Kafka revisited: the Netherlands government and administrative courts and accusations against asylum seekers of crimes against humanity

Appendix: Nine complaints to the Council of State about the unreliability of the KhAD-WAD report, in the context of the Council of State's self-reflection exercise in 2021 following the Child Care Subsidy Affair. Including insight into the suffering caused by the inaccurate KhAD-WAD report.

Dr. Joost Brouwer, May 2024

References in the complaints to the inaccuracy of the KhAD-WAD official report are highlighted in yellow. Some of the descriptions of the misery caused by the inaccurate KhAD-WAD report are highlighted in green.

NB. 1. Due to the conversion of PDFs into .doc files, there are some irregularities in the typography here and there.

2. By placing the complaints one after the other, the footnote numbering continues, instead of starting again at 1 with each new complaint.

Complaint 1

[redacted]

[redacted], 2 February 2021

To the President of the Administrative Law Section
of the Council of State
Mr B.J. van Ettekoven
PO Box 20019
2500EA The Hague

Dear Sir

It is probably unusual for me, as a non-lawyer, to address you. Please forgive me for doing so in the interest of a just legal system in the Netherlands.

In your wish – following the childcare subsidy affair - to review all old cases in which citizens were treated unnecessarily harshly, as reported in Trouw and NRC on 9 January 2021, I hope that you will also include the cases of Afghan asylum seekers against whom 'article 1F' was invoked.

In various rulings by the Administrative Law Section of the Council of State on this subject, it is stated that it is up to the foreign national to provide concrete grounds for doubting the accuracy of the KhAD-WAD report of February 2000, but each time that information to that effect was provided, the Council of State found that the information provided contained "no concrete grounds". The expertise, objectivity, independence and reliability of persons and bodies that raised objections were repeatedly called into question. This accumulation of rejections stands in stark contrast to the never questioned expertise, objectivity and reliability of information from the Ministry of Foreign Affairs. For justice to be done, marginal formal review is not sufficient, but the soundness of the grounds for a decision must also be addressed.

Doubts about the accuracy of the Official Report were not limited to the appellants. On 21 January 2000, shortly before the publication of the February 2000 country report on Afghanistan, the Directorate of General Affairs of the Ministry of Foreign Affairs wrote to the Head of Mission in Islamabad[1] : *'The Ministry of Justice is correct in stating that the last paragraph of section 2.7 reflects one of the most important conclusions of the country report. This paragraph states that it is inevitable that non-commissioned officers and officers of the KhAD and the WAD were personally involved in the arrest, interrogation, torture and sometimes execution of suspects. This wording excludes exceptions and is expected to lead to a large number of cases in which protection under the Refugee Convention must be excluded on the basis of the applicability of Article 1F. Since it is certainly conceivable that the Ministry of Justice will in future be forced to ask the Ministry of Foreign Affairs to indicate on what information this unequivocal conclusion is based, I ask you once again whether you can confirm this information in writing and explicitly address the question of whether this situation continued to exist after the announcement of the policy of national reconciliation.*

And also on 2 March 2000:

The approach that StasJus [=State Secretary [Vice-minister] for Justice] *appears to be taking is to invoke Article 1 (F) of the Refugee Convention against non-commissioned officers and officers of the KhAD and WAD who have applied for asylum in the Netherlands ...However, I note that your memo does not specifically address the expertise and objectivity of the sources with regard to the*

1 DPC/AM adm no. 663896

categorical conclusion in the official report that 'all non-commissioned officers and officers have worked in the macabre departments of the KhAD and WAD and have been personally involved ...'.

The answer was finally given on 14 April 2000:
"The objectivity and expertise of these spokespersons is not questioned on our part...."
This is followed by a litany of reasons why they are such good informants.
The response did not contain a concrete answer to the request *to explicitly address the question of whether this situation continued to exist after the announcement of the policy of national reconciliation* (quod non). Nor did it contain any concrete information about periods, fields of expertise, or parts of the country in which the informants were said to have expertise, as far as can be ascertained from the unredacted parts of the letters. This is aside from the publications by J. by J. Brouwer in the NJB[2] , which reveal that *'the statements from confidential sources on which the accusatory conclusions in the KhAD-WAD official report are based do not* exist*'.*

The above barely substantiated "trust" in unnamed informants seems too flimsy a basis on which to deny a number of people basic rights such as living with their underage children and building a reasonable existence for more than twenty years now.

Furthermore, the response from Islamabad only arrived after the publication of the Official Report. It has regularly been argued, in rebuttal of the appellants, that information provided after publication [of the Official Report] cannot be considered reliable due to its being influenced by the publication of the Official Report. A critical observer might wonder whether this is also the case here. Did the embassy perhaps shield the minister from criticism, and how reliable is such backing of the boss? The fact that the statements made by the spokespeople *were 'completely consistent'* does not inspire confidence in the independence, thoroughness or scope of the embassy's investigation either.

Incidentally, the internal inconsistencies and generalisations in the Official Report, which describes the Russian presence (ending in February 1988), but the title barely substantiates extending its operation to 1992, and in which an initial security service KhAD (approx. 5,000 employees) is equated with an entire ministry WAD (over 100,000 employees), should also be cause for critical re-reading. The exceptionally high number of 1F cases in the Netherlands compared to the rest of Europe may also be taken as writing on the wall[3] Various experts have repeatedly raised doubts about the Official Report of February 2000. The Council of State has consistently given greater weight to the presumed expertise of the Ministry of Foreign Affairs. In my humble opinion, it is an extremely dangerous development for the rule of law if the judiciary listens more to the presumed expertise of the government than to information from external experts. An honest judgement is then no longer guaranteed and the rule of law is endangered. In some political regimes, the judiciary is forced to do so, but in the Netherlands, independence is the norm.

Given the doubts expressed above about the reliability of the Official Report and the independence of retrospective justification, I would like to conclude by repeating Buruma's position[4] from more than ten years ago, which should still apply in full: *"Let us dismiss the cases against the 1F Afghans now that, after 10 years, we have still not been able to establish guilt, and give them a place here. If we find new evidence, that will provide grounds for prosecution as yet."*

Yours sincerely,

[redacted]

2 J. Brouwer & P. Bogaers 2018, *Why the KhAD-WAD official report of 29 February 2000 is incorrect and unreliable'*, *NJB* 2018/750, issue 16, pp. 1104-1111.
J. Brouwer NJB 'The KhAD-WAD official report – part 2' NJB 2020/17 dated 28 April 2020 https://njb.nl/media/3755/njb17_art3-website.pdf

3 http://www.tekenvoorrechtvaardigheidinnederland.nl/

4 Y. Buruma – War and Innocence - NJB 2008/38 dated 27 October 2008

Complaint 2

Subject: Unprecedented injustice concerning the [redacted] family / V. nr. [redacted]
Date: Wed, 14 Apr 2021 16:48:43 +0200
From: [redacted]
To juridischereflectie@raadvanstate.nl

To Mr B.J. van Ettekoven, President of the Administrative Law Section of the Council of State,

Dear Mr van Ettekoven,

Let me start by introducing myself. My name is [redacted]. Since 1 April 2001 (the date on which the 'J. Cohen Act' came into force), I have been working as a volunteer for asylum seekers. For the past 10 years, these have been undocumented migrants. I am a legal assistant at [redacted], part of the Salvation Army Limburg/Brabant. The [redacted] tries to help these undocumented migrants obtain a residence permit and, if that is not possible, to assist them in returning to their country of origin (see [redacted]). Before that, I worked at Vluchtelingenwerk [redacted]. In assisting the [redacted] family, I worked closely with [redacted] of [redacted] Lawyers in [redacted].

At Vluchtelingenwerk [=Netherlands Refugee Association], I soon came into contact with the [redacted] family, husband, wife, at that time without their three children. They arrived in the Netherlands from Pakistan in 1998. After quite some problems in Afghanistan and Pakistan, they could finally start working on their future. What a miscalculation! In 2001, an announcement arrived in the post from the IND's 1F unit regarding an investigation into alleged crimes against humanity committed by Mr [redacted]. These crimes were said to have taken place between 1986 and 1992, when he was working for the secret service, the KhAD-WAD. In 2003, his residence permit was revoked and in 2011, various proceedings were finally concluded by the Council of State. At that point, not only Mr [redacted], but also his family were given a 'life sentence'. The impact on the young family was enormous. I can say this because I knew the family very well from 2001 until their departure for Belgium in early 2018. I will come back to that later.

There is abundant evidence that the Official Report of February 2000 is flawed. Mr Brouwer and Mr Bogaers have convincingly demonstrated this in two articles in the NJB (see appendix). There are many similarities with the report Ongekend onrecht [Unprecedented injustice] by the Childcare Subsidy Inquiry Committee of the Lower House . This is also evident from the report Ongezien onrecht in het Vreemdelingenrecht [Unprecedented injustice in immigration procedures] that was presented to the new Lower House this week (see appendix). The person charged under article 1F [of the Refugee Convention] does not have Dutch nationality and has difficulty getting a fair hearing; the government's distrust of the 1F person and his family is great; all evidence to the contrary provided by the 1F person is dismissed without a second thought. Only a few knowledgeable individuals, such as Mr Brouwer and Mr Bogaers, action groups and journalists, repeatedly present evidence that the aforementioned official report is, to put it euphemistically, flawed. For 20 years now, judges have rigidly adhered to this official report, much to the frustration of the lawyers and families involved. The Lower House also dismisses all arguments. There is one major difference: the affected group is small and, cynically speaking, will die out of its own accord. Who cares then about their fate? Their traumatised children?

I have seen with my own eyes how children suffer from the injustice done to their fathers. They cannot understand why every member of the family now (fortunately) has a residence permit, but their father does not. Apparently, there is something wrong with him. His authority as a father is undermined. This is all the more painful because they come from a culture in which the father's role is central. They do not fully realise how hard their father is working to obtain justice, or rather, to undo the injustice. He is also constantly trying to 'make up' for the loss of income. No family benefits, but benefits for a single parent, no special benefits because the mother lives with an illegal immigrant, no normal health insurance, etc. The family is heavily dependent on the food bank, but after the maximum period of three years, this will come to an end. Panic sets in. Fortunately, neighbours sometimes lend a helping hand and extras from various organisations, municipal funds and the annual informal care allowance help to ease the pain. Wrongfully listed on the woman's insurance policy? That is fraud, followed by a hefty fine! Fortunately, the government's national scheme for uninsurable foreigners provides a solution in this regard, but the debts are piling up. As is well known, our government is one of the largest clients of debt collectors in the country. Mr [redacted] is considering leaving his wife so that she can at least receive benefits, but these are partially offset by the rent he would then have to pay. So he decides against it. The children are not doing well at school and his health is also deteriorating. I request a postponement of departure for medical reasons, which is granted immediately and not - as is usual - for six months, but for one year. After one year, it is possible to apply for a medical residence permit, but this does not apply to Mr [redacted] given his 1F status. In total, Mr [redacted] is granted three postponements of departure. Also important is that he is entitled to benefits for asylum seekers, provided he checks in at the asylum seekers' centre every week. He does so faithfully, which at least gives him some financial breathing space.

In March 2016, the mayor of [redacted], Mrs [redacted], draws the attention of the Vice-minister for Justice, Mr Dijkhof, to the social importance of a residence permit for Mr [redacted]. She points out, among other things, Mr [redacted]'s integration, the dire circumstances in which he and his family find themselves and the serious health problems he is struggling with. Former Minister Leers devised this procedure to give the municipality a say in the exercise of the Vice-minister's discretionary power. However, he refuses to exercise his authority. On 9 June 2016, he wrote literally: "We must prevent the Netherlands from becoming a refuge for people who have committed serious crimes elsewhere." And: "The official report of 29 February 2000 on the security services in communist Afghanistan shows that all (non-commisioned) officers of the WAD were **personally** involved in serious human rights violations". Knowing that the official report in question is flawed, I wonder how the Vice-minister could have come to such a conclusion. In fact, this is a new conviction, while the discretionary power is intended (see letter from the Minister dated 21 February 2007) to look at a set of circumstances that specifically apply to the individual in question. Discretionary power involves compelling reasons of a humanitarian nature. This power is specifically intended to ensure that, in the absence of hardship clauses, rules are not applied automatically, as it were, but that the human dimension is taken into account. This has been completely ignored. The previous appointment with the IND to submit and explain the application in person is thus cancelled. After all, the Vice-minister has spoken out of turn and already rejected the application. Mr [redacted] would be better off not spending the nearly 1,000 euro in administrative fees for submitting an application and further appeal proceedings. The begging tour to raise the money will therefore not take place. After all the legal procedures, a person is once again crushed by the government apparatus, which is extremely distressing! As is well known, the Vice-minister's discretionary power was abolished in 2019.

In early 2018, Mr XXX draws what I believe to be the only correct conclusion. Leaving his family behind, he 'flees' once again after 20 years, this time to neighbouring Belgium. There, he is granted a residence permit.

Kind regards,

[redacted]
tel. [redacted]

Attachments:

J. Brouwer & P. Bogaers 2018, *'Why the KhAD-WAD official report of 29 February 2000 is incorrect and unreliable'*, *NJB* 2018/750, issue 16, pp. 1104-1111. pdf

J. Brouwer NJB 'The KhAD-WAD official report – part 2' NJB 2020/17 dated 28 April 2020. pdf

Geertsema et al. 2021 NJB Unseen injustice in immigration law NJB 2021-14. pdf

Complaint 3

From: Bestuurssecretariaat [redacted]
Sent: Wednesday, 21 April 2021, 10:14
To:juridischereflectie@raadvanstate.nl
CC: [redacted]; [redacted]
Subject: Constricting regulations for KhAD/WAD employees

To the Legal Reflection Working Group of the Council of State

Dear Sirs and Madams,

Your Legal Reflection Working Group recently issued a call for reports of 'constricting regulations that are disproportionately harsh'.

In response to your request, I refer you to the appendix, which describes in detail the consequences for a family from our municipality (the [redacted] family) of an official report from the Dutch embassy in Pakistan dated 29 February 2000 concerning (non-commissioned) officers of the KhAD/WAD in Afghanistan. This official report was the basis for the IND's decision – with reference to Article 1F of the UN Human Rights Convention – not to grant residence permits to former employees of the KhAD/WAD.

I am bringing this situation to your attention with the request that you further investigate these regulations. I would appreciate hearing in due course how you have addressed this matter.

If you would like more information about this situation in recent years, please contact Mr [redacted], deputy secretary of the municipality of [redacted]. Tel.: [redacted]

Yours sincerely,

[redacted],

Mayor of the municipality of [redacted]

Enclosure: Situation overview regarding Mr [redacted], 2021

Situation overview regarding Mr [redacted], formerly residing at [redacted]

Mr [redacted] in the period 1982-1992

1. In the Afghan year 1360 (according to our calendar, 1982), [redacted] joined the KHAD, the Afghan state security service. It was wartime, with regular attacks by Mujahideen fighters financed and armed by the West. Soviet rule was omnipresent. At least 25,000 people were employed by the KHAD (renamed WAD in 1988). In addition some 1,500 Soviets worked at the headquarters in Kabul.[5]

Among other things, the KHAD had a department 12 for domestic intelligence, monitoring citizens and recruiting soldiers. In addition, there was department 1, which was tasked with setting up a diplomatic service and providing foreign intelligence. From the outset, Mr [redacted] worked in this department 1.

Employees were given military ranks so that they would not be conscripted as soldiers, which meant they were better paid (and less susceptible to blackmail abroad). From 1985 to 1989, Mr

5 Source: Soldiers of God, Robert D. Kaplan 2002

[redacted] was second and later first secretary at the Afghan embassy in [redacted]. Due to the war situation, he did not change embassies, but remained working in [redacted] throughout this period.
After 1989, Mr [redacted] returned to Kabul and found himself in the very chaotic period of President Najibullah. 'Mujahideen who had fought together as comrades were now engaged in bitter and violent battles between rival Afghan warlords.[6]
Mr [redacted]'s registrations as an employee of the WAD had thus become meaningless. Ultimately, the conflict was settled in 1992 when the Taliban came to power. For Mr [redacted], this was the moment to leave the country, following an attack on his home in which four of his children were killed. His wife, daughter and son followed him a few months later.

Effects of the Official Report of 29 February 2000

A report by staff at the Dutch embassy in Pakistan on the security services in communist Afghanistan (1978–1992), dated 29 February 2000, states that it was 'impossible for officers and non-commissioned officers to function within the KHAD or the WAD if they did not wish to participate in the systematic human rights violations that took place there'. The report is based on statements made by Afghans who settled in Pakistan in the 1980s. Information about the situation between 1985 and 1992 was scarce because travelling was very dangerous. The sweeping statement regarding KHAD/WAD officers and non-commissioned officers has become the basis for the IND to refuse to grant residence permits to former KHAD/WAD employees, with reference to Article 1F of the UN Human Rights Convention.
Nuances, individual differences or other views from any source whatsoever (e.g. Afghan parliament, Afghan consuls, Amnesty International, UNHCR) were not accepted.
In judicial review, in some cases a nuance was initially assessed as relevant and an appeal was declared well-founded or, on the basis of new facts, legal proceedings could be reopened. However, the Council of State always ultimately concluded that, on the basis of the – now much-criticised – official report of 29 February 2000, the IND had rightly refused a residence permit (in short:, the legal proceedings had been correct).
All this despite the fact that the KhAD-WAD official report has been proven to be incorrect. None of the arguments put forward in two articles[7] by Brouwer and Bogaers in the Juristenblad [=the Netherlands Law Review] have been refuted by the IND or the Council of State. Nevertheless, and therefore quite wrongly, the 1F verdict has been upheld.

Proceedings in the Netherlands

The family arrived in the Netherlands via Pakistan in 1997. They were granted temporary asylum status fairly quickly. As a result of the official report of 29 February 2000, Mr [redacted]'s residence permit was revoked on [redacted] 2000.
This was followed by a period of fifteen years of legal proceedings: namely, from the revocation of his residence permit on [redacted] 2000 to the ruling of the [redacted] District Court on [redacted] 2016. For almost the entire period, he resided legally in the Netherlands and held a W document. On [redacted] 2011, a complaint was lodged against the Dutch State with the European Court of Human Rights (ECHR) in Strasbourg. This resulted in an interim measure prohibiting the Netherlands from deporting Mr [redacted] while the proceedings were ongoing. On [redacted] 2016 (after five years!), a notification was received, without further explanation, that it had been decided to declare the complaint inadmissible.

The withdrawal of residence permits in 2000 affected a large number of Afghans who had arrived in the Netherlands after July 1997. The residence permits of officers and non-commissioned officers of the KHAD/WAD who arrived in the Netherlands before August 1997 were not withdrawn. They now have Dutch passports.
During the court proceedings on [redacted] 2010 in Haarlem, daughter [redacted], also on behalf of her [redacted], pointed out in a written statement the necessary presence of her father in the family. In 2011, [redacted] organised a petition: "We don't want to lose our father". In just a few weeks,

6 Source: The Secret History of Al Qaeda, Abdel Bari Atwan, 2006
7 Nederlands Juristen Blad − 20-4-2018 − Issue 16 – pp. 1104 – 1111 and 1-5-2020 − Issue 17 – pp. 1232-1238

she collected 3,000 signatures in [redacted] and the surrounding area. Afterwards, another thousand signatures were received via Petitions Online.
The IND's consideration that 'family ties can also be maintained using modern means of communication' is poignant.

Code 98 in the Municipal Population Register (MPR)

Various departments of the IND and the DT&V regularly attempted to make it clear that 'deportation' or 'eviction' would be necessary. In particular, registration in the MPR and subsequently the MPR (code 98, code 32 in varying forms) caused considerable frustration.
This also led to financial problems for the family because, in the case of code 98, the Internal Tax Department determined that 'a partner was being housed who was not legally resident in the Netherlands'. On that basis, rent and healthcare allowances plus child-related budget were often withdrawn retroactively.
Ultimately, after lengthy complaints procedures with the IND, everything could be resolved. This required many hours of work by civil servants ,and also by volunteers from the Dutch Council for Refugees. In 2012, for example, the Tax Department alone corresponded about this in some thirty letters.
In a letter dated [redacted] 2013, the Asylum Client Management Department of the Immigration Service IND announced its intention to issue an entry ban. This was surprising because Mr [redacted] had never been declared undesirable. In a nine-page letter, it was 'judged that the person concerned poses a threat to public order'. On that basis, Mr [redacted] would have to leave the country immediately, but 'due to the interim measure imposed by the ECHR, the person concerned may not be deported'. This did nothing to ease the tensions for the family.
All those years, Mr X X X was prohibited from performing paid work, he did not build up any state pension rights and he was not allowed to travel.

Deportation phase commenced

Meanwhile, after living in the Netherlands with his family for almost 20 years, Mr [redacted] was deregistered by the COA [the Refugee Housing Service] in [redacted] on 14 October 2016. This followed the declaration of inadmissibility of the complaint lodged with the ECHR in 2011.
DT&V [the Return and Departure Service] then invited him to prepare for his departure from the Netherlands and he was about to be taken into custody. The exact date of his deportation from the Netherlands was never announced. From the date of deportation, he would be subject to a **ten-year** entry ban in Europe.
Based on the registration of unlawful residence in the Netherlands, the tax authorities (once again) set the family's benefits rights at zero. In order to change this, the couple decided to separate. Mr [redacted] found temporary accommodation in the vacant [redacted] of [redacted].

An invitation from DT&V [the Return and Departure Service] to report to the Afghan consul in The Hague on [redacted] 2016 to obtain a travel document aroused Mr [redacted]' s suspicion. Rightly so, as it turned out, because he was not expected at the Afghan embassy, but at the IND headquarters in Rijswijk. This prompted Mr [redacted] to travel to Germany. He has been living there (in [redacted]) for more than five years now.

In [redacted] 2020, he received a regular temporary residence permit in Germany. This allows him to travel within Europe, but not to come to the Netherlands.
His wife and youngest son still live and work in [redacted], and his other son and daughter live and work in [redacted].

19 February 2013 (supplemented on 22 November 2016, 30 January 2017 and 12 April 2021)
Mr [redacted] Social Security Number [redacted]

Contact person Refugee Working Group
[redacted]

[redacted]

Asylum lawyer Mr. [redacted]

[redacted]

Complaint 4

From: [redacted]
To:juridischereflectie@raadvanstate.nl
Date: 21-04-2021 11:48
Subject: Legal reflection on constricting regulations

Dear Madams/Sirs,

We understand that, following the report by the Parliamentary Inquiry Committee on Childcare ('Unprecedented Injustice'), the Administrative Law Section of the Council of State has launched an internal reflection programme.

An internal working group on 'Legal reflection' is examining whether – apart from the legislation on childcare subsidy – there are other regulations where either the strict rules themselves or strict enforcement practices lead to disproportionate outcomes for citizens.

You called for potentially constricting regulations or implementation in areas such as immigration law to be brought to the attention of the 'legal reflection' working group.

A large number of such cases have already been put forward through the report 'Unheard of Injustice'. It is with regret that we now add another example, where the implementation of immigration law, combined with the implementation of the benefits system, has held a family hostage for twenty years, causing great psychological, financial and physical stress and ultimately leading to the family members being scattered across three countries (the Netherlands, Belgium and Germany). See attached *.pdf file.

We have now received consent from both Mr XXX and his daughter [redacted] to present their 'case'.

We would appreciate hearing your thoughts on this matter.

Yours sincerely,

[redacted]

[redacted]
Contact person Refugee Working Group
[redacted]
[redacted]
t [redacted]

Appendix: Overview of the situation regarding Mr XXX, 2021. See above, p. 7 at the bottom - p. 10.

Complaint 5

[redacted]

Council of State
Administrative Law Section
PO Box 20019
2500 EA THE HAGUE

BY EMAIL ONLY:
juridischereflectie@raadvanstate.nl

[redacted], 22 April 2021

RE: [redacted]/ Tax Department – Subsidies

Dear Sir or Madam,

In your call for legal self-reflection, you ask for examples of restrictive legislation and enforcement. I hereby respond to this call, based on the situation of the [redacted] family (hereinafter: [redacted]). The restrictive situation concerns both immigration law and benefits, in the light of EU law and human rights treaties, including the ECvHR and the UNCRC =UN Convention of the Rights of the Child]. The individual case clearly illustrates where the restrictions lie at various points, a situation that also applies to other people. The explanatory notes also place this in a broader context.

The [redacted] family is originally from Afghanistan. When the mother was heavily pregnant with her eldest daughter, the family fled to the Netherlands (1997). They were granted asylum and permanent residence permits, after which five more daughters were born. Since 2003, or from birth, the mother and daughters have had Dutch nationality. In 2000, an official report on Afghanistan was published, stating that all officers and non-commissioned officers of the security services in Afghanistan were guilty of war crimes in the period 1987-1992. The father, Mr [redacted], was also accused ot this. In 2003, he was classified as 1F and did not receive Dutch nationality like the other family members. He had the right of residence until 2006, when it was revoked. In 2016, father [redacted] submitted a follow-up asylum application, partly because of his conversion to Christianity. That conversion has since been recognised by the immigration service IND, so, because of the threat of a violation of Article 3 of the ECvHR, the father cannot return to Afghanistan. Due to the application of Article 9 of the Awir [=Income-dependent Regulations Act], the entire family did not receive healthcare allowance, housing allowance or child-related budget. As a result, they ended up (well) below the minimum subsistence level. Mother received social assistance benefits as a single mother. The costs of rent, health insurance and food were not covered, let alone money for school trips or work weeks. In 2015, the allowance for single mothers on social assistance was discontinued and the family's budget became negative.

The official report, which is highly controversial partly because of the secret sources used[8] , assumes that anyone who ever worked for KhAD-WAD is a war criminal and is only applied in this way in the Netherlands. However, no criminal investigation has ever taken place. Nor has there been any individual assessment or proportionality test. As in the childcare subsidy scandal, this means that a large group of people has been designated as suspects in advance, without being able to prove the contrary. No explicit consideration was given to the individual's contribution to the war. An exception was only considered possible if the foreign national could prove that they were a significant exception, which is an almost impossible task (see, among others, Council of State rulings RVS:2009 :BJ8654, RVS:2011 :BU2860). From the outset, Mr [redacted] has consistently stated that he started working as an electronics repairman in order to fulfil his military service obligation. A letter dated 29 January 2008 from Vice-Consul [redacted] of Afghanistan in The Hague, certified by the Dutch Ministry of Foreign Affairs, also confirms that he did not commit any crimes against humanity during his work in the WAD. This statement has so far been disregarded in the Netherlands. Instead of assuming the innocence of refugees unless there is hard evidence of participation in war crimes, a group of several hundred people were suddenly designated as perpetrators, without the opportunity to defend themselves. This is strongly reminiscent of the childcare subsidy scandal.

The Dutch family members were then completely excluded on the basis of Article 9 of the Awir, to which no exceptions could be made. No assessment was made of the principle of proportionality, nor was it investigated whether the provision of benefits to Dutch family members in this specific case actually led to them 'profiting' from provisions that frustrate immigration policy. The law is based on general assumptions, which were not further assessed by the Tax and Customs Administration. A report on this subject was published by the MO Group [Social Support Group] in December 2009, in which social counsellors raised the alarm about this overly strict application of Article 9 of the Awir.[9] In the case of the [redacted] family, the exclusion did not achieve its objective, as Mr **XXX** could not be deported, first because of ongoing proceedings and later because of his conversion. In this specific case, a mother with six children was excluded from benefits to such an extent that she had a negative income. There was no question of proportionality.

In such cases, where Article 8 and 14 of the ECvHR and other human rights treaties were invoked to challenge this issue, the Tax Department consistently took the position that there had been no violation. Your Section did not fully assess the cases against Articles 8 and 14 of the ECvHR, but only considered whether there were 'very special cases' (see, inter alia, Council of State ruling RVS:2017:3325). No assessment was made of individual circumstances, the proportionality of the exclusion to the objective to be achieved in the specific case, or the interests of the child. Your Section generally allowed these rejections to pass, except for one case in 2014 (RVS:2014:3788). To date, this has been the only case ever upheld. For the [redacted] family, the consequences became even greater from 2015 onwards due to the introduction of the single parent allowance. Your Section rejected an appeal against this poverty trap in case law in such cases because, it was stated, the child-related budget was not meant to guarantee a minimum subsistence level (RVS:2018:1645). The interests of children were not taken into account.

In 2011, the *Ruiz Zambrano* judgment was handed down, which showed that EU law applies to cases concerning underage EU citizens who have not left the Member State. No policy was formulated immediately, but in 2012 your Section issued rulings on which the IND's subsequent policy was based (RVS:2012:BV8623, RVS:2012:BWOOI I, RVS:2012:BV8619).

8 See, among others, https://www.njb.nl/blogs/waarom-het-khadwad-ambtsbericht-van-29-februari-2000-onjuist-en-onbetrouwbaar-is-uitgebreide-versie/ and https://njb.nl/blogs/het-khad-wad-ambtsbericht-deel-2/

9 https://schuldinfo.nl/fileadmin/Publicaties/Toeslag_of_tegenslag.pdf

The interpretation of Article 20 TFEU [=Treaty on the Functioning of the European Union] was so limited that virtually no one appeared to have a derived right of residence. Virtually impossible requirements were imposed on the evidence to be provided, and general theoretical assumptions were always made that the child might still be able to go to the other parent. This position was accepted in rulings on benefits and subsidies cases, including in the case of Ms Chavez Vilchez (RVS:2013:1846). Your Section saw no reason to refer preliminary questions on this subject (RVS:2016:179). The Central Appeals Tribunal then did refer preliminary questions [to the European Court of Justice] (CRVB:2015:665).

The case concerning benefits for the [redacted] family was held up for a long time by your Section pending the response to the questions posed by the Central Appeals Tribunal. When this judgment was handed down on 10 May 2017 *(Chavez et al. v. SVB and municipalities* EU:C:2017:354), it became apparent that the interpretation given to EU law in the Netherlands was incorrect, that the IND's policy was untenable and that insufficient attention had been paid to the rights of the children. This was followed by several judgments on the concept of 'current threat to public order' and, in May 2018, the *K* & *HF* judgment (EU:C:2018:296) followed, in which it was concluded that the 1F stamp is insufficient to establish that there is always an actual threat to public order and that the individual's contribution to the war and the actual current situation must be taken into account. The Court considers the question of whether there has been a criminal conviction to be relevant in this regard. Next, the principle of proportionality must be assessed, taking into account, among other things, the interests of family members and children in the light of the Charter of Fundamental Rights of the EU, but also, for example, conversion and danger upon return. It should be noted that the questions in this case were raised by the *Belgian* Council for Alien Law Litigation.

When the case of the [redacted] family was put back on the agenda, your Section concluded, despite the case law of the European Court of Justice, that it could not be assessed against EU law because this suggestion had been raised too late (RVS:2018:1943). An appeal to Articles 8 and 14 of the ECvHR was also unsuccessful. It was the Gelderland District Court that then concluded on multiple occasions that the Tax Department had to independently assess the case against EU law and proportionality (see RBGEL:2019:2540). Reports from a healthcare psychologist and child psychologists regarding the health of the mother and her various daughters were among the factors that were important in this regard. Your Division has since also concluded that in these cases, an assessment must indeed be made in accordance with Article 20 TFEU, in line with the criteria set out in the *K* & *HF* judgment (RVS:2019:3954, RVS:2019:545). The tax authorities concluded that Mr [redacted] has a derived right of residence under Article 20 TFEU. The municipality of [redacted] also came to this conclusion.

In practice, it appears that the IND still does not wholeheartedly guarantee the rights of underage Union citizens in light of Article 20 TFEU. After a favourable implementation immediately following the judgment, more and more obstacles are now being raised and the level of evidence required is almost as excessive as it was before the *Chavez Vilchez* judgment.[10] *(3)* It is of great importance that adequate legal protection is provided in order to prevent a recurrence of injustice. In recent years, your Section has invested in expertise relating to EU law. I therefore sincerely hope that you will draw a line in the sand in good time and also seize opportunities to refer questions [to the European Court of Justice] for a preliminary ruling where the IND attempts to test the limits of EU law. In this regard, it is particularly crucial that the interests of the child are truly paramount.

In the case of the [redacted] family, too, the injustice continues. To date, the IND continues to refuse to recognise the derived right of residence, even though two other administrative bodies do so. This

10 https://migrationlawclinic.org/2020/11I19/reviewing-the-application-of-chavez-vilchez-in-the-netherlands/

is inexplicable. The principle of Union loyalty requires administrative bodies to consult with a view to the effective application of Union law. This applies all the more to authorities within a Member State (see, inter alia, CRVB :2013:BZ3857). The IND seems unable to reconsider its positions, does not comply with Union law and attempts to undermine it. After the appeal of the [redacted] family was upheld, the IND did not revise its decisions, but instead lodged an appeal. As a result, the family remains in uncertainty for even longer. The IND, which according to Article 2:4 of the General Administrative Law Act (Awb) must perform its duties without bias, only presents arguments to the detriment of the [redacted] family and refuses to acknowledge the facts in the family's favour and to collect and consider all relevant information, in accordance with Article 3:2 of the Awb.

Meanwhile, Mrs [redacted] has left for Germany in despair and Mr [redacted] is left alone with one of the children in the house. The family has been damaged forever and can only be together at weekends. Their very distressing situation has been going on for 18 years, a whole childhood. The oldest children are now adults. The younger children miss their father and their education and future are uncertain because they do not know whether this will be in Germany or the Netherlands. They have suffered a great injustice, the negative consequences for their mental health have been ignored, their interests have not been taken into account and certainly have not been the primary consideration, even though this standard is clearly laid down in supranational law, namely Article 20 TFEU in conjunction with Article 24(2) of the Charter of Fundamental Rights of the European Union.

As recommendations for your Administrative Law Section of the Council of State, I would like to suggest the following:

- Conduct a thorough assessment of human rights in cases concerning foreign nationals and provisions;
- Put the interests of the child first, as required by the Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union;
- Assess proportionality and proportionality in all cases;
- Do not hesitate to set limits on administrative bodies that act in contravention of EU law and the General Administrative Law Act;
- Deal generously and kindly with requests for preliminary rulings;
- Provide clarity regarding duration of procedures;
- Put an end to the long-standing injustice suffered by the [redacted] family and proceed with compensation for damages.

Yours sincerely

[redacted]

Complaint 6

From: [redacted]
Sent: Wednesday, 21 April 2021, 10:23 a.m.
To:juridischereflectie@raadvanstate.nl
Subject: Injustice in immigration law regarding Khad-Wad/ 1F policy

[redacted]
Correspondence address:
[redacted]

Council of State
Kneuterdijk 22
2514 EN The Hague

[redacted]21 April 2021,

Dear Sir or Madam,

My name is [redacted], born on [redacted] in Kabul.
In 2000, I arrived in the Netherlands as a refugee together with my wife and children.
In 2010, my wife and children were granted residence permits and Dutch nationality.
However, I was not granted this right to reside in the Netherlands because, without any demonstrable evidence, but on the basis of suspicions, I was designated a war criminal and was therefore unjustly given 1F status.
Because I cannot accept this position and because I cannot accept that this status has been imposed on me based on falsehoods, I have therefore initiated legal proceedings to obtain my residence in the Netherlands. During my trial, I was assisted by solicitor [redacted].
During this trial, the IND and the Council of State upheld the KhAD/WAD official report of 29 February 2000 as an expert report.

Research conducted by Mr Joost Brouwer in 2018 and 2020 shows that this official report is (demonstrably proven) unreliable. There is more than ample evidence that the KhAd/WAD official report of 2000 is incorrect, yet the IND maintains the 1F objection and its consequences with tacit support. (see the attached appendix NJB articles)

Nevertheless, these findings by Mr Brouwer were dismissed during my proceedings.
The ruling was therefore to leave the Netherlands, and I was issued with an entry ban.
I am surprised that Mr Brouwer's findings were not taken into account.

The 1-F Unit refers in its 1-F policy to the seriousness of the crimes committed, but in my case these alleged crimes have never been proven by demonstrable evidence.
In addition, the 1F Unit never comes up with arguments in my favour.

The ruling of the Netherlands Rule of Law would therefore mean that I would have to leave my wife, my children and grandchildren who have built their lives in the Netherlands and would not even be able to return to see them. This ruling feels inhumane to my family and myself!
I now ask myself... where are my human rights?

In the Netherlands, according to the constitution, you are only punishable if there is evidence that a criminal offence has actually been committed. I have been punished on the basis of assumptions from unreliable sources in the Khad/WAD official report. Apart from this official report, there is no evidence that I am guilty.
And if I want to defend myself by demonstrating that this official report is not based on facts, using the findings of Mr Brouwer, these are not taken into account in the proceedings. So I have been granted 1F status, but I am not being given a fair chance to defend myself against this.

The stress I have experienced over all these years surrounding my proceedings and the fear of having to leave my family are not good for the health of my wife and me.
I am being treated by Dr [redacted] of the GGZ in [redacted] for numerous psychological complaints, high blood pressure, stress and other physical complaints. (see appendix)
My financial situation also leaves much to be desired. It is impossible for me to lead a normal life now that I am always dependent on the income of others.
It is a difficult and hopeless existence.

My wife lives in the Netherlands, as do my children and grandchildren, who speak Dutch and work hard for Dutch society. All these years, we have built our lives in the Netherlands in a proper manner. It is inhumane that you want to take me away from my family.

I would therefore like to ask you personally to study Mr Brouwer's documents more closely and to consider them as evidence in my recent legal proceedings in defence of my innocence regarding the KhAD/WAD official report.
In light of these findings, I would like to ask you to lift my entry ban and grant me valid residence in the Netherlands.
If, despite Mr Brouwer's new findings, you maintain that I am guilty of war crimes and I retain my 1F status, I consider this to be unjust and it appears that the Dutch legal system is not acting in accordance with the law. I will then inform the media and draw attention to questions surrounding this situation.

Many thanks,

Yours sincerely,

[redacted]

Complaint 7

Council of State
Administrative Law Section
PO Box 20019
2500 EA THE HAGUE

ALSO BY EMAIL:
juridischereflectie@raadvanstate.nl

[redacted], 23 April 2021

RE:
Legal self-reflection -[redacted]/Tax Department – Subsidies

Dear Sir, Madam,

You recently launched a legal self-reflection programme. As stated on the website (https://www.raadvanstate.nl/kinderopvangtoeslag/programma-reflectie/), this reflection also covers the following areas:

> The reflection also concerns other matters dealt with by the Administrative Law Section. It looks at other types of cases within the jurisdiction of the Administrative Law Section where citizens can get caught between the cogs of strict legislation and strict enforcement. Special attention is paid to laws without 'safety valves', such as hardship clauses. Suggestions from lawyers, ombudsmen, courts, academics, and others are being used. In addition, for some types of cases—also based on conclusions to be drawn by the Council of State's Advocate General—it will be examined how intensively administrative judges must review administrative measures. And what the significance of the principle of proportionality is in this regard."
>
> 'Part of the reflection also involves professional discussions about the tension between legal dependability (established principles in case law) and individual justice, about whether there are sufficient opportunities to challenge established principles, about the culture of dissent, and how to organize that dissent between Councillors of State and lawyers, who work on thousands of cases each year. In this part, too, use is made of the knowledge in this field on the side of other organizations and external experts."

§

We hereby provide our input, based on the situation of the [redacted] family.

The difficult situation concerns both immigration law and welfare benefits and subsidies, in light of EU law and human rights treaties, including the ECHR and the UNCRC [=UN Convention on the Rights of the Child]. The situation of this family is an example of what constricting legislation and enforcement can lead to, and also highlights how this affects other people.

Almost 25 years ago, Mr and Mrs [redacted] fled Afghanistan with their baby and came to the Netherlands! They were granted asylum (1998) and permanent residence permits, and five daughters were born afterwards. Since 2003, or from birth, the mother and daughters have had Dutch nationality. In 2000, an official report on Afghanistan stated that all officers and non-commissioned officers of the security service in Afghanistan were guilty of war crimes in the period 1987-1992. The father of this family, Mr [redacted], was also accused of this. He lost his right of residence and was designated a so-called '1-Fer'. It should be noted that he is probably the youngest or one of the youngest Afghans in the Netherlands to have been given this 'label', because he joined the service in 1986 at the age of 18 as an electronics repairman in order to fulfil his military service requirement.

1. Due to the application of Article 9 of the Awir [Income-dependent Regulations Act], the entire family does not receive healthcare allowance, housing benefit or child-related budget. As a result, they fall (well) below the minimum subsistence level. The mother received social assistance benefits as a single mother. The costs of rent, health insurance and food were not covered, let alone money for school trips or study weeks. In 2015, the allowance for single mothers on social assistance stopped and the family's budget became negative.

2. The official report of 29 February 2000 on the Afghan KhAD and WAD was used as the basis for a number of 1F objections that caused very distressing suffering to the individuals affected and their families, very similar to the suffering of the victims in the childcare subsidy scandal.

Everything depended on the official report from 2000, while the accuracy of that official report is highly debatable (see the two NJB articles)[11] . The Netherlands is the only country that has this policy and the application thereof. Although it has been substantiated in every possible way, very extensively, why father Afghamir did not commit any crimes, this is not being considered.

Further explanation of the actions and attitude of the IND and the Council of State, and the disastrous consequences for the family, can be found in the attached letter dated 3 March from the support group for the [redacted] family. This support group is in close contact with the family, the lawyers and the municipality o f [redacted]. The unjustified principled stance taken by the IND and the Council of State has also caused hundreds of other families of Afghan origin in the Netherlands to suffer greatly, and continues to do so.

3. In 2016, father [redacted] submitted a renewed asylum application, partly on the grounds of his conversion to Christianity. This conversion was ultimately recognised by the IND after it was deemed credible by the court. Due to the threat of a violation of Article 3 of the ECHR, father cannot return to Afghanistan.

The IND, which according to Article 2:4 of the General Administrative Law Act must perform its duties without bias, only presents arguments to the detriment of the XXX family and refuses to acknowledge facts in favour of the family and to collect and consider all relevant information in accordance with Article 3:2 of the General Administrative Law Act.

The IND appears unable to reconsider its position, does not comply with EU law and attempts to undermine it. After the appeal lodged by the [redacted] family was upheld, the IND did not revise its decisions but instead lodged an appeal. As a result, the family remains in limbo for even longer.

Meanwhile, Mrs [redacted] has left for Germany in despair and Mr [redacted] is left alone with one of the children in the house. The family has been damaged forever and can only be together at weekends. Their very distressing situation has been going on for 18 years, a whole childhood. The oldest children are now adults. The younger children miss their father and their education and future are uncertain because they do not know whether this will be in Germany or the Netherlands. They have suffered a great injustice, the negative consequences for their mental health have been ignored, their interests have not been taken into account and have certainly not been the primary consideration.

Further explanation of the actions and attitude of the IND and the Department, and the disastrous consequences for the family, can be found in the attached letter dated 3 March from the support group for the [redacted] family. This support group is in close contact with the family, the lawyers and the municipality of [redacted].

11 See, among others, https://www.njb.nl/blogs/waarom-het-khadwad-ambtsbericht-van-29-februari-2000-onjuist-en-onbetrouwbaar-is-uitgebreide-versie/ and https://njb.nl/blogs/het-khad-wad-ambtsbericht-deel-2/

For your information, a letter from the council of the PKN Reformed Congregation church in [redacted] has also been enclosed, which was also sent to the Council of State.

4. There is no clarity for the family as to when your Concil of State will issue a ruling in the current appeal case, so the uncertainty continues. In addition, after all the terrible experiences of the past nearly 20 years, the family has virtually lost all confidence that justice will ever truly be done.
However, now that it has recently become apparent that this kind of 'unprecedented injustice' is ultimately unacceptable, there is still some hope.

As recommendations for your Administrative Law Division of the Council of State, I would like to suggest the following:
- Put the interests of the child first, as required by the UNCRC and the Charter of Fundamental Rights of the European Union;
- Assess proportionality and proportionality in all cases;
- Assess the accuracy of the official report from 2000 (see the two NJB articles)[12] and assess the accuracy or otherwise of the actions of the government and the Council of State in this group of cases;
- Ensure that expert statements are taken seriously (e.g. statements from child psychologists and health psychologists, church councils, the Plaisier Committee, etc.), as these bring the 'human dimension' into focus and expertise is sometimes lacking (in this case at the IND).
- Ensure that statements from other authorities (e.g. statements from the mayor) are taken seriously, as Bosman puts it: "A civil servant must serve society and not his minister; the people at the counter are more important than politicians in The Hague."
- Ensure that a culture of 'befehl ist befehl' [orders are orders] does not develop within the various executive bodies and that only civil servants remain who, in combination with professional deformation, no longer have any regard for the human dimension;
- Provide clarity regarding procedural duration (including your Council of State);
Put an end to the prolonged injustice suffered by the [redacted] family and proceed with compensation for damages.

Yours sincerely

[redacted]

[redacted], [redacted], [redacted]

Annex:
Letter from the Support Group for the [redacted] family, dated 3 March 2021
Letter from PKN Reformed Congregation [redacted], dated 3 March 2021

12 See, among others, https://www.njb.nl/blogs/waarom-het-khadwad-ambtsbericht-van-29-februari-2000-onjuist-en-onbetrouwbaar-is-uitgebreide-versie/ and https://njb.nl/blogs/het-khad-wad-ambtsbericht-deel-2/

Complaint 8

From: [redacted]
Sent: Saturday, 24 April 2021, 20:39
To:voorlichting@raadvanstate.nl
Subject: immigration law, background information for Mr Ettekoven

Dear Mr B.J. van Ettekoven

Perhaps a little late, but here is a response from the field regarding the distressing tensions surrounding the role of the Council of State (Administrative Law Section) in immigration law in relation to the principles of the rule of law. An appendix provides a practical description of how things can go wrong. It concerns the application of the 1F status of Afghan refugees.

It is striking that the 1F Unit has never, or almost never, come up with arguments in favour of a man with a 1F stamp on his own initiative. It is also striking that 1F Unit far too often, almost always, talks about the seriousness of the crimes committed, while it has not been proven at all that the person concerned actually committed the alleged crimes.

Hence the title of my appendix: The systemic errors of the 1F policy.

I hope this will help to provide more insight into the practical implementation of the policy of the Administrative Court.

Yours sincerely,

[redacted]

The systemic flaws of the 1F policy

1. The 1990s: large numbers of people (including Afghans) flee to the Netherlands. The government's legitimate fear is that among the refugees are people who have committed human rights violations, among other things. How do you prevent these people from obtaining status in the Netherlands?
2. The idea was to use Article 1F of the UN Convention on the Status of Refugees, which was adopted shortly after the war. This article stipulates that no country is obliged to grant asylum to war criminals. Rightly so! This article was still influenced by the recent experience of SS members fleeing Nazi Germany to South America, among other places. That might have helped to keep Afghan criminals out.
3. But how do you select the criminals from among thousands of fleeing people? To this end, a method was sought to circumvent the normal obligation under our legal system to accuse someone through regular criminal proceedings, then conduct a (police) investigation and then, via the Public Prosecutor, bring the person in question before the court, which then issues a ruling. Here, the government has started to mix administrative law/immigration law with penal law. What has been done?
4. On 29 February 2000, an Official Report was issued by the Ministry of Foreign Affairs, which became controversial almost from the outset and remained so among national and international (UN) bodies. Why was that? In short, a legal construct was built which essentially meant that all Afghan (non-commissioned) officers (but also civilians!) who had worked for the Afghan secret service were deemed to have participated in human rights violations, torture, murder, etc., and if they had not participated (directly) themselves, they must have known enough about it to be equally guilty. Numerous studies (in particular two articles in the Dutch Law Journal by Brouwer and Bogaers, but also criticism from, for example, the UNHCR) show

that this official report does not meet reasonable standards of quality and transparency. See the appendix at the bottom of this document**.** For the government, this official report offered the opportunity to refrain from any investigation into individual guilt and to collectively refuse asylum to a large group of people.

5. What is the legal situation? The principle of our rule-of-law state is that a person is innocent of any crime until a court ruling has established that he is guilty. After 2000, hardly any serious attempts were made to investigate individual guilt. Even in 2011, it could not be established that a former general from Afghanistan was guilty of human rights violations. What about all the other officials (often civilians) from that ministry? [redacted] from Afghanistan was one such civilian official. So what is happening legally is that immigration law is being used/abused to punish people who have not been individually accused of human rights violations by denying them the right to asylum. I have been assisting [redacted] for years in his journey through the procedures.
6. The human dimension of this is that several hundred families have been plunged into misery because one of the family members, usually the father, has been wandering around the Netherlands for many years without any rights whatsoever. They are not allowed to work, they have no identity (BSN) [=social security number], so they cannot insure themselves, not even against medical expenses. In short, they are undesirable foreigners against whom no formal individual objection has ever been raised, but who are collectively suspected (and nothing more than that) of serious crimes through a political-legal construct.
7. On 28 October, however, following an appeal in cassation by human rights lawyers and an Afghan man with 1 F status, the High Court ruled that individuals, against whom a general suspicion has been raised on the basis of the Official Report of 29 February 2000, may indeed submit evidence of their innocence. [redacted] from [redacted] has provided evidence of his innocence by means of an original statement from the Afghan authorities, legalised by the Ambassador of Afghanistan. He had already done this previously (around 2005), but at that time the original version had been lost by the Afghan Embassy in the Netherlands. The fax copy that was made of it was rejected by the IND as 'just a copy'. According to the IND, such statements could be bought on any street corner in Kabul if you had enough money. However, this claim has never been proven. Now that [redacted] has submitted a new asylum application, this exculpatory statement will play a central role in the further decision-making process.

For connoisseurs, there are of course the two articles from the Juristenblad [Netherlands Law Review], but for the quick reader, below is a brief summary of the conclusion that must be drawn about this system, which is fundamentally contrary to the Dutch Constitution and other laws. Until now, judges have not dared to deal with the substance of the 1F policy. Why not? Mainly, but not exclusively, because this official report is constantly assessed by judicial bodies as being an expert report that judges would do well not to touch.
The fact that it is not illogical to critically re-evaluate the Official Report of 29 February 2000 is also evident from a remark made in passing by the Vice-President of the Council of State, Mr Th. De Graaf, in his letter of 10 August 2020 to me as counsel. If he had been convinced that the official report was sacrosanct, he would certainly not have referred to these articles in the NJB [Netehrlands Law Review]. It is, of course, clear that, from his positio,n he cannot/may not intervene in this discussion.

[redacted], 21 October 2020
Mr [redacted]

Below are three appendices:

1. Letter to the Vice-President of the Council of State from [redacted] [the writer of this submission]
2. Letter from the Vice-President of the Council of State to [redacted] [the writer of this submission]
3. A brief summary of the conclusions of the investigation by the authors of the aforementioned NJB articles.

Conclusions of the Nederlands Juristen Blad [Netherlands La Review] article of 1 May 2020:

The KhAD-WAD official report part 2: politicians continue to violate the rule of law with regard to this official report

The NJB article of 20 April 2018 mentioned in the introduction demonstrates that:

- The KhAD-WAD official report of 29 February 2000 is based on
  - a biased selection of sources;
  - selective use of evidence;
  - a distortion of facts;
  - and what can be seen as fraud with regard to the so-called international support for the conclusions of the official report.

Subsequently, none of the facts presented in that article have been refuted by anyone.

The following has been added to this article:

- In their answers to parliamentary questions on 22 May 2018, the responsible ministers misled the House on essential points.
- The Ministry of Foreign Affairs has acknowledged that there is no international support for the accusatory conclusions in the KhAD-WAD official report, support that was so important in making the conclusions of the official report acceptable. All previous and more recent claims by the minister about the existence of such international support have therefore been refuted. No evidence was ever provided for the existence of such international support.
- The Ministry of Foreign Affairs has acknowledged that the statements from confidential sources do not exist, statements on which the accusatory conclusions in the official report were entirely dependent.
- In 1999-2000, the Ministry of Justice actively interfered with the content of what should have been an independent official report, an interference about which neither the Ministry of Justice nor the Ministry of Foreign Affairs is willing to provide details.
- In 2000, the Ministry of Justice failed to fulfil its legal obligation to ascertain the care with which the investigation for the KhAD-WAD official report was or was not carried out.
- The ministers responsible continue to refuse to address the facts that demonstrate the inaccuracy and unreliability of the KhAD-WAD official report and, if they do come up with arguments at all, they only offer counterarguments that can easily be refuted. In doing so, they knowingly persist in maintaining and using what has been proven to be a false document.

What more do politicians and the judiciary need to recognise that the KhAD-WAD official report of 29 February 2000 is indeed incorrect and that this official report must be withdrawn in order to stop the suffering that has been and continues to be inflicted on the victims of this incorrect official report?

Complaint 9

From: [redacted]
Sent: Saturday, 22 May 2021, 14:58
To: [redacted] [and via this to <juridischereflectie@raadvanstate.nl>
Subject:

Afghan Association [redacted]
Address: [redacted]
[redacted]
Chamber of Commerce: [redacted]
Email: [redacted]
Telephone: [redacted]

For the Legal Reflection Council of State,

The way KhAD-WAD 1F individuals have been treated for the past 20 years is similar to how the victims of the childcare subsidy scandal have been treated: (the family of) a KhAD-WAD 1F individual often has a low income; the 1F individual themselves does not have Dutch nationality and access to justice is difficult. The government's distrust of these people is far too great – all evidence to the contrary of the 1F objection is ignored – and that distrust has far-reaching consequences.
There is more than ample evidence that the KhAD-WAD official report from 2000 is incorrect, yet the IND, with the tacit support of the Council of State, maintains the 1F objection and its consequences.
The families of KhAD-WAD 1F persons are being unjustly hit hard financially, especially if the father is staying in the Netherlands because he simply cannot safely return to Afghanistan.

Kind regards,

[redacted]
President [redacted]