

(automatic translation)

Dutch Council of State - 202303430/1/V2 - 26 June 2024 - ECLI:NL:RVS:2024:2604

**Asylum seeker - Article 28(1) Directive 2013/32/EU (Procedures Directive) - Failure to appear at 'further interview' - Rejection of application as unfounded or manifestly unfounded – Provision of the directive not implemented in national law**

*Staatssecretaris van Justitie en Veiligheid tegen appelland*

No legal basis for experiment to reject asylum application without further hearing

The application of the foreign national of Algerian nationality for a temporary asylum residence permit was rejected. After the registration interview, the State Secretary invited the foreign national for a further interview. In the invitation, the State Secretary pointed out to the foreign national that, if he does not appear and he does not give a reason for not appearing in advance, the State Secretary assumes that he can return safely to his country of origin. Subsequently, the foreign national did not appear at the further interview without giving a reason in advance.

Although the Administrative Jurisdiction Division (Division) understands the State Secretary's wish to make the asylum procedure more efficient, it has come to the conclusion that there is no legal basis for this procedure. Article 28(1) of the Procedures Directive makes it possible, under certain conditions, to reject the substance of an asylum application if a foreign national does not appear at the further interview, but the Dutch legislature has not implemented this provision of the Directive in the Aliens Act 2000. Nor can the State Secretary rely directly on that provision of the Procedures Directive. It is up to the legislator to implement this provision in the Dutch Aliens Act 2000 if it so wishes.

The Division concludes that, because the power under Article 28(1) of the Procedures Directive to reject an application as (manifestly) unfounded in the event of implicit withdrawal or implicit abandonment of that application has not been implemented in national legislation, an interpretation of that provision in conformity with the Directive is not possible and the prohibition of reverse vertical effect prohibits the direct effect of that provision.

The State Secretary loses the appeal.