

Legal Aid Board

# Legal aid in asylum procedures

International Forum Legal Aid Taiwan

November 2023

Authors: Eddy Sluiter, Jorike Franssen, Marie-Claire van den Broek

Presented by Janny Lubbers



# Index

- Dutch legal aid system
- Legal aid system in asylum procedures
- Data
- Asylum section of the Legal Aid Board
- Quality requirements lawyers
- Dutch asylum procedure

# Dutch legal aid system

## Framework Dutch legal aid system (1)

- Dutch Constitution Section 18
  1. Everyone may be legally represented in legal and administrative proceedings
  2. Terms concerning the supply of legal aid to persons of limited means shall be laid down by Act of Parliament

## Framework Dutch legal aid system (2)

- **Legal Aid Act** (Wet op de Rechtsbijstand)
  - **Legal Aid Board** (Raad voor Rechtsbijstand) is the the public body entrusted with the organisation and administration of legal aid. This includes matching the availability of legal experts with the demand for legal aid, as well as supervision and quality control of the actual services provided

## Dutch legal aid in general

- The Dutch legal aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act:
  - Legal Services Counter (primary help)
  - Before granting legal aid to a client a 'means, significance and merits'-test is done by LAB
  - 'Means'-test is succeeded by electronic connection with the Dutch Tax Administration
  - Determination of client's contribution is based on his annual fiscal income of two years ago
  - Payment to the lawyer based on fixed fee for different types of services
  - *Exception*: asylum seekers – presumed to be of insufficient means

# Payment of lawyers

- System with a fixed fee which differs according to different types of cases, with fixed surcharges if applicable
- Fees are based on extensive analyses of legal aid cases from the past and are supposed to correspond with the average time spent on a specific kind of case by a lawyer
- More complex/time-consuming cases 'compensated' with cases requiring less work.
- One point = 120,20 euro
- Possibility to request extra hours
- Travel expenses and interpreter's fee are covered by legal aid system, costs relating to expert consultation are not



# Legal aid in asylum procedures

## European framework legal aid in asylum procedures

- **EU Asylum Procedures Directive** (Procedurerichtlijn) (art. 20):
  - (restricted) right to legal assistance and representation in asylum procedures
- Legal Aid in asylum procedures in the Netherlands:
  - Above minimum standards, because:
    - No means and merits test
    - Legal Aid provided in all phases of the asylum procedure

# Who is who? The players (1)

## **1. Parliament:**

Decision-maker - sets budget and conditions for fees, contributions and type of services and cases

## **2. Ministry of Justice and Security:**

Policy-maker - proposes budget (legal aid system operates according to an open end provision)

## **3. Immigration and Naturalisation Service (IND):** part of the Ministry of Justice and Security. Handles the admission of foreigners in the Netherlands, processes all applications for asylum, family reunification, visas, naturalisation, and other residence permits

## Who is who? The players (2)

- 4. Legal Aid Board** (semi-independent government body):  
Policy implementer - spends budget and advises to the minister of Justice and Security
- 5. Private lawyers, Legal Services Counter, Mediators:**  
Providers of legal assistance (in asylum cases only registered lawyers)
- 6. Dutch Council for Refugees** (VluchtelingenWerk Nederland):  
Non-governmental organization (NGO) that represents the interests of refugees and asylum seekers in the Netherlands. The executive work is done by paid employees and a large number of volunteers who are involved in both social and legal guidance.

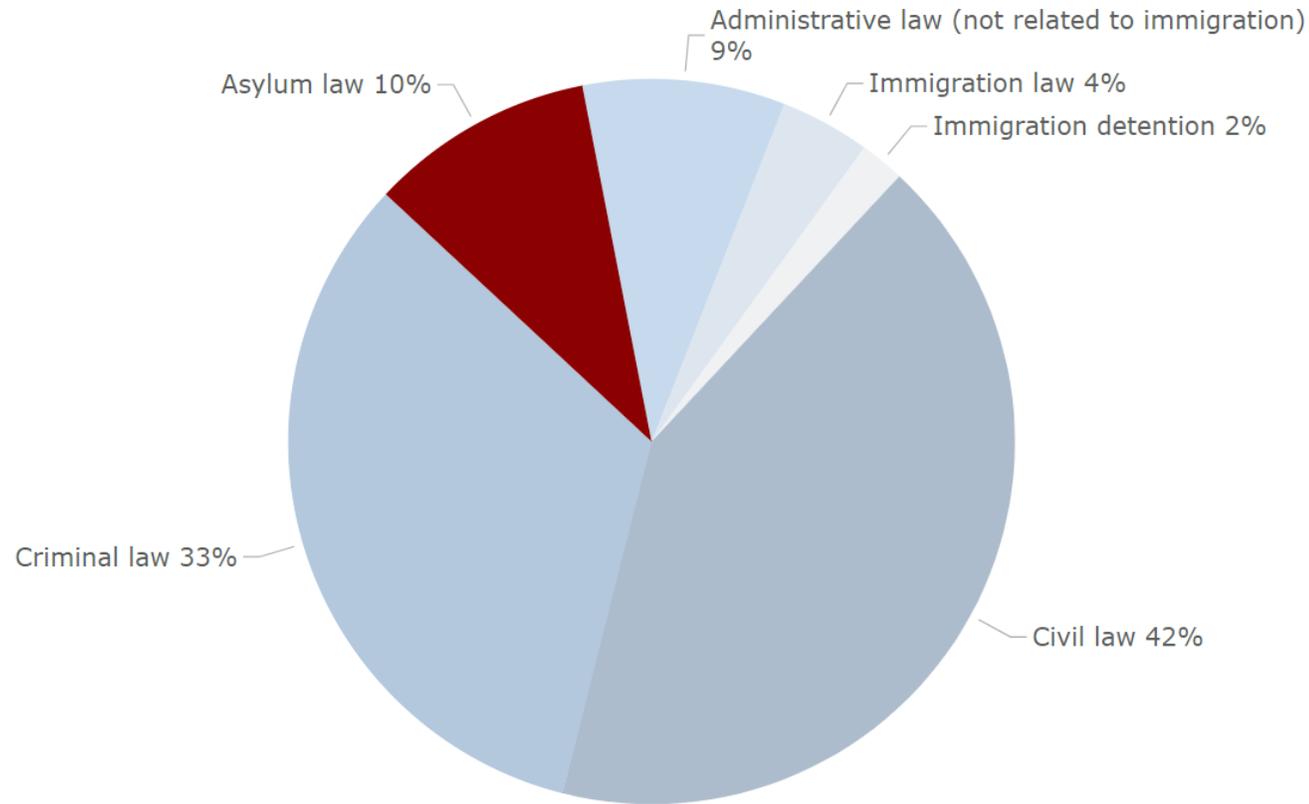
# The necessity of legal aid in asylum procedures

- In order to create a good system of legal aid it is necessary to strike the right balance (checks and balances) between the interests of the various stakeholders:
  - those who need legal aid;
  - those who provide legal aid;
  - those who pay legal aid; the government;
  - others who benefit from a good legal aid scheme and well prepared and documented applications (determining authorities, courts).
- Asylum procedure: factual and legal complexity, vulnerable clients, fixed process, institutional setting, time constraints. Professional legal aid providers to ensure all relevant aspects of asylum seeker's case are taken into account.

# Legal Aid Board

Data

# Asylum law represents 10% of total number of subsidised procedures



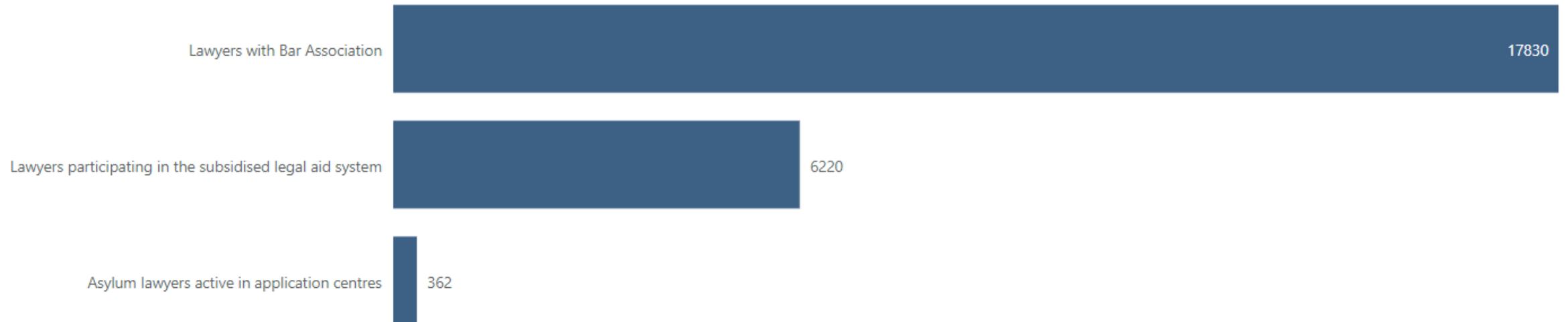
# Amount spent on Asylum Legal Aid

Total amount spent on Legal Aid: € 521,417,412.-



● Asylum Legal Aid ● Other Legal Aid

# Number of lawyers in area's of law



# Legal Aid Board

## Asylum section of Legal Aid Board

# Asylum section of Legal Aid Board (1)

- Responsible for:
  - The organisation and planning of legal aid for asylum seekers
  - Providing timely and adequate legal representation by registered lawyers, within system of state funded legal aid
  - Legal Aid Desks in four application centers
  - Subsidizing of registered lawyers (and DRC - partly)

## Asylum section of Legal Aid Board (2)

- Operational planning
  - Asylum section draws up a roster / schedule for asylum lawyers every six months (on average 4x2 cases)
  - Asylum section distributes cases to lawyers according to this roster (depending on caseload) and grants a fee certificate
  - Lawyers meet with their clients in the application centers or in their own offices
  - All meetings are arranged with an interpreter present (live or phone)

## Asylum section of Legal Aid Board (3)

Main principle: continuity of legal aid = 1 lawyer represents the asylum seeker during the entire procedure (relationship of trust)

- LAB appoints lawyer to client as soon as possible (after registration → before start of general asylum procedure), 1 family-unit = 1 case.
- In practice the lawyer is not present during the interview (check of report next day)

# Requirements lawyers

## Quality measures Dutch Bar association

- Traineeship (3 years, courses, examination)
- Rules of conduct
- Complaints procedure
- Subject to disciplinary proceedings
- Permanent education and training (20 points)
- Audit

## General requirements for lawyers legal aid

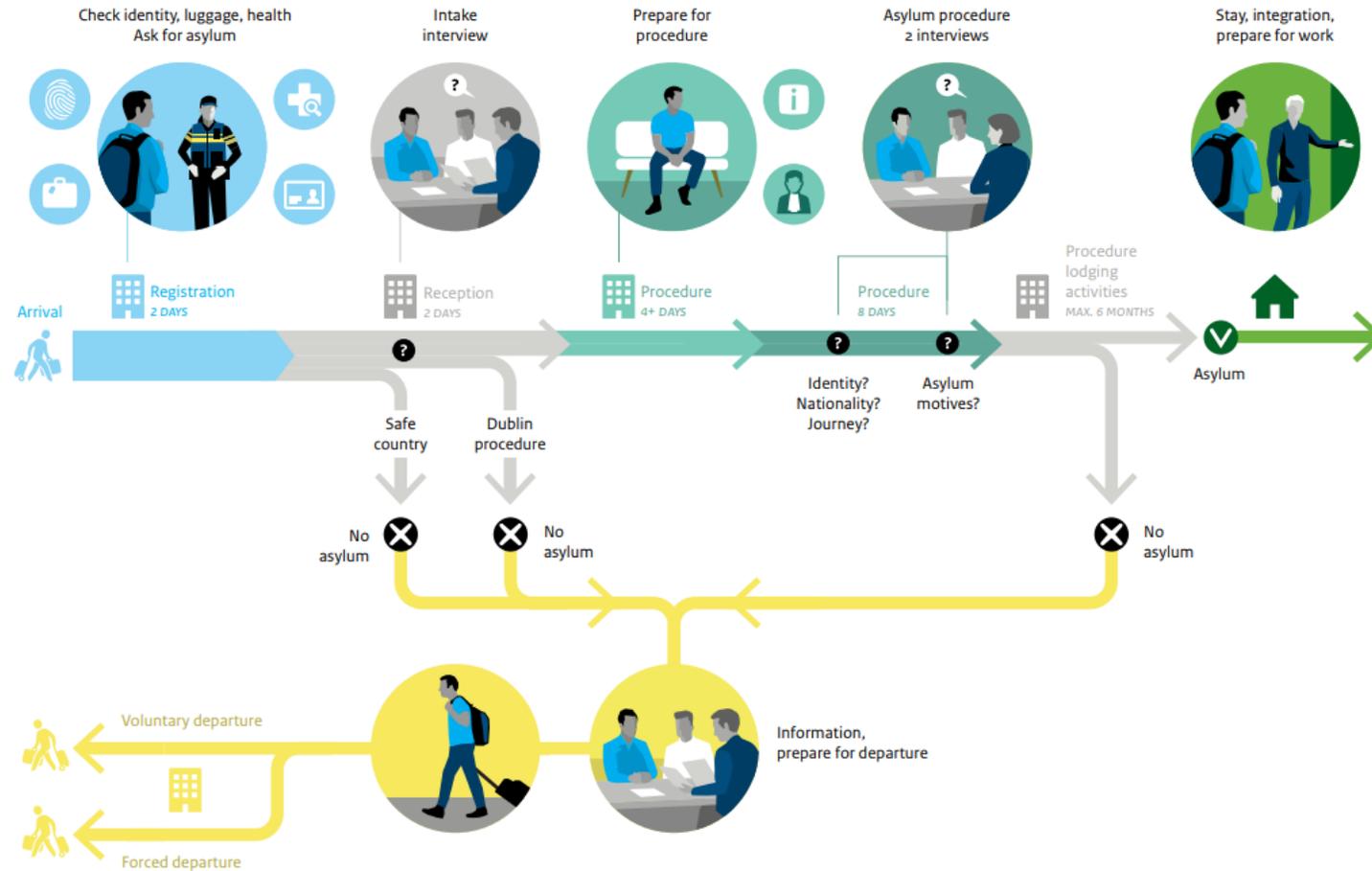
- Lawyers are bar members
- Lawyer must be registered at LAB
- Comply with general registration conditions
- For some fields (a.o. asylum and immigration) additional terms apply, set out in appendixes to general requirements
  - Successfully completed specialised courses and training
  - Permanent education, fixed amount of yearly courses/studypoints

# Requirements and quality control Asylum Law

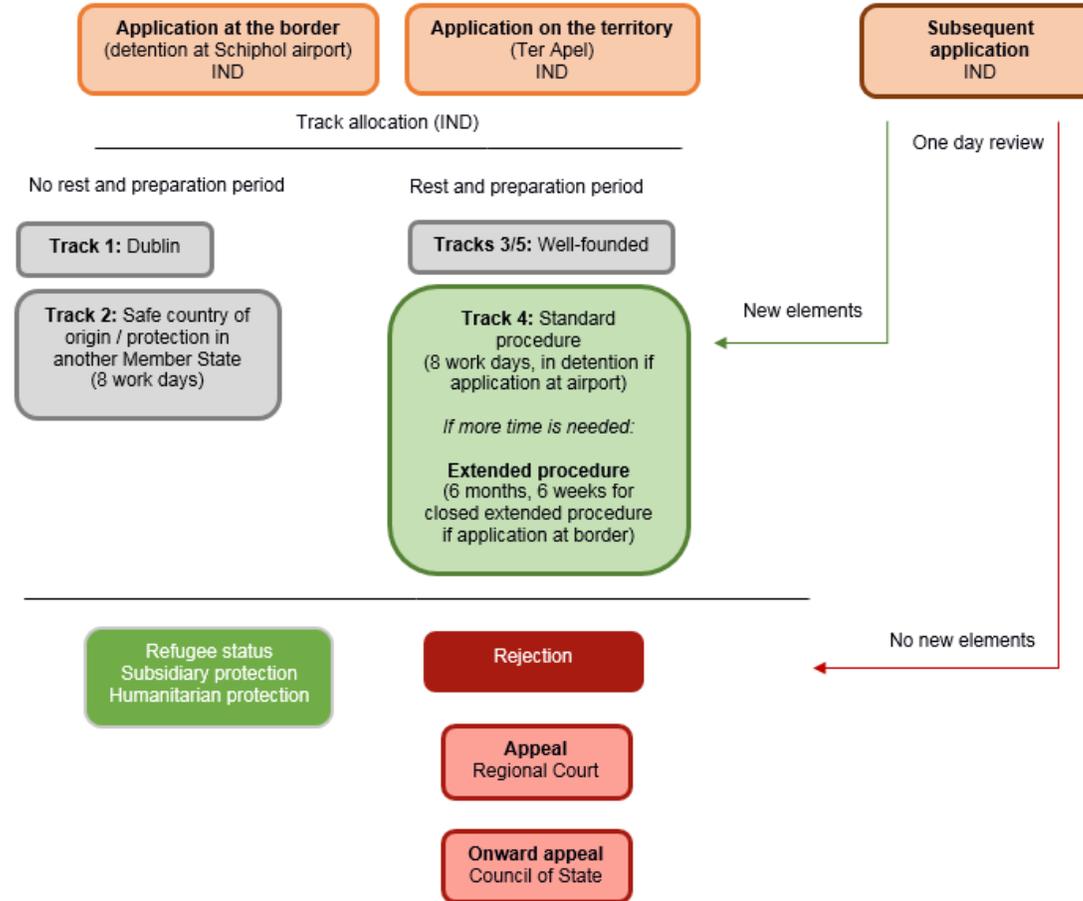
- Successfully completed specialised asylum and immigration law courses and training
- Permanent education, fixed amount of yearly courses/studypoints
- Supervised entry on AC roster
- Membership of 'Legal Aid to Refugees Working Group' of the Dutch Refugee Council
- Act in accordance to minimum standards laid down in 'Best Practice Guide Asylum'
- Submit to assessment by commission Inter-collegial review:
  - reviews quality of colleagues work based on minimum standards Best Practice Guide
  - quality improvement measures. Last resort: KRAV
- Complaints commission legal aid in asylum and immigration detention (KRAV)
  - treatment of complaints against lawyers, according to Best Practice Guide
  - ex offico investigation (multiple cases)
  - advises to Legal Aid Board on measures (from warning to removal from system)

# Dutch asylum procedure

# Steps in the asylum procedure



# Types of asylum procedures

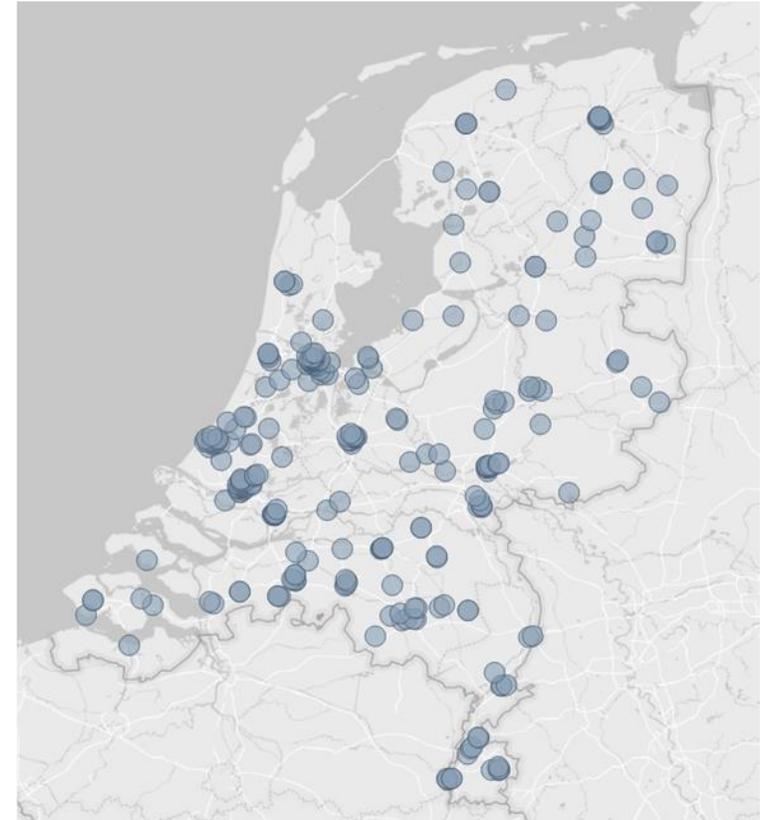


# Asylum lawyers

354 asylum lawyers partaking in schedules at the 4 application centres first half of 2023

Rooster 1e helft 2023	Aantal deelnemers
AC Schiphol	99
AC Den Bosch en Budel	141
AC Zevenaar	84
AC Ter Apel	92

Spread of law offices & application centers



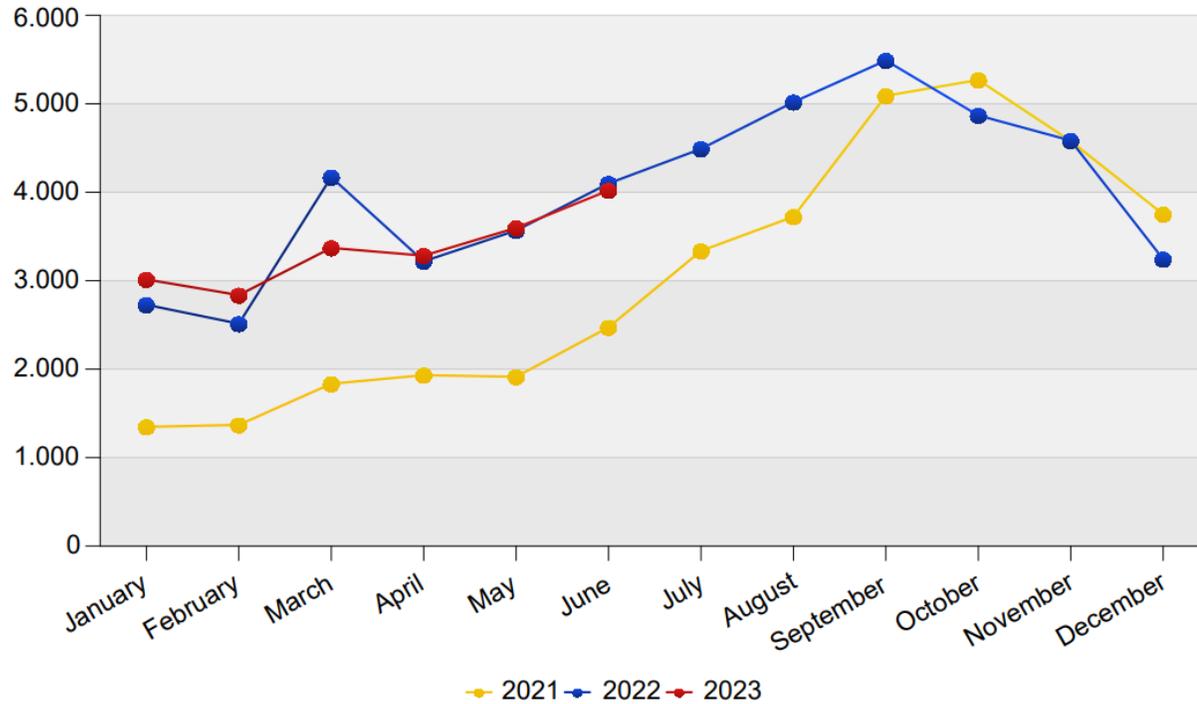
## General asylum procedure (track 4\_)

day -1	day 1	day 2	day 3	day 4	day 5	day 6
Lawyer	IND	Lawyer	IND	Lawyer	IND	IND
voorbereiding op A.A.-procedure	Interview asylum motives	Check interview	Intended decision (to reject)	Written reaction	Drafting decision	Notification decision
Preparation period	start asylum procedure		decision extended procedure or granting of permit			

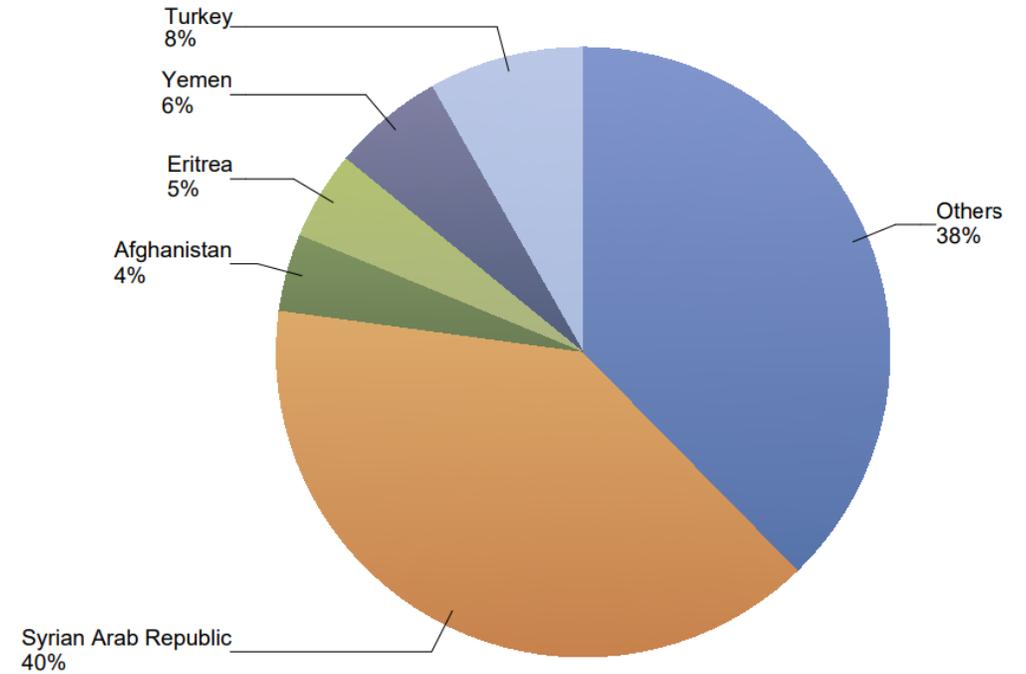
Lawyers fee corresponds to the phases completed.

# Asylum trends summer 2023

Total asylum applications in The Netherlands



Top Nationalities total applications last twelve months  
 Period: Jul 2022 - Jun 2023  
 Number of total asylum applications: 47.815



## Current challenges

## Current challenges

- Backlog of processing applications by IND and reception crisis.
- System under pressure / multiple priorities / external factors
- Pressure on EU