

Country factsheet Luxembourg

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the issues covered in the two reports.

1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

2009 Top 10 Nationalities		2008 Top 10 Nationalities	
Total	485	Total	455
Kosovo	130	Serbia	220
Iraq	65	Bosnia and Herzegovina	30
Bosnia and Herzegovina	35	Iraq	30
Russian Federation	25	Albania	15
Albania	20	Montenegro	15
Iran (Islamic Republic of)	20	Iran (Islamic Republic of)	15
Belarus	15	Russian Federation	10
Serbia	15	Eritrea	10
Eritrea	10	Somalia	10
Somalia	10	Cameroon	10

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	110	0	n.a.	360	470	110	23.4
Iraq	50	0	n.a.	10	60	50	83.3
Russian Federation	15	0	n.a.	25	35	15	42.9
Albania	10	0	n.a.	20	30	10	33.3
Kosovo	5	0	n.a.	155	165	5	3.0
Iran (Islamic Republic of)	5	0	n.a.	15	25	5	20.0

Statistics on final decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	20	10	n.a.	170	205	30	14.6
Kosovo	15	5	n.a.	85	105	20	19.0
Iran (Islamic Republic of)	5	0	n.a.	5	10	5	50.0
Bosnia and Herzegovina	0	0	n.a.	20	20	0	0.0
Albania	0	0	n.a.	10	10	0	0.0
Russian Federation	0	0	n.a.	10	10	0	0.0

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can, particularly be the case with statistics provided under 'humanitarian status'. For a more detailed understanding of the data, the reader is invited to consult national statistics at: <http://www.mae.lu/en/Site-MAE/Immigration>.

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available. Kosovo (under United Nations Security Council Regulation 1244).

¹ Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

² The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: [Eurostat](http://www.eurostat.eu), Data extracted on 01 September 2010.

2. Background Information

Asylum act¹

[Droit d'asile et formes complémentaires de protection \(2006\)](#)

Asylum authorities

First instance authority

[Ministry of Foreign Affairs - Directorate of Immigration](#) (Ministre des Affaires étrangères – la Direction de l’Immigration - Service des réfugiés)

Second instance authority

[Tribunal Administratif](#)

3. Duty to inform asylum seekers

The asylum law guarantees to the asylum seeker the right to information as well as the opportunity to communicate with the UNHCR. Pursuant to its Article 6, the asylum seeker is informed in writing of the content of the procedure, his/her rights and obligations during the procedure and possible consequences for non-compliance with the obligations and non-cooperation with the asylum authority. The information is given in a language, which the asylum seeker is reasonably supposed to understand (Article 6(3)). Furthermore, the asylum seeker shall be informed of the possibility to be assisted, free of charge, by an interpreter with command of the language, which the asylum seeker is reasonably supposed to understand, and of the right to choose a legal counsel enrolled in the Bar Association or have one appointed by the President of the Bar Association (Article 7(1)).

In August 2010, the Directorate for Immigration provided the following information to the FRA as regards written information materials.

Written information materials	Information leaflet translated into 11 languages.
Provided when?	At the time of lodging the application and during the first instance interview.
Provided by whom?	At the time of lodging the application by the responsible agent who conducts the very first interview regarding identity, origin, spoken languages etc. During the first instance interview by the eligible officer.
Has an evaluation of information tools been carried out?	No.

¹ The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

4. Effective Remedy

Type of procedures

The asylum law regulates several types of procedure: (i) Dublin procedure; (ii) admissibility procedure (safe third country or subsequent applications); (iii) regular procedure; and (iv) accelerated procedure (simple/clear-cut cases enumerated in Article 20(1)). Admissibility decisions as well as accelerated procedures should be completed within two months (Articles 16(8) and 20(1)).

Duty to state reasons for rejection and procedure to appeal

Article 7(3) of the asylum law guarantees to the asylum seeker – if not assisted or represented by a legal counsel – the right to be informed in a language, which he/she is reasonably supposed to understand, of the content of a decision taken by the asylum authority. The information provided shall indicate the possibility of lodging an appeal. Furthermore, separate provisions regulating individual procedures stipulate the duty of the asylum authority to issue a motivated decision accompanied by the information on the right to an effective remedy, which shall be communicated to the asylum seeker in writing (Article 15(2), 16(9), 19(1), 20(2)).

Time limits for appeal

Dublin II decisions as well as decisions on inadmissibility (safe third country) may be appealed before the administrative tribunal within one month from the date of notification of the decision (Article 17). The asylum seeker may lodge an appeal against a decision rejecting the asylum application, as well as against a decision ordering the asylum seeker to leave the territory, within one month from the date of its notification (Article 19(3)). The appeal against a decision rejecting the asylum application, issued in the accelerated procedure, has to be filed with the administrative tribunal within 15 days from the notification of the decision (Article 20(4)).

Type of procedure	Time limits	Right to remain
Regular procedure	1 month	Automatic suspensive effect.
Accelerated procedure	15 days	Automatic suspensive effect.
Subsequent applications	1 month	No automatic suspensive effect but the appellate body may grant suspensive effect in the individual case.
Dublin procedure and decisions on inadmissibility	1 month	No automatic suspensive effect but the appellate body may grant suspensive effect in the individual case.

Right to remain in the country during appeal

The time limit for lodging an appeal against a negative decision on the asylum application issued in the regular procedure as well as the appeal as such, lodged within the time limit, has automatic suspensive effect (Article 19(3)). The same applies for an appeal filed with the

administrative tribunal against a negative decision issued in the accelerated procedure (Article 20(4)).

In cases not specified in the asylum law (Dublin procedure and decisions on inadmissibility, such as subsequent applications), the Law on Procedure before the Administrative Judiciary applies, which does not provide for a suspensive effect of appeals unless ordered otherwise by the President of the Tribunal, or by the substituting judge. The application on the suspension has to be filed separately with the President of the Tribunal. Suspension may be granted only if two conditions are met: (1) the execution of the contested decision would cause to the appellant serious and irreparable harm and (2) the arguments submitted in support of the appeal seem reasonable (Article 11).

Legal Aid

The asylum seeker has to be informed of his/her right to choose a legal counsel or to have one appointed by the President of the Bar Association (Article 7(1)). The fact that this information has been provided to the asylum seeker must be registered in the file (Article 7(1)). In the appellate procedure before the Administrative Tribunal, the appeal has to be delivered to the tribunal with a signature of a legal counsel enrolled in the list created by the councils of the Bar Association (Article 1, Law on Procedure before the Administrative Judiciary).

Language assistance

The asylum seeker must be informed of his/her right to free language assistance. The fact that this information has been provided to the asylum seeker must be registered in the file (Article 7(1)). The asylum authority must choose an interpreter able to ensure an appropriate communication level between the asylum seeker and the person conducting the interview (Article 9(6)(b)).

Hearing

The procedure before the Administrative Tribunal is normally conducted in a written procedure and appellants are obliged to be represented by a lawyer at the hearing.² Article 14 of the Law on Procedure before the Administrative Judiciary states that after the examination of the case, the court may order investigative measures, which can also include an oral hearing, when necessary.

² See the information provided on the official website of the judiciary at: <http://www.justice.public.lu/fr/organisation-justice/juridictions-administratives/procedure-recours/index.html>.