

Country factsheet Portugal

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	140	Total	160
Eritrea	20	Colombia	25
Guinea	20	Sri Lanka	25
Mauritania	15	Congo, the Democratic Republic of the	20
Colombia	15	Bosnia and Herzegovina	10
Nigeria	10	Guinea	10
Sri Lanka	10	Nigeria	10
Bosnia and Herzegovina	5	Serbia	5
Ukraine	5	Eritrea	5
Cameroon	5	Somalia	5
Congo, the Democratic Republic of the	5	Congo	5

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	5	45	n.a.	45	95	50	52.6
Colombia	0	15	n.a.	0	15	15	100.0
Congo	5	5	n.a.	0	10	10	100.0
Eritrea	0	5	n.a.	0	5	5	100.0
Somalia	0	5	n.a.	0	5	5	100.0
Sri Lanka	0	5	n.a.	0	5	5	100.0

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	0	0	0	n.a.	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://sefstat.sef.pt>.

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. The Democratic Republic of the Congo.

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://sefstat.sef.pt), Data extracted on 01 September 2010.

2. Background Information

Asylum act¹

[Act 27/2008 establishing conditions and procedures for granting asylum and subsidiary protection](#)

Asylum authorities

First instance authority

[Aliens and Borders Service](#) (Servico de Estrangeiros e Fronteiras - SEF), Ministry of Home Affairs (the Minister of Home Affairs takes a decision on whether to grant or refuse to grant asylum after having received the proposal by the SEF)

Second instance authority

Administrative Courts

3. Duty to inform asylum seekers

Within three days after registering the asylum seeker's application, the asylum seeker shall receive a document certifying reception of the application as well as information on the rights and obligations of asylum seekers (Article 14). Article 49 of the asylum law enumerates a number of guarantees for asylum applicants, including (i) the right to be informed of the admissibility decision and its content; (ii) to benefit, whenever necessary, from the services of an interpreter to assist the applicant in the formalisation of the application and in the course of the respective procedure; and (iii) to benefit from legal assistance. Furthermore, the Immigration Service shall provide the asylum seeker with an informative brochure written in a language the asylum seeker can understand and which may also be provided orally (Article 49(2)).

In August 2010, the Aliens and Borders Service provided the following information to the FRA as regards written information materials.

Written information materials	Information leaflet translated into 5 languages.
Provided when?	At the time of lodging the application, at the registration of the application and during the first instance interview.
Provided by whom?	By the case 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

Chapter IV of the Asylum Law regulates a special procedure for determining the responsible EU Member State according to the Dublin II Regulation.

Every asylum application is first subject to an admissibility assessment. Such assessment can be undertaken in an accelerated manner in the circumstances set forth in Article 19 of the Law, which include for example, safe country of origin, safe third country or subsequent applications where no new facts are presented. Applications deemed admissible are reviewed in the regular procedure.

A special regime exists for applications lodged at the border; a decision on the admissibility shall be issued within a maximum period of five days (Article 23). If the application is admissible, it will be examined in the regular procedure (Article 27 (f)).

Duty to state reasons for rejection and procedure to appeal

Articles 20, 24(4) and 29 require that decisions issued in the admissibility, border as well as regular procedure state the reasons as well as information on the right to judicial review. In case of a negative decision on a subsequent application, the migration authority shall inform the asylum seeker of the reasons for the inadmissibility of the application as well as of the possibilities of judicial review before the administrative courts (Article 33(6)).

Time limits for appeal

Decision on the asylum application issued in the accelerated procedure may be appealed against within eight days after its notification before the administrative courts (Article 22). The same time limit applies also to inadmissible subsequent applications. A shorter time limit of 72 hours applies for decisions issued in a border procedure (Article 25). Negative decisions issued in a regular procedure may be appealed against within 15 days from the notification of the decision (Article 30). The asylum seeker may lodge an appeal against a decision issued in the Dublin procedure within five days from its notification (Article 37(4)).

Type of procedure	Time limits	Right to remain
Regular procedure	15 days	Automatic suspensive effect.
Decisions on inadmissibility issued in the accelerated procedure	8 days	Automatic suspensive effect.
Subsequent applications	8 days	No automatic suspensive effect.
Border procedure	72 hours	Automatic suspensive effect.
Dublin procedure	5 days	Automatic suspensive effect.

Right to remain in the country during appeal

Asylum seekers are entitled to stay in the national territory for the purpose of asylum procedure, until a decision on admissibility is taken (Article 11). Appeals lodged against the decisions issued in the accelerated procedure, in the border procedure, in the Dublin procedure and in the regular procedure do have suspensive effect. Only an appeal against a decision on inadmissibility of the subsequent asylum application does not have suspensive effect (Article 33(6)).

Legal Aid

The [Portuguese Refugee Council](#), an NGO responsible for helping the asylum seekers, as well as UNHCR may according to the law provide direct legal advice to asylum seekers at every stage of the procedure (Article 49(4)). The Portuguese Refugee Council assists asylum seekers and provides them with legal aid free of charge. Article 62 of the [Code of Administrative Procedure](#) guarantees the right by the asylum seeker or his/her lawyer to consult information on file. However, Article 49(5) of the asylum law provides for certain exceptions to protect national security. Legal advisors and other legal representatives are entitled to access restricted areas, such as detention or transit areas, in order to speak to the asylum seeker (Article 49(6)).

Language assistance

Pursuant to Article 49(1) of the asylum law, the asylum seeker is entitled to benefit, whenever necessary, from the services of an interpreter to assist him/her in the formalization of the application and in the course of the respective procedure. Article 5 of the [Code of Administrative Procedure](#) provides for the principle of equality of arms.

Hearing

Article 8 of the [Code of Administrative Procedure](#) stipulates the principle of participation of individuals who seek to defend their interests before the administrative court. Articles 100 – 105 regulate this principle further by stating that the parties to the dispute have the right to be heard by the court before taking the final decision on the merits of the case. The court decides in each case whether the right to be heard will be carried out orally or in writing. The court has jurisdiction to review questions of both fact and law (Article 102). Article 103 lists exceptions to the right to be heard.