

Reorganizing the provision of social support to homeless aliens in the Netherlands

A Bourdieusian perspective on the meaning of aliens' welfare rights

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Master thesis Human Geography

Globalisation, Migration and Development

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Supervisor: **Dr. Roos Pijpers**

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All people are equal, but some people are more equal than others

Preface

This thesis is the conclusion of the Human Geography master programme at the Radboud University of Nijmegen. Although the research and writing process took longer than expected, I am satisfied to conclude this study and to present the resulting thesis.

Doing this research has been a personal challenge. Although I enjoyed unravelling the complex issue central to this thesis, I did experience various difficulties in the writing process. Still, both the experience of working hard to achieve good results and the sadness and tiredness with each failed attempt have been valuable to me. Those experiences have taught me that you can conquer adversity if you persevere and believe in your abilities. It was hard work, but worth it at the end.

I would not have been able to finish this project without the support of various individuals. Therefore, I would like to end with some words of thanks.

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Enjoy reading,

Mandy Schapendonk

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List of Abbreviations

Abbreviation	Full name (in English)
AZC	Asielzoekerscentrum (Asylum Seekers' Center)
BMA	Bureau Medische Advisering (Medical Advice Bureau)
BS-procedure	Buitenschuld-procedure ('No-Fault'-procedure)
CEC	Conference of European Churches
COA	Centraal Orgaan opvang Asielzoekers (Central Agency for the Reception of Asylum Seekers)
CoM	Committee of Ministers
CrvB	Centrale Raad van Beroep (Dutch Central Appeals Tribunal)
DT&V	Dienst Terugkeer en Vertrek (Repatriation and Departure Service)
ECHR	European Convention of Human Rights 1950
ECSR	European Committee for Social Rights
EctHR	European Court of Human Rights
ESC	European Social Charter 1996
FEANTSA	European Federation of National Organizations working with the Homeless
GOL	Gezinsopvanglocatie (Family Reception Centre)
iMMO	instituut voor Mensenrechten en Medisch Onderzoek (Netherlands Institute for Human Rights and Medical Assessment)
IND	Immigratie- en Naturalisatie Dienst (Immigration- and Naturalisation Service)
INLIA	Internationaal Network van Lokale Initiatieven ten behoeve van Asielzoekers (International Network of Local Initiatives for (the benefit of) asylum seekers)
JB-field	Juridical-bureaucratic field of alien law
LOGO	Landelijk Overleg Gemeentebesturen Opvang- en terugkeerbeleid (National Consultation Municipalities Reception- and Return policy)
MOO	Medisch Opvangproject Ongedocumenteerden (Medical reception project for Undocumented people)
NGOs	nongovernmental organizations
Rva	Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 (Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2005)
Rvb	Regeling verstrekkingen bepaalde categorieën vreemdelingen 1998 (Specific Categories of Aliens (Provisions) Regulations 1998)

RvS	Raad van state (Council of State)
VBL	Vrijheidsbeperkende Locatie (Freedom-Restricting-Location)
VNG	Vereniging van Nederlandse Gemeenten (Association of Dutch Municipalities)
Wmo	Wet maatschappelijke ondersteuning 2014 (Social Support Act 2014)
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum (Research and Documentation Centre)

1. Introduction

In this chapter, the current study will be introduced. First, the project framework of current study will be discussed. Second, the focus of the current study will be discussed. Third, the research purpose and -questions will be discussed. Fourth, the scientific- and social relevance will be discussed. Finally, the outline of the study will be discussed.

1.1 Project framework

In the European Union, irregular migrants and asylum seekers are increasingly excluded from social welfare entitlements by rigid laws. Inspired by the need to control, and increasingly faced with difficulties in controlling its external borders, states of the European Union do not only create borders on the outside, but also on the inside. Through social welfare policy, European states simultaneously engage in practices of inclusion and exclusion. On the one hand, the social welfare system is used to enforce social security law. That is, it functions to promote general well-being by, at least, ensuring minimal standards of living to individuals. On the other hand, the social welfare system is used to enforce alien law. By relating right of residence to entitlements to social welfare benefits the social welfare system functions to discourage entry into- and promote removal from the state's territory of migrants without a right of residence (Vonk, 2002).

According to Abramovitz and Blau (2004, 39) '[t]he welfare state is an arena of social, economic, and political struggle...[in which agents try] to resist, challenge, and change power relations that shape the prevailing status quo'. In this context, the interaction between alien law and social security law is challenged. Although states under international law, on the basis of their national sovereignty, have the right to control the entry, residence and expulsion of migrants, the question remains whether this right justifies the practices and policies of exclusion those states currently employ. Many have questioned whether states' practices and policies excluding migrants from social welfare entitlements are in violation with international human rights law (Rubio-Marin, 2014; Spijkerboer, 2013; Di Pascale, 2014).

Hence, there exists, to some extent, a tension between the aims and objectives of the national legal system and the international legal system with regard to immigration (White, 1999). More specific, there exists a tension between the right to exclude and the obligation to respect human rights. On the one hand, the state is presupposed to have the right to control immigration into its territory. Consequently, the state is presupposed to have the right to exclude individuals by enacting alien law. On the other hand, individuals are presupposed to hold certain rights in virtue of being human. Those rights are protected by international human rights law. Consequently, the state

is presupposed to have the duty to fulfil its obligations under international human rights law. The question remains where the balance is to be drawn between the right to exclude and human rights obligations lies (Di Pascale, 2014).

Under those circumstances, various struggles over the logic of immigration law take place at different levels. Both the law itself and its implementation form sites of struggle in which different agents try to change the interaction between immigration- and social security law (Guiraudon, 2000; Guiraudon and Lahav, 2006). Those struggles are reflected in both social welfare policy and – practices. On the national level the result of this struggle is reflected in the organization of the provision of social support to migrants. The organisation of the provision of social support to migrants within a state's jurisdiction thereby reflects a practice of exclusion and inextricably also inclusion.

The exclusion of migrants from entitlements to social welfare benefits is most notably challenged by interventions of the courts and bureaucracies (Guiraudon, 2000; Guiraudon & Lahav, 2006). Although related, interventions of the courts mainly challenge the legal position of migrants under social security law, while bureaucracies mainly challenge the actual access they have to social support.

1.2 Focus of the current study

In current study, the focus will be on the struggle between the national government, municipalities and nongovernmental organizations [NGOs] over the logics of alien law, that is immigration law, in the Netherlands. The Netherlands is one of the states in which the interaction between alien law and social security law is heavily challenged. In particular, it is challenged to what extent not having a (specific form of) right of residence justifies the withholding of social-economic rights. Debate on this issue makes the making- and implementation of alien law in the Netherlands sites of struggle. In those sites different agents try to give meaning to alien law. That is, they try to define what it means to have either a right to exclude or social-economic rights.

The struggle in the Netherlands is mainly informed by the situation of homeless aliens. In the remainder of this study, as will be explained in Chapter 2, the term aliens will be used to refer to migrants. At heart of the struggle in the Netherlands is the question whether not having a (specific form of) right of residence justifies the situation of homeless aliens. Municipalities and NGOs are structurally confronted with homeless aliens who have neither been legally admitted to the Netherlands nor have realized return. The situation of homeless aliens results in emergency situations at the local level. Those emergency situation do not only have negative consequences for the aliens themselves, but also for society in terms of risks to the public order and –health. However,

due to the workings of the Linkage Act of 1998 which relates right of residence to social welfare entitlements, homeless aliens do not have right to social support of the national government. Moreover, while social support policy is under their responsibility, the same act forbids municipalities to provide those people social support. Consequently, while homeless aliens find themselves in a distressing situation, they have no right to protection of the state.

The struggle over the logic of alien law is however not just a juridical one. Instead, the meaning agents attribute to alien law is reflected in their actual practices. Those practices, in turn, influence the spaces in which homeless aliens live. Motivated by different interests several agents try to challenge the status quo by making use of their specific power resources. To give some examples: several municipalities, contrary to an agreement with the national government, and many NGOs do provide social support to homeless aliens; lawyers in individual cases force the national government or municipalities to provide social support to homeless aliens by going to court; and medics carry out medical examinations of homeless aliens with serious medical problems and thereby support them in obtaining a right of residence. By those acts of resistance, those agents do not only challenge the Linkage Act and alien law, but also directly influence the lives of homeless aliens.

The struggle over the logics of alien law takes place at two interrelated domains. On the one hand, the struggle takes place within- and between governmental agents. It takes place between policy-making and policy-implementing agents across government layers. In this respect, in particular municipalities challenge national policy. While the national government is responsible for alien policy, municipalities are responsible for social support policy. In this framework, the national government justifies the exclusion of aliens from social support through the Linkage Act in the framework of alien policy and municipalities justify the provision of social support to aliens in the framework of social support policy (local responsibilities). Municipalities argue that they, given their local responsibilities for public order-, -safety and -health, cannot withhold homeless aliens access to social support provisions.

On the other hand, the struggle takes place in courts. By appealing to international human rights law, lawyers challenge national alien law. In recent years, the Dutch Central Appeals Tribunal already obliged municipalities to provide social support to homeless aliens in individual cases. Recently, at July 1, 2014, the European Committee for Social Rights [ECSR] ruled that the Dutch state violates its obligations under international human rights law by not providing basic social support to homeless aliens. Referring to this decision, the Dutch Central Appeals Tribunal and the Council of state in January 2015, by temporary disciplinary measures, decided that both the national government and municipalities are obliged to provide basic social support to homeless aliens. Those recent decisions have intensified the struggle over the logic of alien law. They have strengthened challengers in their belief that not having a (specific form of) right of residence cannot justify the

situation of homeless aliens and thereby have strengthened the call for change.

1.3 Research objective and -questions

The objective of this research is to provide recommendations to the agents involved in the provision of social support to homeless aliens on how to improve the organization of those provisions. This objective will be achieved by unravelling and interpreting the struggles between the national government, municipalities and NGOs over the logic of alien law in the Netherlands. The adopted research approach, grounded in the field theory of Bourdieu, is threefold: explain the situation of homeless aliens, explore suggested solutions to this situation and explore whether and how those solutions actually can be mobilized. This approach needs some explaining.

Underlying idea of this approach is that there are reasons why the current situation is as it is. That is, why alien law related to homeless aliens has not substantially changed despite many years of contestation. The making and implementation of alien law is not a neutral activity. Instead, it is an activity in which different agents try to define its meaning. They try to do so by imposing certain 'categories of thought' upon alien law. For example, agents explain the situation of homeless aliens in different ways and thereby differently construct the deservingness of homeless aliens. Whereas agent A may believe that the situation of homeless aliens is the result of failing alien policy, agent B may believe their homeless situation is a consequence of their own actions. Accordingly, agent A will construct homeless aliens as being deserving of social support whereas agent B will do the opposite.

In the struggle for defining the meaning of alien law agents do not possess equal power resources, which are needed to impose certain categories of thought. Power resources are valued differently in different areas and depending on their valuation grant their possessor a different position in the power hierarchy characteristic of that area. For example, while juridical knowledge is valuable in court, it is not so valuable on the sports field. Hence, a jurist will have a better power position to influence the activity central in court than the activity central to the sports field.

By the same token, an agent holding the power resources valued most in the area of alien law will have a dominant position in its power hierarchy and therefore will have most power to impose his meaning on alien law. That is, in the current study, to influence the way in which is dealt with homeless aliens. In this process of domination, the power resources of dominated agents will be devaluated, their power position in the hierarchy will worsen and thereby their power to influence the way in which is dealt with homeless aliens will decrease as well. Under those circumstances, in which dominant agents have the most power to influence the situation, power hierarchies tend to reproduce themselves and situations tend to remain unchanged. Following my earlier example, a dominant position of agent B will result in a situation in which alien law related to homeless aliens is

exclusive and in which agent A, under the assumption that agent A does not possess the highly valued power resources of agent B, will have little power to challenge the situation.

Taking all the above into account, in order to explain why the situation is as it is, one needs to unravel the dominant and dominated meanings of the different agents involved and explain how some 'voices are turned into noises'. That is, explain how some meanings dominate others. By reconfiguring the 'givens' of a situation, the way in which that situation is presented affects the ways in which claims are heard. Some claims then are no longer heard as 'voices that question the order of things, but as noises that disturb the established order' (Dikeç, 2004, 205). Lastly, in order to provide recommendations on solutions that actually 'mean' something for the agents involved, one has to look for solutions which are grounded in the categories of thought and practices of the agents involved. That is, one needs to discern possibilities to turn 'noises into voices'. As Nicholls (2013) argues, noises can only become voices again if they somehow comply with the rules of the game.

Under those circumstances, it is unrealistic to provide recommendations targeting at achieving equal social-economic rights for aliens and citizens. Those kind of recommendations will not be of any use to the agents involved, since their implementation would require a dramatic- and therefore unlikely transformation of existing power hierarchies. Still, the current study will not totally disregard the ideal of social justice. That is to say, current study will aim to contribute to social justice by providing recommendations targeting at achieving *more equal social rights for aliens and citizens*. The latter is in line with the Bourdieusian thought applied in the current study according to which social scientist can help to bring about social justice by demonstrating the arbitrariness of domination and providing dominated agents means to challenge this domination.

The main question of this research is:

How is the provision of social support to homeless aliens organized in law and practice and how could it be improved?

This research question will be answered by addressing the following sub-questions:

1. In which way the provision of social support to homeless aliens is organized in law and practice?
2. How do some meanings on the provision of social support to homeless aliens dominate others?
3. In which way and by what meanings the dominant meaning is challenged?
4. What room for change can be discerned?

1.4. Scientific- and social relevance

The current study is both socially- and scientifically relevant. In immigration literature, the interaction between state policies, mostly studied by political scientists, and migratory dynamics and -strategies, mostly studied by social scientists, tend to be overlooked (Guiraudon & Lahav, 2006; Vonk, 2002). Moreover, as Guiraudon and Lahav (2006, 208) argue, 'little attention has been given to the variety of agents and venues where immigration policy is shaped, elaborated and implemented'. While attention has been given to the role of international agents, scholarship on immigration is inconclusive with regard to the role and nature of domestic agents, like courts, bureaucracies and street-level bureaucrats, on national policy. This is problematic, because in particular interventions by the court and bureaucracies do mediate the outcomes of alien law. Therefore one should not only look to the law, but also to the context in which law is enacted.

Moreover, in both immigration- and public policy literature policy implementation is often a missing variable. This is problematic since policy implementation mediates the effects policy has on the ground. In this respect, in particular bureaucracies are relevant. Policy elaboration and implementation functions have been delegated to non-central state agents. Those implementing agents may have different interest than policy-making agents and therefore may not always be willing to enforce policy. Especially when it concerns agents whose prime function is not related to alien policy, 'agents may not always find it in their interest to comply' (Guiraudon and Lahav, 2006, 215). In the implementation process, factors like the use of discretionary power, the relative autonomy from outside pressures and the use of international negotiations do matter. Under those circumstances, policy outcome is the results of various struggles (Guiraudon and Lahav, 2006). Consequently, it is important to understand the degree to which various political agents have convergent interests, the relative autonomy bureaucracies have in relation to their 'principals', the way in which 'implementors' make use of their autonomy, the way in which they interpret and apply immigration regulations and the values that guide their actions (Guiraudon and Lahav, 2006; Guiraudon, 2000).

Taking the above into account, current study is scientifically relevant for various reasons. First, the current study will underline the need to close the gap between the discipline of political science and social science on migration issues by demonstrating that alien policy is actually challenged by domestic agents on the ground that it is too far removed from migratory dynamics and -strategies. Second, the current study includes the influence of both international- and domestic agents on alien policy and even relates domestic agents to international ones. For example, in current study it is considered how domestic agents like municipalities and NGOs make use of decisions of international courts in challenging alien policy. Third, the current study includes the

onderscheidenvARIABLE of policy implementation. It considers the way in which, in particular, municipalities challenge and counter national policy. As will be demonstrated, municipalities do not always find it in their interest to comply to national policy and make use their autonomy to resist national policy. Last, by the above contributions, the current study also provides insight in the interplay between local-, national- and international 'legal' systems and the interplay between policy-making and policy-implementing (governmental) agents.

The current study is also socially relevant for various reasons. First, it can contribute to reducing the implementation deficit of alien policy. The situation of homeless aliens can, at least in part, be explained by the failure of alien policy. Second, it can contribute to reducing aliens' homelessness. Third, it can contribute to a better understanding of the interplay between- and within governmental agents in the implementation of contested policy. Last, it can provide dominated agents, striving for more equal social-economic rights for aliens and citizens, the means to challenge the status quo. That is, it can provide dominated agents the means to challenge the valuation- and arbitrariness of dominant power resources and can thereby support them in improving their power position.

1.5 Outline of the study

In Chapter 2, the link between alien- and social security law will be explained. The concepts of 'aliens' and 'social support' will be defined and those concepts will be related in the context of the European welfare state to explain the link between alien law and social security law. This chapter will provide insight in the legal position of aliens under 'European' social security law and thereby will help to put the struggle over the provision of social support to homeless aliens in the Netherlands into perspective.

In Chapter 3, the field under study will be theorized and conceptualized. In this chapter the lens through which the struggles over the provision of social support to homeless aliens in the Netherlands will be analyzed, is constructed.

In Chapter 4, the research strategy and -methodology will be discussed. Besides discussing the research approach and methods of data-collection and -analysis, this chapter will also discuss the limitations of the current study.

In Chapter 5, (the organization of) the provision of social support to homeless aliens in law and practice will be discussed. In this chapter, an answer will be formulated to the first sub-question of this research, respectively 'in which way the provision of social support to homeless aliens is organized in law and practice?'. In this chapter, the focus is on describing how the current situation looks like.

In Chapter 6, the struggle over the provision of social support to homeless aliens will be analyzed through the lens constructed in Chapter 3. In this chapter, the focus is on explaining how some 'voices are turned into noises' and discerning possibilities to 'turn noises back into voices'. Three sub-questions will be answered in this chapter, respectively 'how do some meanings on the provision of social support to homeless aliens dominate others?', 'in which way and by what meanings the dominant meaning is challenged?' and 'what room for change can be discerned?'.

In Chapter 7, the main findings of the study will be synthesized in order to answer the main research question, respectively 'How is the provision of social support to homeless aliens organized in law and practice and how could it be improved?' In this chapter, also the significance of the results and some recommendations for further research will be discussed.

2. Linking alien- and social security law

In this chapter, the link between alien law and social security law will be explained by defining the concepts of 'aliens' and 'social support' and relating those concepts in the context of the European welfare state. This chapter will provide insight in the legal position of aliens in 'European' social security law and thereby will help to put the struggle over the provision of social support to homeless aliens in the Netherlands into perspective.

First, the concept of aliens will be introduced (2.1). Second, the concept of social support will be introduced (2.2). Third, the provision of social support through social welfare policy in the context of the European welfare state will be discussed (2.3). In this section, particular attention will be given to two understandings of social welfare policy. Fourth, the concepts of aliens and social support will be related in the context of 'European' social welfare policy to establish the link between alien law and social security law. That is, the development of the legal position of aliens under social security law will be discussed (2.4). Last, the main findings of the chapter will be summarized (2.5).

2.1 Aliens

In this section, the concept of aliens will be defined. First, it will be explained why alternative notions of aliens are not used in this study. Second, based on some categorizations of aliens, the notion of 'aliens' as used in the current study will be defined.

Since there exists no consensus in literature over which notion should be used to refer to aliens, it is useful to motivate why some alternative notions are not being used. First, the notion of 'undocumented immigrant' could have been used. This notion refers to immigrants who do not have legal papers. However, not all immigrants who are residing within a state's territory without the state's permission are in fact undocumented.

Second, the notion of 'illegal immigrant' could have been used. This notion is used to describe immigrants who have entered into- or are staying within a state's territory without the state's permission. Those immigrants do not or no longer hold a right of residence or, in other words, a legal status (Paspalanova, 2008). The descriptor 'illegal' in this notion is often used interchangeably with descriptors like 'unauthorized' or 'unofficial' (see for example Newton, 2008).

One could argue on two grounds that this notion is the most appropriate to use. First, because the notion is widely used in official reports, journalistic accounts and academic research, one should 'go with the flow' and thus use this notion. In other words, because the notion is popular in public- and political debate, one should use it in order to link up scientific research with those debates. Second, because it is precisely this illegality which is perceived to rise to certain issues. Most

notably, illegal immigrants do not have entitlements to social welfare benefits, exactly because they are 'illegal' (Black, 2003).

However, both arguments are problematic. As Paspalanova (2008) argues, it could be questioned whether it is correct to allow the media's- and political preferences, stimulated by public opinion, to determine the terminology in academia. Allowing this would presuppose that media and politics are unbiased. Moreover, an illegal immigrant is only 'illegal' because he is made illegal by state action. That is, by the state not granting a right of residence to the immigrant. Furthermore, in popular language the adjective 'illegal' describes actions or things and not people (Paspalanova, 2008). In popular language 'illegal' is defined as 'not allowed by the law' (Oxford Advanced Learner's Dictionary, z.j.) or 'contrary to or forbidden by law' (Oxford Dictionaries, z.j.). Consequently, the use of the adjective illegal in relation to immigrants gives rise to the suggestion that those immigrants themselves are illegal. In fact, the act of entering into- or staying within a state's territory without the state's permission rather than the immigrants themselves is illegal. Hence, the adjective illegal cannot be used to refer to a person. It follows from the above that both the notion of 'illegal immigrant' and of 'undocumented immigrant' are misleading. They suggest that aliens either are illegal individuals or are not having any legal papers.

In the current study, it is not relevant to look exclusively at 'illegal' or 'undocumented' immigrants. Instead, it is relevant to look at homeless aliens. In this study, homeless aliens are understood as immigrants who reside within the state's territory and who are not entitled to governmental social support under alien law. In the remainder of this study, the notion of 'homeless aliens' will be used to refer to those people. Homeless aliens can either have or not have a right of residence. Moreover, those people can either have or not have legal papers. In the current study, the notion of 'irregular aliens' will be used to refer to aliens without a right of residence, whereas the notion of 'regular aliens' will be used to refer to aliens having a right of residence. When discussing alien law or –policy in general, that is without referring to any specific group of aliens, the notion of 'aliens', without any adjective, will be used. The notion of 'aliens' refers to all aliens residing within the state's territory without a residence permit. Aliens are not entitled to social support in the same way as citizens, but can be entitled to some form of governmental social support depending on their right of residence.

Aliens are not a homogeneous group of people. Aliens can be categorized among a variety of lines, of which some will be mentioned. First, aliens can either have or not have a right of residence. Being in a residence procedure does not grant aliens a right of residence per se. Whether it does mainly depends on the type of procedure and the stage of proceedings. Aliens can be in different residence procedures, most notably 'asylum procedures' and 'regular procedures' (e.g. family reunification), and can be in different stages of legal procedures, most notably the stage of

application, review and (further) appeal. Moreover, over time aliens can 'shift' in legal status as well as in legal procedure. For example, when the state rejects a residence application of an alien, this alien will lose his right of residence. However, by submitting an appeal or starting another type of residence procedure the same alien may reacquire a right of residence. Still, although aliens over time may have different legal statuses, the status as alien remains unchanged (White, 1999).

Second, aliens can have entered the Netherlands in different ways. Based on the way of entry, three groups of aliens can be distinguished. The first group consists of aliens who have entered the Netherlands in a legal manner (via a residence procedure) and became irregular (lost their right of residence) at a later stage. Those immigrants have entered the Netherlands via the regular admission procedure and have become irregular because they do not longer fulfil the conditions for regular residence. For example, they become irregular by overstaying their temporary visa. The second group consists of aliens whose asylum application is rejected. The third group consists of migrants who have entered the Netherlands in an irregular manner (Kamerstukken II, 2003/04, 29537, no. 2).

Third, aliens can come from different countries of origin. Beenackers, Kromhout and Wubs (2008) categorize aliens as European or non-European. Citizens of the member states of the European Union residing in the Netherlands almost always have some right of residence. Another way to categorize countries of origin is by distinguishing between stable- and unstable countries or safe- and unsafe countries. Whether an alien is coming from an unstable- or unsafe country may influence his chances to get a residence permit (Bouter, 2013).

2.2 Social support

In this section, the concept of social support will be elucidated. First, based on two categorizations, the notion of social support will be introduced. Second, the main benefits of social support will be discussed. Third, some differentiation in social support benefits will be discussed. Last, the notion of social support will be defined.

According to Taylor (2011, 189) social support 'is the perception or experience that one is cared for, esteemed, and part of a mutually supportive social network'. Social support consists of 'supportive contacts with others, a sense of belonging or mattering to others, and participation in social groups' (Taylor, 2011, 207). Social support arises from the conduct of social relationships. The supportive resources provided by social support, then, are supposed to 'flow' through the ties of the social network of an individual. Social support can be categorized in various ways (see for example Basham, Henry, Sarason & Sarason, 1983; Bergen & Gottlieb, 2010; Taylor, 2011). For our purposes, the categorizations of the adequacy and sources of social support are relevant.

The adequacy of social support can be considered from either the perspective of the recipient, the provider or both. Moreover, social support can be valued according to different criteria, most notably on the basis of qualitative- or quantitative criteria. For example, one can look at the experienced satisfaction with received support (qualitative adequacy) or the frequency with which people are recipients of supportive actions (quantitative adequacy). Different types of social support are differently correlated with benefits. That is, their adequacy is valued differently (Basham et al., 1983).

The sources of social support can be categorized in two interrelated ways (Bergen & Gottlieb, 2010). On the one hand, social support can be categorized in terms of different categories of social relationships. Social support can come from various sources, ranging from the family to social workers and can either be more 'natural' (family/friends) or more 'formal' (social organizations). Those sources represent different categories of social relationships. Depending on the closeness and strength of, and role-definition within, a social relationship, a relationship can either provide bonding (reflecting the most intimate expressions of support, e.g. providing warmth) or bridging (more distanced expressions of support, e.g. providing novel information) (Bergen & Gottlieb, 2010).

On the other hand, sources of social support can be categorized in terms of the types of support offered. Taxonomies of social support classify support into several specific types. The categories mostly used are emotional-, tangible-, informational-, and companionate support (Bergen & Gottlieb, 2010). Emotional- or esteem support 'involves providing warmth and nurturance to another individual and reassuring a person that he or she is a valuable person for whom others care' (Taylor, 2011, 190). Tangible- or instrumental support involves the provision of tangible assets (e.g. financial assistance, food) and encompasses direct ways of support. Informational support is the provision of information and advice and helps an individual to 'understand a stressful event better and to ascertain what resources and coping strategies may be needed' (Taylor, 2011, 190). That is, it helps an individual solve problems. Companionship- or belonging support helps to give an individual a sense of social belonging (Taylor, 2010).

Social support, in that it helps individuals to deal with stressors, risks or adversity, is linked to increased well-being in general and improved health in particular. To give a number of examples on the benefits of social support: social support reduces psychological distresses (e.g. depression or anxiety); can function as a coping strategy for certain problems (e.g. informational social support can help to resolve a problem) or emotions (e.g. emotional support can help to regulate emotional responses); promotes psychological adjustment to chronically stressful conditions; and contributes to physical health and survival (Bergen & Gottlieb, 2010; Taylor, 2011). Moreover, high social support is related to an internal locus of control, relative satisfaction with life, less preoccupation with material concerns and security, and less difficulty in persisting on a task that does not yield a ready solution

(Basham et al., 1983). The latter implies that people high in social support have less difficulties in coping with the difficulties of life (Basham et al., 1983; Bergen & Gottlieb, 2010; Taylor, 2011). Hence, following Taylor (2011), it can be concluded that social support is a critical resource for managing stressful occurrences.

However, social support does not always give rise to the same benefits. Instead, the effectiveness of (different types of) social support is influenced by various factors of which a few will be mentioned.

First, the type of relationship between the (would-be) recipient and provider influences the effectiveness of social support (Bergen & Gottlieb, 2010). In order for a supportive action to be supportive it needs to meet the 'matching hypothesis' (Taylor, 2011, 194), that is, there must be a match between the specific needs for support of the recipient and the social support provided by the provider. This concerns both the category of social relationship (for example social worker versus close friend) and the type of social support (for example emotional support versus informational support)¹. Consequently, individuals might experience gaps in their social support and well-intentioned supportive efforts may misfire and thereby produce conflicts and psychological distress instead of benefits for well-being. Thus, social 'supportive' relationships are not inevitably helpful in managing stress (Taylor, 2010).

Second, the characteristics of the (would-be) recipient and provider influence the effectiveness of social support (Bergen & Gottlieb, 2010). For instance, although women are somewhat more vulnerable to psychological stress, they are also 'somewhat more likely to give social support, seek it out in times of stress, and benefit from it' (Taylor 2011, 202). Personality moderators include experiences of anxiety, depression and hostility, but also encompasses moderators like gender, personal outlook about the future and the locus of control. Also the actions of the recipient may influence the receipt of social support. For example, an recipient who expresses distress often and over time, might overcharge the provider and thereby push him away.

Third, the conditions for which or under which an individual requires social support may influence the effectiveness of social support. On the one hand, the conditions for which an individual requires support can be stigmatizing or may require specific social support (for example HIV). In those cases the type of provider which is perceived appropriate, either by the recipient or the provider himself, may be limited. On the other hand, in especially high-stress situations the stress-reducing effects of social support may be limited. Consequently, those most in need for social support are potentially less likely to benefit from social support (Taylor, 2011).

¹ For example, when the provider provides emotional support while the recipient needs informational support, the recipient might perceive this well-intentioned support to be controlling or directive. Moreover, for example, the provision of emotional support may be experienced differently when provided by a close friend as compared to a social worker.

Last, contextual factors influence the effectiveness of social support. For our purposes, two main interrelated contextual factors can be discerned, respectively the social context and the political context. The social context encompasses the social setting in which social support is used, provided, moderated and interpreted and includes culture. Culture encompasses, among others, the behaviours, beliefs, values and ways of living within a society. Those elements do influence, for instance, whether and to what extent 'mobilizing' social ties for personal or social needs is regarded as appropriate. The political context encompasses the political setting in which social support policy is produced and reproduced. Within welfare states (see the next section) the provision of governmental social support is institutionalized and organized by the state through policy. The (re)production of this policy is influenced by different agendas and consequently the policy itself will reflect particular purposes (Taylor, 2011).

In current study, the focus will be on the 'formal' form of social support. That is, the provision of social support by the national government (and its institutions), the municipalities and NGOs. The national government and municipalities are perceived to be 'state sources' of social support, and NGOs are perceived to be 'non-state sources'. Preliminary ideas over the characteristics of the relationship between those sources and aliens are that the role-definition in the state-alien relationship is more formal, more distanced, and more bridging and that the role-definition in the NGO-alien relationship is less formal, less distanced and more bonding. Moreover, it is asserted that the national government and municipalities mainly provide tangible- and informational social support, while NGOs mainly provide emotional-, informational- and companionate support.

The adequacy of the social support actually provided and the quantitative and qualitative criteria used to define this adequacy are addressed from the perspective of the social support provider. The appropriateness of the social support provider and the effectiveness of social support are left open. The latter is regarded as necessary due to the influences of many moderating factors in the provision of social support to aliens. For example, the type of relationship between- and the characteristics of aliens and social support providers on the one hand and the conditions for which and under which an alien requires support on the other hand vary greatly.

The following factors moderating the effectiveness of social support are taken into account: 'preoccupation with material concerns and security', 'health', 'social context', 'political context' and 'high-stress conditions'. It is assumed that a high preoccupation with material concerns and security, a bad health, demanding policies (that is, policies in which social support is made conditional on many behavioural requirements), a social context not meeting the matching hypothesis and high-stress conditions negatively influence the effectiveness of social support while increasing the need for social support.

2.3 Social welfare policy

In this section, first the provision of social support by European welfare states is introduced. Second, two understandings of social welfare policy are discussed. On the one hand, the understanding of social welfare policy as a way for the state to fulfil its obligations under international human rights law. On the other hand, the understanding of social welfare policy as a way for the state to meet social needs. In the next chapter those understandings of social welfare policy will be applied to conceptualize the field under study.

2.3.1 The provision of social support by European welfare states

In the current study, social support is understood as a form of social protection provided by European welfare states under social security law. Social protection is understood as any public intervention assisting the poor to manage risk. Social protection, like social support, is offered by welfare states in order to promote the well-being of the poor. It reduces the incidence and severity of poverty by ensuring them minimal levels of living standards. Under social security law, formal social support is provided through social welfare policy or more specific 'social support policy' (Conway, de Haan & Norton, 2000; Fouarge and Muffers, 2002).

The welfare state is a state, consisting of an constellation of socio-economic institutions, in which power is deliberately used to guarantee that social needs or rights of individual are met and to promote the well-being of the people. The welfare state provides individuals protection against a certain set of risks by ameliorating adverse conditions. It does so by, at least, three directions of public intervention. First, it guarantees individuals, irrespective of the market value of their work and property, a minimum income. Second, it narrows levels of insecurity for individuals by enabling them to meet certain social contingencies which otherwise would lead to crisis (e.g. homelessness). Third, it provides individuals a range of social services to ensure that individuals, without distinction of status or class, are offered the best standards available on a certain agreed range of social services. The first and second direction of public intervention are concerned with ensuring minimum standards of living. The third direction of public intervention is concerned with meeting optimum standards. By those public interventions, the welfare state distributes social resources within society² (Briggs, 1961; Conway, de Haan & Norton, 2000; Fouarge & Muffers, 2002; Svallfors, 2012).

Within welfare states, the distribution of social resources in society is institutionalized and organized by the state through, among others, social welfare policy. Under social welfare policy the state provides various forms- and types of provisions which can be categorized in various ways (see

² Although social welfare can be supplied from various sources, ranging from the household to society, and the mix of suppliers varies across time and place, in this research only social welfare supplied by the state (at the national level and the local level) and NGOs is taken into consideration.

Abramovitz & Blau, 2004 for an overview). For our purposes, three kinds of benefits are relevant, respectively cash benefits, in-kind benefits and social services. Cash benefits are (direct or indirect) grants which can be used by the recipient as he sees fit. In-kind benefits help people cover basic needs by providing them indirect (e.g. via vouchers) or direct (e.g. via the provision of public housing) benefits. In-kind benefits ensure that public money is only used to cover specific needs and thereby places a high value on social control. Social services are individualized nonmonetary types of help (e.g. counselling-, information- and referral services) which help people to actually find the specific support they need. Social services aim to increase individuals' ability to participate fully in society and therefore place a 'high value on individual rehabilitation, growth, and development' (Abramovitz & Blau, 2004, 53).

Social welfare policy can be understood in two distinct ways. Those understandings are grounded in two distinct discourses³ which traditionally inform justifications for social protection, and indeed for the welfare state. On the one hand, social welfare policy can be understood as a way for the state to comply with its obligations under international human rights law. On the other hand, social welfare policy can be understood as a way for the state to meet the social needs of society. In the current study, social welfare policy is perceived as providing individuals entitlements to social welfare benefits. The notion of 'welfare rights' is used to refer to those entitlements. Those 'welfare rights', depending on the justification of social protection applied, can either be 'strong' or 'remedial'. If one perceives welfare rights to be the implementation of international human rights law in national law, the state cannot seriously interfere with those rights. In this case, welfare rights are strong. In contrast, if one perceives welfare rights to be part of a strategy to respond to social needs, the state can seriously interfere with those rights. In this case, welfare rights are remedial.

In the following sections, the two understandings of social welfare policy will be elaborated. Those understandings will inform the conceptualization of the field under study (see Chapter 3).

2.3.2 Fulfilling social-economic rights

One way to understand social welfare policy is grounded in the human rights discourse. The 'rights school' locates the basis of social protection in a rights perspective to human development. Their justification for the welfare state is based on doctrines of, in particular, economic and social rights. In order to understand their perspective, it is necessary to briefly discuss rights and human rights.

A right is 'an entitlement that a person possesses to control or claim something' (Griffin, 2008, 31). Eddy (2006) argues that rights 'single out aspects of persons' well-being that are sufficient to give rise to...special, decisive, reasons in others' (Eddy, 2006, 343). A right permits the right-holder

³ A third discourse (the risk discourse) could also be discerned. This discourse is however not relevant for our purposes. See Barrientos & Hulme, 2010 and Munro, 2010 for details on this discourse.

to do something or to claim something on others in particular situations and imposes the obligation on others to (not) do something⁴. Rights and duties are contained in law and can be enforced through the legal system.

On the international level, some rights are laid down in human rights law. Human rights are instruments designed to protect persons against certain threats which would make life generally intolerable (Blake, 2014). Blake (2013, 2014) argues that human rights protection under international law imposes three distinct sorts of obligations on states, namely to respect-, to protect- and to fulfil human rights. The obligation to respect is global in scope and hence places states under a universal obligation to not violate human rights. In contrast, the obligation to protect and fulfil are local in scope and hence places state under a obligation to protect and fulfil the human rights of *all* individuals present within its jurisdiction. In order to protect and fulfil human rights within its jurisdiction, states need to set up 'political institutions with the standing ability to offer concrete defenses of these rights and act to vindicate them when they are violated' (Blake, 2013, 111). That is, they need to transpose international human rights law into national law. International human rights law thereby also is a framework for national social welfare policy.

Through social welfare policy states transpose provisions on social protection included in international human rights law into entitlements to social welfare benefits. Hence, in line with the rights school, social welfare policy can be understood as a way of the state to fulfil its obligations under international human rights law. Social welfare policy, in the form of entitlements, then defines a set of welfare rights (Munro, 2010; Svallfors, 2012). Welfare rights in that case could be perceived as entitlements to social goods or -services. Welfare rights (at minimum) include the right to food, shelter and basic medical care (Eddy, 2006).

2.3.3 Meeting social needs

Another way to understand social welfare policy is grounded in the needs discourse. The 'needs school' locates the basis of social protection in the context of the satisfaction of basic needs. Their justification of the welfare state is based on doctrines of needs (Munro, 2010). According to the needs school, social welfare policy can be understood as a way of the state to meet the social needs of society. In order to understand this perspective, it is necessary to briefly discuss social needs and

⁴ In order to be warranted protection by a right, following Miller (2005), a interest needs a certain weight of significance. Although interests always have some value, not all interest have equal value. Miller (2005) makes a distinction between a basic interest and a bare interest. A basic interest refers to something that is so vital to human well-being that it should be warranted protection by a right. A bare interest is a legitimate interest, but generally not important enough to deserve such protection. Hence, according to Miller (2005), only a basic interest imposes an obligation on others to meet that interest. Moreover, according to Laegaard (2010), rights must be more fundamental and more general (in normative terms) than single case assessments. This implies that in order to be a right, the justifying reason for its existence needs to apply in the same way to a class of cases. That is, the justifying reason needs to explain why one has a right. It follows that a basic interest and a general justifying reason are required to ground a human right.

the way in which the state meets them through social welfare policy.

There does exist a clear definition of neither need nor social need (see for example Bradshaw, 1972; Manning, 1998 for discussion on this point). The only general statement which can be made about needs is that they clearly differ from wants and preferences. Needs are more basic or essential to individuals than wants. Also, needs differ from preferences, because preferences are only revealed when we make choices and needs may well have to be discovered by others than the individual having them. The only general statement what can be made about social needs is that they arise from shared conditions of life and the social structures and –processes mediating those conditions. Hence, social needs are concerned with the distribution of a certain ‘good’ among social groups (Manning, 1998).

Taking the above into consideration, the question arises how social welfare policy can be understood as a way of the state to meet the social needs of society. The answer lies in the construction of social needs. As Abramovitz and Blau (2004, 19) argue, social welfare policy is 'the way society responds or does not respond to social need'. That is, only a number of social needs are met by social welfare policy. In order for a social need to be met by social policy, the situation in which the need is left unmet needs to be constructed as being a social problem. For a social need to become a social problem, its needs to be publicly recognized as genuine and worthy enough of public concern and those recognizing that social need have to organize themselves in order to meet it.

The construction of a social problem consists of three elements, respectively choosing it, defining it and offering an explanatory theory about the causes and the functioning of the problem. Abramovitz and Blau (2004) argue that self-interest is decisive in this process of construction. Every construction is arbitrary, 'every analysis of a problem emphasizes the features it implicitly deems most relevant' (Abramovitz & Blau, 2004, 8).

Since social welfare policy is inherently redistributive and different agents may have different perspectives on the nature and causes of- and solutions to social problems, constructions are always controversial. Moreover, not every construction of a social problem makes in onto the public- and political agenda. In fact, most constructions fail to do so. On the one hand, only agents with political power are able to define what (not) constitutes a social problem. For example, by non-decisions like mobilizing bias against a specific construction, those agents use their political power to conserve the status quo. Powerful agents are able to determine whether and how a social problem is addressed through social welfare policy (Abramovitz and Blau, 2004; Conway, de Haan & Norton, 2000; Svallfors, 2012).

The dominant construction of a social need as a social problem does however not only determine whether and how a social problem is addressed. Conversely, the way in which a social problem is addressed, that is the characteristics of the social welfare policy designed to address it,

also influence the spaces in which needs are articulated and mediated. Relevant in this respect is the distinction between universal- (e.g. pension programmes) and selective social welfare programs (e.g. homelessness programs)⁵. In Table 1, some of the differences between universal- and selective programs are presented (Abramovitz and Blau, 2004, 39-56). While universal programs 'provide benefits to individuals and families regardless of income' (Abramovitz & Blau, 2004, 40), selective programs are 'designed solely for the poor' (Abramovitz & Blau, 2004, 40) and thus only provide benefits to those most in need. The definition- and determination of eligibility, the type of benefits offered, and the way of administration and financing differ between those programs. Moreover, given their specific characteristics, those programs themselves are perceived differently by the public. The importance of the difference in public perception can best be demonstrated by a quote of Abramovitz and Blau (2004, 51):

The simplicity of the universal programs' application process, the uniformity of their benefits, and the lack of stigma and intrusion reflect of view of the recipients as worthy and deserving. Thus, the rules and regulations encourage applicants, generate solidarity, and promote social cohesion....In contrast the selective programs reflect a deep distrust of the poor, fear of welfare fraud, and hostility to government provision to the poor. It typically deters applicants, demeans individuals, and divides one group of people from another. (Abramovitz and Blau, 2004, 51)

That being the case, people with a 'universal' need have a better chance to succeed in demonstrating that their need is a social need than people with a 'selective' need. For example, it will be much easier for a retired man to demonstrate that his need for higher retirement benefits (universal program) is a social need than it will be for a homeless man to demonstrate that his need for better shelter is social need (selective program). Hence, the characteristics of the social welfare policy designed to address a social problem influence the spaces in which needs are articulated and mediated.

⁵ See Abramovitz and Blau, 2004, 39-56 for an extensive discussion on the characteristics of universal- and selective social welfare programs.

	Universal programs	Selective programs
Eligibility		
Population served	Poor and non-poor	Poor
- more likely...	- middle class, older, man, white persons	- lower class, younger, female, persons of colour
Eligibility established by	Membership of beneficiary	Passing a (means or income)
- central definition.. - eligibility conditional upon.. - risks..	group - membership - membership - known; similar	test - poverty - behavioural requirements - unknown; un-similar
Eligibility determination-/ application process	Easy application form Short and simple	Detailed information form Long and tedious
- need - level of intrusion/intervention into family/individual life	- presumed need - low ('preserved individual dignity')	- demonstrated need - high ('demeaning')
Individual eligibility is a...	Right	Remedial right
- access to benefits is moderated by level of funds	- No	- Yes
Public perception programs and benefits offered		
Perception benefits offered		
- regarded as... - assessed in away - referred to as... - degree of stigmatization	- legitimate - positive - insurance and compensation - low	- illegitimate - negative - handout and doles - high
Perception programs	More popular Less visible Concealed in tax laws Clothed in protective language (e.g. tax credits)	Less popular/highly stigmatized More visible Obvious and open Negatively labelled (e.g. assistance/relief)

Note. Adopted from *The Dynamics of Social Welfare Policy* (39-56) by M. Abramovitz and J. Blau, 2004, Oxford: Oxford University Press

Table 1 Some differences between universal- and selective social welfare programs.

2.4 Establishing the link between alien- and social security law

As mentioned in the introduction of this study, social welfare policy is used instrumental in European welfare states to enforce immigration law. By relating right of residence to entitlements to social welfare benefits, the social welfare system is used to discourage entry into- and promote removal from the state's territory of aliens without a (specific form of) right of residence (Vonk, 2002). In this section, the concepts of aliens, social support and social welfare policy will be related to explain the existence of the link between alien law and social security law.

Within welfare states, access to social protection is primarily based on a distinction on the basis of right of residence. In order to understand this dominant distinction, it is necessary to briefly discuss the development of social security law within European welfare states and its differential effects on the legal position of migrants. In the course of time, the welfare state provided social security to an increasingly number of categories of persons and against a wider range of risks and contingencies. The process of the integration of persons into the social security system, however, has had differential effects on the level of protection enjoyed by migrants in social security law. This concerns both migrants vis-à-vis citizens and migrants vis-à-vis other migrants. Those differences can be explained in two ways.

First, the differential effects of the development of social security law on the level of protection enjoyed by migrants can be explained by the dual nature of the right to social security. The right to social security is both universal and selective. On the one hand, the right to social security is universal in that sense that it presupposes that all persons in a vulnerable situation have the right to be protected. Both international human right conventions and national constitutions include notions of social protection. Social protection in this framework should be construed as a subjective right to assistance.

On the other hand, the right to social security is selective in that sense that social protection should be provided to persons in a vulnerable situation *by virtue of their membership of society*. For example, the Universal Declaration on Human Rights recognizes the right to social security for everyone as a *member of society*. Consequently, as Vonk (2002, 2) argues, the right constitutes the 'expression of the notion that each citizen is entitled to an adequate standard of living and that the state bears responsibility in this'.

Over time, social protection programmes became nationalized and access restrictions were made applicable to foreign nationals by the introduction of the nationality requirement. Following legislative changes and legal decisions of courts⁶, the nationality requirement gradually was replaced by the notion of territoriality. The notion of territoriality expresses the principle that states are

⁶ This concerns in particular legal decision on Article 14 of the European Convention of Human Rights.

responsible for the social protection of *all* individuals living within their territory (Vonk, 2002).

However, the replacement of the nationality requirement by the territoriality requirement has been more complete with respect to social insurance than with respect to social assistance. In most European welfare states legal residence is required for access to social assistance. As Vonk argues:

In almost all European countries the nationality condition and the territoriality conditions are intertwined by establishing links between the right to social assistance and the legality of residence. Here we find a curious form of interaction between immigration law and social welfare law. Entitlement to social assistance depends on the legality of residence, while in turn the legality of residence may depend upon the foreigner claiming social assistance. Only for those with permanent residence status may such conditions be alleviated. (Vonk, 2002, 5)

The above can be explained by the different character of social assistance programmes as opposed to social insurance programs. Whereas social insurance programs are universal programs, social assistance programs are selective programs.

Universal programs, like social insurance programs, aim to guarantee a minimum living standard for all members of society. Those programs traditionally are grafted upon the existence of a contract of service between the employee and employer and thus a 'reciprocal insurance relation between the insured person and the social insurance institution' (Vonk, 2002, 4). Those programmes then cover contribution-financed benefits (Conway et al., 2000).

Over time, states agreed upon international treaties to coordinate social insurance schemes across states. Those coordination treaties contain minimum standards for social security and, as Vonk (2002, 3) argues, 'provide inter alia for equality of treatment on grounds of nationality'. Within the European Union, national access rules that adversely affect the legal position of nationals of other member states under domestic social security law have been partially abolished. Still, within the European Union access restrictions do exist for migrants from most third countries who lack any protection under international coordination law. Under those circumstances, social insurance schemes to some extent reflect the universality of the right to social security (Guiraudon & Lahav, 2006; Vonk, 2002).

In contrast, selective programs like social assistance programs aim to guarantee a minimum living standards for 'the poor'. Those programs traditionally are based upon the notion of a 'unilateral charitable obligation' (Vonk, 2002, 4) and cover non-contributory, tax-financed benefits (Barrientos & Hulme, 2010; Conway et al, 2000). Within European welfare states, the prevailing opinion on social assistance remains, similar to the traditional local 'poor laws', that not the host-

state but the state of origin is responsible for providing social support to needy migrants. Consequently, migrants' access to social assistance always has been, and still is, more problematic than access to social insurance. Hence, the legal position of migrants in social security law is weaker with respect to social assistance than with respect to social insurance (Vonk, 2002).

Second, the differential effects of the development of social security law on the level of protection enjoyed by migrants can be explained by the immigration policies of European welfare states. European welfare states, in the framework of increasingly restrictive immigration policy, are increasingly discriminating between migrants. While those policies favour, in particular, high-skilled migrants they disfavour asylum seekers, irregular migrants and some third country nationals. Within European welfare states, the latter is reflected in the lack of legal guarantees for irregular migrants and asylum seekers under social security law.

In almost all European countries, both asylum seekers and irregular migrants are excluded from the (regular) social security system. Asylum seekers are, as Vonk (2002, 11) argues, are covered by separated schemes 'which provide alternative and often very minimal forms of care'. Irregular aliens, at best, have very limited entitlements to certain forms of minimal social assistance. With respect to asylum seekers, European countries adopted those restrictive measures in order to make the country less attractive for asylum seekers and to avoid their integration into- and to facilitate their expulsion from society (Vonk, 2002). Since exclusion from social security is often coupled with all kinds of other restrictions with respect to, for instance, employment and housing, those excluded, especially in times of restrictive immigration policies, are extremely vulnerable to deprivation, exploitative practices, and further restrictive measures (Vonk, 2002).

2.5 Conclusions

In this chapter, the notions of 'aliens' and 'social support' have been defined and those notions have been related in the context of the European welfare state to explain the link between alien law and social security law. In the following, the main points of this chapter will be summarized.

In the first section of this chapter, the concepts of 'aliens' has been discussed. In the current study, the notion of 'aliens', without any adjective, will be used to refer to all aliens residing within the Netherlands without a residence permit. Depending on their right of residence, aliens may be entitled to governmental social support. The notion of (ir)regular aliens will be used to refer to aliens which do (not) have a right of residence. Last, the notion of homeless aliens will be used to refer to all aliens who, under national law, are not entitled to governmental social support.

In the second section of this chapter, the concept of 'social support' has been discussed. In the current study, the focus will be on the provision of social support by the national government,

municipalities and NGOs. The adequacy of the social support actually provided and the quantitative and qualitative criteria used to define this adequacy are addressed from the perspective of the social support provider. The appropriateness of the social support provider and the effectiveness of the social support provided are left open for consideration. 'Preoccupation with material concerns and security', 'health', 'social context', 'political context' and 'high-stress conditions' are taken into account as factors moderating the effectiveness of social support.

In the third section of this chapter, the provision of social support through social welfare policy in the context of the European welfare state has been discussed. It has been explained that social support is provided through social welfare policy in order to ensure minimal living standards for the poor. In the current study social welfare policy is perceived as providing individuals entitlements to social welfare benefits or 'welfare rights'. The 'strength' of those welfare rights depends on the understanding of social welfare policy applied. Two understandings of social welfare policy, which will inform the conceptualization of the field under study discussed in the next chapter, are elaborated.

On the one hand, grounded in human rights discourse, social welfare policy can be understood as a way of the state to fulfil its obligations under international human rights law. Social welfare policy, in the form of entitlements, then defines a set of welfare rights. If welfare rights are understood in this way, the state cannot seriously interfere with those rights.

On the other hand, grounded in the needs discourse, social welfare policy can be understood as a way of the state to meet the social needs of society. It has been stressed that only some social needs are met by social welfare policy. In order for a need to be met by policy, the situation in which the need is left unmet must be constructed as being a social problem. The dominant construction of a social problem then determines whether and how a social need is addressed by social welfare policy. By briefly discussing the different public perception of universal- and selective social welfare programs, it has been demonstrated that the construction of a social need does not only influence the design of the policy formed to address it, but that the characteristics of that design also influences the spaces in which needs are articulated and mediated. That is, the characteristics of social welfare policy also affect the extent to which agents are able to turn a social need into a social problem worthy to be met by social welfare policy. If welfare rights are understood in the framework of this perspective, they at best are remedial and the state can seriously interfere with them.

In the fourth section of this chapter, the link between immigration law and social security law has been established by discussing the development of the legal position of aliens under social security law. It has been argued that the development of social security has had differential effects on the level of protection enjoyed by (different groups of) migrants. Differences in the level of protection enjoyed by migrants vis-à-vis citizens can be explained by incomplete replacement of the

nationality requirement by the territoriality requirement in social assistance programs. The legal position of migrants in social assistance is weaker than their position in social insurance. Differences in the level of protection enjoyed by some groups of migrants vis-à-vis other groups of migrants can be explained by the immigration policies of European welfare states. Those states are increasingly discriminating between different groups of migrants. This is in particular reflected in the lack of guarantees for irregular migrants and asylum seekers under social security law.

3. Conceptualizing the struggles over the organization of the provision of social support to homeless aliens

In this chapter, a theoretical framework will be set up which can serve to reach two objectives. On the one hand, it can serve to analyze the struggles between agents over the provision of social support to homeless aliens. On the other hand, it can serve to discern room for change. That is, discern possibilities to change the current result of this struggle, respectively the organisation of the provision of social support to homeless aliens.

First, the Bourdieusian technology, that is the perspective used to analyze the struggles over the organization of social support to homeless aliens, will be discussed. Second, the understanding of welfare rights applied in this research will be discussed. Third, the Bourdieusian technology and the understanding of welfare rights central to this study will be combined to conceptualize the field under study. Last, the conceptual model, that is the lens through which the struggles over the organization of the provision of social support to homeless will be analyzed, is presented and explained.

3.1 The Bourdieusian technology

In this research, it will not only be tried to provide a new perspective on the meaning of alien law with respect to the provision of social support to homeless aliens, but it will also be tried to change this meaning. For those purposes, Bourdieu's field theory will be employed. The field theory of Bourdieu is one of the most prominent theories in sociology. As Danahar, Schirato and Webb (2002,1) argue, Bourdieu's field theory is 'arguably the most significant and successful attempt to make sense of the relationship between objective social structures (institutions, discourses, fields, ideologies) and everyday practices (what people do, and why they do it)'. With the Bourdieusian framework, one can expose that social reality is an expression of power and domination. The Bourdieusian framework allows the researcher to expose the arbitrariness of the taken-for-granted classifications and categorizations underlying this social reality. Moreover, it allows the researcher to identify alternative meanings or room for change within this social reality that can be employed to transform this reality. Before elaborating Bourdieu's field theory, it is useful to briefly introduce Bourdieu's thought.

3.1.1 Introducing the Bourdieusian perspective

Bourdieu was a French sociologist who tried to overcome the split between objectivism⁷ and subjectivism⁸ with regard to the existence of objective- and subjective realities or truths. While objectivism advocates the existence of an objective reality by stressing the importance of structured contexts, subjectivism advocates the existences of subjective realities by stressing the importance of the interpretation or experiences of individuals of those structures (Danahar et al., 2002). Both subjectivist- and objectivist approaches to human practices, according to Bourdieu, are flawed. On the one hand, subjectivism highlights that objectivism fails to acknowledge agency⁹. On the other hand, objectivism, in turn, does highlight that agency is regulated by contexts or, in other words, that the possibilities for agency depend on 'what is available to us' within those contexts (Danahar et al., 2002; Gorski, 2013).

Bourdieu tried to overcome the split between objectivism and subjectivism, through a 'constructivist structuralism' (Bourdieu & Wacquant, 1992, 11), by conceptualizing the relationship between people's practices and the contexts or social spaces in which those practices occur. According to Bourdieu, reality is a multidimensional space consisting of a number of subspaces. Those subspaces or spheres of action consist of groups, which in turn, consist of individuals. Bourdieu argues that human behaviour is structured by power relations between and within (the subsections of) those subspaces. Therefore, one needs to understand what kind of power relations (groups of) individuals take part in order to understand their practices (Gorski, 2013).

As Danahar et al. (2002, 36) argue, Bourdieu 'insists that practice is always informed by a sense of agency..., but that the possibilities of agency must be understood and contextualised in terms of its relation to the objective structures'. According to Bourdieu, while being disguised as disinterested, a form of duty or impersonal, human behaviour is both self-interested and political¹⁰. Therefore, a purely disinterested act does not exist (Danahar et al., 2002). Moreover, Bourdieu argues that practices need to be contextualised both 'with regard to the various[spaces] in which those activities take place, and the agent's place within that...[space]' (Danahar et al., 2002, 13). In other words, both 'inwardly' and 'outwardly'. The social reality only seems 'objective' or self-evident to individuals, because this reality itself produces the categories of thought which individuals apply to

⁷ The idea central to objectivism is that 'people's actions and attitudes are determined by objective social structures' (Danahar et al., 2002, xiv). Practices are understood only as the reproduction of those structures. The best known body of objectivist theory is structuralism, which holds that the 'social world is organized according to structures...and that these make meaning possible' (Danahar et al., 2002, xv). Those structures or objective regularities exist independent of individual consciousness and wills.

⁸ The idea central to subjectivism is that 'social reality is produced through the thoughts, decisions and actions of individual agents' (Danahar et al., 2002, xv).

⁹ The idea central to agency is that 'individuals are equipped with the ability to understand and control their own actions, regardless of the circumstances of their lives' (Danahar et al., 2002, ix).

¹⁰ Bourdieu perceives human behavior to be largely competitive and utilitarian (Danahar et al., 2002).

it. Accordingly, social reality exists both in things and in minds. That is, both inside and outside agents. The individual is not only in the world, but the world is also in the individual (Danahar et al., 2002; Gorski, 2013).

Before dealing in greater detail with Bourdieu's conceptualisation of the relationship between people's practices and contexts, it is useful to briefly discuss some general guiding principles underlying Bourdieu's work which should be taken into account in carrying out this research. Those principles are the centrality of power, relationality and reflexivity. First of all, power is at the heart of Bourdieu's work. Bourdieu stresses the 'competitive, stratified character of social worlds...[which are]...firmly ordered by mechanisms and processes of domination and reproduction' (Swartz, 2013, 21). Second of all, thinking relationally is central to Bourdieu's work. Looking at social reality, one should not focus on the intrinsic properties of agents but at their relational attributes. The actions of agents are influenced, also beyond consciousness and direct contact or control, by a broad range of other agents, all being interdependent. That being the case, subjects can only be understood in relation to the position they occupy within social space (Gorski, 2013; Swartz, 2008).

Thinking relationally and the centrality of power indicate that one should not take a certain view of social reality as granted. The way social reality is perceived is both the product and stake of competition between different agents. The taken-for-granted social reality is the result of a dominant agent having the power to impose a particular meaning as legitimate. Consequently, in order to understand and act upon the social world, one needs to debunk taken-for-granted classifications and –categorizations underlying this social reality. That is, one should always distinguish between objective- and subjective forms of knowledge. Moreover, a certain view of social reality only obtains significance by comparison to others. To exist is to exist in relation to others and therefore what is real is relational. Consequently, one should take notice of the structure of relations uniting and differentiating views on reality (Gorski, 2013; Swartz, 2008, 2013).

Finally, reflexivity is central to Bourdieu's work. A researcher should always be aware of his stance and location relative to the object of study in order to minimize the projection of the researcher into the object of study. This implies one should be aware of one's own position in the research-, scientific- and social space. In other words, one should reflect 'upon how forces such as social and cultural background, our position within particular...[social spaces] and intellectual bias shape the way we view the world' (Danahar et al., 2002, xv). Research always represents a situated view of social reality and this view, in turn, always bears traces of the position of the researcher himself (Gorski, 2013; Swartz, 2008, 2013).

In the light of the latter, Bourdieu in his work always takes theories and analyses 'somewhere else', in other words, politicises them (Danahar et al., 2002, 5). This 'politicizing disposition' (Danahar et al., 2002, 5) of Bourdieu is informed by the idea that theories corresponding to social reality, even

when they are coming from supposedly 'neutral' or 'apolitical' disciplines, inevitably support the power structures they (theoretically) ignore, since the disciplines they are coming from are already implicated in the reproduction of those ignored repressive ideas and acts (Danahar et al., 2002). Bourdieu argues that research ought to be a means to change things rather than to disinterestedly reflect on them (Danahar et al., 2002). Accordingly, Bourdieu regards research to be successful only 'if it makes, rather than corresponds to, the social reality that it describes via the action of powerful agents' (Schusterman, 1999, 143 in Danahar et al., 2002, 8). Still, the usefulness of a theory is always limited by specificities of time, place and space (Danahar et al., 2002; Gorski, 2013).

3.1.2 Bourdieu's field theory

3.1.2.1 Field, habitus and doxa

Bourdieu conceptualizes the relationship between people's practices and contexts as the relationship between field and habitus. Fields are semi-autonomous subspaces or specialized spheres of action within society. Bourdieu (2005, 30) defines a field as follows:

A field is a field of forces within which the agents occupy positions that statistically determine the positions they will take with respect to the field, these positions-takings being aimed at conserving or transforming the structure of relations of forces that is constitutive of the field. (Bourdieu, 2005, 30)

According to Bourdieu (1977, 1987), fields are structured by two principles. Those principles organize action within fields and (partly) predetermine potential courses of action for agents. The first structuring principle of fields is the doxa. Each field operates according to a logic or doxa largely internal to that field. Doxa can be defined as '[a] set of core values and discourses which a field articulates as its fundamental principles and which tend to be viewed as inherently true and necessary' (Danahar et al., 2002, xi). Within a particular field, agents will share a set of values and discourses in so far as they consider the game worth playing. This universe of tacit presuppositions are the rules of the game being played within the particular field and are reflected in common habits and practices.

The second structuring principle of fields is the habitus. In contrast to the doxa, the habitus is situated at the individual level. Bourdieu (1977, 78) defines habitus as 'the durably installed generative principle of regulated improvisations...[which produces] practices'. The habitus enables an agent to make sense of the world and to position themselves within it and, in doing so, reflects a disposition or an attitude towards the world. It consists of a system of unconsciously functioning

ways of thinking and filters of perception structuring practices and representations (Bourdieu, 1977).

On the one hand, habitus expresses the way in which an agent has (unconsciously) internalized his position (where and who one has been) in society or in other words the objective or material conditions of existence, into subjective dispositions. These dispositions are influenced, among others, by personal history, most notably social class, upbringing and education. On the other hand, habitus expresses the ways in which an agent engages in practices. It is a 'feeling for the game'¹¹ which in turn guides strategy (Bourdieu, 1977; Danahar et al., 2002).

Habitus (partly) predetermines potential courses of action of agents by conditioning the relationship between objective probabilities (e.g. chances to access a certain good) and agents' subjective interests' (e.g. need of that certain good). Habitus predetermines the 'natural' options to choose from by ruling out the unthinkable ones. By doing so, the habitus makes a 'virtue out of necessity' (Danahar et al., 2002, 42). Hence, agents make choices between 'preselected' possibilities rather than 'free' calculations and decisions.

Strategy is Bourdieu's version of agency. Strategy is not wholly conscious or rational calculative. Although agents can be conscious of acting strategically, in other words, of trying to use or change the rules of the game to their advantage, they are unaware that their motives to do so are not natural, but are driven by values and expectations from the habitus. While the dispositions belonging to a particular habitus seem 'common sense' to the individual in and on which the habitus is prescribed, thereby making 'other' dispositions being usually understood as negative or strange, the habitus is in a sense entirely arbitrary (Danahar et al., 2002). According to Bourdieu (2000, 142-3 in Danahar et al., 2002, 25) this internalization of the world into the individual, in the form of habitus, is what makes an individual 'feel at home'.

3.1.2.2 Struggle and capital

Within a field, while shared to some extent by all agents, not all agents necessarily agree on the doxa or the rules of the game. For this reason, there exists a struggle between agents which either try to conserve or transform the doxa of the field by imposing a certain meaning or certain categories of thought on the field. In this struggle, capitals play a decisive role (Danahar et al., 2002).

Capitals are (existing or potential) power resources or 'knowledges' and attributes which agents possess. Among others, one could distinct between economic- (concrete commodities, e.g. money), cultural- (skills e.g. educational qualifications), linguistic- (mastery of the language of the dominant culture), social- (resources stemming from social relations, e.g. membership status) or juridical capital (power to divide by law). These different forms of capital are to a greater or lesser

¹¹ This feeling consists of having a sense of the field, of one's own position within that field, of the relative value of the capitals and a sense of what constitutes symbolic capital.

degree symbolic, are interchangeable and differ in value across fields.

In accordance with its doxa, a field is characterized by a specific 'symbolic capital' that is valued above others. Symbolic capital is a set of symbols (e.g. status or respect) which is recognized as legitimate by other agents. Symbolic capital hence mean nothing in themselves, but depend on people believing that an agent possesses those capitals (Danahar et al., 2002). Within a field, different agents try to either conserve or transform the doxa to either retain or obtain symbolic power. In this struggle for power, the definition of symbolic capital and the valuation of the different forms of capital are both objects and stakes of struggle. On the one hand, agents try to influence the doxa by using both the amount and composition of the capitals they possess. By imposing a particular meaning upon the field they try to turn the capitals they possess into symbolic capital. On the other hand, agents try improve or keep their power position within a particular field by accumulating those capitals which are recognized as symbolic in that particular field (Danahar et al., 2002).

As a result of the distribution of capitals and their valuation, certain power structures within (and across) fields emerge in which agents, based on the capitals they possess, are ascribed a certain position. In these power structures some agents, that is possessors of symbolic capital, dominate other agents. This domination, or the exercise of violence in a symbolic way, is referred to by Bourdieu as symbolic violence. Bourdieu (1992d, 167 in Danahar et al., 2002, 25) perceives symbolic violence as 'the violence which is exercised upon a social agent with his or her complicity'. This violence takes 'the form of taken-for-granted classifications and categorizations' (Swartz, 2013, 25) . Dominated agents then may 'being denied resources, treated as inferior or being limited in terms of realistic aspirations' (Danahar et al., 2002, xvi). Symbolic violence fundamentally means the imposition of those categories of thought and perception legitimating the dominators upon dominated agents.

Misrecognition, a form of forgetting that agents inevitably are caught up in and produced by, is central to the functioning of symbolic violence. Agents which are subjected to symbolic violence evaluate the situation or status quo through the arbitrary categories of thought determined by the dominant agents. Consequently, those dominated agents do misrecognize the arbitrariness of the symbolic. Therefore they do not question how dominators came by it and how the capital came to be valued. When the doxa is internalized by agents, misrecognition also works by making the habitus appear natural. Dispositions belonging to the habitus can only effectively function if agents do not think about the contexts of their production or existence¹². That is, if agents misrecognize its

¹² Like Danahar et al., (2002, xiv) state: '[w]hen we feel comfortable within our roles within the social world, they [that is, those dispositions belonging to the habitus] seem to us like second nature and we forget how we have actually been produced as particular kinds of people'.

symbolic.

Misrecognition results in a situation in which those subjected are complicit to the (re)production of the (power distribution and position-takings in the) social hierarchy. As Danahar et al. (2002, 23) argue:

agents adjust their expectations with regard to the capital they are likely to attain in terms of the 'practical' limitations imposed upon them by their place in the field [and their habitus]....Consequently - and to a certain extent, paradoxically - those with the least amount of capital tend to be less ambitious, and more 'satisfied' with their lot. (Danahar et al., 2002, 23)

Those subjected perceive the power structure and its effects to be 'the natural order of things' (Danahar et al., 2002, 25). Consequently, power structures within fields, being arbitrarily constructed by dominant groups, tend to reproduce themselves rather than to transform. Hence, attempts undertaken by agents to improve their place within a field are largely doomed to failure (Danahar et al., 2002). Under those circumstances, it is not realistic to expect that power structures can be turned into equal structures. As Bourdieu (2000, 214-15 in Danahar et al., 2002, 24) argues: '[t]hose who talk of equality of opportunity forget that social games...are not 'fair games'.

3.1.2.3 Transformation

All the above, however, does not mean that fields cannot change. While fields tend to reproduce themselves, they are, according to Bourdieu, fluid and dynamic rather than static entities. Fields are always being changed by both (complementary) internal practices and -politics and external pressures or -changes.

As mentioned earlier, fields are semi-autonomous. This implies that external pressures, like an increased interconnectedness with or reliance to another field, can change the doxa of a field and accordingly the positions of agents within that field. External pressures can transform fields from autonomous- into heteronomous fields. More precise, they can transform certain subsections of a field from autonomous- into heteronomous poles¹³ (Danahar et al., 2002). The transformation of a field, irrespective of whether it is dramatic or gradual, does not take place in a homogeneous fashion. Instead, different subsections of the field either embrace or reject, at different 'paces', the changing rules of the game. Under those circumstances, as Danahar et al. (2002, 30) argue, the field 'is usually "traumatised" by fairly overt disagreements and agonistics, primarily over which part [of the field]

¹³ Conversely, of course, heteronomous fields or -poles can also transform into autonomous fields or -poles.

most truly represents or embodies the field and its values'. The doxa of the field then is defended in orthodoxy¹⁴ and attacked in heterodoxy¹⁵ by different agents.

Transformation of a particular field always results in modifications of the habitus of the agents within that field. Agents tend to incorporate the values and imperatives of the fields where they are moving through and across into their habitus. Since the habitus is not only durable and transposable, but also oriented towards the practical, the dispositions belonging to the habitus are always open to modification. Modification is possible when those dispositions no longer make sense or when an agent uses his feel for the game as a means to improve his power position. The process of modification of the habitus is, however, usually gradually. The habitus can tolerate modification (e.g. by moving from one field to another) because of the existence of the doxa, usually promoted by dominant agents like the government and the media, that characterizes national cultures across fields. The doxa thus provides a 'continuity of meaning' (Danahar et al., 2002, 43). Moreover, the interest in improving one's position in itself is produced by and through the habitus. This implies that even when one does feel like the game is no longer worth playing anymore, one continues to define one's interest according to its rules (Danahar et al., 2002).

One of the aims of this research is to provide recommendations to the agents involved in the provision of social support to homeless aliens over how to improve this organization. In order to change power structures within a field, agents need to transform the relative value and arbitrariness of the different forms of capital (that is, change the rules of the game) and accumulate capitals accordingly. In the current study, the researcher will try to identify room for change by taking into account three considerations. First, given that arbitrarily constructed power structures within fields tend to reproduce themselves, one could argue one needs to discern sites within fields where one enjoys some degree of freedom, in other words, sites where one has a small chance of knowing the game played and of minimizing the manipulation of the field in which one operates (Danahar et al., 2002). Second, given the importance of changing the rules of the game, one needs to discern the heteronomous poles within a field. That is, one needs to identify (complementary) internal- and external pressures which challenge the doxa of the field. Third, given that agents need to accumulate capitals according to the changing rules in order to transform the power structures within a field, one needs to discern 'new' capitals which can be mobilized. That is, capitals which relative value is changing and which, for that reason, can be used to improve the position of some agents.

¹⁴ Orthodoxy: 'Those sets of beliefs and values that constitute the received wisdom and the status quo within a field. The orthodoxy reflects the 'official history' of the field: that version of events preserved in official records and documents, authoritative publications and practices' (Danahar et al., 2002, xiv).

¹⁵ Heterodoxy: 'The set of beliefs and values that challenge the status quo and received wisdom - or common sense - within a particular field' (Danahar et al., 2002, xiii)

3.2 Understanding welfare rights

In the current study social welfare policy is perceived as providing individuals with entitlements to social welfare benefits. The notion of 'welfare rights' is used to refer to those entitlements. Welfare rights (at minimum) constitute the right¹⁶ to food, shelter and basic medical care (Eddy, 2006) (see Chapter 2). In order to understand the conceptualization of the field of study in the next section, in which a distinction will be made between the existence- and fulfilment of aliens' welfare rights, it is important to briefly discuss how the current study understands- and deals with the effects of rights-conflicts and scarcity on welfare rights¹⁷.

According to Eddy (2006, 344) rights-conflicts arise 'because a particular agents has conflicting duties or...when conflicting duties are held by different agents'. Rights can conflict in various ways. First, they can conflict with other normative considerations (e.g. individual- vs. general welfare). Second, they can conflict with other rights (e.g. the welfare rights vs. the right to exclude). Third, they can conflict with the same rights when different agents have competing claims on the same rights (e.g. two people claiming entitlement to shelter).

Rights-conflicts are of particular relevance to welfare rights, because welfare rights are more likely than other forms of rights to give rise to jointly unfulfillable rights-claims. On the one hand, welfare rights are commonly regarded as positive rights to specific goods or services, giving rise to duties for states to perform in order to fulfil these rights-claims, that is to provide those goods or services. On the other hand, welfare rights give people entitlements to potentially scarce goods or services (Eddy, 2006).

Justified by rights-conflicts, different authors argue that 'welfare rights' should be denied the status of genuine rights. Rights-conflicts are perceived as threatening the peremptory force and hence the analytical integrity of rights. The latter is especially the case for welfare rights, since the state due to scarcity is not able to fulfil the 'welfare rights' of all. Based on the above, different authors argue that 'welfare rights', that inevitably conflict, should not be titled rights. That is, entitlements to food, shelter and basic medical care cannot be perceived as being rights. Underlying this argument are the assumptions that rights are absolute and that their integrity lies in their absolute character (Eddy, 2006).

In the current study, just like Eddy (2006), a distinction is made between equally having a claim- and having an equal claim to the distribution of some good or service. Equally having a claim

¹⁶ A right is 'an entitlement that a person possesses to control or claim something' (Griffin, 2008, 31). Eddy (2006) argues that rights 'single out aspects of persons' well-being that are sufficient to give rise to...special, decisive, reasons in others' (Eddy, 2006, 343). A right permits the right-holder to do something or to claim something on others in particular situations and imposes the obligation on others to (not) do something.

¹⁷ See Eddy (2006) for an extensive discussion on the problems rights-conflicts and scarcity pose to welfare rights and how to best deal with those problems.

concerns the existence of welfare rights. Having an equal claim concerns the fulfilment of welfare rights. That is, being equally entitled to the good or service.

Eddy (2006) makes this distinction in order to deal with the effects of rights-conflicts and scarcity on the content and validity of welfare rights. First, this distinction reflects an understanding of rights according to which all rights are prone to conflict. That is, few, if any, rights are absolute. It rejects the 'illusion of absoluteness' (Eddy, 2006, 341) which denies that rights can be justifiably infringed and which, in doing so, increases the likelihood of conflict and inhibits dialogue which is required for social policy in pluralistic societies.

Second, this distinction reflects an understanding of rights according to which rights cannot be denied a status of a genuine right solely on the ground that they conflict. Eddy (2006), following Waldron (1989), argues that a sufficiently important interest to a good or service taken separately is important enough to give rise to a duty in another to provide that particular good or service. Therefore, the integrity of rights lies in the individual nature of their grounds rather than in their absolute character. These grounds, in turn, are somewhat 'universal', implying 'the reasons for holding that there is a duty to serve the interest of one person should also apply to the same effect in the case of any other, if her interests and circumstances are relevantly similar' (Waldron, 1989, 208). That is people having similar interests in similar circumstances equally have a claim to a good or service.

Third, this distinction reflects an understanding of rights according to which the availability of resources and conflicting claims and considerations need to be taken into account in the framing of the content of an individual's welfare right. In the specification (in the making of policy) and the realisation (in the implementation of policy) of rights into justifiable rules, contextual factors and rights-conflicts will determine which interpretation of a right, or of the duty grounded by the interest, becomes authoritative. That is, trade-offs will take place (Benhabib, 2011; Garcia, 2014). Individual welfare rights hence 'will need to be balanced against other rights, the availability of resources, as well as other individuals' equally weight welfare-rights claims' (Eddy, 2006, 342). That is, the scope of welfare rights, or the nature of the duties grounded by them, are conditioned by competing rights-claims and contextual factors.

This understanding of welfare rights, on the one hand, implies it is important to assess whether an individual's interest to food, shelter and basic medical care taken separately is considered as being important enough to give rise to a duty in another. On the other hand, it implies it is important to assess what interpretation of welfare rights is authoritative. That is, how the scope of welfare rights is conditioned by competing rights-claims and contextual factors.

The advantage of the approach described above is that it simultaneously acknowledges that the existence of a right does not guarantee its exercisability and that the exercisability of a right is

not necessarily reflected in its existence. That is, with respect to the current study, the legal position of aliens under national social security law and the actual access they have to social support in practice do not correspond. On the one hand, not all welfare rights of aliens recognized under national law are exercisable. On the other hand, not all 'exercisable welfare rights' of aliens are recognized under national law as 'existing'. Consequently, the meaning of aliens' welfare rights is not only determined in law, but also in practice.

3.3 Conceptualizing the juridical-bureaucratic field of alien law

3.3.1 Defining the juridical-bureaucratic field of alien law

In 2.4 the link between social security law and alien law in the context of European welfare states has been established. It has been argued that homeless aliens are excluded from welfare rights under law on the basis of right of residence. The exclusion of homeless aliens under social security law, however, does not mean that those aliens do not have access to social support in practice. In fact, the exclusion of homeless aliens is challenged at both the 'formal level' and the 'effective level'. That is, according to Guiraudon (2000) and Guiraudon and Lahav (2006), the exclusion of homeless aliens is challenged by both interventions of the courts and bureaucracies.

The current study defines the organization of the provision of social support to homeless aliens in the Netherlands as the juridical-bureaucratic field of alien law. In the remainder of this study the juridical-bureaucratic field of alien law will be termed the 'JB-field'. Like the term indicates, the field constructed in this way is made of two partially overlapping- and interrelated fields of alien law, respectively the juridical field of alien law and the bureaucratic field of alien law.

The central value of the JB-field is understood as a specific meaning of aliens' welfare rights. It is assumed that this meaning is reflected in the 'organization of the provision of social support to homeless aliens'. The organization of the provision of social support to homeless aliens, which reflects practices of exclusion and inextricably also inclusion, is perceived to reflect a temporary equilibrium in the JB-field. The judiciary and the bureaucracy are perceived to be two central interrelated contexts in which the meaning of aliens' welfare rights is fixed. Whereas agents in the bureaucracy can only confirm or challenge the meaning of aliens' welfare rights by their practices, agents in the judiciary can more directly influence alien law by court decisions.

Within the JB-field, three central agents can be discerned, respectively the national government, the municipalities and nongovernmental organizations [NGOs]. Although NGOs officially are no 'state nobility', they do play an important role in the provision of social support to aliens and thus in giving meaning to alien's welfare rights. The discerned agents, in turn, consist of

organizational fields. Although those organizational fields will not be the main focus of this study, it is useful to mention that struggles within those fields influence the values and dispositions those agents bring into the JB-field. That is, their habitus.

Within the JB-field a continuous struggles take place over the meaning of aliens' welfare rights at various interrelated levels, like the national- or local level, and at various formal- and informal sites, like courtrooms and meetings between municipalities and NGOs. In the current study, the existence of aliens' welfare rights is assumed to be determined at the 'formal level', while the fulfilment those rights is assumed to be determined at the 'effective level'.

In the current study, accordingly, the hypothesis is formulated that the meaning of aliens' welfare rights, reflected in the organization of the provision of social support to homeless aliens, can be explained by two interrelated struggles in the JB-field.

On the one hand, a struggle at the 'formal level' over the question whether aliens equally do have a right to social support. Equally having a claim concerns the existence of aliens' welfare rights. A sufficiently important interest to social support can, taken separately, be sufficient to ground a duty in another to provide this. This struggle is assumed to result in a particular legal position of homeless aliens in social security law. At the formal level the exclusion of aliens is most notably challenged by court interventions (Eddy, 2006; Guiraudon and Lahav, 2006).

On the other hand, a struggle at the 'effective level' over the question whether aliens do have a equal right to social support. Having an equal claim concerns the fulfilment of aliens' welfare rights. This struggle is assumed to result in a particular degree of access of social support for homeless aliens and a specific content of the social support provided to homeless aliens. At the effective level the exclusion of aliens is most notably challenged by bureaucracies (Eddy, 2006; Guiraudon and Lahav, 2006).

The two struggles defined above are perceived to be two continuums consisting of gradual distinctions between dynamic categories rather than clear demarcations between distinct categories. The continuums are termed the 'continuum of rights' (the 'formal' struggle) and the 'continuum of responsibility' (the 'effective' struggle). The two continuums, in turn, form the axes of aliens' welfare rights. In Figure 1, the axes of aliens' welfare rights are visualized. The continuum of responsibility is the horizontal axis and the continuum of rights is the vertical axis.

In order to understand and intervene in the organization of the provision of social support to homeless aliens, it is necessary to understand which meaning is accorded to aliens' welfare rights. Therefore it is important to identify the criteria on the basis of which homeless aliens are either included into- or excluded from social support in law and practice and to understand the criteria on the basis of which homeless aliens are (not) provided social support in specific ways. To that end, the

continuum of right and the continuum of responsibility are conceptualized in more detail in the following sections.

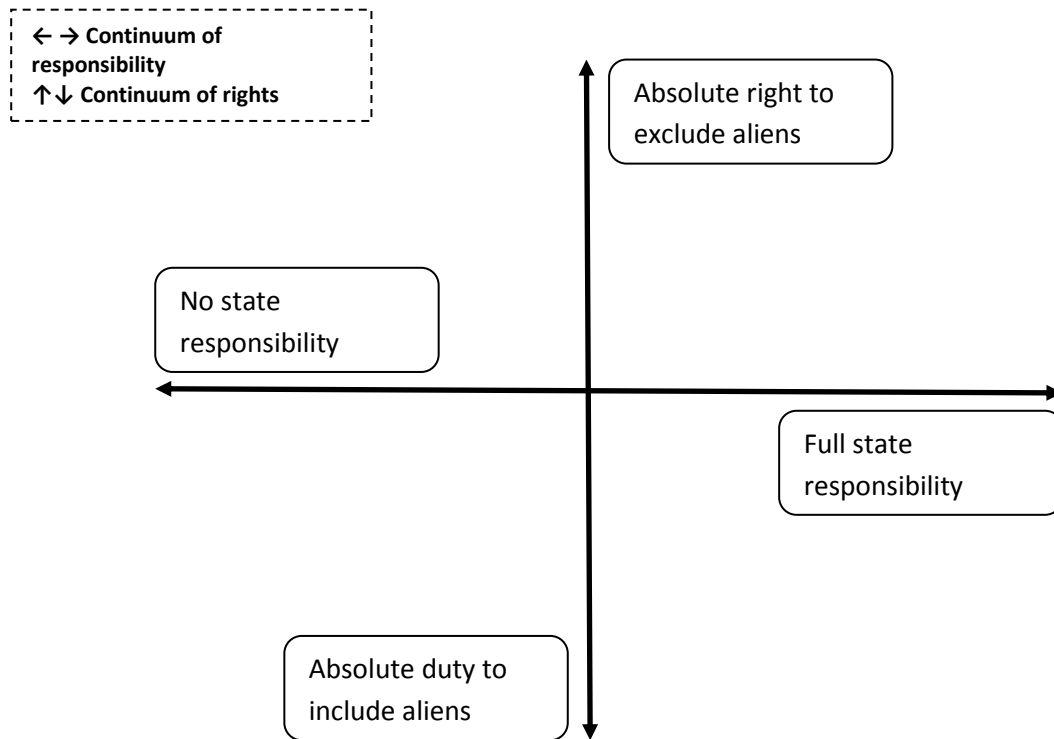


Figure 1: The axes of aliens' welfare rights

3.3.2 The continuum of rights

At the formal level a struggle takes place within the JB-field over the question whether aliens equally do have a right to social support. That is, the existence of aliens' welfare rights. In this research, the existence of aliens' welfare rights will be assessed with the help of a rights-based approach (see 2.3.2 for an introduction on this approach). In line with the relational perspective central to Bourdieu's thought, one can only assess whether aliens' equally have welfare rights when one looks at those rights invoked by agents to either accept or deny the existence of aliens' welfare rights.

In the current study, the struggle at the formal level of the JB-field is understood as a struggle over the relationship between the state's right to exclude aliens from social welfare entitlements and aliens' human rights. On the one hand, alien law is built upon the assumption that the state, on the basis of its national sovereignty, has the right to control immigration into its territory. Consequently, the state is presumed to have the right to exclude individuals by enacting alien law. That is, to prevent aliens from entering into or staying within its territory without its permission. On the other hand, international human rights law is built upon the assumptions that all human beings hold

certain rights in virtue of being human and that states should protect those rights. Consequently, the state is presumed to have the duty to fulfil its obligations under international human rights law. That is, in the framework of social protection, to ensure all individuals at least a minimal living standard. The duty of the state to fulfil its obligations under international human rights law in relation to the state's right to exclude could be conceptualized as the state's duty to include¹⁸. Hence, the 'absolute' right to exclude and the 'absolute' duty to include are understood as forming the opposite ends of the continuum of rights¹⁹. In Figure 2 the continuum of rights is conceptualized.

At heart, the opposites of the continuum can be conceptualized by looking at the criteria on the basis of which aliens are either included into- or excluded from social security law²⁰.

At one end of the continuum the rights, aliens' welfare rights are defined on the basis of a distinction based on right of residence. This distinction is grounded in alien law. At the other end of the continuum the rights, aliens' welfare rights are defined on the basis of a distinction based in personal characteristics other than legal status. This distinction is grounded in international human rights law.

To understand those criteria it is important to briefly say something on two major forces influencing the legal position of (homeless) aliens under social security law, respectively the legislature and the judiciary. The judiciary and legislature can be considered as two opposing forces which to a lesser or greater extent stand in (mis)balance. This (mis)balance, with respect to the legal position of homeless aliens under social security law, reflects the (mis)balance between the restrictive objectives of alien law and the protective objectives of international human rights law. When measures under alien law run contrary to legal guarantees granted under international human rights law, those measures are vulnerable to corrections by the courts. In the words of Vonk (2002, 10) '[w]hen policy measures and legal principles are at odds with each other, the state of the law tends to be volatile and complex' (Guiraudon & Lahav, 2006; Vonk, 2002).

The legislature of the Netherlands has defined the legal position of aliens in social security law on the basis of a distinction based on right of residence (see 2.4 for an explanation on the establishment of this distinction). Accordingly, the existence of the welfare rights of those aliens not having the 'right' form of right of residence, like homeless aliens, is denied. The judiciary challenges the legal position of homeless aliens in social security law by court interventions (Guiraudon & Lahav, 2006). The existence of aliens' welfare rights is accepted in those cases in which their exclusion runs

¹⁸ In order to keep the ends of the continuum at the same analytical level, state's duty to include is mentioned and not aliens' right to be included.

¹⁹ Although rights in line with the argument made in 3.2 can never be absolute, they in practice can be perceived as such. The 'rhetoric of absoluteness' (Glendon, 1990, 44-45) is informed by a particular rights discourse which characterizes (to a more or lesser degree) the political culture of liberal democratic societies.

²⁰ Bouter (2013), in his research on the chances of aliens on receiving social support from NGOs, identifies two axes on the basis of which is determined whether an alien has a right to social support. The first axe is grounded in juridical categories or legal statuses. The second axe is grounded in personal characteristics other than legal status (e.g. need). In the current study, the axes discerned by Bouter (2013) are assessed relationally.

contrary to the legal guarantees granted to them under international human rights law. In those cases, courts may include aliens without a 'right' form of right of residence under national legislation into social security law. Important in this respect, is that special protection is warranted to 'vulnerable persons' under international human rights law and hence 'vulnerability' is an important criteria on the basis of which homeless aliens are included in social security law.

In line with the above, the hypothesis is formulated that the continuum of rights consists of two axis, respectively the 'axe of alien law' and the 'axe of international human rights law' (see Figure 2). 'Not vulnerable' and 'extremely vulnerable'²¹ are conceptualized as being the opposite ends of the 'axe of international human rights law' and 'no right of residence' and 'strong right of residence' are conceptualized as the opposite ends of the 'axe of alien law'.

The equilibrium on the continuum of rights, that is the balance between the state's right to exclude and the state's duty to include, is assumed to result in a particular legal position of homeless aliens in social security law. This equilibrium will be assessed by analyzing the perception and practicable use of the differentiating criteria 'vulnerability' and 'right of residence' in either denying or accepting the existence of aliens' welfare rights.

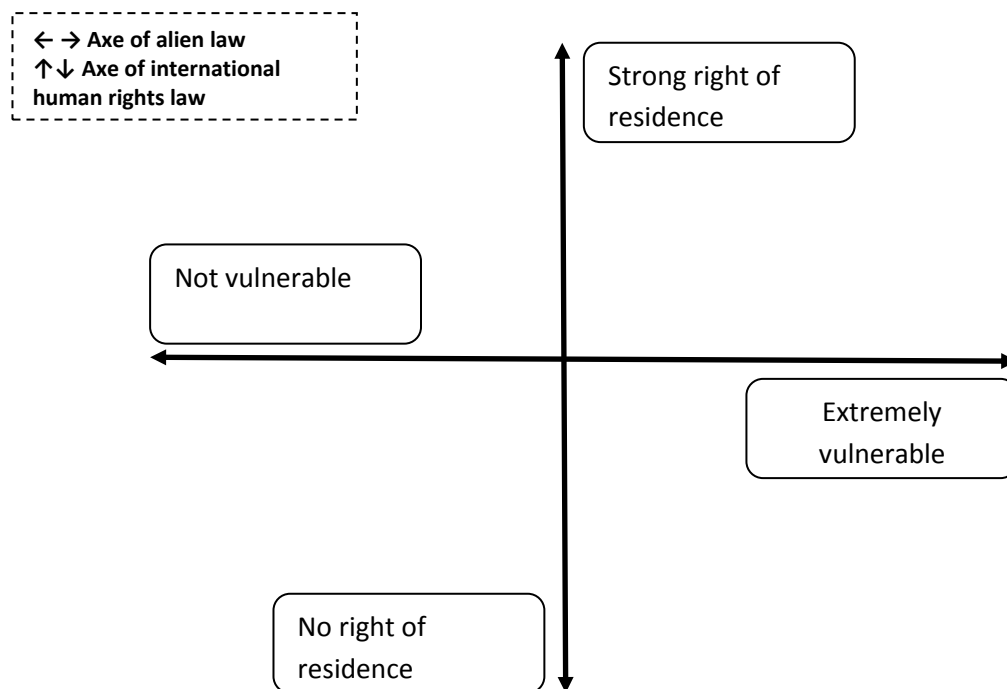


Figure 2 The continuum of rights

²¹ One could argue that a 'duty to include' grounded in international human rights law implies that this criteria should be 'being human'. However, as a result of a long history of struggle by European governments, international human rights law contains restrictive clauses with respect to the conditions under which legal guarantees are valid. This 'legitimizing effect of law' (Vonk, 2002, 12) operates against the inclusion of certain groups of aliens in social security law rather than it challenges their exclusion. Consequently, there is no ground in international human rights law to include aliens under social security law solely on the basis of their 'human being'.

3.3.3 The continuum of responsibility

At the effective level of the JB-field a struggle takes place over the fulfilment of aliens' welfare rights. That is, over the question who should be provided social support, in what way and by which agent. In this research the fulfilment of aliens' welfare rights will be assessed with the help of a needs-based approach (see 2.3.3 for an introduction on this perspective). On the one hand, in contrast to the rights-based approach, the needs-based approach acknowledges that the content of a right, or the nature of the duties grounded by the interest, is conditioned by contextual factors and competing rights-claims. That is, that trade-offs will take place in the transposition of legal guarantees granted under social security law into policy and in the implementation of this policy. On the other hand, the needs-based approach leaves room to address why not all 'exercisable welfare rights' of aliens are recognized under national law as 'existing'. As discussed in 2.3.3, the situation in which the social need is left unmet needs to be constructed as being a social problem in order to be met by public action. The dominant construction of this situation, in turn, determines whether and how a social problem is addressed through social welfare policy (Abramovitz & Blau, 2004). The first implies it is important to assess the way in which legal guarantees of social protection are transposed into (the implementation process of) policy. The latter implies it is important to assess how the situation of homeless aliens is constructed.

In line with the above, the hypothesis is formulated that the transposition of legal guarantees of social protection into (the implementation process of) policy and the construction of the situation of homeless aliens are reflected in the way in which social support is (not) provided. The struggle at the effective level hence is understood as a struggle over the 'right' answers to the following questions:

- What social support should be provided to which aliens?
- Who should be responsible for the provision and financing of this support?
- For what ends and by what means this social support should be provided?

Important to the struggle at the effective level are bureaucracies or the implementers of policy. The bureaucracy is a major force challenging the exclusion of aliens from access to (specific forms of) social support provisions under alien policy. The bureaucracy might not believe in the legitimacy or efficacy of the rules alien law produces, might not be willing to act in accordance with alien policy (e.g. it might believe that some interest conflicting with alien policy are more important) or might not be able to act in accordance with alien policy (e.g. it might not have the capabilities to do so). Hence, implementers do not necessarily perform in accordance with national policy. On the contrary, they might even counter alien policy by providing some form of social support to aliens who under alien

law do not have a 'right' form of right of residence. By doing so the bureaucracy influences alien law and -policy in (making and) performing it and thereby affects the meaning of aliens' welfare rights (Bourdieu, 1994; Guiraudon & Lahav, 2006; Tomlins, 2004).

To understand differences between the existence of aliens' welfare rights under social security law and the exercisability of aliens' welfare rights in practice, it is important to consider how bureaucracies either confirm or challenge alien law. The extent to which the interests of the legislature and bureaucracy differ are an important factor in this respect, especially when agencies whose primary function is not to implement alien law are delegated (by the state) or sanctioned (by the court) to implement alien law. Also the way in which bureaucracies interpret and apply alien law, the values that guide their actions, the use they make of their discretionary power and their independence from external pressures (e.g. court decisions or state's sanctions following non-compliance) are important factors (Guiraudon & Lahav, 2006).

In the current study, it is assumed that social support is provided to either serve the restrictive objectives of alien policy or the protective objectives of social support policy. 'No state's responsibility' and 'full state's responsibility' are understood as forming the opposite ends of the continuum of responsibility.

At the 'no state responsibility' end of the continuum the provision of social support is organized in such a way it supports the objectives of alien policy. That is, to prevent aliens from entering into or staying, without the state's permission, within the state's territory. The provision of social support hence aims to encourage aliens to obey to alien law. Under those circumstances, the state does not have any responsibility for the fulfilment of aliens' welfare rights.

At the 'full state responsibility' end of the continuum the provision of social support is organized in such a way it supports the objectives of social support policy. That is, to ensure all a minimal standard of living. The provision of social support hence aims to guarantee minimal standards of living to all individuals, irrespective of whether they obey to alien law.

At heart, the opposites of the continuum of responsibility can be conceptualized by analyzing what justifications, objectives and means are invoked to (not) provide social support to homeless aliens in specific ways. In the current study, the hypothesis is formulated that the continuum of responsibility consists of two axes, respectively the axe of access and the axe of content.

The axe of access concerns homeless aliens' access to social support. It deals with the construction of those conditions of need regarded as deserving enough to be met by public action. Those deserving conditions of need are, among others, reflected in the explanatory theory offered in the construction of the situation of homeless aliens and in the eligibility determination process of social support programs (see 2.3.3). Since deserving conditions of need consist of various elements, the ends of the axe of access are conceptualized as 'full access' and 'no access'. At the 'full access'

end the conditions of need are constructed in such a way it grants (specific groups of) homeless alien's full access to social support. At the 'no access' end the conditions of need are constructed in such a way it does not grant (specific groups of) homeless aliens any access to social support.

The axe of content concerns the content of the social support homeless aliens' receive. It deals with the effects of scarcity, caused by both competing rights-claims and the availability of resources, on the content of social support provisions. The ends of this axe are conceptualized as 'needs-based' and 'resource-based'. At the 'needs-based' end of the axe the (lack of) provision of social support to homeless aliens is justified on the basis of their (lack of) need. At the 'resource-based' end of the axe the (lack of) provision of social support to homeless aliens is justified on the basis of the availability of resources. In Figure 3 the continuum of responsibility is visualized. The axe of access is the horizontal axis and the axe of content is the vertical axis.

The position of aliens' welfare rights on the continuum of responsibility is assumed to result in a particular degree of access of social support for homeless aliens and a specific content of the social support provided to homeless aliens. This equilibrium will be assessed by analyzing the construction of the situation of homeless aliens by different agents, the arguments they use to either justify or deny the provision of social support to homeless aliens and the ways in which they (do not) provide social support to homeless aliens.

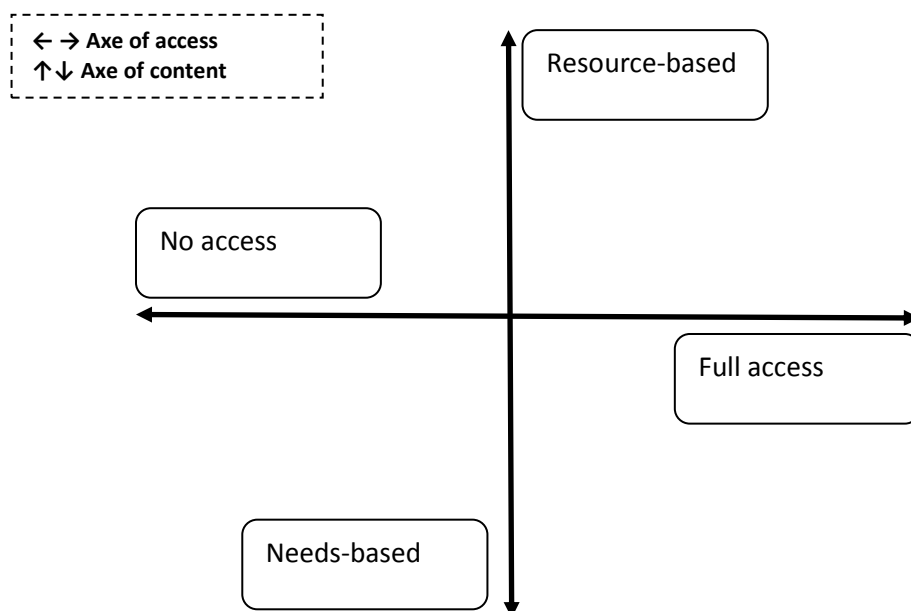


Figure 3: The continuum of responsibility

3.3.4 Defining related agents and fields

The JB-field does not function in a vacuum. Instead, the JB-field is related to and interacts with many other fields. Moreover, in addition to the national government, municipalities and NGOs, also other agents influence the JB-field. While those agents and fields undeniably influence the temporary equilibrium in the JB-field, it is impossible, given the resource-based limitations of this research, to conduct an in-depth research on all those related agents and fields. Therefore, based on initial experiences during research²², related agents and fields deemed relevant are included in the context of the JB-field. Eventually two fields, respectively the field of journalism and the medical field, and one agents, respectively the European Union, is included in the context of the JB-field.

First, the European Union is included in the context of the JB-field. The influence of the European Union on the JB-field is obvious. The Dutch legal system has to conform to the legal system of the European Union. Consequently, European legislature and judiciary can both restrict and foster the exclusion of (specific groups of) aliens from the social welfare system at the national level.

Second, the field of journalism is included in the context of the JB-field. Media is both a form of communication and a way of perceiving social affairs. Strömbäck and Esser (2014) argue that no political actor can risk ignoring the media. Media provides means to produce meaning. Consequently, being the most important source of information on politics and society, media provide political agents influential means to influence the public opinion and the political agenda to their own advantage. Moreover, since media considerations have become increasingly relevant in politics, political agents, eventually being dependent on public support, increasingly need to adapt their communication to the media and their logic to convey their message. That is, they need to communicate in a less sophisticated way which is easier to understand by the public at the cost of informational value. This mediatization of politics has helped to create a widespread populism. Consequently, following Strömbäck (2008, 228) 'the important question no longer is related to the independence of the media from politics and society. The important question becomes the independence of politics and society from the media'. Therefore, one cannot neglect the influence of the field of journalism on the JB-field (Bouter, 2013; Strömbäck, 2008; Strömbäck and Esser, 2014).

Third, the medical field is included in the context of the JB-field. First, as mentioned in 2.2, the primary benefits of social support are generally asserted to be health benefits. Second, as will become clear later on, medical considerations are used to both justify the provision of social support to homeless aliens and to criticize alien law. Last, as will become clear later on as well, health conditions are a main component of 'vulnerability', which in turn is used by courts to include some

²² The details of the fieldwork are discussed in Chapter 4.

homeless aliens into social security law.

3.4 Conceptual model

In the foregoing the axes of aliens' welfare rights have been conceptualized and theorized. In this final section, all elements of the JB-field discussed in this chapter will be related and visually displayed. The resulting conceptual model forms the lens through which the struggles over the organization of the provision of social support to homeless aliens will be analyzed.

The current study defines the organization of the provision of social support to homeless aliens in the Netherlands as the JB-field. The central value of the JB-field is understood as a specific meaning of aliens' welfare rights. It is assumed that this meaning is reflected in the organization of the provision of social support to homeless aliens, which in turn, is perceived as reflecting a temporary equilibrium in the JB-field.

Within the JB-field, three central agents are discerned, respectively the national government, municipalities and NGOs. Struggles in the organizational fields of those agents, which will not be the main focus of this study, influence the values and dispositions those agents bring into the JB-field. The judiciary and bureaucracy are perceived to be two central interrelated contexts in which the meaning of aliens' welfare rights is fixed.

Central to the JB-field are two struggles about the meaning of aliens' welfare rights. Those struggles are conceptualized as the axes of aliens' welfare rights. Those axes are understood as two continuums consisting of gradual distinctions between dynamic categories. Those continuums, in turn, each consist of two axes.

The first continuum is the continuum of rights. The continuum of rights is concerned with the question whether aliens equally have a right to social support. That is, the existence of aliens' welfare rights. This continuum ranges from 'absolute right to exclude' to 'absolute duty to include'. At one end of the continuum of rights, aliens' welfare rights are defined on the basis of a distinction based on right of residence. This distinction is grounded in alien law. At the other end of the continuum of rights, aliens' welfare rights are defined on the basis of a distinction based in personal characteristics other than legal status. This distinction is grounded in international human rights law.

The continuum of rights, in turn, consist of two axes, respectively the axe of alien law and the axe of international human rights law. According to the axe of alien law, the existence of welfare rights is only accepted for those aliens who do have the 'right' form of right of residence under alien law. This axe ranges from 'no right of residence' to 'strong right of residence'. According to the axe of international human rights law, the existence of welfare rights is accepted in those cases in which not doing so runs contrary to legal guarantees granted to aliens under international human rights law.

Since vulnerability is an important criteria on the basis of which homeless aliens are included in social security law, the ends of this axe are conceptualized as 'not vulnerable' and 'extremely vulnerable'.

The struggle at the continuum of rights is assumed to result in a particular legal position of homeless aliens under social security law. At this formal level, the exclusion of aliens is most notably challenged by court interventions and hence the (mis)balance between the legislature and the judiciary plays an important role. The position of aliens' welfare rights on this continuum depends on the perception and practical use of the differentiating criteria of vulnerability and right of residence in either denying or accepting the existence of aliens' welfare rights.

The second continuum is the continuum of responsibility. This continuum is concerned with the question whether aliens do have an equal right to social support. That is, the fulfilment of aliens' welfare rights. This continuum ranges from 'no state's responsibility' to 'full state's responsibility'. At the no state responsibility end, social support is solely provided to encourage aliens to obey to alien law. At the full state responsibility end, social support is solely provided to guarantee minimal standards of living to all individuals. That is to fulfil the welfare rights of aliens.

The continuum of responsibility, in turn, consists of two axes, respectively the axe of access and the axe of content. The axe of access is concerned with the construction of those conditions of need regarded as deserving enough to be met by public action. This axe ranges from 'no access' to 'full access'. At the full access end, the conditions of need of (specific groups of) homeless aliens are constructed in such a way those aliens have full access to social support. At the no access end, the conditions of need of (specific groups of) homeless aliens are constructed in such a way those aliens do not have any access to social support. The axe of content is concerned with the effects of scarcity, caused by both competing rights-claims and the availability of resources, on the content of social support provisions. This axe ranges from 'needs-based' to 'resource based'. At the needs-based end, the provision of social support is justified on the basis of (the lack of) need. At the resource-based end, the provision of social support is justified on the basis of the availability of resources.

The struggle at the continuum of responsibility is assumed to result in a particular degree of access of social support for homeless aliens and a specific content of the social support provided to homeless aliens. At this effective level the exclusion of aliens is most notably challenged by bureaucracies and hence the (mis)balance between the legislature and the bureaucracy plays an important role. The position of aliens' welfare rights on this continuum depends on 'the construction of the situation of homeless aliens', 'the arguments used to justify or deny (specific) provisions' and 'the ways in which social support is provided to homeless aliens'.

In Figure 4, the conceptual model of the JB-field is presented. As visible in Figure 4, the JB-field does not operate in a vacuum. Important agents and fields to which the struggles in the JB-field

are related are the European Union, the field of journalism and the medical field.

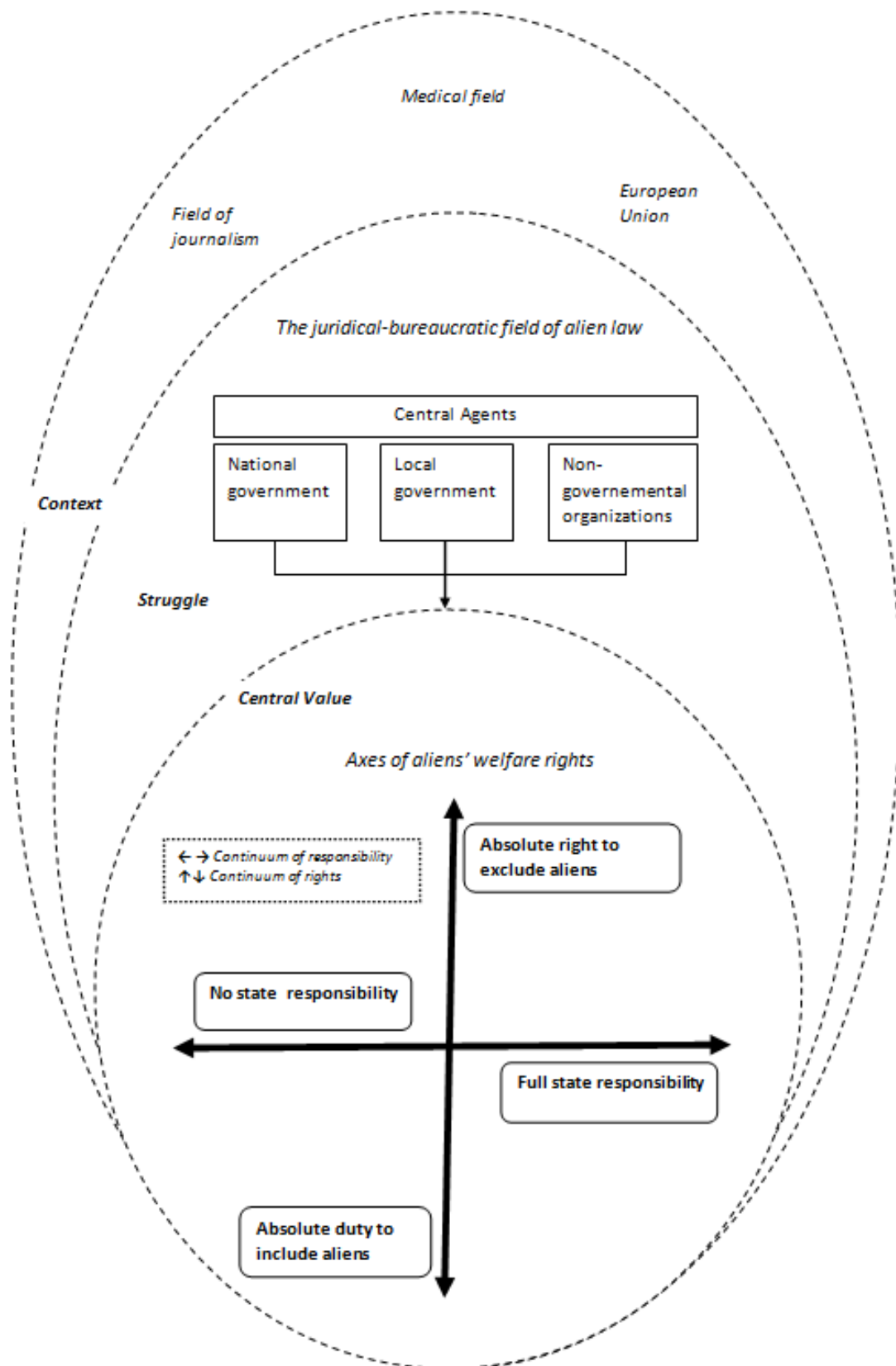


Figure 4: Conceptual model

4. Methodology

In this chapter the research strategy and -methodology will be discussed. To start with, it will be explained how the JB-field is operationalized (4.1). This is regarded as necessary in order to understand the choices made with regard to the research approach and methods of data-collection and data-analysis. Second, the research approach will be elucidated (4.2). Third, the methods of data-collection will be discussed (4.3). Fourth, the methods of data-analysis will be discussed (4.4). Last, some limitations and difficulties of the applied approach and methodology will be discussed (4.5).

4.1 Operationalizing the JB-field

In line with the constructed JB-field (see Chapter 3), the methodology needs to support the researcher in analyzing the (struggles over the) meaning of aliens' welfare rights in the JB-field. To understand the latter, it is necessary to briefly explain how the JB-field, in line with the defined research questions (see Chapter 1), is operationalized.

The position of aliens' welfare rights on the continuum of rights and the continuum of responsibility, reflected in the organization of the provision of social support to homeless aliens, is understood as the central value of the JB-field. The struggle over the existence of aliens' welfare rights central to the continuum of rights is assumed to result in a particular legal position of homeless aliens under social security law. The struggle over the fulfilment of aliens' welfare rights central to the continuum of responsibility is assumed to result in a particular degree of access to social support for homeless aliens and a specific content of the social support provided to homeless aliens.

The continuums of rights and responsibility, in turn, are understood as each consisting of two axes. Those axes are defined on the basis of criteria which are (likely to be) invoked in defining either the existence or the fulfilment of aliens' welfare rights. With respect to the continuum of rights, that is the existence of aliens' welfare rights, those criteria are 'right of residence' and 'vulnerability'. With respect to the continuum of responsibility, that is the fulfilment of aliens' welfare rights, those criteria, or rather dimensions, are 'the construction of the situation of homeless aliens', 'the arguments used to justify/deny the provision of social support to homeless aliens', and 'the ways in which social support is provided to homeless aliens'.

The meaning of aliens' welfare rights then is dependent on two 'factors'. First, the meaning of aliens' welfare rights depends on the criteria which are invoked by the national government,

municipalities and NGOs (the central agents of the JB-field) in defining either the existence or the fulfilment of aliens' welfare rights. On the one hand, this concerns the perception and practical use of the criteria 'right of residence' and 'vulnerability' in either accepting or denying the existence of aliens' welfare rights. On the other hand, this concerns the construction of the situation of homeless aliens by the different agents, the arguments they use to justify or deny to provide social support to homeless aliens and the ways in which they do provide social support to homeless aliens.

Second, the meaning of aliens' welfare rights depends on the positions the national government, municipalities and NGOs hold in the power structure characteristic of JB-field. On the one hand, the use of the criteria and dimensions mentioned above, and hence the meaning of aliens' welfare rights, varies across the JB-field. The 'real' meaning and 'values' then depend on the power structure of the field granting a specific agent, advocating a specific meaning and specific values, a dominant position. On the other hand, as discussed in the previous chapter, the position of an agent in the JB-field affects the potential courses of action for that agent and thus its possibilities to influence the organization of the provision of social support to homeless aliens. The positions agent hold are dependent on the distribution of capitals and the valuation, according to the doxa of the JB-field, of those capitals.

The objective of this study is *not* to determine the position of aliens' welfare rights on the continuum of right and responsibility. Instead, the objective of this study is to provide recommendations to the agents involved in the provision of social support to homeless aliens on how to improve the organization of the provision of social support to homeless aliens. It is asserted that the position of aliens' welfare rights is reflected in (the organization of) the provision of social support to homeless aliens. Consequently, the conceptualization of the JB-field described above provides a lens through which to answer the sub-questions central to this study. Those questions are:

1. In which way the provision of social support to homeless aliens is organized in law and practice?
2. How do some meanings on the provision of social support to homeless aliens dominate others?
3. In which way and by what meanings the dominant meaning is challenged?
4. What room for change can be discerned?

The concepts central to Bourdieu's field theory and thought are not directly applicable. Hence, one needs to look how those concepts (like habitus) play out in practice and subsequently conceptualize them. The sub-questions of this study then will be answered as follows. First, by assessing the perception and practical use of the criteria central to the continuum of rights and the dimensions

central to the continuum of responsibility by the different agents and the position of those agents in the power structure of the JB-field, which in turn is grounded in the distribution and valuation of capitals, dominant- and dominated meanings are discerned. Second, by assessing the attitudes and strategies of agents in either conserving or challenging the status quo it is determined how some meanings either dominate- or challenge others.

In order to carry out the two assessments mentioned above, it is necessary, on the one hand, to describe the way in which the provision of social support to homeless aliens 'factually' is organized. That is, to describe the legal position of homeless aliens under social security, the particular degree of access of social support for homeless aliens and the specific content of the social support provided to homeless aliens. On the other hand, the above requires to describe the acts by which agents either conserve or challenge this organization.

Third, by looking for poles within the JB-field where the doxa of the JB-field actually is being changed by external logics, internal practices or capitals whose relative value is changing, on the basis of the first and the second assessment, room for change is identified. For example, an increasing importance of the criteria of vulnerability might challenge the importance of the criteria of right of residence in determining the existence of aliens' welfare rights and therefore might provide room to change the organization of the provision of social support to homeless aliens.

4.2 The research approach

4.2.1 Qualitative approach

In research one can either choose from a qualitative- or quantitative approach. In quantitative research the data consists of numbers and the researcher tries to express a view on reality by expressing it, through numerical evidence, in terms of numerical values. In qualitative research the data consists, in most cases, of words and the researcher tries to express a view on reality by expressing it, through interpretation, in terms of rules, patterns or structures. Results in quantitative research are usually acquired by deductive reasoning and presented in the form of graphs and tables. Results in qualitative research are usually acquired by inductive reasoning and presented in the form of words or a detailed description (Korzilius, 2001; Punch, 2005).

In this study a qualitative approach is adopted. The choice for this approach is based on both the characteristics of the qualitative approach as compared to the quantitative approach and the characteristics of the object of study.

First, the availability of- and the possibilities to obtain information on (the organization of) the provision of social support to homeless aliens motivate the choice for a qualitative approach. To

begin with, there are few quantitative figures available on the (organization of the) provision of social support to homeless aliens. In fact, most of the information available is qualitative in nature. Also, it is not practicable for the researcher to obtain meaningful quantitative data in the framework of this research. On the one hand, since the provision of social support to homeless aliens is both politically- and socially charged, many agents do not keep statistics on their provisions to homeless aliens. Moreover, when they do, it is questionable whether they are willing to share those statistics. On the other hand, the researcher is not able, given that this research has to be conducted with few resources within a short period of time, to herself collect quantitative data on such a large scale as the JB-field.

Second, the Bourdieusian perspective used in the current study (see the previous chapter) motivates the choice for a qualitative approach. Central to this perspective, which in some sense also reflects a methodology, is the analysis of power and relationality. Those features cannot be addressed in terms of numbers. Consequently, a qualitative approach is more appropriate to analyze the object of study

Third, certain characteristics of the object of study motivate the choice for a qualitative approach. The object of study can be characterized as complicated and has never been studied as a whole (see for example Bouter, 2013 and Doornik, Kos and Maussen, 2015 for studies on specific elements of the JB-field). Also, the object of study is dynamic rather than static. Moreover, given the charged nature of the object of study, it needs to be studied from close quarters. That is, in order to obtain access to meaningful information, it needs to be studied from within.

The qualitative approach is most appropriate to deal with those specific characteristics. In comparison to the quantitative approach, the qualitative approach is more exploratory, evolutionary and holistic. It provides greater flexibility to adapt the research strategy and -methodology to obtained information or 'unplanned' developments. Moreover, the qualitative approach allows to address a phenomenon in a more holistic manner. Last, the qualitative approach provides more room for personal judgement and hence allows the researcher to be less separated from the object of study. So, the qualitative approach is best suited to conduct this research (Creswell, 2013; Flick, 2009; Korfilius, 2001; Punch, 2005).

4.2.2 Case study

One can choose between many different strategies in qualitative research (see Creswell, 2013, 104-106 for a summary on the characteristics of five main qualitative strategies). Since the JB-field is never studied as a whole, it is useful to provide a detailed insight. The case study pre-eminently is an appropriate strategy to acquire an in-depth understanding of a case. Therefore, a case study will be undertaken in this research. To put it more precisely, a single within-site case study will be conducted

(Creswell, 2013; Flick, 2009). However, this study is not a 'regular' case study. The case studied is not only an instrumental case which serves to understand the object of study as well as possible (Creswell, 2013), but is also an 'interventional' case which serves to intervene in the object of study. That is, to change the (organization of the) provision of social support to homeless aliens.

According to Creswell (2013, 97) a case study 'involves the study of a case within a real-life contemporary context or setting'. The case study aims to give a precise description or -reconstruction of a case (Flick, 2009). The main advantage of the single case study strategy is that it allows the researcher to gain an extensive insight into the object of study and thus to produce results with high internal validity. As Flick (2009, 134) argues ' [c]ase studies can capture the process under study in a very detailed and exact way....[because t]hey are not restricted due to an intended comparability'. Accordingly, the main disadvantage of the single case study strategy is that its results lack external validity or generalizability (Creswell, 2013, Korfilius, 2000).

The main difficulty of the case study is that the object of study, that is the case, needs to be demarcated. One needs to clarify what (not) belongs to the case. A case should be bounded or, in other words, needs to be described within specified parameters of, for example, place and time (Creswell, 2013; Flick, 2009). In the current study, the case is understood as the JB-field. In the previous chapter, the JB-field is defined as the organization of the provision of social support to homeless aliens in the Netherlands. The JB-field will be studied from August 2014 until the end of April 2015.

However, since the boundaries of the JB-field themselves are part of the struggle over that field, the JB-field is not bounded in the strict sense. Under those circumstances, the exact parameters of the JB-field have been defined in the course of research. Based on previous research (see for example Bouter, 2013 and Doornik, Kos and Maussen, 2015) the three central agents, respectively the national government, municipalities and NGOs, and the central activity of the field, that is struggle over the meaning of aliens' welfare rights, have been used as the starting point in defining those parameters. The three central agents then are understood as being three interrelated within-site sub cases.

4.2.3 Triangulation

To ensure the internal validity of the case study, it is important to apply the concept of triangulation. As Flick (2009, 445) explains, '[t]riangulation means that researchers take different perspectives on an issue under study or -more generally speaking- in answering research questions'. Triangulation is a strategy to increase the possibilities for producing knowledge (on different levels), to produce better knowledge (on the same level) and to improve the quality of research. Triangulation can be used both complementary, that is to make up for the weaknesses of different perspectives, and divergent,

that is to elucidate different aspects of the case under study. When the researcher arrives at similar results by using triangulation those findings become validated (Creswell, 2013; Flick, 2009; Verschuren & Doorewaard, 2007).

Denzin (1989, 237-241) makes a distinction between four types of triangulation, respectively data-, theoretical-, methodological- and researchers triangulation. In this research all types of triangulation, apart from researchers triangulation, have been used. A multitude of data sources, data-collection methods, data-analysis methods and theoretical perspectives has been used. For example, persons, documents, local-temporal settings and media reports all have been used as data sources.

4.3 Methods of data-collection

In this section, the data-collection methods used in this study will be discussed. First, the methods for collecting primary data will be discussed. In this research, primary data is collected by means of interviews and observations. Not all those experiences of the field were pre-planned. Instead, the researcher tried to attend to as much as was going on. Observations and interviews complement one another. A challenge to interviews is that the statements of interviewees do not necessarily give a complete account of their viewpoints and practices, since those viewpoints and practices are, to some extent, tacit and grounded in implicit presuppositions (Bourdieu, 1994). Observations may open up those viewpoints and practices that do not surface in interviews. They provide the opportunity to gain information on taken-for-granted or informal aspects of a situation which are not recognized or articulated by people. Moreover, since interviewees tend to reflect reality as somewhat rational and ordered when directly questioned, observations provide the opportunity to more realistically capture the chaotic nature of reality (Flick, 2009).

A challenge to observations, in turn, is that the presence of the observer might influence the actions of the observed. Interviews can serve to straighten those effects and prevent a biased view of the observer. Interviews can do this, however, only partially. Depending on the interests of interviewees, they may react strategically to certain questions. Moreover, not all information about the object under study is derivable by observations. So, interviews can be used to obtain particular information to fill in knowledge gaps.

Second, the methods for collecting secondary data will briefly be discussed. In this research, a multitude of secondary data, respectively scientific literature, documents and media reports have been used. This data is collected by means of search engines and persons.

4.3.1 Interviews

According to Flick (2009, 160), '[a] goal of interviews in general is to reveal existing knowledge in a way that can be expressed in the form of answers and so become accessible to interpretation'. In this research interviewees are considered as being holders of a 'subjective theory' (Flick, 2009, 156), or a complex stock of knowledge, about the organization of the provision of social support to homeless aliens. This knowledge consists of both explicit (articulated) presuppositions and implicit (non-articulated and non-expressible) presuppositions.

In the current study, interviews are conducted for two purposes. On the one hand, they are used to reconstruct the viewpoints and positions of the central agents in the JB-field. On the other hand, they are used to reconstruct how those viewpoints and positions impact practices and vice versa. For those purposes, different kinds of questions are asked during the interviews. Most notably, open questions, hypothesis-directed²³ questions and confrontational²⁴ questions are asked. By posing those questions, the researcher attempted to make the implicit presuppositions underlying the subjective theory of the interviewees more explicit.

Interviews have been conducted with juridical- and medical experts, professionals working for NGOs and officials working for municipalities or the national government. All those interviewees are understood as being experts. Moreover, all interviewees are understood as representing agents in the JB-field.

Several kinds of interviews have been conducted in this research. First, unstructured interviews have been conducted. Unstructured interviews are conversational in nature. In this research, unstructured interviews have been conducted with professionals of NGOs and officials of municipalities and the national government before and after observations. Those interviews were conducted 'spontaneously' and mainly served to support the researcher in developing knowledge about- and gaining access to the JB-field.

Second, semi-structured interviews have been conducted. Nine semi-structured interviews have been conducted face-to-face and one interview has been conducted over the phone. Per interview, the questions posed are somewhat adjusted to the expertise and the kind of agent interviewed. Given the major interests of agents in- and the highly politicized nature of the JB-field, it is assumed to be ineffective to only ask direct questions. Therefore, loosely structured interview schemes, grounded in a more structured interview guides, have been used during the interviews.

The interview guides are presented in Appendix A. In Appendix A also an individual interview

²³ For example, question of specific relation A to B containing presupposition C. Interviewees, to some extent, depending on their subjective theory, either take up or refuse the presupposition implicit in the question (Flick, 2009).

²⁴ For example, 'you express idea X, what do you think of alternative Y'. Confrontational questions were asked in response to the presuppositions articulated by the interviewee with the aim of critically re-examining this presupposition in light of competing alternatives (Flick, 2009).

scheme used during an interview with an NGO is presented. This scheme is included to give an impression on how the interview guides practically have been used to make the individual interview schemes. The interviews conducted have been transcribed verbatim²⁵.

The 'general' interview guide, that is the guide used to varying degrees to make all interview schemes, consists of four topics, respectively 'the position/stance of the organization/person in the JB-field', 'the agent's view on relevant matters', 'the provision of social support to homeless aliens' and 'the effects of "external" fields'. All questions posed under the header of those topics can be interpreted as being concerned with either the 'viewpoints/attitudes', 'positions/relations' or 'practices' of agents.

Besides the general interview guide, a 'juridical' and 'medical' interview guide have been used to make the interview schemes for interviews with respectively juridical- and medical experts. Those interviews served to acquire information on specific elements of the JB-field. Hence, those guides focus on topics related to the specific knowledge of the juridical- and medical experts. The 'juridical interview guide' consist of three topics, respectively 'alien law/policy and homeless aliens', 'international human rights law and homeless aliens' and 'rights-conflicts'. The 'medical interview guide' also consists of three topics, respectively 'the integration of medical considerations into alien policy', 'the medical advice hearing and deciding' and 'the Article 64/BMA advice'.

Third, structured interviews have been conducted. In total 25 structured interviews with eighteen individuals have been conducted via e-mail. In those interviews, based on information gaps and/or -uncertainties, specific questions on specific issues are asked. Those interviews served to fill information gaps and to validate findings.

In the Appendix A, a overview of all interviewees is presented. This overview is established on the basis of the kind of interview conducted. In the current study, several respondents wished to remain anonymous. Therefore, this study does not refer to individual respondents. Instead, the researcher refers to 'respondent(s)' to indicate that findings are supported by information provided by respondent(s) in interviews.

4.3.2 Observations

According to Flick (2009, 282), '[o]bservation, in its different forms, tries to understand practices, interactions, and events, which occur in a specific context'. Observation is a very open way of conducting research. It provides the opportunity to gain information on taken-for-granted or informal aspects of a situation which are not easily recognized or articulated by agents. Moreover, observation provides the opportunity to acquire insight in features like group processes, group

²⁵ The transcriptions of those interviews, due to the high number of pages are not enclosed in this thesis. They can, however, be requested for by the author.

dynamics, the nature of interaction between agents, the relative dominance and participation of agents and main issues of discussion (Flick, 2009; Strebbins, 2001).

The struggle over the meaning of aliens' welfare rights is not directly observable. Consequently, an important step of this research was to identify situations in which this struggle could be observed. To this end, events and/or situation were searched in which different agents would discuss the organization of the provision of social support to homeless aliens and/or the situation of homeless aliens. Eventually, eleven observations have been conducted. In appendix B an overview of the observations conducted is presented.

The researcher can take different roles in the observation of a situation, ranging from the role of the insider as a complete participant to the role from the outsider as a complete observer or non-participant (Flick, 2009, 223). In the participant observation, the situation is observed from a membership perspective and the observer actively influences what is observed by participating in the situation. In the non-participant observation, the situation is observed from an outsider perspective and the observer takes distance to and refrains from intervening in the observed situation. This role-positioning allows the researcher to stay in the field and to observe it at the same time. In other words, to develop both an understanding (as a participant) and a scientific understanding (as an observer).

The nature of the situation under observation influences what position is feasible and useful. As Flick (2009, 224) argues, '[t]he easier a field is to overlook, the more difficult it is to participate in it without becoming a member'. The number of participating agents in and the natural occurrence of the situation under observation influence the extent to which the observation is (c)overt, that is the visibility of the observer. The degree of visibility for the observer, in turn, affects the observed situation itself, because observed agents may become more conscious of how they act and what they say (Flick, 2009).

The observed situations varied in their size and natural occurrence. Informed by those characteristics, a feel for the game and, in some cases, the need to acquire specific information, both participant- and non-participant observations have been conducted. Most observations were non-participant. The presence of the observer is unlikely to have seriously influenced those observed situations. For example, in the case of the observation 'Network meeting Supporting Undocumented Migrants' organized by the Dutch Red Cross the number of participating individuals was limited and the events started with the introduction of everyone present. In those observations, the researcher was introduced as a trainee of the Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten [VNG]) conducting a research, commissioned by the VNG, on the way in which the provision of social support to homeless aliens could be reorganized. In those events, the researcher was introduced as being a 'temporary helper' of the 'real member' of the VNG also attending the

events. In other words, the researcher was not perceived as being a member of the VNG who could actually be of any use to the participants.

On a single occasion the researcher fully participated. In the thematic meeting jointly organized by the VNG and Pharos (a centre for expertise on health inequalities), in which both municipalities and NGOs participated, the researcher was asked to present her recommendations to the VNG. This possibility to present and discuss developed ideas has been used by the researcher to check whether those ideas actually mean something to the participants. As discussed in the previous chapter, recommendations on improving the organization of the provision of social support to homeless aliens need to mean something to the agents involved in order to actually be of any use.

To guide the observations, the researcher made use of an observation scheme (see Appendix B). This scheme, consisting of a short list of themes (and sub-themes), was used to demarcate those features which need to be documented. To maintain sensitivity to the new, this scheme was open to the addition of features and themes. Hence, the observations were rather flexible and responsive. The following themes have been used as a starting point: 'statements about the organization of the provision of social support to homeless aliens', 'statements about aliens' right to social support', 'statements about the position/stance of agents in the JB-field' and 'main points of discussion and agreement'. In Appendix B those themes are further clarified by distinguishing sub-themes and features.

4.3.3 Secondary data

In this research, a multitude of secondary data is used. First of all, several types of literature have been used, respectively theoretical literature, empirical literature and methodological literature (Flick, 2009, 48). For example, methodological literature on how to conduct research is used to write this chapter. Second, several documents have been used. Documents are perceived to be a 'means of communication' (Flick, 2009, 258). As Flick (2009, 258) argues '[s]omeone (or an institution) produces them for some (practical) purpose and for some form of use (which also includes a definition of who is meant to have access to them)'. Documents differ, among others, in their authorship (personal or official) and accessibility (closed, restricted, open archival or open published) (Flick, 2009, 258). In this research both documents from personal- and official authors have been used. Moreover, documents with a varying degree of accessibility have been used. Some of those documents were accessed upon request. Others were entrusted in confidentiality. Third, the media are used as a secondary source of data. For example, several media reports on events in the JB-field have been included.

Literature is collected by means of search engines. Media reports and documents are collected by means of search engines and persons. Those media reports referred to by persons

during the execution of this research are assumed to be of importance to the agents within the JB-field and thus for the study.

4.4 Methods of data-analysis

As already mentioned, the conceptual model discerned in 3.4 forms the lens through which (the struggles over) the organization of the provision of social support to homeless aliens will be analyzed. It is assumed that the position of aliens' welfare rights is reflected in this organization. In the current study, the meaning of aliens' welfare rights is analyzed by using the methods of thematic analysis and discourse analysis. By employing thematic analysis (see Flick, 2009, 318-323) and discourse analysis (see Flick, 2009, 338-341) the taken-for-granted meaning of aliens' welfare rights is debunked.

By thematic analysis the social distribution of perspectives on a phenomenon or process can be reconstructed among groups or 'cases'. In thematic analysis, the researcher first needs to construct a 'case profile' (see Flick, 2009, 319), that is, a description of the elements or features of the case. Second, the researcher needs to construct a system of 'meanings' per case. Third, the researcher needs to compare those cases. This approach resembles with the execution of a 'within-site' case analysis followed by a 'cross-site' case analysis.

In thematic analysis, the cases of analysis need to be constructed a priori. The national government, municipalities and NGOs are taken as a starting point for those groups. The position of aliens' welfare rights on the position of the continuum of rights and the position of aliens' welfare rights on the continuum of responsibility are taken as a starting themes. In the process of data-analysis, those themes have been further unravelled by analyzing their discerned dimensions.

In this research, thematic analysis is used for two purposes. On the one hand, by thematic analysis the varieties in the meaning of aliens' welfare rights across the JB-field is reconstructed. For example, per agent the way in which the situation of homeless aliens is constructed and the values underlying this construction are analyzed. Among these constructions, homeless aliens and the features related to it, like the right to social support, are defined in different ways. On the other hand, thematic analysis is used to identify room for change. Room for change is identified by looking at similar meanings across cases.

In this research, discourse analysis is used to reconstruct the patterns of language consisting of networks of presupposed relations between 'objects' (rights and responsibilities) and 'subjects' (agents, roles and positions). Discourse is understood as a 'specific juncture at which power and language intersect producing and constituting the objects of discourse....[Discourses form] systems of rules which make it possible for certain statements but not others to occur at particular times,

places and institutional locations' (White, 1999, 9). Discourse are "[t]he forms of language associated with, and expressing the values of, particular cultural fields. A legal discourse, for example, expresses the values and beliefs of the field of law' (Danahar et al., 2002, xi). They are mostly manifested in particular ways of using language.

Discourse analysis is concerned with identifying and specifying (the construction of) discourses (Flick, 2009). In the Bourdieusian framework employed in this research, power plays a central role. Complementing this perspective, the discourse analysis in this research aims to reconstruct, by analyzing texts, the varieties in presupposed relations between certain 'objects' (rights and responsibilities) and 'subjects' (agents, roles and positions) (see Flick, 2009, 340). That is, to reconstruct the assumptions and dispositions underlying the acts of different agents. The network of relations are supposed to form patterns in language, that is, discourses. In order to analyze texts, all collected data, where possible, will be turned into written form.

In the analysis of data, the transcribed data is read and re-read several times. In this process, the researcher moved back and forth between inductive and deductive thinking. By inductive thinking ideas are developed from data. By deductive thinking those concepts are tested against the data.

4.5 Limitations of the applied approach and methodology

4.5.1 The researcher

In (qualitative) research, the researcher is the primary instrument. It is the researcher who employs data-collection strategies and methods of data-analysis. As Flick (2009, 14) argues, '[d]espite all the methodological controls, influences from interests, social and cultural backgrounds are difficult to avoid in research and its findings. These factors influence the formulation of research questions and hypotheses as well as the interpretation of data and relations'. The researcher always is personally involved in research, always is able to 'think', due to the habitus, only certain things. It follows from this that an 'objective' or 'neutral' understanding and interpretation is impossible. Therefore, it should be acknowledged that this research is just one interpretation of the object of study. That is, just one version of constructed reality with temporal and local particularity (Flick, 2009).

One of the controls which should be carried out to limit the influence of the researcher is self-reflexivity (see Danahar et al., 2002, 55-56). The researcher should do various things to be self-reflexive. First, the researcher should 'free themselves, as far as is possible, from preconceived notions and values taken from their own habitus' (Danahar et al., 2002, 56). In order to do so the researcher needs to be aware of, and simultaneously 'forget' his own social position. Second, it is

important that the researcher makes explicit what is happening in the research and why. Therefore, the researcher needs to explicit the intentions of and procedures applied in research. Third, the researcher should always be aware of the contexts in which data is gathered. That is, the researcher should be aware of how the contexts of observations and interviews censor the responses of the observed and the interviewees. The same applies to the use of secondary data. Secondary data represent a specific version of reality and therefore the researcher should always ask oneself by who the data is produced, with what purposes and what are its function or use. Fourth, the researcher needs to stay as close as possible to the point of view of the interviewee in the (details of the) transcription of interviews to limit the problem of transcription, that is, the lost of non-verbal and particular verbal (e.g. tone of voice) elements of communication (Flick, 2009; Danahar et al., 2002).

In the current study, the researcher tried to be self-reflexive to the best of her possibilities. The researcher continuously adopted a critical approach to herself and the data used.

4.5.2 The research approach

The choices made in this research with respect to the research-, theoretical- and methodological approach pose certain limitations on this research and its findings. The adoption of the qualitative case-study approach has two main disadvantages. First, due to the uniqueness of this approach, the research lacks the ability to be replicated. In order to deal with this limitation and give the reader the best possible insight in the procedure of the research, steps undertaken are elaborated as fully as possible. Second, the findings of this study have a limited generalizability. This is however not necessarily a limitation to this research, because the researcher does not aim for generalizability. As Flick (2009, 130) argues '[s]tudies with a sensibly limited claim to generalization are not only easier to manage but also, as a rule, more meaningful.'

Moreover, the theoretical perspective adopted in this research requires the researcher to be self-aware. In this research the 'taken-for-granted-reality' is seen as form of symbolic violence. According to Bourdieu (in Danahar et al., 2002), the researcher should have radical and hyperbolic doubt in order to debunk this reality. That is '[t]he consistent disposition to doubt and question the received wisdom, values and logic that a field presents as its common sense, along with the claims that fields make on behalf of themselves' (Danahar et al., 2002, xiv). This disposition is adopted by the researcher as consistent as possible, but there are no guarantees this is went completely successful.

Finally, the object of study itself required the researcher to gain access to the JB-field. The organization of the provision of social support to homeless aliens is highly politicized. This implies that the agents involved have important interests in the matter. Due to strategic interest, those agents however are not all willing to publicly express those interests. The latter implies that access to

the JB-field is important to acquire insight in those interest. This access can either be gained by gaining access to the agents themselves or by gaining access to platforms of struggle.

To gain access to the JB-field, the researcher did a internship with the Dutch Association of municipalities [VNG]. In the framework of this internship, the researcher gained access to the platform of struggle between municipalities and the national government. The VNG, being the most influential promoter of the interests of municipalities in relation to the national government, plays a central role in this platform. Moreover, the VNG provided access to various agents in the JB-field, like officials of municipalities and the national government and professionals of NGOs.

5. The organization of the provision of social support to homeless aliens in law and practice

In this chapter, the organization of the provision of social support, in law and practice, to homeless aliens is discussed. As mentioned in Chapter 3, the focus in this study is on the social support provided by the national government, municipalities and NGOs. In this chapter, the following research question will be answered:

In which way the provision of social support to homeless aliens is organized in law and practice?

In the first section of this chapter (5.1), (the organization of) the provision of social support to aliens in accordance with Dutch legislation is discussed. Homeless aliens are excluded from governmental social support under Dutch legislation. It is nevertheless regarded as necessary to discuss the governmental provision of social support in order to understand on which grounds homeless aliens are excluded from social support under Dutch legislation.

In the second- and third section of this chapter, (the organization of) the provision of social support to homeless aliens beyond Dutch legislation will be discussed. In some cases, homeless aliens or, in other words, aliens who are excluded from entitlements to social support under Dutch legislation, are eligible for social support nonetheless. This eligibility can be the result of either the local practices of municipalities and NGOs or court interventions.

In the second section of this chapter (5.2), the provision of social support to homeless aliens by municipalities and NGOs will be discussed. Where possible, data on those social support provisions will be presented. On the basis of the practices of municipalities and NGOs, several categories of homeless aliens will be distinguished.

In the third section (5.3), relevant court interventions will be discussed. After explaining international human rights law and the case-law with respect to Article 8 of the European Convention of Human Rights, recent court interventions and their possible implications are discussed.

In the fourth section (5.4), the research question central to this chapter will be answered by summarizing and relating the main findings of this chapter.

5.1 The provision of social support to aliens in accordance with Dutch legislation

In this section, the provision of social support to aliens by the national government and municipalities in accordance with Dutch legislation will briefly be discussed. The provision of social support to aliens officially is a responsibility of the national government. The national government provides social support to aliens in accordance with three regulations laid down in official legislation and in accordance with some informal regulations (see Appendix C for details on those regulations).

The three formal regulations laid down in official legislation are the 'Linkage Act 1998' (Koppelingswet 1998, [Linkage Act]), 'Specific Categories of Aliens (Provisions) Regulations 1998' (Regeling verstrekkingen bepaalde categorieën vreemdelingen, [Rvb]) and the 'Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2005' (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen, [Rva]). Those regulations, in turn, are related to one another in the Aliens Act 2000 (Vreemdelingenwet 2000, [Aliens Act]).

The Linkage Act relates right relates right of residence to social welfare entitlements. It stipulates that irregular aliens and some groups of regular aliens have no right to social welfare provisions. Thus, access to social welfare provisions is made conditional upon residence status. All public goods and services, with the exception of medically necessary care, pregnancy care, legal aid (for all aliens) and education (for minor aliens), are subject to the Linkage Act (Aliens Act, 2000; Ministerie van Justitie, 2008; Respondent).

The Rva primarily contains regulations for asylum seekers who do not have sufficient means of subsistence. The Central Agency for the Reception of Asylum Seekers [COA] provides those aliens shelter, a health insurance and a weekly living allowance (COA, n.d.a). The Rvb contains regulations for specific categories of aliens who do not possess sufficient means of subsistence. It concerns aliens who are authorized to stay in the Netherlands, that is are regular, and who are not entitled to benefits under the Rva or any other provision of law. The COA provides those aliens a monthly living allowance and health insurance (COA, n.d.b).

Those aliens who are entitled to provisions under the Rva are mainly accommodated in asylum seekers' centers [AZCs]. In the AZCs, the COA, which implements the Rva and Rvb, provides the physical reception of aliens. Under the Rva the COA mainly provides reception to (rejected) asylum seekers. The (rejected) asylum seekers who are provided reception by the COA can be divided into four groups, respectively (COA, n.d.a; Respondents):

- asylum seekers who are awaiting a decision on their first request for asylum
- asylum seekers who are awaiting a decision on a notice of appeal in the Extended Asylum Procedure
- asylum seekers who have been granted a provisional ruling

- asylum seekers who are awaiting a decision on a repeated request for asylum, provided that their Extended Asylum Procedure has started

The COA provides reception to those aliens until their departure period has expired. For the first three groups mentioned, this period lasts 28 days. For the fourth group mentioned, this period lasts zero days.

Besides reception for asylum seekers, the COA, pursuant to the Rva, also provides reception to two other groups of aliens. On the one hand, the COA also provides reception to unaccompanied minor foreign nationals [UMFNs]²⁶. UMFNs reserve the right to reception from the COA until they reach the age of eighteen or until the moment that return is realized (Rijksoverheid.nl, n.d.a; Aanhangsel HAN TK, 2013/14, no. 552846.). On the other hand, the COA also provides reception to aliens who have been granted 'Article 64'. That is, 'postponement of departure on medical grounds' on the grounds of Article 64 of the Aliens Act. On the basis of the 'Spekman-procedure', some aliens who are awaiting a decision on an Article 64-application are also entitled to reception from the COA (Kamerstukken II, 2008/09, 30846, no. 4). In Appendix C Article 64 and the Spekman-procedure are explained in detail.

At the local level municipalities provide social support to regular aliens under the Social Support Act (Wet maatschappelijke ondersteuning 2014 [Wmo]). The linkage principle is laid down in Article 1.2.2 of the Wmo. It follows from this Article that a regular alien can be eligible for provisions under the Wmo, if (Schulinck, n.d.; Wmo 2014 art. 1.2.2; Vw 2000 art. 8 (a) to (e) and (l)):

- he has a temporary or permanent asylum or regular (non-asylum) residence permit
- he has submitted an application for authorization of continued residence before the ending of regular residence
- he has lodged objection or appeal against the withdrawal of residence authorization within four weeks and will not be expelled
- he has the nationality, or is a family member of someone who has the nationality, of a country of the European Union or the European Economic Area, or Zwitserland²⁷

The provisions under the Wmo to which those specific groups of aliens are entitled are individual assistance, women's shelter services, payment or community shelter services.

Besides formal legislation, there also exist some informal regulations granting specific groups of aliens entitlements to social support. While there is discussion about the implementation of those

²⁶ Unaccompanied minor foreign nationals [UMFNs] are aliens below the age of 18 who are not, or have not been, married and who are not accompanied by adult parent(s) or a guardian assigned abroad.

²⁷ This does not apply if the person is staying in the Netherlands for less than three months or is still seeking employment after three months.

informal regulations, the eligibility of those aliens is generally recognized. Under those informal regulations, three groups of aliens are provided social support by the national government.

First, it concerns families with minor children who are not, or no longer, entitled to provisions under the Rva. Since September 2011, those families are entitled to reception in so-called 'Family Reception Centers' (Gezinsopvanglocaties [GOLs]). GOLs are reception locations with sober facilities are sober. Although cooperating in organizing return is not an admission criterion, GOLs are aimed at stimulating return. In the GOLs the COA provides the physical reception. Families with minor children, regardless of their right of residence, reserve the right to reception until return is realized, a residence permit is granted or the youngest child reaches the age of eighteen (Aanhangsel HAN TK, 2013/14, no. 552846; Dienst Terugkeer en Vertrek, n.d.a; see Appendix C for details).

Second, aliens who cooperate in organizing their return are entitled to reception for a maximum of twelve weeks in the so-called 'Freedom-Restricting-Location' (vrijheidsbeperkende locatie, [VBL]) in Ter Apel. In the VBL the COA provides the physical reception and the Repatriation and Departure Service (Dienst Terugkeer en Vertrek, [DT&V]) provides guidance focused on realizing return (Dienst Terugkeer en Vertrek, n.d.b).

Third, aliens whose special individual circumstances require reception are entitled to reception of the COA. In Appendix C some details on this arrangement are included.

5.2 The provision of social support to homeless aliens by municipalities and NGOs

In some cases, aliens who are excluded from social support due to the workings of the Linkage Act, nevertheless can be eligible for social support. This eligibility can be the result of either court interventions or local practices of municipalities and NGOs. In this section the local practices of municipalities and NGOs will be discussed separately. Where possible, data on the size- and spatial distribution of their social support provisions will be presented. At the end of this section several categories of homeless aliens will be distinguished on the basis of the practices of municipalities and NGOs.

5.2.1 The provision of social support by municipalities

In this section, the municipal provision of social support to homeless aliens will be discussed. First, the way in which municipalities provide social support will be discussed. Second, based on the limited information available, some numeric information on this social support will be provided.

5.2.1.1 Practices

Although the Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten [VNG])

and the state secretary of security and justice agreed in the Management Agreement of 2007 (Albayrak & Deetman, 2007) that municipalities would stop facilitating emergency shelter for homeless aliens by at the latest 1 January 2010, various municipalities do still provide social support to homeless aliens (Regioplan, 2009; Wetenschappelijk Onderzoek- en Documentatiecentrum [WODC], 2011).

Many of those municipalities have united in the 'National Consultation Municipalities Reception- and Return policy' (Landelijk Overleg Gemeentebesturen Opvang- en terugkeerbeleid [LOGO]). Also the 'International Network of Local Initiatives for (the benefit of) asylum seekers' (Internationaal Netwerk van Lokale Initiatieven ten behoeve van Asielzoekers [INLIA]) takes part in LOGO. LOGO is born out of the need to discuss issues surrounding homeless aliens. In the framework of this informal consultative body, municipalities exchange best practices, align their policies, and sometimes act collectively (INLIA, n.d.a; n.d.b).

Parallel to the creation of LOGO the INLIA introduced a model for an emergency shelter provision. This model provides for a collaborative partnership between a local foundation 'emergency shelter', INLIA and the municipality. The objective of this partnership is to:

provide temporary emergency shelter to specifically defined categories of aliens, who reside within municipalities without provisions of the national government, and who have no possibilities to (by themselves or through others) obtain shelter or to provide for themselves. (INLIA, n.d.a, par Doelstelling, freely translated)

In this partnership, the local foundation consisting of local NGOs provides the physical reception, the municipality finances and facilitates this provision and INLIA decides on the admission of aliens to the provision (INLIA, n.d.b).

The LOGO-municipalities apply uniform criteria for the admission of aliens to the shelter provision. Those criteria have been developed by INLIA in close consultation with municipalities. They have become known as the 'INLIA-criteria'. According to the INLIA criteria, aliens belonging to the following groups are eligible for the shelter provision (INLIA, n.d.a, freely translated):

1. regular aliens who are awaiting a decision on a residence application and who do not have a right to provisions of the national government
2. aliens who cooperate in organizing their return and who do no longer have a right to provisions of the national government, because they are unable to realize their return (get the documents required) within the period of departure (AZC) or the period of twelve weeks (VBL).

3. aliens for whom it is, on humanitarian- or medical grounds, unacceptable that they do not receive any form of social support

In practice, municipalities define the first and second INLIA-group are by the admission criteria 'perspective'. The criteria 'perspective' means that the alien should either have perspective on obtaining a residence permit or on realizing return. To check whether an alien meets this criteria, it is for example assessed whether the pending application is promising or whether there are possibilities to submit a promising application. In the latter case, it concerns an irregular alien who can possibly obtain regular residence by submitting a residence application. In practice, only those aliens who are in (or who can start) a 'promising' procedure are eligible for municipal social support. If the alien requesting for municipal social support has no perspective on obtaining a residence permit, it is assessed whether there is perspective on realizing return. In practice, this means that an alien who is willing to work on return will be provided social support for a limited period. Subsequently, this period of social support is only extended if the alien demonstrates he is actively working on organizing return. For example, the alien has to demonstrate that he has contacted the embassy of the country of origin in order to obtain the required traveling documents (Respondents).

The third INLIA-group is also known in practice as the 'humanitarian residual category'. This group includes aliens who find themselves in distressing situations and/or who are in need of social support because of their vulnerability. For instance, an alien with serious medical problems (Respondents).

Those criteria, established in 2001, are still authoritative. That is, they serve as a guideline for many municipalities that do provide social support to homeless aliens. Those criteria are, however, not applied uniformly. In fact, there are substantial differences in the way in which they are applied (Bouter, 2013). On the one hand, the assessment of eligibility is carried out by different agents. Research conducted by Regioplan (2009, 17) indicates that this assessment is carried out by the organization providing the shelter in 29 percent, by involved parties like INLIA or the Dutch Refugee Council in 25 percent, by a committee established by the municipality in 19 percent and by the municipalities themselves in 16 percent of the cases. On the other hand, the eligibility determination differs among municipalities for the simple reason that all criteria used to determine eligibility are subjective (Regioplan, 2009). For example, there is no norm which indicates when a pending procedure is 'promising' enough.

Besides the INLIA-criteria, municipalities also use two other admission criteria, respectively 'need' and a 'local connection' criteria. 'Need' encompasses how necessary and urgent the provision of social support is. Factors like the availability of alternatives for shelter within the alien's social network and the medical situation of the alien influence need. The local connection criteria

encompasses the connection of the alien to the region. In most cases, the region is limited to the municipality. To meet this criteria, the alien needs to have resided in an AZC located in the municipality where he requests social support or needs to have lived in that municipality before he lost his right of residence. This criteria is strictly applied by municipalities in order to prevent a 'pull effect'.

5.2.1.2 Data on the provision of social support

There does not exist an overview of the municipalities which provide social support to homeless aliens and of the number of homeless aliens to which they provide social support. Nevertheless, it is regarded important in the current study to say something about those matters. That is, to give an impression of the actual situation. Therefore, the researcher decided to make use of 'fragmented' data on municipal social support provisions from research of Regioplan (2009), the WODC (2011) and the VNG (2014)²⁸. In Appendix D the data of those studies is presented and discussed in detail in terms of their specificities and limitations.

All three studies explicitly address the facilitation of social support for rejected asylum seekers by municipalities (Table D.3, Appendix D). The researcher considers this data to be a good indication of the municipal provision of social support to homeless aliens for three reasons. First, although rejected asylum seekers are a minority of the whole group of homeless aliens, they constitute that group that often is in need for social support (Respondents). For example, compared to those migrant workers who are not entitled to any form of governmental support, they are much less likely to be able to provide for themselves. Second, rejected asylum seekers form a substantial part of the group of homeless aliens who actually is provided social support by municipalities (Respondents). Moreover, informed by political considerations, municipalities regularly use the term 'rejected asylum seekers' while actually also referring to other groups of homeless aliens (Observations).

Before discussing the data, it should be stressed that most municipalities do not provide social support to homeless aliens. This can be explained by the simple fact that most municipalities, because there is no reception centre located within their boundaries, are not confronted with homeless aliens. Moreover, even some (smaller) municipalities that actually do have a reception centre within their boundaries are not confronted with homeless aliens, because those aliens move to 'more attractive' municipalities the moment they end up on the streets. It should also be stressed that municipalities that actually do provide social support to homeless aliens do not always communicate openly (or publicly) about the social support they provide. To avoid political- or public

²⁸ The researcher made use of a dataset of the VNG established on the basis of a survey conducted among municipalities.

discussions, municipalities pay much attention to their communication and the visibility of their actions. Under those circumstances, not all municipalities providing social support to homeless aliens keep statistics on their provisions (Respondents).

Based on the data available, some statements can be made about the social support facilitated for rejected asylum seekers by municipalities. The data demonstrates that mainly (medium-sized and) large municipalities and municipalities with an AZC facilitate social support for rejected asylum seekers. In those municipalities, also the size of the social support facilitated, in terms of numbers of people provided social support, is bigger (Table D.1, Table D.2, Appendix D).

The number of rejected asylum seekers who are actually provided social support in 2014 is difficult to establish. The only statement which can be made with certainty is that, over the period 2007-2014, in at least 50 percent of the municipalities the number of rejected asylum seekers provided social support was lower than ten. According to the data of the VNG (2014), the number of rejected asylum seekers provided social support is even smaller than five persons in 41 percent of the cases (Table D.1, Appendix D). This finding is in line with the conclusion of the WODC (2011) that social support is mainly provided in individual cases. The high average number of rejected asylum seekers provided social support indicated by the data of the VNG probably can be attributed to the overrepresentation of (medium-sized and) large municipalities in the sample on which the research is based (Table D.4, Appendix D). In those municipalities the number of rejected asylum seekers provided social support on average is higher.

In Appendix D (Table D. 5) also an overview is presented of all municipalities which facilitate social support for a substantial number of rejected asylum seekers. In Table D.5 (Appendix D), all 'centre-municipalities'²⁹, that are 43 municipalities which have been delegated the responsibility for providing social support provisions to the region under the Social Support Act, are presented and all 'non-centre municipalities' which indicated to facilitate social support for more than five persons are presented.

Table D.5 (Appendix D) shows that 24 of the responding 35 centre-municipalities facilitate social support for rejected asylum seekers in 2014. It can be said with certainty that, at least, ten centre-municipalities facilitate social support for a substantial group of rejected asylum seekers. Six centre-municipalities facilitate social support for over 30 persons. In three centre-municipalities, the number of people lies between twenty and thirty and in one municipality between ten and twenty³⁰. Table D.5 (Appendix D) also shows that, in particular, the non-centre municipalities Súdwestfryslân (ten to twenty persons) and Wageningen (twenty to thirty persons) facilitate social support for a

²⁹ The importance of those municipalities will become clear in the discussion of the recent court discussions (see 5.3.4).

³⁰ Seven municipalities facilitate social support for less than ten people. Three municipalities did not provide any data on the number of rejected asylum seeker provided social support.

substantial group of rejected asylum seekers in 2014. In the case of Wageningen this can be explained by the presence of an AZC. In the case of Súdwestfrysland no explanation has been found in current study.

5.2.2 The provision of social support by NGOs

In this section, the provision of social support to homeless aliens by NGOs will be discussed. First, the way in which NGOs provide social support will be discussed. Second, based on the limited information available, some numeric information on this social support will be provided.

5.2.2.1 Practices

Various NGOs provide social support to homeless aliens. Some of those NGOs are subsidized by the municipality in the framework of the INLIA-model, others are financially independent. NGOs, mostly locally organized, provide social support to homeless aliens in different ways. Some choose to only provide either medical-, juridical- or social support, while others also provide shelter.

The eligibility criteria applied by NGOs vary. Bouter (2013), who conducted a study on aliens' chances of obtaining shelter from NGOs, argued that most NGOs use similar criteria, but do apply them in different ways. Important criteria in the assessment of eligibility are the 'local connection-criteria', 'perspective' and 'need'. The similarity of those criteria to those criteria used by municipalities can be explained by the implementation of the INLIA-model in various municipalities.

In the framework of this INLIA-model, the Refugee Council plays varying roles. In some municipalities, like Nijmegen, the Refugee Council plays an important role in the assessment of perspective and/or even coordinates the social support provision. In those municipalities, the juridical knowledge of- and the holding of files of rejected asylum seekers³¹ by the Refugee Council are perceived to be of added value. In other municipalities, like Rotterdam, the Refugee Council does not play any part (outside AZCs). In those municipalities often other NGOs are present which possess equal or even more juridical expertise (Respondents).

Most NGOs consider return to the country of origin as perspective. Whereas in the past NGOs often merely focused on regular residence in the Netherlands, those NGOs now consider return to be an option as well. Bad living circumstances and poor prospects have made some NGOs to believe that return is a better option for some homeless aliens. Unlike the government, however, those NGOs do not consider return as a 'must'. Instead, NGOs believe it is up to the homeless alien make the choice between living in illegality in the Netherlands or returning to the country of origin.

The similarity of the eligibility criteria used by NGOs and municipalities can also be explained

³¹ The Refugee Council already provides support to aliens in the AZCs and therefore holds files on some homeless aliens.

by the limited means of NGOs. In those circumstances, it is logical that NGOs use the local connection criteria to prevent being confronted with an unbearable burden. Also, the use of the criteria perspective and need are understandable in those circumstances. For example, in those cases in which there is perspective, the period for which the alien involved needs social support is likely to be shorter. Due to this shorter lead time NGOs are able to provide social support to a larger number of aliens.

5.2.2.2 Data on the provision of social support

In Appendix E (Table E.1) an overview is presented of the NGOs which provide social support and/or shelter to homeless aliens. This overview is based on the information provided by the Stichting Landelijk Ongedocumenteerden Steunpunt [LOS] (n.d.) on its website. In Table 2, this data is juxtaposed with the data that Bouter (2013, 16-17/52) collected in the same way in 2013. At 25 October 2014, 46 NGOs provide social support to homeless aliens and 28 of them provide shelter or 'beds'. In sum those NGOs provide shelter to 584 persons³². A comparison of the data shows that both the number of NGOs that provide social support and/or shelter to aliens and the number of cities where NGOs are located have decreased. Also the number of available beds has decreased. By attempting to contact the NGOs which ceased to exist, efforts were made to trace the cause of their exit. This efforts only succeeded in a single case. This NGO stated that the choice of the municipality to terminate subsidy left the organization no other choice than ceasing its operations.

Table 2 Data on the provision of social support/and or shelter by NGOs in 2013 and 2014.

	Bouter 2013¹	LOS 2014²	Change over 2013- 2014 (in percentages)
Number of supportive NGOs	56	46	-17.9
Number of municipalities in which NGOs are present	35	28	-20.0
Number of NGOs which shelter	37	28	- 24.3
Number of municipalities in which NGOs provide beds	25	19	- 24.0
Number of beds provided	905	584	-35.5

Note¹. Adopted from *Giving shelter* (16-17/52) by H. Bouter, 2013, retrieved from <http://www.stichtinglos.nl/sites/default/files/los/files/Giving%20Shelter%20-%20Master%20Thesis%20of%20Harmen%20Bouter.pdf> [Electronic Version]

Note². Data collected on October 25, 2014 from <http://www.stichtinglos.nl/noodopvang>, the website of Stichting Landelijk Ongedocumenteerden Steunpunt.

³² The calculation of the number of persons provided shelter is based on the data presented in Table 1, Appendix E. In this calculation, 'a few' are equaled to three persons, 'families' are equaled to five person and 'women (+children)' are equaled to 2,5 persons.

5.2.3 Categories of homeless aliens

Several categories of homeless aliens can be discerned on the basis of the practices of municipalities and NGOs. On the local level, social support is aimed at homeless aliens, that is aliens who do not (or no longer) have a right to social support of the national government under alien law. On the one hand, it concerns specific groups of rejected asylum seekers in a (follow-up) procedure. On the other hand, it concerns specific groups of homeless aliens who, despite the existence of arrangements under alien law which grant a right to social support in such situations, end up on the streets.

The following categories of homeless aliens can be discerned:

1. Asylum seekers in the appeal stage (Regular Asylum Procedure) or further appeal stage (general- and Extended Asylum Procedure) of their first asylum application who have not been granted a provisional ruling. A condition is that the hearing of the (further) appeal takes longer than 28 days (the period of departure).
2. Asylum seekers who have submitted a repeated asylum application. A condition is that the application is not dealt with under the Extended Asylum Procedure.
3. Asylum seekers who have started legal proceedings before the European Court of Human Rights and who have not been granted a provisional ruling
4. Aliens who have submitted an residence application on regular grounds
5. Aliens who are having serious medical problems and who are not entitled to social support from the COA under the Rva, Article 64- or the Spekman-procedure.
6. Aliens do actively and verifiably cooperate in organizing return, but are not (longer) entitled to support in the AZC or the VBL.

In Appendix F is explained why those aliens actually become (or stay) homeless.

5.3 Relevant court decisions and their implications

In some cases homeless aliens can become eligible for social support as the result of court interventions. In those cases, courts rule that the vulnerability of the alien involved is more important than his right of residence and such in determining the existence of the right to social support. Recently, the Dutch courts have ruled that both municipalities and the national government are obliged to provide basic social support to homeless aliens. In order to understand the content and implications of those court decisions, it is important to discuss the international human rights treaties referred to in those decisions and to discuss relevant decisions by international committees and national courts.

5.3.1 International human rights treaties

Two international treaties are relevant to our purposes, respectively the European Convention on Human Rights [ECHR] (1950) and the European Social Charter [ESC] (1996). The ECHR and ESC are international human rights treaties which establish a minimum of protection which must be offered to individuals by Member states of the Council of Europe³³ (Parlementaire Documentatie Centrum - Universiteit Leiden, n.d.). The European Court of Human Rights [ECtHR] and the European Committee for Social Rights [ECSR] are responsible for monitoring compliance with respectively the ECHR and the ESC. Moreover, both the ECtHR and ECSR hear collective complaints against states. The Committee of Ministers of the Council of Europe [CoM], in turn, supervises the implementation of decisions of the ECtHR and ECSR. While decisions of the ECtHR are legally binding, decisions of the ECSR and resolutions of the CoM are authoritative³⁴. Authoritative means that Dutch courts take those decisions into considerations in the grounds of their judgments. Consequently, decisions of the ECSR can have effects on the outcomes of national procedures (Dutch Section of the International Commission of Jurists, 2014).

The ECHR and ESC impose certain obligations on the states. The main obligation imposed upon states is to not violate the human rights enshrined in the ECHR and ESC. In some circumstances, the ECHR and ESC also place positive obligations on states. Pursuant to the case-law of the ECtHR and ECSR, a positive obligation may arise in two types of situations. On the one hand, situations in which an individual's human rights are violated by other persons. In those situations, the state, which did not take part in the violation, may have the obligation to protect the victim of this violation. On the other hand, situations in which an individual's human rights are violated due to inhumane- or humiliating circumstances. In those situations, it concerns individuals who are unable to exercise their human rights by the means at their disposal. In those situations, the state may have the obligation to eliminate the social-economic living circumstances, amounting to the violating situation, within which those individuals live. That is, to provide for the fulfillment of those rights (Vereniging van asieladvocaten en -juristen Nederland, n.d.; see for example ECtHR, 26-05-1985, no. 8978/80).

Although human rights may not be violated, they may be derogated under certain circumstances. That is, states may interfere with human rights. Whether such an interference amounts to a violation of the human right in question depends on a range of elements. In short, it depends on the degree of interference with the right and the necessity and proportionality of that interference in terms of policy objectives and options. It is decisive whether the state, which has a

³³ The Council of Europe is a body established in 1949 to promote democracy and human rights throughout Europe. All states within Europe, with the exception of Belarus, Kazakhstan and Vatican City, are member states of this Council.

³⁴ Decisions of the ECSR are primarily addressed to the Committee of Ministers. Following a decision of the ECSR, the CoM adopts a resolution outlining recommendations to the state sued.

certain 'margin of appreciation', has 'properly' weighed the public- and private interests on the basis of the factual circumstances. 'Properly' then means that the weighing, in which the state should apply the principles of proportionality³⁵ and subsidiarity³⁶, results in a 'fair balance'. If the interference with the rights imposes a personal- and disproportionate burden on the right holder, the state does violate the human right. The state does also violate a human right when the interference with that right does not have a legal basis, this basis does not contain a legitimate purpose which fits into an objective of common interest or when there do not exist judicial remedies to deny the interference (Kamerstukken II, 2012/13, 33 400-XV, no. 7, par. 2.6.; Kamerstukken II, 2006/07, 19367, no. 1162; ECHR-online.nl, n.d.).

Two additions have to be made to the assessment described above. First, the importance of the 'very core' of human rights. Although states have a margin of appreciation in interfering with human rights, infringement may never result in undermining the very core of those rights. The ECtHR indicates human dignity and human freedom to be the core of the ECHR (ECtHR, 29-04-2012, case 2346/02, par. 65.).

Second, the importance of being vulnerable. Vulnerable individuals and groups have a particular right to protection under international human rights law. Consequently, states have a special obligation to protect their human rights. There is no fixed definition of vulnerable persons. Undergoing traumatic events or being fully dependent on a state which fails to act, among others, can underlie the basis for the definition of vulnerable persons. In any case, children and people with serious medical problems are included in the category of vulnerable persons (Vereniging asieladvocaten en -juristen Nederland, n.d.; RvS, 22-11-2013, ECLI:NL:RVS:2013:2099; CRvB, 16-07-2014, ECLI:NL:CRVB:2014:2444.).

5.3.2 Court decisions granting social support to homeless aliens in individual cases

In recent years, the Dutch courts in individual cases ordered municipalities to provide social support to homeless aliens, that is aliens who do not have an 'entitlement-granting' right of residence under alien law. In those cases, social support is granted under the Social Support Act (Wet maatschappelijke ondersteuning 2014). Aliens who obtain social support in such a way invoke Article 8 of the ECHR. Article 8 holds the right on protection of private- and family life. The notion of private life, which is of particular relevance for our purposes, does not allow an exhaustive definition, but at least covers aspects like physical-, moral- and mental integrity and mental stability. Those aspects are designated by the ECHR as essential conditions to fully enjoy this right. That is, to guarantee the normal development of the personality of every person in his relation to others

³⁵ Proportionality: there is fair balance between the means used and the defined objectives.

³⁶ Subsidiarity: the state has applied the least onerous means available.

(Vreemdelingen circulaire 2000 (B), B9/14.1; ECtHR, 06-05-2001, case 44599/98, par 47.).

From the established case-law certain conditions can be discerned under which aliens, pursuant to Article 8 of the ECHR, are eligible for social support under the Wmo. First, the alien involved demonstrates he belongs to the category of vulnerable persons who under Article 8 of the ECHR have in particular right to protection of their private- and family life (CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995, par 5.4; CRvB, 29-06-2011, ECLI:NL:CRVB:2011:BR1061). Second, the state has a positive obligation to provide social support to the alien involved. Third, there is neither a provision under any other law nor a 'factual provision' available pursuant to which social support can be provided. A factual provision can be a GOL (CRvB, 06-02-2013, ECLI:NL:CRVB:2013:BZ0917) or the VBL (CRvB, 20-06-2012, ECLI:NL:CRVB:2012:BW8957). Last, denying the alien involved access to social support under the Social Support Act does not reflect a fair balance (CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995). In Appendix G those conditions are further explained.

If those conditions are met, the municipality has to provide the alien involved in adequate social support under the Social Support Act. That is, social support adequate with respect to the specific needs and conditions of the individual concerned (RBROT, 20-12-2013, ECLI:NL:RBROT:2012:BZ5392). Although social support under the Social Support Act does not suspend the obligation to leave, the municipality needs to provide social support as long as it is not established that the alien involved actually is able to leave the Netherlands (CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995; RBROT, 20-12-2013, ECLI:NL:RBROT:2012:BZ5392).

5.3.3 Two decisions of the European Committee for Social Rights

In recent decisions on the provision of social support to homeless aliens, Dutch courts have referred to decisions of the ECSR. Two decisions, on two complaints, of the ECSR are relevant. The first complaint, lodged by the Conference of European Churches [CEC], specifically concerns the provision of social support to irregular homeless aliens within the jurisdiction of the Netherlands (ECSR, 01-07-2014, case 90/2013). The complainant claimed that the Dutch state acts in contravention of the ESC by withholding irregular migrants not having sufficient means of subsistence access to the basic needs of shelter, food and clothing.

The second complaint, lodged by the European Federation of National Organizations working with the Homeless [FEANTSA], concerns the provision of emergency shelter to regular homeless people within the jurisdiction of the Netherlands (ECSR, 25-10-2013, case 86/2012). The complainant claimed that the Dutch state acts in contravention of the ESC by not granting everyone who does not have sufficient means of subsistence and who finds himself/herself in an emergency situation access to emergency shelter.

In both complaints, it is alleged that the Dutch state acts in contravention of the provisions

contained in Article 13 and Article 31 of the ESC. Article 13 stipulates that '[a]nyone without adequate resources has the right to social and medical assistance' (ESC 1996). Article 31 stipulates that '[e]veryone has the right to housing' (ESC 1996). In order to ensure the effective exercise of the right to social- and medical assistance, states have to provide adequate social support to persons in an situation of immediate and urgent need. That is, states have to adopt measures to ensure that any person who does not have sufficient means of subsistence and who finds himself in an emergency situation has access to, at least, shelter, food, emergency medical care and clothing. To ensure the effective exercise of the right to housing, states have to adopt measures to prevent and reduce homelessness. That is, states have to adopt measures that ensure that at least any person in need has access to emergency shelter (ECSR, 01-07-2014, case 90/2013, 25-10-2013, case 86/2012).

On a case-by-case basis, the ECSR assesses whether the rights enshrined in the ESC are applicable to irregular migrants. The ECSR argues this inclusion is justified where failing to do so would undermine the very core of human rights (ECSR, 01-07-2014, case 90/2013, par. 71). With respect to the cases under discussion, the ECSR argued that access to shelter, food and clothing are closely linked to the realization of fundamental rights and human dignity (ECSR, 01-07-2014, case 90/2013, par. 74). Consequently, the ECSR argued, in situations of emergency all persons without adequate resources must have a legally recognized- and non-derogable right to the satisfaction of their need for shelter, food and clothing (ECSR, 01-07-2014, case 90/2013, par. 74, 108, 130). Hence, Article 13 and Article 31 do apply to irregular migrants.

The ECSR ruled that the Dutch state violates both the right to social support and the right to housing. That is, the interference of the state with those rights does not reflect a fair balance. On the one hand, the large majority of irregular migrants does neither in law nor in practice have access to emergency social support (ECSR, 01-07-2014, case 90/2013, par. 107, 108, 112, 143). The ECSR argues that the measures making access to emergency social support conditional upon right of residence or the willingness to cooperate in organizing return are a disproportionate mean for an objective of alien policy. Moreover, since the Dutch state has less onerous means available to achieve the objectives of alien policy, the necessity of those measures cannot be accepted (ECSR, 01-07-2014, case 90/2013, par. 121-124; ECSR, 25-10-2013, case 86/2012, par. 180-183.).

On the other hand, a significant part of regular homeless migrants and homeless nationals neither in law nor in practice are offered emergency shelter (ECSR, 25-10-2013, case 86/2012, par. 126). Emergency shelter is not available on the basis of need which should be the main criterion in determining eligibility. The ECSR argues that scope of the obligation to provide emergency shelter is restricted in an excessive manner by making access to emergency shelter subject to the local

connection criterion³⁷, by the application of eligibility criteria under the Social Support Act³⁸ and the incomplete application of the national access principle³⁹, (ECSR, 86/2012, par. 116-137). As a consequence of those measures, not everyone with a valid claim has access to emergency shelter. The ECSR concludes that the 'legislation and practice of the Netherlands fail to ensure access to community shelter for the purpose of preventing homelessness' (ECSR, 86/2012, par. 129).

The ECSR rules that the Dutch state needs to guarantee that anyone in need has access to emergency support. This means that the Dutch state, regardless of right of residence, must provide shelter, clothing and food to anyone who does not have sufficient means of subsistence. Need has to be the most important eligibility criteria for emergency shelter. Moreover, access to emergency shelter may only be made subject to eligibility- and use criteria which are necessary to orderly provide this provision (ECSR, zaak 90/2013; ECSR, zaak 86/2012.). Last, the delegation of tasks and responsibilities for providing social support to aliens has to be laid down in agreements between the national government and the 'implementing' agents. For this reason, the unregulated provision of social support to homeless aliens by municipalities and NGOs does not change the judgment of the ECSR on the violation by the Dutch state (ECSR, 01-07-2014, case 90/2013, par. 119).

5.3.4 Recent court decisions

Recently, Dutch courts have decided that both centre-municipalities and the national government are obliged to provide all 'aliens in need', regardless of their right of residence, in basic social support. In those decisions, the courts referred to both the decisions of the ECSR and the case-law on Article 8 of the ECHR. In appendix G the details of the specific decisions are discussed. In this section, the content of those decisions will be summarized.

First, Dutch courts ruled that both 'centre-municipalities', that is municipalities responsible for the implementation of the Social Support Act, and the national government, more precisely the state secretary of security and justice, have the obligation to provide adequate social support to aliens in need. They at least need to provide night shelter, a shower, breakfast and dinner. Those decisions are temporary disciplinary measures. The courts decided to impose those measures, because they could not exclude the possibility that the decision of the ECSR will change the content of the Dutch right to social support with retroactive effect.

³⁷ Municipalities apply a local connection criterion 'when deciding on access to shelter services. Homeless persons are obliged to establish they have resided within the same region for the period of two out of three years prior to their application for a placement at an emergency shelter' (ECSR, 86/2012, 63, 13).

³⁸ For example, a person is only eligible for emergency shelter under the Social Support Act if there is a lack of self-reliance and multiple problems (ECSR, 86/2012).

³⁹ According to the national access principle any homeless person, regardless of his whereabouts, can turn to shelter provisions of municipalities (ECSR, 86/2012). The national access principle needs to ensure that there is a nationwide network of provisions and that emergency shelter is available all across the Netherlands.

In those decisions, referrals were made to the decision of the ECSR on the provision of social support to irregular migrants (ECSR, 01-07-2014, case 90/2013). The courts derived from this decisions that the state has the obligation to provide irregular migrants shelter, food and clothing. The courts interpreted the ECSR decision in such a way it has implications for the application of Article 8 of the ECHR. The situation in which people are deprived of access to shelter, food and clothing is regarded to be in violation with the right on protection of private- and family life. Consequently, Dutch courts ruled that the state has a positive obligation to provide all people in need shelter, food and clothing. The recent court decisions imply that not having sufficient means of subsistence and the absence of a right to social support under national legislation are circumstances that give sufficient ground to be eligible for governmental social support under Article 8 of the ECHR.

Second, Dutch courts ruled that the social support provided needs to be adequate with respect to the specific needs and conditions of the individual concerned. In some cases, especially in cases in which it concerns aliens with serious medical problems, Dutch courts ruled that the provision of night shelter is not adequate. For example, in individual cases the courts ordered municipalities to provide aliens in an own room and shower facility. The latter implies that, in line with the case-law on the Social Support Act, an assessment of the needs and conditions must be made on a case-by-case basis.

Third, Dutch courts ruled that access and use of social support provisions may not be subject to conditions other than those necessary for orderly providing the provisions. In two recent court decisions, Dutch courts assessed whether the state can meet its positive obligation under Article 8 of the ECHR, in conformity with the decision of the ECSR, by offering social support in a GOL or the VBL. Access to- and use of those provisions is made conditional upon the imposition of a freedom restricting measure and/or the obligation to cooperate in organizing return. The court ruled that the state secretary needs to demonstrate on a case-by-case basis that those measures, interfering with the right to private- and family life, are justified. This implies that access to social support in a GOL or the VBL may not systematically be made conditional upon those measures in advance.

5.3.5 Implications recent court decisions

In this section, the implications of the court decisions discussed in the previous section will briefly be summarized. Those implications are drawn on the basis of the literal interpretation of those decisions. As will become clear in the next chapter, those decisions in fact are interpreted differently.

First, the court decisions have implications for the application of the linkage principle. The application of the linkage principle, for as far as it concerns access to basic needs, is restricted by those decisions. Accordingly, the dominant distinction on the basis of right of residence central to the

linkage principle is challenged by a distinction on the basis of vulnerability central to international human rights law. Whereas in recent years court decisions only overruled the linkage principle in individual cases, the recent court decisions overrule the linkage principle on a much wider scope. In the recent court decisions all aliens in need are granted, in the grounds of Article 8 of the ECHR, the right to adequate social support of the state. In order to comply with the recent court decisions, that is to provide all aliens in need in adequate social support, the linkage principle as included in the Social Support Act and Aliens Act needs to be changed.

Second, the court decisions have implications for the target group which should be provided social support. In the recent court decisions aliens in need are designated as vulnerable persons who under article 8 of the ECHR have a particular right to protection. Aliens in need are persons who do not have sufficient means of subsistence and who remain deprived of shelter, food and clothing if the Dutch state refuses to provide for this. The latter implies that a 'residual category', respectively homeless aliens not belonging to the discerned categories, needs to be added to the categories of homeless aliens discerned in 5.2.3.

Third, the court decisions have implications for the distribution of responsibilities between municipalities, NGOs and the national government. Municipalities can only deny homeless aliens access to municipal social support if there is, in line with the case-law on the Social Support Act, either a provision under any other law or a 'factual provision' of which the aliens can make use. Under those circumstances, there is the risk for municipalities that they will be confronted with arranging social support for all homeless aliens. That is, municipalities will be not be able to refuse homeless aliens access to their social support provisions on the ground that the national government, which in fact is responsible for alien policy, decided to not align its social support rules with the court decisions. The latter stresses the importance of laying down in agreements the delegation of tasks and responsibilities with regard to the provision of social support to homeless aliens.

Fourth, the recent court decisions have implications for the way in which homeless aliens must be provided social support. On the one hand, the social support provided must be adequate for the applicant. This means that an assessment should take place on a case-by-case basis of what is needed in view of the factual circumstances of the individual case. On the other hand, access to and use of social support provisions may not be subject to conditions other than those necessary to orderly provide these provisions. This means that homeless aliens may no longer systematically be imposed a freedom restricting measure when placed in the VBL or a GOL and that access to the VBL no longer may be made conditional upon cooperating in organizing return.

Last, the recent court decisions have implications for return policy. In the current situation, aliens without a right of residence have the obligation to leave the Netherlands. The responsibility to

comply with this obligation or to prove that one is unable to comply with this obligation due to technical-administrative causes or medical circumstances lies entirely with the alien. It already followed from the case-law on the Social Support Act that, while social support under the Social Support Act does not suspend the obligation to leave, the municipality needs to provide social support as long as it is not established that the alien actually can leave the Netherlands. From the recent court decisions follows that access to adequate social support in no case may be made conditional upon cooperating in organizing return. Consequently, no time limit may be put on the provision of social support. However, both from a humanitarian-, management- and financial perspective it is undesirable that homeless aliens stay in social support provisions for a long period of time. Under those circumstances, it is necessary to find more durable solutions for the situation of homeless aliens.

5.4 Conclusions

This chapter sought to answer the following sub-question of the current study: *In which way the provision of social support to homeless aliens is organized in law and practice?*

The provision of social support to aliens officially is a responsibility of the national government. It has been argued that the national government provides social support to aliens in accordance with several regulations under alien law. The Linkage Act, which relates right of residence to social welfare entitlements, is authoritative in this respect. The Linkage Act excludes irregular aliens and some groups of regular aliens from social support.

Alien law is however challenged. In some cases, homeless aliens or aliens who are excluded from social support under alien law, nevertheless can be eligible for social support in practice. This eligibility can be the result of either local practices of municipalities and NGOs or court decisions.

On the one hand, alien law is challenged by the local practices of municipalities and NGOs. Based on in particular the admission criteria 'perspective', 'need' and a 'local connection criteria', various municipalities and NGOs provide social support to homeless aliens. The homeless aliens provided social support at the local level on the one hand consist of specific groups of rejected asylum seekers in a (follow-up) residence procedure. On the other hand, they consist of specific groups of aliens who, despite the existence of arrangements under alien law which grant a right to social support in such situations, end up on the streets. The latter groups are aliens who have serious medical problems and aliens who cooperate in organizing return.

Based on the data available on the (size of the) social support provided in municipalities, it can be said that social support is mainly provided in (medium-sized and) large municipalities and municipalities with an AZC within their boundaries. Also the size of the social support provided in those municipalities is bigger. On the basis of the available data, it can also be said that the number

of NGOs providing social support and the size of this support has decreased, probably due to financial pressures, in the period 2013-2014. The available data indicates that the problems of homeless aliens are of special importance to the 'G4-municipalities', that is Amsterdam, The Hague, Rotterdam and Utrecht, the 'centre-municipalities' Arnhem, Den Bosch, Eindhoven, Emmen, Groningen, Heerlen, Leeuwarden, Nijmegen, Zwolle en the 'non centre-municipalities' Súdwestfrysland and Wageningen.

On the other hand, alien law is challenged by court decisions. Courts have ruled that the exclusion of homeless aliens from governmental social support in some cases is not justifiable under international human rights law. That is, that the interference of the Dutch state with the human rights of homeless aliens in some cases amounts to a violation of their human rights.

First, Dutch courts in individual cases have ordered municipalities to provide social support to homeless aliens under the Social Support Act. Aliens who obtain social support in this way invoke Article 8 of the ECHR. Municipalities need to provide social support to those aliens under the Social Support Act if the following conditions are met: 1)the alien involved demonstrates he belongs to the category of vulnerable persons 2)this results in a positive obligation for the state to provide social support 3)there is neither a provision under any other law or a factual provision available of which they alien can make use 4)denying the alien involved access to social support under the Social Support Act does not reflect a fair balance.

Second, the ECSR ruled that the Dutch state acts in contravention with the ESC by withholding aliens in need access to their basic needs. The ECSR argued that access to shelter, food and clothing are closely linked to the realization of fundamental rights and human dignity, that is the very core of human rights. For this reason, the ECSR argued, all persons who do not have sufficient means of subsistence and who find themselves in a situation of emergency must have a legally-recognized and non-derogable right to the satisfaction of those needs. The ECSR ruled that the Dutch state therefore has the positive obligation to provide all aliens in need in adequate social support without making access to this support subject to any conditions.

Third, recently, referring to the case-law on Article 8 of the ECHR and a decision of the ECSR, Dutch courts by temporary disciplinary measures ruled that both centre-municipalities and the national government are obliged to provide social support to aliens in need regardless of their right of residence. Access to those social support provisions may not be made subject to conditions. Moreover, the social support provided must be adequate with respect to the factual circumstances of the individual alien concerned and at least should include night shelter, a shower, breakfast and dinner.

By those decisions, courts have restricted the application of the linkage principle for as far as it concerns access to basic needs. Accordingly, the dominant distinction on the basis of right of

residence central to the linkage principle is challenged by a distinction on the basis of vulnerability central to international human rights law. The recent court decisions also challenge the main principle underlying return policy, respectively that only those homeless aliens who cooperate in organizing return are entitled to governmental social support. The court ruled that access to social support provisions may no longer be made conditional upon cooperating in organizing return or a freedom restricting measure in advance. Consequently, the recent decisions may have major implications for return policy.

6. Analyzing the struggles over the organization of the provision of social support to homeless aliens

In this chapter, the struggles over the organization of the provision of social support to homeless aliens are analyzed. As discussed in the previous chapter, the exclusion of homeless aliens from social security law is challenged by both municipalities and NGOs, which provide social support to those aliens outside law, and courts, which oblige municipalities and the national government to provide social support to homeless aliens in some cases.

This chapter aims to answer three sub-questions of this research:

1. How do some meanings on the provision of social support to homeless aliens dominate others?
2. In which way and by what meanings the dominant meaning is challenged?
3. What room for change can be discerned?

In this chapter, first the relative positions of the central agents, that are the national government, municipalities and NGOs, in the JB-field will be explained by analyzing the valuation and distribution of capitals and the related field of positions within the JB-field (6.1).

Second, the view of the national government, municipalities and NGOs on the situation of homeless aliens will be discussed. The construction of this situation determines whether and under which conditions social support is provided to (homeless) aliens. By relating the constructions of those agents to the field of positions within the JB-field, the dominant rules on the provision of social support to (homeless) aliens will be established.

Third, the struggles over the those rules will be analyzed by discussing two cases. Municipalities and NGOs, in some cases supported by juridical- and medical experts, question the legitimacy and effectiveness of the those rules. Apart from criticizing alien policy, those agents also propose alternative ways to deal with (specific groups of) homeless aliens. The first case that will be discussed focuses on the practice of 'klinkeren', or, in other words, the practice adopted by the national government of putting people out of reception facilities into the streets. Discussion about this practice is demonstrative for the struggle over return arrangements. The second case that will be discussed focuses on two medical advices carried out in the framework of alien policy. Discussion about those advices is demonstrative of the struggle over the importance of medical considerations, that is the importance of an 'external logic', in alien policy. In this section, the attitudes and strategies of the different agents, and the argument they use to conserve or challenge the status quo

will become clear.

Last, a 'new' struggle emerging during research will be discussed. During research, two important developments took place. On the one hand, several court decisions (discussed in 5.3.4) became public and gained considerable attention within the JB-field. On the other hand, the struggle within the JB-field became more public. In particular municipalities and NGOs, backed by those court decisions, stood up more openly against national policy. Those developments intensified the struggle over (the organization of) the provision of social support to homeless aliens and consequently the way in which the different agents either try to defend or attack the rules of the game came to the surface. This section, on the one hand, will demonstrate in which way dominated agents can challenge the rules of the JB-field by changing the relative value of the capitals in that field. On the other hand, this section will demonstrate how dominant the position of the national government and the rules it advocates actually are and hence how difficult it is to actually change the status quo.

Last, all the above will be taken together in order to answer the three sub-questions central to this chapter.

6.1 Explaining the relative positions of the central agents in the JB-field

In this section, the relative positions of the national government, municipalities and NGOs in the JB-field are explained by analyzing the valuation and distribution of capitals and the related field of positions within the JB-field. It will be demonstrated that the national government holds a dominant position in the JB-field, municipalities hold an intermediate position and NGOs hold a dominated position. All statements about agents' possessing certain (amounts of) capitals are made relatively to the other agents in the JB-field.

In principle, the national government has the exclusive right to make law and national policy (Respondents). This exclusive right grants the national government a dominant position within society. On the one hand, the national government has the power to determine the content of the legal obligations and rights of all agents subjected. That is, all agents within its jurisdiction. The national government, by doing so, determines what actions of agents are legally 'just' and 'unjust' and therefore strongly influences the valuation of agency. On the other hand, the national government has the power to determine the distribution of responsibilities in the implementation of policy. In accordance with the responsibilities allocated, lower state nobilities receive financial compensation from the national government⁴⁰. Therefore, the national government also strongly

⁴⁰ For the execution of tasks resulting from national policy, municipalities are compensated by contributions from national funds, most notably an earmarked fund and the General Grant. Municipalities are only free to decide on the precise allocation of budget from the General Grant. The national budget is distributed among municipalities on the basis of a

influences the possibilities for agency.

In the JB-field, the national government is responsible for the implementation of alien policy and thus the admission, reception and repatriation of aliens. Important in this respect is the Management Agreement of 2007 between the Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten [VNG]) and the state secretary of security and justice (Albayrak & Deetman, 2007). In this agreement it was established, on the one hand, that the national government would adopt measures to improve return policy and to prevent the ending upon the streets of aliens. On the other hand, it was established that municipalities would stop providing social support to irregular aliens.

Municipalities are responsible for the implementation of social support policy, that is the Social Support Act (Wet maatschappelijke ondersteuning, 2014 [Wmo]). They receive a certain budget from the national government to implement this policy. Pursuant to the Linkage Act, most aliens are excluded from the scope of the Social Support Act. Consequently, municipalities only receive financing for the provision of social support to 'non-aliens'. NGOs do not have any official responsibility with regard to the implementation of national policy and therefore do not receive any financing from the national government.

Based on the above, it can be argued that the national government, holding both most juridical and economic capital, has a dominant position in the JB-field. This does however not mean that municipalities and NGOs do not hold those capitals at all.

Both municipalities and NGOs try to counter the juridical dominance of the national government by making use of 'external'- and 'internal' juridical power. On the one hand, municipalities and NGOs try to make use of 'external' juridical power. That is, the juridical power of courts. Hence, court decisions function as power resources for municipalities and NGOs. As discussed in 5.3.2, Dutch courts in recent years have ordered municipalities to provide social support to homeless aliens in individual cases. NGOs use those court decisions, and the threat of starting a lawsuit, to force municipalities to take responsibility. Moreover, Despite the disadvantages of those lawsuits in terms of costs, those lawsuits also provide municipalities the opportunity to build up case-law on the eligibility of homeless aliens for social support.

The case-law on the Social Support Act demonstrates that not all aliens who are eligible for governmental social support under international human rights law, are eligible for this support under alien law. Municipalities and NGOs try to use this discrepancy between 'international'- and 'national'

weighed allocation system that takes into account factors like the number of inhabitants, the physical size of the municipality and the question whether the respective municipality is a service center, or 'centre-municipality', for the region. Any change in national legislation can impact the financing for municipalities. Besides governmental money, municipalities have a limited amount of own sources of income including income from taxes, municipality property and subsidies of the European Union. Still, municipalities are financially dependent upon the national government (Respondents).

eligibility to demonstrate there is a legal responsibility not laid down in alien law and to thereby counter the dominance of the national government in the JB-field. On the one hand, municipalities and NGOs use this discrepancy to question the 'legal justness' of alien law. On the other hand, municipalities use this discrepancy in their plea towards the national government to either take responsibility (the national government is officially responsible for the provision of social support to aliens) or to allocate those responsibilities and financial compensation (lower state nobilities need to be compensated for implementing tasks falling under the responsibility of the national government).

On the other hand, municipalities try to make use of their 'internal' juridical power to counter the juridical dominance of the national government. While the national government has designed some frameworks within which municipalities should implement the Social Support Act, municipalities have a certain degree of autonomy in designing policy to this end. While social support policy, in conformity with the Linkage Act, should not cover homeless aliens, in reality it does in some cases. In some of those cases, municipalities put their responsibility to public health, order and safety above their obligation to act in conformity with alien law.

Moreover, although the national government decides what amount of money municipalities receive for implementing national policy, it does not decide how this money precisely is spent. Therefore, municipalities have a certain degree of autonomy in allocating budget to activities and services. In various municipalities, budget is made available to support homeless aliens. So, while officially there is no funding available for municipalities to provide social support to homeless aliens, it is nevertheless made available.

Although NGOs officially have no responsibility with regard to the implementation of national policy, in some cases they are indirectly allocated responsibility by municipalities. That is, they are allocated responsibility in the municipal provision of social support to homeless aliens outside law. In accordance with the allocation of this responsibility, NGOs in those cases receive financial compensation from municipalities. In doing so, municipalities use their economic capital to facilitate the provision of social support outside law. In other cases, NGOs provide social support to homeless aliens on their own initiative. The financial means to do so mainly originate from private funds and donors. In all cases, irrespective of whether it concerns municipalities or NGOs, it should be noted that the amount of economic capital available is very limited.

Last, it seems justifiable to argue that those most engaging with homeless aliens, know most about them and their living situation. Officials of municipalities and, even more, professionals of NGOs are mainly involved with homeless people. Therefore, it can be argued that NGOs, and to a lesser extent municipalities, possess social- and cultural capital in the form of knowledge about the living reality of homeless aliens. This knowledge in general is however not regarded to be important in the JB-field. Only knowledge which could serve return/alien policy, is regarded 'valuable', that is

worthy of financial compensation by the national government. This is for example visible in the subsidization of the International Organization for Migration [IOM]⁴¹.

6.2 Constructing the provision of social support to homeless aliens

The way in which the situation of homeless aliens is constructed, determines whether and in what way that situation is met by public action. The dominant construction of the situation of homeless aliens then ‘officially’ determines under which conditions social support should (no longer) be provided to aliens. It determines which aliens are eligible for social support, for what period of time, which agent is responsible for providing this support and what exactly should be provided for what goals.

In this section, the situation of homeless aliens as constructed by the national government, municipalities and NGOs will be discussed separately. Subsequently, the dominant construction of the situation of homeless aliens and, strongly related, the dominant rules on the provision of social support to (homeless) aliens will be discussed. First, however, it is necessary to say something over the context in which those constructions take place. In particular, it is necessary to discuss the interaction with the field of journalism. By doing so, some light will be shed on the circumstances explaining why agents construct the situation of homeless aliens the way that they do.

6.2.1 The interaction with the field of journalism

In the Netherlands, subjects surrounding aliens are highly charged, both in politics and society. This can be explained by the strong increase in populism in politics overall and in aliens-related subjects in particular. In the Netherlands, the right-wing populist political party ‘Party of Freedom’ has made exclusionist populist statements about aliens-related subjects core of its electoral strategy. To illustrate, in reaction to an increasing flux of asylum seekers in 2015, this party for example repeatedly expressed statements like ‘we need to close the borders to stop the tsunami of aliens entering’ or ‘we should support our own people instead of spending money on those fortune hunters’ in the media.

The rise of populism described above is reinforced by the strong mediatization of politics. Due to this mediatization, as discussed in 3.3.4, political actors have adapted their communication to media logic. That is, they publicly communicate, at the cost of informational value, in a less sophisticated way which is easier to understand by the public. Consequently, both ‘quality’ and

⁴¹ Since 1991 the IOM, on behalf of the national government, provides various forms of support to various groups of aliens who are willing to return. For example, the IOM provides support to aliens who are willing to return through the ‘Return and Emigration of Aliens from the Netherlands’-program and to rejected asylum seekers under the ‘Return and Reintegration Regulation’-program (Kamerstukken II, 2014/15, 29344, no. 123).

‘sensational’ press give much attention to aliens-related subjects in an often unsophisticated way.

Taken together those developments have led to a situation in which it is very hard to begin a dialogue over issues related to aliens. Those issues have become so sensitive that opposing parties have taken positions of principle. Consequently, there is little room for negotiation. Moreover, those developments have resulted in a situation in which support for ‘exclusionist measures’ is more likely than support for ‘inclusive measures’ with respect to aliens. As articulated by a respondent of an NGO ‘it is an understatement to say that the climate is not preferable for aliens’ (Respondent). Accordingly, it is very hard for agents to impose measures which could benefit aliens. For governmental agents, efforts could backfire electorally and for non-governmental agents, efforts to this end could backfire in terms of decreasing (social) support. As argued by a respondent ‘[t]he problem of course is that he [the state secretary of security and justice who is responsible for alien policy] finds himself in an impossible position. Every effort he will make to improve or humanize alien policy, will enormously backfire electorally’ (Respondent).

In the JB-field the interaction with the field of journalism is expressed in several ways. First, agents in the JB-field make frequent use of the media to raise attention for specific issues and to influence public opinion and politics. They do so by framing the situation of homelessness to their benefit. That is, by offering a different explanatory theory for the situation of homeless and by framing the deservingness of homeless aliens accordingly. For example, depending on their interest, homeless aliens are depicted as either an abstract threat or a human face⁴². In general, the national government uses the media to defend its alien policy, while municipalities and NGOs use the media to challenge it (Bouter, 2013).

Second, the interaction with the field of journalism is reflected in the differential use of the media by agents in the JB-field. In the media, those agents supporting ‘exclusionist measures’ often communicate openly and directly about their support for those measures. In contrast, those agents supporting or even implementing ‘inclusive measures’ are cautious in their public communication, or even refrain from communicating publicly about, this stance. The latter is for example reflected in the lack of public communication by some municipalities over the social support they actually do provide to homeless aliens (Observations; Respondents).

Third, the interaction with the field of journalism is reflected in the extent to which the media has attention for the different agents in the JB-field. Because of its national scale and the possession of much economic capital, the national government tends to gain most media attention

⁴² The importance of this difference in depiction is clearly visible in individual cases in which the media actually works in favor of ‘inclusive measures’ rather than ‘exclusive measures’. Those cases generally concern ‘Dutch aliens’, or aliens who are part of the ‘Dutch community’ and who lose their right of residence after a long period of legal residence. Media attention in those cases puts a lot of pressure on governmental agents to do something. See the case of Mauro for an example (Nederlandse Omroep Stichting, 2013).

and is able to use the media in a very professional way (Bouter, 2013).

6.2.2 The view of the national government

The official message of the national government is that aliens end up on the streets because they do not comply with their obligation to leave the Netherlands. That is, by not being 'obedient' to alien law. The national government argues that those people, in the form of social support in the VBL, have sufficient possibilities to be supported in organizing their return. The national government puts a strong focus on 'own responsibility'. It conveys the message that homeless aliens have control over their situation of homelessness and can end their homelessness by cooperating in organizing return.

Moreover, the national government perceives the current alien policy to be 'strict but fair'. Those 'deserving' protection are granted a residence permit and those 'deserving' social support after their residence application has been rejected are provided this. Deservingness, or the eligibility of aliens for social support, hence is determined on the basis of alien law. Remarkable in this respect is that homeless aliens are depicted by the national government as being 'illegals'. In reality, many homeless aliens provided social support by municipalities and NGOs beyond alien law are 'legal', that is, have a right of residence (Respondents). The term 'illegal' generally is associated with undeservingness⁴³ and therefore one could argue that this message is conveyed by the national government to stress the undeservingness of homeless aliens.

The national government holds that society must be shielded from beneficiaries in order to maintain the welfare system. Homeless aliens then are perceived to be beneficiaries. To not encourage the 'disobedient' behavior of homeless aliens, those individuals should not be provided social support. Providing social support is assumed to discourage homeless aliens to comply with their obligation to leave and to give them 'false hope' on regularization and it regarded to cost too much money. Consequently, in the opinion of the national government, the social support provided by municipalities and NGOs to homeless aliens, in general, is wrong.

And yet, in spite of the above, there are some exceptional cases in which the national government finances local social support projects. In those cases, the national government regards the specific 'local knowledge' as 'valuable' in the framework of alien policy and therefore worth of financial compensation. First, the national government⁴⁴ (structurally) provides financing for various voluntary return (and re-integration) projects carried out by municipalities and NGOs. In those projects homeless aliens can obtain social support on the condition that they cooperate in organizing their return. The best known organization receiving financing for return projects is the International Organization for Migration.

⁴³ In fact, this negative association was one of the main reasons to not use this term in the current study (see 2.1).

⁴⁴ Half of the funding for those projects comes from an European fund.

A remarkable event in current study was that the DT&V, despite insistence of one of its employees, refused to share the available data on the effectiveness of local return projects. The author intended to use this data to compare the effectiveness of local return projects to the effectiveness of the DT&V. A possible explanation for this event is that the DT&V does not want to 'provide evidence' which could support the critique that its return policy is ineffective. The DT&V is under high pressure to improve return rates, but actually fails to do so.

Second, the national government, together with some municipalities, finances the 'Medical reception project for undocumented people' (Medisch Opvangproject Ongedocumenteerden) carried out by the Solidarity committee refugees of Amsterdam (Amsterdams Solidariteits Komitee Vluchtelingen). In this project, aliens with serious psychological problems are provided shelter, support and guidance with the aim of reaching a sustainable solution (Respondent).

Third, in various municipalities (among others in Utrecht, Rotterdam and Nijmegen) the national government participates in local consultations. Some of those consultations have been initiated over 2013-2014 in the framework of the 'Pilot Local Cooperation', others already existed. In general, the Repatriation and Departure Service [DT&V], the Immigration and Naturalization Service [IND], national- (e.g. the International Organization for Migration) and local (e.g. the Rotterdams Ongedocumenteerden Steunpunt) NGOs and the municipality take part in those consultations. In some (large) municipalities, there also exist a local consultation specifically aimed at vulnerable aliens, that is in most cases aliens with serious medical problems. The municipality is the directing agent in those consultations.

The objective central to those consultations is finding solutions for individual homeless aliens. To find solutions, the different agents, on the basis of their own responsibilities and roles, work together. The basis for achieving results then lies in ensuring that all agents move in the same direction. To this end, the agents involved bring together information on the alien in question and jointly decide on his perspective and the most appropriate strategy to stimulate and support the alien in realizing this perspective. The focus in those consultations is on homeless aliens with serious medical problems, homeless aliens in very distressing circumstances, homeless aliens who are unable to return and criminal- or nuisance-causing aliens (Observation National Meeting Pilot Local Cooperation).

6.2.3 The view of municipalities

The official message of municipalities is that aliens end up on the streets because alien policy is failing and the national government does not take responsibility for this policy failure. Municipalities

argue alien policy fails because it fits a ‘paper reality’⁴⁵ rather than the actual reality.

On the one hand, municipalities are of the opinion that return policy is failing. Municipalities have other ideas about how to effectively stimulate return. The requirements for receiving social support under alien policy, and the assumptions underlying those arrangements, are perceived to be ineffective and unrealistic. For example, it is perceived to be too simplistic to assume that homeless aliens will decide to voluntarily return without being provided any support in the form of, for example, advice on the opportunities in the country of origin. Hence, it is regarded to be ineffective to only provide social support to aliens who have already made up their mind and have already decided to return to the country of origin.

The above, however, does not mean that municipalities deny the own responsibility of homeless aliens. They do reiterate that aliens need to comply with their obligations under alien law. However, since a substantial part of the homeless aliens provided social support by municipalities have a right of residence and thus are not ‘illegal’, it is not appropriate to explain the situation of homeless aliens by solely focusing on their own responsibility (Aangeenbrug, 2014; Respondents). Moreover, to some extent it is irrelevant to municipalities whether aliens end up on the streets as a consequence of not taking their ‘own responsibility’. Regardless of whether they are not willing (are ‘disobedient’ under alien law) or not able (should be ‘deserving’ of social support under alien law) to return to the country of origin, the fact remains that municipalities are faced with practical problems resulting from their presence.

On the other hand, municipalities are of the opinion that specific arrangements of alien policy are ineffective. This concerns in particular the ‘No-fault’ (Buitenschuld, [BS]) arrangement and the Article 64-arrangement. Those arrangements are explained in detail in Appendix C. Municipalities claim that the requirements of those arrangements are too strict and/or too strictly applied. Therefore, those arrangements do not cover all aliens who are unable to organize return due to either medical- or technical-administrative reasons. The malfunction of those arrangements is regarded to be especially problematic, because their malfunction results in a situation in which homeless aliens unable to return, through no fault of their own, find themselves in a legal limbo.

Municipalities which do provide social support to homeless aliens argue that they cannot remain passive under the circumstances described above. They justify the provision of social support to homeless aliens by referring to their local responsibilities. That is, the municipal duty of care and -responsibility for maintaining public health, -order and -safety. In the framework of those responsibilities, municipalities apply the principle that no one should live, or at least sleep, in the streets. The vulnerability of some homeless aliens, especially that of aliens with serious medical

⁴⁵ In a separate section (6.3.2) this idea will be demonstrated by discussing the practice of ‘klinkeren’.

problems, and the threat some homeless aliens form to the public health, -order or -safety then compel municipalities to provide social support to them. In contrast to the national government, municipalities determine the deservingness of homeless aliens, that is their eligibility for social support, on the basis of more than alien law alone. That is, on the basis of more personal characteristics than only legal status.

Nevertheless, the principles of alien law are relevant to the assessment of the eligibility of homeless aliens for municipal social support. As discussed in 5.2.1, in general only homeless aliens with regular residence, homeless aliens who cooperate in organizing return and homeless aliens in very distressing situations can be eligible for municipal social support. This demonstrates that 'right of residence' and 'stimulating return', two notions central to alien policy, also steer the practices of municipalities.

In comparison with the national government, however, municipalities do apply a more practical-oriented approach towards homeless aliens. Central to this approach is finding solutions, in the form of a residence permit or return, for homeless aliens in distressing situations. Municipalities argue that providing social support outside the scope of alien law in individual cases is needed in order to find a solution. For example, municipalities may decide to provide social support to an homeless alien in the preparation of an Article 64-application. According to municipalities, in order to find a solution, more attention should be given to all circumstances which give rise to the specific situation of a homeless alien. Taking all circumstances into consideration is not part of the approach of the national government (see 6.3.1).

Municipalities indicate to provide social support under protest. They are of the opinion that 'the national government should solve its problems' (respondent). The official message of municipalities, strongly expressed in both the media and politics, is that 'alien law is the responsibility of the national government and therefore the national government has to deal with homeless aliens'. Although, according to national law the trueness of this statement is not in question, it is instrumental in various ways.

One reason why municipalities strongly express the message that the national government is responsible for alien law and thus homeless aliens is to demonstrate there is a responsibility that is not taken up by the national government. That is, to demonstrate there in fact is a responsibility ('given the circumstances we have to act') and to demonstrate that this responsibility belongs to the national government ('but actually you should be the agent acting'). Doing so, municipalities try to urge the national government to either take responsibility or to officially delegate the responsibility, and thus allocate financial compensation, to municipalities.

In this respect, municipalities (even those who do provide social support to homeless aliens) are confronted with a 'to act/to not act paradox'. On the one hand, not acting will possibly result in

situation in which municipalities are not able to fulfill their local responsibilities/social- and human costs. On the other hand, providing social support to homeless aliens could create the false impression that municipalities think they are, in fact, responsible for providing this support. This 'to act/to not act paradox' is even reflected in the practices of those municipalities providing social support to homeless aliens. Although, by providing social support they 'accept responsibility' for mediating the situation of homeless aliens, and the social support they provide to homeless aliens in many ways is comparable to social support provided to 'non-alien' under the Social Support Act [Wmo], most municipalities provide this social support outside the Wmo and do not term it 'Wmo-support' (Respondent). They fear to call those provisions 'Wmo-support', because the Wmo actually is under the responsibility of municipalities.

Another reason why municipalities strongly express the message that the national government is responsible for alien law and thus homeless aliens is to 'keep homeless aliens away from their doorstep'. Municipalities have available limited means and capacity and can therefore only meet a limited number of requests. Municipalities, especially large municipalities, fear that providing social support, or officially recognizing or openly communicating about social support provided to homeless aliens, will result in a pull effect. In practice, as confirmed by several respondents in the current study, several municipalities (and NGOs) that do provide social support to homeless aliens receive an excessive number of request from all over the country.

To put it even more strongly, all respondents support the idea there exists, in the current situation, a relationship between the (communication over the) provision of social support to homeless aliens and a pull effect. This relationship probably is most clearly visible in the case of the municipality of Utrecht. On the one hand, this municipality provides various- and (relatively) many forms of social support to homeless aliens and does, in contrast to most municipalities, communicate openly about those provisions. On the other hand, this municipality is confronted with a major pull effect. As articulated by an respondent of an NGO, the latter 'is of course also a consequence of their own policy'.

However, several respondents stress that this relationship partly can be explained by the fact that most municipalities do not provide social support to homeless aliens. As an respondent of an NGO stated 'there are so many gaps, so many places with an AZC which do not have an emergency shelter'. A substantial part of the aliens who end up on the streets of those municipalities go to municipalities which do provide social support to homeless aliens and subsequently call upon those municipalities for social support.

As a consequence of this pull effect, several municipalities have to bear a disproportional, if not unmanageable, burden. The latter is reflected in the prioritization of 'those most needy and deserving of social support' by municipalities. Since municipal officials by definition are unable to

meet the request of all those whom, taken separately, have a valid claim, those officials have to favor some over others. In this prioritization process, the municipal official is faced with considerable dilemmas⁴⁶. Several respondents in the current study, experiencing major dilemmas in this process, stressed the need to distribute the burden more properly across the country. They believe this would not only eliminate the pull effect, but also the need to prioritize. As one respondent argued 'if there exists shelter everywhere, there is no need to leave'.

6.2.4 The view of NGOs

NGOs explain the situation of homeless aliens by pointing to the failing, inhumane and restrictive alien policy. In their explanation, NGOs refer to different parts of alien policy.

NGOs are of the opinion that the asylum admission policy is too restrictive. As articulated by an respondent '[t]he IND is quickly inclined to reject claims and judge a narrative is implausible.' NGOs argue that asylum seekers do not always have a 'fair chance' to tell their asylum narrative. In this respect, NGOs refer in particular to asylum seekers with serious medical problems. NGOs argue the IND does not take those problems sufficiently into account in the process of hearing and deciding. This is regarded especially problematic, because it is perceived to be very hard to prove at a later stage that the asylum seeker was unable to tell his narrative well due to his medical problems during his first procedure⁴⁷.

Second, NGOs are of the opinion that the regular admission policy, which includes the Article 64 and No-fault [BS]-procedure, is ineffective and too restrictive. With respect to the assessment of Article 64-applications a respondent of an NGO for example stated 'in some cases, I really am flabbergasted by the conclusions the IND draws'. With respect to the assessment of BS-applications a respondent of another NGO for example argued ' [e]specially in those cases in which someone has no identity documents, already a additional positive power of persuasion is demanded. When you have no documents, you already are depicted to be suspicious'. NGOs, like municipalities, argue that the requirements of the Article 64- and BS arrangement are too strict and/or too strictly applied and that they therefore do not cover the groups they are intended to cover. NGOs argue that, as a consequence of the latter, some homeless aliens find themselves in a hopeless and inhumane situation. The latter is regarded as unacceptable by NGOs.

⁴⁶ For example, if an alien not originating from the municipality but certainly in need for social support calls upon an official, should one uphold the region criteria? Or another example, if an homeless alien and homeless non-alien request for the same bed, to which person it should be granted? In practice, the need for prioritization results in a situation in which only some homeless aliens are provided social support. For example, in practice few shelter is available for man. it should be stressed that municipalities, especially within the framework of the ongoing transitions in the framework of the Social Support Act, are faced with enormous budget constraints and organizational transformations making it difficult to comply with responsibilities delegated recently. Consequently, municipalities already face difficulties in complying with just their official tasks.

⁴⁷ See 3.3.3.2.

Third, NGOs have other ideas about how to effectively stimulate return. Like municipalities, they perceive the requirements for receiving social support under alien policy to be ineffective and unrealistic. Also, they question whether the national government is the right agent to support aliens in organizing return. Moreover, NGOs have other ideas about the need to return. While most respondents of NGOs do think it is reasonable to expect aliens who have exhausted all legal remedies to return and that aliens, in principle, have 'own responsibility' in organizing return, they do not think aliens have the obligation to leave. For example, one respondent expressed the belief that although people may not be entitled to a residence permit, they 'do not just flee without a good reason' (Respondent).

NGOs explain the ineffectiveness of 'simplistic' alien policy in two ways. On the one hand, several respondents explain the ineffectiveness of alien policy by referring to the lack of attention for the 'human aspect' of alien policy. That is, the way in which aliens are treated. They argue that aliens are solely treated as 'subjects having own responsibility', instead of 'human beings having thoughts and desires'. On the other hand, several respondents explain the ineffectiveness of alien policy by referring to the false impressions the national government creates. They refer in particular to the false impression that return is always possible. Under those circumstances, NGOs argue, alien policy corresponds to a paper reality rather than the actual reality.

In light of the points discussed above, NGOs are of the opinion it is too simplistic to argue that aliens end up on the streets solely because they are not willing to comply with their 'own responsibility' under alien law. Instead, the ending upon the streets of aliens can only be explained by looking at the interplay between one's choices, not responsibilities per se, and circumstances, like the state of health and the course of the proceedings. Accordingly, the point of departure in dealing with homeless aliens should not be to stimulate them to comply with their obligation to leave, but to look at all circumstances which have caused (or are causing) his homelessness.

NGOs justify the provision of social support to homeless aliens by referring to the idea that every human being is worthy of humane treatment. Humane treatment at least constitutes that all human beings have access to basic needs. In this respect, it is regarded unacceptable that people end up on the streets. The deservingness of homeless aliens then is defined on the basis of their need and 'being human'. NGOs feel they have to take action to protect people in distressing situations against inhumane treatment.

NGOs are of the opinion that the provision of (basic) social support to homeless aliens is not only justifiable, but actually is a responsibility of the Dutch government. As articulated by a respondent of an NGO:

It is not humane if you withhold people access to basic needs. That is going much too far. You may adopt a strict alien policy, you may, but even then everyone has a right to basic things, you cannot exclude people from that.

The idea of that every human being is worthy of humane treatment is grounded in two things. On the one hand, the idea is grounded in the belief of Christianity. Many NGOs which provide social support to homeless aliens have a Christian background. On the other hand, the idea is grounded in international human rights law. Recognizing that the belief of Christianity alone is not influential enough to force municipalities or the national government to take responsibility, NGOs also refer to international human rights law. In doing so, they do ground their justification not only in a moral obligation, but also in a legal obligation.

The idea that everyone deserves human treatment is, however, only partly reflected in the practices of NGOs. This mainly can be explained by the financial dependency of much NGOs on the government. Those NGOs have to comply to the policy of their funder. Besides, even those NGOs who are financially independent, have to prioritize in selecting who to help. Like discussed in 5.2.2.1, the existence of a perspective affects this prioritization. One could argue that the latter either demonstrates the need for more money or demonstrates that NGOs, in spite of everything, are to some extent permeated with the 'dogma of own responsibility' proclaimed by the (national) government.

NGOs are of the opinion that both the national government and municipalities are responsible for homeless aliens. Therefore, those agents are actually the ones who should take responsibility and arrange social support for homeless aliens. Hence, likewise municipalities, NGOs state to provide support under protest, holding other agents responsible for arranging support.

6.2.5 The dominant rules

The dominant construction of the situation of homeless aliens officially determines under which conditions social support should (no longer) be provided to (homeless) aliens. The national government holds a dominant position in the JB-field. Therefore, it is the dominant constructor of the situation of homeless aliens. Holding both the juridical capital to form alien law and the economic capital to give shape to its implementation, the national government constructs the situation of homeless aliens on the basis of alien law. Alien law consequently could be perceived as being 'symbolic capital' in the JB-field.

In this framework, the undermining of alien policy by homeless aliens rather than the situation of homeless aliens is constructed as a social problem. The situation of homeless aliens is in principle constructed as an 'individual' problem. It is the result of the 'disobedient behavior' of

homeless aliens, that is not taking 'own responsibility', and therefore should not be met by public action in the form of social support provisions. This 'disobedient behavior', in turn, is constructed as undermining alien policy.

The conditions under which social support should (no longer) be provided to (homeless) aliens are dominated by considerations in the framework of, in particular, return policy. In this framework, aliens whose first residence application has been rejected (or who have never submitted an application) need to be stimulated to return to their country of origin. It is assumed that return, except in very exceptional cases, is always possible. Hence, social support arrangements focus on stimulating aliens to- and supporting aliens in taking their 'own responsibility'.

The general rule on the provision of social support to (homeless) aliens holds that (adult) aliens *not willing* to take 'own responsibility' should not or no longer be provided social support and that one should deviate from this general rule in exceptional cases only. In those cases, the burden of proof rests with the alien. That is, the alien needs to demonstrate he is *not able* to organize return. In practice, aliens whose residence application is rejected are removed from reception facilities the moment their 'period of departure' is expired. Aliens who are willing to work on return are, under certain conditions, eligible for reception in the VBL. Further, only exceptional cases or aliens who are covered by the Rva, Article 64 or the related Spekman-procedure, or the BS-procedure (indirect by obtaining a temporary residence permit) can regain access to social support (see Appendix C for details on those regulations).

6.3 The struggles over the dominant rules

In the previous section, the construction of the situation of homeless aliens by the national government, municipalities and NGOs have been discussed. It has been argued that the national government, holding a dominant position in the JB-field, is the dominant constructor of the situation of homeless aliens. Hence, the conditions under which social support should (no longer) be provided to (homeless) aliens are dominated by considerations in the framework of in particular return policy. The general rule holds that (adult) aliens *not willing* to take 'own responsibility' should not or no longer be provided social support and that one should deviate from this general rule in exceptional cases only. In those exceptional cases, the burden of proof rests with the alien.

However, both the general rule on the provision of social support to homeless aliens and its exceptions are challenged in the JB-field. In fact, they are at the heart of the struggle in the JB-field. Municipalities and NGOs, in some cases supported by juridical- and medical experts, question the legitimacy and effectiveness of the rules under alien policy and hence undermine the capacity of alien law to dominate in arenas of decision-making. Apart from criticizing alien policy, those agents also

propose alternative ways to deal with (specific groups of) homeless aliens. In doing so, those agents try to change the rules of the game, the relative value of the capitals they possess and accordingly their power position within the JB-field.

In this section, two cases demonstrating the struggles over the 'general rule and its exceptions' will be discussed. First, the struggle over 'return arrangements' will be discussed. To avoid overlap, the focus will be on the practice of 'klinkeren'. That is the practice adopted by the national government of putting people out reception facilities into the streets. Second, the struggle over the importance of medical aspects in the assessment of residence applications will be discussed. The focus will be on two medical advices carried out in the framework of alien policy.

Before discussing those cases, it is however first necessary to discuss the attitude and strategies the different agents bring into those struggles. The attitude of and strategies adopted by agents come closest to the concept of 'habitus' discerned in the Bourdieusian theoretical framework. That is, they give insight in the ways of thinking and filters of perception that structure the practices and representations of agents. In doing so, they shed some light on the arguments used by the different agents in the struggles themselves.

6.3.1 Attitudes and strategies

The approach of the national government under alien law can best be characterized as a 'thinking in boxes' approach. As articulated by a respondent, 'everything is aimed at controllability and manageability'. Under alien law, the national government has designed a complex framework of strictly defined 'boxes' under which it places aliens. Those boxes could be termed 'granted a (temporary) residence permit', 'in procedure' and 'realized return'. The national government, for the purpose of enforcing an effective- and restrictive alien policy, constantly conveys the message that all aliens fit in those predefined boxes. The latter is visible in various assumptions made by the national government under alien policy. For example, the national government assumes all aliens are able to organize return.

Moreover, in the pursuit of a restrictive alien policy, the national government has designed those boxes, so to say, in such a way that the boundaries of the individual boxes have a different permeability. For example, it is much more difficult to move from the 'realized return' box to the 'granted a (temporary) residence permit' box than vice versa. As argued by a juridical respondent 'those aliens must be kept out as much as possible'.

Under this approach, those aliens who do not fit into the boxes or homeless aliens pose a problem for the national government. To deal with this problem and to simultaneously defend the effectiveness and legitimacy of alien policy, that is the (boundaries of the) boxes, the national government shifts the responsibility for this misfit to the homeless aliens. That is, it stresses the 'own

responsibility' of aliens in organizing return. Accordingly, the fact that homeless aliens do not fit into the predefined boxes is a consequence of their behavior rather than of alien policy. Only for very exceptional cases, the national government has introduced a, so to speak, 'very exceptional cases box'. This box includes the Article 64- and BS-arrangement. To prevent that 'disobedient' aliens make misuse of this box, access to those arrangements is subjected to very strict requirements.

Municipalities, NGOs and other agents, like medical- and juridical experts, criticize this approach by arguing that this approach explains why some homeless aliens find themselves in a legal limbo. Arrangements under return policy, related to social support, are too simplistic and therefore ineffective. On the one hand, the approach denies that it is impossible to fit people perfectly into predefined boxes, especially when those 'boxes' are defined in the framework of a very restrictive alien policy. Behavior is only controllable and predictable to a limited extent. On the other hand, this approach denies that other circumstances, in an unruly practice, can be relevant. For example, medical circumstances may limit aliens in their ability to organize voluntary return or to submit an Article 64-application.

More in particular, this approach makes it difficult to find solutions in those cases in which aliens after a first procedure are neither granted a residence permit nor organize return. Juridical respondents argue that alien law compared to other areas of law has the most odd approach of all. In other areas of law, one considers to deviate from a policy rule if the general rule does not lead to the desired result. In deciding how to deviate from the general rule, all circumstances of the individual case are taken into consideration. By contrast, in alien law there also exist rules about when exactly to deviate from the general rule. A juridical respondent argued this approach is odd, because 'if you make sub-rules for when an exception should be made, it is impossible to consider all circumstances'. Consequently, in those cases in which someone does meet neither the general rule nor the rules for the exceptions, there are no options left. The juridical respondent argued that this 'muddling through [or not acting solution-oriented] is part of the strategy aiming at making life as unpleasant as possible here [for irregular/homeless aliens]'. Another juridical respondent confirmed this idea by arguing that the national government tries to exert pressure on living in irregularity with 'the aim of making you [irregular alien] so desperate that you think "I have no life here, I have to return" '.

At the same time, municipalities and NGOs realize they are having a hard time influencing alien policy (Respondents). On the one hand, it is hard to negotiate and/or gain support for measures benefiting aliens in the prevailing political- and public climate. On the other hand, the national government holds a dominant position within the JB-field.

Under those circumstances, municipalities and to a lesser extent NGOs have adopted a practical-oriented approach. Characteristic of this approach is the focus on 'finding solutions to the

problems of homeless aliens'. A solution can either be residence permit or the realization of return. By stressing the need to find a solution for individual problematic cases, municipalities in particular try to turn a policy problem into a practical problem and thereby try to depoliticize the subject at hand. Under this approach, municipalities rather stress the need to reduce local problems surrounding homeless aliens rather than the need to change alien policy. In order to find solutions, municipalities stress, it is necessary to cooperate and take all circumstances into account in deciding on how to treat a homeless alien. By doing so, municipalities try to get a voice in the situation of homeless aliens.

With this approach, municipalities and NGOs try to increase the space for negotiation from below. That is, from within the agencies (DT&V/IND) of the national government. In doing so, they try to demonstrate that the knowledge of local agents can be valuable to the national government. To this end, they stress that 'their' approach, in conformity with the logic of the JB-field, will result in stimulating voluntary return. That the national government does finance local return projects and the Medical reception project for undocumented people project and does participate in local consultations (see 6.2.1) indicates that the national government actually can recognize the value of local knowledge. That is, those acts demonstrate that the efforts of municipalities and NGOs can lead to concrete results.

In the current study, a strong struggle within and between NGOs was visible over the question which position NGOs should take in relation to the government. Some NGOs have adopted a pragmatic approach. Those NGOs chose to focus on cooperation with governmental agents under the header of finding solutions in individual cases. Other NGOs criticize this approach on the ground that NGOs, as advocate of aliens, should challenge the foundations of alien policy and fight for the rights of homeless aliens rather than cooperate in implementing 'wrong' alien policy. They fear that NGOs, taking this position in relation to the government, become merely an extension of the government in the implementation of alien policy. Given the importance of 'perspective' in the practices of many NGOs, one could argue that NGOs indeed have internalized the 'return-principle' central to alien policy into their habitus. Motivated by those considerations, other NGOs adopt an advocating approach focused on fighting for the rights of aliens and policy changes (Observations)⁴⁸.

Based on the observations carried out in the current study, it seems plausible that the position taken up by an NGO largely depends on the extent to which it is financially dependent on the government. The national government, in the framework of alien law, and to a lesser extent municipalities, having an interest in temporary provisions, will only support those activities which are likely to result in higher return rates. Hence, the choice for a specific strategy by NGOs (in particular)

⁴⁸ See also Westerink (2013) for a critical article on this matter.

is strongly informed by self-interest and self-preservation (Observations).

The latter, however, also applied to other agents in the JB-field. In the current study, all agents demonstrated self-interest. At those points agents plead for change, they also plead for having a role in the 'changed' situation. This plea was most evident in an interview with a respondent of the national government. This respondent continuously repeated they were the best agent to do the job in the 'changed' situation (Observations; Respondents).

In the current study, to a lesser extent also a struggle between municipalities was visible over the question which position municipalities should take in relation to the national government. This struggle was visible in two ways. First municipalities are caught by a 'to act/to not act paradox'. Second, municipalities, communicating differently about the social support they provide to homeless aliens, vary in the extent to which they publicly oppose national policy (see 6.2.3).

6.3.2 The struggle over the practice of klinkeren

In this section, the struggle over the practice of 'klinkeren' is discussed. Klinkeren is the practice of putting people out reception facilities into the streets. Aliens whose (first) residence application has been rejected are removed from reception facilities the moment their 'period for departure' is expired (see Appendix F). The practice of klinkeren is illustrative of the attitude of the national government towards return and the strategy it adopts to stimulate return. Municipalities and NGOs argue that the 'thinking into boxes' approach of the national government underlying the practice of klinkeren does not only partly explain the ineffectiveness of return policy, but also results in an undesirable situation in which 'no-one' has responsibility over social- and human costs resulting from the situation of homeless aliens.

Within the struggle over the practice of klinkeren, several interrelated points of discussion can be discerned. First, the point that the national government holds unrealistic ideas on the process of realizing return. Second, the point that the national government puts too much focus on the 'own responsibility' of homeless aliens. Third, the point that the national government denies that the situation of homeless aliens in itself is problematic and requires measures *laat staan*.

On the one hand, the national government is being criticized for not taking sufficiently into account the 'human aspect' in its approach towards return. That is, it does not take into account that also other factors than its policy will influence the behavior of homeless aliens. On the other hand, the national government is criticized for not taking sufficiently into account 'contextual factors' in its approach towards return. That is, it does not take into account factors like the living situation and state of health of homeless aliens. The assumption that withholding aliens access to social support will stimulate them to voluntary return is regarded to be illustrative in this respect. This assumption, for example, denies that the situation of homelessness itself can make it hard to be occupied with

other things than material concerns and security. That is, to be occupied with changing the mindset and deciding to return. This assumption also denies situations in which homeless aliens due to medical problems are unable to oversee the consequences of their acting. Under those circumstances, critics argue, it may be more effective to provide social support to stimulate and support aliens in changing their mindset instead of only providing social support to aliens with a 'clear return mindset'. Hence, municipalities and NGOs are of the opinion that more considerations than merely right of residence and the willingness to return need to play a role in the provision of social support to homeless aliens.

Klinkeren is applied by the national government in the framework of return policy. The national government argues klinkeren is a necessity for an effective return policy. The underlying idea is that ending upon the streets would stimulate irregular aliens to comply with their obligation to leave the Netherlands. Moreover, by withholding aliens who have obtained a right of residence by submitting a subsequent application or an appeal against a negative decision access to reception facilities, klinkeren would decrease the number of 'futile' (subsequent) applications. That is, it would discourage aliens to proceed with the sole intention of stretching their stay in the Netherlands and postponing their 'inevitable return'. Last, by shortening the stay of aliens in reception facilities and reducing the number of proceedings, klinkeren would result in cost-savings.

An 'old' point of critique on the practice of klinkeren relates to the length, in most cases 28 days, of the 'period of departure'. Nearly all respondents in the current study argue that the length of this period is unrealistic. On the one hand, respondents argue that the length of the period is too short for aliens to 'change their mindset'. They argue that the mindset of aliens in procedure is targeted at stay in the Netherlands until the very end. Hence, a negative decision on a application is experienced as a 'shock' rather than a disappointment. Consequently, at the moment that they become officially obliged to return, that is the moment their application is rejected, return in most cases has never been considered as a viable option. In the light of the above, the length of the period of departure is too short to go through the process of changing the mindset. Consequently, critics argue, klinkeren does not only undermine the effectiveness of return policy, but actually does stimulate living in irregularity.

On the other hand, respondents argue that the length of the period is too short for aliens to obtain the documents required for return. Putting those aliens who are awaiting a decision on an request to receive those documents out into the streets is regarded problematic, because those people will get out of sight and therefore will be untraceable the moment a decision is made on their request⁴⁹. In this respect, it is remarkable that the DT&V has available 'country-specific departure-

⁴⁹ A counterargument of the DT&V is that an alien should submit an application for the required documents earlier, and not just once their residence application has been rejected. The court, however, decided in 2015 that the DT&V may not

information'. That is, information over how long it averagely takes to receive travel documents per country. From this information it can be concluded that it averagely takes much longer than 28 days to receive travel documents from specific countries⁵⁰. The latter in particular applies to countries which are perceived to be problematic by the national government in that sense that it is difficult to repatriate nationals of those countries. Thus, while the DT&V is aware of the difficulties of realizing return to some countries, it does nothing with this information.

Another point of critique on the practice of *klinkeren* relates to the practice of 'administratively excluding' homeless aliens from access to reception facilities. In the system of the DT&V/IND, aliens who are put on the streets are administratively excluded from access to reception facilities, by registering their status as 'mob', which means they have left the facility to an 'unknown destination'. By giving someone this status, he is removed from the workload of the DT&V/IND.

Municipalities and NGOs blame the national government for holding the simplistic belief that 'those people put on the streets will just disappear' (Respondent). That is, for holding the simplistic belief that those aliens will adapt themselves the 'digitalized paper reality' of the national government by realizing return. The national government assumes, or rather pretends, that all people registered as 'mob' in the system of the DT&V/IND leave the Netherlands. In reality, according to the Refugee Council, only 30 percent of those people actually leave the Netherlands (Respondent). At some point, those aliens put on the streets will end up on the radar of municipalities or NGOs (Respondents).

To illustrate this 'they will just disappear' assumption, a respondent of an NGO referred to a situation in which he called an employee of the IND to ask information about a irregular homeless alien he was providing social support. The employee argued that the alien in question could no longer be in the Netherlands, because he was registered as mob in the system and that she therefore could not provide any personal information. Since the alien in question was actually sitting beside the member of the NGO making the call, this was quite a strange statement.

Municipalities, and in a somewhat different way NGOs, experience the practice of *klinkeren* as a way of the national government to 'administratively discharge' aliens from its responsibility. That is, to relieve itself from responsibility over homeless aliens. On the one hand, the national government pretends that those people who are put on the streets will 'disappear'. By doing so, it excludes the possibility that the ending upon the streets of aliens leads to problems. This stance implies there is no responsibility to take up to start with. This position is criticized, since in practice the ending up on the streets of those people results in both individual- and social problems. Hence, the national government actually denies the existence of those problems. The national government

demand an alien to do so (Respondent).

⁵⁰ This information can be accessed through INLIA (2014).

can maintain this position, since it is not directly confronted with those problems. As an official of a municipality noticed '[n]o one is living in the streets of the national government'. Consequently, it is easy to say for the national government that municipalities and NGOs should not provide social support to homeless aliens.

On the other hand, the national government stresses that ending up on the streets is the 'choice' and thus the responsibility of the 'disobedient' aliens themselves. It stresses that they end up on the streets because they are not willing to take their 'own responsibility', that is to comply with their obligation to leave. The latter implies that even if there is a responsibility not taken up with regard to homeless aliens, this responsibility is individual and not governmental or social.

In practice, this stance of the national government results in a situation in which the legal responsibility for homeless aliens lies with 'no-one'. This position of the national government, in general, is challenged in different ways. On the one hand, municipalities and NGOs criticize the denial of responsibility by the national government by referring to the ineffectiveness of return policy and the unrealistic assumptions underlying this policy. First, the 'own responsibility' dogma cannot justify the homeless situation of some aliens. Municipalities and NGOs stress that a substantial part of the homeless aliens they do provide social support do have a right of residence and thus are not yet under the obligation to leave.

Second, the return arrangements of the national government are perceived to be ineffective in stimulating homeless aliens *not willing* to return to return. Several respondents argue that return in principle only is an option for a small minority of homeless aliens. Respondents argue that aliens, in order to consider return as a viable option, need to perceive the situation in the country of origin as providing more chances than the situation in the Netherlands. Municipalities and NGOs argue that this change of mindset will not take place without engagement. Consequently, it is ineffective to only provide social support to aliens who have already decided to return. By klinkeren, aliens are lost out of sight and thereby all opportunities to influence their perspective are lost. Some agents also question whether return support should be provided by the DT&V.

Third, the arrangements for those aliens not able to comply with their obligation to leave due to medical- or technical-administrative reasons do not cover all aliens in such a situation. Municipalities and NGOs argue that the Article 64-procedure⁵¹ and the BS-procedure malfunction (see Appendix C for details on those procedures).

Several respondents argue it is very hard to submit an application for, let alone be granted, a BS-permit, because it is very difficult to meet all requirements. The alien in question needs to provide objective verifiable evidence proving that the authorities of the country of origin do not cooperate in

⁵¹ Discussion on the functioning of the Article 64-procedure will be discussed in 6.3.3.

his repatriation. The alien, among others, has to provide evidence demonstrating he has tried to arrange his departure both independently and with the help of the International Organization for Migration and the DT&V. Moreover, the alien needs to either have identity documents or has to be recognized as being stateless and the DT&V should not have any doubts about the details the alien provided regarding his identity and nationality. In practice, it is very hard to meet all those requirements. The latter is reflected in the low number of aliens who submit an application for- and/or are granted a BS-permit. For example, in 2011 290⁵² applications were submitted of which 30 were accepted. (Adviescommissie voor Vreemdelingenzaken, 2013, 28-29). Municipalities and NGOs argue that homeless aliens who are unable to return, as a consequence of this malfunction, end up in a legal limbo.

On the other hand, the denial of responsibility by the national government is criticized by municipalities and NGOs by pointing to the consequences of not acting. Regardless of whether the homeless aliens are unwilling and/or unable to return, doing nothing can have detrimental effects in terms of both humane- and social costs. To illustrate this an official of an municipality in the current study referred to the case of a homeless alien with serious medical problems living in the streets of the city centre of an municipality. This homeless alien, due to his medical problems, may not be able to control his behavior and hence may cause nuisance. The homeless alien himself then bears 'costs' in terms of a bad state of health while the municipality or community bears costs in terms of a decreased livability of the city-centre. Municipalities and NGOs also regard it unrealistic to expect homeless aliens highly preoccupied with material concerns and security, that is aliens who have a very short-term orientation, to work on organizing return. In light of the above, municipalities and NGOs feel the need to engage with homeless aliens.

Municipalities and NGOs differ in the degree to which they reject the practice of *klinkeren*. Most NGOs totally reject the practice of *klinkeren*. While they do not necessarily support the unconditional provision of social support to aliens, they argue it is unacceptable from a humanitarian perspective to put anyone out on the streets (Respondents). Municipalities differ in their opinion depending on, among other factors, the extent to which they are confronted with homeless aliens and their capacity and willingness to engage with them. Some municipalities call for more attention to, or even try to make arrangements with local reception facilities on, the putting out into the streets of 'vulnerable aliens'. In this context, a respondent of an municipality referred to a case in which she was contacted by the DT&V with the question whether the municipality could unofficially arrange shelter for an alien who was to be removed from the local reception facility. This case is remarkable, since it may indicate that even within the national government, officials in some cases

⁵² This number of applications includes lodged statements of objections. Hence, the number of individual applications is lower.

have difficulties with the practice of *klinkeren*. The latter idea was suggested several times by respondents in the current study.

A remarkable case with regard to municipalities and the practice of *klinkeren* is the municipality of Utrecht. Under the pretext of its responsibility for the public order and -safety, the municipality of Utrecht has attempted to take full control over the practice of *klinkeren* within its municipality. It has made an arrangement with the local COA that the COA will not put aliens out into the streets. Hence, if someone no longer has a right on reception of the COA, that is the national government, the local COA informs the municipality about the approaching removal. Subsequently, the municipality arranges alternative shelter for this person.

The attempt of the municipality of Utrecht to take full control over the practice of *klinkeren* is challenged by the national government. In an individual case, which gained much media attention, the state secretary of the security and justice overruled the municipality of Utrecht and proceeded to remove an alien from the reception facility of the COA in Utrecht. The state secretary stressed it is his responsibility to enforce alien law, even if this is against the will of municipalities (Aanhangsel HAN TK, 2014/15, no. 7, item 6). In reaction to this event, an ongoing discussion emerged on 'who is the boss' with respect to the removal of aliens from reception facilities.

6.3.3 The struggle over the importance of medical considerations in alien policy

In the section the struggle over the importance of medical aspects in the assessment of residence applications will be discussed. In this struggle, the interaction with the medical field is clearly visible. On the one hand, municipalities and NGOs argue that the ending up on the streets of aliens with serious medical problems can be largely explained by the lack of attention for medical aspects in alien policy. Guided by the idea that 'especially sick people should not live on the streets' and, in the case of municipalities, the duty of care or responsibility for public health, municipalities and NGOs feel obliged to act. Hence, municipalities and NGOs express medical considerations in both their critique on alien policy and in their justifications for the provision of social support to homeless aliens.

The struggle over the importance of medical aspects in the assessment of residence applications will be discussed by focusing on the attitude of governmental agencies towards medical problems and the workings of two medical advices through which medical considerations are integrated in alien policy, which all are heavily criticized⁵³. Two medical advices are carried out in the framework of alien policy. On the one hand, there is the 'Medical Advice Hearing and Deciding'

⁵³ See for example van Haren (2010) for a critique on the Medical Advice Hearing and Deciding. See for example the Dutch Section of the International Commission of Jurists (2013) and Bloemen, Boo, Gilhuis and Legemaate (2010) for critiques on the assessment of Article 64.

carried out by Medifirst⁵⁴. Medifirst advises the IND in the hearing of asylum seekers and in the deciding on their asylum applications. On the other hand, there is the 'BMA-advice', that is the medical advice carried out by the Medical Advice Bureau (Bureau Medische Advisering [BMA])⁵⁵. The BMA advises the IND in the assessment of Article 64-applications. In Appendix H the Medical Advice Hearing and Deciding and the BMA-advice are explained in detail.

Several interrelated points of discussion can be discerned in the struggle over the importance of medical aspects in alien policy. First, the point that the IND, as a 'medical layman', is too dominant in determining *which* medical aspects are relevant to the assessment of residence applications. Second, the point that the IND, as a 'medical layman', is too dominant in determining the *importance* of medical findings in the assessment of residence applications. Third, the point that the 'medical agents' in alien policy, that is Medifirst and the BMA, do not act in accordance with their professional medical standards.

On the one hand, the IND is criticized for lacking knowledge on mental and psychiatric problems and the effects of those problems on the ability to tell the asylum narrative and the emergence of a medical emergency situation. This critique is best summarized by the 'Medical reception project for undocumented people', which states that 'one looks from a juridical perspective to medical problems, whereby one disregards the actual situation in which the person involved finds himself' (Medisch Opvangproject Ongedocumenteerden, 2012, 31, freely translated). On the other hand, the IND is criticized for, as a medical layman, continuing to prioritize its own view on medical problems over the view of medical experts.

6.3.3.1 The attitude of governmental agencies towards medical problems

The attitude of governmental agencies towards medical problems is being criticized on two points. On the one hand, the IND is being criticized for not taken sufficiently into account mental- and psychiatric problems. Several respondents argue that the IND lacks knowledge on those problems and therefore, considered from a medical perspective, addresses those problems the wrong way. As a medical respondent argued 'the problem of the IND is that it applies somatic measures to psychiatric problems'. They only know to look through 'somatic glasses' to psychiatry.

On the other hand, the BMA and Medifirst are being criticized for not acting in accordance with their professional medical standards. The assessment of someone's state of health by a medical advisor of Medifirst or the BMA is very different to that of an 'regular' doctor. That is, there 'are big differences in the way in which medical problems are assessed inside and outside the alien chain'

⁵⁴ Medifirst is an organization which provides the IND and COA independent medical advice on asylum seekers.

⁵⁵ The BMA is an organization which advises the IND on medical aspects related to taking decisions pursuant to the Aliens Act.

(Respondent). This difference can mainly be explained by the position of the medical advices of Medifirst and the BMA.

The medical advices carried out by Medifirst and the BMA are embedded in the framework of alien law. Within this framework, the IND is the client of Medifirst and the BMA. Consequently, the IND defines the tasks of those medical advisors and the requirements they should meet in executing those tasks. Medifirst and the BMA are imposed limitations with regard to the topics about which they are allowed to make assessments and statements. For example, Medifirst is not allowed to further examine or advice on medical limitations which, in the view of the IND, do not directly affect the process of hearing and deciding by the IND (IND, 2010a). Hence, presented scars for example are only generally written down in the medical advice (alike 'person has scars on this body part') and not further examined by Medifirst. Further the BMA, for instance, is only allowed to make statements about the medical-technical availability of the necessary medical treatment in the country of origin. Hence, the BMA does not assess the individual accessibility or effectiveness of the medical treatment (IND, 2010b).

In the light of the above, medical experts from the field question whether the medical advisors of Medifirst and the BMA are professionally independent. They argue that the professional medical standards to which those medical advisors are bound are compromised during the process of advising the IND. As articulated by a respondent 'who finds me bread and cheese, it's to his tune I dance'. Several respondents argue that considerations in the framework of alien policy have priority over medical standards in the advising by Medifirst and the BMA and that those 'medical' agents hence do not act in accordance with their professional medical standards.

With respect to Medifirst, this point can best be illustrated by the following case outlined by a medical respondent:

if you are asked [by the IND] whether someone can ride a bicycle, and your answer [as Medifirst] is 'yes he can ride a bicycle, but actually you have to take into account that driving a car will be very difficult', your answer is wrong. That is, in this case, the IND only wants to know whether the person can ride a bicycle. Whether the person can drive a car is irrelevant to them, so they do not want to hear anything about that.

In this, it may be relevant from a medical perspective that the person 'is not able to drive a car'. However, since the IND is not interested in this inability, the medical advisors of Medifirst actually 'ignore' its presence. Under those circumstances, another respondent argued, one should speak of Medisecond rather than Medifirst.

With respect to BMA, this point can best be illustrated by an example. The general

assessment of the BMA of the 'availability of possibilities for treatment in the country of origin', which does not include an individual judgment, and the assessment of the BMA of 'the emergence of a medical emergency situation', which is limited to the short term, are regarded to be inconsistent with professional medical standards. In accordance with those standards, a medical advice also needs to include an individual judgment and a prognosis of a disease also needs to include a medium-term prognosis. Accordingly, the assessments of the BMA are perceived as being neither part of a 'professional' medical advice nor the task of professional 'medical' advisors (Bloemen, de Boo, Gilhuis & Legemaate, 2010; Inspectie voor de Gezondheidszorg, 2006).

That all being said, it should be stressed that there seems to be some room for negotiation within governmental agencies with regard to the importance of medical considerations in alien policy. Several respondents argued that the governmental agencies are slowly starting to realize that they are doing something wrong with respect to aliens with serious medical problems. Several medical respondents argued that their message that something is going wrong is slowly getting through. Remarkable in this respect, is that a medical respondent argued that the IND cannot really be blamed for its inability to deal with mental and psychiatric problems, because they, so to speak, do not know any better. As the respondent argued 'I always say that we [psychiatric doctors] should educate the doctors of the BMA and the IND about PTSD [posttraumatic stress disorder] and psychiatry. What it is and what it means....Do not complain about them, educate them'.

6.3.3.2 The Medical Advice Hearing and Deciding

Medical considerations are integrated in the asylum procedure through the 'Medical Advice Hearing and Deciding' carried out by Medifirst (see Appendix H for details; see IND, Medifirst and Vereniging van Indicerende en adviserende Artsen [VIA], 2010 for the Protocol of this advice). Detecting medical limitations and taking into account those limitations in the process of hearing and deciding is, in the framework of a careful asylum assessment, deemed necessary for two reasons.

On the one hand, an asylum seeker needs to make plausible there is a legal ground for granting protection. Central to the assessment of asylum applications by the IND, is the question whether the asylum narrative is plausible. That is, whether the asylum narrative is complete, coherent and consistent. On the other hand, not all asylum seekers are able to tell their asylum narrative in a plausible way. Various studies have demonstrated that medical limitations can negatively influence the ability to tell a complete, consistent and coherent asylum narrative (see for example Bögner, Herlihy & Brewin, 2007; Deutsch & Gangsei, 2007; Tankink, 2009). In particular limitations in mental functions like memory- and concentration problems, which are highly prevalent among asylum seekers, negatively influence this ability (Bloemen & Kollen, 2015). In those cases in which incoherence and inconsistencies in the asylum narrative can be attributed to medical

limitations, it is regarded to be unreasonable to deny asylum applications on the ground the asylum narrative is not plausible.

The Medical Advice Hearing and Deciding, which is introduced in 2010 to deal with the effects of medical limitations in the asylum procedure, is criticized by municipalities, NGOs and medical experts on two points.

First, the medical advice is being criticized for being inadequate to find all medical limitations relevant to the process of hearing and deciding. In the current study, several respondents refer to cases in which asylum seekers, in their view, should never have been heard the way they were. Critics argue that a more extensive psychiatric and psychological examination is needed in order to really understand mental- and psychiatric problems and -limitations .

Bloemen and Kollen (2015) argue that the Medical Advice Hearing and Deciding has such an orienting nature that it is insufficient to identify all limitations. On the one hand, it is not clear when a medical problem is perceived to be medical limitation Illustrative in this respect is that Medifirst does not always advice on medical limitations in those cases in which it actually detects psychical complaints. On the other hand, it is not clear how medical limitations are related to someone's functioning. The definition of limitations in the medical advice (for example 'person can become emotional) is vague in that sense it does say little about the actual limitations in terms of someone's functioning (Bloemen & Kollen, 2015)

Moreover, several respondents in the current study argue that mental problems may remain invisible during the medical examination of Medifirst, because the asylum seeker does only speak about emotional memories in the hearing by the IND which takes place after the examination. This is regarded problematic, because speaking over emotional memories is perceived to make mental problems, like a posttraumatic stress disorder, most visible. During the medical examination, Medifirst is not allowed to pose any questions related to emotional memories, since those belong to the asylum narrative and thus the IND.

Second, the IND is being criticized for not sufficiently taking into account the consequences of medical limitations in deciding on asylum applications. Respondents in the current study question whether the medical advice does actually have any effect on the deciding. In this respect, respondents refer to cases in which the IND 'ignores'⁵⁶ the evidence value of medical support evidence. Although the importance of medical considerations to the asylum procedure may have been recognized in national legislation, the IND in practice insists on the standpoint that medical reports have no (decisive) role to play in the assessment of plausibility. Illustrative of the latter, is

⁵⁶ Bloemen and Kollen (2015) argue that the IND does not at beforehand chooses to ignore potential medical support evidence. Instead, it adopts the point of departure that inconsistency and incoherence in asylum narrative reflect implausibility and does not feel the need to investigate alternative scenario's, since those are not perceived to contribute to objective truth-finding.

that even in those cases in which medical reports demonstrate that inconsistency or incoherence in someone's asylum narrative can be attributed to his medical circumstances, the IND reserves the right to reject an application on this ground. It remains up to the IND, which cannot be classified as a 'medical expert', to determine on the consequences of medical limitations for the assessment of plausibility. Hence, the IND, as a medical layman, gives priority to its own view on medical problems over the view of a medical expert (Bloemen & Zwaan, 2010; Respondents).

Bloemen and Kollen (2015) already argued that ignoring knowledge over psychological phenomenon can result in unjust doubts and unjust conclusions regarding the plausibility of the asylum narrative. This is especially problematic if it concerns asylum seekers with a posttraumatic stress disorder. This disorder strongly hinders the storing and retrieval of memories related to traumatic events⁵⁷. At 2013, the United Nations High Commissioner for Refugees (2013) already concluded that traumas and plausibility can interfere in such a way that it has a negative influence on the assessment of the asylum application of traumatized asylum seekers. Moreover, Herlihy and Turner (2015) have demonstrated that the ideas of determining authorities like the IND of the presentation of 'lying' asylum seekers overlap with the presentation of asylum seekers with a posttraumatic stress disorder. To illustrate the problematic, Bloemen and Kollen (2015) refer to cases in which the IND judges that the asylum narratives of traumatized asylum seekers is implausible on the ground that the narrative appears inconsistent during the hearing. In those cases, the IND ignores, for example, that this inconsistency can be explained by the phenomenon of 'hypermnesia' (Herlihy & Turner, 2009). That is, repeatedly telling about traumatic details of memories will increase the completeness of the memory and thereby will automatically result in inconsistencies. The hearing of the IND, which is targeted at peripheral details rather than the core of the traumatic events further complicates the above, since it is known that traumatized people often less well recall those peripheral details (Herlihy, Sragg & Turner, 2002).

This approach of the national government, in which considerations in the framework of alien policy take priority over medical considerations, is perceived to be detrimental. It is not only regarded as highly regrettable 'since it becomes increasingly clear how sick those people really are' (Respondent), but is also regarded as unhelpful in dealing well with asylum seekers having serious medical problems. Some critics even go a step further by arguing that this approach is only

⁵⁷ For example, as a consequence of the process of disassociation traumatized people often have partial and incomplete memories. Disassociation is a psychological process in which the thoughts, emotions and memories of a traumatic event are placed outside the consciousness. The event is so traumatic that the memory is removed from the conscious mind and thereby hidden from the person's knowledge. Hence, the memory is not stored well and consequently it is difficult to retrieve those memories at a later stage. This psychological mechanism functions to protect someone against too strong emotions. Another example: avoidance is a key symptom of the posttraumatic stress disorder. As part of their survival strategy, to reduce the recurrence of intense memories from the traumatic event, people suffering from this disorder will avoid reminders of the traumatic events or mention thereof. Also, symptoms of increased vigilance, like being irritable and being less able to concentrate or sleep, make it difficult to retrieve memories (Bloemen and Kollen, 2015).

understandable in the framework of a restrictive alien policy. In this argument, denying the evidence value of medical reports in the asylum procedure results in weaker asylum cases for sick aliens and thus more rejections of asylum applications (Respondents).

As a consequence of this approach, critics argue, asylum seekers suffering from traumas or other mental problems do not have a fair chance to make their case (Respondents). This is regarded as especially problematic for two reasons. On the one hand, there is too little time in the Regular Asylum Procedure to gather a 'second opinion' which could serve as counterbalance to the assessment of Medifirst. This is regarded regrettable because asylum seekers who were unable, due to medical problems, to tell their asylum narrative well at first, are 'haunted by this non-attributable inability for the whole course of the juridical procedure' (Respondent).

On the other hand, at a later stage, it is very difficult to prove that someone was unable to tell his asylum narrative well due to medical circumstances. In theory, those people can submit a repeated asylum application. However, a repeated asylum application is only assessed in those cases in which there is evidence of 'novum', that is 'new facts and/or circumstances'.

Medical reports can be used as support evidence in proving novum. For example, a medical report can provide evidence for a relationship between someone's medical problems and his ability to tell the asylum narrative well and thereby can function as counterevidence against the medical advice of Medifirst. In practice however, as several respondents argue, there is no clear demarcation line between being novum and not being novum. Several respondents refer to similar cases, in which similar medical reports were used as support evidence, but different decisions were made with respect to being novum or not. Hence, the value of medical reports as medical support evidence is not always recognized.

Compared to other medical reports, the medical reports of the Netherlands Institute for Human Rights and Medical Assessment [iMMO]⁵⁸ have a strong evidence value as support evidence in the asylum procedure. This is visible in the substantial effects iMMO's medical reports have on the assessment of asylum applications by the IND⁵⁹. In the current study, several respondents refer to iMMO's medical reports as more fully integrating medical considerations into alien policy than those of Medifirst. They argue that iMMO carries out more extensive and thorough medical assessments and writes better medical reports. One respondent for example referred to a client (homeless alien) who had two up-coming appointments with iMMO of in total six hours, which is remarkably longer than the duration of the medical examination of Medifirst. In Appendix H, some notes on iMMO and

⁵⁸ iMMO is related to Amnesty International. In their work, iMMO makes use of freelance professionals, who perform medical assessments independently in the framework of their professional responsibility. See more on <http://www.stichtingimmo.nl/?lang=en>

⁵⁹ In 85 percent of the cases (203), the medical report of the iMMO has contributed to the granting of a residence permit at a later stage. This concerns cases in which iMMO has provided a medical report since the beginning of 2012 and in which the outcome of the asylum application is known (Bloemen and Kollen, 2015, 16/17).

the method it applies are included.

Medical reports of other organizations than iMMO in principle are not regarded as medical support evidence by the IND on the ground that those medical reports do not preclude the possibility of made up stories. Unique to iMMO is that it carries out its medical advices in accordance with the Istanbul Protocol 1999 (see Appendix H). Hence, iMMO expresses the relationship between the nature of the psychical problems and the ability to tell the asylum narrative well in terms of degrees. By doing so, it includes the possibility of made up stories (Smulders, 2015).

However, even with respect to the iMMO reports, the IND often calls into question the value of those reports as medical support evidence on the ground that those reports cannot provide complete certainty. In this argument, the IND ignores the fact that, just like medical reports, also the assessment of plausibility can never meet the demand of complete certainty (Bloemen & Kollen, 2015)⁶⁰. Nevertheless, if the IND is able to sufficiently motivate that iMMO's medical report does not change the implausibility of the asylum narrative, the IND can bypass iMMO-reports without backing it up by an report of an expert (Smulders, 2015). The latter is perhaps the most illustrative example of the dominance of the view of the IND on medical problems over the view of medical experts.

6.3.3.3 The BMA-advice on Article 64

In the assessment of an Article 64-application, the IND is given advice on the state of health of the individual alien by the BMA. This advice is given on the basis of an assessment of the medical file of the alien. In Appendix H the BMA-advice on Article 64 is explained in detail. In short, the BMA assesses whether the medical treatment which the alien is receiving in the Netherlands is also available in the country of origin. When the necessary medical treatment is not available in the country of origin, the BMA assesses whether discontinuation of the medical treatment will result in a medical emergency within three months after the alien's return to the country of origin. In a separate assessment, the BMA also determines whether and under what conditions the claimant, in view of his state of health, is able the travel (IND, 2010b).

For our purposes, one specific point of critique on the assessment of Article 64 is relevant. That is, the critique on the way in which 'the emergence of a medical emergency situation in the short term' is assessed in the BMA-advice. The IND defines a medical emergency situation as:

situations whereby the person involved is suffering from a disorder with regard to which it has been decided, based on current medical and scientific opinion, that the lack of treatment

⁶⁰ On this matter, the Council of State (RvS, 31-07-2013, ECLI:NL:RVS:2013:621) has ruled that the reports of iMMO do function as medical support evidence and that they cannot be bypassed solely on the ground that they are not fully conclusive.

in the short term will lead to death, invalidity or another form of serious mental or physical damage. The term 'in the short term' means within a deadline of three months. (European Migration Network, 2010, 29; IND, 2010b, 8, freely translated)

The assumption underlying this definition is that it is possible to make a absolute assessment on the course of diseases.

Medics from the field do not recognize this definition (Bloemen, de Boo, Gilhuis & Legemaate, 2010). On the one hand, they argue it does not fit medical practice in which it is, in most cases, regarded impossible to make a absolute assessment on the course of diseases. As argued by the Dutch Healthcare Inspectorate (Inspectie voor de Gezondheidszorg, 2006) it is, due to a lack of research, really hard to indicate the period in which the effects of the discontinuation of medical treatment will manifest themselves. A prognosis therefore should be made in rather gradual or dimensional terms. Hence, while demanded by the IND, an evident 'yes' or 'no' to the question whether a medical emergency situation will emerge is not that obvious.

On the other hand, as explained by a medical respondent in the current study, the notion medical emergency situation is defined by the IND solely on the basis of somatic complaints. That is, it does not include mental or psychiatric complaints. The medical respondent argued that '[t]he whole situation is going wrong because the IND and BMA measures psychiatry against the same yardstick as somatic diseases. That is the crux of the matter'. The respondent explained this problem as follows:

[Do you] think it is possible to treat someone with a snake phobia in a snake pit? If you ask someone whether that is realistic, everyone impulsively says no, since everyone is able to identify oneself with someone having a snake phobia and a snake pit. Although not completely the same, it is still regarded realistic to send someone with PTSD [posttraumatic stress disorder] back to the country of origin.

The respondent explained that psychiatric problems cannot be assessed in isolation from the context. In the treatment of those problems, one always needs to take into account the context in which the trauma is undergone, the context of the treatment and the future context. For example, in order to effectively treat psychiatric problems, the treatment context needs to be experienced as safe by the person and there must be (the possibility to built up) a relationship of trust. Consequently, the respondent argued, one should take the context into consideration when assessing whether a medical emergency situation will emerge. Even in those cases where the medical treatment is individual accessible in the country of origin, the context of the country of origin can

result in a situation in which the person in question actually is untreatable and will die within three months. As a respondent argued '[w]hen you treat someone in the context he has undergone trauma, he will constantly be triggered and therefore he is likely to be untreatable....[Hence,] not the skill and expertise determine whether the person is treatable, but the context does'.

To illustrate, the respondent referred to the case of an alien who had been tortured in his country of origin by government officials in uniform. The respondent argued that this alien, when again confronted with those uniforms at return in the country of origin, will likely become psychotic and thus untreatable and is likely to hang himself within three months. In this situation, the respondent quite ironically asked the BMA whether one could speak of 'the emergence of a medical emergency situation within three months' in this case, since the discontinuation of the treatment will result in death, to which the BMA responded with 'no, one cannot'. The BMA and the IND maintain that one cannot make firm statement about how someone will react on return. Moreover, they maintain that traumas should be brought forward during the asylum procedure.

6.4. A 'new' struggle emerging during research

During research, two important developments took place. On the one hand, several court decisions became public and gained considerable attention within the JB-field. In 5.3, those decisions and their possible implications have already been discussed. In short, the ECSR has ruled that the Dutch state acts in violation of the ESC by withholding aliens in need access from basic social support. Dutch courts, referring to this decision, by temporary disciplinary measures ruled that both centre-municipalities and the national government are obliged to provide all aliens in need, regardless of their right of residence, in adequate social support. Aliens in need are people who do not possess sufficient means of subsistence and who remain deprived from access to shelter, food and clothing if the Dutch state refuses to provide this. Adequate social support means that the assistance needs to be adequate with respect to the specific needs and conditions of the individual concerned and at least consists of night shelter, a shower, breakfast and dinner. Access to this social support may not be subject to any conditions except those necessary for orderly providing it. The most important implications of those court decisions are that access to (basic) social support may not be made conditional upon cooperating organizing return and no time limit may be put on the provision of social support. Hence, the decisions may have major implications for return policy.

On the other hand, the struggle in the JB-field became more public. Backed by those court decisions municipalities and NGOs stood up more openly against national policy. Herein the interaction with the field of journalism is clearly visible. The media traditionally give much attention to alien-related topics and struggles between the national government and municipalities and accordingly the discussion on the court decisions considered substantial media attention. Moreover,

the agents in the JB-field gained media attention in order to get support for their standpoints and to put pressure on other agents.

By becoming both a mean and a stake in the struggle in the JB-field, the court decisions intensified the struggle over (the organization of) the provision of social support to homeless aliens. Disagreements and agonistics over which parts most truly represent or embody the JB-field and its values came to the surface. That is, the way in which the different agents either try to defend or attack the doxa of the JB-field in either orthodoxy or heterodoxy came to the surface.

In the following section, the use- and the struggle over the recent court decisions will be discussed. This discussion is based on two periods. These periods, in turn, are defined on the basis of influential events. The first period starts with the becoming public of the decision of the ECSR at 10 November 2014, includes the recent Dutch court decisions and ends at 14 April 2015. The second period starts with the becoming public of the resolution of the Committee of Ministers [CoM], includes a 'social support' proposal of the national government and ends at 30 April 2015. The CoM, in response to the ECSR decision issued their recommendations to the Dutch state in the form of a resolution.

The first period discerned is demonstrative of the way in which dominated agents can challenge the doxa of a field by changing the relative value of the capitals characteristic of that field and the capitals they hold. The discussion on this period demonstrates how complementary external pressures, in the form of a growing importance of social security/international human rights law, and internal practices, in the sense that dominated agents started to (publicly) provide (more) social support to homeless aliens and to publicly oppose the national government, changed the struggles in the JB-field.

The second period discerned is demonstrative of the way in which dominant agents can defend the doxa of a field by mobilizing the dominant capitals they possess to neutralize the efforts of dominated agents. The discussion on this period demonstrates how difficult it is to actually transform a field or, in other words, how dominant the position of the national government and the logic it advocates actually are.

6.4.1 The struggle over the decisions of the ECSR and Dutch courts

This section discusses the struggle over the decisions of the ECSR and Dutch courts (discussed in 5.3.3/4) in the period 10 November 2014 until 14 April 2015. During this period, municipalities and NGOs strongly adopted an 'activist' strategy in which they strongly advocated for action in the form of policy changes. Municipalities and NGOs tried to mobilize the court decisions to change the organization of the provision of social support to homeless aliens and their respective positions, grounded in the distribution of capitals, within this organization. To this end, municipalities and

NGOs questioned the symbolic value of national governments' alien law by presenting the court decisions as symbolic capital or as 'right'.

Municipalities in particular adopted a dual strategy to put pressure on the national government to act. On the one hand, they tried to negotiate with the national government via the Association of Dutch Municipalities [VNG]. On the other hand, they tried to get public- and political support for their views by using the media and by lobbying with opposition parties in the cabinet.

In contrast, the national government strongly adopted a delaying strategy in which it strongly advocated to postpone any decisions on possible actions. The national government tried to undermine the attempts of municipalities and NGOs by questioning the rightness and stressing the temporary nature of the court decisions⁶¹. By presenting the decision of the ECSR as arbitrary, and stressing the rightness or symbolic of alien law, the national government tried to ensure that the 'definite judgments' (the Dutch courts can change their interpretation of the ECSR decision on the basis of the CoM resolution) will be at their benefit. That is, that the court decisions will not become symbolic and thus the status quo will prevail.

At 10 November 2014, the date the ECSR decision became public, the state secretary of security and justice (VNG, 2014b) immediately made clear he is not willing to take any measures in response to the decision of the ECSR. The state secretary stressed he will wait for the resolution of the CoM before taking any decisions (Rijksoverheid.nl, 2014).

The state secretary of security and justice, who is of the opinion that the national government is not under the international obligation to offer protection to homeless aliens, tried to undermine the importance of the ECSR decision on the basis of two arguments. On the one hand, the 'old' argument that neither decisions of international committees like the ECSR nor the Articles of the international human rights treaties in which they are grounded have a binding effect. As a juridical respondent argued '[w]ith everything that happens, the national government stresses that it does not have a binding effect'. In this framework, the ECSR decision is a mere recommendation rather than an important decision having implications.

On the one hand, the state secretary tried to undermine the importance of the ECSR decisions by using the argument that this particular decision of the ECSR is not just. The national government questioned the justness of the ECSR decision by raising the impression that the ECSR went beyond its remits by including irregular migrants under the scope of the European Social Charter in that decision. In its communication to the CoM the national government stressed the provision of the European Social Charter excluding irregular migrants from its personal scope and

⁶¹ The court decisions are not definite in that sense that the Dutch courts can change their interpretation of the ECSR decision after the CoM adopts its resolution.

requested the CoM to confirm the validity of this provision. The national government stated the following in its communication to the CoM:

The ECSR's unwarranted interpretation risks jeopardising the trust that states place in what they have agreed upon in treaty law. Any interpretation of a treaty should be in good faith and cannot unilaterally impose completely new obligations upon member states. The decisions by the ECSR do not merely contain an extensive interpretation of the treaty provisions; they contain an interpretation which is simply *contra legem*. (Resolution CM/ResChS (2015) 5, par Address by the Representative of the Netherlands)

By this declaration the national government did not only classify the inclusion of irregular migrants by the ECSR in this case as against the law, but also hints, by the 'unilaterally impose completely new obligations upon member states'-phrase, that this action of the ECSR threatens the sovereignty of the contracting states.

A juridical respondent in the current study confirmed that 'the inclusion of irregular migrants by the ECSR is tricky'. Although the ECSR has done it before and it can be justified under the denominator of living law, the appendix of the European Social Charter explicitly states that the Charter does not cover those people. The respondent argued that 'even jurists who stand up in favor of irregular migrants doubt whether the ECSR can enforce welfare rights for those people in this way' (Respondent). Consequently, the respondent expressed, everyone will be very careful to fully accept those decisions.

At 10 November 2014, the VNG and the National Consultation Municipalities Reception- and Return policy [LOGO], in response to the decision of the ECSR, advocated for measures by the national government (LOGO, 2014a; VNG, 2014b). They justified those measures by stating that 'the decision of the ECSR confirmed the view of municipalities that something needs to be done' (VNG, 2014b, par Uitspraak niet Negeren). Municipalities made clear they take the decision seriously and argue that the national government should do so as well. The VNG stressed that the ECSR is an authoritative European body and therefore the national government cannot ignore its decision (VNG, 2014b, 2014c). Moreover, municipalities stressed the need for direct action. They criticized the delaying strategy of the national government by referring to the fact that the CoM actually cannot change the decision of the ECSR (Respondents).

In response to the ECSR decision, several municipalities started a 'bed, bath, bread' or BBB-provision for homeless aliens. In the large municipalities, this concerned both a 'regular' BBB-provision for all homeless aliens and a 'plus' BBB-provision for vulnerable homeless aliens. Those provisions are in line with earlier proposals of the VNG (see for example Aangeenbrug, 2014).

Moreover, municipalities already providing social support to homeless aliens became more public about those provisions. Although the state secretary of security and justice repeatedly expressed he did not support those initiatives, municipalities believed those initiatives were justified by the ECSR decision. In the beginning of December 2014, according to a survey carried out by the political party Christian Union, at least 50 municipalities either already provided a BBB-provision to homeless aliens or made preparations to start one (Christenunie, 2014). By providing BBB to all homeless aliens, municipalities tried to convey the message that they take the ECSR decision seriously and take responsibility by complying with it (VNG, 2014b, 2014c). According to an respondent of the VNG, this public advocacy for a basic social support provisions marked 'quite a shift'⁶².

Other municipalities refused to provide BBB on the ground that they are neither responsible for alien policy nor for the implementation of the ECSR decision. This refusal is mainly guided by the fear that the national government will shirk its responsibility and the municipalities subsequently have to shoulder the burden of the costs. That is, this 'standing firm'-stance is motivated by financial considerations rather than the unwillingness to take responsibility. As an respondent of one of those 'refusing' municipalities stated 'financing, it is all about financing'. Those municipalities do think that the national government is responsible for alien policy and thus should provide financial compensation to municipalities for providing BBB. By refusing to provide BBB, municipalities tried to convey the message that, although they want to comply with the ECSR decision, it is up to the responsibility of the national government to take action.

The argument that the national government is at least financially responsible for implementing the ECSR decision is also reflected in the advocacy of the VNG. The VNG stressed one cannot ignore the decision of the ECSR with a view on the intergovernmental relationships. As stated by the VNG (2014b, par Interbestuurlijke verhoudingen) '[i]n the intergovernmental relationships the costs resulting from failing national [return] policy are also for the account of the national government'.

That several municipalities support the idea that homeless aliens should have access to a BBB-provision, does however not mean that they unequivocally support the ECSR decision. A major concern raised by all agents in the JB-field about the ECSR decision is that social support should be provided unconditional. Although focusing on different grounds, all agents question this unconditionality. Whereas the national government solely focuses on the effects on the willingness to voluntary return, municipalities and NGOs also focus on the humane consequences. As expressed

⁶² The starting point of this shift can be traced back to the 'public act' of the mayor of Amsterdam (Eberhard van der Laan) at 28 August 2014 (De Volkskrant, 2014; NOS, 2014). He was the first mayor of a (G4-)municipality who publicly advocated the structural provision of sober social support to irregular aliens. After consultation with the other G4-municipalities, the VNG at 5 September 2014 publicly supported the idea brought forward by the mayor of Amsterdam (VNG, 2014a).

by several respondents 'you do not want to keep someone sheltered for eternity'. An respondent of a NGO providing social support to homeless aliens on the instruction of a municipality argued that she could only stand behind the social support they provide, because it is a temporary provision aimed at finding a sustainable solution. In the light of the above, municipalities and NGOs stressed the need to find solutions for the situation of homeless aliens. That is, to search for solutions in either the form of a residence permit or return. Several respondents in the current study expressed the belief that it is, in the vast majority of cases, possible to find a solution. Those respondents, however, also expressed the belief that the approach of the national government is not suited for finding solutions.

In response to the ECSR decision, both the VNG and LOGO submitted proposals for reorganizing the provision of social support to homeless aliens. In its proposals, the VNG targets its efforts to the realization of two social support provisions. On the one hand a BBB provision for all. On the other hand, a 'plusprovision' for vulnerable individuals, in particular aliens with serious medical problems (VNG, 2014b; VNG, 2014c). The LOGO (2014b) also submitted proposals. Those proposals focus more on the practical division of responsibilities between the national government and municipalities in providing social support to homeless aliens. The LOGO proposes that the national government provides social support to all (rejected) asylum seekers awaiting a definitive decision on their residence application and that municipalities provide support, in the form of both a BBB- and a 'plus'-provision under the Social Support Act, to all other categories of homeless aliens. The latter indicates that LOGO believes that municipalities are more equipped to find solutions for homeless aliens who do not have perspective on admission to the Netherlands.

After the decisions of the Dutch courts, obliging centre-municipalities and the national government to provide all aliens in need in social support, the pressure on the state secretary to financially compensate municipalities increased. Those decisions confirmed that municipalities actually are obliged, in conformity with the ECSR decision, to provide social support to aliens in need and thereby need to implement tasks part of national policy. At 25 March 2015, the VNG (2015a, 2015b) publicly announced that an agreement was reached with the state secretary on financial compensation for the costs centre-municipalities need to make in order to comply with the Dutch court decisions. The VNG stressed in its announcement that municipalities need to bear in mind that the fee will not cover the costs actually made. The state secretary limited the scope of the financial compensation arrangement by making it subject to several conditions. For example, only a fee will be provided in cases in which it concerns aliens who are known by the IND. Moreover, the level of the fee per night per alien will be determined by the state secretary the moment the end date of the of

the provision is known. Respondents in the current study indicated that the level of the fee proposed by the state secretary is far removed from the real costs made⁶³.

6.4.2 The struggle over the resolution of the CoM and the BBB-proposal of the national government

This section discusses the struggle over the resolution of the CoM and a social support proposal of the national government in the period 15 April 2015 and 30 April 2015.

At 15 April 2015 the resolution of the CoM became public (Resolution CM/ResChS (2015) 5). While the ECSR decision was clear-cut over the violation of human rights by the Dutch state and thereby the need to change policy, the resolution of the CoM was more ambiguous. It seems that the CoM is of the opinion that the ECSR went beyond its remit by including irregular migrants under the personal scope of the European Social Charter. The CoM does not have the power to change the decision of the ECSR itself and therefore could only confirm that the Dutch state acts in violation with international human rights law. However, the CoM did not draw clear conclusions from this violation. Most notably, the CoM vaguely states that the decision of the ECSR raises complex issues since the European Social Charter in principle does not cover irregular migrants. Still, it neither gives a judgment on the limitation of the personal scope of the European Social Charter. Moreover, the CoM states it is up to the Dutch government to decide on how to arrange the provision of social support to (homeless) aliens. By this vague resolution, the CoM actually provided the national government space to interpret the resolution to its liking. Consequently, one could argue that the lobby of the national government questioning the justness of the ECSR decision has been successful.

In response to the resolution of the CoM, the coalition parties engaged in consultation. Those consultations became highly charged and thus highly complicated. On the one hand, the opposite positioning of the coalition parties on this issue is grounded in principal standpoints. Whereas the Labour Party (PvdA) stresses there is a human duty to provide social support to everyone, the People's party for Freedom and Democracy (VVD), in contrast, stresses that aliens need to respect the (negative) decisions of Dutch courts (NU.nl, 2015a). On the other hand, since political views on aliens-related issues differ so greatly, political parties in particular try to profile themselves on those issues. For example, as part of their electoral strategy the VVD has adopted a harder approach on aliens-related issues (NU.nl, 2015a). Under those circumstances, the consultation between the coalition parties became a political discussion rather than a discussion on the rights of irregular aliens. As the mayor of The Hague (Jozias van Aartsen) stated '[i]nstead of looking at it in a sober

⁶³ At 20 July 2015, the VNG and the state secretary of security and justice reached agreement on financial compensation of municipal BBB-provisions. The national government agreed to transfer 10,3 million to municipalities to compensate for providing BBB for half a year (NOS, 20-7-2015).

and rational way, it has been reduced to a coalition issue over who wins the putative battle over the public opinion' (Niemantsverdriet & Van Outeren, 2015, par Strijd om publieke opinie).

At 22 April 2015, after nine days of consultation, the coalition parties presented their 'bed, bad, bread'- or 'BBB-agreement' (Kamerstukken II, 2014/15, 19637, no. 1994). The national government argues, referring to the limited personal scope of the European Social Charter mentioned in the CoM resolution, that the CoM resolution confirms that the national government is not under the international obligation to unconditionally provide irregular aliens basic social support. Consequently, on this ground there is no need to change governmental social support policy. What remains is the need to stimulate voluntary return in order to increase the effectiveness of return policy. In this framework, the national government decided to somewhat change the access conditions of the Freedom-Restricting-Location [VBL] in Ter Apel.

The BBB-agreement holds the introduction, for at least one year, of a 'preliminary phase' in the five largest municipalities of the Netherlands⁶⁴ and in the VBL in Ter Apel. An alien, regardless of whether he is willing to work on return, can obtain temporary shelter for a 'limited number of weeks' at those locations. During this period, social support is provided targeted at stimulating the willingness to return. At the end of the 'limited number of weeks' period, the shelter is continued in the regular VBL in Ter Apel only if the alien is actually willing to cooperate in organizing return. Thereby the preliminary phase is a 'preparation on the actual realization of return in the regular VBL' (Kamerstukken II, 2014/15, 19637, no. 1994, 3). The BBB-agreement also states that all municipalities need to close their provisions to homeless aliens. If they refuse to do so, the national government will withhold budget from those municipalities.

The BBB-agreement is criticized by opposition parties in the cabinet, municipalities and NGOs. The agreement is criticized, among others, as being unworkable⁶⁵, unrealistic, in violation of human rights and inhumane (see for example Blik op nieuws, 2015; De Volkskrant, 2015a; LOGO, 2015a, 2015b, 2015c; VNG, 2015c; Wienen, 2015). The BBB-agreement is perceived to be just a temporary false solution which the national government tries to impose in order silence critics. Most notably, it is experienced as reflecting wishful thinking far removed from reality. For example, LOGO (2015b, 2015c) characterizes the BBB-agreement as more of the same in that sense that politics remain far removed from reality. Also the VNG argues that the discussion on BBB makes clear that the national government is far removed from the reality of municipalities (Wienen, 2015) and that the characteristics of the agreement do not fit the reality which municipalities face (VNG, 2015c). With the BBB-agreement, hence, the national government provides yet another 'paper

⁶⁴ The five biggest municipalities are Amsterdam, Den Haag, Eindhoven, Rotterdam and Utrecht.

⁶⁵ A survey carried out by the VNG indicates that two-third of the municipalities believe that the proposal is unworkable (VNG, 29 April 2015).

solution'. Characteristic in this respect, is that the latter actually is not a surprise to many. In the current study several respondents expressed the hope that something would really change, but simultaneously expressed the fear that the national government at best would propose a false solution. The latter confirms that agents adjust their expectations to the power position they hold.

Several critics question to which problem the BBB-agreement actually provides a solution (see for example LOGO , 2015c). Already mentioned is that the consultation between the coalition parties foremost was a political discussion. Under those circumstances, the BBB-agreement has become a political compromise that provides a solution to problems inherent to the coalition rather than to the problems of homeless aliens. The latter is most clearly expressed by an official of the municipality of Groningen who stated 'the cabinet is saved with this agreement, but the people eventually are not helped with it' (Dagblad van het Noorden, 2015a).

Critics argue that the BBB-agreement ignores that, since return policy will never be a watertight system, there will always be people who fall between two stools and need shelter. Moreover, as municipalities and NGOs stress, there will always be people unwilling or unable to return (VNG, 2015c). Hence, the actual situation of homelessness of aliens unable or unwilling to return is ignored rather than solved. Characteristic in this respect is that the national government raises the false impression that all homeless aliens are irregular and are under the obligation to leave the Netherlands. It constantly terms the whole group as 'rejected' or 'illegal'. The BBB-agreement thereby, as LOGO (2015c, par. Illegalen) argues, 'disregards the fact that about one-third of the target group resides in the Netherlands regularly'.

Also the proposed approach to stimulate return in the BBB-agreement is regarded to be problematic, because it is grounded in (the 'more of the same') unrealistic assumptions with respect to return. On the one hand, it is questioned whether aliens who end up on the streets will actually go to the designated locations. Municipalities argue that, knowing that the designated locations only provide temporary social support aimed at realizing the willingness to voluntary return, it is unrealistic to expect homeless aliens to 'take the bus to those designated locations' (Wienen, 2015; NU.nl, 2015b). Instead, it is regarded to be more likely that those aliens will either disappear into irregularity or remain into the streets of the municipality where the 'klinkeren' took place, thereby once again resulting in a 'act-not act' dilemma for municipalities (VNG, 2015c; Wienen, 2015). Moreover, municipalities argue that the temporary provision of social support only aimed at realizing the willingness to return will alleviate the advantage of municipalities in providing effective solution-oriented social support to homeless aliens. As the mayor of Leiden (Henri Lenferink) argued '[t]he cities are actually so suitable for providing social support...because people there have the idea they will remain outside the repatriation system [including the VBL] (Bakker, 2015, par Ruimte).

On the other hand, it is questioned whether those aliens who do go to those designated

locations eventually will not end up on the streets. Most notably, both municipalities and NGOs argue that a 'limited number of weeks' in many cases is insufficient (VNG, 2015c; Bakker, 2015). The mayor of Rotterdam (Ahmen Aboutaleb), for example, argues it takes three to six months rather than two to three weeks to motivate people to return and to arrange the required documentation (Bakker, 2015). He argued that '[t]wo or three weeks...is an illusion' (Oude Elferink, 2015). LOGO also argues it is unrealistic to expect that someone's perspective will change in this short period. In practice, the proposal would mean that those aliens who are removed from asylum seekers' centers on the ground that there is no perspective on realizing return will be referred to the designated locations. LOGO questions whether it is realistic to expect that this perspective will change to the extent that return is realistic after a 'limited number of weeks' stay in the designated locations (LOGO, 2015c). The LOGO thinks this is not the case and that the municipalities of the designated locations consequently will be confronted with ending up on the streets of aliens once again. The latter then is especially problematic due to the limitation to five designated locations. This will not only result in logistic problems by resulting in a pull effect to the designated locations, but will also result in a situation in which relative many aliens end up on the streets in municipalities which already are home to many homeless aliens⁶⁶ (VNG, 2015c; LOGO, 2015c).

In this framework, the VNG (Wienen, 2015) stressed that 'return can be stimulated better and more effectively'. That is, actually, return can be more effectively stimulated by adopting a decentralized approach in which the DT&V is not the directing agent and in which there is not directly geared towards return. As an official of the municipality of Utrecht (Jan Braat) argued, referring to the way of working of the DT&V, '[i]f we continue keep doing what we already did, we will get what we got....It can only become more efficient if one decentralizes (Bakker, 2015, par Ruimte). Also the mayor of Amsterdam (Van der Laan, NU.nl, 2015b) stressed the strength of cities in providing customization.

As explained by a representative (Sjany Middelkoop) of the Pauluskerk, deciding on voluntary return is a difficult choice and therefore people need to get sufficient time to consider it. That is, the choice to return must come from within the individual rather than being enforced by twisting someone's arms (Bakker, 2015). The VNG (2015c) stresses that aliens can only made to realize that they have to return in an environment which they experience as safe and in which there is sufficient time to intensively work with them. There is no 'one size fits all' approach. Consequently, municipalities argue, people-oriented social support on a small-scale, in more than just the five

⁶⁶ LOGO argues that 5.000 aliens are put out of the reception facilities of the national government and alien detention centers into the streets per year. They argue that this, in line with the BBB-agreement, would mean that 1.000 aliens per year are distributed over the five biggest cities and that most of those aliens, since the agreement is unworkable, will end up on the streets in those five cities. Hence, according to LOGO, the Agreement will only increase the problem of homeless aliens in the five biggest cities (LOGO, 2015c).

designated municipalities in the BBB-agreement, allowing for customization and active intervention in a familiar environment will be more effective in stimulating voluntary return (Bakker, 2015; VNG, 2015c). The VNG argues that the results of the Pauluskerk in Rotterdam⁶⁷, where about one-third of the homeless aliens decided to return, demonstrate that this approach is effective (VNG, 2015c). With respect to the period of provisions, the point of departure then needs to be '[s]helter as short as possible, as long as is effective' (VNG, 2015c, 2).

By proposing (or supporting) this alternative, municipalities (and to a lesser extent NGOs) try to demonstrate that they do not question that aliens have to return, but do question how to make that happen. As Jos Wienen of the VNG communicated '[i]t is about how to make that [return] happen and what you should do while they are still here' (Wienen, 2015). The VNG in its proposals stresses the common objective of the national government and municipalities, namely increasing the willingness of homeless aliens to return and thereby increasing the effectiveness of return policy. By focusing on local solutions, municipalities and NGOs try to get space and try to ensure that they have something to say (Bakker, 2015).

With the BBB-agreement, the national government tries to make clear to municipalities that 'it is the boss' with regard to aliens-related issues. That is, it tries to make clear it is the agent that determines how to deal with aliens. The national government presents the agreement as being the solution to the conflict of responsibility, that is conflict between 'local' and 'national' responsibilities, with which municipalities are confronted. On the one hand, by arguing that the proposal removes the need for municipal provisions, it stresses that there is no longer a structural conflict of responsibilities for municipalities. On the one hand, by arguing it is workable to refer homeless aliens to the designated locations, it stresses that municipalities, where needed, can remove this conflict of responsibility without undermining national policy.

Moreover, the national government tries to impose this BBB-agreement unilaterally on municipalities. Part of the BBB-agreement is laying down its implementation in an management agreement between the national government and the VNG. In the BBB-agreement however, the national government states that 'the management agreement will have a binding effect so that it contains sufficient incentives to promote its implementation' (Kamerstukken II, 2014/15, 19637, no. 1994, 4). Moreover, the national government threatens to withhold budget from municipalities if no management agreement is established at 1 November 2015 or if municipalities do not implement this agreement. Thereby, it actually tries to force municipalities to close their social support provisions to homeless aliens and to 'cooperate' in the implementation of its BBB-agreement. Municipalities then are 'implementors' rather than, as stressed by the VNG (30 2015c, 4),

⁶⁷ The Pauluskerk is a church which provides social support to aliens.

'administrative partners'. Typical in this respect is that nor the VNG nor all designated municipalities have been consulted in the establishment of the BBB-agreement and that the submitted proposals of the VNG and LOGO are not reflected in the agreement at all (LOGO, 2015c; VNG, 2015c; Respondent).

Municipalities are in particular irritated by the threat of imposing fines. This threat is experienced as 'a sign of great mistrust of municipal government' and 'puts under pressure cooperation with the national government' (VNG, 2015c, 3). Moreover, according to Jos Wienen of the VNG, it is absurd that municipalities are at risk of being fined when they do not let people sleep into the streets (Wienen, 2015). The threat then is a 'very undesirable and unacceptable limitation of municipal autonomy' (VNG, 2015c, 3). With the BBB-agreement, the national government tries to determine how municipalities should meet their duty of care. That is, it determines which people the municipality may and may not provide care. This 'meddlesomeness' of the national government is, especially given the recent transfer of care tasks to municipalities and related budget cuts, experienced as contrary to the increased responsibilities for care of municipalities (see for example Blik op nieuws.nl, 2015). Consequently, municipalities argue there must be room for municipalities to provide BBB in line with the recent court decisions (VNG, 2015c, 3).

Also considered as odd in the BBB-agreement is that 'that the DT&V is not imposed a best effort obligation with respect to making rejected asylum seekers return to the countries of origin, while the municipalities are held accountable for matters over which they have no say' (VNG, 2015c, 3). According to the BBB-agreement, the national government and municipalities under the direction of the DT&V will jointly provide social support at the designated locations targeted at stimulating the willingness to return. The designated municipalities then will be financially compensated by the national government for those shelter provisions in so far that those provisions actually are successful in contributing to return policy. In practice the designated locations will be annexes of the VBL and will be under the direction of the DT&V. Under those circumstances, municipalities regard it as unreasonable to be held accountable for return (VNG, 28 2015c).

In response to, and in some cases even in anticipation of, the BBB-agreement several municipalities indicated they would continue the provision of BBB to homeless aliens (Nederlandse Omroep Stichting [NOS], 2015a; VNG, 2015d). For example, Deventer, Leiden, Groningen and Arnhem indicated they would continue to provide BBB (LOGO, 2015b). Also Utrecht, designated as a location in the BBB-agreement, declared it would continue its own BBB policy (De Volkskrant, 2015b). Too, the mayor of Amsterdam, also a designated location, stated 'I supported BBB, and a still do' (NU.nl, 2015b). He stressed that '[l]aw needs to be implemented, but a law also needs to be executable'.

Remarkable in this respect is that many local officials of the VVD, the coalition party firmly

against the provision of social support to homeless aliens, actually do support the provision of BBB in their municipalities (Niemantsverdriet & van Outeren, 2015). For example, this includes the mayor of The Hague (Jozias van Aartsen) and the mayor of Utrecht (Jan van Zanen). Since the problem of homeless aliens will not disappear by the BBB-agreement, the mayor of The Hague for example stated, 'neither will the very sober BBB-provision of the city' (Niemantsverdriet & van Outeren, 2015, par Strijd om publieke opinie).

The threat of being fined does not really frighten those municipalities. Several municipalities stated that the national government is actually unable to impose them fines. The municipality of The Hague stressed there is not legal ground to fine municipalities (NOS, 2015b) and thus even if the national government decides to do it, as an official of the municipality of Nijmegen argued, 'the judge knows what to about that' (Dagblad van het Noorden, 2015b).

At the end of April 2015, the VNG and the state secretary of security and justice are still negotiating on the management agreement (VNG, n.d.). The vague definition of notions like 'a number of weeks' in the BBB-agreement have actually shifted the problem of make real decisions to the negotiations with municipalities. It remains the question whether the VNG, and municipalities in general, will be able to stand firm. As a respondent argued, 'it is quite a step to say no to 20 million'. That is the amount of money made available by the national government to implement the BBB-agreement. The latter is especially questionable, since the five largest municipalities are provided 'something' (that is better than nothing) in the BBB-proposal. Those municipalities are confronted most with the problematic of homeless aliens and hold a strong position within the VNG.

6.5 Conclusions

In this section, all the above will be taken together in order answer the three question central to this chapter:

1. How do some meanings on the provision of social support to homeless aliens dominate others?
2. In which way and by what meanings the dominant meaning is challenged?
3. What room for change can be discerned?

In the first two parts of this section, the first and second question will be answered. In the first part, it will be discussed what meaning on the provision of social support to homeless aliens is dominant and how this meaning dominates others. In the second part, it will be discussed by what meanings and in which way dominated agents (fail to) challenge this dominant meaning. In the third part, the last question will be answered by discerning room for change.

6.5.1 Symbolic capital

In the JB-field, the national government holds a dominant position as opposed to municipalities and NGOs. The national government holds both the juridical capital to form alien law and the economic capital to determine on the organization of its implementation. Consequently, the national government has the power to strongly influence both the valuation of agency and the possibilities for agency of dominated agents. The latter is enforced by the fact that municipalities (direct) and some NGOs (mostly indirect) are financially dependent on the national government.

The logic or doxa of the JB-field is grounded in alien law. The idea that 'rejected aliens should return to their country of origin', central to alien law, is accepted as being a principle inherently true and necessary in the JB-field. For example, even municipalities and (some) NGOs use 'perspective' as a criteria in determining aliens' eligibility for social support. Also the focus on right of residence and the importance of stimulating return are reflected in the practices of municipalities and NGOs. Hence, alien law could be perceived as being the 'symbolic capital' of the JB-field.

The national government is the dominant constructor of the situation of homeless aliens and thereby determines the conditions under which social support should (no longer) be provided to aliens. The national government constructs the situation of homeless aliens on the basis of alien law. The situation of homeless aliens is constructed as being the result of the 'disobedient behaviour' (not taking own responsibility) of homeless aliens and thereby is constructed as being an individual problem. Accordingly, the provision of social support to homeless aliens by municipalities and NGOs is 'wrong'. The national government stresses the undeservingness of homeless aliens by terming them 'illegals'.

The 'disobedient behavior' of homeless aliens, in contrast, is constructed as being a social problem in the sense that it undermines the effectiveness of return policy. In line with this construction, the provision of social support should be aimed at enforcing alien policy. In particular, by withholding homeless aliens access to provisions, it should stimulate them to take their own responsibility in organizing return. The general rule is that aliens not willing to return, that is, to take own responsibility, should not or no longer be provided social support and that one should deviate from this general rule only in those exceptional cases in which the alien in question demonstrates he is not able to realize return. To prevent misuse, access to the 'very exceptional cases box' through the BS- and Article 64-procedure, is made subject to very strict requirements.

The strategy of the national government can be characterized as a 'thinking into boxes' approach. This approach is most clearly visible in the practice of *klinkeren* applied by the national government in the framework of return policy. The national government assumes (or pretends) that all aliens fit into the boxes of 'admission', 'in procedure' and 'return' predefined under alien law.

Homeless aliens, that are aliens not fitting into those boxes, consequently pose a problem to the national government. Faced with this problem, the national government defends its boxes approach and thus alien law by shifting the responsibility for this misfit to the homeless aliens themselves. It does so by stressing that their homeless situation is the result of their unwillingness to take 'own responsibility' rather than, for example, the practice of *klinkeren*. Accordingly, it is not the responsibility of the national government to address the situation of homeless aliens.

The national government strongly defends the logic of alien law in the JB-field. It undermines efforts of municipalities and NGOs to challenge the status quo by questioning the value of the capitals they mobilize and by stressing the symbolic value of alien law. This is most clearly visible in the struggle over the interpretation of the recent court decisions. The national government does not perceive those legal decisions as conforming to the logic of alien law and therefore undermines efforts of municipalities and NGOs to turn those decisions into 'symbolic capital'. It stresses there is no need to conform to the ECSR decision, because the decision is neither legally binding nor 'just'. Moreover, by putting the 'political' CoM resolution, which it probably has successfully influenced by lobbying, above the 'legal' ECSR decision, the national government makes clear that alien law is the only relevant 'juridical capital'. That it did limit the scope of the temporary financial arrangement compensating municipalities for the costs of implementing the recent court decision is illustrative in this respect.

In undermining the efforts of municipalities and NGOs to challenge the status quo, the national government also strongly demonstrates 'it is the boss' with respect to aliens-related issues. That is, that it exclusively has the right to decide on how to deal with aliens. The latter is not only visible in the BBB-agreement (which will be addressed in a moment), but also in the integration of medical considerations in alien policy. The national government, despite various critiques of medical experts, continues to prioritize its own medical layman view on the relevance and importance of medical problems for to the assessment of residence applications over the view of medical experts. In fact, it has imposed Medifirst and the BMA limitations in such a way that the medical advices they carry out are conforming to alien logic rather than to medical logic.

The BBB-agreement also demonstrates that the national government, at least at the policy-making level, is not willing to change 'the rules of the game'. That is, it is not willing to grant homeless aliens any form of entitlement or right to basic social support. The BBB-agreement of the national government can be interpreted as an attempt of the national government to consolidate the 'rules of the game' and to silence those agents challenging those rules. On the one hand, the national government tries to restore the 'policy-maker versus policy-implementer' relationship between itself and municipalities. That the national government tries to impose the proposal rather than to establish it in consultation with municipalities is illustrative in this respect.

On the other hand, the national government tries to silence municipalities by limiting their autonomy. It presents the BBB-agreement as providing a to alien logic conforming solution to the conflict of responsibility, that is the conflict between local responsibilities and 'national responsibilities' (to conform to alien law), with which municipalities are confronted in the current situation. It does so by arguing that the BBB-agreement removes the need for structural municipal social support provisions for homeless aliens and removes the 'necessity' to undermine national alien policy in those exceptional cases in which such a conflict of responsibility arises. Moreover, by obliging non-designated municipalities to close their provisions to homeless aliens and threatening to impose them fines if they refuse to do so, the national government tries to force municipalities to close their provisions and to 'cooperate' in the implementation of its BBB-agreement.

6.5.2 Struggle and heterodoxy

Municipalities hold a intermediate position and NGOs hold a dominated position in the JB-field. Both agents try to make use of the juridical power of courts to demonstrate there is, at least in some cases, a legal governmental obligation not laid down in alien law to provide homeless aliens in (basic) social support. Moreover, municipalities, by making use of their autonomy in designing social support policy and allocating budgets, mobilize their juridical- and economic capital to facilitate social support to homeless aliens. In some cases, they subsidize NGOs, which have available very limited financial means, to provide social support to homeless aliens. In comparison to the national government, NGOs and to a lesser extent municipalities hold much social- and cultural capital in the form of knowledge on the living situation- and being of homeless aliens.

Municipalities and NGOs, in some cases supported by agents like medical- and juridical experts, challenge the status quo by heterodoxy. Municipalities and NGOs challenge the status quo, among others, by countering the dominant construction of the situation of homeless aliens. In contrast to the national government, they do construct this situation as being a social problem. They justify this view by referring to the detrimental consequences of not acting in terms of both social- and human costs.

Municipalities and NGOs argue that the situation of homeless aliens, at least in part, can be explained by the ineffectiveness of alien policy and the refusal of the national government to accept responsibility for this policy failure. Alien policy is characterized as corresponding to a 'paper reality'. Municipalities and NGOs stress, in different ways, that return policy is ineffective in stimulating unwilling aliens to return and that the arrangements, respectively the Article 64- and BS-arrangements, for those aliens not able to realize return do not cover all aliens with a valid claim. By stressing the ineffectiveness of alien policy, municipalities and NGOs challenge the strong focus on 'own responsibility' central to the construction of the national government. Moreover, by

questioning the effectiveness of alien policy they undermine the capacity of alien law to dominate in (local) arenas of decision-making.

Municipalities and NGOs explain the ineffectiveness of alien policy in different ways. Most notably, they explain its failure by referring to the 'simplistic thinking into boxes' approach adopted by the national government. Municipalities and NGOs stress that it is impossible to pigeonhole people. First, they stress that the assumptions underlying this approach, like the assumption that return is always possible, are false. Second, they stress that policy can only influence behavior to a limited extent. Third, they stress that in an unruly practice also other circumstances, like the situation of homelessness itself and medical circumstances, are relevant. Consequently, the ineffectiveness of alien policy, and accordingly the situation of homeless aliens, in part can be explained by the lack of attention for aliens as human beings having thoughts and desires rather than merely being subjects having own responsibility and the simplistic assumptions about the return process used by the national government.

With respect to homeless aliens with serious medical problems, municipalities and NGOs, supported by medical experts, moreover argue that alien policy is insufficient in including medical aspects in the assessment of asylum applications and Article 64-applications. The IND is criticized for lacking knowledge on mental and psychiatric problems and for prioritizing its own 'layman' view on medical problems over those of medical experts. This approach then is perceived to result in a situation in which some aliens do not have a fair chance to make their case and as partly explaining the legal limbo in which some homeless aliens with serious medical problems find themselves.

In contrast to the national government, municipalities and NGOs define the deservingness of homeless aliens on the basis of more factors than just legal status or the willingness to work on return. In particular municipalities refer to the fact that a substantial part of the homeless aliens they provide social support is in fact regular. By doing so, they try to increase the perceived deservingness of those people.

Municipalities justify the provision of social support to homeless aliens by referring to their local responsibilities and the vulnerability of some homeless aliens. NGOs justify it by referring to the idea that all human beings are worthy of human treatment. By grounding this principle in both faith and international human rights law, NGOs try to raise the impression that this principle implies both a moral- and legal obligation. In general, municipalities and NGO share the principle that no one should live, or at least, sleep in the streets. That is, everyone should have access to at least night shelter.

Municipalities and NGOs stress that the national government actually is the agent responsible for providing social support to homeless aliens. This focus on responsibility functions to demonstrate that there is a responsibility not taken up by the national government. Municipalities

and NGOs try to force the national government to either take this responsibility or to delegate it and accordingly allocate financial compensation.

The strategy of municipalities, and to a lesser extent NGOs (depending on whether or not they are financially independent), can be characterized as a practical-oriented approach. This approach is driven by the recognition that there is few room for negotiation on aliens-related issues on policy-making levels, the recognition it is hard to gain support for inclusive measures in the unfavourable political- and public climate and the recognition that the national government will only support approaches which do not undermine alien policy. The latter is illustrative for the argument of Bourdieu that agents adjust their acts to the power position they hold.

In the framework of this practical-oriented approach, municipalities and NGOs stress that, regardless of whether the explanation lies in 'not taking own responsibility' or 'failing alien policy', neither homeless aliens nor the practical problems surrounding their presence 'will disappear'. Consequently, in particular municipalities stress the need to find solution for homeless aliens, especially with respect to vulnerable aliens in distressing situations. By stressing the need to find solutions, municipalities try to turn a political problem into a practical problem and try to shift the focus from changing alien policy to reducing local problems without precluding the possibility that (the approach underlying) alien policy is flawed. To conform to the logic of alien law, they also stress that 'their' approach will stimulate voluntary return. Hence, they do not question the 'objective' of providing social support, that is stimulating return, but do question the 'means' to achieve this objective.

Subsequently, in particular municipalities stress several aspects they regard as necessary to find a solution for homeless aliens. On the one hand, they stress it is necessary to take all circumstances into account in order to find a solution for those aliens who do not fit the boxes predefined under alien law. By this focus, municipalities actually challenge the unique approach of alien law (in comparison to other areas of law) in which one does not take all circumstances into account when deviating from the norm or general rule. On the other hand, municipalities stress it is necessary to cooperate in order to find a solution for homeless aliens. By doing so, they try to get a voice in the situation of homeless aliens, try to increase the value of local knowledge (alike in the MOO-project) and try to increase the space for negotiation from within governmental agencies (alike in local consultations).

Backed by the recent court decisions, the strategy of municipalities and NGOs somewhat changed. By mobilizing the court decisions as 'symbolic capital', municipalities and NGOs tried to challenge the symbolic value of alien law. They stressed that the recent court decisions do not only justify the provision of governmental social support to homeless aliens, but actually turn this provision into an legal obligation. Accordingly, municipalities and NGOs adopted an activist strategy

in which they strongly advocated for policy changes. For in particular municipalities, the public advocacy in the media for the provision of governmental social support to homeless aliens marked quite a shift in their approach.

Several municipalities decided to conform with the recent court decisions and started a BBB-provision. Other municipalities, who already provided social support to homeless aliens, became more public about their provisions. By doing so, municipalities tried to convey the message that they are taking the court decisions seriously and actually do take responsibility. Other municipalities, fearing that the national government would shirk its responsibility, refused to provide BBB. By doing so, they tried to convey the message that the national government is responsible and thus needs to either take responsibility or delegate it.

Both the VNG and LOGO submitted proposals in which they plead for a basic BBB-provision for all homeless aliens and a 'plus'-provision for vulnerable, in particular sick, homeless aliens. In those proposals it is suggested that the obligation to unconditionally provide social support to homeless aliens stresses the need to find solution. The LOGO proposal, by proposing that the national government should only provide social support to aliens who are in procedure, also hints at the idea that municipalities are better equipped to find solutions for homeless aliens.

Municipalities and NGOs deny that the BBB-agreement provides any solution to the situation of homeless aliens. Instead, they argue that the agreement actually ignores the 'reality' of homeless aliens. The principles and assumptions underlying the agreement are 'more of the same' and reflect a continuation of the 'thinking into boxes' approach. That municipalities and NGOs actually expected a proposal like such reflects that agents adjust their expectations to the power position they hold. By referring to the DT&V, municipalities suggest that the national government should look at the contribution of its 'own' institutions to the situation of homeless aliens rather than that of municipalities.

With respect to the 'imposing' characteristics of the BBB-agreement, municipalities defend their 'right' to make use of their autonomy. That is, they stress that the national government cannot determine how they meet their local responsibilities like the duty of care. Besides, they stress there is no legal ground for fining municipalities. Moreover, they underline they can only be held accountable for results of their own. Several municipalities deny the 'mandatory force' of the BBB-agreement by continuing their BBB provisions. They thereby indicate that a law needs to be executable in order to dominate in the local arenas of decision-making.

In proposing an 'executable law', municipalities and NGOs stress that voluntary return can be stimulated in more effective ways. That is, in a way in which the DT&V is not the directing agent and in which there is no compulsion imposed in advance. The latter is justified by the argument that the mindset of aliens unwilling to return only can be changed by engaging with them. Key words in the

return approach advocated by municipalities and NGOs are 'solutions', 'decentralization/small scale', 'no size fits all/customization', 'people-oriented', 'effective rather than a short period of provisions' and 'engagement/active intervention'. By this approach, municipalities and NGO challenge the return approach adopted by the national government and the functioning of the DT&V in this process. By stressing the value of local knowledge, moreover, they continue their struggle for getting a voice in the situation.

6.5.3 Room for change

On the policy-making level there is little, if any, room for negotiation. The interaction with the field of journalism, reflected in the rise of populism and strong mediatization of politics, contributes to the fact that aliens-related subjects are highly charged in both politics and society and that exclusionist measures rather than inclusive measures for aliens are more likely to receive support. Under those circumstances, there is little room for dialogue in the decision-making arena of, in particular, the national government and aliens-related discussions have a principal- rather than a practical nature. Consequently, it is not viable to plea for including a 'official' right to basic social support into alien law.

On the policy-implementation level there is some limited room for negotiation. The national government finances local return projects and the MOO-project and participates in local consultations. On the one hand, those acts demonstrate that the national government perceives some local knowledge to be valuable, that is worthy of financial compensation. By financing local return projects, the national government demonstrates it is looking for ways to improve the effectiveness of return policy and is willing to give agents other than the DT&V some freedom in realizing this. Remarkable in this respect is that officials of the national government in some cases actually have difficulties with the practice of *klinkeren* and that the municipality of Utrecht has succeeded in making arrangements on the putting on the streets of vulnerable aliens with the local reception facility of the national government.

By financing the MOO-project, the national government demonstrates it is looking for ways to deal with homeless aliens with serious medical problems. With respect to this specific group, the interaction with the medical field is clearly visible. On the one hand, medical considerations are reflected in both the critique municipalities have on alien policy and their justifications for the provision of social support to homeless aliens. On the other hand, medical experts seem to have succeeded in creating some room for negotiation within governmental agencies with respect to the relevance of medical considerations in the assessment of residence applications. Medical respondents in the current study argue that they IND, Medifirst and the BMA are slowly starting to realize that they are doing something wrong with respect to aliens with serious medical problems.

That the reports of the iMMO, carrying out its medical advices in line with the Istanbul Protocol, have a relative strong evidence value in the assessment of residence applications also demonstrates that linking medical considerations to international treaties may be useful in influencing the relevance of medical considerations.

By participating in local consultations and financing the Pilot Local Cooperation, the national government demonstrates it is in individual cases willing to cooperate in finding a solution for homeless aliens. Hence, those acts of financing demonstrate that, although not communicated officially, subsections within the national government support alternative ways of implementing specific parts of alien policy. Still, only ways which increase the effectiveness of alien policy and which do not include a unconditional provision of social support to homeless aliens are regarded to be valuable.

7. Discussion and conclusions

In the current study the struggle over the interaction between alien law and social security law in the Netherlands has been studied by analyzing the struggles between the national government, municipalities and NGOs over (the organization of) the provision of social support to homeless aliens. The research objective was to provide recommendations to those agents on improving the organization of the provision of social support to homeless aliens. The main question posed in the current study is:

How is the provision of social support to homeless aliens organized in law and practice and how could it be improved?

Central to the Bourdieusian perspective adopted in the current study is the idea that it is no coincidence that the situation is as it is. The making- and implementation of alien law is an activity in which different agents try to define the meaning of alien law by imposing certain categories of thought upon it. Those agents, who do not possess equal power resources or ‘capitals’ and thus have different positions in the power hierarchy characteristic of the JB-field, do not have an equal influence on (the organization of) the provision of social support to homeless aliens.

In line with this perspective, the current study sought to explain how some voices are turned into noises and to discern possibilities to turn those noises back into voices again. First, by unraveling dominant and dominated meanings of different agents. Second, by explaining how some meanings dominate others. Third, by explaining by what meanings and how dominated agents try to challenge the dominant meaning. Fourth, by looking for improvements which are grounded in the categories of thought and practices of the agents involved and which somehow comply with the ‘rules of the game’ played in the JB-field. That is, by looking for improvements which actually ‘mean’ something to the agents involved.

According to the Bourdieusian thought applied in the current study, social scientist can help to bring about social justice by demonstrating the arbitrariness of domination and providing dominated agents means to challenge this domination. Consequently, in the search for improvements the ideal of social justice has not been totally disregarded. In fact, the researcher sought to contribute to social justice by providing recommendations targeting at achieving *more equal social rights for aliens and citizens*.

In the current study, four sub-questions have been formulated to find an answer to the main question. Those questions are:

1. In which way the provision of social support to homeless aliens is organized in law and practice?
2. How do some meanings on the provision of social support to homeless aliens dominate others?
3. In which way and by what meanings the dominant meaning is challenged?
4. What room for change can be discerned?

In this chapter, first the main findings on those separate sub-questions will be presented. Subsequently, the research question will be answered. That is, recommendations will be given to improve the organization of the provision of social support to homeless aliens. Next, the significance of the results of this study will be discussed. Last, the limitations of the current study will be discussed and recommendations for further research will be given.

7.1 Discussion and recommendations

7.1.1 Discussion

Sub-question 1. *In which way the provision of social support to homeless aliens is organized in law and practices?*

In the Netherlands, the provision of social support to aliens is under the responsibility of the national government. The national government provides social support in accordance with alien law. The Linkage Act which relates right of residence to social welfare entitlements is authoritative in this respect. Due to the workings of the Linkage Act, homeless aliens are excluded from governmental social support. Hence, homeless aliens do not have any entitlement to governmental social support under alien law.

Alien law is however challenged. On the one hand, alien law is challenged by the local practices of municipalities and NGOs. Various municipalities and NGOs do provide social support to homeless aliens at the local level. In particular, they provide social support to aliens in a (follow-up) residence procedure, aliens having serious medical problems and aliens who are working on organizing return. Since the recent court decisions, various municipalities have initiated a social support provision, the so-called BBB-provision, for all homeless aliens.

On the other hand, alien law is challenged by court decisions. Courts have ruled that the exclusion of homeless aliens from governmental social support in some cases is not justifiable under international human rights law. Recently, referring to the case-law on Article 8 of the ECHR and a decision of the ECSR, Dutch courts by temporary disciplinary measures ruled that both centre-

municipalities and the national government are obliged to provide adequate social support to aliens in need regardless of their right of residence. By those decisions, the courts challenge the distinction on the basis of right of residence central to alien law by a distinction on the basis of vulnerability central to international human rights law. Since access to basic social support provisions may not be subject to conditions, like cooperating in organizing return, those decisions may have major implications for return policy.

As a consequence of the local practices of municipalities and NGOs and court decisions, homeless aliens, that is aliens who are excluded from social support under alien law, in some cases in practice can be entitled to social support nevertheless.

Sub-question 2. How do some meanings on the provision of social support to homeless aliens dominate others?

The national government holds a dominant position in the JB-field as opposed to municipalities and NGOs. By holding both the juridical capital to form alien law and the economic capital to determine on the organization of its implementation, the national government is able to strongly influence both the valuation of agency and the possibilities for agency of dominated agents. Municipalities hold an intermediate position and NGOs hold a dominated position in the JB-field. Municipalities, based on their autonomy in designing social support policy and allocating budgets, possess some juridical- and economic capital to facilitate the provision of social support to homeless aliens. NGOs possess (very) little economic capital. In comparison to the national government, NGOs and to a lesser extent municipalities hold much social- and cultural capital in the form of knowledge on the living situation- and being of homeless aliens. This knowledge is however not perceived as very valuable by the national government.

Its dominant position allows the national government to determine the logic of the JB-field. This logic is grounded in alien law. Alien law hence could be perceived as being symbolic capital in the JB-field. Central to the logic of the JB-field is the idea that aliens whose (first) residence application is rejected and aliens who have never submitted a residence application should leave the Netherlands. Social support arrangements then should be aimed at stimulating those aliens to return. Unique to this logic, as compared to other areas of law, is the 'thinking into boxes' approach. Homeless aliens, that is aliens who do not fit into the boxes predefined under alien law, pose a problem to this approach. Faced with this problem, the national governments defends alien law by shifting the responsibility for this misfit to the homeless aliens themselves. It stresses that their situation of homelessness is the result of their 'disobedient' behaviour or, in other words, their unwillingness to take own responsibility.

Its dominant position also allows the national government to best construct the situation of

homeless aliens and thus to determine the conditions under which social support should (no longer) be provided to aliens. In line with the logic of alien law, the 'disobedient behaviour' of homeless aliens, not willing to take their 'own responsibility' and thus to conform to alien law, is perceived to be a social problem in the sense that it undermines the effectiveness of return policy. Hence, the provision of social support should be aimed at enforcing return policy. Accordingly, the general rule is that aliens *not willing* to return should not or no longer be provided social support and one should deviate from this general rule only in those exceptional cases in which the alien in question demonstrates he is *not able* to realize return. To prevent misuse, access to the social support provisions for aliens not able to return is made subject to very strict requirements.

The national government undermines efforts of municipalities and NGOs to challenge the status quo by questioning the value of the capitals they mobilize and by stressing the symbolic value of alien law. This is most clearly visible in the fact that the national government undermines the 'juridical' value of the legal ECSR decision by stressing it is neither legally binding nor 'just'.

In undermining the efforts of municipalities and NGOs to challenge the status quo, the national government strongly emphasizes 'it is the boss' with respect to alien-related issues. That is, that it exclusively has the right to decide on how to deal with aliens. The BBB-agreement of the national government is most illustrative in this respect. By this agreement, the national government not only tries to consolidate the 'rules of the game' but also tries to silence those agents challenging those rules. In particular, it tries to force municipalities to close their social support provisions for homeless aliens and to cooperate in the implementation of the BBB-agreement. That is, to conform to their role as 'policy-implementers' rather than policy-makers.

Sub-question 3. *In which way and by what meanings the dominant meaning is challenged?*

Municipalities and NGOs, in some cases supported by agents like medical- and juridical experts, challenge the status quo in two (interrelated) ways. In the first place, they try to demonstrate there is governmental responsibility with respect to homeless aliens. That is, they try to demonstrate there is a need to change the content of alien law itself.

First, municipalities and NGOs challenge the dominant construction of the situation of homeless aliens by stressing that their situation cannot solely be explained by the 'own responsibility' argument. On the one hand, they underline that a substantial part of the homeless aliens provided social support at the local level are regular. On the other hand, they emphasize that alien policy is not watertight. In particular they stress that the arrangements, respectively the Article 64- and BS-arrangement, for aliens not able to realize return are not accessible for all aliens with a valid claim. Under those circumstances, not all homeless aliens can be held responsible for their homeless situation.

Second, municipalities and NGOs try to demonstrate there is governmental responsibility with respect to homeless aliens by advocating an alternative construction of the situation of homeless aliens. This construction, to some extent, is grounded in the logic of social security law which, in turn, reflects the idea that everyone has a right to an adequate standard of living included in international human rights law. In line with the objective central to social security law, that is securing minimal standards of living to 'the poor', municipalities and NGOs advocate the principle that no one should live, or at least sleep, on the streets. The deservingness of homeless aliens then is based on need rather than on their legal status and/or willingness to work on return.

In this construction, it is not that relevant whether the cause for the situation of homeless aliens lies in their unwillingness to take own responsibility or the failing of alien policy. Conversely, what is relevant in this construction, are the effects of the situation of homeless aliens itself. That is, that the situation of homeless aliens in itself results in unacceptable human- and social costs. The situation of homeless aliens then is perceived to be a social problem. This construction of the situation of homeless aliens in turn is used to justify, in the case of municipalities, the use of autonomy. That is, the mobilization of juridical- and economic capital to facilitate the provision of social support to homeless aliens under the denominator of meeting local responsibilities and protecting vulnerable people.

Third, municipalities and NGOs, supported by some juridical experts, try to demonstrate there is a legal governmental responsibility to provide homeless aliens (basic) social support under international human rights law not laid down in alien law. They do so by referring to the recent court decisions, that is the decision of the ECSR and those of the Dutch courts obliging both centre-municipalities and the national government to provide adequate social support to aliens in need. They stress that those decisions do not merely justify the provision of social support to homeless aliens, but even turn those provisions into a legal obligation. In their attempt to mobilize those decisions, municipalities and NGOs adopted an activist approach in which they strongly advocated for policy changes. Moreover, municipalities tried to convey the message that those decisions are 'serious' or 'important' by either becoming more public about the social support they already provided to homeless aliens and/or by initiating a BBB-provision and, in some cases, also a plus-provision.

In the second place, municipalities and NGOs, in some cases supported by agents like medical- and juridical experts, challenge the status quo by trying to demonstrate that there are more effective ways to pursue the objectives of alien law. That is, they question the logic underlying alien policy without necessarily advocating for changes in alien law itself. By doing so, they try to demonstrate there is a need to change the way in which alien law is implemented. Those agents challenge the implementation-approach of the national government in various ways. Central to all

those ways is questioning the assumptions and knowledge underlying the approach of the national government.

First, municipalities and NGOs, supported by medical experts, challenge the integration of medical aspects in the assessment of residence applications, that is the assessment of Article 64 applications and asylum applications. They argue that the IND lacks knowledge and mental and psychiatric problems and consequently addresses those problems, from a medical perspective, in the wrong way.

Second, municipalities and NGOs challenge the general rule that aliens unwilling to work on return on advance should not be entitled to any form of social support. They argue that 'passive intervention', in the sense of withholding homeless aliens access to social support provisions, may not always be serving return policy. Instead, they argue, the mindset of those unwilling aliens only can be changed by 'active intervention' in the form of engagement. Compulsion in advance consequently may not be effective in all cases.

Third, those agents question the assumptions underlying the return process and the role of the DT&V in this process. They stress that the 'period of engagement' under alien policy, for example in the form of the 28-days period of departure or the 'limited number of weeks' in the case of the BBB-agreement, is too short to be effective. The country-specific departure-information which the DT&V possesses, but on which it does not act, confirms it actually takes much longer in some cases to obtain the required travel documents. By referring to the inadequate contribution of the DT&V to return policy, municipalities also question the adequacy of the DT&V as the directing agent in stimulating unwilling aliens in organizing return.

Fourth, municipalities and NGOs, supported by medical- and juridical experts, challenge the thinking into boxes approach adopted by the national government. They stress it is impossible to put people into boxes, especially when those boxes are defined on the basis of false assumptions and knowledge. Most notably, this approach denies that policy influences behaviour only to a limited extent and that in an unruly practice also other circumstances, like the situation of homelessness itself, medical circumstances and the conduct of the residence procedure, affect the way to which people actually fit into those boxes.

Fifth, grounded in the points discussed above, municipalities and NGOs stress a solution-oriented approach is needed to improve the effectiveness of alien policy. By focusing on achieving solutions those agents try to shift the focus from changing the logic of alien law to reducing local problems without precluding the possibility that alien policy actually is flawed. They stress that given that admission- and return policy are and will always be imperfect, room is needed to correct those 'imperfections'. That admission policy is flawed, moreover, demonstrates that this solution can either be return or admission. Under the heading of this approach, in particular municipalities stress the

need to take all circumstances into account and hence to cooperate with all agents involved with the alien in question. Municipalities and NGOs stress that, in the framework of an effective policy, the recent court decisions obliging the government to provide unconditional social support, increase the need to gear towards solutions. By advocating this approach, municipalities and NGOs try to get a voice in the situation of homeless aliens, try to increase the value of their local knowledge on the living situation- and being of homeless aliens and try to increase the space for negotiation from within governmental agencies.

Sub-question 4. *What room for change can be discerned?*

At the policy-making level, there is little, if any, room for negotiation. The national government is not willing to grant homeless aliens any form of right or entitlement to (basic) social support. On the one hand, the national government, which is holding a dominant position in the JB-field, is unwilling to change the 'rules of the game'. On the other hand, the political- and public climate is very unfavorable for inclusive measures for homeless aliens.

At the policy-implementation level there is some limited room for negotiation. The national government finances local return projects, the MOO-project and participates in local consultations. This demonstrates that the national government perceives some local knowledge to be valuable, that is worthy of financial compensation. First, the financing of local return projects demonstrates that the national government is looking for ways to improve the effectiveness of return policy and is willing to give agents other than the DT&V some freedom in realizing this. Second, the financing of the MOO-project demonstrates that the national government is looking for ways to deal with homeless aliens with serious medical problems. Agents seem to have succeeded in creating some room for negotiation within governmental agencies on how to deal with those aliens and on the relevance of medical considerations in the assessment of residence applications. Last, the participation in local consultations and financing of the Pilot Local Cooperation demonstrates that the national government in individual cases is willing to cooperate in finding solutions for homeless aliens.

The above implies that subsections within the national government, although not communicated officially, support alternative ways to implement specific parts of alien policy. Moreover, that medical experts have succeeded in influencing the importance of medical considerations in alien policy, as reflected in the strong evidence value of the IMMO-reports, and that the recent court decisions have affected the dynamics of the struggles in the JB-field demonstrate that interaction with other fields can provide possibilities to change the rules of the game within (subsections of) the JB-field.

7.1.2 Recommendations

Research question. *How is the provision of social support to homeless aliens organized in law and practice and how could it be improved?*

As mentioned in the introduction of this chapter, the current study sought to provide recommendations to the agents involved in the provision of social support to homeless aliens on improving the organization of this provision. More specific, it sought to provide recommendations which are grounded in the categories of thought and practices of the agents involved and which somehow comply with the rules of the game. That is, recommendations which actually ‘mean something’ to the agents involved. According to the Bourdieusian thought applied in the current study social scientist can help to bring about social justice by demonstrating the arbitrariness of domination and providing dominated agents means to challenge this domination. Consequently, in the search for improvements the ideal of social justice has not been totally disregarded. In fact, the researcher sought to contribute to social justice by providing recommendations targeting at achieving *more equal social rights for aliens and citizens*.

The dual focus in searching for improvements described above posed the researcher with a major difficulty. Targeting at achieving more equal social rights for aliens and citizens would imply that the recommendations on reorganizing the provision of social support to homeless aliens should include the recognition of an official right to basic social support for homeless aliens under national law. However, the national government, which holds a dominate position in the JB-field, is unwilling to recognize this right at the policy-making level. That is, there is few, if any, room for negotiation at the policy-making level with respect to changing the provision of social support to homeless aliens. Moreover, the political- and public climate is unfavorable to inclusive measures for aliens. Under those circumstances, it is not regarded meaningful to recommend the agents involved to include an official right to basic social support for homeless aliens under alien law.

The latter, however, does not mean that no meaningful recommendations can be given. In fact, by various recommendations, dominated agents can be given the means to challenge the domination of the national government. While there is few, if any, room for negotiation at the policy-making level, there is some room at the policy-implementation level. That is, while the objectives of alien policy in the current situation are unchangeable, there exist some room to change the means to reach those objectives. In fact, the dominated agents, that is municipalities and NGOs, have adjusted their acts and strategy to the latter. That is, they have recognized that the national government will only support approaches which serve the objectives of alien policy.

Under those circumstances, it is vital for municipalities and NGOs that they are able to demonstrate that their local approaches to stimulating voluntary return work better than those of

the national government. In the current situation, however, claims that local approaches are more effective are not convincing due to the lack of numbers. Hardly any municipality or NGO encountered in the current study did have numbers available on the results of their provisions and the characteristics (like legal status, course of proceedings or presence of serious medical problems) of the homeless aliens they provided social support. Consequently, to start with, I would recommend municipalities and NGOs to jointly develop a simple sheet to uniformly record relevant data on those matters. Those numbers could function to actually prove that local approaches are more effective than the approach adopted by the DT&V.

Also, those numbers could function to more effectively signal the national government, which traditionally is somewhat obsessed with numbers, over flaws in alien policy. For example, if the numbers show that a substantial part of the homeless aliens provided social support are rejected asylum seekers having a specific serious medical problem which interferes with the ability to tell the asylum story well, this might be used to demonstrate that the national government is coming short in dealing with this specific medical problem in the hearing and deciding process. This is relevant, because for example the study of Herlihy and Turner (2015) demonstrates that the ideas of determining authorities like the IND of the presentation 'lying' asylum seekers overlap with the presentation of asylum seekers with a posttraumatic stress disorder.

Moreover, those numbers would be beneficial, because actually no one knows how big (or small) the problem of homeless aliens actually is in terms of number of persons or in terms of human- and social costs. One of the main arguments of the national government to implement the Linkage Act was that it would save costs by shortening the stay of aliens in reception facilities. It is however not known how this saving relates to the additional costs made with respect to homeless aliens. For example, crisis intervention in the case of a medical emergency brings about high costs and is more likely to be needed in the case of a homeless alien than in the case of an alien provided some form of social support.

Second, I would recommend municipalities and NGOs to continue demonstrating there is a governmental responsibility with respect to homeless aliens. A risk of adjusting one's position to the power position one holds, is that one gradually becomes less 'ambitious' in, or even recalls from, challenging the status quo. Most important in this respect is that the VNG 'stands firm' in the negotiations over the management agreement with the national government. At the end of this study, those negotiations were still underway. The latter implies that the national government has not been able yet to impose its BBB-agreement on the VNG or, in other words, that the VNG has not yet given in completely. In order to challenge the status quo, it is important that the VNG succeeds in defining the term 'limited number of weeks', that is the period for which social support should unconditionally be provided in the designated locations, in a beneficial way, that municipalities,

instead of the DT&V, will become the directing agent in the process of stimulating return and that it succeeds in rejecting the imposition of restrictions to the autonomy of municipalities in meeting local responsibilities. While succeeding in the first- or the second point mentioned will provide municipalities opportunities to prove the effectiveness of the local approach, the latter is essential to retain the possibilities for struggle they have in the current situation.

Moreover, in continuing demonstrating there is a governmental responsibility with respect to homeless aliens, I would recommend municipalities to keep making use of their autonomy in undermining the capacity of alien law to dominate in local arena's of decision-making. That is, to continue their local provisions to homeless aliens and thereby demonstrate they at least do believe there is a responsibility.

In challenging the dominant construction of the national government on the provision of social support to homeless aliens, I would recommend both municipalities and NGOs to use the term 'aliens in need' to refer to those people to counter the dominant framing of 'illegals'. In contrast to the terms currently used by municipalities and NGOs, like rejected asylum seekers or undocumented people, the term aliens in need is grounded in social security law rather than in alien law. Hence, this term has quite different connotations. Using this term could help in countering the dominant framing of homeless aliens as 'illegals' and the related perceived undeservingness of homeless aliens.

Last, I would recommend municipalities and NGOs to seek collaboration with agents from 'external' fields. The interaction with the medical field, as reflected in the relatively strong evidence value of iMMO reports and the suggestion raised that medical experts have opened up some room for negotiation within governmental agencies on the relevance of medical aspects in the assessment of residence applications, demonstrates that 'external' logics can create heteronomous poles within the JB-field open to change. Moreover, the struggle over the interpretation of the recent court decisions demonstrates, as reflected in the changed attitude of in particular municipalities, that capitals of 'external agents' may influence the dynamics of the JB-field.

In particular collaboration with the medical field could be beneficial for municipalities and NGOs. First, there already seems to be some room for negotiation within governmental agencies with respect to the relevance of medical considerations in the assessment of residence applications. Second, that the national government finances the MOO-project for some years now, illustrates that the national government is to some extent aware of either its inability to deal well with those people or the need to provide those people more than 'regular social support' in its own reception facilities. Third, homeless aliens with serious medical problems are, in particular, a concern for municipalities and NGOs.

On the one hand, collaboration with medical experts in legal proceedings may help to demonstrate that aliens with serious medical problems are legally entitled to adequate social

support. The case-law on Article 8 of the ECHR provides some room for this. Given the latter, I would recommend municipalities and NGOs to stimulate (or continue stimulating) legal proceedings on the eligibility of homeless aliens with serious medical problems to social support under the Social Support Act. While those proceedings are costly for municipalities, they do provide the possibility to build up case-law which, in contrast to the decision of the ECSR, is legally binding. On the other hand, collaboration with medical experts in the local provision of social support to homeless aliens may help to demonstrate that local agents are better equipped to deal with this specific group of aliens. Given the latter, I would recommend in particular municipalities to actively involve medical experts in their social support provisions to homeless aliens.

In the nearby future, seeking out the media may also provide opportunities. At the end of this study, the influx of asylum seekers grew substantially. The expectation is that this increase in influx will continue. As a consequence of this influx, municipalities are being put under great pressure to make available buildings for reception facilities of the national government. Also, the national government is being put under great pressure to create places in reception facilities by removing people from them. That is, by applying the practice of *klinkeren*. Moreover, this influx will probably increase the number of homeless aliens calling upon municipalities for social support by simultaneously increasing the number of homeless aliens and the pressure on living in irregularity. Consequently, the problematic of homeless aliens is likely to increase. Those circumstances may provide opportunities to demonstrate to the public, by using the media, the scale- and severity of the situation of homeless aliens, the wrongness of the practice of *klinkeren* and/or the ineffectiveness of return policy.

7.2 The significance of the results

In the current study the interaction between social security law and immigration law is addressed by analyzing the struggles over the provision of social support to homeless aliens in the Netherlands. Those struggles are analyzed by applying Bourdieu's field theory in specific and his thought in general. For as far as known, Bourdieu's field theory and –thought has never been applied to the study of the interaction between immigration- and social security law in such an extensive manner.

The study undertaken contributes to the existing literature on immigration- and public policy in various ways. First, the current study contributes to the literature on immigration by demonstrating that domestic agents, to which little attention is given in literature (Guiraudon & Lahav, 2006), are important in shaping, elaborating and implementing immigration policy. Second, and strongly related, the current study contributes to the literature on both immigration- and public policy by demonstrating the relevance of the, often missing (Guiraudon & Lahav, 2006), variable of policy implementation.

Guiraudon and Lahav (2006) have suggested that policy-implementers may have different interests than policy-makers and therefore may not be willing to enforce or comply with policy. They suggested that implementing domestic agents mediate the effects policy has on the ground, that is policy outcomes. The current study confirms the ideas of Guiraudon and Lahav (2006) by demonstrating that municipalities, as implementing agents, have other interests than the national government with respect to homeless aliens and hence are not always willing to comply with alien policy. To put it even stronger, various municipalities actually challenge alien policy by providing social support to homeless aliens beyond alien law. It has been demonstrated that the use of autonomy, the use of international negotiations and the interpretation of alien policy are important factors in this process of contestation. Moreover, by demonstrating that municipalities and NGOs make use of international negotiations in challenging alien policy, the current study also relates domestic agents to international ones.

The current study also underlines the need to close the gap, identified by Vonk (2002), between political science and social science on immigration issues. That is, the gap between studies on state policies, mostly studies by political scientists, and migratory dynamics and -processes, mostly studies by social scientists. In the current study, agents questioning the effectiveness of Dutch alien policy repeatedly made the argument that this ineffectiveness in part can be explained by the gap between the assumptions and knowledge underlying alien policy and the living reality of aliens. This gap could be interpreted as reflecting an insufficient integration of knowledge on migratory dynamics and -processes into alien policy. Subsequently, one could argue that one should include this living reality into alien policy in order to increase the effectiveness of alien policy⁶⁸. Consequently, it would be interesting to conduct a comparative study in different countries to explore whether and how the degree to which migratory dynamics- and processes (the 'reality' of aliens) are included into alien policy affects the outcomes of alien policy.

The theoretical- and methodological approach adopted in this study is grounded in the field theory and thought of Bourdieu. The Bourdieusian perspective underlines that 'reality', or a status quo like the organization of the provision of social support to homeless aliens, is always being shaped, transformed and conserved by (struggles within) power structures. On the one hand, this perspective allowed the researcher to provide insight in how difficult it is, and why it is so difficult, to change power structures. That it is difficult to change power structures, is most clearly visible in the discussion on the recent court decisions. On the other hand, this perspective allowed the researcher to demonstrate that even those agents who are trying to challenge the status quo, are imbued with

⁶⁸ This point is not included in the recommendations on improving the organization of the provision of social support to homeless aliens, because the Dutch state, in the framework of defending the restrictiveness of its alien policy, has an interest in ignoring this knowledge.

those categories of thought which aim to conserve that status quo. The latter is for example visible in the importance of the eligibility criteria 'perspective' in the practices of municipalities and NGOs.

The current study demonstrates that the Bourdieusian relational- and reflexive perspective is highly valuable for the study of this reality. Based on the points mentioned above, this perspective is valuable for two reasons in particular. First, this perspective is valuable because it allows the researcher to 'really' understand a status quo, that is to understand why that situation is as it is. Second, this understanding, in turn, 'forces' the researcher to make 'realistic' recommendations. That is, recommendations which actually mean something to the agents involved and hence actually may be of value to them in changing the status quo. That is, research carried out on the basis of such a perspective is more likely to have practical value.

7.3 Limitations and further research

For a correct interpretation of the value of the results of this study, it is important to reflect on its limitations. In 4.5, the limitations on the researcher, as the primary instrument, and the research approach already have been discussed. It has been mentioned that the researcher tried to be self-reflexive to the best of her possibilities in order to limit her influence on the research. Moreover, since it is impossible to completely prevent that the researcher influences the research, it has been acknowledged that this research is just one interpretation of the object of study. Last, it has been acknowledged that this case study somewhat lacks the ability to replicated and that its findings have a limited generalizability. With respect to the latter, it should be mentioned that this study aimed for meaningful results rather than for generalizability (Flick, 2009).

In the current study the researcher was faced with an access problem. The researcher mainly had access to the agents municipalities and NGOs, while having almost no access to the agents of the national government. Consequently, more insight was gathered in the practices, attitudes and strategies of municipalities and NGOs than those of the agencies of the national government. Consequently, especially given that the current study concludes that some subsections of the national government may support alternative ways to implement specific parts of alien policy, it would be interesting to study the struggles within the national government on the logics of alien law. That is, it would be interesting to study whether and where there is room for negotiation within the governmental agencies.

In the current study, the researcher experienced, for example during talks on the research with family, that it is very hard to explain people that the situation of homeless aliens is problematic. Besides the political- and social climate in the Netherlands, which is unfavorable to inclusive measures for homeless aliens, the above probably can also be explained by the policy for

homelessness that the Netherlands adopts. The Netherlands adopts a homelessness policy in which the people in question are actually removed from public sight as much as possible. Consequently, the public is not really aware of the existence and/or severity of the situation of homeless people. Given that a social needs need to be constructed as a social problem worthy of public concern in order to be met by public policy, one could question whether this 'hiding' is beneficial for raising public support for homeless people. Therefore, it would be interesting to conduct a comparative study between the Netherlands (where homeless people are removed from sight as much as possible) and another country (where homeless people are 'visible' for the public) on the influences of the visibility of homeless people for the way in which their situation of homelessness and their deservingness are perceived.

Bibliography

Aangeenbrug, M. (2014). *Voorstellen voor de ondersteuning van ongedocumenteerden vreemdelingen binnen gemeenten*. The Hague, the Netherlands: Vereniging van Nederlandse Gemeenten.

Abramovitz, M., & Blau, J. (2004). *The Dynamics of Social Welfare Policy*. Oxford: Oxford University Press.

Adviescommissie voor Vreemdelingenzaken. (2013). *Waar een wil is, maar geen weg*. The Hague, the Netherlands: Author.

Albayrak, N., & Deetman, W.J. (2007). *Bestuursakkoord tussen de Staatssecretaris van Justitie en de Vereniging van Nederlandse Gemeenten inzake het vreemdelingenbeleid*. Retrieved from <https://zoek.officielebekendmakingen.nl/kst-31018-23-b2.pdf>

Algemene wet bestuursrecht [General Administrative Law Act]. (1992, June 4). Retrieved January 15, 2015 from <http://wetten.overheid.nl/BWBR0005537/2016-01-01>

Bakker, M. (2015, April 29). Bed-bad-broodakkoord wankelt. *De Volkskrant*. Retrieved from <http://www.volkskrant.nl/politiek/bed-bad-broodakkoord-wankelt~a3989008/>

Barrientos, A., & Hulme, D. (2010). Social Protection for the Poor and the Poorest: An Introduction. In A. Barrientos, & D. Hulme (Eds.), *Social Protection for the Poor and Poorest. Concepts, Policies and Politics* (pp. 3-27). New York, USA: Palgrave Macmillian.

Basham, R.B., Henry, M.L., Sarason, B.R., & Sarason, I.G. (1983). Assessing social support: The Social Support Questionnaire. *Journal of Personality and Social Psychology*, 44, 127-139.

Beenackers, E.M.T., Kromhout, M., & Wubs, H. (2008). *Illegaal verblijf in Nederland*. The Hague, The Netherlands: Research and Documentation Center (WODC).

Benhabib, S. (2011). *Dignity in adversity: Human rights in troubled times*. Cambridge, UK: Polity Press.

- Bergen, A.E., & Gottlieb, B.H. (2010). Social support concepts and measures. *Journal of Psychosomatic Research*, 69, 511-520.
- Black, R. (2003). Breaking the convention: Researching the “illegal” migration of refugees to Europe. *Antipode*, 35, 34-54.
- Blake, M. (2013). Immigration, jurisdiction, and exclusion. *Philosophy and public affairs*, 41, 103–130.
- Blake, M. (2014). The right to exclude. *Critical Review of International Social and Political Philosophy*, 17, 521-537.
- Blik op nieuws.nl. (2015, April 23). *Arnhem in verzet tegen bed, bad, brood van kabinet*. Retrieved from <http://www.blikopnieuws.nl/2015/arnhem-in-verzet-tegen-bed-bad-brood-van-kabinet>
- Bloemen, E., De Boo, M., Gilhuis, H.J., & Legemaate, J. (2010). Medische advisering in vreemdelingenzaken onder de maat: Kritiek op artsen IND. *Medisch Contact*, 65, 2596-2598.
- Bloemen, E. & Kollen, M. (2015). Bewijs geleverd: Medisch Steunbewijs en medische beperkingen in asiel. *Journal Vreemdelingenrecht*, 27(3), 57-69.
- Bloemen, E. & Zwaan, K. (2010). Medisch beperkt in asiel: Medische en psychische problemen in de asielprocedure en de mogelijkheden van werkinstructie 2010/13. *Asiel en Migrantenrecht*, 9, 398-406. <http://www.medi-first.nl/12650/web/files/original/1/3/13204.pdf>
- Bögner, D., Brewin, C.R., & Herlihy, J. (2007). Impact of sexual violence on disclosure and long-term psychopathology in post traumatic stress disorder. *Journal of Traumatic Stress* 2007, 10, 37-49.
- Bourdieu, P. (1994). Rethinking the state: Genesis and structure of the bureaucratic field. *Sociological theory*, 21, 1-18.
- Bourdieu, P. (1977). *Outline of a Theory of Practice*. Cambridge: Cambridge University Press.
- Bourdieu, P. (1987). The Force of Law: Towards a Sociology of the Juridical Field. *The Hastings Law Journal*, 38, 814-854.

Bourdieu, P. & Thompson, J. (1992). *Language and Symbolic Power*. Cambridge, UK: Polity Press.

Bourdieu, P., & Wacquant, L. J. D. (1992). *An invitation to reflexive sociology*. Chicago: University of Chicago Press.

Bourdieu, P. (2005). *The social structures of the economy*. Cambridge, UK: Polity Press.

Bouter, H. (2013). *Giving Shelter* (Master's thesis, Radboud University, Nijmegen, The Netherlands).

Retrieved from <http://www.stichtinglos.nl/sites/default/files/los/files/Giving%20Shelter%20-%20Master%20Thesis%20of%20Harmen%20Bouter.pdf>

Bradshaw, J.R. (1972). A taxonomy of social need. *New Society*, 496, 640-643.

Briggs, A. (1961). The Welfare state in Historical Perspective. In F.G. Castles & C. Pierson (Eds.), *The Welfare state Reader* (2nd ed.) (pp. 16-29). Cambridge, UK: Polity Press.

Centraal Orgaan opvang Asielzoekers. (n.d.a). *Asielzoekers*. Retrieved from <https://www.coa.nl/nl/asielzoekers>

Centraal Orgaan opvang Asielzoekers. (n.d.b). *Regeling verstrekkingen bepaalde categorieën vreemdelingen*. Retrieved from <http://www.coa.nl/nl/over-coa/rvb>

Chouinard, V. (1994). Geography law and legal struggles: which ways ahead? *Progress in Human Geography*, 18(4), 415-440.

ChristenUnie. (2014) *Bed, bad, brood*. Retrieved from <https://www.christenunie.nl/nl/bedbadbrood>

Conway, T., A., De Haan and Norton, A. (Eds.). (2000). *Social Protection: New Directions of Donor Agencies*. London, UK: Department for International Development.

Creswell, J.W. (2013). *Qualitative Inquiry and Research Design* (3rd ed.). London, UK: Sage.

Dagblad van het Noorden. (2015a, April 22). *Groningen houdt bed, bad, brood-opvang open*. Retrieved from <http://www.dvhn.nl/archief/Groningen-houdt-bed-bad-brood-opvang-open-20908508.html>

Dagblad van het Noorden. (2015b, April 29). *Boete 'bed, bad brood' deert Stad niet*. Retrieved from <http://www.dvhn.nl/archief/Boete-%E2%80%98bed-bad-brood-deert-Stad-niet-20910125.html>

Danahar, G., Schirato, T., & Webb, J. (2002). *Understanding Bourdieu*. London, UK: Sage.

Denzin, N.K. (1989). *The Research Act* (3rd ed.). Englewood Cliffs, NJ, USA: Prentice Hall.

Deutsch, A., & Gangsei, D. (2007). Psychological evaluation of asylum seekers as a therapeutic process. *Torture, 17*, 79-87.

Dikeç, M. (2004). Voices into noises: ideological determination of unarticulated justice movements. *Space and Polity, 8*(2), 191-208.

De Volkskrant. (2014, August 28). *Van der Laan wil in héél Nederland opvang voor asielzoekers*. Retrieved from <http://www.volkskrant.nl/binnenland/van-der-laan-wil-in-heel-nederland-opvang-voor-asielzoekers~a3729108/>

De Volkskrant. (2015a, April 16). *VVD-burgemeester van Aartsen: 'bed, bad en brood' goed idee*. Retrieved from <http://www.volkskrant.nl/binnenland/vvd-burgemeester-van-aartsen-bed-bad-en-brood-goed-idee~a3960130/>

De Volkskrant. (2015b, April 29). *Utrecht gaat door met eigen bed-bad-brood-beleid*. Retrieved from <http://www.volkskrant.nl/binnenland/utrecht-gaat-door-met-eigen-bed-bad-brood-beleid~a3989210/>

Di Pascale, A. (2014). Italy and Unauthorized Migration: Between state's Sovereignty and Human Rights Obligations. In R. Rubio-Marin (Ed.), *Human Rights and Immigration* (pp. 278-310). Oxford: Oxford University Press.

Dienst Terugkeer en Vertrek. (n.d.a). *Gezinslocatie*. Retrieved from https://www.dienstterugkeerenvertrek.nl/Terugkeer_en_vertrek/Verblijfslocaties_voor_vreemdelingen/Gezinslocatie/

- Dienst Terugkeer en Vertrek. (n.d.b). *Vrijheidsbeperkende locatie*. Retrieved from https://www.dienstterugkeerenvertrek.nl/Terugkeer_en_vertrek/Verblijfslocaties_voor_vreemdeling_en/Vrijheidsbeperkende_locatie/
- Doomernik, J., Kos, S., & Maussen, M. (2015). Policies of Exclusion and Practices of Inclusion: How Municipal Governments Negotiate Asylum Policies in the Netherlands. *Territory, Politics, Governance*, 3, 1-21.
- Dutch Section of the International Commission of Jurists. (2014). *Nederland, kom verplichtingen onder het Europees Sociaal Handvest na*. Retrieved from <http://www.njcm.nl/site/newsposts/show/341>
- Dutch Section of the International Commission of Jurists. (2013). *Het Bureau Medische Advisering nader beschouwd: Zorgpunten en aanbevelingen*. Retrieved from <http://www.njcm.nl/site/uploads/download/521>
- ECHR-online.nl. (n.d.). *ECHR-Introduction*. Retrieved from <http://echr-online.info/echr-introduction/>
- Eddy, K. (2006). Welfare Rights and Conflicts of Rights. *Res Publica*, 12, 337-356.
- European Migration Network. (2010). *The Practices in the Netherlands Concerning the Granting of Non-EU Harmonised Protection Statuses*. Retrieved from http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/non-eu-harmonised-protection-status/19a._netherlands_national_report_non-eu_harmonised_forms_of_protection_final_version_15april2010_en_en.pdf
- Europees Sociaal Handvest (herzien) [European Social Charter (revised)]*. (1996, May 3). Retrieved from <http://wetten.overheid.nl/BWBV0001800/2006-07-01>
- Flick, U. (2009). *An introduction to qualitative research*. London, UK: Sage.
- Fourage, D., & Muffers, R. (2002). Social exclusion in European welfare states. In J. Berghman, K. Boos, R. Doeschot, A. Nagelkerke & G. Vonk (Eds.), *Social Security in Transition*. (pp. 47-62). The Hague, The Netherlands: Kluwer Law International.

- Garcia, S. M. (2014). What comes first, democracy or human rights? *Critical Review of International Social and Political Philosophy*, 17, 681-688.
- Glendon, M. A. (1999). *Rights Talk: the Impoverishment of Political Discourse*. Toronto: University of Toronto Press.
- Gorski, P. S. (2013). Introduction. Bourdieu as a Theorist of Change. In P. S. Gorski (Ed.), *Bourdieu and Historical Analysis* (pp. 1-18). Durham, NC, USA: Duke University Press.
- Griffin, J. (2008). *On Human Rights*. Oxford: Oxford University Press.
- Guiraudon, V. (2000). The Mashallian triptych reordered: the role of courts and bureaucracies in furthering migrant rights. In M. Bommes & A. Geddes (Eds.), *Immigration and Welfare, Challenging the borders of the welfare state*. (pp. 72-89). London, UK: Routledge.
- Guiraudon, V., & Lahav, G. (2006). Actors and venues in immigration control. Closing the gap between political demands and policy outcomes. *West European Politics*, 29, 201-223.
- Herlihy, J., Sragg, P., & Turner, S. (2002). Discrepancies in autobiographical memories – implications for the assessment of asylum seekers: repeated interviews study. *British Medical Journal*, 324, 324-327.
- Herlihy, J., & Turner, S. (2009). The psychology of seeking protection. *International Journal of Refugee Law*, 21, 171-192.
- Herlihy, J., & Turner, S. (2015). Untested assumptions: psychological research and credibility assessment in legal decision-making. *European Journal of Psychotraumatology*, 6, 1-5.
- Illegal. (z.j.). In *Oxford Advanced Learner's Dictionary*. Retrieved from <http://www.oxforddictionaries.com/definition/learner/illegal>
- Illegal. (z.j.). In *Oxford Dictionaries*. Retrieved from <http://www.oxforddictionaries.com/definition/english/illegal>
- Immigratie- en Naturalisatiedienst. (2010a). *IND-werkinstructies nr. 2010/13*. Retrieved from <https://ind.nl/Documents/WI%202010-13.pdf>

Immigratie- en Naturalisatiedienst. (2010b). *Protocol Bureau Medische Advisering*. Retrieved from <https://ind.nl/Documents/Protocol%20BMA%202010.pdf>

Immigratie en Naturalisatie Dienst, Medifirst & Vereniging van Indicerende en adviserende Artsen. (2013). *Protocol Medisch Advies Horen en Beslissen*. Huis ter Heide, the Netherlands: Medifirst.

Inspectie voor de Gezondheidszorg. (2006). *Medische Advisering in het kader van het vreemdelingenbeleid door BMA*. Retrieved from <http://www.igz.nl/zoeken/download.aspx?download=Medische+advisering+in+het+kader+van+het+vreemdelingenbeleid+door+BMA.pdf>

Internationaal Netwerk van Lokale Initiatieven ten behoeve van Asielzoekers. (n.d.a). *Doelstelling en Criteria*. Retrieved from <http://inlia.nl/Doelstelling-en-criteria.html>

Internationaal Netwerk van Lokale Initiatieven ten behoeve van Asielzoekers. (n.d.b). *Gemeentelijke opvang*. Retrieved from www.inlia.nl/gemeentelijke-opvang.html

Internationaal Netwerk van Lokale Initiatieven ten behoeve van Asielzoekers. (2014). *Wettelijke vertrektermijn aantoonbaar te kort*. Retrieved from <http://www.inlia.nl/landgebondenvertrekinformatie.html>

Istanbul Protocol. (1989, September 6). Retrieved January 29, 2015, from <http://wetten.overheid.nl/BWBV0002085/1991-03-01>

Koppelingswet [Linkage Act]. (1998, March 26). Retrieved January 15, 2015, from <http://wetten.overheid.nl/BWBR0009511/1998-08-01>

Korzilius, H. (2000). *De kern van survey-onderzoek*. Assen, The Netherlands: Van Gorcum.

Laegaard, S. (2010). What is the Right to Exclude Immigrants? *Res Publica*, 16, 245-262.

Landelijk Overleg Gemeentebesturen Opvang- en Terugkeerbeleid. (2014a). *LOGO-reactie indien toewijzing van de ECSR klacht inzake dakloze vreemdelingen*. Retrieved from <http://www.logogemeenten.nl/download/38>

- Landelijk Overleg Gemeentebesturen Opvang- en Terugkeerbeleid. (2014b). *Verklaring LOGO over uitspraak ECSR inzake opvang voor dakloze vreemdelingen*. Retrieved from <http://www.logogemeenten.nl/nieuws/item/155/verklaring-logo-over-uitspraak-ecsr-inzake-opvang-voor-dakloze-vreemdelingen>
- Landelijk Overleg Gemeentebesturen Opvang- en Terugkeerbeleid. (2015a). *Resolutie Comité van Ministers bekendgemaakt*. Retrieved from <http://www.logogemeenten.nl/nieuws/item/169/resolutie-comite-van-ministers-bekendgemaakt>
- Landelijk Overleg Gemeentebesturen Opvang- en Terugkeerbeleid. (2015b). *Veel kritiek op 'bed, bad en brood' compromis kabinet*. Retrieved from <http://www.logogemeenten.nl/nieuws/item/170/veel-kritiek-op-bed-bad-en-brood-compromis-kabinet>
- Landelijk Overleg Gemeentebesturen Opvang- en Terugkeerbeleid. (2015c). *Bed-bad-brood discussie: Haagse wenselijkheid vs lokale realiteit*. Retrieved from <http://www.logogemeenten.nl/nieuws/item/171/bed-bad-brood-discussie-haagse-wenselijkheid-vs-lokale-realiteit>
- Manning, N. (1998). Social needs, social problems and social welfare? In P. Alcock, A. Erskine & M. May (Eds.), *The Student's Companion to Social Policy* (pp. 33-34). London, UK: Blackwell.
- Maslow, A.H. (1943). A Theory of Human Motivation. *Psychological Review*, 50, 370-396.
- Medisch Opvangproject Ongedocumenteerden. (2012). *Ziek en op straat: Een jaar Medisch Opvangproject Ongedocumenteerden (MOO)*. Retrieved from http://www.askv.nl/wp-content/uploads/2015/03/MOO_rapportage_2012DEF.pdf
- Miller, D. (2005). Immigration: The Case for Limits. In A. Cohen & C. H. Wellman (Eds.), *Contemporary Debates in Applied Ethics* (pp. 191-206). Oxford, UK: Blackwell.
- Ministerie van Justitie. (2008). *Koppelingswet: vreemdelingen en de controle op het verblijfsrecht bij voorzieningen*. Retrieved from <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/brochures/2008/01/08/koppelingswet-vreemdelingen-en-de-controle-op-het-verblijfsrecht-bij-voorzieningen/06pd2008g486.pdf>

Munro, L. T. (2010). Risks, Needs and Rights: Compatible or Contradictory Based for Social Protection. In A. Barrientos & D. Hulme (Eds.), *Social Protection for the Poor and Poorest. Concepts, Policies and Politics* (pp. 27-47). New York, USA: Palgrave Macmillan.

Newton, L. (2008). *Illegal, Alien or Immigrant. The Politics of Immigration*. New York: New York University.

Niemantsverdriet, T., & Van Outeren, E. (2015, April 17). Lokale VVD'ers: wel bed-bad-brood – coalitie hervat spoedoverleg. *NRC Handelsblad*. Retrieved from <http://www.nrc.nl/nieuws/2015/04/17/lokale-vvders-wel-bed-bad-brood-coalitie-hervat-spoedoverleg>

Nederlandse Omroep Stichting. (2013, March 30). *Verblijfsvergunning voor Mauro*. Retrieved from <http://nos.nl/artikel/490228-verblijfsvergunning-voor-mauro.html>

Nederlandse Omroep Stichting. (2014, August 8). *Van der Laan: een bed, bad en brood voor asielzoekers* [Video file]. Retrieved from <http://nos.nl/video/692004-van-der-laan-een-bed-bad-en-brood-voor-asielzoekers.html>

Nederlandse Omroep Stichting. (2015a, December 9). *Gemeenten blijven illegalen opvangen*. Retrieved from <http://nos.nl/artikel/2074139-gemeenten-blijven-illegalen-opvangen.html>

Nederlandse Omroep Stichting. (2015b, April 29). *Gemeente Den Haag: bed-bad-brood probleem niet groter maken* [Video file]. Retrieved from <http://nos.nl/video/2033034-gemeente-den-haag-bed-bad-brood-probleem-niet-groter-maken.html>

Nicholls, W.J. (2013). *Making undocumented migrants into legitimate political subjects: theoretical observations from the United states and France*. Amsterdam, the Netherlands: Amsterdam Institute for Social Science Research. Retrieved from <http://dare.uva.nl/document/2/136570>

NU.nl. (2015a, April 16). *Hoe 'bed, bad, brood' de coalitie dreigde te splijten*. Retrieved from <http://www.nu.nl/dvn/4032012/bed-bad-brood-coalitie-dreigde-splijten.html>

NU.nl. (2015b, April 17). *Van der Laan wil huidig bed-bad-broodregeling behouden*. Retrieved from <http://www.nu.nl/amsterdam/4033002/van-laan-wil-huidig-bed-bad-broodregeling-behouden.html>

Oude Elferink, E. (2015, April 29). Aboutaleb: Opvang van twee, drie weken is een illusie. *Business Nieuws Radio*. Retrieved from <http://www.bnr.nl/nieuws/Rest/bbb/316631-1504/aboutaleb-opvang-van-twee-drie-weken-is-een-illusie>

Parlementair Documentatie Centrum – Universiteit Leiden. (n.d.). *Raad van Europa (RvE)*. Retrieved from http://www.europa-nu.nl/id/vg9ho48czuz9/raad_van_europa_rve

Paspalanova, M. (2008). Undocumented vs. Illegal Migrant: Towards Terminological Coherence. *Migraciones Internacionales*, 4 (3), 79-90

Punch, K.F. (2005). *Introduction to Social Research: Quantitative and Qualitative Approaches*. London, UK: Sage.

Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen [Asylum Seekers and Other Categories of Aliens (Provisions) Regulations]. (2005, February 5). Retrieved January 15, 2015, from <http://wetten.overheid.nl/BWBR0017959/2016-01-01#Aanhef>

Regeling verstrekkingen bepaalde categorieën vreemdelingen [Specific categories of aliens (Provisions) Regulations]. (1998, July 1). Retrieved January 15, 2015, from <http://wetten.overheid.nl/BWBR0009726/2015-01-01>

Regioplan. (2009). *Omvang gemeentelijke noodopvang aan afgewezen asielzoekers*. (Report No. 1897). Amsterdam, The Netherlands: Regioplan. Retrieved from https://www.parlementairemonitor.nl/9353000/1/j4nvgs5kjg27kof_j9vvij5epmj1ey0/vi8d83b44ay4/f=/blg21070.pdf

Rijksoverheid.nl. (n.d.a). *Alleenstaande minderjarige vreemdelingen (amv)*. Retrieved from <http://www.rijksoverheid.nl/onderwerpen/asielbeleid/alleenstaande-minderjarige-vreemdelingen-amv>

Rijksoverheid.nl. (2014). *Kabinet wacht besluit Comité van Ministers af*. Retrieved from <https://www.rijksoverheid.nl/actueel/nieuws/2014/11/10/kabinet-wacht-besluit-comite-van-ministers-af>

Rubio-Marin, R. (2014). *Human Rights and Immigration*. Oxford: Oxford University Press.

Schulinck. (n.d.). *Rechtmatig verblijf*. Retrieved from <http://www.antwoordopwmo.nl/inhoud?pid=1710>

Smulders, S. (2015). Medisch steunbewijs en de implementatie van de herziene procedure richtlijn. *Journal Vreemdelingenrecht*, 26(3), 41-56.

Spijkerboer, T. (2013). "Wij zijn hier": gelijke behandeling van niet uitzetbare vreemdelingen? Paper presented at the *Article 1-Seminar 2013* at March 22, 2013 at the Utrecht University. Retrieved from http://humanistischverbond.nl/doc/lezingspijkerboor_art1lezing.pdf

Stichting Landelijk Ongedocumenteerden Steunpunt. (n.d.). *Noodopvang/Hulp Uitgeprocedeerde Asielzoekers*. Retrieved from <http://www.stichtinglos.nl/noodopvang>

Strebbsins, R. A. (2001). *Exploratory research in the social sciences*. London, UK: Sage.

Strömbäck, J. (2008). Four phases of mediatization: An analysis of the mediatization of politics. *The International Journal of Press/Politics*, 13, 228-246.

Strömbäck, J., & Esser, F. (2014). Mediatization of Politics: Towards a Theoretical Framework. In J. Strömbäck & F. Esser (Eds.), *Mediatization of Politics* (pp. 3-28). New York, USA: Palgrave Macmillan.

Svallfors, S. (2012). Welfare state and Welfare Attitudes. In S. Svallfors (Ed.), *Contested Welfare states: Welfare attitudes in Europe and beyond* (pp. 1-24). Stanford: Stanford University Press.

Swartz, D. L. (2008). Bringing Bourdieu's master concepts into organizational analysis. *Theory and Society*, 37, 45-52.

Swartz, D.L. (2013). Metaprinciples for Sociological Research in a Bourdieusian Perspective. In P.S. Gorski (Ed.), *Bourdieu and Historical Analysis* (pp. 19-35). Durham: Duke University Press.

Tankink, M. (2009). *Over zwijgen gesproken*. Utrecht, The Netherlands: Pharos.

Taylor, S.E. (2011). Social support: A Review. In M.S. Friedman (Ed.), *The Handbook of Health Psychology* (pp. 189-214). New York: Oxford University Press.

Tomlins, C. (2004). History in the American Juridical Field: Narrative, Justification, and Explanation. *Yale Journal of Law & the Humanities*, 16, 323-398

United Nations High Commissioner for Refugees. (2013). *Beyond Proof: Credibility assessment in EU asylum systems*. Brussels, Belgium: Author.

Van Haren, F.L.M. (2010). Medifist of His Masters Voice? *Asiel & Migrantenrecht*, 8, 439.
http://www.asielenmigrantenrecht.nl/a_mr/ve11001552,%202010-10-22,%20Asiel&Migrantenrecht%202010,%20nr.%208%20-%20Column%20-%20MediFirst%20of%20His%20Masters%20Voice%20-%20F.%20van%20Haren.pdf

Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden [Convention for the Protection of Human Rights and Fundamental Freedoms]. (1950, November 4). Retrieved January 29, 2015 from <http://wetten.overheid.nl/BWBV0001000/2010-06-10>

Vereniging asieladvocaten en-juristen Nederland. (n.d.). *Een stille revolutie; de opvang van derdelanders zonder verblijfsvergunning*. Retrieved from <http://www.vajn.org/doc/vajn-artikel-de-stille-revolutie.pdf>

Vereniging van Nederlandse Gemeenten. (n.d.). *Bestuursakkoord bed-bad-brood*. Retrieved from <https://vng.nl/onderwerpenindex/asielbeleid-en-integratie/asielbeleid/bed-bad-broodregeling-0>

Vereniging van Nederlandse Gemeenten. (2014a). *Gemeenten willen uitgeprocedeerde asielzoekers opvang kunnen bieden*. Retrieved from <https://vng.nl/onderwerpenindex/asiel/asielbeleid-en-integratie/nieuws/gemeenten-willen-uitgeprocedeerde-asielzoekers-opvang-kunnen-bieden>

Vereniging van Nederlandse Gemeenten. (2014b). *Uitspraak ECSR: Nederland moet illegalen opvangen*. Retrieved from <https://vng.nl/onderwerpenindex/asiel/asielbeleid-en-integratie/nieuws/uitspraak-ecsr-nederland-moet-illegalen-opvangen>

Vereniging van Nederlandse Gemeenten. (2014c). *Brief Vaste Commissie voor V&J*. Retrieved from https://vng.nl/files/vng/brieven/2014/20141112_brief-parlement_opvang-niet-rechtmatig-verblijvende-vreemdelingen-en-uitspraak-ecsr_0.pdf

Vereniging van Nederlandse Gemeenten. (2015a). *Bed-bad-broodregeling*. Retrieved from <https://vng.nl/onderwerpenindex/asiel/asielbeleid-en-integratie/brieven/bed-bad-broodregeling>

Vereniging van Nederlandse Gemeenten. (2015b). *College van burgemeesters en wethouders*. Retrieved from https://vng.nl/files/vng/brieven/2015/20150325_brief-overige-bed-bad-brood-vng-aan-gemeenten.pdf

Vereniging van Nederlandse Gemeenten. (2015c). *Bezwaren tegen kabinetsbrief uitgeprocedeerde asielzoekers*. Retrieved from https://vng.nl/files/vng/brieven/2015/20150428_brief-parlement_opvang-uitgeprocedeerde-asielzoekers-bed-bad-brood.pdf

Vereniging van Nederlandse Gemeenten. (2015d). *VNG-peiling: 'blijft bed-bad-brood bieden'*. Retrieved from <https://vng.nl/onderwerpenindex/asiel/asielbeleid-en-integratie/nieuws/vng-peiling-blijf-bed-bad-brood-bieden>

Verschuren, P., & Doorewaard, H. (2007). *Het ontwerpen van een onderzoek* (4th ed.). The Hague, The Netherlands: Boom Lemma.

Vonk, G. (2002). Migration, social security and the law. In J. Berghman, K. Boos, R. Doeschot, A. Nagelkerke, G. Vonk (Eds.), *Social Security in Transition* (pp. 77-92). The Hague, The Netherlands: Kluwer Law International.

Vreemdelingencirculaire 2000 (A) [Aliens Act implementation guidelines 2000 (A)]. (2001, April 1). Retrieved January 29, 2015, from <http://wetten.overheid.nl/BWBR0012287/2016-02-01>

Vreemdelingencirculaire 2000 (B) [Aliens Act implementation guidelines 2000 (B)]. (2001, April 1). Retrieved January 29, 2015, from <http://wetten.overheid.nl/BWBR0012289/2016-01-01>

Vreemdelingenwet 2000 [Aliens Act 2000]. (2000, November 23). Retrieved January 15, 2015, from <http://wetten.overheid.nl/BWBR0011823/2015-07-20>

Waldron, J. (1989). Rights in conflict. *Ethics*, 99, 503-519.

Westerink, H. (2013). *“Vrijwillige terugkeer”-projecten botsen met strijd voor verblijfsrecht*. Retrieved from <http://www.doorbraak.eu/vrijwillige-terugkeer-projecten-botsen-met-strijd-voor-verblijfsrecht/>

Wet maatschappelijke ondersteuning 2015 [Social Support Act 2015]. (2014, July 19). Retrieved January 15, 2015, from <http://wetten.overheid.nl/BWBR0035362/>

Wetenschappelijk Onderzoek- en Documentatiecentrum. (2011). *Pardon? Evaluatie van de Regeling afwikkeling nalatenschap oude Vreemdelingenwet*. The Hague, the Netherlands: Author.

Wetenschappelijk Onderzoek- en Documentatiecentrum. (2014). *Evaluatie van de herziene asielprocedure*. The Hague, the Netherlands: Author.

White, A. (1999). *Refugees, asylum-seekers and human geography - some theoretical perspectives*. Retrieved from <https://www.jiscmail.ac.uk/cgi-bin/filearea.cgi?LMGT1=CRIT-GEOG-FORUM&a=get&f=/white.htm>

Wienen, J. (2015, April 30). Wij gemeenten zeggen nee. *De Volkskrant*. Retrieved from <http://www.volkskrant.nl/politiek/wij-gemeenten-zeggen-nee~a3990112/>

Wilcox, S. (2009). The open borders debate on immigration. *Philosophy Compass*, 4, 1–9.

Appendix A. Interview respondents and interview guides

Overview respondents interviews

Table A.1 Respondents semi-structured interviews

Person	Background respondent	Organization (location)	Date of interview
Jos Dute	Scientific expert (Health law)	Radboud University (Nijmegen)	5-11-2014
Paul Minderhoud	Scientific expert (Immigration law)	Radboud University (Nijmegen)	12-11-2014
Agnes Moyene-Jansen	Professional mental healthcare institution Medical expert	Reinier van Arkel-groep (Den Bosch)	27-01-2015
Willemijn Scheepens	Professional national government Medical expert	Medifirst (Huis ter Heide)	18-11-2014
Martien Wierdsma	Official municipality	Municipality Leeuwarden (Leeuwarden)	14-11-2014
Marijke Werkhoven	Professional NGO	Stek/de Halte (The Hague)	13-11-2014
Sandra Van Tweel	Professional NGO	Emergency shelter Nijmegen The Refugee Council (Nijmegen)	17-11-2014
Connie van den Broek	Professional NGO	Stichting Rotterdams Ongedocumenteerden Steunpunt (Rotterdam)	21-11-2014
Lilian van der Plaats	Professional NGO	Emergency shelter Den Bosch The Refugee Council (Den Bosch)	16-01-2015
Rieke Spierings	Professional NGO	Medisch Opvangproject Ongedocumenteerden (n.a.)	24-02-2015

Table A.2 Respondents structured interviews

Person consulted	Kind of respondent	Organization	Date of response(s)
Remco Terpstra	Official national government	Repatriation and Departure Service [DT&V]	19-11-2104
Pieter Postma	Official municipality	Landelijk Overleg Gemeentebesturen Opvang- en terugkeerbeleid [LOGO]	22-09-2014 17-12-2014
Petra Pannekoek	Medical expert	Equator Foundation	17-12-2014
Evert Bloemen	Medical expert	Pharos	24-12-2014 21-01-2015 20-02-2015
Unknown	Professional NGO	Harriet Tubman Huis Amsterdam Zuid-Oost	30-10-2014
Caroline Visser	Professional NGO	Interkerkelijk Platform Kerk en Vluchteling Wijchen en omgeving	25-10-2014
Margriet Bos	Professional NGO	Jeanette Noelhuis Amsterdam Zuid-Oost	29-10-2014
Geesje Werkman	Professional NGO	Kerk in Actie	24-09-2014
Rieke Spierings	Professional NGO Medical expert	Medisch Opvangproject Ongedocumenteerden	10-02-2015
Rabija Kalic	Professional NGO	Emergency shelter Arnhem The Refugee Council Oost-Nederland	30-10-2014
Dikkie van Gijssel	Professional NGO	Emergency shelter Zwolle Salvation Army	19-01-2014
Joke Koolhof	Professional NGO	NVA Amersfoort Platform voor (bijna) uitgeprocedeerde asielzoekers	27-10-2014
Diane Martens	Professional NGO	Stem in de Stad Haarlem	28-10-2014
Harry Westerink	Professional NGO	Stichting de Fabel van de Illegaal	3-11-2014 14-11-2014

Person consulted	Kind of respondent	Organization	Date of response(s)
Rian Ederveen	Professional NGO	Stichting Landelijk Ongedocumenteerden Steunpunt	7-10-2014 27-10-2014 16-12-2014 22-12-2014
Wiel van de Vorle	Professional NGO	Stichting Noodopvang Asielzoekers Venlo	10-11-2014
Marleen Kramer	Professional NGO	Vluchtelingen onder Dak Wageningen	30-10-2014
Mariët Mensink	Professional NGO	Wereldvrouwenhuis Mariam van Nijmegen	26-10-2014

Note. All respondents are consulted by e-mail

The interview guides

A. The 'general' interview guide

Topic 1. The position/stance of the organization/person in the JB-field

a. The organization/respondent (general information)

- reason for being
- points of departure
- orientation
- activities
- size
- financing

b. Perception of- and relation to other agents

- distribution tasks and responsibilities under alien policy
- perception of relationship with the other agents
- main points of agreement/discussion
- financial (in)dependency on other agents
- perception added value of the self, of other agents and of collaboration
- the degree of interaction/collaboration with other agents
- the perception/valuation of the interaction/collaboration with other agents
- the directing agent in collaboration
- shared objectives in collaboration
- perception of the position of the municipality in which the organization is located as opposed to other municipalities with respect to homeless aliens
- explanation and perception of the tensions between the national government/municipalities/NGOs
- perception of the value/legitimacy of municipals use of autonomy
- perception of the influence the different agents have on the situation of homeless aliens

Topic 2. The agent's view on relevant matters

- the effectiveness/legitimacy of alien policy

- the linkage between right of residence and the right to social support
- the claim homeless aliens have to social support
- the necessity/effectiveness of the application of the 'cooperate in realizing return' criteria and the way in which this criteria is applied as a access condition for social support provisions
- the effectiveness of assuming 'own responsibility'
- the functioning and causes of the situation of homeless aliens
- the reasons that municipalities/NGOs are confronted with aliens with serious medical problems
- the responsibility for the situation of homeless aliens
- the Pilot Local Collaboration
- the need/justification to provide more/less social support to (specific groups of) homeless aliens
- the need to reorganize the provision of social support to homeless aliens
- the way in which the provision of social support to homeless aliens should be reorganized
- the need to change (specific arrangements under) alien policy
- the way in which (specific arrangements under) alien policy should be changed

Topic 3. The provision of social support to homeless aliens

a. Determination eligibility/criteria on the basis of which a claim of a homeless alien to social support is accepted/denied

- legal status
- vulnerability
- health condition
- willingness to work on return
- prioritization between requests
- other criteria

b. Justification to (do not) provide social support to homeless aliens/to challenge alien policy

- the argument that the 'obligation to leave/return' or 'own responsibility' justifies denying homeless aliens access to social support
- the argument that 'local responsibilities', 'human being' or 'vulnerability' justifies the provision of social support to homeless aliens
- court decisions
- number/characteristics of homeless aliens
- other justifications

c. The way in which social support is provided to homeless aliens

- access/use conditions (e.g. the use of a 'cooperate' criterion/behavioural requirements)
- period of provision
- aims/objectives provisions
- means of provision
- forms of social support provided

Topic 4. The effects of 'external' fields

a. Interaction media

- use of the media
- importance/influence of the media

b. Interaction judiciary

- use of (recent) court decisions
- importance of (recent) court decisions
- interpretation recent court decisions (most notably the ECSR decision)
- expectations influence recent court decisions/response national government to recent court decisions

B. The juridical interview guide

Topic 1. Alien law/policy and homeless aliens

- content of alien law
- official distribution of tasks and responsibilities between agents under alien law
- the provision of social support under alien law
- the integration of the concept of 'vulnerability' into alien law
- the functioning, effectiveness and bottlenecks of the Article 64-procedure and BS-procedure
- possibilities to deviate from alien law/to 'legally' provide social support to homeless aliens
- the approach underlying/the logics and colour of alien law/policy
- the legitimacy and effectiveness of alien policy
- the effectiveness of assuming 'own responsibility'

Topic 2. International human rights law and homeless aliens

- the obligation the state has towards homeless aliens under international human rights law
- the provisions/legal guarantees to which homeless aliens (/their lawyers) appeal in court to enforce governmental social support
- the development of jurisprudence on social security for homeless aliens
- the importance and the assessment of the concept of 'vulnerable individuals'
- the extent to which homeless aliens belong to the category of vulnerable individuals
- the effects of court decisions on the social support act
- the legal position of homeless aliens under social security law
- position/importance of the ECHR as opposed to alien law
- position/importance of the ESCR as opposed to alien law
- interpretation of/judgment on/expectations prompted by the ECSR decision

Topic 3. Rights-conflicts

- balance between the state's right to exclude (on the basis of legal status) and the state's duty to include (on the basis of human rights/vulnerability)
- balance between municipalities' local responsibilities and their responsibility to act in accordance with alien law (the legitimacy of the social support provisions of municipalities to homeless aliens)
- balance between the ECSR-decision and alien law

C. The medical interview guide

Topic 1. The integration of medical considerations into alien policy

- the way in which medical advices are integrated into alien policy
- the degree to which it is expected from aliens with serious medical problems to be able to either work on return or prove that one is unable to do so
- the way in which is dealt with traumas and scars
- the way in which is dealt with the effects of medical problems on the ability to tell an asylum story well
- the way in which the IND takes into consideration medical advices in deciding on residence applications/the effects of medical advices on decisions of the IND
- the reason why municipalities/NGOs are confronted with aliens with serious medical problems
- the access homeless aliens have to medical care

- the adequacy/functioning/effectiveness of the Medical advice hearing and deciding and the BMA-advice/Article 64-procedure

Topic 2. Medical advice hearing and deciding

- function of the medical advice in the asylum procedure
- task definition Medifirst
- the content/scope/method of the medical advice
- common medical limitations found
- common ways to deal with the medical limitations found
- the effects the medical advice has on the asylum procedure/influence on decision IND
- opinion on the medical advice

Topic 3. Article 64/BMA advice

- function medical advice in the Article 64-procedure
- the content/scope/method of the medical advice
- the assessment of Article 64
- the definition of medical necessary care applied by the IND
- opinion on the medical advice

Example interview scheme

Table A.3 Interview scheme used in an interview with a professional of an NGO

Topic	Remarks	Cumulative time (in minutes)
Introduction		5
Word of thanks	Permission record	
Introduction research		
Structure interview	Organization, target group, the provision of social support, relation/position government	
NGO (organization)		10
Person/organization	Background, experience/reason for being, points of departure, objectives, activities	
Financial resources	Resources, conditions financing, Financial (in)dependency from the government, costs	
The way in which social support is provided		25
Requests	Number of requests, characteristics/problematic requestors	
Eligibility criteria	Legal status - vulnerability	
Prioritization	Number of request > supply	
Provisions	Forms of support, eligibility criteria per form?	
Access/use conditions	Behavioural requirements? Other? Ending support?	
Position/stance/relation organization - government		40
Alien policy	Opinion, effectiveness, legitimacy, approach national government, homeless aliens claim vs. Linkage principle	
Obligation to return/leave	Opinion, when viable option, perception own responsibility	
Situation homeless aliens	Causes, functioning, governmental vs. Own responsibility, medical problems	

Opinion justifications	Own- vs. Local responsibility vs. Human being/ vulnerability, court decisions, other	
Position municipality	Provisions, resistance national policy, arguments	
Relation municipality	Main points of agreement/discussion, financial dependency vs. collaboration	
Added value agents		
Collaboration	Degree/perception/valuation, directing agent, shared objectives, opinion pilot Local Cooperation	
Perception differential influence agents		
'External' capitals		45
Media	Use, importance, influence	
Judiciary/court decisions	Interpretation, importance, opinion responses, expectation response government	
Other considerations		
Improvements/changes		55
Provision social support to aliens	What aspects, for which homeless aliens, responsibility,	
Alien policy		
Conclusion		60
Additions/remarks		
Word of thanks		

Appendix B. Observations and the observation scheme

Overview observations

Table B.1 Observations conducted

Organiser(s)	Event	Participating agents	Location, date
Association of Dutch Municipalities [VNG]	Meeting Commission Asylum and Integration	Municipalities	The Hague 11-09-2014
Pharos	Meeting Steering group Lampion	National NGOs and medical organizations	Utrecht 17-09-2014
Association of Dutch Municipalities [VNG]	Consultation	VNG and College voor de Rechten van de Mens	The Hague 20-09-201
Ministry of Security and Justice	National Meeting Pilot Local Cooperation	National government Municipalities NGOs	Rotterdam 02-10-2014
Ministry of Security and Justice	General Consultation reception and asylum	National government (Permanent Committee of Security and Justice)	The Hague 20-11-2014
Association of Dutch Municipalities [VNG]	Meeting Commission Asylum and Integration	Municipalities	The Hague 27-11-2014
Association of Dutch Municipalities [VNG]	Consultation	VNG and the Dutch Red Cross	The Hague 02-12-2014
Association of Dutch Municipalities [VNG]	Consultation asylum-related issues	Municipalities	The Hague 08-12-2014
Soeterbeeck Program, Radboud University Nijmegen	Seminar bed-bath-bread discussion	Scientific experts Alien	Nijmegen 05-02-2015
Dutch Red Cross	Network meeting Supporting Undocumented Migrants	NGOs	Utrecht 10-04-2015
Pharos Association of Dutch Municipalities [VNG]	Thematic meeting	Municipalities NGOs	Utrecht 16-04-2015

The observation scheme

Table B.2 Observation scheme

Theme 1. Statements about the organization of the provision of social support to homeless aliens	
Statements about how it is organized/provided	
Critique on how it is organized/provided	
Statements about how it should be organized/provided	
Justifications given for either providing more/less social support- or providing social support in another way to homeless aliens	
Features theme 1	
Eligibility criteria	Period of provisions
Access/use conditions	Size of provisions
Financing	Responsibilities
Objective provisions	Justifications
Form of provisions
Construction of the situation of homeless aliens	
Theme 2. Statements about aliens' right to social support	
Statements about the importance of 'right of residence'/alien law	
Statements about the importance of 'vulnerability'/international human rights law	
Features theme 2	
The interpretation of alien law	
The interpretation of international human rights law	
The interpretation of court decisions	
.....	
Theme 3 Statements about the position/stance of agents in the JB-field	
Statements about other agents	
Statements about the interaction with other agents	
Statements about the strategy/attitude of agents	
Features theme 3	
Demands towards other agents (e.g. take responsibility)	
Critiques on the acting of other agents	
Way in which critiques/demands are voiced (e.g. in a diplomatic- or critical way)	
Agreement/struggle on how to act in relation to other agents	
Agreement/struggle on how to communicate about certain issues (e.g. in the media)	
Statements about the collaboration with other agents	
.....	
Theme 4 Main points of discussion and agreement	
Features theme 4	
.....	

Appendix C. Laws and regulations

In this Appendix some laws and regulations will be further explained. First, the Linkage Act, Article 64 of the Aliens Act 2000 and the 'No-Fault' or 'Buitenschuld'-procedure will be explained. Next, the conditions under which specific groups of aliens, respectively families with minor children, aliens who cooperate in organizing their return and aliens in special individual circumstances, can obtain reception of the national government will be explained.

The Linkage Act

The Linkage Act, which actually is an umbrella term for numerous amendments to various laws, came into force on 1 July 1998. In the Aliens Act 2000 the linkage principle, as the linkage between right of residence and social welfare entitlements has become known, is laid down in Article 10. The Linkage Act stipulates that irregular aliens and some groups of regular aliens have no right to social welfare provisions. Article 8 of the Aliens Act 2000 defines when an alien has regular residence. Whether an regular alien is entitled to social welfare provisions depends on the type of right of residence he has. Article 11 of the Aliens Act 2000 sets out the conditions under which an regular alien can claim entitlements to public goods or -services. In principle, aliens who (re)acquire a right of residence by lodging an objection- or an (further) appeal against the rejection of a residence application are not entitled to social welfare provisions. The same applies to aliens who (re)acquire a right of residence by submitting a repeated residence application (Linkage Act, Ministerie van Justitie, 2008).

Article 64

Article 64 of the Aliens Act 2000 states 'that repatriation must not take place as long as the state of health of the foreign national or of one of his family members means it would not be responsible to travel' (European Migration Network, 2010, 30; Aliens Act, Article 64). An alien needs to be under treatment in the Netherlands in order to be able to submit an Article 64-application.

In the assessment of an Article 64-application, the Immigration and Naturalization Service [IND] is given advice on the state of health of the alien in question by the Medical Advice Bureau (Bureau Medische Advisering [BMA]). In the framework of this medical advice, the BMA assesses whether the medical treatment which the claimant is receiving is also available in the country of origin. When the necessary medical treatment is not available in the country of origin, the BMA assesses whether discontinuation of this medical treatment will result in a medical emergency within three months after the claimant's return to the country of origin. One speaks of a medical emergency when:

the person involved is suffering from a disorder with regard to which it has been decided, based on current medical and scientific opinion, that the lack of treatment in the short term [that is, within three months] will lead to death, invalidity of another form of serious mental or physical damage'. (Vreemdelingen­circulaire 2000 (A), A3/7, Ad2a; European Migration Network, 2010, 29)

In a separate assessment, the BMA also determines whether and under what conditions the claimant, in view of his state of health, is able to travel (IND, 2010b).

Article 64, that is 'postponement of departure on medical grounds' on the grounds of Article 64 of the Aliens Act, hence can be granted on two grounds. On the one hand, Article 64 is granted if:

discontinuation of the medical treatment will lead to a medical emergency [within three months after return to the country of origin] and medical treatment of the medical complaints in question [that is, the necessary medical treatment] cannot take place in the country of origin. (European Migration Network, 2010, 29)

On the other hand, Article 64 is granted, regardless of whether the treatment of the medical complaints in question can take place in the country of origin, if the alien is not able, due to his state of health, to travel (Vreemdelingen­circulaire 2000 (A), A3/7, par. 1-2).

Aliens who have been granted Article 64 are entitled to reception of the Central Agency for the Reception of Asylum Seekers. The obligation to leave and the authority to repatriate then are suspended and the alien is granted lawful residence during the period for which Article 64 is granted (Vreemdelingen­circulaire 2000 (A), A3/7.1-7.2). Pregnant women are always granted Article 64 for the period from six weeks before until six weeks after the expected date of delivery. Aliens who are undergoing a treatment for tuberculosis are also always granted Article 64 for as long as the treatment takes.

Some aliens awaiting a decision on an Article 64-application are, on the basis of the 'Spekman-procedure' (Kamerstukken II, 2008/09, 30846, no. 4), entitled to reception of the Central Agency for the Reception of Asylum Seekers. Only rejected asylum seekers and asylum seekers awaiting a decision on (further) appeal can request for reception on this ground. To request for reception on this ground, those aliens need to meet several requirements. For example, they have to submit an up to date and complete medical file prior to their request (Aanhangsel HAN TK, 2013/14, no. 552846; Kamerstukken II, 2011/12, 30846, no. 18; Vreemdelingen­circulaire (A), A3/7.1).

The 'No-Fault'-procedure

In some cases, an alien is (yet) unable to return to the country of origin due to 'technical-administrative reasons'. In most cases, those aliens do not have valid travel documents and are

unable to obtain them. Aliens who are not in the possession of valid travel documents, need to ask for a Laissez-Passer by the embassy of their country of origin. A Laissez-Passer functions as a replacement travel document. However, several countries refuse to provide travel documents. Those countries do not recognize aliens originating from their country as nationals.

Those aliens who are unable to leave the Netherlands due to 'technical-administrative reasons' can apply for a 'No-Fault' or 'Buitenschuld' permit. In the application, the alien has to prove he meets the 'no fault criterion' or in other words, that he is unable to leave the Netherlands through no fault of his own. The alien needs to provide objective verifiable evidence proving that the authorities of the country of origin will not cooperate in his repatriation. The alien, among others, has to provide evidence demonstrating he has tried to arrange his departure both independently and with the help of the International Organization for Migration and the Repatriation and Departure Service. Important in this respect, that the Repatriation and Departure Service has no doubts about the details the alien has provided regarding his identity and nationality. If aliens get granted a 'No-Fault' permit, they obtain a temporary right of residence (European Migration Network, 2010; Vreemdelingen circulaire 2000 (B), B8/4).

The reception of families with minor children

Since September 2011, families with minor children are entitled to reception in 'Family Reception Centers' (Gezinsopvanglocaties [GOLs]). A family with minor children needs to meet three criteria in order to be eligible for reception in a GOL. First, the family should not, or no longer, be entitled to provisions under the Rva. This means that both irregular- and regular residing families can be entitled to reception in a GOL (Aanhangsel HAN TK, 2013/14, no. 552846; Ministerie van Veiligheid en Justitie, Directoraat-Generaal Vreemdelingen zaken, personal communication, January 8, 2015).

Second, the reception needs to be necessary to prevent that the minor alien ends up in an humanitarian emergency situation. The Repatriation and Departure Service assesses whether or not a humanitarian emergency situation will arise. A decisive factor in this assessment is whether the minor alien ends up on the streets if the national government does not provide him reception. While the reception itself is aimed at the family, the assessment of this aspect is primarily aimed at the situation of the minor alien (Aanhangsel HAN TK, 2013/14, no. 552846; Ministerie van Veiligheid en Justitie, Directoraat-Generaal Vreemdelingen zaken, personal communication, January 8, 2015).

Third, families need to be willing to give up part of their liberty. When placed in a GOL, a family is imposed a freedom restricting measure (under Article 56 of the Aliens Act) by the Repatriation and Departure Service. Consequently, the family may not leave the municipality in which the GOL is located. Moreover, those families are imposed a reporting obligation (under Article 54 of the Aliens Act) by the Aliens Police (Aanhangsel HAN TK, 2013/14, no. 552846; Ministerie van

Veiligheid en Justitie, Directoraat-Generaal Vreemdelingenzaken, personal communication, January 8, 2015).

The reception of aliens who cooperate in organizing their return

Aliens who cooperate in organizing their return are entitled to reception for a maximum of twelve weeks in the Freedom-Restricting-Location (VBL) in Ter Apel. Both aliens with an asylum history, that is rejected asylum seekers, and aliens without an asylum history are entitled to reception in the VBL. An alien needs to meet three criteria in order to be eligible for reception in the VBL. First, the Repatriation and Departure Service needs to believe that the alien actually is able to realize return within twelve weeks. Second, the alien involved has to be willing to 'actively and verifiably' cooperate in organizing his return. Last, the alien must be willing to give up part of his liberty. Like families placed in GOLs, aliens placed in the VBL are imposed a reporting obligation by the Aliens Police and a freedom restricting measure by the Repatriation and Departure Service (Dienst Terugkeer en Vertrek, n.d.b).

The reception of aliens in special individual circumstances

Aliens whose special individual circumstances require reception are entitled to reception of the Central Agency for the Reception of Asylum Seekers. To prove eligibility an alien must demonstrate the presence of those special circumstances. This, at least, is the case when an alien is in a medical emergency. One speaks of a medical emergency when:

the person involved is suffering from a disorder with regard to which it has been decided, based on current medical and scientific opinion, that the lack of treatment in the short term [that is within three months] will lead to death, invalidity of another form of serious mental or physical damage'. (Vreemdelingencirculaire 2000 (A), A3/7, Ad2a; European Migration Network, 2010, 29)

The Central Agency for the Reception of Asylum Seekers is obliged to provide reception in the situation of a medical emergency, on the condition that the alien in question cannot call on essential medical care to prevent the occurrence of the consequences of the lack of treatment. That is, on the condition that essential medical care cannot be provided outside the reception centre (RvS, 22-11-2013, ECLI:NL:RVS:2013:2099; RvS, 10-01-2014, ECLI:NL:RVS:2014:86).

Appendix D. Data on the facilitation of emergency shelter by municipalities

In this Appendix, first the data of the research of Regioplan (2009), the Wetenschappelijk- Onderzoek en Documentatiecentrum ([WODC], 2011) and the Association of Dutch Municipalities ([VNG], 2014) on the facilitation of emergency shelter by municipalities will be presented. Next, the specificities and the limits of the data of those studies are discussed. Last, some data on the facilitation of emergency shelter by centre-municipalities and some non-centre municipalities will be presented.

Presenting the data of the research of Regioplan, the WODC and the VNG

Table D.1 Data on the facilitation of emergency shelter for rejected asylum seekers by municipalities

	WODC ¹				Regioplan ²	VNG ³
	May 2007	January 2010	January 2011		May 2009	July 2014
	Percentages municipalities with/without an emergency shelter					
<i>With</i>	30	14	9		22	30
<i>Without</i>	67	83	87		78	47
<i>Closed in the past⁴</i>	N/A	N/A	N/A		17	16
<i>Unknown</i>	4	4	4		0	23
	Percentages municipalities with an emergency shelter broken down by municipality size					
<i><50.000 inhabitants</i>	27	9	5		17	24
<i>50-100.000 inhabitants</i>	46	35	19		44	38
<i>>100.000 inhabitants</i>	41	41	29		74	69
	Percentages municipalities with an emergency shelter broken down on the basis of the presence/absence of an AZC⁵					
<i>With AZC</i>	63	34	26		82	55
<i>Without AZC</i>	24	10	5		N/A	27
	Size emergency shelter (in persons) in municipalities with an emergency shelter					

<i>Total</i>	1187	310	129		750	668-694 ⁶⁹
<i>Average size</i>	4.6	1.2	0.5		6.8	10.0-10.4
<i>Maximum size</i>	120	40	32		115	150
	WODC				Regioplan	VNG
	May 2007	January 2010	January 2011		May 2009	July 2014
	Percentages municipalities facilitating emergency shelter broken down by categories of provisions size					
<i><5 persons</i>	48	65	54		38	41
<i>5-10 persons</i>					22	22
<i>10-20 persons</i>	17	0	0		19	3
<i>20-30 persons</i>	6	6	0			8
<i>>30 persons</i>	12	6	0		7	8
<i>Unknown</i>	17	23	46		14	18
	Average size emergency shelter (in persons) in municipalities broken down by municipality size					
<i><50.000 inhabitants</i>	3.1	0.5	0.2		Table D.2	Table D.2
<i>50-100.000 inhabitants</i>	4.6	1.8	1.0			
<i>100.000 inhabitants</i>	13.4	9.8	3.9			
	Average size emergency shelter (in persons) in municipalities with an emergency shelter broken down on the basis of the presence/absence of an AZC					
<i>With AZC</i>	11.8	3.2	1.4		Table D.2	Table D.2
<i>Without AZC</i>	3.5	0.9	0.3			

*Note*¹. Adopted from *Pardon? Evaluatie van de Regeling afwikkeling nalatenschap oude Vreemdelingenwet* (143-157) by Wetenschappelijk Onderzoek- en Documentatiecentrum [WODC], 2011, The Hague, the Netherlands: Author.

*Note*². Adopted from *Omvang gemeentelijke noodopvang aan afgewezen asielzoekers* (9-15) by Regioplan, 2009, Amsterdam, the Netherlands: Author.

*Note*³. This information is based on a dataset of the Dutch Association of municipalities [VNG] which was established on the basis of a survey conducted among municipalities in 2014.

*Note*⁴. 'Closed in the past' means that those municipalities do no longer facilitate emergency shelter, but did so in the past.

*Note*⁵. AZC means asylum seekers' centre.

⁶⁹ This number is the sum of the size indicated by 67 municipalities. Five of those municipalities provided an estimate, in toe form of a range, of the number of rejected asylum seekers provided shelter within their municipality. For that reason, two numbers are presented.

Table D.2 The size of facilitated emergency shelter in 2014 broken down by municipality size and the presence/absence of an AZC

Size provisions (in persons)	Percentages municipalities facilitating emergency shelter broken down by presence/absence AZC		Percentages municipalities facilitating emergency shelter broken down by municipality size (in thousands inhabitants)			
	<i>With AZC¹</i>	<i>Without AZC</i>	<i><25</i>	<i>25-50</i>	<i>50-100</i>	<i>>100</i>
<i>0</i>	30,8	55,0	66,7	50,6	38,24	19,2
<i><5</i>	19,2	19,6	19,61	22,3	20,59	7,7
<i><5-10</i>	11,5	6,4	3,9	5,9	11,8	15,4
<i><10-20</i>	3,85	1,8	0	1,2	5,9	7,7
<i>20-30</i>	15,38	0,5	0	1,2	2,9	11,5
<i>>30</i>	15,38	0,9	0	0	5,9	15,4
<i>Unkown</i>	3,85	15,91	8,8	18,8	14,7	23,1
<i>Total</i>	100 (n=27)	100 (n=221)	100 (n=102)	100 (n=85)	100 (n=35)	100 (n=26)

Note¹ . AZC means asylum seekers' centre.

Note. This information is based on a dataset of the Dutch Association of municipalities [VNG] which was established on the basis of a survey conducted among municipalities in 2014.

The specificities and the limits of the data of Regioplan, the WODC and the VNG

It should be noted that the results from Regioplan (2009), the Wetenschappelijk Onderzoek- en Documentatiecentrum ([WODC] , 2011) and the Association of Dutch Municipalities ([VNG], 2014), are not directly comparable. The latter, and strongly related the big differences between the data of the VNG on the one hand, and the data of the WODC and Regioplan on the other hand, can be explained by both the different questions posed in those studies and the selectivity of the samples used.

First, the studies use different questions with respect to the facilitation of emergency shelter to rejected asylum seekers by municipalities and the size of those provisions. Those questions are juxtaposed in Table D.3. In the studies of Regioplan (2009) and the WODC (2011) municipalities were only asked about (the size of) the provisions in which they were (directly or indirectly) involved. In the study of the VNG municipalities were also asked about (the size of) the provisions in which they were not involved. That is, provisions of independent third parties.

Table D.3 The different questions posed with respect to the facilitation of emergency shelter and its size

	Question posed on the facilitation of emergency shelter	Question posed on the size of the emergency shelter facilitated
Regioplan¹	Is there still emergency shelter for rejected asylum seekers present in your municipality, in which the municipality is directly or indirectly involved?	For how many rejected asylumseekers your municipality facilitated emergency shelter on 31 May 2009?
WODC²	Did your municipality provide or finance emergency shelter for rejected asylum seekers on 25 May 2007, 1 January 2010, and/or 1 January 2011?	How large was the group rejected asylum seekers who received emergency shelter at that moment?
VNG³	Do rejected asylum seekers receive shelter in your municipality (from the municipality itself or via third parties)?	How many rejected asylum seekers did receive shelter in your municipality in 2014?

Note¹ Adopted from *Omvang gemeentelijke noodopvang aan afgewezen asielzoekers* (9/13) by Regioplan, 2009, Amsterdam, the Netherlands: Author.

Note² Adopted from *Pardon? Evaluatie van de Regeling afwikkeling nalatenschap oude Vreemdelingenwet* (187/188) by Wetenschappelijk Onderzoek- en Documentatiecentrum [WODC], 2011, The Hague, the Netherlands: Author

Note³ This information is based on a dataset of the Dutch Association of municipalities [VNG] which was established on the basis of a survey conducted among municipalities in 2014.

Second, the studies use of different research samples. Those samples differ in their representativeness of the responding municipalities. In Table D.4 the representativeness of municipalities in terms of population size in the three studies is presented. Table D.4 shows that the samples of the studies of Regioplan (2009) and the WODC (2011) are representative of the target population. In the study of the VNG medium-sizes and large municipalities are overrepresented.

Table D.4 The representativeness of the samples

	Distribution response (in percentages) broken down by municipality size (in thousands inhabitants)			
Municipality size	Regioplan¹	WODC²	VNG³	Population
<50	82,0	83,2	75,4	83
50-100	10,5	10,2	14,1	10
>100	7,5	6,6	10,5	7
Total	100 (n=306)	100 (n=256)	100 (n=248)	100 (n=393)

Note¹ Adopted from *Omvang gemeentelijke noodopvang aan afgewezen asielzoekers* (7) by Regioplan, 2009, Amsterdam, the Netherlands: Author.

Note² Adopted from *Pardon? Evaluatie van de Regeling afwikkeling nalatenschap oude Vreemdelingenwet* (145) by Wetenschappelijk Onderzoek- en Documentatiecentrum [WODC], 2011, The Hague, the Netherlands: Author

Note³ This information is based on a dataset of the Dutch Association of municipalities [VNG] which was established on the basis of a survey conducted among municipalities in 2014.

Based on the above, one could conclude that the data of the VNG on the percentages of municipalities which do facilitate emergency shelter for rejected asylum seekers and the size of the provision they facilitate are an overestimate of the actual situation. Since the problem of homeless aliens is bigger in (medium-sized and) large municipalities, which are overrepresented in the sample, the percentages of municipalities facilitating emergency shelter and the size of the shelter facilitated are overestimates. That those numbers are overestimates is also partly the result of the question posed in the VNG-survey. In contrast to the studies of Regioplan (2009) and the WODC (2011), the question posed in the VNG-survey does include social support provided by third parties (without involvement of the municipality) within the municipality.

However, this conclusion needs to be revised, because one could also argue that the data of Regioplan (2009) and the WODC (2011) in general and the data of the VNG (2014) on the size of the emergency shelter facilitated in particular are underestimates of the actual situation. On the one hand, one could argue that the VNG-data on the size of emergency shelter facilitated is an underestimate. Three of the four so-called 'G4-municipalities', that are the biggest municipalities of the Netherlands, are either not represented in the data of the VNG or did not indicate the size of the emergency shelter they facilitated for rejected asylum seekers. In those municipalities the number of homeless aliens and accordingly also the size of the emergency shelter facilitated is the biggest. To illustrate, the municipality of Utrecht, the only G4-municipality which did indicate the size of the emergency shelter they facilitated, indicated they facilitate emergency shelter for 150 persons. Hence, if the data on the size of the emergency shelter facilitated by the three other G4-municipalities was included, assuming that they facilitate emergency shelter for similar numbers as the municipality of Utrecht, the total- and the average size of the emergency shelter facilitated by municipalities in the VNG-data would have been much bigger.

On the other hand, one could argue that the data of the WODC (2011) and Regioplan (2009) are underestimates of the actual situation. The WODC (2011, 148) itself already indicated in its study that their data from 2010 and 2011 probably is an underestimate. After reaching agreement on the Management Agreement in 2007, various municipalities started to name the emergency shelter they continued to facilitate differently and started to 'obscure' the amount of financial resources they did set aside for those provisions by financing them from different parts of their budget. The latter is also related to the extent to which municipalities communicate openly about the provisions they facilitate for homeless aliens. Motivated by political- and public interests, some municipalities prefer to not explicitly name those provisions (Respondents; WODC, 2011). Hence, it is not always clear whether and for how many people municipalities do facilitate emergency shelter.

Some data on the facilitation of emergency shelter by centre-municipalities and some non-centre municipalities

Table D.5 Data on municipalities facilitating emergency shelter for a substantial number of rejected asylum seekers

	Facilitation emergency shelter in 2014	Size emergency shelter in persons in 2014	Costs (if not stated otherwise) ⁷⁰ in euros per year
Centre-municipalities ¹			
Alkmaar	-	-	-
Almelo	Yes	<5	-
Almere	Not anymore	1	15.000
Amersfoort	Yes	5-10	12.000-20.000
Amsterdam	Yes	-	-
Apeldoorn	Yes	-	-
Arnhem	Yes	>30	200.000
Assen	Never	-	-
Bergen op Zoom	Yes	<5	Unknown
Breda	Yes	0	-
Delft	Yes	5-10	-
Doetinchem	Not anymore	-	-
Dordrecht	-	3	-
Eindhoven	Yes	>30	215.000
Emmen	Yes	10-20	28.000
Enschede	Not anymore	-	85.000
Gouda	Yes	0	-
Groningen	Yes	>30	345.000
Haarlem	Yes	5-10	50.000
Heerlen	Yes	20-30	30.000
's-Hertogenbosch	Yes	20-30	100.000
Hilversum	-	5-10	-
Hoorn	Not anymore		Unknown
Leeuwarden	Yes	>30	-
Leiden	Yes		282.000
Maastricht	Yes	5-10	> 100.000
Nijmegen	Yes	>30	9950 (per person)
Purmerend	Never	3	-

⁷⁰ Not all respondents did indicate the costs in the same way. If not stated otherwise, the number presented concerns the costs in euro's per year.

	Facilitation emergency shelter in 2014	Size emergency shelter in persons in 2014	Costs (if not stated otherwise) in euros per year
Purmerend	Never	3	-
Rotterdam	Yes	-	750.000
Tilburg	Not anymore	-	-
Utrecht	Yes	150	1.880.000
Venlo	Yes	-	-
Vlaardingen	Yes	0-5	-
Zaanstad	Never	<5	-
Zwolle	Yes	20-30	150.000
Non-centre municipalities²			
Borne	Yes	5-10	0
Haren	Yes	5-10	-
Hellevoetsluis	Yes	5-10	-
Hengelo	Yes	5-10	-
Leek	Yes	5-10	11.000
Lelystad	Yes	5-10	-
Súdwestfyslan	Yes	10-20	-
Wageningen	Yes	20-30	50.000

Note¹. Centre-municipalities are municipalities which have been delegated the responsibility for providing social support provisions to the region under the Social Support Act. The importance of those municipalities will become clear in the discussion on recent court discussions. The seven centre-municipalities (Den Haag, Den Helder, Deventer, Ede , Helmond, Spijkenisse and Vlissingen) which did not respond to the survey are not included.

Note². All non-centre municipalities which facilitate social support for more than five persons are included.

Appendix E. Data on the provision of social support by NGOs

Table E.1 Overview NGOs providing social support and/or shelter to homeless aliens

Location NGO	Name NGO	Number of beds available
Almelo	de Wonne Almelo	3
Amersfoort	Stichting Noodfonds Vluchtelingen	
Amsterdam	Amsterdams Solidariteits Komitee Vluchtelingen / Steunpunt vluchtelingen (ASKV/SV)	25
	- Medisch Opvangproject Ongedocumenteerden	30
Amsterdam	Harriet Tubmanhuis	9 (+kids)
Amsterdam	Jeanette Noel-Huis	12
Amsterdam	Steungroep Vrouwen zonder Verblijfsvergunning (SVZV)	
Arnhem	Noodopvang Arnhem	20
Arnhem	VluchtelingenPlatform Arnhem	
Breda	Steunpunt Ongedocumenteerden Breda en Omstreken (STOB)	
Den Haag	de Halte	19
Den Haag	Haags Noodfonds Vluchtelingen	
Den Haag	Participating Refugees in Multicultural Europe (PRIME)	
Didam	Stichting toekomst voor vluchtelingen in nood	
Drachten	Interkerkelijke Werkgroep AZC Drachten	20
Eindhoven	Vluchtelingen in de Knel	50
Emmen	Stichting Op Stee (SOS)	15
Enschede	Bondgenootschap Vluchtelingen Raad van kerken	
Groningen	Internationaal Netwerk van Lokale initiatieven ten behoeve van Asielzoekers (INLIA)	
Groningen	Werkgroep Vluchtelingen Vrij	
Haarlem	Stem in de Stad, afdeling Asielzoekers	
Heerlen	Stichting Vlot	6
Helmond	Vluchteling als Naaste (VaN)	20
Hertme	Noodopvang Dakloze Asielzoekers (NDA)	20
Leiden	Fabel van de Illegaal	
Leiden	Stichting uitgeprocedeerde Vluchtelingen en andere Vreemdelingen (STUV)	30
Nijmegen	Wereldvrouwenhuis Mariam van Nijmegen	7
Nijmegen	Geef Asielzoekers Toevlucht (GAST)	25
Nijmegen	Project Noodopvang Nijmegen	A few
Papendrecht	Stichting Noodopvang Papendrecht (SNP)	2 families
Roermond	Stichting Noodhulp Vluchtelingen	
Rotterdam	Rotterdams Ongedocumenteerden Steunpunt (ROS)	13
Rotterdam	Pauluskerk/Omzo	40
Rotterdam	Stichting Landelijk Ongedocumenteerden Steunpunt	

Location NGO	Name NGO	Number of beds available
Sittard	Stichting Noodopvang Dakloze Vreemdelingen Sittard-Geleen-Born	
Utrecht	STIL (Stichting Lauw-Recht)	A few
Utrecht	Fanga Musow	5 (+ kids)
Utrecht	Huize Agnes	8 (+ kids)
Utrecht	Stichting Dienstverlening aan Buitenlanders	
Utrecht	Stichting Noodopvang Dakloze Vreemdelingen Utrecht (SNDVU)	110
Utrecht	Stichting Seguro	12
Venlo	Stichting Noodopvang Asielzoekers Venlo	A few
Vlaardingen	Stichting Uitvlucht	2 families
Wageningen	Vluchtelingen onder Dak (VoD)	
Wageningen	Vluchtelingenorganisatie Mai Mi Bath	
Zaandam	Stichting Noodopvang Asielzoekers Zaanstreek	A few
Zwolle	Dakloze Asielzoekers Tijdelijke Opvang (Dato)	20

Appendix F. Categories of homeless aliens

In this appendix, it will briefly be explained why the categories of homeless aliens, discerned in 5.2.3, actually become (and remain) homeless. This discussion, besides the sources mentioned, is also based on information provided by respondents.

Category 1. Asylum seekers in the appeal stage (Regular Asylum Procedure) or further appeal stage (Regular- and Extended Asylum Procedure) of their first asylum application who have not been granted a provisional ruling. A condition is that the hearing of the (further) appeal takes longer than 28 days (the period of departure).

In the Regular Asylum Procedure, appeal does not have suspensive effects. Asylum seekers lodging appeal against a negative decision in the Regular Asylum Procedure therefore are not authorized to await the decision on appeal in the Netherlands. After the rejection of their first asylum application, those asylum seekers remain entitled to reception during the 'period of departure' of 28 days. In the period July 2012 until December 2013, the courts decided within four weeks upon two thirds of the appeal cases processed under the Regular Asylum Procedure (Wetenschappelijk Onderzoek- en Documentatiecentrum [WODC], 2014, 55/137). Hence, two thirds of the appeals are dealt with within the 'period of departure'.

In the Extended Asylum Procedure, appeal does have suspensive effects. Asylum seekers lodging appeal against a negative decision in the Extended Asylum Procedure therefore are authorized to await the decision on appeal in the Netherlands. Consequently, those asylum seekers reserve the right to reception during the appeal proceedings. Since further appeal does not have suspensive effects, those asylum seekers remain entitled to reception until 28 days (the 'period of departure') after the rejection of the appeal.

To prevent removal from a reception facility, an asylum seeker who is not authorized to await a decision on (further) appeal in the Netherlands, may request the court for a provisional ruling. A court, under Article 8:81, paragraph 1 of the General Administrative Law Act (Algemene wet bestuursrecht), can issue a provisional ruling if 'this is urgently required in view of the interests involved'. If a provisional ruling is granted, the obligation to leave and the authority to repatriate are suspended. Hence, a provisional ruling allows the asylum seeker in question to await the decision on (further) appeal in the Netherlands. This individual has regular residence and remains entitled to reception of the national government until 28 days (the 'period of departure') after the rejection of the (further) appeal.

In practice, however, judges in most cases reject requests for a provisional ruling. Those requests are mostly rejected on the ground that there is no concrete day known, prior to the day on which the decision about the (further) appeal is taken, on which the person is forcibly repatriated. The judge is of the opinion that the ending of reception prior to the decision on (higher) appeal, in itself, is not an 'urgent interest' (WODC, 2014)

Category 2. Asylum seekers who have submitted a repeated asylum application. A condition is that the application not processed under the Extended Asylum Procedure.

Asylum seekers who submit a repeated asylum application are, in principle, not entitled to reception. Those people only acquire entitlement to reception if their case is referred to the Extended Asylum Procedure. In the year 2012, 2283 repeated asylum application were processed under the Regular Asylum Procedure. Of these, 45 percent was rejected, 24 percent was granted and 31 percent was referred to the Extended Asylum Procedure (WODC, 2014, 60).

In practice, a repeated asylum application will only be referred to the Extended Asylum Procedure if the asylum seeker demonstrates there are 'new facts and/or circumstances' which were not known or could not reasonably have been known at the moment of the previous application. A repeated asylum application in which there is not provided evidence of new facts and/or circumstances can be dismissed (under Article 4, paragraph 6 of the General Administrative Law Act), without further examination, solely with reference to the rejection of the previous application.

Category 3. Asylum seekers who have started legal proceedings before the European Court of Human Rights and who have not been granted a provisional ruling.

Asylum seekers who have exhausted all domestic legal remedies can bring proceedings before the European Court of Human Rights. Similar to asylum seekers who have lodged a (further) appeal against the rejection of their first asylum request, those people only are entitled to reception if the European Court of Human Rights grants them an 'interim measure', that is provisional ruling. The court only grants an interim measure if the Dutch government actually applies the decision on return. That is, if the Dutch government actually begins the process of removal. However, in most cases the national government does not begin the process of removal while the proceeding before the European Court of Human Rights is still underway. Consequently, during the proceedings, which in some cases can take three to four years, those asylum seekers remain deprived from reception.

Category 4. Aliens who have submitted a residence application on regular grounds.

Aliens who are awaiting a (first) decision on a residence application on regular grounds have regular stay, but are not entitled to reception. Moreover, appeal and further appeal against a rejection of a residence application on regular grounds do not have suspensive effects. Hence, during the (further) appeal stage, those aliens have irregular residence. If those aliens request the court for a provisional ruling, and the court decides to grant it, they reacquire regular residence. Even then, however, those aliens are not entitled to reception.

Regioplan (2009, 17-18) argues that this category of homeless aliens mainly consists of asylum seekers who submit an application on regular grounds after their asylum application has been rejected. There are no figures available on the number of residence applications submitted on regular grounds (WODC, 2014, 60).

Category 5. Aliens who are having serious medical problems and who are not entitled to reception from the Central Agency for the Reception of Asylum Seekers under the ‘Asylum Seekers and Other Categories of Aliens (Provisions) Regulations’, Article 64-procedure or the Spekman-procedure.

Aliens having serious medical problems are entitled to reception if there arises a medical emergency situation or if they are granted Article 64. In some cases, aliens awaiting a decision on an Article 64-application are also entitled to reception (see Appendix C for the details of those regulations).

In practice, it is difficult for aliens having serious medical problems to acquire an entitlement to reception under those regulations. On the one hand, the medical conditions from which such an alien suffers are often not considered to be not sufficiently serious to establish the existence of a medical emergency situation. On the other hand, many of those aliens are unable to meet the requirements of the Article 64- or Spekman-procedure (in 6.3.3 the difficulties and struggle over the assessment of Article 64 are further discussed).

For example, in order to be able to submit an Article 64-application, the alien in question already needs to be under treatment for his medical problems in the Netherlands. However, mental health care is difficult to obtain for (homeless) aliens. Mental healthcare institutions are reluctant to treat aliens with serious medical problems who are not sheltered or otherwise have a permanent place of residence. The latter is problematic, because it contributes to a situation in which homeless aliens with serious medical problems are entangled in a vicious cycle. That is mental healthcare institutions refuse to provide care to those aliens, because they do not have a stable living environment, which in turn, is the result of their residence status not providing them entitlement to governmental social support. Consequently, although their state of health may give those aliens a

right to a residence status under Article 64, they cannot submit an application because they are not in treatment.

Category 6. Aliens do actively and verifiably cooperate in organizing return, but are not (longer) entitled to support in the AZC or the VBL.

After their period of departure has expired, aliens who cooperate in organizing their return are entitled to reception for, in principle, a maximum of twelve weeks in the Freedom-Restricting-Location (VBL) in Ter Apel. In those twelve weeks those aliens have to arrange travel documents. In practice this is not always possible. Although the Repatriation and Departure Service may choose to extend the period of twelve weeks, there is no guarantee that the reception of aliens cooperating in their return is continued after three months.

The above has two potential adverse effects. On the one hand, it can result in a situation in which aliens who are willing to and who *are able* to return do have insufficient time to arrange travel documents. On the other hand, aliens who cooperate in organizing return, but yet are unable to realize return due to technical-administrative reasons face the risk to nevertheless end up on the streets. Those aliens possibly are eligible for a 'No-Fault' or 'Buitenschuld' permit (see Appendix C for details) which grants them a temporary right of residence. An additional problem for those aliens is that the 'No-Fault'-procedure often takes long. Consequently, those aliens risk living on the streets for a long time through no fault of their own.

Appendix G. Details jurisprudence

In this Appendix, first the conditions under which homeless aliens are eligible for social support under the Social Support Act (Wet maatschappelijke ondersteuning 2014 [Wmo]) are discussed. Next, the recent court decisions, summarized in 5.3.4, will be explained in detail.

Conditions under which homeless aliens are eligible for social support under the Wmo

In some cases, homeless aliens can obtain social support under the Wmo by invoking Article 8 of the ECHR. In this section, the conditions under which an homeless aliens is eligible for social support under the Wmo will be explained. This explanation is based on various court decisions (CRvB, 29-06-2011, ECLI:NL:CRVB:2011:BR1061; CRvB, 20-06-2012, ECLI:NL:CRVB:2012:BW8957; CRvB, 06-02-2013, ECLI:NL:CRVB:2013:BZ0917; CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995).

Condition 1. the alien involved demonstrates he belongs to the category of vulnerable persons who under Article 8 of the ECHR have in particular right on protection of their private- and family life

Under international human rights law, vulnerable persons and groups have a particular need for protection. states consequently have a special obligation to protect their human rights. An homeless alien belongs to the category of vulnerable persons if 'it is determined, on the basis of an objective medical standard, that the psychical and mental health of the alien is substantially threatened when he remains deprived from social support' (CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995, par 5.4, freely translated). An alien has to provide first evidence that he belongs to the category of vulnerable persons (CRvB, 29-06-2011, ECLI:NL:CRVB:2011:BR1061).

Condition 2. the state has a positive obligation to provide social support to the alien involved.

Whether the state has a positive obligation cannot be determined beforehand. The existence of this obligation depends on the factual circumstances of the individual case. Important in this respect is the 'very core' of human rights. Although states have a margin of appreciation in interfering with human rights, infringement may never result in undermining the very core of those rights. The European Court for Human Rights indicates human dignity and human freedom to be the core of

human rights (ECtHR, 29-04-2012, case 2346/02, par. 65.).

The Central Appeals Tribunal (CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995, par 5.1, freely translated) has said the following about the very core of human rights in relation to Article 8 of the European Convention on Human Rights:

In the event of circumstances that have the effect that the normal development of the private- and family life becomes impossible (ECtHR 3 May 2001, Domenech Pardo versus Spain, no. 55996/00) there may be such an interference with the 'very essence' of Article 8 of the ECHR that a positive obligation falls on the state to bring the current situation in line with the guarantee included in Article 8 of the ECHR.

If the state falls under a positive obligation, the state must take measures to guarantee the protection of the right to private- and family life. In the case of homeless aliens, this means that the state should provide adequate social support to the alien.

Condition 3. there is neither a provision under any other law nor a 'factual provision' available pursuant to which social support can be provided.

Municipalities can deny an homeless aliens access to social support under the Wmo, if there is a provision under any other law or a 'factual provision' available of which the alien can make use. A precondition is that this social support provision is adequate with respect to the specific needs and conditions of the individual concerned. This is the case if staying in this provision does not result in an untenable situation which has severe implications for the psychical and mental health of the alien in question (CRvB, 19-04-2010, ECLI:NL:CRVB:2010:BM1992, par 4.5, 4.6). If the provision under any other law or the 'factual provision' is not adequate, the municipality should provide social support under the Wmo.

Whether there are provisions of which an alien can make use, depends on the factors on which the individual's request for social support is based. In this respect, it is important to distinguish between aliens whose request is exclusively grounded in medical circumstances and aliens whose request is grounded in a combination of factors.

Possibility 3a. the request for social support is exclusively grounded in medical circumstances

If an alien's request is exclusively grounded in his medical situation there is a provision under the Rva of which the alien can make use. Under Article 3 of the Rva the COA provides reception to some

groups of 'severely ill' aliens.

First, the COA provides reception to aliens who, under Article 64 of the Aliens Act, have been granted postponement of departure on medical grounds. Second, the COA provides reception to rejected asylum seekers who have met the requirements for reception under the Spekman-procedure. Third, the COA provides reception to aliens who find themselves in a medical emergency situation (see Appendix C for an explanation of the Article 64- and the Spekman-procedure and the definition of a medical emergency situation).

Possibility 3b. the request for social support is grounded in a combination of factors

If an alien's request is not exclusively grounded in his medical situation, it is not legally regulated who should provide adequate social support. Hence, there is no provision under any other law available of which the alien can make use. In those cases, municipalities can deny the alien in question access to social support under the Wmo, if the alien can make use of a 'factual provision' which removes the necessity of social support under the Wmo. This factual provision is available if the alien can make use of social support in a GOL (CRvB, 06-02-2013, ECLI:NL:CRVB:2013:BZ0917) or the VBL (CRvB, 20-06-2012, ECLI:NL:CRVB:2012:BW8957).

Condition 4. denying the alien access to social support under the Wmo does not reflect a fair balance

If the alien involved demonstrates he belongs to the category of vulnerable persons under Article 8 of the ECHR, this results in a positive obligation on the state and this obligation cannot be met by means of a provision under any other law or a factual provision, the alien may be eligible to social support under the Wmo. The municipality which receives the request for social support under the Wmo, then needs to decide, on the basis of the factual circumstances of the individual case, to either accept or refuse the request. In this assessment, a certain 'margin of appreciation' is left to the municipality.

The decision of the municipality needs to demonstrate a 'fair balance' between the public interests of the municipality to refuse to grant the alien access and the private interests of the alien to be granted access (see for example CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995). In this assessment, the municipality needs to apply the principles of proportionality and subsidiarity (see 3.2.2).

If the municipality decides to grant the alien access to social support under the Wmo, they need to provide the alien adequate social support. This implies that an individual assessment should take place of what is needed in view of the factual circumstances of the individual case. For example, night shelter hence may not be adequate for an alien with serious mental problems (See for example

RBROT, 20-12-2013, ECLI:NL:RBROT:2012:BZ5392).

A provision under the Wmo can only be of a temporary nature. Accordingly, over time, the municipality may review the assessment of what is adequate social support in the individual case. A change in the factual circumstances of the individual case, like a change in the state of health of the alien, may give grounds for doing so. Social support under the Wmo does not suspend the obligation to leave of the alien. The municipality needs to provide social support under the Wmo as long as it is not determined that the alien actually can leave the Netherlands. Last, the state secretary of security and justice remains primarily responsible for the reception of aliens. Hence, it may be expected from the alien to also turn to the state secretary to submit a request for social support (CRvB, 17-06-2014, ECLI:NL:CRVB:2014:1995; RBROT, 20-12-2013, ECLI:NL:RBROT:2012:BZ5392).

Details recent court decisions

Court decisions concerning the centre-municipalities

At 17 December 2014 the Central Appeals Tribunal (CRvB, 17-12-2014, ECLI:NL:CRVB:2014:4178; CRvB, 17-12-2014, ECLI:NL:CRVB:2014:4179) decided, by a temporary disciplinary measure, that the municipality of Amsterdam provide night shelter, a shower, breakfast and dinner to eight aliens who requested from social support from the municipality. As a consequence of this ruling all centre-municipalities, that is municipalities which are responsible for the implementation of the Wmo, need to provide homeless aliens in night shelter, a shower, breakfast and dinner. Access and use of this social support provision may not be subject to conditions other than those necessary for orderly providing the provisions. No higher appeal is possible against this decision.

The social support municipalities provide to aliens under the Wmo needs to be adequate. On the one hand, this means that the social support provision must meet health-, safety- and hygienic standards and must be equipped with basic facilities like access to water. On the other hand, this means that the social support must be sufficiently adapted to the specific conditions of the individual alien. Hence night shelter cannot be considered to be adequate in all cases. The latter is particularly the case if it concerns an alien with serious medical problems. To illustrate, at 22 January 2015 the court of Arnhem (RB Gelderland, 02-01-2014, 14/9024) decided that the night shelter provided by the municipality of Nijmegen to an individual alien could not be considered to be adequate in view of the specific conditions of the individual. The court ruled that the municipality of Nijmegen must provide this alien in an own room with a shower facility. Consequently, in line with the case-law on the Wmo, an assessment of needs and conditions must be made on a case-by-case basis. At January 2015, the court in Breda (RB Zeeland-West-Brabant, 16-01-2015, BRE 14/7493 VV) recommended the

municipality of Tilburg to bring in a medical advisor to estimate the state of health of a individual alien who put into question the adequacy of night shelter.

Decisions concerning the national government

At 23 December 2014, the court of Utrecht (RBDHA, zittingsplaats Utrecht, 23-12-2014, AWB 14/18686) decided, by a temporary disciplinary measure, that the state secretary of security and justice must provide night shelter, a shower, breakfast and dinner to an alien who requested from social support of the state secretary. As a consequence of this ruling, the national government just like centre-municipalities needs to provide social support to homeless aliens.

In its decision, the court of Utrecht stated that the decision of the ECSR on the complaint of the Conference of European Churches (ECSR, 01-07-2014, case 90/2013) has implications for the application of Article 8 of the ECHR. The court stated the following:

The court considers, in light of the view expressed by the ECSR, that being deprived of access to (any) shelter, food and clothing, in the case of rejected asylum seekers/undocumented, touches upon the respect for human dignity in such a way that this results in a situation in which the normal development of the private- and family life becomes impossible....The state, by virtue of Article 8 of the ECHR, has the positive obligation...to provide shelter, food and clothing to the claimant. (RB Den Haag, 23-12-2014, AWB 14/18686, par 13, freely translated)

The decision of the court of Utrecht implies that not having sufficient means of subsistence and the absence of a right to social support of the national government, are circumstances that give sufficient ground to be eligible for social support under Article 8 of the ECHR.

In the same decision (RBDHA, 23-12-2014, AWB 14/18686), the court of Utrecht also discussed the question whether the Dutch state can meet its obligation under Article 8 of the ECHR by offering social support in the VBL. In the current situation, an alien is only entitled to social support in the VBL if he is willing to 'actively and verifiably' cooperate in organizing his return and if he is willing to give up part of his liberty. When placed in the VBL, an alien is imposed a freedom restricting measure by the Repatriation and Departure Service.

The court ruled that access to shelter, food and clothing, conform to the decision of the ECSR, may not be subject to conditions. Consequently, social support in the VBL, which the state secretary offered in this case, is not in conformity with the decision of the ECSR. The national government thus cannot meet its positive obligation under Article 8 of the ECHR by offering social support in the VBL. In the meantime, the state secretary of security and justice has lodged an appeal against this decision with the Council of state (Aanhangsel HAN TK, 2014/15, no. 1015). Until a

decision on this appeal has been taken, the state secretary must provide homeless aliens in social support without imposing a freedom restricting measure on them.

At 23 December 2014, the court in Utrecht (RBDHA, 23-12-2014, ECLI:NL:EBDHA:2014:15956) decided that the state secretary may not impose a freedom restricting measure on a family with a minor child which at the time the decisions was taken was residing in a GOL. The court ruled that the motivation of the state secretary to impose this measure was not duly justified and therefore the measure was unlawful. In this case, the state secretary offered the family in question, which was no longer entitled to reception of the COA under the Rva, social support in a GOL in order to ensure the continuation of the medical treatment of one of the family members and to thereby prevent the development of a humanitarian emergency situation. However, as the court confirmed, a freedom restricting measure can be imposed only in exceptional cases in the framework of the public order or national safety. Moreover, the court argues that the imposition of a freedom restricting measure in this case is not necessary to achieve the intended objective, that is preventing the development of a humanitarian emergency situation. While the court did not refer to the decision of the ECSR in its decision, the ruling does imply that access to social support in a GOL may not systematically be made conditional upon a freedom restricting measure. In the current practice, families with minor children are systematically imposed a freedom restricting measure when placed in the GOL.

Appendix H. Medical Advices

In this Appendix, the three medical advices mentioned in 6.3.3, will be discussed in detail. First the Medical Advice Hearing and Deciding carried out by Medifirst will be discussed. Second, the advice of the Medical Bureau will be discussed. Last, the independent medical advices of the Netherlands Institute for Human Rights and Medical Assessment will briefly be discussed.

The Medical Advice Hearing and Deciding

In the asylum procedure Medifirst, that is an independent medical consultancy organization, carries out the so-called 'Medical Advice Hearing and Deciding' (Medisch Advies Horen en Beslissen). The introduction of this medical advice in 2010 was the result of a long struggle over the recognition of the importance of medical problems in the asylum procedure. In comparison to the Dutch population, asylum seekers often suffer from serious medical problems. The national government, by introducing this medical advice, acknowledged that medical problems, especially mental problems, can limit the ability of asylum seekers to tell their asylum narrative well and that one therefore needs to have attention for medical problems in the asylum procedure. The national government, by introducing this medical advice, also tried to increase the quality of the assessment of residence applications and to, accordingly, reduce subsequent (medical) applications (Bloemen & Zwaan, 2010).

All asylum seekers who submit a first asylum request undergo a medical examination in the period between their registration and their first hearing by the Immigration and Naturalization Service [IND]. In this medical examination, Medifirst searches for medical findings which can be regarded as limitations in the framework of the process of hearing and deciding by the IND (IND, 2010a; IND, Medifirst and Vereniging van Indicerende en adviserende Artsen [VIA], 2013). The objective of the medical examination, as noted in the protocol of the medical advice, is to:

determine possible functional limitations of asylum seekers, which are the result of medical problems, and which result in not being able to tell and declare about the asylum story and gaps, incoherence and inconsistencies in the asylum story. (IND, Medifirst & VIA, 2010, 7, freely translated)

The medical examination is carried out by a nurse using an anamnesis, where appropriate with the assistance of a language line interpreter. In the examination, the asylum seeker is interviewed about all aspects of his medical state. The examination on average takes 45 minutes. On the basis of the

medical examination the nurse makes a distinction between asylum seekers having an not having serious medical limitations. If the nurse concludes there are serious medical limitations, or can draw no unequivocal conclusion, the asylum seeker in question is referred to the doctor or medical advisor. The doctor subsequently will carry out a follow-up examination which also takes about 45 minutes. If the nurse concludes there are no serious medical limitations, the medical examination is concluded. In either case, the nurse, possibly in consultation with the doctor, writes a medical advice. The doctor in all cases is responsible for finalizing the medical advice and for submitting it to the IND. If the doctor does not approve the draft medical advice written by the nurse, the doctor may ask for a follow-up examination of the alien involved (IND, Medifirst & VIA, 2013; Respondent).

In the medical advice, Medifirst advises the IND on how to take into account the specific medical limitations of the asylum seeker in the process of hearing and deciding. Medifirst can advice the IND to postpone the hearing. This however only happens in very exceptional cases. The point of departure is that hearings, even if there are medical limitations, should take place. That is, as long as it is possible to have a conversation with someone, the hearing will take place. More commonly, Medifirst will advice the IND to make adjustments to the hearing. Those adjustments, for example, are 'taking breaks more frequently', 'asking thorough questions' or 'hearing someone at another location'. Medifirst also advises on whether the person involved should be heard by a man or woman and on whether the interpreter should be man or woman (IND, Medifirst & VIA, 2010; Respondent).

With respect to deciding on asylum requests, it should be noted that the point of departure remains that the asylum seeker, regardless of medical limitations, has to make plausible there is a legal basis for granting asylum. A key criteria the IND applies in assessing this plausibility is the consistency and coherence of the asylum narrative. Asylum seekers with medical limitations however may not be able to declare consistently and coherent. For example, declarations about traumatic memories may be inconsistent due to problems, caused by those traumas, in the storing and retrieval of memories. Therefore, the IND needs to take into consideration medical limitations in deciding on the plausibility of someone's narrative. On a case-by-case basis, the IND decides whether and to what extent detected inconsistencies and incoherencies can be held against an asylum seeker. The relevant question then is whether someone, given his medical limitations, can be blamed for 'lying', that is being inconsistent or incoherent. In those cases in which inconsistent declarations are attributable to medical limitations, the IND cannot use this inconsistency as an objection in the same way as in those cases where there are no medical limitations (IND, Medifirst & VIA, 2013; Respondent).

The workings of the medical advice hearing and deciding can be demonstrated by a simplified example given by a respondent. In a certain case, Medifirst concludes that a man is having problems with the retrieval of memories. Subsequently, Medifirst advises the IND to pose short simple

questions. The moment the IND takes a decision in this case, it should include this medical limitation in the weighting factor. As the respondent explained: 'when the man is asked during the hearing what color of jacket the stewardess was wearing and he answers blue while it actually was black, the decision-maker should know, taking into consideration the man's limitations, this answer cannot work against him, although it may work against a healthy person'.

Under all circumstances, the IND remains exclusively responsible for the assessment of the asylum narrative and the plausibility of the declarations given by the asylum seeker (IND, Medifirst & VIA, 2013). The medical advice can 'give the juridical procedure a certain twist, but does not tell the IND what to do' (Respondent).

The BMA-advice on Article 64

In the assessment of an Article 64-application, the Immigration and Naturalization Service [IND] is given advice on the state of health of the alien in question by the Medical Bureau (Bureau Medische Advisering [BMA]). This advice is given on the basis of an assessment of the medical file of the alien.

In the framework of this medical advice, the BMA assesses whether the medical treatment which the alien is receiving is also available in the country of origin. When the necessary medical treatment is not available in the country of origin, the BMA assesses whether discontinuation of the medical treatment will result in a medical emergency within three months after the alien's return to the country of origin. In a separate assessment, the BMA also determines whether and under what conditions the claimant, in view of his state of health, is able to travel (IND, 2010b). If the medical necessary treatment is not available in the country of origin and discontinuation of treatment will lead to an emergency situation within three months, or when the claimant is not able to travel, article 64 is granted.

The BMA decides on the availability of the medical treatment in the country of origin by assessing 'the presence of a medical treatment in any place in the country of origin...whereby the treatment present is specifically assessed for the individual complaints of the claimant' (IND, 2010b, 14). The BMA only assesses the medical-technical availability of the medical treatment. The individual accessibility and effectiveness of the medical treatment and the possibility of transfer do not play any role in its advice. The latter is justified by the argument that the non-medical factors (e.g. economic circumstances) which affect those aspects cannot be objectified or predicted and are excluded from the area of expertise of the medical advisors of the BMA. That is, the argument that the medical advisors cannot make well-informed statements about those aspects. The assessment of the presence of the medical treatment is based on information from International SOS (a firm

providing medical and travel security assistance) and the Ministry of Foreign Affairs (IND, 2010b).

In the BMA-advice, medical emergency situations are defined as

situations whereby the person involved is suffering from a disorder with regard to which it has been decided, based on current medical and scientific opinion, that the lack of treatment in the short term will lead to death, invalidity or another form of serious mental or physical damage. The term 'in the short term' means within a deadline of three months. (European Migration Network, 2010, 29; IND, 2010b, 8, freely translated)

The question central to the assessment of a medical emergency situation is '[h]ow will the untreated condition manifest itself in the person concerned and what consequences will this have on the short term according to medical understandings?' (IND, 2010b, 17). The BMA only assesses the medical consequences of the discontinuation of the treatment. Since one, according to the IND, cannot medically objectify or –predict how someone will respond to return, the medical consequences of the response to the (threatened) repatriation do not play any role (IND, 2010b).

The BMA assesses whether an alien is able to travel on the basis of the nature and severity of the disease and the estimated medical risks linked to the travel. A 'medically responsible travel' then means that the alien is medically fit to travel, possibly under certain circumstances (IND, 2010b).

Medical advices of the Netherlands Institute for Human Rights and Medical Assessment

The Netherlands Institute for Human Rights and Medical Assessment [iMMO]⁷¹ is the only organization in the Netherlands which carries out forensic medical examinations by asylum seekers. It does so in line with the Istanbul Protocol 2004⁷². iMMO focuses in particular on victims of tortures and other forms of inhumane treatment and asylum seekers with medical problems. With regard to potential victims of tortures or ill-treatment, iMMO assesses whether someone's medical problems are the consequence of tortures or other forms of inhumane treatment undergone in the country of origin. It does so by indicating the degree of consistency between the overall pattern of lesions and

⁷¹ IMMO is related to Amnesty International. In their work, IMMO makes use of freelance professionals, who perform medical assessments independently in the framework of their professional responsibility. See more on <http://www.stichtingimmo.nl/?lang=en>

⁷² Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations, High Commissioner for Human Rights: Geneva. 2004.

the attribution given by the asylum seeker. The judgment on the relationship between the lesion and the trauma described takes the form of 'not consistent', 'consistent with', 'highly consistent', 'typical of' or 'diagnostic of'. For example, when the judgment is 'highly consistent', 'the lesion could have been caused by the trauma described, and there are few other possible causes' (Istanbul Protocol, 187c, 36).

In contrast to the IND, iMMO focuses on the core details of the traumatic events. That is, it puts the experience of violence at core of the asylum narrative. Bloemen and Kollen (2015) argue that this difference in approach enables the asylum seeker to recall more information over the treatment undergone and thereby demonstrates the added value of the contribution of medical experts.

With regard to asylum seekers with medical problems, iMMO assesses whether there are (or were in the case of a repeated asylum application) psychical problems which interfere with the ability to declare complete, coherent and consistent in the framework of the asylum application (Bloemen & Kollen, 2015). In contrast to the Medical Advice Hearing and Deciding, iMMO explicitly focuses on the consequences of medical limitations. The judgment on the relationship between the nature of the psychical problems and the ability to tell a complete, consistent and coherent asylum narrative is expressed in degrees, ranging from 'no interference' to 'certain interference'. When the judgment is 'certain interference', the psychical problems are of such a nature that they certainly have interfered with the asylum seeker's ability to tell a complete, consistent and coherent asylum narrative.

Appendix I. Executive summary

Introduction

In European welfare states, irregular migrants and rejected asylum seekers are increasingly excluded from social welfare entitlements by rigid laws. In almost all European welfare states, entitlements to social welfare benefits are made conditional upon having a (specific form of) right of residence. Hence, the social welfare system is simultaneously used to enforce social security law, that is to at least ensure minimal standards of living to individuals, and to enforce alien law, that is to discourage entry- into and removal from the state's territory of migrants without a 'right' form of right of residence.

Many have argued that European welfare states, by excluding migrants from social welfare entitlements, are acting in contravention of international human rights law. Consequently, there exists a tension between the state's right to exclude, that is the state's right to control immigration into its territory, and the state's obligation to protect human rights, that is the human rights of migrants. The important question then is where the balance should be drawn between the state's right to exclude and its human rights obligations.

Welfare states form arenas of struggle in which agents try to either conserve or challenge the power relations that shape the prevailing status quo. In this framework, the interaction between immigration law and social security law is contested. The making and implementation of immigration law form sites of struggle in which different agents try to either conserve or change the interaction between immigration law and social security law. Most notably, interventions of the court and bureaucracies, by challenging the legal position of migrants under social security law and the actual access they have to social support, challenge the exclusion of migrants from entitlements to social welfare policy.

In the current study, the struggle over the interaction between immigration law and social security law is addressed by analyzing the struggle between the national government, municipalities and NGOs over the organization of the provision of social support to homeless aliens in the Netherlands. The Netherlands is one of the states in which the interaction between alien law, that is immigration law in the Netherlands, and social security law is heavily challenged. At heart of the struggle in the Netherlands is the question whether not having a (specific form of) right of residence justifies the situation of homeless aliens. Homeless aliens are excluded from governmental social support on the basis of their right of residence. Municipalities and NGOs perceive this to be problematic, because their situation results in emergency situation at the local level having negative consequences for both the aliens themselves and society. Recently, Dutch courts have obliged both

the national government and municipalities to provide basic social support to homeless aliens. Those decisions have not only intensified the struggle over the organization of the provision of social support to homeless aliens, but have also strengthened the call to change it.

The objective of this study is *to provide recommendations to the agents involved in the provision of social support to homeless aliens on how to improve the organization of those provisions*. The research question is: *How is the provision of social support to homeless aliens organized in law and practice and how could it be improved?*

In the current study, it is regarded to be inappropriate to arrive at those recommendations by comparing the current situation to some kind of ideal, like for example social justice. The main argument for this choice is that there are reasons why the situation is as it is. In other words, why alien law related to homeless aliens has not substantially changed despite many years of contestation.

In the current study, the making- and implementation of alien law is understood as an activity in which the national government, municipalities and NGOs try to define meaning of alien law, that is the way in which there is dealt with (homeless) aliens. Those agents do not have equal power resources and thus no equal position in the power hierarchy characteristic of alien law. Consequently, those agents are not equally able to define the meaning of alien law. Dominant agents, holding the most power resources, are best able to influence the way in which there is dealt with (homeless) aliens. In imposing their meaning on alien law, dominant agents, by reconfiguring the 'givens' of a situation, present the situation of homeless aliens in a specific way. In this process, dominant agents turn some 'voices into noises'. That is, they turn calls for change into disturbances of the established order and thereby affect the way in which claims are heard. Under those circumstances, the power hierarchy characteristic of alien law and hence the organization of the provision of social support to homeless aliens tends to remain unchanged.

In the light of the above, it is not regarded to be appropriate to arrive at recommendations by comparing the current situation to some kind of ideal. Implementing those recommendations would require a dramatic-, and therefore unlikely, transformation of the existing power hierarchy. The recommendations to improve the organization of the provision of social support to homeless aliens are made on the basis of the current situation itself. The research approach then is threefold: explain the situation of homeless aliens, explore suggested solutions to this situation and explore whether and how those solutions actually can be mobilized. The situation of homeless aliens can be explained by unravelling the dominant and dominated meanings of different agents and by explaining how some 'voices are turned into noises'. That is, by explaining how some meanings dominate others. Suggested solutions can be explored by analyzing by what meanings and in which

way the dominant meaning is challenged. Possibilities to turn 'noises into voices' again, that is solutions which actually can be mobilized, can be explored by searching for suggested solutions which somehow comply with the rules of the game. In other words, by looking for solutions which somehow can be integrated into the dominant meaning.

In line with the above, the research question will be answered by addressing the following sub-questions:

1. In which way the provision of social support to homeless aliens is organized in law and practice?
2. How do some meanings on the provision of social support to homeless aliens dominate others?
3. In which way and by what meanings the dominant meaning is challenged?
4. What room for change can be discerned?

This study contributes to the existing literature on immigration- and public policy in various ways. First, the current study contributes to the literature on immigration by demonstrating that domestic agents, to which little attention is given in literature, are important in shaping, elaborating and implementing immigration policy. Second, and strongly related, the current study contributes to the literature on both immigration- and public policy by demonstrating the relevance of the, often missing, variable of policy implementation.

The current study demonstrates that municipalities, as implementing agents, have other interests than the national government with respect to homeless aliens and hence are not always willing to comply with alien policy. To put it even stronger, various municipalities actually challenge alien policy by providing social support to homeless aliens beyond alien law. Moreover, this study demonstrates that the use of autonomy, the use of international negotiations and the interpretation of alien policy are important factors in this process of contestation. Moreover, by demonstrating that municipalities and NGOs make use of international negotiations in challenging alien policy, the current study also relates domestic agents to international ones.

The current study also underlines the need to close the gap between political science and social science on immigration issues. That is, the gap between studies on state policies, mostly studies by political scientists, and migratory dynamics and -processes, mostly studies by social scientists. In the current study, agents questioning the effectiveness of Dutch alien policy repeatedly made the argument that this ineffectiveness in part can be explained by the gap between the assumptions and knowledge underlying alien policy and the living reality of aliens. This gap could be interpreted as reflecting an insufficient integration of knowledge on migratory dynamics and -

processes into alien policy. Subsequently, one could argue that one should include this living reality into alien policy in order to increase the effectiveness of alien policy.

The theoretical- and methodological approach adopted in this study is grounded in the field theory and thought of Bourdieu. The current study demonstrates that the Bourdieusian relational- and reflexive perspective is highly valuable for the study of social reality. This perspective is valuable for two reasons in particular. First, this perspective is valuable because it allows the researcher to 'really' understand a status quo, that is to understand why that situation is as it is. Second, this understanding, in turn, 'forces' the researcher to make 'realistic' recommendations. That is, recommendations which actually mean something to the agents involved and hence actually may be of value to them in changing the status quo. That is, research carried out on the basis of such a perspective is more likely to have practical value.

Conceptualization of the struggles over the organization of the provision of social support to homeless aliens

The conceptualization of the struggles over the organization of the provision of social support to homeless aliens is grounded in Bourdieu's thought in general and his field theory in specific. The Bourdieusian framework allows the researcher to expose the arbitrariness of the taken-for-granted classifications and categorizations underlying social reality and to identify meanings or room for change within this social reality that can be employed to transform this reality.

Three general guiding principles underlying Bourdieu's should be taken into account in carrying out research. Those principles are the centrality of power, relationality and reflexivity. Thinking relationally and the centrality of power imply that one should not take a certain view of social reality as granted. The way social reality is perceived is both the product and stake of competition between different agents. The taken-for-granted social reality is the result of a dominant agent having the power to impose a particular meaning as legitimate. Moreover, to exist is to exist in relation to others and therefore what is real is relational. In other words, a view on social reality can only obtain significance by comparison to others. Reflexivity means that the researcher should always be aware of his stance and location relative to the object of study in order to minimize the projection of the researcher into the object of study.

In accordance with those principles, one needs to debunk taken-for-granted classifications and –categorizations underlying this social reality in order to understand and act upon the social world. Also, one should take notice of the structure of relations uniting and differentiating views on reality. Last, one should acknowledge that research always represents a situated view of social reality and this view, in turn, always bears traces of the position of the researcher.

In his field theory, Bourdieu conceptualizes the relationship between people's practices and contexts as the relationship between field and habitus. Fields are semi-autonomous subspaces or specialized spheres of action within society. According to Bourdieu, fields are structured by two principles. Those principles organize action within fields and (partly) predetermine potential courses of action for agents. The first structuring principle of fields is the doxa. Each field operates according to a logic or doxa largely internal to that field. It encompasses the fundamental principles, inherently true and necessary, central to that field and it reflects the rules of the game being played within that particular field. The second structuring principle of fields is the habitus. In contrast to the doxa, the habitus is situated at the individual level. The habitus consists of a system of unconsciously functioning ways of thinking and filters of perception structuring practices and representations. It reflects, among others, a feeling for the game which, in turn, guides strategy.

Within a field, while shared to some extent by all agents, not all agents necessarily agree on the doxa or the rules of the game. For this reason, there exists a struggle between agents which either try to conserve or transform the doxa of the field by imposing a certain meaning or certain categories of thought on the field. In this struggle, capitals play a decisive role. Capitals are (existing or potential) power resources or 'knowledges' and attributes which agents possess. These different forms of capital are to a greater or lesser degree symbolic, are interchangeable and differ in value across fields. In accordance with its doxa, a field is characterized by a specific 'symbolic capital' that is valued above others. Symbolic capital is a set of symbols (e.g. status or respect) which is recognized as legitimate by other agents.

Within a field, different agents try to either conserve or transform the doxa to either retain or obtain symbolic power. In this struggle for power, the definition of symbolic capital and the valuation of the different forms of capital are both objects and stakes of struggle. On the one hand, agents try to influence the doxa by using both the amount and composition of the capitals they possess. By imposing a particular meaning upon the field they try to turn the capitals they possess into symbolic capital. On the other hand, agents try to improve or keep their power position within a particular field by accumulating those capitals which are recognized as symbolic in that particular field (Danahar et al., 2002).

As a result of the distribution of capitals and their valuation, certain power structures within (and across) fields emerge in which agents, based on the capitals they possess, are ascribed a certain position. In these power structures some agents, that is possessors of symbolic capital, dominate other agents. Dominated agents evaluate the situation or status quo through the arbitrary categories of thought determined by the dominant agents and consequently perceive the power structure and its effects to be 'the natural order of things'. Under those circumstances, power structures within fields, being arbitrarily constructed by dominant groups, tend to reproduce themselves rather than

to transform.

The latter, however, does not mean that fields do not change. In contrast, fields are always being changed by both (complementary) internal practices and -politics and external pressures or -changes. External pressures, like an increased interconnectedness with or reliance to another field, can change the doxa of a field and accordingly the positions of agents within that field. More precise, external pressures can transform certain subsections of a field from autonomous- into heteronomous poles. The transformation of a field, irrespective of whether it is dramatic or gradual, does however not take place in a homogeneous fashion. Instead, different subsections of the field either embrace or reject, at different 'paces', the changing rules of the game. The doxa of the field then is defended in orthodoxy, or 'status quo-sets of beliefs and values' and attacked in heterodoxy, or 'challenging-sets of beliefs and values', by different agents. In order to change power structures within a field, agents need to transform the relative value and arbitrariness of the different forms of capital (that is, change the rules of the game) and accumulate capitals accordingly.

In the light of the above, in order to discern room for change, it is important to discern the heteronomous poles within a field. That is, one needs to identify (complementary) internal- and external pressures which challenge the doxa of the field. Moreover, given that agents need to accumulate capitals according to the changing rules in order to transform the power structures within a field, one needs to discern 'new' capitals which can be mobilized. That is, capitals which relative value is changing and which, for that reason, can be used to improve the position of some agents.

In accordance with the Bourdieusian framework described above the current study defines the organization of the provision of social support to homeless aliens in the Netherlands as the juridical-bureaucratic field, or JB-field, of alien law. Like the term indicates, the field constructed in this way is made of two partially overlapping- and interrelated fields of alien law, respectively the juridical field of alien law and the bureaucratic field of alien law. The central value of the JB-field is understood as a specific meaning of aliens' welfare rights. It is assumed that this meaning is reflected in the organization of the provision of social support to homeless aliens, which in turn, is perceived as reflecting a temporary equilibrium in the JB-field.

Within the JB-field, three central agents are discerned, respectively the national government, municipalities and NGOs. Struggles in the organizational fields of those agents, which will not be the main focus of this study, influence the values and dispositions those agents bring into the JB-field. The judiciary and bureaucracy are perceived to be two central interrelated contexts in which the meaning of aliens' welfare rights is fixed.

Central to the JB-field are two struggles about the meaning of aliens' welfare rights. Those struggles are conceptualized as the axes of aliens' welfare rights. Those axes are understood as two

continuums consisting of gradual distinctions between dynamic categories. Those continuums, in turn, each consist of two axes.

The meaning of aliens' welfare rights is dependent on two 'factors'.

First, the meaning of aliens' welfare rights depends on the criteria which are invoked by the national government, municipalities and NGOs (the central agents of the JB-field) in defining either the existence or the fulfilment of aliens' welfare rights. On the one hand, this concerns the perception and practical use of the criteria 'right of residence' and 'vulnerability' in either accepting or denying the existence of aliens' welfare rights. On the other hand, this concerns 'the construction of the situation of homeless aliens by the different agents', 'the arguments they use to justify or deny to provide social support to homeless aliens' and 'the ways in which they do provide social support to homeless aliens'.

Second, the meaning of aliens' welfare rights depends on the positions the national government, municipalities and NGOs hold in the power structure characteristic of JB-field. On the one hand, the use of the criteria and dimensions mentioned above, and hence the meaning of aliens' welfare rights, varies across the JB-field. The 'real' meaning and 'values' then depend on the power structure of the field granting a specific agent, advocating a specific meaning and specific values, a dominant position. On the other hand, as discussed in the previous chapter, the position of an agent in the JB-field affects the potential courses of action for that agent and thus its possibilities to influence the organization of the provision of social support to homeless aliens. The positions agent hold are dependent on the distribution of capitals and the valuation, according to the doxa of the JB-field, of those capitals.

Methodology

The objective of this study is *not* to determine the position of aliens' welfare rights on the continuum of right and responsibility. Instead, the objective of this study is to provide recommendations to the agents involved in the provision of social support to homeless aliens on how to improve the organization of the provision of social support to homeless aliens. It is asserted that the position of aliens' welfare rights is reflected in (the organization of) the provision of social support to homeless aliens. Consequently, the conceptualization of the JB-field described above provides a lens through which to answer the sub-questions central to this study.

The concepts central to Bourdieu's field theory and thought are not directly applicable. Hence, one needs to look how those concepts (like habitus) play out in practice and subsequently conceptualize them. The sub-questions of this study are answered as follows. First, by assessing the perception and practical use of the criteria central to the continuum of rights and the dimensions

central to the continuum of responsibility by the different agents and the position of those agents in the power structure of the JB-field, which in turn is grounded in the distribution and valuation of capitals, dominant- and dominated meanings are discerned. Second, by assessing the attitudes and strategies of agents in either conserving or challenging the status quo it is determined how some meanings either dominate- or challenge others.

In order to carry out the two assessments mentioned above, it is necessary, on the one hand, to describe the way in which the provision of social support to homeless aliens 'factually' is organized. That is, to describe the legal position of homeless aliens under social security, the particular degree of access of social support for homeless aliens and the specific content of the social support provided to homeless aliens. On the other hand, the above requires to describe the acts by which agents either conserve or challenge this organization.

Third, by looking for poles within the JB-field where the doxa of the JB-field actually is being changed by external logics, internal practices or capitals whose relative value is changing, on the basis of the first and the second assessment, room for change is identified.

The current study is a qualitative within-site case study. To ensure the internal validity of the case study, data-, theoretical- and methodological triangulation are used. In this research a multitude of secondary data is used, respectively scientific literature, documents and media reports. This data is collected by means of search engines and persons.

Primary data is collected by means of interviews and observations. Those data-collection methods complement one another. Interviews are conducted for two purposes. On the one hand, they are used to reconstruct the viewpoints and positions of the central agents in the JB-field. On the other hand, they are used to reconstruct how those viewpoints and positions impact practices and vice versa. Interviews have been conducted with juridical- and medical experts, professionals working for NGOs and officials working for municipalities or the national government. All those interviewees are understood as being experts. Observations are to observe events and/or situations in which different agents discuss the organization of the provision of social support to homeless aliens and/or the situation of homeless aliens. Those observations are interpreted as situations in which the struggle over the meaning of aliens' welfare rights is visible.

In the current study, the meaning of aliens' welfare rights is analyzed by using the methods of thematic analysis and discourse analysis. By employing thematic analysis and discourse analysis the taken-for-granted meaning of aliens' welfare rights is debunked. In this research, thematic analysis is used for two purposes. On the one hand, by thematic analysis the varieties in the meaning of aliens' welfare rights across the JB-field is reconstructed. For example, per agent the way in which the situation of homeless aliens is constructed and the values underlying this construction are analyzed. Among these constructions, homeless aliens and the features related to it, like the right to

social support, are defined in different ways. On the other hand, thematic analysis is used to identify room for change. Room for change is identified by looking at similar meanings across cases.

In this research, discourse analysis is used to reconstruct the patterns of language consisting of networks of presupposed relations between 'objects' (rights and responsibilities) and 'subjects' (agents, roles and positions). In the Bourdieusian framework employed in this research, power plays a central role. Complementing this perspective, the discourse analysis in this research aims to reconstruct, by analyzing texts, the varieties in presupposed relations between certain 'objects' (rights and responsibilities) and 'subjects' (agents, roles and positions). That is, to reconstruct the assumptions and dispositions underlying the acts of different agents. The network of relations are supposed to form patterns in language, that is, discourses.

In order to analyze texts, all collected data, where possible, is turned into written form. In the analysis of data, the transcribed data is read and re-read several times. In this process, the researcher moved back and forth between inductive and deductive thinking. By inductive thinking ideas are developed from data. By deductive thinking those concepts are tested against the data.

Findings and recommendations

The findings of this study will be summarized per (sub-)question. By synthesizing those findings the research question will be answered. That is, recommendations will be given to improve the organization of the provision of social support to homeless aliens

Sub-question 1. *In which way the provision of social support to homeless aliens is organized in law and practices?*

In the Netherlands, the provision of social support to aliens is under the responsibility of the national government. The national government provides social support in accordance with alien law. The Linkage Act which relates right of residence to social welfare entitlements is authoritative in this respect. Due to the workings of the Linkage Act, homeless aliens are excluded from governmental social support. Hence, homeless aliens do not have any entitlement to governmental social support under alien law.

Alien law is however challenged. On the one hand, alien law is challenged by the local practices of municipalities and NGOs. Various municipalities and NGOs do provide social support to homeless aliens at the local level. In particular, they provide social support to aliens in a (follow-up) residence procedure, aliens having serious medical problems and aliens who are working on organizing return. Since the recent court decisions, various municipalities have initiated a social support provision, the so-called BBB-provision, for all homeless aliens.

On the other hand, alien law is challenged by court decisions. Courts have ruled that the

exclusion of homeless aliens from governmental social support in some cases is not justifiable under international human rights law. Recently, referring to the case-law on Article 8 of the ECHR and a decision of the ECSR, Dutch courts by temporary disciplinary measures ruled that both centre-municipalities and the national government are obliged to provide adequate social support to aliens in need regardless of their right of residence. By those decisions, the courts challenge the distinction on the basis of right of residence central to alien law by a distinction on the basis of vulnerability central to international human rights law. Since access to basic social support provisions may not be subject to conditions, like cooperating in organizing return, those decisions may have major implications for return policy.

As a consequence of the local practices of municipalities and NGOs and court decisions, homeless aliens, that is aliens who are excluded from social support under alien law, in some cases in practice can be entitled to social support nevertheless.

Sub-question 2. *How do some meanings on the provision of social support to homeless aliens dominate others?*

The national government holds a dominant position in the JB-field as opposed to municipalities and NGOs. By holding both the juridical capital to form alien law and the economic capital to determine on the organization of its implementation, the national government is able to strongly influence both the valuation of agency and the possibilities for agency of dominated agents. Municipalities hold an intermediate position and NGOs hold a dominated position in the JB-field. Municipalities, based on their autonomy in designing social support policy and allocating budgets, possess some juridical- and economic capital to facilitate the provision of social support to homeless aliens. NGOs possess (very) little economic capital. In comparison to the national government, NGOs and to a lesser extent municipalities hold much social- and cultural capital in the form of knowledge on the living situation- and being of homeless aliens. This knowledge is however not perceived as very valuable by the national government.

Its dominant position allows the national government to determine the logic of the JB-field. This logic is grounded in alien law. Alien law hence could be perceived as being symbolic capital in the JB-field. Central to the logic of the JB-field is the idea that aliens whose (first) residence application is rejected and aliens who have never submitted a residence application should leave the Netherlands. Social support arrangements then should be aimed at stimulating those aliens to return. Unique to this logic, as compared to other areas of law, is the 'thinking into boxes' approach. Homeless aliens, that is aliens who do not fit into the boxes predefined under alien law, pose a problem to this approach. Faced with this problem, the national governments defends alien law by shifting the responsibility for this misfit to the homeless aliens themselves. It stresses that their

situation of homelessness is the result of their 'disobedient' behaviour or, in other words, their unwillingness to take own responsibility.

Its dominant position also allows the national government to best construct the situation of homeless aliens and thus to determine the conditions under which social support should (no longer) be provided to aliens. In line with the logic of alien law, the 'disobedient behaviour' of homeless aliens, not willing to take their 'own responsibility' and thus to conform to alien law, is perceived to be a social problem in the sense that it undermines the effectiveness of return policy. Hence, the provision of social support should be aimed at enforcing return policy. Accordingly, the general rule is that aliens *not willing* to return should not or no longer be provided social support and one should deviate from this general rule only in those exceptional cases in which the alien in question demonstrates he is *not able* to realize return. To prevent misuse, access to the social support provisions for aliens not able to return is made subject to very strict requirements.

The national government undermines efforts of municipalities and NGOs to challenge the status quo by questioning the value of the capitals they mobilize and by stressing the symbolic value of alien law. This is most clearly visible in the fact that the national government undermines the 'juridical' value of the legal ECSR decision by stressing it is neither legally binding nor 'just'.

In undermining the efforts of municipalities and NGOs to challenge the status quo, the national government strongly emphasizes 'it is the boss' with respect to alien-related issues. That is, that it exclusively has the right to decide on how to deal with aliens. The BBB-agreement of the national government is most illustrative in this respect. By this agreement, the national government not only tries to consolidate the 'rules of the game' but also tries to silence those agents challenging those rules. In particular, it tries to force municipalities to close their social support provisions for homeless aliens and to cooperate in the implementation of the BBB-agreement. That is, to conform to their role as 'policy-implementers' rather than policy-makers.

Sub-question 3. *In which way and by what meanings the dominant meaning is challenged?*

Municipalities and NGOs, in some cases supported by agents like medical- and juridical experts, challenge the status quo in two (interrelated) ways. In the first place, they try to demonstrate there is governmental responsibility with respect to homeless aliens. That is, they try to demonstrate there is a need to change the content of alien law itself.

First, municipalities and NGOs challenge the dominant construction of the situation of homeless aliens by stressing that their situation cannot solely be explained by the 'own responsibility' argument. On the one hand, they underline that a substantial part of the homeless aliens provided social support at the local level are regular. On the other hand, they emphasize that alien policy is not watertight. In particular they stress that the arrangements, respectively the Article

64- and BS-arrangement, for aliens not able to realize return are not accessible for all aliens with a valid claim. Under those circumstances, not all homeless aliens can be held responsible for their homeless situation.

Second, municipalities and NGOs try to demonstrate there is governmental responsibility with respect to homeless aliens by advocating an alternative construction of the situation of homeless aliens. This construction, to some extent, is grounded in the logic of social security law which, in turn, reflects the idea that everyone has a right to an adequate standard of living included in international human rights law. In line with the objective central to social security law, that is securing minimal standards of living to 'the poor', municipalities and NGOs advocate the principle that no one should live, or at least sleep, on the streets. The deservingness of homeless aliens then is based on need rather than on their legal status and/or willingness to work on return.

In this construction, it is not that relevant whether the cause for the situation of homeless aliens lies in their unwillingness to take own responsibility or the failing of alien policy. Conversely, what is relevant in this construction, are the effects of the situation of homeless aliens itself. That is, that the situation of homeless aliens in itself results in unacceptable human- and social costs. The situation of homeless aliens then is perceived to be a social problem. This construction of the situation of homeless aliens in turn is used to justify, in the case of municipalities, the use of autonomy. That is, the mobilization of juridical- and economic capital to facilitate the provision of social support to homeless aliens under the denominator of meeting local responsibilities and protecting vulnerable people.

Third, municipalities and NGOs, supported by some juridical experts, try to demonstrate there is a legal governmental responsibility to provide homeless aliens (basic) social support under international human rights law not laid down in alien law. They do so by referring to the recent court decisions, that is the decision of the ECSR and those of the Dutch courts obliging both centre-municipalities and the national government to provide adequate social support to aliens in need. They stress that those decisions do not merely justify the provision of social support to homeless aliens, but even turn those provisions into a legal obligation. In their attempt to mobilize those decisions, municipalities and NGOs adopted an activist approach in which they strongly advocated for policy changes. Moreover, municipalities tried to convey the message that those decisions are 'serious' or 'important' by either becoming more public about the social support they already provided to homeless aliens and/or by initiating a BBB-provision and, in some cases, also a plus-provision.

In the second place, municipalities and NGOs, in some cases supported by agents like medical- and juridical experts, challenge the status quo by trying to demonstrate that there are more effective ways to pursue the objectives of alien law. That is, they question the logic underlying alien

policy without necessarily advocating for changes in alien law itself. By doing so, they try to demonstrate there is a need to change the way in which alien law is implemented. Those agents challenge the implementation-approach of the national government in various ways. Central to all those ways is questioning the assumptions and knowledge underlying the approach of the national government.

First, municipalities and NGOs, supported by medical experts, challenge the integration of medical aspects in the assessment of residence applications, that is the assessment of Article 64 applications and asylum applications. They argue that the IND lacks knowledge and mental and psychiatric problems and consequently addresses those problems, from a medical perspective, in the wrong way.

Second, municipalities and NGOs challenge the general rule that aliens unwilling to work on return on advance should not be entitled to any form of social support. They argue that ‘passive intervention’, in the sense of withholding homeless aliens access to social support provisions, may not always be serving return policy. Instead, they argue, the mindset of those unwilling aliens only can be changed by ‘active intervention’ in the form of engagement. Compulsion in advance consequently may not be effective in all cases.

Third, those agents question the assumptions underlying the return process and the role of the DT&V in this process. They stress that the ‘period of engagement’ under alien policy, for example in the form of the 28-days period of departure or the ‘limited number of weeks’ in the case of the BBB-agreement, is too short to be effective. The country-specific departure-information which the DT&V possesses, but on which it does not act, confirms it actually takes much longer in some cases to obtain the required travel documents. By referring to the inadequate contribution of the DT&V to return policy, municipalities also question the adequacy of the DT&V as the directing agent in stimulating unwilling aliens in organizing return.

Fourth, municipalities and NGOs, supported by medical- and juridical experts, challenge the thinking into boxes approach adopted by the national government. They stress it is impossible to put people into boxes, especially when those boxes are defined on the basis of false assumptions and knowledge. Most notably, this approach denies that policy influences behaviour only to a limited extent and that in an unruly practice also other circumstances, like the situation of homelessness itself, medical circumstances and the conduct of the residence procedure, affect the way to which people actually fit into those boxes.

Fifth, grounded in the points discussed above, municipalities and NGOs stress a solution-oriented approach is needed to improve the effectiveness of alien policy. By focusing on achieving solutions those agents try to shift the focus from changing the logic of alien law to reducing local problems without precluding the possibility that alien policy actually is flawed. They stress that given

that admission- and return policy are and will always be imperfect, room is needed to correct those 'imperfections'. That admission policy is flawed, moreover, demonstrates that this solution can either be return or admission. Under the heading of this approach, in particular municipalities stress the need to take all circumstances into account and hence to cooperate with all agents involved with the alien in question. Municipalities and NGOs stress that, in the framework of an effective policy, the recent court decisions obliging the government to provide unconditional social support, increase the need to gear towards solutions. By advocating this approach, municipalities and NGOs try to get a voice in the situation of homeless aliens, try to increase the value of their local knowledge on the living situation- and being of homeless aliens and try to increase the space for negotiation from within governmental agencies.

Sub-question 4. *What room for change can be discerned?*

At the policy-making level, there is little, if any, room for negotiation. The national government is not willing to grant homeless aliens any form of right or entitlement to (basic) social support. On the one hand, the national government, which is holding a dominant position in the JB-field, is unwilling to change the 'rules of the game'. On the other hand, the political- and public climate is very unfavorable for inclusive measures for homeless aliens.

At the policy-implementation level there is some limited room for negotiation. The national government finances local return projects, the MOO-project and participates in local consultations. This demonstrates that the national government perceives some local knowledge to be valuable, that is worthy of financial compensation. First, the financing of local return projects demonstrates that the national government is looking for ways to improve the effectiveness of return policy and is willing to give agents other than the DT&V some freedom in realizing this. Second, the financing of the MOO-project demonstrates that the national government is looking for ways to deal with homeless aliens with serious medical problems. Agents seem to have succeeded in creating some room for negotiation within governmental agencies on how to deal with those aliens and on the relevance of medical considerations in the assessment of residence applications. Last, the participation in local consultations and financing of the Pilot Local Cooperation demonstrates that the national government in individual cases is willing to cooperate in finding solutions for homeless aliens.

The above implies that subsections within the national government, although not communicated officially, support alternative ways to implement specific parts of alien policy. Moreover, that medical experts have succeeded in influencing the importance of medical considerations in alien policy, as reflected in the strong evidence value of the iMMO-reports, and that the recent court decisions have affected the dynamics of the struggles in the JB-field

demonstrate that interaction with other fields can provide possibilities to change the rules of the game within (subsections of) the JB-field.

Research question. *How is the provision of social support to homeless aliens organized in law and practice and how could it be improved?*

As mentioned in the introduction of this chapter, the current study sought to provide recommendations to the agents involved in the provision of social support to homeless aliens on improving the organization of this provision. More specific, it sought to provide recommendations which are grounded in the categories of thought and practices of the agents involved and which somehow comply with the rules of the game. That is, recommendations which actually ‘mean something’ to the agents involved. According to the Bourdieusian thought applied in the current study social scientist can help to bring about social justice by demonstrating the arbitrariness of domination and providing dominated agents means to challenge this domination. Consequently, in the search for improvements the ideal of social justice has not been totally disregarded. In fact, the researcher sought to contribute to social justice by providing recommendations targeting at achieving *more equal social rights for aliens and citizens*.

The dual focus in searching for improvements described above posed the researcher with a major difficulty. Targeting at achieving more equal social rights for aliens and citizens would imply that the recommendations on reorganizing the provision of social support to homeless aliens should include the recognition of an official right to basic social support for homeless aliens under national law. However, the national government, which holds a dominate position in the JB-field, is unwilling to recognize this right at the policy-making level. That is, there is few, if any, room for negotiation at the policy-making level with respect to changing the provision of social support to homeless aliens. Moreover, the political- and public climate is unfavorable to inclusive measures for aliens. Under those circumstances, it is not regarded meaningful to recommend the agents involved to include an official right to basic social support for homeless aliens under alien law.

The latter, however, does not mean that no meaningful recommendations can be given. In fact, by various recommendations, dominated agents can be given the means to challenge the domination of the national government. While there is few, if any, room for negotiation at the policy-making level, there is some room at the policy-implementation level. That is, while the objectives of alien policy in the current situation are unchangeable, there exist some room to change the means to reach those objectives. In fact, the dominated agents, that is municipalities and NGOs, have adjusted their acts and strategy to the latter. That is, they have recognized that the national government will

only support approaches which serve the objectives of alien policy.

Under those circumstances, it is vital for municipalities and NGOs that they are able to demonstrate that their local approaches to stimulating voluntary return work better than those of the national government. In the current situation, however, claims that local approaches are more effective are not convincing due to the lack of numbers. Hardly any municipality or NGO encountered in the current study did have numbers available on the results of their provisions and the characteristics (like legal status, course of proceedings or presence of serious medical problems) of the homeless aliens they provided social support. Consequently, to start with, I would recommend municipalities and NGOs to jointly develop a simple sheet to uniformly record relevant data on those matters. Those numbers could function to actually prove that local approaches are more effective than the approach adopted by the DT&V.

Also, those numbers could function to more effectively signal the national government, which traditionally is somewhat obsessed with numbers, over flaws in alien policy. For example, if the numbers show that a substantial part of the homeless aliens provided social support are rejected asylum seekers having a specific serious medical problem which interferes with the ability to tell the asylum story well, this might be used to demonstrate that the national government is coming short in dealing with this specific medical problem in the hearing and deciding process. This is relevant, because for example the study of Herlihy and Turner (2015) demonstrates that the ideas of determining authorities like the IND of the presentation 'lying' asylum seekers overlap with the presentation of asylum seekers with a posttraumatic stress disorder.

Moreover, those numbers would be beneficial, because actually no one knows how big (or small) the problem of homeless aliens actually is in terms of number of persons or in terms of human- and social costs. One of the main arguments of the national government to implement the Linkage Act was that it would save costs by shortening the stay of aliens in reception facilities. It is however not known how this saving relates to the additional costs made with respect to homeless aliens. For example, crisis intervention in the case of a medical emergency brings about high costs and is more likely to be needed in the case of a homeless alien than in the case of an alien provided some form of social support.

Second, I would recommend municipalities and NGOs to continue demonstrating there is a governmental responsibility with respect to homeless aliens. A risk of adjusting one's position to the power position one holds, is that one gradually becomes less 'ambitious' in, or even recalls from, challenging the status quo. Most important in this respect is that the VNG 'stands firm' in the negotiations over the management agreement with the national government. At the end of this study, those negotiations were still underway. The latter implies that the national government has not been able yet to impose its BBB-agreement on the VNG or, in other words, that the VNG has not

yet given in completely. In order to challenge the status quo, it is important that the VNG succeeds in defining the term 'limited number of weeks', that is the period for which social support should unconditionally be provided in the designated locations, in a beneficial way, that municipalities, instead of the DT&V, will become the directing agent in the process of stimulating return and that it succeeds in rejecting the imposition of restrictions to the autonomy of municipalities in meeting local responsibilities. While succeeding in the first- or the second point mentioned will provide municipalities opportunities to prove the effectiveness of the local approach, the latter is essential to retain the possibilities for struggle they have in the current situation.

Moreover, in continuing demonstrating there is a governmental responsibility with respect to homeless aliens, I would recommend municipalities to keep making use of their autonomy in undermining the capacity of alien law to dominate in local arena's of decision-making. That is, to continue their local provisions to homeless aliens and thereby demonstrate they at least do believe there is a responsibility.

In challenging the dominant construction of the national government on the provision of social support to homeless aliens, I would recommend both municipalities and NGOs to use the term 'aliens in need' to refer to those people to counter the dominant framing of 'illegals'. In contrast to the terms currently used by municipalities and NGOs, like rejected asylum seekers or undocumented people, the term aliens in need is grounded in social security law rather than in alien law. Hence, this term has quite different connotations. Using this term could help in countering the dominant framing of homeless aliens as 'illegals' and the related perceived undeservingness of homeless aliens.

Last, I would recommend municipalities and NGOs to seek collaboration with agents from 'external' fields. The interaction with the medical field, as reflected in the relatively strong evidence value of iMMO reports and the suggestion raised that medical experts have opened up some room for negotiation within governmental agencies on the relevance of medical aspects in the assessment of residence applications, demonstrates that 'external' logics can create heteronomous poles within the JB-field open to change. Moreover, the struggle over the interpretation of the recent court decisions demonstrates, as reflected in the changed attitude of in particular municipalities, that capitals of 'external agents' may influence the dynamics of the JB-field.

In particular collaboration with the medical field could be beneficial for municipalities and NGOs. First, there already seems to be some room for negotiation within governmental agencies with respect to the relevance of medical considerations in the assessment of residence applications. Second, that the national government finances the MOO-project for some years now, illustrates that the national government is to some extent aware of either its inability to deal well with those people or the need to provide those people more than 'regular social support' in its own reception facilities. Third, homeless aliens with serious medical problems are, in particular, a concern for municipalities

and NGOs.

On the one hand, collaboration with medical experts in legal proceedings may help to demonstrate that aliens with serious medical problems are legally entitled to adequate social support. The case-law on Article 8 of the ECHR provides some room for this. Given the latter, I would recommend municipalities and NGOs to stimulate (or continue stimulating) legal proceedings on the eligibility of homeless aliens with serious medical problems to social support under the Social Support Act. While those proceedings are costly for municipalities, they do provide the possibility to build up case-law which, in contrast to the decision of the ECSR, is legally binding. On the other hand, collaboration with medical experts in the local provision of social support to homeless aliens may help to demonstrate that local agents are better equipped to deal with this specific group of aliens. Given the latter, I would recommend in particular municipalities to actively involve medical experts in their social support provisions to homeless aliens.

In the nearby future, seeking out the media may also provide opportunities. At the end of this study, the influx of asylum seekers grew substantially. The expectation is that this increase in influx will continue. As a consequence of this influx, municipalities are being put under great pressure to make available buildings for reception facilities of the national government. Also, the national government is being put under great pressure to create places in reception facilities by removing people from them. That is, by applying the practice of *klinkeren*. Moreover, this influx will probably increase the number of homeless aliens calling upon municipalities for social support by simultaneously increasing the number of homeless aliens and the pressure on living in irregularity. Consequently, the problematic of homeless aliens is likely to increase. Those circumstances may provide opportunities to demonstrate to the public, by using the media, the scale- and severity of the situation of homeless aliens, the wrongness of the practice of *klinkeren* and/or the ineffectiveness of return policy.