

THE NETHERLANDS, BELGIUM AND GERMANY:

A Comparative Analysis on the Detention Policies and Repatriation Practices of Foreign Nationals



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Executive Summary

This study focusses on the immigration laws in three EU Member States, primarily focusing on the detention laws and detention practices concerning foreign nationals in the Netherlands, Belgium and Germany. It explores which laws and policies are the strictest in comparison to the other two countries. In the past decade the immigration laws in Europe have changed and have had a tendency to become even stricter.

The aim of the research is to compare the background of these three countries regarding the aspect of immigration and immigration policies. Secondly, the objective is to research and compare the legal grounds for the detention of third-country nationals. In addition, the goal is to discover the similarities and differences between the key government agencies present in all three countries, which address the issue of unwanted immigration. After this, an overview of the different focus of each national policy is given in regard to foreign nationals residing in the country.

Furthermore, an overview on the given criticism and views on every country's immigration and detention policies is provided followed by a result analysis on which country is the one that possesses the strictest policies and whether or not the same country also achieves the highest repatriation results.

The main findings of the research are that the Netherlands has indeed stricter immigration and detention laws when compared to Belgium and Germany. As a result, it also obtains the highest results in repatriations of unwanted foreign nationals residing in the Netherlands. Stricter and more consistent policies have proven to have better results as long as these strict policies are carried out along with incentives for third-country nationals to co-operate. These incentives include, assistance from organizations such as the International Organization for Migration, which helps foreign nationals get back on their feet when returning to their home countries after being abroad for some time. These incentives have proven successful in promoting voluntary return.

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2. Preface

This report is the bachelor thesis for the conclusion of my bachelor program of European Studies at The Hague University of the Netherlands. Moreover, it is meant to research if the Dutch policies and practices on returning illegal migrants are as strict and as controversial as its reputation says. If it is stricter than most European countries and stricter than its bordering countries, it is also more effective in repatriating illegal aliens. I have always been interested in the subject of migration but particularly in illegal migration and why this phenomenon occurs. I further developed my interest in the subject after completing my five month internship with the Repatriation and Departure Service Headquarters in the Hague. The aim of this thesis is to provide a better comprehension and a clear overview on the Dutch, German and Belgium legal grounds for detention, policies and practices illegal aliens go through when they have to return to their country of origin, focusing on the detention process. Furthermore, the conclusion of this report will provide an answer to the main question; "Is the Netherlands the country with the strictest views and policies towards illegal migration?" If the Netherlands is not the European country with the strictest policies, is Belgium the European Member State with the strictest policies or is it Germany. In conclusion it will be researched of the country with the strictest policies is also the most effective one. If the European country with the harshest views and policies towards illegal migration is in fact the most effective one, this will mean that a stricter approach to combat illegal migration may be the answer to some of the problems most European Member States are facing.

This dissertation is original, unpublished, independent work by the author, I.A van Ruyven Garcia Rojas.

3. Vocabulary

Assisted Voluntary Return: Voluntary return of foreign nationals to their country of origin with financial help.

Forced Repatriation: Non-voluntary return of foreign nationals to their home country.

Foreign National: Person who is not a citizen of the host country in which he or she is residing. Synonym to third-country national.

Irregular migrant: A person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country (IOM, 2011).

Illegal immigrant: Person who does not have the legal right to reside in the country, third-country national who does not fulfill the conditions of entry in a country (Heegaard, Köpfli & Ardittis, 2013).

Repatriation: The return of illegal aliens residing in one country to their country of origin.

Return: The process of a third-country national going back, in voluntary compliance with an obligation to return or enforced (Heegaard, Köpfli & Ardittis, 2013).

Third countries: Third countries is a term used by the European Commission for all countries who do not belong to the European Union or the European Economic Area (Eurofund, 2007).

Voluntary departure: Compliance with the obligation to return within the time limit fixed in the return decision (Heegaard, Köpfli & Ardittis, 2013).

Is the present Dutch policy on forced return of illegal aliens stricter than in the bordering countries Germany and Belgium, and therefore more effective?

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4. List of Abbreviations

ACVZ: Advisory Committee on Aliens Affairs (Adviescommissie voor Vreemdelingenzaken)

CEAS: Common European Asylum System

COA: Central Body reception Asylum Seekers. (Centraal Orgaan opvang asielzoekers)

DJI: Custodial Institutions Agency (Dienst Justitiële Inrichtingen)

DT&V: Repatriation and Departure Service of the Netherlands (Dienst Terugkeer en Vertrek)

EHCR: European Court of Human Rights

REAG: Reintegration and Emigration Programme for Asylum-seekers

IOM: International Organization for Migration

IND: Immigration and Naturalization Service (Immigratie en Naturalisatie Dienst)

5. Introduction

Germany and Belgium are the bordering countries of the Netherlands. They share a border, a relationship, similar languages and similar cultures with the Netherlands. They are similar in geographical position, landscape and way of thought. Although there are quite obvious differences between Dutch, Belgium and German citizens, the government and policies can be easily compared to each other. This provides a better comparison to the Netherlands than comparing countries to the Netherlands which have no obvious similarities. Foreign nationals wanting to reside or work in Europe, who do not have any affiliation with these three countries, do not see a significant difference between the Netherlands, Belgium and Germany. The way of life is similar, the languages are as equally difficult to learn and the geographical position is almost the same. It is also quite difficult to obtain a residence visa for any of these countries and the work opportunities are also comparable for its citizens. Having found the similarities, it was no difficult choice to make the comparison between the Netherlands, Belgium and Germany.

First of all, most countries in Western Europe developed organized systems of immigration regulation around the same time in the early 1990s. Accordingly, since alien's laws enter administrative bodies with great discretionary powers, in most countries, it was not necessary to make amendments to these laws every time a stricter or more liberal immigration regulation was made (Hammar, 2009, p. 249).

Moreover, the beginning of cooperation among EU Member States on the issue of immigration as security can be traced back to the mid-1980s. Order and security were to be reconciled with the freedom of movement for EU nationals and third-country nationals legally residing in the territory by means of increased and improved coordination among the police, customs and the judiciary of the signatory EU states and third countries. The EU external borders were to be strengthened through the sharing of best practices of border surveillance and surveillance. In addition the Schengen Information system (SIS) was introduced in order to share information on asylum claims, illegal migrants and any other required information (Zhyznomirska, 2006, p. 33).

Since 1993, the EU Member States have started formal intergovernmental cooperation on asylum and immigration policies. The Maastricht Treaty of 1992 established an intergovernmental pillar dealing with Justice and Home Affairs, as well as the Common foreign and Security Policy (Zhyznomirska, 2006, p. 34). Co-operation in the area of asylum and immigration policy is an important aspect of creating a European zone of freedom, security and justice. In the European Pact on Immigration and Asylum of 2009, the agreement was made to create harmonized legal bases in a Common European Asylum System (CEAS). Furthermore, it was emphasized that the practical co-operation between EU Member States was to be strengthened (*European Co-operation*, 2011).

Furthermore, an irregular migrant is a person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers inter alia those persons who have entered a transit or host country lawfully but have stayed for a longer period than authorized or subsequently taken up unauthorized employment (also called clandestine/undocumented migrant or migrant in an irregular situation). The term "irregular" is preferable to "illegal" because the latter carries a criminal connotation and is seen as denying migrants' humanity (IOM, 2011).

Irregular migrants will be referred to from now on as illegal aliens, foreign nationals, third-country nationals and illegal immigrants. All these terms will refer to those people who are staying in a European Member State who do not have the legal documents to stay in that country permanently and who are residing illegally in that specific country. Consequently, irregular migration is a constant subject which makes headlines. In Europe, policymakers are under both public and political pressure which keeps increasing to address both the flows and stocks on unauthorized immigrants in each country. Within the European Union Member States, national governments define, identify, and react to irregular migration in various ways. However, with the removal of the internal borders within the Schengen area, European governments collaborating intensively on the management of the external borders. They do this with the support of EU institutions. The European Agency for the Management of Operational Cooperation at the external borders of the Member States coordinates Member States and their joint border enforcement and return operations. The reactive nature of the European Union irregular migration to border management operations and return policies suggest that continuing large-scale investments in border enforcement are most likely to be needed together with related policies that combat the root causes of this type of migration (Morehouse, C., Blomfield, M., 2011, p. 1). Illegal

migration is a very complex and multi-faceted phenomenon that defies any simple explanation. For the most part, countries that have become the target destinations of migration flows are showing an increasing interest in controlling them (Sinn, 2005, p.11).

Furthermore, forced repatriation of deportable aliens to their home country occurs increasingly. In the last few years we can detect a visible tendency for Member States that wish to rid themselves of a certain group of illegal aliens and to create an agreement with the State of the nationality of the members of that particular group to be able to accelerate and regulate repatriation. The Netherlands entered such an agreement in 1994 for the first time. This agreement regarded the Vietnamese people residing in the Netherlands (Meijers, H. et al., 1997, p. 105). A European Member State has the right to expel irregular aliens, this relevant general rule of international customary law is undisputed. The national alien's law of all Member States is based on this rule (p. 107).

There is an evident rise in asylum migration and an increased number of Illegal immigration into Europe after the recruitment ban and the immigration restrictions in the early and mid-1970s. After these were limited in the 1980s and early 1990s, legal or illegal immigration and employment rose all the more. After shielding off Europe from unwanted immigration and of increasing restrictions on entry, stay and participation there are new forms of immigration and residence which have become firmly established in the grey zone between legality, irregularity, illegality and criminality (Bade, 2004, p. 350-351).

In addition, while immigration continues, the European States still possess an intimidating regulatory capacity. It can be said that the European countries have increased both their capacity and willingness to control immigration, especially immigration which is defined by state policies as unwanted. This includes asylum-seekers and migrants defined as illegal. The organizations of European countries, their political system, the distribution of power and the ideas that animate these practices are of central importance. This proposes strong associations between immigrant policies in European countries of immigration and European nation states as political authorities regulating the entry to the territory and membership of the community. This signifies that the vocabulary of integration is heavily imprinted with historical, political and social processes associated with the nation state and their self-understanding (Geddes, 2003, p. 22-23).

There are prominent national particularities that display a distinction between European countries in terms of their approach to these issues. But, simultaneously there are similarities between European countries in terms of the ways in which they react to international migration (Geddes, 2003, p. 191).

Irregular migration has been the subject of increasing and ongoing public debate in Europe. The issue grew to greater public prominence in 2008 with daily reports of unauthorized migrants reaching the Mediterranean and of others who tragically lost their lives in the process. Policymakers in Europe are under a great deal of pressure both public and political to reduce irregular migration. It is believed that irregular migration negatively impacts countries by undermining the rule of law, fostering labor exploitation, increasing poverty and by putting pressure on public services (Morehouse, C., Blomfield, M., 2011, p. 2). This is why many European Union Members, including the three case studies within this research, view illegal immigration as a significant problem which needs to be addressed, in which way the problem will be dealt with is up to every national government as long as they follow the legal framework set up in the European Union.

5.1 Background

The Netherlands has a long history of being viewed as a very tolerant country towards immigration, the past decade has brought major changes in policies towards immigration to the Netherlands and stricter policies towards illegal immigration. Until the 1970s the Netherlands was quite lenient towards immigration, their immigration policy was not as harsh as it is now. Since 1980s the Netherlands has increased its detention policies to restrictive ones. According to Amnesty International, the number of people that could be held in detention facilities grew from 200 in 1989 to about 3,000 in 2007. There was a lot of public commotion over these harsh conditions in detention centers which only worsened after the 2005 fire in Schiphol Airport in a detention facility where several detainees lost their lives. This all resulted in reforms focusing in safety regulations for detention facilities and families with children, there was a new alternative which restricted detention periods to “in principle 14 days” (Global Detention Project, 2009).

In contrast to most countries, the statistics on the immigration population in the Netherlands are not based on nationality or country of birth, they are based on ethnicity. The Dutch government makes a distinction between “*allochtonen*”, person who has at least one parent born outside the Netherlands, and “*autochtoon*”, which means native. In

the Netherlands even if a person is born in the Netherlands does not make them a native if one of their parents was born abroad (Ersanili, 2007, p. 2). The Netherlands introduced a new citizenship law in 1985 that replaced an older law from 1892. This new law facilitated access to citizenship for second generation descendants of immigrants. Dutch-born children of immigrants can opt for Dutch citizenship between the ages of 18-25. The third generation, second generation born in the Netherlands, automatically receives Dutch citizenship at birth (Ersanili, 2007, p. 4).

In comparison to some European countries like the Netherlands, Belgium is often overlooked as a country of immigration because of its size and its less known history of immigration. However, over the past three decades Belgium has become a permanent country of settlement for different kinds of migrants. Migration, asylum and integration policies have largely been responsive in nature, reacting to the circumstances rather than pursuing a long-term vision. Although recently, policymakers have started to develop new policies and legislation in a more consistent way.

The first effort made towards a more comprehensive immigration law was in 1980. Citizenship and integration policies had been always shaped in a “laissez-faire” way for numerous years. Only in recent years has the government begun to reform these policies, starting with asylum and family reunification. Unlike other European countries such as the Netherlands, the Belgian Nationality code has never provided any formal integration conditions. Of the people that acquired the Belgian nationality, the majority, are third-country nationals (Petrovic, 2012).

Germany on the other hand was a country of emigration in the 19th and first half of the 20th century. Since the 1950s Germany has become one of the most important European destinations for migrants. The recruitment of guest workers, the influx of ethnic Germans from eastern Europe and the former Soviet States as well as the reception of asylum seekers have led to a substantial growth of the immigrant population in the Germany. Since the 1990s when immigration of asylum-seekers and ethnic Germans reached its highest point, immigration and integration have become important and highly contested topic in domestic policy discussion (Özcan, 2007, p. 1). Official statistics are only of limited value when describing the immigrant population because they essentially only identify foreigners, persons without German citizenship. This is a problem because a considerable number of foreigners did not migrate to Germany themselves, they were

born in Germany. As a result, instead of referring to them as foreigners, there is an increasing tendency to refer them as people with a migration background. To indicate that citizenship as a sole indicator is insufficient to adequately describe the immigration population (Özcan, 2007, p. 4).

Until 1993, foreigners in Germany were generally not entitled to a German citizenship. In 1993 the Nationality Act was reformed to establish a right to naturalization. The only prerequisite was 15 years of legal and permanent residency in the Federal Republic. In 2000, a new Nationality Act came into force entitling foreigners to be naturalized after eight years of legal residency in Germany. According to the new law, children of foreign parents can acquire German citizenship at birth if at least one parent has lived legally and continuously in Germany for at least eight years before to the birth. In principle this new Nationality Act excludes dual citizenship although exceptions can be granted when the country of origin does not allow the applicant to give up their original nationality (Özcan, 2007, p. 4).

5.2 Problem Analysis

Dutch detention practices have indeed been among the most controversial in Europe. The Netherlands has been criticized for using boats as detention sites, the detention boat in Rotterdam for example. The Dutch have been criticized for detaining large numbers of asylum seekers and for placing unaccompanied minors in juvenile justice centers. The attitudes and policies towards illegal immigration in the European Union have toughened within the last two decades, but there has not been a change as dramatic as in the Netherlands. Since 2006, policies against illegal immigration have just gotten stricter. The question is; why is it that a country that had institutionalized the acceptance of difference and that had a reputation of being tolerant could shift so rapidly to what is now perceived as coercive and assimilationist policy?.

Overall, foreign citizens constitute only a minority of all people of immigrant descent, only a small percentage of the population of the Netherlands do not hold a Dutch passport. This is due to the generous naturalization policy that was once operative in the Netherlands. Soon enough at the start of the new millennium claims have risen that integration was not a success in the Netherlands as it had been expected to be. The restructuring of Dutch industry in the early 1980s left many low skilled workers unemployed, many of them were of immigrant origin. By the end of the decade more than

one-third of Turkish and Moroccans in the Netherlands were unemployed. In contrast to Germany and other European countries, most Dutch people considered it wrong to encourage the return of these people, these people were people to whom Dutch economy owed so much. As a consequence, immigration became an increasing burden for welfare and social policy regimes (Bodemann, Gökçe, 2006, p.126-128). A much debated article called *The Multicultural Tragedy* published by Paul Scheffer (2000) stated that Dutch multiculturalism had failed. This was the start of a new chapter in Dutch immigration policy. Just in a few years, the Netherlands had become one of the harshest advocates of straightforward assimilation giving place to stricter policies and punishments for illegal immigration.

In brief, the problem is that the Netherlands is viewed as the European Union Member State that possesses the strictest policies towards illegal immigration and that has become extremely intolerant towards illegal immigration. But, this might not be a problem after all. The Netherlands may indeed be very strict with its policies and the Netherlands might have a harsh approach to stop illegal immigration but in the end there is a problem with illegal immigration flowing into the European Union and all EU Members States are combatting the problem in their own way.

Some policies may be harsher than others but in the end every country is different and has to deal with illegal immigration in their own way. The Netherlands is a small country who cannot deal with a huge influx of immigrants because of its size. So, because of past policies which resulted in a rapid increase in the number of immigrants coming to the Netherlands, the country now has to adapt and make changes in order to be able to cope with the existing number of foreign nationals residing in the Netherlands and the numerous amounts of people wanting to immigrate to the country. An increasing amount of the repatriation of unwanted aliens is what all EU Member States strive for, but the objective is to never lose focus and forget the government is dealing with human beings whom have to be treated as such and be given incentives and alternatives to promote voluntary and assisted voluntary returns.

5.3 Goal and research question

The aim of this research is to obtain a better understanding and a greater insight of the detention and return policies and practices in three EU Member States. Focusing primarily on the Netherlands but simultaneously viewing and comparing the policies to Belgium and Germany. The thesis seeks to provide an insight into these policies and how it affects their results, number of illegal aliens who are successfully returned to their home countries, and in the end there will be a clear insight into which is the strictest country when it comes to combatting illegal immigration and if the results reflect on why the country is so harsh with its policies. The goal is to provide an overview to whether stricter policies have better return results.

6. Methodology

The chapter's objective is to give a clear overview on how the research was conducted. Firstly, the chosen research methods will be outlined and described. Finally, the type of interviews that were conducted will be explained.

6.1 Chosen research methods

To begin with, the general research approach is a comparative case study between the Netherlands, Belgium and Germany. Quantitative research methods and both primary and secondary data was used to conclude this report and to succeed in answering the main research question; Is the present Dutch policy on forced return of illegal aliens stricter than those in the bordering countries of Germany and Belgium, if stricter, is it also more effective?.

The thesis will first review the found literature on the policies of forced return and the legal grounds in order to obtain a better understanding of the measures taken by the three different countries to address and deal with the issue of illegal immigration in the way that most suits that particular country. The review is primarily based on academic articles, websites and books. The articles all contain qualitative and quantitative information and data. In second place, after outlining the different legal grounds for detention and the different focusses of the immigration policies the thesis will be characterized by the focus on the country who has the strictest legal grounds and policies for the detention of illegal aliens including the opinions of experts in their field in which country has the best results in detaining and returning illegal aliens. Finally, after having analyzed all the evidence found on the detention and return policies in the Netherlands, Belgium and Germany there will be a conclusion formed on whether the country with the strictest policy is indeed the Netherlands and whether the strictest country towards illegal migration detains and returns the most illegal aliens to their home country.

6.2 Type of interview

For the purpose of this research non-standardized interviews were chosen. This form of interviewing was done through e-mail responses. This was the most suitable form found to complete all the wished interviews on time and as precisely as possible. More information on the interviews can be found in Appendix 5.

7. Detention profiles and legal grounds for detention

This chapter aims to provide the necessary information for a comparison between the detention profile of the Netherlands, Belgium and Germany. The chapter first presents the terms used in detention followed by the legal grounds for the detention of irregular migrants in these particular countries.

7.1 Terms used in detention

The following terms are applied within the return practices in the Netherlands, Belgium and Germany. Forced Departure is only applied when foreign nationals refused or failed to leave the country voluntarily and did not accept assistance from the government organization or any other (non-profit) organizations. They are then moved to a removal center until a flight becomes available and the travel documents are in order. In the Netherlands, the Repatriation and Departure Service of the Netherlands works closely with the authorities in the countries of origin in order to ensure that foreign nationals can return in a dignified manner (DT&V n.d.).

The Repatriation of irregular migrants who are detained by the police are not immediately sent on a plane back to their country of origin. When the illegal immigrants get arrested, they are first transferred to the countries authorities. Consequently, the authorities in charge determine whether the person in question can be deported or not. If the repatriation is found to be life-threatening to the illegal immigrant, they are allowed to stay for the time being. The illegal immigrants are then housed in secured centers for foreign national called detention centers while they await deportation (RNW, 2012).

7.2 The Netherlands

The legal basis for immigrant detention in the Netherlands is laid down in the Aliens Act 2000 (Vreemdelingenwet 2000), which entered into force on April 1st 2001. This act allows the detention of irregular migrants and asylum-seekers at the border in order to prevent them from formally entering the Netherlands. And it also allows the detention of irregular migrants who are discovered after having entered the territory, rejected asylum-seekers and migrants who have overstayed their visas. Border detention is mostly imposed together with a formal entry refusal. Based on Article 3 of the Aliens Act 2000 and Article 13 of the Schengen Border Code, a person who does not fulfill the visa criteria and who arrives by ship or by airplane can be refused formal entry at the border. To

prevent this person from gaining access to the state beyond the border point, he or she can be detained. The majority of individuals placed in immigration detention are discovered and arrested during surveillance or supervisory activities such as criminal investigation, traffic control or an investigation into illegal labor activities. Immediately following their detention foreign nationals have the right to appeal their case before a district court. Detention may be lifted if it is considered unreasonably burdensome (Amnesty International, 2008, p.17).

There are two main legal grounds for the detention of migrants in the Netherlands. The first is laid down in art. 3 jo art. 6 par. 1 and 2 Aliens Act 2000. Art. 3 section 1 mentions the other cases not stated in the Schengen Border Code in which access to the Netherlands shall be denied. The cases are: a Person who does not possess a valid document to cross a border, or who does possess a document valid to cross a border but lacks the necessary visa, a person who is a danger to public order and/or national security, a Person who does not possess the sufficient means to pay for the expenses of their stay in the Netherlands as well as the expenses of a trip to a place outside the Netherlands and finally a person who does not fulfil the requirements set by a general policy measure.

Article 6 sections 1 & 2 of the Aliens act 2000 states that the alien to whom the access to the Netherlands has been denied can be obliged to stay in a border control appointed space or location. It also states that the space or location can be secured to prevent unauthorized leave. Migrants are mostly detained because they do not fulfil the requirements as set in art. 3 section 1. Article 59 section 1 states that if necessary, in the interest of public policy, or national security the Dutch Minister may, with a view of expulsion, order the remand in custody of an alien who is not lawfully resident in the Netherlands, is lawfully resident on the grounds of art. 8. If the papers needed to return an alien are available, it is deemed to be in the interest of public policy that the alien remain in custody. An alien shall not be remanded in custody or it shall end as soon as the alien has indicated that he wishes to leave the Netherlands and has the opportunity to do so. Remand in custody shall not last longer than four weeks. In case of application before art. 39 the custody shall not last more than six weeks. Art. 39 is only applied to illegal migrants found in the territory including asylum seekers whose application for asylum has been denied. The article is not applicable to migrants at the borders (Detention in Europe, 2011).

Amnesty International describes and reports these two detention regimes (sections 6 and 59 of the Aliens act 2000) in their report which states that irregular migrants and asylum-seekers can be detained under either art. 6 (border detention) or art. 59 with different detention regimes. The main difference between the two detention regimes is that in the case of border detention, detainees are not considered to not have formally entered the Netherlands. Border detention is imposed in combination with a formal entry refusal (art. 3 Aliens act 2000 & art. 13 Schengen border code) (Global detention project, 2009).

By Dutch law, there is no minimum age for detention. However, in policy guidelines a few guarantees are laid down: Minors younger than the age of 16 who live with their parents in the Netherlands will not be detained separated from their parents. When possible, alternative measures will be applied to families with under age children. Lastly, unaccompanied minors between the ages of 12 and 16 will only be detained if the actual detention can take place within 4 days in a Youth Detention center (Global detention project, 2009).

Moreover, migrants detained at the border have similar rights to the migrants detained on the territory. However, a major difference is that migrants who are detained at the borders have no minimum rules as to how long a phone call or visit may last. Nevertheless, no organization or institution has unrestricted access to the detainees. Migrants detained within the Dutch territory have the right to receive visitors at least one hour a week. Apart from this, the Council for the Administration of Criminal Justice and Protection of Juveniles and the Supervising Commission have unrestricted access to the detainees. Family members, lawyers and social workers are bound to the general rules (Detention in Europe, 2011).

7.3 Belgium

The legal basis for immigrant detention in Belgium is laid down in the law of 15 December 1980 (Wet van 15 December 1980/ Loi du 15 décembre 1980). Under Belgium law, illegal alien is the term used for any person who fails to provide evidence that he or she possess the Belgium Nationality. The act provides for the establishment of secure centers situated at the border or within Belgian territory to accommodate the people in an irregular situation. All foreign nationals may be detained when they are refused entry or have been refused asylum at the border. Foreign nationals who are staying in the country irregularly,

who pose a threat to the public order and security, who present false information regarding their situation to the authorities, whose asylum claims are being processed, who are awaiting the completion of a removal order may also be detained. Belgium makes the distinction between two types of secure detention sites: closed centers and border zones. Persons held at the border zones are not considered to have entered Belgian territory. In closed centers accommodate persons who have officially entered the territory but are in an irregular situation (Global detention project, 2009). Regarding the detention of illegal third-country nationals in Belgium the law states that awaiting removal, detention can be ordered for two months. The detention can be extended under specific conditions; reasons of national security (up to five months on a monthly basis). It may not exceed eight months in total (Law 15/12/1980 art.7).

Belgian law does not prohibit the detention of minors, there is no minimum age. In theory children can be detained from the day they are born. However, since the implementation of a guardianship mechanism for unaccompanied minors (Programme Law 24/12/2004, Title XII, Chapter 6, art. 479), minors are, in principle, not detained. The duration of detention varies for asylum seekers and illegal migrants, from one month to a maximum of eight months. Belgian law states that detainees, upon arrival at the detention center, should be informed about the reasons for their detention in a language they understand (Royal Decree 02/08/2002, art 17). Detainees also have the right to receive free legal aid. The Belgian law states that the directors of detention centers must ensure all detainees are effectively able to use this right (Royal Decree 02/08/2002, art. 62-64).

Belgian law entitles detainees to receive daily visits from spouses, partners, children, parents, tutors etc. After one month of detention they are also allowed "intimate visits" with their spouse or partner. Detainees are entitled to daily visits of diplomatic officials from their home country. NGO representatives that have been individually authorized may visit the detention centers as well (Royal Decree 02/08/2002, art. 28-45) (Detention in Europe, 2010).

7.4 Germany

Legal grounds for the detention pending deportation are found in Sect. 62 of the Residence Law (Aufenthaltsgesetz). There are two types of detention: Detention for preparation of expulsion/deportation and detention for the enforcement of deportation (Detention in Europe, 2013). The German Alien law defines illegal aliens as: everyone who is not German according to art. 116 section 1 of the Basic Law. Art 116 states that Germans are the nominal holders of German citizenship and in combination with the Federal Expellee Law also the descendants of German settlers in Eastern Europe and Russia, which are German not by citizenship but by ethnicity (Aleinikoff, Klusmeyer, 2001, p. 44).

The legal basis for immigrant detention in the Germany is laid down in the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Federal Law Gazette). The act serves to control and restrict the influx of foreigners into the Federal Republic of Germany. A foreigner is anyone who is not German within the meaning of Article 116 (1) of the Basic Law. This act does not apply to foreigners whose legal status is regulated by the Act on the General Freedom of movement for EU citizens, foreigners who are not subject to German jurisdiction according to the provisions of Sections 18 to 20 of the Courts Constitution Act and foreigners who by virtue of treaties on diplomatic and consular communication and on the activities of international organizations and institutions, are exempt from immigration restrictions, from the obligation to notify the foreigners authority of their stay and from the requirement for a residence title (Federal Ministry of Justice, 2014).

Foreigners may only enter or stay in the federal territory if they are in possession of a recognized and valid passport or passport substitute. In justified individual cases, the Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may permit exemptions from the passport obligation before the foreigner enters the federal territory for the purpose of crossing the border (Federal Ministry of Justice and Consumer Protection, 2014, p.3). In addition, a foreigner who has been expelled, removed or deported from the federal territory shall not be permitted to re-enter or stay in Germany. He or she shall not be granted a residence title, even if the requirements entitling him or her to a title in accordance with this Act are fulfilled. Time limits shall be applied to the effects stated in sentences 1 and 2 on application. The time limit shall be set according to the individual case concerned and may only exceed five years if the

foreigner has been expelled on the grounds of a criminal conviction or if he or she poses a serious danger to public safety or law and order. The setting of the time limit shall take due account of whether the foreigner has left the federal territory voluntarily and in good time. The time limit shall begin when the person concerned leaves the federal territory. No time limit shall be applied if a foreigner has been deported from the federal territory on account of a crime against peace, a war crime or a crime against humanity, or on the basis of a deportation order pursuant to Section 58a. The supreme land authority may permit exemptions from sentence 7 in individual cases. By way of exception, the foreigner may, except in cases covered by sub-section 1, sentence 7, be granted temporary entrance into the federal territory for a short period prior to expiry of the exclusion period stipulated in accordance with sub-section 1, sentence 3, if his or her presence is required for compelling reasons or if the refusal of permission would constitute undue hardship (Federal Ministry of Justice, 2014, p.11). The maximum duration for detention in Germany is 18 months, but there are limits to be taken into account before the maximum of 18 months is reached. Detention is illegal if it is clear that for reasons, for which the detainee is not accountable, the deportation will not be possible within the upcoming three months (Sect. 62 par 2. s.4 Residence Law). The next limit is at six months of detention. Detention may be extended beyond that date only in cases where the detainees work against their deportation (Sect. 62 par. 3 s.2 Residence Law) (Detention in Europe, 2013).

Moreover, there is no provision in federal law providing a minimum age for detention. However, a certain age limit can be derived from a conflict from a conflict between Residence law and youth welfare law. According to youth welfare law, the youth welfare officers are responsible for any minor under the age of 18 who cannot be taken care of by his or her parents or any other person in charge. On the other hand, the Residence law has a clause that states that a foreign national who is 16 years of age or older must lead his or her own case without help of a legal guardian (Detention in Europe, 2013). In general, state law, like federal law, provides regulations for visits, letters and gifts from people on the outside world to illegal immigrants in detention. Contact with pastoral workers is also granted under both laws. A few of these state laws particularly mention visits by NGOs, consulate and embassy staff, and even correspondence with members of parliament, the ECHR. In addition, there is visitation rights for family members, friends and lawyers. In short, states laws tend to be more liberal about visits and correspondence, with even less restrictions for contact with lawyers, MPs and NGOs (Detention in Europe, 2013).

8. Key government agencies and organizations

The following chapter aims to provide an overview on the most important and relevant government institutions and organizations who oversee the implementation of the detention policies in each country.

8.1 The Netherlands

The Repatriation and Departure Service of the Netherlands (DT&V) coordinates the actual departure of foreign nationals who reside illegally in the Netherlands. The DT&V is responsible for implementing the Dutch government's repatriation policy. They take the initiative to ensure that the departure of the foreign nationals is performed carefully, with dignity and on time. The DT&V works closely with all government agencies and social organizations involved. The DT&V strives for transparent and humane ways of working. Always respecting the dignity of the foreign national concerned (DT&V n.d.).

The DT&V is an implementing body of the Ministry of the Interior and Kingdom Relations who is responsible for supervising the assisted voluntary and forced repatriation of foreign nationals in the Netherlands. They focus on two target groups: Illegal foreign nationals who have been detained within the framework of national supervision including those who have been refused entry within the framework of border surveillance. And asylum seekers who have exhausted their appeals and who are now obliged to return to their country of origin (The Repatriation and Departure Service, 2011).

In addition, there are many repatriation projects that encourage foreign nationals to return to their country of origin voluntarily. These often consist of financial assistance or other kind of assistance in the country of origin (*Assisted Voluntary Return*). Setting up a business or going back to school for example. The voluntary repatriation processes are performed by the International Organization for Migration (IOM) who has offices in almost every country in the world, and other local non-governmental organizations. The projects are financed by the Ministry of Security and Justice and the Ministry of foreign Affairs. Money can also be obtained from the European Union. The DT&V monitors the granting of subsidies (DT&V n.d.).

The immigration and Naturalization Service (IND) enforces immigration law in the Netherlands. The Directorate for detention and Special Facilities of the National Agency of Correctional Institutions is responsible for the administrative detention of migrants. Both agencies are part of the ministry of Justice. Furthermore, the Aliens Police and the Royal Military are authorized to see whether aliens are lawfully resident in the Netherlands. They are allowed to stop people, ask them for identification and take them for questioning if they suspect them of being illegal immigrants (Global detention, 2009).

A foreign national who is denied entry at the Dutch border by the Royal Marshals is called an inadmissible person. The Royal Marshals then sends the carrier (person who transported the foreign national to the Netherlands) a removal order. The carrier is then obliged to return the inadmissible person to the location where he started his journey, or to transport them to another location where he will be admitted. This could be the person's country of origin or another country where his admission is guaranteed. (Ministerie van Veiligheid en Justitie n.d.) A carrier is obliged to return a foreign national who is refused at the Dutch border. If the carriers fail to do so within the time limits, the Dutch government can recover costs that are incurred by the inadmissible person (Ministerie van Veiligheid en Justitie n.d.).

To sum up, the Naturalization and Immigration Service (IND), the Repatriation and Departure Service (DT&V) and the Central Body for the reception of Asylum Seekers (COA) work closely together in order to achieve a proper implementation of the Immigration law in the Netherlands. The IND is in charge of the admission of foreign national into the Netherlands, the COA is in charge of receiving and guiding the asylum seeker and the DT&V is in charge of the return process and departure of foreign nationals. Their collaboration focuses at the same time on all other partners in the Aliens chain; Foreign Aliens police, Royal Marshalls, Seaport Police, the Council for the Judiciary, the Council of the State and the Custodial Institutions Agency. And on the partners of the Aliens chain (Vreemdelingenketen); Municipalities, Organizations such as: Refugee Work the Netherlands, the International Organization for Migration en Nidos (Youth protection for refugees). The objective of the Immigration policy states; a regulated and controlled admission to, stay in and depart from the Netherlands or return of foreign nationals, that in a national and international context is socially responsible (IND, COA en DT&V, 2008).

8.2 Belgium

Belgian policymakers have been struggling to respond to the growing issue of unauthorized and unwanted migrants over the last few decades. Belgium has addressed the issue with a longstanding voluntary return policy in cooperation with the International Organization for Migration (Petrovic, 2012).

The Immigration Department (*Office des étrangers*) functions under the Federal public service (Service Public Fédéral). It is an administrative body in charge of the everyday administration of most immigration related policies, which include the management of the detention centers in Belgium (Global detention project, 2009). The Belgian government provides access to certain NGO's (Belgian Jesuit Refugee Service & Coordination et initiatives pour réfugiés et étrangers) who regularly visit detainees to provide them with legal advice and who then report on the Belgian detention practices. NGO's do not have access to the border zone detention facilities (Global detention project, 2009).

Furthermore, the Belgian Federal Police (Air Police Service) is made up of the federal police units working at the six Schengen airports in Belgium. A federal Command Post is set up in Brussels. It establishes the global air police policy according to the global policy of the Federal Police's General Directorate of Administrative Police. The Air Police Service mission consists in ensuring border control. They carry out checks at external frontiers, enforce the Schengen rules, enforce national immigration policy and search for false or falsified travel documents (Belgian Federal Police, 2014).

Lastly, Fedasil is the organization responsible for the reception of asylum seekers and other target groups. They guarantee a high-quality reception. Also, they coordinate the various voluntary return programs. Fedasil strives to acquire the requisite flexibility and decisiveness in order to be able to assume their responsibility. Their goal is to make an important contribution to the definition, the correct image, the social acceptance and the implementation of a just migration policy. Fedasil also grants the material aid to asylum seekers and other foreigners with equal right to reception. In addition, the agency organizes high-quality reception and support services. They provide monitoring and guidance for unaccompanied minors, promote the integration of reception centers within the local community and finally, Fedasil is the agency is the competent authority for managing the European Refugee Fund in Belgium (Fedasil, n.d.).

8.3 Germany

In Germany, the Federal Office for Migration and Refugees makes the decisions about asylum applications. After an asylum application has been made, the Federal Office decides whether subsidiary protection is to be granted to a certain individual (*The asylum process*, 2011). Furthermore, the Joint Centre for Illegal Migration Analysis and Policy plays a key role in bringing together authorities and other administrative bodies such as; the Federal Criminal Police Office, the Federal Police, the Federal Office for Migration and Refugees, the financial control section of the Federal Customs Administration, the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, and the Federal Foreign Office. Together, they analyze and evaluate information on illegal employment and abuse of social benefits related to illegal immigration (Federal Ministry of the interior, *Illegal migration*, 2014)

The Federal Criminal Police Office is Germany's central criminal investigation agency. It coordinates the federal and state cooperation in police investigations. Moreover, the Federal Police is a specialized force responsible for border protection, railway policing and aviation security. They have a wide range of law enforcement tasks, in particular, border protection and aviation security as assigned by Germany's Basic Law and Federal Law. Which include the Act on the Federal Police, the Residence Act, the Asylum procedure Act and the Act on Aviation Security (Federal Ministry of the Interior, *The Federal Police*, 2014).

As part of the repatriation support program REAG (Reintegration and Emigration Program for Asylum-seekers), which is commissioned by the Federal Ministry of the interior and carried out by the International Organization for Migration, illegal residents and victims of human smuggling have the opportunity to claim funds. Moreover, foreign nationals who are under the legal obligation to leave Germany, and who are known to the authorities, are eligible to participate in the REAG return program. In addition, the Federal Government ensures that the federal states comply with the obligation to enforce the duty to leave the country. Lastly, the Federal Government coordinates its repatriation policy with the countries of origin and closes agreements (Sinn, 2005, p.8).

To conclude this chapter, the International Organization for Migration (IOM) is the leading intergovernmental organization in the field of migration who works closely together with

governmental, intergovernmental and non-governmental partners. They work to ensure the humane management of migration, to promote international cooperation on migration

issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need. IOM is active in the Netherlands, Belgium and Germany amongst many other countries (IOM, n.d.).

Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), is the European Union agency for external border security. They coordinate and develop European border management. They plan, coordinate, implement and evaluate joint operations conducted using EU Member State Staff and equipment at the external borders. Moreover, Frontex serves as a platform to bring together Europe's border-control personnel. Finally, when Member States make the decision to return foreign nationals who have failed to leave voluntarily, and are staying illegally in their country, Frontex assists those Member States in coordinating their efforts to maximize efficiency and cost-effectiveness while also ensuring that respect for fundamental rights and the human dignity of returnees is maintained at every stage (Frontex, 2014).

9. Focus of the immigration policies

The next chapter provides an overview of the exact focus is of the different national immigration policies in the Netherlands, Belgium and Germany. Even though all EU Member States are bound by treaties and directives, they do have different focusses which play a role in how the immigration laws and policies within a country are changed and executed.

9.1 The Netherlands

Immigration policies have been modified in the past but the most significant change has been the introduction of a new aliens law (Aliens Act 2000) which came into effect in 2001. The law brought major changes in refugee and asylum procedures but a major aim of this new law was to discourage immigration for the purpose of family formation, especially from Morocco and Turkey. Another aim was to prevent fake marriages (Ersanili, 2007, p. 7). In recent years the new laws have aimed at restricting low-skilled and family migration and furthering the integration of the immigrants who are already living in the Netherlands (p. 8).

Furthermore, in order to stimulate the economy, the Dutch government aims to attract highly skilled migrant workers. 10 years ago, a special admission procedure was introduced to reach that objective called "Knowledge Migration Program". The program made it easier for employers to employ highly skilled employees outside the EU. Employers can reach a settlement with the Immigration and Naturalization Service so the employees can be provided with a residence permit within a few weeks (GMW, n.d.).

9.2 Belgium

In recent years, the Belgian immigration policies have been marked by a heavy emphasis on security. After much criticism the Belgian authorities have taken measures to limit the detention of families with children (Global detention project, 2009).

Apart from this, in Belgium, the main priorities regarding asylum and immigration can be separated in three main branches. Firstly, the development of the second phase of the Common European Asylum System (CEAS) which ensures effective access to asylum procedures and which provides a high level protection to those in need. Secondly, the

development of a common policy on legal migration that is beneficial to the country of origin, Belgium and to the migrant themselves. Last, the fight against trafficking in human beings and illegal immigration through the improvement of the external border management (EU trio, n.d.)

Moreover, the policies in Belgium have recently enforced and aim on reducing the number of asylum seekers. This includes, the transformation of the financial aid given to asylum seekers into material aid for those in need, and the introduction of “safe-countries” which is supposed to significantly increase the speed of the procedure for asylum cases by automatically excluding a few demands from those countries (European Commission, 2013, p.31).

9.3 Germany

Promoting the integration of foreigners living in Germany is one of the most important tasks of the home affairs policy. Immigrants should be able to become integrated and take advantage of the opportunities offered to all German citizens, including new arrivals (Federal Ministry of the Interior, *Integration*, 2014).

Current developments in German immigration policies are rooted in the reform process which began with the reform of the Nationality Act. This new legislative reform triggered a general debate about immigration and integration. When the opposition parties refused to allow naturalized Germans to hold multiple citizenships, immigration and integration began to emerge as highly controversial social and domestic policy issues. Even a special committee was set up to develop recommendations for structuring immigration and promoting integration. In 2005, an Immigration Act came into force. The law contains provisions in the immigration on foreign workers, the reception of refugees and asylum-seekers and the integration of immigrants. Moreover, it contains aspects related to security in the fight against terrorism. The Federal Republic's first Immigration Act was ground breaking in its focus on promoting the integration of all the immigrants already living in Germany and on increasing the number of highly-skilled and self-employed immigrants (Özcan, 2007, p. 5-6).

10. Views and criticism of detention policies

Chapter 9 provides the views and criticism given by various people and organizations to the immigration policies and detention practices which have been enforced during the past few years in the Netherlands, Belgium and Germany.

10.1 The Netherlands

Dutch Migration policy has developed into a policy that is both inviting to migrants needed by Dutch society and restrictive to others. Within Dutch migration policy, the residence permit of highly skilled migrants is not linked to a maximum residence period. The promotion of circular migration has been regarded as a strategy combining the interests of the migrant, the country of origin and the country of destination in the Netherlands. This is referred to as a “triple win” situation (Europees Migratienetwerk, 2010, p. 5).

In 2008, criticism of the Dutch detention practices where abundant. In particular, the prison-like quality of most detention centers. Amnesty International expressed serious concern on the fact that the conditions in which migrants and asylum-seekers are detained in the Netherlands is similar to those in regular prisons. And that migrants and refused asylum-seekers are held under a regime which is based on the one designed for regular prisoners. Amnesty also stated numerous other concerns on ineffective procedures which should have investigated ill treatment, the use of isolation in detention and inadequate medical care. Some of these concerns have also been reported by the European Parliament (Global detention project, 2009).

The Dutch government is taking a stricter line on illegal immigrants. In 2012, the target was to track and detain 4,800 illegal migrants in the Netherlands. According to former Immigration Minister G. Leers, a more active detention must be achieved, not only by the immigration police but also by police officers on the streets. A quote from the former minister: “People living here illegally is undesirable and not something that should be tolerated. There have to be penalties. We intend to give illegal immigrant a choice of becoming legal or leaving. That means they have to be tracked down and we now have agreements about that” (van Steijn, 2012).

Similarly, Brussels is concerned with Dutch immigration rules. The European Commission has stated it will take legal action against the Netherlands it is decides to go ahead with the plans to deport EU nationals who have been jobless for three months. Under EU law, European Union nationals have six months to find work in another European country before having to return home. The EU Commission is also critical of the Dutch decision to exclude people, who are working in the Netherlands but live in another EU country, from their social security rights (Dutch news, 2012).

There is reason to claim the Netherlands is a country who has been and still is quite strict towards illegal aliens in the Netherlands, there are various people and organizations that do not hesitate and communicate their discontent and opinion on the topic. According to Justitia et Pax (n.d.), a catholic human rights organization, they are gravely concerned with immigrants who are detained in the Netherlands. They believe it is unreasonable and out of proportion. They believe the detention of immigrants is out of proportion and unreasonable because according to them, immigrants detained have not been convicted nor are they suspected of a punishable act, during their detention they do not have the right to work, take a course or be educated and groups of detainees share a cell together. In addition, they claim migrant detention is a measure that is too severe and that is used too often and wrongfully.

Although it is true that foreign nationals detained in the Netherlands are not all criminals who have committed some type of crime, they were involved in illegal activities (residence without permit in the Netherlands) and until now, it has been primarily illegal immigrants involved in a crime or who endanger public safety that have been detained. (van Steijn 2012). In the Netherlands illegal migrants detained are housed in special detention centers and not regular prisons. There are indeed illegal immigrants who have committed grave offences and others who were simple caught with no residence permit. Either way, they are engaging in illegal activities and are thus detained. There is clear distinction between illegal immigrants who have to complete a criminal sentence in the Netherlands before returning to their country of origin and foreign nationals awaiting departure without having to complete a criminal sentence.

In general, there is negative media attention regarding the accommodation centers for foreign nationals who must leave the Netherlands. This especially increased after the “Schiphol fire” in 2005, where 5 illegal detainees died. As a consequence, this heated up the debate about the safety in departure centers (European Commission, 2013, p.279).

10.2 Belgium

There has been some criticism on the Belgian detention practices. NGO's who have access to detention centers have criticized the Immigration Department for detaining vulnerable people who are not minors. These vulnerable people include: persons suffering from health and/or mental health problems, victims of human rights abuses and pregnant women. In 2002 the ECHR (European Convention on Human Rights) rules that Belgian authorities had deliberately neglected to provide the detainees with adequate information on their rights. In 2008, a report by Belgian NGO's stated that detainees did not adequately understand their legal situation (Global detention project, 2009).

Belgian immigration policies have been subject to serious debate nationally and internationally. The European Court of Human Rights, amongst others, has criticized Belgium for controversial practices including the detention of children. In 2006, the Council of Europe's Committee on the Prevention of Torture criticized Belgium for using plastic wrist ties by immigration officials while accompanying people being deported. In 2009, an NGO reported that Belgian authorities used sedatives during removal, which is by no means an acceptable restraining method under immigration legislation (Global detention project, 2009).

Furthermore, Belgian law provides for the controversial practice of detaining children together with their parents in closed detention centers. It has also been controversial in detaining unaccompanied minors until they are taken into the state's guardianship service. The EHCR condemned Belgium in 2006 for violating Article 3 (prohibition of inhuman treatment), Article 5 (right to liberty and security) and Article 8 (right to respect private and family right) of the European Convention on Human Rights for detaining a 5 year old girl for two months without an appointed guardian. In 2010, the ECHR found Belgian guilty, yet again, for violating articles 3, 5 and 8 for detaining four children along with their mother in a detention center (Global detention project, 2009).

Finally, according to NGO's, the protection of human rights in Belgium is not optimal. Third-country nationals do not always benefit from the rights they are entitled to, public authorities often ignore the rights they are mandated to grant foreign nationals. Some NGOs have mentioned several condemnations by the ECHR regarding the treatment of third-country nationals pending return. The conditions in detention centers were criticized together with the lack of clear rules regulating who to send to detention centers. It is also noted that there is no protection in the texts of vulnerable groups such as children, pregnant women, elderly people or the disabled (European Commission, 2013, p.28-29).

10.3 Germany

To begin with, Germany has a problem with immigration. The problem is that Germany needs it, more than any other European Country. They need it because of the low birth-rate in Germany (Bristow, 2013).

However, officials in Brussels have been highly critical of a German provision which limits access by EU nationals to its unemployment benefits (Schult, 2014). Because of this, Brussels has demanded that even the foreigners who have never worked in Germany, should have access to the German unemployment benefits if they come from an EU Member State. The attempt to use social security rules to keep out immigrants from Eastern Europe does not make sense economically and is also an incorrect way to engage is a justified effort to combat abuses of the social system. German laws, on this front, contradict European Principles (Spiegel staff, 2014).

In addition, Germany's immigration detention practices and infrastructure are decentralized which makes it difficult and challenging to get comprehensive information on Germany. Each individual state has compelling discretion in setting policy and they establish which facilities, including prisons, are going to be used to hold immigration detainees in administrative detention (Flynn, Cannon, 2009, p.6).

Furthermore, in Berlin, which is one of the small number of federal states who keep detainees exclusively in specialized centers where rules are less strict and detainees are kept separated from criminals. However, in Munich on the other hand, the detention center is located inside a correctional facility who takes in detainees prior to deportation. In general, detainees are accommodated on a separate ward but some of them, especially women still have to live among prisoners. In Munich, the rules are far stricter

and social interaction both with other detainees and with the outside world is much stricter. In addition, interviews have shown that detainees in Germany suffer from uncertainty about the outcome of their detention which suggests they are not being properly informed (JRS, 2010, p.186-187).

Moreover, according to respondents of the non-governmental sector, deportation procedures can be considered inhumane in Germany. For instance, when third-country nationals pending return are taken from their homes early in the morning without any prior notice. It was also mentioned that the right to privacy and family unit, Art. 8 ECHR, is not always respected (European Commission, 2013, p.98). Apart from this, some NGOs pointed out the fact that the assignment of foreign nationals to a specific geographical area called "Residenzpflicht", which they can only leave with a special permission, breaches Art. 13 of the Universal Declaration of Human Rights (European Commission, 2013, p.98).

Notably, there are two different views in Germany in regard to the handling of illegal third-country nationals in general. In the first place, those who view illegal foreign nationals as breaking the law. The second one, underlines the human rights side of the problem of illegal immigration. They consider demand and support originating in the destination countries as part of the problem (European Commission, 2013, p.98).

11. Result analysis

The following chapter presents the results of the research, including the interview results with the experts. To begin with, it will reveal which of the three countries can be considered the strictest regarding its immigration policy and why this particular country is considered to be the strictest. Finally, it will view the number of repatriation of third-country nationals to their country of origin to see whether the strictest country also has the highest number of repatriations.

11.1 Country with the strictest policy

After concluding the research and reviewing the findings with thorough consideration, it can be concluded that the country with the strictest immigration policy and detention practices within expert opinion, public opinion and media opinion is: the Netherlands.

All three countries have been subject to national and international debate regarding their immigration and detention policies. There has been criticism by NGO's, national organizations and from Brussels. However, as mentioned before, the government in the Netherlands is taking a stricter line on illegal immigrants. The past 10 years have brought major changes in policies towards immigration to the Netherlands and stricter policies towards illegal immigration. Since 1980s the Netherlands has increased its detention policies to more restrictive ones. Furthermore, the Netherlands is the only country in the world who makes the distinction between "autochtoon" and "allochtoon", meaning if a child is born in the Netherlands he or she are still not considered natives because at least one of their parents is an immigrant. In addition, the Netherlands is the only country in the world who has a government organization, The Repatriation and Departure Service, whose only mission is return and repatriate as much illegal aliens as possible and cooperate with other EU countries in order to share information on how each EU country can adapt and change their approach to repatriate as much third-country nationals as they can.

In conclusion Dutch detention practices have been among the most controversial in Europe. Even though, all three countries have been criticized by different NGO's and other organizations on similar aspects regarding the detention practices of illegal aliens (that they are inhumane, in conflict with European treaties, too-prison like), the Netherlands has been criticized for using boats as detention centers, which is not done anywhere else in Europe. Since there has not been a change as dramatic as in the Netherlands in regard to immigration policy this is why the Netherlands has the strictest policies and detention practices towards illegal immigration in comparison to Belgium and Germany.

11.2 Country with the highest number of repatriations

According to Eurostat (Third country nationals ordered to leave, 2014), throughout 2008 until 2013, Belgium has ordered the most third-country nationals to leave Belgian territory and return to their country of origin. However, Belgium has the least number of entry refusals, of third-country nationals at external borders. On the other hand, Germany has ordered the least foreign nationals to return to their home country, but has refused the most third-country nationals entry at external borders.

Overall, when taking a look at the total number of foreign nationals actually returning to their home country after having been ordered to leave (Appendix 3) in 2011, we see that Germany achieves the highest number of repatriations. But, when considering the total population at that time in each particular country and the percentage of the total population that were foreign nationals living in the country, it can be safely concluded that the Netherlands achieves the highest results in returning foreign nationals to their country of origin (Appendix 4).

For more details and a visual overview, a table of figures can be found in Appendix 1, 2, 3 and 4.

12. Conclusions

In final chapter the main conclusions, findings and limitations of this research will be presented. They will eventually give an answer to the main question. Recommendations will be given in order to provide ideas for further research followed by a sub-section in which the limitations of the research will be stated and discussed.

As mentioned previously, the country with the strictest immigration policy and detention policies is the Netherlands, when compared to Belgium and Germany. Moreover, all three countries have been criticized by different organizations and people on different aspects of their immigration laws. Nevertheless, it can be concluded that the legal grounds for detention and return are quite similar to each other because of the Return Directive, which sets a legal basis for all EU Member States detention and return laws. All three countries have similar laws and legal grounds for policies because of the increasing EU co-operations and tendency to work together in regard to immigration and asylum aspects. The main criticism all immigration and detention policies in the Netherlands, Belgium and Germany suffer from, is that of being inhumane, too-prison like and not very consistent.

Individual criticism consists of ineffective procedures, inadequate medical care and concerns from Brussels on a plan to deport EU nationals who have not found a job within 3 months in the Netherlands. Limitation to unemployment benefits for non-German EU citizens and decentralized detention infrastructure which results in unequal rights for detained foreign nationals in Germany. Lastly, the detention of vulnerable people, including children, and controversial practices, including the use of sedatives and plastic wrist ties in Belgium.

Furthermore, the Netherlands had been viewed as a very tolerant country towards immigration until the 1980s, when the Netherlands increased its detention policies to restrictive ones. After concluding that the Netherlands has the most consistent and strict immigration and detention policies when it comes to detaining and returning illegal aliens it can be considered that strict and consistent policies and practices do in fact achieve the best results when it comes to repatriating third-country nationals. The Netherlands achieves the highest results when taking into account the size and total population of the Netherlands in ratio to the percentage of foreign nationals residing in the country.

Moreover, all three national policies have different focusses when it comes to national immigration policies. The Netherlands focuses on discouraging immigration for the purpose of family reunification and attracting highly skilled migrants while Belgium emphasize on security and reducing the number of asylum seekers that go to Belgium. On the other hand, Germany mainly focusses on promoting the integration of foreign nationals who are already residing in Germany. Finally, all three countries operate in similar ways when it comes to detaining and returning foreign nationals, the main difference is that in the Netherlands, every different part of the Aliens law is distributed and organized within separate organizations in the Netherlands (Repatriation and Departure Service, Immigration and naturalization Service, Royal Marshalls, and the Dutch National Police.

To summarize, the Netherlands is indeed a stricter country than Belgium and Germany when it comes to immigration and detention policies. It is also observed that stricter policies achieve better results in repatriating unwanted foreign nationals. However, it is recommended that stricter policies go hand in hand with incentives for foreign nationals to co-operate for return purposes and that some type of help or assistance is provided to third-country nationals upon returning to their home-country in order to start a new life after having lived abroad (de Borst, 2014). And finally, it is advised that EU Member States continue co-operation on aspects regarding immigration and asylum to share experiences and best practices amongst other things in order to promote equalizing and synchronizing immigration, asylum and detention laws, policies and practices across Europe.

12.1 Recommendations

The research attempts to provide an overview of which European Union country is the strictest when it comes to immigration law, detention policies and detention practices. The conclusion is that these laws and policies are stricter and somewhat more consistent in the Netherlands, according to experts. Nevertheless, the research only provides an overview of three European Union countries, which happen to be bordering countries. In order to provide insight into which European country is the strictest of them all, further research needs to be conducted on all the other 28 EU Member States to be able to provide an accurate assessment on which EU country has the strictest or toughest immigration laws and detention practices in general.

12.2 Limitations

The methodological approach of this research has proven to be successful in finding which of the three bordering countries has proven to be the strictest compared to the other two. However, due to the lack of response from interview respondents from Belgium and Germany, no expert opinion from Belgium or Germany could be used. Moreover, at some points few or no information could be found on the Netherlands, Belgium or Germany that could provide better complete information for a better comparison regarding the views and criticism towards the detention and immigration policies in these countries and the legal grounds for detention. Nevertheless good quality sources were found regarding the subjects and a proper overview could be given. In the case of the result analysis, the most recent and accurate data is from 2011. Later data was not complete for the purpose of the analysis (Appendix. 4).

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14. Appendices

14.1 Appendix 1: Third country nationals ordered to leave

Country	2008	2009	2010	2011	2012	2013
Netherlands	33,200	35,575	29,870	29,500	27,265	32,435
Belgium	28,545	24,035	22,865	36,885	50,890	47,465
Germany	11,985	14,595	19,190	17,550	20,000	:

*: not available

Source: Eurostat (Third country nationals ordered to leave, 2014)

14.2 Appendix 2: Third country nationals refused entry at external borders

Country	2008	2009	2010	2011	2012	2013
Netherlands	3,160	2,500	2,935	3,500	2,560	1,990
Belgium	1,170	2,055	1,855	2,730	2,390	1,535
Germany	7,215	2,980	3,550	3,365	3,820	3,845

Source: Eurostat (Third country nationals refused entry at external borders, 2014)

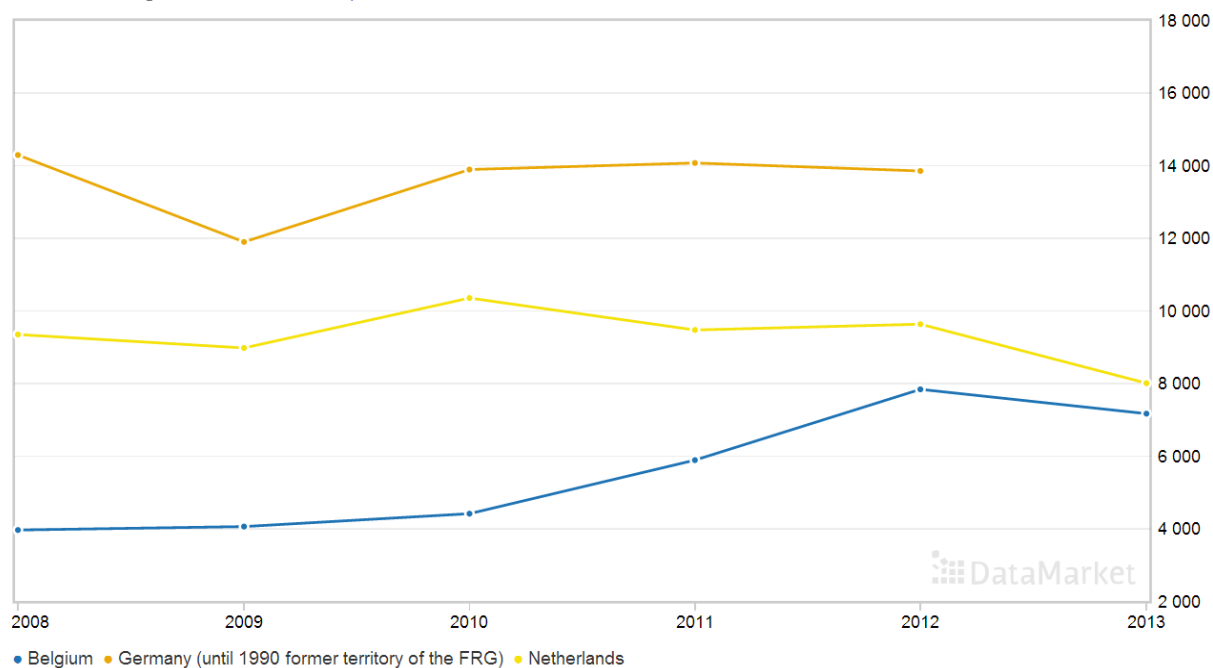
Is the present Dutch policy on forced return of illegal aliens stricter than in the bordering countries Germany and Belgium, and therefore more effective?
Ingrid van Ruyven, 10053352

14.3 Appendix 3: Third country nationals returned following an order to leave

Units: person

Third country nationals returned following an order to leave - annual data (rounded)

Indicator on migration: Total number of persons returned Units: Person



Source: (Data base, 2014)

14.4 Appendix 4: Statistics of 2011

Country	Year	Total population	Total pop. of foreign citizens	% of total population	foreign nationals returned	% total pop. of foreign citizens
Netherlands	2011	16,655,799	673,200	4.0	9,475	1,4
Belgium	2011	11,000,638	1,162,600	10.6	5,890	0,5
Germany	2011	81,751,602	7,198,900	8.8	14,075	0,2

Source: (Data base, 2014), (Eurostat, 2012), Eurostat (population on 1 January by age and sex, 2014).

14.5 Appendix 5: Student Ethics Form

European Studies Student Ethics Form

Name: Ingrid van Ruyven Garcia Rojas

Supervisor: M. van den Haspel

Section 1. Project Outline

1. Title of Project

The Netherlands, Belgium and Germany: A Comparative Analysis on the Detention Policies and Repatriation Practices of Illegal Aliens

2. Aims of project:

The objective of this dissertation is to obtain a better understanding and a greater insight of the detention and return policies and practices in three EU Member States. Focusing primarily on the Netherlands but simultaneously viewing and comparing the policies to Belgium and Germany. The research aims to provide an insight into these policies and how it affects their results, number of illegal aliens who are successfully returned to their home countries, and in the end there will be a clear insight into which is the strictest country when it comes to combatting illegal immigration

3. Will you involve other people in your project – e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc.

YES

Section 2

1. What will the participants have to do?

The selected interviewees will receive a document (short questionnaire) with five questions regarding the theme of illegal immigration and migrant detention. They will then be asked to please fill in the answers to the questions on the WORD document and when finished return the completed document via e-mail.

2. What sort of people will the participants be and how will they be recruited?

Only people who are experts in a specific field will be recruited to answer the questions, people with knowledge on the subject (immigration policy in the Netherlands, Belgium or Germany). E-mails will be sent to ask for their time and participation.

3. What sort stimuli or materials will your participants be exposed to?

Questionnaires; Pictures; Sounds; Words; Other.

4. What procedures will you follow in order to guarantee the confidentiality of participants' data?

The names of the interviewees will not be mentioned in the dissertation, just job titles (which are provided within the answer to the first question) and answer to the questions.

Student's signature:

Date: June 2, 2014

14.6 Appendix 6: Interview Questions and answers

Interviewee #1

Country of origin: The Netherlands

Job Title: General Director, Transport and Support Service of the ministry of Security and Justice.

Interview Questions

The objective of the research for this thesis is to provide an overview of the detention policies and detention practices of three European Union Member States; The Netherlands, Belgium and Germany. Germany and Belgium are the bordering countries of the Netherlands. They share a border, a relationship, similar languages and similar cultures with the Netherlands. They are similar in geographical position, landscape and way of thought. Although there are quite obvious differences between Dutch, Belgium and German citizens, the government and policies can be easily compared to each other. This all provides a clearer overview and more suitable comparison.

The main research question is: "Is the present Dutch policy on forced return of illegal aliens stricter than in the bordering countries Germany and Belgium, and therefore more effective?" The goal of the interview is to provide an expert opinion on which of the three countries possesses the strictest policies towards illegal aliens and the harshest detention practices.

There are several government organizations present in your country that combat illegal migration and who apply the policies and practices for their detention and repatriation.

1. What is your role within the application of the detention policies and practices towards illegal migration in your country? For which organization are you working for momentarily and what is their role? Please elaborate.

For the last 3 years I have been responsible –being the general director- for the Transport and Support Service of the ministry of Security and Justice. This service with 1067 colleagues is responsible for the safe transport and security of detainees (Criminal Law), illegal migrants (Aliens Law) and youngsters (Civil Law). Our organization transports illegal migrants to -embassies (presentation in order to obtain an alternative travel document "laissez-passer",

- courts for the judicial procedures,
- detention centers,
- the Dutch, Belgian and German airports to be expelled,
- the German and Belgium borders to be expelled and
- other European countries in the so called 'Dublin-procedure' .

2. Which are the main government bodies present in your country that deal and combat illegal migration and who apply the policies of detention and repatriation? Just mention them please.

- the Repatriation and Departure Service of the ministry of Security and Justice (return)
- the Immigration and Naturalization Service of the same ministry (admission)
- the Dutch National Police (supervision)
- the Royal Marechaussee (border control)
- the Transport and Support Service of the ministry of Security and Justice (security).

The Netherlands has created a reputation during the last few years of being the European Member State with the strictest views and policies to combat illegal aliens residing in the Netherlands and to combat illegal migration from coming to the Netherlands

3. What is your personal opinion on the detention policies and practices in your own country, where you are aware of the Dutch reputation of being intolerant towards illegal migration? Do you agree with this reputation? Does your own country have a similar reputation? Please elaborate.

In the Netherlands the procedures to obtain a residence permit or asylum last a very long time. The possibilities to appeal against government decision are limited on paper but in practice it will take a few years before you can be obliged to leave the country. This phenomenon is very well known in the dark world of human smuggling. In my opinion there should be one EU procedure that all member states will have to apply. One EU procedure limited in time (maximum 6 months, appeal and high appeal included) to give clarity to all involved parties. There can be no admission procedure without a return procedure. Otherwise you should welcome everybody that takes the time to come by and hand him or her a residence permit for life. This means that supervision on illegal migration by the police and the Royal Marechaussee remains necessary. And yes, sometime illegal migrants end up behind bars because they do not want to cooperate to return to their home country. Some 800 illegal migrants are in detention centers in 2014,

where it is estimated that more than 400.000 persons have an illegal stay in the Netherlands. In this ratio the Dutch policy is far from strict! Every 30 days an independent judge decides whether it is allowed to keep the illegal migrant in detention and that the fact that returns to one's home country is not possible is caused by the lack of cooperation of the illegal migrant him or herself. So it is clear that I do not agree with this reputation. The fact that at this moment more than 1000 asylum seekers (mainly coming from Eritrea and Syria) a week find their way to the Netherlands underlines my statement.

4. Do you believe that the strictest policies and practices to combat illegal migration also achieve the best results and have the highest number of repatriations of foreign nationals? Please explain.

A strict policy on supervision, on admission and return should always be combined with a policy to make it attractive (What is in it for me if I cooperate?) to return to their home country (sticks and carrots). More and more you see programs coming up to help returnees in finding a job, a home, relations, an education (in fact a life!) in their home country after have been abroad for several years. The European Commission (EURINT program) and IOM are very active partners in this field. These programs have proven to be very successful!

5. Are you familiar with the detention and return practices in the other two countries? If not why is that? If so, what is your personal opinion on them? Are they stricter than the detention policies in your own country or similar? Please elaborate.

through my experiences in the field of international migration (I previously worked for the Immigration and Naturalization Service and the Repatriation and Departure Service I am familiar with the detention and return practices in Belgium and Germany. In general you could say that the 3 systems are quite similar. The main difference is that because of the enormous workload every different part of the Aliens Law is organized within separate organizations in the Netherlands. I underlined this in the answer to question 2. In terms of a successful return policy one could say that the Netherlands are a more strict country. Numbers on forced and voluntary return are much higher than in our neighboring countries. On the other hand one can doubt this conclusion in terms of supervision and detention.

Interviewee #2

Country of origin: The Netherlands

Job title: Advisor, Repatriation and Departure Service of the Netherlands

Interview Questions

The objective of the research for this thesis is to provide an overview of the detention policies and detention practices of three European Union Member States; The Netherlands, Belgium and Germany. Germany and Belgium are the bordering countries of the Netherlands. They share a border, a relationship, similar languages and similar cultures with the Netherlands. They are similar in geographical position, landscape and way of thought. Although there are quite obvious differences between Dutch, Belgium and German citizens, the government and policies can be easily compared to each other. This all provides a clearer overview and more suitable comparison.

The main research question is: "Is the present Dutch policy on forced return of illegal aliens stricter than in the bordering countries Germany and Belgium, and therefore more effective?" The goal of the interview is to provide an expert opinion on which of the three countries possesses the strictest policies towards illegal aliens and the harshest detention practices.

There are several government organizations present in your country that combat illegal migration and who apply the policies and practices for their detention and repatriation.

1. What is your role within the application of the detention policies and practices towards illegal migration in your country? For which organization are you working for momentarily and what is their role? Please elaborate.

It is not the Repatriation and Departure Service (R&DS / DT&V), but the Service for Judicial Institutions (SJI / DJI) which is responsible for the detention policy (for aliens) as such. Of course the R&DS is responsible for the return of aliens to their country of origin and in that respect detention is a means of being able to execute returns.

It is important to establish that several Services (like the Immigration and Naturalization Service - INS / IND – the Aliens Police and the R&DS) as part of the ministry of Security and Justice, but also the Royal Netherlands Marechaussee (ministry of Defense) and the ministry of Foreign Affairs are the government institutions to combat illegal migration.

2. Which are the main government bodies present in your country that deal and combat illegal migration and who apply the policies of detention and repatriation? Just mention them please.

Reference is made to the answer to Q.1

The Netherlands has created a reputation during the last few years of being the European Member State with the strictest views and policies to combat illegal aliens residing in the Netherlands and to combat illegal migration from coming to the Netherlands

3. What is your personal opinion on the detention policies and practices in your own country, where you are aware of the Dutch reputation of being intolerant towards illegal migration? Do you agree with this reputation? Does your own country have a similar reputation? Please elaborate.

I think that the reputation of the NLD, being intolerant to aliens, is incorrect. Nevertheless illegal migration is a topic on the political agenda, not only of Dutch Government but also of Europe, including the EU. So you could say there is a strong endeavor for practical cooperation between European countries to combat illegal migration, by making the rules for accepting and denying of applications for a temporary or (more) permanent stay for third country nationals (TCN) as strict as possible.

Therefore it should be concluded, as far as I am concerned, that there is no question of the NLD being intolerant, but only strict and consistent. There is in my perspective an open mind towards people who need protection, and it should be.

4. Do you believe that the strictest policies and practices to combat illegal migration also achieve the best results and have the highest number of repatriations of foreign nationals? Please explain.

With reference to the aforementioned answer, I would say that strict policies and practices will only lead to the best results if they are transparent and consistent.

Legal proceedings will only lead to results if the government in this respect takes clear and well-founded decisions on a structural basis.

5. Are you familiar with the detention and return practices in the other two countries? If not why is that? If so, what is your personal opinion on them? Are they stricter than the detention policies in your own country or similar? Please elaborate.

As far as I know the German and Belgium policies and practices on return and detention in general do not differ very much from those in the NLD, also because of the EU Return Directive. Nevertheless I am familiar with the fact that in Belgium the number of foreign detainees is decreasing, because Belgian government adapted their policy on detention. It is Belgian practice nowadays to only put those aliens in detention if there is a strong suspicion or even a certainty that the competent Belgian authorities will be able to execute the return of the persons in question, knowing that they will receive the necessary (replacement) travel documents from the diplomatic representations for those individuals.