The Netherlands

➢ *General introduction*

Since the end of World War II, four distinct phases of immigration in the Netherlands have emerged.

- 1945 to 1960: Immigration was driven by the decolonization of Indonesia and Surinam.
- 1960 to 1973: Excess labour demands attracted immigrants from Southern Europe and North Africa. Initially, recruitment was managed by employers, but beginning with Italy in 1960, the Government began signing "recruitment agreements" with sending countries.
- 1974 to 1997: Immigration was driven by family reunification motives (peaking in 1983-84), then by asylum seekers.
- 1997 to 2007: Flows of family reunification, asylum-seeker and low-skilled immigrants decreased, whilst recruitment of high-skilled workers increased.

The first official document to formulate a coherent policy view on immigration, **the 1970 Memorandum on Foreign Employees** (*Nota Buitenlandse Werknemers*), specified that the **Netherlands was not a migration-receiving country.** While the Memorandum acknowledged that foreign labour was **necessary to sustain economic growth**, it formalized the unofficial view that migrant workers were wanted solely as temporary transients in Dutch society. Whilst the concept of circular migration was not yet popular, the "rotating" of foreign workers between sending countries and the Netherlands was proposed. This was consistent with the reality on the ground at the time: The majority of workers were male and came without their families (in the early 1970s there were 55,000 Turkish and Moroccan guest workers and only 20,000 family members).

The 1973 oil crisis and economic downturn after 1979 had significant effects on immigration, particularly on the composition of the migrant population. It also impacted considerably on the public (and political) view on immigration. **The 1974 Memorandum of Reply** explicitly stated that the Netherlands had responsibilities towards guest workers, and that a policy to accommodate them in Dutch society was imperative.

This policy sought to give guest workers improved access to public services and social security and to provide cultural support. Housing was an initial priority; however, later on, as migrant workers became more regionally concentrated, municipalities began providing better access to health care, social assistance-based income support and education. Ethnic (sender country)-based education and mother-tongue teaching was aimed at facilitating future return.

By the mid-1970s, government policy sought to restrict labour immigration, by tightening controls on **entry and using quotas** at the sending country and company level (enforced through both work permit restrictions and strict visa requirements) to reduce the ease and desirability of migration. However, these policy initiatives did not achieve significant cuts in the number of new immigrants. The total number of non-Western immigrants more than tripled between 1975 and 1985 — from less than 200,000 to approximately 600,000 (the total Dutch population was approximately 15 million in that period).

While throughout the **1970s and 1980s the Netherlands saw only a couple of thousand asylum seekers per year,** the number increased to 14,000 in 1988 and exploded further to yearly peaks of 53,000 (1995) and 45,000 (1999 – 2001). When the Netherlands and other countries tightened the criteria for refugee status and reconsidered social assistance in cash in 2001, the number of asylum applications dropped significantly. The tightening of **the access to asylum was realized through an administrative action** (the Linkage Act — Koppelingswet, 1998) linking all social economic databases electronically, allowing authorities to identify and locate illegal or irregular immigrants when they used the administrative, health services, schools or parts of the social security administration.

➢ *The current legal framework*

The Aliens Chamber (VK) forms part of the administrative law section at the district court of The Hague and focuses solely on hearing disputes in relation to alien law. The most relevant legislation and regulations in relation to asylum and migration are to be found in the **Aliens Act 2000,** which lays down the **conditions applicable in regard to the entry and admission of foreign nationals, including the asylum procedure,** and for the removal of foreign nationals who do not have any right of residence. **The Integration Act and the Civic Integration Abroad Act** set out the mandatory requirement for integration of foreign nationals in the Netherlands.

The Netherlands Nationality Act (RWN) lays down the conditions for obtaining and losing Dutch citizenship. **The Aliens Employment Act (WAV)** regulates the admission of foreign nationals to the Dutch labour market. The Administrative Penalty for Aliens Employment Act stipulates that an administrative penalty may be imposed on employers if they employ foreign nationals illegally.

In the development towards an effective government, the establishment of the Immigration and Naturalisation Service (IND) introduced a **separation between policy development and policy implementation**. On adopting the **Aliens Act 2000**, in particular the asylum procedure was substantially amended. An important change was the introduction of the 'Intention procedure'. After the IND has assessed the application it notifies the applicant and his/her lawyer if it has the intention to reject the application. Another major amendment was that IND was made responsible for the assessment of applications for 'Provisional residence permits' (MVV).

➢ ***Procedures and policies***

To be able to enter the Netherlands, **immigrants are required to hold a valid border-crossing document,** with a visa where required. Visas are to be acquired at diplomatic representations and in certain cases at the border. **Asylum applicants have to submit their application in person at the Dutch external border** (sea port or airport) or at one of the three IND application centres.

Admission on the grounds of both migration and asylum is assessed by the IND. All residing foreign nationals need to have a residence document. For immigrants both temporary and permanent residence permits are generally issued according to the following main categories: family reunification and family; adoption and foster children; re-entry; work; study; Council Directive 2004/114/EC; exchange programmes; working holidays; au pairs; medical treatment; medical emergency situations; family members; victims or witnesses of human trafficking. Asylum applicants may be eligible for a temporary residence permit. If the IND decides positively on an application for asylum, the applicant will be given a temporary residence permit (for five years max.) in the first instance. If the individual still needs protection after five years, he or she may be eligible for a permanent residence permit. Holders of residence permits are entitled to accommodation in a municipality of their choice as well as training, social security benefits and study grants. They will also be entitled to family reunification subject to certain conditions.

An immigrant may obtain citizenship through application, birth or naturalisation. This entitles permanent stay. Holders of residence permits are allowed to have paid employment. To be able to work in the Netherlands, employment migrants will be expected to have a residence permit and a work permit. A work permit is valid for up to three years. Highly skilled migrants, under the High Skilled Migrants Scheme, with a residence permit do not need a work permit. Asylum applicants will be able to gain access to the labour market six months after the date on which the asylum procedure starts.

Return policy in the Netherlands primarily focuses on foreign nationals who are obliged to leave because they do not reside lawfully. The foreign national then is to leave the country independently. As soon as the asylum applicants no longer require protection, they are expected to return to the country of origin.

SPAIN:

➢ ***General introduction***

Spanish legislation on immigration, as well as the ones of the other Mediterranean countries of "new immigration", entered in forces only in the mid-eighties. The earliest juridical sources refer to that period: **Ley n. 7 of 1 July 1985** on the rights and freedoms of foreigners in Spain, whose contents were then later integrated by an implementing regulation approved by Royal Decree 155 of February 2, 1996 . Asylum and international protection are, however, regulated by **Ley 5/1984 of 26 March 1984**, entered into force in June 1994 (then completed with Royal decree 203 of 10 February 1995).

The legislation which currently regulates migration in Spain **is the result of a combination between the organic Ley 4/2000, of January 2000** (which seems to have taken considerable inspiration from the Italian legislation - Law 40/1998, while expanding, with an entire title and the penalty system), **and Ley 8/2000, of December 2000, a more restrictive reform made by the new government Aznar.**

To the openness introduced by the Ley 4/2000, the Ley 8/2000 opposes more restrictive elements, as results of a reform process characterized by strong electoral pressures. The main features of this new law are:

- programming of flows (similar to the Italian "quota system";
- implementation of specific intervention measures on the labour market;
- anticipation of penalties both for those who favours illegal immigration and for employers who hire in black;
- immediate expulsion of foreigners residing illegally in Spain, while the previous law had just placed a system of fines;
- through the introduction of the "permanent residence", foreigners are compared to the Spain citizens only from the social protection system, not political point of view.

In general, **the requirements for entry into the Spanish territory are three**:

1. possession of valid identity documents,
2. proof of having sufficient means of subsistence for the length of stay and
3. proof of the purpose and conditions of stay.

The Organic Law 14/2003, which entered into force in December 2003, has intervened in particular to promote and foster the social integration of foreign citizens. It also determined that the seasonal jobs

should be of direct preference to those who come from countries with which Spain has signed agreements on regulation of flows.

➢ *The current legal framework*

The general structure of the legal framework is established in **article 13.1 of the Spanish Constitution**. The basic legislation is Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreign nationals in Spain and their social integration, and its Regulation.

Asylum is governed by Law 12/2009 of 30 October 2009 governing the right of asylum and subsidiary protection. **Rules on citizenship are set out in the Civil Code.**

The aims of the legal texts concerning the immigration system, Organic Law 4/2000 and Implementing Regulation, are mainly:

1) consolidating a model based on legal immigration and linked to the current national labour market;

2) reinforcing the tools for the fight against irregular migration, amongst others, illegal employment of workers in the hidden economy;

3) supporting and guaranteeing circular mobility and voluntary return;

4) promoting the integration of the immigrants already living in Spain;

5) protecting victims of gender-based violence and other vulnerable groups (victims of human trafficking);

6) improving the treatment of unaccompanied minors; and

7) clarifying and simplifying the procedures, making a better use of the resources available.

➢ *Procedures and policies*

Spanish legislation distinguishes between **two situations**: foreigners in Spain can be in a situation of stay or residence.

Stay is defined as presence on Spanish territory for a period of time up to 90 days, except in the case of students, who can stay for a period equal to that of the courses in which they are matriculated. On the other hand, **residents are foreigners who live in Spain with a valid residence authorization.** They can be in a situation of temporary or permanent residence. The legislation also contemplates three specific situations: the special regime for students, the residence of stateless persons, undocumented people and refugees, as well as the residence of minors. Accordingly, one can state that the two principal legal situations in which third-country nationals may find themselves in Spain are visitors or residents. A visitor

may stay in Spanish territory for a limited period of time, in principle, not exceeding 90 days and does not require a prior authorization, apart from the requirement of a visa to enter the country, where applicable. On the other hand, the situation of a resident is precisely defined by law as requiring an authorization to reside, whether temporarily or permanently. Within this framework of temporary and permanent residence and special regimes, the legislation covers the entry and residence of family members, employed and selfemployed persons and students.

The entry of third-country nationals takes place via border crossing points established for that purpose. It is a requirement to hold a valid passport or travel document, a valid visa where required, and other documentation justifying purpose and conditions for stay. There are two basic situations by which aliens can be present in Spain: short-term stay or residence, according to article 29 of the **Organic Law 4/2000.** Short-term stay shall be construed as remaining in Spanish territory for a period of time not exceeding 90 days, and those admitted for study purposes, student exchange, non-working practices or voluntary service. In the residence situations are, amongst others, those who are legally present in Spain for working reasons, family reunification or non-work residence, and all of the foregoing is without prejudice to the situations established on the aforementioned Law 12/2009 of 30 October 2009, regarding those granted international protection.

Admission criteria for migration are primarily related to the labour market. Work permits for employees require that employment is obtained via a general scheme, a Collective Management of Recruitment in the Country of Origin (annual prevision of a hard-to-fill jobs list) or job search visa. Work permits for selfemployed workers require certification that the third-country national holds the relevant professional qualifications or has the resources necessary for job creation. Refugees are entitled to a long-term residence and work permit. A provisional residence or stay permit - valid for up to six months, but renewable – is granted to asylum seekers during the application process. A work permit may be granted after that. Asylum applicants and refugees are entitled to access social programmes.

Legal residence includes the following phases:

a) **temporary residence**, whose duration in general is one year for the initial permit and 2 years in case of renewal, with different validity periods for other situations of temporary residence (specially concerning family reunification residence);

b) **long-term residence**, after 5 years residence in Spain or fulfilling certain legal conditions, whose holders shall have an aliens' identity card with a validity period of 5 years, renewable.

Return of third-country nationals may be forced or voluntary. Forced return is applied to third-country nationals who do not meet the requirements for entry, stay or residence or who commit serious offences.

Precautionary measures for persons subject to removal may be applied, including periodic presentation before the competent authorities, compulsory residence in a given place, withdrawal of passports, precautionary arrest and preventive detention, following judicial permit, at a detention centre. For third-country nationals meeting certain requirements, voluntary return is offered. The Ministry of Employment and Social Security, in collaboration with IOM and other NGOs, is responsible for the Voluntary Return Plans.

- ***Citizenships***

As regards the citizenship, **on January 9, 2003 came into force a new "Citizenship Code",** which reformed the discipline defined by Law 18 of 17 December 1990. Among others, major innovation reforms regarded the acquisition of citizenship to descendants of the exiled during the Spanish Civil war between 1936 and 1939 and to children born before 1982 to a Spanish mother and foreign father, whose first was denied citizenship.

The general principle to acquire the citizenship is that of the *jus sanguinis* that favours the emigrants of Spanish origin. Citizenship may be required **after ten years of residence and not before 18 years of age. Naturalization by royal decree, however, is discretionary** and may be granted: after five years for political refugees, after two citizens of Latin American countries, Andorra, the Philippines, Equatorial Guinea and Portugal, after a year the foreign-born children of at least one Spanish parent.

Finally, in Spain, **foreigners are entitled to vote, since 1985, in the municipal elections** only on condition that Spanish citizens are granted the same rights in the countries from which immigrants come, on a basis of reciprocity.