7 Asylum Seekers' Limited Right to Work in the Netherlands

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Abstract

This chapter considers the rights of asylum seekers to work in the EU and the Netherlands. The chapter maps EU and Dutch regulation on labour market access for asylum seekers as it stands and – with regard to the Dutch regulation – what arguments were put forward in its making. Building on the report ‘Van azc naar een baan’, De Lange argues that the removal of practical impediments to formal employment will limit the attractiveness of the informal labour market, likely to provide less decent work. The chapter concludes that the limited right to work and the obligations of asylum seekers to contribute financially to their reception once income is acquired does not help prepare them for their eventual financial independence.

Keywords: asylum seekers, labour market access, Reception Conditions Directive 2013/33/EU, financial contribution to reception.

1 Introduction

Europe, including the Netherlands, received a large number of asylum seekers in 2015 and early 2016.² 74635 requests for asylum were submitted

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² For the purposes of this study, application of the term ‘refugee’ is not limited to migrants who have been recognised as such by a state in accordance with the Convention on Refugees. ‘Refugees’ refers collectively to asylum seekers (migrants who have requested asylum) and

in the Netherlands over a two-year period, 54% of requests were granted. In early 2016, more than 44000 people were housed in asylum seekers' reception centres, whereas, in early 2017, the number was down to 25485.³ The decrease in new asylum seekers is due to the so-called EU-Turkey deal, which effectively sealed the border between Turkey and Greece. A rapid reduction in the processing time for asylum applications ensued, which means that an asylum seeker now has little time to settle in, and possibly to look for work, while awaiting the outcome of the evaluation procedure.

This chapter considers the rights of asylum seekers who are awaiting the outcome of the evaluation of their asylum claim to work in the EU and, more specifically, in the Netherlands. The chapter is based on the report *Van azc naar een baan* (From asylum seekers reception centre into a job) that we presented in spring 2017.⁴ The research for this report was conducted over a six-month period starting in September 2016.⁵ Although the numbers of asylum applicants have gone down since the EU-Turkey deal, there are at least two reasons to examine the right to work during the asylum procedure in a book discussing decent labour markets and migrant labour. First, Northern Europe could at any time be faced with a renewed influx of asylum seekers. As the economy is on the rise and labour shortages are increasing, asylum seekers may easily find their way into readily available, possibly precarious jobs. The need for workers to fill labour shortages was indeed one of the reasons for Germany's welcoming attitude towards the refugees. The second reason to discuss asylum seekers' access to the labour market is that a legal framework that allows for asylum seekers to work in the formal economy gives them a head start at their successful economic integration in case their application is evaluated positively. Or working will have at least given them a meaningful way to pass their time while awaiting the outcome of the procedure, possibly acquiring skills useful once forced to return. On the other hand, a lack of labour market access is found to delay and possibly obstruct future labour market participation. Examining the

holders of asylum status (migrants who have been granted temporary residence based on an asylum request).

3 COA, *Personen in de opvang uitgesplitst naar leeftijd en land van herkomst*. Available at: <https://www.coa.nl/nl/over-coa/cijfers-en-jaarverslagen>.

4 T. de Lange, E. Besselsen, S. Rahouti, and C. Rijken (2017), *Van azc naar een baan. De Nederlandse regelgeving over en praktijk van arbeidsmarktintegratie van vluchtelingen*, Universiteit van Amsterdam. Thanks to University of Amsterdam student assistant Andrew Faughan for translating. The research was funded with a research grant from *Instituut Gak*.

5 The research was based on legal analysis of legislation and case law and interviews and focus groups with, amongst others, migrants with a refugee status.

right to work of asylum seekers thus illuminates how host states are caught in a balancing act between interests such as providing jobs for the native workforce and keeping existing welfare arrangements in place on the one hand and, on the other hand, the legal obligations towards the quality of a 'decent' reception of asylum seekers and integration of those who have been offered protection. First, this chapter maps EU and Dutch regulation on labour market access for asylum seekers as it stands and – with regard to Dutch regulations – what arguments were put forward in its making. This section is followed by a discussion of the obligations of asylum seekers to contribute financially to their reception once income is acquired. The final section presents some conclusions and discussion.

2 Right to Work During the Asylum Procedure

Per article 15 of the EU Reception Conditions Directive 2013/33/EU⁶, Member States shall ensure that applicants have access to the labour market no later than nine months from the date when the application for international protection was lodged. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law. Member states must ensure that applicants have *effective access* to the labour market – access in a purely legal sense without practical access will not suffice. Member States may give priority to Union citizens and legally resident third-country nationals in accordance with their own labour market policies. The Netherlands has chosen not to restrict access based on labour market needs so this restriction is not discussed any further. According to article 15 section 3 of the Receptions Conditions Directive, access to the labour market shall not be withdrawn during appeals procedures in the admission procedure, if the appeal has suspensive effect, until such time as a negative decision on the appeal is notified.

Member states are free to decide how the Directive is to be implemented in national law. This explains why an asylum seeker in Sweden may work immediately upon filing an application, in Germany after three months, in Belgium after four months, and in the Netherlands only after six months.⁷

6 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 lays down standards for the reception of applicants for international protection [2013] OJ L 180.

7 M. den Heijer, J. Rijpma, and T. Spijkerboer (2016), 'Coercion, prohibition, and great expectations: The continuing failure of the Common European Asylum System', *CMLR* 53(3) p. 609; European Commission (2016), *An economic Take on the refugee crisis*, Institutional paper 033 p. 21.

The preamble names two goals why access to the labour market is part of the Reception Conditions Directive: in order to promote *the self-sufficiency* of applicants and to limit wide discrepancies between Member States. To achieve these goals, it is essential to provide clear rules for the applicants' access to the labour market (preamble 23). The standards for the reception of applicants also have to suffice to ensure them a *dignified* standard of living and comparable living conditions in all Member States should be implemented for asylum seekers.

The relevant Dutch legal framework is the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen*, or WAV), which came into force in 1995 and regulates migrants' access to the Dutch labour market. This act is not restricted to labour migration, but also applies to migrants for whom work is not the primary purpose of the stay, as may be the case with asylum seekers and family migrants. The WAV is also aimed at preventing unfair labour competition caused by the illegal hiring of migrants.⁸ According to article 2 of the WAV – its key section –, employers not in possession of a work permit for persons from outside the European Economic Area are forbidden from hiring migrants.

The Minister of Social Affairs and Employment has delegated implementation of the WAV to the administration of the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*, or UWV). The UWV is therefore responsible for implementation of the WAV as well as for issuing work permits for persons from outside the European Economic Area. Before a permit is issued, the so-called priority workforce must be taken into consideration; if anybody already available on the Dutch labour market is able to perform the job, the UWV will not issue a permit, since doing so could potentially cause displacement in the labour market. The UWV also applies the WAV to 'employers' that have not concluded an employment contract.⁹ Therefore, it makes no difference whether the 'employer' holds authority over and pays a wage to the individual performing the work – the usual indicators of the existence of an employment contract under Dutch labour law. In terms of the WAV, the fact that the employer has the migrant carry out work is sufficient grounds to assume that the former is, in fact, an employer.¹⁰ The term 'work' is also broadly defined – the prohibition on employment unless a permit is issued also comes into play if a migrant runs a business or does volunteer

8 See, in this volume: L. Berntsen and T. de Lange (2018), 'Employer sanctions: instrument of labour market regulation, migration control and worker protection?'; A. Klap and T. de Lange (2008), 'Marktordening via het werkgeversbegrip van de Wet Arbeid Vreemdelingen', *SMA* p. 390.

9 Art. 1 sub b sub 1 WAV.

10 See L. Berntsen and T. de Lange (2018).

work. Many exceptions apply, such as the unfettered access to the Dutch labour market enjoyed by Union citizens, and the rules that apply specifically to highly skilled migrants, academic scholars, performers, and Asian chefs.¹¹

Note must be taken of the fact that, prior to the WAV coming into force in 1995, asylum seekers were not allowed to work, nor was there a specific policy for granting work permits to employ them. However, a work permit could be granted for the employment of an asylum seeker if no priority workforce was available, or if humanitarian reasons so dictated.¹² Whether the work permit would be granted was a balancing act between the interest of the asylum seeker to be employed and the State's interest in protecting the national labour market. At the time, the Dutch ministry of Justice, responsible for deciding on asylum applications, used to object to asylum seekers working because this would result in integration, which may stand in the way of return later on. They also argued that there was the risk of raised expectations [of legal residence] if the asylum seeker were permitted to work. Besides, allowing asylum seekers to work may have a pull-effect on others. After time passed (more like after three years than six months), the balance shifted to the humanitarian reasons pro-labour market access.¹³ This individual balancing shifted to a full exclusion of asylum seekers in 1995, a rigid stance that was aborted soon after and would have obviously been precluded under current EU law.¹⁴

The Dutch regulation of the access to the labour market for asylum seekers can be divided into three stages: the first six months; after six months; and the period thereafter, when the access is again denied.

2.1 Employment During the First Six Months of the Asylum Procedure

During the first six months in an asylum seekers centre, asylum seekers are not permitted to perform paid work, even if their abilities are in demand on the Dutch job market. This is a result of the inflexible categories specified by the Aliens Act and the WAV: a migrant may either file an asylum request or apply for a 'regular' residence permit as a migrant worker or student – but

11 T. de Lange, H. Oosterom, and P. Krop (2016), 'Arbeidsmigratie', in K. Zwaan, *Nederlands Migratierecht*, Boom Juridisch.

12 Chapter B.11.1, section 4.2.1.d of the Aliens Act Implementation Guidelines (Vreemdelingen-circulaire 1982), Available at: <http://cmr.jur.ru.nl/cmr/>.

13 *Parliamentary Documents II*, 1990/1991, 19637, 76, p. 2. Also an editor's note: 'Werkvergunning asielzoekers' (1991) *Migrantenrecht* 2, pp. 39-40.

14 J. Klaver & E. Tromp (2003), *Asielzoekers en werk. Evaluatie van de mogelijkheden van betaald werken in het kader van de Wet arbeid vreemdelingen*, Regioplan, p. 8.

not both. Once an asylum request has been filed, it is no longer possible to file for a regular residence permit (a single permit for work and residence under EU Directive 2011/98) since the asylum seeker will not have been issued a proper visa before arriving in the Netherlands.

This can sometimes prove burdensome. For example, Doctors without Borders sought a workaround when it requested permission for its doctors, who had fled to the Netherlands and applied for asylum, to work. For them to be able to receive a status as a migrant worker (instead of asylum seeker), the Immigration and Naturalization Service (IND) had to waive the visa requirement, which it refused to do, although it could have chosen to do so.¹⁵ However, even if the IND had waived that requirement, access to the job market is the domain of the UWV. Regulations based on the WAV would need to be amended to give the UWV the discretionary power to issue work permits during the first six months of an asylum procedure.¹⁶ While current regulations allow migrant workers and highly skilled migrants to be recruited abroad and come to the Netherlands to work in fields experiencing labour shortages, (promising) asylum seekers already present, awaiting the outcome of their procedures, cannot be hired for those same jobs. If they would have applied for work permits and long-term visas this would have been very time consuming, if successful at all.

So, since 1995, asylum seekers have had to wait six months before they can be employed. There have been repeated calls to allow asylum seekers to work sooner than six months into the procedure. Already in 2000, the Labour Foundation (*Stichting van de Arbeid*) attempted to convince the government to drop its objections to granting asylum seekers broader access to the jobs market¹⁷:

Paid labour provides asylum seekers with something to fill their days, provides them with an income, allows them to maintain their skills, and should in theory make them better able to stand on their own two feet once the asylum procedure has drawn to a close, whether in the Netherlands or elsewhere. The current common perception is that a majority of asylum seekers cannot find work.¹⁸

15 Interview UWV. See also Art. 16 first para., sub a Aliens Act.

16 Art. 8 first para., sub e WAV is currently phrased in the imperative. The optional exception provided in art. 9 WAV should be able to be applied to asylum seekers.

17 Stichting van de Arbeid, Recommendation letter (SA 0007896/HA, 2000).

18 Ibid.

As far as we know, no research has been performed to support the claim that earlier labour market access, as is the practice in some other EU countries, serves to attract an increasing number of asylum applicants.¹⁹ The argument should not, thus, serve to legitimise the decision to refrain from easing the requirements governing access to the jobs market during the asylum procedure.

Even before 1995, the choice not to give asylum seekers access to the labour market was under attack. In WRR's 1989 report '*Allochtonenbeleid*' (ethnic minorities policy), it was proposed that asylum seekers be allowed to work as early as two months after submitting an asylum application, subject to certain conditions. The WRR emphasized that it was in everyone's best interest that newcomers integrate as quickly as possible into Dutch society.²⁰ They should therefore be allowed to work, if necessary, in specially designed work projects. The two-month waiting period would discourage *de facto* labour migration, allaying fears that the proposal, if implemented, would only serve to encourage asylum applications. The WRR furthermore speculated that the proposal would spare asylum seekers from boredom and allow them to provide for their own income, which would, in turn, decrease government expenses. The government in power at the time did not wish to grant work permits automatically and held to its policy of granting them sparingly. It was argued that²¹, if asylum seekers were allowed to integrate *too* well, it would prove difficult to repatriate them later on if an asylum application was ultimately denied.

In 2014, the Dutch Advisory Committee on Migration Affairs published a report '*Lost time*' pleading for more opportunities to work during this initial period.²² In 2015 a joint policy brief '*No time to waste*' issued by three prominent institutions²³ amongst them the Dutch Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid*, WRR) also called for expedited labour market access. Policy attention has

19 For instance, in Belgium, asylum seekers have labour market access after four months into the application procedure. In 2016, only 3.6% of those eligible for labour market participation actually worked. N. Lambrecht, M. De Vos, and I. Van de Cloot (2016), *Arbeidsmarkt integratie van vluchtelingen: de klok tikt*, Itinera.

20 WRR (1989), *Allochtonen beleid*, report to the government.

21 *Parliamentary Documents II*, 1990/1991, 19637, p. 76.

22 ACVZ (2013), *Verloren Tijd*.

23 WRR, WODC, and SCP (2015), *Geen tijd verliezen: van opvang naar integratie van asielmigranten*, Policy Brief 4.

been targeted at stimulating voluntary work by asylum seekers instead.²⁴ The waiting time of six months has remained.

2.2 Inclusion after Six Months and Exclusion Again after Six Months of Work

So, only after the first six months of the asylum procedure in the Netherlands have passed, is the asylum seeker is allowed to work – as long as the employer has obtained a work permit from the UWV.²⁵ The main requirement for a work permit is that the asylum seeker must still be entitled to the facilities provided by the Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers, or COA). The WAV explicitly states that the reason for allowing migrants to work is to improve the quality of their stay during the asylum procedure. The work permit procedure is simplified, no labour market test applies, there is no need to work enough hours to sustain oneself, and, if general sectoral quota are in place, these do not apply in the case of the employment of asylum seekers. The limits are set in subordinate legislation, requiring the job is performed under market-conforming conditions and not for more than 24 weeks.²⁶ There are no sectoral restrictions, but for jobs as an artist, musician, on a movie set, or as a technician supporting artists or musicians, the maximum duration is fourteen weeks.

The limited duration of the employment is justified by the government for two reasons. First, because of the national welfare arrangements that become available after the passing of time. Working more than 24 weeks out of 39 weeks would lead to an entitlement to unemployment benefits. One condition for receiving unemployment benefits is the availability on the labour market and the use of – at the time – state-led employment services. According to the Dutch government: ‘an unemployment benefit claim does not match with the stage in the asylum claim evaluation procedure in which no final decision has been taken on legal residence or return.’²⁷ The other reason is because, according to the Dutch government, the prospect of

24 T. de Lange (2018), ‘Vrijwilligerswerk door vreemdelingen: klem tussen botsende beleidsvelden’, in: *Nieuwe wegen voor vluchtelingen in Nederland*, AUP: Amsterdam; zie ook Bakker, L. e.a. (2018). *Vrijwilligerswerk: stimulans voor tijdige participatie en integratie? Monitor- en evaluatieonderzoek vrijwilligerswerk door asielzoekers en statushouders die in de opvang verblijven*, Significant voor het Ministerie van Sociale Zaken en Werkgelegenheid. Barneveld.

25 Art. 8 para. 2 WAV.

26 Art. 2a *Besluit uitvoering WAV*.

27 *Parliamentary Documents II*, 1999/2000, 26800 VI, 53, pp. 2-3.

unrestricted employment would act as a magnet for (bogus) refugees. The Netherlands is the only country in the EU that limits the length of labour market access once access is granted.²⁸ The Dutch 24-week rule might very well be a violation of article 15 paragraph 3 of the Reception Conditions Directive, which states that access to the labour market, once granted, shall not be withdrawn during (appeals) procedures.²⁹ Furthermore, the Directive does not allow for asylum procedures to last longer than six months. As of late 2015, only 605 people had been waiting for more than a half year.³⁰ In the first eleven months of that year, the UWV issued 51 (and denied 33) work permits to asylum seekers whose procedures had passed the six-month mark. Applications, either first-time or extensions, were denied because either or both the COA and IND had failed to state a reason for the length of the procedure, because wages below the legal minimum had been offered, or because the 24-week work limit had already been reached.³¹

2.3 Testing the Waters

At the time of writing, a test case was brought before the Dutch District Court of Haarlem, to determine whether the 24-week rule violates European Union law.³² From the case file, we can report as follows. It is the case of Ahmad, an Iraqi, who has been waiting for more than six months for a decision on his application for asylum. He is 30 years old, and trained as a welder and construction worker. With the help of his attorney, he has found a position at a firm devoted to helping unemployed construction workers get back to work. The labour contract offered is for twelve months. A request was filed for a work permit valid for twelve months and, failing that, for 24 weeks. The UWV indeed issued a 24-week permit. When it was pointed out that the 24-week permit was in violation of European law, the UWV answered: 'The regulation quite specifically states that an asylum seeker may work no more than 24 weeks.' The 'regulation' referred to by the UWV is, of course, the Dutch regulation; the European Reception Condition Directive was not

28 European Commission (2016), *An economic Take on the refugee crisis* (Institutional paper 033) p. 23.

29 T. de Lange and C. Rijken (12 January 2016), 'Asielzoeker kan eerder aan de slag', *Opinie Volkskrant*, Amsterdam.

30 More recent data on the number of months it takes to process applications is not readily available to the public.

31 Correspondence with the UWV, 1 November 2016.

32 A hearing was scheduled at the end of November 2017, so, unfortunately, the results of the procedure could not be reported here.

mentioned by the UWV. The attorney filed an objection on behalf of both Ahmad and his employer.

In its ruling on the objection, and in direct response to the complaint that European law had been violated, the UWV acknowledged the EU Reception Conditions Directive, stating that adequate access to the job market had been provided, but that it nonetheless lacked the discretionary power to deviate from current regulations. This ruling was then taken to the court. While awaiting the court's hearing, Ahmad's asylum application was denied in final. The Court decided to dismiss the case on formal grounds (due to lack of procedural interest).³³ It thus remains uncertain if EU law precludes the Dutch limited labour market access of only 24 weeks.

3 Income Acquired Is to Pay for Reception

Next, we will discuss what comes of the income acquired by the asylum seeker. Article 17 of the Reception Conditions Directive states that Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. Member States may require applicants to cover or contribute to the cost of material reception and health care if they have sufficient resources, for example, if they have been working for *a reasonable period of time*. The Netherlands provides asylum seekers with a material means of existence, but seeks reimbursement once an asylum seeker starts to earn income, per the Asylum Seekers Provisions Regulations 2005 (*Regeling verstrekkingen asielzoekers 2005*, or Rva) and the Asylum Seekers Personal Contribution Regulations 2008 (*Regeling Eigen bijdrage Asielzoekers 2008*, or Reba).

Under the Rva, asylum seekers are provided with housing and a general allowance. Other expenses, such as travel, can be reimbursed. If asylum seekers have income, they are expected to help defray the expenses of room and board while at the asylum reception centre.³⁴ The Dutch regulation does not take into account whether the income is steady or merely occasional, thus, it leaves little discretion to the COA.³⁵ The COA cannot formally deviate from the requirement to recover that income. However, article 17 of the Reception

33 District Court Haarlem, case no. 17/5350, 22 February 2018 (not published).

34 Article 3b Reba and article 3a Reba.

35 Per article 20 of the Rva, in conjunction with article 5 of the Reba, an asylum seeker who enjoys any income whatsoever *must* reimburse housing expenses and the allowance.

Conditions Directive could be construed to mean that it is only possible to require asylum seekers to contribute to their own room and board if they have worked for a *reasonable* length of time.³⁶ Occasional income, such as income earned when participating in a workplace reintegration project, would not incur an obligation to surrender earnings, making participation in such a programme more appealing to asylum seekers. In this respect, Dutch regulation appears to conflict with the Directive.

The following examples show that the income an employed asylum seeker living in an asylum reception centre can expect to keep after reimbursing the COA is determined by the number of dependent family members. Asylum seekers with dependent family members are allowed to keep such a small portion of their earnings that it has been reported that they often just refuse employment.³⁷ The regulation discourages asylum seekers from accepting job offers – the earnings they are allowed to keep do not make it worth their while. The following three examples are extrapolated from previously mentioned Ahmad's monthly salary; 25 percent of earned income, with a maximum of € 196, is exempt.³⁸

Figure 1 Amounts withheld from the salary of a single asylum seeker working full-time

	Income	Reimbursement amount	Remarks
After tax salary 40-hour work week	€ 1,463.48		25% of salary (max. € 196) exempt
Meals		– € 252.48	= 58.31 x 4.33
Room		– € 216.50	= 50 x 4.33
Total reimbursement to COA		– € 468.98	
Net income	€ 994.50		

In Figure 1, we see that Ahmad, single and with no dependents, is allowed to keep € 994.50 of his monthly earnings, which makes it worth his while to hold a job. He contributes € 216.50 monthly for his room and € 252.48 for meals. The COA pays for his health insurance. Travel expenses might prove prohibitive if not reimbursed.

³⁶ Art. 17 para 4 Reception Conditions Directive 2013/33.

³⁷ A. Stoffelen (11 November 2016), 'Asielzoekers weigeren werk door eigen bijdrage opvang,' *Volkskrant*, Amsterdam.

³⁸ Article 5, para 3 and 4 Reba.

Figure 2 Amounts withheld from the salary of a married asylum seeker with two children, working full-time

	Income	Reimbursement amount	Remarks
After tax salary	€ 1,463.48		25% of salary
40-hour work week			(max. € 196) exempt
Meals		– € 710.12	44.70 x 4.33 x 2 = 387.10 37.30 x 4.33 x 2 = 323.02
Room		– € 433.00	50 x 4.33 25 x 4.33 12.5 x 4.33 12.5 x 4.33
Total reimbursement to COA		– € 1,143.12	
Net income	€ 320, 36		

Source: based on examples provided by the COA

In Figure 2, we see that, if Ahmad has a wife and two children, he is only allowed to keep € 320.36 of his monthly full-time salary. The monthly contribution for a family of four is € 433 for room and € 710.12 for meals. The family would not receive child benefits, but would receive an extra allowance for the children. Travel expenses could have a negative effect on the net income, but, if his wife also has a job, no additional contributions are required.

The COA is not always able to recover the amounts due.³⁹ Within six weeks of receiving a pay slip, the COA issues a decision specifying the amount of the personal contribution, but, by that time, the money has often already been remitted to family left behind in the country of origin – for their support or perhaps to pay the travel expenses to be incurred by family reunification. The COA collected € 178,000 in 2014 and € 109,000 in 2015 in personal contributions from asylum seekers housed in an asylum seekers reception centre.⁴⁰ No data is available that explains the decline, but it could be due to the greater number of residence permit holders moving on from an reception centre to be housed by a municipality, because fewer asylum seekers and residence permit holders have work, or simply because there are fewer personnel available to recover the amounts due.

³⁹ Interview and correspondence with the COA.

⁴⁰ The COA's financial accounts for 2015 is available at: <https://www.coa.nl/>.

In the course of our research, it became clear that asylum seekers do not object to covering a portion of the expenses incurred for their room and meals, or (partially) paying back allowances. They did, however, often complain that it was difficult to save for an education or for the purchase of the equipment they might need – e.g., a laptop, tools, work clothes – to establish financial independence, especially if they were only able to find occasional work. The administrative burden faced by an employer requesting a work permit for perhaps only a few days' work, and by asylum seekers who have to report their income to the COA only to end up with scant financial gain, remains a major obstacle on the path to finding work while in the reception centre. This encourages undeclared work – or work for less than the minimum wage – in violation of the Foreign Nationals Employment Act. The high personal contributions to the COA end up discouraging asylum seekers from taking work, especially those with large families. We have heard stories of asylum seekers (and resident permit holders still housed in an asylum reception centre) turning down job offers because they cannot keep most of their earnings, have to do too much paperwork, must cover their own travel expenses, or because there is little to no chance of being transferred to an asylum seekers reception centre nearer to the job they have been offered.

Finally, it must be noted that the fact that, in some cases, it hardly pays to work is not a problem unique to asylum seekers and residence permit holders. It affects everyone working in the Netherlands at or near minimum wage who compares his or her meagre earnings to the (welfare) benefits and allowances he or she could otherwise claim.

4 Asylum Seekers at Work: Not Without Risks

The debate on whether to expand or restrict access to the job market frequently overlooks the fact that certain asylum seekers are particularly vulnerable to exploitation. They are generally unaware of Dutch labour law and may struggle to pay back debts accumulated during their journey.⁴¹ This makes them more likely to accept work for lower wages than are considered appropriate in the Netherlands, and subject to worse working conditions.

41 J. O'Connell Davidson (2013), 'Troubling freedom: migration, debt, and modern slavery', *Migration Studies*, 2 pp. 176-195; H. Lewis and L. Waite (2015), 'Asylum, Immigration Restrictions and Exploitation: Hyper-precarity as a lens for understanding and tackling forced labour', *Anti-Trafficking Review*, 5 pp. 49-67.

Cognizant of such risks, the European Commission recommends that Member States should not keep asylum seekers waiting for more than six months before granting them access to the job market.⁴² During our research period, we became aware of only one such incident: in 2016, a laundry in Zaandam was shut down following allegations that asylum seekers were being exploited.⁴³ The asylum seekers were initially housed in an reception centre, but bedding and a provisional kitchen observed during a workplace inspection indicated that they were actually living at the laundry. The asylum seekers had been promised an hourly wage of ten euros, but it was reported that they were actually paid 4.50 euros, and occasionally nothing.⁴⁴ Early 2018 the laundry shop owner was convicted for labour exploitation equaling trafficking of the asylum seekers.⁴⁵ We were also informed that the COA refuses requests from businesses to 'hand over' asylum seekers when the business is seeking labourers, if it seems unlikely that labour regulations will be observed properly. Reports of abuse and exploitation since the recent influx of asylum seekers to the Netherlands are, however, too anecdotal to warrant any conclusions.

5 Discussion

An efficient asylum procedure is a precondition for successful economic integration, but, if the procedure drags on for too long, the time spent waiting should be put to good use – hanging around in an asylum seekers' residence centre can be detrimental to one's health. It is the current common finding that speedy access to the job market encourages the social integration of those allowed to stay, and helps prepare those who must repatriate for the inevitable.⁴⁶ Asylum seekers are not allowed to work during the first six

42 L. Slingenberg (2014), 'Asylum seekers' access to employment: Tensions with human rights obligations in the recast of the directive on reception conditions for asylum seekers', in C. Matera and A. Taylor (eds.), *The Common European Asylum System and Human rights: enhancing protection in times of emergencies*, Cleer Working Papers p. 96.

43 The COA reports suspected exploitation to the IND's Expertise Centre for Human Trafficking and Human Smuggling (Expertisecentrum Mensenhandel en Mensensmokkel).

44 Arrests made in connection with the exploitation of refugees, news bulletin issued by the Inspectorate of the Ministry of Social Affairs and Employment, 10 November 2016. In another incident, an asylum seeker was hired to work without pay in a bar and grill. Available at: <http://www.nhnieuws.nl/nieuws/196626/grillroom-en-steakhouse-dicht-na-ontdekking-syrische-asielzoekers>.

45 District Court Amsterdam, 22 March 2018, case nr. 13/845229-16, ECLI:NL:RBAMS:2018:1637.

46 WRR, WODC, and SCP (2015), *Geen tijd verliezen: van opvang naar integratie van asielmigranten*, Policy Brief 4.

months of the asylum procedure but, as of 2017, few need to wait that long. It has been argued that, in the interest of their speedy integration, asylum seekers should be allowed to support themselves with paid employment if a decision takes longer than two months. Research has not revealed any heightened risk of displacement on the job market stemming from abuse of the asylum procedure. Nonetheless, any potential risk could be alleviated by granting staggered access to the job market. Our first recommendation in *Van azc naar een baan* thus laid out how staggered access to the job market could be implemented. Potential employers may apply for a work permit once an asylum seeker's application procedure extends beyond, for instance, two months. In this early stage, possibly the permit will only be granted if it does not displace priority workforce on the job market. The job market assessment may be dispensed with if a salary has been offered above the standard wage level that applies to highly skilled workers. Next, all asylum seekers should be allowed to work if the procedure exceeds four months, provided a work permit has been issued, but no longer subject to assessment of the job market. The 24-week limit on work in any six-month period is an unnecessary impediment to the integration of migrants on the job market, and is most likely in violation of the Reception Conditions Directive. We therefore recommend that the 24-week limit should be eliminated, in spite of the risk that rights to unemployment benefits could accrue. Unemployment benefits could be converted into 'repatriation compensation' in the event that an asylum application is denied. If asylum is granted, insurance premiums end up in the appropriate social insurance fund.

The mandatory contributions for room and board dictated by the Rva and the Reba tend to discourage asylum seekers and residence permit holders living in an asylum reception centre from seeking paid work. The COA is currently not allowed to deviate from the stipulations of the Reba. This is also in violation of the Reception Conditions Directive, article 17 para 4, which states that Member States *may* require applicants to contribute to the cost of the material reception conditions if they have sufficient resources, for example, if they have been working for a reasonable period of time. The Reba, however, requires asylum seekers who enjoy any income whatsoever to surrender it, no matter how long they have worked. Especially for asylum seekers with families, this arrangement makes work less attractive. Delays in settling amounts connected to implementation of the Reba occasionally cause asylum seekers to leave the reception centre still carrying debts to the COA. This makes them vulnerable to abuse and exploitation. Therefore, we recommend that the Reba should be amended to allow the COA greater discretion in deciding, pursuant to the Reception Conditions Directive,

whether to require a personal contribution taken from wages earned. This will make it more financially worthwhile for asylum seekers to engage in paid work while residing in an reception centre, and will help prepare them for their eventual financial independence.

Financial gain is not the only driving force behind a desire to work. Both asylum seekers *and* the bureaucracy need to commit to making it possible to engage in – formal – paid labour. The Reception Conditions Directive, however, obliges the Netherlands to take it a step further and grant effective access to the job market. In our report *Van azc naar een baan*, we thus recommend to remove the practical impediments to employment as we feel this will also limit the attractiveness of the informal labour market, likely to provide less decent work.

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