Please cite as: EUAA, '4.4.11. Penalty payments for exceeding the time limit in first instance decision-making' in *Asylum Report 2023*, Mai 2023.

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icon presenting penalty payments in exceeding processing times

In the Netherlands, on 6 July 2022, the Council of State declared as non-binding a temporary law which suspended incremental penalty payments for delays in pronouncing an asylum decision between 11 July 2020 to 11 July 2021. The Council of State found that the legislative amendment made it extremely difficult for applicants to have access to an effective guarantee of a timely decision, and as such, the law did not offer an effective legal remedy. The council thus considered that administrative courts were still competent to hear appeals against the failure to make a timely decision on an asylum application between 11 July 2020 to 11 July 2021. In February 2023, the IND noted that it had paid EUR 3.4 million in penalty payments in 2022, which was lower than in 2021.481

Furthermore, on 30 November 2022, the Dutch Council of State ruled that a judicial penalty was an effective means of ensuring through a court decision that the State Secretary fulfils its obligation to decide timely on an asylum application. It declared the temporary suspension of the penalty payments as non-binding and contrary to the principle of effective legal protection insofar as the legislative amendment excluded the possibility of imposing a judicial penalty in asylum cases. It was further noted that without a judicial penalty, a foreign national has no effective means of persuading the State Secretary to take a timely decision. However, the Council of State also distinguished judicial penalties from administrative penalties and held that the exclusion of the latter from the asylum procedure is not contrary to EU law and the principle of effective legal protection. The council explained that administrative penalties were owed automatically by the government, without a need for the applicant to request them before the court, so the council considered that this is not a means for a person to persuade the government to take a timely decision.

- 481Immigration and Naturalisation Service | Immigratie- en Naturalisatiedienst. (2023, February 13). Last year 3.4 million euros paid in periodic penalty payments. https://ind.nl/en/node/2321

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