45. About bed, bath and bread

Municipalities as the last resort for rejected asylum seekers

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There is a clear difference in the interpretation of humanitarianism between the Dutch state and Dutch municipalities in relation to the plight of rejected asylum seekers. Where the central government does not consider it necessary to provide them with shelter, Dutch municipalities are offering a minimum safety net, through their so-called ‘bed, bath and bread’ arrangements.

Asylum procedures

Asylum seekers in the Netherlands can be granted asylum in the event that they require protection, for example because they are being persecuted for their religion, political beliefs or background. The obligation on the part of the Netherlands to grant asylum in these situations is based on international treaties. Over the past fifteen years, the European Union has established many rules to protect people seeking asylum in the EU. The most important document in this context is the 2003 Dublin Regulation, which determines which EU Member State is responsible for processing an asylum application.

After receiving an asylum application, the Dutch Immigration and Naturalisation Service (IND) will assess the risk that the asylum seeker would face if they returned to their country of origin, but it will also take into account whether the asylum seeker has family in the Netherlands and if they are in ‘a situation of disproportionate hardship’. If, in the Immigration and Naturalisation Service’s view, this is not the case the Dutch government is no longer obliged to provide them with shelter and
housing. Rejected asylum seekers have a right to appeal if their application is rejected. If the judge upholds the decision made by the IND, the asylum seeker is required to voluntarily leave the Netherlands within a certain period. He or she must do so from a location in a municipality designated by the government. The Ministry of Security and Justice’s Repatriation and Departure Service, the body responsible with implementing the government’s so-called return policy, goes on to review whether forced departure needs to take place. This service registers the actual departure of rejected asylum seekers. If rejected asylum seekers do not depart voluntarily, the Royal Netherlands Marechaussee and the Aliens Police can deport them. If the asylum seeker or the government of their country of origin do not cooperate in their departure, the only remaining recourse of the asylum seeker is to fall back on the humanity of the municipalities, which provide shelter through the municipal ‘bed, bath and bread’ arrangement. It should be added that, for families with underage children, there are special family locations available where they can stay if they refuse to participate in voluntary departure.

Legal inequality

The policy on the ‘bed, bath and bread’ facilities is different in each Dutch municipality, and lies outside the control of the national government. This means that the national government does not know which rejected asylum seekers are homeless and which are staying in municipal shelters. They may travel from one municipality to the next to make use of the municipal services that exist there. The majority of municipalities subsidise a reception location, with the organisation tasked with implementing the policy, in cooperation with social care organisations, providing night shelter, breakfast and supper. The municipality may also opt to be in charge of a reception location itself, in which case rejected asylum seekers may receive support directly from the municipalities. These differences in policy result in legal
inequality and legal uncertainty for rejected asylum seekers, as it offers no surety that a municipality will provide them with shelter at all, and policies vary from one municipality to the next.

**European frameworks: The Social Charter and the European Court of Human Rights**

In this context, the question arises as to whether rejected asylum seekers in the Netherlands might be entitled to protection anyway, even though their applications has been rejected. European law does not address the situation of rejected asylum seekers, as they fall under national law. Under Dutch law, a rejected asylum seeker does not have any rights and must leave the Netherlands immediately. In other words, the Dutch central government does not provide 'bed, bath and bread'. In these situations, Dutch municipalities offer help on humanitarian grounds; in doing so, they feel supported by a ruling by the European Committee of Social Rights appointed by the Council of Europe's Committee of Ministers (note: not the European Union), which was established under the European Social Charter and monitors compliance with the Charter. Under the Dutch Constitution, the Netherlands is not obliged to comply with the Social Charter, as it is not a binding international treaty. However, the rights set out in the Social Charter have been incorporated into the Dutch system and apply to Dutch citizens and to those who are staying in the Netherlands legally – in other words, *not* to rejected asylum seekers. Nevertheless, the Committee of Ministers investigated a complaint made against the Netherlands about the issue of whether the Dutch government, by refusing to provide food and shelter to rejected asylum seekers, had violated articles of the Social Charter.

The complaint against the Dutch government had been lodged by an NGO, the Conference of European Churches. In April 2015, the Committee of Ministers formally ruled in a resolution that the Social Charter applies to rejected asylum seekers, as water,
food and clothing are ‘closely linked to the most fundamental rights of (…) persons, as well as to their human dignity’, and that the right to housing and protection against homelessness applies in order to prevent those concerned from being placed in a situation of extreme helplessness. According to the Committee, the right to life and human dignity not only includes the right to shelter, food and clothing, but also the right to a safe place to sleep. The denial of this right to emergency assistance would harm rejected asylum seekers in the Netherlands more than conferring these rights would burden the Dutch government. With this ruling, the Committee ruled against the Netherlands and in favour of the rejected asylum seekers’ representatives. The ruling all but unleashed a revolution. The Committee not only deemed the Social Charter to be applicable in this situation – i.e. to people who are residing in the Netherlands illegally – but it also used a broad interpretation of the term ‘human dignity’.

Incidentally, back in November 2014, in anticipation of the ruling by the Committee of Ministers, the Dutch Central Appeals Tribunal had already issued a preliminary ruling stating that Dutch municipalities were required to support rejected asylum seekers by providing food, clothing and shelter. The Dutch government was far from happy with the resolution by the Committee of Ministers, and felt that the Committee had used far too broad an interpretation of the rights of rejected asylum seekers. In response, the Dutch cabinet decided in April 2015 that the temporary shelter of rejected asylum seekers by municipalities had to stop, and that the government would only provide five reception locations in Dutch municipalities. The emphasis should very much be on a quick return to the rejected asylum seeker’s country of origin; shelter should not last for more than a few weeks. According to an article published in the Volkskrant daily newspaper on 29 April 2015, several Dutch municipalities, contrary to the state’s stance, did not consider it ‘humane’ to ‘put or leave rejected asylum seekers out on the street’. They therefore refused to cooperate with the Dutch cabinet’s plans to bring about accelerated deportation, and instead offered bed,
bath and bread. This means that many Dutch municipalities are choosing to provide greater levels of support and shelter than the Dutch state is in favour of.

Municipalities were not happy with the solution proposed by the government, as it would require the many reception locations to be closed, but also because it would make rejected asylum seekers homeless, as they are often unable or unwilling to cooperate in their return to their country of origin. And that would mean that the municipalities would still have to provide shelter. The strange thing about this situation is that the Dutch state is trying to avoid the responsibility for the provision of shelter, while the Dutch court (the Central Appeals Tribunal) is complying with the ruling by the Committee of Ministers and taking the side of the Dutch municipalities. The Dutch cities are aware that, no matter what the courts or the Dutch political sphere may decide, they are ultimately the ones who will be saddled with looking after rejected asylum seekers.

The legal route which would be open to rejected asylum seekers after that is via the European Court of Human Rights in Strasbourg, which adjudicates cases according to the European Convention on Human Rights. The rulings of the European Court are binding for the Dutch state. The European Convention on Human Rights covers not only civil and political rights, but also the right to housing. A rejected asylum seeker could follow this route as a way of enforcing their right to shelter. A procedure could be initiated with the European Court to this end, providing that the highest legal authority in the Netherlands has first issued a ruling with a negative impact on the rejected asylum seeker. So far, no case of this kind has been brought before the European Court of Human Rights.

Cities provide humanitarian shelter

The above reveals that the so-called return policy is an Achilles’ heel in the Dutch asylum policy. At the political level, the
protection of rejected asylum seekers has been provided for neither by the Dutch nor the European authorities. At the legal level, both the Dutch courts and the European Committee of Ministers are taking a progressive line, but under the Dutch Constitution the Dutch government cannot be forced to comply with the stance of the European Committee. For this reason, legal protection for rejected asylum seekers can be expected neither from the central government nor from the local authorities in the Netherlands. The only protection that rejected asylum seekers can hope for is from those Dutch municipalities that are offering bed, bath and bread facilities on humanitarian grounds. These facilities are not offered by all municipalities, and can vary from one municipality to the next, which results in legal uncertainty on the part of rejected asylum seekers and can lead to unequal treatment compared to rejected asylum seekers in other municipalities where such facilities do not exist. To prevent this, the Association of Netherlands Municipalities (VNG) must establish a uniform policy for municipal bed, bath and bread arrangements. It is also clear that the approach of the local governments runs counter to the national stance on rejected asylum seekers. As long as no ruling has been issued by the European Court of Human Rights that obliges the government to assume responsibility for the necessary provisions for rejected asylum seekers, the municipal facilities – no matter how insufficient they may be – are unfortunately very much necessary.

The author

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