EUROPEAN PARLIAMENT

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WORKING PAPER

ASYLUM
IN THE EU MEMBER STATES

Civil Liberties Series

LIBE 108 EN

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Manuscript completed in January 2000

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FOREWORD

For providing useful information and answering various questions during the preparation of this document, we would like to thank: the UNHCR Offices in the EU Member States; Mr Johannes Van der Klaauw, UNHCR Senior Liaison Officer with the European Institutions; and the European Council on Refugees and Exiles (ECRE), Brussels Office.

TABLE OF CONTENTS

Each country section is divided into the following sub-sections, subject to the existence of information, certain procedures, etc., for respective country (i.e. some divergences exist):

1. **Statistics**
2. **National Legislation Concerning Asylum and Refugees**
3. **Decision Making Bodies**
4. **Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution**
5. **Admissibility/Border Procedure**
6. **Regular Procedure**
7. **Accelerated/Simplified Procedure**
8. **Manifestly Unfounded Applications**
9. **The Safe Country of Origin Concept**
10. **Safe Third Country**
11. **Internal Flight Alternative**
12. **Rights of Convention Refugees**
13. **Complementary Forms of Protection**
14. **The future**

Introduction

This document is divided into three parts:

Part I contains a short description of relevant instruments concerning asylum and refugees, on a global and on a European level. The instruments enumerated here contain rules on procedures which are in focus for this document, mainly: the definition of 'a refugee' (origin of persecution); procedural safeguards; accelerated/simplified procedures; the safe country of origin and safe third country principles; manifestly unfounded applications; and the Dublin Convention.

Part II makes a comparison between the practices of Member States and draws some conclusions as to the level of harmonisation. Apart from the issues dealt with by the instruments mentioned in relation to Part I, visa restrictions, carrier sanctions, complementary forms of protection and access to procedures are also discussed.

Part III contains a view of asylum procedures country-by-country. It is the information presented here that form the basis for the comparisons and conclusions in Part II. Included here is recent statistics of the number of asylum-seekers and recognised Convention refugees in the Member States. The main issues for this document are dealt with in the following order:

- admissibility and border procedures;
- regular determination procedures;
- right of appeal;
- accelerated procedures;
- manifestly unfounded applications;
- safe country of origin;
- safe third country; and
- complementary protection.

Statistics on transfers according to the Dublin Convention are mentioned in relation to admissibility procedures, if this is the stage where such transfers are made; otherwise in relation to regular determination procedures. In the countries where new legislation has been proposed, a section on the contents of such legislation has been added last.

This layout has been chosen with the aim of in a functional way describing the current asylum procedures in the Member States and the level of harmonisation regarding some key issues.

Part I

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Instruments on Asylum and Refugees

1. Global Instruments

1.1. The 1951 Geneva Convention and the 1967 Protocol relating to the Status of Refugees (1951 Convention and 1967 Protocol)

While Article 14 of the Universal Declaration of Human Rights states that everyone "has the right to seek and to enjoy in other countries asylum from persecution", no explanation is given as to what exactly is meant with 'asylum'. Generally it is interpreted to mean "admission to live on the territory of a state, on a permanent or temporary basis"[1], and is granted to persons defined as refugees in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. The 1951 Convention was adopted as a means to replace *ad hoc* agreements (adopted before the Second World War to meet specific refugee situations) with a more general instrument[2]. The definition of a refugee in the 1951 Convention relates to events that took place before 1 January 1951. To make the provisions valid also for new refugees, the 1967 Protocol was drafted, and here the time limit is excluded. All EU Member States are parties to both the Convention and the Protocol.

Article 1A of the 1951 Convention states that a refugee is a person who:

> "…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country…"

The definition is according to Article 1A also valid for stateless persons in relation to their country of former habitual residence.

In the 1951 Convention, the possibility was left open for signatories to limit their obligations to persons who became refugees as a result of events occurring in Europe. Of the European countries, Malta and Turkey still adhere to such a limitation, which means that persons fleeing to these countries from events taking place outside Europe cannot be awarded Convention refugee status.

Article 33 the 1951 Convention establishes a prohibition against *refoulement* – the so-called 'principle of *non-refoulement*'. The content of the principle is that a refugee must not be sent back to a country where "his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Thus, the prohibition of *refoulement* applies at least to persons who fit the Convention refugee definition. In practice, the principle is generally considered to apply in cases where persons are presenting themselves – within a country or at the border – with a claim of seeking asylum[3]. Thus, according to the principle of *non-refoulement*, an asylum-seeker can not be sent back to another country where he would face persecution, even if he has not (yet) been granted asylum or been formally recognised as a refugee in the receiving country.

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[1] *Asylum* (with the contribution by Guy S. Goodwin-Gill on the principles of international refugee law), Parliamentary Assembly, Council of Europe Publishing, Ed. Sophie Jeleff, Strasbourg 1995, p. 14.

[2] See *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention* and the 1967 Protocol relating to the Status of Refugees, UNHCR, Geneva, p. 3ff.

[3] Goodwin-Gill, Guy, *The Refugee in International Law*, Second Edition, Oxford 1996, p. 123ff.

1.2. 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture)

Article 3 of the Convention against Torture states:

> "1. No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
> 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

This is considered to be a clear expression of the principle of *non-refoulement*.

2. European Instruments

2.1. The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

Article 3 of the European Convention on Human Rights contains the following prohibition:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

This also covers *non-refoulement*, because States parties to the Convention has an obligation not to send a person back to a situation where he could face the kind of treatment prohibited by the Article.[4]

2.2. The European Union

2.2.1. Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, 15 June 1990 (Dublin Convention)

The Dublin Convention was drafted 1990, but did not enter into force until 1997. A typical situation in which the Dublin Convention is applicable would be when an asylum-seeker has entered the Community area through one Member State, but subsequently continues to another Member State where he files an application for asylum. According to the Convention the application shall be examined by a single Member State, but necessarily not the one in which the application was filed. Primarily, the application shall be examined in the Member State where the applicant has family members who have been granted refugee status. If no such family members exist, the application shall be examined in the Member State where the applicant has a valid residence permit or visa. If no such residence permit or visa exists, the *first Member State of entry* shall be responsible for the examination. It is to be noted, that in consequence of Article 3(5) of the Convention, any

[4] Goodwin-Gill, Guy, *op. cit.,* p. 125.

Member State can send an asylum-seeker to a third (non-Community) State (in application of the safe third country principle) *before* applying any of the rules on determination of responsibility mentioned in the Convention.

2.2.2. Resolution on manifestly unfounded applications for asylum, 1 December 1992 (London Resolution on manifestly unfounded applications for asylum)

This Resolution determines in which cases an application for asylum can be considered as manifestly unfounded and dealt with in accelerated procedures. It also establishes that Member States can use admissibility procedures where applications may be quickly rejected on objective grounds.

2.2.3. Resolution on a harmonized approach to questions concerning host third countries, 1 December 1992 (Resolution on safe third countries)

This Resolution establishes the criteria determining whether a country, in which an applicant has stayed or through which he has transited before coming to a Member State where he has applied for asylum, can be considered as a safe country; if so, the applicant can, subject to certain safeguards, be sent back to this third country, and he is expected to file his application there. The Resolution expressly states that the determination of whether there exists a safe third country to where the asylum-seeker shall be sent precludes a substantial examination of the asylum claim, and also that the safe third country principle precludes determination of responsibility according to the Dublin Convention.

2.2.4. Conclusions on countries in which there is generally no serious risk of persecution, 1 December 1992 (Conclusions on safe countries of origin)

These Conclusions establish guidelines for when a country outside the European Union can be considered as safe, with the aim that applications by asylum-seekers from that country may be declared manifestly unfounded and dealt with in accelerated procedures.

2.2.5. Council Resolution on minimum guarantees for asylum procedures, 20 June 1995 (Resolution on minimum guarantees)

This Resolution enumerates certain guarantees and safeguards that shall apply in relation to the asylum procedures in the Member States. It relates to the 1951 Convention and the 1967 Protocol, the principle of *non-refoulement*, access to procedures, regular determination procedures (including appeal and review procedures), manifestly unfounded applications, border procedures, unaccompanied minor asylum-seekers and women asylum-seekers.

2.2.6. Joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees (Joint Position)

The Joint Position deals *inter alia* with the definition of persecution, the grounds of persecution and the origins of persecution (state persecution, persecution by third parties and situations of civil war and internal armed conflict).

2.2.7. Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (Resolution on unaccompanied minors)

This Resolution establishes guidelines for the treatment of unaccompanied minors and the handling of their applications for asylum.

Part II

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Comparisons and Conclusions

1. Definition of a refugee - Origin of persecution

As all legal text, the definition of a refugee in the 1951 Convention has been subject to discussions concerning the interpretation. One discussed issue is that of the origin of persecution - who is the *persecutor*? Unlike the subjective element of 'fear of persecution' this is an objective element of the refugee definition, but as there are no provisions in the 1951 Convention itself that defines the origin of persecution, States have different interpretations, leading to different practices regarding who can be admitted as a refugee. The issue is critical, because the broader the definition of the persecutor, the more asylum-seekers will be eligible for refugee protection status. It is of course generally agreed that persecution emanating from state authorities is covered by the refugee definition, but practices differ when it comes to non-state agents, e.g. guerrilla groups that control part of a country or terrorise the population in a country where the state authorities cannot provide protection (or may not want to). If the state authorities in a country of origin try to counteract persecution committed by a third party, but fail, is the persecuted person entitled to protection within the meaning of the 1951 Convention? And what if the state authorities willingly turn a blind eye to persecution by non-state agents? And what if the state has collapsed altogether, and several parties struggle for power amidst a situation of civil unrest, or war?

In the UNHCR Handbook Paragraph 5, we find the following concerning persecution by non-state agents:

> "Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection"[5].

1.1. Member State practice

Following are tables on possible agents of persecution and the Member States where refugee status can be awarded in respective cases:

1.1.1. State authorities
Refugee status can be awarded in all Member States.

1.1.2. Non-state agents where public authorities *encourage* the persecution or where the authorities *are not willing* to offer protection
In all member states except Greece, Luxembourg and Portugal.

[5] *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1979

1.1.3. Non-state agents where public authorities prove *unable* to provide, or are *ineffective* in providing, protection	
Austria	(Austrian asylum authorities in some decisions follow a more restrictive interpretation.)
Belgium	
Denmark	
Finland	
Ireland	
Italy	(Recognition possible, but the situation is somewhat unclear.)
Netherlands	
Sweden	
United Kingdom	(Applicants have to show that they first have tried to seek the protection of their own authorities.)

1.1.4. Non-state agents where there is no state	
Belgium	(According to practice.)
Italy	(Recognition possible, but the situation is somewhat unclear.)
Netherlands	
Sweden	
United Kingdom	

1.2. Comment

The practice among Member States regarding the status of persons who are victims of persecution by non-state agents is in theory fairly similar. The main differences lie in the possibility of awarding Convention status in cases where the actual authorities of a state are willing but *unable* to offer protection from persecution by third parties, and whether Convention status can be granted in cases where there is no state at all.

The issue of agents of persecution is usually assessed in either of two ways: the 'accountability/complicity view' or the 'protection view'[6]. According to the accountability view there can only be persecution within the meaning of the 1951 Convention if there exists a state, and this state can be held accountable for violations. Courts in Germany and France have argued along the lines of the accountability view, which strictly applied gives the result that Convention status should not be granted in cases where there exists a state but where the state authorities are *unable* to provide effective protection. In other words, the state cannot be held accountable if it is willing to offer protection, and without state accountability there is not persecution within the meaning of the Convention. However, according to the protection view, a state's inability to provide protection does not alter the

[6] Vermeulen Ben: *Persecution by Third Parties*; University of Nijmegen, Centre for Migration Law, Nijmegen, May 1998 (Commissioned by the Research and documentation Centre of the Ministry of Justice of the Netherlands), p. 11ff.

fact that the person in question is in fact persecuted. In other words, the *absence of protection* against persecution is the important factor - in such cases the intention, or sometimes even existence, of state authorities is irrelevant. Proponents of the protection view argue that the 1951 Convention is a human rights instrument, a treaty with the aim of providing protection to people whose human rights have been violated, while it is not a treaty on state responsibility[7].

In France, Germany and Spain, Convention status for persecution by non-state agents can be awarded if the authorities in countries of origin tolerate or encourage the persecution, but not when the same authorities *want to* but *cannot* offer protection. Such inability to provide protection can lead to the granting of Convention status in Austria, Belgium, Denmark, Finland, Ireland, Italy, the Netherlands, Sweden and the United Kingdom. The divisive point seems to be the *intent* of the official government[8], even in cases where the nature of the persecution (from the point of view of the persecuted) is the same.

The authorities in Belgium, Italy, the Netherlands, Sweden and the United Kingdom can recognise persons as Convention refugees also in the absence of a state in the country of origin.

In some countries, practice concerning this issue has changed very recently. For example, although it is not evident from the text of Chapter 3 Section 2 in the Swedish Aliens Act (as amended 1997), Sweden can now grant refugee status in cases where there has been a total break-down of government authority (e.g. Somalia, Afghanistan), and after a decision in 1998 by the Co-ordinating Chamber in Aliens Law *(Rechtseenheid-kamer)* in the Netherlands, it seems that this Member State now in practice recognises that there can be persecution in the sense of the 1951 Convention even if there is no state. Other Member States can in such situations usually offer a complementary form of protection, or at least refrain from sending the applicant back to the country of origin, in appliance of the principle of *non-refoulement*. It should be remembered that all EU Member States are bound not only by the prohibition against *refoulement* in Article 33 of the 1951 Convention, but also by the prohibition in Article 3 of the European Convention on Human Rights. Nevertheless, the distinction between refugee status and other forms of complimentary protection is important in relation to the rights attached. Thus, while some asylum-seekers, who flee from persecution by non-state agents in countries where there is no functional state, can be awarded refugee status in a few Member States, other asylum-seekers fleeing from the same conditions but apply for asylum in other Member States may get to stay temporarily for humanitarian reasons or might be 'allowed' to stay (i.e. not deported) but not get any kind of formalised legal status at all.

In a situation of a breakdown of the state authorities in a country of origin, but where a third party can be considered as a *de facto* authority which now has control over the territory or part of the territory, most Member States can, depending on the circumstances of each particular case, grant refugee status to applicants coming from the territory in question. A non-recognised *de facto* government can be held accountable for committing

[7] Vermeulen Ben, *op.cit.,* p. 16.

[8] Peers Steve: *Mind the Gap*!, *Ineffective Member State Implementation of European Union Asylum Measures;* Report prepared for the Immigration Law Practitioners' Association and the Refugee Council, May 1998, p. 22.

persecution, and consequently the persecuted can be recognised as a Convention refugee. The level of state-like systems that need to have been established in such cases varies among the Member States. Generally, the *de facto* authorities must have a stable and effective ability to exercise 'state-like powers' in the territory for a substantial length of time.

In Article 5.2 of the Joint Position some criteria is established concerning persecution by third parties. Persecution has to be encouraged or permitted by the authorities, or in the case that the official authorities are unable to prevent persecution each case should be examined individually in light of the judicial practice in the examining Member State. Thus the minimum requirement is that persecution by third parties can qualify for refugee status if the state encourages or permits the persecution - the use of wider and more inclusive applications is up to each Member State respectively.[9] As we have seen, most, but not all, Member States actually do include cases where the state authorities are unable to offer protection, but few extend the protection as far as to include situations where there is no effective state at all.

Asylum-seekers fleeing from situations of civil war, will in all Member States only get refugee status if they can show persecution in the sense of the 1951 Convention. That is to say, the applicant must show distinctive persecution apart from the 'typical' hardships in such a situation. In a civil war there may be several factions claiming authority over a territory, and it can be difficult to establish the exact conditions as to whether the state authorities are still in power, or if another, third party, should be considered as a *de facto* authority. Therefore, in most Member States, applicants from civil war situations are awarded a subsidiary form of protection (e.g. humanitarian status) or temporary protection status rather than Convention status. Naturally, to some extent it depends on the individual case[10].

2. Visa regulations and Carrier sanctions

2.1. Visa regulations

The most recent list of countries whose nationals require visas to enter the European Union was adopted by the Justice and home Affairs Council on 12 march 1999. It includes:

Afghanistan	Dominican Republic	Laos	Saudi Arabia
Albania	Egypt	Lebanon	Senegal
Algeria	Equatorial Guinea	Liberia	Sierra Leone
Angola	Eritrea	Libya	Somalia
Armenia	Ethiopia	Madagascar	Sri Lanka
Azerbaijan	Federal Republic of	Maldives	Sudan
Bahrain	Yugoslavia	Mali	Suriname
Bangladesh	Fiji	Mauritania	Syria

[9] Vermeulen Ben, *op. cit.*, p. 31f.

[10] Peers Steve, *op. cit.,* p. 22.

Belarus	Former Yugoslav	Mauritius	Taiwan
Benin	Republic of	Moldavia	Tajikistan
Bhutan	Macedonia	Mongolia	Tanzania
Bulgaria	Gabon	Morocco	Thailand
Burkina Faso	Gambia	Mozambique	Togo
Burma/Myanmar	Georgia	Nepal	Tunisia
Burundi	Ghana	Niger	Turkey
Cambodia	Guinea	Nigeria	Turkmenistan
Cameroon	Guinea-Bissau	North Korea	Uganda
Cape Verde	Guyana	Oman	Ukraine
Central African	Haiti	Pakistan	United Arab
Republic	India	Papua New Guinea	Emirates
Chad	Indonesia	Peru	Uzbekistan
China	Iran	Philippines	Vietnam
Comoros	Iraq	Qatar	Yemen
Congo	Ivory Coast	Romania	Zambia
Cuba	Jordan	Russia	
Democratic	Kazakhstan	Rwanda	
Republic of the	Kyrgyzstan	Sao Tomé and	
Congo	Kuwait	Principe	
Djibouti			

Member States can themselves determine visa requirements for nationals of countries not on the common list (*see report on respective country*). All Member States require visas from stateless persons and persons from the territory under Palestinian Authority. Since the Schengen Implementation Agreement (SIA) came into force on 26 March 1995, a so-called Schengen visa exists for short stays (maximum three months) or transit (Title II, Chapter 3 and 4 of the SIA), which is in principle valid for all Schengen States.

The visa requirements affect asylum procedures mainly in cases where asylum-seekers are stopped at the border to file their applications there. If they are citizens of a country nationals of which are required to have a visa for entry, they are usually not allowed to enter, and the determination procedure takes place while the applicant is held in a waiting zone at the border or in an airport.

The risk is of course that a person without valid visa will be turned away directly at the border without having been able to actually file a claim for asylum. In theory, all Member States apply the rule that if an alien without valid entry documents makes a statement to border authorities that he wishes to seek asylum, the case must be assessed in some way. This assessment may however consist of a decision that the asylum-seeker comes from a safe third country, and can therefore be refused entry and access to regular determination procedures. The lack of a valid visa can thus make it impossible to enter a Member State and file an application for asylum and receive a decision based on the merits of the case.

2.2. Carrier sanctions

To counter the influx of aliens without proper travel documents or required visas, i.e. persons that do not have the formal right to enter, most Member States have introduced legislation on carriers' liability.

A typical scenario is that an airline has transported an alien to a Member State where he did not have the right to enter, due to lack of, or falsified, travel documents. The airline is liable to pay fines if it has been negligent in letting the alien travel. In this way, pressure is put on carriers to check passengers before departure to see that all travel documents are in order. If not, the alien is likely to be refused transportation. Thus, the aim with this kind of sanction is to decrease pressure on immigration authorities in the countries of destination. By its nature, it works as impediment to all forms of influx, where the alien does not have (or have false) travel documents, most notably illegal immigration and escape from persecution.

Finding themselves burdened with an increase of asylum-applications, and considering a substantial quantity of those asylum applications to be fraudulent, lacking in substance or otherwise manifestly unfounded, Member States have, as mentioned above, resorted to introducing stricter legislation on carrier liability to stop the problem before it reaches the Community itself[11]. However, the level of co-ordination has been low. Some States, like Finland, Spain and Sweden, do not have laws on carrier sanctions, but demand only that carriers take responsibility (economic and practical) of repatriation of the aliens in question. Some States reimburse the carrier or does not impose any fines in case the alien in question is actually admitted to the asylum procedures or is recognised as a refugee. In some Member States the regulations on carriers' liability are only applied on arrivals from third (non-EU) countries, in others the rules are even applied to intra-community transports.

It is especially when put together with strict visa requirements, that the use of carrier sanctions can pose a threat to persecuted persons' possibility of applying for asylum. In Recommendation 1163 (1991) of the Council of Europe (on the arrival of asylum-seekers at European airports, 43rd Ordinary Session of the Parliamentary Assembly) it is stated that some "countries have imposed airline sanctions which undermine the basic principles of refugee protection and the right of refugees to claim asylum by placing a considerable legal, administrative and financial burden upon carriers, and moving the responsibility away from the immigration officers". Concern has been voiced to the fact that the imposition of carrier liability has placed duties normally executed by immigration authorities in the hands of airline staff, who do not have the proper education or experience to deal with such issues. To avoid fines, they now have to make judgements on the validity of passports and visas, not to mention the authenticity of the fear of persecution of a claimant for asylum. It has been argued that it is absurd to expect airlines to be judges of whether a person without the proper documents but who claims to be persecuted is in fact lying, whether the case is otherwise lacking in substance, or whether the case is manifestly unfounded according to the laws of the member State of destination (it must also be remembered that Member States have different criteria as to whether a claim is manifestly unfounded or not). Claims have been made that people trafficking has increased as a result of stricter carrier sanctions, and that it has provoked an increase in the quality of forgeries of passports.

It is a very serious allegation that the adopted measures of carrier sanctions in reality effectively prevent some people from claiming their right to seek asylum from

[11] Cruz António: Shifting Responsibility - Carriers' liability in the Member States of the European Union and North America, GEMS No. 4, Trentham Books Limited, Oakhill, Stoke-on-Trent, 1995, p. 27.

persecution. It would be questionable from a human rights point of view if persons with legitimate claims were refused by unqualified airline personnel already in the country of departure, instead of having their cases tried by for the purpose competent authorities in a reception country. It is impossible to say how often this in fact happens. It is clear though, that the aim of imposing fines and other sanctions on carriers who bring undocumented aliens to the Member States is to decrease the number of such aliens who actually reach the borders and airports of the Member States. It is equally clear, that some of those aliens might be asylum-seekers.

Article 31 of the 1951 Convention prohibits penalties on the illegal entry of refugees. The penalties imposed on carriers reflect indirectly on refugees, to the extent that the undocumented aliens are asylum-seekers that would be successful in their claims. According to paragraph 2 of Article 31, States must likewise not apply restrictions other than those necessary on the movements of refugees. These provisions have sometimes been provided as indication that carrier sanctions of the type here described are in contradiction with the 1951 Convention. Relating to the important principle of *non-refoulement* as set out in Article 33 of the 1951 Convention, it has even been argued that the refusal of airlines to let an asylum-seeker board an aircraft in the alleged country of persecution, in effect is the same as returning him there (without examination of his claim) - a 'procedure' which seriously risks violating the mentioned principle[12].

3. Accelerated (simplified) procedures

3.1. Member State practice

3.1.1. Member States that use accelerated procedures	
Austria	(Applications which are considered to be manifestly unfounded (includes safe country of origin cases) or manifestly well-founded. Safe third country cases: formally accelerated procedures, but in practice regular procedures with limited procedural safeguards.)
Denmark	(Manifestly unfounded applications, safe country of origin cases, safe third country cases.)
Finland	(Safe third country cases and manifestly unfounded cases.)
France	(All border applications. Accelerated procedures are also used in relation to in-country applications if they are considered to be manifestly unfounded or relate to an applicant coming from a safe third country.)
Germany	(Accelerated asylum procedure at airports for asylum claims of asylum-seekers arriving by air from a safe country of origin or without proper travel documents. In-country applications if manifestly unfounded.)
Greece	(All applications filed at airports or seaports, and manifestly unfounded applications, including safe third country and safe country of origin cases.)
Ireland	(Accelerated appeal procedure for manifestly unfounded cases.)

[12] Cruz António, *op. cit.*, p. 75.

Italy	(All border applications.)
Netherlands	(Manifestly unfounded applications, including safe country of origin cases.)
Portugal	(All border applications.)
Spain	(Accelerated admissibility procedure for manifestly unfounded claims, including safe third country cases.)
Sweden	(Manifestly unfounded applications, including safe country of origin and safe third country cases.)
United Kingdom	(Accelerated appeal procedure for manifestly unfounded, safe country of origin and safe third country cases.)

3.1.2. Member States which do *not* use accelerated procedures	
Belgium	(All applications go through an admissibility procedure. A case deemed to be manifestly unfounded may be declared inadmissible, but does not go through an accelerated procedure.)
Luxembourg	

3.2. Comment

The practice regarding accelerated procedures is somewhat different among the Member States. Partly this has to do with the fact that accelerated procedures itself can mean several different things: actually speedier procedures (shorter time-limits for giving decisions, etc.); same as regular procedures but with limited procedural safeguards (e.g. restricted right to personal interview); regular procedure with accelerated *appeal* procedure; or accelerated procedure used in admissibility phase. Thus in some cases it would be more correct to talk about *simplified* procedures rather than accelerated. However, the terminology is in part set by the Resolution on manifestly unfounded applications for asylum, Article 2. Accelerated admissibility procedures are also mentioned there, and Article 3 states that appeal and review procedures may be more simplified in manifestly unfounded cases. All these three possibilities are used by Member States. The United Kingdom and Ireland use accelerated 'fast track' appeal procedures, whereas most other countries channel unfounded claims directly into an accelerated or simplified procedure, where sometimes the right to appeal is restricted (Denmark, Finland, France, Germany, the Netherlands, Spain and Sweden). In France, Greece, Italy and Portugal, all border applications go through an accelerated procedure. In Belgium, an application that is considered to be manifestly unfounded is dismissed in the obligatory admissibility procedure, and does not go through any other special procedure, accelerated or otherwise. This *could* in a way be considered as a simplified procedure of the type mentioned in Article 2 of the Resolution, as it in practice means that manifestly unfounded applications will not be admitted to regular determination procedures.

Articles 6-11 of the Resolution on manifestly unfounded applications sets out the criteria under which an application for asylum may be considered as manifestly unfounded, and thus dealt with under accelerated procedures. There are basically two such criteria: if there is no substance to claim to fear persecution (Article 6); and if there is a deliberate deception or abuse of asylum procedures (Article 9). In the Member States that use

accelerated procedures these Articles are more or less adhered to (in either admissibility phase, simplified procedure or accelerated appeals procedure).

Evidently there are dissimilarities in the Member States' practices concerning accelerated or simplified procedures, and an important aspect of the issue is what practical consequences these differences have. A simplified procedure generally means lesser safeguards, often concerning the right to appeal, but the Resolution clearly states that 'the applicant should be given the opportunity for a personal interview with a qualified official empowered under national law before any final decision is taken' (Article 4) and also that deliberate deception and abuse of asylum procedures as defined in Article 9 *in themselves* cannot outweigh a well-founded fear of persecution (Article 10). Even so, at the point where the decision to channel a claim for asylum through a simplified procedure is made, the chances of rebuttal for the applicant decreases, and therefore a lot of responsibility is placed on that initial decision.

4. Safe country of origin

4.1. Member State practice

4.1.1. Member States which make use of the safe country of origin principle	
Austria	(Considered as manifestly unfounded. Simplified procedure applies. Concept rarely used.)
Denmark	(Considered as manifestly unfounded. Accelerated procedure applies. A list of safe countries is used.)
France	(Does not automatically lead to accelerated procedure, but it can in some cases.)
Germany	(Considered as manifestly unfounded. Accelerated procedure A list of safe countries is used.)
Greece	(Considered as manifestly unfounded. Accelerated procedure applies.)
Luxembourg	(Considered as manifestly unfounded and declared inadmissible.)
Netherlands	(Considered as manifestly unfounded and declared inadmissible in the accelerated admissibility procedure. A list of safe countries is used.)
Portugal	(Considered as manifestly unfounded. Accelerated procedure applies.)
Spain	(An application will not be rejected on the basis of the safe country of origin principle, but would be considered to be manifestly unfounded for lack of credibility in the light of the general situation in the country, and processed in the accelerated procedure.)
Sweden	(Considered as manifestly unfounded. Accelerated procedure applies.)
United Kingdom	(Considered as manifestly unfounded. Accelerated procedure applies. A list of safe countries is still used, but it will be abolished when pending legislation is adopted.)

4.1.2. Member States which do *not* make use of the safe country of origin principle	
Belgium	

Finland	(The list of safe countries of origin has been abandoned, and each case has to be assessed on an individual basis.)
Ireland	
Italy	(The safety of the country of origin is taken into account, but it is only one of several factors dealt with during the procedure.)

4.2. Comment

The safe country of origin principle is based on the notion that some countries can be considered *a priori* 'safe', and applications for asylum of persons coming from such countries can therefore be dismissed without extensive examination. According to the Conclusions on safe countries of origin, Article 1, this applies to "a country which can be clearly shown, in an objective and verifiable way, normally not to generate refugees or where it can be clearly shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist". Article 3 prescribes that an assessment of a country as safe should not lead to automatic refusals of nationals from that country, but that the application shall be handled on an individual basis; although, if the Member State in question so wishes, an accelerated procedure may be used. Applicants shall also have the possibility to present facts that might substitute the general assumption of safety.

Most Member States that use the safe country of origin principle channel such cases through an accelerated procedure. Some States (Denmark, Germany, the Netherlands, the United Kingdom) also make use of formal lists, enumerating supposed safe countries. Several of the States that do not use written lists, have established 'lists through practice'. All Member States claim to assess cases individually, and it can sometimes be difficult to draw a line between the actual use of the safe country of origin principle and a determination in regular procedures based on the merits of the case. However, most Member States channel safe country of origin cases into accelerated procedures, thus confirming that even though a case might be tried individually in such a procedure and consequently not automatically refused without any assessment whatsoever, these cases will be subject to lesser safeguards than if they were handled in regular determination procedures. Furthermore, some States' accelerated border procedures leave the applicant with a non-suspensive right to appeal in safe country of origin cases, which in reality makes the effect of the appeal very limited.

5. Safe third country

5.1. Member State practice

5.1.1. Member States that make use of the safe third country principle	
Austria	(Implemented in context of the admissibility procedure. Accelerated procedure formally, but in practice regular procedure with limited safeguards.)
Belgium	(Can be applied in admissibility procedure in conjunction with other

	criteria for inadmissibility and if the applicant has been resident in the third country for more than three months.)
Denmark	(Border applications: Ground for inadmissibility; In-territory applications: Safe third country is an exclusion ground to be considered after examination in substance.)
Finland	(Accelerated procedure is used.)
France	(Border Applications: Ground for inadmissibility; In-territory application: The application is examined, but safe third country cases can be dealt with in an accelerated procedure.)
Germany	(Refused directly at the border. No access to regular determination procedure. In-country applicants have a possibility to appeal a refusal.)
Greece	(Considered as manifestly unfounded, accelerated procedure is used.)
Italy	(Application declared inadmissible at the border.)
Luxembourg	(Ground for inadmissibility.)
Netherlands	(Ground for inadmissibility.)
Portugal	(Claim considered manifestly unfounded and inadmissible in the accelerated admissibility procedure.)
Spain	(Never applied in itself, but always in conjunction with other inadmission causes.)
Sweden	(Accelerated procedure is used.)
United Kingdom	(Accelerated appeal procedure is used.)

5.1.2. Member States that do *not* use the safe third country principle	
Ireland	(Applicant can be sent to third country if he has a right of residence there or has already applied for asylum there.)

5.2. Comment

Practically all Member States use the safe third country principle, i.e. retain the right to send an applicant for asylum to another country where the claim for asylum should be examined due to the fact that the applicant has travelled *via* this country before coming to the Member State, and thus should have filed his application for asylum there in the first place. This country must be 'safe', meaning not only that the applicant must not run the risk of being persecuted there, or that there must be no risk of the applicant being sent back to his country of origin, or any other country, if there is a risk of persecuted there, but also that he should have access to functional and fair asylum procedures in the third country. The Resolution on safe third countries contains provisions on how the Member States are to use the principle of safe (or 'host') third country, including certain safeguards. In Article 2 the requirements on the third country are enumerated, comprising *inter alia* a reference to Article 33 of the 1951 Convention concerning the principle of *non-refoulement*, a provision to the effect that the asylum-seeker must be protected from torture or inhuman or degrading treatment in the third country, and a provision stating that the applicant must be protected from *refoulement* in the third country. All Member States officially adhere to these provisions.

We can see that the Member States use the safe third country concept in slightly different ways. Most often the safe third country cases are intercepted at the border. Applicants who do not have the proper documents for entry can be held at airports, seaports or land-border points as their travel routes are scrutinised, after which a decision is usually taken on their admissibility to the territory. Such procedures apply in Austria, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Portugal and the United Kingdom. In Belgium, safe third country cases are assessed within the for all applications applicable admissibility procedure. Spain uses the principle in practice almost solely in connection to other Member States (a situation which should now be processed under the Dublin Convention). The States that deal with safe third country cases at the border have different ways of doing so. For example, in Germany an applicant can be rejected by the border authority without the application being sent to the Federal Office (the asylum determination body) and the effects of appeal is very limited as it is not suspensive, whereas in the United Kingdom all applications must be sent to the Asylum Division of the Home Office, and appeal can have suspensive effect under certain circumstances. In Denmark, an appeal against refused admissibility on safe third country grounds is not possible at all.

The Dublin Convention (Article 3(5)) and the Resolution on safe third countries (Article 3(a)) provides that a Member State can send an asylum-seeker to a third country (outside the European Union) *before* applying the rules determining which Member State should handle the application. Therefore, the case might be that an applicant is excluded from filing an application in any of the Member States, if he came through another country considered to be safe. This however depends largely on which Member State deals with the application. Belgium, for example, does not use the safe third country notion to deny people access to determination procedures if the applicant has spent less than three months in the supposed safe third country. Other Member States might use the principle in cases of mere transit through a safe third country (Austria, Denmark, Finland, France, Germany and the United Kingdom). Ireland does not use the safe third country notion in handling asylum applications, except when sending applicants to other EU Member States, which in effect is an application of the Dublin Convention itself. Spain and Portugal do not refuse examination of an asylum application on the basis of the safe third country notion *per se*, but an applicant may be sent to a safe third country, if one such exists in the particular case, if his application has been deemed manifestly unfounded on other grounds[13].

The Council of Europe has recommended that when determining whether a third country is a safe country to which an asylum-seeker can be sent, the deporting State should, in each individual case, make sure that the third country observes international human rights standards relevant to asylum (including the prohibition of torture and other inhuman or degrading treatment or punishment), the 1951 Convention and the 1967 Protocol and the principle of *non-refoulement*, and furthermore that there is an actual possibility for the asylum-seeker to seek and enjoy asylum there.[14] Concerns have been raised that Member States often only require formal adherence by the third country to the 1951 Convention or the European Convention on Human Rights, without investigating the application in

[13] Peers Steve, *op. cit.*, p. 17.

[14] Recommendation No. R (97) 22 of the Committee of Ministers to member states containing guidelines on the application of the safe third country concept, adopted on 25 November 1997.

practice.[15] Likewise, concerns have been raised that a real assessment seldom is made as to whether the asylum-seeker will have the possibility of effectively lodging an application and in practice make use of a satisfactory asylum procedure in the third country.[16] The European Council on Refugees and Exiles (ECRE) believes that the discrepancies between the Member States' practices are so serious that it has proposed that the States should discontinue the application of the safe third country concept until a detailed set of safeguards has been adopted.[17]

6. Right of appeal

6.1 Regular procedure

6.1.1. Member State practice

6.1.1.1. Appeal possible in regular procedure	
Austria	(2 levels.)
Belgium	(2 levels.)
Denmark	(1 level; Appeal is made automatically.)
Finland	(2 levels.)
France	(2 levels.)
Germany	(2-3 levels.)
Greece	(1 level.)
Ireland	(1 level.)
Italy	(2-3 levels.)
Luxembourg	(2 levels.)
Netherlands	(2 levels.)
Portugal	(1 level.)
Spain	(2 levels.)
Sweden	(1 level.)
United Kingdom	(2 levels.)

6.1.1.2. Suspensive effect in regular procedure	
Austria	(Not automatically in second appeal, but it can be requested.)
Belgium	(Not automatically in second appeal, but it can be requested.)

[15] See for example Peers Steve, *op. cit.* p. 20.

[16] See for example Achermann Alberto and Gattiker Mario: "Safe Third Countries: European Developments", in: *International Journal of Refugee Law*, Volume 7, Number 1, 1995, Oxford University Press, p. 35.

[17] ECRE (European Council on Refugees and Exiles, ENAR (European Network Against Racism) and MPG (Migration Policy Group): *Guarding Standards - Shaping the Agenda*, May 1999, p. 9.

Denmark	
Finland	
France	(No suspensive effect of second appeal.)
Germany	
Greece	
Ireland	
Italy	(No suspensive effect of second appeal.)
Luxembourg	
Netherlands	(Not automatically in all cases, but it can be requested.)
Portugal	
Spain	(Not automatically. It has to be applied for explicitly and is only granted under exceptional circumstances.)
Sweden	(Not automatically, but it can requested.)
United Kingdom	

6.1.2. Comment

All Member States allow asylum-seekers who have entered regular determination procedures to appeal a negative decision, or to make a request for such an appeal. The nature of the appeal bodies differ among the Member States. In some countries (Finland, Germany, Italy, Luxembourg, Portugal and Spain) the first appeal is filed with a Court. Yet in other States (Austria, Belgium, Denmark, France, Ireland and the United Kingdom) the first appeal is filed with a for the purpose specially created body, typically called the 'Refugee Appeals Board'. Those bodies are often composed of several persons representing different authorities, most often including the Ministry of the Interior and the Ministry of Foreign Affairs. In the Netherlands and Sweden the same authority that made the first decision also examines the appeal (although in both cases there are additional safeguards if yet another negative decisions should be reached). In Greece, the decision is made by the Minister of Public Order. In Italy, the instance of appeal only examines the legality of the earlier decision - a positive decision transfers the case back to first instance again.

The procedures of appeal in regular determination procedures are clearly very diversified. The practice with regard to suspensive effect also differs. In most States, first appeal has suspensive effect, whereas such a safeguard in second appeal is usually subject to a special request, and is infrequently granted. The number of appeal instances range from 1 to 4. Needless to say, with respect to appeal procedures, the level of 'fairness and efficiency' can appear very different for an asylum-seeker arriving in the European Union, depending on the Member State of arrival.

6.2. Accelerated (simplified) procedure

6.2.1. Member State practice

6.2.1.1. Appeal possible in accelerated (simplified) procedure

Austria	(2 levels.)
Denmark	(Appeal can only be made if the Danish Refugee Council disagrees with the Immigration Service's refusal on the grounds of manifestly unfounded application. The applicant can also file a suspensive request for stay on humanitarian grounds.)
Finland	(Appeal can only be made if the District Administrative Court opposes the decision on manifestly unfoundedness by the Directorate of Immigration.)
France	(1 level.)
Germany	(1 level.)
Greece	(1 level.)
Ireland	(1 level.)
Netherlands	(1 level.)
Spain	(1 level.)
Sweden	(1 level.)
United Kingdom	(1 level.)

6.2.1.2. Appeal *not* possible in accelerated (simplified) procedure	
Denmark	(An appeal can not be filed if the Danish Refugee Council endorses the Immigration Service's refusal on the grounds of manifestly unfounded application.)
Finland	(An appeal can not be filed if the District Administrative Court endorses the decision on manifestly unfoundedness by the Directorate of Immigration.)

6.2.1.3. Suspensive effect of appeal possible in accelerated (simplified) procedure	
Austria	(Only in first appeal. In some circumstances it has to be requested.)
France	(It can be requested, but is rarely given.)
Germany	(Not automatically, but it can be requested.)
Greece	
Netherlands	(Not automatically, but a provisional ruling to that effect can be requested.)
Spain	(Not automatically, but it can be requested.)
Sweden	(It can be requested, but is rarely given.)
United Kingdom	(Except in safe third country cases, where suspensive effect is not automatic, but can be requested.)

6.2.2. Comment

Two countries - Denmark and Finland - allow appeal to a decision in the accelerated procedure only when a second body (the Refugee Council and the District Administrative Court respectively) disagrees with the decision on manifestly unfoundedness. This is in accordance with Article 19 of the Council Resolution on minimum guarantees, which

states that "Member States may exclude the possibility of lodging an appeal against a decision to reject an application if, instead, an independent body which is distinct from the examining authority has already confirmed the decision".

6.3. Admissibility or border procedure

6.3.1. Member State practice

6.3.1.1. Appeal possible in admissibility or border procedure	
Austria	(1 level.)
Belgium	(2 levels.)
Denmark	(1 level.)
France	(1 level.)
Germany	(Appeal is however in practice not possible for safe third country cases at the border.)
Greece	(1 level.)
Italy	(1 level.)
Luxembourg	(2 levels.)
Portugal	(2 levels.)
Spain	(2 levels.)

6.3.1.2. Suspensive effect of appeal possible in admissibility or border procedure	
Belgium	(Not automatically in second appeal.)
Greece	
Luxembourg	(Only first appeal has suspensive effect.)
Portugal	(Only first appeal has suspensive effect.)
Spain	(Second appeal only has suspensive effect if the appeal is endorsed by UNHCR. Otherwise it can be requested.)

6.3.1.3. Suspensive effect of appeal *not* possible in admissibility or border procedure	
Austria	
Denmark	
France	
Germany	(Suspensive effect is forbidden by law.)
Italy	

6.3.2. Comment

The Resolution on Minimum Guarantees provides the Member States with the possibility not to admit an asylum-seeker if his application is deemed manifestly unfounded at the border (Article 24). Even though most States provide the theoretical possibility to appeal a

negative decision, the fact that asylum-seekers are held at the border and the low chances of such an appeal having suspensive effect can render the appeal without real substance.

In Belgium and Luxembourg the admissibility procedure has a more formalised character than the border procedure used by most Member States - it applies to all applications, and the procedural guarantees are similar to those in the regular procedure.

7. Complementary forms of protection

Most Member States grant some kind of residence permit that is proposed to act as a complementary form of status to actual Convention refugee status. Primarily it is a protection for persons who do not qualify for Convention status from being sent back to a country where they will be exposed to serious human rights violations. Complementary, or 'subsidiary', protection is not the same as temporary protection, which is given to groups of people as an emergency measure in a situation of large scale influx.

The rights afforded to persons under complimentary protection varies among the Member States. Family reunification is possible in Denmark, Finland and Sweden, is limited in the Netherlands and Spain, can be granted after a delay in Belgium, France, Ireland and the United Kingdom and is not granted at all in Austria, Germany, Luxembourg and Portugal. The right to work is granted in Denmark, Finland, Ireland, the Netherlands, Portugal, Sweden and the United Kingdom, is limited in Austria, Belgium, France, Germany and Spain and is not granted at all in Luxembourg. (All this refers to the highest form of status for those States that have several levels of complimentary protection.) Italy does not offer any form of individualised complimentary protection.

In Denmark, Finland and Sweden the complimentary status is more or less a *de facto* refugee status described by law, whereas Belgium, Ireland and Luxembourg allow the beneficiaries and contents of protection to be subject to governmental discretion. Of the countries that offer several levels of subsidiary protection, Belgium, Germany and Spain can grant a kind of tolerated status, the beneficiaries of which are not necessarily awarded a residence permit.

Looking at statistics from 1998 on asylum applications - 'Convention refugee status granted' and 'Humanitarian status granted' - one finds that the share of humanitarian recognitions vary significantly between the Member States (with respect to these figures humanitarian status includes all subsidiary forms of protection: *de facto* refugee status, exceptional leave to remain, suspension of deportation, etc.). In Denmark, the Netherlands and Sweden the subsidiary forms of protection in fact represents a majority of the recognitions during that year.

The situation of complementary protection in the EU Member States has been subject to a Resolution by the European Parliament (on the harmonisation of forms of protection complementing refugee status in the European Union, A4-0450/98). The Resolution was adopted in February 1999, and it expresses concern over the lack of harmonisation with regard to complimentary protection within the European Union. It also points out that subsidiary protection does not call into question a full implementation of the 1951 Convention. In no way should complimentary status be seen as a replacement to Convention refugee status. The Resolution recognises the fact that for the asylum

determination regime to be fair and efficient within the Community, harmonisation is needed both concerning the definition of a 'refugee' and alternative forms of protection. Complementary protection is proposed to be provided for persons who:

- have fled their country of origin, and/or cannot or do not wish to return because their lives, safety or freedom are threatened by widespread violence, foreign aggression, internal conflict, large-scale violation of human rights or other circumstances which have severely disrupted public order;
- have fled their country of origin, and/or cannot or do not wish to return because they have justified fears of being tortured, subjected to sexual violence or violence on account of their sexual orientation, inhuman or degrading treatment, capital punishment or other violations of their fundamental rights.

8. The Dublin Convention

The Dublin Convention came into force in 1997, and it is therefore too early to evaluate its long-term impact on the EU asylum determination systems. Member States increasingly refer to the Convention when making transfers of asylum-seekers. A reason for the fact that the number of explicit referrals to the Convention initially was low can be that before its enactment, and possibly just after, most Member States made such transferrals as an application of the safe third country concept. Now, however, the safe third country cases and the 'Dublin' cases should be handled according to separate rules. As a connection between them, Paragraphs 3(a) and 3(b) of the Resolution on safe third countries in conjunction with Article 3(5) of the Dublin Convention provides that a Member State can apply the safe third country concept *before* transferring an application under the terms of the Dublin Convention. At least five Member States (Austria, Germany, Denmark, the Netherlands and the United Kingdom) apply these provisions. Most Member States do not have special provisions relating to this specific issue, perhaps because the situation does not arise very often. It is however an important distinction, because implementation of those provisions means that Member States can remove a person to a country outside the European Union on safe third country grounds before applying the Dublin Convention, including the humanitarian clauses on family reunification (Article 4) and other humanitarian considerations (Article 9). The consequence is thus that the Dublin Convention does *not* guarantee that an application for asylum will be processed by one of the Member States.

For the Dublin Convention to be effective, a high level of harmonisation of the asylum procedures within the EU is necessary. An indication not only to the fact that the said procedures are not harmonised, but also that the Dublin Convention sometimes can be left powerless, is given by a ruling by the Court of Appeal in the United Kingdom on 23 July 1999. The Court found that in some cases France and Germany cannot be considered as safe countries, so that British authorities cannot send asylum-seekers back to these countries in application of the Dublin Convention. The cases concerned are when asylum applicants have fled from persecution by non-governmental forces - France and Germany (and some other Member States, under a variety of conditions) do not recognise such persecution as ground for Convention refugee status. The United Kingdom, on the other hand, does.

Similarly, in the Netherlands, the aliens chamber of the Court in Zwolle has given a ruling with the content that Kurds who have fled from military obligations in the Turkish army cannot be sent back to Germany in application of the Dublin Convention. In the Netherlands, conscientious objection can form a ground for asylum, which is not the case in Germany. It has generally been assumed that all EU Member States shall be presumed safe - it could be argued to be a precondition for the Dublin Convention to be applicable. These decisions therefore put the application of the Convention into question.

Another aspect of the implementation of the Dublin Convention is the practical consequences of transferring asylum-seekers between the Member States. A substantial part of the requested transfers do not take place immediately, and some are not accepted at all (*see numbers in the State-by-State report*). These asylum-seekers can be faced with difficult living conditions while the issue as to which Member State is responsible for the handling of their application is resolved. As an example, Dutch authorities have refused to provide temporary housing in reception centres for such asylum-seekers, because another Member State is responsible for handling the applications. Apparently this has not stopped some applicants to remain in the Netherlands. While not being provided with shelter, they have ended up in the streets. The Dutch refugee Council has estimated that of 794 'Dublin-cases' between October 1998 and April 1999, 526 have been refused access to reception centres.

The issue of the socio-economic rights of asylum-seekers awaiting a decision under the terms of the Dublin Convention has been the subject of concern to NGOs, among which The European Council on Refugees and Exiles (ECRE) has recommended that future EU legislation replacing the Dublin Convention should address these problems[18].

The question of procedural guarantees concerning the process determining which Member State is responsible for an application is not covered by the Resolution on minimum guarantees or by any other instrument. In practice, it is very difficult for asylum-seekers to challenge a decision of transferral in accordance with the Dublin Convention, especially if they are held at the border, with no right to enter. The Commission, in its working document Towards Common Standards on Asylum Procedures (SEC (1999) 271), noted the lack of such procedural guarantees and suggested that they could be included in either a proposal for a Community legal instrument on asylum procedures or in a Community instrument replacing the Dublin Convention.

9. Access to Procedures

A precondition for a functional refugee protection regime, and without which procedural safeguards within a determination procedure have little meaning, is the actual and effective possibility of persons who are fleeing persecution to lodge applications for asylum - to be able to enter the first stage of that system. This vital access to asylum procedures must be viewed in the light of several issues discussed above, such as the definition of 'a refugee' in relation to persecution by non-state agents, visa regulations, carrier sanctions, safe country of origin practices, safe third country practices, the use of border procedures and the Dublin Convention.

[18] ECRE, *op. cit.,* p. 9.

A combination of extensive use of the safe third country concept and accelerated border procedures without procedural safeguards will undoubtedly hamper an effective possibility for asylum-seekers to enter determination procedures. So will strictly imposed carrier sanctions, because they provoke carriers to institute checks already in the country of departure, laying the burden of deciding who is likely to be a 'genuine' candidate for refugee status on airline personnel, who is not trained for this purpose. And so will a formalised use of the safe country of origin concept, if there is no way of rebutting the presumption of safety. We have seen that the practices of Member States regarding all these issues are diversified. Thus, an asylum-seeker's possibility to actually enter a procedure where his case will be examined on its merits will depend on which Member State he approaches. The implications of this in combination with the implementation of the Dublin Convention are troubling. It would seem that it is more important than ever for asylum-seekers to 'choose' among the Member States as to where he should first file an asylum request, although of course in reality very few can do so. As long as access to procedures (and content of procedures) are different among the Member States, a redistribution instrument like the Dublin Convention increases the random component as to the outcome of an asylum application filed within the European Union.

Part III

*

Asylum Procedures in the Member States

A U S T R I A

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*10,162*
Main country of origin: Federal Republic of Yugoslavia	

1.2. 1998

Total number of applications for asylum in 1998	*13,800*
(4.0% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Federal Republic of Yugoslavia Iraq Iran Afghanistan India

Total number of decisions taken 1998		*9,510*
of which		
Convention status granted	*500*	(5.3% of decisions)
Rejected	*3,500*	(37% of decisions)
Otherwise closed	*5,510*	(58% of decisions)

2. National Legislation Concerning Asylum and Refugees

- Asylum Act 1997
- Aliens Act 1997
- Law concerning the Federal Care for Asylum-Seekers

3. Decision Making Bodies

1st Instance: Federal Asylum Agency (*Bundesasylamt*, under the Ministry of the Interior)

2nd Instance: Independent Asylum Appeals Board (*Unabhängiger Bundesasylsenat*)

3rd Instance: Administrative Court (*Verwaltungsgerichtshof*)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non-state agents if the state authorities in the country of origin are unwilling to protect the applicant. In some cases also when state authorities are unable to provide protection.

Austrian courts have sometimes granted refugee protection in cases where persecution emanates from non-state agents in areas where the authority of the state is no longer effective, and the non-state agents are thus considered to be *de facto* authorities. Courts have also followed a more strict interpretation where refugee status in these cases is only granted when the state authorities *deliberately* do not act to prevent persecution.

Austrian authorities also take into consideration discrimination with regard to conscription and treatment during military service that may amount to persecution.

5. Admissibility/Border Procedure

5.1. Procedure

Different admissibility procedures apply for applications made after entry via airport or directly from a country of origin and applications made after arrival by land from a third country. A case can be refused as manifestly unfounded or dismissed as inadmissible on safe third country grounds prior to admission to regular procedures.

Aliens who arrive via an airport or otherwise directly from their country of origin and 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 Agency. Applications filed at an airport may not be dismissed as being manifestly unfounded or rejected by reason of existing protection in a safe third country except with the consent of UNHCR.

Other aliens who file an asylum application at the time of a border control carried out at a frontier crossing point shall be refused entry and informed that they have the possibility either of seeking protection from persecution in the country in which they are currently resident or of filing an application for asylum with the competent Austrian diplomatic or consular authority. It is however possible, 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. In such a case the applicant will have to await the decision abroad.

5.2. Appeal

If the decision is negative, the asylum-seeker can apply for a re-examination of the case by the Independent Asylum Appeals Board, who takes the final decision.

During the course of this procedure asylum-seekers cannot be guaranteed access to a refugee assistance organisation or to an interpreter. Neither is a personal interview carried out by a qualified official guaranteed. It is therefore difficult for many asylum-seekers to satisfactorily formulate the grounds on which they should be granted asylum, and to refute a presumption of coming from a safe third country. Such an asylum-seeker runs a great risk of being rejected at the border without the case having been thoroughly examined.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Embassy and Consulate
- Police
- Federal Asylum Agency

Generally there is an effective possibility to lodge an application for asylum, and border guards are given clear instructions on the handling of asylum-seekers, but there have been some cases where the application was not forwarded by the aliens police. (*See also 5. Admissibility/Border Procedure.*)

There is no time-limit for the lodging of an application.

The applicant is interviewed by a senior official of the Federal Asylum Agency. However, this is only done provided that the holding of such an interview is possible without disproportionate expense. The interview may also be dispensed with if the asylum-seeker is "not in a position to assist in establishing the material facts through the giving of testimony" (Article 27(1) of the 1997 Asylum Act).

Refugee advisors may be appointed to assist aliens in matters concerning asylum law, translation of documents and provision of interpretation. Interpretation is free. In practice, there are problems as regards access to legal advice, mainly because there are not enough refugee advisers.

The applicant has the right to remain in the country pending final decision.

Right to data protection: According to Austrian legislation concerning data protection, everyone has the right to protection of personal data, especially such data concerning private and family life, in so far as the individual has an interest of privacy worthy of protection.

With respect to asylum-seekers and refugees, authorities are empowered to use personal data *inter alia* for the purpose of determining the State responsible for examining an application for asylum, and with a view to the administration of criminal justice or to the maintenance of public safety. The Aliens Act (Article 99) allows a central information gathering system to be set up by the immigration authorities, containing general information on individuals such as name, sex, date and place of birth and nationality, as well as data on criminal investigations and photographic and fingerprint data.

Role of UNHCR in determination procedure: According to the Austrian Asylum Act, UNHCR shall always be notified of the initiation of a procedure relating to an application for asylum. This applies also to cases at the border, where application form and questionnaire have been completed, or where a procedure with the view of rejection, forcible return, expulsion or deportation is conducted against an asylum-seeker. UNHCR is entitled to request information on such proceedings and to be present at interviews and oral hearings and enter into contact with the aliens concerned. Asylum-seekers have the right to get into contact with UNHCR at any time.

Role of NGOs in determination procedure: NGOs do not have a by legislation formalised position in the procedure, but in practice they are in contact with a lot of asylum-seekers to whom they provide counselling.

Visa restrictions: The Austrian authorities demand visa from nationals of the countries featured on the EU common list. In addition, visa is demanded from nationals of the following countries (as of June 1999): Antigua & Barbuda, Bahamas, Barbados, Belize, Bosnia-Herzegovina, Botswana, Brunei, Dominica, Estonia, Grenada, Honduras, Kenya, Kiribati, Lesotho, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Nicaragua, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

Visa is also demanded from nationals of some dependent territories of the Member States: Bermuda (UK), Montserrat (UK), St. Helena (UK) and Macao (Portugal, until 1999-12-31).

Carrier's liability: A carrier which brings an undocumented passenger has the obligation to provide, within three days, the Austrian authorities with the personal data of the passenger and details of his travel documents. The carrier is not fined if it ensures the immediate departure of an inadmissible foreigner.

6.1.1. Expulsion

The period of validity of the temporary residence permit ends with the final decision. While the aliens police may issue a decision concerning the deportation of the alien already during the asylum procedure, the deportation itself may only take place after the final decision. Aliens with enforceable residence bans or deportation orders can be deported. If it is necessary to secure the deportation procedure the alien can be arrested. (*See also 6.8 Detention Possibilities.*)

6.2. Right to Appeal

In case of a negative decision in the regular determination procedure, an asylum-seeker has a 2 level right to appeal.

The first instance of appeal is the Independent Asylum Appeals Board. The time limit for filing the appeal is 2 weeks, and the time limit for the answer from the Appeals Board is 6 months.

In case of a negative decision by the Independent Asylum Appeals Board, an appeal is possible to the Administrative Court. The Court can deny the processing of a complaint against a decision of the Independent Asylum Appeals Board if the decision does not involve a legal issue of particular importance. The time limit for filing the appeal is 6 weeks, but there is no formal time limit for the Court to deliver a decision.

Through the appeal proceedings, interpretation is free, but legal assistance is not.

6.2.2. Suspensive Effect of Appeal

The appeal to the Independent Asylum Appeals Board has automatic suspensive effect.

The appeal to the Administrative Court does not have automatic suspensive effect, but it can be accorded by the Court on request.

6.3. Principle of *Non-Refoulement*

The Austrian authorities are required by law to follow the terms of the 1951 Convention, the European Convention on Human Rights and the Convention Against Torture. However, there is still a risk of asylum-seekers being refused at the border prior to a substantive examination of the case, which means that the risk of aliens being sent to countries where they could suffer persecution or to countries where they are not protected from *refoulement* is noticeable.

6.4. Specific Provisions for Women

Austrian asylum determination procedures include specific provisions concerning female asylum-seekers. There is a right for women to deal with female interviewers and interpreters during the procedure, even though this right only exists in cases where the asylum-seeker's fear of persecution is based on interference with the right to sexual self-determination. A married female asylum-seeker has the right to file an independent application for asylum.

Even though it is rare that an asylum-seeker is granted refugee status only on grounds of gender-related persecution (sexual violence, rape, forced sterilisation, female genital mutilation), the authorities has to take this into account and such persecution is looked upon as generally being persecution within the meaning of the refugee definition in the 1951 Convention.

6.5. Unaccompanied Minors

In Austria, minors are children under 19. Aliens over the age of 14 can apply for asylum without assistance. In the determination procedure all unaccompanied minors are represented by an official of the youth welfare office.

Although the Resolution on Unaccompanied Minors is implemented in Austria, concerns have been raised on the level of practical implementation. Measures of implementation are lacking concerning the tracing of members of the family of the unaccompanied minor, the specialised medical care important to unaccompanied minors who come from difficult situations such as armed conflicts as regards to neglect, exploitation, abuse and torture, and the need for interviewers to have the necessary experience and training. Apart from this, there exist procedures for reunification with family. Long-term measures, such as issuance of a residence permit, are the same as for other asylum-seekers.

6.6. Social Rights for Asylum-seekers

Access to work permit: Asylum-seekers are not allowed to work in Austria.

Freedom of movement: Applicants for asylum have the right to move freely.

Financial assistance: Asylum-seekers who are under Federal care get free board and lodging. In addition, they get about 500 Austrian Shilling in monthly pocket-money.

Access to schools: School is compulsory for minors between 6 and 15.

Specific integration training: Foreign children have the possibility to attend special language courses.

Health care: Minors under Federal care enjoy specialised health-care services.

6.7. Residence Rights

When an application for asylum has been submitted, the asylum-seeker gets a provisional right of residence, which is valid until the final decision on the asylum claim has been taken. Prior to submitting an application, no such right exists however, and many potential asylum-seekers are detained on grounds of illegal entry or illegal residence in the territory. And even though asylum-seekers have a provisional right of residence once the application has been lodged, the aliens police has the possibility of commencing expulsion proceedings against them, including detention.

6.8. Detention Possibilities

Upon arrival: Asylum-seekers arriving at an airport or at the border may be required to remain at a specific place in the border control area or within the area of the Federal Asylum Agency during the week following the border control. This restriction is however not classified as detention according to Austrian law. In addition, many aliens are detained on grounds of illegal entry or illegal residence in the territory before and during their determination procedures. At least 13% of all asylum-seekers are in detention.

To facilitate deportation: Aliens may be arrested in order to secure the deportation procedure. Aliens who are legally in Austria may only be arrested if they are suspected of evading the procedure. On these grounds detention is also possible during the asylum procedure. During 1998 a total of 15,092 persons were placed in remand centres pending deportation.

7. Accelerated/Simplified Procedure

7.1 Procedure

In relation to cases that are considered as manifestly unfounded and to safe third country cases a simplified procedure applies that could be described as the regular procedure but with less safeguards and shorter time limits.

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 manifestly unfoundedness has been taken. Such a decision can be taken within the admissibility procedures at borders and airports.

As in the regular procedure, the decision in first instance is taken by the *Bundesasylamt*. The Court has 6 months to reach a decision.

UNHCR is notified on all proceedings with the intended aim of establishing manifestly unfoundedness, and have access to the asylum-seeker and opportunity to advise him.

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

7.2. Right to appeal

There is a right to appeal on two levels. The first negative decision can within 10 days be appealed to the Independent Asylum Appeals Board. A further negative decision can be appealed to the Administrative Court.

The Independent Asylum Appeals Board has to give an answer within 4 working days, but there is no time limit for answer from the Administrative Court.

There is a suspensive effect of the appeal to the Asylum Appeals Board, but if an expulsion order has been issued and the time of the execution of this measure falls within the time limit of appeal (10 days), the expulsion order stands unless a separate appeal against *refoulement* is made.

Legal assistance and interpretation are provided throughout the procedures.

8. Manifestly Unfounded Applications

An application for asylum can be considered as manifestly unfounded for the following reasons (the Austrian definition follows the criteria in Paragraph 6 of the Resolution on manifestly unfounded applications for asylum):

- 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 does clearly 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.

9. The Safe Country of Origin Concept

If an applicant comes from a safe country of origin, the case is considered as manifestly unfounded and channelled through the simplified procedure. Consequently, the presumption of safety is rebuttable within the procedure for appeal as followed in the simplified procedure.

There exists no formal list of safe countries, and decisions taken on the basis of this principle are very rare.

10. Safe Third Country

10.1. Definition

The principle is used along the lines of the 1992 Resolution on safe third countries.

Several safeguards have to be followed. The alien must have access to an asylum procedure in the third country, and he must not be exposed to danger there. He must have an entitlement to residence in the third country during the procedures, and be protected from *refoulement*.

The presumption is that a country is safe if it has ratified the 1951 Convention and established by law an asylum procedure in accordance with the principles of this Convention and the European Convention on Human Rights and made a declaration pursuant to Article 25 thereof (a declaration which gives the right to individuals and groups to lodge complaints against the State with the European Commission of Human Rights).

There is no formal list of safe third countries, but in practice the following countries are considered to be safe: Algeria, Bulgaria, Congo-Brazzaville, the Czech Republic, Ghana, Hungary, Hong Kong, Iran, Iraq (the northern part of the country; also considered as safe

for southern Iraqis), Jordan, Niger, Norway, Pakistan, Romania, Russia, Saudi Arabia, Slovenia, Switzerland, Tajikistan, Turkey and Ukraine.

The Slovak Republic used to be considered as a safe third country, but in a recent decision the Independent Asylum Appeals Board was of another opinion. The reason for this was that asylum-seekers who are sent back to the Slovak Republic (in application of the safe third country rule) do not have access to the asylum determination procedures there. Thus it is not safe for asylum-seekers. The Austrian governments position has generally been that all neighbouring States are safe countries.

10.1.1. Mere Transit

Mere transit in a safe third country is sufficient for application of the safe third country principle in Austria.

10.2. Procedure

The same procedure as for manifestly unfounded applications is used.

The alien is interviewed by the *Bundesasylamt*, and the decision is taken on the basis of this interview.

The decision is handed to the applicant in written form. It is translated, and information on the right to appeal is included.

Authorities of third countries and carriers are not systematically informed in writing that no examination as to the substance was carried out, but the Independent Asylum Appeals Board has now started to issue certificates to the asylum-seeker confirming the non-examination of the claim.

11. Internal Flight Alternative

The existence of an internal flight alternative is one circumstance among others, and it does not automatically make an application the subject of simplified procedures.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees have the same rights in this respect as nationals.

Access to employment: The same access to the labour market as nationals.

Access to social security: Same as nationals.

Access to health services: Same as nationals.

Access to education: Same as nationals.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Unmarried children under 19.

13. Complementary Forms of Protection

13.1. Limited right of residence

Asylum-seekers who have not received refugee status, but cannot be sent back on the grounds that they would risk being exposed to human rights violations, such as torture or other cruel, inhuman or degrading treatment, may receive a limited right of residence. This is an application of the principle of *non-refoulement*, and the Court shall take such a decision *ex officio*.

The permit is first granted for 1 year with two possible extensions of 1 year each. After that, the permit can be extended for a maximum of 3 years at a time. The permit can be extended as long as the situation in the country of origin prevails.

Persons with such a residence permit do not have a right to family reunification. They have a limited right to work.

13.2. Suspension of deportation

Asylum-seekers who can not be deported for legal or practical reasons can be allowed to stay for up to one year. This permit can be revoked at any time, and it cannot be said to actually constitute a complementary protection status. Persons on suspension of deportation do not enjoy the right of family reunification or the right to work. They do have access to basic health care, and their children can go to school.

B E L G I U M

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*12,654*
(not including dependants)	

1.2. 1998

Applications for asylum in 1998	*22,000*
(6.3% of the total number of applications in the EU 1998)	

Main countries of origin (applications) 1998:	Federal Republic of Yugoslavia Democratic Republic of the Congo Romania Albania Rwanda

Total number of decisions taken 1998		*6,520*
of which		
Convention status granted	*1,670*	(25% of decisions)
Rejected	*4,480*	(69% of decisions)
Otherwise closed	*370*	(6% of decisions)

2. National Legislation

- Act on entry into the territory, residence, right of establishment and removal of aliens (the 'Aliens Act', 15 December 1980, last amended 15 July 1996)
- Royal Decree on entry into the territory, residence, right of establishment and removal of aliens(8 October 1981)

3. Institutional Framework

Decision on *admissibility*:

1st Instance: The Directorate for Aliens Affairs (DAA, under the Ministry of the Interior)

2nd Instance: The General Commission for Refugees and Stateless Persons (*Commissariat général aux réfugiés et epatrides*)

3rd Instance: The Council of State (*Conseil d'Etat*)

Decision on the *substance* of the claim (after the application has been declared admissible by the DAA):

1st Instance: The General Commission for Refugees and Stateless Persons (*Commissariat général aux réfugiés et epatrides*)

2nd Instance: Permanent Commission on Appeal for Refugees (*Commission permanante de recours des réfugiés*)

3rd Instance: The Council of State (*Conseil d'Etat*)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State Authorities;
- Non state agents if the public authorities are unwilling or unable to offer protection, or if they encourage the persecution;
- Non state agents also when there is no State, depending on the circumstances of each particular case.

5. Admissibility Procedure

5.1. Procedure

All applications for asylum are processed in an admissibility procedure. The competent authority is the Directorate for Aliens Affairs (DAA), which takes decisions on whether an application is admissible to the regular determination procedures, or inadmissible, e.g. due to being manifestly unfounded or because another State is responsible for treating the application.

An alien who applies for asylum directly at the Belgian border and who does not possess the necessary documents to enter Belgian territory are admitted to a transit centre and provided with free counsel during the admissibility procedures. The applicant can remain in the transit centre for two months while waiting for a decision.

Aliens who file their application to the DAA within the country may, if they wish to, stay at another temporary residence centre in Brussels.

The Dublin Convention: Decisions on the applicability of the Dublin Convention is taken in the admissibility procedure. During 1998, Belgium requested other Member States to take responsibility of 1,621 asylum applications, of which the other States

accepted 1,331. Belgium was asked to take responsibility for 1,029 applications, of which 671 were accepted. Of these, only 251 transfers actually took place.

5.2. Appeal

A two level appeal is possible in the admissibility procedure.

After a negative decision by the DAA the applicant can file an urgent appeal to the General Commission for Refugees and Stateless Persons. If the alien is detained at the border, the appeal must be filed within 1 working day of the negative decision. If the alien is not detained at the border, the time limit is 3 days. The appeal has suspensive effect.

If the first appeal is rejected, a further appeal is possible with the Council of State. It must be filed within 60 days and should consist of requests for suspension and annulment of the former decision. Thus, there is no automatic suspensive effect. When deciding on the suspension, the Council of State evaluates the possibility of grave and irreparable harm should the decision be executed. If suspension is granted, the legality of the former decision (by the General Commission for Refugees and Stateless Persons) is reviewed. The Council of State can issue an annulment of this decision, but only based on its legality; the substance or the facts of the case cannot be reviewed.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Airports
- Sea and Sea Ports
- Directorate for Aliens Affairs
- General Commission for Refugees and Stateless Persons

The applicant had to apply within 8 working days after entry. Administrative measures have been taken to ensure that any asylum-seeker arriving at the border is afforded an opportunity to lodge an asylum application.

An alien who enters Belgium legally must apply before the end of the legal stay. If this is not adhered to, and the applicant fails to give a satisfactory explanation, the claim runs the risk of being declared inadmissible.

The competent authority is the General Commission for Refugees and Stateless Persons, which studies the merits of each individual case to decide whether or not to grant refugee status. This procedure can take three years. Usually the asylum-seeker is interviewed again, but if this cannot be done (e.g. for medical reasons) the decision is taken on the basis of the written report forwarded by the ADD (- a report which was written during the admissibility procedure).

The Minister of Interior reserves the right to take a negative decision during any moment of the procedure if the applicant is considered a threat for public safety.

Asylum-seekers get access to a legal advisor or other counsellor to assist them during the procedure. All information is available in several languages and interpretation is free.

Role of UNHCR in determination procedure: UNHCR has access to the reception centres, and asylum-seekers are allowed to get in contact with UNHCR if they wish. Furthermore, UNHCR monitors the work of the Belgian refugee status determination bodies, is entitled to investigate individual cases and is allowed to give opinions in the proceedings (except before the Council of State). If a State authority does not follow a recommendation by UNHCR, it must justify the reasons for not doing so.

Role of NGOs in determination procedure: Some NGOs have translated explanatory leaflets into the languages most commonly spoken by asylum-seekers in Belgium. Asylum-seekers are allowed to make contact with NGOs during the determination procedures.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition to this list, the Benelux countries have a common list enumerating several other states: Antigua & Barbuda, Bahamas, Barbados, Belize, Bosnia-Herzegovina, Botswana, Colombia, Croatia, Dominica, Estonia, Grenada, Jamaica, Kenya, Kiribati, Latvia, Lesotho, Lithuania, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

Carrier's liability: If a carrier (air-, maritime- or international land-) during the same trip brings at least five people who are not in possession of the necessary travel documents on to Belgian territory, a fine can be laid upon the carrier. The carrier is also liable in the case where Belgium is only a transit country but at least five people lack travel documents to enter a third country. The absence of documents must in both cases be a result of negligence on the part of the carrier. Expenses due to repatriation and stay in Belgium must be paid by the carrier. Further administrative fines can also be imposed, but these are refunded if the alien at a later stage is admitted to Belgium as an asylum-seeker.

6.1.1. Expulsion

Rejected asylum-seekers who do not fulfil the conditions for obtaining a residence permit on exceptional reasons will be removed or deported. If this is not possible, they will stay in Belgium without a temporary residence permit or any legal status.

6.2. Right to Appeal

There is a two level right to appeal in the regular determination procedure.

After a negative decision by the General Commission for Refugees and Stateless Persons an appeal is possible to the Permanent Commission on Appeal for Refugees. The time limit for filing the appeal is 15 days.

Following a negative decision by the Permanent Commission on Appeal for Refugees, an appeal is possible to the Council of State. The time limit for filing 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.

6.2.2. Suspensive Effect of Appeal

The appeal to the Permanent Commission on Appeal for Refugees does have suspensive effect.

The appeal to the Council of State does not have automatic suspensive effect, but it can be requested.

6.3. Principle of Non-Refoulement

The principle is implemented in the admissibility and regular determination procedures.

6.4. Specific Provisions for Women

Asylum applications submitted by women are wherever possible handled by female staff. Any changes to this rule must be agreed to by the applicant.

6.5. Unaccompanied Minors

In Belgium minors are children under 18.

Unaccompanied minors who apply for asylum are usually accommodated in special centres. They are subject to the same procedures as adults but in event of a negative decision the DAA waits until the minor reaches the age of 18 before removing him from the territory.

6.6 Social Rights for Asylum Seekers

Access to work permit: During the admissibility procedure the asylum-seeker does not have a work permit. If he is admitted to the regular determination procedure there is the possibility of a work permit at the request of a prospective employer. In such a case a temporary permit is issued, limited to a renewable period of twelve months. The permit is only valid for that particular employer.

Financial assistance: Asylum-seekers are given financial assistance, allocated by the local assistance department and equivalent to assistance for nationals in need.

Access to schools: All children have access to school, where asylum-seekers are exempted from registration fees that foreigners usually have to pay to follow the courses. Asylum-seekers also have access to universities on the same conditions as other foreigners, which means that they may have to pay an additional registration fee.

Other rights: Asylum-seekers also have a right to social assistance and a right to housing. They have no right to family reunification.

6.7. Residence Rights

Before admission into the procedure asylum-seekers stay in closed reception centres. Those who applied at the border and do not have entry documents are detained in transit centres. The 'residence permit' is only valid as long as the admissibility procedure or suspensive appeal procedure lasts.

Following a positive decision on admissibility, the asylum-seeker has the right to stay in a reception centre awaiting a decision.

6.8. Detention Possibilities

Asylum-seekers can be detained at the border if they lack the required travel documents, or if they are appealing a negative decision in the admissibility procedure and they filed the original application at the border. They can otherwise be detained if they applied after a legal residence permit had expired, or if they left a previously designated place of residence without informing the authorities.

Following a final negative decision, rejected asylum-seekers can be detained up to five months pending expulsion.

7. Accelerated/Simplified Procedure

All asylum applications in Belgium go through the admissibility procedure. It is there that an application can be deemed manifestly unfounded, or declared inadmissible on safe third country grounds. Apart from the admissibility procedure, there is no accelerated or simplified procedure within the Belgian asylum determination system. Once an application has been declared admissible, it enters the regular procedure, where an examination is made based on the merits of each case.

8. Manifestly Unfounded Applications

The criteria in the Resolution on Manifestly Unfounded Applications for Asylum are incorporated in Belgian law and applied by the decision making bodies.

An application for asylum can be regarded as manifestly unfounded in the following cases:

- There are no grounds for or proof of fear of persecution within the meaning of the 1951 Convention;
- The alien has used false travel documents or forged identity cards;
- The claim is clearly founded on grounds inappropriate to asylum;
- The alien has been the subject of an expulsion order within the previous ten years without it having been revoked;
- There is evidence of deliberate deception or abuse of the asylum procedures.

9. The Safe Country of Origin Concept

The safe country of origin notion is not used in Belgium. In this respect, all application for asylum are investigated on their own merits.

10. Safe Third Country

10.1. Definition

If it can be said that the principle of safe third country is used in Belgium, it is in a modified way as compared to the common practice in the other Member States. The asylum-seeker has to have resided for *more than three months* in one or several third countries, which he left without fear of persecution, for the principle to be applicable. If this is the case, the application can be declared inadmissible during the admissibility procedure.

This practice is often referred to as 'country of first asylum', although it is not a prerequisite that the alien has actually obtained asylum in the third country, only that he has safely resided there for a certain amount of time.

There is no list of countries considered to be safe. Each case is dealt with on an individual basis.

10.2. Procedure

If an asylum-seeker is sent back to a country in which he has resided for more than three months, and which he left by his own will without fear of persecution, he is given a document attesting that his application has not been examined in substance (i.e. as to his fears of persecution in his country of origin). The authorities in the third country are not informed directly by the Belgian authorities, except in cases of bilateral agreements and within the framework of the Schengen Agreement.

In case of a negative decision, the procedure of appeal follows that of the procedure in which the negative decision was made, i.e. it depends on whether the refusal was made in the admissibility or regular procedure.

The decision is given in written form including information on the right to appeal.

11. Internal Flight Alternative

The existence of an internal flight alternative in the country of origin can constitute a reason for the Belgian authorities to declare an application for asylum as manifestly unfounded and inadmissible. However, the problems of the application of this principle has become increasingly recognised, and the notion is used less and less as a basis for rejection of a claim.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees have the same freedom of movement as nationals.

Access to employment: At first, refugees are required to obtain a work permit for a specific job. After three years employment or lawful and uninterrupted residence in Belgium, the alien can get a work permit valid for all sectors. After five years residence, the refugee gets a permit of establishment and does no longer need a work permit.

Access to health services: Refugees have the same access as nationals.

Access to education: Refugees have access to the education system. Regarding universities, the additional registration fee for foreigners is not demanded from recognised refugees.

Family reunification:
Family reunification is in principle possible for the following categories:

- Spouse;
- Unmarried children under 18.

A person whose right of residence in Belgium is based on family reunification may not himself apply for family reunification with other persons.

13. Complementary Forms of Protection

13.1. Residence permit under exceptional circumstances

Asylum-seekers who do not get refugee status, but cannot be sent back to their countries of origin due to the principle of *non-refoulement* can be awarded a residence permit in Belgium. Persons with strong ties in Belgium, such as work and knowledge of languages, may also get a residence permit. This avenue is mainly used by asylum-seekers who have been in Belgium for several years during the examination of their asylum applications which have then been rejected. They can by that time have strong ties in Belgium, and even have children who have been born and grown up there.

Application is made to the Ministry of the Interior; appeal of a negative decision (suspension and annulment) can be made to the Council of State within 60 days. The permit is issued for 6 months or more, and is renewable.

These persons enjoy several social rights, but the right to work is restricted, depending on years spent in Belgium, and family reunification can only be considered after 3 years stay.

13.2. Suspension of Deportation

Persons who for different reasons are not eligible for residence permit under exceptional circumstances, but still cannot be removed from Belgium, e.g. because the country of

origin refuses re-admittance or because of medical problems, can get to stay in Belgium without any legal status or actual residence permit.

Such aliens have no employment rights, and no right to family reunification. Basic health care and children's right to education are granted.

14. The Future

In September 1999 the government proposed changes to the asylum system in Belgium, including a revised procedure. A new body, the Federal Administration on Asylum, will replace the current three bodies dealing with these issues: the Directorate for Aliens Affairs, the General Commission for Refugees and Stateless Persons and the Permanent Commission on Appeal for Refugees. After a negative decision due to the application being manifestly unfounded, there will be a 5 day limit for submitting an appeal to the Administrative Court for Refugees. Manifestly unfounded cases shall not take longer than one month to process, and other cases not more than one year.

The government has not proposed a new form of complimentary protection, but will instead wait until action is taken concerning this issue on the level of European Union legislation.

The proposal also includes rules on the possibility of undocumented aliens who have been in Belgium for a long period of time (4 years for single persons, 3 years for families) to be legalised.

D E N M A R K

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*3,327*

1.2. 1998

Total number of applications for asylum in 1998	*5,700*
(1.6% of the total number of applications in the EU 1998.)	
of which:	
Unaccompanied minors	*229*

Main countries of origin (applications) 1998:	Iraq Somalia Federal Republic of Yugoslavia *Stateless* Afghanistan Croatia

Total number of decisions taken 1998		*6,110*
of which		
Convention status granted	*900*	(15% of decisions)
Humanitarian status granted*	*2,650*	(43% of decisions)
Rejected	*2,560*	(42% of decisions)

* Includes *de facto* and all other subsidiary forms of status.

2. National Legislation

- Aliens Act
- Act on Temporary Residence Permits for Certain Persons from Former Yugoslavia, etc., Consolidated Act No. 563 of 30 June 1995 of the Danish Ministry of the Interior
- Aliens Regulations

3. Institutional Framework

1st Instance: The Immigration Service (under the Ministry of the Interior)

2nd Instance: Refugee Appeals Board (independent)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non state agents if the authorities tolerate the persecution, refuses to interfere, or prove unable to provide effective protection.

5. Admissibility/Border Procedure

5.1. Procedure

The admissibility practice in Denmark applies only to the issue of safe third country and transfers in accordance with the Dublin Convention.

When an asylum-seeker who does not have the necessary travel documents arrives at the border he must present his request for asylum to the border police. He must provide information regarding nationality, identity and travel route. This information will be sent to the Immigration Service which, based on an assessment of if there is another (safe third) country that should handle the application, decides whether the applicant gets access to the territory and the asylum procedure or not.

All asylum seekers arriving at Copenhagen airport are entitled to receive independent legal counselling by the Danish Refugee Council.

The Dublin Convention: During 1998, Denmark requested that 2,152 applications for asylum should be taken over by other EU Member States. Of these, 1,630 were accepted. Denmark received 329 Dublin-requests, of which 172 were accepted.

5.2. Appeal

Where an asylum seeker is denied access to the asylum procedure at the border, an appeal to the Ministry of Interior may be filed. This appeal does however not have a suspensive effect, so it will be difficult for the individual to challenge the presumption that a given third country is safe.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Airport
- Central aliens authorities within the country
- Embassy and Consulate

There is no time limit for the filing of an application if it is done in-country. At the border the request should be made directly to the border police. Border guards are given clear instructions on how to handle asylum-seekers.

After entry, the asylum-seeker is placed in a reception camp, where he will be asked to complete a questionnaire regarding family, work circumstances, military service, financial circumstances, political activities and reasons for seeking asylum. On the basis of this questionnaire, the applicant will be placed either in the procedure for manifestly unfounded applications or in the regular determination procedure.

The asylum-seeker always has the right to remain in the country until the final decision on the application has been taken (applies to decision in first instance).

Asylum seekers may call in a legal adviser or other counsellor to assist them during the procedure, and they are informed of the possibility to contact the Refugee Council. In first instance, the asylum-seeker himself will have to pay for the assistance of a lawyer. In the beginning of the procedure the applicant is given a written guide for asylum-seekers, which includes a description of the asylum procedures. The guide is available in a number of languages. Interpretation is provided for the interview and are paid for out of public funds.

All decisions are communicated in a language the applicant understands.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition, visa is required (as of June 1999) from nationals of: Antigua & Barbuda, Bahamas, Barbados, Belize, Bolivia, Bosnia-Herzegovina, Botswana, Colombia, Croatia, Dominica, Grenada, Kenya, Kiribati, Lesotho, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

Visa is also demanded from nationals of some dependent territories of the Member States: Bermuda (UK), Montserrat (UK), St. Helena (UK) and Macao (Portugal, until 1999-12-31).

Carrier's liability: It is an offence to bring an alien without valid passport and visa into Denmark, and a fine can be imposed on any carrier that is guilty of doing so.

6.1.1. Expulsion

The asylum-seeker receives written and oral notification of the final rejection and a date by which he is required to leave the country. He attends a meeting with the police in order

to plan his return journey. The asylum-seeker is allowed to express a preference regarding the travel route and may sometimes travel to a country other than his country of origin. The rejected asylum-seeker may be detained if alternatives to detention are not considered sufficient to ensure his presence for the purpose of removal from the country.

6.2. Right to Appeal

There is a one level right to appeal in the regular procedure. In fact, all refusals by the Immigration Service are automatically appealed. The appeal is lodged with the Refugee Appeals Board, which is a quasi-judicial body independent of political interests. The Board sits in panels of 5 members, and the chairman of each panel is a judge. The other members of the panel are nominated by the Danish Refugee Council, the General Council of the Bar and Law Society, the Ministry of Foreign Affairs and the Ministry of the Interior respectively.

The asylum-seeker is provided with a lawyer paid for by the Danish authorities. Interpretation is also provided.

Immediately after the Board's meeting, the asylum-seeker is informed orally of the decision. Later, he is given a copy of the written decision.

6.2.2. Suspensive Effect of Appeal

Appeal in the regular determination procedure has suspensive effect.

6.3. Principle of Non-Refoulement

The Danish Aliens Act contains a prohibition against sending a person back to a country in which he risks persecution in the sense of the 1951 Convention.

6.4. Specific Provisions for Women

Special attention is given to the problems of female asylum-seekers. In so far as it is possible, female interviewers and interpreters are used. Medical examinations of female asylum-seekers are always carried out by female doctors.

6.5. Unaccompanied Minors

Minors are children under 18.

Unaccompanied minor asylum-seekers are accommodated in special centres for unaccompanied children. Minors who are between 0 and 14 years old usually receive exceptional leave to remain in Denmark. Applications from minors over 15 are processed in the normal determination procedure

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers are not allowed to acquire a work permit.

Freedom of movement: Asylum-seekers are free to travel within the country.

Financial assistance: Asylum-seekers receive board and lodging. In most centres they are given a food allowance, while in some centres food is provided in canteens. Applicants are also given weekly pocket money, and after having stayed in Denmark for five months they are given a monthly clothing allowance. The asylum-seekers who stay in private accommodation do not receive these allowances. Likewise, asylum-seekers who have money or valuables on arrival in Denmark may have to cover their own expenses.

Specific integration training: Classes in Danish language and society are held for the benefit of asylum-seekers.

Health care: All asylum centres have medical staff present. On arrival, all asylum-seekers are offered a medical check-up. Urgent and specialist treatment is free of charge.

6.7. Residence Rights

Asylum-seekers are during the determination procedures usually required to live in the asylum centre in which they are placed, but there is also a possibility of private accommodation with family members or friends. The residence permit is valid until a final decision on the application has been made.

6.8. Detention Possibilities

Asylum-seekers who are unidentified or whose travel route is unknown are subject to detention. However, some categories are exempt from detention (e.g. women asylum-seekers with minor children) and may instead be asked to report to the police at fixed times. If the asylum-seeker fails to comply with these restrictions detention will be imposed.

Regarding manifestly unfounded cases, the asylum-seeker can be detained if this is necessary to ensure his presence while the case is being considered.

Detained asylum-seekers must be brought before a judge within three days. The lower City Court decides on the length of the detention, a decision which can be appealed to a higher Court and, ultimately, the Supreme Court.

7. Accelerated/Simplified Procedure

7.1. Procedure

As mentioned before, after entry the asylum-seeker answers a questionnaire and attends an interview on the basis of which the claim is directed to the manifestly unfounded applications procedure or the regular determination procedure. The manifestly unfounded procedure is an accelerated procedure with limited safeguards.

If the Immigration Service decides on the procedure for manifestly unfounded applications, the case is forwarded to the Danish Refugee Council who makes an independent review and interviews the applicant. There are two possible outcomes of this procedure:

- either the Refugee Council disagrees with the Immigration Service's opinion on the unfoundedness of the claim, in which case the Council has the right to veto the decision after which the case will be transferred to the regular determination procedures; or
- the Refugee Council agrees with the decision of the Immigration Service, in which case the asylum-seeker is informed that his case has been rejected, and that there is no right to appeal the decision (*see 7.2 Right to Appeal, below)*.

In the latter case, the asylum-seeker can submit an application to the Ministry of the Interior for permission to stay in Denmark on humanitarian grounds. This application can have suspensive effect if it is submitted immediately after the negative decision has been received.

Of the 462 applications that the Immigration Service considered manifestly unfounded in 1998, the Refugee Council vetoed 25%.

There is also a special fast-track procedure within the manifestly unfounded (or accelerated) procedure primarily directed towards aliens from certain safe countries of origin *(see 9. The Safe Country of Origin Concept)* which are almost certain to be rejected in the accelerated procedure. Under this fast-track procedure the aliens concerned may be detained if the handling of the application does not take more than 7 days.

7.2. Right to appeal

There is no right to appeal within the accelerated procedure. As mentioned above, the asylum-seeker has the possibility to file a suspensive request for stay on humanitarian grounds. The decision on this request is usually given within a few days, after which, and if negative, the alien has to leave the country.

In lack of a right to appeal, the remaining procedural safeguard is the fact that the Danish Refugee Council is involved in the decision and has the right to refer the case to the regular procedure, as described above.

8. Manifestly Unfounded Applications

The Immigration Service can regard an application for asylum as manifestly unfounded in the following cases:

- The grounds for the application are outside the scope of the 1951 Convention;
- The application is totally lacking in substance;
- The application is manifestly lacking in credibility;
- There is clear evidence of deliberate deception or abuse of asylum procedures;
- The applicant comes from a safe country of origin;
- The applicant has already been rejected as an asylum-seeker at an earlier point, and has now re-entered the country during the same year seeking asylum;
- The applicant lacks identity papers or travel documents.

9. The Safe Country of Origin Concept

This principle is implemented in practice, and cases belonging to this category are channelled into the accelerated procedure.

The list of countries considered to be safe includes Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Russia, the Slovak Republic, Ghana, Niger, Senegal, Tanzania, Canada, USA, Australia, New Zealand and Japan.

10. Safe Third Country

10.1. Definition

The Danish authorities generally consider countries which have ratified the 1951 Convention and in which there exists access to fair and efficient asylum procedures to be safe third countries. The list of such countries includes, apart from EU Member States, Canada, Hungary, Iceland, Norway, Switzerland and the USA.

The life or freedom of the asylum-seeker must not be threatened in the country to which he is sent back. Furthermore, there is a prohibition in Danish legislation against indirect *refoulement*, i.e. to send an alien back to a country in which he is not protected from *refoulement*. This is however not investigated in each individual case.

10.1.1. Mere Transit

The basis for the application of the safe third country principle is that the asylum-seeker has travelled through another country other than his country of origin before coming to the country where the asylum application is lodged. If during a transit through a third country the asylum-seeker came into contact with the authorities of that country, or if the transit through the third country extended for more than 24 hours, the Danish authorities consider the principle to be applicable.

10.2. Procedure

As described in the section about the admissibility procedure, an asylum-seeker arriving at the border without the proper documents to enter Denmark will have to make the request for asylum directly to the border authorities. The Immigration Service then takes the decision on whether to let the applicant enter the country or reject him at the border on safe third country grounds. If the latter is the case, the asylum-seeker may be detained until he can be returned to the third country. He is given an explanation in his own language as to why his claim has been rejected, and information on addresses and telephone numbers to UNHCR or NGOs in the third country. In addition he is given a statement, written in the language of the third country, explaining that he was rejected on safe third country grounds and that no substantial examination of the asylum claim was made. All this information is produced by the Danish Refugee Council, and is approved by the Immigration Service.

Unaccompanied minors under 15 are not refused at the border on safe third country grounds. Also in other vulnerable cases (such as the presence of relatives in Denmark) the alien might be allowed to enter despite coming through a safe third country.

It is to be noted that the procedure is different if the asylum-seeker has valid travel documents for entering Denmark. In this case, there can be no rejection at the border, and the applicant enters the in-country asylum procedure. The further fate of the application here depends on whether the Immigration Service considers it to be manifestly unfounded or not.

UNHCR and the Danish Refugee Council do not have automatic access to cases, with the exception of applicants at Copenhagen Airport who uses their right to contact the Refugee Council. Those asylum-seekers who get in contact with the Refugee Council get counselling on the reasons for denial of entry and how to apply for asylum in the country to which he is being returned. All asylum-seekers receive this information in writing in their own language.

If the applicant for various reasons cannot be deported he is granted access to the regular asylum application procedure.

10.3. Appeal

There is no possibility for the applicant to rebut a presumption of safety in a third country. The only way of challenging a negative decision on safe third country grounds is to appeal to the Ministry of the Interior for an overturn of the decision on refusal of entry or expulsion. But this appeal has no suspensive effect, which means that the practical implications of it are limited.

11. Internal Flight Alternative

Existence of an internal flight alternative can lead to the application being considered as manifestly unfounded.

12. Rights of Convention Refugees

Freedom of movement or residence: Same as nationals.

Access to employment: Same access to the labour market as nationals.

Access to social security: Refugees have access to 80% of social benefits given to Danish citizens.

Access to health services: Same access as Danish citizens.

Access to education: Same as Danish citizens.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Partner in a stable relationship (including same sex);
- Unmarried children under 18;
- Parents over 60 if the refugee can and will support them.

13. Complementary Forms of Protection

13.1. *De facto* status

De facto refugee status can be awarded to aliens who do not qualify for refugee status, but are nevertheless in need of international protection for reasons similar to those in the 1951 Convention or for other weighty reasons. Initially a residence permit of 3 years is granted, after which time an application for permanent residence can be made (and is normally granted).

De facto refugees enjoy the same rights and benefits as Convention refugees.

13.2. Residence permit for humanitarian reasons

A residence permit on humanitarian grounds may be issued, provided the alien is in such a position that essential considerations of a humanitarian nature concisely make it appropriate. The applicant might for example suffer from a serious illness, or run a great risk of being exposed to extremely difficult living conditions (e.g. starvation) if returned. The permit is granted for a period of 6 months, and is renewable.

Aliens who have been granted residence permit for humanitarian reasons enjoy most of the rights that Convention refugees do. The right to take up employment is granted after 12 months stay.

13.3. Residence permit on exceptional grounds

This residence permit is primarily granted to children who arrive in Denmark unaccompanied, and to asylum-seekers who have received a final rejection both in the determination procedure and on a request for humanitarian status, but who cannot be removed from the State because the country of origin refuses re-admittance. The permit will initially be given for 6 months, with possibilities of renewal. After 5 years, a permanent residence permit can be issued.

The rights awarded to persons with residence permits on exceptional grounds correspond with most of the rights granted to Convention refugees. However, the right to work is granted after 1 year of residence, family reunification with spouse can be granted 3 years after permanent residence permit was issued, and family reunification with minor children can be granted 5 years after permanent residence permit was issued.

F I N L A N D

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*1,068*

1.2. 1998

Total number of applications for asylum in 1998	*1,300*
(0.37% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Federal Republic of Yugoslavia Somalia Turkey

Total number of decisions taken 1998		*870*
of which		
Convention status granted	*10*	(1.1% of decisions)
Humanitarian status granted*	*370*	(42.5% of decisions)
Rejected	*240*	(27.6% of decisions)
Otherwise closed	*250*	(28.7% of decisions)

* Includes all subsidiary forms of status.

2. National Legislation

- Aliens' Act (1991)
- Aliens' Decree (142/94)
- Finnish Nationality Act (401/68)
- Act on the Amendment of the Finnish Nationality Act, 3 February 1995
- Law No. 446 of 1991, Concerning the Aliens' Ombudsman
- Decree No. 447 of 1991, Concerning the Aliens Ombudsman
- Decree No. 448 of 1991, Concerning the Asylum Board

3. Institutional Framework

1st Instance: The Directorate of Immigration (under the Ministry of the Interior)

2nd Instance: The District Administrative Court of the Province of Uusimaa

3rd Instance: The Supreme Administrative Court

According to future plans regional administrative courts will take over the responsibilities of the present District Administrative Courts.

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non-state agents if the State authorities are unwilling or unable to provide protection.

Recognition of persecution by non-state agents, for the purpose of protection under the 1951 Convention, has previously not on a general basis been acknowledged by Finnish authorities. Persons exposed to such persecution have sometimes been granted a *de facto* refugee status, due to need for protection. However, according to a principal decision by the government (1997), the definition of a refugee in the 1951 Convention is also recognised to include persecution by non-state agents where authorities in the country of origin are unwilling or unable to offer protection.

5. Admissibility Procedure

Apart from the procedure at the border where an application may be rejected on safe third country or safe country of origin grounds, there is no specific admissibility procedure in Finland (see *7. Accelerated/Simplified Procedure*).

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Airport
- Police
- The Directorate for Aliens

Asylum-seekers should apply for asylum with a police officer or passport control officer upon entering Finland, or soon after. It is not possible to lodge an application from abroad. 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. Police and passport

controllers are given instructions on how to handle an asylum application, how to handle the reception of asylum-seekers, refusal and deportation, and how to handle applications from minors.

The Directorate of Immigration is responsible for examining applications for asylum. The goal set out by the government concerning the time of the whole procedure is that it shall take no more than 18 months, including appeal.

Asylum-seekers are allowed to make use of legal advisers during the procedure. If the applicant cannot pay for these services, the legal counsellor is paid by the Refugee Council (which is financed primarily from government funds). An interpreter is paid for out of public funds and provided for the interviews in first instance and the oral hearings during appeal.

The decision is given in writing, containing the reasons for the decision and information on the possibilities and procedures of appeal. If the decision cannot be given to the applicant in a language that he understands, an interpreter can translate it.

The Aliens' Ombudsman: In 1991 an aliens' ombudsman was created within the Ministry of Social Services and Health. The Ombudsman has free access to border points and the police inform him automatically about all asylum requests submitted. The office of the Ombudsman shall generally be informed of matters on asylum and monitor the situation of aliens in Finland. Initiatives to protect the situation of aliens are drawn up in co-operation with other authorities and organisations.

The Dublin Convention: Finland transmitted 117 requests for transfers of asylum applications in 1998, of which 42 were accepted, 29 rejected and 46 remained pending at the end of the year. 57 Dublin-requests were made to Finland, of which it accepted 44, rejected 7 and had not decide on 6 at the end of the year.

Role of UNHCR in determination procedure: Asylum-seekers are informed of the location of the nearest UNHCR regional office, which is in Stockholm, Sweden. UNHCR can sometimes intervene in individual cases, but has no official role in the procedure.

Role of NGOs in determination procedure: Asylum-seekers normally get access to NGOs when they are transferred to reception centres. The Finnish Red Cross runs the reception centres and also monitors individual cases through the determination procedure. The Refugee Legal Centre is an NGO providing legal assistance to refugees

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. The definitions in the Schengen agreements concerning visa will be included in the Aliens Act and the Aliens Decree. In addition, visa is required (as of June 1999) from nationals of: Antigua & Barbuda, Belize, Bosnia-Herzegovina, Brunei, Colombia, Croatia, Dominica, Kenya, Kiribati, Marshall Islands, Micronesia, Nauru, Northern Marianas, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, Tonga, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Venezuela, Western Samoa and Zimbabwe.

Carrier's liability: There are no laws imposing fines specifically on carriers. The legislation on trafficking aliens can apply, but then the carrier would have to transport the aliens for the reason to obtain financial benefit for itself and be aware of the fact that the alien lacks travel documents. The punishment is then fine or imprisonment. However, in the normal case, such as when an airline has transported an alien that lacks travel documents to Finland, the carrier will have the responsibility of transporting the alien out of Finland.

6.1.1. Expulsion

Following a rejection, the asylum-seeker is expected to leave the country voluntarily. If he does not, the local police initiates the procedure by making a proposal of deportation to the Directorate of Immigration. The asylum-seeker is given 14 days to submit a written statement to the Directorate of Immigration before the decision is made. Rejected asylum-seekers are often detained pending enforcement of the deportation decision.

6.2. Right to Appeal

There is a two level appeal possibility in Finland.

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 Convention refugee status and other residence permits (so called B-status), but it cannot rule on humanitarian status.

An application for a second leave to appeal can be filed with the Supreme Administrative Court.

6.2.2. Suspensive Effect of Appeal

Both appeals has suspensive effect.

6.3. Principle of Non-Refoulement

Legislation in Finland prevents aliens to be sent back to countries where they would risk being persecuted under the terms of the 1951 Convention, or where they would be subjected to inhuman treatment. Thus, the principle of *non-refoulement* must be adhered to both in terms of the 1951 Convention and general human rights provisions.

6.4. Specific Provisions for Women

There are no specific provisions for women asylum-seekers, but specific attention is given to the problems of female asylum-seekers. The authorities try to meet the applicant's wishes regarding female interpreters.

6.5. Unaccompanied Minors

The legislation does not contain special provisions concerning the decision-making procedure regarding asylum applications from minors, but the government has set out the principle that an application submitted by an unaccompanied minor has to be processed

within three months. If the procedure takes longer, the minor will be granted a residence permit.

There is no age limit for filing an application for asylum.
The reception of minor asylum-seekers - housing, health care, basic education, some cultural and leisure activities - is financed by the State. Reception centres exist that are specialised in minors.

Before the family situation of the unaccompanied minor is clear, a trustee is appointed by the local Court. The trustee shall among other things assist in the contacts with authorities and legal matters. At a later stage, if no relatives to the minor can be found, it is the responsibility of the municipal child welfare authorities to appoint a guardian, who has a wider range of responsibilities than the trustee.

6.6. Social Rights for Asylum Seekers

Access to work permit: At first, asylum-seekers do not have the right to work, but after having been in the country for three months they can apply for a work permit related to a specific job. In practice very few asylum-seekers find work.

Freedom of movement: Asylum-seekers are free to move within Finland.

Financial assistance: Asylum-seekers are given a living allowance, the amount of which is a defined percentage of the total amount of basic and supplementary social allowances granted to nationals. The allowance is intended to cover all living expenses, such as food and clothing, but not accommodation.

Access to schools: Children of asylum-seekers are entitled to attend comprehensive school from 7 to 16 years of age.

Specific integration training: Children are often placed in special classes where they are taught Finnish (or Swedish).

Specialised services for health: Asylum-seekers have access to the free municipal health service. In Helsinki there is a special rehabilitation centre for torture victims, which is primarily intended for recognised refugees, but asylum-seekers in need of urgent treatment can also go there.

Housing: Asylum-seekers may live in a reception centre or find their own accommodation.

6.7. Residence Rights

Asylum-seekers can stay in the country until their applications has been decided on.

6.8. Detention Possibilities

If an asylum-seeker's application is still being processed and there is reasonable cause to believe that he will hide or commit criminal offences, or if it has been decided that the asylum-seeker will be refused entry or deported and there is reasonable cause to believe

that he will hide or commit criminal offences, or if the identity of the asylum-seeker is yet to be established, he may be placed in detention.

The lower Court in the region where the detainee is held must be notified without delay, or at the latest on the day following the detention order. The case must come before the Court at the latest four days after the beginning of the detention. After two weeks detention, the Court shall on its own initiative re-examine the case. Detention can then be extended for another two weeks, and so on.

7. Accelerated/Simplified Procedure

7.1. Procedure

Since 1998 there is only one accelerated procedure in Finland (before, there were two: the procedure for clearly unfounded claims, which included safe third country and safe country of origin cases; and the procedure for manifestly unfounded applications). Safe third country cases and manifestly unfounded cases are dealt with in the new accelerated procedure.

The Directorate of Immigration takes a decision on manifestly unfoundedness or safe third country, a decision which also includes a negative decision on residence permit and a decision on refusal of entry. The decision is then subjected to the District Administrative Court of the Province of Uusimaa, which has to make a final decision on the case without delay.

If the District Administrative Court agrees on the manifestly unfoundedness, 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 to be processed within the regular procedure.

7.2. Right to appeal

As described above, a decision in the accelerated procedure cannot be appealed when the District Administrative Court confirms the view of the Directorate of Immigration. If the claim is instead referred back to the regular procedure, the rules concerning appeal in that procedure applies henceforth.

8. Manifestly Unfounded Applications

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

- The application does not appeal to serious violations of human rights or grounds related to injunctions against forcible repatriation;

- 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;
- The application has an obvious aim of misusing the asylum procedure.

9. The Safe Country of Origin Concept

The use of the safe country of origin principle is in theory abandoned, which means that an application will not be automatically declared manifestly unfounded on the basis of a list of safe countries. An assessment of the situation must be made in each individual case.

10. Safe Third Country

10.1. Definition

The applications of applicants coming from safe third countries will be channelled through the accelerated procedure. The Finnish authorities refer to the concept as 'safe country of asylum' or 'first country of asylum'.

To be considered safe, the third countries have to:

- have ratified the 1951 Convention, the UN and Council of Europe Conventions on Human Rights, and the UN and Council of Europe Conventions against torture;
- follow the above mentioned Conventions, and the recommendations of the Executive Committee of UNHCR;
- observe recognised human rights standards in their treatment of asylum-seekers and refugees;
- have working and just asylum determination procedures and procedures for the integration of refugees;
- be willing to readmit the asylum-seekers that are returned to them.

Transferrals to other EU Member States will be made in accordance with the Dublin Convention. Other countries considered to be safe third countries are the EEA countries, Switzerland, USA and Canada.

10.1.1. Mere Transit

The applicant must have had an opportunity to apply for asylum in the third country, but there is no requirement for him to actually have been in contact with the authorities of that country. Transit through the international zone of an airport is enough for the principle to be invoked.

11. Internal Flight Alternative

The existence of an internal flight alternative is one of many factors taken into consideration during the examination of an asylum claim. It does not automatically make

an application for asylum the subject of the accelerated procedure. Each individual case is considered on its own merits.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees have the same freedom of movement as nationals.

Access to employment: Refugees have the same access to the labour market as nationals.

Access to social security: Refugees have access to the social security system.

Access to health services: Refugees have access to national health services.

Access to education: Refugee children have the same access as nationals, and many of them already start school while being asylum-seekers awaiting a decision on their applications.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Unmarried children under 18.

Reunification with parents and unmarried minor siblings is also possible if the refugee is a minor.

13. Complementary Forms of Protection

13.1. Residence permit based on the need for protection (*de facto* status)

A residence permit can be granted to persons who, if they are sent back to their country of origin, risk being exposed to torture or other cruel, inhuman or degrading treatment, death penalty, armed conflict, environmental catastrophe or other similar serious situations.

The permit is issued for 1 year, with possibility for renewal. After two years, a permanent residence permit is issued.

This residence permit is in practice a *de facto* status, the holders of which enjoy the same rights (work, family reunification) as Convention refugees.

F R A N C E

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*12,984*
(not including accompanied minor dependants)	

1.2. 1998

Applications for asylum in 1998	*22,400*
(6.4% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Romania China Sri Lanka Democratic Republic of the Congo Turkey Federal Republic of Yugoslavia

Total number of decisions taken 1998		*22,373*
of which		
Convention status granted	*3,684*	(16.5% of decisions)

2. National Legislation

- *Loi no 98-349 du 11 mai 1998 relative à l'entrée et au séjour des étrangers en France et au droit d'asile.*
- Order of 2 November 1945 'concerning the conditions of entry and stay of Aliens in France', modified particularly by the Law of 6 of July 1992, 24 August and 30 December 1993, and 27 December 1994.
- The Law of 25 July 1952 'concerning asylum' (former law 'creating a French Office for the Protection of Refugees and Stateless Persons (OFPRA)').
- Decree No. 82-442 of 27 May 1982.
- French Constitution of 1958 and especially art 53.1 concerning 'territorial asylum' (constitutional asylum).
- Decree dated 30 June 1946 regulating the conditions of entry and stay of Aliens in France.
- Decree No. 53-377 of 2 May 1953 'relating to the French Office for the Protection of Refugees and Stateless Persons (OFPRA)'.

- *Décret No. 91-1164 du 12 novembre 1991 pris en application de l'article 20 de la Loi No. 89-548 du 2 août 1980 relative aux conditions de séjour et d'entrée des étrangers en France et fixant les modalités d'application de l'article 35 bis de l'Ordonnance No. 45-2658 du 2 novembre 1945 modifiée.*
- *Décret No. 95-507 du 2 mai 1995 déterminant les conditions d'accès du délégué du Haut Commissariat des Nations Unies pour les Réfugiés ou de ses représentants ainsi que des associations humanitaires à la zone d'attente et portant application de l'article 35 quater de l'Ordonnance No. 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France.*

3. Institutional Framework

1st Instance: French Office for Protection of Refugees and Stateless Persons (OFPRA, *Office Francais de Protection des Réfugiés et Apatrides*)

2nd Instance: Refugee Appeals Board (CRR, *Commission des Recours des Réfugiés*)

3rd Instance: Council of State (*Conseil d'Etat*)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where persecution originates from the following sources:

- State authorities;
- Non-state agents where the persecution is *de facto* encouraged or deliberately tolerated by the authorities so that the party concerned cannot effectively claim the latter's protection.

Refugee status can not be granted when the authorities are unable or ineffective in providing protection. Thus, state accountability is required for there to be persecution in the sense of the 1951 Convention. Other persecution, such as persecution by non-state agents where the authorities try to protect the person concerned, but are not able to, can however be sufficient ground for not sending the applicant back to the country of origin, and award him with a subsidiary form of protection.

Persecution by *de facto* authorities can be adequate ground for recognition of refugee status in cases where the authorities have partly or totally disappeared. This does however not mean that protection can be generally granted when there is no state in the country of origin. The persecutor has to have obtained a *de facto* state authority position, and there cannot be any internal flight alternative.

5. Admissibility/Border Procedure

5.1. Procedure

If an asylum-seeker arrives at the border without the proper documents to enter, he has to ask for asylum there, in which case he will not be allowed to enter French territory until a decision on his admissibility has been taken. A decision of denial of entry is taken by the Ministry of the Interior after consultation with the Ministry of Foreign Affairs. If the undocumented asylum-seeker arrives at an airport or a harbour he can be kept in a waiting area during the examination of the request. The applicant can be kept in this waiting area for a maximum of 20 days. Should the asylum-seeker be rejected at the border, he cannot apply for a residence permit on humanitarian grounds.

Applications can be refused entry to the procedure, if they at the border are deemed inadmissible - clearly unfounded - for the following reasons:

- Another EU Member State is responsible for handling the application in accordance with the Dublin Convention;
- The applicant comes from a safe third country;
- The basis of a claim falls outside the terms of the 1951 Convention;
- Fraudulent documents, facts, statements;
- Failure to appear or provide information;
- The applicant has a criminal conviction or is considered to be a threat to public order.

The border procedure is an accelerated procedure (not to be confused with the in-country accelerated procedure, *see 7. Accelerated/Simplified Procedure*) with the aim of determining admissibility, but it is not an admissibility procedure in a wider sense, since not all applications are processed in it. If an applicant has the proper travel and entry documents, he can enter France and file the asylum application there, in which case it will not be subjected to the border procedure.

UNHCR is not directly involved in the border procedure, but can monitor individual cases by visiting waiting zones. The Ministry of the Interior may also ask UNHCR for advice in border cases. NGOs have a very limited access to asylum seekers in waiting zones.

5.2. Appeal

A negative decision can be appealed within 24 hours to an administrative Court. This appeal does however not have any suspensive effect, and a Court decision is usually not given until months later, wherefore the effect of appeal is very limited.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Airports
- Sea and Sea Ports
- Embassies and consulates
- OFPRA

Applications for asylum are considered by OFPRA and are under its jurisdiction for the entire asylum procedure. The office is a public institution under the Minister of Foreign Affairs. It is assisted by a council including various authorities dealing with migration related matters. Requests for refugee status to the OFPRA can only be made after admission to the territory. Embassies are also entitled to receive the requests and issue a stay permit.

Legal Aid is subject to legal entry into France. In practice this means that most applicants are excluded from free legal aid. Interpreters are however provided in all cases on all levels of the procedure.

Final decision: OFPRA's decision has to include a written justification, including a statement of the legal and factual reasons for the decision.

Role of UNHCR in determination procedure: UNHCR has access to asylum-seekers in waiting zones, and give advise and information to applicants throughout the procedure.

Role of NGOs in determination procedure: Some applicants get support from NGOs, but these organisations are not involved in the procedure, and do not have any influence over decisions. However, the Social Assistance Service for Emigrants has a seat on the administrative board of OFPRA where it represents the NGOs.

Visa restrictions: France demands visa in accordance with the common EU list. In addition, visa is required for nationals of: Antigua & Barbuda, Bahamas, Barbados, Belize, Bolivia, Bosnia-Herzegovina, Botswana, Colombia, Dominica, Grenada, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Nicaragua, Northern Marianas, Panama, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.
Visa is also demanded from nationals of some dependent territories of the Member States: Bermuda (UK), Montserrat (UK), St. Helena (UK) and Macao (Portugal, until 1999-12-31).

Furthermore, airport transit visas are required for nationals of Albania, Angola, Bangladesh, Ethiopia, Ghana, Haiti, Somalia and the Democratic Republic of the Congo. Aliens who conceal or destroy their travel documents risk 6 months to 3 years imprisonment and banishment from France for 10 years.

Carrier's liability: An airline company which transports an undocumented alien to France is subject to a maximum fine of 10,000 FF per undocumented passenger. The airline is also liable for detention costs and return trip. If the undocumented alien is later granted asylum, the airline is exempted from these fines.

6.1.1. Expulsion

A final negative decision is accompanied by a request to leave French territory, stating that the foreigner must leave the country voluntarily within one month. When the deadline expires, an expulsion order will be issued and may be implemented immediately.

6.2. Right to Appeal

There is a 2 level right to appeal the decision of OFPRA.

The competent institution for the first appeal is the Refugee Appeals Board (CRR). The appeal has to be filed within 1 month of the negative decision, or within 4 months if no answer is given by OFPRA (no answer in 4 moths is considered as a negative decision).

The decision of the CRR can be appealed to the Council of State. The time limit for filing the appeal is 2 months. This appeal is only about a point of law, there is no re-examination of the facts.

6.2.2. Suspensive Effect of Appeal

The appeal to the CRR has suspensive effect. The appeal to the Council of State does not. However, if an application has been refused in accordance with the Dublin Convention, there is no suspensive effect at either level.

6.3. Principle of Non-Refoulement

The principle is laid down in law, and the same definition as in Article 33 of the 1951 Convention is used.

6.4. Specific Provisions for Women

Right to deal with female interviewers and interpreters during the procedure: When female asylum-seekers report that they have been victims of sexual violence, they are dealt with only by female officials.

6.5. Unaccompanied Minors

In France minors are children under 18.

OFPRA requires a legal representative to register a minor's asylum application. Therefore, before applying for refugee status the minor must be placed under the care of a guardian. If there is no family member in France that can act as guardian, the State acts as guardian and the minor is taken into care by the Social Assistance for Children (*Aide Sociale à l'Enfance*), which is connected to the local social authorities. There are however no specific reception centres, and the ordinary reception centres for asylum-seekers are not allowed to house unaccompanied minors. Therefore accommodation can be a problem. Authorities are reluctant to meet the costs involved in housing the minors in homes.

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers have no access to the labour market.

Freedom of movement: Whether they are accommodated in reception centres or not, asylum-seekers have total freedom of movement.

Financial assistance: On arrival all asylum-seekers receive a waiting allowance, as a one-off payment. Applicants who are not accommodated in reception centres receive a monthly integration allowance of 1,700 FF. There is no monthly allowance for minors. Asylum-seekers living in reception centres receive daily pocket money.

Food and accommodation in the reception centres are provided free of charge.

Access to schools: School is compulsory for children between 6 and 16.

Housing: Asylum-seekers who need housing must apply to the non-governmental agency *France Terre d'Asile* (FTDA). Members of FTDA and a representative of the French Ministry for Social Affairs and Integration make up the National Admission Board, which allocates places available in the centres on the basis of social criteria. The reception centres where the asylum-seekers may be housed are called *Centres d'accueil pour demandeurs d'asile* (CADA).

6.7. Residence Rights

The residence permit awarded to asylum-seekers is valid for 3 months, and is renewable.

6.8. Detention Possibilities

Border applicants are kept in waiting zones at airports, sea-ports and some railway stations. (Land-border applicants are not detained like this because they are not allowed onto the territory of France.) When an asylum-seeker has been kept in a waiting zone for more than 4 days, the detention is automatically subject to review by the *Tribunal de Grande Instance*. The review is repeated every four days, but the total time of detention must not exceed 20 days. Each decision by the *Tribunal de Grande Instance* can be appealed to the Court of Appeal, which must give an answer within 48 hours. Further appeal can be made, within 10 days of the notification of the decision of the Court of Appeal, to the *Cour de Cassation*.

7. Accelerated/Simplified Procedure

7.1. Procedure

Under certain circumstances an application that has been filed in-country can be channelled through an accelerated procedure, namely if:

- the application is considered to be manifestly unfounded;
- the applicant comes from a safe third country;

- another Member State is responsible for examining the application in accordance with the Dublin Convention.

In 'Dublin cases', the applicant does not have actual access to the accelerated procedure - transfer is meant to take place as soon as possible without any possibility of appeal.

7.2. Right to appeal

A negative decision in the accelerated procedure can be appealed to the Refugee Appeals Board, but the appeal does not have suspensive effect. Such an effect may be requested, but is rarely given.

8. Manifestly Unfounded Applications

An application for asylum can be considered as manifestly unfounded for the following reasons (There is no legal definition of the criteria for declaring an application to be manifestly unfounded, but the French practice more or less follows the criteria in the 1992 Resolution on Manifestly Unfounded Applications for Asylum):

- The reasons for the application is not supported by the 1951 Convention (e.g. the reasons might be of an economic nature);
- The asylum-seeker uses false identity documents, false information, or abuses the procedure in other ways;
- The asylum-seeker poses a threat to public order;
- The exclusion clauses in Article 1 F of the 1951 Convention can be invoked (*inter alia* the applicant has committed crimes against humanity);
- Another State is responsible for handling the application in accordance with the Dublin Convention;
- The asylum-seeker did not follow the set deadlines for reporting to the interview.

9. The Safe Country of Origin Concept

There is no formal list of safe countries of origin, and the principle is not formally applied to automatically channel applications into an accelerated procedure, but during an individual examination the authorities *can* decide to treat a claim in the accelerated procedure if the claimant comes from a country where there is no serious risk of persecution. No reference to the principle *per se* or the 1992 London Conclusions on safe countries of origin is however made.

As an example, French authorities has refused to renew the residence permits, except in exceptional circumstances, of persons from Benin, Cap Verde, Chile, Hungary, Poland, the Czech Republic and Romania.

10. Safe Third Country

10.1. Definition

The safe third country principle is used in France, but in different ways depending on whether the application was filed at the border or within the country.

In the border procedure the application can be rejected without the case having been examined on its merits.

In the in-country procedure the case is examined, but it might nevertheless be channelled through the accelerated procedure if the existence of a safe third country in that particular case is considered enough to render the application manifestly unfounded. Notably, the Council of State has ruled that the presence of a safe third country shall not by itself render an application inadmissible.

For a country to be considered safe, it must be a signatory to the 1951 Convention, and it must adhere to the principle of *non-refoulement*.

10.1.1. Mere Transit

Mere transit can by the French authorities be considered enough to make the safe third country principle applicable to a case, but for in-country applications it has to be decided on a case by case basis. Generally, the applicant must have travelled through the country so that he had sufficient time to seek adequate protection. Contact with the authorities is not necessary, as long as the opportunity to make such contact existed.

10.2. Procedure

If the safe third country principle is invoked, the border procedure and the accelerated procedure are used respectively.

Theoretically, the French authorities are supposed to examine if the applicant will get access to the asylum procedures in the third country, but in practice no contact with the authorities of the third country is made to ensure that the asylum-seeker is admitted.

11. Internal Flight Alternative

The existence of an internal flight alternative in the country of origin does not by itself render an application inadmissible or manifestly unfounded. It is one of many factors during the examination of a claim. If the concept is to be invoked, the persecution must come from non-state agents or local authorities.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees have the same freedom of movement as nationals.

Access to employment: No work permit is required, and refugees have the same access to the labour market as nationals.

Access to health services: Refugees have access to the national health system. If they have a low income, they are entitled to assistance from the state medical aid service.

Access to education: School is obligatory for children up to 16 years of age. The Ministry of Education organises special adaptation classes for migrants and refugees within the schools.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Children under 18;
- Partner in a stable relationship (stability must be confirmed by OFPRA);
- Dependent parents (in some cases).

Family reunification with spouse and minor children is an absolute right for Convention refugees, and is granted in every case. Reunification with other family members is granted on a case by case basis, and there is no possibility to appeal a negative decision.

13. Complementary Forms of Protection

13.1. Territorial asylum

Rejected asylum-seekers can apply for territorial asylum, which may be granted if the applicant would risk treatment contrary to Article 3 of the European Convention on Human Rights, should he be sent back. The decision is taken by the Ministry of the Interior. A one year permit is given, which can be renewed twice. After 3 years the applicant can make a request for a permanent residence permit.

Until now this form of protection has only been granted to Algerians. Their fear of persecution does generally not relate to the State, but to non-state agents. Since this does not give rise to refugee protection in France, territorial asylum has been their sole possibility.

The rights of persons granted territorial asylum follow the general rules of aliens. This means that family reunification can only be considered if the applicant has resided legally for at least 2 years in France, has sufficient and stable income and adequate housing.

13.2. Residence permit on humanitarian grounds

A residence permit on humanitarian grounds can be granted to asylum-seekers who after having lived in France for several years and integrated into the French society have been presented with a negative decision on their application for asylum. It can also be granted to applicants who can establish that return to the country of origin is impossible.

Residence permits for humanitarian reasons are valid for 3, 6 or 12 months, with possibility of renewal.

Persons with humanitarian status may apply for, but have no legal right to, family reunification. For it to be granted they must have stayed legally in France for at least 2 years, and have sufficient income and adequate housing.

Asylum-seekers rejected directly at the border do not have the possibility of applying for humanitarian status.

G E R M A N Y

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*46,516*
(*Excluding* re-opened applications)	

Main countries of origin (applications) in the *first six months* of 1999: Federal Republic of Yugoslavia Turkey Iraq Afghanistan

Total number of decisions taken in the *first six months* of 1999		*62,007*
(*including* re-opened applications)		
of which		
Constitutional status granted	*2,221*	(3.6% of decisions)
'Small' (Convention) status granted	*3,379*	(5.4% of decisions)
'Humanitarian' status granted*	*1,042*	(1.7% of decisions)
Rejected and Otherwise closed	*55,365*	(89.3% of decisions)

* Includes all subsidiary forms of status.

1.2. 1998

Total number of applications for asylum in 1998	*143,500*
(*including* 're-opened' applications)	
(41% of the total number of applications in the EU 1998)	

Main countries of origin (applications) 1998:	Federal Republic of Yugoslavia Turkey Iraq Afghanistan Iran Vietnam

Total number of decisions taken 1998	*149,928*

(*including* 're-opened' applications)		
of which		
Constitutional status granted	*5,883*	(3.9% of decisions)
'Small' (Convention) status granted	*5,437*	(3.6% of decisions)
'Humanitarian' status granted*	*2,537*	(1.7% of decisions)
Rejected and otherwise closed	*136,071*	(90.8% of decisions)

* Includes all subsidiary forms of status.

2. National Legislation

- Constitution (*Grundgesetz*) for the Federal Republic of Germany (Article 16(a))
- Aliens Act of 1991 (Act Concerning the Entry and Residence of Aliens in the Territory of the Federal Republic)
- Asylum Procedure Act of 26 June 1992

Section 16(a) of the Constitution establishes the right of politically persecuted persons to enjoy asylum in Germany. The 'Constitutional' refugee status thus acquired is the most far-reaching protection status in Germany, concerning the right of stay, family reunification and social rights. The residence permit given to holders of the Constitutional refugee status is unlimited in time.

Section 51 of the Aliens Act establishes what is sometimes called the 'small' refugee status, expressed in the terms of protection against expulsion to a State in which a persons life or freedom is threatened for reason of race, religion, nationality, membership of a particular social group, or political convictions. This is the German equivalent to a 1951 Convention refugee status, and it gives rise to lesser entitlements in some areas - such as the scope of the residence permit - than the Constitutional status. The 'small' refugee status is temporary in its nature. The residence permit can be valid for up to two years, with possibility of extension. If the situation in the country of origin has improved, so that the risk of persecution no longer exists, the residence permit may not be prolonged and the refugee is sent back.

3. Institutional Framework

1st Instance: The Federal Office for the Recognition of Foreign Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*, under the Ministry of the Interior)

2nd Instance: *Verwaltungsgericht* (independent)

3rd Instance: *Oberverwaltungsgericht* (independent)

4th Instance: *Bundesverwaltungsgericht* (independent)

As a separate instance - a final avenue when all other remedies have been exhausted:

The Constitutional Court (*Bundesverfassungsgericht*)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where persecution originates from the following sources:

- State authorities;
- Non-state agents, where the state authorities encourage the persecution or deliberately does not provide protection (i.e. state accountability is required).

The emphasis concerning refugee protection in Germany lies on *political* persecution - hence the requirement of state accountability.

5. Admissibility/Border Procedure

There is no formal admissibility procedure applying to all applications within the German asylum determination system, but an applicant arriving at an airport and who comes from a safe country of origin or does not have valid travel documents is treated in a special airport procedure according to the Asylum Procedure Act Article 18(a). The asylum-seeker is not allowed to enter the country (if accommodation at the airport is possible) while the application is processed. The decision has to be taken as quickly as possible. (*See 7. Accelerated/Simplified Procedure.*)

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Airports
- Police
- *Ausländerbehörde*
- The Federal Office for the Recognition of Foreign Refugees

An asylum-seeker should file an application for asylum as soon as possible after entry into Germany, and failure to do so without sufficient reasons can render the application manifestly unfounded.

Border control and local authorities are given instructions by law. These instructions contain, *inter alia,* an obligation to refer applicants to the competent reception centre. A branch office of the Federal Office is assigned to each such centre. According to a system of distribution of asylum-seekers between the *Länder*, an applicant can be allocated to another *Land* than that in which he filed his application.

The Federal Office considers the possibility of both refugee statuses (and other alternative statuses) in connection to each case. If an applicant is not entitled to the Constitutional status, the possibility of 'small' status is examined, and so on.

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 called in if needed. The asylum seeker may call in a legal adviser or other counsellor to assist during the procedures. If the asylum seeker is unable to pay the legal adviser, legal aid is often granted, i.e. a lawyer is appointed and paid for out of public funds.

Final decision: The decision is given to the applicant in writing, and it contains the reasons for the decision as well as information on the right to appeal.

The Dublin Convention: In 1998, Germany assumed responsibility for 9,263 asylum applications in accordance with the Dublin Convention, of which 3,054 transfers actually took place before the end of the year. Other EU Member States agreed to take responsibility for 1,662 applications that had been filed in Germany. Of these, 809 were actually transferred in 1998.

Role of UNHCR in determination procedure: Asylum seekers have the right to contact UNHCR at all stages of the procedure, and are advised of this right when making their applications. Furthermore, The Federal Office is required to forward its decisions to UNHCR. The UNHCR representative may also attend the hearing of the applicant. The Federal Office uses UNHCR material in the decision making process.

Role of NGOs in determination procedure: NGOs can take part in the procedure by giving advice to applicants. In the determination procedure, account can also be taken of material produced by NGOs.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition, visa is required for nationals of: Antigua & Barbuda, Bahamas, Barbados, Belize, Bosnia-Herzegovina, Botswana, Dominica, Grenada, Kiribati, Lesotho, Marshall Islands, Micronesia, Namibia, Nauru, Nicaragua, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.
Visa is also demanded from nationals of some dependent territories of the Member States: Bermuda (UK), Montserrat (UK) and St. Helena (UK).

Carrier's liability: A carrier is only allowed to transport aliens to Germany if these have valid passport and visa. If transported aliens do not have the required documents, the carrier is liable to fines. The fines are not cancelled even if an alien is later granted refugee status or permission to remain on humanitarian grounds.

6.1.1. Expulsion

Applicants not granted asylum have to leave the country within one month. If the asylum-seeker declares that he will leave the country voluntarily, the deadline can be prolonged

up to three months. If the asylum-seeker has not left the country before the deadline the *Ausländerbehörde* will enforce the decision to deport.

6.2. Right to Appeal

There is a constitutional right to appeal after any kind of decision. In some cases the decision can be appealed in 3 levels.

The time limit for filing an appeal to the locally responsible administrative court against a decision by The Federal Office is two weeks.

Instances of appeal: 1) *Verwaltungsgericht* (independent)
2) *Oberverwaltungsgericht* (independent)
3) *Bundesverwaltungsgericht* (independent)

There is no time limit for giving the decision.

Legal assistance is free if granted by the Court. Interpretation is not free. UNHCR can take part by providing comments and information on countries of origin.

In addition to the appeal possibilities described above, a further venue exists in the way of a constitutional complaint to the Constitutional Court (*Bundesverfassungsgericht*). This can be done when all other remedies are exhausted and the complaint concerns a constitutional matter, e.g. the right to asylum. If this extra-ordinary legal remedy is successful, the previous Court's decision is overturned, and that previous Court (most probably the *Bundesverwaltungsgericht*) has to decide on the case again.

6.2.2. Suspensive Effect of Appeal

Appeal has automatic suspensive effect.

6.3. Principle of Non-Refoulement

The principle of *non-refoulement* is implemented with the European Convention on Human Rights and the UN Convention Against Torture taken into account.

However, it is unclear if the principle is adhered to in cases of refusals at the border on the ground of the safe third country principle, especially regarding the risk of chain deportation.

6.4. Specific Provisions for Women

There are no specific provisions that concern gender-related persecution (sexual violence, rape, forced sterilisation, female genital mutilation). In fact, since such persecution is often not considered as political and is furthermore rarely exercised by a State (but rather third parties), it can be difficult to obtain refugee status on those grounds.

Right to deal with female interviewers and interpreters during the procedure: The investigating authority has female staff that has been trained to handle sensitive situations regarding female asylum-seekers.

6.5. Unaccompanied Minors

Minors are children under 18.

Unaccompanied 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. Unaccompanied minors aged 16-18 must apply for asylum in their own right.

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

Procedures for reunification with family: 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, and they may also be granted asylum if the mother or father has a recognised entitlement to asylum.

6.6. Social Rights for Asylum Seekers

Access to work permit:
Asylum-seekers that arrived before 15 May 1997: The first three months after their arrival, the asylum-seekers stayed in reception centres, and they were not allowed to work during this period. After that, they were allocated to asylum centres, and had the right to apply for work permits for specific jobs. This still applies for the asylum-seekers arriving before 15 May 1997. The jobs in question must however have been advertised for a certain period without being filled by a German or EU citizen.
Asylum-seekers arriving after 15 May 1997: These asylum-seekers do not have the right to work during any stage of the asylum determination procedure.

Freedom of movement: Asylum-seekers are only free to move within the boundaries of the local district to which they have been allocated. The permit may be extended to a wider area. For travel outside the restricted are, a permit must be obtained from the local aliens authorities.

Financial assistance: Assistance is given in kind, in addition to a small daily sum of pocket money. The level of financial assistance varies between the *Länder*.

Access to schools: It is not compulsory for children of asylum-seekers to attend school. In most *Länder* they have a right to attend school, but it can in practice depend on the financial and human resources available at local schools. It is rare that children of asylum-seekers are taught in their own mother tongue.

Housing: On arrival asylum-seekers are placed in reception centres, where they can stay for 3 months, before being sent to other arrangements, such as community housing or asylum centres.

6.7. Residence Rights

Asylum-seekers, if they have entered the country legally, can stay until a decision has been taken on their applications.

6.8. Detention Possibilities

Asylum-seekers can under certain circumstances be put in detention:

1. Before an order on deportation has been taken, an alien can be taken into custody if no immediate decision can be made on deportation, and expulsion would be difficult or impossible without the preparatory detention. The detention may last a maximum of 6 weeks;

2. After an order of expulsion, an asylum-seeker may be placed in preventive detention for up to a week if it can be suspected that he will otherwise try to evade the expulsion;

3. Long term preventive detention for up to 6 months can be ordered if an alien has disregarded a time limit for leaving the country and changed his place of residence within the country without notifying the authorities, or there is a 'continuing' suspicion that the alien will evade the expulsion.

7. Accelerated/Simplified Procedure

7.1. Procedure

As mentioned above, asylum-seekers arriving at airports are, if they lack the required travel documents to enter Germany or if they arrive from a safe country of origin, subjected to an accelerated procedure. If room is available for the applicant at the special reception facility at the airport, the Federal Office shall immediately examine the claim and take a decision within 48 hours. The examination includes an interview with the applicant. If the Federal Office rejects the application as manifestly unfounded, entry is denied. The asylum-seeker can not be deported before a decision has been reached by the Federal Office.

The concept of manifestly unfoundedness can apply both to applications filed at the border and to applications filed in-country. An in-country application can thus also be declared manifestly unfounded and is consequently subjected to the same accelerated procedure, with regard to time limits for appeal, as the border application.

7.2. Right to appeal

There is a one level right to appeal a decision on manifestly unfoundedness. The locally responsible administrative Court (the *Verwaltungsgericht*) is the competent forum. The appeal must be filed within a week of the negative decision.

There is no automatic suspensive effect, but it can be requested by the Court. Until a decision has been reached on this issue, the asylum-seeker can not be deported.

The applicant receives the same legal assistance and interpretation as in the regular procedure.

No further appeal is possible.

8. Manifestly Unfounded Applications

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 alien stays in Germany only because of economic reasons or in order to evade a general emergency situation or an armed conflict;
- The statements produced by the alien, in major aspects, are either contradictory or not substantiated or they obviously do not coincide with the facts or are based on forged or falsified evidence;
- The alien uses misleading information in the asylum procedure as to his identity or nationality or refuses to state his identity or nationality;
- The alien has stated different personal data and launched another asylum application or asylum request;
- The applicant lodged the asylum application so as to avert an imminent termination of residence although he had previously had sufficient opportunity to file an asylum application.

9. The Safe Country of Origin Concept

The notion of safe country of origin is used in Germany, and within the accelerated border procedure it can be invoked as a ground for considering an application manifestly unfounded.

To decide which countries that can be considered safe, the government examines the human rights situation in countries from which large numbers of asylum-seekers come to Germany, but where only a few of those are granted asylum. Several sources of information are consulted, and based on this process the list of safe countries of origin is created.

The list comprises Bulgaria, the Czech Republic, Ghana, Hungary, Poland, Romania and the Slovak Republic.

The presumption of safety is in theory rebuttable within the procedure for appeal that applies to the accelerated procedure.

10. Safe Third Country

10.1. Definition

According to the Constitution, a country where application of the 1951 Convention and the European Convention on Human Rights is assured, can be considered as a safe third country. Countries that fit this description but which are not EU Member States must be specified by legislation. In accordance with the concept of 'normative establishment of

certainty', the safe third country must also have accepted the individual complaints procedure under Article 25 of the European Convention on Human Rights. The procedures in the safe third country must also include a formalised examination by the authorities to ensure that the principle of *non-refoulement* is adhered to. Actual access to asylum procedures is not essential. The countries that are considered to be safe (EU Member States are *a priori* safe) are Norway, Poland, Switzerland and the Czech Republic, which means that all States with which Germany shares a border are treated as safe third countries. Therefore all asylum-seekers trying to enter Germany by land run the risk of being refused entry due to the safe third country principle.

The concept of safe third country can also be invoked if an asylum-seeker, before coming to Germany, has already found protection in another country. It could be that he is the holder of a refugee passport from that other country or that he resided there for a period of at least three months and could have stayed there without fear of deportation to the country of origin. Each case is assessed individually.

10.1.1. Mere Transit

The concept of safe third country is applied also in situations of mere transit through a third country. There must have been an opportunity to lodge an application, but actual contact with the authorities of that country is not necessary. If, for example, an asylum-seeker disembarks an aircraft during a transit in a third country, he is considered as having had the opportunity to apply for asylum there.

10.2. Procedure

Contrary to the procedure for manifestly unfounded applications, if an application if refused on safe third country grounds it is not admitted to the asylum procedures at all. Entry is if possible refused directly at the border, and no application is forwarded to the Federal Office. The decision on non-admissibility may be taken by either the border authority, aliens authorities or the Federal Office without any examination of the merits of the claim.

At the border the refusal of entry is normally communicated orally to the asylum-seeker, but it can be issued in writing upon request by the applicant. The decision includes information on the right to appeal.

10.3. Right to Appeal

An asylum-seeker has the right to file an appeal against refusal on safe third country grounds. The local administrative Court is the responsible forum. In practice this is not possible for refusals at the border. Suspensive effect of such an appeal is forbidden by law (Asylum Procedure Act Article 34(a)), except in exceptional circumstances (such as threat of death penalty if return is proceeded with, the situation in the third country has changed drastically or there is a threat of persecution in the third country itself). The same applies as regards the chance of rebutting a presumption of safety.

The time limit for filing the appeal is 14 days.

11. Internal Flight Alternative

The existence of an internal flight alternative in the country of origin *can* render an application for asylum manifestly unfounded, and if so it is consequently channelled through the accelerated procedure. Each case should however be decided individually, and internal flight alternative might not be enough to justify manifestly unfoundedness. An asylum-seeker can in some cases be expected to use an internal flight alternative not only where the persecution is exercised by non-state agents/third parties, but also when the persecutor is the State itself.

12. Rights of Convention Refugees and Constitutional Refugees

Freedom of movement and residence: Both categories of refugees have the same freedom of movement as nationals.

Access to employment: Both categories are in theory allowed to work.

Access to health services: Same access as nationals for both categories of refugees.

Access to education: Same access as nationals for both categories of refugees.

Financial assistance: Both categories of refugees get social allowance covering food, pocket money, clothes and some other costs related to housing.

Family reunification:
Persons enjoying the Constitutional refugee status have a right to family reunification with:

- Spouse;
- Unmarried children under 18.

Reunification with other family members might be possible if the refugee can support and house them.

Persons enjoying the Convention refugee status can be granted family reunification on a discretionary basis.

13. Complementary Forms of Protection

13.1. Persons fleeing war and civil war situations

Persons that cannot be sent back to war or civil war situations can get a residence permit for a maximum of 2 years. The permit is renewable. The holders of such a permit have a limited access to employment, and no right to family reunification.

13.2. Tolerated residence - *Duldung*

If the Federal Office finds that an application for asylum does not warrant the Constitutional or the 'small' (Convention) refugee status, an asylum-seeker can still be allowed to stay in Germany due to obstacles to his deportation. The applicant must not be expelled:

- to a State where there is a risk of him being subjected to torture;
- to a State where he risks capital punishment;
- to a State where there is considerable risk to his person, his life or his freedom; or
- if the expulsion is in any way contrary to the European Convention on Human Rights.

Following a decision that any of these obstacles to expulsion is at hand, the asylum-seeker is awarded a temporary residence permit, a so called *Duldung*. This 'tolerated status' can also be issued if there is a practical obstacle to expulsion, such as health problems or lack of travel documents. The residence permit may be valid for a maximum of 1 year, with possibility of extension. The permit only applies territorially to the *Land* concerned.

The rules regarding social benefits concerning asylum-seekers generally apply also for persons with a *Duldung* status. They are usually accommodated in asylum centres, and they are entitled to social assistance provided they did not come to Germany solely to obtain such assistance. Family reunification is generally not possible in these cases. The right to work is subject to politics in the respective *Länder*. In some *Länder*, aliens with *Duldung* status are not allowed to take any job at all, forcing them to rely on social assistance. This makes it difficult for them to apply for a more secure residence permit, which they are allowed to if they have stayed two years in Germany and if they are not dependent on social security.

G R E E C E

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*743*

1.2. 1998

Applications for asylum in 1998	*3,000*
(0.86% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Iraq Turkey Afghanistan

Total number of decisions taken 1998		*4,200*
of which		
Convention status granted	*160*	(3.8% of decisions)
Humanitarian status granted*	*290*	(6.9% of decisions)
Rejected	*3,750*	(89.3% of decisions)

* Includes all subsidiary forms of status.

2. National Legislation

- Presidential Decree no. 61/1999
- Law No. 1975 of 1991, last amended by law 2452 of December 1996

3. Institutional Framework

1st Instance: The Secretary-General of the Ministry of Public Order

2nd Instance: Minister of Public Order

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where persecution originates from the following sources:

- State authorities;
- In practice also non-state agents if the authorities are unwilling or unable to provide protection. Greek authorities have however in position papers stated that persecution by non-state agents can only be persecution within the meaning of the 1951 Convention if the State authorities are *unwilling* to offer protection. The situation is not clear.

5. Admissibility Procedure

There is no special admissibility procedure in Greece, but accelerated procedures are used for border and airport applications *(see 7. Accelerated/Simplified Procedures)*.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Any public authority in Greece

An application for asylum can be lodged with any public authority in Greece. All authorities can however not be fully qualified to handle requests for asylum, and there is a risk that an asylum-seeker in practice can experience difficulties in lodging an application.

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

After an initial interview, the authority examining the asylum claim submits the relevant application, with supporting documents and a report, to its supervisory Police Directorate or Aliens' Sub-Directorate, who, after stating their opinion on the proposals made by the interviewing officer or with regard to transferring the responsibility of the examination to another Member State of the European Union according to the Dublin Convention, submits them to the competent Directorate of the Ministry of Public Order.

The Secretary-General of the Ministry of Public Order decides on the application, following relevant recommendation made by the Division of State Security of the Ministry of Public Order.

The examination is conducted by the following authorities:

- Aliens' Sub-Directorates or Departments
- The Security Departments of the State Airports

- The Security Sub-Directorates or Departments of the Police Directorates

Asylum applications are to be examined by these Services within 3 months following their submission. Applications filed at ports and airports, where asylum seekers remain until a decision has been taken, are to be examined on the same day *(see 7. Accelerated/Simplified Procedures)*.

For the purpose of examining applications specialised police and civil personnel are assigned, who serve at specially established Offices of the Services described above. Legal advice is however not always accessible for the applicant, and neither is information about the procedure in languages that the asylum-seekers understands. A personal interview shall however be held, and all interpretation costs are covered by the authorities.

If the asylum-seeker is recognised as a refugee, he is handed the recognition decision and a refugee ID card. On the basis of this card, the refugee is provided, free-of-charge, with a residence permit valid for five years, which is renewable for equally additional periods of time.

If the asylum-seeker is rejected, the content of the decision is orally announced to the applicant in a language which he understands. The decision contains full justification for the rejection of the asylum claim and explicitly mentions the time limit of 30 days for the right to file an appeal.

Role of UNHCR in determination procedure: UNHCR has access to asylum-seekers throughout the procedure, including appeal procedure. All decisions are communicated to UNHCR.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition, visa is required for nationals of: Antigua & Barbuda, Bahamas, Barbados, Belize, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Brunei, Colombia, Costa Rica, Dominica El Salvador, Grenada, Honduras, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Venezuela, Western Samoa and Zimbabwe.
Visa is also demanded from nationals of some dependent territories of the Member States: Bermuda (UK), Montserrat (UK), St. Helena (UK) and Macao (Portugal, until 1999-12-31).

Carrier's liability: The legislation contains rules regarding carrier liability. Fines can be imposed on carriers that bring undocumented aliens to Greece. There will however be no fine if a carrier agrees to cover expenses related to accommodation, repatriation and other costs involved.

6.2. Right to Appeal

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 taken within 90 days,

and is based on the advice of an appeal committee/board. This board consists, *inter alia*, of officials from the Ministry of Public Order and the Ministry of Foreign Affairs. UNHCR also participates.

The time limit for filing the appeal is 30 days.

6.2.2. Suspensive Effect of Appeal

The appeal has suspensive effect.

6.3. Principle of Non-Refoulement

The principle of *non-refoulement* is implemented with both the 1951 Convention and other Human Rights instruments (the Convention Against Torture and the European Convention on Human Rights) taken into account. There is however a risk of asylum-seekers being refused entry at the border before a substantive examination of their cases has been carried out, which increases the risk of applicants being *refouled* to countries where they could be subjected to persecution.

6.4. Specific Provisions for Women

When female asylum-seekers due to traumatic experiences or cultural background have difficulties in dealing with male asylum officers, they have a right to be interviewed by female officers and to deal with female interpreters.

In cases where a family files a common application for asylum, the wife does not have a special right to file an independent application.

Gender-related persecution, such as sexual violence, rape, forced sterilisation and female genital mutilation, is taken into account in the decision-making process. There are however very few cases where these grounds have been used to afford women refugee protection.

6.5. Unaccompanied Minors

In Greece minors are children under 18.

Unaccompanied children between 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 finger-printing where a minor is not yet 14.

There are no specific provisions regarding family reunification for an unaccompanied minor asylum-seeker. The general rules determining family reunification apply.

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers can apply for a work permit for a specific job.

Freedom of movement: Asylum-seekers are free to move within the country, but they are obliged to keep the Aliens Department of the Police informed of their whereabouts. If

the alien moves from his place of residence and does not notify the authorities, the examination of his claim can be interrupted.

Financial assistance: The State does not grant any financial assistance to asylum-seekers. Some financial and material assistance is provided by NGOs.

Access to schools: Children of asylum-seekers have access to the educational system. 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.

Housing: The number of places at reception centres are very limited, and most asylum-seekers have to rely on welfare agencies for shelter.

6.7. Residence Rights

Before admission into the determination procedure, an asylum-seeker has no formal right of residence in Greece. Once admitted, asylum-seekers can stay in refugee camps or anywhere else if they keep the police informed of their whereabouts. The residence permit is valid for 6 months and
is renewable.

6.8. Detention Possibilities

Upon arrival: Persons arrested due to illegal entry, stay or exit, and who apply for asylum while in detention, often remain in detention pending a final decision. This may include women and children.

To facilitate deportation: Aliens can be detained to secure deportation procedure.

7. Accelerated/Simplified Procedure

7.1. Procedure

If an asylum-seeker arrives at an airport or seaport, does not have the proper documents to enter the territory and files his application for asylum there, the application shall be examined on the same day. The applicant meanwhile remains at the airport or seaport.

All applications filed at airports or seaports are to be 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 or if the claims of persecution of the applicant are otherwise clearly unfounded, fraudulent or abusive of the asylum procedures. A reference is made in Greek legislation to the EU Resolutions on manifestly unfounded applications and safe third countries.

The Head of the Division for Police, Security and Order of the Ministry of Public Order decides on the application, following relevant recommendation of the Department of State Security, Ministry of Public Order.

The submission of the case to the Ministry of Public Order should be made within 10 days. In exceptional cases, if the alien does not fulfil the legal conditions to enter Greek territory or if he is found in an airport transit zone on his way to a third country, the claim, together with the relevant report and supporting documents, shall be submitted to the competent Directorate of the Ministry of Public Order within 24 hours.

Each case is examined individually, and the asylum-seeker must not be expelled before a decision on manifestly unfoundedness has been taken.

Interpretation is paid for by the State.

UNHCR has access to transit zones in airports.

7.2. Right to appeal

If the application is rejected, the applicant has the right to appeal before the Secretary General of the Ministry of Public Order, within 10 days from the date of delivery of the decision. The same committee as for appeals in the regular procedure advises the Ministry when taking the decision.

The answer to the appeal must be delivered within 30 days. The appeal has suspensive effect.

8. Manifestly Unfounded Applications

The definition found 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 reasons for the application is not supported by the 1951 Convention (e.g. the reasons might be of an economic nature);
- The asylum-seeker uses false identity documents, false information, or abuses the procedure in other ways;
- The asylum-seeker comes from a safe third country;
- The asylum-seeker comes from a safe country of origin.

9. The Safe Country of Origin Concept

This principle is implemented in Greece, and the parameters of the 1992 Conclusions on countries in which there is generally no serious risk of persecution is referred to in the legislation. No formal list of safe countries exists, however.

If an applicant comes from a safe country of origin, his application is considered manifestly unfounded, and dealt with in the accelerated procedure.

The presumption of safety is rebuttable in the appeal procedure.

10. Safe Third Country

An application of an asylum-seeker coming from a safe third country is processed within the accelerated procedure.

The 1992 Resolution on safe third countries is used as a guideline. There is no formal list of safe third countries, but a general requirement is that the country in question must be a party to the 1951 Convention.

The exact practice of the handling of safe third country cases is not yet fully established.

11. Internal Flight Alternative

The existence of an internal flight alternative is one of a number of aspects that are used to determine cases, but it is applied very rarely. It is *not* used, at least not on its own, to channel cases into an accelerated procedure.

12. Rights of Convention Refugees

Freedom of movement or residence: Refugees have the same right to move freely within the country as nationals.

Access to employment: Refugees have to apply for a work permit to have free access to the labour market.

Access to social security: Same as nationals.

Access to health services: Same as national.

Access to education: Same as nationals.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Children under 18;
- Parents and older children if dependent.

13. Complementary Forms of Protection

13.1. Residence permit on humanitarian grounds

An asylum-seeker who is not granted refugee status can be granted a temporary residence permit on humanitarian grounds. The permit is valid for one year, and to renew the permit the alien must, at least 15 days before the expiration of his card, submit an application to

that end through the locally competent police authority of his place of residence. The General Secretary of the Ministry of Public Order decides on such applications.

When examining if a residence permit on humanitarian grounds should be issued, the authorities take into consideration whether there is an objective impossibility of removal or return of the alien to his country of origin or to the country of his habitual residence due to '*force majeure*' (e.g. serious health problems on the part of the alien or of members of his family, international embargo imposed on his country or civil war followed by mass violations of human rights) and if the alien cannot be removed in compliance with the principle of *non-refoulement*, with relation to Article 3 of the European Convention on Human Rights and Article 3 of the Convention Against Torture.

I R E L A N D

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*1,975*

1.2. 1998

Applications for asylum in 1998	*4,600*
(1.3% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Nigeria Romania

Total number of decisions taken 1998		*1,440*
of which		
Convention status granted	*130*	(9% of decisions)
Rejected	*1,200*	(83% of decisions)
Otherwise closed	*110*	(8% of decisions)

2. National Legislation

- Refugee Act (1996)
- Aliens Act 1935
- Irish Nationality and Citizenship Acts, 1956 to 1994
- Aliens Order, 1946
- Dublin Convention (Implementation) Order, 1997 (S.I. No. 360 of 1997)

The full text of the Refugee Act of 1996 is not yet implemented. Those provisions that are implemented include, *inter alia*: the definition of 'a refugee'; prohibition of *refoulement*; provisions on the Dublin Convention; and provisions on appeal. Regarding other issues, the letter of understanding between the Department of Justice and UNHCR applies.

3. Institutional Framework

1st Instance: Department of Justice and the Refugee Applications Commissioner in consultation with UNHCR and the Ministry of Foreign Affairs

2nd Instance: The Refugee Appeal Board

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where persecution originates from the following sources:

- State authorities;
- Non-state agents if the State authorities are unwilling or unable to offer protection.

5. Admissibility Procedure

There is no general admissibility procedure applying to all applications in Ireland, but a claim for asylum may be refused access to the determination procedure if the Dublin Convention can be applied - the applicant will be sent back to another EU Member State.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Immigration Officer (at border)
- Department of Justice (in Dublin)
- Any 'Garda' (police) station

Generally, asylum-seekers who have documents to enter Ireland apply either directly with the Ministry of Justice or, if outside Dublin, with the police. Asylum-seekers arriving at Shannon Airport in the west of Ireland apply directly with immigration officers at the airport. On arrival, the applicant will have to fill in an asylum questionnaire. An immigration officer interviews the claimant to decide whether the claim should be dealt with by another Member State according to the Dublin Convention or if Ireland is responsible for the examination. If admitted, the asylum application is dealt with by the Ministry of Justice on the basis of exchange of letters with UNHCR, which submits its opinion on each individual case. The Refugee Applications Commissioner, appointed by the Minister of Justice, is responsible for investigating the application.

The staff that handles asylum applications are trained in conjunction with UNHCR. Immigration Officers are instructed to immediately inform the Asylum Section of the Department of Justice about the filing of an asylum application. It is not necessary for an alien to use the words 'asylum' or 'refugee' to be an asylum-seeker, and if in doubt the Immigration officers should contact the Department of Justice.

During the procedure, the asylum-seeker may call in a legal adviser for assistance. At the beginning of the procedure applicants are given written information concerning their

rights and obligations. This information is, if necessary and possible, translated orally by an interpreter.

Final decision: The decision shall include reasons, and information on the possibilities and procedures of appeal, and is communicated to the asylum-seeker in writing.

Use of the Dublin Convention: During 1998, Ireland transferred 30 asylum applications to other Dublin Convention Member States, and received roughly 55 transfer applications from other parties to the Convention.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition, visa is required (as of June 1999) for nationals of: Antigua & Barbuda, Belize, Bolivia, Bosnia-Herzegovina, Botswana, Colombia, Dominica, Ecuador, Kenya, Kiribati, Marshall Islands, Micronesia, Namibia, Northern Marianas, Seychelles, Slovak Republic, Solomon Islands, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Trust Territ. The Pacific Is./Palau and Tuvalu, Vanuatu.

Role of UNHCR in determination procedure: The applicant may contact UNHCR at all stages of the procedure. This right is explained to the asylum-seeker when he files his application.

6.2. Right to Appeal

There exists a right to appeal to the Refugee Appeal Board, which consists of persons independent of, but appointed by, the Minister of Justice. The appeal must be filed within 14 days of a negative decision, and the applicant must specifically specify if he wants an oral hearing in the appeal procedures. If no request for an oral hearing is made, the appeal will be decided on the papers only.

The Appeal Board makes a recommendation to the Minister of Justice, and the Department of Justice makes the final decision on the appeal. If the Department disagrees with first instance, the applicant will be recognised as a refugee.

Following a negative decision, a further appeal is theoretically possible to an ordinary Court for a judicial review on a procedural point.

6.2.2. Suspensive Effect of Appeal

The appeal has suspensive effect.

6.3. Principle of Non-Refoulement

This principle is adhered to according to the Refugee Act (1996) Article 5, and immigration officers are provided with written guidelines which specifically mention this provision.

6.4. Specific Provisions for Women

Account is taken of individual circumstances of a particular case. Thus, if it is possible, and if the situation so demands, a female asylum-seeker will be interviewed by female officers.

6.5. Unaccompanied Minors

In Ireland minors are children under 18.

The Health Board has statutory responsibility for the welfare of unaccompanied minor asylum-seekers. The minors are required to stay in a supervised hostel, and the Health Board takes the decision whether an asylum application should be filed.

6.6. Social Rights for Asylum Seekers

Access to work permit: It has until very recently been the case that asylum-seekers do not have access to the labour market in Ireland. However, according to a decision by the Minister of Justice in July 1999, those asylum-seekers who have been waiting more than 12 months for a decision on their applications will be allowed to work. This affects about 2,000 of the 6,000 asylum-seekers awaiting final decisions on their claims. Asylum-seekers who have children born in Ireland are also excluded from the prohibition to take up employment (children born in Ireland are Irish citizens).

Freedom of movement: Asylum-seekers are principally free to move within Ireland, but they have to sign in at a local police station or at the Aliens Registration Office on a weekly basis.

Financial assistance: Asylum-seekers are entitled to a supplementary welfare allowance.

Access to schools: School attendance is compulsory for children between 6 and 16.

Health care: Asylum-seekers have access to free health care in Ireland.

Housing: Upon arrival asylum-seekers are entitled to emergency accommodation. This accommodation can be provided by the Red Cross, in a youth hostel, in temporary flats, in bed & breakfasts or in hostels for homeless people. During the course of the procedure, they have a right to subsidised housing.

6.7. Residence Rights

On arrival, after having completed an asylum questionnaire, asylum-seekers receive an identity card that is valid for a 3 to 6 months stay in Ireland.

6.8. Detention Possibilities

A person can be detained if:

- he posts a threat to national security or public order;

- he has committed a serious non-political crime in another country;
- he has not made reasonable efforts to establish his identity;
- it can be assumed that he will try to avoid removal to another Member State in accordance with the Dublin Convention;
- it can be assumed that he intends to leave Ireland and enter another State unlawfully;
- he has destroyed his identity and travel documents or uses forged identity documents.

7. Accelerated/Simplified Procedure

7.1. Procedure

During regular examination an asylum claim can be deemed manifestly unfounded by the Refugee Applications Commissioner. Further examination is then terminated and the application rejected. The further handling of the claim (if the decision is appealed) will take place in an accelerated appeals procedure. UNHCR is also notified of such a refusal, and will be sent copies of appeal submissions.

7.2. Right to appeal

A decision on manifestly unfoundedness can be appealed to the Refugee Appeal Board within 7 days. The decision on the appeal will be based on the papers only. UNHCR can make observations on the appeal within 7 days of the prior rejection.

The Refugee Appeal Board makes a recommendation to the Minister of Justice, after which the Department makes a decision. A positive decision re-starts the examination of the case at first instance.

8. Manifestly Unfounded Applications

An application for asylum can be regarded as manifestly unfounded in the following cases:

- If it does not show at face value any grounds for the contention that the applicant is a refugee;
- If the applicant gave clearly insufficient details or evidence to substantiate his application;
- The applicant's reason for leaving or not returning to his country of nationality does not relate to a fear of persecution;
- If the applicant did not reveal that he or she was travelling under a false identity or was in possession of false or forged identity documents and did not have reasonable cause for not so revealing;
- If the applicant, without reasonable cause, made deliberately false or misleading representations of a material or substantial nature in relation to his application, in relation to which the applicant, without reasonable cause and in bad faith, destroyed

identity documents, withheld relevant information or otherwise deliberately obstructed the investigation of his application;
- If the applicant deliberately failed to reveal that he had lodged a prior application for asylum in another country;
- If the applicant submitted the application for the sole purpose of avoiding removal from the State;
- If the applicant earlier had made an application for a declaration or an application for recognition as a refugee in a state party to the 1951 Convention, and the application was properly considered and rejected and the applicant has failed to show a material change of circumstances;
- If 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;
- If the applicant after making the application has, without reasonable cause, left the State without leave or permission or has not replied to communications addressed to him from the authorities, or prior to which the applicant has been recognised as a refuge under the 1951 Convention by a state other than the State, has been granted asylum in that state and his reason for leaving or not returning to that state does not relate to a fear of persecution in that state.

9. The Safe Country of Origin Concept

The concept of safe country of origin is not implemented as such in Ireland. The situation in a country of origin and the grounds for an asylum application is assessed individually in each case.

10. Safe Third Country

The safe third country principle is not used in Ireland, if one excludes the transferrals made to other EU Member States in accordance with the Dublin Convention.

Each case is examined individually, and an asylum-seeker can be sent back to a third country under certain circumstances. Basically he has to have resided and have a right of residence in the third country, or already have lodged an application for asylum in that country (*see 8. Manifestly Unfounded Applications*).

11. Internal Flight Alternative

The notion of internal flight alternative is not applied in any formalised manner in Ireland, i.e. it does not automatically render an application manifestly unfounded.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees have the same freedom of movement as nationals.

Access to employment: Refugees have the same access to the labour market as nationals.

Access to health services: Refugees have access to the national health services.

Access to education: School attendance is compulsory for children between 6 and 16.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Children under 18.

Reunification with other family members, wards or guardians is possible if they suffer from mental or physical disability so that they cannot support themselves fully.

13. Complementary Forms of Protection

13.1. Permission to remain on humanitarian grounds

A permission to remain can be granted to asylum-seekers who do not come within the refugee definition as provided for in the 1951 Convention but who cannot be returned to their country of origin for humanitarian or other specific reasons. They receive a residence permit renewable every year. After five years residence in Ireland with this status they may apply for naturalisation. This status has no formal legal basis, but has emerged in practice. Holders have the right to work. Family reunification is usually not permitted during the first year.

I T A L Y

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first four months* of 1999	*3,268*

1.2. 1998

Applications for asylum in 1998	*7,100*
(2% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Federal Republic of Yugoslavia Iraq Turkey

Total number of decisions taken 1998		*3,470*
of which		
Convention status granted	*1,030*	(29.7% of decisions)
Rejected	*2,390*	(68.9% of decisions)
Otherwise closed	*50*	(1.4% of decisions)

2. National Legislation

- 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, concerning financial assistance to refugees
- Law of 19 February 1998, concerning immigration

A new law on immigration - Law of 19 February 1998 - has been enacted, and it replaces all provisions of the 'Martelli-Law', except those on asylum procedure.

3. Institutional Framework

1st Instance: The Central Commission for the Recognition of Refugee Status (*Commissione Centrale per il riconoscimento dello stato di refugiato*)

2nd Instance: The Regional Administrative Court (TAR, *Tribunale Amministrativo Regionale*)

3rd Instance: Council of State (*Consiglio di Stato*)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non-state agents when the authorities are unable to offer protection, or if the persecution is tolerated by them;
- Non-state agents also when there is no State.

There is no clear policy established concerning non-state agents, but court decisions show that recognition of refugee status in these cases is possible, though not the general rule.

5. Special Border Procedure

5.1. Procedure

There is no admissibility procedure applicable to all applications, but there is a special procedure for applications filed at the border.

If an asylum-seeker does not have the proper documents to enter Italy, he must file an application for asylum with the border police. In the border procedure an application can be deemed inadmissible for the following reasons:

- The applicant comes from a safe third country;
- The applicant is a convicted criminal or is considered to be a threat to public order;
- The applicant has already been granted refugee status in another country.

The applicant is refused entry, and has to await a decision at the border.

5.2. Appeal

A negative decision may be appealed, but it can be difficult in practice since access to the procedure is in fact prevented by the refusal of entry.

Undocumented applicants can be held in detention at the border for up to 30 days pending their deportation.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Provincial Police Headquarters (*Questura*)
- Border (police)
- Airports, sea and seaports

The Central Commission for the Granting of Refugee Status examines the asylum claim. A decision has to be reached within 15 days.

The Central Commission is presided over by a Police Commissioner, and includes persons from the Office of the Prime Minister, the Ministry of Foreign Affairs and the Ministry of the Interior. A representative from UNHCR takes part in an advisory capacity.

The asylum-seeker has the right to be interviewed by the Central Commission for Recognition of Refugee Status. If at least one member of the Commission understands the applicants own language, the interview is conducted in this language. Otherwise, the interview is held in English, French, Spanish or through an interpreter.

Applicants are given a temporary residence permit valid for 45 days to await the decision of the Central Commission.

Role of Dublin Convention: During 1998 Italy received 1,980 requests from other Member States to assume responsibility for asylum applications. Italy itself requested other Member States to take responsibility for 411 asylum applications.

Role of UNHCR in determination procedure: UNHCR has an advisory position in the Central Commission for the Recognition of Refugee Status.

Role of NGOs in determination procedure: NGOs do not have access to asylum-seekers in transit zones at airports, which has significance because such aliens who want to apply for asylum must make a justified and documented application to the frontier police. This can be a very difficult task under the circumstances and without legal aid.

Visa restrictions: The Italian authorities demand visa from nationals of the countries featured on the EU common list. In addition, visa is demanded (as of June 1999) from nationals of: Antigua & Barbuda, Bahamas, Barbados, Belize, Bosnia-Herzegovina, Botswana, Dominica, Grenada, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

Carrier sanctions: Any costs involved in the repatriation of an undocumented alien must be met by the carrier that brought him to Italy.

Furthermore, anybody who knowingly facilitates an illegal entry into Italy can be imprisoned up to 2 years or be sanctioned with a maximum fine of 2 millions Italian lire. If the trafficking involves three or more traffickers, or if it is done for financial gain, the traffickers can be imprisoned for 2 to 6 years and be fined from 2 to 10 million Italian lire.

6.1.1. Expulsion

Previously, refused undocumented applicants at the borders were given expulsion orders which gave them 15 days to leave the country voluntarily. The new Law of 19 February 1998 has introduced the possibility of detaining such persons for 30 days pending deportation. The number of aliens actually being expelled from Italy has consequentially increased dramatically.

6.2. Right to Appeal

After a negative decision by the Central Commission, an asylum-seeker may within 30 days file an appeal to the Regional Administrative Tribunal (TAR), which only examines the legality of the procedure, and does not judge on the merits of the case. If the Administrative Tribunal accepts the appeal, the case is referred back to the Central Commission for re-examination.

If the Administrative Tribunal rejects the appeal, there is a possibility to, within 120 days, lodge an appeal with the Council of State.

If a rejected asylum-seeker fails to comply with the deadline for appeal to the Regional Administrative Court (30 days), he can still file an appeal to the President of the Republic within 120 days.

6.2.2. Suspensive Effect of Appeal

The appeal to the Administrative Tribunal has suspensive effect if it is filed within 15 days.

The appeal to the Council of State has no suspensive effect.

The appeal to the President of the Republic has no suspensive effect.

6.3. Principle of Non-Refoulement

The Italian legislation contains a prohibition of *refoulement* as described in Article 33 of the 1951 Convention, including a prohibition against sending a person to a country where the principle of *non-refoulement* is not safeguarded.

6.4. Specific Provisions for Women

One of the grounds for persecution cited in the legislation is 'sex', but other than that there are no specific provisions relating to women asylum-seekers. However, in practice it has happened in some cases that women have been recognised as facing persecution on the grounds of membership of a social group when they have transgressed strict religious or social rules.

Right to deal with female interviewers and interpreters during the procedure: As much as it is possible, female asylum-seekers that have been exposed to violence in the country of origin are interviewed by female officials with the help of female interpreters.

6.5. Unaccompanied Minors

A minor is a child under 18.

Very few unaccompanied minors apply for asylum in Italy. In case they do, there are some problems concerning family re-unification. An unaccompanied minor is not always able to obtain family re-unification if he cannot economically support the family members.

In all decisions concerning unaccompanied minors the best interest of the child shall always be taken into account. A guardian is nominated by the Tribunal for minors, which is notified of the minor asylum-seeker by the border police. The guardian assists the minor in the determination procedure.

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers are not allowed to work.

Freedom of movement: Asylum-seekers have the right to move freely in Italy, if they are not detained at the border.

Financial assistance: Financial assistance is given to asylum-seekers for a maximum of 45 days.

Access to schools: School attendance is compulsory for children from 6 to 14 years of age. In theory, mother tongue tuition shall be provided, but is often not in practice, due to lack of qualified teachers.

Health care: Asylum-seekers only have access to subsidised health care in emergencies.

Housing: Special accommodation for asylum-seekers is not compulsory, and it is furthermore not available for everybody. Some reception centres are run by NGOs.

6.7. Residence Rights

Asylum-seekers are given a temporary residence permit valid for 45 days after having been admitted into the territory.

6.8. Detention Possibilities

The new Law of 19 February 1998 grants the possibility of detaining aliens for 30 days pending their deportation. Furthermore, undocumented border applicants can be detained at the border pending a decision on their claim.

7. Accelerated/Simplified Procedure

Accelerated or simplified procedures are not mentioned as such within the Italian refugee status determination system, but the special border procedure could be said to be a simplified procedure with less safeguards concerning appeal, where manifestly unfounded applications and safe third country cases are declared inadmissible.

8. Manifestly Unfounded Applications

Italy has implemented the provision in Paragraph 24 of the Resolution on minimum guarantees for asylum procedures which allow a case to be rejected as manifestly unfounded before admission to the regular determination procedure. This is done in the special border procedure.

An application can be deemed manifestly unfounded in the following cases:

- The authorities find that the applicant is not fleeing from persecution but rather from ordinary justice;
- The applicant comes from a safe third country;
- The applicant has been convicted of certain serious crimes in Italy, or it is proven that he represents a danger to state security or belongs to a criminal, drug-trafficking or terrorist organisation;
- One of the exclusion clauses mentioned in Article 1 F of the 1951 Convention is applicable.

9. The Safe Country of Origin Concept

The principle of safe country of origin is not used on a formal basis in Italy. It is one of several factors that are taken into account during the examination of a claim for asylum.

10. Safe Third Country

10.1. Definition

The provisions of the Resolution on safe third countries are taken into account when an application for asylum is examined. In the special border procedure, the applicant may be refused admission on the grounds of the safe third country principle.

The following criteria can lead to the notion being invoked:

- The applicant has already been granted refugee status in another state;
- The applicant comes from a state, other than that of origin, which has signed the 1951 Convention and in which he has been staying for a period of time (not including the time he needed to get to the Italian border - the applicant must have stopped in the third country, and then left again for Italy, for the principle to be invoked).

10.1.1. Mere Transit

The principle is not applied in mere transit cases. If the applicant had the intention of reaching Italy, the transit through another country is not considered to be a stay in that country.

10.2. Procedure

In practice, returns of asylum-seekers to safe third countries almost exclusively occur in the context of the special border procedure. If an alien cannot be returned, for example due to the principle of *non-refoulement*, he is normally allowed to enter the regular determination procedure.

11. Internal Flight Alternative

The existence of an internal flight alternative is taken into consideration in conjunction with other factors during the determination process. It is not a fact that can lead to automatic rejection in the special border procedure.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees are free to move as they wish within Italy.

Access to employment: Recognised refugees have the same access to the labour market as nationals, except for a few public positions where Italian nationality is required.

Access to social security: Same as nationals.

Access to health services: Same as nationals.

Access to education: Same as nationals.

Family reunification:
Family reunification is in principle possible for the following categories, if the refugee has regular work and adequate housing:

- Spouse;
- Unmarried children under 18;
- Elderly dependent parents.

The application for family re-unification shall be submitted to the *Questura*. Negative decisions can be appealed.

13. Complementary Forms of Protection

No other specific status is available for asylum-seekers.

(The Italian Government has on two occasions issued decrees to give the possibility of temporary protection on humanitarian grounds to specific categories of people: citizens from the Former Yugoslavia in 1992; and Somalis in 1992. Persons belonging to these groups could then apply for a residence permit. Also some Kosovo Albanians and Kurds have been granted temporary protection. This is however not a complementary or subsidiary form of protection within the regular asylum determination system, available as an alternative for asylum-seekers.)

L U X E M B O U R G

1. Statistics

1.1. 1998

Total number of applications for asylum in 1998	*1,709*
(0.5% of the total number of applications in the EU 1998.)	

Total number of decisions taken 1998		*174*
of which		
Convention status granted	*43*	(25% of decisions)
Rejected	*71*	(41% of decisions)
Otherwise closed	*60*	(34% of decisions)

2. National Legislation Concerning Asylum and Refugees

- Asylum Procedure Act of 1996
- Grand Ducal Regulation of 22 April 1996
- Law of 11 November 1996

3. Decision Making Bodies

1st Instance: Ministry of Justice

2nd Instance: Administrative Court

3rd Instance: Administrative Court of Appeals

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities.

The situation concerning non-state agents is unclear.

5. Admissibility Procedure

Before starting a thorough status determination procedure, the authorities must determine which Member State is responsible for handling the application, according to the Dublin Convention. If Luxembourg is not considered to be the responsible State, measures are taken to transfer the applicant to the Member State that is designated.

5.1. Procedure

After it has been decided that Luxembourg shall take responsibility for the asylum claim, the application is examined in a procedure to see if it is admissible to the regular procedure. This applies to all applications, both those filed at the border and those filed in-country. Reasons for inadmissibility: the claim is manifestly unfounded; or the applicant came to Luxembourg through a safe third country.

The Ministry of Justice takes the decision in consultation with the Refugee Consultative Commission. During the procedure, the refugee may be asked, or may ask, to appear before the Commission. Legal aid may be granted for the hearing. A decision must be given within 2 months.

5.2. Appeal

Following a negative decision, the asylum-seeker can appeal to the Administrative Court within 1 month. The appeal has suspensive effect. A decision on this appeal must be given within 1 month.

A further appeal is possible to the Administrative Court of Appeals.

Both these appeals concern only the legality of the initial decision. If any of the appeal instances decide in the applicants favour, the case is referred back to the Ministry of Justice for re-evaluation on the admissibility.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- In-country

Asylum-seekers have the right to an individual interview with a representative of the Ministry of Justice. They also have the right to legal assistance. Interpretation is provided free of charge.

The authorities make an examination as to the identity of the applicant. Fingerprinting and taking of photographs is only allowed if it is absolutely necessary to establish his identity. The Refugee Consultative Commission, which is composed of a representative of the

Ministry for Family Affairs, a person designated on the advice of UNHCR and a judge, investigates the case and gives an advisory opinion to the Ministry of Justice.

The Ministry of Justice's decision is communicated to the asylum-seeker in writing, including information on the procedures for appeal.

Visa restrictions: Luxembourg demands visa from nationals of the countries featured on the EU common list. In addition to this, the Benelux countries have a common list enumerating several other states: Antigua & Barbuda, Bahamas, Barbados, Belize, Bosnia-Herzegovina, Botswana, Colombia, Croatia, Dominica, Estonia, Grenada, Jamaica, Kenya, Kiribati, Latvia, Lesotho, Lithuania, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

6.1.1. Expulsion

See 6.8 Detention Possibilities.

6.2. Right to Appeal

A negative decision by the Minister of Justice can be appealed to the Administrative Court. A decision in the applicants favour overturns the earlier decision, and the asylum-seeker is allowed to stay.

A negative decision by the Administrative Court can be further appealed to the Administrative Court of Appeals.

6.2.2. Suspensive Effect of Appeal

The appeal to the Administrative Court has suspensive effect.

6.3. Principle of Non-Refoulement

The principle is adhered to.

6.4. Specific Provisions for Women

There are no specific provisions relating to female asylum-seekers.

6.5. Unaccompanied Minors

Unaccompanied minors are taken care of by the Social Department of the General Commission for Aliens (*Commissariat Général aux Etrangers*) and a lawyer is allocated by the Ministry of Justice to provide legal representation for the child. In some cases the minor is also allocated a guardian. The Ministry of Family Affairs is responsible for youth centres in Luxembourg where unaccompanied minors sometimes are accommodated.

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seeker do not have the right to work in Luxembourg.

Freedom of movement: Asylum-seekers have the right to move freely within the country.

Financial assistance: A basic allowance to cover food and other minor living expenses is granted. It can be given in the form of money or food coupons.

Access to schools: School attendance is free for children between 7 and 16.

Specific integration training: Free language classes in German or French are given for asylum-seekers who are over 16 and who have been admitted into the regular determination procedure.

Health care: Asylum-seekers enjoy free medical care.

6.7. Residence Rights

Asylum-seekers may stay in Luxembourg until a final decision has been reached on their applications.

6.8. Detention Possibilities

A rejected asylum-seeker can, if for practical reasons he cannot be removed from the country, be held in administrative detention for one month. If necessary, the duration of detention can be extended twice by the Ministry of Justice. The aim is to expel the person in detention as soon as possible. The decision on extension of detention can be appealed to the Administrative Court and the Administrative Court of Appeals.

7. Accelerated/Simplified Procedure

There is no accelerated procedure in use in Luxembourg.

8. Manifestly Unfounded Applications

In the admissibility procedure, an application can be considered as manifestly unfounded for the following reasons:

- 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.

9. The Safe Country of Origin Concept

The applicant coming from a safe country of origin is one of the reasons for an application being manifestly unfounded. There is however no official list of safe countries - each case is examined on its own merits.

10. Safe Third Country

10.1. Definition

If an applicant comes from a safe third country, his application is declared inadmissible in the admissibility procedure. The definition used in Luxembourg corresponds with the 1992 Resolution on safe third countries.

There is no formal list of safe third countries. A requirement for a country to be considered as safe is that it is a signatory to the 1951 Convention without geographical restrictions. The asylum-seeker must have been granted protection or had the opportunity to ask for protection in the third country. The third country must also guarantee protection from *refoulement*, and the freedom and safety of the asylum-seeker must not be threatened in that country. He must be treated in conformity with recognised human rights standards.

10.1.1. Mere Transit

Mere transit does not lead to the safe third country concept being invoked, if the asylum-seeker did not have the opportunity to ask for protection in the third country.

11. Internal Flight Alternative

The existence of an internal flight alternative can cause an application for asylum to be declared manifestly unfounded in the admissibility procedure.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees are given a identity card initially valid for 5 years, which gives same rights as nationals what concerns travel within and outside the country.

Access to employment: Employers have to request a work permit, which is automatically granted. Refugees are also entitled to unemployment benefits.

Access to social security: Refugees without means can receive social support from the General Commission for Aliens. Those refugees who are over 30 and meet the required conditions may receive the Monthly Guaranteed Income on the same terms as nationals. Maternity allowance, child benefit and education allowances are also given on the same terms as for nationals.

Access to health services: The same access as nationals.

Access to education: The same access as nationals.

Specialised services: Reception classes exist for children who do not speak any of the official languages (French, German or Luxembourgish).

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Dependent minor children;
- Dependent parents if the refugee can prove that he has supported them for 2 years before the application.

13. Complementary Forms of Protection

13.1. Authorisation of residence on humanitarian grounds

This status has no legal basis, but according to practice rejected asylum-seekers and persons that are refused temporary protection may apply for residence permit on humanitarian grounds. A work permit is usually granted to persons holding this status. Family reunification is difficult, but possible, to obtain.

13.2. Status of tolerated residence

If removal from Luxembourg is not possible for rejected asylum-seekers or persons whose residence permit has expired, e.g. because their country of origin refuses to let them return, they can be granted a status of tolerated residence. The status has no legal basis, and the permit holders do not have the right to work or to family reunification, although they are entitled to some social benefits. The permit is renewable on a monthly basis.

(In addition to these subsidiary forms of protection, the authorities of Luxembourg can grant temporary protection to certain groups of people (as in 1992 when a number persons from the former Yugoslavia were given this status). A status of immigrant worker has also been granted in some cases to persons who had previously enjoyed temporary protection.)

T H E N E T H E R L A N D S

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*17,431*
Main countries of origin: Federal Republic of Yugoslavia Afghanistan	

1.2. 1998

Total number of applications for asylum in 1998	*45,200*
(13% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Iraq Afghanistan Federal Republic of Yugoslavia Bosnia and Herzegovina Somalia

Total number of decisions taken 1998		*43,270*
of which		
Convention status granted	*2,360*	(5.5% of decisions)
Humanitarian status granted*	*12,740*	(29.5% of decisions)
Rejected	*11,040*	(25% of decisions)
Otherwise closed	*17,130*	(40% of decisions)

* Includes all subsidiary forms of status.

2. National Legislation

- Aliens Act (13 January 1965, last amended 1994, partially last amended 01-07-1998)
- Aliens Decree
- Aliens Regulation
- Aliens Circular
- Frontier Guard Guidelines

3. Institutional Framework

1st Instance: *Immiggratie en Naturalisatie Dienst* (IND, under the Ministry of Justice)

2nd Instance: Review procedure: IND

3rd Instance: Appeal procedure: District Court in The Hague (*Arrondisementsrechtbank te Den Haag*)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non-state agents if the state authorities tolerate or promote the acts of persecution, or are unable to offer protection;
- Non-state agents also when any form of factual government authority is lacking.

Relating to the definition of persecution, the following criteria can also be taken into consideration:

- Conscientious objections due to being called to fight against an individual's own ethnic group;
- Conscientious objections due to religious belief or deep-rooted convictions, which are not taken into account by the authorities or when no alternative service is available;
- Refusal to participate in conflict condemned by the international community, in conflict which contravenes basic principles of human conduct or principles of war.

5. Admissibility Procedure

All asylum applications are processed through an admissibility procedure in one of the two application centres at the border (Rijsbergen and Zevenaar) or at the one at Schiphol airport. An interview is made, 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. No determination examination as such is made at this stage. The procedure takes aim on establishing certain facts about the applicant, such as his identity and the escape routes taken. One reason for rejection at this stage is if the applicant has come to the Netherlands through a safe third country. It is also at this stage that the rules of the Dublin Convention are applied. If a decision is not taken within 48 hours, the asylum-seeker is allowed to enter the regular procedure.

In the Aliens Act Article 15(b) the reasons for inadmission to the regular procedures are enumerated:

- If an earlier claim was lodged and subsequently refused, the grounds of which have not changed;
- If the asylum-seeker has filed a previous application under another name;
- Failure to produce valid travel documents;
- If the applicant can be removed on safe third country grounds;
- Failure to appear or to provide information.

If it is determined that an application is inadmissible for safe third country reasons, special rules apply concerning deportation and time limits (*see 10. Safe Third Country*).

An application can also be deemed to be manifestly unfounded, in which cases it is channelled into the accelerated procedure (*see 7. Accelerated/Simplified Procedure*).

An application that is deemed to have some chance of success is allowed to enter the regular determination procedure.

The Dublin Convention: In 1998, the Netherlands requested that other EU Member States should take responsibility for 6,418 applications, of which 5,686 was agreed to. During the same period, Dutch authorities took responsibility for 823 applications, of a total of 1,057 requests from other Member States.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- There are three main application centres (*aanmeldcentrum* or AC): at Rijsbergen, at Zavenaar and at Schiphol Airport (in January 2000 a new centre will be opened in Ter Apel)
- Embassies and consulates
- Regional police
- Sea ports

Border and in-country applications are treated equally.

Aliens who enter the Netherlands without travel documents have to apply for asylum immediately after entry. If this is not done, but an application is filed at a later stage, the claim will be declared inadmissible. There is no formal time limit for filing an application when the asylum-seeker is in possession of a valid travel document.

Officials in charge of border control are required to have their secondary exams at the 'MAVO-level' as a minimum (10 years of studies). They are obliged to study the revised 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

Asylum applications are examined by IND, a relatively autonomous agency of the Ministry of Justice. Asylum-seekers have a right to a personal interview and to receive legal advice and information concerning the procedures in a language which he understands. Interpreters can be provided.

If no answer to the application is given within six months, it is to be regarded as a 'fictitious' rejection. However, in reality the average processing time for an application for asylum is 22 months.

Role of UNHCR in determination procedure: UNHCR can be involved in the proceedings of individual cases, i.e. during a hearing by an IND commission, the Advisory Commission on Aliens Affairs, the District Courts or at the Council of State. In practice however, due to reasons such as limited number of staff at the Liaison Office and the large numbers of asylum-seekers, UNHCR only becomes involved in cases considered to be important and precedent-setting that might be brought to its attention.

Role of NGOs in determination procedure: 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.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition to this list, the Benelux countries have a common list enumerating several other states: Antigua & Barbuda, Bahamas, Barbados, Belize, Bosnia-Herzegovina, Botswana, Colombia, Croatia, Dominica, Estonia, Grenada, Jamaica, Kenya, Kiribati, Latvia, Lesotho, Lithuania, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

The Ministry of Foreign Affairs is the competent authority to decide on whether or not to impose a visa requirement.

Carrier's liability: Carrier sanctions were instituted on 1 January 1994 for bringing immigrants who lack the proper travel documents into the Netherlands. Article 6 of the revised Aliens Act demands that a carrier which provides transportation to an external border or to anywhere within the territory of the Netherlands is obliged to take the necessary measures and to exercise such supervision as may reasonably be required to prevent an alien who is not fulfilling the requirements regarding the holding of international travel documents from entering the territory (on that particular carrier). In addition, transportation companies are obliged to copy travel documents and to check such documents upon boarding the carrier, once the routes requiring such treatment have been discerned. Transportation companies which neglect these obligations risk prosecution on the basis of article 6 or article 197(a) of the Penal Code (trafficking).

6.1.1. Expulsion

According to a recent decision taken by the Dutch government, those rejected asylum-seekers who have exhausted all appeal possibilities will be given four weeks to leave the country. If they have not left by this time, they will be denied access to all reception facilities.

6.2. Right to Appeal

There are two procedures relating to appeal:

- Review procedure
- Appeal procedure

Review: An asylum-seeker whose claim has been rejected at first instance can ask for a review of the case by IND. The time limit for filing the request for review is four weeks after the initial decision was communicated to the alien. The General Act on Administrative Law *(Algemene Wet Bestuursrecht*) stipulates that he must be herd in person (except in cases where the alien is not allowed to stay in the country pending the review procedure, *see 6.2.2 Suspensive Effect of Appeal*). IND will decide on the request to review the case based on a report from the hearing. The time limit for answer is six weeks, with a possible extension of four weeks. If no answer is given, it is considered as a 'fictitious' rejection, which the applicant can appeal.

An alternative to this procedure is to have the alien heard by the independent Advisory Commission on Aliens Affairs (ACV). It is compulsory, according to the revised Aliens Act Article 31(2)b, when it is plausible that expulsion would result in the applicant being persecuted to a certain degree (determined by Article 15 of the same Act). In other cases that might be complicated or fundamental in a way that could lead to new jurisprudence, it may be practical to obtain the view of ACV. When the Advisory Commission is involved, IND has to give an answer on the request for review within ten weeks; a time limit which can be extended by four weeks. In the absence of an answer, the alien can appeal the 'fictitious' rejection.

Appeal: If the request to review the case is rejected, the alien 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 on review was communicated to the alien. If a request for provisional ruling on the stay of expulsion is made (*see 6.2.2 Suspensive Effect of Appeal*), the President of the District Court may at the same time as deciding on that request decide on the main issue. Time limit for answer is six weeks, with a possible extension of an additional six weeks.

Legal aid: Asylum-seekers are entitled to legal aid throughout the whole review/appeal procedure Both legal assistance and interpretation are free.

6.2.2. Suspensive Effect of Appeal

Review: The Aliens Act Article 32(1)a prescribes that expulsion of the alien will be postponed if a request for review is made, except where it is reasonable to doubt that there is any danger of the applicant being persecuted. In these cases, the alien can request a

provisional ruling (*voorlopige voorziening*) from the President of the Aliens Division of the District Court.

Appeal: 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 taken on the provisional ruling.

6.3. Principle of Non-Refoulement

The principle of *non-refoulement* is adhered to by the authorities, and the European Convention is taken into account when assessing the issue.

6.4. Specific Provisions for Women

Special work instructions exist for liaison officers and decision makers concerning women asylum-seekers. Staff receive special training, and applicants can choose to be interviewed by female officials.

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 women asylum-seekers suffering trauma due to gender specific persecution have access to appropriate counselling services. Measures are taken to guarantee physical safety in the reception centres.

6.5. Unaccompanied Minors

In the Netherlands minors are children under 18. Provisions applicable to unaccompanied minor asylum-seekers applies to an asylum-seeking minor that is not accompanied or looked after by his parents or any other adult relatives upon arrival in the Netherlands.

If the minor is at least 12 years old he may submit his own application for asylum. A minor under 12 can not submit an application, thus it has to be filed on his behalf by a guardian. If none such is available, an NGO - *Stichting 'De Opbouw'* in Utrecht - is usually appointed as acting guardian.

Four weeks from when the asylum application has been submitted (instead of the normal seven days) is allowed before an interview is held with the minor. The interview is held by an IND Liaison officer. The central issue is whether the minor has any parents or other relatives in his 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 may be granted a residence permit for one year, a permit 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 parents or other relatives, the residence permit may be withdrawn or not renewed. If this does not occur, the residence permit is without restriction after three years.

The decision on 'unaccompanied minor asylum-seeker' status is based on the assumption that return to the country of origin is not possible for the moment, because there are no

relatives to be found to take care of him. In addition to this, an unaccompanied asylum-seeker may, like any other asylum-seeker, be recognised as a Convention refugee or be granted a residence permit on humanitarian grounds.

The provisions of Council Resolution of 26 June 1997 on unaccompanied minors are implemented, and procedures for reunification with family exist.

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers do not have access to the labour market in the Netherlands.

Freedom of movement: Asylum-seekers are free to move within the country, but during the initial phase of their application, asylum-seekers may have restrictions placed upon them on the basis of Section 17 of the Aliens Act.

Financial assistance: Asylum-seekers get approximately 35 gulden in pocket money every week. The amount is higher if the asylum-seeker chooses to prepare his own meal. The amounts given is more or less equivalent to assistance for nationals in need.

Access to schools: School is compulsory for children between 5 and 16 years of age. Between 16 and 17 it is partially compulsory.

Specific integration training: Special language classes are given for the asylum-seeker's benefit.

Health care: Asylum-seekers have access to basic health care.

Housing: Before admission into the procedure asylum-seekers stay up to 24 hours in an Application Centre (AC). After this, the decision on admissibility should have been taken, and once in the procedure the applicant is first placed in a Reception and Investigation Centre (OC) for about a month. Following this, the alien stays in an Asylum-seekers' Centre (AZC) until local reception is available (should the application be approved).

In relation to the Dublin Convention: Asylum-seekers arriving in the Netherlands via another EU Member State are not entitled to accommodation in a reception centre.

6.7. Residence Rights

The validity of a residence permit is normally one year with possibility of extension, but it also depends on the expiration date of the passport and if there are any restrictions to the permit.

6.8. Detention Possibilities

Upon arrival: 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 or inadmissible and the asylum-seeker is detained, he can lodge an appeal with the District Court. There is no automatic suspensive effect, so a request for provisional ruling has to be made. The alien

should be heard by the Court within two weeks, and a decision should come 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.

There is a further way of appealing detention under Aliens Act Section 35 by means of a written statement pursuant to the Criminal Code Section 451(a).

To facilitate deportation: If a decision is taken on the asylum application within four weeks, saying that the application is inadmissible or manifestly unfounded, Aliens Act Section 18(b) is implemented with the aim of securing removal. If the decision is not taken within four weeks, the alien can be detained under Aliens Act Section 26.

It should be noted that minor asylum-seekers can not be detained.

7. Accelerated/Simplified Procedure

7.1. Procedure

An accelerated procedure is used when an application is considered to be manifestly unfounded, when an applicant has committed a serious offence on the state's territory or an applicant is a serious risk to public security. The accelerated procedure is thus a direct continuation of the admissibility procedure. (*See 5. Admissibility Procedure.*) Applications are processed by 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 on the application.

The decision is issued to the applicant in writing.

7.2. Right to appeal

If the application is rejected as manifestly unfounded, the applicant can file an appeal to the Aliens Chamber of the District Court within four weeks.

There is no automatic suspensive effect. A request for a provisional ruling must be filed to the President of the District Court within 24 hours of the negative decision. 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.

8. Manifestly Unfounded Applications

During the admissibility/accelerated procedure, an application for asylum is regarded as manifestly unfounded 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 alien comes from a safe country of origin;
- The alien has, in addition to the nationality of his country of origin, the nationality of another country in which he can find protection;
- A country of earlier residence admits the alien and he can stay there until he finds lasting protection elsewhere (The Dutch Court has held that this provision does not apply when the expulsion policy of that other country is less favourable for the asylum seeker than the Dutch expulsion policy. A period of two days has sometimes been considered as residence.);
- The asylum-seeker has knowingly produced false or forged documents or papers, and maintained their authenticity when questioned on the subject;
- The applicant has, against better knowledge, produced travel documents or identification papers which have no relation to him.

9. The Safe Country of Origin Concept

The concept is implemented and such a case is treated as manifestly unfounded and rejected in the admissibility/accelerated procedure. The rules concerning appeal in the accelerated procedure applies.

The list of safe countries of origin include Bulgaria, The Czech Republic, Ghana, Hungary, Poland, Romania, Senegal, and The Slovak Republic.

10. Safe Third Country

10.1. Definition

The Netherlands has incorporated the notion of safe third country in the legislation concerning aliens and refugees (Aliens Act). The principle is used when an asylum-seeker has come to the Netherlands through another country where he had an opportunity to file an application for asylum. The third country must be safe for the alien, and he must be protected from *refoulement* in that country.

The countries that could be considered as safe third countries are EU Member States, EEA States (Iceland and Norway) and any other States which guarantee observance of the 1951 Convention, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. Apart from the EU and EEA Member States, there are three States that are considered as safe third countries by default: The Czech Republic, Poland and Switzerland.

10.1.1. Mere Transit

The safe third country concept can only be applied if the asylum-seeker has resided in that country. Thus, the concept does not apply in cases of mere transit. In fact, asylum-seekers can invoke mere transit as an indication that the third country was not the apparent final

destination. However, due to treaty obligations, such as the Dublin Convention, a safe third country (i.e., in this case, other EU Member States) can be responsible for examining an application for asylum also in cases of mere transit. This exception to the general rule has been recognised by the District Court in Zwolle.

10.2. Procedure

Before a decision on the admissibility of a claim for asylum, the authorities have to decide whether a safe third country exists. Thus an asylum-seeker is not allowed to enter the regular refugee determination procedure until such an assessment has been made. If the application is deemed inadmissible on safe third country grounds, the asylum-seekers is in fact prevented from entering the actual asylum procedure, and instead deported to another country. Consequently, the substance of the individual claim is not investigated by the authorities.

If the third country agrees to admit the asylum-seeker, he is deported. The third country must admit the asylum-seeker to an adequate asylum procedure or grant a durable residence permit for the alien so he can stay under conditions considered normal.

If the third country does not admit the alien within 24 hours, he is transferred to a reception centre but is not allowed to lodge an application. The asylum-seeker will remain in the centre until the third country agrees to admit him. However, if it is uncertain whether the third country will admit him, and his claim is considered to be inadmissible or manifestly unfounded in the Netherlands for other reasons, he is readmitted to the accelerated procedure and a negative decision will be taken. If his claim is not inadmissible or manifestly unfounded for other reasons, and after the alien has stayed in a reception centre one month without the third country having admitted him, he will be allowed to enter regular determination procedures in the Netherlands.

Following a negative decision on the basis of the safe third country principle, the authorities of the third country are informed in writing by the Dutch authorities that no examination of the substance of the claim was carried out.

11. Internal Flight Alternative

The existence of an internal flight alternative is one of several reasons for the possible rejection of an asylum claim, but it does not, during the examination of an individual application, automatically lead to rejection or to the accelerated procedure being used. However, the State authorities can decide that a particular asylum-seeker producing country harbours an internal flight alternative. This has the effect that asylum-seekers from that country are refused refugee status in the Netherlands and are sent back to their country of origin, without their cases having been examined in full.

For internal flight alternative to be invoked as an obstacle to recognition, the persecution must be exercised by non-state agents or local authorities. If the persecution comes directly from the State authorities, there can be no safe flight alternative within the country.

12. Rights of Convention Refugees

Freedom of movement and residence: Same as nationals.

Access to employment: Same access to the labour market as nationals.

Access to social security: Same as national.

Access to health services: Same as national.

Access to education: Same as national.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Unmarried couples if they can prove their relationship and have a regular income and housing;
- Unmarried children under 18;
- Reunification is possible for dependent relatives if they can provide clear evidence of their family connections and the degree of dependence (financial, social, emotional...).

13. Complementary Forms of Protection

13.1. Residence permit for humanitarian reasons ('C-status')

Aliens who do not meet the criteria of the 1951 Convention may under certain circumstances be granted this status. It can be granted where an alien cannot reasonably be expected to return to his country of origin given the general living conditions there, or if he runs the risk of being subjected to inhuman treatment if returned. This status may also be granted where an alien has suffered traumatic experiences in his country of origin. The residence permit must be renewed annually.

Holders of a residence permit for humanitarian reasons enjoy the same rights as Convention refugees, with the exception that they must have a sufficient income and adequate housing to be granted family reunification.

13.2. Provisional residence permit

The provisional residence permit may be granted if enforced removal to the country of origin would bring unusual hardship to the alien in connection with the general situation in the country (e.g. if there is a civil war). The original application for asylum must be irrevocably withdrawn from the determination procedure. Provisional residence permits are granted on a yearly basis and are renewable. If the obstacles to expulsion cease to exist during the first three years, the provisional residence permit will be withdrawn. After three years of continuous principal residence in the Netherlands, the alien is entitled to an ordinary residence permit.

Holders of a provisional residence permit are gradually granted social and employment rights. Family reunification is formally not allowed, but can be granted in exceptional circumstances.

14. The Future

A new Aliens Act is supposed to enter into effect on 1 January 2001. The draft is still under discussion and liable to changes, but the main features will probably be as follows:
There will be only one status available for individual asylum-seekers. This temporary refugee status will be valid for one year, with possibility of renewal. After three years with this status an unlimited residence permit can be applied for. There will be one other kind of protection status, but it will not be granted on an individual basis. The Minister of Justice will be able to decide that people coming from a certain country where there is a war-situation will have a year-long right to residence without their individual applications for asylum being processed. If the situation in the country of origin improves, the special temporary right of stay will be withdrawn; if the situation in the country of origin persists, these people will be eligible for the ordinary temporary refugee status. The three year period mentioned above will commence at this point. If an asylum-seeker is rejected, relief, including housing, will cease immediately, and departure must take place at once.

The main questions that have arisen concerning the proposed new Aliens Act aim at the state of insecurity recognised refugees will live in for a period of three years before they get a more permanent right to stay, and the practical implications of the immediate discontinuation of all relief benefits at the moment of rejection.

P O R T U G A L

1. Statistics

1.1. 1998

Total number of applications for asylum in 1998	*340*
(0.1% of the total number of applications in the EU 1998.)	

Main countries of origin (applications) 1998:	Sierra Leone Nigeria Ghana Algeria

Total number of decisions taken 1998	*291*	
of which		
Convention status granted	*4*	(1.4% of decisions)
Humanitarian status granted	*28*	(9.6% of decisions)
Rejected	*259*	(89% of decisions)

2. National Legislation

- Art. 33 of the Constitution
- Law No. 15, establishing a new legal asylum and refugee regime (26 March 1998)
- Decree-Law no. 244 (8 August 1998)

3. Institutional Framework

Admissibility phase:

1st Instance: Director of the Aliens and Borders Service (*Servico de Estrangeiros e Fronteiras*)

2nd Instance: National Commissioner for Refugees (*Comissário Nacional para os Refugiados*)

3rd Instance: Administrative Court (*Tribunal Administrativo de Circulo*)

Concession phase:

1st Instance: Minister of Internal Affairs (*Ministro da Administracao Interna*)

2nd Instance: Supreme Administrative Court (*Supremo Tribunal Administrativo*) (independent)

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where persecution originates from the following sources:

- State authorities;
- Non-state agents (according to practice).

5. Admissibility/Border Procedure

5.1. 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 not treated in the admissibility procedure.

The Director of the Aliens and Border Service decides on the admissibility. An application will be declared inadmissible if it:

- is manifestly unfounded (which includes safe third country and safe country of origin cases);
- shall be examined by another Member State according to the Dublin Convention.

During the procedure, asylum-seekers remain at the border or the international zone at an airport. Expulsion can never be carried out prior to a negative decision in the accelerated process. The decision shall be given within 20 days. It is communicated in written form, including the substantiated reasons for rejection or admittance.

This procedure is fairly new - established by the new asylum law of 1998 - and its full implications on the asylum regime in Portugal will have to be evaluated at a later stage. According to the new law, border guards and airport officials will be trained and given clear instructions on how to handle asylum applications and asylum-seekers. Initially the rules concerning manifestly unfoundedness 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 border procedure.

5.2 Right to appeal

There is a two level right to appeal in the admissibility procedure:

1. National Commissioner for Refugees (*Comissário Nacional para os Refugiados*);

2. Administrative Court (*Tribunal Administrativo de Circulo*).

Time-limit for filing the appeal:

1st level: 5 days;
2nd level: 8 days.

Time-limit for answer:

1st level 48 hours;
2nd level: there is no time-limit.

Suspensive effect:

1st level: Yes;
2nd level: No.

Asylum-seekers are given legal assistance and interpretation on both levels of the appeal procedure.

UNHCR may join reports or country of origin information to the files.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border;
- Airports and seaports;
- Any police authority.

An application for asylum must be lodged with the relevant authority at the latest 8 days after entry.

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 final decision is taken by the Ministry of the Interior, and the NCR provides an advisory opinion.

The applicant is interviewed, and he has access to legal advice. Information concerning the procedure is given to the applicant in a language he understands, or is translated by an interpreter.
Interpretation is provided free of charge. Sometimes when the language spoken by the applicant is unusual or has regional particularities, translation is done by other applicants, who understand the language and translate it into a more common language (e.g. English or French).

Role of UNHCR in determination procedure: UNHCR may issue advisory opinions on the adjudication on the asylum claims, join reports or country of origin information to the file, and, if deemed necessary, interview asylum-seekers and provide social assistance to them.

Role of NGOs in determination procedure: NGOs provide free legal and social assistance in all stages of the procedure.

Visa restrictions: The Portuguese authorities demand visa from nationals of the countries featured on the EU common list. In addition, visa is required for nationals of: Antigua & Barbuda, Bahamas, Barbados, Belize, Bolivia, Bosnia-Herzegovina, Botswana, Brunei, Colombia, Dominica, El Salvador, Estonia, Grenada, Guatemala, Honduras, Jamaica, Kenya, Kiribati, Latvia, Lesotho, Malawi, Malaysia, Marshall Islands, Micronesia, Namibia, Nauru, Nicaragua, Northern Marianas, Panama, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

Carrier's liability: Carriers can be liable to fines for bringing undocumented aliens to Portugal, but only in cases where serious negligence can be proven.

6.1.1. Expulsion

After the negative decision, the asylum-seeker is given a maximum deadline of 30 days to leave the country. Once this deadline has elapsed the asylum-seeker is subject to the aliens legislation on expulsion.

6.2. Right to Appeal

There is a one level right to appeal to the Supreme Administrative Court. The appeal has to be filed within 20 days from the negative decision. There is no time limit for an answer from the Court.

Legal assistance and interpretation is free. UNHCR can submit reports on countries of origin.

6.2.2. Suspensive Effect of Appeal

The appeal has suspensive effect.

6.3. Principle of Non-Refoulement

The principle is implemented with both the 1951 Convention and other human rights instruments taken into account, with the aim that an applicant should not run the risk of being refused admittance before a substantive examination of his case has been made.

6.4. Specific Provisions for Women

There are no specific provisions in the legislation concerning asylum seeking women. Therefore, there is no right for them do deal with female interviewers and interpreters

during the procedure. All individuals (except minors) do however have the right to file independent applications.

Gender-related persecution, such as sexual violence, rape, forced sterilisation and female genital mutilation, is taken into account when deciding on a claim. When gender-related persecution is the result of political or religious persecution, the asylum-seeker is entitled to special protection (under Article 58 of the asylum law, concerning 'vulnerable cases').

6.5. Unaccompanied Minors

Minors are children under 18.

Unaccompanied minors receive special assistance from the *Santa Casa da Misericórdia de Lisboa* (SCML), which provides them with shelter and monthly aid during the entire procedure. Accommodation is given in hostel rooms leased by SCML. Unaccompanied minors 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 education. The authorities have the aim of helping the minor reunite with his family.

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers have the possibility to work if they are admitted to the regular procedure. While an application is still processed within the admissibility procedure, the asylum-seeker does not have the right to work.

Freedom of movement: If the application was submitted at the border the asylum-seeker is required to stay there while the claim is being processed, and 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 he keeps the authorities informed of his whereabouts.

Financial assistance: Asylum-seekers, once admitted to the regular determination procedure, are given a monthly amount of 28,100 Esc. For a maximum of 4 months. This is equivalent to the financial assistance given to nationals in need.

Access to schools: Children of asylum-seekers have access to the education system.

Specific integration training: No specific integration training is given by the authorities, but some NGOs organise language courses in Portuguese for children asylum-seekers.

Health services: Asylum-seekers have access to the national health service, but no specialised health care is given.

6.7. Residence Rights

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.

6.8. Detention Possibilities

Upon arrival: If an asylum-seeker submits an application at the border or at an airport, he has to stay in the international zone until the claim is admitted. After admission asylum-seekers are not detained.

To facilitate deportation: An alien can be detained to facilitate deportation when his claim for asylum has been rejected.

7. Accelerated/Simplified Procedure

Portugal uses an accelerated admissibility procedure (*see 5. Admissibility/Border Procedure*).

8. Manifestly Unfounded Applications

During the admissibility/accelerated procedure, an application for asylum is regarded as manifestly unfounded in the following cases:

- The applicant does not fulfil any of the criteria laid down in the 1951 Convention;
- The alleged fear of persecution has no substance or the application is clearly fraudulent or abusive;
- The asylum-seeker comes from a safe third country;
- The asylum-seeker comes from a safe country of origin;
- The asylum-seeker is the subject of an expulsion order;
- The asylum-seeker has committed one of the serious offences mentioned in Article 1F of the 1951 Convention;
- There are serious grounds based on internal or external security measures or public order;
- The asylum claim was presented after the deadline had expired without due substantiation.

9. The Safe Country of Origin Concept

The principle is implemented, and if the applicant comes from a safe country of origin it can render his application manifestly unfounded, which in turn leads to it being handled in the accelerated procedure.

The guidelines in the Conclusions on safe country of origin are adhered to. There is however no formal list of countries that are considered to be safe.

The presumption of safety is rebuttable within the accelerated appeal procedure.

10. Safe Third Country

10.1. Definition

The concept of safe third country is implemented, and if the applicant comes from a safe third country his application can be deemed manifestly unfounded and dealt with in the accelerated procedure.

The life and freedom of the asylum-seeker must not be threatened in the third country, and the principle of *non-refoulement* must be adhered to by that country. Furthermore, the applicant must not run the risk of being exposed to the death penalty in the third country.

The applicant can only be sent back to a safe third country if he already has obtained protection, or if he has made use of the opportunity, at a border or within that country's territory, to contact its authorities in order to seek protection or when it is proven that he has been admitted.

There is no formal list of safe third countries, but in general these countries must be parties to the 1951 Convention.

The authorities in the third country are not as a rule informed by Portuguese authorities that no examination as to the substance of the asylum-seekers claim was carried out.

10.1.1. Mere Transit

Mere transit through a safe third country does not generally lead to rejection on safe third country grounds, but if the applicant came into contact with the authorities in the third country during a transit, the safe third country concept may be invoked.

10.2. Procedure

See 7. Accelerated/Simplified Procedure.

11. Internal Flight Alternative

The existence of an internal flight alternative is one of many factors examined during the procedure. It does not lead to automatic dismissal of a claim.

12. Rights of Convention Refugees

The rights awarded to Convention refugees also apply for persons granted residence permit for humanitarian reasons or exceptional reasons of national interest. One exception is the right to family reunification, which is only granted to Convention refugees.

Freedom of movement and residence: Refugees can move freely in Portugal, and are free to settle in any part of the country.

Access to employment: The same conditions apply as for nationals, but in a Portuguese company which has more than 5 employees, at least 90% of the work force must be Portuguese nationals.

Access to social security: The same rules as for nationals apply.

Access to health services: Refugees have the same access to health services as nationals.

Access to education: Refugees have the same access to the education system as Portuguese nationals.

Family reunification:
Family reunification is in principle possible for the following categories:

- Spouse;
- Minors under 18.

The following conditions must be fulfilled:

- The person in Portugal must be a recognised Convention refugee;
- The birth or marriage certificate of the family member must be presented;
- The refugee in Portugal must have a secure economic situation, including work contract and rented or owned accommodation;
- The family member must have a valid entry visa.

The family member must submit an application to the UNHCR office in his country of origin, and the refugee in Portugal must submit a request for family reunification to the Aliens and Border Service, which is the authority responsible for taking the decision.

Due to the many conditions, very few cases of family reunification are successful.

13. Complementary Forms of Protection

13.1. Residence permit for humanitarian reasons

May be granted to aliens who are unable to return to their country of origin because of lack of security resulting from armed conflicts or systematic violations of human rights. The permit is valid for one year, and is renewable. After 5 years, it is possible to apply for a residence permit valid for another 5 years.

Holders of the permit have the right to work, but there is no right to family reunification.

13.2. Residence permit for exceptional reasons of national interest

This status is in practice mostly given to people from former Portuguese colonies, such as Mozambique, Angola, Cabo Verde and Sao Tome e Principe. Permits are valid for 2 years, and are renewable.

S P A I N

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*4,001*

1.2. 1998

Total number of applications for asylum in 1998	*6,700*
(2% of the total number of applications in the EU 1998.)	

Main countries of origin (Applications) 1998:	Algeria Romania Sierra Leone Nigeria Morocco

Total number of decisions taken 1998		*6,840*
of which		
Convention status granted	*240*	(3.5% of decisions)
Humanitarian status granted*	*730*	(10.7% of decisions)
Rejected	*5,870*	(85.8% of decisions)

* Includes all subsidiary forms of status.

2. National Legislation

- Art. 13 of the Constitution;
- Law on Asylum (26 March 1984, last amended 19 May 1994);
- Royal Decree 203/95 (10 February 1995);
- Circular no. 6/1995 of 17 April 1995, by the Secretary of state of the Interior, conveying procedures derived from the entry into force of the Implementing Convention of the Schengen Agreement.

3. Institutional Framework

1st Instance: Asylum and Refugee Office (OAR, under the Ministry of the Interior) and the Minister of the Interior

2nd Instance: *Audiencia Nacional* (under the *Consejo General del Poder Judicial*)

3rd Instance: Supreme Court (*Tribunal Supremo*, under the *Consejo General del Poder Judicial*)

The organs mentioned as second and third instance are judicial bodies that as such are independent, but are subordinate to the *Consejo General del Poder Judicial*.

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non-state agents if the state authorities tolerate or promote the acts of persecution.

If the authorities in the country of origin have demonstrated their willingness to provide protection to victims of persecution by non-state agents and react systematically to investigate the respective crimes and try to prevent the occurrence of human rights violations, refugee status can not be granted.

5. Admissibility Procedure

The Spanish refugee determination procedures include an accelerated admissibility procedure that applies to all border applications (land border, sea- and airport). If a claim is declared to be manifestly unfounded, it is subject to an accelerated appeal procedure. If it is declared admissible, the applicant can enter the country and the claim is thereafter dealt with in the regular procedure.

The accelerated/admissibility procedure was in 1997 used for over 50% of all applications in Spain.

5.1. Procedure

The application is processed by the Asylum and Refugee Office (OAR), which interviews the asylum-seeker (at some border points interviews are made by border police). Generally, asylum applications are examined on the basis of a questionnaire and any available documentation. OAR prepares a report and forwards a proposal to the Minister of the Interior, who takes the decision on admissibility. The decision must be communicated to the applicant within 4 days of the submission of the application. If the authorities fail to respect the strict time frame, the applicant is automatically admitted to the regular determination procedure.

5.2. Appeal

If the decision is negative, the asylum-seeker can, within 24 hours, request an administrative review by the Minister of the Interior, who has to make a final decision within 2 days of the request for review. Thus, a final decision must be reached within 7 days, including administrative review, during which time the applicant remains at the border point or in the airport. If the deadline for the decision is not met by the authorities, the application is automatically admitted to the regular status determination procedure and the person is allowed to enter the territory.

Within the short time frame of the administrative review, UNHCR examines the case and forwards a reasoned opinion to the authorities. A positive recommendation regarding an asylum-seeker that the authorities denied admission to the regular procedure has relevance to the suspensive effect of the last resort for the applicant - an appeal before the *Audiencia Nacional* within a deadline of 2 months. This means that whenever the asylum-seeker indicates his intention to lodge an appeal before the *Audiencia Nacional*, he is authorised to enter Spanish territory.

If however UNHCR agrees with the Minister of the Interior on the admissibility of the asylum claim, the authorities may start deportation proceedings. The asylum-seeker can within two months lodge an appeal with the *Audiencia Nacional*, but in this case the appeal does *not* have suspensive effect, unless specifically requested by the applicant and deemed appropriate by the *Audiencia Nacional*. Therefore, the effect of the appeal is limited.

The decision is communicated to the applicant in writing, mentioning also available legal recourse.

The UNHCR Office in Spain has free access to asylum-seekers and must be informed of all applications.

Specific guarantees:
A number of special measures and rights are guaranteed for the purpose of ensuring a fair procedure:

- Distribution of information leaflet on the Spanish asylum determination procedure;
- Right to Legal Assistance;
- Right to Assistance by an Interpreter;
- Right to Medical Assistance;
- Right to contact UNHCR at any moment;
- Confidentiality of all information provided by the asylum-seeker;
- In case deadlines for the decision-making are not met by the authorities, the respective applicants are automatically admitted to the regular determination procedure.

6. Regular Procedure

6.1 Status Determination Procedure

Application Possibilities:

- Asylum and Refugee Office (in Madrid);
- Aliens Offices (*Oficina de Extranjeria*);
- Police authorities at border points (including airports and harbours);
- Provincial Police Departments or Police stations indicated by an instruction of the Ministry of the Interior;
- Spanish Embassies and Consulates abroad.

The access of the asylum-seeker to refugee status determination procedures is guaranteed by Spanish law. The 1994 Asylum Law provides a special safeguard for asylum-seekers in its Article 5(1), according to which no alien who applies for asylum can be rejected at the border or expelled until the application has been declared inadmissible or examined on its merits. Consequently, in theory there does not exist any risk of refusal at the border prior to examination of the case. However, the examination is not necessarily of a substantive nature, since some of the inadmission causes contained in Article 5(6) of the 1994 Asylum Law are of a purely formal nature (e.g. transfer to another Member State under the Dublin Convention, or application of the safe third country principle).

The authorities that handle applications are generally qualified to do so, but there can be some problems with respect to applications lodged in-country with police authorities, who are not specialised in the processing of asylum claims.

An asylum-seeker has to file an application for asylum within one month of entry, except when the alien in question is staying legally in Spain with a permit exceeding one month or when it is a change of circumstances in the country of origin that motivates the application. The time limit is in practice not applied rigidly, and it is sometimes possible to justify a late application by referring to personal circumstances.

The OAR handles the refugee status determination procedure in the administrative phase. The procedure concludes with the recommendation by the Inter-Ministerial Eligibility Commission which is submitted to the Minister of Interior for its endorsement. The Inter-Ministerial Eligibility Commission consists of representatives from the Ministries of Interior, Foreign Affairs, Justice, Labour and Social Affairs as well as a representative from UNHCR in an advisory capacity (without a vote).

There does not exist any obligation on the part of the authorities to conduct interviews with each and every asylum-seeker. However, asylum-seekers arriving at Madrid International Airport are regularly interviewed by an official of OAR.

The asylum-seeker is given an information leaflet and is entitled to assistance by an interpreter.

The Dublin Convention: In 1998, Spain submitted 160 requests to other EU Member States concerning Dublin-cases, and itself received 548 Dublin-requests from other States.

Role of UNHCR in determination procedure:
UNHCR has a very active role, both in the admissibility procedure and in the regular procedure, and has permanent access to individual asylum files. The UNHCR office

issues a reasoned opinion with respect to every asylum application that is filed at border points and with respect to each asylum application lodged in-territory that OAR considers should not be admitted to the regular procedure. Moreover, the UNHCR office in Spain participates in an observer capacity at the Inter-Ministerial Eligibility Commission which meets on a monthly basis. Asylum-seekers are entitled to seek contact with UNHCR at any time during the procedure, and a separate interview by UNHCR is possible.

Role of NGOs in determination procedure: Spanish NGOs providing legal counselling to asylum-seekers are entitled to submit written reports supporting an asylum request. These reports are taken into consideration by the Inter-Ministerial Eligibility Commission. Moreover, asylum-seekers in Spain are entitled to establish contact with any NGO providing legal or social counselling to asylum-seekers at any stage of the procedure.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition, visa is required for nationals of: Antigua & Barbuda, Bahamas, Barbados, Belize, Bosnia-Herzegovina, Botswana, Brunei, Dominica, Grenada, Jamaica, Kiribati, Lesotho, Malawi, Marshall Islands, Micronesia, Namibia, Nauru, Northern Marianas, Seychelles, Solomon Islands, South Africa, St. Kitts & Nevis, St. Lucia, St. Vincent & Gren., Swaziland, Tonga, Trinidad & Tobago, Trust Territ. The Pacific Is./Palau, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

Carrier's liability: There are no fines for carriers who bring undocumented asylum-seekers to Spain, but the carrier is responsible for the return of the rejected asylum-seekers.

6.1.1. Expulsion

A rejected asylum-seeker receives an exit order, which gives him 15 days to leave the country voluntarily. Asylum-seekers who have not left the country within this period are expelled as a result of a deportation order.

A deportation order can be appealed to the regional judicial courts. The appeal does not have automatic suspensive effect, but it can be requested. It (suspensive effect) may be granted if enforcement of the deportation might cause serious or irreparable damage to the applicant and if public interest is not seriously affected by the suspension. Generally, suspension can be granted if the applicant has family or business ties in Spain, and it is refused when the deportation order follows a criminal offence.

6.2. Right to Appeal

There is a two level right to appeal:

1st level: *Audiencia Nacional*

2nd level: Supreme Court (*Tribunal Supremo*, subordinated to the *Consejo General del Poder Judicial*)

The appeal to the *Audiencia Nacional* has to be filed within 2 months. There is no time limit for the answer.

Free legal assistance and interpretation are provided in the first appeal. Upon request by the competent judicial authorities, UNHCR submits a reasoned opinion with respect to the asylum claim concerned.

A negative decision by the *Audiencia Nacional* can be appealed to the Supreme Court, which only examines the legality of the decision.

6.2.2. Suspensive Effect of Appeal

There is no automatic suspensive effect. It must be applied for, and is only granted under exceptional circumstances.

6.3. Principle of Non-Refoulement

Spanish legislation contains strong prohibitions against *refoulement*, and also against sending an alien to another country where he does not have the corresponding protection. Article 33 of the 1951 Convention as well as the European Convention on Human Rights and the UN Convention Against Torture are taken into account.

6.4. Specific Provisions for Women

Asylum-seeking women have the right to be interviewed by female staff and interpreters during the procedures. They also have a right to file independent applications.

Gender-related persecution, such as sexual violence, rape, forced sterilisation and female genital mutilation, are taken into account when the claim for asylum is examined, and this type of persecution often forms a basis at least for the granting of residence permits on humanitarian grounds.

6.5. Unaccompanied Minors

In Spain minors are children under 18.

Unaccompanied minor asylum-seekers are assigned a legal tutor to act *in loco parentis* and to represent the minor in the asylum determination procedures. The minors will be placed under the care of the local governmental Department for the Protection of Minors.

Procedure for family reunification: The competent authorities shall co-operate with the institutions responsible for the protection and care of minors, in order to proceed with the family reunification in the country of origin or in the country in which adult family members reside.

Long-term measures: If repatriation is not possible, the Department for Protection of Minors will request the respective Government Delegate to issue the necessary residence permit.

6.6 Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers can be authorised to work on a case by case basis. The Provincial Delegation for Labour and Social Affairs takes the decision following a report from OAR.

Freedom of movement: Asylum-seekers are free to move as they wish within the country, but must keep the police informed of their whereabouts.

Financial assistance: Financial assistance may be given to asylum-seekers on a case by case basis. Asylum-seekers in need can also be provided with social, educational and medical assistance. The type of assistance to be granted is accorded by the Ministry of Labour and Social Affairs following an assessment by the National Institute for Migration and Social Services. As a general rule it includes accommodation in a reception centre or an alternative economic aid.

Access to schools: The Spanish legislation provides for compulsory schooling for children under the age of 16, regardless of their nationality or status. Therefore, children of asylum-seekers benefit from the public education system on the same conditions as Spanish children.

Specialised services provided, especially for health: All asylum-seekers are entitled to medical assistance at any stage of the asylum procedure. The Spanish Government is financing assistance programmes for refugees and asylum-seekers through local NGOs, under which programmes reception centres have been established that provide temporary accommodation (up to 6 months) to asylum-seekers and refugees including food, clothing, language courses, medical assistance free of charge (specialised services by social workers) and pocket money.

6.7. Residence Rights

Before admission into the procedure: In the context of the accelerated border point procedure (maximum 7 days), the applicant is only allowed to enter Spanish territory once his application is admitted to the regular status determination procedure or if UNHCR submitted a favourable recommendation *and* the asylum-seeker indicates his intention to lodge an appeal before the *Audiencia Nacional* within a deadline of 2 months. The asylum-seeker is then issued with a card for asylum-seekers which authorises him to reside in Spain until a decision on his application is taken.

An alien lodging an application for asylum in-territory is directly issued with a card for asylum-seekers, which permits him to stay legally in Spain awaiting the decision on the admission of his case.

Once in the procedure: Once in the regular determination procedure asylum-seekers are entitled to reside in Spain. Their permit as asylum-seekers is valid for 3 months and is renewable.

6.8. Detention Possibilities

Upon arrival: During the processing of the admission procedure of asylum applications filed at border points (maximum 7 days), applicants will remain at the border, where adequate facilities have to be provided to accommodate them.

In an appeal case concerning the length of detention, the Constitutional Court stated that detention at the airport following a rejection of admission to the regular status determination procedure for a period beyond 72 hours does not constitute an infraction of the legal system, as the persons concerned are free to return to their country of origin or to a third country. Therefore this kind of detention cannot be considered as deprivation of freedom, but as an administrative measure with a view to preventing illegal aliens from entering Spanish territory after denial of admission to the regular status determination procedure.

Detention is not allowed to facilitate deportation.

7. Accelerated Procedure

An application filed inside the country may be processed and rejected in an accelerated admissibility procedure due to the same criteria as in the border procedure. However, the time limits are different.

OAR prepares the case, and must forward a proposal to the Minister of the Interior within 30 days. UNHCR gives a reasoned opinion on each case, but this opinion is not binding and has no legal effect. The minister of the Interior must reach a decision within another 30 days. If no decision is reached by this time (after a total of 60 days after the application was submitted) the application shall be transferred to the regular determination procedure.

There is in the in-country accelerated procedure no possibility of an administrative review of the decision of the Minister of the Interior, but appeal of a negative decision is possible to the *Audiencia Nacional* within 2 months. This appeal does not have suspensive effect unless the Court deems it appropriate. The earlier negative decision by the Minister of the Interior is usually accompanied by an exit order with the content that the asylum-seeker has 15 days to leave the country voluntarily, and if suspensive effect is not granted by the *Audiencia Nacional* and the time limit has expired, the applicant is subjected to a deportation procedure and forced to leave.

8. Manifestly Unfounded Applications

During the admissibility and accelerated procedures, an application for asylum can be regarded as manifestly unfounded, and is therefore rejected, in the following cases:

- There are no substantial or formal grounds for fear of persecution within the meaning of the 1951 Convention - the application is based on grounds which are not related to the granting of refugee status;

- The claim repeats one which has already been rejected, and circumstances in the country of origin have not changed since the first rejection took place;
- The claim is based on manifestly unfounded facts, data or statements which are outdated and do not justify a need for protection;
- The applicant would have the right to reside in or be granted asylum in another state - implementation of the safe third country principle;
- The applicant has previously been recognised as a refugee by another state;
- The asylum claim falls under the provisions of Article 1F and 33 (2) of the 1951 Convention;
- The Dublin Convention is applicable.

9. The Safe Country of Origin Concept

In practice, EU Member States and some other countries are presumed to be 'safe'. However, the asylum applications would not be rejected on the basis of the safe country of origin principle, but would be considered to be manifestly unfounded for lack of credibility in the light of the general situation of the country, unless in the particular case a study in depth appears to be justified. Thus, the claim can be processed in the accelerated procedure, and the rules on appeal for that procedure apply.

10. Safe Third Country

10.1. Definition

Theoretically Spain follows the 1992 London Resolution on safe third countries, but in practise the safe third country concept is never applied by itself, but always in conjunction with another inadmission cause. An application can for safe third country reasons be declared inadmissible in the accelerated procedures, but it has almost exclusively been used for Schengen and Dublin Convention removals, after the applications in question were declared manifestly unfounded on other substantive grounds.

The following safeguards are used:

- Life or freedom of applicant must not be threatened in host third country within the meaning of 1951 Convention Article 33;
- There must be effective protection against *refoulement* in the third country;
- The applicant must not risk being exposed to torture or degrading treatment in the third country;
- The applicant must not risk being exposed to death penalty in the third country;
- Protection must already have been granted or there must exist a clear opportunity to seek protection or clear evidence of ability to assimilate in the third country.

Countries concerned: Any country in which observance of the 1951 Convention, the European Convention on Human Rights, and the relevant UN human rights conventions is guaranteed.

10.2. Procedure

If an applicant comes to Spain through a safe third country, his application may be handled in the admissibility/accelerated procedure. However, it must be pointed out that the safe third country concept is very rarely applied *per se* by the Spanish authorities. It was earlier a cause for sending asylum-seekers back to other EU Member States, a practice which has now been superseded by the Dublin Convention.

11. Internal Flight Alternative

The existence of an internal flight alternative is a circumstance that is looked into when assessing each individual case. It does not automatically lead to application of the accelerated procedure or to rejection.

12. Rights of Convention Refugees

Freedom of movement and residence: Refugees are allowed to settle and travel wherever they wish but the police must be informed of their whereabouts.

Access to employment: Refugees have the same access to the labour market as nationals.

Access to social security: Same as for Spanish nationals.

Access to health services: Same as for Spanish nationals.

Access to education: Refugee children have the same access to the education system as nationals.

Specialised services: There exist special NGO and governmental programmes aiming at facilitating integration of refugees.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Stable partner;
- Unmarried children under 18;
- Parents over 65.

The recognised refugee living in Spain must submit an application for family reunification. The relatives abroad must then apply for asylum to a Spanish consulate or embassy. OAR investigates the case, and the decision is taken by the Minister of the Interior. A negative decision may be appealed to the *Audiencia Nacional*.

13. Complementary Forms of Protection

13.1. Residence permit on humanitarian grounds and for reasons of public interest

This status is mainly given to persons who left their country of origin due to conflicts or serious disturbances of a political, ethnic or religious character, but who do not qualify for Convention refugee status. The decision to grant a residence permit is taken by the Minister of the Interior. The permit is renewable on a yearly basis.

Holders of this status have to obtain a permit to be able to work, and family reunification can be granted subject to certain conditions concerning time spent in Spain and economic sustenance.

A residence permit based on humanitarian grounds may also be accorded to groups for the same reasons, but in this case the decision is taken by the Council of Ministers, based on a proposal from the Minister for Foreign Affairs and on the advice of the Inter-Ministerial Commission for Aliens Affairs.

14. The Future

A new Bill is under way in Spain that is intended to replace the present Aliens Act from 1985. It will however probably not be approved by the Parliament until after the next general elections in the spring of 2000.

Some of the proposed changes relate to immigrants in Spain (i.e. not asylum-seekers or refugees specifically). Undocumented immigrants who arrived before 1 June 1999 and have been staying in Spain for at least two years will be granted residence and work permits. Foreign residents will have the right to vote in local elections. Immigrants under 18 will have the same rights to education and access to the health care system as Spanish citizens. Those immigrants given residence and work permits will have a right to family reunification with spouse, financially dependent children under 25 and other minor financially dependent ascendants and siblings. Recognised refugees already enjoy several of these rights, persons on a lesser protection-status or undocumented aliens do not. The new Bill, if it is passed, sets out to extend the scope of social rights to these less protected groups.

S W E D E N

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*5,094*

1.2. 1998

Total number of applications for asylum in 1998	*12,844*
(3.7% of the total number of applications in the EU 1998.)	
of which	
Women (including minors)	*4,843*
Men (including minors)	*8,001*
Unaccompanied minors	*291*

Main countries of origin (applications) 1998:	Iraq Federal Republic of Yugoslavia Bosnia and Herzegovina

Total number of decisions taken 1998			*13,570*
of which			
Convention status granted		*1,100*	(8% of decisions)
Alternative status granted		*5,970*	(44% of decisions)
	of which		
	Risk of death penalty or torture	*866*	
	Conflict or natural disaster	*119*	
	Persecution on grounds of gender or homosexuality	*2*	
	Other humanitarian grounds	*4,983*	
Rejected		*6,500*	(48% of decisions)
	of which		
	Manifestly unfounded	*486*	
	Safe third country cases	*2,029*	

2. National Legislation

- Aliens Act (1989:529), amended October 1997
- Aliens Ordinance (1989:547)

3. Institutional Framework

1st Instance: Swedish Immigration Board (*Statens invandrarverk*, SIV, under the Ministry of Foreign Affairs)

2nd Instance: Alien Appeals Board (*Utlänningsnämnden*, under the Ministry of Foreign Affairs)

There is currently a proposal under discussion in Sweden to replace the Aliens Appeals Board as second instance with aliens Courts. The regional Courts in Stockholm, Göteborg and Malmö (possibly also Linköping) are proposed to acquire the function of aliens Courts. The changes are suggested to come into force 1 July 2001.

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

After recent amendments to the Aliens Act applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non-state agents (third parties) when the persecution is encouraged or permitted by the authorities, or when the authorities prove unable to offer protection;
- Non-state agents also when there is no State.

5. Admissibility Procedure

There is no separate admissibility procedure in Sweden.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Airports and seaports
- Police

There is no fixed time limit within which to file an asylum application in Sweden.

Instructions are given to border control that they, in case of an asylum-seeker showing up at the border wishing to file an application for asylum, must immediately contact the Immigration Board (SIV). An asylum application is thus regarded as having been made.

The Immigration Board is responsible for handling the application, interviewing the applicant and giving a decision on the claim. During the examination the applicant will

continuously, in his own language, and both orally and in writing, be given information as to the proceedings. Interpretation is free, paid for out of public funds. Asylum-seekers may call in a legal adviser or other counsellor to assist them during the procedure. Where asylum seekers cannot pay the services of a legal adviser out of their own resources, such legal aid is often granted and a lawyer is appointed and paid for out of public funds, except in clear cases where it is *obvious* that the applicant will be allowed or will not be allowed to remain in Sweden.

Final decision: The final decision is communicated in writing, including the reasons for the decision and information on the possibilities and procedures for appeal. If it is not given to the asylum seeker in a language which he understands, it can be explained through an interpreter.

Role of the Dublin Convention: During 1998 Sweden transferred 1,488 asylum-seekers to other Member States in accordance with the Dublin Convention. Of those, 1,321 were transferred to Germany. During the same period, Sweden admitted 99 asylum-seekers from other Member States, most of the applicants coming from Denmark and the United Kingdom.

Role of UNHCR in determination procedure: When making their applications asylum-seekers are advised that they may contact UNHCR at all stages of the procedure.

Role of NGOs in determination procedure: The information above concerning UNHCR is also valid for aid organisations.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition, visa is required from nationals of: Antigua & Barbuda, Bosnia-Herzegovina, Colombia, Croatia, Kenya, Marshall Islands, Micronesia, Nauru, Northern Marianas, South Africa, St. Kitts & Nevis, Tonga, Trust Territ. The Pacific Is./Palau, Vanuatu and Western Samoa.

Carrier's liability: Sweden has no regulations imposing fines on carriers when they have transported undocumented aliens into the territory, but there is an economic responsibility on the part of the carrier concerning the return trip of the rejected alien.

6.1.1. Expulsion

During 1998, 3,800 rejected asylum-seekers were expelled from Sweden.

6.2. Right to Appeal

There is a one-level right of appeal, which is in fact first lodged with the Immigration Board which made the first decision on the application. SIV re-examines the case, and if it *does not* find any grounds for changing the initial decision, the case if forwarded to the Alien Appeals Board. Thus, if SIV finds grounds for a reconsideration of the initial decision, the case is never dealt with by the Appeals Board. SIV or the Alien Appeals Board can refer a case to the Ministry of Foreign Affairs, which is usually done only when there are sensitive policy issues at stake.

The time-limit within which to lodge the appeal is 3 weeks.

6.2.2. Suspensive Effect of Appeal

Suspensive effect of the appeal is not automatic, but a stay enforcement of the expulsion measure can always be requested. The applicant will not be deported before a decision on that request has been taken.

However, other rules apply if the application is deemed to be manifestly unfounded.

6.3. Principle of Non-Refoulement

According to the Swedish Aliens Act Chapter 8 Sections 1 and 2, an alien cannot be sent to a country where he risks capital or corporal punishment or being subjected to torture or other inhuman or degrading treatment or punishment (thereby complying with Article 3 of the Convention Against Torture), and furthermore he must not be sent to a country where he risks persecution in the sense of the 1951 Convention. The alien may not be sent to a country where he is not protected from subsequent *refoulement*.

There are exceptions to these provisions, in cases where public order and safety is 'seriously endangered' if the alien remains in Sweden and the persecution threatening him in the other country does not imply danger to his life or is of a particularly grave nature, and where his activities endanger the national security of Sweden.

6.4. Specific Provisions for Women

There are no specific provisions relating to female asylum-seekers, but in practice specific attention is given to this issue. Instructions are given to SIV staff that the use of female examiners should always be considered when the applicant is a woman, and such consideration is also given concerning interpreters.

6.5. Unaccompanied Minors

Minor asylum-seekers are accommodated in special reception centres under the supervision of SIV.

6.6. Social Rights for Asylum Seekers

Access to work permit: Asylum-seekers do not automatically have a work permit, but applicants whose applications are expected to take more than 4 months to process are allowed to work. In such cases they will have to pay a contribution for food and accommodation if they stay in a reception centre.

Freedom of movement: Asylum-seekers are free to travel within the country without restrictions.

Financial assistance: Assistance is provided in kind, e.g. clothing, medical care, etc.

Access to schools: Children of asylum-seekers have access to the educational system. Normally they attend classes specially instituted for asylum-seekers.

Specific integration training: Authorities organise integration training for children to prepare them for the regular school system. Adults who live in residential centres take part in 20 hours of organised activities per week. For adults living outside residential centres language classes are organised.

Health care: For adult asylum-seekers only emergency medical or dental treatment is available. Children under 18 are entitled to medical and dental care on the same basis as Swedish children.

Housing: Approximately half of the asylum-seekers stay in government-funded housing centres during the examination of their claim.

6.7. Residence Rights

Asylum-seekers have a right to stay in Sweden until a final decision has been taken on their applications (not always including appeal decision).

6.8. Detention Possibilities

Depending on the circumstances, a decision on detention can be taken by the police, SIV, the Alien Appeals Board or the Minister of Foreign Affairs. When the decision has been taken by the police, one of the other three competent authorities must confirm it. The decision to detain must be reviewed after two weeks, unless the case has been appealed to the Alien Appeals Board.

Detention orders issued by the police or SIV can be appealed to the County Administrative Court. In case of a negative decision there, a review on a point of law or principle can be requested of the Administrative Court of Appeal. Detention orders issued by the Minister of Foreign Affairs can be appealed to the Supreme Administrative Court.

7. Accelerated/Simplified Procedure

7.1. Procedure

An accelerated procedure has been introduced in Sweden in accordance with the Resolution on manifestly unfounded applications. The procedure concerns applications that are considered to be manifestly unfounded and cases where the applicant can be sent back to a 'safe third country'. The decision is, as in the regular procedure, taken by SIV.

When it is manifest from an individual examination that no grounds for asylum exist and that there are no other grounds for residence permit, the procedure prescribes expulsion with immediate effect. The expulsion order must be given and be enforced within three months, according to law. In practice, most decisions are given within a week, with the average just under a month.

Role of UNHCR/NGOs: UNHCR and NGOs are only allowed restricted access to asylum-seekers whose applications are processed in the accelerated procedure. Authorities do however inform UNHCR of the handling of some expulsions on the grounds of the

applicant coming from a safe third country, and UNHCR can make a request to the competent authorities to gain access to individual cases.

7.2. Right to appeal

There is a right to appeal a decision in the accelerated procedure, but simplified procedures are used and the effect of the appeal is limited.

The appeal is, as in the regular procedure, filed with the Alien Appeals Board.

There is no automatic suspensive effect. A request for suspensive effect can be made, but it is rarely granted. If the applicant asks for such an injunction of the expulsion order, SIV has to review the case (though this rarely happens). If SIV rejects the request for injunction, the case is automatically referred to the Alien Appeals Board, which may make its review before the expulsion of the asylum-seeker, but *it is not obliged to*. Thus in practice it is unlikely that the appeal has suspensive effect in any substantial number of cases.

8. Manifestly Unfounded Applications

As mentioned above, an application is processed in an accelerated procedure if it is qualified as being manifestly unfounded. An application can be considered as manifestly unfounded for the following reasons:

- If the asylum-seeker has no substantial or formal grounds for fear of persecution within the meaning of the 1951 Convention, e.g. when he comes from a country where human rights violations may occur, but the reason for the asylum application submitted does not meet the requirements for asylum;
- If the claim is obviously unsubstantiated, *mala fida* or abusive;
- When the asylum-seeker comes from a country where it is established with certainty that human rights violations do not occur, i.e. the applicant comes from a safe country of origin.

9. The Safe Country of Origin Concept

The principle is implemented. It does not exist in the legislation as such, but the criteria laid down in the Conclusions on safe countries of origin are used in practice. There are however no formal list of safe countries of origin, rather each application is examined and decided upon on an individual basis, after a personal interview with the applicant.

The presumption of a country of origin as being 'safe' is rebuttable in the appeal procedure: the asylum-seeker can present additional information showing that there is a danger of persecution in his particular case.

10. Safe Third Country

10.1. Definition

Sweden has incorporated the principle on safe third country (as set out in the Resolution on safe third countries) into its legislation.

The safe third country principle is implemented when an asylum-seeker, prior to arrival in Sweden, stopped in another country where protection against persecution could have been given.

In these cases, the life or freedom of the applicant must not be threatened in the third country. This applies also with respect to the principle of *non-refoulement*, which must be considered *ex officio* by the authorities. The aim is that the asylum-seeker shall be protected from the risk of being sent to his country of origin or to another country where he does not enjoy protection.

The Swedish authorities do not have a formal list of safe third countries, but one could be said to have been established through practice, including EU Member States (covered by the Dublin Convention), other Western countries, Bulgaria, the Czech Republic, Romania and Slovakia. The criteria used to establish the 'safety' of a country are the provisions of the 1951 Convention, Article 3 of the European Convention on Human Rights and Article 3 of the Convention Against Torture.

10.1.1. Mere Transit

Swedish authorities can apply the safe third country rule in cases of 'mere transit' through a third country, but individual circumstances are assessed in each separate case. The applicant must have 'stayed' in the third transit country, but no specific time frame is applied.

10.2. Procedure

An inquiry is conducted by the police with the aim of establishing the applicant's identity, travel route and country of origin. After these facts have been established, the case is handed over to SIV for further investigation. If the safe third country principle is deemed to be applicable, the case may not be admitted to the regular procedure or be considered on its merits.

The accelerated procedure is followed (*see 7. Accelerated/Simplified Procedure*).

The written decision is handed to the asylum-seeker in Swedish, but it is normally translated by an interpreter. If the decision is negative the reasons must be stated, and it must contain information on appeal rights (the accelerated procedure applies: residence permit refused; expulsion with immediate effect; no suspensive effect of appeal.)

The authorities in third countries are usually not informed by Swedish authorities that no examination as to the substance of the case was carried out. The only document issued to the asylum-seeker is a copy in Swedish of the decision on inadmissibility. However, in

cases where a special readmission agreement exists between Sweden and the third country, information of the non-substantial examination is given.

11. Internal Flight Alternative

A case where an internal flight alternative exists is usually not considered to be manifestly unfounded by the Swedish authorities, thus immediate expulsion is not applied. The existence of an internal flight alternative is rather taken into consideration in conjunction with other factors during the determination procedures.

12. Rights of Convention Refugees

Freedom of movement and residence: Same as nationals.

Access to employment: Same access to the labour market as nationals.

Access to health services: Same as nationals.

Access to education: Same as for nationals.

Family reunification:
Family reunification is in principle possible for the following categories:

- Spouse of the recognised refugee;
- Stable partner of the recognised refugee;
- Unmarried children under 18 of the recognised refugee, if the children are themselves without children and have previously lived with their parents;
- Other close relatives or persons who were not members of the same household but have strong humanitarian reasons for applying for family reunification.

13. Complementary Forms of Protection

13.1. Aliens otherwise in need of protection

With the amendment of the Alien Act in 1997 the category of 'aliens otherwise in need of protection' was introduced. To some extent such aliens get the same rights as refugees, e.g. permanent residence permit. They also have the same right to work and to family reunification.

Such protection may be granted to:

- aliens who have a well-founded fear of being punished by the death penalty or corporal punishment or being subjected to torture or other kinds of inhuman or degrading treatment or punishment;
- aliens who need protection due to external or internal armed conflict or are unable to return to their country of origin because of an environmental catastrophe; and

- aliens who have a well-founded fear of persecution for reasons of their gender or homosexuality.

A residence permit may also be issued for humanitarian reasons.

U N I T E D K I N G D O M

1. Statistics

1.1. 1999

Total number of applications for asylum in the *first six months* of 1999	*30,447*

1.2. 1998

Total number of applications for asylum in 1998	*58,900*
(17% of the total number of applications in the EU 1998.)	

Main countries of origin (Applications) 1998:	Federal Republic of Yugoslavia Somalia Sri Lanka, Russian Federation Afghanistan Turkey Pakistan

Total number of decisions taken 1998		*31,540*
of which		
Convention status granted	*5,330*	(16.9% of decisions)
Humanitarian status granted*	*3,900*	(12.4% of decisions)
Rejected	*17,470*	(55.4% of decisions)
Otherwise closed	*4,840*	(15.3% of decisions)

* Includes all subsidiary forms of status.

2. National Legislation

- British Nationality Act 1981
- Asylum And Immigration Appeals Act 1993
- Asylum And Immigration Act 1996
- Immigration Rules - HC 395 (1994)
- The Asylum Appeals (Procedure) Rules 1996
- Extradition Act 1989, Chapter 33

3. Institutional Framework

1st Instance: Secretary of State for Home Affairs

2nd Instance: Special Adjudicator; Immigration Appellate Authority (IAA)

3rd Instance: Immigration Appeal Tribunal (IAT)

4th Instance: Court of Appeal

5th Instance: High Court

4. Definition of a "Refugee" (Article 1A 1951 Convention) - Origin of Persecution

Applicants for asylum can be awarded refugee status in situations where the persecution originates from the following sources:

- State authorities;
- Non-state agents when the persecution is knowingly tolerated by the authorities, or if they are unable or unwilling to offer effective protection;
- Non-state agents also in cases where there is no state in the country of origin.

5. Application of Admissibility Procedure

There is no admissibility system within the British asylum determination system.

6. Regular Procedure

6.1. Status Determination Procedure

Application Possibilities:

- Border
- Airport
- Seaport
- In-country
- Some diplomatic posts abroad

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

Border guards are instructed on how to handle an application for asylum made at border points (airports or seaports). The application is submitted to immigration officers at the border point, who after that must refer the claim to the Home Office. Applications made in-country are directly submitted to the Asylum Division of the Home Office.

All asylum-applications made at the border, at airports or after entry into the country 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 Convention refugee status, the granting of exceptional leave to remain (ELR) and the decision to refuse an application. The screening unit of the Asylum Division holds a brief interview with the applicant to ascertain his identity, immigration status and if he travelled through a safe third country on his way to the United Kingdom (only in case of a border/port applicant). 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. After the interview the applicant has 5 days to submit further written representations regarding the asylum claim. This faster procedure is however not used for applicants from Afghanistan, Bosnia, Croatia, the Gulf States, Iran, Iraq, Liberia, Liberia, Rwanda, Somalia, former Yugoslavia and for Palestinians.

The asylum-seeker has the right to remain in the country until the final decision on his application has been reached. The applicant may call in a legal advisor at any stage of the procedure. Legal aid is available if the asylum-seeker does not have the means to pay for it himself. The Home Office have founded the Refugee Legal Centre, which provides free legal advice and representation. In-country asylum-seekers are given a leaflet with information on procedural rights and obligations. Border applicants may turn to the Immigration Service for information on the procedures. Interpreters are provided during the determination procedure, both at interviews and oral hearings.

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. If it is not possible to hand it to the asylum-seeker in a language he understands, it can be translated by an interpreter.

Role of UNHCR in determination procedure: Applicants have the right to contact UNHCR at any stage in the determination procedure. UNHCR is also sent copies of all rejections of asylum applications if the asylum-seeker appeals the decision. Furthermore, UNHCR can choose to be a party to appeal hearings. The authorities may also consult UNHCR on questions of interpretation and in particularly difficult or sensitive cases.

Role of NGOs in determination procedure: The Refugee Arrivals Project (RAP), an NGO funded by the Home Office, is represented at Heathrow, Gatwick and Stanstead airports, where it can assist and give advice to asylum-seekers. At the seaport of Dover, the Kent Committee for the Welfare of Migrants is present to provide assistance to asylum-seekers. The main NGO representing the interests of refugees in the United Kingdom is the Refugee Council. Among other things it provides practical advice on the possibilities of housing, financial assistance, and other social rights.

Visa restrictions: Visa is demanded from citizens of states that are enumerated on the common list of countries citizens of which require a visa to enter the common area issued by the EU. In addition, visa is required (as of June 1999) from nationals of: Bosnia-Herzegovina, Colombia, Ecuador, Kenya, the Slovak Republic and the Vatican State.

A transit visa requirement has been introduced for certain nationalities to curb misuse of the waiver system for visa nationals ostensibly transiting the UK en route to a third country.

Carrier's liability: Carriers have the duty to check that passengers have a valid passport and, if required, visa, and that the documents are not forgeries (the forgery has to be 'reasonably apparent'). A carrier can be charged £2000 for each undocumented or falsely documented passenger that it brings onto British territory.

6.2. Right to Appeal

There is a two level right to appeal within the regular determination procedure.

Appeal at the first level is made to the Immigration Appellate Authority (IAA) (or 'special adjudicators'). It must be lodged within 7 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 5 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 is possible to the Immigration Appeal Tribunal (IAT). The appeal has to be submitted within 5 days, and an answer to whether leave for appeal will be granted must be given within 10 days. After that, a date for hearing shall be fixed within 5 days. The Tribunal only considers points of law.

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 consider points of law.

Finally, the applicant can, against the decision of the Appeal Tribunal, apply for leave to seek judicial review with the High Court.

Appeal may be filed from abroad.

6.2.2. Suspensive Effect of Appeal

Appeal in the regular procedure has suspensive effect.

6.3. Principle of Non-Refoulement

The right not to be refouled is laid down by law. According to Court decisions, it is also of relevance whether the country that a person will be deported to adheres to the principle. Thus, the authorities must also afford protection from chain-*refoulement*.

6.4. Specific Provisions for Women

There are no specific provisions concerning asylum-seeking women in the United Kingdom, but in practice special attention is given to the problems that they may have.

6.5. Unaccompanied Minors

Unaccompanied minors are the subject of several special measures. They are referred to specifically in the Immigration Rules, and applications by unaccompanied minors have a priority for consideration in the determination procedures. Specific training is provided for caseworkers, and each unaccompanied minor is given an individual adviser to assist during the procedures.

6.6. Social Rights for Asylum Seekers

Access to work permit: After having waited at least 6 months for a decision, asylum-seekers can apply for a work permit that will give them free access to the labour market. The permit is granted by the Home Office on a discretionary basis. Thus, it is not an entitlement that asylum-seekers automatically have after the six month period, rather an assessment is made in each individual case.

The rule is consequently that if a first decision has been taken within six months, there is no possibility to apply for a work permit. However, following a decision by the High Court in 1997, if a decision on the asylum claim has been delivered within six months, but the asylum-seeker subsequently appealed the decision, he *can* apply for a work permit. Now, this decision has again been reversed, but the original system has not been re-implemented yet. With the coming into force of the new regulations in April 2000, the government plans to implement the old rule again without exception, so that work permit can only be applied for by an asylum-seeker if no decision has been delivered after six months. (It is to be noted that the plans also include the goal that no decision shall take more than six months to deliver.)

Freedom of movement: Asylum-seekers applying at a port of entry are detained (except in some cases when they get a temporary permission to enter, *see 6.8 Detention Possibilities*). In-country applicants are free to move as they please within the country.

Financial assistance: Financial assistance is only given to port applicants, and only during the initial stage of the determination procedure. If a negative decision is given by the Home Office during the initial stage, an asylum-seeker does not get any financial assistance during the appeal procedure that might follow. The financial aid to port applicants can take the form of income support and housing benefit. All cases are assessed individually, and the amounts vary according to, *inter alia*, age and size of the family.

In-country applicants who are destitute must be supported by local authorities.

Financial assistance can also be given to children in need in exceptional circumstances

Access to schools: School is compulsory for children between 5 and 16.

Specific integration training: There are no specific provisions concerning special classes for children who do not speak English. However, adult education institutions have a duty to offer adequate language classes for all adults.

6.7. Residence Rights

Asylum-seekers have a right to stay in the United Kingdom until a decision has been made on their application.

6.8. Detention Possibilities

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 he will have access to suitable accommodation and that he will stay in a known location.

An asylum-seeker that has been detained for more than 6 days can apply for bail, if no decision on his request has yet been taken. He can also apply for bail pending the hearing of an appeal against a negative first decision.

7. Accelerated/Simplified Procedure

7.1. Procedure

There exists an accelerated procedure relating to the *appeal procedure* for manifestly unfounded applications and applicants coming from safe third countries.

As described above, the Home Office examines the substance of a claim for asylum. After this examination, the Secretary of State has to consider whether to 'certify' the claim, i.e. make it subject to the accelerated appeals procedure on the grounds of being manifestly unfounded or on safe third country grounds. This in practice means that the case is rejected at first instance for being manifestly unfounded, and that only the accelerated appeals procedure remains as a revenue for the applicant.

7.2. Appeal

The decision to certify an application can be appealed to the Immigration Appellate Authority (IAA). Special adjudicators will then review the case. Time limit for filing the appeal is 7 days, except for detained port applicants who must file the appeal within 2 days. The decision must be given within 10 days, but this time limit may be extended by the special adjudicators.

The appeal has suspensive effect, except if it concerns a case where the applicant is sent back to another EU Member State (according to the Dublin Convention) or if the applicant is being sent back to another 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. Removal is then suspended until a final judgement has been made. A person that is forced to leave the United Kingdom but still wants to appeal the decision must file his appeal from abroad within 28 days of departure.

If the special adjudicators' decision is negative, there is no more appeal possibility.

8. Manifestly Unfounded Applications

If the Secretary of State certifies a claim for asylum as being manifestly unfounded it is processed in the accelerated appeals procedure.

An application can be regarded as manifestly unfounded in the following cases:

- The claim does not show fear of persecution in the sense of the 1951 Convention;
- The circumstances which have given rise to a legitimate fear of persecution no longer exist;
- The claim is fraudulent or the evidence given to prove the fear of persecution is false;
- The claim is 'frivolous';
- The applicant cannot produce a valid passport and cannot give a reasonable explanation as to why.

9. The Safe Country of Origin Concept

The principle is implemented and a list of safe countries exists. The so called 'white list' includes Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania. Unless an applicant coming from one of these countries can show a reasonable likelihood that the presumption of safety is erroneous in his case, the claim is dealt with in the accelerated procedure.

The use of a 'white list' is due to be discontinued as soon as the new asylum regulations come into force.

10. Safe Third Country

10.1. Definition

EU Member States, Norway, Switzerland, USA and Canada are normally considered as safe third countries by British authorities, but there is no formal list.

If the Home Office during the initial interview with an asylum-seeker finds that he has come to The United Kingdom through a safe third country, the case is refused and thereafter handled in the accelerated procedure.

10.1.1. Mere Transit

The safe third country rule is used also in cases where the applicant has transited the third country without having made contact with its authorities. The main requirement is that such a contact was possible.

10.2. Procedure

The accelerated procedure is used, with special appeal procedures for safe third country cases. *(See 7. Accelerated/Simplified Procedure.)* If the application was filed at the border (airport or seaport), the applicant have to stay there until a decision on safe third country has been made.

An asylum-seeker rejected on safe third country grounds is given an explanatory letter to be presented to the third country's authorities, stating that he is removed on those grounds.

UNHCR role: The High Commissioner does not intervene in individual cases, but supplies the authorities with assessments and information on specific safe third countries.

11. Internal Flight Alternative

An application may be refused where an internal flight alternative exists, but it does not automatically lead to the accelerated procedure. Each case is assessed individually. Furthermore, the existence of an internal flight alternative can only be invoked if the persecution in question is exercised by non-state agents.

12. Rights of Convention Refugees

Freedom of movement: Refugees have the same freedom of movement as nationals.

Access to employment: Refugees have the same access as nationals.

Access to social security: The same terms are used for social benefits to refugees as for nationals.

Access to health services: Same as nationals.

Access to education: School attendance is compulsory for children between 5 and 16 in the United Kingdom.

Family reunification:
Family reunification is possible for the following categories:

- Spouse;
- Dependent children, under 18 for boys and 21 for girls.

13. Complementary Forms of Protection

13.1. Exceptional Leave to (enter or) Remain (ELR)

ELR may be granted in cases where there are overwhelming compassionate circumstances or where circumstances prevailing in a country are such that it would be unreasonable to

return a rejected asylum-seeker there. There is no provision for the granting of ELR in the Immigration Rules but it is a discretionary decision taken by the Secretary of State for the Home Office. ELR is granted for one year and may be extended further for two 3-year periods. After seven years, an application can be submitted for indefinite leave to remain (ILR).

Regarding freedom of movement and access to employment, education, social security and health services, persons with ELR have the same rights as Convention refugees (and nationals). Family reunification is however only possible after the person with ELR have stayed 4 years in the United Kingdom.

14. The Future

A new Immigration and Asylum Bill is currently under the process of being adopted in the United Kingdom. It is expected to receive Royal Assent in November 1999, and implementation will begin 1 April 2000. Several of the provisions are either existing in the old legislation or have been introduced during 1998 and 1999 in accordance with the Government's White Paper 'Fairer, Faster and Firmer - A Modern Approach to Immigration and Asylum', published on 27 July 1998. The most significant changes concerning asylum will be the following:

- The appeal procedures will only include one instance of appeal - the Immigration Appeal Tribunal. The right of appeal will extend both to those asylum-seekers that are lawfully in the United Kingdom, and those who have entered without the requested travel documents.
- The current system where local authorities have the responsibility to support in-country asylum-seekers will be replaced by a new support system, where asylum-seekers in genuine need will get assistance from a new national agency funded and administered nationally by the Home Office. Accommodation will be provided without choice of location, and assistance will mainly be given in kind. (Support to unaccompanied minor asylum-seekers will still be given according to the old system.)
- The time taken for the handling of applications will be gradually shorter, and the goal is that by 1 April 2001 the initial stage of the determination procedures will take 2 months, and the appeal stage an additional 4 months. Thus, the total maximum time for the processing of an asylum application is hoped to be 6 months.