NETHERLANDS INSTITUTE FOR HUMAN RIGHTS

"Gezinnen gezien?" Study of Dutch regulations and practices in the light of the European Family Reunification Directive

August 2014

SUMMARY AND CONCLUSIONS

1.1 Is the right to family reunification sufficiently guaranteed?

The right to protection of family life has been laid down in Article 8 of the 1950 European Convention of Human Rights (ECHR). This right protects the family as a unity against arbitrary interference by the state, but does not constitute a right to live as a family in the country of one's choice.

In 2003, the EU Member States drew up the Family Reunification Directive, which lays down a right to family reunification for third-country nationals residing in the EU. If they meet certain conditions, they will have a right to family reunification with those family members who are part of the nuclear family, in the EU country of residence. In that sense, the EU countries have a positive obligation to facilitate family reunification and this right goes far beyond Article 8 ECHR. The Directive has strongly improved the legal position of third-country nationals to enforce their right to protection of family life, which has been laid down in various human rights conventions, compared to their position prior to 2003.

In 2004, the Netherlands transposed the Directive into national legislation. In the implementation of this legislation and of any new regulations, the Netherlands is bound by the provisions of the Directive, but also by the basic rights of the EU Charter and the general principles of EU law. One of the most important principles here is that each EU member state may only take measures that do not affect the purpose of the Directive, i.e. to facilitate family reunification. The measure should also always be proportionate to the goal to be achieved, in the sense that the measure is suitable and necessary in order to achieve the goal.

The Netherlands Institute for Human Rights (hereinafter: the Institute) conducted research into the manner in which the Dutch government has implemented family reunification policy for third-country nationals since 2004 and the extent to which this policy is in line with the Directive. Research was conducted both into the contents of the regulations and the manner in which the policy is implemented in practice.

The Institute conducted this research in order to answer the question whether the Dutch government sufficiently guarantees the right of family reunification for third-country nationals under the Directive.

In order to answer this question, the Institute first of all gathered information about how the Directive was implemented and about the subsequent amendments to the regulations. The research focussed on three topics:

- the income requirement
- the Civic Integration Abroad Act (*Wet Inburgering Buitenland*)
- the administration fee for an application

Are these regulations in line with the Directive? And how was the response to the case law of the European Court of Justice and the European Commission's insights? The Institute then assessed how the regulations are implemented in practice. Are they in line with the Directive?

1.2 Implementation of the Directive in general

It became apparent that, in 2004, the Dutch government explained the Directive such that existing laws and regulations had to be amended as little as possible. In doing so, the government assumed that the legislation complied with the minimum standards set. The horizontal clauses of Articles 5(5) and 17 of the Directive under which the Member States are obliged to make an individual assessment and take into account all relevant circumstances and interests, in particular those of children, were initially not explicitly included in Immigration Legislation. It was sufficient to refer to existing provisions in the Dutch General Administrative Law Act and Article 8 ECHR. Later, these articles were as yet included, be it partly.

The Institute has established that recurring discussions on the transposition of these articles have been held in the course of time. Especially as regards the interests of children, the State Secretary was asked more than once, and only recently, about how these interests are assessed in practice. Various political parties repeatedly asked that further policy rules be laid down in this regard. The State Secretary believed and still believes that further rules are not necessary because these interests have already been sufficiently included in Dutch policy, referring to Article 4:84 of the Dutch General Administrative Law Act and Article 8 ECHR. Practice-based research shows, however, that these articles do not fulfil the safety net function implied by the State Secretary.

The research shows that the government mostly used the implementation in 2004 to introduce an already intended tightening of the admission requirements. On this occasion, for instance, the income requirement was tightened and the age for family formation was

increased from 18 to 21 years. The aim of this tightening was to deal with the poor integration of disadvantaged migrants and to prevent this group from becoming dependent on public funds on a structural basis. From that moment onwards, the successive governments have always pursued a similar migration policy aimed at a restrictive admission policy and dealing with poor integration. The requirement under EU law to loyally implement the Directive, aimed at allowing family reunification, is not a priority.

The Institute has established that, as from 2004, many adjustments or proposals have been made to tighten the admission conditions, without this being necessary under the Directive Not only did the government seek the boundaries of what is still acceptable under the Directive, it also exceeded boundaries. The European Court of Justice has repeatedly rapped the knuckles of the Dutch government because the requirements set by the Netherlands on sponsors were not in line with the purpose of the Directive (the income requirement and the fees). It is noticeable that during the drafting of new rules, the recommendations of the Council of State and the Advisory Committee on Migration Affairs, but also the concerns expressed by, for example, the European Commission as early as in 2008 concerning the implementation of the Directive in the Netherlands, are hardly taken seriously.

If there are any evaluations to assess whether the measures taken contribute to achieving the objectives set (e.g. with respect to the Civic Integration Abroad Act and the income requirement), no consequences are attached to the conclusions of these evaluations that the objectives pursued are only achieved to a limited extent. It is noticeable that the manner in which the Immigration and Naturalisation Service (hereinafter: INS) collects and records its data makes it difficult to assess the exact consequences of policy changes. For instance, the effects of the measures on the extent of migration are unclear. It is also, however, not always possible to obtain a clear picture of the consequences for specific groups (e.g. illiterate persons and persons using another alphabet for the Civic Integration Abroad Act).

Having considered this, the Institute has established that the right of third-country nationals to live together with their family members in the EU Member States has become increasingly strong at a European level, whereas this right becomes increasingly weak at a national level due to repeated tightening of national policy until it reaches the minimum level of the Directive (and sometimes below that).

Most important conclusions regarding the implementation:

- The government gives priority to the implementation of the national, restrictive migration policy which is used as a selection tool to prevent increasing migration of disadvantaged groups and not to a loyal implementation of the Directive, aimed at allowing family reunification in order to promote integration.

- Article 5(5) and Article 17 of the Directive have not been implemented sufficiently, as a result of which there is no sufficient guarantee that the circumstances and interests of all family members are identified and taken into account. For children in particular, it is of the essence that their interests are explicitly guaranteed in legislation.

1.3 The income requirement

Regulations
Despite criticism by the Council of State and various experts, the income standard was raised in 2004. Criticism by the European Commission in 2008 and the results of the evaluation in 2009 that raising the income standard only had a limited effect on the extent of migration was no reason to adjust the income requirement. The 2004 tightening of the income requirement had to be reversed only under the pressure of the *Chakroun* judgment by the European Court of Justice. The Court ruled that this measure was not in line with the purpose and useful effect of the Directive. In doing so, the Court ruled that the income standard may not be used as an absolute standard, but may only serve as a reference standard. All relevant circumstances and interests must be clearly identified and balanced for each specific application, the assessment having to focus on whether a sponsor can support his or her family. This differs per person. These standards were later confirmed and set out in more detail in the Guidelines of the European Commission.

With respect to the sustainability of the income, the Commission states in the Guidelines that income generated in the past may serve as evidence, but cannot be set as a requirement, as it may lead to an unauthorised additional admission requirement and waiting period.

In response to the *Chakroun* judgment, the State Secretary said that the requirement of an individual assessment is already met by offering exceptions to the income requirement and by a test against Article 4:84 of the Dutch General Administrative Law Act and Article 8 ECHR. The rules were not amended in this regard. Only in Articles 3.74 and 3.75 of the Aliens Decree were the words “in any case” added in order to state that the income standard is not a firm requirement, but a rule of thumb. The State Secretary believed that the sustainability requirement was also in line with the Directive.

Practice
Based on examined INS files from 2012, the Institute concludes that the above-mentioned individual assessment and the flexibility included in the regulations with respect to the income standard (by adding the words ‘in any case’ in Articles 3.74 and 3.75 of the Aliens Decree) are not actually applied in practice. In principle, an application is rejected if the standard or one of the exceptional provisions are not met. Such a rejection is not based on an assessment in the light of Article 5(5) and Article 17 of the Directive. No test is performed against the principle of proportionality: the interests of the State in the

measure and the interests of the various family members are not balanced against each other.

It follows from the *Chakroun* judgment that, even if the target amount is not met, it is necessary to assess the individual situation of an applicant and his or her family. As the needs may differ strongly per person, it should be assessed whether, in the specific case, the sponsor has sufficient income in order to support his or her family. If any arguments concerning low living expenses are put forward, these arguments need to be investigated and discussed in the grounds for the decision. The fact that, in current practice, these arguments are refuted by referring to the theoretical possibility of reliance on social assistance, without investigating whether such reliance is likely in the specific case, is considered by the Institute to be an incorrect implementation of the Directive.

The income position of the group of sponsors between the age of 21 and 23 is not sufficiently taken into account in practice. A lower statutory minimum wage applies to this group, which is why it is more difficult for them to meet the income requirement. This is not a factor that is taken into account when making a decision. Given the fact that, in its Guidelines, the European Commission provides that minimum wages should be regarded as the upper limit of what a Member State may require, the Institute can draw no other conclusion than that the policy in respect of this group is, in any case, not in line with the Directive and the principle of proportionality.

In case of incapacity for work, it is possible to request an exemption from the income requirement. This exemption is only granted in case of full and permanent incapacity for work. In respect of persons who are entitled to social assistance and are incapacitated for work, it appears that municipal authorities hardly ever assume that a person is permanently incapacitated for work. During the assessment of a request for exemption, this reality is not included in the question whether maintaining the income requirement is proportionate. The Institute is not convinced that this practice is in line with the principle of proportionality and establishes that this is detrimental to the purpose of the Directive, namely to promote family reunification.

The mechanical application of the (exception) rules whereby not all circumstances of an individual case are taken into account - an application that is also established by the Institute in other respects in the examined cases - is incompatible with case law of the European Court of Justice and the ECHR, which repeatedly rapped the knuckles of the Dutch government in connection with an excessively formalistic attitude. The fact that certain groups are exempt from the income requirement does not justify the fact that there is no individual assessment of the situation of any applicant.

Applying Article 4:84 of the Dutch General Administrative Law Act shows that in practice, the principle is that interests have already been balanced by the legislature. For the law already provides for exceptions to the main rule. In practice, however, this article does

not guarantee that, in a specific case, interests are identified and balanced against each other, and are assessed in the light of the purpose of the Directive and the principle of proportionality under EU law. If it is not possible to successfully rely on a ground for exception, Article 4:84 of the Dutch General Administrative Law Act does not offer a solution. No records are kept of how many applications are granted under Article 4:84 of the Dutch General Administrative Law Act.

The test under Article 8 ECHR provides that, in principle, States need not respect the choice of residence made by family members. This gives states a very strong position in advance. As family reunification is the rule under the Directive, thereby granting a stronger right than Article 8 ECHR, the Institute believes that the assessment of all individual circumstances and interests under the Directive cannot be implied in the, less far-reaching, test under Article 8 ECHR. The circumstance that it is possible to live as a family in another country is of the essence in the test under Article 8 ECHR. Under the Directive, it is impossible to attach the same importance to this circumstance, as this would erode the right to family reunification.

The practice-based research for 2012 shows that the test under Article 8 ECHR only twice offered a remedy if there were insufficient resources. The Institute concludes that the State Secretary wrongly creates the impression that Article 8 ECHR, just as Article 4:84 of the Dutch General Administrative Law Act, serves as a safety net. The same applies to the State Secretary's opportunity to exercise his discretionary power to grant residence even if the applicant does not meet the conditions.

Most important conclusions regarding the income requirement

- Prior to the introduction, it is not or hardly assessed whether the set purpose of new measures regarding the income requirement can be achieved. There is no impact assessment in order to identify the consequences of the new measure for certain (vulnerable) groups. After the entry into force, the effects of measures cannot always be measured due to a lack of data.
- The government does not take recommendations and evaluations seriously enough.
- The flexibility included in the regulations with respect to the income requirement is not used in practice. The income requirement is not regarded as a target amount but as a firm limit below which no family reunification is allowed. Exceptions are only applied under very strict conditions. Contrary to the *Chakroun* judgment, there is no assessment of the individual need of an applicant to provide for himself and his family members.
- Also with respect to durability, the national policy is a firm requirement, without there being a test of individual needs. The requirement that a three-year employment history be demonstrated if there is no annual contract results in an unlawful waiting period, which is disproportionate for young persons in particular.

- In practice, there is no test of all relevant factors referred to in Article 5(5) and Article 17 of the Directive. In many cases, the files do not contain the information necessary in order to perform this test. A more active attitude is expected from the INS in order to identify and balance all circumstances, together with the applicant.
- Certain groups have more difficulty complying with the income requirement. For instance, due to the lower minimum wage, it is more difficult for young persons to meet the income standard. And, in many cases, this makes it impossible for persons who are permanently incapacitated for work to successfully rely on the exemption provision, as an impossible burden of proof falls on them (the municipal authorities no longer issue any proof of permanent incapacity for work). This puts the proportionality of the requirement at risk. In these cases, however, there is no assessment of all relevant circumstances and interests.
- The practice-based research shows that Article 4:84 of the Dutch General Administrative Law Act and Article 8 ECHR do not fulfil the safety net function implied by the State Secretary. Any applications granted under Article 4:84 of the Dutch General Administrative Law Act are not registered and, in 2012, the income requirement was not applied in only two cases based on Article 8 ECHR.
- The weight that is still given to Article 8 ECHR in practice when balancing the interests of the state versus the interests of family members is incompatible with the Directive, the principle of proportionality and case law of the European Court of Justice. The Directive is based on the right of family reunification and thereby a free choice of a residence for third-country nationals. The focus should be on family reunification (Directive) instead of an investigation as to whether a family can live somewhere else (Article 8 ECHR). The less far-reaching test under Article 8 ECHR cannot possibly include the more far-reaching test under the Directive.

1.4 The civic integration abroad requirement

Regulations

The basic principle of the Directive is that family reunification is a means for third-country nationals who live in the Netherlands for better integration. The Institute establishes that, upon the introduction of the Civic Integration Abroad Act in 2006, the Government assumed an opposite basic principle, namely that family reunification can only be allowed if foreign family members have demonstrated already before coming to the Netherlands that they are likely to integrate. They must have passed the civic integration examination. Here, the civic integration test is a selection tool.

With respect to the Civic Integration Abroad Act, too, the government makes use of the scope offered by Article 7(2) of the Directive, without being forced by the Directive to do so, in order to introduce a tightening of this condition. The Institute establishes that not only does the government seek the boundaries of what is allowed, it also exceeds

boundaries. It is clear that the government always gives priority to the implementation of the restrictive national policy and not to a loyal implementation of the Directive.

The Institute establishes that, with respect to this topic, the government is hardly willing to adjust the regulations following criticism, recommendations or evaluations. From 2006 onwards, the Advisory Committee on Migration Affairs, the European Commission, Regio Plan and the National Ombudsman clearly expressed themselves in favour of a hardship clause tailored to the Civic Integration Abroad Act. A hardship clause for the Civic Integration Abroad Act was eventually introduced no sooner than in 2011. The results of the Triarii study that increasing the language level of the civic integration examination will exclude too many people if they are dependent on self-teaching, and the recommendation made by the Franssen Committee that increasing the language level will result in a selection on the basis of training and not only on motivation did not prevent the government from increasing the language level all the same.

The Institute believes that in its current form, the Civic Integration Abroad Act is contrary to the Directive and the principle of proportionality. The civic integration examination may only serve to promote integration and may not serve any other purposes. Nor may it serve as a selection tool, as is the case at present. Imposing a best efforts obligation on sponsors, instead of the current performance obligation will fit in with the Directive. With respect to the principle of proportionality, the Institute notes that the interest of the State in the enforcement of the Civic Integration Abroad Act does not weigh heavily, as it has been demonstrated only to a very limited extent that the Act promotes integration. It does not outweigh the importance of a reunification of family members, who sometimes have to postpone their wish to live together for a long period of time due to the Civic Integration Abroad Act. Family members are disproportionately affected by the strict application of the civic integration requirement and the exceptions thereto, the high language level, self-teaching and high costs. This specifically applies to vulnerable groups, such as illiterate persons, persons using another alphabet and less educated persons. What is important here is that the State can also achieve integration using a less drastic means by again taking on its full responsibility for the integration of family members once they are in the Netherlands.

Practice of the Civic Integration Abroad Act

The Institute concludes from the 2012 file research that the INS implemented and applied the hardship clauses to a minimum extent in that year. As a result, the implementation of the Civic Integration Abroad Act is so strict that it is incompatible with the Directive. The hardship clause was applied only 15 times in 2012. Moreover, the hardship clause appears to be neither an exemption nor an alternative integration condition in practice. It is not an exemption because sitting the examination (sometimes several times) is almost always a condition before it possible to successfully rely on the hardship clause. The hardship clause

is no alternative integration condition either. For groups who have difficulty complying with the requirement, such as illiterate persons and persons using another alphabet, they do not know when they have made sufficient efforts and when their situation is exceptional enough in order to successfully rely on the hardship clause. Circumstances considered to be exceptional by the European Commission, such as illiteracy, are only taken into account in combination with other, often very severe, circumstances and proper efforts. There are no public data available on the number of cases in 2012 in which an exception was made on the basis of the exempting provision due to a mental or physical impairment.

It also appears that any reliance on the exceptions to the civic integration requirement is only successful if the family member is permanently unable to pass the civic integration examination. This means that if there is still any hope of passing the examination in the next few years, for example by demanding from an illiterate person that he first learns to read and write, any reliance on these exceptions will be unsuccessful. In doing so, the Netherlands is creating a waiting period. In the Guidelines on the income requirement, the European Commission stated that a waiting period is unlawful.

Certain groups, such as illiterate persons, persons using another alphabet and less educated persons have less chance of passing the examination. The grounds for exemption rarely offer a solution for them.

The aforementioned relevant circumstances of Article 5(5) and 17 of the Directive do not constitute the assessment framework used by the decision-making team when applying the hardship clause. The substantiation of the 2012 decisions therefore do not account for the said factors, such as the nature and strength of the family ties. The interests of children, too, are not put first during the implementation of the grounds for exemption. In situations in which the interests of children should be decisive according to the European Commission, these hardly played a role in the Dutch practice in 2012. Especially of the children who already live with their sponsor in the Netherlands. Their interests are not sufficiently identified and balanced against the interest of the State to facilitate integration, by enforcing the Civic Integration Abroad Act.

It also appears that the safety net function - implied by the State Secretary - of Article 4:84 of the Dutch General Administrative Law Act and Article 8 ECHR plays no significant role if the civic integration requirement cannot be met. No records are kept of how many applications are granted under Article 4:84 of the Dutch General Administrative Law Act. In 2012, there were no cases in which the civic integration requirement was not applied based on Article 8 ECHR.

Finally, it is striking that no public data are available on any successful reliance on the medical exemption provision. Better and clearer registration is highly desired.

Most important conclusions regarding the Civic Integration Abroad Act

- The Institute believes that in its current form, the Civic Integration Abroad Act is contrary to the purpose of the Directive and the principle of proportionality. The civic integration examination may not serve as a selection tool for admission within the context of family reunification, which is the case at present. The civic integration examination may not be a performance obligation, only a best efforts obligation. As it became apparent that the Civic Integration Abroad Act is suitable only to a very limited extent for facilitating integration, and it is also possible to achieve integration using a less drastic means, the interest of the State does not outweigh the interests of the family members, who often have to postpone their wish to live together due to the effect of the Civic Integration Abroad Act.
- The exceptions to the civic integration requirement are implemented to the least possible extent. Only a demonstrated permanent incapacity results in an exemption. A reliance on the hardship clause is successful only very rarely under special (burdensome) circumstances (2012: 15x), usually after proven efforts by having to do the test anyway. This strict implementation results in an indefinite waiting period for people with a temporary impairment (which could also last for years), which is not permitted under the Directive.
- In practice, there have been no tests against Article 5(5) and 17 of the Directive, while such test is mandatory if an application is rejected. A more active attitude is expected from the INS in order to identify and assess all circumstances, together with the applicant.
- The practice-based research shows that Article 4:84 of the Dutch General Administrative Law Act and Article 8 ECHR do not fulfil the safety net function implied by the State Secretary. Any applications granted under Article 4:84 of the Dutch General Administrative Law Act are not registered and, in 2012, there were no cases in which the civic integration requirement was not applied based on Article 8 ECHR.
- Prior to the introduction, it is not or hardly assessed whether the set purpose of the Civic Integration Abroad Act and any amendments thereto can be achieved. There is no impact assessment in order to identify the consequences of the new measure for certain (vulnerable) groups. After the entry into force, the effects of measures cannot always be measured due to a lack of data.

1.5 The administration fees

Regulations

The Institute establishes that, when increasing the administration fees for an application in 2005, the government wrongly assumed that the levying of fees fell under the exclusive jurisdiction of the Member States and that the Directive did not apply. After that, the

administration fees were increased several times up to a maximum amount of 1250 euros in 2011.

The criticism that high administration fees could form barriers for third-country nationals to enforce their right to family reunification was removed by the government by referring to the possibility to apply for an exemption, also referring to the safety net function of Article 8 ECHR. Neither the criticism by the European Commission in 2008 on the implementation of the Directive nor the recommendation of the European Commission in 2009 to the Netherlands to as yet comply with the Directive on long-term residents resulted in an adjustment. What is more, the fees were again increased in 2011, when infringement proceedings against the Netherlands were already pending. The Institute also establishes in respect of the administration fees that recommendations by various bodies, such as the European Commission, which is authorised to monitor the correct compliance with European Directives, are ignored by the government.

In 2012, the European Court of Justice rendered a clear judgment that these high fees affected the purpose and useful effect of the Directive and were incompatible with the principle of proportionality. A judgment by the Judicial Division of the Council of State was then necessary in that same year in order to convince the responsible minister to reduce the administration fees. For the Institute, this is another example of the fact that the government has a policy choice prevail over the duty to implement the Directive and the judgments of the European Court of Justice, while it should have been clear for a long time that it acted contrary to the Directive.

In the ECHR judgment *G.R versus the Netherlands* on the possibility to be exempted from paying administration fees, the Netherlands was also rapped on the knuckles. The Court ruled that too much unnecessary proof had to be submitted and even spoke of excessive formalism. Such approach does not come even close to the obliging attitude described in the Directive in order to facilitate family reunification. The conditions for exemption from paying administration fees were partially adjusted following the judgment.

Practice

The Institute establishes that the file research shows that the possibility of a reliance on an exemption from paying administration fees under Article 8 ECHR is not very accessible in practice. This could constitute a barrier for families in order to qualify for family reunification.

Most important conclusions regarding the** administration **fees:

- With respect to increasing fees, too, the European Court of Justice eventually blew the whistle on the Dutch government, as the amount of the administration fees affected the purpose and useful effect of the Directive.

- The Netherlands was also rapped on the knuckles by the ECHR regarding the manner in which the Netherlands implemented the possibility to be exempted from paying fees. Too much proof and too many formalities were demanded here. The judgment spoke of excessive formalism.
- The 2012 practice-based research shows that the exemption from paying fees has not been regulated clearly in practice and may therefore be an obstacle in achieving family reunification.

1.6 General conclusion and recommendations

All things considered, the Institute arrives at the following conclusion:

On several essential points, national policy and practice do not meet the requirements set by the Directive. As a result, the right to the protection of family life, laid down in various human rights conventions and the European Charter of Fundamental Rights and further strengthened in the Directive, is not guaranteed sufficiently.

For third-country nationals who meet the conditions, it is no problem to be admitted to the Netherlands. This constitutes the large majority of the people applying for family reunification. For third-country nationals who do not immediately meet the requirements, the manner in which their application is tested is very important. For them, it is important that all relevant factors are identified and that a test is performed in the manner provided for in Article 5(5) and Article 17 of the Directive. The basic principle here is that family reunification is the rule and benefits integration. This is not the case at present. Not even if applicants rely on a specific exemption provision, the hardship clause or one of the general exceptional provisions such as Article 4:84 of the Dutch General Administrative Law Act or Article 8 ECHR. The basic principle is still the approach contained in Article 8 ECHR, which is aimed at the question whether it is also possible to live as a family in another country and whereby starting a family or relationship when the family members still live separated from each other in the Netherlands and in a third country, is regarded a negative factor for the family members.

The possibility of a flexible application of rules and exceptional provisions partly determine the question whether a condition is in line with the Directive. Although such flexibility has been included in national regulations in any case in respect of the income requirement, practice does not show such application; neither for the income requirement nor for the civic integration requirement. With respect to these requirements, the Institute establishes that an exemption or dispensation is only granted in case of permanent incapacity. This creates a waiting period for people with a 'temporary' impairment (which could sometimes last for years), which is not permitted under the Directive.

The ease with which the State Secretary always refers to the safety net function contained in Article 4:84 of the Dutch General Administrative Law Act and Article 8 ECHR during discussions in Parliament contrasts sharply with reality. Given the fact that applications are rarely granted on these grounds, these articles do not serve as a safety net at all.

That is why the Institute gives the following recommendations.

With regard to legislation:

- Civic integration policy should be reviewed as soon as possible. Efforts should be demanded from newcomers, but no strict examination requirements should be set. The government should assume responsibility again for the integration of family members once they have arrived in the Netherlands.
- Article 5(5) and Article 17 of the Directive should be fully included in the regulations, specified in further detail and all applications should be tested against these articles before they are rejected. The rights of children, for example as laid down in Article 24 of the European Charter of Fundamental Rights, should be given an independent and prominent place in legislation and testing.
- Any legal uncertainty among parties concerned should be avoided by pursuing consistent policy on several years based on a clear vision which is in line with the Directive: permission for family reunification is the basic principle. An impact assessment should be conducted before introducing new measures. Lessons should be learned from evaluations and policy should be adjusted if the set purpose is not or only partly achieved with the introduction of the measure. Recommendations should be taken seriously.
- Sufficient data should be recorded so as to measure the effects of measures.

With regard to practice:

- The application procedure should be set up in accordance with the purpose of the Directive, in other words the outmoded test based on Article 8 ECHR should be abandoned. A clear test based on a right of family reunification should be implemented, in which all individual circumstances and interests are identified and included in the assessment.
- The conditions should be applied in a sufficiently flexible manner, so that the income requirement and the civic integration requirement are no strict requirements and an exception is made not only in case of permanent incapacity.
- Partly by applying the rules in a sufficiently flexible manner, it should be prevented that the results of measures are that vulnerable groups are affected disproportionately.

The INS should have sufficient information available in order to assess all individual factors; this requires a more active and obliging attitude when assessing applications.