
Acces to Social Services for Aliens Without Residence Permit; Social Rights for Aliens Without Residence Permit

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The Dutch system of social rights has been developed right after the Second World War. In that time the possession of a residence permit was not a criterion for the access to social services. Illegal employees had a right to unemployment benefits. This was deliberately decided upon as to prevent them from getting dependent from their employers, to reduce the possibility of abuse.

Only after the eighties the first discussions raised on the exclusion of illegal employees from social rights. For asylum seekers special reception regimes were made, with which they got excluded from the regular services. But on the whole, politicians and authorities thought it would not be appropriate for integration purposes to make a distinction in social rights between nationality or residence permit.

Then, in the nineties, this perception changed. The law on identification was introduced and a residence permit became a condition for the granting of a tax number, which enables a person to work legally. That was the first step to exclude illegal migrants from the regular labour market and a number of social services.

But the most important step in this regard has been made by the adoption of the so called “Koppelingswet” in 1998. Migrants who are not legally in the Netherlands, became excluded from education (from the level of secondary school), housing, financial support for housing, child benefits, sickness insurance and all social security provisions.

Not only illegal migrants suffer from this exclusion, but also migrants who are in a procedure for a residence right, awaiting for a final decision. Only migrants with a residence permit, temporary or permanent, are entitled to social services. Legally residing migrants who had not applied in time for extension of their permit, even if this only was a day too late, became excluded from social services.

The “Koppelingswet” had two goals: it had to prevent illegal migrants from continuing their stay in the Netherlands; it had to diminish the expectations of the migrants who were in procedure and to prevent an atmosphere of complete legality, that would make it very hard to deport them again if their application would be rejected finally.

The draft law caused a lot of political discussion, and also many social service workers felt threatened: could they be forced not to help migrants in need, and to betray migrants without the right documents? Wouldn't this be against their duty to take care of people who are in need? And was it according to basic human rights?

This discussion led to three exceptions in the law:

- Access to education for children up to the age of eighteen years old
- access to medical necessary treatment. That means all the care that a doctor thinks necessary, most of the times the care that falls under the scope of a sickness insurance. First instance doctors can get financial compensation from a fund, the so called “Koppelingsfonds”. Hospitals have a fund from which they get compensation for a patient who is not insured.
- Access to legal aid.

After the exclusion of so many groups, in practice there appeared to be a need to include certain groups again. The authorities found a solution on that, without breaching the principle of the Koppelingswet. For these groups a special regulation is made, from which they get support to replace the right to social security and sickness insurance.

These groups are:

- Victims and witnesses from human trafficking, while awaiting the penal procedure
- Family members who entered the Netherlands with an authorisation for a provisional stay, a kind of visa for long stay, on the ground of family reunification, while awaiting for their residence permit

Exchange of data

The Alien Regulation formulates the obligation for the alien police to inform executive authorities on the status of migrants, and on the other hand the obligation for these authorities to inform the Alien Police on the granting, ending or withdrawing of certain benefits. These authorities have the duty to control the status of a migrant before they grant certain support or access. But during the political debate on the draft law, the government explicitly stated that medical staff are not obliged to inform the police on the treatment of an illegal alien.

Jurisprudence

There have been many efforts to get a ruling from the court on the right to access for illegal migrants and migrants who are allowed to reside in the Netherlands. Almost all arguments failed before the court. In the case of minor children, who stated that they derived their rights from the Convention of the rights of the child, the court judged that illegal minors didn't have social rights on that basis. However, a minor child that is not illegal in the Netherlands, but awaiting a decision of the authorities or a court, and is allowed to stay in the Netherlands in the meanwhile, the judge found that article 2 (1) of the Convention obliges the Netherlands to give the child the right to social security. So after this decision, also minor children who are awaiting the processing of an application for a residence permit, fall under this special regulation that I mentioned. (If a family is in this situation, only the child gets financial support).

Lawyers try to get a decision from the court that also illegal migrants who cannot return because are not accepted by their own country, must have access to social security. But until now, lawyers haven't succeed.

I already mentioned the group of migrants that enters the Netherlands legally, on the basis of an authorization for temporary stay. They apply for a residence permit immediately after their arrival in the Netherlands, and almost always it will be granted because an assessment has already taken place when they were abroad. But still they have to wait a long time, sometimes about 40 weeks. During this period they are not only excluded from social security, but they also can not enter into a contract of sickness insurance. Thus, a large group is not insured for a long period. Of course, especially for ill people, but also pregnant women for instance, that is a big problem. It is Kafka at his best, because all persons residing in the Netherlands are supposed to be insured. Only recently the responsible ministers have shown their willingness to look for a solution.

I already showed that migrants with a residence permit have access to social services. I have to put this remark into perspective. One of the criteria for granting a temporary residence permit, is that you are able to gain a sufficient income. Also at the moment of application for renewal, it will be assessed whether the migrant has sufficient income. In the meantime the migrant can apply for social security, but the consequence will be that the permit will not be renewed. Except if article 8 European Convention does not allow such a refusal. So in practice, only few migrants with a temporary permit apply for social security.

Time after time, politicians discuss about the possibility to create a selective form of migration policy, in order to pick out the ones we need and without sticking with dependent migrants, so to say. They often propose a system with growing social rights, so that the first years you don't have rights, but later on you gain some. A citizenship with different rights. These politicians don't realise that we are almost on the bottom line, if we want to respect human rights. Many proposals that have been made, have either insurmountable disadvantages (for instance because migrants would become more attractive than Dutch workers, because they would become cheaper), or breach human rights.

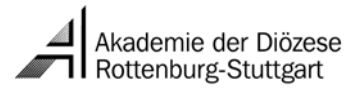
The government has already revoked the Convention on Equal Rights in the field of social security between Dutch and third country nationals of countries that are treaty partner. The only goal of this annulment was to be able to prohibit the export of certain benefits of migrants to their home countries. The latest proposal of the government is to admit third country nationals as labour forces for a maximum of one year, without having the possibility to apply for social security (as we saw before, this is already not a real possibility). If they want to extend their stay after this year, they have to return to their home country and ask for a new permit for one year. This is how you create circular migration, a phenomenon for which also the European

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Commission recently made proposals. The consequences of earlier government ideas about temporary labour migration seem to be forgotten.