

The Asylum Procedures Directive

Asylum in Europe
Now, it's up to you.



Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

The chances for asylum seekers of gaining protection depend greatly upon the procedures used to assess their cases. Even the most compelling claim for international protection may fail if it is not fully and fairly considered.

The Directive aims to harmonize procedural guarantees given during the asylum procedure and to uphold the quality of asylum decision-making in the Member States. The Directive confirms certain basic procedural guarantees such as the right to a personal interview, the right to receive information and to communicate with UNHCR, the right to a lawyer, and the right to appeal. However, some provisions in the Directive have the potential to lead to breaches of international refugee law, including to the *refoulement* of persons in need of international protection.

During the negotiations on the Directive in 2005, MEPs were only consulted. In the end the Council adopted standards which were lower than those proposed by the Commission and supported by the EP. As a result, disparities in asylum procedures across the EU remain and the chance of being granted international protection varies depending on the Member State in which an asylum application is lodged. Exceptions and derogations are such that, in practice, minimum safeguards do not necessarily apply to all asylum-seekers in the EU.

After fleeing persecution in their country of origin, individuals still face enormous difficulties in the asylum procedure in the EU. In order to explain the reasons which forced them to flee their country and seek protection in Europe, asylum seekers should have the right to a personal interview. Inadequate asylum procedures may prevent persons from presenting all the facts of their application and deprive persons fleeing persecution, war or torture of the protection they deserve.

What matters

- **All asylum seekers should have access to a fair and efficient asylum procedure**
People seeking protection should have the opportunity to lodge their asylum application and have their case heard. Today, Member States use accelerated procedures with lower safeguards in a wide range of situations, not necessarily related to the validity of claims. The use of accelerated and border procedures with reduced procedural safeguards should be limited. Unaccompanied children and vulnerable groups should be always exempt from such procedures.
- **European states should work to improve asylum procedures to get decisions right the first time around**
The Directive sets minimum procedural guarantees during the asylum procedure such as the right to have a personal interview to explain reasons for fleeing, or the right to an interpreter. However, the Directive includes many exceptions to these minimum standards, which significantly undermine the fairness of procedures and accuracy of decisions. The Directive also allows Member States to derogate from basic procedural guarantees in border procedures. Sufficient procedural guarantees should be given in all asylum procedures including at the border, and especially for vulnerable persons and children. European states should provide asylum determination systems with the appropriate resources and expertise to make high quality decisions at the first instance stage of the procedure ('frontloading'). Better initial decision-making reduces the length and expense of the system as a whole by avoiding unnecessary appeals. The Directive allows Member States to decide whether persons who have not been recognized as refugees should be allowed to stay in Europe during the appeal against this negative decision (so called suspensive effect). Given the serious consequences of a negative decision, which could result in sending the person back to face persecution, suspensive effect of appeals against these decisions should be guaranteed by the Directive.
- **It should not be presumed that a third country is necessarily safe for asylum seekers**
According to the Directive, Member States may decide not to give protection to a person on the assumption that this person can find protection in another country through which he/she might have transited prior to coming to the EU (a so called "safe third country"). Access to the asylum procedure may be denied altogether under this rule. Particular concerns arise when this rule is applied automatically by border guards based on a set list of countries. The Directive should be amended to allow asylum applicants to rebut the presumption that, in their particular case, a country is safe.

