficient if the permit is granted, but may (in the long term) be less efficient and more complicating for those cases that are

68 Through the arrival of the support unit, it is attempted to ease the administrative burden again. Currently, the support unit is only active in Den Bosch. The intention is that it will be implemented broadly.

69 Driven by efficiency refers to conducting as much work in as short a period as possible.

70 Inspectorate for Justice and security (2022). *Tijd voor kwaliteit, een onderzoek naar de algemene asielprocedure (Time for quality: a study of the general asylum procedure).*

71 However, this does not mean that important preconditions and quality assurance are lacking or absent in the daily implementation practice of the General Asylum Procedure. However, it does result in additional considerations for the staff member.

rejected. This finding aligns with an important recommendation by the Zwol Committee, namely to invest in careful processing of first asylum applications because this limits delays in appeal, subsequent and departure procedures.[72]

Box 4.5 The benefit of the doubt

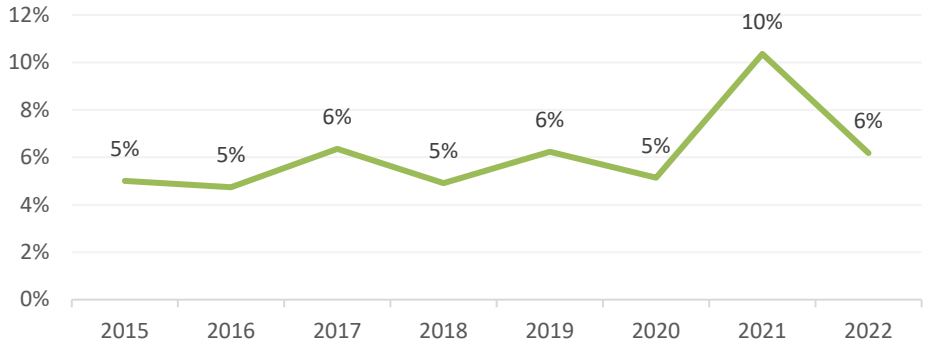
In cases where the decision officer is in doubt about whether to approve or reject an application because, for example, there is insufficient evidence, decision officers can give the benefit of the doubt. Because there is doubt, a lot can be balanced and investigated with the purpose of removing that doubt. To prevent this, the work instruction within the IND is to give the benefit of the doubt in such cases. But it is those cases where, eventually, the benefit of the doubt is given that can be substantively complex.

In March 2021, new instructions on accelerated processing of asylum cases were laid down in IB 2021/34. In this instruction, it says that as a result of the increased asylum backlog, reservation is desired towards additional activities: 'For cases in the General Asylum Procedure, this means that reservation is required when forwarding cases to the Extended Asylum Procedure for supplementary interviews or investigations. Hence, the principle is that decisions are taken as much as possible based on the interview in the General Asylum Procedure, without any supplementary interviews or investigations. Thus, decisions on cases are taken as much as possible based on the information that is already available within the General Asylum Procedure. (…) The result of the above situations can be that staff members must sooner proceed to giving the benefit of the doubt in cases in the General or Extended Asylum Procedure. This particularly plays a role in cases where supplementary investigations or an interview was intended to remove any last remaining doubt.'[73]

In the O&A report on the **share of positive decisions**,[74] it is mentioned that the increased attention for the human dimension at the IND and in case law can result into the IND being more likely to give the benefit of the doubt.

However, from the registration data it does not become apparent that there has been a consistent increase in the proportion of cases where the benefit of the doubt was mentioned explicitly as the reason for granting asylum since 2015 (see figure 4.3.). Only in 2021, there was a strong increase, when 10% of the completed cases the benefit of the doubt was mentioned in the record. A possible explanation for this is IB 2021/34 (see box 4.5). It could also play a role here that in 2021, many complex, protracted cases were processed by the **knot-cutting team**. In 2022, the percentage of cases in which the benefit of the doubt was given explicitly decreased back to 6%. No data were available from before 2015.

Figure 4.3 Percentage of a sample of completed cases where the staff member granted the benefit of the doubt per year, 2013-2022 (N=40,000, 5,000 per year)



Source: Results of text mining analysis of a sample, obtained by DEC; see appendix 1.2 for an explanation of the methods.

4.2.2 *Various temporary methods*

In addition, the interviewees indicate that they are regularly dealing with temporary acceleration methods for certain groups of applicants because of the efficiency

72 Onderzoekscommissie langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht (Investigation Committee on long-term residing foreign nationals without sustainable right of residence, 2019).
73 IB 2021/34 Versnelling in het afhandelen van asielzaken (Acceleration of processing asylum cases)
74 IND (2022). *Duiding inwilligingspercentages asiel (Explanation asylum the share of positive decisions s).*

mindset. Within the IND, the efficiency of processing asylum applications is continuously being worked on, during which experiments on acceleration measures are being run in the shape of projects. If these projects turn out to contribute to efficient processing of applications, they are implemented as a standard. However, the gain of these projects is sometimes monitored insufficiently, resulting in insufficient insight into their effectivity at the end of the pilot project. The IND also has to deal with a continuously changing group of applicants, and as a result new methods are being invented for new groups of applicants. As a result, standard implementation after pilots often fails to take place.

Temporary acceleration measures simplify processing a certain type of cases. However, they also entail that staff must take an increasing number of different exceptions into consideration, for different groups and specific periods. They have different cases and as a result they always have to look into whether there is a specific method for the case they are faced with and they must then internalise this method. This requires more expertise and knowledge from the staff. The temporary nature of many measures makes staff lose track. That being said, if temporary measures are ultimately implemented as a standard, they can make the work less complex in the long term (see chapter 4.4.3).

Temporary measures can also complicate work for specialist units (1F, TOELT, BDoc, enforcement, family reunification). They note in the interviews that various units or locations are organising many different pilot programmes to increase efficiency. In table 4.5, it can be seen that the number of units within A&B has increased in recent years. If the specialist unit is organised centrally, like BDoc and TOELT, local pilot programmes complicate their work because they must take into consideration the different approaches of different locations. However, in the BAA project that is currently ongoing, experiments are being run with to extend local initiatives to a national program.

Table 4.5 Number of units of A&B according to year

	2018	2019	2020	2021	2022	2023
Number of units	59	71	75	93	80	109

Source: HR data of the IND

4.2.3 Central coordination of different processes

Interviewees note that there is too little central coordination for the different processes. For example, the multitude of temporary methods at different locations is particularly complex because the whole is not coordinated centrally. When a certain efficiency measure is used, there is insufficient coordination with respect to how this may affect other locations and or units/departments. This can make the work more efficient for a specific unit, but complicate the work for other units. In doing this, too much emphasis is put on a specific task and the process as a whole is considered less. In the report *Onderzoek doorlooptijden IND (Investigation of processing times IND),*[75] it is observed that consistency of management is lacking. Better, consistent management would, according to the researchers of this report, make the operational practices less complex and accordingly contribute to a more efficient process. In this context, the BAA project offers a possible solution. As mentioned, various local pilots are combined under this BAA project, so that central management of the pilots can take place.

For example, the specialist units (1F, TOELT, BDoc, enforcement, family reunification) experience that there is less attention for enquiring into information

75 Significant Public (2020). *Onderzoek doorlooptijden IND (Investigation of processing times IND).*

that they need to carry out their task. According to them, there is insufficient guidance for this by the management. Because of a lack of time in the interviews, but also because of a lack of experience among interview staff (see chapter 4.1.1), the information relevant for these units is not always collected sufficiently . Requests from the specialist units for a supplementary interview in which additional information is asked are rejected much more often than before because of efficiency (after all, this takes more time). Consequently, the specialist units have limited information to base their decisions on and notice, moreover, that the time span they have to conduct their investigation is shorter. After all, delay because of investigation is no longer acceptable. This makes it more difficult for these units to conduct investigations properly. This is an element that makes conducting the activities of the specialist units more complex: they have less information to base their investigation on and less time for substantiation. If an investigation is not conducted thoroughly enough, or if an investigation is not conducted at all because of time pressure, decision officers also have less information to make sound decisions. This, in turn, requires more expertise from decision officers (see section 4.2.1).

4.3 Procedural aspects

From the interviews, a number of procedural aspects have emerged that contribute to complexity according to the interviewees. These aspects are discussed below. See Appendix 5 for an explanation of the asylum procedure.

4.3.1 Operational practices of the asylum procedure

In section 3.4, it was discussed how the track policy has made the work less complex. However, there are also a number of aspects in the way in which it is put into practice that instead make the work more complex, according to the interviewees. Various units within the IND (SUA, 1F, Ter Apel) and the DT&V indicate that the track policy within the asylum procedure offers too little flexibility within the current timespan, because of which files are transferred between employees too often. In the report *Tijd voor kwaliteit (Time for quality),*[76] it is indicated that the asylum procedure offers too little flexibility.[77] According to the interviewees, the fact that the file transfers occur so often, is because during the asylum procedure there is no ownership of an application, resulting in a case being processed by different staff members. In addition, it regularly happens that an (originally Dublin) case changes track because of the problems described in chapter 3 concerning the implementation of track 1 (the Dublin procedure). If the deadlines are not met because, for example, there is a need for an extra day of interviews or additional investigation, a case is likely to be transferred to the Extended Asylum Procedure, where the case is taken up by a different staff member (see section 4.3.3).[78]

The consequence of file transfer is that staff need increasingly more time to familiarise themselves with the file. In *Onderzoek doorlooptijden IND (Investigation*

76 Inspectorate for Justice and security (2022). *Tijd voor kwaliteit, een onderzoek naar de algemene asielprocedure (Time for quality: a study of the general asylum procedure).*

77 At the time of this study, the asylum procedure was still eight days, and the possibility of the General Asylum Procedure + did not yet exist.

78 For this reason, the General Asylum Procedure + was introduced on 25 June 2021, in which it is possible in advance to extend the General Asylum Procedure by three days. However, in the report *Evaluatie wijzigingen asielprocedure (Evaluation changes asylum procedure)* by O&A, it is put forward that the General Asylum Procedure + was not used often enough in the first year after its introduction. By now, recommendations from this report have been implemented to make it possible that the General Asylum Procedure + can be applied more often. [For an explanation, see: IND (2023). *Evaluatie wijzigingen Algemene Asielprocedure (Evaluation changes asylum procedure)*.

of processing times IND),[79] the number of file transfers is also considered problematic.

4.3.2 Increased processing times

The processing times of asylum procedures have increased since 2010 (see box 4.6). According to various interviewees, (Zwolle, Zevenaar, 1F, BDoc, DMB, DRM, legal aid), the increase in processing times also results in more complexity.

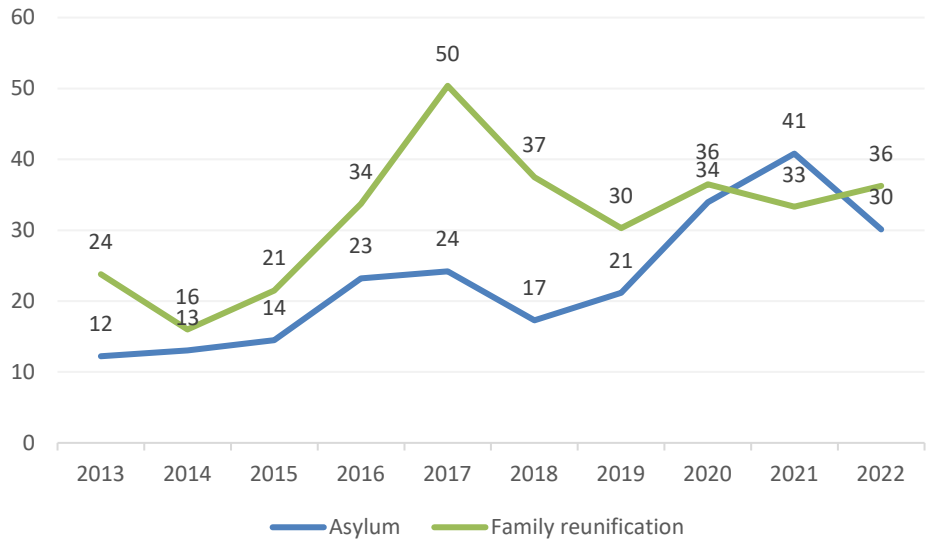
If the processing times are longer, cases can also become more complex according to the interviewees because the circumstances of the applicant that are important for the decision can change in the interim. For example, an applicant can convert to a different religion, their health situation can change or the applicant can start a family. This requires more considerations. After all, a decision must be taken ex nunc (based on the facts and circumstances known at that time). In case of a long processing time, the individual circumstances of foreign nationals (as well as legislation) can have changed compared to the circumstances that were addressed in the first interview.

79 Significant Public (2020). *Onderzoek doorlooptijden IND (Investigation of processing times IND).*

Box 4.6 Processing times

It does indeed become apparent from registration data that the processing times of both asylum applications and applications for asylum family reunification have increased since 2013 (the first available year in the registration data; see figure 4.4). There are fluctuations that are strongly influenced by the discrepancy between a large number of applications and a limited staff. For asylum family reunification, this can in particularly be seen in the exceptionally high processing times in 2017. However, across the board it can be seen that the processing times were the shortest at the start of the research period and then continued to increase.

Figure 4.4 Average processing times (in weeks) of asylum cases* and asylum family reunification cases of beneficiaries of international protection according to the year of the asylum decision, 2013 t/m 2022 (N=399,862)**



Source: INDiGO registration data, provided by BIC, reference date 8/9/2023
*First asylum applications (including Dublin), subsequent asylum application and lateral entry.
**Family reunification applications in the context of asylum family reunification, 8 ECHR family reunification or 8 ECHR family life.

The same applies to appeal cases, where the court must decide ex nunc whether a decision is correct. The court also has long waiting times. If a case is pending at the court for a longer period of time, there is a risk that when the decision goes to court, it is no longer in line with the current legislation. In addition, newly submitted facts and reasons for asylum result in additional work. After all, JZ must adopt a position on this pursuant to Section 83 (a) Aliens Act. New facts can pertain to individual circumstances, but also to a changed/deteriorated situation in the country of origin. If there is a new reason for asylum in an appeal, the choice can be made to stay the court proceedings, and have supplementary interviewing and a supplementary decision by A&B in the context of final dispute settlement. The court can then include this supplementary decision in the appeal proceedings.

The long processing times also result in extra activities. If a case has a long processing time, it is more likely that there will be a notice of default, appeal for failure to give timely decision, an emergency request and/or a request to be prioritised (see box 4.7). Hence, processing a case will require more time and actions. See box 4.7 for the influence of processing times and the Penalty Payments Act (*Wet dwangsommen*) on complexity.

Box 4.7 Penalty Payments Act (*Wet dwangsommen*)

On October 1st 2009, the Penalty Payments (Failure to Give Timely Decisions) Act (*Wet dwangsom en beroep bij niet tijdig beslissen*, hereinafter: Penalty Payments Act) became effective. For the IND, this means that if no decision on an application is reached within the legal decision period and the foreign national puts the IND into default, the IND must make a decision within two weeks. If this is not done, an incremental penalty will automatically become effective during a 42-day period, to an amount of up to € 1,442 (administrative penalty). In addition, the foreign national can lodge an appeal to the administrative court against the late decision on the application. The court can impose a further decision period on the IND and impose a penalty in case of breach (the legal penalty).

The introduction of the Penalty Payments Act has influenced the decision process for cases that exceed the legal decision period because in the event that this Act is invoked, a notice of default must be submitted and assessed for validity; an incurred penalty must be calculated (if applicable); a claim form must be generated and filled in; and a consideration must be included in the decision on the validity of the default notice and (any) incurred penalty. In addition, the person making the decision must carry out additional actions in INDiGO to ensure that the incurred penalty is paid to the foreign national. Especially if the person making this decision does not carry out these actions often, they will have to delve into this each time.

Because many more applications were made than anticipated, the decision periods increased and, accordingly, the Penalty Payments Act was invoked more often. The aim of the implementation of the Interim Act on the Suspension of Periodic Penalty Payments (*Tijdelijke wet opschorting dwangsommen IND*, hereinafter: Temporary Act) on July 11th 2020 was to disable the administrative and legal penalty in asylum cases, and to make it impossible to appeal to the administrative court in case of late decisions on an asylum application. From July 11th 2021, it was decided through the extension of the Temporary Act to make the submission of 'appeals against late decisions' possible again. Although the court could impose a further decision period on the IND again in asylum cases where the legal decision period was exceeded, it could not attach a penalty to this.

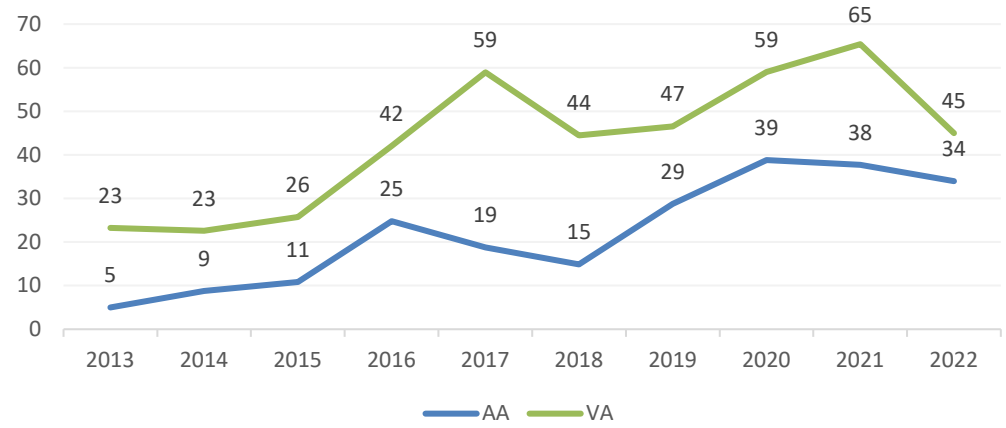
Many appeals were lodged against the disablement of the administrative and legal penalty. The various locations of the District Court of The Hague ruled differently on this. As a result, the IND had to pay a penalty in some cases but not in others, depending on the question which court handled the appeal. Eventually, the ABRvS ruled on November 30th 2022 that disablement of the legal penalty was in breach of Union Law.[80] The Temporary Act has been declared non-binding in this respect. The ABRvS does consider abolition of the administrative penalty compatible with Union Law.

The abolition of the administrative fine in asylum cases benefits the decision process. After all, the decision officer no longer has to conduct the abovementioned actions. In cases where a legal penalty is incurred, it must be calculated and paid. For other migrant groups applying for a residence permit, nothing has changed in the method: there, both administrative and legal penalties can apply.

Finally, it emerged from the interviews that more cases were forwarded to the Extended Asylum Procedure, where processing times are longer and more file transfer takes place. However, registration data do not support this claim: the share of transfers to the Extended Procedure does not show a consistent trend and is roughly as high in the first year as in the last. When we show processing times separately for the General and the Extended Asylum Procedures, the average processing time has increased between 2013 and 2020 (see figure 4.5). Hence, it seems that it is not the share of cases forwarded to the Extended Asylum Procedure as such that is a complicating factor, but instead the processing times across the board.

80 ECLI:NL:RVS:2022:3352

Figure 4.5 Average processing times (in weeks) of asylum cases processed in the General and Extended Asylum Procedures according to the year of the decision, 2013 to 2022 inclusive (N=148,900)



Source: INDiGO registration data, provided by BIC, reference date 8/9/2023
*First asylum applications, subsequent asylum application and lateral entry.
**Family reunification applications in the context of asylum family reunification, 8 ECHR family reunification or 8 ECHR family life.

4.4 Components of the operational practices that reduce complexity

When interviewees list the factors that make the work less complex, it particularly concerns elements of operational practices. These factors can be subdivided into the same themes as the complicating factors: activities of staff, management and procedural aspects.

4.4.1 Activities of staff

Across the research period, staff are of the opinion that the findability of information has deteriorated since 2010 (see chapter 4.1.2). Staff from A&B Schiphol and Zwolle and BIS do, however, mention improvements in the information provision that have been initiated in the past two years. Although there are still problems in the information provision, the **Information & Knowledge pages**[81] in particular have contributed to the findability of information. Informind[82] and Q&As[83] are also experienced as helpful.

DMB and DRM indicate that the **HASA chamber** leads to less complexity when processing subsequent applications. The HASA chamber is a place where subsequent asylum applications (*herhaalde asielaanvragen,* HASAs) are submitted. In the HASA chamber, it is checked whether the file contains the necessary information before the application is processed. Before the introduction of the HASA chamber, applications where information was lacking were often submitted and had to be assessed. Processing such a case could take up a lot of time. Hence, this could be a way for applicants to stretch the processing time (and right to reception). Because of the completeness check of the file before the subsequent application is processed, cases can be processed more quickly. In cases that are unlikely to be granted and a

81 On the Information & Knowledge pages of the IND intranet, all substantive information can be found according to topic that is relevant for carrying out the activities in the primary process of the IND. On the pages, all relevant and current work instructions, country-specific information, policy, legislation, case law analyses, Q&As, WIKIs, etc. are available together according to topic.
82 On InformiIND on the IND intranet, all case-transcending information can be found that is relevant for carrying out the activities in the primary process of the IND. On these pages, all relevant and current work instructions, country-specific information, policy, legislation, and government publications are available.
83 Questions and Answers (Q&As) are documents drawn up by SUA containing all questions that have been asked on a subject from the primary process, and their answers by SUA.

subsequent application is only submitted to postpone departure, quick processing of subsequent applications can be a reason to refrain from submitting them.

From the interviews, several other examples emerge of elements that have made the work less complex, but were mentioned by one party only:

- A&B Den Bosch mentions the national pilot programme in which the support unit took administrative burdens off their hands.
- The family reunification team of A&B Zwolle mentions that the possibility to conduct interviews via Webex simplifies the work, since this formerly had to be done by a staff member of the embassy who was otherwise unfamiliar with the file. Agreements have been made with UNHRC and the International Organisation for Migration (IOM) for this purpose, who facilitate this. These improvements apply to all family reunification teams.
- In the beginning of the research period, the duty to verify[84] was expanded into several types of investigations in response to EU[85] and Dutch[86] case law. This initially resulted in more work for BDoc, but later these activities were organised centrally under the verification section that is part of TOELT. This reduces the complexity of activities for BDoc and because of centralisation of the activities, cases can also be processed more efficiently.
- TOELT indicates that the number of individual official reports they receive has decreased because the number of countries in which an investigation can be conducted is decreasing. It can also be that A&B does not choose to conduct such time-consuming investigations so that they have to carry out less actions.
- A&B Zevenaar indicates that it is less often necessary to request investigations by Foreign Affairs, and hardly any language investigations are being performed (but language indications are). Because of this, they have to carry out less actions.
- The asylum family reunification team in Zwolle additionally mentions that the introduction of DNA testing to demonstrate a family relationship has made the activities for family reunification less complex. This change was also implemented nationally. Previously, the family tie had to be demonstrated by means of interviews, which was difficult to do in practice. DNA testing offers a solution here.

4.4.2 Management

In the field of management, DRM mentions the control tower. The idea of the control tower is that the control tower predicts the work supply and the available nett capacity, distributes the work among locations, and monitors achievement. Through the control tower, staff are assigned cases that align with their level of experience. Whether the control tower really performs as described above has, however, not yet been evaluated.

4.4.3 Procedural aspects

DMB mentions that since 2021, the process has been organised so that the reason for asylum is asked in the reporting interview, which creates the option to better manage further processing (for example more time for LGBTI+ applications). Secondly, they mention the acceleration measures, such as the General Asylum Process Plus, the combining of the interviews, written interviews and the target-

84 The duty to verify is a duty for the Minister for Migration to always verify whether expert reports have been drawn up carefully and the conclusions of the investigation can indeed be supported by the findings. This duty applies to Medical Assessment Section (BMA) and Bureau Documenten (BDoc), among others.
85 The Korošec judgment by the European Court for Human Rights
86 ECLI:NL:RVS:2010:BO0794

group-oriented approach. It must be noted that written interviewing is no longer possible after a motion in the House of Representatives.[87]

The target-group-oriented approach is a simplification of the activities according to five parties (A&B Zwolle and A&B Den Bosch, SUA, DMB and DRM). This approach focuses on efficiently processing applications that are foreseeably likely to be granted. This particularly concerns applications that can be granted based on their category, such as those by Syrians and Yemeni for most of the research period. The share of such applications is large and the assessment relatively easy, making it possible to process many applications in a relatively small amount of time. As described in section 4.2.2, the temporary nature of measures does result in complexity because staff lose track of the various (temporary) methods.

Finally, DRM, DMB and A&B Den Bosch indicate that the changes in the asylum procedure in 2021 have reduced complexity (see chapter 3.4). In the O&A report into the changes in the asylum procedure in 2021, it is also observed that these changes (if implemented optimally) can contribute to a shorter processing time and less forwarding to the Extended Asylum Procedure.[88] This reduces complexity since longer processing times and more file transfers make the work more complex.

87 Parliamentary Paper 2023, 36333 no. 65
88 IND (2022). *Evaluatie wijzigingen Algemene Asielprocedure (Evaluation changes General Asylum Procedure).*

5 External influences

An important theme in the interviews with IND staff is the increased pressure on the IND from politics, courts, lawyers and society as a whole. Some professionals in the field of asylum from outside the IND also experience that the asylum process is being put under much political pressure (DMB, DRM, VWN, judge) or social pressure (DMB, DRM). Therefore, we will address the external influences on the IND in this chapter. This chapter often relates to the external pressure as *experienced by professionals*. Although external pressure is often difficult to quantify, it does most certainly play a role in the conduct of professionals. For example, external pressure can result into IND staff asking additional questions in interviews or including more elements in a decision. Because of this, the experienced pressure from outside affects actual complexity (not just experienced complexity). After all, external influences make that the activities of the IND require more actions, considerations or time.

To still quantify the experiences with external influences, this chapter also presents findings from a media analysis (see boxes 5.1 to 5.3 inclusive). These results support the findings in various respects. First, the absolute numbers demonstrate that, in line with staff perception, there is continuous attention for the IND in the media. In addition, these analyses show which trends have taken place over time. Finally, an explanation of the news items that caused peaks in media attention is shown. This paints a picture of the topics which lead to a lot of media attention for the IND. The methods of the media analysis are described in appendix 1.3.

In this chapter, we first describe the general trends, while also explaining *how* external influences contribute to complexity of the activities of the IND (section 5.1). In the subsequent sections, we describe how the influence of politics (section 5.2), society (section 5.3), the court (section 5.4) and the lawyers (section 5.5) affect the IND. We do so according to the order of most frequently mentioned external influence (politics) to least mentioned influence (lawyers). This involves the answers given by the interviewees themselves. No external influences were mentioned in the interviews that make the activities of the IND less complex.

5.1 General trends

Many of the IND staff members have the feeling that the IND more often receives negative attention on the news and that their work is under scrutiny. According to them, this contributes to the complexity of their work because it makes staff members consider more. Two considerations are mentioned specifically. First, decision officers have the idea that many decisions are reversed by the court. In this respect, the experience deviates from registration data, since we saw in figure 3.2 that rulings are not more often in favour of the applicant. Second, staff are afraid to get media attention for an individual case. In boxes 5.2 and 5.3 it can be seen that there is attention for individual cases in the media. The combination of what are, in their opinion, strict judges and the possibility that a case is covered in the media, results in even less decisiveness. To prevent errors, they therefore draw up a very extensive legal substantiation. This leads to long interviews and opinions, with a lot of redundant information (See section 4.1.1)

The general picture from the media analysis is that there has been a lot of attention for the IND in the past five years. In line with the experience of some IND staff, there is always something related to the IND in the media, since the attention has never disappeared completely in the full five-year period (see box 5.1). The media attention has, moreover, increased, in particular in the past two years because of

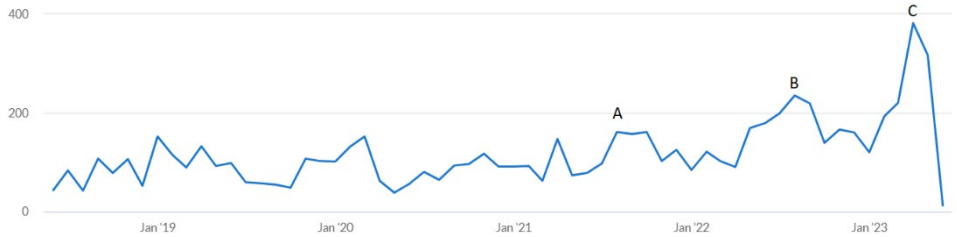
the reception crisis.[89] IND staff indicate that such information puts them under pressure. They can be called to account for news on their employer in their private environment and are highly aware of the long processing times. This results in an additional consideration: they are afraid to make mistakes because of which applicants have to wait even longer. Therefore, they may possibly undertake additional actions to ensure that the case is processed correctly, such as supplementary investigation. This also takes additional time. In general, it applies that in times of great social pressure, staff want to put in extra effort to complete the case. For example, it becomes apparent from the interviews that staff regularly put in overtime to prevent a case from having to be forwarded to the Extended Asylum Procedure.

Although we here consider the media attention as an indicator of a social tendency, it is important to note that the media themselves also play a role in this. They steer the social debate by choices such as which story they provide a platform for and how they frame a story.

Box 5.1 Media attention for the IND in general

In the past five years, the IND has received a lot of attention in the media.[90] The media attention fluctuates highly over time, but across the board a rising trend can be seen (see figure 5.1). In particular, the media attention has been continuously high from mid-2021, with large peaks in August 2022 and April 2023.

Figure 5.1 Media attention for the IND in general, from June 1st 2018 to June 1st 2023 inclusive



Source: Media analysis in Lexis Nexis (Nexis Newsdesk); see appendix 1.3 for an explanation of the search.

During the highest peaks, the most frequently discussed topics in the media are:

A. **Evacuation of Afghans and family reunification with UAMs** (August 2021): In August 2021, two topics were simultaneously current. First, the Netherlands makes efforts to evacuate Afghans who are no longer safe in their country after the power grab by the Taliban because of their involvement in Dutch missions in Afghanistan. To provide reception for the Afghan evacuees, reception locations have to be created quickly. This leads to protests among the local population, for example in Harskamp. Second, there is commotion about the change of the method by the IND limiting the right to family reunification **of** UAMs.
B. **Reception crisis and asylum deal** (August 2022): There continues to be a lot of attention for the application centre in Ter Apel, which is unable to handle the number of **asylum applicants** that report on a daily basis. The King visits Ter Apel and the Dutch Council for Refugees brings preliminary relief proceedings against the National Government and the Central Agency for the Reception of Asylum Seekers (COA) to provide a solution for the reception crisis. In the meanwhile, politicians debate with their followers about the proposed asylum agreement that aims to provide a solution.

89 It must be noted here that it is not the IND but the Central Agency for the Reception of Asylum Seekers (COA) that is responsible for the reception of asylum seekers. However, the IND is often mentioned in relation to the reception crisis because the reception capacity of the COA depends on the capacity of the IND to process applications within the decision periods, just like the capacity of the Aliens Police, Identification and Human Trafficking Department (AVIM) of the police to find enough capacity for identification and registration. This example illustrates the mutual interdependency of the parties in the immigration system: if a bottleneck occurs for one party, the other party is also held responsible for it.

90 In total, the IND was mentioned in 13,839 news items in this period, with a potential reach of 5.4 billion readers. The potential reach is expressed by the average number of visitors per item per month.

C. **More asylum applications than previously expected** (April 2023): The government presents annual statistics from which it becomes apparent that the number of asylum applications that is expected in the coming year is higher than previously assumed. The IND indicates that it is unable to process this number of applications and that further increase of the waiting times cannot be prevented. The Minister for Migration also indicates that it is possible that people will have to stay on the streets in the summer while awaiting their turn to submit an application. It is an ongoing challenge to find sufficient reception accommodation.

From the descriptions of the peak moments, it becomes apparent that the combination of political decision-making (A and B), policy changes (A) and the situation in third countries (A and C) result in pressure on the IND.

Media strategy of the IND
The IND has both a reactive and a proactive media strategy. The guidelines for this strategy are captured in the IND media strategy from 2019. This describes how the IND must (more proactively) handle attention for the IND in the media. The IND does this by monitoring how and when the IND appears in the media (online and offline), so that the service can immediately react to the current debate through its own communications. In addition, themes have been outlined that the IND actively disseminates via various (media) channels. For example, the work of the IND is pictured more clearly.

Since 2022, the IND also has its own spokespersons who handle all questions from the press and requests from the media and prepare and support interviews and external media performances. For this, IND ambassadors are used, as well as the IND managing director and other members of the management team. Since 2022, this has resulted in various articles and interviews in papers and other printed media, and performances on radio and television.

The IND also organises occasional press briefings. In the past two years, such a meeting was organised in response to the **Performance Update**. In these cases, some media performances by the Managing Director of the IND followed from this. For example, the Managing Director of the IND had an interview with the newspaper Trouw in August 2022, in which she indicated that the IND *might* be more likely to give asylum seekers the benefit of the doubt. The reason for this is that it takes increasingly more time for the IND to process applications and **it** is unable to keep up with the number of applications. Another interview with the Managing Director of the IND was published in May 2023. The predicted number of applications in the upcoming months was so high that she indicated that the capacity of the IND fell short to process these applications within the legal periods. To prevent such problems in the future, the Managing Director of the IND advocates stable long-term funding for the IND.

An important reason for the increased pressure is the attention for the **human dimension** (see box B1.2 in appendix 1). This development is visible among all external parties that exercise an influence on the IND. A certain part of politics, society, courts and lawyers exerts pressure on the IND to pursue a more humane and lenient asylum policy and provide a more tailored approach. IND staff are highly aware of this and want to take into account the human dimension. This forms an additional consideration. Some staff struggle with how they should take the human dimension into consideration because of a lack of instructions, which, in turn, negatively affects their decisiveness. From the report *Eindrapportage doorlichting IND* (final report on the assessment of the IND), it also becomes evident that there is a fear within the IND that awareness of the human dimension is incompatible with the efficiency required to achieve a just assessment within the legal period at the same time.[91]

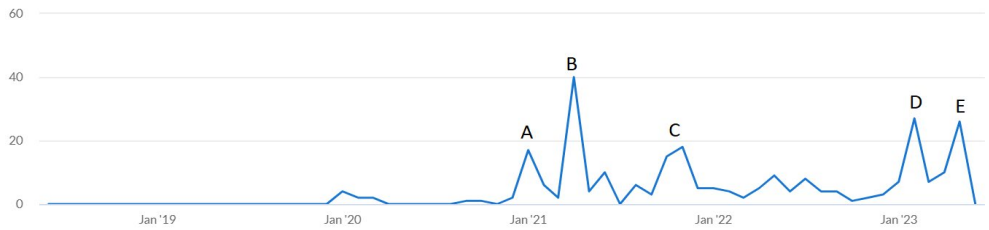
The results of the media analysis do indeed demonstrate that there has been attention for the human dimension at the IND since January 2020 (see box 5.2). This attention has brief peaks in response to individual cases or incidents related to the human dimension at other government agencies. Between the peaks, the attention for the human dimension at the IND is limited.

91 EY (2021). *Eindrapportage Doorlichting IND (final report on the assessment of the IND).*

Box 5.2 Media attention for the human dimension at the IND

The attention for the human dimension has increased at the IND in the past five years (see figure 5.2). In addition to the term human dimension, we also included references to the childcare allowance affair and the report *Ongehoord Onrecht in het Vreemdelingenrecht* (Unheard Injustice in Aliens Law) in the human dimension.[92]

Figure 5.2 Media attention for the human dimension at the IND from June 1st 2018 to June 1st 2023 inclusive



Source: Media analysis in Lexis Nexis (Nexis Newsdesk); see appendix 1.3 for an explanation of the search.

In January 2020, the IND was first associated to the childcare allowance affair. From 2021, we see that there is attention from the media for the human dimension at the IND at peak times, but that the attention decreases in the interim. The highest peaks are caused by the following items:

A. **Family loses rent allowance after birth of daughter** (January 2021): In January 2021, the IND was associated with the childcare allowance affair when a Syrian man lost his allowances from the Tax and Customs Administration because the IND had decided his daughter was residing illegally in the Netherlands. In the light of the childcare benefits affair, this led to commotion.

B. **Villagers protest against removal of family and error Tax and Customs Administration** (April 2021): Villagers and the mayor of Wormer protest against the removal of a Moroccan family after the death of the father of the family. At the same time, it is on the news that the Tax and Customs Administration has again made mistakes because the service had incorrectly informed citizens that they had to repay allowances. The cause of this error was the incorrect processing of data from the IND about the residence status of the persons involved.

C. **Portuguese man has been waiting for a passport for 27 years, legislative proposal data sharing criticised and asylum reception tabled during government formation** (November 2021): Questions are asked in the House of Representatives about a Portuguese man who has been waiting for a passport for 27 years. In addition, the Data Protection Authority warns against the bill on sharing of personal data, which was meant to facilitate data sharing of citizens between various government organisations. At the same time, asylum reception is discussed during the government formation, and the IND is also asked to join the discussion. These three events together result in a peak in the attention for the human dimension at the IND.

D. **Royal Netherlands Marechaussee is not allowed to use ethnic profiling** (February 2023): The Court of Appeal judges that the Royal Netherlands Marechaussee is not allowed to take skin colour into account when selecting persons to check. This judgment is also associated with the IND because here, too, there were recent signs of ethnic profiling. The IND used a risk model to estimate fraud with permits of highly skilled migrants, **in which** the country of birth of board members of the organisations that wished to act as recognised sponsors was included as a risk factor.

E. **Government stuck when paying penalties** (May 2023): The **implementing organisation** for the repair of the childcare allowance affair needs more time to pay compensation to the victims of the childcare allowance affair. This led to outrage among politicians. The IND also has to process millions worth of penalty payments. This demands capacity from these organisations and judges, increasing the backlogs even further.

92 During these five years, the IND was associated with the human dimension in 276 articles, reaching 139 million readers. The potential reach is expressed by the average number of visitors per item per month.

In these cases, the media attention for the consideration of the human dimension by the IND follows particularly from individual **dire** cases (A, B and C), particularly when children are also disadvantaged as a result. In addition, incidents around the human dimension at other government organisations, or government organisations in a general sense, result in media attention (C, D and E).

5.2 Politics

Most interviewees from IND units mention political pressure as an important cause of increased complexity. In almost all cases, this is mentioned by the units within A&B in particular, as well as policy departments of the IND (SUA) and the Ministry (DMB and DRM) and DT&V. From the 2022 IND Performance Update, it also emerges that the IND is called to account in the press and during contact with lawyers that it pursues *too restrictive* migration policies. However, it is politicians who are responsible for these policies. On the other hand, there are also politicians who believe that the IND should rather have a *more restrictive* policy. The IND is often seen as a policy maker and implementing agency at the same time.

Staff indicate that the interference of politics with the asylum policy has increased. Various units indicate that the political pressure on policy development can lead to ill-considered and unfeasible policy political parties give input for policies from various angles, the emphasis is mostly on forming a policy which all parties can agree with, and less attention is paid to the feasibility of the policy. Because practical experience (for example with the enforceability of certain measures) plays a lesser role in that case, it happens that the policy is sensitive to abuse by applicants. Moreover, the policy is sometimes not legally tenable because it is in breach of EU Directives. A frequently mentioned example here is the asylum family reunification measure,[93] where experts stated in advance that the policy was in breach of EU Directives, but the political power still chose to implement this policy. Eventually, the Minister for Migration withdrew the measure shortly before the Council of State ruled in three judgments that the family reunification measure was in breach of Dutch and EU law. The interviewed judge indicates that the IND must more often speak out in public against the implementation of legally untenable policies. DMB and DRM indicate that the IND does indeed speak out when the service disagrees with policy, but that what is done with its recommendations is eventually up to the political level.

Political pressure is particularly great on the themes LGBTIQ+ and conversion or apostacy. For these themes, there are interest organisations which are lobbying intensively for these target groups, according to the interviewees. In turn, these organisations have ties with political parties, which exercise pressure through, for example, Parliamentary questions and committees. This way, many parties give input for policy. Hence, it is a challenge for the persons involved to take into consideration the diverse interests in the policy, because of which feasibility is sometimes not considered in advance. An example of this is the appointment of LGBTIQ+ coordinators who have to be involved in each LGBTIQ+ case. This measure is meant to achieve better assessment of asylum applications for LGBTIQ+ reasons. However, this does result in an additional action for decision officers when they are

93 On Friday 26st of August 2022, the government presented a package of measures to offer relief in the so-called reception crisis. One of these measures was the 'family reunification measure', which refers to a temporary limitation of family reunification by imposing higher requirements on an entry permit for reuniting family members of beneficiaries of an asylum status. An important part of this was the housing requirement, which provides that beneficiaries of an asylum status may only have family members come over in the first 15 months if they have arranged housing. This measure is meant to ease the pressure on reception centres. However, there was a lot of criticism of the legal tenability of this measure. Various lower courts reversed the decisions by the IND based on this requirement. Eventually, the Minister for Migration withdrew the measure shortly before the Council of State ruled in three judgments that the family reunification measure was in breach of Dutch and EU law (see ECLI:NL:RVS:2023:506, ECLI:NL:RVS:2023:507 and ECLI:NL:RVS:2023:508)..

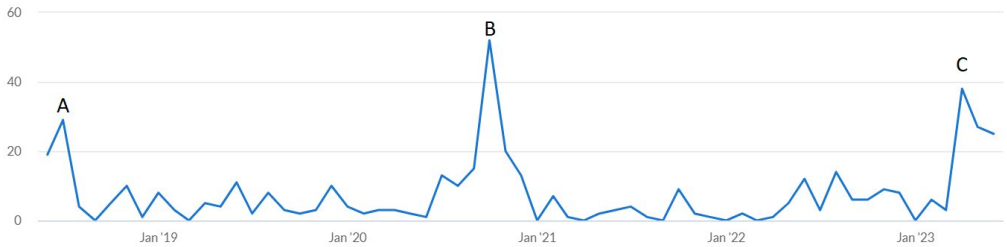
assessing an LGBTIQ+ case because consultation of the coordinator is always required. This also results in discussions with courts about how insight is given into whether an LGBTIQ+ coordinator has been consulted and what the consequences for the decision are if this is not the case. These are more considerations for the legal representatives of the IND. The LGBTIQ+ framework has also turned out to be sensitive to abuse because in the public work instructions it has been laid down exactly which requirements an applicant must meet to have an application based on an LGBTIQ+ reason granted. As a result, decision officers need more substantive knowledge to be able to estimate whether an authentic account is involved, or an account that was made up based on the assessment framework.

Contrary to the experiences of some staff, it does not become evident from the media analysis that the attention for the IND has structurally increased in the past five years in relation to LGBTIQ+ and conversion as reasons for asylum (see box 5.3). However, there are large peaks in the attention, which can be linked back to the implementation of the new assessment framework and the subsequent fraud in individual cases.

Box 5.3 Media attention for the assessment by the IND of LGBTIQ+ and conversion as reasons for asylum

There has been a lot of attention in the media in the past five years for the method in which the IND assesses applications by LGBTIQ+ applicants and converts.[94] The attention for the assessment of LGBTIQ+ and conversion cases fluctuates highly over time and no trend can be discerned in the entire five-year period (see figures 5.3 and 5.4). It can also be noticed that attention for both reasons follows a comparable pattern. In general, there is somewhat more attention for the assessment of LGBTIQ+ applications than there is for the assessment of conversion applications. However, the peak moments largely overlap, which indicates that these two assessments of intrinsic reasons to apply for asylum often occur jointly in the social debate.

Figure 5.3 Media attention for the assessment by the IND of asylum applications by LGBTIQ+ applicants from June 1st 2018 to June 1st 2023 inclusive



Source: Media analysis in Lexis Nexis (Nexis Newsdesk); see appendix 1.3 for an explanation of the search.

The most important peak moments of attention for how the IND handles LGBTIQ+ applications (see figure 5.3) are:

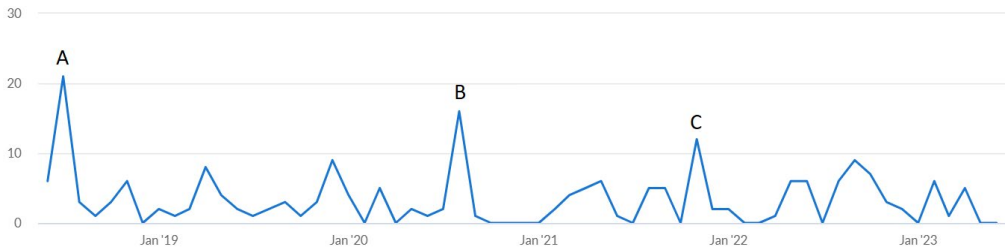
A. **New assessment framework applications by LGBTIQ+ applicants and converts and the effects on individual cases** (July 2018): **The minster for migration** announces that the asylum applications by LGBTIQ+ applicants and converts will be assessed more carefully from now on. The IND will be providing additional training for staff, more open questions will be asked and the emphasis will be less on the discovery and coming-out for homosexuality when assessing applications with homosexuality as a reason **for asylum**. In relation to this announcement, individual LGBTIQ+/ conversion cases are on the news for which this change may or may not offer relief.

94 481 articles on the IND and LGBTIQ+ applicants were published and 212 articles on the IND and converts. These reached 193 million and 46 million readers respectively. The potential reach is expressed by the average number of visitors per item per month.

B. **Large-scale fraud in LGBTIQ+ asylum applications** (October 2020): Hundreds of Ugandan applicants have posed as homosexuals (something that is forbidden in Uganda) and have thusly obtained an asylum status in the Netherlands. They used the public assessment framework for LGBTIQ+ cases for this, in which the requirements to be granted asylum based on LGBTIQ+ motives are explained. The new framework seems to encourage fraud.

C. **Russian asylum seeker on hunger strike and trans woman granted a permit after all** (April 2023): In Drachten, a Russian asylum seeker went on hunger strike. He no longer felt safe in Russia because of his journalism, activism and homosexuality. Therefore, he applied for asylum in the Netherlands, but has still not heard anything from the IND after nine months. At the same time, there is a case of a trans woman from Egypt. The IND decides to withdraw i**ts?** appeal before the hearing, allowing her to remain in the Netherlands.

Figure 5.4 Media attention for the assessment by the IND of asylum applications by converts from June 1st 2018 to June 1st 2023 inclusive



Source: Media analysis in Lexis Nexis (Nexis Newsdesk); see appendix 1.3 for an explanation of the search.

How the IND handles conversion cases has the same first peak in attention as for LGBTIQ+ cases (see A above). The two other peaks (see figure 5.4) are:

B. **Petition against removal of a converted Kurdish family and application converted Iranian rejected** (August 2020): The IND has rejected the application of a Kurdish family from Turkey, **who have** converted from Islam to Christianity. To prevent the **pending removal**, a petition was started. At the same time, the story of an Iranian who converted to Christianity is in the news. His application was also rejected and he fears for his safety if he has to return.

C. **Converted Iranian staying illegally in the Netherlands** (November 2021): An Iranian woman has applied for asylum in the Netherlands because she thinks she is no longer safe in Iran due to her conversion to Christianity. According to her, however, the IND considers her asylum account implausible, because of which her application has been rejected. She has stayed in the Netherlands illegally in the past four years.

In the above news items it can be noticed that individual cases attract a lot of media attention to the IND, as we saw for the attention for the human dimension (see box 5.2). Individual cases play a role in peaks A and C for LGBTIQ applicants and B and C for converts. In addition, there is logically a lot of attention for the new assessment framework (A), where, again, individual cases are described to outline the impact. Subsequently, we see that the outrage is great when this new assessment framework is abused to commit fraud (LGBTIQ+ peak B).

From both the interviews and the media analysis it becomes apparent that individual cases are often the reason for politicians to speak out against the asylum policy. This is in line with the incident-rule reflex, or risk-rule reflex, as described in box 5.4. By particularly giving input on individual cases which are often experienced as harrowing, there is less attention for the evaluation and improvement of the general policy. Many interviewees point out such a reflex.

Box 5.4 Risk-rule reflex

The risk-rule reflex is the governmental tendency to avert risks and incidents immediately by drawing up – insufficiently considered – new rules with negative outcomes and overreaction as a possible consequence.[95] This phenomenon is also mentioned in the Performance Update of 2022 and by TCU, where it is called the 'incident-rule reflex'. Because media and politics primarily focus on individual, often harrowing, cases, the policy is adjusted in response to individual cases. Because the focus is primarily on individual cases, there is less attention for the evaluation and improvement of the general policy.

The political pressure also works in both directions: on the one hand there are parties who want a more humane and lenient policy (in particular for harrowing cases); and on the other hand there are political parties which strive for a more strict and restrictive asylum policy. This puts IND staff in a difficult position: how can you be lenient and strict at the same time? For some interviewed staff members it feels like the IND can never do it right.

5.3 Society

Most interviewed IND units experience pressure from society as a whole. The social pressure becomes particularly evident through pressure from organisations, for example VWN, Nidos, and also the national ombudsman. Social pressure is mentioned by most A&B units, SUA, JZ, DMB, DRM and DT&V. It is less of an issue among organisations cooperating with the IND in the implementation of migration policy.

The description of social pressure has a lot of similarities with that of political pressure. Here, too, the dichotomy is mentioned between citizens asking for a humane and lenient policy on the one hand, and citizens asking for a strict and restrictive policy on the other hand. The desire for a humane policy is often expressed by meddling in individual cases, in particular LGBTIQ+ and conversion cases. The media play an important role in this by drawing the attention of a large audience to these individual cases. Subsequently, various social organisations try to exert an influence on an individual case.

Interviewees from the department of legal affairs (JZ) of the IND indicate that in the international context, the social debate on credibility is exceptional in the Netherlands. In other countries this is less of a topic for debate. According to them there is often no explicit and public assessment method for credibility abroad, resulting in less criticism of the method of assessment from society.

5.4 Court

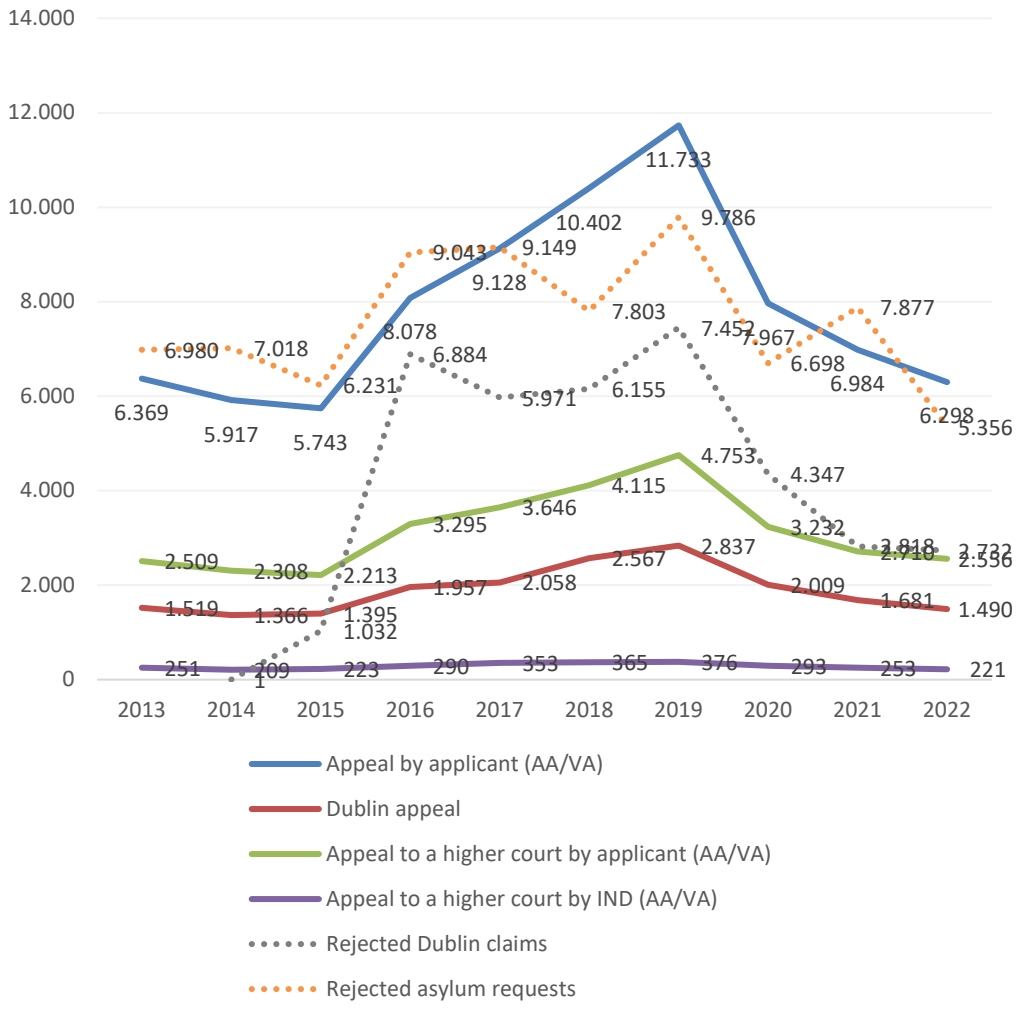
Various IND units (SUA, JZ and some of the A&B units) indicate that judges have become more strict, critical, demanding or active. They are under the impression that the IND is more often put in the wrong in court. However, as indicated it does not become apparent from registration data that courts more often rule against the IND (see figure 3.2). Nonetheless, staff experience that more demanding judges give the IND more work to do, even if it is just because decision officers already take into consideration the high demands on substantiation in court in their assessment. This also requires more actions, considerations and time from BDoc. Where previously their findings were accepted as the truth, judges more often ask for a further explanation or supplementary evidence.

According to the interviewees, the most important causes of a more critical attitude of courts towards the IND are the childcare allowance affair and increased attention for the human dimension (see box B1.2 in appendix 1). The interviewed judge also

95 Partners en Pröpper (2014). *De risicoregelreflex ontleed (The risk-regulation reflex dissected).*

recognises that courts have become more self-critical and partners in the system in response to the childcare allowance affair and the publication of *Ongehoord Onrecht in het vreemdelingenrecht*. However, this judge is also of the opinion that the IND has become more persistent in its decision and often continues legal proceedings in the event of a qualitatively bad decision. However, registration data do not show an increase in the number of appeals lodged by the IND. In figure 5.5, it can be seen that the number of appeals by the IND is relatively low. Between 2019 and 2022, a decrease can be seen in the number of appeals. In this period, however, we also see a strong decrease in the number of appeals lodged by applicants. Hence, there were less judgments in this period against which the IND could appeal. All in all, it does not become apparent from the data that the IND increasingly continues legal proceedings.

Figure 5.5 Number of appeal proceedings in asylum decisions* according to the year of the asylum decision compared to rejections of asylum applications and Dublin claims, 2013 to 2022 inclusive ($N_{appeals}$=131,636; $N_{rejections}$=113,333)



Source: INDiGO registration data, provided by BIC, reference date 8/9/2023
*First asylum applications (including Dublin), subsequent asylum application and asylum applications reopened after appeal.

There are also IND staff members who have the feeling that judges more often put themselves in the position of either policy makers or the IND as implementing organisation. The interviewed judge does not recognise this: this judge indicates

that judges only indicate where policy and national legislation do not align with EU Directives. Moreover, this judge is of the opinion that the IND must be more proactive when adopting EU Directives in its own policy, so that the court has to take less corrective action. In addition, it is mentioned that the Council of State plays a larger role when shaping asylum policies. This also becomes apparent from the increased amount of case law by the ABRvS. This is probably a result of the direction chosen by the Council of State after the childcare allowance affair to assess more extensively whether government bodies sufficiently consider the interests of citizens (the human dimension).[96]

5.5 Lawyers

In various interviews it was indicated that the lawyers have become more astute, strict and active. This experience is shared by legal departments of the IND (JZ) and DMB (JAZ), SUA, two A&B units, BIS and DT&V. These parties appreciate the quality of the word of asylum lawyers. According to them, they have a lot of knowledge and prepare cases well. In doing so, they also avail themselves well of public work instructions. In addition, they sometimes receive support from VWN. With an own research unit, VWN can compile extensive country-specific information for lawyers. The parties involved see this as something positive in the first place: applicants are informed, counselled and represented well.

However, lawyers can complicate the operational practices when they disrupt IND processes by exercising pressure to take decisions faster or by submitting new documents in an appeal which then need to be reacted to in a written defence. Because of this, the IND staff involved must consider time after time to which extent they must respond to requests for acceleration and when this becomes unreasonable towards other applicants. It can also require extra actions and time from them if, for example, they must address components in a written defence. In addition, according to SUA, activist lawyers can disrupt policy formation because they seem to disagree with the IND by default, even if the IND puts forward solid arguments.

SUA and JZ mention that the active lawyers in the Netherlands also have to do with the significant role that is assigned to lawyers in the Dutch asylum procedure. Where in most other countries lawyers are only given a role in the appeal phase (as is obligatory in the EU Directives), in the Netherlands there is also funded legal counsel during the asylum procedure. Because of this, lawyers exercise more direct influence on the asylum procedure and on the considerations of decision officers during the asylum procedure. This can be an additional consideration for decision officers during the asylum procedure and requires more alignment.

96 Het Advocatenblad (28 February 2022). *Raad van State meet nu ook de menselijke maat (Council of State now also measures human dimension).*

6 Applicants

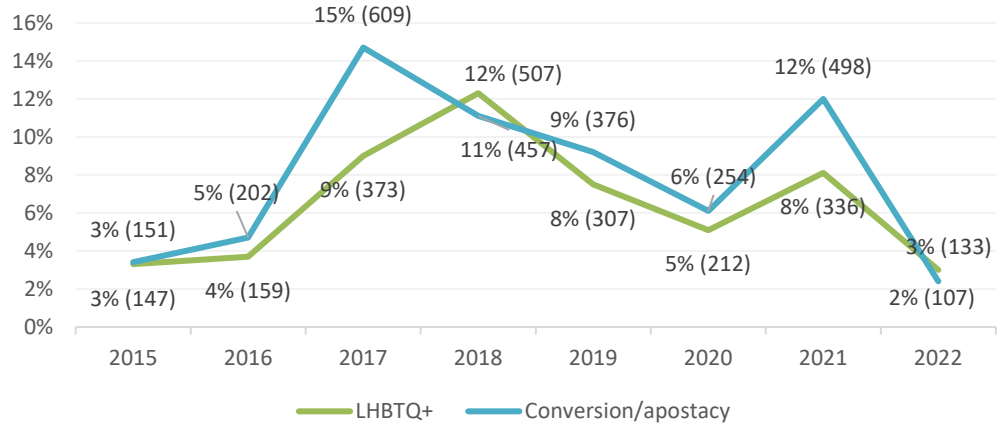
In some of the interviews characteristics and actions of applicants emerge as causes of complexity. We will first address the most frequently mentioned characteristics of applicants that complicate reaching a decision, namely reasons for asylum (section 6.1) and medical issues (section 6.2). Next, we will address the actions of applicants during the asylum procedure and any appeal phase (section 6.3) that contribute to complexity. Finally, one feature of applicants will be discussed which some interviewees claim has made the work of the IND less complex, namely the nationality of applicants (section 6.4). The findings from this chapter are based on experiences of a part of the IND staff and staff of DMB and DRM. Other professionals in the asylum domain did not mention any features or actions of applicants that cause complexity in response to the open question about the causes of complexity. If registration data are available, the findings are compared with these numbers.

In most cases, characteristics of applicants influence complexity in interaction with complex legislation policy or practical implementation. For example, when we look at the presumed increase of LGBTIQ+ as a reason for asylum, it particularly contributes to complexity because a more complex assessment framework applies to asylum request with this reason for asylum. To gain an understanding of the underlying mechanisms of complexity, we mention in each section if interaction with another cause occurs.

6.1 Reasons to apply for asylum

By far, the most frequently mentioned characteristic of applicants that contributes to complexity according to interviewees is the more frequent occurrence of LGBTIQ+, conversion or apostacy, and political opinion as reasons for asylum. This was mentioned by part of the A&B units, JZ, HIK and BIS. Interviewees often mention the reasons LGBTIQ+ and conversion or apostacy, and to a lesser extent political opinion. Because a complex assessment framework applies to these reasons for asylum, an increase in these reasons for asylum means that there will also be an increase in the time, actions, knowledge and considerations that are required for making a decision.

Figure 6.1 Percentage (absolute number) off finished cases in the sample where LGBTIQ+ and/or conversion/apostacy* is mentioned as reason for asylum (N=40,000, 5,000 per year)



Source: Results of text mining analysis of a sample, obtained by DEC; see appendix 1.2 for an explanation of the methods.
*Measured using text mining of the report of the detailed interview, so this concerns whether these reasons were mentioned in the detailed interview.

To gain insight into the occurrence of these reasons for asylum, a sample of interview reports was analysed using text mining (see figure 6.1). This method was chosen because the reasons for asylum are not registered systematically by the IND. The IND does not register this information structurally to guarantee the applicant's privacy. The results of this analysis are indicative.[97]

Across the board, no consistent upward trend, as experienced by the interviewees, can be seen from 2015. Rather, the percentage of cases where these reasons were given fluctuates highly between 2015 and 2022. The trend shows lows and highs in 2015, 2020 and 2022, when the percentage of LGBTIQ+ cases was 3-6% and the percentage of conversion cases 2-5%. By contrast, there were peaks in 2017/2018 and 2021, when LGBTIQ+ cases comprised 8-12% of all cases and conversion cases 12-15%. Considering the difference in time investment for these types of cases compared to cases with a more general reason for asylum, these fluctuations make it difficult for the IND to make a good estimate of the amount of time that must be planned per case.

A possible explanation for the large variations is migration flows from certain countries. There are large differences between nationalities in the extent to which they put forward LGBTIQ+ or conversion/apostacy as a reason for asylum. For Syrians (1%), Yemenis (1%), Turks (1%) and Eritreans (2%), o not often put forward LGTBI+ as a reason for asylum. Iraqis (10%), Iranians (10%), and Afghans to a lesser extent (6%), put forward this reason more often.

In the case of conversion, we see a similar dichotomy, but with even greater differences. On the one hand, there are nationalities where conversion/apostacy is not a frequently occurring reason for asylum: Turks (0%), Syrians (1%), Yemenis (2%) and Eritreans (2%). On the other hand, there are nationalities which put forward this reason in a considerable part of the applications: Iran (63%), Afghanistan (22%) and Iraq (15%). If, applying this knowledge, we look at the top-

97 This method has turned out to be reliable within this sample (see table B2.5 in appendix 2.3). It must be noted that the sample has turned out not to be fully representative for the nationalities in the population. Because of this the results of the years where nationalities strongly deviate cannot be generalised across the population (see an explanation of representativeness in B2.3.1.3 and the nationalities of the whole group in table B3.1 in appendix 3).

5 nationalities in the sample per year (see table B2.4 in appendix 2.3), it can be noticed that in years when there were relatively few LGBTIQ+/conversion cases, the percentage of the nationalities where these reasons do not often occur is relatively high.

However, the role of nationality is not stable. We also see fluctuations in the percentage of LGBTIQ+/conversion cases within nationalities. For example for Iranians, the group with the most conversion cases by far, the percentage of these cases varies from 44% in 2016 to 70% in 2018.

6.2 Medical complaints

Interviewees from SUA, JZ, A&B Schiphol and DT&V suspect that an increasing number of medical complaints is put forward by applicants. This can concern both psychological and physical complaints. Possible causes mentioned by JZ are the longer travel routes where traumas are sustained, or the ability to better prove medical complaints than before.

An increase of medical complaints complicates the work of the IND in two ways. First, procedural safeguards apply to certain medical conditions. For example, it may be the case that an interview can only be scheduled after an applicant has visited a doctor, that an interview must be spread across several days, that extra time must be taken for breaks, or that a specific staff member must be scheduled for an interview. This can also play a role in balancing the statements. For example, it can be that someone's memory is poor or that someone is not good at recollecting data, so that certain facts cannot be held against them unless it is substantiated properly why this is still done. Second, the ex-officio assessment against Section 64 Aliens Act was introduced during the research period (see section 3.3), where it must be assessed by default whether there are medical reasons why someone is not able to leave the country. For these two reasons, an increase in medical complaints requires more actions, considerations, knowledge and time. The IND can use MediFirst or FMMU for an investigation into any safeguards under which an asylum seeker can be interviewed. Where the examinations of scars or psychological complaints is concerned, of which the asylum seeker claims that they are the result of violence experienced in their country of origin, the IND must first deploy expertise from NFI or NIFP. This requires more cooperation as well.

6.3 Actions by applicants

Employees from various A&B units, JZ, HIK and BDoc indicate that applicants are increasingly well prepared for the asylum procedure. This is in the first place because the IND instructions have become public. For example, the work instruction on the assessment of LGBTIQ+ cases are public, allowing applicants and their lawyers to look up how the IND decides on these cases. Interviewees notice that since then it has happened that literal texts from this work instruction are told in the interviews. Second, SUA and JZ suspect that social media and online communication between applicants contribute to a better preparation. Through these platforms, applicants can inform and advise one another about processes at the IND. Finally, according to HIK the longer waiting times allow applicants to take more time for their preparation, , and applicants are also more likely to influence one another in reception centres. On the one hand, it is positive if applicants are able to prepare well for the procedure, but on the other hand this can be at the expense of the authenticity of their asylum account. This contributes to substantive complexity for the IND because it results in an additional consideration: does this account align well with the assessment framework because this ground for protection applies, or because someone learnt instructions from the internet by heart? This extra

consideration makes it difficult to form an opinion about the credibility of the asylum account.

Related to this, some staff (A&B family reunification, HIK, BDoc) *suspect* that there is more improper use of IND procedures than before. According to them, public work instructions, social media and long waiting times make it easier for foreign nationals who are not entitled to protection to misguide the IND to still be eligible for a permit. We also saw in the previous chapter that political and social pressures sometimes lead to the introduction of policies that are more sensitive to abuse. An example was mentioned in the media analysis where these causes coincide, namely the large-scale fraud where a network of migrant smugglers provided training for applicants to convince the IND that they are LGBTIQ+ (see box 5.3 and the Letter to the House of Representatives about this[98]). Some examples of improper use/abuse of procedures that were mentioned in the interviews are stating to be a minor in one country and an adult in the other, depending on what suits best under the applicable policy framework; only obtaining or making available documents if this is beneficial; divorcing and then remarrying to have several partners come over with a family reunification permit; joining a political demonstration in the Netherlands after rejection of an application based on political opinion and sharing this via social media to create a new circumstance that must be included in the processing of a subsequent application.

It is difficult to support these suspicions with registration data. After all, a lot changed during the research period in the way in which enforcement was organised within the IND, making data across such a long period of time difficult to compare. For example, if we were to look at signs of fraud and enforcement, a rise in the number of signs could just as well be an indication of an improved detection structure, as the actual more frequent occurrence of fraud. Therefore, it is unclear whether the interviewees' suspicions of an increase of improper use and abuse match reality.

An increase of (suspicion of) improper use and abuse of procedures requires more actions and time from several units. A&B units must always make the consideration whether there is fraud or abuse. If these phenomena occur more often or are detected more often, this requires more time in the sense of reporting the signs to HIK. In addition, this takes more time for HIK because they gather the signs and start any subsequent proceedings in response. Any subsequent procedures must then in turn be assessed by the A&B units for whether this is, for example, a reason for not admitting the foreign national or withdrawing their already issued permit. This also requires more considerations from BDoc when assessing documents. Because new ways to commit fraud are continuously being found, this also requires continuous development of expertise for enforcement by these units.

6.4 Nationalities of applicants

Five interviewed parties (A&B Zevenaar, A&B Ter Apel, SUA, DMB and DRM) experience that there are proportionally more relatively simple applications than before, which has made the work of the IND less complex according to them. They experience that an increase in the share of applications by asylum seekers whose nationality is likely to be granted asylum based on the country policy. This concerns asylum applications by persons who are from a country where the situation is so unsafe that most applications can be granted relatively easily.[99] For these applications, there is an assessment framework that requires a relatively limited

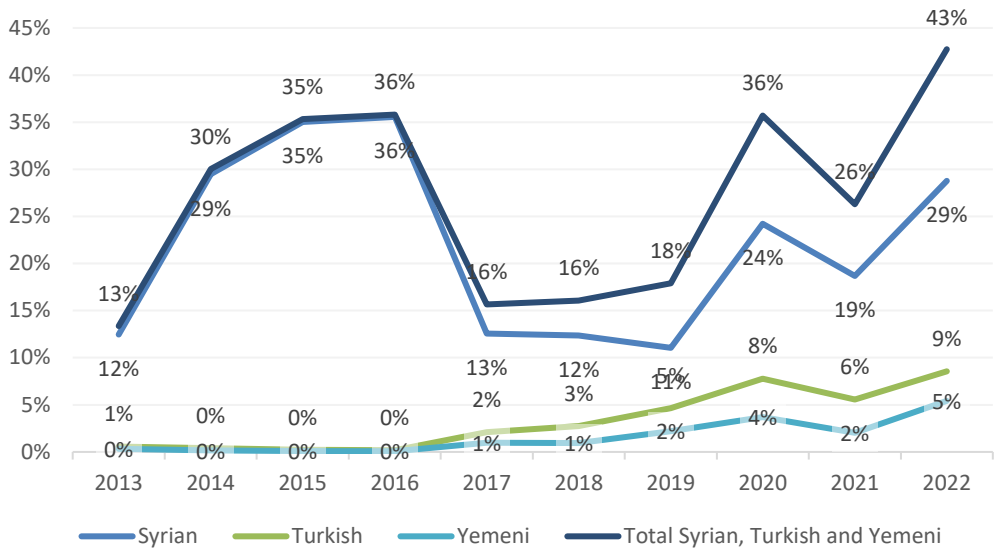
98 Parliamentary Paper 2021, 19637 no. 2759

99 Still, it is always assessed whether an applicant did not contribute to the unsafe situation in the country of origin, for example by committing war crimes.

time. When many of such applications are submitted at the same time, they can also be handled on a project basis. This happens, for example, in the target-group-oriented approach, where Syrian, Turkish and Yemeni applications can be processed relatively easily. The creation of a relatively easy assessment framework has made the procedure for processing applications that are likely to be granted less complex. If the number of applications that are likely to be granted increases, it therefore becomes easier for the IND to process the applications in their totality. JZ mentions in addition that the nationalities that occur among applicants also influence the extent to which the applicants have documents. This, in turn, highly influences the level of difficulty of gathering evidence for an asylum decision. For example, Syrians and Turks are in general more likely to have more documents than Eritreans.

To gain more insight into the nationalities of applicants, registration data have also been analysed. If we specifically look at the three nationalities that are likely to be granted asylum and for whom the target-group-oriented approach is used (see figure 6.2), it can be seen that the percentage of Yemeni and Turkish applicants has indeed increased over time (except a decline in 2021, which is presumably related to the corona pandemic). However, the Syrian group forms a much larger part of the total population. This group shows a strong increase until 2013, after which the share of this group strongly decreases between 2016 and 2017. Between 2017 and 2022, the share of Syrians increases again. Because the group of Syrian applicants is so large, it strongly affects the percentage of nationalities that are likely to be granted asylum (see the trend of the overall number of applications in figure B3.3 in appendix 3, which is similar to the trend of the Syrian nationality). Between 2017 and 2022, the findings from registration data are in line with the experiences as described in the interviews: in this period the portion of applications that are likely to be granted increases. It is expected that these more recent years have had a greater influence on interviewees because they can still remember them best. Across the entire period, however, we see that the portion of applications that are likely to be granted fluctuates.

Figure 6.2 Percentage of asylum applications* where the applicant had Syrian, Yemeni or Turkish nationality according to the year of the asylum decision, 2013 to 2022 inclusive (N=242,130)



Source: Registration data INDiGO, provided by BIC, reference date 08/09/2023
*First asylum applications, subsequent asylum applications and lateral entry.

The family reunification applications of these groups also show a similar trend, only reunification with Yemenis has decreased since 2020 (see figure B3.1 in appendix 3). Hence, registration data paint the picture that the share of the three groups of the target-group-oriented approach fluctuates highly between 2013 and 2022. Nonetheless, for family reunification applications, an increase can be seen between 2018 and 2022 in line with the experiences from the interviews.

An overview of the top-10 nationalities per year of the asylum decision can be found in figure
B3.1 in appendix 3.

7 Conclusions and available solutions

This report describes a study into experienced complexity when taking asylum decisions. This research looks back on the period of 2010 to 2022 inclusive using interviews, data analysis, case law, internal documentation and literature. The purpose of the study is to discover whether there has been a (positive/negative) change in the extent of experienced complexity or not. If there is a change, the study aims to discover what the causes of an increase or decrease in complexity are. Finally, the study aims to propose available solutions to reduce complexity.

This chapter contains the most important conclusions of the report (section 7.1). These are divided into general conclusions (section 7.1.1) and conclusions pertaining to one of the themes from the interviews: legislation, policy and case law (section 7.1.2, operational practices (section 7.1.3), external influences (section 7.1.4) and applicants (section 7.1.5). Based on these conclusions, available solutions are proposed that focus on reducing, or better handling, complexity (section 7.2). First available solutions are addressed that the IND can implement independently (section 7.2.1). Next, available solutions for other parties are mentioned (in cooperation with the IND) (section 7.2.2). At the end of this section, an overview table is provided of all available solutions. The chapter is concluded with a short final word (section 7.3).

7.1 Conclusions

7.1.1 General conclusions

1. It has become more complex in the last decade for IND staff to make an asylum decision.

Almost all interviewed IND staff experience that their activities have become more complex between 2010 and 2022 (15 of the 16 interviewed units). This is also reflected in interviews with other professionals from the field of asylum. A judge, a lawyer, the legal department of DMB and DT&V are of the opinion that it has become more complex to make an asylum decision. The causes of an increase in complexity that are mentioned in the interviews can be divided into four themes.

- From the interviews, the experience emerges that **legislation** has become increasingly complex. This also becomes apparent from case studies, in which the interaction between Dutch and EU legislative changes, policy changes, case law and internal instructions at the IND have been shown. The many changes at different levels result in increasingly complex practical implementation at the IND.
- Elements of **the way the work is organised** at the IND are also noted as causes of complexity. This experience aligns with findings from document analysis of process descriptions and work instructions of the IND, among other things. From this, it becomes apparent that more steps must be taken and increasingly elaborate instructions must be followed to reach an asylum decision. In addition, it becomes evident from text analysis that interview reports and notes by decision officer have become longer.
- **External influence** exerted by politics, society, judges and lawyers on the IND also contributes to complexity in the experience of interviewees. Media analysis illustrates this experience through the picture of an increasing number of media items on the IND. From examples of topics that receive a lot of media attention, it becomes evident that they mostly pertain to individual harrowing cases, changes in migration policy, or the situation in third countries.

- Finally, characteristics and behaviour of **applicants** emerge from the interviews as an experienced cause of complexity. Interviewees experience an increase in the share of applicants for whom personal reasons for asylum (for example LGBTIQ+, conversion or apostacy) play a role. From the analysis of textual data, a different picture emerges. From this, it becomes evident that there has been a highly fluctuating share of applications for personal reasons for asylum over a longer period. However, it does become clear from the case studies on the themes of LGBTIQ+, conversion or apostacy, and political beliefs that the assessment framework for asylum applications on these grounds has become more complex. In addition, interviewees have the impression that medical problems among applicants occur more often than before. Finally, interviewees have the idea that applicants are better prepared and have more knowledge of the facts than before, when they start the asylum procedure.

Outside the IND the experience with complexity is more diverse than within the IND. We have just seen that some external professionals think that complexity has increased, but there are also parties who only consider complexity to be increased in some respects, or *not at all* across the board. These differences in perception can be explained from the different outlook that the parties have on the asylum procedure. Interviewees of the Migration Policy Department (*Directie Migratiebeleid*, DMB) and Migration Coordination Department (*Directie Regie Migratieketen*, DRM) indicate from their policy perspective that the assessment of asylum applications has become more complex for *specific components*, whereas other components have become simpler instead. The Dutch Council for Refugees (*VluchtelingenWerk*, VWN) and Nidos do not think that reaching an asylum decision has become more complex, but do see that it is experienced as such by the IND. They suspect this has to do with the many exceptions for different target groups (VWN) or unclarity in work instructions (Nidos).

The experiences of increased complexity can also be seen in the data analysis (for example the increased number of pages in interview reports, which illustrates that the interviews have become more extensive). In some respects in this study, the experiences and the data do not align (for example for the percentage of well-founded appeals). It is important to mention that the experience of professionals is an important finding as such, which must be addressed within the organisation, even if the data paint a different picture in some respects.

Some causes were also mentioned that have made making asylum decisions *less* complex in some respects. This particularly concerns aspects of legislation (for example the introduction of track 2 and combining interviews) and the operational practices (for example the introduction of the Information & Knowledge (IK) pages). However, if we balance these causes against the causes that have made the work more complex, the complicating factors weigh heavier.

2. Complexity is inevitable in some respects and can also lead to more careful asylum decisions

In some respects, complexity is inevitable because the world in which we live has simply become more complex and our influence on this is minimal. For example, EU legislation is less straightforward to adopt than Dutch legislation and (EU) case law has increased during the research period.
In addition, digitisation and the arrival of social media have made a lot more information available, which can be considered when making an asylum decision. The IND has little to no control over such trends. Hence, for these aspects, there is little to gain from focussing on the question how complexity can be reduced. In

these cases we consider (increasing) complexity as a given fact and we must focus on the question how the IND can best deal with this.

Moreover, complexity is not always negative: it can lead to more careful asylum decisions. For example, it was mentioned in the interviews that the assessment of the credibility of the asylum account was previously more straightforward, but that the old assessment method (positive persuasion) was simplified. The new assessment method (comprehensive credibility assessment) is substantively more complex and takes more time, but it does lead to a better balanced and supported decision with better awareness of the sometimes difficult burden of proof on the applicant. As such, an increase in complexity can be positive in some cases because it contributes to a better asylum decision that better reflects the individual case. The increase of available information has also made the work of the IND more complex, but can contribute to better supported decisions. Where complexity has a positive outcome, it is the question whether it is desirable to reduce complexity. It is more relevant for this to pay attention to the question how IND staff can better handle the existing complexity.

3. The term complexity is broad; within this study, substantive complexity and required time are the most relevant

From the literature study and contact with other government organisations and researchers it becomes apparent that the term *complexity* can be interpreted in different ways. First, in terms of contents it can cover different subjects. From a research perspective, complexity primarily concerns the complex organisation structure ('system') and its characteristics. From a policy perspective, complexity often refers to something that is either substantively complex or takes a lot of time. Second, complexity can be considered from two different perspectives. In parliamentary committees, complexity is often viewed from the citizen's perspective (see for example the reports Klem tussen balie en beleid (Stuck between desk and policy)[100] of Ongekend Onrecht (Unheard Injustice)[101]). Government organisations and policy makers additionally focus on the complexity for those responsible for implementing the policy, whereby they primarily focus on the feasibility of the policy. Because of this diversity of interpretations of complexity, it is helpful for available solutions to reduce complexity to specifically define to which elements of complexity they pertain.

In this investigation, a broad definition of complexity is used, which includes time, knowledge, actions, considerations and cooperation. However, during the study it became clear that at its core, this can be reduced to two elements: 1) **Substantive complexity**, by which we refer to how complicated it is to make an asylum decision; (2) The **time** necessary to reach an asylum decision. Substantive complexity predominantly includes knowledge, but also considerations staff have to make. Time also includes the number of actions and the required cooperation. After all, it does not necessarily become apparent for these latter two elements that the actions are complex as such or that, for example, the cooperation is not smooth; instead, it primarily means that it takes more time to carry out these steps. To apply focus, we will particularly address these two elements in the conclusions.

After these general conclusions, the following sections will address conclusions that particularly pertain to the themes that emerged from the interviews as the most important causes of complexity: legislation and policy, the operational practices, external influences and the applicant. For the overview, these themes are discussed

100 TCU (2021). *Klem tussen balie en beleid (Stuck between desk and policy).*
101 Parliamentary Committee of Inquiry into Childcare Allowance (2020). *Eindverslag Ongekend Onrecht (Final report Unheard Injustice).*

separately, but in reality the themes are closely intertwined and one theme cannot be seen separately from the others.

7.1.2 Conclusions about legislation, policy and case law

4. Dublin transfers and return have become more complex whereas the purpose of the legislation is achieved increasingly less

From the interviews, two elements emerge that are unfeasible for part of the asylum cases: Dublin transfers and return. These components of the asylum system have been enshrined in a rather general European Directive/Regulation, which has increasingly been made concrete by case law and preliminary rulings. Because of this, small amendments continuously need to be implemented, which complicates practical implementation.

In the first place, it became impossible for an increasing number of cases during the research period to carry out the Dublin Regulation. According to this Regulation the first country where someone enters the Dublin area (in absence of family members) is responsible for processing the asylum application. However, increasingly often it is impossible for the IND to transfer persons coming under the Dublin Regulation to other EU Member States within the period prescribed for this.[102] One of the causes of this is the situation in some other Member States and the subsequent case law, from which it follows that applicants may not be transferred to certain countries because reception has not been organised properly there and, hence, their right to reception cannot sufficiently be complied with. It also happens that countries insufficiently cooperate with Dublin transfers to be able to effect them in time. For part of the cases, the IND itself does not meet the transfer period because some of the asylum seekers abscond and leave for an unknown destination. Or asylum seekers start a regular procedure pending the Dublin procedure, causing the ultimate transfer date to lapse.

A second element for which the asylum policy has become unfeasible for some cases is return. Case law prescribes that if an asylum application is rejected, a return decision must also be drawn up, in which it says to which country of origin the applicant will be returned. For a small share of the applications, the country of origin of the applicants is unknown, or the country of origin does not cooperate with return. In this situation, the applicant is not desired in the Netherlands, but can/will not return to the country of origin either. The consequence of this is that the applicant will stay in the Netherlands without a residence status or travels on to other countries.

These are two examples of policy that can be applied increasingly less effectively because of various circumstances, particularly in other countries. The increased complexity makes making an asylum decision more difficult. Staff of the IND and the Repatriation and Departure Service (DT&V) invest a lot of time in effecting the Dublin Regulation and return decisions, although according to them this does not achieve what was intended by the regulations.

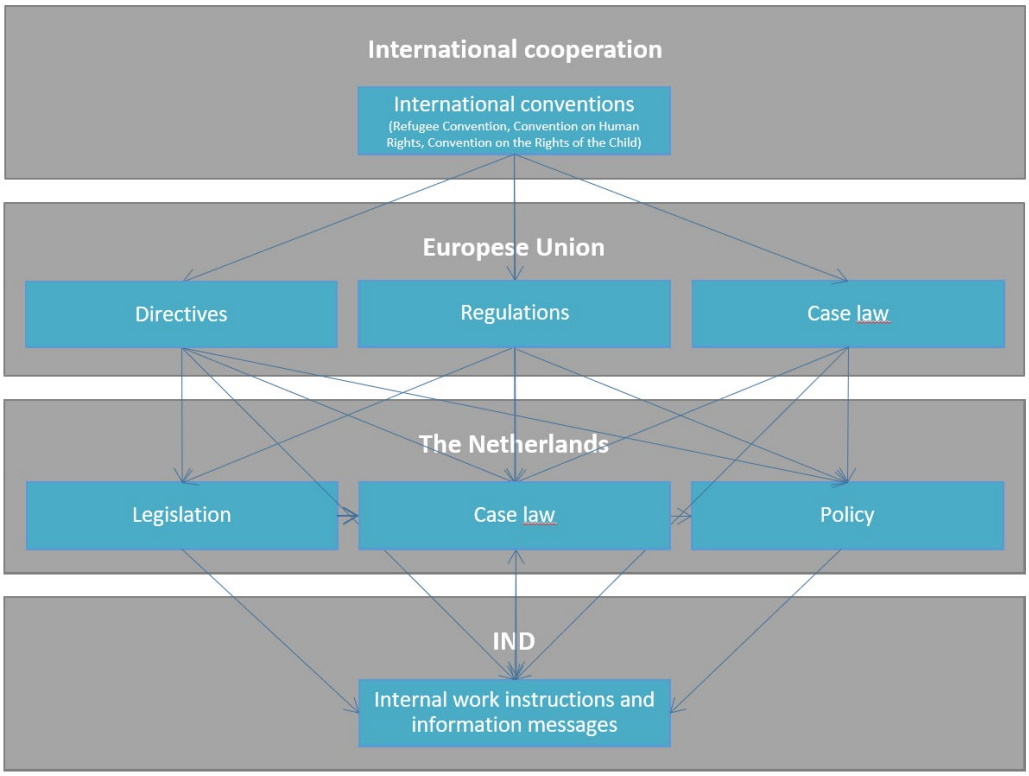
5. The system that forms the legal and policy framework for the IND is complex

The frameworks that determine how the IND makes an asylum decision are formed by a complex web of legislation, policy and case law on different levels (international, EU, the Netherlands, IND). Figure 2 shows a schematic overview of the relevant elements that influence the development of laws, regulations and policy

102 NOS (2022). *Gros verzoeken om asielzoekers over te dragen aan ander EU-land leidt tot niets (Majority of requests to transfer asylum seekers to another EU country lead to nothing).*

at different levels. The complexity of this is the way in which an amendment on one of the levels also influences the other levels because of their interrelation. After all, changes are not always implemented for all lower levels until the lowest level has been reached. In practice, processing changes takes place via various 'feedback loops' on and between the different levels. This way, levels can be skipped from top to bottom and lower levels can also influence higher levels. Upward influencing takes place if, for example, the IND uses a work instruction which the court then orders it to observe. This results in case law that gives shape to national legislation, which can ultimately lead to policy changes.

Figure 2. Schematic presentation of the interaction between legal and policy frameworks on different levels



Case law in particular is labelled as a cause of complexity in the interviews. EU Directives are often formulated rather generally; therefore, their interpretation is determined by EU and national case law to a great extent. Moreover, the experience is that EU judgments are often not clear, which can, in turn, lead to additional case law. The amount of case law has increased considerably according to the interviewees. Case law *immediately* applies to the IND, even if it has not (yet) been implemented in legislation and policy. Therefore, the IND itself must often implement case law in coordination with DMB. In addition, it is often not clear in court judgments whether they only apply to a specific type of case or are intended as a more general method for a broader group. Consequently, it sometimes happens that the IND first points out various exceptions in various instructions in response to various court judgments, followed by a more general policy or instruction based on the combination of these judgments. The fact that the IND first interprets case law narrowly is seen as a cause of complexity by various parties (A&B, VWN, judge, DT&V). The policy and legal sections of the IND (SUA, JZ and DMB), however, indicate that it cannot be said after the first court judgment to which extent a more generally applicable change is concerned. This only becomes clear to them as case law gradually accumulates.

6. Asylum cases where a personal reason for asylum plays a role are more complex than other cases

From the interviews, it consistently emerges that making an asylum decision is particularly complex when a case is concerned where personal reasons for asylum play a role. By personal reasons for asylum we mean the reasons LGBTIQ+, conversion or apostacy, or political opinion. These reasons are only put forward in some cases (see figure 6.1). For more general reasons for asylum, such as war, the situation in the country of origin is mapped out. This can be done rather factually (based on various reliable sources). Personal reasons, by contrast, concern the assessment of the applicant's personal perception. For example, IND staff must assess to which extent someone who indicates to be homosexual really is homosexual. An extensive assessment framework has been drawn up for this, where the staff member can ask various questions to assess whether it is credible that someone really is homosexual (the comprehensive credibility assessment). These elements must all be assessed comprehensively, so that all elements from the assessment framework are assessed and considered in conjunction: one implausible element is insufficient for rejection.

Asking the information from this extensive assessment framework and considering all separate elements is complex for IND staff. Moreover, various staff of the IND indicate that it is simply impossible to really prove something as personal as someone's sexual orientation. This assessment framework, in which the assessment criteria are described in detail, is public. This makes it possible for applicants to invent a story that meets all elements of the framework. According to the interviewees, the assessment framework does not achieve what it is intended for in this sense: it cannot distinguish the authentic asylum accounts from the fictious accounts. According to IND staff, this type of applications is rarely rejected. There are no registration data available to see whether cases with these reasons are granted or rejected more often because the IND does not structurally register the asylum reasons of applicants to guarantee their privacy.

Finally, personal reasons for asylum result in a complex assessment when they are brought forward in subsequent asylum applications because relevant developments after arrival in the Netherlands ('surplace') must the also be taken into consideration, such as conversion, development of religion or participation in political demonstrations.

7.1.3 Conclusions on the operational practices

7. The average experience level of decision officers has become lower

The average experience level of decision officers has become lower since 2010. There are two underlying reasons for this. First, a many new staff have been hired in a short period. Second, staff are not given enough scope to find their way independently in regulations and to reach decisions independently.
For less experienced staff it is more difficult to assess what is important to question in an interview or to include in an intended decision and what not to consider. Because of this, they are more inclined to ask more and to include more elements in their intended decision than may be necessary. Various IND staff mention this lack of decisiveness. The result of this is that irrelevant components are recorded in reports and intended decisions and that the core of the account and decisions is conveyed less clearly. This reduces the quality of the asylum decision, while conducting interviews and making decisions takes more time. Both experienced and new staff recognise that this problem occurs among part of the staff. Earlier, the Inspectorate for Justice and Security detected that because of the large number of new staff combined with complex asylum applications, processing asylum applications has come under pressure, and that risks for the quality of processing

asylum applications are associated with this. In the same report, it was mentioned that decision officers are under pressure to work quickly and efficiently and have to multitask a lot during the interview.[103]

8. Decision officers must take more steps to reach an asylum decision

From the interviews and process descriptions it becomes apparent that decision officers must take more steps to reach an asylum decision. Consequently, taking an asylum decision takes more time. First, the number of administrative tasks has increased, while administrative support has decreased. In addition, case law has led to more administrative steps, for example because in case of rejection of an asylum application a specific country of return must now be specified in the return decision. Second, increasingly more is expected from decision officers with respect to detection. Various expertise units expect attention for the detection of war crimes (as prescribed under Article 1F of the Refugee Convention), risks for national security, human trafficking, fraud and abuse. Third, the IND carries out quality measurements, in which staff can, in their opinion, also be controlled for steps that are not relevant (for the decision). Finally, if the asylum application does not give reason for a residence permit, further assessment must take place for other (regular) grounds for obtaining right of residence if there are indicators for this (Article 64 Aliens Act, Article 8 ECHR). Because more steps must be taken, it requires more time to make an asylum decision. Often, it also has become substantively more complex. In particular the detection and further assessment requires specific expertise in addition to time, such as knowledge about signs of human trafficking and medical issues.

9. The amount of information has increased and the information provision is fragmented

From the interviews and document analysis, it becomes clear that the amount of information decision officers have to include in their decision has increased considerably since 2010. This information is available in different forms (work instructions, information messages, Q&As, country-specific information) and, moreover, changes continuously to remain up to date. Via different channels, staff are informed of these changes. For example, there are various newsletters and intranet pages per location, because of which the information known can differ among staff.

A positive development in this respect is, according to IND staff, the so-called Information & Knowledge (IK) pages. These pages have been available since 2021 and provide an overview of all information (work instructions, information messages, Q&As, country-specific information) compiled using a main task, theme or country. These pages give decision officers an overview and prevent them from losing a lot of time on searching relevant information.

10. The IND registration system is often obstructive rather than supportive

Many IND staff indicate that the registration system of the IND (INDiGO) complicates their work. As one staff member put it: the system is supposed to support us, but it rather feels like we are supporting the system. According to the interviewees, the system contains many small impracticalities, such as a questionnaire of which part of the questions have been formulated using double negations, components that are difficult to find or no pop-up messages if components have been forgotten. A long-term project is ongoing at the IND to create a new registration system (TIV).

103 Inspectorate for Justice and security (2022). *Tijd voor kwaliteit, een onderzoek naar de algemene asielprocedure (Time for quality: a study of the general asylum procedure).*

7.1.4 Conclusion about external influences

11. External influences put a lot of pressure on IND staff

IND staff and some other professionals in the field of asylum experience increasingly more external influence from politics, society, judges and lawyers on the IND. According to them, politics, lawyers and interest organisations exert pressure on the policy formation process, resulting in less attention for the feasibility of the policy. In addition, they experience that the pressure from politics and society comes from two directions: on the one hand, there are parties and citizens that exercise pressure on the IND to apply a stricter migration policy; on the other hand there are parties and citizens that want the IND to be more humane in harrowing (individual) cases instead. As a result, the IND is also asked continuously to change its priorities: on the one hand there is the desire to quickly process applications that are unlikely to be granted to discourage such applications, and on the other hand there is the desire to quickly process specific groups that are likely to be eligible for asylum. Consequently, the IND plays a continuous role in the public debate and IND staff often have the idea that the service can never do right. Some staff also fear that their case will be picked up by the media or politics and their work will be under scrutiny. This forms an additional consideration, because of which staff provide even more extensive substantiation and involve more components in interviews and decisions. All these external influences complicate the policy frameworks used by the IND and make the activities of IND staff more difficult.

12. Courts impose higher requirements on the substantiation of rejecting decisions

Several staff members of the IND indicate that making an asylum decision has become particularly complex if an application is eligible for rejection. Between 2013 and 2022, 44 percent of asylum applications were rejected (see box 3.6). IND staff notice that the burden of proof has shifted from the applicant to the IND since 2010. IND staff have the idea that courts impose higher requirements on the substantiation by decision officers, in particular for rejections. JZ states that there is not always a shift of the burden of proof, but that often more explanation is required for the same proof. This concerns not only a higher burden of proof, but also higher requirements for investigating the risks upon return and the substantiation of decisions. However, according to registration data judgments on appeals are not more often against the IND. In some cases, courts are of the opinion that it is easier for the IND to conduct an investigation than it is for the applicant, considering the means available to it. Especially after the childcare allowance affair, courts seem to have more attention for the applicant's situation.

7.1.5 Conclusion about applicants

13. The complexity for the IND is not constant, but changes when characteristics of applicants change

IND staff indicate in interviews that they have the idea that the share of complex cases (with personal reasons for asylum) has increased since 2010, whereas policy makers have the idea that the share of straightforward asylum cases (with nationalities likely to be granted asylum) has increased instead. Although the share of the important target groups that are likely to be granted asylum has increased since 2017, we see across a longer period (from 2013) that the share of target groups likely to be granted asylum fluctuates. Hence, registration data do not show a consistent trend towards more straightforward or more complex cases. The fluctuations seem to be closely associated with migration flows from certain countries. In particular, the large group of Syrians applying for asylum in the Netherlands during the research period has had a large influence on the statistics. It is these fluctuations that make it difficult for the IND to prepare well for its

commission. Migration flows are often difficult to predict, which has made migration a complex phenomenon.

7.2 Available solutions

In response to the findings of this study, suggestions for available solutions are given in this section. The proposed available solutions have been drawn up by the researchers based on the findings of this study. Next, the available solutions were fine-tuned in a session with researchers from the Netherlands School of Public Administration (*Nederlandse School voor Openbaar Bestuur*) in a session with members of the sounding board. These available solutions serve as a starting point for the reduction, or better handling, of complexity. It is expressly up to the professionals involved in the field of asylum to further shape the available solutions. We distinguish available solutions which the IND can work on independently (section 7.2.1) and available solutions for other parties (in cooperation with the IND) (section 7.2.2).

7.2.1 Available solutions IND

From this study, it becomes apparent that decision officers find it increasingly difficult to carry out their activities within the prescribed period. This is due to the lowered level of experience of staff, as well as the increased complexity of activities. Therefore, available solutions focusing on professionalisation of *staff* and optimisation of *processes* are addressed below.

Professionalisation of decision officers

To handle the complex reality of the IND better, further investment in the professionalisation of staff is recommendable. This action perspective focuses on how to better deal with the existing complexity.

To shape the professionalisation of decision officers, findings from this study have been viewed from the Dreyfus model.[104] This model describes an individual learning process using five phases: novice, advanced beginner, competent professional, proficient professional, and expert. The novice needs a lot of rules and instructions and is not well able to estimate when they can deviate from these instructions. As someone enters into a higher experience phase, they are better able to recognise patterns, work methodically and gain an overview. Eventually, the expert can act quickly and intuitively. This also reduces the sense of insecurity. To reach the next phase, reflection, counsel and practice are important in addition to fewer instructions. In addition, errors should not be prevented by imposing rules, but by giving staff a sense of responsibility of the choices they make. Currently, IND staff seem to find it difficult to reach the higher phases of professionality because they are given insufficient scope to develop themselves. Using the mechanisms from this model, we mention some focus areas for the IND below for further professionalisation of staff. Eventually, this action perspective will require a culture change on different levels. When elaborating this action perspective, the Severijns' findings on how to handle insecurity can also be taken into account (see appendix B1.4).[105]

- **Trust from the management:** Improving the decisiveness of staff can be stimulated if the (higher) management offers more professional space. Staff must be stimulated by the organisation to utilise this scope. Staff must be trusted by the management to do this.

104 Dreyfus, H., & Dreyfus, S. E. (2000). *Mind over machine.* Simon and Schuster.

105 Severijns, R. W. J. (2,019). *Zoeken naar zekerheid (Searching for certainty). Een onderzoek naar de vaststelling van feiten door hoor-en beslismedewerkers van de Immigratie-en Naturalisatiedienst in de Nederlandse asielprocedure (A study into the establishment of facts by case workers of the Immigration and Naturalisation Service in the Dutch asylum procedure).* Deventer: Wolters Kluwer.

- **Proper support:** To improve decisiveness, staff must be given proper support in addition. From the interviews, it became clear that the IND hired so many new staff at the same time, that new staff are sometimes familiarised with the work by staff who themselves have little experience. Sometimes, experienced staff are also familiarising several new colleagues at the same time. This can be at the expense of individual attention that is needed to familiarise someone with the complex interview and decision activities. A possible solution for the lack of capacity for support among experienced staff is to have peer supervision take place at a horizontal level. By having staff of a similar expertise level brainstorm together about cases they encounter, they can jointly reach a well-considered decision and they can practice forming an opinion. To develop forming an opinion among staff, it is good not to take difficult decisions away from them, like the knot-cutting team is, for example, doing now.
- **Room in instructions:** In the study, a dichotomy is exposed. On the one hand, there are staff who want fewer instructions and more opportunities to form their own professional opinion. On the other hand, there are (predominantly but not exclusively less experienced) staff who, instead, need more extensive instructions. The latter group often appeals to the advisory department of the IND to further elaborate policy, which leads to more and longer instructions. By now, there are so many and such detailed instructions that staff are given less opportunities to gain experience in forming their own opinion. This can reduce the decisiveness of staff (and result in a growing need for more extensive instructions).

  Improving the decisiveness of staff can be stimulated by offering fewer instructions and more scope for professional opportunities instead. This also requires a culture change. First, this requires from the IND advisory department that they draft less and less extensive instructions, so that staff need to resort more to their own decisiveness and can better develop as a result. Second, it is up to the asylum units to utilise the new scope by forming their own decisions and no longer go to the advisory department for more instructions. This requires a short-term time investment because decision officers will need more time to search information themselves to reach a decision. In the long term, however, the IND can reap the benefits of this investment if staff develop decisiveness through the experience they gain and can take decisions more easily. Earlier research[106] also states that it is not realistic to strive for a method that takes away all uncertainties in the assessment of asylum applications. Therefore, the researcher advocates spending more attention to learning from one another how to handle the given uncertainties.

  A caveat here is that in some cases it is not possible to write less (extensive) instructions. Courts may ask to provide insight into how assessment takes place. In addition, the case law is sometimes so difficult that an instruction is needed to support decision officers. To make sure that the legal knowledge among staff remains at an adequate level, theme meetings from JZ and SUA can also be considered as an alternative.
- **Sufficient time:** One of the conclusions of this report is that the work has become more complex and requires more time and actions. Currently, staff experience that they are not given enough time to carry out their extensive

106 Severijns, R. W. J. (2,019). *Zoeken naar zekerheid (Searching for certainty). Een onderzoek naar de vaststelling van feiten door hoor-en beslismedewerkers van de Immigratie-en Naturalisatiedienst in de Nederlandse asielprocedure (A study into the establishment of facts by case workers of the Immigration and Naturalisation Service in the Dutch asylum procedure).* Deventer: Wolters Kluwer.

range of tasks properly. Staff can better deal with complexity if the time they are given for activities is estimated more realistically. They will then have more scope to make an assessment themselves. In addition to the IND management, there is also a role in this for the commissioner, which will be explained further in section 7.2.2.

- **Retaining staff:** Another way to retain knowledge is by preventing staff from moving on. The staff turnover at the A&B department is higher than the IND average and also higher than average at the national government level and on the labour market. Particularly in the first two years of their employment, a lot of A&B staff move on.[107] An important bottleneck for job satisfaction, particularly at the A&B department, is the high work pressure. By not imposing unrealistic demands on production by staff, staff can be prevented from leaving. In addition, there are all sorts of other instruments that can be deployed in human resource management to retain staff, such as primary and secondary terms of employment, possibilities for development and specific activities focusing on job satisfaction. The human resource management of the IND was outside the scope of this study, so further research by the A&B and HR departments of the IND is needed to find out where the possibilities for improvement are.

Process organisation

Various processes within the IND can be optimised to prevent activities of decision officers from becoming unnecessarily complex. By easing the administrative burden and having a soundly functioning registration system, complexity can be reduced. In addition, central information provision and optimally utilising knowledge acquired in pilot projects can assist in dealing better with complexity. We explain these aspects below.

Easing the administrative burden

By introducing the then new registration system (INDiGO) of the IND in 2011, administrative support came to lapse. However, INDiGO turned out to be less straightforward and intuitive than hoped, and was therefore unable to take over the administrative tasks of administrative staff in practice. Hence, decision officers became responsible for these tasks. From the interviews, it becomes apparent that the administrative burden on decision officers is high and distracts them from their core task: conducting interviews and making decisions. In addition, these are another type of activities that align less well with the job profile for which decision officers are selected. Therefore, it is worth considering assigning administrative tasks elsewhere than to the decision officers. It may also be possible to automate part of it. A positive side-effect of this could be that it can contribute to job satisfaction and, thus, the retention of staff.

Some interviewees are experienced with administrative support by the support unit and are very satisfied with this. Broader deployment of the support unit can ensure that decision officers have more success in finishing their interviews and decisions within the allocated time. In some areas within the IND, the central support unit is deployed to carry out a check of the completeness of the file and, where necessary, supplement it by starting an investigation. This can improve efficiency because it is more likely that the application can be processed within the general procedure. In addition, the local support unit has already been deployed in some areas for completing administrative tasks. The local support unit can be deployed even more broadly to ease the administrative burden on decision officers and make the work less complex.

107 IND (2023). *Strategische Personeelsplanning (*Strategic Human Resource Planning).

Facilitating registration system
A registration system should support staff, instead of forming an obstacle for their activities. This is not how many staff members experience the current system. Currently, a project is ongoing at the IND to develop a new registration system (TIV). This offers a unique opportunity to avoid complicating factors from the current system. In any case, it is important that the new registration system does not further complicate the interview and decision activities. It is desirable for this that decision officers are allowed to give input when the new system is developed and tested, so that impracticalities can be removed from it. Considering that it is expected to take a few years before the new registration system is introduced, it can be assessed until that time where improvements can already be implemented in the current system to reduce complexity.

Central information provision
That the amount of information to be included in an asylum decision has increased considerably is a given fact. However, the IND can take steps to provide the available information less diffusely. The management of information provision can be assigned more centrally, so that there is better control of information provision and specific capacity can be allocated to it. In addition, the number of locations where information can be found can be reduced, for example. The Information and Knowledge (IK) pages are a step in the right direction in this area because they offer information from different locations thematically.

Optimally utilising knowledge acquired in pilot programmes
Within the Asylum and Protection (A&B) department, many projects are going on to benefit efficiency. These are, for example, specific methods for a certain target group, which are stopped again after some time. Because there is often insufficient insight into the effectiveness of the programme, the method is often not implemented in the standard procedure after the pilot phase. Staff who gained expertise in efficiently processing a certain type of application during the pilot programme are afterwards again deployed more broadly, and consequently this expertise is not used optimally. In the meanwhile, other staff have not been able to gain any experience with this type of application because all of it was processed within the pilot. Moreover, staff are having to deal with continuously changing methods, which can make them lose track. This can be prevented by gaining more insight into effectiveness during the pilot programmes. If a programme turns out to be effective, the method should also be implemented in the standard process. Agreements must be made about this at the start of the programme and capacity must be reserved for this. This way, the acquired knowledge from pilot programmes can be utilised optimally, allowing the IND to better respond to the great variety in types of applications.

Where complexity cannot be reduced: recognising and labelling
From this report, it becomes apparent that complexity is a given fact in some respects, which the IND and other parties can do (almost) nothing about (see conclusion 2 under 7.1.1). In these respects, it is important to recognise that reality is simply complex and that the IND must relate to this. It can well be that this can also be labelled as such in the internal and external communication. The IND can use internal communication to reduce frustration among staff about complex regulations and procedures. This way, bottlenecks can be recognised, and it can be explained that and why certain aspects cannot be influenced. Because of the many improvement processes, IND staff sometimes have the idea that the complicating factors can be greatly influenced. The IND can also indicate in the external communication that complexity is, in part, unavoidable. The IND is unable to

complete the activities within the prescribed periods with the current organisation, means and the current number of applications. If the service is able to clearly label in which areas the work has become more complex and why complexity cannot be reduced here, this can contribute to a sense of reality among external parties. This study makes it clear that it is not so simple to make the asylum procedure easier or faster. If there is a more realistic sense of what the IND is able to achieve in its complex field of work, complexity can better be dealt with.

7.2.2 Available solutions for other parties

In some respects, the IND needs other parties to reduce complexity or better deal with complexity. In this section, available solutions are addressed for which it is up to other parties in cooperation with the IND to address. The first three available solutions can result in a reduction of complexity. The final two available solutions, which pertain to differentiation in the asylum procedure and consistency in human resources, can help to better deal with complexity. We explain these aspects below.

Leaving the operational practices of the asylum policy up to the IND

Commissioner, owner and politics

From the many interviews with IND staff, it becomes clear that the organisation is under great pressure. Where the commissioner, owner and politics should focus on *what* the IND must implement, they also increasingly exercise pressure on *how* the IND conducts its activities. In this study, various negative consequences of this were addressed. Examples are the continuous reprioritisation of certain target groups, which does not benefit the efficiency across the board, and the request for increasingly more due care requirements from politics, amongst other areas, with respect to the assessment of personal reasons for asylum. This make the work more difficult to implement for the IND. Staff have doubts about the fitness for purpose of changes in the process that have to be made as a result. The commissioner, owner and politics can give the IND itself, as the implementing organisation, more scope to shape the activities. If less external influence is exercised on the operational practices of policy by the IND, this can reduce complexity.

Engaging in a conversation about the implications of case law

Judges, policy makers and the IND

It emerges from this study that it is often unclear for the IND and policy makers what the applicability scope of a judgment is. It is then unclear whether the judgment pertains to one very specific case, or that the judgment should apply to the greater whole. According to them, this only becomes clear as case law gradually accumulates. This can sometimes take years. For staff, this means that they may be confronted with many small adaptations or exceptions, before there is a larger policy adjustment. This results in complexity and frustration among staff. What can eventually help the IND and policy makers in this is if courts give more clarity about the implications of a judgment. This particularly concerns case-transcending judgments by the administrative court (ABRvS), which can have great consequences for practical implementation. In a dialogue with judges and other partners in the immigration system, the IND can also pass on signals about (the type of) judgments that could cause problems in terms of translation into practice and about (the type of) judgments that are, instead, helpful for practice. By opening up the conversation between parties (considering the role of each), policy makers and the IND can communicate these signals more clearly to judges, so that judges can indicate more explicitly to which type of cases a judgment applies. If there can be more clarity about the interpretation of case law, complexity can be reduced for the IND because an accumulation of small changes in response to case law can be prevented. As a partner in the immigration system, the IND is already engaged in a dialogue with the judiciary. These dialogues can be used to discuss the above.

Improving feasibility of Dublin Regulation and Return Directive
Policy makers, the Permanent Representation of the Netherlands, politics and the IND

The unfeasible elements of the Dublin Regulation and the Return Directive follow from EU legislation and case law. Therefore, a solution for this must be found at EU level. This can be approached via two channels.

First, the IND managing director can engage in dialogue with the European Union Agency for Asylum (EUAA). The purpose of the EUAA is that Member States implement EU legislation in the same way. Problems of feasibility of the Dublin Regulation particularly pertain to the situation in other Member States. For example, inadequate reception in other Member States and insufficient cooperation by other Member States have the result that persons cannot be transferred. EUAA can try to support Member States when improving reception (currently at the request of the Member State itself). In addition, there are regular meetings of the various Member States at the invitation of the EUAA. It is not the purpose of these meetings to call Member States to account for the extent to which they cooperate with the implementation of the Dublin Regulation.[108] The meetings are focused on making work agreements and asking questions about the interpretation, implementation and performance of the current Dublin Regulation. Moreover, the European Commission intends to give the EUAA a more active monitoring function in the future. It is currently unclear whether it will also be possible in the future for a Member State to ask the EUAA to mediate or call another Member State to account for not honouring agreements. Legislation currently does not provide for options to impose sanctions on Member States for poor compliance with Regulations.

Second, it is important that implementation bottlenecks and interests are addressed in Brussels when new EU legislation is being established. For instance, new legislation can provide solutions, or at least refrain from introducing new complicating factors for the process. Currently, the IND is already involved very actively by DMB in dialogues about new EU legislation, such as the negotiations for the so-called migration pact.[109] However, the outcome of the negotiations on this Pact do not offer solutions for all problems that were addressed in this study; for example, it does not solve the lack of preparedness of countries to cooperate with the Dublin transfer. As indicated before, the EU legislation process is a long process in which the interests of 27 Member States are negotiated. The influence of the Netherlands on this is limited. Cooperation with other (likeminded) Member States is necessary to make a fist at the negotiating table. The Pact has will enter into force after two years and has a great impact. It is important that during the period for entry into force, the voice of the implementing agencies is clearly heard.

It requires joint efforts by policy makers, the Permanent Representation of the Netherlands in Brussels, politics and the IND to exercise influence on an EU level. However, as a small country, the Netherlands has a minor influence in the EU. The potential of this action perspective to reduce complexity is therefore relatively small, but influence can be exercised. It is important for this to actively invest in finding allies.

108 The Netherlands currently does not always manage to meet the deadlines either. If a dialogue is started via the EUAA, the Netherlands must also take its responsibility in this respect.
109 E200018 - Commissiemededeling voor een migratie- en asielpact - Europese Berichtgeving Eerste Kamer (Commission announcement for a migration and asylum pact - European Information for Senate)

Differentiating the asylum procedure

The commissioner and the IND

From this study, it becomes apparent that the required time to assess an asylum application can vary highly depending on the reason for asylum and the applicant's nationality. Applications where personal reasons for asylum (LGBTIQ+, conversion or apostacy, political opinion) play a role require relatively much expertise and time. By contrast, applications by certain nationalities that are likely to be granted are relatively straightforward and can be processed quickly. The IND can take advantage of the expected complexity of the case by taking into consideration the time and expertise that a certain reason for asylum or certain nationality requires when planning the case. The A&B department can then start using specialisations and optimally deploy knowledge thusly. The research agency Significant earlier advocated differentiation within the asylum procedure according to nationality and reason for asylum.[110]

Differentiation already takes place in part, but can be used wider. In 2021, the option was already introduced to plan more time for 'complex' reasons for asylum by classifying them in the General Asylum Procedure +. This is a procedure where three more days are available to reach a decision.[111] To already have insight into the applicant's reason for asylum early on in the procedure, the reason for asylum is already asked for in the reporting interview for this purpose. However, from the evaluation of this measure it became apparent that the General Asylum Procedure + had not often been used by October 2022.[112] After this, the work instruction for use of the General Asylum Procedure + was adapted so that it would be used more widely. The IND is currently examining how the General Asylum Procedure + has functioned since then. In response to the outcomes of this examination, it can be seen whether the use of the General Asylum Procedure + can be improved. In addition, it can be seen whether the General Asylum Procedure + can be used for specific nationalities, just like can now be done for specific grounds for asylum.

Differentiation according to specialisations does not often take place yet. If the asylum procedure would be more differentiated according to reason and nationality, staff could also further specialise in a certain type of application. This way, the type of application can be dealt with more efficiently. It is good to look at part-time specialisations in this context, so that staff retain knowledge of other cases, allowing their flexible deployment when necessary.

Considering that the task, deployment of capacity and prioritisation are determined by the commissioner, such a differentiation must be elaborated in cooperation with the commissioner and the IND. By being able to differentiate more within the asylum procedure, the IND can better handle the complexity associated with the fluctuating amount and types of asylum application that the organisation has to process.

Achieving consistency in human resources

Commissioner, owner and the IND

The retention of staff is important to keep knowledge and experience up to scratch. Earlier, it was addressed that the IND can use its human resource management to retain staff. However, in this context there is also a role for the administrative triumvirate. After all, long-term agreements about the commission of the IND are

110 Significant (2020). *Onderzoek doorlooptijden IND (Investigation of processing times IND).*

111 Asylum applications can be planned in the General Asylum Procedure + based on two grounds: 1) If a case has complex and/or multiple reasons for asylum, because of which it is expected that more time is needed for the detailed interview; or 2) if it is expected that special procedural safeguards are needed for it.

112 IND (2023). *Evaluatie wijzigingen asielprocedure. (Evaluation of changes to the General Asylum Process.)*

made in the administrative triumvirate of commissioner, implementing organisation (IND) and owner. The current funding method primarily emphasises the short term and has the result that activities for influx and backlog are not paid on time. There is also insufficient scope for activities that do not immediately lead to more production, such as proactive recruitment and training of staff to be able to handle future peaks in influx. In short: the current funding, primarily based on production, insufficiently supports a long-term vision on the organisation (size) of the IND. A similar observation of asylum reception was made this year by the Netherlands Court of Audit.[113] The IND desires a future-proof funding method, which supports the making of *long-term* agreements on the targets of the IND. The IND needs a funding method that is appropriate for the organisation, creates more stability for the organisation and makes long-term management possible within the dynamic migration context. This, combined with professionalisation of staff, contributes to a higher level of experience among decision officers. This also increases the predictability and possibility to plan our work. And it would enable the IND to recruit and train staff proactively, for example. This way, the IND is better equipped for its increasingly complex activities.

Table 7.1 Overview of available solutions, objectives and parties

Available solutions	Objective		Parties
IND	Reducing complexity	Better dealing with complexity	
Professionalising decision officers		x	IND
Easing administrative burden	x		IND
Facilitating registration system	x		IND
Central information provision		x	IND
Optimally utilising knowledge acquired in pilot programmes		x	IND
Where complexity cannot be reduced: recognising and labelling		x	IND
Other parties			
Leaving the operational practices of the asylum policy up to the IND	x		Commissioner, owner and politics
Engaging in a dialogue about the implications of case law	x		Judges, policy makers and the IND
Improving feasibility of Dublin Regulation and Return Directive	x		Policy makers, the Permanent Representation of the Netherlands, politics and the IND
Differentiation of asylum procedure		x	Commissioner, owner and the IND

113 The Netherlands Court of Audit concluded that the budgetary framework based on the agreed costs per expected asylum seeker often leads to an insufficient advance for the year of implementation. For this, the COA must always quickly scale the reception capacity up or down during the year of implantation, which entails higher costs and is inefficient. See: Netherlands Court of Audit (2023). Focus op opvangcapaciteit voor asielzoekers (Focus on reception capacity for asylum seekers).

Achieving consistency in human resources		x	Commissioner, owner and the IND

7.3 Concluding remarks

In this concluding chapter, various elements have emerged that make it more complex for the IND to take asylum decisions. The available solutions provide a basis for reducing complexity. In some cases, it is a given fact that it has become more complex to take an asylum decision, and the action perspective focuses on how to better deal with the existing complexity. The IND currently has to take more asylum decisions than it can handle and is confronted with backlogs. Increased complexity worsens the backlogs, but it is not the only factor. In addition to complexity, various other factors play a role, such as a large number of asylum applications, productivity of the IND and processing times of the procedure. Hence, addressing complexity will not provide a complete solution for the complex problems in the field of asylum. Nonetheless, complexity is a topic that is prominent among professionals in the field of asylum, and within the IND in particular. Therefore, complexity must be addressed. It is recommended to further flesh out the abovementioned available solutions within the IND and in cooperation with policy makers, the commissioner and politics. It is up to the IND to retain control of the development of these available solutions and to monitor progress.

Appendix 1 Literature review

At the start of the research, a literature review was conducted. There has been little research into complexity among implementing organisations (organisations responsible for the practical implementation of policy). Available literature often concerns policy documentation. Below, we describe how complexity is defined in the studied sources (B1.1), what is known about complexity in government organisations (B1.2), which causes of complexity emerge from the literature (B1.3), and what is known about the reduction of complexity (B1.4).

B1.1 Definition of complexity

In the academic literature, complexity as a phenomenon is primarily studied in the form of complex systems. There is a (rather young) field of research called complexity science. This research field focuses on complexity in systems consisting of separate elements that interact with one another and, within their context, can exert an influence on the system as a whole. Characteristics of complex systems are also at the centre, such as self-organisation and emergence. Self-organisation refers to the process in which actors align their behaviour without outside direction. This results in interaction or behavioural patterns.[114] Emergence refers to a phenomenon that is not produced by individual components, but that originates from the interaction between the system components under certain circumstances.[115] The theory originates from the hard sciences, where it is applied to, for example, ecosystems, disease transmission and computer systems. In the last decennium, it has been applied more broadly and complex systems are also seen in the social sciences, for example infrastructure networks, social networks and organisations. The IND can also be seen as a complex system, considering that the service consists of a complex whole of staff members who are part of various departments and units with various tasks where certain rules apply, and who mutually influence one another and are subject to circumstances such as outside influences. Hence, we can define complexity by means of the characteristics of the complex system of the IND, such as the extent of self-organisation and emergence.

In policy documents, complexity is generally not defined, but authors seem to assume a more comprehensive interpretation of complexity. This also includes elements from outside 'the system', such as complexity in legislation and policy, and complexity for the end user (the applicant in the case of the IND). To align with policy processes in other government organisations, the choice was therefore made not to define complexity according to complexity science in this study, but to develop a more comprehensive definition ourselves using studied policy documents. This definition has also been coordinated with the supervisory committee of this study (see section 1.7). See box B1.1 for the applied definition.

Box B1.1 Definition of complexity
We talk about an increase in complexity if more time, actions, considerations, knowledge, and/or cooperation are required.

B1.2 Complexity at implementing organisations

The past decennium there has been increasingly more attention for complexity at implementing organisations. The most important reason for this was the childcare

114 Van der Heuvel, J. (2009). *Zelforganisatie in complexe adaptieve systemen (Self-organisation in complex adaptive systems).* Master's thesis Erasmus University.

115 Teisman, G., & Gerrits, L. (2,014). The emergence of complexity in the art and science of governance. Complexity, Governance & Networks, 1(1), 17-28. DOI: 10.7564/14-CGN2

allowance affair and the ensuing attention for the human dimension at implementing organisations. In box B1.2, we will go into the background and application of the human dimension. One of the most important lessons from the Parliamentary Committee of Inquiry into Childcare Allowance is that the allowances system has become too complex.[116] Citizens are given a lot of responsibility, although they cannot always be expected to have a complete grasp of the complex legislation.

Box B1.2 The human dimension

Background human dimension

In the autumn of 2018 it became clear that the Tax and Customs Administration had been labelling persons unjustly as **fraudsters** since 2004. These persons had to repay large amounts of childcare allowance to the Tax and Customs Administration in a short period. In many cases, this had major negative consequences for the persons involved, such as debt problems, placement in care of their children and psychological issues.

When this so-called *childcare allowance affair* came to the fore, a large social debate arose on the way in which the government handles citizens. This led to a need for more attention for the *human dimension*. Accordingly, the Temporary Committee on Executive Agencies was established, which investigated how government organisations could act in a more people-oriented way. This committee uses the following description of the human dimension:[117]

The human dimension is 'doing justice to the interests of citizens when establishing and implementing policy and legislation. Closely related to this is the concept "*doenvermogen*", **the ability to act and persevere**, of citizens introduced by the Netherlands Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid*). The term expresses that citizens should not only know the law, but should also be able to act upon it. A government that is aware of the human dimension takes into account that not everyone is able to do so under all circumstances. The ability to act and persevere can temporarily be considerably reduced, for instance during a divorce, the loss of a loved one, unemployment, debts, or long-term poverty, but it can also be structurally lower, for example because of low literacy, a lower IQ or digital illiteracy.'

There was specific attention for the human dimension at the IND in response to the report Ongehoord Onrecht in het Vreemdelingenrecht (Unheard Injustice in Aliens Law).[118] In this report, 48 cases in aliens law are exposed where according to the authors the persons involved had been wronged. One of the conclusions of the report is that because of restrictive regulations and inflexible adherence to the rules at the IND, little scope for the human dimension remains.

Application of the human dimension

The human dimension has become an important term in the social debate about the performance of government institutions. In addition, it is a policy term for which different policy makers and implementing organisations have their own interpretation. In practice, this often means that room is left in policies, so that implementing agencies can deviate from the generally applicable rules and apply tailoring if the personal circumstances of citizens require this.

In the policy documents complexity comes back in different aspects. An increase in complexity is experienced in legislation, in the organisation of the operational practices and at the level of the citizen.

Complexity is mentioned the most where **legislation** is concerned (Parliamentary Committee of Inquiry into Childcare Allowance, Temporary Committee on Executive Agencies (*Tijdelijke commissie Uitvoeringsorganisaties*, TCU), Work on Operations programme (in Dutch: *Werk aan Uitvoering* or WaU), research agency Significant). For example, the final report by the TCU[119] mentions that the number of generic rules and frameworks has increased and that legislation is accumulating. The Parliamentary Committee of Inquiry into Childcare Allowance also mentions in its final report that legislation has become too difficult to implement. In the WaU

116 Parliamentary questioning Childcare benefits (2020). *Eindverslag Ongekend Onrecht (Final report Unheard Injustice).*
117 TCU (2021). *Klem tussen balie en beleid (Stuck between desk and policy).*
118 SVMA and VAJN (2,021). *Ongehoord Onrecht in het Vreemdelingenrecht (Unheard Injustice in Aliens Law)*
119 TCU (2021). *Klem tussen balie en beleid (Stuck between desk and policy).*

programme, a reduction of the amount, complexity and detail of policy and legislation is also one of the available solutions.[120] In the Performance Update 2022, it is mentioned that new policies are continuously being produced, in which many refinements, accumulations and repairs create a complex set of policies.

Complex legislation is often mentioned as a bottleneck for citizens, and in some cases for implementing agencies. For example, the final report by TCU mentions that not only citizens, but also professionals in implementing organisations find it difficult to grasp and apply the rules. Moreover, professionals in implementing organisations also have to deal with additional work instructions and partially automated decision-making in addition to increasing complexity in legislation. In this research, we adopt the perspective of the IND as implementing organisation.

The Parliamentary Committee of Inquiry into Childcare Allowance also mentions the way in which the allowance system has been organised as complex. In the asylum domain, it is also mentioned in various studies that the way in which the **asylum procedure** has been organised is too complex. In addition, research agency Significant mentions in its study into the processing times of the IND[121] that the asylum procedure has become more extensive and complex in recent years. The asylum procedure is often unsuitable, particularly for complex cases. Because of this, complex cases often remain unprocessed because there is insufficient time to process them in the General Asylum Procedure and there is insufficient experienced staff available. Significant mentions that leaving these complex cases unprocessed is counterproductive. The research agency advocates more differentiation within the General Asylum Procedure, particularly according to nationality and reason for asylum, because complexity and labour-intensiveness of cases can differ considerably based on these characteristics. After this study, changes were implemented in the asylum procedure in 2021 which should simplify it, such as no longer conducting the first interview. The option to differentiate based on reason for asylum was also introduced in the form of the General Asylum Procedure Plus, which provides three extra days. However, from the evaluation of these changes in 2023, it became apparent that the General Asylum Procedure Plus is not yet used often.[122]

Management of implementing organisations also emerges as a bottleneck from various reports. The programme WaU, for example, mentions that the cooperation between politics, policy and operational practices makes management of the implementing organisation difficult and makes it less likely that bottlenecks are recognised. The study of processing times by research agency Significant also indicates that management within the IND at a tactical and operational level is lacking in various respects. At a tactical level, there is insufficient management of the various projects, pilot programmes and improvement measures that are ongoing within the IND. Because of this, overview over the various measures is lacking and measures are not sufficiently seen in conjunction: there is too little prioritisation and application of focus. At an operational level, management targets and information needs have not been formulated sufficiently clearly. Operational managers have insufficient information about the operational practices, for reasons including staff not registering information properly. Because this information is lacking, there is also insufficient monitoring of the state of affairs of operational targets. There is also insufficient dialogue between staff and operational managers in which, for example, team targets are discussed or individual agreements are made. The lack of management can contribute to complexity because processes run less smoothly and

120 Werk aan Uitvoering (Work on Implementation) (2020). *Fase 2: Handelingsperspectieven en samenvatting analyse. (Phase 2: Available solutions and summarising analysis.)*
121 Significant (2020). *Onderzoek doorlooptijden IND (Investigation of processing times IND). Final report.*
122 IND (2022). *Evaluatie wijzigingen Algemene Asielprocedure (Evaluation changes asylum procedure).*

bottlenecks are less likely to be detected. If we look at the IND as a system, the separate components of the system are insufficiently attuned to each other, because of which the system performs less well as a whole.

The **characteristics of applicants** can also play a role in complexity. From the studies by the research agencies Significant[123] and Consultancy Ernst & Young (EY),[124] it emerges that the complexity of applications combined with the assessment framework often forms a bottleneck for the IND. In both reports, it is stated that the number of complex cases increases because the number of applications with LGBTIQ+ or conversion as a reason for asylum is increasing. However, the latter finding is based on the experience of staff, since the reasons for asylum are not registered. The programme WaU emphasises that multi-layered problems among citizens must be considered more to improve services.[125] However, this aspect is not reflected in the reports focusing specifically on the IND, so it is unknown whether this also applies to asylum seekers as a target group.

B1.3 Causes of complexity
Different causes of complexity are mentioned – often implicitly – in the literature. For example, as a cause of complex legislation it is often mentioned that during policy formation, the feasibility of the policy is not sufficiently taken into account.[126] TCU points out that during implementation of new policy, the parliament wants to reduce its effect on people already using a certain service as much as possible, and consequently implementing organisations must implement policy for different and very specific groups. The? parliament does this to create public support. In addition, according to the committee, policy is often adjusted in the interim due to changes in political wishes. Operational aspects are sometimes not balanced sufficiently in doing so, and therefore small changes can have an unintended great impact on the operational practices.

In addition to elements of legislation that contribute to complexity, policy documents also implicitly mention bottlenecks in the operational practices itself. For example, it is mentioned that professionals are given insufficient scope and tools to operate in complex environments. In addition, management, information provision and organisation of the organisation is not always up to scratch (also see B1.2).[127]

In this study, we aim to conduct a broad analysis, in which causes are identified on all levels, from the applicants up to the European legislator. The following actors play a role in this: Applicants, social parties, the implementing organisation (IND), partners in the immigration system and other partners, policy makers, the judiciary, and Dutch and European legislators.

B1.4 Reducing complexity
Little is known about ways to reduce complexity at implementing organisations. In 2019, the so called 'Van Zwol' Committee concluded that regulations on asylum did not have to be changed (further) to enable faster decision-making on asylum applications, but that management, funding, the processes and the processing times at the IND must be up to scratch.[128] The Committee did not consider the question whether the implementation of the asylum policy has become more complex. The current study aims to show whether complexity does indeed deserve the attention it

123 Significant (2020). *Onderzoek doorlooptijden IND (Investigation of processing times IND). Final report.*
124 EY (2021). *Eindrapportage Doorlichting IND (final report on the assessment of the IND)*
125 Werk aan Uitvoering (Work on Implementation) (2020). *Fase 2: Handelingsperspectieven en samenvatting analyse. (Phase 2: Available solutions and summarising analysis.)*
126 TCU (2021). *Klem tussen balie en beleid (Stuck between desk and policy).*
127 EY (2021). *Eindrapportage doorlichting Vreemdelingenketen (Final report investigation of the immigration system).*
128 Onderzoekscommissie langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht (Investigation Committee on long-term residing foreign nationals without sustainable right of residence, 2019).

receives, or that this attention must be shifted to other problems. If complexity does indeed play an important role, it is relevant to gain insight into the causes of complexity and how these can be addressed to reduce complexity. Hence, in this report we formulate available solutions that interviewees see to reduce complexity by way of the described causes.

In addition, in his study, Severijns looked into the way in which decision officers at the IND deal with establishing facts.[129] Three types of insecurity are distinguished with which they are confronted: action insecurity (how do I act?), interpretation insecurity (how do I interpret legislation) and information insecurity (which weight should I attach to the available information or the lack of information?). To further develop decisiveness, it is good to pay attention to opinion formation for these three types of insecurity. How officials deal with these insecurities depends on three drivers, according to the researcher: coping (how do they handle the circumstances of their work), tailoring (how do they interpret rules and apply them to concrete cases) and ethical (how they unite their personal and professional values). Differences in these three areas can lead to differences in the interviews and decisions conducted and made by staff.

129 Severijns, R. W. J. (2,019). *Zoeken naar zekerheid (Searching for certainty). Een onderzoek naar de vaststelling van feiten door hoor-en beslismedewerkers van de Immigratie-en Naturalisatiedienst in de Nederlandse asielprocedure (A study into the establishment of facts by case workers of the Immigration and Naturalisation Service in the Dutch asylum procedure).* Deventer: Wolters Kluwer.

Appendix 2 Methodological justification

B2.1 Methods interviews

B2.2.1 Methods

B2.2.1.1 Data collection
Selection of interviewees
To gain a complete picture of the experiences with complexity, a broad range of professionals employed with the IND, partners in the asylum system or cooperation partners were interviewed. The selection of departments and units to be interviewed within the IND and external parties was made in consultation with the supervisory committee and researchers. The aim was to interview all parties who play a role in reaching a final asylum decision and to reflect the diversity within the implementation of asylum policies.

After selection of the departments, units, and organisations had taken place, the request for an interview was made. For the interviews with staff of the IND and the Ministry, the members of the supervisory committee made the request for participation in an interview to (the managers of) departments/units of the organisational unit they represent. Because of the size of these organisations, it is not possible for the researchers to have insight into which persons can best be interviewed, so the choice was given to the managers of the units. They know who meets the selection criteria (see next paragraph) and have relevant expertise on the topic. In addition, it is important for the study to disrupt the overburdened day-to-day operations as little as possible, so planning-related factors were sometimes also decisive. Whether one or several staff members were selected for an interview was also left up to the management because the managers were best able to estimate whether one staff member could represent the department/unit well, or whether there was more diversity in experiences, so that it would be better to interview several persons. An appointment was made with the selected persons based on availability. Here, it also played a role how many people could be missed for an interview without disrupting the day-to-day operations. External organisations were approached through previously made contacts of the IND. They also were allowed to choose themselves whom they deemed suitable for an interview and whether this would be an individual or a group interview.

Two selection criteria were given for the selection of the professionals to be interviewed. First, the professional needed to have good insight into the field of asylum. Second, we want to look back on the period of 2010 to 2022 inclusive, so the choice was made to select professionals who had been employed at their organisation since at least 2010 (or if unavailable, possibly elsewhere in the field of asylum). Thus, experienced staff were involved. Consequently, this research gives less insight into the experiences of new staff, which can possibly differ from that of more experienced staff (for example because they need more detailed instructions). However, it became evident from the interviews that experienced staff, who often mentor new staff, thought that new staff would have a different perspective in some respects. Therefore, a group interview was held at the end of the research period with staff who were at the end of their training – and had been employed with the IND for around a year – to gauge whether their experiences were essentially different from those of experienced staff. These staff were recruited via the Basic Asylum Education Programme (*Basisopleiding asiel*, BOA), where they were at the end of the first year of the programme. Based on availability, an interview was

scheduled with all nominated staff members. The interviewees were from the same BOA group, so their experiences were rather homogenous and may differ from those in other groups.

An overview of the 24 interviewees and the task description of the parties involved is recorded in table B2.1. The job titles of the interviewed staff were decision officer, senior staff member, manager, operational analyst, document investigator, advisor, business analyst, legal representative, policy officer, legal adviser and operations coordinator. The expertise represented in the interviews consisted of 1F, Dublin, enforcement, family reunification, application process, reassessment, lateral entry, document investigation, country and language information and legal affairs. Other tasks that the interviewed staff conduct are mentoring, training (BOA), complaints coordinator, GDPR expert, quality assurance, and conversion and LGBTIQ+ coordinator. The knot-cutting team (responsible for dealing with so-called "headache cases") was also represented.

Representation IND
Within the IND, 16 interviews were held with 37 professionals. The interviews represent the diversity of departments and units within the IND well. Most interviews (9 interviews with 25 professionals) were held with staff in the primary process at the Asylum and Protection Department, because the operational practices of the asylum policy are organised here.[130] Of this department, a variety of locations and (specialist) units were involved. In the interviews, employees were represented with a range of different tasks. Interviews were also held with departments/units that provide support to the primary process (3 interviews with 5 professionals), develop policy (1 interview with 2 professionals) or give legal advice (1 interview with 4 professionals). Because this study primarily focuses on operational practices, no staff were interviewed at a strategic level, such as board members. Therefore, this perspective has not been mapped out in this study.

Representation partners in the immigration system/cooperation partners
Eight interviews were also held with 10 professionals who work at partners in the immigration system/other partners. Here, all parties were chosen that play a direct role in the establishment of a final asylum decision. Hence, this includes parties that develop the asylum policy (DMB(-JAZ), DRM), parties who play a (supportive) role in the asylum procedure (lawyers, Nidos, VWN) or are subsequently involved in court proceedings (judges) or return (DT&V).

130 By *primary process*, we mean the process in which the assessment of asylum applications takes place. Legal representatives of JZ were also involved directly in finalising applications because they represent the IND in court. However, we do not classify them under the primary process here because they do not make asylum decisions themselves.

Table B2.1 Overview of 24 interviewed parties (24 interviews with 50 professionals)

Department/unit/organisation	Task description	Interviewees Number
IND		
Asylum & Protection Department (*Directie Asiel en Bescherming*, A&B)		
A&B Den Bosch		2
A&B The Hague (unit 1F)	The 1F unit investigates cases in which the foreign national can potentially be connected to serious crimes, including those that are not entitled to asylum based on article 1F of the UN Refugee Convention.	1
A&B Schiphol		5
A&B Ter Apel		1
A&B Zevenaar		3
A&B Zevenaar (Dublin unit)		2
A&B Zwolle		5
A&B Zwolle (family reunification team)		3
A&B new staff		3
Services Department		
Enforcement Information Hub (*Handhaving Informatie Knooppunt*, HIK)	The HIK collects and processes signs of fraud, abuse and migration crime within the IND in cooperation with partners in the immigration system.	2
Identity and Document Investigation Unit (*Bureau Documenten*, BDoc)	Document experts and document investigators give advice about the value of documents that are supplied by applicants as evidence and about prevention and detection of ID fraud.	1
Country and Language Investigation and Assessment Team (*Team Onderzoek en Expertise Land en Taal*, TOELT)	Staff gather language and country-specific information, build knowledge (networks) and make this information available to IND staff.	2
Information Provision Department (*Directie Informatievoorziening*, IV)	Together with BIS, IV is responsible for the information provision (ICT) of the entire IND.	1
Legal Affairs Department (*Directie Juridische Zaken*, JZ)	JZ gives legal advice to policy advisers within the IND and represents the IND in legal proceedings.	4
Strategy and Implementation Advice Department (*Directie Strategie en Uitvoeringsadvies*, SUA)	SUA is the dialogue partner of policy makers of the Ministry and provides the IND with recommendations for the implementation of policy in work instructions, information messages and Q&As. It also conducts policy evaluations.	2
Regular Residency and Dutch Nationality Office (*Directie Regulier Verblijf en Nederlanderschap*, RVN)		
Business Innovation & Support Department (BIS)	BIS supports processes focusing on innovation and improvement within the IND as a whole.	3
External parties		
Migration Coordination Department (*Directie Regie Migratieketen*, DRM)	DRM fully enables the immigration system and its partners to implement the Aliens Act and aliens policy quickly and carefully.[131]	1
Migration Policy Department (*Directie Migratiebeleid*, DMB) of the Ministry, Asylum, Reception and Return (*Asiel, Opvang en Terugkeer*, AOT) Unit of the Ministry	DMB is responsible for the policy for regulated and controlled admission, residency and return of foreign nationals. The department formulates framework-setting policy and gives scope for implementation.[132]	2
DMB, Legal and General Affairs Section (*Afdeling Juridische en Algemene Zaken*, JAZ) of the Ministry	The legal department of DMB provides policy makers with legal advice.	1
Administrative judge specialised in aliens law		1
Asylum lawyer		1
Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*, DT&V)	DT&V supports foreign nationals whose application has been rejected with their return to their country of origin or migration to another country.	1

131 https://www.rijksoverheid.nl/ministeries/ministerie-van-justitie-en-veiligheid/organisatie/organogram/directoraat-generaal-migratie-dgm

132 https://www.rijksoverheid.nl/ministeries/ministerie-van-justitie-en-veiligheid/organisatie/organogram/directoraat-generaal-migratie-dgm

The Dutch Council for Refugees (*Vluchtelingenwerk Nederland*, VWN)	VWN is a non-governmental organisation that supports refugees and asylum seekers.	1
Nidos	Nidos is an organisation that has custody of, provides reception to, and manages the interests of unaccompanied minor foreign nationals in the Netherlands.	2
Total		**50**

Representation IND

In figure B1.1, an overview is shown of all sections of the IND, and under each section it is shown which perspectives were included through the interviews (16 interviews with 40 professionals). It can be seen here that the interviews represent the diversity of departments and units within the IND well. Most interviews (9 interviews with 25 professionals) were held with staff in the primary process at the Asylum and Protection Department, because the operational practices of the asylum policy are organised there.[133] Of this department, a variety of locations and (specialist) units were involved. In the interviews, there was often a range of tasks represented. Interviews were also held with departments/units that provide support to the primary process (3 interviews with 5 professionals), develop policy or give legal advice (2 interview with 6 professionals).

The interviews

The interviews primarily took place online[134] and lasted between 20 minutes (when no change in complexity was experienced) and 2 hours. This lowered the threshold for participation in the interviews for colleagues who worked from home. The number of interviewees varied between one and five. In each interview, an interviewer and a minute taker from the research unit were present. Prior to the interviews, a list of topics was compiled for semi-structured interviews. The questions were based on the research questions, which were supplemented with some in-depth questions (e.g. if complexity has changed, how do you notice this?). For the external parties, the list of topics was somewhat adapted to have it better align with the party's situation. External parties were asked to reflect on the part of the asylum procedure they were involved in (e.g. Nidos was asked about the complexity of reaching an asylum decision for UAMs). The list of topics was also somewhat adapted for new IND staff, so that they did not have to reflect on the full research period, but were asked for their experience with complexity at the time. At the end of this interview, a number of findings from the other interviews were also tested.

A setup was chosen in which the general experiences were addressed first, so that it could be asked openly whether the interviewees experienced an increase or decrease in complexity or not. It could also be that complexity had increased in some respects, but decreased (or showed no change) in others. It was chosen to allow the interviewees to express in their own words how they noticed whether complexity had changed or not. Only after this first component, the definition of complexity used in this study was given. It turned out to align well with how the interviewees interpreted complexity themselves.

133 By *primary process*, we mean the process in assessment of asylum applications takes place. Legal representatives of JZ are also involved directly in finalising applications because they represent the IND in court. However, we do not classify them under the primary process here because they do not make asylum decisions themselves.

134 Only the interviews with SUA and TOELT took place on location because the interviewees and the researchers were present at the same location during the scheduled time.

If interviewees experienced a change in complexity,[135] the causes of this change were subsequently addressed and what could be done about them. To form a picture of the causes, an interactive approach was chosen, in which the moderator showed a table in which they filled in the causes of complexity together with the interviewees. This way, the interviewees had an overview of all causes that were mentioned. Because the interviewees also looked at the table, the interviewer could verify whether the aspects mentioned were understood well and recorded in the table. The interviews were not recorded, but the minute taker kept detailed (almost literal) records and elaborated this report further afterwards. Because there is no literal report, no quotes were included in this study. The report of the interview was shown to the interviewees afterwards so that they could check whether their experiences had come across well. The table that was filled in jointly has also been included here as a summary of the interview.

The interviews went well. Interviewees often thought the subject was interesting and had a lot to talk about it. Hence, the two hours were often filled with ease. Only the few cases where no change in complexity was experienced, did the interview end quickly. In the group interviews with staff with different expertise, an interesting interaction arose, where staff also thought it was interesting to learn how things worked in other types of expertise. In the group interviews with staff with the same type of activities, people often agreed a lot. The individual interviews and group interviews did not lead to different findings. Towards the end of the research period, hardly any new findings were produced by the interviews, which indicated that data saturation had been reached.

B2.2.1.2 Data analysis

Categorisation

The analysis of the interviews consisted of two steps. The first step of the categorisation consisted of making an overview of all mentioned causes of an increase or decrease in complexity and labelling these causes. The number of causes of complexity that emerged from the interviews varied highly, from 2 to 25 causes per interview. We gathered and labelled all causes. This means that we concisely summarised the essence of a cause from the interviews, so that causes from different interviews with the same essence could be combined under the same label. In total, we reached around 125 different causes.

The second step of the categorisation was to group the labels and give the groups titles (the categories). Each label occurs between 1 and 14 times in the interviews. Based on the most frequently mentioned labels, main and subcategories were chosen, under which the less frequently mentioned labels could subsequently be categorised.

Interpretation of findings

When putting the experiences from the interviews on paper, we applied some checks for the purpose of reliability of the results.

- We describe findings when the experience was represented among a **larger group**. If an experience was mentioned by only one interviewee but was still relevant, this is stated separately.
- Insofar as possible, we verified whether statements were **factually correct.** This was done by, inter alia, having various persons from the organisation proofread the report for factual errors. Experiences based on something that was factually incorrect have not been shown.

135 In most cases by far, the interviewees turned out to have experienced a change in complexity (in certain respects). In the few cases where interviewees did not experience a change in complexity, the interview was ended after the general experience.

- We excluded experiences that were beyond the **scope** of this research. Statements which we were unable to trace back to one of the five components of the definition (time, knowledge, actions, considerations, cooperation) were not included because they do not concern complexity. Statements about, for example, matters that are outside the research period or from outside the field of asylum were not included in the analysis.
- We took into consideration the **perspective** of the interviewee when analysing the findings. If, for example, an interviewee indicated to have heard something that did not work well in a process that they did not have insight into themselves, less weight was attached to this than if someone carried out the process themselves and indicated something did not work well.
- We tried to explain **contradictions** in experiences of various persons involved. It often happened that interviewees contradicted one another. In this situation, we tried to either see if based on objective information one of the two arguments was stronger (e.g. if one of the two based themselves on factually incorrect information), or pointed out the contradiction and where possible explained it from the differences in perspective between the persons involved.

B2.2 Methods registration data

In this report, registration data have been presented that were supplied by the Business Information Centre (BIC) of the IND. This concerns the outflow of cases from 2013 to 2022 inclusive. The years 2010 to 2012 inclusive have not been included because a different registration system was used in those years and the data from it are difficult to retrieve. These data are also more difficult to compare with the data from 2013 and onwards. The dataset contains information about two topics: the asylum cases (B1.1.2.1) and legal proceedings (B1.1.2.2).

B2.2.1 Methods

B2.2.1.1 Data collection

The data were selected by BIC from the data warehouse using a SQL query. This retrieves data as they are registered in registration system INDiGO on the reference date. If the same query is repeated at a later time, this may lead to different data because data in the system might have been adapted by then. A query cannot be made with a reference date in the past.

B2.2.1.2 Data analysis

The Research and Analysis Unit processed the registration data in SPSS and generated figures in Excel.

B2.2.2 Data

B2.2.2.1 Asylum cases

First, the data set contains all cases that were completed between 1 January 2013 and 31 December 2022 (N= 414,424). These data give insight into the amount of work that was completed within the primary process of the IND and the composition of the cases processed (type of case, processing procedure, characteristics of applicants). The following types of cases were included in the analysis.

- first asylum applications (including by UAMs);
- subsequent asylum applications (including by UAMs);
- resettlement and relocation cases;
- lateral entry;
- family reunification cases of beneficiaries of international protection following an asylum case (including applications in the context of Article 8 ECHR).

The latter category does not always fall under asylum within the IND; some of these cases are processed by regular units. However, where reunification after asylum is concerned, this category has been included in the data, but is shown separately in the figures where relevant.

B2.2.2.2 Legal proceedings

Second, the dataset contains data on legal proceedings that were concluded between January 1st 2013 and December 31st 2022 (N= 133,333). These data give insight into the amount of work the legal department of the IND completed, the types of cases where they represent the IND and the outcome of the appeal proceedings. This includes:

- first-instance appeals lodged by applicants;
- second-instance appeals to higher courts lodged by applicants or the IND.

Information has also been included about the outcome of these proceedings.

B2.3 Methods text data

For some information, no structured data are available, but information can be found in the file in the form of text. For this information, the Data Expertise Centre (DEC) of the IND was asked to text mine the information. This means that the text of relevant documents was gathered and these text files were searched for certain search terms. By counting the search terms, unstructured data (text) can be converted into structured data (tables). The analysis focused on three topics: reasons for asylum, the benefit of the doubt and the size of documents. To all outcomes of these analyses applies that they are indicative; unlike the registration data, they are not hard data. We explain this further in the methods.

B2.3.1 Methods

B2.3.1.1 Data collection

Because analysis of all files from the research period would take up too much time and server capacity, the choice was made to analyse a sample. The sample was made by BIC and contains the same selection of the cases as included in the analysis of the registration data (see B1.1.2.1), only without the family reunification cases. For the years 2015 to 2022 inclusive, 5,000 cases processed in Track 4 were selected, which led to a total sample of 40,000 cases. Cases from before 2015 were not included.

For the cases from the sample, two types of files were searched: the report of the detailed interview and the notes of the IND employee. The report of the detailed interview contains the extensive asylum account, which provides a lot of information about the reasons of applicants to apply for asylum. The notes are an internal document in which IND staff keep records of the case. Hence, this document contains important information about the case from the perspective of the IND staff involved, such as their consideration to give the benefit of the doubt. Both documents play an important role in the asylum decision.

In table B2.2 it is shown per year how many interview reports and notes by staff were found. It is also shown for how many of the cases at least one interview report/notes file was found. This is because it can happen that there are several reports of the detailed interview, for example if it took place over several days and/or several staff members were involved. It also happens that staff generate several notes files for a case. Across the board, at least one interview report/notes file was found for 85% of the cases. The percentages are reasonably consistent over the years; only in 2022 surprisingly few records were found. A possible explanation given by A&B for this is the chaotic situation around the Ter Apel application centre in this period, because of which records may possibly not have been generated when starting the asylum procedures.

Table B2.2 Overview of found interviews and notes by staff

Years	Reports detailed interview		Notes of IND employee	
	Number of files	Number of cases with at least 1 file (%)	Number of files	Number of cases with at least 1 file (%)
2015	11,267	4,450 (89%)	5,552	4,462 (89%)
2016	11,895	4,297 (86%)	5,213	4,327 (87%)
2017	11,669	4,140 (83%)	4,904	4,263 (85%)
2018	10,407	4,118 (82%)	4,635	4,297 (86%)
2019	9,534	4,090 (82%)	4,499	4,192 (84%)
2020	10,243	4,165 (83%)	4,800	4,319 (86%)
2021	10,812	4,151 (83%)	4,671	4,257 (85%)
2022	8,319	4,441 (89%)	4,006	3,800 (76%)
Total*	84,146	33,852 (85%)	38,280	33,899 (85%)

*In a small proportion of the cases, an interview report belongs to several cases because, for example, several family members are interviewed simultaneously. These different cases can be concluded in a different year, so that one interview report is counted in several years.

B2.3.1.2 Data analysis

Interview reports were searched for search terms that indicate the reasons for asylum LGBTIQ+ and conversion/apostacy (see table B2.3). The notes by staff were searched for indications that the staff member had given the benefit of the doubt. The length of the documents was deducted from the page numbers that are written at the bottom of the page. The notes by staff do not contain such a page number, so for these files the number of bytes (characters) from the file properties were used as an indicator of length.

Table B2.3 Overview of (Dutch) search terms and locations per topic

Topic	Search terms (in Dutch)	Search location
Reason for asylum LGBTIQ+	LHBTIQ+, homo, lesbi, biseks, bisex, transse, intersek, intersex, pansek, pansex, queer, gay, lgbt	Interview reports
Reason for asylum conversion/apostacy	bekeer, bekeri, bekeren, afvalli	Interview reports
The benefit of the doubt	"voordeel van de twijfel", "vvdt", "voordeel vd twijfel", "voordeel van twijfel"	Record
Number of pages	Y from "Pagina <X> van <Y>"	Interview reports
Number of characters	*Number of characters counted in text*	Record

B2.3.1.3 Representativeness

When drawing a sample, a certain unintended bias can occur: a certain type of case can be overrepresented or instead underrepresented in the sample. In case of the reasons for asylum, the applicant's nationality is an important characteristic for which a bias would influence the results. After all, nationality is closely related to the occurrence of LGBTIQ+ and conversion/apostacy as reasons for asylum. If, for example, proportionally more Syrians would be in the sample than the actual outflowing group, this can lead to an underestimation of the proportion of applications where the reasons LGBTIQ+ or conversion/apostacy play a role. After all, Syrians are generally awarded an asylum status based on the general situation in their country of origin, so that LGBTIQ+ and conversion/apostacy are relatively uncommon to be mentioned as reasons for asylum in interview reports.

To check whether there is a bias based on nationality in the sample, the percentage of the top-five nationalities from the sample were compared with the percentage of these nationalities in the total outflow. In most respects, there were no significant differences between the sample and the outflow, but in some respects certain nationalities were overrepresented or underrepresented in the sample (see blue in table B2.4). It is important to consider this when interpreting the results.

Table B2.4 Overview of top-five nationalities per year in % per group in the sample and in the total group of outflowing applicants

Year	Nationality	% sample	% total outflow
2015	Syrian	40	45
	Eritrean	24	19
	Stateless	9	9
	Afghan	3	2
	Iraqi	2	2
2016	Syrian	51	45
	Eritrean	11	10
	Iraqi	8	6
	Stateless	7	6
	Afghan	6	4
2017	Syrian	16	35
	Afghan	14	6
	Iranian	12	5
	Iraqi	11	7
	Eritrean	9	12
2018	Syrian	20	20
	Iranian	8	4
	Afghan	7	5
	Eritrean	6	14
	Turkish	6	2
2019	Syrian	21	18
	Turkish	11	4
	Iranian	9	5
	Eritrean	6	8
	Moldovan	5	5
2020	Syrian	37	25
	Turkish	14	7
	Iranian	7	5
	Yemeni	5	5
	Unknown	5	8
2021	Syrian	27	26
	Iranian	13	7
	Turkish	10	6
	Afghan	6	8
	Unknown	4	11
2022	Syrian	40	41
	Turkish	14	9
	Yemeni	8	5
	Somali	4	3
	Iraqi	4	3

B2.3.1.4 Validation

To give insight into the validity of the results, a validation was carried out. This means that a file examination was conducted for a set of files on which the model was used. Comparing the outcomes of the file researchers and the model yields insights into the extent to which the model is able to give the desired answers. In addition, the outcomes of the file examination can be compared with different versions of the model to examine at which threshold the model leads to optimal results. A threshold is the minimum number of hits for the search term to be able to classify the document as positive (for example a case is only classified as a conversion case if search terms for conversion are mentioned at least five times in the detailed interview).

The validation focuses on reasons for asylum because this part of the analysis is the most complex conceptually, making this validity check the most relevant. No validation was carried out for the benefit of the doubt and the length of the

documents because these are such specific subjects that the search terms leave little room for misinterpretation by the model.

The outcomes of the validation are shown in table B2.5. Here, the three best thresholds for both models are compared. Based on the values in this table, the threshold of 10 was chosen for the LGBTIQ+ model and a threshold of 5 for the conversion model (printed in bold in the table).

Across the board, the models score well for validity. The accuracy is high: the LGBTIQ+ model predicts the correct answer in 97% of the cases and the conversion model predicts the correct answer in 92% of the cases. In addition, the table shows how good the model is at correctly predicting (True) the outcome and how often it is wrong (False). A distinction is made here between positive values (the case is a LGBTIQ+/conversion case) and negative values (the case is not a LGBTIQ+/conversion case). The models more often incorrectly show positive values than negative values. The F1 score is an overall indicator of the predictive ability of the model. All in all, the indicators show a good validity and reliability of the models.

Table B2.5 Outcomes of validation for LGBTIQ+ and conversion/apostacy models

Reason	Thres-hold[1]	True Positive[2]	False Positive[3]	True Negative[4]	False Negative[5]	Accuracy[6]	Precision[7]	Recall[8]	F1[9]
LGBTIQ+	3	53	19	254	2	0,94	0,74	0,96	0,83
LGBTIQ+	5	51	11	262	4	0,95	0,82	0,93	0,87
LGBTIQ+	**10**	**50**	**6**	**267**	**5**	**0,97**	**0,89**	**0,91**	**0,90**
Conversion/ apostacy	3	65	16	237	10	0,92	0,80	0,87	0,83
Conversion / apostacy	**5**	**60**	**10**	**243**	**15**	**0,92**	**0,86**	**0,80**	**0,83**
Conversion/ apostacy	10	49	6	247	26	0,90	0,89	0,65	0,75

[1] Minimum number of times that search terms must occur in a document for the model to classify the document as positive (: it is a LGBTIQ+/conversion case).
[2] Number of documents that has correctly been classified as positive.
[3] Number of documents that has incorrectly been classified as positive.
[4] Number of documents that has correctly been classified as negative (: it is *not* a LGBTIQ+/conversion case).
[5] Number of documents that has incorrectly been classified as positive.
[6] Number of documents that has been classified correctly.
[7] Proportion of positive answers that has been classified correctly as positive.
[8] Number of positive answers found compared to proportion of correctly classified positive answers.
[9] Indicator of the total accuracy of the model based on the true and false positives and negatives. By using the harmonic averages in the calculation, equal values for precision and recall are stimulated,[136] so that the model is not much better at predicting positive values than negative values or vice versa.

B2.3.2 Data

The data on reasons for asylum, the benefit of the doubt and the size of documents are given in percentages for the full sample per year. The size is shown in pages (interview reports) and characters (records).

B2.4 Methods media analysis

In this section, we describe the methods underlying the data analysis. The results of this are presented in boxes 5.1, 5.2 and 5.3 in chapter 5.

B2.4.1 Searches

Four searches were conducted. These searches were based on the most important outcomes of the interviews. The searches pertained to attention for:

1. the IND in general;
2. the IND combined with LGBTIQ+;
3. the IND combined with conversion;
4. the IND combined with the human dimension (including the childcare allowance affair and Unheard Injustice in Aliens Law).

The searches did not focus on the field of asylum because it is nearly impossible to exclude items on regular migration. Therefore, although this study focuses on asylum migration, other forms of migration are also mentioned in the analysed media items.

B2.4.2 Approach

The media analysis was conducted using the programme Lexis Nexis (Nexis Newsdesk). This programme contains a database of all articles of local and national newspapers, published in print as well as digitally. Social media have not been included because Lexis Nexis gives limited insight into them. In Nexis Newsdesk, it is only possible to look back five years in time. Therefore, it was not possible to conduct a media analysis of the full research period. To gain as much insight in trends as possible, the choice was made to look back five years from the reference date (1 June 2023).

The analysis was carried out in three steps:

1. a first printout of the results based on the generic terms;
2. a validation of the outcomes, during which the lists were checked and the search terms adapted;
3. a second final printout of the results based on the adapted search terms.

For the analysis of attention for the IND in general, no validation took place. After all, the search terms for the IND are efficient (the probability that they actually refer to the IND is very high[137]) and the search question is rather general, making validation less necessary than for the combined search terms, where the context is of greater importance. In addition, the list was too long to check manually. For the combined search terms, all results were checked and irrelevant results were excluded by applying exclusion criteria (see table B1.3.1). It was chosen to adapt the search term and not to remove the results manually for the sake of reproducibility of the results. The following types or articles were excluded from analysis:

- IND and LHBTIQ+/conversion/human dimension are not mentioned in relation to each other.
- The search term was interpreted incorrectly (e.g. articles on the football player Gaya that are labelled as LGBTIQ+ based on the search term ‘gay’);
- Announcement of articles;
- The search term occurs in a reference to another article;

137 The search term was entered such that it concerns the word IND in isolation (separate from other words) or at the beginning of a word (e.g. IND-related); thus, words that end with IND (e.g. mind, kind) were not labelled as IND.

- The IND is mentioned to refer to a foreign migration service ('the German IND');
- The search term is exclusively used in a negation (e.g. articles on Russian conscientious objectors who formed a new migration flow from Russia, where, in contrast to earlier flows, there is no longer a considerable proportion of LGBTIQ+ applicants);
- Non-substantive articles (e.g. a vacancy, an agenda for an event, weekend tips).

Although the combined searches were checked carefully, the results still paint an indicative picture. After all, it is highly reliant on the interpretation of the researcher which articles still came under the search term and which were not relevant. This especially applies to the general search because the results could not be validated there.

B2.4.3 Technical specifications

The exact search terms used per topic (in Dutch) are shown in table B2.6. The inclusion criteria (to be included in the analysis) are shown in green and the exclusion criteria (not to be included in the analysis) in red. An * indicates that another word may be attached to the search term, for example *IND-medewerker* (IND staff member) is also counted under IND-*.

The following settings were applied to the analysis:

- Research period: 1 June 2019 to 1 June 2023 inclusive
- Content: online news and print media
- Source location: The Netherlands
- Languages: Dutch and English
- No elimination of double entries: The same article can be published several times and can then be counted several times (e.g. the exact same article in 10 different newspapers counts as 10 hits).

There can be an overlap between the lists of articles of the various search actions. For example, it is evident that all of the combined search terms (IND+..) appear in the general list (IND). In addition, there is an overlap particularly between the LGBTIQ+ and conversion lists because the discussion in the media is often about the assessment of both types of reasons for asylum.

Table B2.6 Search terms per topic (Dutch)

Topic	Search terms
IND general	IND OR naturalisatiedienst OR IND-*
IND + human dimension	(ind OR naturalisatiedienst OR IND-* OR immigratiedienst) AND ("menselijke maat" OR "ongehoord onrecht" OR "onrecht in het vreemdelingenrecht" OR kindertoeslagenschandaal OR kindertoeslagenaffaire OR toeslagenschandaal OR toeslagenaffaire) AND NOT ("[thx -2- Niek]" OR Patserproject OR coronademonstratie OR cao-lonen OR celebritynieuwtjes OR Frissen OR "Transnational Institute" OR "License to disturb" OR obesitas OR luchtvaarteconoom OR Blackpool OR isolatie-aanpassingen OR Kinkerstraat OR nieuwsjaarsduik OR RIJSSEN-HOLTEN OR zwemles OR AaFM OR coronagetallen OR mediastages OR Calypso OR DGABD OR coke-maffia)
IND + LGBTIQ+	((gay* OR homo* OR lhbt* OR transgender* OR transvrouw OR lesbi* OR "seksuele geaardheid") AND (ind OR naturalisatiedienst OR immigratiedienst)) AND NOT (icke OR jelle OR aardbev* OR pluche OR aboutaleb OR bloemenfiets* OR gaya OR kruiswoordtest OR "u20ac29,50, Pier14" OR "Ouder & Kind" OR Koninkrijksconcert OR Linklaters OR Blaustein OR "immigratiedienst ICE" OR Chan OR onderzoeksmethode OR Swiers OR Ghullam OR Tijuana OR Pilgrim OR Mogadishu OR Azmani OR Bredanaars OR niet-Arabische OR Zaltbommel OR WIJeindhoven OR kankerlijers OR Balkanland OR Angelo OR Huffnagel OR Ombudsman OR schrijen OR Ntinu OR requisitoir OR twaalfhonderd OR "Amerikaanse immigratiedienst" OR DACA-programma OR Oisterwijk OR Hulk OR Ojik OR misslaan OR Abbasova OR Befangenheit OR Al-Qaeda OR Uppsala OR Yihehe OR halfnaakt OR Amess OR Regenboogstickers OR Funan OR Coenraads OR "85 Russen" OR dienstweigeraars OR Blackpool OR FSB OR fluistert OR "Duitse immigratiedienst" OR koffiezetapparaat OR verdrukte OR "89 Russen" OR Kondo OR Puberen OR Gayane OR

	Etymologisch OR mienskip OR kieswijzer OR "Hans Verhoeven" OR "(vrijwillig)" OR "(vrijwilliger)" OR stage OR blaustein OR fascisme OR Saidi OR bouwput OR Slingerland OR Muslu OR plenaire OR Teamleiders OR "homo economicus" OR meemoeder)
IND + conversion	(IND OR naturalisatiedienst OR IND-* OR immigratiedienst) AND (bekeerling* OR bekering*) AND NOT (coronagetallen OR AaFM OR Greifswald "Duitse IND" OR "Britse immigratiedienst" OR Swealmeen OR Sändaren OR nodig.De OR Suikerfeest OR Marcelle OR Godwin OR Rudaw OR interpellatiedebat OR Josefsson OR Begum OR narcisme-valkuil OR Heberlein OR "wapperen), ")

Note. The inclusion criteria (to be concluded in the analysis) are shown in green and the exclusion criteria (not to be included in the analysis) in red.

B2.4.4 Results in figures

In table B2.7, an overview is given of the number of items and potential reach per topic. The potential reach is the number of visitors per article per month (calculated by LexisNexis).

Table B2.7 Results in figures of the media analysis

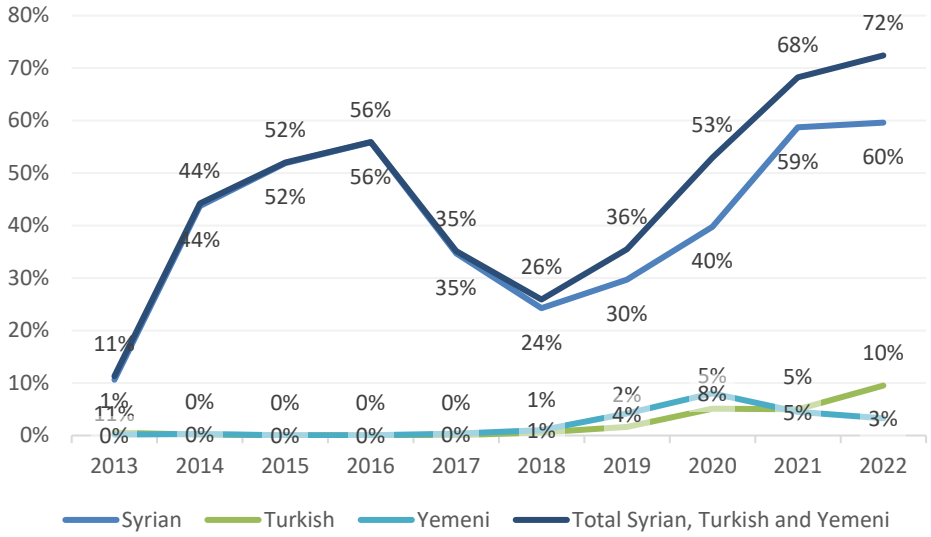
Topic	Number of items	Potential reach
IND	13,839	5,4 billion
IND + human dimension	276	139 million
IND + LGBTIQ+	481	193 million
IND + conversion	212	45,5 million

Appendix 3 Supplementary figures and tables

This appendix contains supplementary figures to which reference is made in the text.

Nationalities likely to be granted family reunification

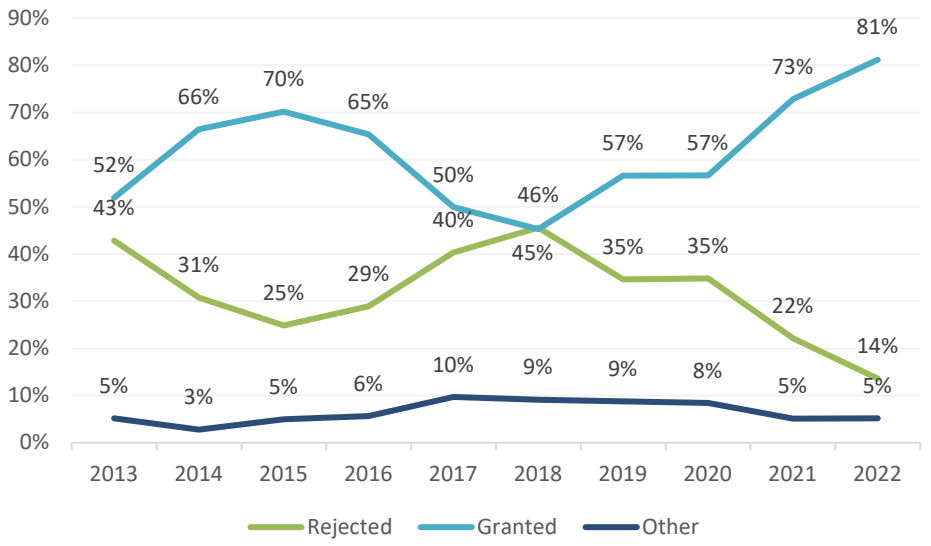
Figure B3.1 Percentage of applications for asylum family reunification* where the applicant had Syrian, Yemeni or Turkish nationality according to the year of the asylum decision, 2013 to 2022 inclusive (N=157,755)



Source: Registration data INDiGO, provided by BIC, reference date 08/09/2023
*Family reunification applications in the context of asylum family reunification, 8 ECHR family reunification or 8 ECHR family life.

Processing family reunification cases

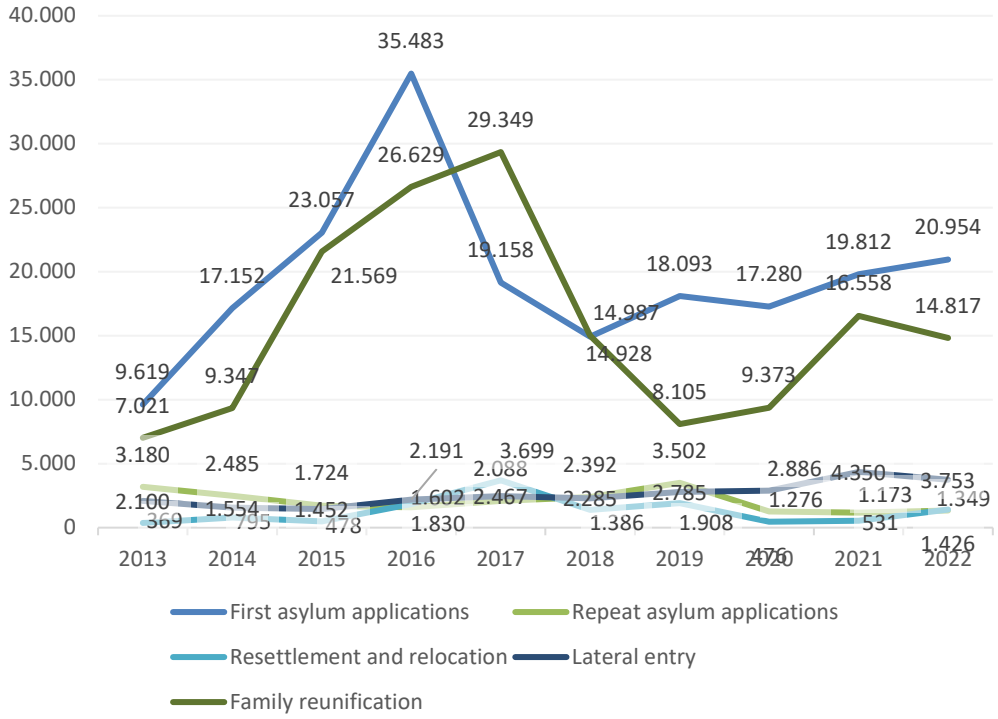
Figure B3.2 Outcome of asylum family reunification cases* according to the year of the asylum decision, 2013 to 2022 inclusive (N=157,755)



Source: Registration data INDiGO, provided by BIC, reference date 08/09/2023
*Family reunification applications in the context of asylum family reunification, 8 ECHR family reunification or 8 ECHR family life.
**Absent values (19) and disposal invalid (2), valid with granting (1) and withdrawal (1) have been left out because these are administrative errors.

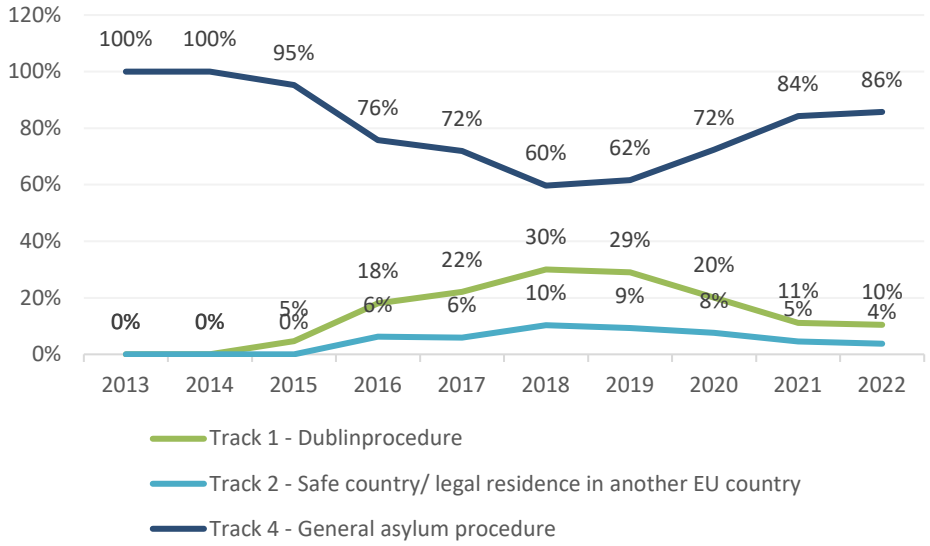
Overview of applications IND

Figure B3.3 Type of asylum cases* according to the year of the asylum decision, 2013 to 2022 inclusive (N=445,691)**



Source: Registration data INDiGO, provided by BIC, reference date 08/09/2023
*First asylum applications (including Dublin), subsequent asylum applications and lateral entry.
**Resettlement and relocation have not been included in the other figures and tables.

Figure B3.4 Asylum case tracks* according to the year of the asylum decision, 2013 to 2022 inclusive (N=255,028)**



Source: Registration data INDiGO, provided by BIC, reference date 08/09/2023
*First asylum applications (including Dublin), subsequent asylum applications and lateral entry.

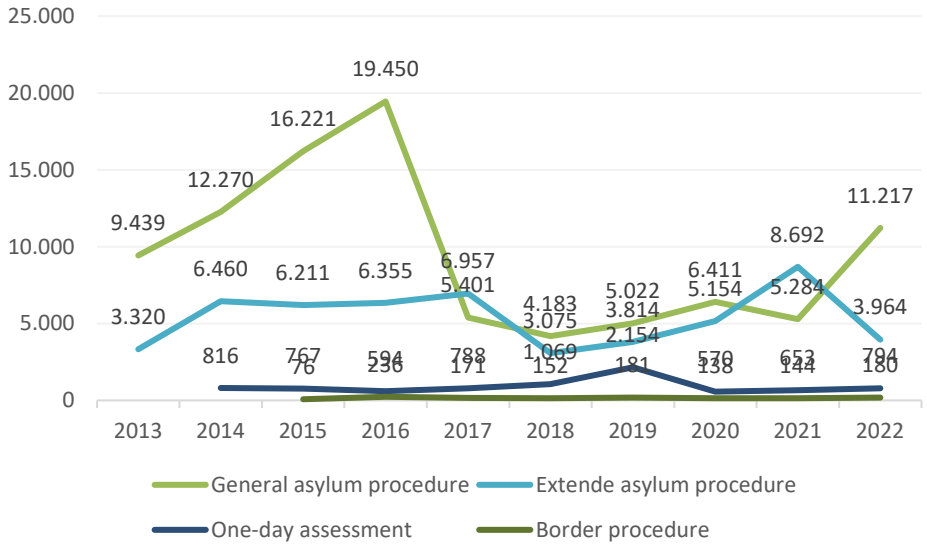
Table B3.1 Top 10 nationalities of asylum application* according to the year of the asylum decision, 2013 to 2022 inclusive (N=242,425)

Top 10 nationalities	N	%	Top 10 nationalities	N	%
2013			**2014**		
Syrian	1856	12%	Syrian	6247	29%
Unknown	1603	11%	Eritrean	3949	19%
Afghan	1535	10%	Stateless	1670	8%
Iranian	1465	10%	Afghan	993	5%
Iraqi	1118	8%	Iraqi	991	5%
Somali	1049	7%	Iranian	708	3%
Eritrean	697	5%	Somali	687	3%
Armenian	422	3%	Unknown	570	3%
Russian	383	3%	Mongolian	355	2%
Egyptian	288	2%	Georgian	341	2%
Other nationalities	4483	30%	Other nationalities	4680	22%
Total	**14899**	**100%**	**Total**	**21191**	**100%**
2015			**2016**		
Syrian	9184	35%	Syrian	13992	36%
Eritrean	5465	21%	Eritrean	3521	9%
Stateless	2290	9%	Iraqi	3118	8%
Afghan	922	4%	Albanian	2243	6%
Iraqi	770	3%	Afghan	2216	6%
Iranian	656	3%	Stateless	1946	5%
Ukrainian	584	2%	Iranian	1466	4%
Kosovan	530	2%	Serbian	1198	3%
Albanian	470	2%	Moroccan	983	2%
Mongolian	450	2%	Kosovan	736	2%
Other nationalities	4912	19%	Other nationalities	7926	20%
Total	**26233**	**100%**	**Total**	**39345**	**100%**
2017			**2018**		
Syrian	3023	13%	Syrian	2434	12%
Afghan	2318	10%	Algerian	1262	6%
Iraqi	2275	10%	Iraqi	1218	6%
Iranian	1945	8%	Eritrean	1212	6%
Eritrean	1677	7%	Moroccan	1089	6%
Moroccan	1269	5%	Iranian	1076	5%
Algerian	1112	5%	Afghan	1035	5%
Georgian	736	3%	Moldovan	729	4%
Unknown	609	3%	Albanian	586	3%
Turkish	499	2%	Turkish	541	3%
Other nationalities	8389	35%	Other nationalities	8487	43%
Total	**23852**	**100%**	**Total**	**19669**	**100%**
2019			**2020**		
Syrian	2694	11%	Syrian	5197	24%
Nigerian	1936	8%	Turkish	1666	8%
Moldovan	1461	6%	Algerian	1151	5%
Algerian	1461	6%	Iranian	1137	5%
Moroccan	1441	6%	Nigerian	1128	5%
Iranian	1373	6%	Moroccan	1011	5%
Iraqi	1227	5%	Eritrean	842	4%
Eritrean	1178	5%	Iraqi	827	4%
Turkish	1134	5%	Yemeni	796	4%
Afghan	926	4%	Afghan	769	4%
Other nationalities	9569	39%	Other nationalities	6920	32%
Total	**24400**	**100%**	**Total**	**21444**	**100%**
2021			**2022**		
Syrian	4736	19%	Syrian	7496	29%
Afghan	3185	13%	Afghan	2831	11%
Iranian	2438	10%	Turkish	2229	9%
Turkish	1410	6%	Yemeni	1412	5%
Nigerian	1358	5%	Algerian	1029	4%
Eritrean	1128	4%	Iranian	982	4%
Algerian	1113	4%	Iraqi	910	3%
Moroccan	1091	4%	Moroccan	904	3%
Iraqi	705	3%	Somali	879	3%
Unknown	655	3%	Eritrean	874	3%
Other nationalities	7517	30%	Other nationalities	6510	25%
Total	**25336**	**100%**	**Total**	**26056**	**100%**

Source: INDiGO registration data, provided by BIC, reference date 8/9/2023
*First asylum applications (including Dublin), subsequent asylum application and lateral entry.

Processing procedures asylum applications

Figure B3.5 Processing procedures in which asylum cases* from track 4 were completed according to year of completion, 2013 to 2022 inclusive (N=158,383)

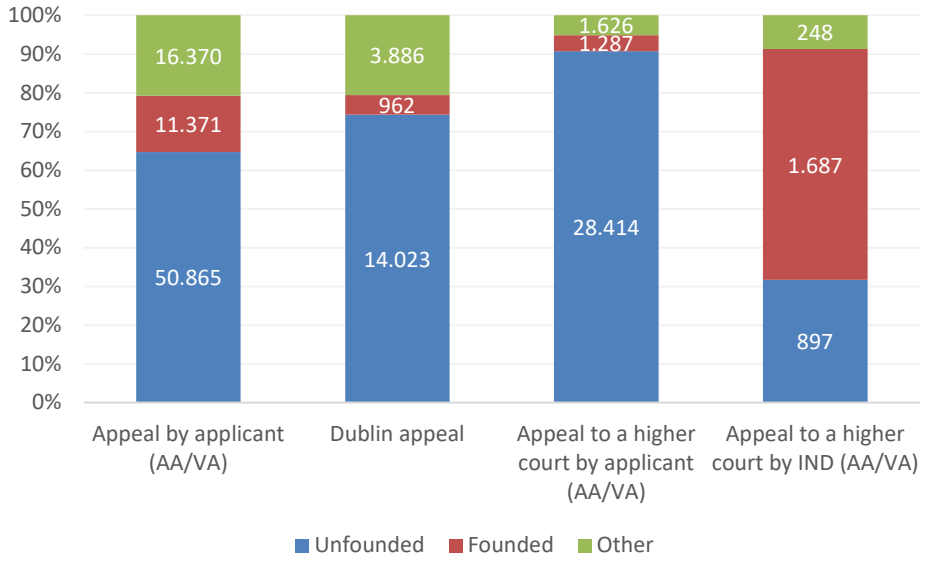


Source: Registration data INDiGO, provided by BIC, reference date 08/09/2023
*First asylum applications, subsequent asylum applications and lateral entry.
Note. For the sake of readability, less frequent processing procedures (EU protection/safe country nationals, Dublin, one-day assessments, last-minute applications, possible granting and foreseeable granting) have not been included in this analysis.

Asylum appeal proceedings

Figure B3.6

Outcomes of first-instance appeals and second-instance appeals to higher courts in asylum cases* from 2013 to 2022 inclusive



Source: INDiGO registration data, provided by BIC, reference date 8/9/2023
*First asylum applications (including Dublin), subsequent asylum application and lateral entry.

For more background statistics on asylum, the reader can consult the Migration Radar on www.ind.nl.

Appendix 4 Case studies

Case study 1: Converts and apostates
In this case study, a timeline is drawn of relevant case law, legislation and policy, and instructions on the assessment of asylum applications by converts and apostates.

2012

In 2012, the CJEU passed a judgment[138] from which it follows that the foreign national may not be expected to abstain from religious practices in the country of origin to avoid persecution. The Aliens Act Implementation Guidelines[139] had to be amended for this and an information message followed in which questions are given that interview staff members can ask in a conversion case. In it, it is mentioned that there is no single template to capture someone's conversion or standards by which conversion can be measured. Conversion can be expressed in different ways and can be different for everyone. It is mentioned that many conversions can be traced back to a change in their sense of meaning and that the person often gains something by conversion. Hence, according to the information message, questions can be asked about the process of conversion and the effect of the conversion. In response to the judgment by the CJEU, it is also mentioned that it is important to form a picture of the practice of the belief during the interview and the visibility by which the person involved expresses their belief, but that making this plausible is primarily up to the person involved. In addition, it is mentioned that the veracity of these circumstances is not always easy to establish.

On 9 November 2012, a first information message is published in which themes are addressed that form the basis for the questions and assessment in conversion cases.

2013

In 2013, the ABRvS passed a judgment on the method of investigation and assessment of conversion. The ABRvS summarises the themes that are addressed in the information message as follows:

- substantiation of and process for conversion;
- knowledge of religious doctrine and religious practice;
- churchgoing.

The ABRvS follows the State Secretary in the emphasis in the investigation and assessment on the process of conversion and the meaning of the new religion for the foreign national. In this respect, the fact that this choice was made against the backdrop of a society in which another religion is forbidden and/or there is a taboo on it plays a role. Hence, the choice must be deeply rooted and well-considered.

On 11 October 2013, an information message is published that inter alia addresses situations in which a foreign national submits a third-party document to support their claimed conversion, for example by a church official or church organisation. This information message must be seen in the context of a situation where, in conversion cases, reports and statements were increasingly submitted by church organisations or persons that presented themselves as experts in the field of religion and conversion.

138 ECLI:EU:C:2012:518
139 ECLI:NL:RVS:2012:166

The information message mentions that although such statements must be included in the assessment, they do not have to be given decisive meaning. The starting point is that the foreign national themselves must state persuasively about their conversion.

2015

For a long period, the ABRvS sanctions the method of investigation and assessment by third parties. For example, the ABRvS rules in a judgment of 2014 that a baptism certificate cannot serve to support a claimed religion since it does not provide conclusive information about the reasons for and process of conversion. Furthermore, the ABRvS reaches the conclusion that the submitted statements by a pastor and Stichting Gave (Gift Foundation) may serve to support a conversion, but that such statements are without prejudice to the foreign national's own responsibility to make persuasive statements. And in a judgment of 2015, the ABRvS indicates that submitted statements by a church official do not relieve the foreign national of the duty to give persuasive statements about their conversion and the process leading up to it. In this same case and in another case[140], the ABRvS also indicates that the assessment framework of the IND is adequate, and that it may be held against the foreign national if they give vague, incoherent or contradictory statements about certain components. In their answers to questions about the reasons for and process of conversion, the foreign national must give insight into their conscious and well-considered choice to convert. If they have not done so, no value has to be attached to statements by religious organisations.

2016

In 2016, an information message was published to replace the information messages of 2012 and 2013. From a brainstorm session and manual file studies, it has emerged that the questionnaire forms this information message is used too rigidly. The idea is that more open questions are asked and that a 'dialogue' is really entered into. It is expected that a proper interview, focussing on the individual case, will also make decisions less complicated. Therefore, the questionnaire is updated (it now offers more of a 'framework'), the questions have been formulated more openly (some questions have been removed) and more relevant background information has been given on converts. In addition, the distinction between active and passive conversion has been shown more clearly and important case law has been incorporated. It is indicated that this information message is a predecessor of a work instruction to be developed.

2018

In 2018, the first work instruction specifically focusing on converts (including apostates) was published: WI 2018/10.[141] This work instruction is the result of a motion tabled by Groothuizen in 2017, which called for the improvement of the assessment of LGBTIQ+ and converts. The work instruction consists of 13 pages.

The earlier information messages have been incorporated into this work instruction. This work instruction does not aim to change the current method. The work instruction attempts to explain and provide points of reference for interviews and decisions. It is, however, described that it is not possible to give a standard answer to the question how conversion takes place and when conversion is credible. Compared to the earlier information messages, a factor is added that must be considered in the investigation and assessment. It is stated that it is up to the foreign national to give insight into what their situation was before conversion

140 ECLI:NL:RVS:2015:3802

141 The public work instructions, information messages and country-specific information of the IND are available on the IND website: https://ind.nl/en/about-us/statistics-and-publications

(starting point), how this person subsequently was introduced to another belief and how further conversion was affected. When doing so, however, the extent to which foreign nationals can express their newly acquired belief in words must be considered, since this may differ from person to person. Moreover, it is mentioned that not all foreign nationals are used to talking about their experience and feelings. It is therefore up to the interviewing staff member to enquire further when standard answers are given. When doing so, it is the intention to invite the foreign national to support their statements further and make them more personal.

Three elements[142] are mentioned to assess the credibility of a conversion in the context of an asylum application. These elements align with the themes that were also mentioned in the information messages. They also must be seen in conjunction. It is important to assess the case with an open mind and to prevent (subconscious) reasoning from the own context. In addition, the IND looks for the foreign national's authentic narrative. If an element is addressed in less depth by the foreign national, an explanation for this must be asked by the interviewer.

This work instruction also addresses apostacy, but this is not considered a religion. In a judgment of 2021 (referred to below), the ABRvS states that apostacy is a religion. The work instruction also addresses alleged apostacy.

The element of fear upon return is also laid down in this work instruction: the foreign national cannot be expected to abstain from practicing their new belief, on condition that the foreign national can make it plausible that these practices are important to them and not being able to practice these activities and/or expressions affects their private life.

In addition, the work instruction addresses how to handle information from third parties and how to handle subsequent applications.

In 2018, the ABRvS[143] ruled that an implausible convert cannot be expected to remove or adapt their tattoo without further reasons to prevent problems upon return. The Minister must include the fundamental right of physical integrity and the case law of the CJEU in his substantiation.

Also in 2018, the ABRvS[144] ruled that if a woman makes it plausible that she has a Western lifestyle and this is based on a religious belief or political opinion, she is eligible for an asylum permit. If no religious belief or political opinion forms the basis for this, the woman can be expected to adapt upon return. If the woman puts forward that she has Western features that she cannot hide, the Minister must investigate and assess whether the woman may be alleged apostacy upon return.

2019

In 2019, an information message (IB 2019/26) was published in which points of reference are given for how to handle cases in which a foreign national indicates that they have a Christian tattoo. In this information message, it is indicated that foreign nationals increasingly often rely on fear of persecution because of a Christian tattoo.

In 2019, a new work instruction (WI 2019/18) was published in response to a newly adopted motion by the House of Representatives. In it, it is determined that in

142 The reasons for and the process of conversion, the knowledge of the new belief and the activities.
143 ECLI:NL:RVS:2018:1802
144 ECLI:NL:RVS:2018:3735

conversion (and LGBTIQ+) cases, a decision officer must always consult a LGBTIQ+/conversion coordinator.

This work instruction resulted in more work: after all, in each case a conversion coordinator had to be consulted. JZ was also confronted with a lot of discussions in court about the question whether a conversion coordinator had been consulted and whether this could be made transparent. This discussion was eventually resolved because courts considered it sufficient if it became apparent from the record that a conversion coordinator had been consulted.

2020

In 2020, the ABRvS[145] ruled that also with respect to (alleged) apostacy and atheism, it must be assessed what the risk upon return is if the foreign national wishes to express themselves openly upon return. After all, no reservation may be expected, just like for converts.

2021

In 2021, the ABRvS passed a judgment[146] with the consequence that the IND must assess and substantiate to which extent inadequate statements on the process of conversion can be compensated by statements by the foreign national about knowledge of the religion and the activities that the foreign national conducts in the context of the religion. The ABRvS has adopted WI 2018/10 as a starting point for this, which states that statements by the foreign national about one element can serve to compensate statements about another element that are less convincing in the opinion of the Minister.

Another ruling from 2021[147] also illustrates that the ABRvS has become stricter where transparency by the IND is concerned. In this context, the ABRvS refers to rulings from 2016,[148] in which the ABRvS gives an explanation of the intensity of judicial review where credibility assessment is concerned. In the light of the comprehensive credibility assessment, all statements made and evidence submitted by foreign nationals about the various aspects that are connected with the claimed conversion must be seen in conjunction and in the light of the other statements made and evidence submitted, as well as other circumstances, such as earlier procedures. Not only to make this clear for a foreign national, but also to allow the administrative court to effectively assess this decision-making. This obligation to substantiate clearly already existed in a certain sense, but the ABRvS has started to monitor more than before whether this duty to substantiate is actually fulfilled.

2022/2023

In 2022, the ABRvS passed a judgment[149] from which it follows that the IND, considering its own policy in WI 2018/10 and 2019/18, must also investigate the compensation possibility in subsequent applications. Moreover, the IND must investigate and assess the statements put forward by the foreign national in the subsequent procedure in conjunction with what the foreign national put forward in the earlier procedure. There must be a procedure-transcending comprehensive credibility assessment. Previously, in conversion cases in which a subsequent application was in question the position was often adopted that the earlier conversion was implausible, so that there could be no development of religion and a conversion that was plausible after all. The statements from the previous application did not have to be considered comprehensively (or again) in the subsequent application. However, following this judgment, all statements including those made

145 ECLI:NL:RVS:2020:1968
146 ECLI:NL:RVS:2021:977
147 ECLI:NL:RVS:2021:2544
148 ECLI:NL:RVS:2016:890 and ECLI:NL:RVS:2016:3502
149 ECLI:NL:RVS:2022:2714

and submitted in earlier procedures, must be assessed in conjunction. Hence, the first conversion account must be included comprehensively in the credibility assessment. This makes the assessment of subsequent applications which are grounded on development of religion by the foreign national a lot more labour intensive. This was followed by IB 2022/88, in which it is also mentioned that a new work instruction is in the making, in which the new method will be included.

In 2022, the ABRvS also passed a judgment[150] saying that it is insufficiently clear how the Minister investigates and assesses claimed apostacy. The existing work instructions on conversion do not contain points of reference for this. The ABRvS rules that apostacy, just like conversion, is a religious belief and the ABRvS more or less orders the Minister to develop policy for it. The ABRvS advises the Minister, with law development and legal protection in mind, that the investigation and assessment of (the credibility of) (alleged) apostacy must be conducted in conformity with the assessment of conversion, thus therefor also using statements about process, knowledge and activities. In addition, possible allegation of apostacy, and which risks the foreign national faces in connection with this upon return, must be investigated and assessed. In connection with this the ABRvS indicates that the Minister must investigate this in conjunction with other circumstances, such as long-term residency outside the country of origin, the behaviour of the foreign national in their country of origin and in the Netherlands, and the claimed problems. The Minister must also include the situation in the country of origin. For asylum seekers from Iran, this means that the Minister must investigate and include the situation at the airport more specifically because it becomes apparent from public sources that the Iranian authorities cross-examine returning nationals. Subsequently, the ABRvS passes a judgment[151] which states that atheism must be distinguished from apostacy. Following this, atheism must be investigated and assessed separately. In 2023, the ABRvS issues a judgment in which it rules that (alleged) apostacy is not only in question if the foreign national abandons the religion with which they grew up or followed in the past, but also if the foreign national has never believed in the religion with which they grew up, or never saw themselves as a true believer.[152] In another judgment from 2023[153], the ABRvS rules that the Minister must also take into consideration the recent social and political developments in Iran when assessing the return risk of a non-religious Iranian apostate.

In 2022, WI 2022/3 was published, which comprises 20 pages. In addition to points of reference for the assessment of a conversion – including conversion to atheism – this work instruction also contains points of reference for the assessment of apostacy as an independent reason for asylum and an explanation of the concepts apostacy and atheism. The reason for this addition are the judgments by the ABRvS[154] on apostasy and atheism respectively. In these cases, it is stated that WI 2019/18 is not always useable for asylum applications by foreign nationals who claim that they are apostates or have converted to atheism. According to the ABRvS, this is because these concepts are so difficult to define and can have many different forms. For example, in practice other factors are involved in addition to conversion, apostacy and atheism, including distance from a religion, aversion, non-practice and a secular lifestyle. In the work instruction, it is attempted to explain this matter better. However, in the work instruction itself it is stated that the terms can be explained in many different ways and are difficult to define. The methods for the different terms seem similar, but differ in their emphasis. This requires more

150 ECLI:NL:RVS:2022:94
151 ECLI:NL:RVS:2022:93
152 ECLI:NL:RVS:2023:3171
153 ECLI:NL:2023: RVS:67
154 ECLI:NL:RVS:2022:93 and ECLI:NL:RVS:2022:

knowledge and considerations to assess asylum applications by persons with this asylum reason. The new method concerning the assessment of subsequent applications in response to the judgments by the ABRvS[155] is also included in this work instruction.

155 ECLI:NL:RVS:2022:2714

Case study 2: LGBTIQ+

In this case study, the relevant case law, legislation and policy, and instructions on the assessment of asylum applications in LGBTIQ+ cases are explained.

2012

In 2012, an information message was published in which it is stated that subsequent applications by homosexuals must be processed substantively, and that the person taking the decision must show reservation when deeming the claimed homosexuality implausible.

On 18 April 2012, the ABRvS requested a preliminary ruling from the CJEU.[156] Among other things, the ABRvS wants to know whether homosexuals can be considered as a social group. In addition, the ABRvS wants to know whether abstinence can be expected from homosexuals upon return to the country of origin. The ABRvS also wonders in which case an act of persecution can be determined.

2013

On 20 March 2013, the ABRvS requested another preliminary ruling from the CJEU.[157] The ABRvS wants the court to explain the method for assessing the credibility of sexual orientation and the limitations to this that must be considered.

In response to the requests for preliminary rulings by the ABRvS,[158] the CJEU rules on 7 November 2013 that homosexuals must be considered as a social group in the sense of the Refugee Convention if they fear persecution because of their sexual orientation.[159] An important element here is that they cannot be expected to conceal their sexual orientation upon return to the country of origin, or exercising restraint in expressing their sexual orientation.

In an information message of 13 November 2013, the ruling by the court on X, Y and Z are explained in the light of the Dutch policy. It is concluded that the policy requires adaptation where the question is concerned whether restraint can be expected from a foreign national to prevent persecution. The court had ruled that this may not be expected, whereas pursuant to the Dutch policy until then, a certain level of restraint could be expected. In the information message, it is pointed out that the proceedings with the ABRvS will be continued.

On 18 December 2013, the ABRvS passed a ruling in the cases X, Y and Z. The ABRvS rules that in case of rejection of an application it does not suffice to conclude that the claimed events are implausible, but that the statements about the method on which the foreign national will express their sexual orientation after return to the country of origin must also be included. In addition, it must be included whether there are regulations in the country of origin that penalise homosexual acts and to which extent those stipulations are being applied in practice.

In an information message of 20 December 2013, a first explanation of this judgment by the ABRvS is made. This concerns the question on how to assess whether the foreign national has to fear persecution in their country of origin. The abovementioned aspects are mentioned here.

2014

156 In the case X, Y and Z
157 In the case A, B and C
158 In the case X, Y and Z
159 ECLI:EU:C:2013:720

To further elaborate this, a new information message was published on 12 January 2014, on interviewing LGBTIQ+ applicants. In it, it is emphasised that, in anticipation of a policy to be newly formed, in the interview with the foreign national there must be more attention for questions pertaining to expressions of homosexuality upon return to the country of origin and to problems to be expected based on this.

On 14 April 2014, a new information message is published. It explains, among other things, how questions about intended expression of sexual orientation in the country of origin can be placed in the assessment framework. It is described that the burden of proof may be on the foreign national, but that it must be taken into consideration that it is difficult for an asylum seeker to make it plausible with conclusive evidence that they are LGBTIQ+. It is emphasised that medical tests or documentary evidence cannot be requested, and no questions about sexual acts/activities may be asked. In addition, two documents (guidelines by the UNHCR[160] and a research article[161]) are cited to support the assessment of credibility of LGBTIQ+. Based on this, themes[162] and sample questions are given that can be asked for the purpose of the assessment of someone's sexual orientation.

On 2 December 2014, the CJEU passes a judgment in response to the preliminary rulings requested by the ABRvS in the case A, B and C. The court rules that the national authorities, like the IND, do not have to assume that a foreign national is a homosexual merely based on their statement that they are homosexual. Investigation into (the credibility of) claimed homosexuality is therefore possible. The court establishes a number of matters that must be considered when assessing the credibility of LGBTIQ+ cases. For example, the asylum seeker cannot be questioned in detail about the way in which they practically exercise their sexual orientation, and the assessment may not only take place based on a stereotypical understanding.

2015

On 8 July 2015, the ABRvS rules that the method in the investigation into and the assessment of sexual orientation used by the IND is not in breach of Union Law. Nonetheless, the ABRvS rules that the court has created a general framework and that the Minister must make it clear how the actual assessment takes place in a specific case. Because of the lack of a policy rule or a standardised line of conduct, comparable to the one available for conversion cases, it is not possible for the court to effectively assess a decision according to the ABRvS.[163]

In response, the IND establishes the adapted method in a new work instruction, WI 2015/19. This work instruction is made public, making the assessment framework clear to all parties involved.

The work instruction is based on the earlier information messages, particularly the information message of 14 April 2014, and contains the themes for questions to assess someone's sexual orientation mentioned above.[164] Supplementary to this, it is emphasised that no assessment may take place against a stereotype. It is also

160 UNHCR (2012). *Guidelines on International Protection No. 9 Sexual Orientation and or Gender Identity.*
161 LaViolette (2,013). *Sexual Orientation and the Refugee Determination Process: Questioning a Claimant About Their Membership in the Particular Social Group.*
162 The themes are private life, family and religion, relationships, contacts and knowledge of country of origin, contact and knowledge of the Netherlands, discrimination, repression and persecution in the country of origin, and future. In the work instruction, an explanation is given of the substance of the themes.
163 ECLI:NL:RVS:2015:2170
164 LaViolette (2,013). *Sexual Orientation and the Refugee Determination Process: Questioning a Claimant About Their Membership in the Particular Social Group.*

stated that the applicant may not always have had an internal struggle with their sexual orientation, but that the applicant must have undergone a process of becoming aware of their orientation. In addition, it is explained that the emphasis is on the experiences of the applicant and their consequences and how these statements fit into the general policy of the country of origin. Statements must be considered in conjunction. If the sexual orientation is considered implausible, it must be indicated which weight is given to the statements about the consequences of the sexual orientation. If the consequences are considered implausible, this strengthens the lack of credibility of the sexual orientation, but this does not automatically mean that the orientation is implausible.

2016

On 15 June 2016, the ABRvS ruled that the compiled work instruction was established carefully and that the method in which the Minister investigates the credibility of a claimed sexual orientation is careful. Moreover, the Minister makes it sufficiently clear how he assesses sexual orientation. Thereby, the defects observed by the ABRvS in the judgment of 8 June 2015 have been removed.[165]

2017

The method for the assessment of LGBTIQ+ cases is again under debate in 2017. In an earlier case, the Minister explained that the interviewer asks open questions to the asylum seeker and asks them for clarification if necessary.[166] On 5 October 2017, the ABRvS rules that the Minister asked insufficient further questions about applicant's answers whereas there was reason to do so.[167] For this the ABRvS bases itself on the IND's own work instructions, which the IND has not followed sufficiently.

In 2017, members of the House of Representatives of the four coalition parties tabled a motion asking the government to investigate whether the assessment of the credibility of converts and the sexual orientation of asylum seekers can be improved, and to make proposals for this. This seems to fit an (increasingly) more critical attitude with respect to the assessment of the credibility of a claimed sexual orientation by the IND. Interest organisations, such as LGBT Asylum Support and the LGBTIQ+ interest organisation COC join the debate and express criticism of the method of assessment in LGBTIQ+ cases. This criticism pertains in particular to the emphasis in the work instruction on the process of becoming aware and on self-acceptation.

2018

The motion and the dialogue with interest organisations result in an improvement in the way in which the credibility assessment of LGBTIQ+ takes place. This is laid down in WI 2018/9. It replaces WI 2015/9. In the WI, it is indicated that the IND is interested in the 'authentic story.' The 'authentic story is mentioned in conjunction with the personal experiences of LGBTIQ+. The extent to which sexual orientation can be expressed in words differs from person to person. Questions are no longer asked that specifically refer to a 'process of becoming aware' and 'self-acceptation', and neither is it assumed that each LGBTIQ+ went through an internal struggle. This way, it is tried to avoid stereotypes. The IND will focus on the personal experiences and sense of meaning through an open-minded approach and by asking open questions, in which a connection is sought with the frame of reference of the foreign national. The IND staff member must ask further questions in case of standard answers and must ask for explanation if questions cannot be answered. The starting

165 ECLI:NL:RVS:2016:1630
166 ECLI:NL:RVS:2016:1630
167 ECLI:NL:RVS:2017:2706

point is that during the interview the interviewer adopts an open-minded position and avoids (unconscious) reasoning from a personal, often Western, perspective, as much as possible. In addition, further explanation is given in the work instruction as to how to handle statements by third parties. The IND must make it apparent how the statements by third parties are weighed in the greater whole. In addition, it is also stated that it is important that courts can (also) verify that the interview took place in conformity with the general approach as described in this work instruction.

The introduction of the new work instructions led to a short period of extra work for the IND. In various appeal cases and opinions, it was argued that the investigation and the substantiation did not comply with the new work instruction because too much emphasis would have been placed on the process of becoming aware and on self-acceptation. Forming a reaction on these appeal cases and opinions was time consuming because it had to be substantiated per individual case whether the requirements of the new work instruction had been met. This was ended by a judgment by the ABRvS on 12 August 2020.[168] In it, the ABRvS rules that the amendment of the work instruction is not a policy change because the emphasis in the assessment of the claimed sexual orientation has not changed compared to the previous work instruction.

2019

On 30 December 2019, WI 2019/17 was published in response to an adopted motion by the House of Representatives. In it, it was determined that in LGBTIQ+ (and conversion) cases, a decision officer must always consult a LGBTIQ+ coordinator.

This work instruction resulted in more work: after all, in each case a LGBTIQ+ coordinator had to be consulted. JZ was also confronted with a lot of discussions in court about the question whether a LGBTIQ+ coordinator had been consulted and whether this could be made transparent, which led to somewhat more work.

2020/2021

In two cases from 2020 and 2021, it was under debate how the IND had to handle reports by interest organisations in the credibility assessment of cases where the applicant claimed to be LGBTIQ+. More specifically, these cases involved a report by Bureau Kleurkracht (an interest organisation for cultural diversity and multiculturality), in which it is stated that the Minister does not take the foreign national's background sufficiently into consideration.[169] [170] The ABRvS rules that the Minister did not sufficiently substantiate what consequences follow from the conclusions of this report, in which the statements by the foreign national are placed in their cultural context. After all, the IND itself laid down in WI 2019/17 that the foreign national's reference framework must be considered in the assessment. From this, it may possibly follow that the applicant did not understand certain questions by the IND well. From the judgments follows that insofar as general findings from research on the culture of the country of origin are involved, the Minister does not have to go more deeply into this. However, when assessing the credibility of sexual orientation, the Minister must take into consideration the argument related to the individual foreign national that because of cultural differences the IND may have understood or interpreted certain statements incorrectly. Hence, the ABRvS distinguishes between general reports (no further obligation to substantiate) and reports pertaining to the individual (a different obligation to substantiate).

168 ECLI:NL:RVS:2020:1885
169 ECLI:NL:RVS:2020:341
170 ECLI:NL:RVS:2021:121

In 2021, a judgment about statements by third parties in general followed. The ABRvS rules that the Minister must make it clear whether he deems the information from the submitted document credible and must actually and manifestly motivate which weight is attached to the content of the document in the light of the statements by the foreign national. Therefore, he can no longer suffice with the consideration that the foreign national themselves did not make sufficiently convincing statements.[171] This judgment refers back to the judgment of 13 April 2016 about the credibility assessment (see box 3.5). The judgments have the consequence that the investigation and substantiation obligation for the IND in claimed LGBTIQ+ cases is further tightened. In the judgment, the ABRvS also introduces the so-called compensation rule. If the foreign national has provided inadequate statements about one theme without justification, this does not automatically result in the foreign national's claimed sexual orientation having to be considered implausible considering that this inadequate statement can be compensated with other statements and submitted evidence. This is remarkable because this compensation rule is mentioned in neither WI 2018/9 nor WI 2019/10. The ABRvS seems to draw a parallel with conversion cases, in which such a compensation rule is mentioned in the WI and is associated with the comprehensive credibility assessment. In doing so, the ABRvS imposes a tighter obligation to substantiate than the defendant would have had based on its own work instruction.

In 2020, another information message was published in which the assessment of the fear for persecution is explained based on the Refugee Convention. This is because SUA has received a lot of questions about this from the primary process. This information message specifically addresses, among other things, the assessment of sexual orientation. It also indicates that someone may not be expected to exercise restraint in expressing their sexual orientation in a way that goes further than the imposed lower threshold[172] (for example LGBTIQ+ activists, foreign nationals who are active for LGBTIQ+ interest organisations, participation in demonstrations, seeking out the press). In 2020, an information message was also published about the assessment of LGBTIQ+ cases of foreign nationals from Cuba in response to a large number of questions from the primary process by A&B.

2023[173]

In the run-up to a court hearing of 12 April 2023, the ABRvS asked a number of questions about the credibility assessment of applications by asylum seekers who claim to be transgender. The ABRvS asked, among other things, about the terminology used, in particular of sexual orientation, transsexual, transgender, binary, non-binary. The questions were answered, but the hearing did not take place because the decision was withdrawn for reasons beyond the scope of the questions. Because the assessment of 'gender' is somewhat neglected in the current work instruction, and the number of cases in which this plays a role is increasing, it remains to be seen whether the work instruction has to be adapted.

171 ECLI:NL:RVS:2021:1754

172 This lower threshold is the actual expression of their own orientation and entering into relationships in a way that is not essentially different from that of heterosexuals accepted in the particular country of origin.

173 Although 2023 is not within the research period, we do mention the developments from this year for the sake of completeness, considering that the assessment of applications of trans persons is also a theme in the preceding years.

Case study 3: Political opinion and westernisation

In this case study, an explanation is given of the relevant case law, legislation and policy, and instructions on the assessment of asylum applications where political opinion and or Westernisation pays a role.

2018

In 2018, the ABRvS passed judgment[174] in a case of an Afghan mother and her children, who had stayed in the Netherlands for some time already, and claimed that they could not return to Afghanistan because of their Western lifestyle. According to the court, they cannot be expected to adapt their lifestyle to the strict Islamic regulations in Afghanistan. This judgment had the consequence that in such cases of Westernised women, an additional investigation had to be conducted into the question whether a political opinion or religious belief formed the basis of Westernisation, and hence required additional substantiation. The ABRvS ruled in this judgment that even though there is no political opinion or religious belief, Western behaviour can still result in the applicant's environment thinking that this person does have such an opinion or belief. In that case, the applicant is still at risk.[175] In this context, a foreign national will have to make it plausible that characteristics are involved that are very difficult or impossible to change. In this respect, particularly the behaviour in the country of origin prior to arrival in the Netherlands, the age at the time of departure, the development in the Netherlands and the duration of residence in the Netherlands play a role. The foreign national must make it plausible that they cannot change the characteristics or that they cannot reasonably be expected to do so, or that the foreign national is unable to conceal them structurally. Furthermore, it must become apparent from the country-specific information that the foreign national will be alleged a reason for persecution because of these characteristics. Hence, the investigation and assessment must now also focus on possible allegation. In response to this ruling, IB 2018/99 was first drawn up, and subsequently WI 2019/1. Evaluating the Westernisation of behaviour means that the staff member must make more considerations which may require more time, actions and coordination with other units.

2019

In 2019, the ABRvS passed a judgment[176] which, together with similar judgments and the many questions received by SUA in this area, led to IB 2020/62. SUA receives a lot of questions from which it becomes evident that the assessment is not always carried out correctly and/or is unclear. In the information message, further descriptions are given as to how a political opinion must be investigated (questioned during a detailed interview) and assessed (further substantiated) based on the assessment framework laid down by the ABRvS in its judgments[177]. The judgments by the ABRvS pertained very specifically to foreign nationals who had only become politically active in the Netherlands, but in the information message, the scope has been drawn a little broader by also including the foreign nationals who had been politically active in the country of origin. In all these cases, additional questions must be asked about political opinion and it must be assessed and substantiated whether it is credible, and if yes, whether it is so fundamental and important for the foreign national that no abstinence can be expected from them. Hence, additional assessments have been added, which results in additional considerations, coordination and time. If a foreign national is concerned who was already engaged in political activities in the country of origin, it must also be assessed and substantiated whether the foreign national has made it plausible that they have to fear persecution in connection with this. If political activities in the Netherlands are concerned, the IND must – if the IND does not assume a fundamental political

174 ECLI:NL:RVS:2018:3735
175 In such a case, the foreign national is in danger in the country of origin because the Western behaviour incorrectly gives the idea that the person has a political opinion or religious belief.
176 ECLI:NL:RVS:2019:1970
177 ECLI:NL:RVS:2019:3880

opinion – also assess whether the foreign national may possibly be alleged to have a (fundamental) political opinion by the authorities in the country of origin.

2022

In 2022, IB 2022/25 was published, following a preliminary ruling requested to the CJEU[1] by the ABRvS on the interpretation and method of assessment of a fundamental political opinion. The method in IB 2020/62 for cases in which asylum seekers claim to have a fundamental political opinion remains applicable after the request for a preliminary ruling until the ABRvS passes judgment.

The ABRvS rules[178] that it is not sufficient to investigate and assess whether the foreign national has attracted negative attention from the authorities because of demonstrations. If the foreign national declares that they want to be politically active after return, it must be investigated whether the political opinion is fundamental and whether its expression poses risks. If the foreign national does not state that they want to be politically active after return, it does not have to be investigated and assessed whether the foreign national has a fundamental political opinion.

178 ECLI:NL:RVS:2022:2511

Case study 4: Ex-officio assessment against Section 64 Aliens Act

The assessment against Section 64 Aliens Act is mentioned as a complex assessment in the interviews. To illustrate this, a work instruction and case law analysis is given below. The work instruction and case law does not only pertain to the ex-officio assessment against Section 64 Aliens Act, but may also pertain to a separate Section 64 Aliens Act application. The overview only illustrates how complex the (ex-officio) assessment against Section 64 Aliens Act can be. It must be noted here that the likelihood that very serious medical issues are at play is somewhat smaller for first asylum applications than when the foreign national has been in the Netherlands longer and submits a separate Section 64 Aliens Act application because of their (newly arisen) medical or psychiatric issues.

The work instruction pertaining to Section 64 comprises 26 pages and contains several references to case law. In the work instruction, it is described that in each rejecting decision a consideration must be included whether the foreign national is able to travel and/or there is a real risk of breach of Article 3 ECHR for medical reasons and/or it is considered plausible in conformity with the recommendation by the Medical Assessment Section (*Bureau Medisch Advisering*, BMA) that a medical emergency will arise in the short term. If the foreign national has put forward arguments of inaccessibility, it must also be substantiated in the rejecting decision why the IND considers this argumentation implausible. If the staff member does not assess against this ex officio, this can be invoked in an appeal.

For the assessment of the medical situation, the BMA issues a recommendation.[179] The BMA may recommend that medical travel conditions must be observed during removal. This can concern giving medication, medical supervision during the flight and a written transfer of medical data. It can also happen that a physical transfer of the foreign national, namely transfer to a medical institution after arrival, is deemed necessary.

Based on the BMA recommendation, the staff member must assess whether medical care is accessible. This accessibility test focuses on the individual case of the foreign national. The foreign national must give reasons why the treatment is inaccessible to them. In the IND decision, the evidence submitted by the foreign national must be addressed. For this, it must be considered that it is sometimes impossible for the foreign national to obtain documentary evidence. However, if the foreign national did not demonstrate their identity and nationality by way of documents and their identity has not been considered plausible in any other way, they make the assessment of accessibility impossible. In the work instructions, it is attempted to give staff guidelines by giving examples of case law in which the court passes judgment on accessibility. This illustrates that it is not fully clear for staff how the court rules in relation to this assessment. The accessibility test is considered as complex because it requires a lot of considerations, time and coordination with other units.

Case law has complicated the accessibility assessment.

Travel conditions

From a judgment by the ABRvS of 2018[180], it follows that if the foreign national (supported by medical information) claims that the journey to their country of origin leads to considerable and irreversible deterioration of their health situation, the BMA

179 In 2010, it follows from case law by the ABRvS (ECLI:NL:RVS:2010:BO0794) that the recommendation by the BMA suffices; unless the foreign national themselves puts forward concrete leads, the IND can, in principle, base itself on the BMA recommendation.

180 ECLI:NL:RVS:2018:4314

must examine this and must see whether travel conditions must be imposed. This results in additional work for decision officer and the BMA.

Another judgment by the ABRvS[181] states that if the BMA imposes the travel condition that the foreign national must be transferred physically to a practitioner in their country of origin, the IND must then indicate concretely in its decision which specific practitioner or institution shall be contacted before removal and it must be included explicitly in the decision that if the travel condition cannot be met, the foreign national will not be removed. For some time, this judgment resulted in more work and procedures, but after a certain time it settled within the organisation and meeting this requirement did not result in much more work to.

Safe treatment environment

In 2021,[182] the ABRvS indicated that the IND must assess whether any reasonable doubt follows from the statements made by the foreign national that the medical treatment in the country of origin will not be effective because, for example, the foreign national sustained traumas there and does not trust the practitioners for that reason. This ruling temporarily complicated the work. This is because staff do not really know how to handle the statements by lawyers about unsafe treatment environments. However, from case law from 2016[183] it follows that such statements must be responded to, but that if the statements have not been made concrete any further, they cannot lead to anything. This case law has removed the lack of clarity and the method of the assessment practice and BMA were adjusted to this.

Factual inaccessibility of healthcare

In 2016, the European Court of Human Rights (ECHR) passed a ruling[184] that made the investigation and substantiation of the assessment against Section 64 Aliens Act more difficult. If the foreign national claims that the medical treatment is factually inaccessible to them because, for example, they are unable to pay the costs of medication or because the clinic where they have to be treated is at too great a distance from where they live, then this must be investigated. However, it is up to the foreign national to make it plausible that the care is factually inaccessible. The policy has been amended in response to this judgment.

The burden of proof for factual accessibility has shifted further to the IND in recent years. The ABRvS assumes sooner than before that the foreign national has made it plausible that the care they require is inaccessible to them considering the circumstances put forward on their behalf. This particularly applies to those foreign nationals who are in a vulnerable and dependent situation. [185]

Proportionality assessment

In a judgment of 2022,[184] the ABRvS ruled that, in some cases, also during the assessment against Section 64 Aliens Act, a proportionality assessment must take place. When assessing the question whether the foreign national would be exposed to a medical emergency situation upon return without medical treatment, the IND assumes a period of three months. According to the ABRvS, the IND must check whether a foreign national has put forward special circumstances that make it unreasonable to stand by this period. Considering the special situation of the foreign national, a period of three months does not automatically have to be long enough to prevent that removal of the foreign national is in breach of Article 3 ECHR.

181 ECLI:NL:RVS:2010:BO6324
182 ECLI:NL:RVS:2015:1038
183 ECLI:NL:RVS:2016:1691
184 ECLI:CE:ECHR:2016:1213JUD00417381
185 ECLI:NL:RVS:2023:2046

Ex-officio assessment

On 22 November 2022, the CJEU passed a judgment from which it follows that the period of three months provided in the policy may no longer be applied strictly in the assessment whether termination of the current medical treatment will lead to a medical emergency in the short term.[186] According to the Court, possible indirect consequences of return to the country of origin in the long term must also be included in the assessment.
Furthermore, the Court determines in this judgment that in case of granting of postponement of departure based on Section 64 Aliens Act and the assumption of a 3 ECHR risk upon return to the country of origin, no return decision can be imposed. In the assessment whether a return decision can be imposed, assessment against Article 8 ECHR must take place according to the court. The medical treatment in the Netherlands can be included when invoking protection of private life. The far-reaching consequences of this judgment for practical implementation have by now been incorporated in the policy.

186 ECLI:EU:C:2022:913

Appendix 5 The asylum procedure

If a person applies for asylum at the Schengen outer border, the application is, under certain conditions, processed in the border procedure. The border procedure is an asylum procedure of up to four weeks at the border for foreign nationals who have not obtained access to the Netherlands. To prevent the foreign national from acquiring access to the Netherlands, they are in detention during the border procedure. The border procedure has its own legal periods, steps and conditions.

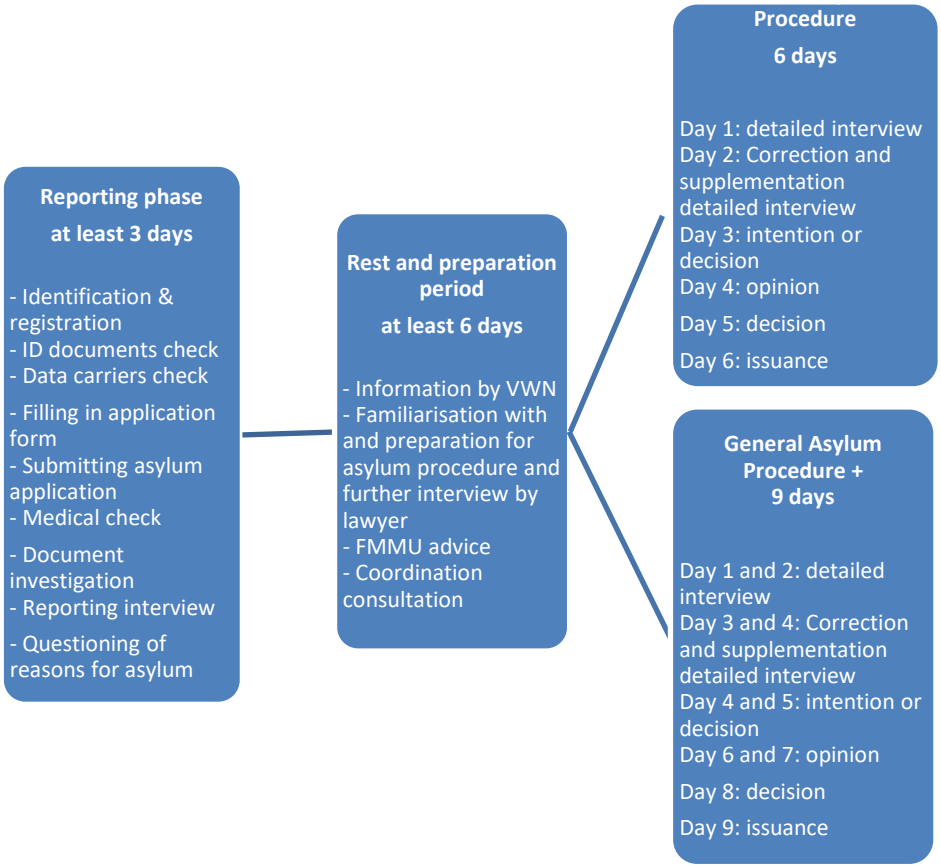
All applicants who do not enter the Netherlands via Schiphol, but via the Schengen inner borders (e.g. via Germany), must report to the application centre in Ter Apel. Here, the applicant can submit an application, after which the procedure is determined. The procedure itself can be implemented at various locations in the country.

Track policy
The asylum application is processed in a certain track. Currently, only track 1, track 2 and track 4 are active. Track 1 (the Dublin procedure) is meant for applicants who have applied for asylum in another European country or should have done so, for example if they reached the Netherlands via that country. In such a case, the other country is responsible for processing the asylum application. Track 2 is for applicants who are from a country that is designated as a safe country of origin or who have legal residence in another European country. In track 4, all asylum applications are processed that cannot be processed in another track. Within this track, the standard asylum procedure is followed. Track 4 is the most commonly applied track. Each track has a legally prescribed procedure with obligatory steps and periods. To tracks 1 and 2, different/ fewer procedural steps apply than track 4.

General asylum procedure
Track 4 starts with an application phase of at least three days, in which Identification and Registration is carried out by the Aliens Police (AVIM)and the data carriers and identity documents are checked. During the application phase, the IND also carries out the reporting interview. After the application phase, the asylum seeker is usually given a rest and preparation period of *at least* six days,[187] in which the foreign national is given information and preparation, a medical examination is performed by external parties and there is room for investigation. During this period, the IND schedules an interview. The standard procedure starts with an interview. After the interview de foreign national gets the opportunity to give corrections and supplementation to the interview. Next, the IND staff member draws up an opinion or decision and issues this to the foreign national.

187 Currently the rest and preparation period is several weeks to months because of limited availability of capacity for the General Asylum Procedure (+).

With respect to the border procedure, other periods and steps apply to track 4 than described above.



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