



Making an asylum decision: has it become more complex?

Summary of a study by the research and analysis department of the IND

General conclusions

In the past twelve years, it has become more complex for staff of the Immigration and Naturalisation Service (in Dutch: *Immigratie- en Naturalisatiedienst, IND*) to make an asylum decision.

Making an asylum or family reunification decision has become more complex between 2010 and 2022, as becomes apparent from a study among around 40 IND staff members and 10 staff members of partners of the IND. Of the partners of the IND, a judge, a lawyer, the Repatriation and Departure Service (*Dienst Terugkeer & Vertrek, DT&V*) and the legal department

of the Migration Policy Department (*Directie Migratiebeleid, DMB*) are of the opinion that the work has become more complex. A number of parties outside the IND think the work has only become more complex in certain areas (DMB, and the Migration Coordination Department (*Directie Regie Migratieketen, DRM*)) or has not become more complex across the board (Dutch Council for Refugees, Nidos). They mention certain elements that have reduced complexity, such as the introduction of track 2 for applicants from safe countries and the combining of the reporting interview and first interview. However, the factors that have made the work more complex weigh more. From analyses it becomes

apparent that, among other things, case law is accumulating, the work instructions are becoming longer and the interviews more extensive.

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. For example, the IND is confronted with computerisation and an increase of available information. In some cases, complexity also leads to better balanced and substantiated asylum decisions, for example the extensive assessment framework for the credibility of the asylum account.

Causes of complexity can be subdivided into the following categories:



Legislation and policy

Causes that have to do with legislation and policy at both a national, as well as EU and international level. Case law plays an important role in this.



The implementation

Causes pertaining to the activities, management, processes and work instructions within the IND.



External influences

Influences from politics, society, judicial power and lawyers that contribute to complexity at the IND.



Applicants

Characteristics (reasons for asylum, medical issues) and actions by applicants that contribute to complexity at the IND.

In this study, the causes of complexity were examined. Based on the findings, available solutions perspectives were drawn up that serve as a starting point for the reduction or better handling of this complexity.

What can the IND do?

Professionalisation of interview and decision staff

Professionalisation of interview and decision staff can equip them better for their increasingly complex tasks. This requires a culture shift on different levels. The following is important here:

- Staff are experienced and trusted by the organisation.
- Staff are supported well.
- There is more scope in instructions for forming an own professional opinion.
- Staff are given enough time for their activities.
- Human resource management focuses on retention and optimisation of staff.

Process organisation

The process organisation can be optimised to make the activities of interview and decision staff easier. For example through:

- Easing the administrative burden;
- A facilitating registration system;
- Central information provision; and
- optimally utilising knowledge acquired in pilot programmes.

Where complexity cannot be reduced: recognising and labelling

In some respects, complexity is a given fact which the IND and other parties can do (almost) nothing about. It can help to label this as such in the internal and external communication. This way, the IND can reduce frustration among staff and contribute to realistic expectations of external parties.

What can other parties do?

Leaving the implementation of the asylum policy up to the IND

Whereas 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. By allowing the IND more scope, unnecessary complexity can be avoided.

Actors: Commissioner, owner, politics

Differentiation of asylum procedure

The complexity of applications differs considerably and this highly depends on the reason for asylum and nationality. By differentiating according to this, cases can be given the necessary time and expertise.

Actors: Commissioner, IND

Engaging in a dialogue about the implications of case law

It turns out that it is often unclear for the IND and policy makers what

the applicability scope of judgments is. This leads to an accumulation of small changes. By engaging in a dialogue together, it can be seen whether more clarity can be achieved.

Actors: Judges, policy makers, IND

Consistency in human resources

By way of a long-term vision on funding and human resources, staff can be retained longer.

Actors: Commissioner, owner, IND

Dublin Regulation and Return Directive

The Dublin Regulation and Return Directive are based on EU guidelines. Addressing complexity can only be done by exercising influence on the EU or individual Member States. The influence on this is, however, limited.

Actors: Policy makers, politics, Permanent Representation of the Netherlands, IND

Complexity is interpreted differently by researchers and officials. In this study, it became apparent that within the IND substantive complexity and required time were particularly relevant.

Legislation and policy



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

From interviews, it became apparent that the Dublin Regulation and return decision have become impossible to carry out in some cases. The Dublin Procedure is complicated, for example because other Member States do not want to cooperate with a transfer or their asylum reception is not up to scratch. Effecting return is difficult if the country of origin is unknown or the foreign national does not cooperate with their return.

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 consist of a complex web of legislation and policy on different levels (international, EU, the Netherlands, IND).

A change at one of the levels resonates in the other levels. Case law in particular contributes to complexity because it immediately applies to the IND. However, it is not always clear whether case law pertains to a specific case or must be interpreted more generally.

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

Asylum cases where personal reasons play a role are substantively more complex and require more time than other asylum cases. By personal reasons for asylum, the reasons LGBTQ+, conversion or apostasy, or political opinion are meant. The complexity in these cases is in the extensive assessment framework by which it must be established for these applications whether the statements about the reason for asylum are credible. If these reasons are put forward, the staff member must assess the applicant's personal perception instead of factual information, more than for other reasons.

External influences



External influences put a lot of pressure on IND staff

Politics, society, courts and lawyers exert an influence on the IND, each from their own role. This contributes to the complexity of making an asylum decision in two ways. First, these parties put pressure on the policy-formation process. This can lead to policy that is a compromise of various positions, in which feasibility is insufficiently taken into consideration. Second, these parties have a direct influence on interview and decision staff. Staff members have the idea that their work is under scrutiny. Because on the one hand people advocate a more restrictive and on the other hand a more humane and lenient policy, some staff feel that they can never do well. Because of the external pressure, staff are becoming more careful, which reduces their decisiveness.

Courts impose higher requirements on the substantiation of rejecting decisions

Several IND staff members experience that courts are imposing increasingly high demands on the substantiation by the IND, particularly on rejections. The Childcare allowance affair in particular seems to have resulted in more attention for applicants' situations. However, according to registration data judgments on appeals are not more often against the IND.

The implementation



The average experience level of interview and decision staff has become lower

The level of experience among IND staff has lowered. This is because of the large proportion of new staff, but also because staff are given less scope to find their own way in regulations and reach decisions independently. One of the reasons for this is that the work of interview and decision staff has increasingly been recorded in work instructions. For this reason, they can practice their own decision-making skills less and consequently ask for even more instructions. This self-reinforcing mechanism contributes to a reduction in the level of experience.

Interview and decision staff must take more steps to reach an asylum decision

The tasks of interview and decision staff have increased considerably. The administrative burden has increased, more is expected from them with respect to detection (for example human trafficking, fraud and abuse), substantive quality measurements are increasing, and ex-officio assessments have been introduced. This has resulted in less time for their core task: interviewing and making decisions.

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

The amount of information that interview and decision staff must include in an asylum application has increased. Information is fragmented and available at different locations. A positive development in this area is the Information and Knowledge (IK) page, where information is bundled according to main task, theme or country.

The IND registration system is often impeding rather than supportive

Many IND staff indicate that the registration system of the IND (INDiGO) insufficiently supports their work. Instead of this, it creates a lot of extra work for them.

Applicants



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

IND staff indicate that they have the idea that the proportion of 'complex' asylum cases (with personal reasons for asylum) has increased since 2010. Policy staff, instead, have the idea that the proportion of relatively straightforward asylum cases (with nationalities likely to be eligible) has increased. The proportion of the most important target groups that are likely to be eligible has indeed increased since 2017. Across a longer period, however, we see a fluctuation in the share of both straightforward and 'complex' asylum applications. It is these changes that make it difficult for the IND to prepare well for its task. Migration flows are often difficult to predict, which has made migration a complex field.