



# OVERVIEW OF THE ASYLUM PROCEDURE

Legal instruments: Immigration Act, Refugees Act, Reception of Asylum Seekers Regulations, Procedural standards for granting and withdrawing international protection Regulations.

## ACCESS TO THE ASYLUM PROCEDURE

Asylum-seekers arriving irregularly:

- They are pre-screened upon arrival by the Police and Health authorities.
- They are taken to an Initial Reception Centre (IRC) for further health screening and initial identification. Applicants can be kept in the IRC for maximum 7 days. During the time in IRC, migrants are provided with information about their right to apply for international protection, they are assigned a case worker and are interviewed by the Police.
- A decision whether to detain<sup>1</sup> the applicant is made by the Principal Immigration Officer. The decision is based on the list of six detention grounds foreseen in EU law. After the decision is made, the applicant is either detained or offered a place in an open reception center.
- An age assessment may be conducted for unaccompanied minors.
- A vulnerability assessment may be conducted (not automatic).
- The same procedure applies to migrants arriving irregularly by plane and arrested at the airport. However, in practice such applicants are usually automatically detained without being placed in the IRC.
- UNHCR and NGOs have access to the IRC, yet rules are unclear.

Asylum-seekers arriving regularly:

- They are not detained.
- They are offered accommodation in open reception centers.
- Asylum-seekers relocated from Greece and Italy are sent to the IRC upon arrival before being offered accommodation in open reception centers.

---

<sup>1</sup> See FACTSHEET No 20 “DETENTION”



## THE ASYLUM PROCEDURE

- The Office of Refugee Commissioner (RefCom) is the authority responsible for examining and determining applications for international protection at First Instance.
- The examination procedure should not exceed 21 months from the lodging of the application. Most of the decisions taken by the RefCom are, in practice, taken before the lapse of 6 months.

### *Overview of the procedure:*

- First stage of the procedure: asylum-seekers fill in a Preliminary Questionnaire. At this point, a decision is taken as to whether the applicant is eligible for transfer to another Member State in terms of Dublin III Regulation<sup>2</sup>.
- Asylum-seekers then fill in the Application Form which is considered to be an official application for international protection.
- A recorded interview with the applicant is conducted by a caseworker with the assistance, if necessary, of an interpreter.
- Asylum-seekers are contacted and required to pick up the decision at the Refugee Commissioner office once this is ready.
- Although foreseen in the legislation, in practice, RefCom rarely applies the accelerated procedure for first applicants and an interview is generally conducted for each applicant.

### *Access to an effective remedy:*

- In case of rejection, an asylum-seeker has 2 weeks to appeal (the period starts to run from the day the applicant picks up the decision from RefCom's office).
- The Refugees Appeals Board (RAB) is an administrative tribunal entrusted to hear and determine appeals against recommendations issued by the Refugee Commissioner.
- The Board consists of 3 separate chambers, each made up of 4 persons - a chairperson and an additional 3 members.
- An appeal to RAB has a suspensive effect.
- No time limit is set in law for the Board to take a decision. Usually decisions are taken within 3 to 6 months. However, appeals are known to have taken over 12 months to be decided.
- An onward appeal is not provided in the law in case of a negative decision from the Refugee Appeals Board but a form of judicial review of the decisions is possible.
- Judicial review does not deal with the merits of the asylum claim but only with the manner in which the concerned administrative authority reached its decision. Such remedy would not automatically have suspensive effect, but this may be requested.
- Judicial review is a regular court procedure, assessing whether administrative decisions comply with required procedural rules such as legality, nature of considerations referred to and duty to give reasons.

---

<sup>2</sup> See FACTSHEET No 17 "THE DUBLIN PROCEDURE"



## SPECIAL PROCEDURES

- Accelerated procedures may apply for applications that are manifestly unfounded, or when the applicant has or could have found safe protection elsewhere under the Refugee Convention or the asylum Directives or when the applicant is coming from a safe country.
- In such cases, the recommendation of RefCom is transmitted to the RAB which has 3 days to review the recommendation. In those cases, asylum-seekers are not entitled to a real possibility of appeal.
- In practice, accelerated procedures are rarely implemented, except for subsequent applications and for safe country of origin's applicants.

## LEGAL AID

- No free legal assistance is provided at first instance. An applicant is allowed to consult a legal adviser at his or her own expense. The only free legal assistance available to asylum seekers at first instance is that provided by lawyers working with NGOs.
- At appeal stage, free legal aid is granted under the same conditions applicable to Maltese nationals. In practice, the appeal forms that the applicants fill in and submit to the RAB contain a request for legal aid.
- No free legal aid is available for subsequent applications.
- For judicial reviews, applicants could be granted legal aid if eligible under the general rules for legal aid in court proceedings.

## VULNERABLE APPLICANTS

- Accelerated procedures are usually not implemented for vulnerable applicants.
- Unaccompanied minors are represented and assisted by a Government-appointed social worker during all the phases of the asylum procedure.
- The special procedural guarantees foreseen in the EU directives apply for vulnerable applicants. No information is available as to what these are in practice.
- In practice, a vulnerability assessment is not conducted for all asylum-seekers.

