

Country factsheet Belgium

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	22,955	Total	15,940
Russian Federation	2,875	Russian Federation	2,765
Kosovo	2,515	Serbia	1,695
Afghanistan	2,055	Iraq	1,180
Iraq	1,535	Afghanistan	1,045
Armenia	1,475	Guinea	725
Guinea	1,230	Iran (Islamic Republic of)	725
Serbia	1,020	Congo, the Democratic Republic of the	640
Iran (Islamic Republic of)	855	Armenia	595
Congo, the Democratic Republic of the	765	Slovak Republic	515
Slovak Republic	605	Cameroon	370

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	2,425	480	n.a.	12,400	15,310	2,910	19
Iraq	305	300	n.a.	575	1,180	605	51.3
Russian Federation	300	0	n.a.	1,785	2,085	300	14.4
Afghanistan	170	115	n.a.	960	1,245	285	22.9
Guinea	260	5	n.a.	440	700	265	37.9
Rwanda	140	0	n.a.	130	270	140	51.9

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	170	115	n.a.	7,270	7,550	280	3.7
Burundi	0	40	n.a.	65	105	40	38.1
Turkey	30	5	n.a.	100	135	35	25.9
Guinea	30	0	n.a.	170	200	30	15.0
Russian Federation	25	5	n.a.	1,485	1,520	30	2.0
Iraq	0	30	n.a.	365	395	30	7.6

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: <https://dofi.ibz.be/fr/1024/frame.htm>.

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); 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](#), Data extracted on 01 September 2010.

2. Background Information

Asylum legislation¹

[Aliens Act \(1980\)](#) (in French)

[Reception Law \(2007\)](#) (in French)

Asylum authorities

First instance authority

[Ministry of Interior - Aliens Office \(AO\)](#) (in charge of registration of the asylum applications, application of the Dublin II Regulation and preliminary examination of repeat applications)

[Office of the Commissioner General for Refugees and Stateless Persons \(CGRS\)](#) (in charge of examining the application, granting or refusing refugee status or subsidiary protection)

Second instance authority

[Council for Aliens Law Litigation \(CALL\)](#) (in charge of appeals of decisions taken by the Aliens Office and the CGRS)

3. Duty to inform asylum seekers

The legal provisions on the information for the asylum seekers are included in the Royal Decree relating to the procedure at Aliens Office level (Article 2-3 of the Royal Decree of 11 July 2003 on the procedure before the Aliens Office).² Article 3 develops the content of a brochure distributed to the applicants at the time they claim to be refugees or introduce their application (information on the procedure, on the application of the Dublin II Regulation, on criteria of the Geneva Convention, possibility of legal assistance, etc.)

Article 14 of the Reception Law requires the [Federal Agency for the reception of asylum seekers](#) to provide the asylum seeker with an information brochure in a language s/he understands with the information on the rights and obligations of the asylum seekers as well as on the competent authorities and organisations that can provide medical, social and legal assistance. The Agency also ensures that the beneficiary of the reception has access to the interpretation and translation services to exercise his/her rights and obligations (Article 15, Reception Law). Asylum seekers can also find an information [brochure on the Aliens Office website](#). Information leaflets exist in many languages at reception centres, offices of government agencies and NGOs. Specific leaflets for female asylum seekers and specific leaflets explaining the asylum procedure for applicants in a closed centre, at a border or in prison are also available.

As regards a child-sensitive approach, it is worth mentioning the so-called '[Kizito comics](#)' published in 2008. It tells the story of Kizito, a separated child arriving in Belgium and seeking asylum. Through a fictional approach, it refers to the different steps of the asylum procedure and to the life in Belgium. The content has been conceived in order to be understood only with the drawings, for separated children who do not speak the language of the country, and dialogues have been simplified. The comic strip comes with a pedagogical booklet, explaining the overall asylum procedure, the different steps and stakeholders.

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

² Arrêté royal fixant certains éléments de la procédure à suivre par le service de l'Office des étrangers chargé de l'examen des demandes d'asile sur la base de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

In August 2010, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) provided the following information to the FRA as regards written information materials.

Written information materials	The CGRS brochure on the procedure translated into 8 languages as well as the Kizito comic and the brochure for female applicants.
Provided when?	At the time of lodging the application, at the registration of the application and during the first instance interview.
Provided by whom?	At the time of lodging the application – by the Immigration Department. During the first instance interview – by the interviewer.
Has an evaluation of information tools been carried out?	No

4. Effective Remedy

Type of procedures

The Aliens Office (AO) is in charge of determining whether Belgium is responsible for the treatment of the asylum application or not (Dublin II Regulation; Art. 51/5), and may declare subsequent applications inadmissible, in the absence of new elements (Art. 51/8).

Belgian legislation does not foresee different first instance procedures. However, this does not mean that each asylum application is processed within the same timeframe. The Aliens Act provides situations (Art. 52, 52/2 and 57/6) in which the determining authority (CGRS) shall accelerate or prioritize the procedure and has to take a decision within a prescribed time period (for example, when the application is deceptive, the applicant is a minor, is placed in detention, etc.). This can vary from 2 months to 15 days, or to 5 days.

Duty to state reasons for rejection and procedure to appeal

The Asylum Act states that decisions of both the CGRS (Article 57/6 para. 2) and Council for Aliens Law Litigation (Article 39/65) have to be motivated. Depending on which language has been chosen by the Aliens Office (either French or Dutch depending on the knowledge of the applicant of one of these languages and the need for an interpreter), all the decisions will be written in that language. According to Article 3 of the Law of 29 July 1991 concerning the formal motivation of administrative acts, the motivation should state the considerations in fact and law upon which the decision is based and should be sufficient. In accordance with Article 2 para. 4 of the Law of 11 April 1994 concerning the transparency of administration, every document containing notification of an administrative decision or administrative act provides information on how to challenge the decision or act. The document should name the institution to which to appeal as well as the applicable time frames.

Time limits for appeal

The asylum seeker may lodge an appeal against Dublin decision rejecting the asylum application, issued by the Aliens Office, within 30 days following the notification of the decision. In case of multiple asylum applications, the asylum seeker may lodge an appeal against a decision refusing to consider the new application on merits within 30 days following

the notification of the decision. A negative decision on the asylum application issued by the CGRS may be appealed against either within 15 days or within 30 days of the notification of the decision depending on the procedure in which the application was examined.

Type of procedure	Time limits	Right to remain
Regular procedure	30 days	Automatic suspensive effect
Accelerated/Prioritized procedure (CGRS decisions)	15 days	Automatic suspensive effect
Appeal against negative admissibility decisions including subsequent applications	30 days	No suspensive effect, unless Article 51/8 has been applied incorrectly
Dublin procedure	30 days	No suspensive effect, unless the CALL decides otherwise

Right to remain in the country during appeal

Appeals generally have suspensive effect. The Aliens Act provides that, without the applicant's consent, no removal measures can be adopted while time limits for appeal have not lapsed and while the appeal is being heard (Article 39/70). The general rule does however not apply in the following cases: (1) an appeal against a Dublin decision by the Aliens Office (a separate appeal for suspension can be lodged); (2) an appeal lodged by an EU national against a decision by the CGRS not to examine his/her application (Article 57/6, 2°) (a separate appeal for suspension can be lodged); (3) an appeal against a decision by the Aliens Office not to further examine a subsequent application (Article 51/8), unless Article 51/8 has been incorrectly applied.

Legal Aid

The Aliens Act grants free legal assistance to all appellants, at every stage of the procedure and in either procedures (regular and accelerated) (Articles 39/56 and 90). Article 33 of the Reception Law guarantees the asylum seekers an efficient access to the legal aid within the first and the second instance, envisaged by Articles 508(1)-(23) of the Judicial Code.

The asylum seeker may consult his or her file in the time period specified in the document setting the hearing date (Article 39/61; see also Government Information Act (Public Access) of 4 April 1994).

Language assistance

The Asylum Act, on the one hand, states that the appeal generally has to be filed in French or in Dutch (Art. 39/69, para. 6); however, on the other one, it grants the right to free and unlimited (i.e. both during the hearing and the preparation of the appeal) language assistance: in fact, upon registration the asylum seeker is asked to indicate whether he/she needs an interpreter (Art. 51/4, para. 2).

Hearing

Article 39/60 states that the second instance procedure is written but that the parties to the dispute and their lawyers can express their observations orally while the hearing is being held. In the reviewed literature no particular obstacles to access the Council for Aliens Law Litigation for a hearing were found.