

Judgment 202305065/1/V6
ECLI:NL:RVS:2023:4418
29 November 2023

Press release

Asylum seeker is allowed to work more than 24 weeks per year

When granting work permits to asylum seekers, the UWV may no longer require that they be allowed to work for a maximum of 24 weeks per year. This so-called 24-week requirement prevents asylum seekers from gaining effective access to the Dutch labour market. This requirement undermines the "purpose and effectiveness of the European Reception Directive" and is therefore contrary to European law. This is the ruling of the Administrative Jurisdiction Division of the Council of State in two judgments issued today (29 November 2023). The Administrative Jurisdiction Division hereby confirms rulings of the courts in Arnhem and Utrecht that came to the same conclusion earlier this year.

24-week requirement

The European Reception Directive obliges member states of the European Union to ensure that asylum seekers have effective access to the labour market. Member States are free to determine the conditions under which this is done. The Netherlands applies the 24-week requirement for this. This requirement means that an asylum seeker may work for a maximum of 24 weeks within a period of 52 weeks. According to the UWV, an extension of the number of weeks could send a signal to asylum seekers that permanent residence in the Netherlands is likely and may result in asylum seekers becoming entitled to unemployment benefits. The lawsuits in which the Administrative Jurisdiction Division ruled today were filed by the employers, because the UWV had rejected the applications for a work permit for two asylum seekers. Otherwise, the asylum seekers would exceed the working period of 24 weeks.

In violation of the European Reception Directive

The Administrative Jurisdiction Division infers from the 'general scheme, context, purpose and history of the adoption of the Reception Directive that the EU legislature intended to promote the independence of asylum seekers by means of that directive'. Part of this broad objective is to facilitate access to the labour market for asylum seekers and to ensure that they have a fair chance to enter the labour market in the Member States of the European Union. In the opinion of the Administrative Jurisdiction Division, the fact that asylum seekers only have access to the labour market for 24 weeks within a period of 52 weeks and not for the other 28 weeks due to the 24-week requirement is "contrary to the background and objective of the Reception Directive."

Threshold for employers

In its ruling the Administrative Jurisdiction Division refers to the final report drawn up by research agency Regioplan in April 2023 at the request of the Ministry of Social Affairs and Employment. It follows from that report that the 24-week requirement prevents effective access to the labour market for asylum seekers. According to this report, the requirement mainly creates a barrier for employers who are usually looking for longer-term staff. The requirement therefore does not make the asylum seeker an attractive employee. The investment is often too large for employers.

The Administrative Jurisdiction Division is also supported by the case law of the Court of Justice in Luxembourg. It follows from that case-law that Member States may not adopt measures or conditions which are 'liable to undermine the purpose and effectiveness of the Reception Directive'. Like the District Courts, the Administrative Jurisdiction Division therefore ruled that the 24-week requirement is non-binding.

NB. On the same date, the Division rendered a judgment in a case with the same subject:
Judgment of 29 November 2024, 202303122/1/V6, ECLI:NL:RVS:2023:4341.