



Office of the United Nations High Commissioner for Refugees

# **Reception Standards For Asylum Seekers In the European Union**

UNHCR

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# Introduction

This document is divided into two parts:

Part I presents UNHCR's recommended reception standards for asylum seekers in the European Union. These recommendations have been formulated on the basis of current State practice and drawing upon basic principles of international human rights law. UNHCR has, within its mandate of providing international protection to refugees and seeking durable solutions to their problems, a legitimate interest in the standards of treatment that asylum seekers enjoy from the moment of their arrival in the asylum country until a final decision is taken on their claims. The treatment of persons who may be refugees has a direct bearing on the standards of international protection of refugees. The key consideration for the Office is that all asylum seekers, while in the procedure for determining their refugee status, should be treated with humanity and sensitivity to their special situation. The common interest of UNHCR and States is to ensure an expeditious identification of refugees in a procedure that guarantees fairness and due process, so as to minimise the financial consequences of reception programmes.

Part II contains the findings of a recent UNHCR study on reception conditions of asylum seekers in the 15 Member States of the European Union. The Study draws upon research carried out by NGOs and reports compiled by governments, complemented by the assessments of UNHCR Branch Offices in the EU Member States. It identifies general trends in reception policies and practice of the 15 EU Member States, covering areas ranging from the conditions in which an asylum seeker finds him/herself immediately upon arrival, to how the provision of basic necessities of life (such as accommodation and food) are arranged during the status determination procedures, and the access asylum seekers have to health care, education and employment opportunities. Given that reception standards often vary as a function of the different phases of the asylum procedures, these are briefly described with a view to providing a useful background to the overall reception policy and practice of States.<sup>1</sup>

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<sup>1</sup> The procedural aspects of status determination are not the intended focus of this study, and consequently certain procedural details may have been omitted.

## **PART I**

# **UNHCR's Recommendations as Regards Harmonisation of Reception Standards for Asylum Seekers in the European Union**

# UNHCR's Recommendations as Regards Harmonisation of Reception Standards for Asylum Seekers in the European Union

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## A. General Considerations

The implementation of the 1951 Convention relating to the Status of Refugees (hereinafter the 1951 Convention) depends in principle upon fair and expeditious asylum procedures.<sup>2</sup> Unless asylum seekers are afforded access to asylum procedures, it is impossible for states to know who is a refugee requiring international protection and benefiting from the 1951 Convention.<sup>3</sup> Reception standards are closely related to the quality of these procedures, and need to be based on the principle that asylum seekers should enjoy an adequate standard of living<sup>4</sup> throughout the asylum procedure. It is essential to enable asylum seekers to sustain themselves during the asylum process, not only out of respect for their rights but also to ensure a fair and effective asylum procedure. Since reception standards can affect eventual integration or return, states consider it to be in their own interest to ensure adequate and humane conditions for asylum seekers during the procedure.

The expression "reception standards" refers to a set of measures related to the treatment of asylum seekers from the time they make their claims either in-country or at the border, including the airport or sea port, until either a transfer is affected to the State deemed to be responsible for the examination of their claims or a final decision is taken as regards the substance of the claims. These measures range from adequate reception conditions upon arrival at the border, access to legal counselling, freedom of movement, accommodation, and adequate means of subsistence to access to education, medical care and employment. Special arrangements are necessary to cover the specific needs of children, women and elderly asylum seekers.

States have a broad discretion to choose what forms and kinds of support they will offer to asylum seekers. These may range from "in kind" support, such as accommodation, food and health care, to financial payment or work permits to allow self-sufficiency. Although each state has this broad discretion, it is important that the combined effect of these measures is evaluated to ensure that, at a minimum, the basic dignity and rights of asylum seekers are protected and that their situation is, in all the circumstances, adequate for the country in which they have sought asylum.

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<sup>2</sup> See, for example, Executive Committee Conclusion No. 8.

<sup>3</sup> See Executive Committee Conclusions No. 8, No. 65, No. 71 paragraph (i), No. 74 paragraph (i), and No. 85 paragraph (r).

<sup>4</sup> See Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Based both on international human rights and refugee law standards and European State practice, which is described in Part II, the following general considerations and recommended standards are intended to form the basis of a discussion with the institutions and Member States of the European Union on how best to harmonise standards in this area. It should also be noted that these recommendations for reception standards are addressed to States with asylum systems where the average living standard is high. These standards may not be realisable in many asylum countries in less developed parts of the world and would need to be adapted accordingly.

## B. Applicable International Legal Framework

States are responsible for respecting and ensuring the human rights of everyone on their territory and within their jurisdiction. International and regional human rights law, as well as applicable refugee protection standards are therefore relevant in the context of defining adequate reception standards for asylum seekers.<sup>5</sup>

In terms of international human rights law, there is a minimum core content of human rights, which applies to everyone in all situations. Article 25 of the Universal Declaration of Human Rights (UDHR) recognises the right of everyone to a standard of living adequate for the health and well-being of himself or herself and of his or her family, including food, clothing, accommodation and medical care and necessary social services. And more specifically, the International Covenant on Economic, Social and Cultural Rights (ICESCR) spells out basic principles that help set out the framework for reception standards in the area of economic and social rights.<sup>6</sup> An adequate standard of living includes the provision of food, clothing and accommodation to those asylum seekers who are unable themselves to secure these.<sup>7</sup> The International Covenant on Civil and Political Rights (ICCPR) provides standards for the exercise of civil rights, including protection against arbitrary detention and torture, and the right to recognition everywhere as a person before the law. Both the ICESCR and the ICCPR prohibit discrimination on the grounds, *inter alia*, of national origin.<sup>8</sup>

In Europe, the human rights of asylum seekers are also protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>9</sup> which applies to everyone within the jurisdiction of the

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<sup>5</sup> This was reiterated by the Executive Committee in its Conclusion No. 82: "... the obligation to treat asylum seekers and refugees in accordance with applicable human rights and refugee law standards as set out in relevant international instruments."

<sup>6</sup> ICESCR General Comment No. 3 (E/C.12/1990/SR) provides a broad definition of minimum standard: "A State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is prima facie, failing to discharge its obligations under the Covenant."

<sup>7</sup> Article 11(1) of the ICESCR guarantees the right to an adequate standard of living.

<sup>8</sup> See Article 2(2) of the ICESCR and Article 2(1) of the ICCPR.

<sup>9</sup> See this Convention of 4 November 1950 and its Protocols.

contracting states.<sup>10</sup> Article 6 of the Amsterdam Treaty provides that the ECHR shall guide future community law. In this context, reception measures should, inter alia, be consistent with provisions relating to the prohibition of inhumane or degrading treatment, the right to liberty, the right to privacy and family life, and the right to an effective remedy.<sup>11</sup>

As for the applicability of international refugee law, the 1951 Convention, complemented by the 1967 Protocol, does not explicitly mention asylum seekers. However, there is nothing in the 1951 Convention, which says that its provisions only apply to formally recognised refugees. In fact, the 1951 Convention applies in parts before a formal recognition of refugee status otherwise important provisions of the 1951 Convention, notably Article 33 and Article 31, would be rendered meaningless. The 1951 Convention therefore remains an important point of departure for considering certain standards of treatment for the reception of asylum seekers, not least because asylum seekers may turn out to be refugees.<sup>12</sup>

A closer examination of the 1951 Convention reveals that the benefits provided under the various provisions of the 1951 Convention have different levels of applicability depending on the nature of the refugee's sojourn or residence in the country. The most fundamental rights (Articles 3 and 33), and some others [see, for example, Articles 7(1), 8, 13] are extended to all refugees. Other basic rights are applicable to any refugee present "within" the country (for example Articles 2, 4, 20, 22, 27), even illegally (see Article 31). Other provisions apply to refugees "lawfully in" the country (Articles 18, 26 and 32), while certain of the more generous benefits are to be accorded "to refugees lawfully staying [résidant régulièrement] in [the] territory" of the country concerned [Articles 15, 17, 19, 21, 23, 24 and 28; see also Articles 14, 16(2) and 25]. The drafting history shows that the English term "lawfully staying" is based on the French, and that a distinction was intended between basic rights accorded to all refugees (and that would, to some extent at least, include asylum seekers whose refugee status has not yet been determined) and other rights and benefits accorded to those accepted as legal residents.

These gradations in treatment allowed by the 1951 Convention are therefore a useful yardstick in the context of defining reception standards for asylum seekers, from the perspective of international refugee law. In essence, the 1951 Convention provisions that are not linked to lawful stay or residence would apply to asylum seekers in so far as they relate to humane treatment and respect for basic rights, including non-*refoulement*.<sup>13</sup> In the application of these provisions, no distinction should be made between different groups of asylum seekers, with the exception, perhaps, of "manifestly unfounded" asylum

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<sup>10</sup> See Article 1 of the ECHR.

<sup>11</sup> See Articles 3, 5, 8, and 13 of the ECHR.

<sup>12</sup> See paragraph 28 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, which explains the declaratory nature of recognition of refugee status.

<sup>13</sup> An asylum seeker can possibly avail himself or herself of the rights contained in Articles 3 (non-discrimination), 4 (religion), 5 (rights granted apart from this Convention), 7 (exemption from reciprocity), 8 (exemption from exceptional measures), 12 (personal status), 16 (access to courts), 20 (rationing), 22 (public education), 31 (refugees unlawfully in the country), and 33 (non-refoulement principle).

applications being processed in accelerated procedures. In such cases, a lower standard of treatment may be justifiable, providing the claims are disposed of expeditiously so as not to cause undue hardship to the persons concerned.

The average length of the asylum procedure in the various countries of the European Union is an important element in this discussion. With prolonged periods, the disadvantage for persons with valid claims to refugee status is evident. Should the asylum procedure be unduly prolonged, asylum seekers should therefore be entitled to a broader range of benefits. Clearly, the need to establish expeditious asylum procedures is paramount because of the hardship protracted periods of uncertainty would cause to asylum seekers, and to avoid that the standard of treatment foreseen in the 1951 Convention is denied to those who turn out to be refugees. In addition, expeditious procedures decrease the overall costs of the reception system for asylum seekers by identifying quickly who is in need of international protection and who is not.

## **C. Recommended Reception Standards**

The following paragraphs discuss important elements of reception policies and set out in bold recommended reception standards for asylum seekers. The term “asylum seeker”, for the purposes of these recommended reception standards, applies to any person whose claim to international protection is being individually considered under either the 1951 Convention and the 1967 Protocol, or any arrangement for complementary forms of protection.

These recommended standards, set out below, which are by no means exhaustive, do not focus on procedural aspects. They provide a basic guide for the design of appropriate reception standards consistent with international law and standards, and are based on an analysis of best state practice in this area. The design and implementation of a reception regime depends on a number of factors, including the average length of the procedure and the nature of the asylum application, that is, whether presumed to be “manifestly unfounded” or not. A reception regime can follow different models or combine flexibly various elements of these models. However, an examination of the combined effect of the various measures taken by states in the reception area is essential for evaluating the consistency of reception policies with international law and standards.<sup>14</sup>

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<sup>14</sup> For more information concerning actual state practice in the context of the European Union, please see the Part II of this document. As for procedural aspects of asylum procedures, basic guidance can be found in Executive Committee Conclusions No. 8, No. 15, No. 22, No. 30, No. 58 and No. 82.

## **(i) Reception on arrival**

Asylum seekers often encounter difficulties at the very early stage of the asylum process. They may lack basic information on the asylum procedure and may be unable to state their asylum claims formally or intelligibly without the assistance of a legal counsellor or an interpreter. Victims of torture or those who suffered other traumatising experience usually require immediate medical or psychological assistance. Others may have been unable to obtain identity or travel documentation since the very authorities to which they would need to apply for travel documents may have persecuted them.

In some instances, when asylum seekers reach a border, states retain them in so-called “international zones” or transit zones in order to reject without delay asylum claims considered manifestly unfounded. In these zones, freedom of movement is restricted, and adequate reception facilities, interpretation services, and basic support are often lacking.

Some countries detain asylum seekers systematically during the admissibility procedure, for instance, when there is doubt regarding their identity or if they have no or invalid documentation. Depending on the procedure, applicants sometimes spend an excessively long period in reception centres at the border.

- ◆ **Reception facilities at borders, including airports, should include all necessary assistance and the provision of basic necessities of life, including food, shelter and basic sanitary and health facilities.<sup>15</sup>**
- ◆ **Even for a short stay, family unity and privacy are essential. Single men and women should be accommodated separately, and families should have the possibility to stay together in the same premises.<sup>16</sup>**

## **(ii) Information and legal advice**

Asylum seekers are usually unaware of administrative procedures of the country where they seek asylum and may therefore not be able to invoke procedural rights correctly. For asylum seekers applying at entry points, the first interview usually takes place at the airport or at the border zone, and most of the applicants await the decision on the admissibility of their application in that location. Whether asylum seekers submit their claims after entering the country or immediately upon arrival, they need access to basic information about the asylum procedure, including access to interpretation facilities, as well as basic legal counselling.

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<sup>15</sup> With regard to the legal background, see Section “Assistance”

<sup>16</sup> More background can be found in Sections “Freedom of movement and dete unity” and “Groups with special needs”.

- ◆ Asylum seekers should have access to legal counselling already at the beginning of the asylum procedure to ensure the effectiveness of the protection system.<sup>17</sup>
- ◆ Asylum seekers should be informed in writing and without delay of the practical arrangements for their reception and of other useful information concerning the asylum procedure (interviews, supporting documentation, appeal possibility, access to legal aid, etc.). They should in particular be made aware of how the procedure works and what their rights and obligations are. Information leaflets should be in a language and in terms understandable to asylum seekers, preferably in their own language.<sup>18</sup> The authorities should share any other relevant information with asylum seekers.
- ◆ Access to trained and qualified interpreters should be provided from the initial stage of the procedure, and interpretation should be free of charge.<sup>19</sup>
- ◆ UNHCR and non-governmental organisations working with UNHCR should have free and unhindered access to asylum seekers at all stages of the procedure, including at the initial admissibility stage. Asylum seekers should equally be entitled to contact UNHCR.<sup>20</sup>
- ◆ When a negative decision has been taken on “safe third country” grounds, the asylum seeker should be informed of this decision, preferably in his or her own language. He or she should be told why he or she is to be returned to the third country, and be provided with the address and telephone number of UNHCR or a refugee-assisting non-governmental organisation working with UNHCR in that country. The asylum seeker should receive a statement in the language of the country to which he or she is to be sent. It should clearly explain that the rejection was based on “safe third country” grounds alone, that the asylum claim has not been examined on its own merits, and that the asylum seeker wishes to apply for asylum in the third country.<sup>21</sup>

### **(iii) Training of border officials**

Decisions taken by border police or immigration officials have crucial consequences for asylum seekers. This is particularly true for decisions as to

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<sup>17</sup> See Executive Committee Conclusion No. 8. In Spain, for instance, asylum seekers have the right to free legal counselling throughout the asylum procedure.

<sup>18</sup> This is, for example, the case in Germany, Austria and Spain.

<sup>19</sup> In Spain, the asylum law foresees that free interpretation should be provided and that asylum seekers should be informed of their right to this service. See also the Dutch Aliens law, as well as the practice in Finland.

<sup>20</sup> See Executive Committee Conclusion No. 22.

<sup>21</sup> In Denmark, for instance, such statements are in the language of the receiving country.

whether or not to refer asylum seekers to the authorities responsible for determining refugee status. Erroneous decisions taken by such officials may result in the asylum seeker's return to the country of origin, in breach of international and domestic law.

- ◆ **Officials who come into contact with asylum seekers should be aware of international and domestic laws relating to asylum seekers and refugees. They should be trained on how to handle asylum applications, including sensitive ones, such as those based on gender-based persecution or those submitted by minors.<sup>22</sup>**
- ◆ **The role of the border officials should be limited to ensuring unimpeded access of the asylum seeker to the asylum procedure, and to preventing *refoulement*. Their role should be strictly confined to understanding and recording the asylum application and transmitting it to the appropriate authority in an expeditious manner. The responsibility for deciding on the merits of a request should exclusively lie with the central authority competent to determine refugee or other protective status.<sup>23</sup>**

#### **(iv) Freedom of movement and detention**

Many European countries resort to the detention of asylum seekers under certain circumstances. The various grounds for detention include pre-admission detention, pre-deportation detention, detention for the purposes of transfer to a safe third country, detention for the purposes of transfer to the responsible state under the Dublin Convention, and criminal detention linked to illegal entry/exit or fraudulent documentation.

Several countries have established special holding centres for asylum seekers.<sup>24</sup> However, many European states may still detain asylum seekers in prisons or police jails. In such cases, asylum seekers and aliens are generally subject to the same regime as other prisoners and are not segregated from criminals or other offenders. In addition, detention conditions are often inadequate and not in line with international standards.

The systematic detention of asylum seekers coming directly from the country of origin or an unsafe third country is at variance with Article 31 of the 1951 Convention. According to this provision, detention should not be based upon an asylum seeker's illegal entry or presence on the territory provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Freedom from arbitrary detention was

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<sup>22</sup> Specific training on gender issues is already being carried out in countries, such as Germany, Greece, Ireland and Switzerland. Training regarding child applicants is already taking place, for example, in Ireland and Greece.

<sup>23</sup> Border police in Switzerland, for example, do not interview applicants; they simply transfer them to registration centres.

<sup>24</sup> For example, in Austria, Belgium, Bulgaria, the Czech Republic, Denmark, France, Germany, Greece, Hungary, the Netherlands, Norway, Poland, Slovakia, Spain, Sweden, Switzerland and the UK.

reaffirmed in the 1999 UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum seekers, which also outline that holding asylum seekers at the airport, in transit zones, or under a strict regime in a reception centre constitutes detention. Similarly, it is also a deprivation of liberty in the sense of Article 5 of the ECHR if the only option for an asylum seeker at the airport transit zone to leave this limited area is to return to a country where he or she would face a risk of torture.<sup>25</sup>

With regard to the enforceability of rights related to freedom of movement, an asylum seeker has a right to compensation before the European Human Rights Court whenever he or she has been deprived of his or her liberty in breach of Article 5 of the ECHR. Compensation is also possible when the conditions of detention amount to inhuman or degrading treatment in violation of Article 3 of the ECHR, due to overcrowding, inadequate heating, sleeping and toilet facilities, insufficient food, recreation and contact with the outside world.<sup>26</sup>

In accordance with Article 31 of the 1951 Convention and UNHCR guidelines on the subject, detention should not be used to deter future asylum seekers.<sup>27</sup> There may be exceptional grounds for detention as long as this is clearly prescribed by a national law, which is in conformity with general norms and principles of international human rights law.<sup>28</sup>

- ◆ **As a general principle, asylum seekers should not be detained. Detention of asylum seekers may exceptionally be resorted to for the reasons set out in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum seekers as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law.<sup>29</sup> In such cases, it should only be resorted to for a minimal period, and only after full consideration of all possible alternatives (for example, reporting obligations or guarantor requirements).**

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<sup>25</sup> See, in the context of the ECHR, case of *Amuur v. France*, 25 June 1996, [www.echr.coe.fr](http://www.echr.coe.fr) Hudoc REF00000573. In the UN context, see Resolution 1997/50 of the UN Commission on Human Rights and subsequent reports of the UN Working Group on Arbitrary Detention concerning the situation of immigrants and asylum seekers.

<sup>26</sup> See, in the context of the ECHR, case of *Cyprus v. Turkey*, applications 6780/74 and 6950/75, the Council of Europe Human Rights Commission's report of 10 July 1976; see also *The Greek case*, Yearbook 12, 1969.

<sup>27</sup> Guidelines on detention are spelt out in Executive Committee Conclusion No. 44 and No. 85, and in subsequent UNHCR guidelines. UNHCR drew attention to the increasing institutionalisation of the practice of detention in its *Note on Detention of Asylum seekers and Refugees* (EC/49/SC/CRP.13) presented to the Standing Committee's 15<sup>th</sup> meeting, stressing that much remains to be done to improve conditions, to end mixing asylum seekers with criminal detainees, explore alternatives to detention and alleviate the hardship imposed on families.

<sup>28</sup> See, for example, Executive Committee Conclusion No. 44 and the UNHCR Guidelines on Detention; Article 5 of the ECHR; Resolution 1997/50 of the UN Commission on Human Rights and subsequent reports of the UN Working Group on Arbitrary Detention concerning the situation of immigrants and asylum seekers.

<sup>29</sup> See Article 9(1) of the ICCPR, Article 37(b) of the CRC and Article 5 of the ECHR.

- ◆ Upon detention, asylum seekers should have the right to be informed of the reasons for detention and of the rights in connection thereto, in a language and in terms, which they understand. They should have access to legal assistance, if necessary. Conditions of detention should be humane with respect shown for the inherent dignity of the person, and they should be prescribed by law. The standards related to conditions of detention, including minimum procedural guarantees, in particular the right to have detention reviewed by an independent body, are elaborated upon in detail in the aforementioned UNHCR Guidelines on Detention.
- ◆ UNHCR and non-governmental organisations working with UNHCR should have free and unhindered access to detained asylum seekers so that they can be properly informed on the procedure and their related rights.
- ◆ In accordance with the aforementioned general principle, minors who are asylum seekers should not be detained.<sup>30</sup> This principle also applies to unaccompanied minors. Where possible, they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, the competent authorities should make alternative care arrangements, such as residential homes or foster care placements. All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained. If none of the alternatives can be applied and states do detain children, this should be as a measure of last resort, and for the shortest period of time.<sup>31</sup> More detailed guidance is contained in the UNHCR Guidelines on Detention.

#### **(v) Documentation and temporary status**

Pending the outcome of their asylum claim, asylum seekers need to be assured of some form of legality during their stay in the territory. In many cases, full enjoyment of basic economic and social rights cannot be secured without formal documentation legitimising the asylum seeker's stay in the country. Executive Committee Conclusion No. 35 recommends that asylum applicants whose asylum applications cannot be decided without delay be provided with provisional documentation sufficient to ensure that they are protected temporarily until a final decision has been taken by the competent authorities with regard to their application.

In most states, temporary permits are issued to asylum seekers once they are admitted to the asylum procedure. In addition to providing basic protection

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<sup>30</sup> See Articles 2, 3, 9, 22 and 37 of the CRC, and the UNHCR Guidelines on Detention.

<sup>31</sup> See Article 37 of the CRC.

against expulsion and *refoulement*, a temporary permit is often the precondition to being entitled to basic assistance and other benefits.

- ◆ **Asylum seekers should be issued temporary permits, which should be valid until the final decision is taken on the asylum application.**<sup>32</sup>
- ◆ **Female asylum seekers should have equal rights to obtain temporary permits, independent of their male relatives, and should have the right to have such documentation issued in their own names.**

#### **(vi) Assistance**

Article 11(1) of the ICESCR obliges states to provide assistance to those persons who are unable to be self-sufficient. Asylum seekers are entitled to an adequate standard of living throughout the asylum procedure. Assistance must include, at a minimum, what is necessary not only for survival but also for a life of dignity. Asylum seekers may still require certain forms of assistance even when accommodation is provided or when they are permitted to work, since employment opportunities may not always be available or sufficient to cover all basic needs.

With regard to the non-discrimination principle and to the minimum core rights of the ICESCR, any differential treatment among asylum seekers is acceptable only when it is based on reasonable grounds.

In some countries, asylum seekers, who fail to comply with rules of the reception system, or who have not submitted their claims immediately upon arrival, are disqualified from public assistance programmes. Such measures should, however, not affect the ability of asylum seekers to continue to pursue their asylum claims effectively.

- ◆ **Needy asylum seekers should be given all necessary support covering the basic necessities of life, including food, clothing and basic accommodation, throughout the asylum procedure until a final decision is taken on their application. If necessary, this should also apply to asylum seekers who are permitted to work but are unable to find adequate employment.**<sup>33</sup>
- ◆ **Support should be granted either in kind (food, clothing, pocket money, etc.) or by giving access to the social welfare system, or through a combination of both. Failure to comply with entry formalities should not automatically lead to denying or limiting**

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<sup>32</sup> See Executive Committee Conclusion No. 35, and Article 27 of the 1951 Convention, which requires only simple presence on the territory.

<sup>33</sup> See Article 11 of the ICESCR, and in particular, ICESCR General Comment No. 12, contained in document E/C.12/1999/5.

**assistance under the minimum threshold of an adequate standard of living.<sup>34</sup>**

- ◆ **For those cases where removal is permissible under the Dublin Convention, basic assistance should be provided until such removal is effected.**

The following paragraphs on accommodation and medical care describe some of the more specific assistance areas where states may need to provide the necessary support.

### **(vii) Accommodation**

In most instances, asylum seekers are destitute. Many depend on the solidarity of friends or relatives who may host them temporarily. Even when they can afford rented or hotel accommodation, owing to language difficulties, hostility of landlords or racial prejudices, asylum seekers often encounter difficulties when trying to find private accommodation. This proves even more difficult when asylum seekers are not permitted to work or cannot find employment.

While many countries do not have state-run reception centres, others transfer asylum seekers to reception centres upon arrival. The nature of the asylum procedure determines the duration and conditions of stay in these centres. In some countries, asylum seekers are given the option between state-run reception centres, hotels or shelters run by non-governmental organisations, or individual solutions.

- ◆ **When asylum seekers are in need of accommodation, the primary responsibility lies with states to provide basic accommodation until the end of the procedure.<sup>35</sup>**
- ◆ **Conditions in reception centres or in other types of collective accommodation for asylum seekers should fulfil minimum standards, including the existence of basic facilities, as well as access to infrastructures with respect to health care and education.<sup>36</sup>**
- ◆ **Reception centres may constitute an acceptable solution for a limited period following arrival or in the case of accelerated procedures for "manifestly unfounded" applications. However, asylum seekers should have access to specific accommodation arrangements or receive adequate means of support sufficient to cover basic accommodation and other costs or be allowed to find alternative forms of accommodation, if these centres do not**

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<sup>34</sup> See Article 31 of the 1951 Convention.

<sup>35</sup> See Article 11 of the ICESCR.

<sup>36</sup> See also ICESCR General Comment No. 4 in relation to its Article 11, contained in document E/1992/23.

provide privacy or affect family unity or health conditions in the longer term or if the procedure is protracted.<sup>37</sup>

- ◆ **With a view to preventing acts of racism and xenophobia against asylum seekers, a reception policy should include appropriate measures to enhance harmonious relationships with the local communities, for instance, by creating awareness of the problems of refugees and designing specifically targeted public information campaigns.<sup>38</sup>**

#### **(viii) Medical assistance– health care**

Asylum seekers may suffer from health problems, including emotional or mental disorders that require prompt professional treatment.<sup>39</sup> When medical examination is not undertaken upon arrival, it is usually done prior to admission to a reception centre following the admissibility stage.

- ◆ **Asylum seekers should receive free basic medical care, in case of need, both upon arrival and throughout the asylum procedure.<sup>40</sup>**
- ◆ **Medical examination and psychological counselling should be subject to strict confidentiality requirements, in particular the HIV testing, which should be done only at the request of the asylum seeker.<sup>41</sup>**
- ◆ **Asylum seekers in need of urgent treatment due to torture or other severe trauma should receive special assistance, such as at special institutions.<sup>42</sup>**
- ◆ **Psychological care and counselling should be available free of charge to asylum seekers referred by the medical personnel.<sup>43</sup>**
- ◆ **The relevant authorities and medical personnel should be sensitised and properly trained to deal with patients coming from different cultural backgrounds.**

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<sup>37</sup> See Article 17 of the ICCPR.

<sup>38</sup> See also Article 20 of the ICCPR.

<sup>39</sup> See the 1995 UNHCR Guidelines on Preventing and Responding to Sexual Violence against Refugees.

<sup>40</sup> See, for example, Article 25 of the UDHR, Article 12(1) of the ICESCR and Article 24(1) of the CRC, which recognise a right to medical care. Access to health care is granted on the same basis as for nationals in the UK, Ireland, the Netherlands, and Belgium. In these cases, there are no conditions placed on access.

<sup>41</sup> See UNHCR Policy regarding Refugees and Acquired Immune Deficiency Syndrome.

<sup>42</sup> Examples of such special institutions are the Rehabilitation Centre for Torture Victims and Crisis Prevention Centres for Immigrants in Helsinki or specialised centres for psychological treatment of asylum seekers in Belgium and in the UK. Victims of torture are referred to specialist institutions as a matter of course in Greece (Presidential Decree 61/1999).

<sup>43</sup> Free psychological services are available through the national health system, for example, in Finland, Italy, Luxembourg, the Netherlands, Ireland, Austria (if the asylum seeker has been granted federal care), and Denmark (once the asylum seeker has been granted a residence permit).

## **(ix) Education**

Following the departure from the country of origin, children asylum seekers suffer from the forced interruption of their education. In order to restore a semblance of normality, it is essential that children benefit from primary and secondary education of a satisfactory quality. In conformity with international law and standards, which re-affirm the right of every human being to education,<sup>44</sup> EU member states have integrated this basic right into their legislation. In addition, many countries have implemented the standards required in the Convention on the Rights of the Child (CRC)<sup>45</sup> concerning secondary education for all children, regardless of the reason for their stay in the country.<sup>46</sup>

Both local integration – once refugee status is granted – and reintegration upon return – if the asylum claim is rejected – are greatly facilitated when access to education has been made available throughout the asylum procedure.

- ◆ **Children asylum seekers have a right to education. Primary education should be compulsory, available and free to all. Given the importance of education, secondary education should also be made available to asylum seekers.**<sup>38</sup>

## **(x) Employment**

Several EU countries allow asylum seekers to work, albeit with restrictions in some cases. Either asylum seekers have the right to work once their application is admitted to the substantive stage of the asylum procedure,<sup>47</sup> or they are granted access to employment on the basis of individual authorisation.<sup>48</sup> A minimum length of stay is the condition in some countries for granting access to employment.<sup>49</sup>

It is widely accepted that dependence on the state is reduced when asylum seekers are working. Apart from the financial aspect, the right to work is an essential element of human dignity, particularly in case of lengthy stay pending the outcome of the asylum procedure.

- ◆ **As is already the practice in many countries, asylum seekers should, preferably, be granted permission to work when the length of the asylum procedure exceeds a certain period or where the “package”**

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<sup>44</sup> See Article 26 of the UDHR; Article 2 of Protocol No. 1 to the ECHR: "No person shall be denied the right to education"; Article 13 of the ICESCR; Article 28 of the CRC; and the UNHCR Guidelines on Protection and Care of Refugee Children; see also ICESCR General Comments No. 11 in document E/C/1999/4, and No. 13 in document E/C.12/1999/10.

<sup>45</sup> See Article 28(1)(b) of the CRC.

<sup>46</sup> In Belgium, education is compulsory until 18 and even illegal aliens, such as rejected asylum seekers, must attend. Free access until 18 is guaranteed in several states, including Luxembourg, Norway, and the UK.

<sup>47</sup> This is, for instance, the case in Belgium.

<sup>48</sup> This is, for example, the case in Greece, Portugal and Spain.

<sup>49</sup> Finland, Sweden, the United Kingdom and Switzerland are relevant examples in this area.

**of support offered to asylum seekers requires independent financial self-sufficiency to maintain an adequate standard of living.<sup>50</sup>**

**(xi) Family unity**

The fundamental importance of the family and its right to be protected is recognised internationally, including through Article 16 of the UDHR. Respect for the principle of family unity is one of the primary means of protecting the refugee family. The importance of respecting family unity, either by maintaining or reuniting the family, is also reflected in Articles 7, 8, 9, 10, 18 and 22 of the CRC, Article 17 of the ICCPR and Article 8 of the ECHR. Slow asylum procedures where family unity is not preserved can have a major and destructive effect on members of the family, particularly children.

- ◆ **The authorities should take appropriate measures, including tracing activities, within the country of asylum to maintain the unity of the family, and process asylum requests expeditiously in order to ensure that separated families are reunited as quickly as possible once they are recognised as refugees.<sup>51</sup>**

**(xii) Groups with special needs**

**Children**

Children accompanying their parents or caretakers often undergo the same treatment upon arrival as adults, including living in detention or in inappropriate accommodation facilities. Because of their dependence, their vulnerability and their developmental needs, they suffer the hardship inherent in displacement even more acutely.

- ◆ **When designing and implementing reception policies, states should be guided by the "best interest" principle, as contained in Article 3(1) of the CRC. This may include the appointment of a representative for all child asylum applicants, ensuring that child applications are given special and priority consideration. Further detailed guidance is contained in the UNHCR Guidelines on Protection and Care of Refugee Children.<sup>52</sup>**
- ◆ **Reception standards should address in particular the special educational, medical, psychological, recreational and other special needs of children, in accordance with relevant**

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<sup>50</sup> See also Article 6 of the ICESCR.

<sup>51</sup> Apart from the human rights norms mentioned here, further guidance on the protection of the refugee's family is also contained in Executive Committee Conclusions No. 9, No. 24, No. 84, No. 85 and No. 88.

<sup>52</sup> These guidelines were published in 1994.

## international human rights law, UNHCR guidelines and Executive Committee Conclusions.<sup>53</sup>

### Unaccompanied and separated children

There are disparities in the treatment of unaccompanied and separated children within EU member states. Unaccompanied and separated children are not always placed in appropriate care-giving relationships, such as foster care at the earliest stage of the procedure and in other cases, they are hosted in special institutions.<sup>54</sup>

Several countries have adopted special measures addressing, specifically, the needs of separated children. For example, in Denmark, unaccompanied and separated children under 14 are in principle granted exceptional leave to remain. In the United Kingdom, they are exempt from the accelerated procedure, and in Greece they are entitled to immediate medical and social care. In Finland, the child is granted residence status whenever a final decision on the asylum application has not been taken within three months.

- ◆ **When dealing with a separated or unaccompanied child, asylum authorities should be guided by the 1997 UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum.<sup>55</sup> Unaccompanied and separated children should be placed in appropriate care-giving relationships, such as foster care or special reception centres, at the earliest stage of the procedure. Such care arrangements should be designed to addressing their special protection and assistance needs.**
- ◆ **Tracing activities should be undertaken at a very early stage and in line with Article 3(3) of the European Union Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries.<sup>56</sup>**
- ◆ **A legal representative should be designated for the handling of the social and legal rights of separated children throughout the asylum procedure, and otherwise to ensure that the child's best interests are represented throughout the child's stay in the country.<sup>57</sup>**

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<sup>53</sup> See the UNHCR Guidelines on Protection and Care of Refugee Children, and Executive Committee Conclusions No. 47, No. 59, and No. 84. See also Articles 3, 7, 22, 24 and 27 of the CRC.

<sup>54</sup> There are specialised reception centres for separated children in, for example, Belgium, Denmark, Finland, Greece, the Netherlands and Spain.

<sup>55</sup> See also the Preamble to the European Union Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, which makes explicit reference to the CRC and the best interest principle as a primary consideration.

<sup>56</sup> See Articles 7 and 22(2) of the CRC, and the UNHCR Guidelines on Protection and Care of Refugee Children.

<sup>57</sup> See Article 3(4) of the European Union Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries. There is automatic appointment

- ◆ **Asylum requests of separated and unaccompanied children should receive priority treatment.**
- ◆ **Special attention should be paid to the risk of child trafficking, in particular separated and unaccompanied female asylum seekers. Special accommodation arrangements, counselling and protection arrangements are necessary for them.**

### **Female asylum seekers**

Being outside their own social network, perhaps for the first time in their lives, may make women vulnerable, particularly if they are unaccompanied by family members. This vulnerability requires special attention and treatment. The problems faced by women could range from shortcomings in the actual asylum procedures to poor physical reception conditions. There is a need for adequate staff training or psychological, social or medical referrals in order to help women overcome their inhibitions in describing sexual violence they may have suffered. When a female asylum seeker needs medical care, her cultural or social background may necessitate special attention, including the availability of a female doctor.

Rights of refugee women are recognised in a number of international instruments.<sup>58</sup> Consistent with these standards, the recognition of female-specific problems in connection with the asylum procedure was spelt out in Executive Conclusions No. 64 and No. 73. Other useful guidance is contained in the UNHCR Guidelines on the Protection of Refugee Women and the UNHCR Guidelines on Sexual Violence.<sup>59</sup> The following points highlight important elements of reception policies in this area.

- ◆ **In asylum procedures, gender awareness should be a guiding principle. All officials and staff involved in the initial reception and the determination process should be trained so that they are sensitive to gender issues.**
- ◆ **At the initial stage of the procedure, female asylum seekers need to be counselled on their rights, including the right to submit an individual application when family members accompany them. As is the case in many countries, female staff using female interpreters should interview women asylum seekers.**

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of a legal representative in Austria under Article 25 (2) of the Asylum Law. Guardians are also appointed in other countries, such as in Germany, Finland, and Italy.

<sup>58</sup> Apart from the International Bill of Human Rights, there are international instruments relating specifically to women, such as the 1979 Convention on the Elimination of all Forms of Discrimination Against Women and the 1957 Convention on the Nationality of Married Women.

<sup>59</sup> See Executive Committee Conclusions No. 39, No. 54 and No. 60. See also, for example, ECRE 1997 Position on Asylum Seeking and Refugee Women; Australian Department of Immigration and Multicultural Affairs: 1996 Guidelines on Gender Issues for Decisions Makers; Canadian Immigration and Refugee Board: Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

- ◆ **Single women with special security needs should be provided with separate and safe accommodation. When asylum seekers are accommodated in so-called “international zones” at ports and airports, the physical safety and the privacy of women should be ensured.**
- ◆ **When detention is resorted to, privacy and the principle of family unity should be respected. Men and women should not be detained together, except in family situations. Special efforts should be made to avoid the detention of nursing mothers and women in the later stage of pregnancy.**
- ◆ **Medical help for asylum seekers upon arrival and in reception centres should include counselling on reproductive health matters. As is the norm in many countries, pregnant women should receive the same maternal and child clinic services as nationals.**

### **Elderly asylum seekers**

Uprooted in the later stage of their lives, elderly asylum seekers are often destitute and risk neglect and abandonment by family members who are unable to provide care. Separated elderly often cannot count on the traditional support network that was available in the country of origin.

Frequently, they lack information about their rights and about facilities available to them. They may, for instance, not be aware that UNHCR, legal support agencies or state-sponsored counsellors are available to assist them upon arrival and throughout the procedure. Even when they know about such services, the elderly may not be mobile or feel confident enough to seek their help. Moreover, important documentation may have been left behind in the country of origin.

The vulnerability inherent in advanced age makes prompt access to medical and health care an essential condition for this group. Also, lack of mobility, a sense of isolation and abandonment, as well as chronic dependency are factors, which the host authorities will need to take into account when designing adequate reception policies for this group.

- ◆ **At the earliest stage of the procedure, efforts should be made to identify elderly asylum seekers in need of legal advice and interpretation services, as well as social counselling. Tracing activities should also be undertaken at an early stage in case of particular vulnerability.<sup>60</sup>**

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<sup>60</sup> For these and other recommendations in this area, see also UNHCR's Policy on Older Refugees (EC/50/SC/CRP.8, Annex II), as endorsed at the Standing Committee's 17<sup>th</sup> meeting.

- ◆ **Elderly asylum seekers have special health and psychological needs.<sup>61</sup> Care needs to be exercised that they are not segregated from the rest of the asylum seeker community living in collective accommodation.**

## **D. Conclusion**

Asylum seekers are entitled to benefit from the protection afforded by various universal and regional human rights instruments, as well as applicable refugee law standards, all of which provide the basic framework for standards and norms of treatment in the area of reception.<sup>62</sup> It is essential that states ensure that the fundamental rights and basic needs of asylum seekers are met during the asylum procedure, and in particular that special efforts are made to reduce the length of the procedures. It is hoped that these considerations and recommended standards will assist states in adopting reception standards and practices that are fully consistent with international law and standards.

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<sup>61</sup> See generally, ICESCR General Comment No. 6 on the economic, social and cultural rights of older persons (E/1996/22).

<sup>62</sup> See in particular the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and the European Convention on Human Rights.

## **PART II**

# **Study on Reception Conditions of Asylum Seekers in the European Union**

# A - Summary of State Practice

## Legal Framework

The standards of reception of asylum seekers in the 15 EU Member States vary considerably from country to country. In some cases, there are statutory rights afforded to asylum seekers, while in other instances simply procedural “tradition” is followed. In a number of countries, asylum seekers may not have legal entitlement to the standards they enjoy in practice<sup>63</sup> or, alternatively, restrictive legislation may simply not be applied rather than actually amended.<sup>64</sup>

Even with regard to basic necessities of life such as a means of subsistence, housing and health care, practice varies considerably. In countries such as Denmark, residence in a reception centre is compulsory in order for the asylum seeker to benefit from any financial assistance. Conversely in countries such as Sweden, families can receive additional financial assistance if they do not reside in a reception centre. The actual provision of accommodation ranges from the dispersal of asylum seekers to assigned centres or regions, to total freedom of movement coupled with dependence on the private housing sector. Similarly, living conditions in the available accommodation, whatever that might be, varies considerably from country to country and even within countries. Full access to health care is also arranged in different ways. It is sometimes made dependent on other aspects of the reception regime, for example, qualifying for the Federal care and maintenance programme in Austria.

The various aspects of reception described below are inevitably interrelated. In particular, access to health care, accommodation, means of subsistence and education are often linked. This may make the comparison of State practice under separate headings more difficult but it does highlight the need for a holistic, transparent approach to reception conditions of asylum seekers.

## Administrative arrangements for reception

The Ministry or department charged with refugee status determination is normally responsible for the reception of asylum seekers. The state institutions concerned often seek partnerships with non-governmental organisations (NGOs) in order to fulfil this responsibility.<sup>65</sup>

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<sup>63</sup> For example the non-detention of single parents with young children in Denmark, or the chance to have a work permit after six months in the UK, are not statutory provisions.

<sup>64</sup> Restrictive legislative provisions which are generally not applied in actual practice include, for example, denying legal aid to asylum seekers in France if their claim has been deemed “manifestly unfounded” or, in Denmark, removing benefits from asylum seekers who do not co-operate with the authorities.

<sup>65</sup> For example, in Germany, many reception centres are run by NGOs. In these cases, all technical aspects of the accommodation, including the provision of food and security, fall under the responsibility of the NGO. Similarly, in Denmark, the Danish Red Cross runs reception centres on behalf of the Danish Immigration Service.

In certain countries, there is a limited capacity in terms of accommodation for the reception of asylum seekers which results in poor initial living conditions for asylum seekers. For example, conditions in so-called “waiting zones” at international airports often become overcrowded. At Roissy airport in Paris, the limited number of beds in the intended accommodation means that persons must sleep in the police station at the airport terminal.

Asylum seekers arriving at the border may be detained if, for example, they do not have the necessary travel documents. They are detained until an admissibility procedure has been completed to determine whether or not they will be granted access to the regular status determination procedure. However, the proportion of asylum seekers detained in this manner varies considerably, as does the maximum period of time and the living conditions.

### Procedures for asylum applications

It has been emphasised at the outset that procedural aspects of refugee status determination are separate from a discussion on reception standards. Nevertheless, the two issues are closely inter-related. An adequate standard of reception enables asylum seekers to present their claims properly and sufficiently, to co-operate with the asylum authorities throughout the procedure and, more generally, to build trust and confidence in the determination process. In turn, fair and expeditious procedures, which quickly identify who is in need of international protection and who is not, reduce the financial costs attached to the implementation of adequate reception standards. As well, where there is public confidence in the efficiency and effectiveness of the asylum procedures, community relations are strengthened and measures to combat racism, xenophobia and intolerance become more effective.

The procedures in place in the EU currently vary widely. Each Member State has a different procedure and the terminology used to describe those procedures is often used differently in the various States.<sup>66</sup>

The considerable differences in procedural legislation and practice amongst the 15 Member States mean that asylum seekers may not enjoy an equal chance of obtaining protection throughout the European Union. The differing standards for asylum procedures and the related question of inconsistency in asylum adjudication hamper the effective implementation of the Dublin Convention.

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<sup>66</sup> For example, the term “accelerated procedure” is used to mean several different things: quicker procedures with, for example, shorter time limits for decisions; an accelerated appeal procedure; the normal procedure but with less procedural safeguards (for example, restricted right to personal interview); or, an accelerated procedure used in an admissibility phase. In this report, a distinction is drawn between regular and accelerated procedures, which include substantive examination of the merits of a case, on the one hand, and admissibility procedures in which the merits of the case are not examined, on the other hand.

## Guidance, information and legal advice given to asylum seekers

### Availability of interpreters

Interpreters are generally provided free of charge for all interviews during the determination procedure.

There are often provisions in the domestic law requiring that an interpreter be present. For example, under the Dutch Aliens Act, an interpreter must always be present, even if both the interviewer and the asylum seeker speak excellent English. In Spain, the government is obliged, not only to provide free interpretation, but also to inform asylum seekers of their right to this service (Article 5.2 of the Implementing Decree 203/95). In Finland, interpreters are made available to asylum seekers not only in the determination procedure but also to assist with accessing legal advice and health care services and in dealings with schools or other officials.

However, the practice does not always match the legislative requirements. Lack of resources and the small number of suitably qualified interpreters are problems common to most countries. Several States find it particularly difficult to provide female asylum seekers with the assistance of female interpreters.

### Information supplied to asylum seekers

Written information, including rights and obligations, are generally supplied to asylum seekers in the form of a leaflet. The number of languages in which such leaflets are produced varies considerably from country to country.<sup>67</sup>

Legislative provisions for the supply of information is not uncommon (e.g. in Austria<sup>68</sup> and Spain<sup>69</sup>), although in some cases existing legislation has not been fully implemented.<sup>70</sup>

When a rejection decision has been taken to return asylum seekers to a “safe third country”, State practice is generally to provide the asylum seeker with a letter stating that the substance of his/her claim has not been examined and that s/he wants to apply for asylum in the “safe third country”. In Denmark, for example, such letters are always in the language of the receiving country and telephone numbers of refugee-assisting NGOs or UNHCR in the receiving country are included.

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<sup>67</sup> For example, in Greece the information leaflet is currently available only in Greek and in Finland just Finnish and English while in Germany the equivalent leaflet is available in 56 languages.

<sup>68</sup> According to Article 26 of the Austrian Asylum Law asylum seekers shall be provided, as early as possible, with a copy of an explanatory leaflet providing information about their rights and obligations. The leaflet is to be in a language understandable to the asylum seekers.

<sup>69</sup> The asylum seeker is informed of his/her rights through an information leaflet which is available in nine different languages (article 5.1 of the Implementing Decree 203/95). It specifically mentions the right to contact UNHCR and to be assisted by a lawyer.

<sup>70</sup> For example, Italy.

## Legal advice

Practice in this area varies considerably. It depends not only on the procedures in place, but also on the resources available to the governments and the NGO sector. Nevertheless, there is some form of legal advice available in the majority of States, even if it is a case of the NGOs having to provide much of the advice.

In some countries, access to free legal counselling is guaranteed throughout the asylum procedure.<sup>71</sup> In a few others, even where there are no specific legal provisions stating that asylum seekers have a right to free legal advice, in practice it is normally provided.<sup>72</sup>

In all but a few cases, advice at the first instance is provided by NGOs. In some countries, NGOs are responsible for all the free legal advice given to asylum seekers.<sup>73</sup> The main difficulty with the NGO sector playing such an important role relates to a lack of resources. In many instances, there is little or no government funding for these activities.

Under certain domestic systems, only cases deemed likely to succeed are eligible for legal aid.<sup>74</sup> This can be contrasted with instances in which legal aid is granted automatically in Germany when a first instance positive decision is appealed by the Government.

Legal aid for certain appeals may be refused at a procedural level. For example, in Sweden, legal aid cannot be granted to appeal the decision to return an asylum seeker to a "safe third country". In France, applicants whose claims are "manifestly unfounded" are not, in theory, entitled to legal aid.<sup>75</sup>

Difficulties relating to access to legal advice can arise, at a practical level, when asylum seekers are accommodated in rural areas.<sup>76</sup> Furthermore, the

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<sup>71</sup> For example, in Spain, asylum seekers have the right to free legal counselling throughout the asylum procedure, including the appeal stage (see article 5(4) of Law 9/94, articles 5(2) and 8(4) of the Implementing Decree 203/95 and Law 1/96 on Pro Bono Legal Assistance). This right is complemented by the new aliens legislation 4/2000, of 11 January 2000, as it is being granted to foreigners in general.

<sup>72</sup> For example, this is the case in Belgium. Conversely, in some countries, such as Italy, where asylum seekers are entitled under the law to legal counselling they may nonetheless only be provided with such if an NGO has set up a specific project in their vicinity.

<sup>73</sup> For example, Greece, Portugal and, in practice, Italy.

<sup>74</sup> For example, in Germany and the UK. This can be contrasted with NGO practice in Spain, for example, where refugee-assisting NGOs automatically respond to all applicants who contact them and provide legal advice and support. This is done in an indiscriminate manner, not just in cases that may set a precedent.

<sup>75</sup> In practice, this condition is rarely applied. Indeed, it would seem to directly contrast with practice in Germany, where free legal counselling is specifically provided to applicants whose claims have been rejected as manifestly unfounded, albeit only in the airport procedure in Frankfurt, Berlin, Dusseldorf and Munich.

<sup>76</sup> For example, there are difficulties in Austria for asylum seekers who reside, under the Federal care and maintenance programme, in remote areas because most NGOs, who generally provide the legal assistance, are located in the cities. This illustrates the need for reception conditions to be considered holistically. Provision regarding accommodation can have significant impacts on other areas such as the provision of legal advice.

desire for faster procedures in some places has made the provision of individual legal advice more difficult, particularly at the first instance.<sup>77</sup>

## Training of government officials

In all countries it is recognised that officials who come into contact with asylum seekers (border guards, police officers, immigration officials, first instance decision makers *et al*) should receive sufficient training, in particular with respect to vulnerable cases.

The officials whom asylum seekers first come into contact with are given clear instructions on the handling of asylum applications. In some instances this training is given only during initial training courses. Official training is supplemented in many cases by NGO and UNHCR informal training sessions but there is a call from both NGOs and government officials for more formal training to be carried out on an ongoing basis.

Specific training on gender-related issues is being carried out in some countries such as Germany and Greece. Training regarding child applicants is already taking place in, for example, Ireland. Overall, however, it has been observed that there is a lack of systematic training concerning the particular needs of vulnerable groups.

## Accommodation and means of subsistence

### Accommodation

The provision of accommodation takes many different forms in the various EU Member States. In Belgium, the Netherlands, Luxembourg, Sweden, Denmark, Finland and Germany all asylum seekers are initially provided with accommodation in reception centres. In these cases, the asylum seekers normally move from transit centres into shared or private accommodation during the course of the determination procedure. This system of accommodation changing over time has the advantage that, at the initial stages of the procedure when information and guidance for asylum seekers is so crucial, the asylum seekers are easily contacted. At later stages, when the need for advice and support has alleviated, private accommodation is perhaps more suitable.

France, Austria, Spain and the UK all have a number of reception centres, but these are not available to all needy asylum seekers. Greece, Ireland, Italy and Portugal have very limited or no centralised reception facilities.

The reception centres are most commonly run by NGOs rather than governments, though usually with a degree of State financing. Even where there is a government run system in place, it is normally, and necessarily, supplemented by NGOs.

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<sup>77</sup> For example, this is the case in Germany. There is a similar problem in Portugal, where NGOs report that the legal aid system is not effective during the border/airport procedure. This is due to the time taken to appoint a lawyer combined with the fact that the appeal procedure before the administrative courts does not have suspensive effect.

In most reception centres, single men and women are accommodated separately. Problems persist however, in some countries, particularly with respect to accommodation provided at border points and waiting zones prior to admission to the status determination procedure.

The practice of dispersing asylum seekers, and making the receipt of assistance dependant on accepting the allocated accommodation, is becoming more common. After initial registration of the asylum application, asylum seekers are allocated to areas within the host country. Where there is a system of shared accommodation in reception centres, asylum seekers will normally have to reside in those centres. Problems have been reported regarding access to services where asylum seekers have been sent to predominantly rural areas. This particularly relates to legal advice supplied by NGOs, specialised medical care for those that have suffered trauma and support from other members of the asylum seeker's community.

### **Means of subsistence**

An asylum seeker's accommodation does not affect the granting of financial assistance in, for example, the Netherlands. Sweden can be contrasted with Denmark. In Denmark, asylum seekers in private accommodation receive no financial assistance, while in Sweden they can receive an extra grant to go towards the cost of the household.<sup>78</sup>

Problems with respect to means of subsistence arise where access is very bureaucratic or certain requirements are placed upon the asylum seekers.<sup>79</sup> The requirement that asylum seekers must co-operate with the authorities in order to qualify for subsistence assistance is common. This can be illustrated by Denmark where, by law, asylum seekers can be denied financial assistance and instead receive food parcels if they do not co-operate with the authorities.<sup>80</sup> As a result of public pressure this is no longer applied, although the law has not been amended not amended to reflect this.<sup>81</sup>

Subsistence assistance is not necessarily conditional on residing in a reception centre, though asylum seekers staying in a reception centre generally receive a higher level of assistance. In Belgium and Luxembourg, assistance during the admissibility stage is only granted to persons residing in a reception centre. In Portugal and Spain, there is no financial assistance until the asylum seeker is admitted to the substantive procedure. Assistance is granted for a maximum of four months in Portugal and six months in Spain, though in Spain assistance can be extended twice for three months each time.

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<sup>78</sup> It is worth noting that all asylum seekers in Sweden, whether residing in collective or private housing, must participate in certain activities, such as language training, in order to qualify for subsistence assistance.

<sup>79</sup> For example, in France, an asylum seeker must possess a temporary residence permit and a certificate from OFPRA certifying that a request for asylum has been lodged in order to benefit from social security and medical care. In Austria, access to the Federal care and maintenance programme requires, in practice, that the asylum seeker has an identity card such as a passport or driving licence.

<sup>80</sup> Pregnant women, children and those with special medical conditions are exempt and cannot have financial assistance withdrawn.

<sup>81</sup> This is another example of the need for legislation to correspond to practice.

Italy and Greece have minimal systems of financial assistance.<sup>82</sup> Asylum seekers in Germany and in Ireland, outside Dublin, only receive pocket money and in the UK, assistance is predominantly in the form of vouchers.

## Health care

Asylum seekers generally have access to emergency health care in almost all EU Member States. They have access to health care on the same basis as nationals in the UK, Ireland, Luxembourg, the Netherlands and Portugal. In these cases, there are no conditions placed on the provision of health care. The restrictions placed on access to the national health care system in other countries normally relate to being admitted to the substantive asylum procedure or registering with the local authorities.<sup>83</sup>

Although lung X-rays and screenings for contagious disease are generally carried out upon arrival, HIV testing is never obligatory.<sup>84</sup>

## Psychological care and counselling

Specialised centres for providing psychological care to asylum seekers have been set up in Belgium. Specialist centres for torture victims exist in the UK, Denmark, Finland and Germany, although they are not primarily targeted at asylum seekers. In Greece, pursuant to Presidential Decree 61/1999, victims of torture are referred to specialist institutions as a matter of course.

Free psychological services are available through the national health system in Finland, Italy, Luxembourg, the Netherlands and Ireland. This is available in Austria if the asylum seeker has been granted Federal care, and in Denmark once the asylum seeker has been granted a residence permit.

## Education

Almost all the countries surveyed grant access to the national school system for children up until the age of 16 years.<sup>85</sup> Indeed, in most countries it is compulsory for children to attend school until 16 years of age and often free until the age of 18 years of age.<sup>86</sup>

For example, Spanish legislation provides for compulsory schooling for all foreign children regardless of their status in Spain. In Belgium, education is compulsory until 18 and even illegal aliens and failed asylum seekers must attend.

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<sup>82</sup> In Italy assistance can be granted for a maximum of 45 days. Asylum seekers residing in reception centres may not receive financial assistance.

<sup>83</sup> For example, in Belgium, the asylum seekers must reside in the reception centre during the admissibility stage of their claim, which may last up to six months, in order to access health care. In France, asylum seekers only have full access to the national health care system if they have a temporary residence permit valid for three months.

<sup>84</sup> However, in Spain, an HIV test is required in order to receive a place in a state-run reception centre. It is not required to gain access to the asylum procedure.

<sup>85</sup> The one exception, Denmark, provides equivalent education in reception centres and then does grant access to the national system after one year. In Portugal, children do not have access to schools until after the admissibility stage.

<sup>86</sup> For example, Luxembourg, the UK and Belgium.

Children who do not speak the national language are offered language classes in many States, but in some cases the service is provided by NGOs without funding by the State.

## Employment

Almost half of the countries within the EU allow asylum seekers to work, although generally there are certain restrictive conditions. In Belgium, asylum seekers have the right to work once their application has been admitted to the substantive stage of the determination procedure.<sup>87</sup> Greece, Portugal and Spain all grant access to employment but not as an automatic entitlement – individual authorisation is required. In Finland, three months residence in the country qualifies an asylum seeker to apply for a work permit and in Sweden, permission to work is granted after four months.<sup>88</sup> In the UK an asylum seeker can apply for a work permit after six months.<sup>89</sup> In Ireland, asylum seekers who had been in the country for at least a year as of 26 July 1999 have been granted work permits.

Permission to work does not however guarantee finding a job. Indeed, the requirement in several countries that a permit must be requested for a particular job places a bureaucratic burden on the potential employer that can make it virtually impossible for asylum seekers to find work. For example, NGOs report that in Ireland, over 2000 asylum seekers became eligible for work in July 1999 yet only 15 had found paid employment by the end of the year. Apparently, this was due to employers' fears that if they employed an asylum seeker they would be liable to pay a fine if they could not prove that an EU national was not available for the job. In December, the Irish government removed much of the bureaucracy, such as the need for each asylum seeker who arrived before 26 July 1999 to request a work permit for a specific job.

Where permission to work is granted, it becomes less likely that asylum seekers will resort to informal employment. Even where an asylum seeker cannot find work, permission to work still has psychological benefits, and in the case of the UK, it opens up educational and training possibilities.<sup>90</sup>

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<sup>87</sup> Asylum seekers must apply for the permit with regard to a particular job. Furthermore, the admissibility stage in Belgium can take up to six months. Belgium is currently revising its law but it is not known, at the time of writing, what effect this may or may not have.

<sup>88</sup> In Sweden, permission to work is normally granted if a decision on the asylum applications has not been made after four months. If a working asylum seeker is still residing in a reception centre, s/he has to contribute to the costs. This policy has been in operation since 1992 following the government's change of mind in response to public opinion indicating a view that able bodied asylum seekers should work rather than receive benefits.

<sup>89</sup> Permission to work in the UK has been granted to asylum seekers, though not their dependants, since 1986, but there is no statutory basis for this practice.

<sup>90</sup> Permission to work is particularly significant in the UK because it gives the asylum seeker access to government training programmes and opportunity for self-employment.

## Children

In many countries, children have the same access to health care as nationals, regardless of status.<sup>91</sup> Exceptions include Austria, where children who do not benefit from Federal care do not receive free medical care. In Germany, children, like adults, only receive free medical treatment if they are suffering from an acute and “painful” disease.

The granting of child allowances also varies. In Austria and Germany, child allowances are not granted to asylum seekers, only recognised refugees. In Belgium and Denmark, there is some financial assistance for children living in the reception centres. In France, asylum seekers with children receive a specific type of child allowance. However, in the UK, families with children receive benefits in the same way as nationals and will continue to do so until the government achieves its goal of two months for an initial decision with a further four months for appeals.

Childcare is provided in many reception centres, but generally only on an *ad hoc* basis.

## Separated children

There are specialised reception centres for separated children in, for example, Belgium, Denmark, Finland, Greece, the Netherlands, the UK and Spain.

There is automatic appointment of a legal representative in Austria under Article 25(2) of the Asylum Law. Guardians are also appointed in other countries such as Germany, Finland, and Italy. There are also special procedures in place for separated children in many countries. In the UK for example, they are exempt from the accelerated procedures and in Greece, they are entitled to immediate medical and social care.

The Government in Finland has specified that an application submitted by a separated child will be processed within three months. If it is not, the child will be granted a residence permit at the end of the three months.

## Female asylum seekers

Several countries have legislative provisions to the effect that female asylum seekers can or should be interviewed by female staff.<sup>92</sup> In some countries,

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<sup>91</sup> In France, Italy, the Netherlands, Spain and Sweden children have the same rights to health care as nationals. In Belgium, children not living in reception centres have the same access to health care as nationals. While in the reception centres, health care is provided to children in the same manner as for adult asylum seekers.

<sup>92</sup> In Austria, article 27(3) of the 1997 Asylum law states that asylum seekers who fear gender-related persecution shall be interviewed by officials of the same sex, though this provision does not relate to the interpreter. In Germany and Spain, female asylum seekers have a right to be interviewed by female staff but they are not systematically informed of this right. In Greece, Presidential Decree 61/1999 stipulates that female asylum seekers should be interviewed by female staff but in practice this is difficult to achieve. In the Netherlands, if a female asylum seeker indicates that she has faced gender-related persecution, male interviewers must stop the interview and inform her that she can be heard by a female interviewer; this policy is implemented on the basis of a letter of 17 September 1997 from the Secretary of State for Justice.

these provisions are not implemented for reasons of the Governments' claimed lack of resources. This is also the case with regard to female interpreters. In countries where there are no legal provisions, practice varies considerably.<sup>93</sup>

In several countries, there seems to be a reluctance to follow the UK example in granting 1951 Convention refugee status to women who claim, and prove, gender-related fear of persecution.<sup>94</sup>

### Freedom of movement and residence

Generally, asylum seekers enjoy freedom of movement. However, they may, in certain circumstances, be subject to detention or certain restrictions such as having to keep the authorities informed of their address or reporting to the local authorities at regular intervals. Restrictions on freedom of movement and residence may also be placed upon asylum seekers indirectly, through dispersal policies and/or making subsistence and other forms of assistance conditional on the asylum seekers accepting the designated place of accommodation or residence.

### Detention practices

Despite stable or falling rates of asylum seekers entering Western Europe, there has been a reported increase in the number of asylum seekers being detained. The only exception cited is Austria, where there was a slight decrease in the number of detained asylum seekers in the first half of 1999 compared to 1998. There are plans to build new or additional detention centres in Belgium, France, Germany, and the UK.

There are several different types of detention, which are generally based on how the asylum seeker entered the territory of the country in which s/he is detained. These include detention at border points or at the airport transit area. The grounds for detention also vary. They generally fall into one of the following categories: pre-admission detention in case of lack of proper documentation, pre-deportation detention and detention for the purposes of transfer to a "safe third country", including transfer to the responsible State under the Dublin Convention.

The countries with no finite or maximum period of detention include: Denmark, Finland, Greece, the Netherlands and the UK. The legislation of other countries specifies that after a certain period of time, the detained asylum seeker should be released if s/he has not been either deported or granted leave to enter the territory.

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<sup>93</sup> There are no specific provisions concerning female asylum seekers in any of the following countries: Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, Portugal, Sweden and the UK. In Belgium, female interviewers and interpreters are not always available. In Denmark, Luxembourg, Ireland and the UK, asylum seekers may request a female officer but the authorities do not systematically arrange for female interpreters and interviewers in cases involving gender-related persecution. In Finland and Sweden efforts are made to ensure that female interviewing staff are used whenever appropriate. In Belgium, France, Italy and Portugal female staff are not always available.

<sup>94</sup> For example, Denmark, Finland and Sweden.

Many European countries have established special detention or holding centres for aliens and asylum seekers, notably Austria, Belgium, Denmark, France, Germany, Greece, the Netherlands, Spain, Sweden and the UK. These facilities may be open, semi-open or closed centres. This being so, the majority of States may still, on occasion, place asylum seekers in prisons or police jails; for example, Austria, Finland, Germany (in certain *Laender*), Greece, Italy, Luxembourg, the Netherlands, Sweden and the UK. In such cases, the detained asylum seekers are generally subject to the same regime as other prisoners and are not segregated from criminals or other offenders.

Airport transit lounges are also often inadequate facilities for the detention of asylum seekers. For example, at the Frankfurt Airport in Germany, there are two showers for over 200 detainees. Asylum seekers are often forced to sleep on chairs or the floor, as bedding facilities are unavailable.

In Denmark, according to general administrative practice, single parents (both men and women) are not subject to detention. This is an example of an instance in which there is no specific rule. It is therefore unclear how young the child must be for the parent to be exempt from detention.

UNHCR is in the process of issuing a detailed report on the detention of asylum seekers in Europe as an update to its 1995 publication.

## **B - Country Survey**

# Austria

## Legal Framework

General Administrative Procedures Act 1991.

Aliens Labour Law 1975 (last amended in 1997).

Federal Law Regulating the Provision of Federal Care for Asylum Seekers of 2 August 1991 (Federal Care Provision Act).

Order of the Federal Minister of Internal Affairs regarding the Provision of Federal Care for Asylum Seekers (Federal Care Provision Order).

Federal Law concerning the Granting of Asylum (1997 Asylum Law).

Federal Law concerning the Entry, Residence and Settlement of Aliens (1997 Aliens Law).

Law on the Independent Federal Asylum Senate (1997).

## Administrative arrangements for reception

The Federal Care Provision Act stipulates that the State shall assume responsibility for providing care for asylum seekers in need of assistance. Pursuant to article 14 of this law, the Minister of the Interior is responsible for its implementation.

The Order of the Federal Minister of the Interior regarding the Provision of Federal Care for Asylum Seekers (Federal Care Provision Order) provides more detailed provisions regarding the admission into the Federal care and maintenance programme, the issue of certificates, the maximum amounts of financial reimbursement for accommodation provided by private individuals and the minimum standards such accommodation must meet. The Federal Care Provision Order also addresses, *inter alia*, social welfare benefits for asylum seekers and the need to ensure that treatment takes into account the specific situation of an asylum seeker and is consistent with the principle of human dignity. (For further details of the Federal care and maintenance programme, see below, “accommodation and means of subsistence”).

## Procedures for asylum applications

### Admissibility procedure

Different admissibility procedures apply depending on whether the application was made (a) after arrival at an airport or (b) after arrival by land at the time of a border control carried out at a frontier crossing point.

- (a) Aliens arriving at an airport, or directly from their country of origin, who file an asylum application at the time of the border control carried out at a frontier crossing point shall be brought before the Federal Asylum Office. Applications filed at an airport may only be dismissed as being “manifestly unfounded” or rejected on “safe third country” grounds with the consent of UNHCR.

(b) Asylum seekers who file an application at the time of a border control carried out at a frontier crossing point shall be refused entry to the territory and informed that they have the possibility of either seeking protection from persecution in the country in which they are currently resident or alternatively filing an application for asylum with the competent Austrian diplomatic or consular authority. It is possible, however, on request by such an alien, to file an application at the border. The asylum seeker is then provided with an application form in a language understandable to him/her. In such a case the applicant will, nonetheless, have to await the decision abroad.

If the admissibility decision is negative, the asylum seeker can apply for a re-examination of the case by the Independent Federal Asylum Senate (IFAS), which makes the final decision.

During the course of this procedure, asylum seekers are not guaranteed access to a refugee-assisting organisation nor to an interpreter. Similarly, a personal interview carried out by a qualified official is not guaranteed. It is therefore difficult for many asylum seekers to satisfactorily formulate the grounds on which they should be granted asylum, and thus to refute the presumption that they are coming from a safe third country. Such asylum seekers run the risk of being rejected at the border without having their case thoroughly examined.

All applications, whether filed at the airport, a border crossing point or from within the country, may be dismissed as inadmissible on "safe third country" grounds because Austria is not the State responsible for examining the claim under the Dublin Convention.

### **Accelerated procedure**

Asylum applications that are dismissed as inadmissible (see above) or rejected as "manifestly unfounded" are dealt with in an accelerated procedure with a shorter time limit to file an appeal.

An application for asylum can be considered "manifestly unfounded" for the following reasons:

- there is no clear indication that there is any danger of persecution in the country of origin;
- the claimed persecution does not fall within the definition of persecution in the 1951 Convention;
- the claim of persecution clearly does not correspond to reality;
- the asylum seeker does not co-operate in the establishment of material facts, despite being requested to do so;
- the asylum seeker comes from a "safe country of origin".

Each asylum seeker is interviewed individually by the Federal Asylum Office, and the final decision is taken on the basis of that interview. An alien can not be expelled before a decision on whether the application is "manifestly unfounded" has been taken.

As in the regular procedure, the Federal Asylum Office makes the decision in first instance. UNHCR is notified on all proceedings and has access to the asylum seeker at any time.

The decision is communicated in a written, translated, form and includes information on the relevant statutory provision and the right to appeal. It does not, however, include the translated reasons on which the decision was based.

There is a right to appeal on two levels. The first negative decision can, within ten days, be appealed to the IFAS. A further negative decision can be appealed to the Higher Administrative Court within six weeks.

The IFAS is required to give an answer within ten working days, but this time limit may be extended as necessary for determining the requisite facts of the case. In practice, therefore, the decision making process lasts much longer than ten days in the majority of the cases. There is no time limit for an answer from the Higher Administrative Court.

The appeal to the IFAS has suspensive effect. But if an expulsion order has been issued and the time of the execution of this measure falls within the time limit of appeal (ten days), the expulsion order stands unless a separate appeal against *refoulement* is made. The appeal to the Higher Administrative Court does not have automatic suspensive effect but it may be granted by the Court on request.

### **Regular status determination procedure**

There is no time limit for lodging an application.

A senior official of the Federal Asylum Office interviews the applicant provided that the holding of such an interview is possible without “disproportionate expense”. Otherwise, the interview may only be dispensed with if the asylum <sup>assist in establishing the material facts through</sup> the giving of testimony” (article 27 (1) of the 1997 Asylum Law). In practice, generally all asylum seekers are interviewed.

The Federal Asylum Office makes the decision.

In the case of a negative decision, an asylum seeker has a two level right to appeal. The first instance of appeal is the IFAS. The time limit for filing the appeal is two weeks, and the time limit for the answer from the IFAS is at the most six months. The appeal to the IFAS has automatic suspensive effect.

In case of a negative decision by IFAS, an appeal to the Higher Administrative Court is possible. The Court can deny appeal against a decision of the IFAS if the decision does not involve a legal issue of particular importance. The time limit for filing the appeal is six weeks. There is no formal time limit for the Court to deliver its decision. The appeal to the Higher Administrative Court does not have automatic suspensive effect, but such can be granted by the Court upon request.

## Guidance, information and legal advice given to asylum seekers

### Availability of interpreters

Article 39a of the General Administrative Procedures Act states that "if a party or any person to be questioned has an insufficient knowledge of the German language the interpreter assigned or available to the authority (official interpreter) shall be engaged". Interpretation is free and according to NGOs the interpreters generally provide a good service. In a few cases, however, problems have arisen, particularly in connection with Kurds from Turkey and Iraq who have been interviewed in Turkish and Farsi although they did not fully understand these languages.

### Information supplied to asylum seekers

According to article 26 of the Asylum Law, asylum seekers shall be provided, as early as possible, with a copy of an explanatory leaflet providing information about their rights and obligations. The leaflet is to be in a language understandable to the asylum seekers. It is normally given to the asylum seekers when they file their application for asylum or when they receive the summons to the interview. In some cases, however, the asylum seeker receives the leaflet just before the beginning of the first interview at the Federal Asylum Office.

The content of the leaflet is determined by law, though in a somewhat rudimentary fashion. In practice the leaflet notes that the application may be filed in one of the official languages of the United Nations and provides information on the following topics: interview, interpreters, written records, identification, separated children, application for extension of asylum, information concerning residence, processing of asylum applications, the right to appeal and the right to residence according to article 19 of the Asylum Law. The leaflet further informs the asylum seeker that, under article 39 of the Asylum Law,<sup>95</sup> s/he may contact UNHCR at any time (UNHCR's address and phone-number in Vienna is included).

### Legal advice

According to article 40 of the Asylum Law the Minister of Interior may appoint refugee advisers who should "*provide aliens with information on any questions concerning asylum law; assist them in connection with the submission of an asylum application or of an asylum extension application and represent aliens in procedures pursuant to the present Federal law or to the Aliens Law, unless the engagement of a lawyer is stipulated by law*". In practice, mainly NGO representatives are appointed as refugee advisers under article 40 of the Asylum Law. They are paid by the Ministry of Interior for several hours of counselling per week. Due to the lack of funding, the refugee advisers are unable to properly fulfil their duties. As a result, not all asylum seekers who ask for advice can be provided with information on questions concerning the Asylum Law, the procedures to be followed and their rights and obligations.

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<sup>95</sup> Article 39 of the Asylum Law states that "*asylum seekers shall be given an opportunity at any time to have recourse to the United Nations High Commissioner for Refugees*".

Consequently, asylum seekers are usually dependent on the legal aid provided by NGOs and lawyers under the UNHCR/Caritas Legal Counselling Project. Asylum seekers under the Federal care and maintenance programme who reside in remote areas sometimes have difficulties in accessing legal aid because most NGOs are located in the cities.

Free legal aid is not made available by the State for proceedings before administrative authorities (the Federal Asylum Office and the IFAS). If asylum seekers make use of their right to file an appeal to the Constitutional Court or the Higher Administrative Court, representation by a lawyer is compulsory. Free legal aid is therefore granted to such appellants needing financial assistance (see article 61 of the Higher Administrative Court Law).

### Training of government officials

Article 37(5) of the Asylum Law stipulates that *"the asylum authorities shall ensure high standards of qualification of their personnel through their instruction and in-service training"*. Decision makers at the first and second instance receive regular training. It would appear, however, that the need and demand for more training has not yet been addressed, especially with regard to first instance decision-making.

Border guards are given clear instructions on the handling of asylum seekers. However, there have been some cases where asylum applications have not been forwarded to the relevant authority by the aliens police.

The military controlling the Hungarian/Austrian border, the border police and the aliens police often lack sufficient training. UNHCR has no information on whether or not specific training regarding female asylum seekers is conducted for the above mentioned state actors.

UNHCR Vienna is involved in the training activities of the IFAS. Furthermore, IFAS/UNHCR round table discussions on selected protection issues are held every two months.

### Accommodation and means of subsistence

Article 1(3) of the Federal Care Provision Act stipulates that there is no claim in law to Federal care and maintenance. The Federal care and maintenance programme is made available only to those asylum seekers who co-operate in establishing their identity and who furnish information on circumstances that may be of importance in assessing their need for assistance. Asylum seekers who are suspected of having committed a criminal offence are excluded from the Federal care and maintenance programme pursuant to article 9 of the Federal Care Provision Order.

The Federal care and maintenance programme includes accommodation, food and medical attention as well as other necessary measures of assistance such as pocket money, clothing, school needs and travel allowances. The individual benefits can also be reduced in line with the asylum seeker's "need

Asylum seekers who are unable to provide for themselves through their own means and efforts are, according to the Federal Care Provision Act, regarded as in need of assistance. Consideration is given to the asylum seeker's own assets and to benefits provided by third parties.

In practice a genuine and proper identity card (passport, identity card or national driving licence) is required in order to be admitted into the Federal care and maintenance programme. NGOs report that the categories of asylum seekers who are considered as not being in need and are therefore excluded from the Federal care and maintenance programme, include asylum seekers who are citizens of a member state of the Council of Europe; asylum seekers who are in possession of a transit visa for any Western European Country, Hungary and the Czech Republic; asylum seekers who are in possession of a mobile phone; and, asylum seekers for whom a guarantee (*Verpflichtungserklärung*) was signed that someone will provide for their living costs, including medical treatment, while they are in Austria. In addition, NGOs state that asylum seekers who are absent from their accommodation for more than three days lose their entitlement to Federal care.

Notwithstanding the criteria listed above, many asylum seekers report that they are denied Federal care on the basis of other, unknown criteria. This is a consequence of what appears to be a somewhat arbitrary decision-making process.

According to the Federal Care Provision Act, entitlement to the Federal care and maintenance programme ceases if the need for assistance ceases or, at the latest, when the determination procedure is concluded. In cases of particular need, the Federal care and maintenance programme may be continued beyond the conclusion of the determination procedure, though not for more than three months.

No statistics concerning the percentage of asylum seekers who receive Federal care and maintenance are available. Due to the restrictive application of the Federal Care Provision Act, and despite the fact that the majority of applicants have no other legal means of livelihood, estimates suggest that only a third of all asylum seekers benefit from Federal care and maintenance. Asylum seekers are, therefore, usually dependent on assistance from churches, other charitable institutions or private persons. Some earn money through illegal work.

Asylum seekers granted Federal assistance are provided with accommodation in private pensions or in one of the four Federal-run centres. The capacity of the Federal-run centres is approximately 1,500 and there are around 3,000 places in private pensions. The State also has agreements with non-profit organisations that offer other accommodation to asylum seekers.

Asylum seekers that are excluded from state assistance and who do not live in a reception centre have to rely mainly on non-profit organisations that provide housing, night shelter and material aid. But this is only emergency coverage.

Entitlement to the social welfare provided by the provinces, rather than at the Federal level, is very limited. In fact, only in a few provinces, and only under special circumstances, are some asylum seekers granted social welfare.

### Health care

There are no legal provisions concerning mandatory medical examination of newly arrived asylum seekers. In practice, asylum seekers who apply for Federal care and maintenance are obliged to undergo a lung x-ray to receive Federal care and maintenance. Lung x-rays are also carried out in reception centres. According to several reports from NGOs, asylum seekers are also required to undergo a lung x-ray before their interview with the Federal Asylum Office in Vienna to ensure they do not have tuberculosis. All asylum seekers in detention must have an official medical observation to ensure that s/he is fit to be kept in prison.

Asylum seekers who are admitted to the Federal care and maintenance programme, or who receive social welfare, have access to health care. Other asylum seekers have to rely on private insurance or on free basic medical treatment provided by some benevolent doctors and private hospitals.

### **Psychological care and counselling**

Since Federal care and maintenance and social assistance include health insurance, those persons who benefit from them can receive psychological treatment free of charge by a doctor of their own choice.

Asylum seekers who do not benefit from Federal care and maintenance or social welfare have no access to free psychological care. They either have to pay for their psychological treatment themselves or, alternatively, they must rely on NGOs to provide psychological treatment. Since there are very few NGOs working in this field in Austria they cannot provide sufficient assistance for all persons in need and often face financial difficulties.

### Education

Education is compulsory between the ages of 6 and 15. Children of asylum seekers may be subject to an examination to check the level of their knowledge. Children who do not speak German may take language classes for a two-year period.

Access to education does not require a legal stay in Austria. Currently, according to NGOs, schools that provide advanced education (to students older than 15) often deny access to pupils who have no right of residence. Asylum seekers can be affected since they do not automatically have a right to a residence permit.

The requirements for admission to university vary. However, in no case is there special financial assistance from the government available to asylum seekers, but there are some very limited private funds for students, especially from developing countries, which are also available for asylum seekers.

## Employment

Asylum seekers receiving Federal care, who are accommodated in welfare homes operated by the Federation, may, with their consent, be employed in auxiliary activities directly connected to their accommodation (for example, cleaning, kitchen work, transport and maintenance).

For auxiliary activities of the aforementioned kind an appropriate remuneration may be paid, taking into account the Federal care benefits. In the assessment of the need for assistance, a refusal to accept reasonable employment or an auxiliary activity as prescribed before, is regarded as a relevant circumstance.

It is clearly outlined that no employment relationship is established through the performance of the said auxiliary activities.

If care recipients undertake a remunerated activity during the period when they are under Federal care, or if they receive allowances as part of training by the labour market administration, they may be allowed, in return for a financial contribution, to remain in their accommodation for up to six months, provided that they have no other place to reside and the capacities of the Federal care system so permit.

In the aforementioned case the care recipient is required to pay a monthly amount of 1,000 Austrian shillings for accommodation and an identical amount for food plus a monthly amount of 250 Austrian shillings each for every additional person living in the household.

## Children

In Austria, children under the age of 19 years are considered minors although children over the age of 14 years can apply for asylum without assistance. There are no specific provisions as regards information about children's rights. Nevertheless, article 13a of the General Administrative Procedures Act 1991 is applicable. This article states that *"[t]he authority shall provide, as a general rule orally, to persons not represented by professional attorneys at law the necessary guidance concerning the conduct of their procedural acts, and shall inform them of the legal consequences directly connected with such acts or omissions."* Therefore, parents must be informed about their right to submit applications for extension of asylum for their children and the consequences.

Children generally benefit from Federal care at a higher percentage than adults. However, for those children who are not receiving Federal care and maintenance and subsequently do not have access to free medical care there are no special measures to promote physical and psychological recovery of child victims.

Child allowance is only granted to recognised refugees or children whose father or mother pays social security contribution. This is generally not the case with regard to asylum seekers.

Asylum seekers are not excluded from the child care system but the long waiting periods and the relatively high costs involved lead to the fact that hardly any child of asylum seekers is in child care.

## Separated Children

In the refugee status determination procedure all separated children are represented by an official of the Youth Welfare Agency. According to article 25(2) of the Asylum Law, the locally competent Youth Welfare Agency is automatically the legal representative of separated children seeking asylum.

As regards care and maintenance, the Youth Welfare Agency is not automatically responsible for the separated child. However, the court may, pursuant to an application from the Youth Welfare Agency, make it so. The Youth Welfare Agency has to pay for adequate accommodation and for the other needs of the children such as food, clothes and health care. Federal care and maintenance is not granted automatically to separated children.

In practice, difficulties arise if separated children cannot prove their identity and the Youth Welfare Agency comes to the conclusion that they are not minors. In these cases, the Youth Welfare Agency does not provide adequate accommodation and care.

Separated children whose asylum applications are rejected are, like adults, subject to deportation under the Aliens Law. Pursuant to Section 68 of the Aliens Law, aliens under 16 years of age may be detained pending expulsion only if accommodation and care appropriate to their age can be guaranteed. Minors who are detained must be kept separate from adults, though in practice they are treated, more or less, as adults.

There are shortcomings with respect to the tracing of the family members of separated children; the specialised medical care needed by separated children who come from situations such as armed conflicts, exploitation, abuse or torture; and the need for interviewers to have the necessary experience and training. Long-term measures, such as the issuance of residence permits, are the same as for other asylum seekers.

The information provided to separated children in the explanatory leaflet given to all asylum seekers reads as follows: *"If you are under 19 years old, you may file applications yourself, providing that you are over 14 years old; however, if your interests cannot be defended by your legal representative (father, mother), your representation in the asylum proceedings will be taken over by the Youth Welfare Agency having jurisdiction. In this case, the Youth Welfare Agency, being your legal representative, will be served with the decision of the Federal Asylum Office (and of the Independent Federal Asylum Review Board). Therefore, you ought to stay in touch with the Youth Welfare Agency during the entire asylum proceedings, or at least until you are 19 years old, and advise them of any change in address of residence."*

## Female asylum seekers

Article 27(3) of the 1997 Asylum Law stipulates that asylum seekers whose fear of persecution is gender-related shall be interviewed by officials of the same sex.

However, article 27(3) of the 1997 Asylum Law only applies to the interviewer and does not make any statement relating to the interpreter. NGOs report that the Federal Asylum Office often makes use of male interpreters in cases

of women who relate their claim to fear of persecution on grounds of their gender. Furthermore, the law does not consider circumstances in which an asylum seeker may prefer to be interviewed by an official of the opposite sex.

Married female asylum seekers have the right to file applications for asylum independent of their husbands' claims.

Families are accommodated together in the reception centres. In the majority of the cases, single men and women are accommodated separately.

### Freedom of movement and residence

Applicants for asylum have the right to move freely but they are obliged to notify the authorities of their address so that they can be contacted.

Asylum seekers who are in the Federal territory are provisionally entitled to reside in Austria unless their application is to be rejected by reason of *res judicata*.

Asylum seekers brought before the Federal Asylum Office may be required to remain at a specific place in the border control area or within the area where the branch office of the Federal Asylum Office is located so as to guarantee the rejection at the border, following the border control; such asylum seekers shall nevertheless be entitled to leave the country at any time.

Asylum seekers whose entry took place by evasion of the border control or in breach of the provisions of Section 2 of the Aliens Law (visa requirements) have a provisional right of residence only when such a right is conferred by the authority. Provisional right of residence shall be granted without delay by the authority, through the issue of the certification, to those asylum seekers whose applications are admissible but are not manifestly unfounded.

Provisional right of residence is certified *ex officio* in the case of asylum seekers to whom a provisional right of residence is accorded. The certification is valid for a maximum period of three months, which may be extended by a maximum period of three months in each case.

Provisional right of residence terminates upon the discontinuation or final conclusion of the asylum procedure. The certification is then withdrawn by the Federal Asylum Office or by the Federal police authority.

According to article 107(1), subparagraphs 3 and 4 of the 1997 Aliens Law, any person residing in the Federal territory as an alien who is subject to the passport requirement but does not possess a valid travel document or who unlawfully resides in the Federal territory is liable to payment of a fine of up to 10,000 Austrian Shilling. There are several reports from lawyers and refugee counsellors stating that asylum seekers have indeed been frequently punished for illegal entry or illegal stay in Austria. However, no consistency of this practice has been observed.

According to the Federal Care Provision Act, asylum seekers benefiting from Federal care and maintenance are spread over the nine provinces (*Bundesländer*) and have to stay at the given place of residence as long as they receive Federal care and maintenance. Once an asylum seeker is

notified that s/he will receive Federal care and maintenance s/he must go to one of the reception centres (Bad-Kreuzen, Mödling-Vorderbrühl, Thalham or Traiskirchen) to receive a "Federal Care-Card" and be allocated a province in which to live. Only under exceptional circumstances<sup>96</sup> can an asylum seeker be transferred to another province.

Asylum seekers who do not receive Federal care and maintenance can freely choose their place of residence within the country. However, their asylum applications are often distributed among the seven branch offices of the Federal Asylum Office. This does not mean that asylum seekers have to move, it simply means that their applications may be processed by a branch office located in a different province than the one in which they reside.

However, the Federal Care Provision Act does not envisage an asylum seeker having a choice of reception centre nor does it provide for different treatment of asylum seekers who are accommodated in private houses.

Asylum seekers who received orders to take up accommodation in premises specified by the Aliens Police as a more lenient measure to detention have to stay at the place of residence given in the decision of the Aliens Police or they will be detained.

### Detention practices

With the entry into force of the Asylum and Aliens Law (1997), the legal basis for detention of asylum seekers was improved insofar as all asylum seekers now obtain a provisional right of residence once they are in the normal asylum procedure. While the law provides for some exceptions, asylum seekers holding a provisional stay permit are usually no longer detained. In addition, the authorities are required to refrain from imposing a detention order if the objective of an order for detention pending deportation can be achieved by the use of more lenient measures. According to the Ministry of Interior, some 674 persons can be detained, at any given time. Throughout the year 2000, the Ministry of the Interior expects this number to increase up to 900. The premises are not specifically designed for long stays. They are principally police detention facilities.

Since January 1998, a programme of social and humanitarian care for foreigners in detention, including asylum seekers, has been in place. It is implemented by several NGOs and financed by the Ministry of Interior. This project ensures that NGOs have access to every detention centre. However, time constraints prohibit NGOs from having unhampered access to detainees at any given time. At some premises, the authorities allow their presence only for a short period of time.

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<sup>96</sup> For example, for reasons such as family-reunification, employment, language courses, psychological care or special medical treatment.

# Belgium

## Legal Framework

The Public Assistance Act of 8 July 1976: *“loi organique du 8 juillet 1976 des centres publics d'aide sociale (CPAS)”*.

The Aliens Act of 15 December 1980: *“loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers”*.

The Belgian Code of Nationality contained in the *“Loi du 28 juin 1984 relative à certains aspects de la condition des étrangers en instituant le Code de la nationalité belge”*.

Instruction by the Minister of the Interior of 9 October 1997: *“Circulaire”* regarding the application of article 9, paragraph 3 of the Aliens Act of 15 December 1980 (on regularisation).

Instruction by the Minister of the Interior of 10 October 1997: *“Circulaire”* regarding aliens who, as a result of external circumstances independent of their will, cannot temporarily abide by an injunction to leave the territory. This was adopted on the basis of the Aliens Act of 15 December 1980.

## Administrative arrangements for reception

Article 3 of the Aliens Act stipulates that a person can be refused entry at the border *inter alia* in the following cases:

- if s/he does not possess valid documents;
- if s/he has been identified by one of the States party to the Schengen Implementation Agreement as an inadmissible person for reasons of public security;
- if an expulsion order has been issued against him/her.

The person may also be denied entry if the Belgian authorities consider that s/he would compromise Belgium's international relations with another State.

If asylum seekers applying for asylum at the border do not possess the necessary documentation, they may be detained in a closed centre operated by the Ministry of Interior to await a decision on the admissibility of their claim. Similarly, applicants who have already entered Belgian territory without the necessary entry documents, who have had their claims rejected at the admissibility stage of the procedure, and whose claims are likely to be rejected on appeal, may also be detained. Both groups must be released and accommodated in an open centre if a decision on the admissibility of their claim has not been made within two months.

All costs associated with the reception of asylum seekers are met by the government.

## Procedures for asylum applications

### **Preliminary Stage**

Pursuant to Sections 51/5 and 51/7 of the Aliens Act (implementing the Schengen Agreement and Dublin Convention), a preliminary stage has been introduced into the asylum procedure relating to the determination of the State responsible for examining the application.

When an asylum seeker submits his/her application either at the frontier or within the territory, the Aliens Office (which is a department of the Ministry of Interior) determines which State should be responsible for examining the application in accordance with the criteria laid down in the Dublin Convention.

According to Section 51/5(3) of the Aliens Act, asylum seekers may be detained under this procedure, but for no more than two months. Thus, even though the Aliens Act does not specifically provide for an accelerated procedure, in practice the claims of detained asylum seekers are treated in an accelerated manner in that they are dealt with within the two month period of detention.

If the Aliens Office determines that Belgium is not the state responsible for examination of the claim, the asylum seeker will normally be refused access to the territory at the frontier or receive notification of a refusal of residence if s/he is already in the country.

### **Admissibility Procedure**

If Belgium is the State responsible, the application for asylum is channelled through an admissibility procedure to determine whether the asylum seeker may be admitted into the territory and the claim examined on its merits. Belgium does not operate accelerated procedures, but the admissibility procedure can be seen as an (unsatisfactory) method of removing “manifestly unfounded” claims and claims declared inadmissible on “safe third country” grounds.

The “safe third country” notion is used in Belgium for asylum seekers that have resided for more than three months in one or several third countries. The asylum seeker must have left the third country for reasons other than fear of persecution for the notion to be applicable.

The other grounds for inadmissibility are set out in the Aliens Act. Initial examination of the admissibility of an application is carried out by the Aliens Office. If the application is declared inadmissible, the asylum seeker is refused admission into the territory or, if already in Belgium, the right to stay. In such cases, the asylum seeker may lodge an “urgent appeal” with the General Commission for Refugees and Stateless Persons (CGRA – Commissariat Général aux Réfugiés et aux Apatrides). This appeal must be filed within three working days after notification of the decision of inadmissibility. The time limit for lodging the appeal is just one working day if the applicant is being detained. The “urgent appeal” has suspensive effect and the CGRA must make a decision within thirty days, though there is no legal provision for sanctions if this time limit is not respected.

If the CGRA rejects the appeal, the applicant can lodge an urgent request for suspension to the Council of State (an administrative court) prior to the date on which the order to leave the territory becomes effective. In addition to this, the applicant can lodge an appeal for suspension and annulment with the Council of State within 60 days of the decision. The filing of an appeal with the Council of State does not have suspensive effect. Suspension will only be granted by the court where it appears that the applicant has a strong case and where the implementation of the inadmissibility decision might cause the applicant serious, and possibly irreparable, harm.

The Council of State's role is limited to verifying the legality of the CGRA's decision and it does not re-examine the facts of the case. The average time required by the Council of State to render a decision on suspension is 12-18 months. It takes the Council of State a minimum of 24 months to reach a decision on annulment.

When the CGRA confirms the decision of in-admissibility (by rejecting the "urgent appeal"), it also gives an opinion on whether or not the applicant should be returned to the country s/he fled. Although this opinion is not binding, it is generally followed by the Aliens Office. However, when the Aliens Office agrees with a CGRA opinion not to deport a failed applicant, the person is not granted a temporary residence permit and, although s/he can remain in Belgium, his/her legal status is uncertain.

Applicants whose claims are declared admissible to the substantial stage of the procedure are issued with a "code 207" which entitles them to benefit from the national social assistance system run by the communes.

### **Regular status determination procedure**

The competent authority for determining status in the regular procedure is the CGRA. The asylum seeker is normally interviewed again, but if this is not possible (for example, for reasons of ill health), the decision is made on the basis of the report written during the admissibility procedure.

There is a two-level right to appeal in the regular procedure. A negative decision of the CGRA can be appealed to the Permanent Commission on Appeal for Refugees. The time limit for lodging the appeal is 15 days. The appeal has suspensive effect.

For a negative decision by the Permanent Commission on Appeal for Refugees, an appeal to the Council of State is possible. The time limit for the appeal is 60 days. The Council of State examines only the legality of the decision and does not re-examine the merits of the case. This appeal does not have automatic suspensive effect, but it can be requested.

## **Guidance, information and legal advice given to asylum seekers**

### **Availability of interpreters**

Article 51/4 of the (Aliens Act) provides that the asylum seeker must give written notification if s/he requires the assistance of an interpreter during the procedure. This is the language then used throughout all stages of the

procedure. Although officially it is not permitted for the asylum seeker to bring an interpreter to the admissibility stage, in practice it is tolerated at the CGRA.

In the reception centres the staff generally speak several languages and also utilise other asylum seekers to assist with translation.

### **Information supplied to asylum seekers**

Asylum seekers are provided with a brochure, prepared by an NGO, containing information on the refugee status determination procedure and the rights of asylum seekers. Staff in the reception centres also provide information. Furthermore, a staff member from the UNHCR Regional Office in Brussels makes regular visits to both the open and closed reception centres. UNHCR receives a substantial payment from the Office of the Minister for Social Integration in exchange for the staff member's monitoring role with respect to the open reception centres. The staff member also provides advice to asylum seekers and trains staff working in the centres during these visits.

Although asylum seekers in both open and closed centres are not informed in writing of their right to contact UNHCR, they are made aware of this right through the regular visits by UNHCR staff members to the reception centres. The staff at the centres, lawyers and social workers who visit the centres are also aware of this right and inform asylum seekers or assist them in contacting UNHCR.

If an asylum seeker is sent back to a country on "safe third country" grounds, s/he is given a document stating that his or her application has not been examined in substance.

### **Legal advice**

There is no right to be represented by legal counsel at the admissibility stage. While there is no specific legal provision in the Aliens Act, asylum seekers are, in practice, provided with free legal advice and representation which starts with the appeal to the CGRA at the admissibility stage of the asylum procedure.

### **Training of government officials**

While no formal training specifically related to refugee and asylum matters is provided by the Belgian authorities to the staff in the reception centres, UNHCR carries out informal training during visits to reception centres.

The government regularly requests that UNHCR provide training to new staff hired to implement the admissibility and refugee status determination procedures.

Although there is no systematic training carried out by the authorities to enhance the protection afforded to vulnerable groups, the Aliens Office and the CGRA do, in general, train specialised personnel to examine asylum claims made by separated children.

## Accommodation and means of subsistence

Unless they have the financial means and wish to obtain their own accommodation, asylum seekers who enter Belgium legally and lodge an asylum application are normally assigned to one of the open reception centres until a decision is made on the admissibility of their claim. Asylum seekers can normally only receive social assistance during the admissibility stage of their application if they are registered by the Aliens Office in an open reception centre. However, when the reception centres are full, newly arrived asylum seekers may proceed directly to the commune to obtain financial assistance and accommodation.

If no decision has been made on the admissibility of an asylum seeker's claim after four months they can leave the reception centre and take up residence in a commune as though their claim had been found admissible. This is a temporary measure, which was introduced because the number of asylum seekers had overwhelmed the capacity of the reception centres. By allowing asylum seekers to leave after four months, additional reception spaces are created.

Asylum seekers whose applications have been deemed admissible are able to leave the reception centre and receive financial assistance from the commune where they live.

There are presently over 25 open reception centres out of which nearly one-third are directly managed by the government, and two-thirds are managed by the National Red Cross under subcontracts with the Office of the Minister for Social Integration. One reception centre is managed independently by the *Mutuelle socialiste*. Additionally, two of the key NGOs dealing with refugee and asylum matters in Belgium - the *Overlegcentrum voor integratie van vluchtelingen* (OCIV) and the *Centre d'initiation et d'intégration pour réfugiés* (CIRE) - have written agreements with the Office of the Minister for Social Integration under which they provide a total of 600 reception places for asylum seekers. At present, there are approximately 4,000 reception places for asylum seekers.

There are two state-run detention centres, *Centre 127* (Melsbroek) and *Centre 127bis* (Steenokkerzeel).

All reception centres are funded by the state.

## Health care

There is no mandatory medical examination other than for tuberculosis. An HIV test is recommended but not obligatory.

Asylum seekers have access to the same health care as Belgian nationals. However, during the admissibility stage of their application, asylum seekers must reside in a reception centre in order to qualify for free health care, which is provided within the centre. Asylum seekers in closed centres are also provided with free health care, which is usually provided within the centres.

## **Psychological care and counselling**

Two specialised centres for the psychological treatment of asylum seekers have been established. An increasing number of psychologists and psychiatrists practising near reception centres are also providing such treatment.

## **Education**

Education is compulsory until the age of 18, including for the children of illegal aliens. The police are not authorised to be near school premises to avoid deterring families staying illegally in Belgium from sending their children to school.

With regards to university education, asylum seekers are subject to the same laws applicable to aliens and may be obliged to pay the fees unless they are from countries identified as “disadvantaged” or their parents or legal guardians are domiciled in Belgium. Recognised refugees resident in Belgium are subject to the same fee structure, which is based on revenue, as Belgians.

## **Employment**

Asylum seekers have the right to work after their asylum application has been admitted into the substantive stage of the asylum procedure. They receive a “B-permit” only at the request of an employer who is willing to engage them. The permit is linked to the validity of the document the asylum seeker has received from the Aliens Office.

Recognised refugees have the right to work and, pursuant to a new directive in 1999, no longer require a work permit. However, the family members, whose refugee status derives from the primary applicant’s status, are not automatically entitled to work. They must obtain a work permit for a specific job offered to them by an employer.

## **Children**

In the reception centres, child care is provided on an *ad hoc* basis.

Health care for children in the reception centres is provided in the same manner as for adults. Children not living in a reception centre have identical access to health care as Belgian nationals.

Education in public Belgian schools is in French or Flemish depending on the school. However, only some schools provide language integration courses. When an asylum seeker or refugee child arrives after the beginning of the school year, the language classes may well be full.

Where there are four immigrant children requiring Flemish language instruction, Flemish schools are authorised to obtain government funding for an additional teacher and assistance in the children integrating into the school’s programme. The French schools do not have such a programme.

Under the Public Assistance Act of 8 July 1976, asylum seekers in the substantive stage of the asylum procedure receive child allowance. This

helps to fund miscellaneous school expenses. Other foreigners must have resided in Belgium for five years in order to be eligible for such an allowance.

Asylum seekers with school age children, whose claims are pending in the admissibility stage of the asylum procedure and who therefore reside in reception centres, receive assistance from the reception centres for the payments of school expenses since they are not entitled to the child allowance.

### **Separated children**

There are no specialised procedures for minor asylum seekers, whether accompanied or not. Although they may be detained in centres with adults, they are usually accommodated in open reception centres. There are reports that approximately 50% of separated children disappear before the completion of the asylum procedure, many ending up in prostitution or caught up in the network of human traffickers.

A royal decree of 1981 provides that without a special decision of the Minister of the Interior or his delegate, no order to leave the territory can be delivered to a person of less than 18 years or to a person who is a minor in accordance with the law of his/her country of nationality. The order to leave Belgian territory is, in such cases, replaced by an order to leave accompanied by another person. In practice, however, for rejected minor asylum seekers between the ages of 16 and 18, the decision of the CGRA notes that as the minor arrived in Belgium by him/herself then s/he is capable of returning alone.

However, those separated children who are not deported are left in a legally insecure position without any documentation or residence permit.

There are three reception centres for separated children:

- The *Petit Château* has a “minors unit” with 35 beds. This unit works in close co-operation with schools, so that the children receive appropriate schooling. Psychological and social welfare needs are taken care of by the organisation EXIL which continues to provide support even after minors leave *Petit Château*. EXIL works with volunteers who often subsequently become the guardians of the children.
- *L’Escale* has eight beds and is managed by a non-profit organisation.
- The *Deinze* centre is a 40-bed Red Cross centre.

The capacity of these centres is far outstripped by the number of separated children applying for refugee status. For example, from 1 January to 31 December 1999 there were 1,834 applications from separated children, an increase of 52% as compared with 1998; the three centres referred to above provide only 83 beds. Therefore, only a small proportion of the separated children residing in Belgium are accommodated in these centres.

There is no system of guardianship for separated children and no specific guidance with regards to access to social welfare, education and medical care. The Note by the Council of Ministers of 1 October 1999, which sets

forth proposed changes to Belgian immigration and asylum policies and laws, provides that all separated children will be permitted to enter the territory and will, therefore, no longer be detained upon their arrival and will be accommodated in special institutions. Additionally, a guardianship will be instituted for all separated children.

### Female asylum seekers

From 1 January to 31 December 1999, 4,995 women applied for asylum in Belgium.

There are no specific regulations relating to the reception of women and the processing of their applications for asylum. Local authorities endeavour to keep families together and, whether in open or closed centres, do not accommodate single women with men. Although there are female staff in the reception centres, female interviewers and interpreters are not always available.

With regards to status determination, women continue to face difficulties due to procedural and substantive shortcomings, especially at the level of the Aliens Office. Asylum officers at this level do not appear to fully appreciate the specific problems and needs of women asylum seekers.

The difficulties women face in the eligibility procedure are reflected in the decisions of the Aliens Office and the CGRA. Women's asylum claims are almost always treated as part of their husbands' claims. Where single women seek asylum, they are often interviewed by a man with, in many cases, a male interpreter, even where the woman was allegedly raped or sexually harassed. The interviewers have often not received any training for interviewing women in this situation. A number of cases have shown that the Aliens Office does not adequately appreciate the link between the human rights violations of a woman in her country of origin and the criteria of the 1951 Convention.

The 1 October 1999 Note to the Council of Ministers, mentioned above, does not mention any changes relating to women asylum seekers and refugees.

### Freedom of movement and residence

In principle, asylum seekers are free to choose their own place of residence. However, the Aliens Act of 1980 introduced a refugee allocation plan; applicants are initially registered at reception centres in order to ensure a balanced distribution of applicants among the municipalities throughout the country. Once their claims are determined to be admissible, they are allocated among the communes throughout the country to try to ensure a balanced distribution. The commune is responsible for providing financial assistance. While the asylum seeker is entitled to live in a different commune, s/he must still return to the assigned commune in order to have access to financial and social assistance.

### Detention practices

Asylum seekers at the border are detained if they do not fulfil all the necessary requirements to enter the territory. Applicants who have already

entered Belgium without the necessary documents and those who request asylum after the expiration of their authorisation to remain in Belgium may be detained following a negative decision on the admissibility of the claim by the Aliens Office.

Asylum seekers who have received a negative decision on their claim and have been ordered to leave the territory may be detained at the border for the period of time necessary for deportation. This detention is initially for a period of up to two months. The Minister of the Interior or his/her delegate can prolong the initial two-month period for additional two-month periods, up to a total of five months, providing three conditions are met. First, the necessary steps for the removal of the person from Belgium must have been taken within seven days of the detention of the person. Second, these steps must be pursued with due diligence. Finally, there must be a real possibility for the removal of the rejected asylum seeker. If detention needs to be prolonged beyond five months due to public order or national security considerations, it can be extended on a month by month basis. The total detention period cannot exceed eight months. Thereafter, the detainee must be released.

Decisions to detain or assign asylum seekers to a particular place of residence are subject to a series of judicial appeals (article 71 of the Aliens Act). However, the courts can only review the legality of the decision to detain the person, not the appropriateness of the decision.

A first appeal against the detention can be lodged with the Council Chamber of the Criminal Tribunal. In practice, the Council Chamber carries out routine controls and only rarely modifies the administrative decision on which the detention is based. The decision can be appealed on a monthly basis.

An appeal against the decision of the Council Chamber can be made to the Accusations Chambers of the Appeals Court, and an ultimate appeal against the decision of the Accusations Chambers can be made to the *Cour de Cassation*. These courts can review the legality of the detention, but cannot evaluate the merits of the decision to detain.

Appeals related to administrative decisions can also be lodged with the Council of State (article 63 of the Aliens Act).

# Denmark

## Legal Framework

The Aliens Act (Act No. 226) of 8 June 1983, with subsequent amendments.

Decree No. 539 of 26 June 1999.

Aliens (Consolidation) Act no.539 of 26 June 1999, with subsequent amendments.

## Administrative arrangements for reception

The legal basis for rejection at the border is laid down in Sections 48a-48e of the Aliens Act. Section 48(2) contains a specific safeguard against *refoulement*. Decisions regarding refusal of entry or expulsion can be appealed to the Minister of the Interior under Section 46(2) of the Aliens Act, but appeals do not have a suspensive effect.

If there is insufficient information to establish an asylum seeker's identity and travel route and the Danish Immigration Service of the Ministry of Interior is therefore unable to make a decision on entry, the asylum seeker may be detained in the prison section of Sandholm camp (under the responsibility of the Ministry of Justice) until the information can be satisfactorily established. The Danish Immigration Service is required to make a decision within three months.

Asylum seekers who are not rejected at the border will be allowed to enter Denmark. Immediately after entry, they will be taken to the registration centre at Sandholm, 25 km north of Copenhagen, which is run by the Danish Red Cross on behalf of the Danish Immigration Service. The asylum seekers are required to give their name, address, date of birth and a brief statement explaining their motives for seeking asylum. If an asylum seeker can establish his or her identity and travel route, s/he will be transferred to one of the reception centres run by the Red Cross in other parts of the country. These reception centres are run by the Red Cross for the Danish Immigration Service.

After a short period in the reception camp, the asylum seeker will be asked to complete a questionnaire detailing family, work and financial circumstances, military service, political activities and reasons for seeking asylum. The completed questionnaire is then translated.

All asylum seekers attend an interview with a representative of the Danish Immigration Service where they will be given the opportunity to explain in greater detail the replies given in the questionnaire. On the basis of the information given during the interview, asylum seekers will be placed either in the accelerated procedure for "manifestly unfounded" claims or in the regular status determination procedure.

However, asylum seekers from European and certain African countries do not complete the questionnaire because it is presumed that, in most cases, they will not be granted asylum in Denmark. Nonetheless, they attend an interview

with the Danish Immigration Service, on the basis of which it is decided whether to process their application under the special fast-track procedure for applicants from “safe countries of origin”. This “fast-track” is part of the accelerated procedures (for “manifestly unfounded” applications or applications with no prospect of success: see the next section).

Under Section 59 of the Aliens Act, it is an offence to use a false passport. However, in practice asylum seekers are not prosecuted for such offences. It is assumed that this is in order to comply with the relevant provisions of the 1951 Convention (article 31, in particular).

There is no strictly defined time limit for lodging an asylum application. Three to four days or up to a week will generally not prejudice an application for refugee status.

## Procedures for asylum applications

### Admissibility procedure

An asylum seeker who arrives in Denmark and is not rejected at the border will be allowed entry into the territory and admission to the determination procedure. The admissibility practice in Denmark applies only to the issue of “safe third country” and transfers in accordance with the Dublin Convention.

In those cases where the police are unable to immediately establish an asylum seeker’s identity and travel route, and the Immigration Service is therefore unable to make a decision on entry or rejection, the asylum seeker will usually be detained. The Immigration Service is required to make a decision within three months.

When the Immigration Service makes an immediate decision to reject an asylum seeker on “safe third country” grounds, the asylum seeker will usually be detained until s/he can be returned to the third country. Where an asylum seeker is denied access to the asylum procedure, an appeal to the Ministry of Interior may be filed. This appeal does not have suspensive effect. If the asylum seeker cannot be returned to the designated “safe third country” s/he will be admitted to the asylum procedure in Denmark.

### Accelerated procedure

After registration by the police, all asylum seekers attend an interview with a representative of the Danish Immigration Service, where they will be given the opportunity to explain in greater detail the replies they gave in the questionnaire. If, after this interview, the Danish Immigration Service decides to process the case in the “manifestly unfounded” procedure, it will be forwarded to the Danish Refugee Council (DRC) for independent review.

A representative of the DRC’s Asylum Department will interview the asylum seeker to ensure that all relevant information has emerged from the questionnaire and the interview with the Danish Immigration Service. If the DRC, which is partly funded by the state, disagrees with the Danish Immigration Service’s decision to classify a case as “manifestly unfounded” it has the right to veto the decision. The Immigration Service will be informed

and the case will be transferred to the normal determination procedure. Of the 462 applications that the Danish Immigration Service considered “manifestly unfounded” in 1998, the DRC vetoed approximately 25%. In 1999, the DRC vetoed approximately 17% of the cases.

However, if the DRC agrees that the case is “manifestly unfounded” or has no real prospect of success, the Danish Immigration Service is informed and the asylum seeker will be notified shortly that his/her application has been rejected. There is no right of appeal against negative decisions finding an application to be “manifestly unfounded”, and the rejected asylum seeker will be required to leave the country immediately. An application for permission to stay in Denmark on humanitarian grounds (under Section 9(2)(2) of the Aliens Act) can, however, be submitted to the Ministry of Interior. Such an application must be submitted, at the latest, upon receiving notification of rejection, if it is to have suspensive effect while a decision is pending. A decision is normally reached within a few days.

The average time to process a case in the accelerated procedure varies, but it is approximately 90 days in total.

There is also a special fast-track procedure within the accelerated procedure primarily for applicants from “safe countries of origin”. These applicants will not be asked to complete the initial questionnaire (see previous section). They can be detained under the procedure if the handling of the application does not take more than seven days. However, this provision is rarely, if ever, used in practice. The countries in the special fast track procedure are all European countries, the USA, Canada, Australia, New Zealand, Japan, Benin, Ghana, Niger, Senegal and Tanzania.

### **Regular status determination procedure**

Asylum claims that are not considered to be “manifestly unfounded” are processed in the normal determination procedure. Asylum seekers are interviewed by the Danish Immigration Service on the basis of the information given in the initial questionnaire. The Danish Immigration Service will subsequently take a first instance decision on the case.

An asylum application that is rejected by the Danish Immigration Service under the normal procedure will automatically be appealed to the Refugee Appeals Board. Appeals have suspensive effect and every asylum seeker is provided with a lawyer paid for by the State.

The Refugee Appeals Board is composed of a chairman, who is a professional judge, and four board members nominated by the DRC, the Danish Bar Association, the Ministry of Foreign Affairs and the Ministry of Interior. Immediately after the Board’s meeting, the asylum seeker is informed orally of the decision. Later, s/he is given a copy of the written decision.

If the Refugee Appeals Board upholds the decision by the Danish Immigration Service to reject an asylum application, the asylum seeker will receive written and oral notification of the final rejection and a date (normally 15 days from the date of notification of the final decision) by which time s/he is required to leave the country.

A rejected asylum seeker may apply for a residence permit on humanitarian grounds pursuant to Section 9.2.2 of the Aliens Act. An application will only have suspensive effect if it is submitted within ten days of receiving notification of rejection from the Refugee Appeals Board.

A rejected asylum seeker attends a meeting in order to plan his/her return journey. The Danish State pays for the travel expenses and provide pocket-money if the person has no money of his/her own. The asylum seeker is allowed to express a preference regarding the travel route, and may even travel to a country other than his/her country of origin provided that it is no more expensive and that s/he can obtain a visa for that country. In practice, a visa cannot generally be obtained due to the time constraints.

A rejected asylum seeker may be detained if the alternatives to detention (as provided for in Section 34 of the Aliens Act) are not considered sufficient to ensure his/her presence for the purpose of removal from the country. There is no maximum time limit for the length of such pre-deportation detention. Detention orders must, however, regularly be reviewed by a court where it must be demonstrated that the detention continues to serve its purpose.

If, through no fault of his/her own, an asylum seeker cannot be removed or deported, s/he may be granted, after 18 months, a temporary residence permit on exceptional grounds in accordance with Section 9.2.4 of the Aliens Act. Deportation may not be possible because, for example, the country of origin refuses to re-admit the asylum seeker.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

Interpretation is generally provided at all interviews and is paid for out of public funds. All decisions are communicated in a language that the applicant can understand.

The use of interpreters is not regulated by the Aliens Law, but instead Decree No. 539 of 26 June 1999. This Decree provides that interpreters must be used during the preliminary interview with the police. According to general administrative practice, interpreters are provided. This means that an interpreter is available during all interviews. However, it is not specified how that interpretation should be provided. The situation in practice is as follows:

- At Kastrup airport interpretation is always provided and it is always conducted in person. The police contact an interpreter from a list of certified interpreters. The interpreter first ensures that the applicant understands him or her before proceeding further. The asylum seeker will be held at the airport until an interpreter has arrived and the interview has been conducted, which in some cases could be several hours.
- According to information received from the Danish police authorities at the border town of Padborg, where most asylum seekers transiting through Germany apply, all preliminary interviews are conducted with the assistance of an interpreter over the telephone. No interpretation in person is available.

- According to the police authorities from the harbour of Helsingør, where most asylum seekers coming via Sweden reach Denmark, the practice differs depending on the availability of interpreters. In practice, if any interpreter is able to come to the police station within a reasonable time the preliminary interview will be postponed until his or her arrival. If the interpreter cannot attend at the police station the interpretation is provided over the phone.
- As asylum seekers may be detained upon arrival, especially when their identity or travel route is not established, they will be required to be brought before a judge if they will be detained beyond 72 hours. Following a decision of the Danish High Court, interpretation is always available during court hearings and is provided by interpreters attending the hearing in person.

### **Information supplied to asylum seekers**

The Danish police are responsible for the initial registration of asylum seekers prior to admission to the substantive procedure. All asylum seekers arriving at Copenhagen Airport are entitled to receive independent legal counselling from the DRC, which is on call at all times. The police are required to inform asylum applicants of this right and to contact the DRC on their behalf.

The DRC has also produced a booklet in several languages which is provided to asylum seekers explaining the asylum process and their rights and obligations in Denmark.

All asylum seekers awaiting a decision on either admission or rejection at the border are offered counselling by a representative of the DRC, including written information in their own language explaining that the Immigration Service has not yet made a decision. They also receive general information on the asylum procedure in Denmark. If they have family members or friends in Denmark, the DRC offers to contact and inform these persons.

When a decision has been made to reject an asylum seeker on “safe third country” grounds at the border, s/he receives information in his/her own language explaining why s/he is to be returned to the third country, how to apply for asylum there and furnishing him/her with the address and telephone number of UNHCR or a refugee-assisting NGO in that area. The asylum seeker is also given a statement, in the language of the country to which s/he is to be sent, to present to the receiving authorities. The statement explains that the asylum seeker has been rejected by Denmark on “safe third country” grounds alone, that his/her asylum claim has not been examined on its merits and that the Danish authorities consider that country to be responsible for the examination of the asylum application.

All the information mentioned above has been produced by the DRC and approved by the Immigration Service.

Following the initial interview with the police, asylum seekers receive written guidelines on asylum from the Danish Immigration Service. They also receive general information on the asylum procedure in Denmark. Asylum seekers are not specifically informed that they may contact UNHCR.

If necessary, the DRC will inform UNHCR or the relevant humanitarian organisations in the receiving country of the asylum seeker's case, in an attempt to prevent further deportation or *refoulement*.

### **Legal advice**

Asylum seekers are entitled, as are all aliens, to request legal aid and the assistance of a lawyer provided for by the State-financed Legal Aid Service (*Advokatavagten*). However, these lawyers are volunteering their time and do not get paid. In practice, asylum seekers seldom make use of this legal aid service.

Before applying for refugee status and at all stages throughout the procedure, asylum seekers may consult the DRC, which plays an active role in counselling asylum seekers, particularly at ports of entry.

Where an asylum seeker is kept in detention, the court shall, pursuant to Section 37(2) of the Aliens Act, assign a lawyer to act on behalf of the individual until a decision is made by a court on the lawfulness of that detention.

In the first instance of the status determination procedure an applicant is not normally entitled to the services of a lawyer paid for by the State. At this stage, the DRC does normally provide counselling and legal assistance. If the Danish Immigration Service rejects the application in the first instance, the negative decision is automatically appealed to the Danish Refugee Board. The appeal has suspensive effect and legal aid is automatically provided and a lawyer will be appointed. Should the asylum seeker have already retained a lawyer, s/he will be paid for by the State during the appeal. If the asylum seeker wants a new lawyer, that will be paid for also. The asylum seeker also has the right to choose his/her own lawyer at the appeal stage. The state will still pay. If s/he does not know a lawyer, one will be appointed.

### **Training of government officials**

Border guards are given clear instructions on how to handle asylum seekers.

The police, the Danish Immigration Service and the Refugee Appeals Board all conduct their own internal training in refugee and asylum policy.

### **Accommodation and means of subsistence**

Asylum seekers receive board and lodging during the determination period. Under an agreement with the Danish Immigration Service, the Danish Red Cross is managing all humanitarian aspects of the accommodation of asylum seekers in Denmark. These tasks include managing the two reception centres for adult asylum seekers or families in Denmark. The reception facilities are open, with asylum seekers free to come and go.

Asylum seekers may receive monthly pocket money and, after five months, a monthly clothing allowance. Asylum seekers with their own financial resources may be required to cover their own expenses and, consequently, may be excluded from state financial assistance. In most of the centres

asylum seekers receive a food allowance in cash. In other centres they receive their meals in canteens.

A few asylum seekers may, upon special request, be accommodated in the private homes of family or friends. Those who choose to stay with a private host must sign a declaration stating that they accept that they will not receive any pocket money, allowances or money for clothes. Furthermore, the host family must sign a declaration that the person can stay with them free of charge. Asylum seekers in private accommodation do not, therefore, receive any financial assistance.

If the asylum seeker is very ill and it is in his/her best interests that s/he does not stay at the reception centre (or in the interests of the other residents), s/he will be accommodated elsewhere. This is an exception to the rule that only asylum seekers residing in a reception centre are eligible for state assistance.

Asylum seekers are not expected to spend more than six weeks at the reception centres. During this period, all tasks connected to the registration of nationality and identity should be completed by the Police.

The Danish Immigration Service has the right to deprive asylum seekers of their right to financial assistance if they do not comply with the obligations to co-operate with the authorities in elucidating their claim for asylum. Asylum seekers who have their right to financial assistance withdrawn receive food parcels. Pregnant women, children or other asylum seekers with special medical conditions cannot have their right to financial assistance withdrawn.

## Health care

Asylum seekers are not required to undergo mandatory medical examinations, but they are offered a medical check-up when they arrive. The Danish Red Cross, which is responsible for the accommodation of asylum seekers, ensures that individuals are examined by a doctor and that any necessary medical treatment is provided.

All the Danish Red Cross asylum centres have their own nurses and, in addition, doctors, psychiatrist and midwives are on call to the asylum centres. If urgent treatment including dental treatment is required, the doctors at the asylum centre can refer the asylum seeker to a specialist or a hospital for special treatment. Medical treatment is provided free of charge. If the medical problem is not serious or does not require immediate treatment, asylum seekers may have to wait until they have received a residence permit. If the asylum seeker stays with a private host, the Danish Immigration Service will still pay for medical and dental expenses.

## **Psychological care and counselling**

It is also possible for the doctor at the asylum centre to refer asylum seekers for psychological treatment where necessary. There are various organisations in Denmark that can counsel and assist torture victims, but asylum seekers must be referred by the doctor at the centre in order to receive such specialised treatment (There are child psychologists / psychiatrists available at some of the specialised child-care centres).

A number of reception centres are reserved to cater to asylum seekers with special needs. These centres offer special care and facilities for vulnerable groups with particular psychosocial needs. One such centre has been established for asylum seekers with psychological problems resulting from, for example, torture. This centre has its own doctors and specialised nurses.

## Education

Children of asylum seekers do not have access to the ordinary Danish schooling system. However, the Danish Red Cross is obliged to provide schooling for all minors with the same classes, number of hours, etc. as Danish children receive, taking into account the educational background of the children of asylum seekers.

Children of asylum seekers who have been in Denmark for more than one year can access the ordinary Danish schooling system on certain conditions; tuition is paid for by the Danish Red Cross.

Asylum seekers do not have access to Danish Universities or the ordinary Danish institutions for higher education. However, under special circumstances, it is possible to grant an exemption from this special rule.

All asylum seekers between 17 and 25 years of age are offered ten hours of schooling and ten hours of school related training per week. The training includes classes in Danish, mathematics, English, history, social science and computer and handicraft training etc. In addition, workshop activities, IT-rooms and other facilities are available at all accommodation centres managed by the Danish Red Cross.

## Employment

Asylum seekers are not permitted to take up paid employment. However, by an agreement with the Danish Red Cross and the Danish Immigration Service it is possible under certain conditions to establish work related training programmes.

## Children

There is a small, weekly child allowance for children under 14 and child care is offered at all accommodation and reception centres managed by the Danish Red Cross.

## **Separated Children**

Separated children are accommodated at special centres with suitable facilities and specially trained staff. These centres have been specially organised and equipped to receive separated children, children arriving with older siblings and those arriving with adults other than their parents.

The Danish Red Cross' Assessor Programme ensures the presence of an assessor at all meetings with the representatives of the authorities.

Minors who are under 14 years of age normally receive exceptional leave to remain in Denmark.<sup>97</sup> Applications from minors over 15 are processed in the status determination procedure.

Separated children may, after approval by the Danish Red Cross and the municipality, stay with other family members who are residing in Denmark. Separated children do not lose the right to receive pocket money or allowances if they stay with a host family.

### Female asylum seekers

No specific legislative measures have been introduced to provide special protection to female asylum seekers. Nonetheless, special attention is given to the needs of female asylum seekers.

There does not yet exist a definite practice with regard to asylum claims based on gender-related fear of persecution and there have been no women granted refugee status on these grounds alone. Indeed, only a small number of women with such claims have been granted permission to stay.

Denmark does not have any guidelines with regard to the treatment of asylum seekers claiming gender-related fear of persecution. There is no right to have a female case officer or interpreter from the Danish Immigration Service, but a female asylum seeker may request this. Then, if it is possible, female interviewers and interpreters will be used.<sup>98</sup> Case officers from the Danish Immigration Service who conduct interviews have all attended courses on interviewing techniques which include consideration of problems involved with gender-related persecution.

As a matter of principle, the DRC attempts to always use female case officers and interpreters when the case involves gender-related aspects of persecution. If the persecution is gender-related and the asylum seeker is a man, the same applies for male case officers and interpreters.

A female asylum seeker who has been a victim of trauma will normally be identified while under the care of the Danish Red Cross in the reception centres. Once identified, she can be provided with counselling and other assistance.

In the asylum centres, the Danish Red Cross always uses female interpreters during procedures that involve personal issues, such as gynaecological examinations. Any medical examination of female asylum seekers is always carried out by a female doctor.

The authorities try to accommodate families together. If the family consists of less than four people they will generally receive one room. Single men and

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<sup>97</sup> There are a series of provisions in the Aliens Act authorising permission to stay on the basis of consideration of humanitarian grounds. In practice, these considerations are oriented towards specific categories of asylum seekers. For example, separated children tend to receive permission to stay on the basis of article 9(2)(4) of the Act.

<sup>98</sup> It should be noted that the Danish Immigration Service does not systematically try to arrange for a female interpreter or case-officer even when the case concerns gender-related persecution.

women are accommodated separately and there is an attempt to accommodate people according to their nationality or ethnicity.

### Freedom of movement and residence

Asylum seekers are given a residence permit which is valid until a final decision on the application has been made. They are required to live in the asylum centre in which they are placed. Although there is a possibility of private accommodation with family or friends, this is exceptional and precludes the right to financial assistance.

Despite these residence requirements, asylum seekers are free to travel within the country.

### Detention practices

Asylum seekers whose identity or travel route is in doubt are subject to detention if they are likely to be rejected and might subsequently try to evade deportation, assuming less restrictive measures (as outlined in section 34 of the Aliens Act) would not be sufficient.<sup>99</sup> Some categories are, however, normally exempt from detention (for example, female asylum seekers with young children) and may instead be asked to report to the police at regular intervals. If the asylum seeker fails to comply with this requirement, detention will be imposed.

There is no specific rule, but according to general administrative practice, single parents (both men and women) are normally not subject to detention. Since there is no specific rule, it is not possible to know for certain how young the children must be.

With regards to “manifestly unfounded” cases, asylum seekers can be detained for seven days if this is necessary to ensure their presence while the case is being considered. In practice however, this is never implemented.

Although there is regular review of detention orders by the administrative courts, there is no maximum duration for the detention of asylum seekers. Rejected asylum seekers whose deportation orders are pending implementation or asylum seekers pending clarification of identity (during the status determination procedure) face lengthy detentions. Such detentions can last a year or more.

Detention conditions are generally adequate. Since 1989, aliens have been detained in a purpose-built detention centre adjacent to the Red Cross reception centre at Sandholm.

As a result, asylum seekers are now rarely detained in ordinary prisons unless they have applied for asylum after being arrested in connection with criminal charges or they have attempted to escape from the Sandholm detention facility. For practical reasons, aliens arriving at the land border with Germany are still normally held in local prisons for up to three days, before being

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<sup>99</sup> NGOs report that less restrictive measures are considered insufficient in a relatively large number of cases and detention is often resorted to inappropriately.

returned to Germany. If it is not possible to return them within three days, they are transferred to the Sandholm detention centre.

Detained asylum seekers must be brought before a judge within three days. The lower City Court decides on the length of detention. This decision can be appealed to a higher Court and, ultimately, to the Supreme Court if special permission to appeal is granted. This is very rare.

# Finland

## Legal Framework

Aliens Act 1991 (amended in 1993, 1995, 1998 and 1999).

Aliens Decree 1994 (amended in 1995, 1996 and most recently 1999).

Integration Act 1999 (on the integration of immigrants and the reception of asylum seekers. This law includes the legislation on the reception of asylum seekers and the representation of separated children.)

## Administrative arrangements for reception

There are 20 reception centres operating in Finland. Eleven are run by the local municipalities, three by the state, five by the Finnish Red Cross and one by Folkhälsan (a Swedish language welfare foundation). All running costs are provided from public funds. There are currently 3,566 places for asylum seekers.

In order to apply for asylum, the applicant is required to submit a written application in his/her mother tongue, which will then be translated. If the person is illiterate, a police officer or an interpreter will help with preparing the application.

A police officer or passport control officer conducts a brief interview in order to establish identity, nationality and travel route as well as the presence of any nuclear family members in Finland and the reasons for the asylum application.

## Procedures for asylum applications

### **Admissibility Procedure**

Other than the procedure at the border where an application may be dealt with in the accelerated procedure according to the "safe third country" notion, there is no specific admissibility procedure. "Safe country of origin" does not exist as a term in the legislation. These cases are normally dealt with in the accelerated procedure on the basis that they are "manifestly unfounded".

### **Accelerated procedure**

"Safe third country" cases and "manifestly unfounded" claims are dealt with in an accelerated procedure.

If the Directorate of Immigration decides that an application is "manifestly unfounded", no residence permit will be granted and the applicant will be refused entry to the territory. The negative decision is reported to the Helsinki Administrative Court, which must make a final decision without delay.

If the District Administrative Court agrees that the application is "manifestly unfounded", the decision cannot be appealed.

If the District Administrative Court decides that the claim is not "manifestly unfounded", the case is referred back to the Directorate for Immigration for it

to be processed again. The Directorate of Immigration can deem the case “manifestly unfounded” another time, but if so, it must be on different grounds.

Pursuant to section 34 of the Finnish Aliens Act, an application for asylum can be considered as “manifestly unfounded” for the following reasons:

- the claim is not based on grounds related to fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion; nor grounds relating to serious violations of human rights; nor other reasons related to injunctions against repatriation;
- the application has the obvious aim of abusing the asylum procedure;
- the applicant can be sent to another EU Member State which, according to the Dublin Convention, is responsible for processing the application for asylum;
- the applicant came from a “safe third country” in which s/he could have received protection.

Applicants coming from “safe third countries” are also channelled through the accelerated procedure, as are transferrals to other EU Member States in accordance with the Dublin Convention.

Countries which might be considered to be “safe third countries” include the EEA countries, Switzerland, the USA, Canada and also, in present practice, the Czech Republic and Hungary. It seems that the Russian Federation is currently treated as a *de facto* “safe country of origin” since virtually all asylum seekers from Russia are dealt with in the accelerated procedure. Furthermore, all Roma from Slovakia and Czechoslovakia are dealt with in this procedure; it seems that Roma from Poland will also be made subject to it. Asylum seekers from Iran, with inconsistencies in their case, and Colombians have also been subject to this procedure.

### **Regular status determination procedure**

Asylum seekers must apply for asylum with a police officer or passport control officer upon entering Finland, or soon after. There is no formal time limit for filing the application, but a delay that the applicant cannot justify may affect the credibility of the claim. It is not possible to lodge an application for asylum from abroad.

The Directorate of Immigration is responsible for examining applications for asylum. The decision is given in writing. It contains the reasons for the decision and information on the possibilities and procedures for appeal. If the decision is not given to the applicant in a language s/he understands, an interpreter will translate it.

There is a two level appeal process. The first appeal is filed with the District Administrative Court of the Province of Uusimaa. The appeal must be filed within 30 days of the negative decision. The Court can rule on the issues of 1951 Convention refugee status and other residence permits (so-called “B Status”) and also, separately, on the issue of expulsion.

An application for a second leave to appeal can be filed with the Supreme Administrative Court. Both levels of appeal have automatic suspensive effect.

## Guidance, information and legal advice given to asylum seekers

### Availability of interpreters

Interpretation is provided for in article 2 of the Aliens Act. Interpretation is provided free of charge to asylum seekers throughout the determination procedure. Interpreters are also made available to asylum seekers to assist with access to legal advice and health care services. Furthermore, interpretation services are provided to asylum seekers for dealing with schools or other officials.

There are problems in finding qualified interpreters for certain “rare” languages.

### Information supplied to asylum seekers

The Finnish Directorate of Immigration has produced information pamphlets for asylum seekers. The pamphlets are so far only in Finnish and English, but the authorities are working on translations for other relevant languages. Asylum seekers receive the pamphlet on arrival. It provides information on the determination procedure, accommodation, subsistence allowances, health care, education, interpretation services, work, study, leisure activities and how to take care of practical matters while awaiting the asylum decision. Reference is made to organisations offering assistance to asylum seekers in Finland including information regarding the nearest UNHCR Regional Office in Stockholm.

The Finnish Refugee Advice Centre (FRAC), the principle NGO providing legal assistance and representation to refugees in Finland, has also produced an information pamphlet for asylum seekers. Their pamphlet is also currently only available in Finnish and English but they too are in the process of having it translated into other languages.

### Legal advice

In the first instance, the Finnish Refugee Advice Centre (FRAC) provides legal advice, free of charge, to all applicants. Asylum seekers are normally informed by the authorities that they can contact FRAC for advice and support.

The FRAC has a special contract with the Ministry of Labour to provide legal assistance in the first instance. This is not within the normal legal aid scheme. In the appeals procedures, asylum seekers have access to the normal legal aid scheme and can choose counsel of their choice.

Asylum seekers can, in theory, use the municipal legal aid offices. However, in practice, these offices do not give advice on the asylum procedure in the first instance and, perhaps as a result, the majority of the appeals are written by lawyers from the FRAC. Indeed, FRAC lawyers act as counsel in 70-80% of the appeals cases.

There is a means test for all persons who apply for legal aid and thus if an asylum seeker can afford a lawyer s/he will not receive a legal aid certificate. On appeals, asylum seekers are normally represented by a lawyer though problems arise concerning access to legal aid when an asylum seeker has been detained.

The Ombudsman for Aliens at the Ministry of Labour can also provide advice to asylum seekers.

### Training of government officials

Police and passport controllers are given instructions on how to handle asylum applications, the reception of asylum seekers, refusal and deportation, and applications from minors. However, the training is only included in the first basic training courses and is not ongoing.

Furthermore, no training regarding gender-related persecution is given to officials who conduct interviews with female asylum seekers.

### Accommodation and means of subsistence

#### **Accommodation**

The reception centres are located throughout the country. Asylum seekers are normally taken to the reception centre nearest their arrival point in Finland. Allocation of accommodation may also depend upon the availability of places at the various centres.

Asylum seekers may either stay in a reception centre or find their own accommodation but all are at least registered with a reception centre. Those in private accommodation receive the same entitlements and services from the reception centre as those living in the reception centre, but they have to pay for their accommodation themselves.

Reception centres are usually public buildings that are no longer in use, such as hospitals and dormitories.

Whenever possible, families have their own, separate, accommodation. Single people may have to share rooms and facilities.

#### **Means of subsistence**

Asylum seekers are entitled to a living allowance, which is based on the basic social welfare allowance granted to nationals. The allowance granted to asylum seekers is, however, lower than that granted to nationals by 15% for adults and 20% for children. The reduction is made because asylum seekers get free accommodation and some services at the reception centres.

The allowance is intended to cover all living expenses, including food and clothing.

## Health care

On arrival, all asylum seekers undergo basic health screening. Certain tests for infectious diseases are obligatory (for example, tuberculosis).

Reception centres are responsible for providing health care services to asylum seekers. To this end, a nurse is assigned to every reception centre. When further health care or medical consultation is arranged through the reception centre, it is free of charge.

Asylum seekers have access to the free municipal health service. However, this is conditional on the asylum seekers accessing the health service through the reception centres. This is because the access is granted on the basis of special reimbursement by the government to the municipality for health care services provided to asylum seekers.

Pregnant women receive the same maternal and child clinic services as nationals.

## Psychological care and counselling

The public health nurse in the reception centre may refer asylum seekers for psychological treatment, in which case it is free of charge. Asylum seekers in need of urgent treatment due to torture may also go to the special Rehabilitation Centre for Torture Victims in Helsinki (although this is primarily intended for recognised refugees). There are also Crisis Prevention Centres for Immigrants in Helsinki and Turku where asylum seekers can receive help with social and/or psychological problems.

## Education

Children from the age of 7 to 16 are entitled to attend school. They are often given special Finnish language classes.

Asylum seekers are also free to apply for a place in any other school, institute or university. It is up to the school whether or not they are accepted as students, but it is not possible to receive financial assistance from the Finnish authorities.

## Employment

Initially, asylum seekers do not have the right to work. After residing in the country for three months they can apply for a work permit, but only one related to a specific job. In practice, very few asylum seekers are able to find work.

## Children

Asylum seekers are not entitled to family allowances but, as mentioned above, they do receive a living allowance.

Children seeking asylum and the children of asylum seekers are entitled to health care.

Asylum seekers are not entitled to municipal child care, but the reception centres sometimes organise child care on a smaller scale when necessary.

Practice varies in this area. While some reception centres use voluntary workers, many have employed staff or made arrangements with the municipal childcare system.

### **Separated children**

The legislation does not contain special provisions concerning the determination procedure regarding asylum applications from minors but the government has specified that an application submitted by a separated child should be processed within 3 months. If the procedure takes longer, the minor will, in theory, be granted a residence permit. Unfortunately, this is rare in practice with most separated children having to wait between one and one and a half years for their decision.

There is no age limit for filing an application for asylum.

The reception of minor asylum seekers is financed by the State. There are currently 4 specialised reception centres for accommodating separated children. Cultural and leisure activities are provided for the minors in the reception centres.

Minors are placed under legal guardianship by the judge. Their legal representative is generally an employee in the reception centre where they live. The system of guardianship has been changed in the Integration Act, which entered into force on 1 May 1999. It provides for a system of legal representatives for separated children. The representatives handle the social and legal rights of the children throughout the determination procedure. They receive some specialised training and, unlike previously, are not usually expected to be employees of the reception centres. The clearest change resulting from the Integration Act is that the representatives are now expected to take on a more active role in the asylum procedure.

### **Female asylum seekers**

Police officers who carry out examinations of asylum requests do not receive any special training on gender-related persecution. Efforts are made, on the applicant's request, to arrange for female staff to conduct the interview and examination of asylum requests. However, in practice this is generally not possible since there is a human resources problem with respect to providing female staff to conduct interviews. There are very few female police officers and there is also a shortage of female interpreters.

There are no special procedures or accommodation for female asylum seekers but single women and single mothers are often accommodated in a specific part of a reception centre.

In the guidelines related to the asylum procedure, reference is made to female asylum seekers; efforts should be made to ensure that they have female interpreters and interviewers in the asylum interview. Recently, also in decisions by the Supreme Administrative Court, special notice was taken of the vulnerable situation of female asylum seekers.

No specific legislative measures have been introduced to protect the rights of female asylum seekers. Furthermore, gender-related persecution is not

interpreted as coming within the ambit of the 1951 Convention refugee definition (which is set out in article 30 of the Aliens Act). Indeed, to date there has been only one case known to UNHCR in which the Finnish Asylum Board considered the vulnerable position of the applicant, as a single woman, as constituting a specific criterion for acknowledging her need of protection under article 31 of the Aliens Act (which provides for *de facto* or “need of protection” status).

### Freedom of movement and residence

Asylum seekers can move freely within Finland. Asylum seekers can either live in a reception centre or find their own accommodation.

### Detention practices

An asylum seeker may be placed in detention if there is reasonable cause to believe that s/he will go into hiding, commit criminal offences, or if his/her identity is yet to be established. This is regardless of whether the application is still being processed or whether a negative decision has already been made.

The lower Court in the region where the asylum seeker is detained must be notified without delay. Notification must take place, at the latest, on the day following the detention order. The case must come before the Court within four days from when the asylum seeker was detained. After two weeks of detention the Court shall, on its own initiative, re-examine the case. Detention can be extended for two-week periods at a time.

## France

### Legal Framework

The French Constitution of 1958.<sup>100</sup>

Order of 2 November 1945 no. 45-2658.<sup>101</sup>

The Law of 25 July 1952 no. 52-893.<sup>102</sup>

The Law of 10 July 1991 no. 91-647.<sup>103</sup>

The Law of 6 July 1992 no. 92-625.<sup>104</sup>

The Law of 24 August 1993 no. 93-1027, amending the Law of 25 July 1952.<sup>105</sup>

The Law of 30 December 1993 no. 93-1417.<sup>106</sup>

The Law of 11 May 1998 no. 98-349, amending the law of 25 July 1952.<sup>107</sup>

The Law of 23 March 1999 no. 99-229, authorising the ratification of the Treaty of Amsterdam.

Decree no. 46-1574 of 30 June 1946.<sup>108</sup>

Decree no. 53-377 of 2 May 1953.<sup>109</sup>

Decree no. 82-442 of 27 May 1982 regulating the application of article 5 of the Order of 2 November 1945.<sup>110</sup>

Decree no. 91-1164 of 12 November 1991.

Decree no.95-507 of 2 May 1995.<sup>111</sup>

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<sup>100</sup> Especially article 53(1) concerning “territorial asylum” (constitutional asylum).

<sup>101</sup> Concerning the conditions of entry and stay of Aliens in France, as amended, in particular, by the Laws of 6 July 1992, 24 August and 30 December 1993, and 27 December 1994.

<sup>102</sup> Concerning asylum and creating a French Office for the Protection of Refugees and Stateless Persons (OFPRA).

<sup>103</sup> Concerning legal aid.

<sup>104</sup> Concerning “waiting zones”.

<sup>105</sup> Concerning immigration control and the conditions of entry and residence for foreigners in France.

<sup>106</sup> Concerning immigration control and amending the Civil Code.

<sup>107</sup> Relating to the entry and residence of foreigners in France.

<sup>108</sup> Concerning the conditions of entry and residence of foreigners in France.

<sup>109</sup> Relating to the French Office for the Protection of Refugees and Stateless Persons (OFPRA).

<sup>110</sup> Concerning the conditions of entry and residence for foreigners in France and relating to admission to French territory.

<sup>111</sup> Regulates the conditions under which UNHCR and certain appointed NGOs have access to the waiting zones.

## Administrative arrangements for reception

Admission procedures at entry points are governed by the Order dated 2 November 1945 (as amended) concerning the conditions of entry and residence of foreigners.

Pursuant to the Law of 6 July 1992 on “waiting zones” (and the Law of 27 December 1994, which extended the concept to railway stations open to international traffic), asylum seekers may be detained in ports, airports and railway stations for the period of time “*necessary to determine whether the application is manifestly unfounded or not*”.

Detention in these “waiting zones” is, for the first four days, an administrative decision. However, the detention period can be extended, by a decision of the civil court of first instance (*Tribunal de Grande Instance*), up to a maximum of 20 days. A decision made by the civil court to extend the detention beyond the initial four days can be appealed to the Court of Appeal (*Cour d'Appel*), though without suspensive effect.

In the “waiting zones”, the State fully finances reception of asylum seekers who will be admitted to the territory or whose request for asylum has not been declared manifestly unfounded. This financial aid is available for a maximum of 20 days at which point the asylum seekers are either granted access to the territory or, if the application is considered “manifestly unfounded”, they are usually returned to the country from which they came directly to France. This is normally a third country, but may be the country of origin.

In the “waiting zones” the costs covered by the State include lodging (in theory in a hostel), three meals a day, one telephone card and medical assistance where necessary. At Roissy airport, where almost 95% of such asylum seekers are located, two floors of the Ibis Hotel are dedicated to aliens kept in the “waiting zone”. Nevertheless, the capacity at the hotel is insufficient and many persons must sleep in the police station at the terminal, which is totally unsuitable.

The border police (PAF - *Police de l'Air et des Frontières*) are responsible for managing the “waiting zones”. Non-governmental organisations are not able to have the permanent presence in the “waiting zones”, that they would like. This limits their ability to provide the necessary assistance to the asylum seekers. Conditions of access for NGOs to the “waiting zones”, provided for in the Law of 6 July 1992, have been laid out in a Decree dated 2 May 1995 and in an order from the Ministry of Interior dated 7 December 1995. Access was granted to five NGOs over a period of two years. Since an *arrêté* of the Minister of Interior dated 19 August 1998, six NGOs are now allowed access to the waiting zones for a period of three years.

Asylum seekers cannot be refused entry solely because they lack the necessary travel documents. However, asylum seekers already on the territory may face difficulties if they entered the country illegally. Given that there are certain differences of approach between the Administration and the various jurisdictions (administrative and judiciary) it is difficult to state with certainty that the defence provided for in article 31 of the 1951 Convention is totally integrated into the system in practice.

## Procedures for asylum applications

### Admissibility procedure

The border procedure is an admissibility procedure, described by the French authorities as “*procédure administrative d’admission sur le territoire*”.

There is no legal definition of the criteria for declaring an application as “manifestly unfounded”, but in practice the French authorities more or less apply the criteria outlined in the 1992 London resolution on “manifestly unfounded” applications.

There is an initial interview with the PAF to establish basic facts such as identity, available documents, travel route and country of origin.

A representative of the Ministry of Foreign Affairs generally conducts the main interview in the “waiting zones”. This interview is to establish whether the asylum seeker should be admitted to French territory to pursue an asylum claim. These interviews help form an opinion which is given by the Ministry of Foreign Affairs to the Ministry of Interior. The opinion of the Ministry of Foreign Affairs does not bind the Ministry of Interior, but it is followed in most cases.

If the Ministry of Interior reaches a positive decision on admissibility, the asylum seeker is admitted into the territory and given a “safe conduct” pass. This is valid for eight days and allows the asylum seeker to apply for asylum with the *Préfecture*. The *Préfecture*, in turn, issues a provisional residence permit valid for one month and an application form produced by OFPRA which must be completed and submitted to OFPRA within one month.

In-country applicants are subject to a type of admissibility stage under the so-called “Pasqua Act” of 24 August 1993. If another State is deemed responsible for examining the claim in accordance with the Dublin Convention, the asylum seeker is not granted access to the normal determination procedure and does not receive any of the benefits normally granted to asylum seekers.

### Accelerated procedure

The so-called “Pasqua Act” of 24 August 1993 is only applicable to in-country applicants. Other than preventing admission to the determination procedure where another state is deemed responsible for examining the claim in accordance with the Dublin Convention, it provides for situations in which an accelerated procedure will be used rather than the regular determination procedure. There are now three such situations, one created by the Law of 11 May 1998, and all have been incorporated into the Law of 25 July 1952. They are when:

- the asylum seeker’s presence in France constitutes a threat to public order;
- the asylum application is deliberately fraudulent or represents an abuse of the asylum procedure;

- the asylum seeker is from a country for which the cessation clause of article 1(c)(5) of the 1951 Convention has been applied. This was introduced by the Law of 11 May 1998.

In each case, the asylum seekers are allowed to lodge an application with OFPRA which is processed in an accelerated procedure known as the “priority procedure”. A negative decision made under this procedure can be appealed to the Appeals Board for Refugees (*Commission des Recours des Réfugiés*), but without suspensive effect.

### **Regular status determination procedure**

After having been admitted to the territory, the applicant must fill in a questionnaire and submit a written application for asylum to the French Office for the Protection of Refugees and Stateless Persons (OFPRA – *Office Français de Protection des Réfugiés et Apatrides*).<sup>112</sup> OFPRA may call the applicant for an interview if there are any additional queries concerning the questionnaire that has been submitted.

First instance decisions on refugee status are made by OFPRA. It reaches its decision largely on the basis of the written applications which are normally completed in French, though additional supporting documents may be submitted in other languages, as long as those languages are relatively well known in France.

Refusal of refugee status by OFPRA can be appealed to the Appeals Board for Refugees (*Commission des Recours*). It consists of a three member court presided over by a member of either the Council of State (*Conseil d'Etat*), the Court of Auditors, the Court of Public Administration, an administrative appeal court or an administrative tribunal. The other two members of the court come, one each, from the *Conseil d'administration* (supervising ministries) of OFPRA and UNHCR. All asylum seekers attend such hearings in person and can be assisted by a lawyer free of charge, if they fulfil the conditions for legal aid (see below, legal aid). The appeal must be lodged within one month of the negative decision or within four months if no decision has been given by OFPRA, (if OFPRA gives no decision after four months, it is considered to have made a negative decision). Appeals under the regular determination procedure have suspensive effect.

If the Appeals Board for Refugees confirms a rejection by OFPRA, an appeal can be made to the Council of State on points of law. Appeals to the Council of State rarely succeed. The time limit for this appeal is two months and it does not have suspensive effect.

An applicant may also, after a first rejection from the Appeals Board for Refugees, apply to have his/her claim re-examined by OFPRA. This requires that the applicant provide new information in support of the request, for example, evidence of change of circumstances in the country of origin. Such reapplication may have suspensive effect if it is one processed in the regular status determination procedure as opposed to the accelerated or priority

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<sup>112</sup> OFPRA is an independent body of the Ministry of Foreign Affairs.

procedure. Refusal to re-examine a case may be appealed to the Appeals Board for Refugees.

A final negative decision is accompanied by a request to leave French territory (IQF –*Invitation à Quitter la France*), stating that the foreigner must leave the country within one month. When the IQF expires, a *reconduite à la frontière* order is issued and may be implemented immediately.

A *Reconduite à la frontière* order can be appealed to the administrative tribunal, with suspensive effect, within 24 hours. A decision on the appeal must be given within 48 hours.

If an asylum seeker cannot be removed or deported for practical reasons, such as illness or conditions in the country of origin, s/he may be granted humanitarian status.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

#### **IN THE “WAITING ZONES”**

The assistance of an interpreter is a right for all foreigners placed in the “waiting zones”. The Administration is supposed to provide free interpretation. Official documents which are given by the border police (PAF – *Police de l’Air et des Frontières*) to persons kept in the waiting zones are translated into a dozen languages. Interpretation is also provided over the telephone by a specialised service of official interpreters.

Interviewing staff are usually assisted by an official interpreter who is physically present during the interview conducted in the waiting zone. Indeed, the *Tribunal de Grande Instance*, which is responsible for deciding whether to extend detention in the waiting zone beyond four days, is quite rigorous in establishing whether an interpreter was present.

Recently, a decision of the Supreme Court of Appeal (*Cour de Cassation*) has called for the presence of an interpreter as soon as the asylum seeker requests one and at all the stages of the procedure. The authorities find this a difficult requirement to fulfil given the number of requests for asylum and the number of languages needed, which is around 60.

Official interpreters are available for hearings before the *Tribunal de Grande Instance* (and for the *Cour d’Appel*) when asylum seekers are being kept in the waiting zones.

#### **WITHIN THE TERRITORY**

OFPRO and the *Commission des Recours* have a pool of interpreters at their disposal, and provided to asylum seekers free of charge. However, reportedly there are problems regarding the training and independence of these interpreters. Asylum seekers can bring their own interpreter to the *Commission des Recours* as well as having the “official” interpreter.

## **Information supplied to asylum seekers**

### **IN THE “WAITING ZONES”**

An internal regulation (that explains to the persons concerned their rights and obligations during the procedure in the waiting zones) is supposed to be displayed at all airports. This document has been translated into the main European languages but has not been translated into the languages most frequently used by asylum seekers arriving at the border. The address and telephone number of UNHCR is on this notice, and will also be provided by the Office of International Migration (OMI – *Office des Migrations Internationales*) upon request.

The OMI is in charge of the *accompagnement humanitaire* in the “waiting zones”, though outside Paris, only at Lyon airport. It monitors the basic needs of the asylum seekers to ensure, for example, that the medical service is functioning, that there are no problems regarding food or clothing, that telephone cards are granted and that useful telephone numbers are available including the telephone numbers of refugee-assisting NGOs. As well as trying to resolve particular problems, the OMI is supposed to monitor conditions and inform the competent authorities. In theory, the OMI also provides information regarding the asylum procedure and the rights of asylum seekers, though there is, reportedly, still much to be achieved in this area.

Regarding the specific rights of children, information can be given by the *Tribunal de Grand Instance* during the hearing, by the OMI and by lawyers. It cannot be confirmed that this information is being disseminated systematically.

### **WITHIN THE TERRITORY**

Once within the territory, NGOs, a network of legal specialists and now even a few web-sites, all provide asylum seekers with information. However, the asylum seekers have to be determined to seek out the pertinent information. There are still many shortcomings with regard to the provision of information and guidance. The language barrier itself is still a major obstacle.

The main written documents used in the procedure all contain the rights and obligations of the asylum seeker. The asylum seeker may also be informed verbally by the interviewer or by his/her lawyer if the case is examined by the *Tribune de Grande Instance*. Nonetheless, NGOs report that asylum seekers are badly informed.

## **Legal advice**

### **IN THE “WAITING ZONES”**

The asylum seekers at the border have been able to benefit from free legal aid since the law of 6 July 1992 came into force and instituted the system of “waiting zones”. The condition of regular and normal residence in France is normally required for a foreigner to benefit from legal aid. However, that is not the case when it concerns persons who face measures such as expulsion or the refusal of a residence permit.

During the border procedure, asylum seekers cannot be accompanied by their lawyer during the interview conducted by the representative of the Minister for Foreign Affairs. This is also the case for asylum seekers applying within the territory, with regard to the interview conducted by OFPRA.

### **WITHIN THE TERRITORY**

Asylum seekers whose applications are rejected in the first instance by OFPRA are entitled to free legal aid before the *Commission des Recours*. They can choose any lawyer that accepts to represent them or a lawyer employed by the Legal Aid Office of the *Commission des Recours* itself. There are however, three conditions on the granting of legal aid. Firstly, the asylum seeker's income must be below a certain threshold. Secondly, s/he must either have entered the country legally or alternatively be in possession of a residence permit valid for at least a year. Asylum seekers issued with the "safe conduct" pass by the border police are considered as having entered the country legally. Finally, the asylum seeker's application must not have been deemed "manifestly unfounded" or otherwise inadmissible. In practice, this last condition is rarely applied.

As a result of these conditions, in particular the requirement that entry to France was legal, only a small minority of asylum seekers benefit from the right to legal assistance.

Asylum seekers can also seek legal advice from refugee-assisting NGOs.

### **Training of government officials**

#### **IN THE "WAITING ZONES"**

At the border, the first officials with whom the asylum seekers come into contact receive minimum training and must, in any case, refer all requests for asylum to a particular police officer on duty. This police officer is empowered to register asylum claims and has, in theory, received the necessary training.

Specific training regarding female asylum seekers is not provided at present. Moreover, officials of the *Police de l'Air et des Frontières* (PAF) who are in charge of conditions in the waiting zones reportedly receive three days training before taking up their duties. However, they receive no specific training concerning female asylum seekers.

#### **WITHIN THE TERRITORY**

The officials with whom the asylum seekers first come into contact are the agents of the *Prefecture* which grant the first residence permit. Basic training is given to these officials but it does not cover the specific problems of female asylum seekers.

Once the request for refugee status has been filed at OFPRA, the OFPRA staff are able to investigate the files of women and to conduct interviews accordingly. Nonetheless, UNHCR periodically receives complaints concerning this area, that suggest that the specific approach followed by OFPRA as regards the identification of particular social or cultural facts is not sufficiently systematic. It relies on the individual OFPRA staff members to

identify the particular social or cultural facts relevant and then to act with all necessary caution in the interviews.

## Accommodation and means of subsistence

### Accommodation

Until approximately two years ago, people admitted to the territory following an application for asylum at the border were given priority in the reception system managed for the government by the French NGO *France Terre d'Asile* (FTDA). However, this is no longer possible due to the fact that the system is overcrowded and thus the people concerned (including minors) have to struggle alone if they have no family or friends in France.

Once asylum seekers are on the territory, State assistance with regard to accommodation is insufficient, and has been for some years now. The State provides some reception centres for asylum seekers (CADA – *Centres d'Accueil pour Demandeurs d'Asile*) which are managed by NGOs, with *France Terre d'Asile* having the overall “monitoring” role. However, the current capacity is 3,588 places and there has been a waiting list of approximately 1,900 persons for more than a year. In order to get onto this list, the asylum seeker must have a temporary residence permit (*autorisation provisoire de séjour*) granted by the local authorities (*Préfecture*).

The residence permit confirms the intention to ask for asylum. However, in the region of Ile-de-France, which contains the largest concentration of asylum seekers, the wait for the first appointment with the *préfecture* can be up to four months.

In general, it takes six months or more for an asylum seeker to be allocated to a reception centre. This discourages some asylum seekers from even attempting to get a place in a reception centre.

The emergency accommodation system for the homeless has, due a lack of available places in reception centres, been put under pressure by NGOs using it as a source of accommodation for asylum seekers. Moreover, this emergency accommodation system is not adapted to asylum seekers and is totally inadequate. NGOs report that the overall situation is critical. Moreover, the financial assistance offered to asylum seekers is insufficient to compensate for the lack of places in reception centres.

Almost half the reception centres are “mixed” in that they house both asylum seekers and other persons in need, such as the unemployed, young workers or migrant workers. The centres are run by various non-profit organisations with the overall network being co-ordinated by *France Terre d'Asile*.

Although living conditions differ in the various centres, there are generally facilities adapted for families. Single men and women are accommodated separately, in individual or twin rooms. Asylum seekers are given food or an allowance for them to prepare their own food.

### **Means of subsistence**

As soon as an asylum seeker is in possession of a temporary residence permit and a certificate from OFPRA certifying that a request for asylum has been lodged, s/he will benefit from social security and medical care, regardless of his/her choice of accommodation.

However, asylum seekers residing in a reception centre receive the “global aid” which is much more substantial and also gives the possibility of assistance from a legal adviser.

In the reception centres, adults and children under three years of age receive a daily allowance of approximately FF10. Children between 3 and 16 years of age receive FF5. Food service is provided or, alternatively, asylum seekers receive a food allowance of approximately FF20 depending on the size on the family.

All asylum seekers are entitled to the “waiting allowance” (*allocation d'attente*) of approximately FF2,000 for adults and FF700 for children, which is paid in one instalment by the Social Service for Assistance to Emigrants (*Service Social d'Aide aux Émigrants*). However, they must present a provisional residence permit and proof that their application has been registered with OFPRA. They are then also entitled to a monthly “integration allowance” of FF1,300 for adults. This allowance, which children do not receive, is paid for a maximum of 12 months. Asylum seekers whose claims have not been determined after this period receive no further financial assistance.

If asylum seekers reside in a reception centre, they lose their right to the *allocation d'insertion*. If, in the time spent waiting for a place in a reception centre, asylum seekers have already begun receiving the benefit, it is stopped upon entry to the reception centre.

Asylum seekers are not entitled to housing benefits as this requires possession of a temporary residence permit valid for at least six months. The permits granted to asylum seekers are only valid for three month periods.

### **Health care**

There are only obligatory medical examinations for asylum seekers admitted to a reception centre, which are the minority. The HIV test is not obligatory, but it will be given on request.

Asylum seekers have access to the national health system on the same basis as nationals if they have a temporary residence permit valid for three months. Asylum seekers not in possession of a permit can receive free treatment in a hospital, as can all persons living in France, with no means of support, regardless of legal status.

### **Psychological care and counselling**

When residing in a reception centre, asylum seekers can, in the larger centres, benefit from psychological care given within the centre once or twice

a week. They will also be assisted by a social worker in negotiating the health care system, which is very complicated.

Medical institutions exist which offer adequate specialised support to asylum seekers. They provide doctors, psychologists, psychiatrists and therapists specifically to the asylum seeker/refugee population. The three principle institutions are AVRE (*Association pour les victimes de la répression en exil*), COMEDE (*Comité médico-social pour les exilés*) and the Primo Levi Association. However, all these institutions are located in the vicinity of Paris.

## Education

Education for children is free and obligatory up until the age of 16. All children can therefore benefit from education regardless of their legal status. There are special classes at the schools to prepare children for entering normal classes.

After 16 years of age, asylum seekers do not have a right to education and therefore cannot benefit from financial assistance for further schooling. However, some asylum seekers have nonetheless been able to enrol for further education despite their status and the enrolment fees, which while constantly increasing, are amongst the cheapest in Western Europe.

There are no specific integration programmes or state-sponsored language classes. Free language classes, where they exist, are provided by local authorities or NGOs.

## Employment

The Circular of 26 September 1991 barred asylum seekers from having the right to work. Previously, it had been granted automatically as soon as an application for asylum was submitted. Now, however, asylum seekers are subject “to the common law provisions applicable to foreign workers for obtaining permission to work, given that the employment situation is opposed to them”, which in practice means that it is virtually impossible to obtain a work permit.

## Children

Children receive the same health care, both physical and psychological, as nationals. The State considers that the existing medical structures can respond to all the medical needs of childhood, including the treatment of traumatised children who are asylum seekers or refugees. There are therefore, no specific measures in place concerning the rehabilitation of child asylum seekers.

Asylum seekers with children receive a child allowance but it is generally not the “*allocation familiales*”, properly so-called, which is given to recognised refugee children, because this requires the possession of a residence permit valid for at least six months.

Asylum seekers admitted to a reception centre can benefit from childcare services. Those asylum seekers who are able, very exceptionally, to obtain a work permit can also benefit from the “*crèches system*”.

## Separated children

Separated children are protected from expulsion until the age of 18 pursuant to the Ordinance of 2 November 1945.

Separated children must be under legal guardianship in order to present their application for asylum. The child can be placed with members of his/her family already resident in France, or under the guardianship of the French authorities. If the child is under the guardianship of a family member, child allowance is often hard to obtain. When under the guardianship of the French authorities, a child remains under the responsibility of the Social Services for Child Aid (*Aid Sociale à l'Enfance*), dependent on the local authorities (*Conseil Regional*) and is usually housed in a reception centre for children.

Other than the *allocation d'attente* granted to all asylum seekers once duly registered, separated children are not entitled to any further allowances or financial assistance.

The position of separated children is, in practice, very complex. According to NGOs, separated children often lack adequate protection.

## Female asylum seekers

Both the *Préfectures* and OFPRA have many women on their staff, perhaps a majority. This is also true for the interpreters. Female interpreters are, without fail, used for the interview at OFPRA when there are delicate issues involved concerning female asylum seekers.

Asylum seekers before the *Commission des Recours* can benefit from the official interpreters, but the system does not, in practice, easily enable female asylum seekers to use female interpreters.

All asylum seekers can ask, if they have strong reasons, that their hearing be private (*huis clos*). But this request is very rare in practice, possibly due to a lack of information regarding this right.

Every team of the PAF responsible for monitoring the "waiting zones" includes, in principle, at least one woman.

The Ministry of Foreign Affairs staff responsible for conducting interviews in the "waiting zones" were, up until recently, all women. However, it would appear that practical constraints are too great for female interpreters to be used systematically in the "waiting zones". Where there is a choice, the interviewing official will, of course, try to be assisted by a female interpreter when interviewing women.

## Freedom of movement and residence

Asylum seekers are granted a "safe conduct" permit when granted access to the territory. It is valid for eight days. They can then obtain a temporary residence permit valid for one month from the *Préfecture*. Having received a certificate from the OFPRA proving that they have submitted their asylum claim, asylum seekers are granted with a three month temporary residence

permit from the *Préfecture*. This permit is renewable for three month periods until a final decision on the asylum claim has been reached.

The Government has a policy of dispersing asylum seekers amongst the various reception centres (CADA) throughout the country. However, as mentioned earlier, only a minority of asylum seekers are accommodated in this manner. Moreover, asylum seekers are free to move as they choose, whether or not they reside in a reception centre. However, asylum seekers who are accommodated in a centre must inform that centre if they are going to be absent.

Asylum seekers often try to settle in the big cities where there is a better chance of finding members of their community, where there are more reception facilities, notably for the homeless, and where it is easier to find irregular work. As a result, certain regions, above all Ile-de-France, host the vast majority of asylum seekers.

### Detention practices

Asylum seekers are generally not detained solely on the basis of their application for asylum. There are, however, two exceptions to this rule. The detention period in both cases is short.

The first exception pertains to asylum seekers in the “waiting zones”. In 1998, the admissibility procedure at the border only applied to approximately ten percent of asylum seekers. This rate increased in 1999, since the number of asylum seekers arriving at the border more than doubled.

The second exception is *rétenion administrative*. It pertains to asylum applicants who have entered the territory and whose claims are considered abusive by the authorities that grant the temporary residence permit (the *Préfecture*). This has a direct consequence on the status determination procedure as these claims are treated as a matter of priority. If the claims are rejected by OFPRA there is still access to the appeal procedure, but with neither suspensive effect nor legal aid.

UNHCR does not have right of access to the detention centres for *rétenion administrative* but UNHCR and certain NGOs do have access to the “waiting

# Germany

## Legal Framework

Constitution for the Federal Republic of Germany (*Grundgesetz*).<sup>113</sup>

The Aliens Act of July 1990 (*Ausländergesetz*).<sup>114</sup>

The Law on Asylum Procedure of 16 July 1982 (*Asylverfahrensgesetz*) as subsequently amended.<sup>115</sup>

The Asylum Seekers' Welfare Act (*Asylbewerberleistungsgesetz*) of 5 August 1997.

## Administrative arrangements for reception

The Federal Office for the Recognition of Foreign Refugees<sup>116</sup> manages the initial distribution of asylum seekers (see below, the section "residence"). An application for asylum has to be lodged with one of the branch offices of the Federal Office. Asylum seekers who are first in contact with the police, aliens authority or border guards are sent to the closest branch office.

Once the application for asylum has been lodged, the local authorities in the Federal *Laender* then have responsibility for the provision of first reception centres and for the subsequent distribution to other accommodation centres throughout their respective *Land*.

NGOs play a key role in the system. Indeed, many reception centres are run by NGOs. In these cases, all technical aspects of the accommodation, including the provision of food and security, fall under the responsibility of the NGO. One such example is the reception centre at Frankfurt airport.

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<sup>113</sup> Section 16(a) of the Constitution establishes the right of politically persecuted persons to enjoy asylum in Germany. However, an amendment to the Constitution in 1993 considerably restricted the right to seek and be granted asylum in Germany. Section 16(a)(2) incorporated the concepts of "safe third country" and "safe country of origin" into the Constitution. Since all EU Member states and countries neighbouring Germany are deemed "safe third countries", the constitutional right of asylum is no longer applicable to refugees who come to Germany by land. The amendment of the Constitution and its subsequent restriction of the right of asylum has been confirmed in all essential points by the Federal Constitutional Court decision of 14 May 1996.

<sup>114</sup> The Aliens Act provides that an alien may not be removed to a state "*in which his life of freedom is threatened by virtue of his race, religion, nationality, membership of a particular social group, or political opinion*" (Section 51(1)). This is sometimes called the "small" refugee status. It is the German equivalent to 1951 Convention refugee status and it gives rise to lesser entitlements in some areas than the Constitutional status. The residence permit issued to refugees under Section 51(1) is, as a rule, valid for two years.

<sup>115</sup> Article 18a of the Law on Asylum Procedure foresees a special fast track procedure for asylum seekers arriving at an international airport. There should be a final decision on the case within 19 days.

<sup>116</sup> Hereafter, the Federal Office.

## Procedures for asylum applications

### Admissibility Procedure

There is no formal admissibility procedure within the German status determination procedures. However, due to the strict use of the “safe third country” notion, an asylum seeker apprehended at, or close to, the border by border guards is not referred to the Federal Office and an asylum procedure is therefore not instigated. The decision to refuse entry is normally communicated orally to the asylum seeker. It may, however, be issued in writing upon request by the applicant. The decision includes information on the right to appeal. Such appeals, although possible from a legal perspective, do not have suspensive effect and are rarely lodged.

If the asylum seeker manages to call at the Federal Office directly or turns to an aliens authority or police station inside the country, s/he will be referred to the Federal Office and an asylum procedure is opened. However, where the Federal Office then comes to the conclusion that the asylum seeker has arrived via a *specific* “safe third country” to which a removal (either on the basis of the Dublin Convention or with regard to Poland and the Czech Republic on the basis of the respective Readmission Agreements) can be effected, the case is not decided on the merits. Nevertheless, in the majority of cases, the specific “safe third country” cannot be determined due to the asylum seeker’s failure to cooperate, and the asylum procedure is fully carried out. Nevertheless, asylum under the German Constitution is still refused on the grounds of the “safe third country” notion, which does not, according to the Federal Constitutional Court, require that the particular “safe third country” be determined. The case is thus examined on its merits with regard to Section 51(1) Aliens Act and other legal obstacles to deportation (Section 53 Aliens Act). An asylum seeker has the right to file an appeal with the local administrative Court (*Verwaltungsgericht*), within 14 days of a negative decision. In practice, however, an appeal is generally not possible because suspensive effect for such appeals is forbidden by law (Asylum Procedure Act article 34(a)) except in exceptional circumstances such as, the applicant may face the death penalty if returned, the situation in the third country has changed drastically or there is a threat of persecution in the third country itself.

### Accelerated airport procedure

Under article 18(a) of the Asylum Procedure Act, asylum seekers arriving at airports are processed within an accelerated procedure if they lack the required travel documents to enter Germany, or alternatively, if they arrive from a “safe country of origin”. If it is possible to accommodate the asylum seekers in the reception facility at the airport they are not allowed to enter the country.

The Federal Office examines the claim and interviews the applicant immediately. It must make a decision within 48 hours and if it fails to do so, the applicant is automatically allowed to enter the country. The asylum seeker cannot be deported before a decision has been reached.

If the Federal Office rejects the application as “manifestly unfounded”, entry to the country is denied. The applicant may file an appeal with the administrative court within three days of the negative decision. In conjunction with the appeal, the applicant must apply for an injunction from the court in order to be granted suspensive effect until a decision has been reached. The administrative court (*Verwaltungsgericht*) must reach a decision within 14 days. If it does not do so, the applicant is allowed to enter the country.

Free legal aid is available at the Frankfurt, Berlin, Munich and Duesseldorf airports but not at Hamburg airport, which is the only other airport where the accelerated airport procedure is being implemented. Legal aid is offered by a local lawyer subsequent to the rejection as “manifestly unfounded” by the Federal Office and comprises advice on the grounds for the rejection and the legal possibilities for, and assistance with, lodging an appeal and application for a court injunction. (See further, the section “legal advice” below.)

### **Accelerated appeals procedure**

Applications can be declared “manifestly unfounded”, and consequently become subject to an accelerated appeals procedure, whether they are filed at the border or in-country.

The finding that an application is “manifestly unfounded” can be appealed to the local Administrative Court (*Verwaltungsgericht*). There is no further possibility of appeal. The appeal must be filed within one week of the negative decision. There is no automatic suspensive effect but the applicant can apply for this separately, also within a week.

The applicant receives the same legal assistance and interpretation as in the regular procedure (that is, free legal assistance if granted by the court). However, some NGOs report that since the deadlines are so short, it can be difficult to persuade a lawyer to take on an appeal at such short notice.

An application can be considered “manifestly unfounded” *inter alia* under the following circumstances:

- it is obvious from the circumstances of the individual case that the applicant is in Germany for economic reasons or in order to evade a general emergency situation or armed conflict;
- statements produced by the applicant are, in major aspects, either contradictory, not substantiated, do not coincide with the facts or are based on forged or falsified evidence;
- the applicant gives misleading information as to identity or nationality or refuses to give any such information;
- the applicant has filed another application using different information;
- the applicant lodged the asylum application so as to avert an imminent termination of residence although there was sufficient opportunity to file an asylum application earlier;

- the “safe country of origin” notion can also be invoked as a ground for considering an application manifestly unfounded.

### **Regular status determination procedure**

An asylum seeker should file an application for asylum as soon as possible after entry into Germany. Failure to do so, if without sufficient reason, can create an assumption on the part of the eligibility officer that the claim could be considered as “manifestly unfounded” and might, therefore, lead him/her to more easily resort to the provisions of Section 30 of the Law on Asylum Procedure.

Border control and local authorities must, by law, refer asylum applicants to the Federal Office, except where the asylum seeker is apprehended at, or close to, the border. Since Germany considers all the countries with which it has land borders as “safe third countries”, asylum seekers who passed through those countries are returned there immediately from the border. There is a branch office of the Federal Office at each centre where they can file their application for asylum. Under the distribution system for asylum seekers, an applicant can be allocated only to the *Land* in which he or she filed the application.

In each case the Federal Office considers the possibility of both forms of refugee status, and alternatives. If an applicant is not entitled to the Constitutional status, the possible of “small” status is examined, and then legal obstacles pursuant to Section 53 of the Aliens Act.

All asylum seekers have a right to be individually interviewed. The interview is conducted by a staff member of the Federal Office and an interpreter will be used if needed. The asylum seeker may call in a legal adviser or other counsellor to assist during the procedures.

The decision is given to the applicant in writing and contains the reasons for the decision as well as information regarding the right to appeal. The time limit for filing an appeal against a decision by the Federal Office is two weeks. The deadline is only one week for appealing rejections made on the grounds that the application is “manifestly unfounded”. (See section on appeals procedure, above.)

There is a constitutional right to appeal after any kind of decision. In theory a decision can be appealed at three levels though in practice it is extremely rare. (The three levels being *Verwaltungsgericht*, the *Oberverwaltungsgericht* and finally the *Bundesverwaltungsgericht*). There is no time limit for the court’s decision. These appeals do not have automatic suspensive effect, but it can be applied for.

Legal assistance is free if granted by the Court. Interpretation is granted free at all court levels in the asylum procedure. UNHCR can take part by providing comments and information on countries of origin.

In addition to the appeal possibilities mentioned above, a complaint can be filed with the Constitutional Court (*Bundesverfassungsgericht*). This can be done when all other remedies are exhausted and the complaint concerns a constitutional matter such as the right to asylum. If this legal remedy is

successful, the previous Court's decision is overturned and that previous Court, probably the *Bundesverwaltungsgericht*, has to decide on the case again. This appeal does not have automatic suspensive effect but the court can be requested to grant suspensive effect in an additional application.

## Guidance, information and legal advice given to asylum seekers

### Availability of interpreters

The interviews by border guards at the airports and the Federal Office's interviews are all conducted with the assistance of interpreters and the interpreters are provided free of charge. If the asylum seekers approach other authorities, however, they are obliged to appear with someone who can interpret.

Where an Administrative Court decides to hear the asylum seeker, the Court can reach a decision simply on the basis of the written exchange, without an oral hearing, if the Court is satisfied that the facts of the case have been established and do not raise questions of law or fact that are of a difficult nature. However, if an oral hearing is held, the Court will provide an interpreter free of charge.

### Information supplied to asylum seekers

Having filed an application with the Federal Office, asylum seekers are informed of their obligations in the determination procedure and, to a much lesser extent, their rights. The information is contained in a leaflet given to the asylum seekers and available in 56 languages.

The duties asylum seekers have include the obligation to keep the Federal Office informed of any change of address and to co-operate in ascertaining the facts of the case by handing over all relevant documents. Asylum seekers are not, however, automatically informed of their right to contact UNHCR.

The desire to speed up the procedure has had an intended impact on the provision of guidance, legal advice and information. Since the change of the asylum law in 1993, new applicants are registered and interviewed within approximately two days of arrival. As a result, individual legal or social counselling on the part of NGOs or lawyers is, as a rule, no longer possible at this stage of the procedure. In order to fill this gap, UNHCR, together with German NGOs, took the initiative to produce leaflets and a counselling video in 10 languages. The impact of this attempt to introduce a quick "group", diminished due to a combination of factors. These included time constraints, staff reductions on the part of NGOs and the prejudiced approach of some authorities who feared that the dissemination of information would enable asylum seekers to prolong the procedure or to adjust their claims.

### Legal advice

In general, asylum seekers have access to free social and legal counselling by various NGOs. These services are sometimes offered in the reception centres but more often the asylum seeker has to travel to the nearest NGO

offices. As mentioned above, due to faster procedures, individual counselling prior to the asylum interview at the Federal Office very rarely takes place.

Legal aid (*Prozesskostenhilfe*) can be granted by courts in cases where there is a chance of success. The requirement that the case be meritorious is the explanation for the fact that legal aid is only rarely granted. Where legal aid is not granted, legal representation has to be financed by the asylum seekers themselves.

Legal aid is granted automatically when the Federal Commissioner for Asylum Matters is appealing a positive first instance decision; that is, when the Federal Office has granted protection to an asylum seeker and that decision has been appealed by the Federal Commissioner for Asylum Matters (subordinate office to the Federal Ministry of Interior). In those cases, the legal representation of the asylum seeker is financed by the government. Furthermore, UNHCR and some NGOs have established legal aid funds in order to support cases they consider, according to their own criteria, to be meritorious.

Since 30 May 1998, the government provides free legal counselling by independent lawyers to asylum seekers whose applications have been rejected as “manifestly unfounded” in the airport procedure in Frankfurt, Dusseldorf, Berlin or Munich. This follows a judgement by the Federal Constitutional Court of 14 May 1996 which ruled that the airport procedure was in line with the requirements of the German Constitution but demanded that there be free legal counselling in view of the sensitive situation (“extraterritorial accommodation”) and time pressure at the airport. Legal assistance for the lodging of appeals is also included in this service.

### Training of government officials

Border guards receive regular training, with UNHCR's involvement, regarding how to identify an asylum claim. This identification is the prerequisite for an asylum seeker to be referred to the Federal Office where they can file an application. The police and aliens authorities, however, do not receive any such training.

Border guards and staff of the aliens authority have not yet received any training on gender-related persecution or the needs that female asylum seekers may have. Nevertheless, such training was conducted for 39 adjudicators, out of the more than 530 adjudicators at the Federal Office, who have been nominated to work as “Special Commissioners for Women Refugees”. Unfortunately, the role of these Commissioners is not sufficiently well defined.

In 1999, the training on gender-related persecution was made available, not just to “special commissioners”, but to any first instance deciding officer who took an interest in the topic.

## Accommodation and means of subsistence

### Accommodation

On arrival, asylum seekers are placed in reception centres where they stay for up to three months before being sent to other accommodations, such as community housing or asylum centres. There are no major differences with regard to the standard of reception between the reception centres and the asylum centres. However, since the Federal States are responsible for the centres, differences may exist between different Federal States depending on the financial situation of the state.

UNHCR has access to all centres.

### Means of subsistence

Assistance is given in kind. There is, in addition, a small daily sum of pocket money. The level of financial assistance, 80 DM/month, does not vary between *Länder* because the law providing assistance is a Federal Law.<sup>117</sup>

### Health care

All asylum seekers are examined for contagious disease (such as Tuberculosis) with the purpose of preventing others from becoming infected.

HIV tests are not obligatory since the authorities do not have a legal basis for mandatory examinations. An examination without prior explicit consent by the asylum seeker would therefore constitute an assault.

Doctors offer calling hours in most reception centres but the time they actually spend in the centres varies considerably. In general, no medical treatment is available at night time.

### Psychological care and counselling

Psychological treatment is hardly ever available directly at the centres. Asylum seekers in need of such treatment have to go to a private practice. However, under the current legislation, asylum seekers' medical bills are only covered by the welfare system when the person concerned suffers from an acute and painful disease. In practice, this often excludes psychological treatment.

Social counselling is available in many, though not all, reception centres. Not even all the large centres, accommodating perhaps 500 asylum seekers each, offer counselling. Indeed, some of the reception centres which do not offer any counselling (neither psychological nor legal) are located in remote areas where there are not even any counselling services in the surrounding villages and towns.

The problem is compounded by the fact that some reception centres do not allow independent organisations to visit the centres for the purpose of counselling.

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<sup>117</sup> Law on Social Welfare for Asylum Seekers (*Asylbewerberleistungsgesetz*)

There are no special measures in place to promote the rehabilitation of children who have been the victims of cruel or degrading treatment. Unaccompanied minors under the age of 16 are, however, accommodated in special child care centres and are cared for by social workers.

## Education

It is not compulsory for the children of asylum seekers to attend school. In all Länder they have a right to attend school, but it can, in practice, depend on the financial and human resources available at local schools.

Not only is it rare for the children of asylum seekers to be taught in their mother tongue, it is also rare for them to be given free German language classes before attending school. In the larger towns, they may be able to attend specific classes to help them integrate.

Asylum seekers do not have access to advanced education.

## Employment

Asylum seekers who have arrived since 15 May 1997 do not have the right to work during any stage of the asylum determination procedure.

Asylum seekers that arrived before 15 May 1997 were also not allowed to work during the first three months while they stayed in reception centres. Once allocated to asylum centres, however, they had the right to apply for permits for specific jobs. The practical impact of this right was limited by the stipulation that the jobs in question had to have been advertised for a certain period of time without being filled by a German or EU citizen.

## Children

Child asylum seekers (accompanied or otherwise) do not have the same welfare rights as the children of nationals due to the Asylum seekers' Welfare Act (*Asylbewerberleistungsgesetz vom 5 August 1997*). As a result, they receive aid in kind and only a small amount of pocket money. Like adults, they can only receive free medical treatment if they are suffering from an acute and painful disease.

Child allowances are not granted to asylum seekers, only to recognised refugees.

The children of asylum seekers may attend kindergarten. During the first three months while the asylum seekers are normally in a reception centre, the children can attend a kindergarten on the premises of that centre. After the first three months, the children may attend a normal kindergarten if the parents are able to secure what are very rare places.

Asylum seeking children who are with their parents, are not regarded as holding any special rights about which they should be informed. As a rule, German children are also not taught about the rights enshrined in, for example, the Convention on the Rights of the Child.

The conditions under which asylum seeking children must live are difficult and are often not addressed. They may have no contact with other children of their age, have language problems, have no quiet place to do their homework while living in crowded reception centres, be homesick and be exposed to a strange new world which no one really explains to them.

### **Separated children**

Separated children under the age of 16 are appointed a guardian to represent them during the determination procedure. They are also looked after by the Youth Welfare offices (*Jugendamt*) and accommodated in special youth centres, which are mostly not used for German children.

Separated children aged 16-18 do not receive any special care and are treated like adults under the German Aliens and Asylum Procedure Law.

In certain *Länder*, minors are held in pre-deportation detention in juvenile detention centres. There is no fingerprinting when a minor is below 14.

The general provisions in the Aliens Act concerning family reunification are applicable. Children have a right to join their families if it is necessary to avoid special hardship. They may also be granted asylum if their mother or father has a recognised entitlement to asylum.

### **Female asylum seekers**

Border guards, police and aliens authorities do not have any established rules regarding the treatment of female asylum seekers. Who is responsible for a particular case thus depends on which official happens to be on duty and is competent for the subject.

However, the border guards at Frankfurt airport, which have the task of conducting first interviews, have female staff in every shift. Female staff are used for the interview of female asylum seekers where possible. The authorities do not, however, inform female applicants in advance that they can be interviewed by a female deciding officer and a female interpreter.

The Federal Office applies the following guidelines in the case of female asylum seekers. Where, upon the filing of an application, circumstances indicate that female asylum applicants have suffered gender-based persecution, the women are informed that they may be heard by a female deciding officer and that a person whom they trust may be present at the personal hearing to provide psychological support. An administrative instruction to this effect was issued by the President of the Federal Office in 1995. It states that *"if circumstances become obvious which make it seem appropriate in the individual case that a woman should conduct the hearing of the female refugee in question on account of the particular persecution she suffered, the hearing is in principle to be conducted accordingly"*. Therefore, where available, female interpreters will be used in these cases.

With regards to the use of female deciding officers, there is a major weakness in the 1995 administrative instruction itself. Namely that female asylum seekers are not automatically informed of the possibility to request a female deciding officer. Indeed, it is often the case that the circumstances, which

suggest that a woman might rather speak to a female deciding officer, do not immediately “become obvious”. UNHCR is aware of a number of cases where interviews conducted by male officers had to be discontinued and taken up again - often weeks later - by female colleagues.

The Federal Office has not agreed with the proposal from UNHCR and other actors that female asylum seekers be informed in advance of the possibility to request a female deciding officer. This would have the benefit of allowing female asylum seekers to decide for themselves whether the gender of the interviewer is of importance to them. Furthermore, it might raise the awareness among female asylum seekers that certain intimate aspects of their stories may be worth mentioning in the interview and might be of relevance within the asylum procedure.

Weaknesses in the Federal Office’s administrative instruction are, nonetheless, in some respects irrelevant. It is not even possible to conduct the interviews according to these guidelines, at least not within a reasonable period of time. Part of the reason for this is that, although around 30% of the Federal Office's eligibility officers are women, not every Branch Office of the Federal Office deals with the same countries of origin. Consequently, there may be no female deciding officers for particular countries in certain branches.

The Federal Office’s commitment to use, where possible, female interpreters is even more difficult to implement. Female interpreters, especially with respect to languages other than English and French, are often simply not available. This is compounded by the fact that the Federal Office feels it must cut costs since it was criticised by the Federal Audit Office for spending too much money on interpreters. Consequently, it is seldom possible to have an interpreter travel the length of the country in order to assist just one asylum seeker. Conversely, the procedures would last too long, in the opinion of the authorities, if the interviews are postponed until such a time as there are several female applicants in one region who speak the same language. Hence, in practice, female asylum seekers very often are interviewed with the assistance of a male interpreter.

Furthermore, interpreters do not receive any special training. Several cases have come to light where the interpreters did not translate the underlying or second meaning of certain expressions or made the women feel ashamed to use more direct language instead of metaphors.

In reception centres, families, single men and single women are, in general, accommodated separately. However, this separation may merely be a separation of rooms rather than of areas in the centre. This may be due to lack of space or because the reception centre consists of just one building. Furthermore, single women are sometimes accommodated together with families in so-called family rooms. The fact that there are sometimes no separate sanitary rooms for men and women, for example at Frankfurt airport, and that women’s rooms cannot be locked, is very problematic.

## Freedom of movement and residence

Asylum seekers are only free to move within the boundaries of the local district to which they have been allocated. For travel beyond the allocated area, a permit must be obtained from the local aliens authorities.

Germany has a distribution system, applicable to all asylum seekers over the age of 16, which is managed by the Federal Office using a computer programme called EASY. This programme takes account of Germany's federal structure due to which certain quota have been established, determining how many asylum seekers have to be taken in by every Federal Land.

Consequently, if an asylum seeker reports at one of the 34 branches of the Federal Office, the EASY programme first decides whether the *Land* where the respective branch is located has already fulfilled its quota. If this is not the case, the asylum seeker can either stay in the first reception centre co-located to this branch or will be distributed to the closest branch within this *Land* depending on whether the branch is responsible for the respective country of origin and whether there is still room available in the co-located reception centre. If, on the other hand, the *Land* has fulfilled its quota, the asylum seeker will be sent to the next *Land* which has not fulfilled its quota yet, provided one of the branches located there is responsible to decide on the country of origin in question and still has a free place to offer in its co-located first reception centre.

Asylum seekers are obliged to reside in the first reception centre for a maximum of three months. After this they are sent to an accommodation centre within the *Land*. Asylum seekers are obliged to stay in these centres until a final decision has been made on their applications. If refugee status has been granted but appealed by the Federal Commissioner for Asylum Matters, the asylum seeker is nonetheless permitted to leave the accommodation centre so long as the cost of the private accommodation is not more than the cost of a place at the centre.

## Detention practices

Asylum seekers are generally not subject to detention prior to a decision on their asylum application. Exceptions to this include the following circumstances.

**During the airport procedure:** *de facto* detention in the closed facility at the airport can amount to a maximum of 19 days prior to a final rejection of an asylum claim as "manifestly unfounded". According to the German Constitutional Court, this *de facto* detention is not considered to constitute a deprivation of liberty.<sup>118</sup>

However, asylum seekers who are rejected in the airport procedure, but who cannot be removed, may spend months in the closed centre at the airport, in conditions that are in fact only acceptable for a short stay.

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<sup>118</sup> Decision of 14 May 1996.

A specialised NGO (*Flughafensozialdienst*) is mandated to care for asylum seekers in the detention centre at Frankfurt Airport. In critical cases, the NGO and asylum seeker's lawyer inform UNHCR. Whenever possible, UNHCR assists with country of origin information. However, there is no systematic exchange between UNHCR and the Federal Office.

**Pre-deportation detention:** unsuccessful asylum seekers who are liable to be deported may be detained in the following circumstances:<sup>119</sup>

- if the deadline for a voluntary departure has elapsed and the person has changed his/her residence without reporting the new address to the aliens authority;
- if the person – for reasons accountable to him/her – was not at the arranged place at a certain time in order to be deported;
- if the person has otherwise evaded the deportation; or,
- if well-founded reasons allow the conclusion that the person will evade deportation.

Pre-deportation detention can be ordered for a maximum period of two weeks if the deadline for a voluntary departure has elapsed and if it is certain that the deportation can be enforced. It can be prolonged for up to six months, unless it is established that - for reasons not accountable to the person – the deportation cannot be enforced within the next three months. However, if the person prevents the deportation through his/her own actions, the order can be extended for another 12 months, allowing for a total of up to 18 months detention pending deportation.<sup>120</sup>

Detention is applied especially if the identity of the unsuccessful asylum seeker is unclear or if s/he provided false information regarding his/her identity. The practice, however, varies considerably between the different Federal States / aliens authorities. Some aliens authorities seem to routinely request pre-deportation detention, while others are less inclined to do so.

The aliens authorities have to apply for pre-deportation detention with the local courts ("*Amtsgerichte*"), which normally decide on criminal or civil cases (depending on the Federal State) and therefore do not have sufficient experience in asylum matters. Such requests by the aliens authorities are routinely confirmed by the judges, even in cases where the enforcement of the deportation is obviously not possible within the established three month period. Although many higher court judgements in recent years have repeatedly declared pre-deportation detention illegal if intended to break the alien's resistance to co-operation, this is still being practised.

The person can appeal against the order of pre-deportation with the District Civil Court (*Landgericht*) and, following that, the Regional Civil Court (*Oberlandsgericht*), within a deadline of two weeks for each. However, a detention order can no longer be subject to judicial review if the time for which

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<sup>119</sup> See Section 57 (2) of the Aliens Act.

<sup>120</sup> See Section 57 (3) of the Aliens Act.

it had been valid has meanwhile elapsed (decision by the Federal Supreme Court – *Bundesgerichtshof*, 25 June 1998, V ZB 7/98). As in the majority of cases, pre-deportation detention is ordered for up to three months and the courts at the first appeal level (that is, the district courts) often take several weeks to reach a decision, it is procedurally impossible for persons to bring their cases before the highest court.

The length of pre-deportation detention differs widely according to country of origin, but is, on average, five to six weeks. Although the Constitutional Court has ruled that pre-deportation detention may not be ordered if actual deportation seems impossible, cases have been reported in which unsuccessful asylum seekers were detained without the authorities having sufficient evidence that the countries of origin would readmit them.

According to figures compiled by the Berlin Senate of Interior, 511 children (65 of them female) were detained in 1997, 335 (44 female) in 1998 and 186 (32 female) from January to October 1999. There are no data available as to how many of those detained were separated children. The longest recorded period of detention was 342 days.

## Greece

### Legal Framework

1975/86 Constitution.

Presidential Decree no. 83 of 1993 on the procedure of recognition of refugee status.

Presidential Decree no. 209 of 1994 on employment of recognised refugees, asylum seekers and temporary residents on humanitarian grounds.

Law no. 1975/1991 on aliens and refugees (the Aliens Act) as amended by law no. 2452 of December 1996.

Presidential Decree no. 266 of 1999.

Presidential Decree no. 61 of 1999.

### Administrative arrangements for reception

Although the government is responsible for reception arrangements, the reception capacity administered by the government is insufficient to address the needs of asylum seekers arriving in Greece. With the exception of a small government funded reception centre (at Lavrio, Attika) and the stipulation in the law that urgent medical needs of asylum seekers are to be addressed by state institutions (Presidential Decree 266/99), no assistance is provided to asylum seekers by the government.

NGOs play an important role in covering the basic needs of asylum seekers, in particular urgent medical care, emergency financial assistance, referral to housing, social counselling and legal counselling. Food and medical care as well as psycho-social services are provided with the partial contribution of UNHCR through its NGO partner, International Social Service. The duration and volume of assistance provided to asylum seekers and refugees by UNHCR funded voluntary agencies is limited. A substantial number of asylum seekers and refugees live close to, or below, the poverty line.

Those caught by the army or coastguard entering illegally are handed over to the police for examination. Asylum seekers are referred to the relevant police authorities for registration and interview. There have been, in the past, cases of summary deportation without an opportunity to apply for asylum.

### Procedures for asylum applications

#### **Admissibility procedure**

There is no special admissibility procedure in Greece, but an accelerated procedure is used for border and airport applications.

#### **Accelerated procedure**

If an asylum seeker arrives at a port or an airport without the proper documents to enter the territory and files an application for asylum, the

application will be examined on the same day. The applicant must wait for the decision at the port or airport.

All applications filed at ports and airports are examined within the accelerated procedure. Applications filed within the country can also be channelled through the accelerated procedure if, after the first interview, the interviewer is of the opinion that the claim is “manifestly unfounded”. A reference is made in the Greek legislation to the EU Resolutions on “manifestly unfounded” applications and “safe third countries”.

The submission of the case to the Ministry of Public Order (MPO) should be made within ten days. In exceptional cases, if the person does not fulfil the legal conditions to enter Greek territory or if s/he is found in an airport transit zone on his/her way to a third country, the claim, together with the relevant report and supporting documents, shall be submitted to the competent Directorate of the MPO within 24 hours.

Each case is examined individually and the asylum seeker must not be expelled before a decision is made on whether or not the case is “manifestly unfounded”. The Head of the Division for Police, Security and Order at the MPO makes the decision on whether the application is “manifestly unfounded”, following the recommendations of the Department of State Security at the MPO.

If the application is rejected, the applicant has the right to lodge an appeal to the Secretary General of the MPO. This appeal must be lodged within ten days from delivery of the initial negative decision. The Secretary General’s decision is based on the advice of an appeals board consisting of, *inter alia*, officials from the MPO and the Ministry of Foreign Affairs. UNHCR also participates. This is the same committee as for appeals in the regular procedure.

The decision must be delivered within 30 days. The appeal has suspensive effect.

The definition of “manifestly unfounded” cases outlined in the 1992 Resolution on “manifestly unfounded” applications for asylum is followed. Consequently, an application can be declared as “manifestly unfounded”, *inter alia*, for the following reasons:

- the reason for the application does not fall within the 1951 Convention;
- the asylum seeker has used false identity documents, given false information, or is considered to have “abused” the procedure in other ways;
- the asylum seeker comes from what is considered to be a “safe country of origin”. No formal list of “safe countries” exists. The presumption of safety can be rebutted in the appeal procedure.

### **Regular status determination procedure**

An application for asylum can be lodged with any public authority in Greece. Not all authorities, however, are fully qualified to handle requests for asylum.

Consequently asylum seekers may, in practice, experience difficulties in lodging an application.

There is no time limit for filing an application.

After an initial interview, the authority examining the asylum claim submits the application, with supporting documents and a report, to its supervisory Police Directorate or Aliens Sub-Directorate. The supervisory body gives its opinions on the proposals made by the interviewing officer and on whether to transfer the responsibility to examine the application to another EU Member State under the Dublin Convention. It then submits the application to the competent Directorate of the MPO.

The Secretary-General of the MPO makes the decision on the application, following relevant recommendations made by the Division of State Security of the MPO.

The examination is conducted by the following authorities:

- Aliens Sub-Directorates or Departments;
- the Security Departments of the State Airports;
- the Security Sub-Directorates of Departments of the Police Directorates.

Asylum applications are to be examined by these services within three months following their submission. Applications filed at ports and airports, where asylum seekers remain until a decision has been made, are to be examined on the same day.

Specialised police and civil personnel are assigned to examine the applications. Legal advice is not always available to the applicant, nor is information about the procedure in languages that the asylum seeker understands. Personal interviews are held and all interpretation costs are covered by the authorities.

If an asylum seeker is recognised as a refugee, s/he is given a copy of the decision and a refugee identity card. On the basis of this card, the refugee is provided, free of charge, with a residence permit valid for five years. This permit is renewable.

If the asylum seeker is rejected, the decision is announced to the applicant orally, in a language s/he understands. The decision contains a reasoned justification for the rejection and explicitly mentions the time limit of 30 days for the right to file an appeal.

UNHCR has access to asylum seekers throughout the procedure, including the appeal procedure. All decisions are communicated to UNHCR.

There is a one level right to appeal to the locally competent Police authority, who forwards the case to the Minister of Public Order. The decision is made within 90 days and is based on the advice of an appeals board. This is the same appeals board as in the accelerated procedure (see above). The time limit for filing the appeal is 30 days. The appeal has suspensive effect.

An asylum seeker who is not granted refugee status can be granted a temporary residence “card” on humanitarian grounds. The Minister of Public Order grants the residence card on humanitarian grounds and there is no right to appeal a refusal. The card is valid for one year. To renew the permit the person must, at least 15 days before the expiration of the card, submit an application to the locally competent police authority. The General Secretary of the MPO decides on such applications.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

In accordance with Presidential Decree 61/1999, asylum seekers are to be provided with an interpreter during the interview with the MPO officer, police director or other competent officer.

Currently, however, the authorities are usually unable to provide interpreters due to a lack of personnel. Furthermore, most of the interviewers’ knowledge of foreign languages is limited and prevents them from directly accessing all available information on the country of origin.

The Greek Council for Refugees, which is funded in part by UNHCR, provides interpreters at some police stations where interviews are conducted. Where necessary, alternatives are also explored, for example locals with the required language skills may be called in by police, especially at border areas, to assist with interviews.

### **Information supplied to asylum seekers**

Persons who are registered as asylum seekers by the authorities are given a leaflet containing information on the asylum procedure and their rights and obligations. Currently, this leaflet (published with partial funding from UNHCR) is available in Greek, English, Albanian, Arabic, French, Kurdish, Russian, Serbo-Croatian, Turkish and Farsi.

Various NGOs have published guides for asylum seekers in various languages that explain the asylum procedure and facilities and services available to asylum seekers and refugees. However, these are available primarily from the NGOs themselves and not from the police.

UNHCR has access to transit zones in airports.

### **Legal advice**

There is no legal aid scheme funded by the government.

Various NGOs, such as the Greek Council for Refugees, International Social Service and others, as well as the Athens Bar, offer free legal advice and representation.

## Training of government officials

The MPO schools for police cadets offer a course on human rights but it does not focus on refugee law or refugee status determination procedures. There

is, however, a training structure for border, customs, police and military officials in receiving children and on special interview techniques to be followed when interviewing children.

UNHCR's relevant guidelines relating to gender have been made known and explained to status determination officers.

Officials of the MPO receive training on refugee protection and the asylum procedure through the various police academies and through specialised training offered by UNHCR. A special problem in the field of refugee status determination, however, continues to be the lack of proper facilities and adequate training of MPO staff in the field of refugee law. UNHCR training is organised for police at central and border areas, and at various levels of authority. UNHCR training always includes a segment on female asylum seekers and refugees, in particular as regards refugee status determination and the asylum procedure.

There is no specific state training structure for government officers in charge of handling asylum matters, other than a School of Judges through which UNHCR sends refugee status determination material to prosecutors and court presidents.

### Accommodation and means of subsistence

Before admission to the determination procedure, an asylum seeker has no formal right of residence in Greece. Once admitted, asylum seekers can stay in refugee camps or elsewhere if they keep the police informed of their whereabouts. The residence permit is valid for six months and is renewable.

The State does not grant any financial assistance to asylum seekers. Some financial and material assistance is provided by NGOs.

The number of places in reception centres is very limited, and most asylum seekers have to rely on welfare agencies for shelter. There are no permanently established reception facilities at land border posts or on the islands. As of very recently, the authorities have taken some ad hoc measures to provide temporary shelter to the most needy new arrivals. This includes accommodating group arrivals in hotels for a few weeks while the screening process is conducted.

Most asylum seekers come in groups and are kept together, generally in precarious conditions with regard to accommodation, health, and privacy.

Detention conditions are poor. The holding area of Athens International Airport was improved and offers minimum standard conditions as long as the number of persons remains below 15.

Except for limited vulnerable categories, asylum seekers cannot count on any financial assistance from the State with regard to shelter. A limited number (up to 300) may be accommodated at Greece's only reception centre (Lavrio), which is run by the Hellenic Red Cross with funds from the Greek government. The Hellenic Red Cross and International Social Service have been assigned the special tasks concerning the running of the Lavrio centre.

Medecins du Monde and the Hellenic Red Cross run two reception centres in the area of Attica, which are not officially recognised by the government.

Separated children, women and families are accommodated in the centre, but they are accommodated separately. Except for limited vulnerable categories, asylum seekers cannot count on any financial assistance from the State with regard to basic human needs. A Presidential Decree, which provides for medical and social care for asylum seekers has been issued.

Many asylum seekers remain without basic support, living in rough conditions and depending on charity. A new law on social welfare was passed in 1998 that includes general provisions on asylum seekers. The law creates a framework for social welfare and mentions asylum seekers and refugees explicitly as being "vulnerable categories" for whom special projects can be designed. In itself, it has no practical consequences.

### Health care

According to Presidential Decree 266/99, urgent medical needs are to be addressed by state institutions.

Health care professionals, provided by NGOs, are available at the reception centres.

Pursuant to Presidential Decree 61/1999, asylum seekers undergo routine medical examinations to prevent the spread of communicable diseases. These examinations do not include HIV testing.

### **Psychological care and counselling**

Asylum seekers who report that they are victims of torture are to be referred to specialist medical institutions by the police, as required by Presidential Decree 61/1999. In addition, treatment is provided by NGOs working at the centres, and UNHCR provides partial assistance. NGOs play an important role in social counselling as well.

### Education

Greek language courses are given in the refugee reception centre in Lavrio, organised by the Ministry of Education.

Children of asylum seekers have access to the education system up until the age of 16. Those who cannot speak Greek have to take language courses on their own initiative, as language classes to prepare children for school are very rarely held by the State.

Asylum seekers have access to advanced education though financial assistance is not available from the government.

### Employment

Asylum seekers can apply for a work permit for a specific job.

Since Presidential Decree 189/1998, asylum seekers have had access to temporary employment, albeit with limitations. Asylum seekers may

undertake employment on the condition that after searching the labour market, no Greek national, EU citizen, recognised refugee, or person of Greek descent expressed interest in the particular post. These restrictions, coupled with competition with irregular workers, have limited asylum seekers' actual ability to find work.

## Children

### Children

In Greece, minors are children under 18 years of age.

As a rule, the protection and rights of asylum seeking children are secured on the basis of the general legislation applicable to children.

There is a worrying trend of minors leaving the reception centres, and indeed the country, with the help of smugglers, paid for by their families.

Childcare is available to a limited extent, but only through NGOs. There is a kindergarten run by the Social Work Foundation and day care facilities provided by the International Social Service at Lavrio reception centre and by the GCR.

### Separated children

Separated children between the ages of 14 and 18 may lodge asylum applications if they seem to have the necessary maturity. In all other cases, a prosecutor is appointed to act as guardian. There is no fingerprinting if a minor is not yet 14 years old. There is not a special status determination procedure for separated children.

There are no specific provisions regarding family reunification for separated children. The general rules determining family reunification apply.

In general, separated children are entitled to special treatment. There are general rules with regard to facilities for care, appointment of a legal guardian, counselling and the provision of interpretation. In particular, separated children are entitled to immediate medical and social care.

In addition to being entrusted to special care centres for children without parents, or whose parents cannot be traced, there is a possibility that separated children will be placed with foster families. The foundations seek to trace families and examine conditions for return. When this is not possible, they undertake the protection and upbringing of the children while exploring the possibility of placing them with foster families.

There is no special regime for detaining children or separated children seeking asylum. Nonetheless, the detention of separated children is extremely rare, although the detention of minors accompanying their parents is not. The Government has declared its intention to lodge homeless separated children in special institutions until their cases are addressed.

## Female asylum seekers

Presidential Decree 61/1999 stipulates that female asylum seekers should be interviewed by female staff, including interpreters, if appropriate due to their cultural background and experiences. In practice, this is not always possible due to a shortage of specialised staff.

When female asylum seekers have difficulties in dealing with male asylum officers, due to prior traumatic experiences or cultural background, they have a right to be interviewed by female officers and to deal with female interpreters.

Claims involving sexual violence, rape, forced sterilisation and female genital mutilation, are examined carefully and with the necessary sensitivity. There are, however, very few cases where these grounds have been used to afford female asylum seekers protection.

## Freedom of movement and residence

Asylum seekers admitted into the refugee status determination procedure are free to move within the country but they are obliged to keep the Aliens Department of the Police informed of their whereabouts. If an asylum seeker moves from his/her place of residence and does not notify the authorities, the examination of his/her asylum claim can be interrupted.

Excluding those in detention, asylum seekers are free to choose where to live, unless they have been assigned a place at the Lavrio reception centre. If they have, they must obtain permission to leave the centre. During the determination procedure the applicant is obliged to remain in his/her stated address or in a place designated by the MPO.

Asylum seekers who submit applications while in a transit zone are normally required to remain there until the claim has been examined and a decision made.

Although the Greek Government has maintained its reservation regarding article 26 of the 1951 Convention, refugees are allowed to travel and settle throughout the country without restriction.

## Detention practices

The authorities detain asylum seekers on the basis that it facilitates deportation. Most cases of detention involve persons who have been arrested for illegally entering Greece and have subsequently applied for asylum. They often remain in detention pending a final decision. Those detained also include rejected asylum seekers and those who have failed to have their "humanitarian" or "temporary protection" status renewed.

The duration of detention varies but may last several months. The Greek Council for Refugees and other NGOs regularly monitor the detention centres in Athens.

# Ireland

## Legal Framework

Refugee Act 1996.<sup>121</sup>

Immigration Act 1999.

Aliens Act 1935.

Irish Nationality and Citizenship Acts, 1956 to 1994.

Aliens Order, 1946.

Implementation Order of the Dublin Convention, 1997 (S.I. No. 360 of 1997).

## Administrative arrangements for reception

Asylum seekers may apply for asylum with immigration officials at ports of entry or, if they are in Dublin, with the Asylum Section of the Department of Justice, Equality and Law Reform directly. If they are outside Dublin, asylum seekers may apply for asylum with the local police. The applicant fills in an asylum questionnaire and is given a preliminary interview by an immigration officer or, in the case of in-country applicants, with a Government official.

Immigration Officers are instructed to inform the Asylum Section of the Department of Justice immediately whenever an application for asylum is made. It is not necessary for a person to use the words “asylum” or “refugee” in order to be treated as an asylum seeker and if in any doubt the Immigration Officers are meant to contact the Department of Justice.

The Directorate for Refugee and Asylum Support Services is the agency responsible for the reception of asylum seekers. Since May 2000, it has provided full board accommodation to all newly arrived asylum seekers, in Dublin for an initial period, then around the country. Voluntary agencies are only involved in providing *ad hoc* assistance to asylum seekers.

## Procedures for asylum applications

### **Admissibility Procedure**

There is no general admissibility procedure for all applications in Ireland other than those cases involving the Dublin Convention. Asylum seekers awaiting transfer to another Member State under the Dublin Convention are treated similarly to other asylum seekers with respect to living conditions. Asylum seekers awaiting transfer are not detained.

### **Accelerated procedure**

An application for asylum may be deemed “manifestly unfounded” for the following reasons:

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<sup>121</sup> The full text of the Refugee Act is not yet implemented.

- the application does not, at face value, show any grounds to support the claim that the applicant is a refugee;
- the applicant gave clearly insufficient details or evidence to substantiate his/her claim;
- the applicant's reason for leaving or not returning to his/her country of nationality does not relate to a fear of persecution;
- the applicant did not reveal that s/he was travelling under a false identity or was in possession of false or forged identity documents, and did not have reasonable cause for not revealing the fact;
- the applicant, without reasonable cause, made deliberately false or misleading representations of a material or substantial nature in relation to his/her application and, without reasonable cause and in bad faith, destroyed identity documents, withheld relevant information or otherwise deliberately obstructed the investigation of his/her application;
- the applicant deliberately failed to reveal that s/he had lodged a prior application for asylum in another country;
- the applicant submitted the application for the sole purpose of avoiding removal from the State;
- the applicant has made a prior application for recognition as a refugee in a state party to the 1951 Convention; the application was properly considered and rejected and the applicant has failed to show a material change of circumstances;
- the applicant is a national of, or has a right of residence in, a state party to the 1951 Convention in respect of which the applicant has failed to adduce evidence of persecution;
- the applicant, after making the application and without reasonable cause, left the country without leave or permission, or has not replied to communications addressed to him/her from the authorities, or prior to which the applicant has been recognised as a refugee under the 1951 Convention and granted asylum in another State and his/her reason for leaving or not returning to that State does not relate to a fear of persecution.

All claims deemed “manifestly unfounded” are dealt with in the accelerated procedure.

A decision that an application is “manifestly unfounded” can be appealed to the Appeals Authority within seven days. The Appeals Authority is a lawyer with a minimum of five years of practice who is independent of, but appointed by, the Minister for Justice, Equality and Law Reform. UNHCR is notified of all “manifestly unfounded” decisions and is provided with a copy of all the dossiers of applicants who have appealed the decision. UNHCR can submit observations on the cases within seven days of receipt of the dossiers. The Appeals Authority does not conduct oral hearings for appeals of “manifestly unfounded” cases. The Appeals Authority makes a recommendation to the Minister for Justice who makes the final decision. A finding at the appeals

level that the application is not “manifestly unfounded” restarts the examination of the case at first instance.

### **Regular status determination procedure**

The refugee status determination process is currently based on administrative procedures conveyed to UNHCR by letter of December 1997. It is anticipated that the Refugee Act 1996 will be implemented in full in 2000. Under the current arrangement UNHCR does not provide written observations to the Department of Justice on each individual asylum case received by the authorities in Ireland (as had been the case under previous arrangements). UNHCR now focuses on providing advice and training on the interpretation of the 1951 Convention and supplying country of origin information, while intervening in individual cases where appropriate.

A negative decision is communicated to the applicant in writing, including the reasons for the decision and information regarding the procedure for appeal.

The applicant has a right of appeal to the Appeal Authority. The appeal must be filed within 14 days of a negative decision and if the applicant wants an oral hearing s/he must specifically request it.

The Appeal Authority makes a recommendation to the Minister for Justice who makes the final decision on the appeal. If the first instance decision rejecting the application is overturned at appeal the applicant will be recognised as a refugee.

The decision of the Minister for Justice can be subjected to the general process of judicial review whereby the High Court can examine the exercise of Ministerial powers on the grounds of non legality, irregular or other procedural impropriety, breach of natural justice or constitutional principles. A number of judicial review cases have been successful. An application for judicial review whereby leave is granted would generally suspend the effect of the original decision pending the outcome of the case.

### **Guidance, information and legal advice given to asylum seekers**

#### **Availability of interpreters**

The procedures conveyed to UNHCR by letter of December 1997 provide for the use of interpretation facilities. However, this is couched by the use of the phrase “where necessary and possible”. Indeed the same phrase is used in the Refugee Act.

There have been cases where female interpreters were not available for female applicants.

#### **Information supplied to asylum seekers**

At the start of the determination procedure applicants are given written information concerning their rights and obligations. This information, which includes information on the determination procedure itself and on the right to contact UNHCR, is provided in 23 languages.

## Legal advice

The Refugee Legal Service (RLS) provides legal advice to asylum seekers at all stages of the asylum process. The RLS also represents asylum seekers at appeal, and assists in submissions on asylum cases, applications for temporary leave to remain and, where necessary, judicial review proceedings.

There is a fee of £4 for advice and £19 for representation.

## Training of government officials

Immigration and asylum officials are trained in conjunction with UNHCR. The training includes particular issues arising as regards the treatment of female asylum seekers, unaccompanied minors and groups with special needs. Appeal Authorities also engage in training activities with UNHCR.

## Accommodation and means of subsistence

Up until December 1999, if asylum seekers had no financial means they were entitled to Supplementary Welfare Allowance, and a variety of other related benefits. With regard to housing, asylum seekers were entitled to emergency accommodation following initial arrival. There were no government-run reception centres, instead, initial accommodation was provided by the Eastern Health Board in hostels or "bed and breakfast" accommodation. Once private rented accommodation was located by an asylum seeker, the Health Board contributed rent allowance.

In December 1999, a Government policy decision was made on foot of the shortage of suitable accommodation in the Dublin area to disperse asylum seekers throughout Ireland. In conjunction with the dispersal policy, direct provision was also introduced at locations outside Dublin. Some asylum seekers arriving as of December 1999 have been dispersed to various hostels and hotels around the country; since May 2000, this has been the case for all newly arrived asylum seekers. The Government also plans to purchase or lease floating hotels, mobile homes, and pre-fabricated housing throughout Ireland. Asylum seekers in such accommodation will receive full board and £15 pounds a week subsistence per adult and £7.50 per child.

Statistical information on accommodation provided to asylum seekers in the private rented sector is not available. Asylum seekers living in such accommodation will not be affected by the direct provision/dispersal policy as the new policy will only be applied to new arrivals.

## Health care

Newly arriving asylum seekers may choose to have a medical examination but it is not obligatory.

Health care is available to all asylum seekers on the same basis as for Irish nationals. Asylum seekers are entitled to a medical card which ensures that they receive free health care, including free prescriptions.

### **Psychological care and counselling**

Psychological services are available to asylum seekers on the same basis as for Irish citizens. In addition, the Refugee Applications Centre in Dublin contains a psychological service dedicated to asylum seekers.

There are no specific measures to promote the physical and psychological recovery of children asylum seekers.

### **Education**

School attendance is compulsory for children between 6 and 16 years of age.

Asylum seekers have access to third level education but are subject to the rules and conditions prescribed for non-EU nationals.

### **Employment**

On 26 July 1999, the Government announced that asylum seekers resident in Ireland for more than 12 months would be eligible to work. This only applies to asylum seekers who had lodged their application by the 26 July 1999. Asylum seekers arriving after this date are not entitled to work. The initial procedure for the granting of work permits was complicated and meant that asylum seekers could not, in practice find work. According to NGOs, of the 2000 asylum seekers who became eligible for work permits, only 15 had secured jobs by December 1999. The system was changed in December 1999 and permits were automatically granted to the pre-July 1999 asylum seekers, rather than having to be requested for specific jobs.

Asylum seekers with Irish born children are entitled to obtain employment to support their child, as is the case with all non-nationals with Irish born children.

### **Children**

In Ireland, minors are children under 18 year of age as defined in the Child Care Act.

At the moment there are only *ad hoc* procedures in place for child asylum seekers. Children seeking asylum generally have the same rights and receive the same benefits as children of nationals.

There is no special provision of English language classes for children in the asylum process, although some schools organise such classes. Childcare is not provided to asylum seekers.

### **Separated children**

The Health Board has a statutory responsibility for the welfare of separated children. An application must be made to the High Court for a "*guardian ad litem*" to be appointed as outlined in the Child Care Act. However, very few such applications have been made to date.

## Female asylum seekers

Female staff are available to female asylum seekers when requested and where possible. Female interpreters are also available, but there is a problem with availability in some languages.

## Freedom of movement and residence

Asylum seekers are, in principle, free to move within Ireland. The 1996 Act (as amended) contains provisions for restricting the place of residence of an asylum seeker admitted into Ireland, obliging asylum seekers to report regularly to a local police station or detaining an asylum seeker subject to review by the courts. However, the relevant section remains unimplemented.

As previously stated the new Government's policy to disperse asylum seekers and provide them with limited cash payments may effectively limit the freedom of movement of asylum seekers.

On arrival, after having completed an asylum questionnaire, asylum seekers receive an identity card that is valid for one year, whilst their application for refugee status is being determined.

## Detention practices

Ireland does not detain asylum seekers as a matter of policy. UNHCR and NGOs have no record of asylum seekers being detained. However, the Refugee Act (1996), which has yet to be implemented, does make provisions for the detention of asylum seekers.

# Italy

## Legal Framework<sup>122</sup>

Article 10 of the Constitution.

Aliens Act of 28 February 1990 (Law No. 39, "Martelli-Law").

Presidential Decree of 15 May 1990, No. 136.

Decree 24 July 1990, No. 237.<sup>123</sup>

Law of 19 Feb 1998.<sup>124</sup>

## Administrative arrangements for reception

The Ministry of Interior is responsible for reception arrangements upon arrival. On the Southern coast, where most arrivals take place, a number of "first reception centres" have been established to provide basic assistance to certain asylum seekers. These centres are run by NGOs or church organisations under contract with the Ministry of Interior. They host asylum seekers until their applications have been filed and the individuals are identified and provided with a residence permit. Once the procedures are completed, asylum seekers may leave the centres.

Only asylum seekers are detected in certain areas (and more often than not quite literally fished out of the sea by the coastal guard) they are housed in "first reception centres". Asylum seekers in the "first reception centres" are therefore, almost invariably, group arrivals by boat.

Asylum seekers who enter from less frequented border points, or who are not detected by the police upon arrival, apply directly at the Provincial police Headquarters and, generally, have no access to reception facilities.

## Procedures for asylum applications

### **Admissibility Procedure**

At the border, admission to the territory as an asylum seeker coincides with admission to the procedure itself. According to law 39/90, an application can be considered inadmissible for the following reasons:

- the applicant has already been granted refugee status in another country that offers adequate protection;
- the applicant comes from a country that has ratified the 1951 Convention;<sup>125</sup>

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<sup>122</sup> A new asylum bill, already approved by the Senate is now before the Chamber of Deputies.

<sup>123</sup> Concerning financial assistance to refugees.

<sup>124</sup> Concerning immigration. This replaces all provisions of the "Martelli-Law" except those on asylum procedure.

- the applicant falls under one of the exclusion clauses (article 1(F) of the 1951 Convention);
- the applicant has a previous conviction in Italy for certain categories of crimes or is considered to be a threat to public order.

The asylum seeker must file an application for asylum with the border police. A finding of inadmissibility may be appealed. However, when the application is found inadmissible at the border, the applicant may be denied entry to the territory. This will depend, in practice, on factors such as the nationality of the applicant and the willingness of the country of transit to readmit him/her. Although the filing of an appeal is possible, this is becoming impossible in practice due to the refusal to grant access to the territory. Appeal through Italian Embassies abroad is theoretically possible, but difficult to pursue.

Once admitted to the procedure, asylum seekers are issued a temporary residence permit which is routinely reviewed until a first instance decision is made. This residence permit allows access to the National Health Service in the chosen area of residence, but does not allow for work.

### **Accelerated procedure**

Accelerated procedures have not yet been introduced as such, in the Italian legislation. The new asylum bill, if and when enacted, will introduce them.

### **Regular status determination procedure**

The Central Commission for the Recognition of Refugee Status (Eligibility Commission) examines each asylum claim. In principle, a case should be decided within 15 days. In practice, the waiting period for a first instance decision is now well over one year.

All asylum seekers are entitled to a personal hearing before the Eligibility Commission. An interpreter in the language of the applicant is provided in most cases. Occasionally, it may occur that the interview is held in English, French, Spanish or Italian through an interpreter or directly with a member of the Commission.

The Eligibility Commission is presided over by a Prefect and is composed of high-ranking officials from the Office of the Prime Minister, the Ministry of Foreign Affairs and the Ministry of Interior. A representative from UNHCR is present in an advisory capacity.

On 17 December 1999, a Higher Court (*Corte di Cassazione*) issued a ruling that clearly endorses refugee status as a subjective right, thus establishing the competence of civil courts to decide on the merit of applications for recognition of refugee status. Until this decision, the Eligibility Commission's negative decisions could only be appealed on procedural grounds before a Regional Administrative Tribunal. Such appeals, which do not have automatic suspensive effect, are still possible. If the Regional Administrative Tribunal overturns the original decision, the case is referred back to the Eligibility

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<sup>125</sup> Mere transit is not considered sufficient; the applicant should have spent a certain period of time in the country for his/her application to be considered inadmissible.

Commission for re-examination. If the Regional Administrative Tribunal rejects the appeal, the asylum seeker may, within 120 days, lodge an appeal with the Council of State. An appeal to the Council of State does not have suspensive effect.

If an asylum seeker fails to comply with the deadline for appeal to the Regional Administrative Tribunal (60 days), an exceptional remedy is foreseen in the form of an appeal to the President of the Republic within 120 days, with no suspensive effect.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

The provision of interpreters is a rather weak point in Italy's reception arrangements. Interpreters are rarely available, other than for the hearing in the regular determination procedure before the Eligibility Commission and in areas where there are constant and regular arrivals (such as Apulia or Calabria). Efforts are being made in order to improve the situation, with projects providing interpreters and "cultural mediators" to the main Provincial Police Headquarters (Rome, Milan, Florence).

### **Information supplied to asylum seekers**

The 1998 Immigration Act provides for the establishment of information desks at border points. These should provide information to all foreigners entering for a period of over three months (article 9 of Law 40/98), but only one information desk has been established. This is in the international zone of Rome Fiumicino airport and is run by the Ministry of Interior with the Italian Refugee Council as the implementing partner.

Asylum seekers should receive general information on the procedure and on their entitlements and obligations directly from the authorities. In fact, they hardly ever do. NGOs, where they are present, are the main source of information. UNHCR is actively encouraging NGOs to set up projects to open information desks in all provinces, and is providing advice and training to their staff.

### **Legal advice**

Although asylum seekers are, in theory, entitled to receive legal counselling, in practice this is only provided by NGOs that have set up specific projects. Again, UNHCR is involved in fostering the development of a national network of competent NGOs in this area.

## Training of government officials

Officials with whom asylum seekers are first in contact do not receive any systematic government training on how to handle asylum seekers. UNHCR provides some training courses to the Police, Border Police and Prefecture's officials.

## Accommodation and means of subsistence

### Accommodation

“First reception centres”, though in principle open, may in fact force asylum seekers to remain until their claim has been filed and the residence permit issued. This can take anywhere between two days and two weeks, depending on the number of asylum seekers arriving at the time.

Reception centres are mostly run by NGOs with government funding and are exclusively for asylum seekers awaiting completion of formalities.

Accommodation facilities for asylum seekers who have already formalised their application and received a residence permit are run directly by local authorities or by NGOs and other associations, under contract. They are open facilities.

Overall responsibility for the provision of assistance to asylum seekers lies with local government. There is no organised allocation system and, as a result, an unknown number of asylum seekers fail to receive assistance. With the average waiting period for status determination increasing, the assistance and accommodation facilities available are, reportedly, often insufficient. Indeed, many asylum seekers may not be able to benefit from accommodation assistance for the entire period of the status determination procedure. Asylum seekers can resort to accommodation run by NGOs, church associations or charities, which are usually financed by local authorities. These are also insufficient to cope with demand and furthermore, the standards of accommodation and facilities available vary considerably.

### Means of subsistence

Financial assistance is given to asylum seekers for a maximum of 45 days on the assumption that, as foreseen by the law, the procedure only takes three weeks. This assistance takes the form of a daily allowance of approximately 20 USD. Asylum seekers hosted in centres, or receiving direct assistance (food and accommodation) from local administrations may not receive the monetary allowance.

Certain NGOs are currently operating specific projects in an attempt to fill this “assistance gap”. Two such projects, financed by the EU, are the *Nausicaa* and *Azione Comune 2000* projects.

### Health care

Medical screening and immediate medical care are provided, if needed, to asylum seekers accommodated in “first reception centres” upon arrivals (see above, reception on arrival). There is no compulsory medical screening for the individual asylum seekers who are not accommodated in one of these first reception centres.

Once asylum seekers are issued with a temporary resident permit, they can register with the National Health Service in order to receive the same medical treatment as Italian nationals. Health care may be either free or subsidised

depending on the type of treatment. Essential drugs are usually free or heavily subsidised for citizens and foreigners without financial means.

Urgent and essential treatment is provided to anybody on the territory – whether residing legally or not.

Under the Aliens Decree of 1996, which states that pregnancy and motherhood must be safeguarded, pregnant women have access to the national health service free of charge for the duration of their pregnancy. This also includes counselling.

### **Psychological care and counselling**

Specialised psychological treatment and counselling may be provided by the National Health Service. Some NGOs have also established free services in this field. Some NGOs have specific projects financed by the EU, such as the “Medical Services Against Torture” project.

### **Education**

School attendance is compulsory for all children from 6 to 16 years of age. In theory, mother tongue tuition should be provided but often this is not possible due to a lack of qualified teachers.

Asylum seekers are not entitled to secondary education.

### **Employment**

Asylum seekers are not allowed to work, though in practice, most find jobs in the informal sector.

### **Children**

In Italy, minors are children under 18 years of age. Children seeking asylum and the children of asylum seekers have the same rights and receive the same benefits, in relation to health care and primary education, as children of nationals.

Asylum seekers with children are usually given priority for access to accommodation and assistance.

### **Separated children**

In all decisions concerning separated children, the best interest of the child is the primary consideration. As soon as a separated child is identified on Italian territory, a guardian is appointed by the Tribunal for Minors. The guardian is present during the child’s personal hearing of his/her asylum claim.

Separated children receive full assistance, documentation, accommodation, health care and education on a priority basis. Depending on their age, they may be entrusted to a foster family or to an institution.

Separated children are also entitled to family reunion once recognised as refugees. Under the new law on immigration a recognised refugee does not

need to prove sufficient income or accommodation in order to obtain family reunification.

### Female asylum seekers

Female staff may not always be available to female asylum seekers.

Whenever possible, families and single women are accommodated separately from single men. Sleeping quarters are always separate.

One of the grounds for persecution cited in the legislation is “gender”, but other than that, there are no specific provisions relating to female asylum seekers. However, in practice, it has happened in some cases that women have been recognised as refugees on the grounds of persecution for reasons of membership of a social group when they have transgressed strict religious or social norms.

Whenever possible, female asylum seekers who were victims of violence in their country of origin are interviewed by female officials with the help of female interpreters.

### Freedom of movement and residence

Once admitted to the procedure, asylum seekers receive a temporary residence permit, valid for two months, which allows them to move freely throughout the country and choose their residence anywhere in Italy. The Government does not have a dispersal policy. In practice, however, asylum seekers tend to cluster in areas that offer better job opportunities in the informal market or around established communities of co-nationals who can provide material and emotional support.

### Detention practices

The Italian legislation does not provide for the detention or restriction of freedom of movement of asylum seekers who are admitted to the procedure. In principle, detention of asylum seekers in Italy occurs only on criminal grounds. Occasionally, it may happen that a foreigner detained while awaiting expulsion applies for refugee status.

At present, there is no legal basis for restricting asylum seekers’ movement within Italy. The asylum bill which is now before parliament does, however, outline a procedure for restricting asylum seekers’ movements during the new “-screening stage” of the procedure. The asylum bill introduces a pre-screening for “manifestly unfounded” cases which would take place regardless of whether the application is lodged at the border or at the Provincial Police Headquarters. According to this draft legislation, detention may last two days.

Illegal migrants may be detained in “temporary holding centres” or in a special zone at the airport for the purpose of verification of identity, and completion of expulsion formalities.

NGOs frequently visit the holding centres where persons awaiting expulsion are detained. When alerted to the presence of an asylum seeker in a holding centre, UNHCR intervenes with the authorities as needed. UNHCR also

organises training courses for Red Cross staff and the authorities on certain issues relating to the detention of asylum seekers.

# Luxembourg

## Legal Framework

Law of 3 April 1996 establishing a Procedure for Examining Asylum Applications (substantially modified by law of 18 March 2000).

Government Regulation of 22 April 1996 implementing articles 3, 8 and 9 of the Law of 3 April 1996 establishing a Procedure for Examining Asylum Applications.

Law of 7 November 1996 on the Organisation of Jurisdictions of the Administrative Order.

## Administrative arrangements for reception

The Ministry for Family Affairs (*Ministère d'Aide à la Famille, de Solidarité Sociale et de la Jeunesse*) through the Government Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers*) is responsible for assisting asylum seekers in Luxembourg.

## Procedures for asylum applications

The Law of 3 April 1996 establishing a Procedure for Examining Asylum Applications establishes a two-stage procedure: an admissibility procedure and a substantive status determination procedure. However, in practice, these two stages are combined into one stage. There is no accelerated procedure in Luxembourg.

## Admissibility procedure

Before starting a thorough status determination procedure, the authorities determine which Member State is responsible for handling the application according to the Dublin Convention. This is done through an initial interview of the applicant by the police at the reception centre where asylum claims are submitted. Fingerprints and photographs are taken at the discretion of the police. If Luxembourg is not considered to be the responsible State, measures are taken to transfer the applicant.

If it is decided that Luxembourg shall take responsibility for the asylum claim, the applicant is interviewed and a determination is made as to whether the claim is i) not admissible, ii) "manifestly unfounded", iii) unfounded or iv) well founded. An asylum claim may be considered to be inadmissible if there is a third country of asylum.<sup>126</sup>

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<sup>126</sup> Article 8 of the Law of 3 April 1996 establishing a Procedure for Examining Asylum Applications establishes the reasons for which an asylum claim can be considered to be inadmissible. Additional criteria are set forth in the Government Regulation of 22 April 1996 implementing articles 8 and 9 of the Law of 3 April 1996.

A claim may be determined to be “manifestly unfounded” for the following reasons, among others:<sup>127</sup>

- the application does not relate to persecution in the sense of the 1951 Convention;
- the applicant comes from a safe country of origin;
- the application is based on false facts or is abusive.

Applicants whose asylum claims are determined to be inadmissible or “manifestly unfounded” must be notified of such a decision within two months. Within one month of notification of a negative decision, an asylum seeker can file an appeal with the Administrative Court (*Tribunal administratif*). The appeal has suspensive effect. The Court must reach a decision within one month of the appeal being lodged.

A further appeal is possible to the Administrative Court of Appeals (*Cour administrative*).

Both these appeals only concern the legality of the initial decision. If any of the appeals are decided in the applicant’s favour, the case is referred back to the Ministry of Justice for re-evaluation of the application’s admissibility.

### **Substantive status determination procedure**

Asylum seekers have the right to an individual interview with a representative of the Ministry of Justice. They are informed of their right to be assisted by an interpreter free of charge and have the right to legal assistance.

With respect to a decision as to the unfounded or well-founded nature of an asylum claim, the Minister of Justice’s decision is communicated to the asylum seeker in writing. A negative decision by the Minister of Justice can be appealed to the Administrative Court. The appeal to the Administrative Court has suspensive effect. A negative decision by the Administrative Court can be further appealed to the Administrative Court of Appeals. This appeal also has suspensive effect.

The Minister of Justice may submit an individual case for advice to the Refugee Consultative Commission (*Commission Consultative pour les réfugiés*), which must render its advice within one month of such a request. This Commission is composed of a judge, a representative from the Ministry for Family Affairs and a person chosen for his/her experience in asylum matters who is nominated by UNHCR.

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<sup>127</sup> Article 9 of the Law of 3 April 1996 establishing a Procedure for Examining Asylum Applications establishes the reasons for which an asylum claim can be considered to be “manifestly unfounded”.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

The Law of 3 April 1996 specifically provides, in article 5, that an asylum seeker shall be informed of his/her right to be assisted, free of charge, by an interpreter. The fact that this information was provided to the asylum seeker is noted in his/her file. Thus, interpreters are available during the determination procedure. They can also be called upon, if needed, in the reception centres.

### **Information supplied to asylum seekers**

There is no specific provision in the relevant legislation concerning information to be supplied to asylum seekers. Asylum examination officers, working for the Ministry of Justice, orally inform asylum seekers of their rights.

Asylum seekers have the right to contact UNHCR although this is normally done by the asylum seeker's lawyer or the NGO assisting the asylum seeker.

### **Legal advice**

The Luxembourg Law of 3 April 1996 states that asylum seekers are to be informed of their right to choose a lawyer registered with one of the bars in Luxembourg or to be designated a lawyer by the President of the "*ordre des avocats*". The fact that this information was provided to the asylum seeker is noted in his/her file.

Legal consultations are also provided by non-governmental organisations that sometimes cover legal costs. Caritas, which since 1992 has received 60% of its funding from the Government Commission for Foreigners, offers asylum seekers legal services as well as social and material support, in particular between the rejection in first instance and the filing of an appeal.

### **Training of government officials**

There is no legislative provision concerning the training of government officials on asylum matters. Training is not yet provided systematically for officials with whom asylum seekers first come into contact.

## Accommodation and means of subsistence

### **Accommodation**

Asylum seekers must reside in a reception centre, or other designated accommodation, until they receive a final decision on their asylum claim. The Government Commission for Foreigners decides where to place the asylum seekers.

There are approximately 4,000 asylum seekers accommodated in reception centres, hotels and houses, funded by the Ministry for Family Affairs or the commune. Specifically, there are six reception centres with a total capacity of nearly 550 beds. Other asylum seekers are accommodated in hotels, some of which accommodate only asylum seekers, and houses, which can be either

In general medical examinations (for example x-rays) are recommended, especially when the asylum seeker seems to be ill, but are not obligatory. The HIV test is not suggested.

Asylum seekers enjoy free medical treatment paid for by the Ministry for Family Affairs through the medical insurance scheme.

Asylum seekers in the centres are assisted by local doctors who are contacted when necessary. A nurse has been engaged on a part-time basis for the largest centres.

### **Psychological care and counselling**

Psychological treatment is available to all persons residing in Luxembourg on the same basis as the right to medical assistance. There are no special provisions for the counselling and psychological care of traumatised asylum seekers, including children.

### **Education**

Asylum seekers between the ages of 7 and 15 have the right to free education. Most asylum seekers older than 15 are sent to professional schools.

If they are 18 or older, they do not have access to university or other higher education unless they have proof of their prior education in their country of origin. Since there are no universities in Luxembourg, agreements have to be made with foreign universities, mostly in Belgium and Germany. There is a "*Centre Universitaire*" in Luxembourg where candidate students can spend a first preparatory year of university. This is considered to be the first year of university and is recognised as such by foreign universities. For that year, no fee has to be paid.

Free language classes in German or French are given to asylum seekers who are over 16 and who have been admitted to the normal determination procedure.

## Employment

Asylum seekers do not have the right to work in Luxembourg at any point during the status determination procedure. (A special Government Regulation made an exception to this rule for Kosovar Albanians).

## Children

All parents receive a certain amount of money for each child from the Government. In reception centres, parents receive special financial assistance for children who attend school.

During an asylum seeker's stay in a reception centre, other asylum seekers residing in the same centre and staff of the centre, provide child care on an *ad hoc* basis. In large centres, one or two persons are responsible for providing assistance to children, for example with school work.

## Separated children

Separated children are the responsibility of the Social Department of the General Commission for Foreigners. A lawyer is allocated, by the Judge for Minors, to provide legal representation for the child. In some cases, the minor is also allocated a guardian but more commonly is placed in temporary custody.

The Ministry of Family Affairs is responsible for youth centres in Luxembourg where separated children are sometimes accommodated.

## Female asylum seekers

Female interviewers and interpreters can be made available for asylum interviews but they must be requested by the asylum seeker since they are not provided automatically.

Families, single men and single women are accommodated separately in the reception centres.

## Freedom of movement and residence

Asylum seekers have the right to move freely within the country. All identity documents as well as all other documents useful to the examination of the asylum claim may be kept by the office of the Minister of Justice until the end of the asylum procedure. The asylum seeker is provided with a receipt for such documents.

Asylum seekers may stay in Luxembourg until a final decision has been reached on their applications.

## Detention practices

Persons in transit at Luxembourg airport are detained if they have either false documentation or no documentation at all. If an application for asylum is filed after the lack of documentation has been discovered, it is widely perceived by the authorities that such claimants are abusing the asylum system.

Detention is also applied, in exceptional circumstances, to facilitate the transfer of the asylum seeker to the responsible state under the Dublin Convention.

The detention is for an initial period of one month. It can be extended, upon the authority of the Minister of Justice, for additional one-month periods. The maximum detention period is three months. Thereafter, the person must be released. An appeal against the detention measure may be submitted to the Administrative Tribunal within one month of the notification of the detention decision. An appeal against the decision of the Administrative Tribunal can be made to the Administrative Court. However, in practice, the courts have ordered the release of asylum seekers on the basis that penitentiaries are inappropriate facilities for the detention of foreigners who do not constitute a danger to national security, tranquillity or public order.

# The Netherlands

## Legal Framework

Aliens Act of 13 January 1965, as amended.<sup>128</sup>

Aliens Decree, last amended 11 December 1998.

Aliens Regulation of 22 September 1966; entry into force 1 January 1967, last amended 9 July 1998.

Aliens Circular of 1994.

Border Control Circular of 1995.

## Administrative arrangements for reception

The government is responsible for the reception of asylum seekers, with no direct involvement by NGOs in the running of any of such activities. Asylum seekers arriving in the Netherlands via another EU Member State are not entitled to accommodation in a reception centre.

Before admission to the regular status determination procedure, asylum seekers stay in an "Application Centre" for up to 48 hours. After this, the decision on admissibility should have been made and, if the claim is also found not to be manifestly unfounded, the applicant is first placed in a Reception and Investigation Centre for about a month. Following this, the applicant is moved to a residence centre until, if the application is approved, local reception is organised.

There are no fixed time limits for submitting the initial request for asylum, though asylum seekers are expected to come forward as early as possible. As a rule, this means within 48 hours of arrival (Court decision 19 August 1994). If an asylum seeker without proper documentation fails to submit his/her application within 48 hours, the application may be deemed inadmissible. However, the District Court has decided that the Immigration and Naturalisation Service (IND – *Immigratie en Naturalisatie Dienst*), a semi-autonomous body operating under the jurisdiction of the Ministry of Justice, should nevertheless examine the case to establish whether a finding of inadmissibility might amount to *refoulement*. There is no formal time limit for filing an application where the asylum seeker is in possession of valid travel documents. Border and in-country applications are treated in the same manner.

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<sup>128</sup> In a November 1998 amendment, Parliament adopted the Act on Undocumented Asylum Seekers, which revised article 15(c) to the effect that applications may be considered "manifestly unfounded" unless the applicant can be presumed not to be accountable for the loss of his/her travel documents. This ground for considering an application "manifestly unfounded" can only be held against the applicant after assessment of the substance of the application. The Act on Undocumented Asylum seekers entered into force 1 February 1999.

## Procedures for asylum applications

### Admissibility procedure

All asylum applications are processed through an admissibility procedure in one of the three application centres: Rijsbergen on the Belgian border, Zevenaar on the German border and at Schipol airport, Amsterdam. A new centre is to be opened in Ter Apel in August 2000. Asylum seekers submit their application using an official form provided by the border police. After a brief interview by the border police, all cases are forwarded to the IND.

In the Aliens Act article 15(b) the grounds for “inadmissibility” are as follows:<sup>129</sup>

- if another country, party to the 1951 Convention, is responsible for the consideration of the claim;
- if an earlier claim was lodged and refused (unless the circumstances of the application have changed);
- if the asylum seeker has filed a previous application under another name;
- if the applicant has failed to produce valid travel documents and did not register as an asylum seeker immediately on arrival in the Netherlands;
- if the applicant has failed to appear or to provide information;
- if the applicant has travelled through a “safe third country”;
- if the applicant has committed a serious offence on the state’s territory;
- if the applicant is a serious risk to public security.

An interview is held and within 48 hours a decision has to be made on whether the application should be transferred to the regular determination procedure or be rejected as “manifestly unfounded”. The whole accelerated procedure is supposed to take no more than this 48 hours.<sup>130</sup> If a decision is not made within 48 hours, the asylum seeker is allowed to enter the regular status determination procedure.

The procedure aims to establish certain facts such as the identity and travel route of the applicant. The merits of the case must also be examined, in order to reach a decision on whether or not to reject the claim. If such an examination is not, in practice, possible, than the case is transferred to a reception and investigation centre for further examination under the accelerated procedure.

If an application is found to be “inadmissible” or rejected as “manifestly unfounded” in the accelerated procedure, the applicant can ask for a review by the IND within 24 hours and file a simultaneous request to the President of the District Court for a provisional ruling on suspension of removal proceedings. In cases where article 18a of the Aliens Act is applied

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<sup>129</sup> It is also at this stage that the rules of the Dublin Convention are applied.

<sup>130</sup> Up until 1 January 1999 the time limit for the decision was 24 hours.

(detention), an appeal can be filed with the Aliens Chamber of the District Court.

Applications that are not rejected as “manifestly unfounded” are allowed to enter the normal determination procedure.

### **Accelerated procedure**

An accelerated procedure is used when an application is not admitted to the normal determination procedures. The accelerated procedure is thus a direct continuation of the admissibility procedure.

Applications are processed by the IND at one of the three application centres and each case is processed individually by an IND officer who prepares a report. There is normally no risk of expulsion prior to a decision being made on the application. The decision is issued to the applicant in writing.

If the application is rejected in the accelerated procedure as “manifestly unfounded”, the applicant can file an appeal to the Aliens Chamber of the District Court within four weeks. An answer to the appeal must be given within six weeks, with a possible extension of another six weeks. Applicants are given legal assistance and interpretation throughout the accelerated appeal procedure.

There is no automatic suspensive effect but the asylum seeker may simultaneously request the President of the District Court in The Hague for a “preliminary stay of execution” (suspension of removal proceedings). A request for a provisional ruling must be filed with the President of the District Court within 24 hours of the negative decision and the stay of execution will only be granted if the President deems that the appeal has a reasonable chance of success. No appeal can be lodged against the President's ruling on this issue.

An application for asylum can be rejected as “manifestly unfounded”, under article 15(c) of the Aliens Act, in the following cases:

- the application is not founded on any of the grounds which reasonably gives rise to a legal ground for admission to the Netherlands;
- the asylum seeker has, in addition to the nationality of the country of origin, the nationality of another country in which s/he could find protection;
- a country of earlier residence admits the asylum seeker and s/he can stay there until s/he finds lasting protection elsewhere;<sup>131</sup>
- the asylum seeker has knowingly produced false or forged documents and maintained their authenticity when questioned on the subject;

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<sup>131</sup> The Court has held that, for the application to be rejected as “manifestly unfounded” under this section of article 15(c), the country of earlier residence must provide sufficient protection against *refoulement*. This is presumed to be the case where the country of earlier residence is a signatory to the 1951 Convention and is known to apply it in good faith (Court of Standardisation, 19 October 1995). However, the application cannot be rejected under this section if status determination has already taken place in the country of earlier residence and the claim has already been definitively rejected (Court of Standardisation 19 March 1999).

- the applicant has knowingly produced travel documents or identification papers which bear no relation to her;
- the applicant comes from a “safe country of origin”.<sup>132</sup>

### **Status determination procedure**

As mentioned above, if there are no grounds for considering an application as inadmissible or “manifestly unfounded”, or if no decision has been made within 48 hours, the application is processed under the normal determination procedure.

As in the accelerated procedure, asylum applications are examined by the IND. Asylum seekers have a right to a personal interview and to receive legal advice and information about the asylum procedure in a language they understand. The decision is made on the basis of a report prepared after the applicant has been interviewed by an official of the IND. At this interview the asylum seeker is entitled to be accompanied by a lawyer or a representative from the Dutch Refugee Council.

If no decision on refugee status is made within six months, it is regarded as a “fictitious” rejection and an application for review can be made.<sup>133</sup>

NGOs assist asylum seekers at the application centres and the various reception centres. They help the applicants prepare for their asylum interviews and may sit in on the interview. In the application centres they have an advisory role in the decision-making process.

There are two procedures relating to appeal: the review procedure and the appeal procedure.

### **REVIEW PROCEDURE**

An asylum seeker whose claim has been rejected at first instance can ask for a review of the case by the IND. The time limit for filing this request for review is four weeks after the initial decision was communicated to the applicant. The General Act on Administrative Law (*Algemene Wet Bestuursrecht*) stipulates that the applicant must be heard in person, except in cases where the applicant is not allowed to stay in the country pending the review procedure. The IND will decide on the request to review the case based on the report from the hearing. The time limit for the decision is six weeks, with a possible extension of four weeks. If no decision is given, it is considered to be a “fictitious” rejection, which the applicant can appeal (see the next section).

On the basis of the Aliens Act, article 32(1)(a), suspensive effect is, in principle, withheld. The applicant can also request a provisional ruling from the President of the Aliens Division of the District Court in order to stay expulsion.

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<sup>132</sup>The list of safe country of origin include Bulgaria, The Czech Republic, Ghana, Hungary, Poland, Romania, Senegal and The Slovak Republic.

<sup>133</sup>In reality the average processing time for an application for asylum is currently eight to nine months.

## **APPEAL PROCEDURE**

If the request to review the case is rejected, the applicant may lodge an appeal with the Aliens Division of the District Court in The Hague. The time limit for filing the appeal is four weeks from when the negative decision was communicated to the applicant. Suspensive effect is not automatic, but a provisional ruling on the matter can be requested from the President of the District Court. As a rule, the asylum seeker will not be expelled until a decision has been made on the provisional ruling.

If a request for a provisional ruling on the stay of expulsion is made, the President of the District Court may decide on the main issue of the case at the same time as deciding on that request. The time limit for a decision is six weeks, with the possible extension of an additional six weeks.

No higher appeal can be made by the applicant against the judgements of the District Court.

A final negative decision is accompanied by a removal order. However, this order may, in exceptional circumstances, be suspended and a conditional residence permit granted if the conditions in the country of origin do not permit the return of the person.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

Interpreters are available to all asylum seekers and they are paid for by the government. An interpreter must, under the Aliens Act, always be present. This is the case even if, for instance, both the interviewer and the asylum seeker speak excellent English.

### **Information supplied to asylum seekers**

The issue of what information is supplied to asylum seekers is regulated by the Aliens Circular 1994. Asylum seekers are informed about the asylum procedure during their interviews. In addition, the Dutch Refugee Council, which has a presence in all the reception centres, informs asylum seekers about the asylum procedure and often advises asylum seekers on an individual basis.

### **Legal advice**

Asylum seekers are provided with free legal aid after the first negative decision (as required by Dutch administrative law). Prior to this, the Dutch Refugee Council provides advice and information.

## Training of government officials

Training is given systematically to officials dealing with asylum seekers, although there is, reportedly, still room for improvement. The IND is planning to open its own training centre in September 2000.

Officials in charge of border control are obliged to study the Aliens Act, secondary legislation based on that Act and the asylum procedure in general. Training is provided by experienced border control officials and concentrates primarily on handling practical situations such as detecting false or forged documents. Officials in charge of border control are also given the 1995 Border Control Circular, which contains procedural and practical instructions.

## Accommodation and means of subsistence

### Accommodation

Asylum seekers are provided with reception facilities in a reception centre where they have to report regularly and are provided with food. During the first three months following their arrival, all asylum seekers are accommodated in one of the 17 reception and investigation centres (*“Onderzoeks-en Opvangcentrum”*) where they are also offered recreational and social-cultural activities.

At the end of this period, they are moved to one of the 79 residence centres (*“Asielzoekerscentrum”*), where conditions are generally better and offer greater privacy. These centres are run by the Asylum Seekers Reception Service (*“Centraal Orgaan opvang Asielzoekers”*), which has been specially established for this purpose and comes under the jurisdiction of the Ministry of Justice.

Since there are not enough places available in the residence centres, some asylum seekers have to be temporarily accommodated in hotels and boarding houses. There are, in total, 68,500 beds available for the reception of asylum seekers. This figure includes 130 places in additional reception facilities, 3,600 in so-called “central reception in houses” and 9,700 in the so-called “self-care arrangement”, which means staying with relatives.

Asylum seekers are dispersed over the country. Sometimes, asylum seekers are allowed to find their own accommodation, which is not forbidden as long as they report to the authorities when required. In principle, asylum seekers are allowed to leave the residence centres after six months to live with close relatives, if they have had their interview within those six months.

### Means of subsistence

All asylum seekers, whether housed in reception and investigation centres or in residence centres, receive pocket-money in addition to a clothing allowance each week. They also receive a one-off clothing allowance upon arrival.

In centres where facilities are available for asylum seekers to cook their own meals, they receive a food allowance.

Asylum seekers in government reception centres and in private accommodation are equally entitled to assistance. The amount of assistance is more or less equivalent to the assistance provided to nationals in need.

## Health care

Asylum seekers are offered a general medical check-up, after which they are insured for basic health costs and emergency dental treatment. They are always tested for tuberculosis but there is no duty to undergo an HIV-test.

Health care professionals are available at reception centres and residence centres to ensure that asylum seekers have access to basic health care.

## **Psychological care and counselling**

During the asylum procedure, asylum seekers are entitled to the same medical treatment as Dutch nationals.<sup>134</sup> Thus, if an asylum seeker has any physical or psychological problems, s/he can be referred to a specialist by the doctor at the reception centre. However, NGOs report a lack of psychological therapy and medical care in the centres.

## Education

School is compulsory for children between 5 and 16 years of age. Between 16 and 17 school is compulsory for one or two days a week, depending on the type of school. Asylum seekers are not entitled to advanced education.

In the asylum seeker residence centres Dutch culture and language classes are provided, though provision varies between the centres.

## Employment

Asylum seekers do not have unconditional access to the work market but they are allowed to work for a maximum of 12 weeks per year. This will possibly be increased to 12 weeks per 39 weeks, reportedly for reasons having to do with preventing eligibility for social benefits.

## Children

In the Netherlands minors are children under 18 years of age. They do not receive the same child allowances granted nationals and non-nationals with a legal status in the Netherlands.

Child care is not, as such, provided to asylum seekers. Nonetheless many asylum centres offer some child care facilities, particularly if, for example, a parent has to go to a status determination interview.

## **Separated children**

Provisions applicable to separated children apply also to asylum seekers who are under 18 years of age and who are not accompanied upon arrival in the Netherlands by their parents or any other adult relative. Separated children are not given any child allowances, since child allowances are given to parents, but they are taken care of by the State and are entitled to the same health care as Dutch citizens.

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<sup>134</sup>A possible exception to this has been discussed with regard to sex-change operations.

Separated children under 15 years of age will, if possible, be placed in one of the four Reception and Investigation Centres which have special facilities for the reception of minor asylum seekers. Separated children under 12 years of age are placed with foster families if possible, though this is becoming increasingly difficult given the increasing number of applications.

If minors are 12 years of age or older, they may submit their own applications for asylum. A minor less than 12 years old cannot submit an application independently and thus the application has to be filed by a guardian on the child's behalf. If there is no guardian, an NGO (*Stichting "De Opbouw"* in Utrecht) is usually appointed acting guardian.

An interview will be held with a minor four weeks after an application has been submitted, (instead of the normal seven days). The interview is held by an IND Liaison Officer. The central issue is whether the minor has any parents or other relatives in his/her country of origin, and the Ministry of Foreign Affairs may be asked to carry out an investigation in the country concerned. If, after six months, investigations have not yielded any results, the minor will be granted a residence permit for one year, which is renewable twice. This residence permit has the restriction, "admitted as an unaccompanied minor asylum seeker", which means that if new information surfaces during the first three years about the parents of the minor, or other relatives, the residence permit may be withdrawn or not renewed. If, however, this does not occur, a residence permit without restriction will be granted after three years.

The decision on "unaccompanied minor asylum seeker" status is based on the assumption that return to the country of origin is impossible because there are no relatives there to take care of the minor. In addition to this, an unaccompanied minor asylum seeker may, like any other asylum seeker, be recognised as a 1951 Convention refugee or be granted a residence permit on humanitarian grounds.

### Female asylum seekers

If a female asylum seeker indicates that she has faced any gender-related persecution or other incidents, the interviewer, if he is male, must stop the interview and inform her that she can be heard by a female interviewer. This policy is implemented on the basis of a letter, or *workinstruction*, from the Secretary of State for Justice dated 17 September 1997. However, it was already general practice before this time. Special work instructions exist for liaison officers and decision-makers concerning female asylum seekers. Staff receive special training.

It is difficult to provide female interpreters, even where there are gender-related issues, due to a lack of interpreters for some languages. Nonetheless, if a female asylum seeker demands to talk only with a female interpreter, the authorities will do their best to accommodate her request.

During the status determination procedure, wives are interviewed independently from their husbands by female interviewers, and they have a right to file independent applications. The results of the interview are kept confidential and are not disclosed to the husband. IND makes efforts to ensure that female asylum seekers suffering trauma due to gender specific ill-

treatment have access to appropriate counselling services. Measures are taken to guarantee physical safety in the reception centres.

In reception centres, single men and single women are accommodated separately. Single men are, in general, put in a room with other single men and families are often accommodated in separate rooms. There is no law regulating the issue, but this is the practise in reception centres.

### Freedom of movement and residence

The legal possibilities to make restrictions on freedom of movement, as laid down in the Aliens Act, apply to all asylum seekers, irrespective of whether the asylum seeker entered the country legally or illegally.

In principle, asylum seekers are free to move within the country, subject, however, to several possible restrictions, such as an obligation to report regularly and the restrictions that can be placed on them during the initial phase of the procedure on the basis of Section 17 of the Aliens Act. For example, asylum seekers whose applications are processed in the accelerated procedure at Schiphol airport are usually detained. In other reception centres there is more freedom of movement though they normally have to report every week.

Asylum seekers not residing in reception centres may be required to report to the aliens police station at a reception centre every day.

Asylum seekers are not free to choose the centre in which they want to stay. They can leave the centre and go outside the municipality in which the centre is located if they notify the authorities and keep reporting at the agreed times. Permission to change centres is only granted if the applicant has close family members (spouse/partner, parents or children) at another centre.

The conditional residence permit granted to asylum seekers is normally valid for one year, with the possibility of extending it twice, each time by a year. If the situation in the country of origin has not changed during these three years, a residence permit without restriction is granted. Possibilities to withdraw this “unrestricted” residence permit are very limited.

### Detention practices

According to the Aliens Act Section 7(a) aliens who arrive by air or sea without proper documentation and who are refused entry to the territory may be detained, pending removal. If the application is declared “manifestly unfounded” and the asylum seeker is detained pending removal, s/he can lodge an appeal with the District Court. There is no automatic suspensive effect, so a request for a provisional ruling against expulsion has to be made. The detained asylum seeker should be heard by the Court within two weeks. A decision should be made within an additional two weeks.

If an asylum seeker has been in detention for over four weeks without having lodged an appeal, the Court is notified. If deportation is still impossible, the

detention measures will probably be considered unfounded, in which case the asylum seeker will be released.

A further way of appealing detention under article 35 of the Aliens Act is by means of a written statement pursuant to the Criminal Code article 451(a).

If a decision is made on the asylum application within four weeks, that determines that the application is inadmissible or “manifestly unfounded”, article 18(b) of the Aliens Act is implemented with the aim of securing removal. If the decision is not made within four weeks, the person can be detained under article 26 of the Aliens Act.

Minor asylum seekers are not detained.

# Portugal

## Legal Framework

Article 22 of the Constitution of the Republic of Portugal.

The Act No.34/94 (26 March 1994) establishing the temporary reception centres.

The Act No.15/98 (26 March 1998) establishing a new legal framework in matters regarding asylum and refugees (the Asylum Act).

Decree-Law No.244/98 (8 August 1998) on entry, exit and expulsion of aliens within the national territory (the Aliens Act).

## Administrative arrangements for reception

According to Section 11(1) of the Asylum Act, applications must be submitted to a police authority, either verbally or in writing, within eight days following arrival in the territory. Applications which are not lodged within this time limit are rejected as inadmissible unless the applicant can give sufficient justification for the delay.<sup>135</sup>

The application is forwarded to the Aliens and Border Service immediately, which in turn notifies the applicant that s/he must come for an interview within the following five days and informs the Portuguese Refugee Council (PRC).

## Procedures for asylum applications

### **Admissibility procedure**

The admissibility procedure in use in Portugal applies to all applications filed at the border. Applications filed in-country by asylum seekers who have entered Portugal legally are processed within the regular refugee status determination procedure.

The director of the Aliens and Border Service decides on admissibility. An application will be declared inadmissible if it is deemed “manifestly<sup>136</sup> or if it shall be examined by another Member State under the Dublin Convention.

During the procedure, asylum seekers remain at the border or in an “international zone” at an airport. Expulsion can not be carried out prior to a negative decision on admissibility. Applicants are interviewed by an official of the Aliens and Border Service with an interpreter where necessary. There is no legal aid available at this stage.

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<sup>135</sup> See Section 13 of the Asylum Act. The eight day time limit is generally applied strictly, particularly if the applicant arrived in Portugal at an airport. Reasons which might justify delay might include illness, detention or incorrect information. In practice, only strong cases are accepted after the 8 days.

<sup>136</sup> See Section 13 of the Asylum Act for a comprehensive list of circumstances in which an application will be considered non-admissible. Both the “safe third country” and “safe country of origin” notions are included.

The rules concerning “manifestly unfounded” applications have been applied strictly, with high demands on standards of proof and an emphasis on false or absent travel documentation. Between May and December 1998, 63% of all asylum claims were declared inadmissible in the admissibility/border procedure.

The decision must be reached by the Aliens and Border Service within 20 days. It is communicated in writing and includes the reasons for the rejection or admittance. If no decision has been made within 20 days, the applicant is automatically transferred to the regular status determination procedure.

There is a two level right to appeal in the admissibility procedure. The first level is to the National Commissioner for Refugees (*Comissário Nacional para os Refugiados*). The time limit for filing the appeal is five days. The time limit for the decision is 48 hours, though in practice it takes one to two weeks. This appeal has suspensive effect.

The second level of appeal is to the Administrative Court (*Tribunal Administrativo de Circulo*). The time limit for filing the appeal is eight days. There is no time limit for the decision and there is no suspensive effect.

Asylum seekers are given legal assistance and interpretation during both levels of the appeal in the admissibility/border procedure.

### **Accelerated procedure**

Portugal does not use a separate accelerated procedure other than the admissibility procedure described above.

### **Status determination procedure**

A claim that is admitted after having been processed in the admissibility procedure is forwarded by the Aliens and Border Service to the National Commissioner for Refugees (NCR). The applicant is interviewed and has access to legal advice. The Ministry of Interior makes the final decision and the NCR provides an advisory opinion.

After a negative decision, the asylum seeker is given 30 days to leave the country. Once this deadline has elapsed, the asylum seeker is subject to the aliens legislation on expulsion.

There is a one level right to appeal to the Supreme Administrative Court (*Supremo Tribunal Administrativo*). The appeal has to be filed within 20 days of the negative decision. There is no time limit for an answer from the Court. Although the appeal has suspensive effect, the asylum seekers’ provisional residence permits are not renewed during the procedure before the Supreme Administrative Court. Therefore, asylum seekers can stay in the country but they are not allowed to work, attend schools or receive any social support. On average, the processing of a case before the Supreme Administrative Court takes about one year. In some cases, it can be much longer.

## Guidance, information and legal advice given to asylum seekers

### **Information supplied to asylum seekers**

At the interview with the NCR in the substantive status determination procedure, information concerning the procedure is given to the applicant in a language s/he understands, or it is translated by an interpreter.

### **Availability of interpreters**

Interpretation is provided free of charge at all stages in the determination procedure. Sometimes, when the language spoken by the applicant is unusual or has regional particularities, interpretation is done by other applicants, who understand the language and translate it into a more common language.

### **Legal advice**

Access to legal aid is provided for under Section 52(2) of the Asylum Act, which states that the Portuguese Refugee Council can provide legal counselling to asylum seekers at all stages of the procedure, and that applicants should benefit from legal aid in accordance with the general law on this issue.

During the administrative procedure, the Portuguese Refugee Council's lawyers provide legal counselling to applicants and file the necessary petitions and appeals on their behalf.

Under judicial proceedings, applicants are entitled to free legal aid on the same basis as nationals. In practice, however, lawyers appointed by the courts often lack experience in asylum cases. NGOs report that the system is not effective in the border/airport procedure due to the time required to appoint a lawyer and because the appeal procedure before the administrative courts has no suspensive effect.

### **Training of government officials**

According to the 1998 Asylum Act, border guards and airport officials shall be trained and given clear instructions on how to handle asylum applications and asylum seekers.

## Accommodation and means of subsistence

### **Accommodation**

No accommodation is provided to asylum seekers in Portugal except for the reception facility opened by the Portuguese Refugee Council in Bobadela. This reception centre has a capacity of 21 beds. Accommodation is provided for a period of 30 days following submission of the application. This may, in some cases, be extended for another 30 days.

Act no.34/94 provides for temporary reception centres for aliens, including asylum seekers. However, the law has not yet been implemented since the necessary implementing decree law has still not been passed.

### **Means of subsistence**

During the admissibility stage of the procedure, asylum seekers are not provided with any financial support from the State. Vulnerable cases are supported by the Emergency Social Service of the humanitarian organisation *Santa Casa da Misericórdia de Lisboa* (SCML).

Once admitted to the regular status determination procedure, asylum seekers are given a monthly allowance in cash for a maximum of four months.

### **Health care**

Asylum seekers have access to the national health service on the same basis as Portuguese nationals. Treatment is paid for partly by the state and partly by the Portuguese Refugee Counsel.

### **Psychological care and counselling**

Access to psychological care is on the same basis as for Portuguese nationals under the national health service. There are no specialised programmes for providing psychological care and counselling to asylum seekers.

### **Education**

Children of asylum seekers have access to the education system once they have a provisional residence permit. Therefore, while still in the admissibility stage of the procedures, children cannot attend school.

Some NGOs organise language courses in Portuguese for children asylum seekers.

### **Employment**

While an application is still being processed within the admissibility procedure, the asylum seeker does not have the right to work. Asylum seekers have the possibility to work if they are admitted to the normal status determination procedure.

### **Children**

Child care is not offered to asylum seekers.

### **Separated children**

There are no special procedures for separated children. They are initially assisted by the Portuguese Refugee Council and granted accommodation in the reception centre. They receive pocket money for food and travel costs.

Further assistance is provided by the *Santa Casa da Misericórdia de Lisboa*, (SCML) which provides them with shelter and monthly aid during the entire procedure. Accommodation is provided in hostel rooms which are leased by (SCML). Separated children also receive social counselling and medical care from (SCML).

The Family Court may, in some cases, nominate a guardian who will take responsibility for the minor and his/her education. The authorities attempt to help the minor reunite with his/her family.

### Female asylum seekers

There are no specific provisions in the legislation concerning female asylum seekers. Therefore, there is no right for them to deal with female interviewers and interpreters during the procedure. All individuals (except minors) do, however, have the right to file independent applications.

When the applicant claims gender-related persecution on the grounds of political or religious motives, she is entitled to special protection (under article 58 of the asylum law concerning “vulnerable cases”).

### Freedom of movement and residence

If the application was submitted at the border, the asylum seeker is required to stay there while the claim is being processed and s/he is not free to enter the country or move freely. An asylum seeker whose application is processed within the country has full freedom of movement as long as s/he keeps the authorities informed of his/her whereabouts.

While still in the admissibility phase, no residence rights are given to the asylum seeker. Once admitted into the procedure, a permit valid for 60 days is granted. The permit is renewable for periods of 30 days until the final decision.

### Detention

An asylum seeker who submits an application at the border or at an airport is held in the “international zone” until the claim is admitted to regular status determination procedure. After admission, asylum seekers are not detained.

A person can be detained to facilitate deportation when his/her claim for asylum has been rejected.

# Spain

## Legal Framework

Article 13 of the Constitution.

The Law on Asylum (Law 5/84 of 26 March 1984, last amended by Law 9/94 of 19 May 1994).

The Asylum Regulation approved by Royal Decree 203/95 (10 February 1995).

Instruction 3/98 of 17 November 1998 by the Secretariat for State Security regarding Stowaways.

Law 29/98 of 13 July 1998 on the Jurisdiction for suits under administrative law.

Implementing Decree 203/95.

Order of 13 January 1989 on Reception Centres for Refugees.

## Administrative arrangements for reception

The Government has the overall responsibility for the reception of asylum seekers, although the implementation of the programmes is carried out jointly by the authorities and NGOs.

Asylum seekers admitted to the status determination procedure<sup>137</sup> can benefit from the social, education and health services provided by the relevant public institutions and special programmes established for them.

However, asylum seekers waiting for a decision on the admissibility of their claims can only benefit from those basic social services accorded to aliens in general, as per article 14.3 of the new Alien legislation 4/2000. However, exceptions to this rule are made for vulnerable cases, when identified, pursuant to article 15(3) of the Implementing Decree 203/95.

In the Spanish cities of Ceuta and Melilla (north Morocco), asylum seekers may receive social assistance after lodging their applications for refugee status.

Refugee reception centres were created in 1989 pursuant to a decision adopted by the Ministry of Labour and Social Affairs.<sup>138</sup> They are managed by the Ministry's Institute for Migrations and Social Services (IMSERSO). This Institute also funds and monitors, on an annual basis, programmes and centres run by NGOs for the reception and accommodation of asylum seekers.

These reception centres are the main source of accommodation. An alternative to the reception centres is the monthly housing allowance provided by the Spanish Red Cross programme. However, the provision of financial

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<sup>137</sup> In accordance with article 15 of the Implementing Decree 203/95 to the Asylum Law 9/94.

<sup>138</sup> Order of 13 January 1989 on Reception Centres for Refugees.

assistance is unusual and generally reserved for applicants that cannot be accommodated in a reception centre. In the case of the Red Cross programme, financial assistance is initially granted for three months (six months for vulnerable groups with the possibility of an extension for up to 12 months).

Asylum seekers are not free to choose between Government and NGO reception centres. Nevertheless, the referral process is conducted on a case by case basis, taking into consideration the specific situation and needs of the asylum seekers concerned. In Madrid, the referral of asylum seekers to the various reception centres is managed by IMSERSO through its social workers assigned to the Office for Asylum and Refuge (OAR - *Oficina de Asilo y Refugio*). As for asylum applications filed in provinces other than Madrid, it is usually the local Red Cross, co-ordinating with the OAR, which decides upon the accommodation for asylum seekers.

### Procedures for asylum applications

According to article 4.1 of the Law 9/94, applications for refugee status must be filed before the competent authorities personally, or in case of personal impediment, through legal representation. In this case, the applicant must confirm his application, when the reason that impeded the personal application has disappeared. In any event, asylum seekers are entitled to legal assistance, interpreter and medical assistance.

Article 4 of the Implementing Decree 203/95 to the asylum law contains a list of places where asylum seekers can lodge their applications:

- Office for Asylum and Refuge of the Ministry of Interior (OAR), located in Madrid;
- police authorities at border points;
- Aliens Offices;
- Provincial Police Departments or Police Stations listed in an Instruction issued by the Minister of Interior;
- Spanish Diplomatic and Consular Missions abroad (in countries other than the country of origin of the asylum seeker).

According to article 4.1 of the Law 9/94, an asylum seeker in Spain will not be penalised for illegal entry when the person concerned meets the criteria for the recognition of refugee status, provided s/he appears before the competent authorities without delay. Asylum seekers are obliged to notify any change of address to OAR or to the Police Headquarters of the province where they reside.

Article 5(1) of the 1994 asylum law establishes that no alien who applies for asylum can be rejected at the border or expelled until their application has been examined and declared either inadmissible or admitted into the regular refugee status determination procedure and a decision made.

Article 7 of the Implementing Decree 203/95 establishes that the asylum application must be filed within one month following the asylum seeker's date of arrival in Spain, except if this person has previously been authorised to stay in Spain for a longer period of time. In that case, the application may be filed, at the latest, at the time of the expiration of the authorisation. If the asylum seeker files his application after the one-month limitation period without justifying the delay, the application could be declared inadmissible due to lack of credibility according to article 7.2 of the Implementing Decree. This provision is, however, seldom applied on its own and there must be other factors which indicate that the claim should be declared inadmissible.

According to article 9 of the Implementing Decree 203/95, the applicant is obliged to provide evidence regarding his/her identity, and to submit a credible statement regarding the alleged persecution.

### **Admissibility Procedure**

Law 9/94, amending the Law 5/84 on Asylum and Refugee Status, introduced an accelerated admissibility procedure for asylum applications filed at either border points or within the territory.

Although Spanish asylum legislation only uses the term "admissibility procedures", the initial border and in-territory procedures are a mixture of admissibility and accelerated procedures. That is, the criteria to determine the admissibility of the claim are not only of a procedural nature, such as deciding on the state responsible to examine the claim (for example, under the Dublin Convention), but they also relate to the substance of the claim.

Admission can be denied if the applicant falls within one of the following categories:

- the claim does not fall within article 1.A of the 1951 Convention or the person does fall under provisions 1.F or 33.2 of the 1951 Convention;
- the application is a mere reiteration of a previous request already rejected by the Spanish authorities (provided that no new circumstances have arisen in the country of origin which may constitute a substantial change in the grounds of the claim);
- the application is founded on facts, data or allegations which are manifestly false, incredible or outdated;
- the responsibility for the examination of the asylum request lies with another State, according to international agreements;
- the applicant is recognised as a refugee or is authorised to reside or be granted asylum in another country;
- the applicant comes from a third country in which protection could have been sought, where there is no risk to his/her life or freedom, and where there is protection from *refoulement*.

UNHCR is informed of every application filed at border points and of applications filed within the territory that the Spanish authorities consider

should be declared inadmissible according to one or more of the provisions in article 5.6 of the Asylum law. UNHCR is requested to give an opinion on the admissibility of the claims filed. The opinion must be reasoned if admissibility of the claim is recommended. It has complete access to the applicants at every stage of the procedure, as well as to their dossiers in the OAR. UNHCR's opinion must be forwarded to the OAR within the timeframe provided for in the Law and its Implementing Decree 203/95.<sup>139</sup>

The Spanish authorities tend to use the accelerated procedure in a restrictive manner. UNHCR is aware that a number of applications have been declared inadmissible on the grounds that the applicants did not provide sufficient evidence supporting their statements or did not produce identity documents proving their alleged nationality at the initial stage of the procedure. UNHCR's advice in such cases has been that the applications should be admitted to the regular status determination procedure. This allows the applications to be examined in more depth and gives the applicants the opportunity to gather more information and provide additional evidence which they may not have had the opportunity to provide during the accelerated phase of the procedure.

The applications are examined on the basis of a short interview, a questionnaire detailing basic personal data and any other available documentation. The OAR prepares a report with its recommendation on the admissibility of the claim and forwards it to the Minister of the Interior together with UNHCR's recommendation. The decision must be signed by the Minister of the Interior and communicated to the applicant in writing, including information regarding legal recourse open to him/her (article 5.6 of law 9/94).

### **ADMISSIBILITY PROCEDURE AT BORDER POINTS**

Applications made at border points are processed by the OAR with interviews conducted in Madrid by officials from the OAR or, alternatively, by border police. Interviewing of asylum seekers at Madrid Barajas International Airport by OAR officials is systematic.

Decisions on border applications must be served within seven days - four days for the first instance decision, one day for the applicant to request an administrative review to the Ministry of Interior, and two days for the review decision. An opinion is requested from UNHCR which, if it recommends the admissibility of the claim, must be reasoned.

If the application is deemed admissible, it will go on to be considered under the regular refugee status determination procedure and the applicant will be authorised entry into Spanish territory.

In the event that the authorities do not meet the four day deadline to decide on the admissibility of the asylum claim, the applicant is automatically admitted to the normal status determination procedure. During this period, of up to seven days, the applicant must remain in premises at the border point.

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<sup>139</sup> For applications filed at the border, the timeframe is 24 hours from the moment of receipt of the communication from the OAR and, for applications filed in-country, it is 10 days.

Should the decision on the review confirm the first negative decision, the competent authorities can proceed with the expulsion. The applicant, however, is entitled to lodge a judicial appeal to the National High Court within two months. This appeal does not have suspensive effect unless the applicant requests this from the National High Court and this Court deems it appropriate to suspend deportation.

UNHCR's opinion has an important impact at the time of lodging the judicial appeal to the National High Court if UNHCR's recommendation was to admit the application to the normal determination procedure but admission has been denied by the Ministry of Interior. According to article 21.2 of the asylum law and article 39.2 of its Implementing Decree 203/95, if the claimant expresses his/her wish to lodge an appeal to the National High Court, the competent authorities will authorise immediate entry to the territory. The applicant can remain in Spain to lodge the appeal and stay until the Court decides on the suspension of the expulsion order.

The border police are responsible for making the necessary arrangements in order to provide the asylum seeker with a lawyer to represent him or her during the border point admission procedure.

### **STOWAWAYS**

Asylum applications by stowaways on board a vessel are dealt with under the accelerated procedure for applications filed at border points. According to the Instruction 3/98 of 17 November 1998 on stowaways issued by the Ministry of Interior, as soon as a stowaway who is detected on board a vessel wishes to apply for asylum, a police officer, together with a doctor or a member of the Spanish Red Cross, will examine the situation on board and will determine whether the stowaway is in satisfactory condition or whether s/he should be disembarked and await the outcome of the application on Spanish territory (usually in a police station at the harbour). If it is decided that the stowaway does not need immediate medical assistance and conditions on the vessel are adequate, s/he will remain on board until served with the admissibility decision. If the vessel has to leave before the asylum claim can be examined, the stowaway will be allowed to disembark. Despite the *de facto* entry onto Spanish territory, the border-point procedure continues to apply. If the asylum claim is declared inadmissible, the owner of the vessel is held liable for the cost of returning the asylum seeker to the country of origin or country of embarkation.

### **ADMISSIBILITY PROCEDURE FOR “IN-COUNTRY” APPLICATIONS**

The criteria applied for non-admission to the normal status determination procedure of applications filed in Spanish territory are the same as those mentioned in the case of applications filed at border points. The time frame for the decision making process is longer in these cases (60 days) and asylum seekers are issued with a temporary identity document which must be kept together with their personal identity document.

The Spanish authorities share with UNHCR the applications they intend to declare inadmissible and UNHCR is requested to give a reasoned opinion. The Ministry of Interior must sign the decision declaring an application inadmissible within the 60-day time frame. If not, the application is

automatically admitted to the normal determination procedure. A negative decision on admissibility by the Ministry of Interior is normally accompanied by a negative order stating that the asylum seeker has 15 days to leave the country voluntarily (pursuant to article 17.1 of the Asylum Law).

There is no administrative appeal against a decision declaring an application inadmissible. The applicant can file an appeal to the competent judicial authority for asylum related matters (in Madrid, this is the National High Court) within the same time frame (two months) and with the same effects as an appeal in the border procedure. The only exception is that UNHCR's reasoned opinion does not result in suspensive effect.

When the Spanish authorities believe another Dublin State is responsible for examining the claim, they will serve the applicant with a decision declaring the application inadmissible under article 5.6e. They will also submit a request to the State concerned. If the latter denies its responsibility, the Spanish authorities will revoke the previous decision of inadmissibility and examine the application in the normal determination procedure. If the requested State accepts its responsibility to examine the application, the Spanish authorities will issue a *laissez passer* for the asylum seeker to travel to that State.

When Spain is requested, under the Dublin Convention, to examine a claim and it considers itself to be the responsible State, it will accept the asylum seeker onto Spanish territory and require him/her to appear immediately before the asylum authorities in order to lodge an asylum application. The application will then be considered under the admissibility/accelerated procedure for applications filed in-country.

### **Status determination procedure**

Once the application has been admitted to the normal status determination procedure, the claimants are issued with provisional identity cards that allow them to stay in Spain.

The in-depth evaluation of the claims is carried out by OAR. This department may interview the applicant a second time, (the first interview having taken place at the admissibility stage), or request the Unified Aliens Office or Police Department of the province where the applicant resides to do so. Even where the OAR chooses not to conduct a second interview, such an interview can be requested by the applicant or his/her lawyer, by UNHCR or by a refugee-assisting NGO.

OAR is also responsible for requesting assessments of the asylum claim from other governmental departments (generally Spanish Embassies abroad via the Ministry of Foreign Affairs) and UNHCR. OAR may also, whenever it is deemed appropriate, request additional information from NGOs dealing with the protection of refugees. In some cases, applicants may be required to travel to Madrid at the Government's expense in order to be interviewed by an OAR officer. The interview is aimed at clarifying the claimed persecution and to receiving concrete data other than that already in the questionnaire.

Once the in-depth evaluation of the claim has been completed, OAR submits the dossier to the Inter-Ministerial Eligibility Commission (CIAR). This

Commission, established by article 6 of the Law 9/94, is composed of representatives from the Ministries of Foreign Affairs, Justice, Labour and Social Affairs, the OAR Director on behalf of the Ministry of Interior and is chaired by the General Director of Home Affairs of the Ministry of Interior. UNHCR attends the meetings of CIAR in an advisory capacity.

The CIAR forwards its recommendations to the Minister of Interior, the competent authority to decide on the asylum requests. Alternatively, the CIAR may decide to return the case to the OAR for further investigation. According to article 7 of the Law 9/94 and article 24.3 of the Implementing Decree 203/95, Spanish NGOs dealing with refugees and asylum seekers are entitled to submit written reports supporting an asylum request. These reports are to be taken into consideration by the CIAR when making recommendations to the Minister of Interior.

If the Minister disagrees with a recommendation made by the CIAR, which is, in practice, very unlikely, the final decision is made by the Council of Ministers.

According to the Law on Administrative Procedures, all the administration's decisions must provide individualised reasons. As a result, the Spanish asylum authorities are providing detailed reasoning in their decisions by means of pre-established modules that are adapted to the specific reasons for rejecting asylum seeker claims.

Where a request for refugee status is denied, the consequences depend on the contents of the recommendation made by the CIAR. If refugee status is denied without any additional recommendation, the applicant is informed of the reasons for rejection and of the obligation to leave the country within 15 days. The applicant is informed of the possibility of appealing to the National High Court within two months from the date s/he received the rejection.

Alternatively, the CIAR can, pursuant to article 17.2 of the asylum law, reject the request for refugee status while recommending the granting of humanitarian status or leave to remain for reasons of public interest. This can also apply to applications deemed to be inadmissible. Those allowed to remain under humanitarian status or for reasons of public interest fall under the general aliens legislation and are entitled to the same rights and benefits as lawfully residing aliens. Persons not allowed to remain on humanitarian grounds or for reasons of public interest may, on a case-by-case basis, be considered for protection against *refoulement* under article 17(3) of the Asylum Law 9/94. Persons granted such protection usually try to regularise their status through the aliens legislation, but this is extremely difficult.

Decisions rejecting asylum can be re-examined under article 9 of the asylum law. This is a type of administrative review. Applicants tend to use this procedure, provided the requirements for article 9 are met, rather than appeal to the National High Court, since its decision making process is much faster. This re-examination procedure is often used when applicants obtain new evidence which deserves fresh examination or if the circumstances in the country of origin have changed. The procedure is the same as the initial one: an investigation by OAR, a proposal by CIAR and a decision by the Ministry of Interior.

## APPEALS AGAINST DENIAL OF REFUGEE STATUS

Judicial appeals of asylum decisions are dealt with under the ordinary appeals procedure of Law 29/98 of 13 July 1998 on the Jurisdiction for suits under administrative law.

There is a two-level right to judicial appeal: the National High Court (*Audiencia Nacional*) and the Supreme Court (*Tribunal Supremo*).

The judicial appeal (filed before the National High Court) against a first instance negative decision must be lodged within two months and does not have suspensive effect unless the applicant requests it from the Court and the Court deems it appropriate to grant the suspension of the expulsion order. However, in practice, it is not likely that a person with a pending appeal of an asylum rejection before the National High Court will be expelled from the country. Upon request by the competent judicial authorities, UNHCR may submit a reasoned opinion to the National High Court on the judicial appeal of a denial of admissibility or a rejection of an asylum claim.

According to the Law 9/94, if the expulsion of the rejected asylum seeker is carried out, she/he can pursue the appeal through a Spanish diplomatic mission abroad. In practice this is seldom done. A negative decision by the Supreme Court will exhaust the procedures and allows the implementation of the expulsion order, unless the Court grants leave to remain in Spain.

Finally, in Spanish law there are two other possibilities for appeals of asylum decisions, but which, owing to their special characteristics, are seldom used:

- The special procedure of law 62/78 on the jurisdictional protection of fundamental rights. The trend among lawyers is to use the ordinary procedure rather than the one established for fundamental rights which is only used in very specific cases when there is a very clear flaw regarding a constitutional right.
- "Optional administrative appeal" (*recurso potestativo de reposición*) provided for by Law 30/92 of 26 November as amended by law 4/99 of 13 January on the legal regime of the Public Administration and of the Ordinary administrative procedure. This optional appeal freezes the possibility to appeal before the judicial authority until the administrative authority (the same administrative authority which decided the appealed decision) decides upon the administrative appeal.

In addition, Spanish administrative law also includes the possibility for an "extraordinary administrative review procedure". However, this is subject to very stringent conditions and requires documentary evidence of an administrative error. This procedure is almost never used for asylum cases rejected under the normal determination procedure. As regards applications declared inadmissible, it is sometimes easier and quicker than a judicial appeal. However, it requires a final decision by the State Council, which takes normally no less than one year. So, in general, administrative flaws are more often dealt with by lawyers, at an informal level, with the administrative officials, who are said to be quite flexible in correcting them.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

Article 4.1 of Law 9/94 provides that asylum seekers are entitled to the assistance of an interpreter while lodging an application and throughout the determination procedure. Furthermore, according to article 5.2 of the Implementing Decree 903/95, the Government has the obligation to inform asylum seekers of this right.

In August 1999, UNHCR was officially informed by the OAR that, due to a shortage of funds, only limited translation and interpretation services would be made available to asylum seekers. According to this notification, interviews with asylum seekers would only be held in Spanish, English, French, Russian, Arabic and Romanian languages. Furthermore, the asylum seekers themselves would be responsible for the translation into Spanish of all documentation they wished to present in support of their claim. If the documents were not presented with Spanish translations, they would not be taken into consideration. However, when serious problems relating to translation and interpretation occurred, no decisions were made by the administration. In practice, applications facing these problems were put on hold until a fair solution could be found. Moreover, the authorities made assurances that all asylum seekers whose documents and statements could not be translated would be admitted to the regular status determination procedure. This is the practice at present.

It has been decided that as from April 2000, asylum seekers, in addition to having the assistance of an interpreter during the oral presentation of their claim (as has been the practice until now), can obtain free translation of five pages of their documents by a specialised translation service, provided that the documents are related to the substance of the application. A summary of the rest of the applicant's documents such as birth or marriage certificates and country of origin information, will also be translated. The selection of documents will be made by the lawyer in agreement with the applicant and in co-operation with the translator.

### **Information supplied to asylum seekers**

Article 5 of the Implementing Decree 203/95 provides that the asylum seeker is informed of his/her rights through an information leaflet, which is available in nine different languages. It specifically mentions the right to contact UNHCR and to be assisted by a lawyer.

Spanish NGOs such as the Spanish Red Cross, the Spanish Commission for Refugee Aid (CEAR) and the Catholic Commission for Migrations (ACCEM) organise regular information sessions in various languages.

### **Legal advice**

Asylum seekers have the right to free legal counselling throughout the asylum procedure, including the appeal stage (see article 5(4) of Law 9/94, articles 5(2) and 8(4) of the Implementing Decree 203/95 and Law 1/96 on Pro Bono Legal Assistance).

Applicants may apply to the local Bar Association for free legal assistance. Furthermore, refugee-assisting NGOs automatically respond to all applicants who contact them and provide legal advice and support. This is done in an indiscriminate manner, not just in cases that may set a precedent.

When applications are made at the border, the border police are responsible for making the necessary arrangements to provide the asylum seeker with a lawyer to assist him/her during the admissibility procedure. This is normally done in consultation with the OAR. In some cities, such as Madrid and Barcelona, the local Bar Association have established a special legal aid scheme with lawyers who specialise in asylum matters. Asylum seekers are also entitled to contact a specialised lawyer through NGOs such as CEAR and ACCEM which provide legal assistance to asylum seekers.

### Training of government officials

The officials with whom asylum seekers are first in contact are not given systematic training regarding asylum seekers and there is no special training provided on the treatment of female asylum seekers and separated children.

UNHCR participates in workshops and seminars aimed at providing training to refugee status determination authorities and NGO staff. It has been recognised that still more attention ought to be paid to the treatment of groups with special needs.

### Accommodation and means of subsistence

#### **Accommodation**

Law 9/94 on Asylum establishes in article 5.7 that, during the processing of the admission procedure of asylum applications filed at border points, the applicants will remain at the border point concerned.

Currently, about 75% of the asylum applications lodged at border points are registered at Madrid's International Airport. Asylum seekers remain at the airport pending a decision on the admissibility of their asylum request. The facilities, which are exclusively for asylum seekers, have a capacity of 12 persons and conditions are generally good with separate rooms available. Similar facilities have been built in Barcelona and Las Palmas International Airports, although in the latter, asylum seekers and other foreigners are placed in the same premises (two rooms with a capacity of approximately 12 persons). In Las Palmas airport, families and vulnerable cases are provisionally accommodated in hostels.

The applicants have access to legal and medical assistance, if needed, and interpretation services. At border points other than Madrid, Barcelona and Las Palmas Airports, the authorities provide *ad hoc* facilities for provisional accommodation or resort to "alien internment" centres. These centres are meant to accommodate those aliens who owing to their irregular situation in Spain, are under an administrative procedure of expulsion. The number of persons accommodated frequently exceeds the capacity. The living conditions at the "alien internment" centres have been criticised both by NGOs and the staff employed in these centres. The Spanish authorities have been

receptive to the concerns raised in this regard and are planning to build more "alien internment centres" to remedy the current situation.

Once asylum seekers are admitted to the regular status determination procedure, the referral of cases to the various assistance programmes (including financial assistance) or reception centres in Spain is decided by IMSERSO (Ministry of Labour and Social Affairs) through its social workers assigned to the premises of the OAR in Madrid. Outside Madrid, the referral process is co-ordinated by the IMSERSO social workers with the Local Red Cross. In principle, asylum seekers are free to choose where to live, but those without financial resources can be referred to the various reception centres throughout Spain, depending on the availability of places. Therefore, an asylum seeker will not necessarily be allocated to a reception centre in the city where s/he filed his/her asylum application.

For applications filed in-territory, two months can elapse from the time the asylum seeker lodges his/her application until the decision on admissibility is made. During this time, the main problem for asylum seekers without financial resources is accommodation. They have to resort to public shelters for the homeless, which are sometimes overcrowded (especially during the winter), and where Spanish nationals are given priority. Women must find accommodation for themselves and their children (regardless of gender) in shelters for women, while men must register at a men's shelter which will normally be in a different part of the city. Family members are, therefore, often separated.

In order to be eligible for accommodation, asylum seekers must not only have had their claims admitted to the normal determination procedure, but also must prove not to have sufficient income or resources. When allocating places in the reception centres, priority is normally given to vulnerable persons, such as the sick (but not suffering from infectious or contagious diseases), the elderly, single parents and families with children.

Four reception centres run by IMSERSO are available to asylum seekers admitted to the normal status determination procedure, refugees and those granted complimentary forms of protection under the Spanish legislation. These centres are located in Madrid (2), Valencia and Sevilla, with a total capacity for 396 persons. The following services are provided in the reception centres: accommodation, food, Spanish language courses, leisure activities, counselling by an in-house social worker and psychologist.

IMSERSO also funds reception centres run by three Spanish NGOs for the above-mentioned categories of beneficiaries: CEAR runs five centres with a capacity for 210 persons (in Malaga, the Canary Islands, Valencia, Barcelona and Badajoz); the Spanish Red Cross runs four centres with a capacity for 103 persons (in Madrid, Córdoba, Alicante and Logroño); and, ACCEM runs seven centres with a capacity for 110 persons (in León, Gijón, Gerona, Guadalajara, Madrid, Almería and Sevilla). The overall capacity of these centres is 423 persons.

In May 1999, IMSERSO opened a new reception centre in Melilla to provide accommodation and other basic services for the growing number of immigrants and asylum seekers arriving in the city. The centre has a capacity

of approximately 300 persons and is run by the Spanish Red Cross. However, these 300 places are available for immigrants in general and only asylum seekers whose claims are pending admissibility decisions. Three social workers, two doctors and nurses, teachers and other professionals work full time in the centre. Beneficiaries of the centre qualify for legal assistance provided by CEAR and some other NGOs.

A person may stay at reception centres for a maximum period of six months. This can exceptionally be extended by three months and, in special cases, for a further three months. However, asylum seekers cannot stay in the reception centre for longer than one year (although this is the general rule, special cases have been allowed to remain for a longer period after approval from IMSERSO).<sup>140</sup>

Those suffering from contagious diseases or severe mental disorders are not allowed to enter reception centres run by IMSERSO.<sup>141</sup> However, centres run by NGOs often have more flexible criteria regarding admission.

Asylum seekers cannot move from one reception centre to another, unless there are strong reasons that justify the transfer. Nevertheless, they may choose to leave the reception centre voluntarily, but if they do so, they do not have the possibility of returning.

Special accommodation arrangements are usually established for refugees arriving in large numbers under specific situations (such as the Kosovar Albanians under the humanitarian evacuation programme in 1999) or resettlement programmes for Bosnian “ex-detainees” in 1992. In such cases, the persons concerned must remain in the designated centre in order to benefit from the assistance accorded to them.

In addition to the lack of accommodation for asylum seekers pending admission to the normal status determination procedure, another problem is the different standards of accommodation at the various reception centres in terms of location, infrastructure, conditions of assistance, programmes, number of personnel assigned to each centre and their professional experience. The lack or poor quality of interpretation services is also a serious problem.

There are two main shortcomings with regard to the referral of asylum seekers to the various accommodation facilities. Firstly, vulnerable persons in need of special attention are not always accommodated in a reception centre, but in hostels or provided with financial assistance. Secondly, “conflictive cases” from the same country of origin but from opposing political parties or ethnic groups have been placed in the same reception centre, resulting in serious internal problems for the beneficiaries of the centres and for the managers.

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<sup>140</sup> This is pursuant to the Ministry of Labour and Social Affairs Order of 13 January 1989 on Reception Centres for Refugees, and article (15) of the Ministry of Labour and Social Affairs Resolution of 6 July 1998 on Refugee Reception Centres run by IMSERSO.

<sup>141</sup> Article 13(4), Resolution of 6 July 98 from IMSERSO (Ministry of Labour and Social Affairs) on Refugee Reception Centres run by IMSERSO.

### **Means of subsistence**

Some vulnerable asylum seekers who cannot enter a reception centre, such as those who suffer from infectious or contagious diseases, may receive a monthly allowance through the Red Cross programme (also funded by IMSERSO). Asylum seekers meeting the conditions for accommodation in a reception centre, but who stay with relatives living in Spain, may also be granted this allowance as a contribution towards the household's income.

The allowance is granted for a period of six months which, in exceptional cases, may be extended twice for three-month periods. During 1999, the monthly allowances under this Red Cross programme were as follows: an equivalent of 228 Euros for single persons; 352 Euros for couples; and 30 Euros for each dependent. In addition, a monthly transportation card is provided directly at the reception centre or by designated NGOs. This is provided for up to 12 months.

According to Article 15.3 of the Implementing Decree 203/95 to the law on asylum, single-parent families, handicapped persons, old age persons or other vulnerable groups, will be granted social assistance from the moment they submit their asylum applications.

### **Health care**

Articles 15.1 and 30 of the Implementing Decree to the Asylum Law establish that asylum seekers and refugees will have access to the health services available within the national health system. The Ministry of Labour and Social Affairs has allocated specific funds to the Spanish Red Cross in order to cover health assistance for asylum seekers and refugees throughout Spain, until the latter are fully incorporated into the public social security system. However, there are several regions (Comunidades Autónomas) with special health care regimes which cover the medical assistance for these persons. Medical assistance is provided at Red Cross health departments, or in other centres/hospitals which have agreements with the Red Cross.

Medical examination is not compulsory when applying for asylum. However, once admitted to the status determination procedure, those asylum seekers who are candidates for accommodation in reception centres must undergo full medical examinations. These include: HIV test, tuberculosis and hepatitis screening, x-ray and stool tests. No medical personnel are attached to the reception centres, although in some cases, medical volunteers may collaborate with the centres.

Article 12 of the Alien legislation 4/2000 foresees the right to health care under the same conditions as Spanish nationals for those aliens in Spain who are registered on the list of residents ("padrón") of the municipality where they reside. Paragraph 2 of the same article establishes the right to public emergency health care for any alien in Spain, regardless of the alien's status.

### **Psychological care and counselling**

Asylum seekers can benefit from some psychological and psychiatric treatment. There are social workers and psychologists working full-time in the

government-run reception centres. Several NGOs also make such services available to asylum seekers. However, both the authorities and NGOs concerned recognise that sufficient attention has not been given to psychological / psychiatric assistance and that there is a need to develop further programmes in this regard.

## Education

Spanish legislation provides for compulsory schooling for all children between the ages of 3 and 16, regardless of their nationality or status in Spain. Accordingly, asylum seekers benefit from the public education system on the same basis as nationals.

Before the new aliens legislation entered into force, asylum seekers had access to higher education but were not eligible for public scholarships. They could apply for grants within the framework of education assistance programmes for refugees run by NGOs and funded by the Government or by EU programmes such as the "integral" programme.

Article 9 of the new aliens legislation 4/2000 foresees the possibility for aliens to benefit from grants previously accorded exclusively to Spanish nationals. It remains to be seen how this will be implemented by the Ministry of Education and how it will affect asylum seekers.

Some refugee reception centres provide Spanish language lessons, including for children before joining the regular classes at school. Asylum seekers can also attend free Spanish courses provided by NGOs or public institutions outside the centres.

## Employment

In accordance with the Asylum Regulation and Royal Decree No. 199/1996, asylum seekers in both the admissibility and regular status determination procedures may be allowed to work if provided with an authorisation by the Provincial Delegation for Labour. This authorisation is given on a case-by-case basis, following a report from the OAR on their applications and in accordance with the alien's legislation. In practice, few asylum seekers benefit from this provision as the administrative procedure for the granting of this authorisation is lengthy and cumbersome, sometimes taking even longer than the status determination procedure itself. It should also be born in mind that the provisional identity cards for asylum seekers (residence permits) are only valid for three months, renewable for similar or shorter periods.

Work authorisations for asylum seekers are more easily granted in the agricultural sector or domestic services, given the greater demand in the labour market. In the professional field, access to the labour market is more limited due to language and cultural barriers, as well as the high unemployment rate in Spain.

## Children

In Spain a person is considered a minor until s/he reaches the age of 18. According to the Constitutional Law 1/1996 on the Legal Protection of Minors,

foreign children in Spain have the right, regardless of their legal status, to benefit from education, health care and all other public services accorded to Spanish children.

Article 9.1 of the new alien legislation 4/2000 foresees that aliens under the age of 18 have the right to education under the same conditions as Spanish nationals. This includes access to basic education and the corresponding academic qualifications, free of charge, and access to the public scholarship and aid system.

The children of asylum seekers can attend kindergarten and school, which is compulsory from the age of 3 to 16. Some refugee centres organise special activities for children according to their age. These are mainly designed to support school lessons, but also include cultural trips and recreational activities.

Spanish NGOs dealing with asylum seekers have special budgets for child care, including the provision of milk, nappies and clothing. Special programmes for asylum seekers and refugees provide for educational scholarships for children covering the costs of school registration fees, lunches, books, etc. in those municipalities where the local/regional administration does not cover it.

### **Separated Children**

Separated asylum seeking children are assigned a legal representative to act *in loco parentis* and to represent the child in the status determination procedure. The children are placed under the care of the local governmental Department for the Protection of Minors. Separated children are usually referred to specialised centres, if places are available. If not, they are accommodated in public centres for Spanish children, without professionals qualified or familiar with the special needs of asylum seeking children.

At present, there are four reception centres (*pisos tutelados*) in Spain that specialise in separated children, whether refugees, asylum seekers or immigrants. One is in Madrid, run by a religious congregation (the "Merciful fathers" created in 1987) with an overall capacity for 12 children. Two centres are in the Canary Islands, run by the CEAR, each of them with capacity for accommodating 14 minors (opened in June 97 and August 99). And the fourth one, opened in Valencia in September 1998, is run by AVAR (Valenciana Association for Refugee Aid) and provides accommodation for eight minors.

The competent authorities co-operate with the institutions responsible for the protection and care of children with a view to achieving family reunification in the country of origin or in the country in which adult family members reside. If repatriation is not possible, or not advisable, the appointed legal guardian will request the Government to grant asylum or issue a residence permit for the child.

There seems to be a need to establish better mechanisms to identify separated children and to ensure the appropriate handling of their claims, particularly in the Autonomous Communities other than Madrid. It has been

pointed out that co-ordination among all institutions and NGOs involved in the assistance of separated children asylum seekers should be reinforced.

### Female asylum seekers

Female asylum seekers have the right to file independent applications and be interviewed by female staff and interpreters during the status determination procedure. However, asylum seekers are not always informed of their right to be interviewed by female staff. A further difficulty is that female interviewers and interpreters are not always available.

Caseworkers and legal advisers dealing with cases involving sexual violence, rape, forced sterilisation and female mutilation, are not sufficiently trained on the procedures for interviewing and status determination of such cases.

In the reception centres, families, single men, and single women are accommodated separately.

### Freedom of movement and residence

Subject to the possible restrictions mentioned below, asylum seekers, who have successfully passed the admissibility stage, are free to travel and live wherever they wish in the country, but they are obliged to notify any change of address to the OAR or to the Provincial Police Headquarters of the province where they reside.

The Ministry of Interior is authorised to impose a mandatory residence if the asylum seeker does not possess the official documents required to stay in Spain (article 14 of the Implementing Decree 203/95). The Ministry of Interior may temporarily adopt restrictions on the freedom of movement of asylum seekers on the basis of national security or public health considerations (article 18(2) of the Implementing Decree 203/95 and article 5(1) of the Asylum law). The Ministry of Interior may also remove asylum seekers from border areas or certain towns and can require that asylum seekers make periodic appearances before the authorities.

The Ministry has to provide reasons which justify the adoption of these measures. Furthermore, these measures are exceptional and of a temporary nature, used in extremely rare situations.

### Detention practices

The Spanish aliens legislation provides for the detention of unlawful aliens for a maximum period of 72 hours without judicial authority. This can be extended to 40 days once a judge has authorised the “internment” of the alien.

Administrative detention with judicial supervision guarantees access to the judicial system (article 24 of the Spanish Constitution). The alien in administrative detention is kept in an “alien internment” centre and not in a penal institution.

The detained alien may apply for asylum at any moment (article 7 paragraph 2 of the Implementing Decree (203/95) to the Asylum Law). The asylum claim is,

in principle, presumed not to be well founded, but the asylum seeker may justify the delay in applying for asylum.

The alien who is detained on grounds of illegal stay in Spain and who files an application for asylum will remain in detention while admissibility of the claim is being considered by the authorities. The 60-day time limit for the authorities to make a decision on admissibility applies (article 17(2) of the Implementing Decree). In practice however, asylum claims which are lodged by applicants in detention centres are processed urgently. If an asylum seeker's application is subsequently admitted to the refugee status determination procedures, the asylum seeker will be released.

The CEAR has lodged an appeal to the Office of the Ombudsman claiming that time spent at border points, generally airports, and in particular Madrid-Barajas, represents an unconstitutional form of detention. The Constitution stipulates that Government authorities can detain a person for only 72 hours, after which time that person must be released or brought before a judge, who alone may authorise extension of the detention. A decision on this issue is currently awaited from the Constitutional Court.

## Sweden

### Legal Framework

The Aliens Act (1989:529, as amended).

The Aliens Ordinance (1998:547, as amended).

The Administrative Procedure Act (1986:223, as amended).

The Legal Aid Act (1972:429).

The Legal Aid Ordinance (1979:938, as amended).

### Administrative arrangements for reception

The Swedish Immigration Board (SIB) is generally responsible for reception arrangements and NGOs have no formal role in these arrangements. On arrival, asylum seekers are accommodated in an “investigation” centre for a few weeks before being admitted to a “residence” centre. Asylum seekers in Sweden generally have access to the activities and facilities offered at the regional reception centres run by the SIB without discrimination. There are approximately 20 reception centres in Sweden. Asylum seekers can also make their own housing arrangements, particularly if they have close relatives or family already residing in Sweden.

Asylum seekers are issued with an identity card certifying that the holder has permission to reside in the territory. This identity document (the so-called SIV card) is valid until a final decision has been made on his or her asylum application. Asylum seekers are not entitled to a travel document.

An asylum seeker may be prosecuted and convicted for using a false passport, but the sentence is usually a fine. It is not common that the Chief Public Prosecutor will pursue criminal charges against such an asylum seeker, although the “offence” remains defined in Swedish law.

If an asylum seeker does not present him/herself *without delay* to the authorities it can influence the person’s credibility during the determination procedure. There is not a precise time limit for what is seen as *without delay*, but a delay of three to four days will not affect the determination procedure. Even a delay of a week may not be viewed prejudicially.

UNHCR has access to asylum applications if it is contacted directly by the decision making authorities, the asylum seeker or legal counsel. Asylum seekers are not formally informed that they may contact UNHCR.

Instructions are given to border officials that, if asylum seekers wish to file an application for asylum, they must contact the SIB immediately.

### Procedures for asylum applications

#### **Admissibility Procedure**

There is no separate admissibility procedure in Sweden.

### **Accelerated procedure**

Asylum seekers whose applications are deemed “manifestly unfounded” in an accelerated procedure may be refused entry into the territory and removed immediately.

In accordance with a Government statement, which has been approved by the Parliament as guidance for the application of the Aliens Act, an order for immediate enforcement of a refusal of entry may be issued in the following cases:

- When an asylum seeker comes from a country where it is established with certainty that human rights violations do not occur.
- When an asylum seeker comes from a country where human rights violations may occur, but the reasons for the asylum application do not meet the requirements for asylum.
- When an asylum seeker can be returned to one of the Nordic countries or when, prior to arrival in Sweden, s/he stopped in another country where s/he would have been protected against persecution or removal to his/her country of origin or another country where such protection is lacking.

However, according to refugee assisting NGOs, the accelerated procedure has been employed in cases where applicants have been removed to countries such as Bosnia-Herzegovina, Iran, Somalia, Syria, Uganda and Zaire.

Decisions of rejection on “manifestly unfounded” grounds are made by the SIB. Applicants are often detained during this procedure. They may be assisted by a lawyer, but free legal counselling is very seldom available. The SIB’s decisions may be appealed to the Aliens Appeals Board without automatic suspensive effect. Applicants may submit a separate application for suspension which is, however, rarely granted.

### **Regular status determination procedure**

The SIB is the first instance decision-making body responsible for handling the applications, interviewing the applicant and making a decision on the claim. This entails the completion of a detailed asylum questionnaire and an interview by a case worker (with the assistance of an interpreter if needed).

Negative decisions of the SIB may be appealed to the Aliens Appeals Board within three weeks of notification. In practice, the appeal is lodged with the SIB which re-examines the case. If the SIB does not find any grounds for reconsidering its initial decision, it then forwards the case to the Appeals Board for a final decision.

The Aliens Appeals Board is comprised of a Chairperson, Alternate Chairperson and lay persons appointed by the Parliament. The Chairperson and the Alternate Chairperson must be judges. In cases considered to be of particular importance, the Appeals Board is composed of two Chairpersons and four lay persons. Otherwise, the Board consists of one Chairperson and two lay persons. If both lay persons disagree with the Chairperson, their

opinion prevails. Cases which are considered to be of minor importance, which are the majority of cases, are determined by the Chairperson alone.

Suspensive effect of the appeal is not automatic, but a stay of enforcement of the expulsion measure can be requested. The applicant will not be deported before a decision on that request has been made.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

According to the Administrative Procedure Act article 8, authorities *should* use interpreters when necessary. Accordingly, there are no absolute requirements to use interpreters under the Administrative Procedure Act.

In principle, an interpreter shall be present when an applicant is interviewed. Only in exceptional cases, for example when it is not possible for the interpreter to attend in person, will a telephone interpretation be carried out. In most cases where telephone interpretation is provided, there is a television monitor allowing the parties to see each other. An interpreter with only an ordinary telephone (without a television monitor) is used if it is absolutely necessary to carry out the investigation and it is not possible to find another solution due to time or location. In 1998, the *Justitieombudsman* (JO) stated that, as a rule, interpretation provided by telephone is insufficient and should not be used systematically.

### **Information supplied to asylum seekers**

Asylum seekers are given an information brochure published by the SIB, which is translated into languages asylum seekers commonly speak (Albanian, Arabic, English, French, Kurdish, Persian, Russian, Serbo-Croatian, Somali and Spanish). This brochure explains the refugee status determination procedure and the rights of asylum seekers. It also explains, without providing specific contact numbers, that legal assistance may be provided by the State or that asylum seekers are entitled to seek their own legal counsel.

The Red Cross and Save the Children are specifically mentioned in the brochure as Swedish-based NGOs which assist asylum seekers. UNHCR is not mentioned. Information on reception arrangements and related services, as well as information about seeking asylum in Sweden, is also available on the SIB's web site.

In June 1998, the Swedish authorities approved a six-month pilot project for NGO involvement in the asylum process at Arlanda Airport (the main international airport outside Stockholm). The Government provided financial assistance to the Swedish Red Cross, the Swedish Council of Churches and the Swedish Refugee Advice Centre to establish a presence at the airport, in an effort to aid asylum seekers in the initial stages of the asylum process. The NGOs began working at Arlanda Airport in October 1998. Findings from this pilot project were generally positive, according to the NGOs that participated, but the project has now come to an end.

## **Legal advice**

Where an application for asylum appears to fall within the criteria for obtaining asylum, the applicant is considered not to require a lawyer since refugee status will be granted. If there are any doubts about the outcome of the determination procedure, the asylum seeker is provided with a lawyer to help him/her supplement the questionnaire and interview carried out by the SIB. Legal assistance and the services of an interpreter are always provided for the appeal before the Aliens Appeal Board.

In the case of an expulsion to a third country (including cases handled under the Dublin Convention), the applicant is not normally entitled to legal aid. However, if the deportation is to the country of origin, the applicant will be provided with a lawyer. The decision of expulsion can be appealed to the Aliens Appeals Board.

The Swedish Refugee Advice Centre, an “umbrella NGO” partially funded by the government, provides free legal services to asylum seekers in need. This assistance may include representing them in hearings before the SIB and the Aliens Appeals Board. This NGO co-operates closely with UNHCR’s Regional Office in Stockholm in terms of seeking country of origin information, gathering information regarding UNHCR guidelines and seeking UNHCR’s views on specific asylum claims or groups of asylum seekers.

## **Training of government officials**

At present there are no specific guidelines on issues concerning gender-related persecution. The authorities monitor the written asylum applications and assign female caseworkers and female interpreters to cases involving claims of gender-related persecution.

According to the SIB, all their caseworkers are made aware of gender-related persecution issues and some caseworkers have undergone training on special interviewing techniques and procedural issues.

## **Accommodation and means of subsistence**

### **Accommodation**

Asylum seekers cannot choose to which reception centre they are allocated. The reception centres are spread throughout the various municipalities in Sweden.

Since 1 July 1994, accommodation in the investigation or residence centres is not compulsory. Asylum seekers may stay outside the centres, particularly if they have relatives or friends living in Sweden. There are approximately 17,000 asylum seekers currently in Sweden, out of whom approximately 10,000 reside outside the centres.

The SIB is responsible for the conditions of reception for asylum seekers and it must ensure that sufficient accommodation is provided for all, including for those living outside the centres.

When accommodated in residence centres, asylum seekers usually live in furnished self-catering flats. Families are generally accommodated together. Single persons are accommodated in shared flats, normally with at least two persons per room. Asylum seekers who share the same language are usually accommodated together.

### **Means of subsistence**

If an asylum seeker has no financial means s/he can apply for financial assistance. If it is granted, s/he will be paid a small allowance by the SIB. The allowance is supposed to cover personal hygiene items, clothes, shoes and transport costs. A special allowance may also be provided for winter clothes.

Financial assistance to asylum seekers is provided as necessary and usually does not have to be repaid, unless it has been obtained under false pretences. To receive such allowances it is normally required that the asylum seeker participate in activities or studies arranged by the SIB such as Swedish language training and acquisition of work experiences at local workplaces.

An asylum seeking family, which is not living in a reception centre, can receive an extra grant to go towards housing costs.

### **Health care**

Asylum seekers are not required to undergo a mandatory medical examination upon arrival, but they are offered a medical examination by the Swedish authorities.

Adult asylum seekers are only entitled to emergency medical and dental care. If an asylum seeker requires medication on prescription this is provided free of cost. Children under 18 years of age are entitled to medical and dental care on the same basis as other children residing in Sweden.

In some reception centres there are health care professionals available twenty-four hours a day. If not, asylum seekers will be transported to the nearest hospital in the event that they require medical assistance.

### **Psychological care and counselling**

Counselling services are available in some reception centres. It is more common however that only emergency psychological or psychiatric treatment is available. Asylum seekers in need of emergency psychological or psychiatric care are referred to specialised doctors for assessment of their needs.

Asylum seeking children in need of psychological treatment do not always receive it. Caseworkers do not necessarily have a sufficient background or training in child behaviour, especially with regard to traumatised children.

### **Education**

The children of asylum seekers have full access to the Swedish school system up to the age of 16 years. They are admitted to Swedish schools as

soon as they are able to participate in the classes. These children normally start in special classes for asylum seekers where they are often taught by teachers who speak their mother tongue. The costs incurred by the local authorities regarding the schooling of the children of asylum seekers are met by the SIB.

All asylum seekers living in residence centres have to take part in organised activities for at least 20 hours a week. Swedish language classes comprise part of these activities. The classes are organised by the local adult education departments and by various educational associations. Alternatively, they may be run under the auspices of the Ministries of Labour and Education.

Asylum seekers staying outside the centres are also offered 20 hours of Swedish language classes per week.

The daily allowance can be reduced for those asylum seekers who do not participate in the organised activities without good reason.

Adult asylum seekers do not have access to advanced education in Sweden.

## Employment

Asylum seekers who wait for more than four months for a decision on residence can be granted permission to work. If, thereafter, they are receiving wages, they have to pay for their food and accommodation in their reception centre. If they are not living in a reception centre, their monthly allowance is reduced in proportion to their income.

In practice, few asylum seekers are able to find work.

## Children

Asylum seeking children are basically entitled to the same health, medical and dental care as other children in Sweden.

The reception centres organise childcare arrangements based on the active participation of the parents. These include after-school activities for children to enable parents to take part in the compulsory educational programmes arranged for adults.

An amendment to the Aliens Act, which came into force on 1 January 1997, provides that during the normal status determination procedure any statements made by children concerning the family's asylum claim should, according to the child's age and maturity, be taken into consideration.

## Separated children

Once they have applied for asylum, separated children are accommodated in special reception homes under the supervision of the SIB.

## Female asylum seekers

The Aliens Act, as amended, stresses the need for greater use of interviews of women accompanying male asylum seekers. In the official explanation of the amendment it was emphasised that the SIB should use interviewers of the

same gender as the applicant. Instructions have been given to SIB staff that the use of female examiners and interpreters should always be considered when the applicant is a woman.

A female applicant who has been the victim of sexual violence will normally have access to a female official who is trained and competent in handling such cases and ensures that there is the necessary follow up with medical and counselling services.

In reception centres, families are usually provided with a separate room, though there is no guarantee that such accommodation will be available. Single persons are usually accommodated in shared flats, with women and men accommodated separately.

With the revision of the Aliens Act, which came into force on 1 January 1997, Sweden adopted a specific protection category in the Act, which provides protection to, *inter alia*, persons who fear persecution on account of their sex. This protection category based on "sex" is not the legal equivalent of refugee status under the 1951 Convention.

At present there are no specific guidelines in Sweden in relation to gender-related persecution.

### Freedom of movement and residence

Asylum seekers are free to travel within Sweden though they can be required to report to the police once or twice a week.

Asylum seekers are free to choose whether they will live in a reception centre or not. However, if they decide to live in a reception centre they can not choose the centre but must live in the centre to which they are assigned.

### Detention practices

Asylum seekers may be detained if their identity or nationality is in doubt or if they are likely to be rejected and the authorities fear they may evade implementation of a deportation order.

While there is provision for regular review of detention orders by the administrative courts, there is no maximum duration for the detention of asylum seekers. There is a tendency for the authorities to hold persons in detention indefinitely. Such detention can be up to one year or more. Rejected asylum seekers, whose deportation orders cannot be implemented due to the conditions in their countries of origin, face lengthy detentions.

Most asylum seekers are housed in purpose-built detention facilities, which offer acceptable conditions. However, some asylum seekers may be detained in regular prisons, remand jails or police cells. During 1998, 2,325 asylum seekers were detained, of whom 233 were minors.

The transfer of responsibility for detention from the police to the SIB and the subsequent change of personnel in the detention centres has improved the treatment of asylum seekers. Moreover, access to the asylum process has

improved because the personnel at the detention centre are now from the same authority which conducts refugee status determination.

# United Kingdom

## Legal Framework

Immigration Act 1971.

British Nationality Act 1981.

Immigration Act 1988.

Asylum and Immigration Appeals Act 1993.<sup>142</sup>

Asylum and Immigration Act 1996.

Immigration Rules – HC 395 (1994).

The Asylum Appeals (Procedures) Rules 1996.

Extradition Act 1989, Chapter 33.

Immigration and Asylum Act 1999.<sup>143</sup>

## Administrative arrangements for reception

The new Immigration and Asylum Act gained Royal Assent on 11 November 1999. It provides the framework for a new support system called the National Asylum Seekers Support Service (NASS), which will be part of the Immigration and Nationality Directorate (IND) of the Home Office.

The Government is responsible for the reception of asylum seekers at ports in terms of arranging interviews, providing the correct forms to be filled in and providing interpreters. Two NGOs, Refugee Arrivals Project and Migrant Helpline, provide advice to asylum seekers arriving at ports in London and Kent. A similar service is run by the British Refugee Council at other ports and for in-country applicants.

Asylum seekers arriving at ports will either be given temporary admission to the UK or detained. They may be interviewed at the port or alternatively at the Home Office. If the interview takes place at the port soon after the asylum seeker's arrival there is not always enough time for the asylum seeker to contact a legal representative. The Home Office has stated that they will not delay interviews in order to allow time for representatives to attend.

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<sup>142</sup>This Act incorporates the 1951 Convention Relating to the Status of Refugees into UK law.

<sup>143</sup>The Immigration and Asylum Act 1999, which received Royal Assent on 11 November 1999, came into force on 3 April 2000. It introduced provisions which touched upon all areas of the immigration and asylum system. In particular, the Act contained new support arrangements for asylum seekers, removing them from the benefits system for nationals and introducing the provision of accommodation on a "no-choice" basis. The Act envisages status determination to take two months for an initial decision and four months for appeals, thus reaching a definitive decision within six months. Until this target is achieved, families with children under 18 years of age are exempt from the new support system and will continue to receive benefits in the same way as nationals.

## Procedures for asylum applications

### Admissibility Procedure

There is no admissibility procedure within the British status determination system.

### Accelerated appeals procedure

There exists an accelerated procedure for appeals against “manifestly unfounded” decisions and for applicants coming from “safe third countries”.

The Home Office examines the substance of a claim for asylum. After this examination, the Secretary of State decides whether to “certify” the claim. If a case is “certified” it means that it is rejected at first instance for being “manifestly unfounded”. Such a decision will be accompanied by a letter setting out the reason why the application has been “certified”.

The decision to certify an application can be appealed to an adjudicator at the Immigration Appellate Authority (IAA) on grounds of “unreasonableness”. The time limit for filing the appeal is seven days, except for detained port applicants who must file the appeal within two days. Special adjudicators at the IAA review the case and must give a decision within ten days. This time limit may, however, be extended by the special adjudicators.

The appeal has suspensive effect unless it concerns a case where the applicant is being sent back to an EU Member State (according to the Dublin Convention) or to a third country designated as a “safe third country” by the Secretary of State. In these cases, where the appeal does *not* have suspensive effect, the asylum seeker can apply to the Court for a judicial review of the decision to refuse the application. If leave is granted, removal is then suspended until a final judgement has been made. A person that is forced to leave the UK but still wants to appeal the decision must file their appeal from abroad within 28 days of departure.

If the special adjudicators’ reject the appeal, there is no further possibility for appeal.

Asylum seekers rejected on “safe third country” grounds are given an explanatory letter to be presented to the third country’s authorities stating that s/he has been removed on “safe third country” grounds alone.

### Accelerated determination procedure

The accelerated determination procedure is intended to deal with “straightforward cases“. The Home Office is currently experimenting with pilot projects for fast-track procedures in respect of port-applicants of certain nationalities, notwithstanding the fact that the White List of so-called “safe countries” was abolished. At the time of writing, these pilot projects are in particular targeted at applicants from Albania, The Czech Republic, Poland, Romania, Latvia, Lithuania, Kenya and India.

Applicants may be screened and substantively interviewed on arrival at the port. The port books a date six days ahead for notification of “decision

interview”, that is, when the decision on the asylum application is handed down. Applicants are given until the end of the fifth day to submit any further material to support their claim. On the morning of the sixth day, a Short Procedure Asylum Interview Record or a Statement of Evidence Form (SEF) is faxed to the Home Office, where a caseworker makes a decision the same day.

Alternatively, the port only screens the applicant and issues him/her with an SEF, which s/he must complete and return within 14 days. The SEF is considered by a caseworker. If asylum or exceptional leave to remain is not granted on the papers, a date for the substantive interview is set five days ahead. The caseworker decides the application immediately after the interview and informs the port accordingly. A similar procedure exists for “straightforward cases” who apply in-country. Legal representatives are allowed to attend interviews. If cases turn out to be “too complex”, they enter the full determination procedure. No statistics are available for how often this occurs.

In the event of refusal of the asylum request, the applicant is removed unless s/he lodges an appeal against the negative decision. About a quarter of cases refused under the ports pilot procedure are reported not to appeal.

### **Regular status determination procedure**

Under the full determination procedure, applicants are given a Statement of Evidence Form in which they have to set out the basis for their claim for refugee status. At a later stage, they are summoned to the IND or to the Immigration Officer at the port of entry, where they are interviewed with or without legal representation.

Immigration officers at the border point refer the claim to the Home Office. Applications made in-country are submitted directly to the Asylum Division of the Home Office.

In most cases, an extensive asylum interview is held with the applicant directly after the application has been filed, for the purpose of shortening the procedure and waiting times. The interviewing officer makes a written record that is signed by the applicant if s/he is in agreement with the transcript. After the interview, the applicant has five days to submit further written representations regarding the asylum claim (However, this faster procedure is not used for applicants from Afghanistan, Bosnia, Croatia, the Gulf States, Iran, Iraq, Liberia, Rwanda, Somalia or the former Yugoslavia, and not for Palestinians). All deadlines must be adhered to, although in practice extensions of time can often be obtained. The rules for attendance of interviews are strict; non-compliance will be treated as abandonment. The immigration officer or caseworker has the discretion to direct interviews as being concluded. The applicant may call in a legal advisor at any stage of the procedure.

All asylum applications are considered by the Asylum Division of the Home Office. The Asylum Division is responsible for all decisions relating to claims for asylum, including the recognition of 1951 Convention refugee status, the granting of exceptional leave to remain and the decision to refuse an

application. The screening unit of the Asylum Division holds a brief interview with the applicant to ascertain his or her identity, immigration status and whether s/he travelled through a “safe third country” on her way to the United Kingdom (in case of a border/port applicant).

A negative decision of the Home Office within the regular status determination procedure may be appealed to the Immigration Appellate Authority (IAA). The IAA comprises the “Special Adjudicators” and the Immigration Appeals Tribunal (IAT).

Appeal at the first level is made to the “Special Adjudicators”. It must be lodged within seven days of a negative decision by the Home Office. The Immigration Service or the Home Office must forward all documents relating to the case to the IAA within 42 days. A notice of hearing is sent out within five days, and the IAA has 42 days to deliver a decision. The time limits for hearing and decision can be extended, and in reality there is a backlog so that hearings are often not scheduled until several months after the filing of the appeal.

A second level appeal, to the Immigration Appeals Tribunal (IAT) of the IAA, with leave, is possible. The appeal has to be submitted within five days, and an answer to whether leave for appeal will be granted must be given within ten days. After that, a date for the hearing shall be fixed within five days. The Tribunal only considers points of law. Appeals to both the “Special Adjudicators” and the IAT have suspensive effect and may also be filed from abroad.

If the appeal to the IAT is dismissed, an application for leave to appeal can be made to the Court of Appeals. On this level, no new examination of the case is made. The Court only considers points of law.

Finally, the applicant can, against a decision of the IAT, apply for leave to seek judicial review with the High Court.

## Guidance, information and legal advice given to asylum seekers

### **Availability of interpreters**

The Home Office provides interpreters and an asylum seeker who can not speak English will not be interviewed until an interpreter is present.

### **Information supplied to asylum seekers**

In-country asylum seekers are given a leaflet with information on procedural rights and obligations. The information does not necessarily include specific rights, such as the right to contact the local UNHCR office. Border applicants may turn to the Immigration Service for information on the procedures.

The decision on an application is communicated to the applicant in writing, and contains the reasons that formed the basis of the decision, as well as information on the possibilities and procedures of appeal against a negative decision. If it is not possible to hand it to the applicant in a language s/he understands, it can be translated by an interpreter.

Asylum seekers applying in-country will be referred to a government funded legal service such as the Refugee Legal Centre or the Immigration Advisory Service who will provide them with this information. Unaccompanied minors will be referred to the specialist children's panel of the British Refugee Council.

### **Legal advice**

Applicants will be informed of their right to legal representation. Any persons, including asylum seekers, who can not afford to pay for a solicitor are in principle entitled to free legal aid. In practice, however, access to competent legal advice is hard to achieve.

In order to receive legal aid to cover representation at an appeal hearing, an applicant must first demonstrate to the legal aid determining body that his or her case has sufficient merit to succeed. S/he will not receive legal aid at the appeals stage until this has been achieved.

The Refugee Legal Centre and the Immigration Advisory Service both give free legal advice, but their capacity is limited.

### **Training of government officials**

Interviewing officers are all given training in interviewing skills. They are also given specific training in dealing with victims of torture. There is, however, no gender specific training.

### **Accommodation and means of subsistence**

#### **Accommodation**

The dispersal policy introduced by the Immigration and Asylum Act sends asylum seekers to "cluster areas" around the country. Although there is certainly a need to reduce the pressure on local authorities in London and the Southeast, where most asylum seekers currently reside, refugee agencies have two main concerns. The first is that asylum seekers who are dispersed to other areas of the country will not have easy access to asylum lawyers who are mostly concentrated in the London area. The second is that asylum seekers may be isolated from their ethnic communities.

Asylum seekers do not have automatic access to State accommodation. An asylum seeker has to prove that he or s/he is destitute to be eligible for accommodation or support. Those asylum seekers who can be accommodated by friends or family may receive a support package which does not include the cost of accommodation. Asylum seekers whose asylum claims are considered to be "manifestly unfounded" may be required to reside in detention/reception centres.

#### **Means of subsistence**

The Immigration and Asylum Act has removed asylum seekers from the normal benefits system for nationals and support is now predominantly provided in kind. The support that is provided is largely in the form of

vouchers, with £10 in cash per week. The total package amounts to 70% of income support (generally considered as the poverty line). The package for families with children under 18 is equivalent to normal income support (100%).

Asylum seekers have encountered problems when using these vouchers in shops, for example being told to put “luxury items” back on shelves and receiving discriminatory treatment by shops. Furthermore, shops participating in the new system are not allowed to give change in cash.

An asylum seeker who is not willing to accept accommodation in the location assigned to him by the Home Office will not receive benefits.

### Health care

Asylum seekers are not required to undergo mandatory medical examinations upon arrival.

Accommodation does not affect asylum seekers’ access to health care since this is provided by the National Health Service, which offers free, or heavily subsidised, treatment to all persons.

### **Psychological care and counselling**

The Medical Foundation for the Care of Victims of Torture provides expert treatment and counselling for asylum seekers, including children, who have been the victims of torture. However, the Medical Foundation’s capacity is limited and they only operate in London and the south-east of England.

### Education

Education is compulsory for children up to 16 years old and continues to be free up to 18. However, in light of the new legislation it is envisaged that the children of some asylum seekers may not be able attend school on a regular basis due to precarious accommodation arrangements.

There is no financial assistance for asylum seekers in further education and those on a full-time course are likely to be treated as overseas students and charged prohibitive fees. There is very little funding in the form of scholarships available from the voluntary sector.

If asylum seekers or their children have been resident in the UK for at least three years, they can benefit from access to, and State funding for, higher education. If they do not satisfy this condition, they have to pay the higher tuition fees and maintenance as if they were overseas students.

The Department of Education and Employment has proposed that this requirement of three year residence be interpreted within the meaning of the Immigration Act 1971 in which case asylum seekers would be excluded from any form of funding regardless of their length of time in the UK.

### Employment

After waiting for at least six months for a first decision, asylum seekers can apply for a work permit that will give them access to the labour market. A

formal application has to be made to the Home Office. The permit is granted on a discretionary basis and is not, therefore, an automatic entitlement. It is, instead, based upon an individual assessment of each case. It is important to note, in this context, that under the new regulations, the Government hopes that no refugee status determination decision shall take more than six months to deliver.

## Children

There is no specific legislative procedure for dealing with child asylum seekers. They are subject to the same admission procedures as adults. Thus the procedural rules relating to “safe countries of origin” and “safe third country” are applied equally to children. Informally, the Home Office has stated that unaccompanied children will not be removed under accelerated procedures either to the country of origin or to a “safe third country” unless adequate return and reception arrangements are in place. However, the process lacks transparency. There are no objective guidelines or criteria available as to how it works in practice.

Children are interviewed by specially trained asylum officers, with the assistance of interpreters where required. The Home Office has set up a special unit of asylum officers to deal with unaccompanied asylum seeking children in an age-appropriate environment.

Procedural rules provide that wherever possible, a child will not be interviewed where a decision can be made by reference to independently verifiable information. This practice may compromise the right of a child to be heard (articles 12 and 13 of the Convention on the Rights of the Child) and can lead caseworkers to make inappropriate inquiries in the country of origin for the purposes of the determination of refugee status of the child.

Unsuccessful asylum applicants are entitled to appeal rights including judicial review remedies in the same way as adults. In practice, the appeal hearing environment is too formal and intimidating for children. Efforts are being made to adapt the hearing rooms to meet this requirement and it is intended to allocate certain Adjudicators to deal with appeals from child asylum seekers.

Until the government achieves its target time of two months for an initial decision on an asylum case, and a further four months for appeals, asylum seeking families with children under 18 will continue to receive benefits in the same way as nationals. Once this target is met, asylum seeking families with children will be put into the new asylum support scheme.

There are no specific provisions for language classes for children who do not speak English.

## Separated children

Separated children are the subject of several special measures. Applications by separated children are given priority in the determination procedure and are exempt from accelerated procedures.

On identification, separated children are allocated to an independent welfare adviser who is responsible for ensuring that the child is directed to whatever legal, medical, or welfare agency the child needs for the fulfilment of his/her rights under UK law. The adviser acts under the auspices of a government-funded project run by the Refugee Council's Panel of Advisers. It is an excellent support service to ensure a child has access to available professional services when required. Its limitations are an excessive workload and a mandate that stops before a comprehensive durable solution has been found for a child asylum seeker.

Separated children are supported by social services in the same way as children of nationals who are of concern to social services.

There is a specialised centre for separated children aged 16-18 in Hillingdon (near Heathrow airport, London). It is run by the British Refugee Council and is funded by the local authority.

### Female asylum seekers

Requests for female interviewers are granted as far as is operationally possible. Female interpreters will be used if possible.

Families, single men and single women are accommodated separately in the "detention/reception" centres.

There are no specific provisions concerning female asylum seekers in the UK legislation but in practice special attention is given to the problems that they may have.

Women arriving as part of a family unit are not always seen as making a claim to refugee status in their own right. There is a tendency to treat women as dependants. As such, the merits of their own claims are either overlooked or superficially examined. No gender-guidance has yet been incorporated into the immigration instructions despite the existence of "Gender Guidelines for the Determination of Asylum Claims in the UK" which were produced by the Refugee Women's Legal Group and which UNHCR helped to draft and endorsed.

### Freedom of movement and residence

In-country applicants are, in principle, free to move as they please within the country, but immigration officers may impose stringent reporting conditions. Adjudicators authorising the release of detained asylum seekers on bail can also impose reporting conditions.

The Secretary of State, under the 1999 Asylum Act, may restrict the movements of asylum seekers by, *inter alia*, requiring them to reside in a specific area, requiring them to be at their residence at certain times and prohibiting them from visiting certain areas. At the time of writing it is not yet clear how this power will be used, although ministers have stated that it will be used to prevent public order problems.

Asylum seekers have a right to stay in the UK until a decision has been made, at least at first instance, on their application. They are furnished with a

Standard Acknowledgement Letter, which serves as proof of their identity as asylum seekers. Asylum seekers cannot obtain travel documents since they must remain in the country until they have received a decision on their asylum application.

### Detention practices

Border-applicants may be detained pending determination of their claims. However, an asylum seeker may be temporarily admitted to the territory if the Immigration Service can be convinced that s/he will have access to suitable accommodation and s/he will stay in a known location.

An asylum seeker who has been detained for more than six days can apply for bail if no decision on his/her request has yet been taken. S/he can also apply for bail pending the hearing of an appeal against a negative first decision.

Various reports indicate that the UK detains more people for longer periods and with less judicial supervision than any comparable country in Europe. In the early 1990s, up to 200 asylum seekers were detained at any one time. After July 1993, the number increased sharply with the opening of further dedicated detention facilities, for example, *Campsfield House* in November 1993, two converted wings within *HMP Rochester* in July 1994 and May 1995 and a purpose-built detention centre at Gatwick Airport in May 1996 (*Tinsley House*). By September 1999, the number had increased to 750-800 asylum seekers being detained at any one time. They were detained for an average of 65 days with over 275-325 asylum seekers spending more than three months in detention. As of 15 September 1999, ten had been detained more than a year.

The Government's stated intention is that the focus of detention will be shifted to the end of the asylum process where there will be a "presumption to detain following refusal prior to removal". It envisages increased use of detention to support an increased number of removals. In March 2000, the Government opened a new detention centre at Oakington in Cambridgeshire for asylum seekers whose claims are considered "manifestly unfounded". There, asylum seekers are detained for one week while their claim is processed in an accelerated procedure.

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