Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications

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Summary and recommendations

Our study of the asylum law and practice of European Union (EU) member states as to the reception of asylum seekers and the examination of asylum applications has allowed us to formulate twenty-nine recommendations for future European asylum law and policy. These recommendations are listed below in the order in which they appear in the report (see chapters three through five). This section briefly presents the main conclusions on the four types of warranted Community action. For a number of issues, international law, member state practice, or both provide sufficiently clear parameters, thus allowing us to recommend the adoption of European standards. It is necessary to conduct further study on a number of other issues. Further, a number of issues require special attention when European asylum legislation is evaluated. As to one issue, concrete Community action is warranted in the short term. The reader is referred to the following chapters for substantiation of these conclusions.

European standards required

Detention
In many member states, arrival asylum seekers are either detained upon arrival or have their freedom of movement limited in a way that amounts to detention under article 5 of the European Convention on Human Rights (ECHR). The grounds for and the terms of detention vary greatly among member states. The currently adopted and proposed legislation only addresses detention in passing. In order to comply with international law, in particular with article 5 of the ECHR, and to promote the harmonisation of law, European standards on grounds for detention, length of detention, and detention conditions should be adopted (see recommendations (1), (2), and (3)).

Reception
Currently adopted and proposed European asylum laws do not address the issue of reception conditions from the moment that asylum seekers express their wish to apply for asylum and formally lodge an application. In at least some member states, it appears that reception conditions during this period are poor. European standards on reception conditions during this period are advisable (see recommendation (9)).
Most member states have asylum laws that address reception and protection in cases of mass influxes of applicants. Only a limited number of member states, however, operate contingency plans that address the practicalities of receiving huge numbers. European standards requiring such plans are advisable (see recommendation (5)).

Most member states acknowledge that situations of single women and victims of traumatizing events warrant special reception conditions. Unfortunately, present European asylum law addresses these needs only generally. In many member states, single women are placed in special units or even special receptions centres. This may serve, *inter alia*, to prevent sexual harassment. European standards codifying this practice are advisable (see recommendation (7)). State practice on the reception of victims of traumatizing events is considerably variable, but some member states have developed policies that seem to take proper account of the special needs of these vulnerable groups. It is advisable that European standards on the identification of these needs, which could draw on the best practices of member states, are adopted (see recommendation (8)).

*Personal interview*

A proper examination of a request for asylum requires that the applicant has an opportunity to put forward all relevant elements of his or her claim. In order to give the applicant this opportunity, a personal interview is required. All member states and the currently proposed European legislation acknowledge the relevance of the personal interview. Many member states, however, allow for a considerable amount of exceptions to the right to a personal interview, exceptions that show a great deal of variation. The currently proposed European legislation allows for all or most of these exceptions. To ensure that no one is sent back to persecution from the EU, European standards that require a personal interview in every case should be adopted (see recommendation (11)).

The interview should have certain safeguards to ensure that the applicant has the opportunity to present all relevant facts and circumstances. The presence of family members during the interview may discourage the applicant from mentioning relevant elements. For instance, a female applicant may feel uncomfortable to mention that she was raped if her husband or children are present. Although the proposed European legislation acknowledges that interviews should be held in circumstances that allow the applicant to present all relevant facts and circumstances, it allows for exceptions. European standards preventing family members from being present during interviews are advisable (see recommendation (12)).
Personal interviews of vulnerable people, namely single women, minors, and victims of traumatizing events, require special guarantees if they are to bring to light as much as possible relevant facts and circumstances. Women may feel reluctant to fully disclose in the presence of male interviewers or interpreters. Thus, it is advisable that European standards requiring that female applicants are always interviewed by female interview officers, using female interpreters as much as possible are adopted (see recommendation (13)). Furthermore, special skills in the conduct of interviews with minors or victims of traumatizing events are required. European standards requiring such skills should be adopted (see recommendations (14) and (15)).

The right to remain during asylum proceedings
The right to remain during asylum proceedings is crucial to ensure that applicants are not sent back to persecution. Most member states recognise this right. Some states, however, as well as the proposed European legislation, allow for a few exceptions. European standards codifying the unconditional right to remain during the asylum proceeding should be adopted (see recommendation (16)).

According to international law, in particular article 13 of the ECHR, appeal proceedings cannot be considered effective if the applicant is expelled before the authorities have addressed his or her case on appeal. In order to ensure compliance with international law, European standards should address the right to remain during appeal proceedings: either appeals should suspend expulsion or applicants should be able to request interim measures to suspend expulsion (see recommendations (17) and (19)).

Single procedures
While the proposed European standards on procedures apply to both the granting of refugee status and subsidiary forms of protection in most member states, as applied to procedures for withdrawal, they apply only to refugee protection. In order to harmonise this area and secure compliance with international law, standards on procedures for granting and withdrawal should apply to both refugee status and subsidiary forms of protection (see recommendations (18) and (20)).

Qualification
At present, European asylum law leaves unresolved a number of important issues as regards qualification. It allows member states to deny protection when parties other than the
government provide protection in the country of origin. In particular, this applies when international organisations provide protection. Such organisations, however, are not able to provide sufficient protection under the Refugee Convention (RC) and article 3 of the ECHR. European standards should be adopted requiring protection for purposes of qualification for refugee status or subsidiary protection (see recommendation (22)).

In order to qualify for protection under the Refugee Convention, an alien must fear persecution based on such criteria as race and religion. Present European asylum law seems to require that the persecuting party persecute for one of the reasons mentioned in the RC. Hence, if the persecutor commits an act of persecution for a reason outside the RC, then the applicant may not qualify for protection. The RC, however, offers no grounds whatsoever for this restrictive reading. The relevant provision of European asylum law should, therefore, be deleted (see recommendation (23)).

Exclusion of minors
In most member states, minors who have committed crimes such as crimes against humanity can be excluded from refugee status or subsidiary protection. The minimum age for these exclusion grounds differs considerably between member states. European standards setting a minimum age for exclusion are advisable (see recommendation (28)).

Collection of data
European asylum law and policy is based on assumptions about the desirable numbers of applicants, costs of reception, and other considerations. This applies to policies and rules on such matters as burden sharing and secondary movements. In order to address these assumptions, the respondents were asked to provide relevant data. It appeared, however, that data on most relevant issues is lacking in some or even most member states. Where data is available, it often does not lend itself to comparisons because of methodological differences. In order to provide future European asylum policy with a sound quantitative basis, European standards on this matter, including definitions for counting the number of applicants and decisions on applications and on the cost of procedures and reception, are advisable (see recommendation (29)).
Further study required on European standards
An analysis of state practice indicates that European legislation may be required on a number of issues. Because it is not possible to give suggestions as to content at present, further study is recommended.

Refoulement
In at least some member states that border non-member states, applicants for protection are rejected at the border. This may amount to refoulement, or expulsion of third country nationals to a state where they have a well-founded fear of being persecuted or where they are at a real risk of being subjected to torture or inhuman or degrading treatment, which is prohibited by international law; if access to proper procedures is denied, the whole system of protection is undermined. Further study on this issue is also recommended (see recommendation (21)).

Identification of minors
The identification of minors is important as European asylum law and the domestic law of member states distinguish between minors and adults when applying standards for reception, procedures, and qualification. For purposes of harmonisation, common methods for identifying minors should be adopted. At present, the methods for identifying minors differ considerably among member states. Some states use medical examinations that other member states consider to be scientifically unreliable or unethical. Further study is advisable (see recommendation (6)).

Special attention for vulnerable people
The asylum applications of women, minors, and victims of trafficking warrant special attention. At present, European legislation only addresses whether women constitute a ‘particular social group’ for purposes of the refugee definition. Gender-related issues, however, might also be relevant for other issues. Member state practice and awareness of gender-related issues varies considerably. Guidelines that would increase the awareness of such issues should be the subject of further study (see recommendation (26)).

Many member states issue a subsidiary form of protection for minors without addressing the question of refugee status. This may be due to a concern for the special interests of minors, as the asylum procedure is often considered to be too exacting and exhaustive for minors. However, if the subsidiary status grants a less favourable status than
refugee status, then the minor’s interests will be adversely affected. Thus, further study should be conducted on minors (see recommendation (27)). Regard should be given to the recent General Comment of the Committee on the Rights of the Child.  

European law encourages victims of trafficking to cooperate in criminal investigations related to trafficking but does not address the victims’ need for protection because of this cooperation. The asylum laws of a few member states acknowledge the claims to asylum of such victims. Some other states issue temporary forms of protection, apparently denying the victims refugee status or subsidiary forms of protection. Further study drawing on the best practices of member states is warranted to draft European legislation on the issue (see recommendation (27)).

**Evaluation of European asylum law required**

As to a number of issues, it is unfortunate that the asylum laws and practices of a large number of member states diverge from the standards set by European asylum law. The implementation and application of those instruments should pay attention to those issues. Regarding the reception of asylum applicants, this concerns information on reception, access to the labour market, and the treatment of minors and victims of torture and violence (see recommendation (10)). Regarding qualifying for protection, this concerns the practice of member states related to the link between persecution on an RC ground, especially as relates to gender-related cases (see recommendation (25)).

An observation of a more general nature is warranted. Most European asylum law addressed in this study sets ‘minimum standards’, meaning that member states are allowed to diverge from the standards to the benefit of applicants. Consequently, European minimum standards do not require member states to lower the level of protection offered under domestic law. When asked to indicate where domestic law or practice was ‘at tension’ with European minimum standards, however, respondents in several member states mentioned that where domestic law provides for greater protection than European standards, the former should be adapted to the latter. Thus, current European asylum law seems to be considered a model for domestic asylum law in at least some member states. European standards may have the adverse effect of lowering of domestic standards, which, of course, is contrary to ‘the safeguarding of rights of third country nationals’ (cf. article 61 of the Treaty on European

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3 CRC General Comment no. 6 (2005): *Treatment of unaccompanied and separated children outside their country of origin.*
Community (TEC)). If this occurs, European standards should ensure that at least international law is observed.

**Community action in the short term required**
The distribution among member states of the number of people applying for asylum status is quite unequal. European asylum law provides for the more equitable sharing of the financial burden of reception in the European Refugee Fund. Whether this instrument operates satisfactorily is not addressed in this study. However, it appears that in at least one member state, Malta, additional physical burden sharing is required. Mass influxes of applicants into Malta lead to an inequitable burden that may result in its inability to receive them and properly process their applications. Furthermore, there seems to be a causal link between the sharp increase in applications in Malta and accession to the EU. Special measures, particularly in the short term, are required to make other member states share this burden.

**Recommendations**

*Arrival and reception (Chapter 2)*

(1) European standards on detention that meet the requirements of article 5 of the ECHR should be adopted, regardless of how these forms of detention are labelled domestically (e.g., as retention).

(2) European standards on the grounds for and the length of detention are advisable.

(3) European legislation addressing reception conditions during the initial detention is advisable.

(4) In order to ensure equitable burden-sharing and the maintenance of reception conditions as required by European asylum law, European law should require member states to have contingency plans for mass influxes of applicants.

(5) Special measures should require other member states to take over certain numbers of applicants from Malta. Such measures should be adopted as soon as practicable.

(6) Study of the reliability of the different types of medical examinations used to determine the age of applicants, as well as assessment of their ethical acceptability and the possibility of adopting corresponding European standards on the matter, is advisable.

(7) European law should require member states to place single women in separate units in reception centres.
(8) European standards on identifying the needs of single women and victims of trafficking as regards reception facilities are advisable. These could be based on the best practices of member states. In this respect, the British and Slovenian examples deserve special attention.

(9) European standards on the treatment of applicants in the period between their expressed desire to apply for asylum and their formal lodging of an application are desirable.

(10) Issues of information on reception, access to the labour market, the treatment of minors and victims of torture, and violence deserve special attention when the application of the Reception Standards Directive (RSD) is evaluated.

Procedures for granting and withdrawing protection (Chapter 3)

(11) European standards requiring a personal interview in every case are advisable.

(12) European standards requiring asylum applicants to be interviewed without the presence of family members and relatives, including the applicant’s children, are advisable.

(13) European standards that would require female applicants to be interviewed by female officers, using female interpreters whenever possible, should be adopted.

(14) European standards requiring specially trained personnel to interview unaccompanied minors in the presence of a guardian or representative are advisable.

(15) European standards on special procedures for victims of traumatising events should be adopted. These could be based on the best practices of member states, such as Germany, where personnel that are specially trained to deal with such victims are used.

(16) It is advisable to issue European legislation to require that applicants are allowed, without exception, to remain until a decision at first instance has been reached.

(17) European standards addressing the right to remain during appeal proceedings should be adopted. Appeal proceedings should either have suspensive effect or allow applicants to request an interim measure from a court or tribunal to suspend expulsion during appeal proceedings.

(18) The draft Procedures Directive (PD) should be amended to apply procedures on subsidiary protection in all member states.

(19) European standards should address the right to remain during proceedings appealing against a decision to withdraw asylum status. Appeal proceedings should either have suspensive effect or allow applicants to request an interim measure from a court or tribunal to suspend expulsion during appeal proceedings.
(20) It is advisable that European standards provide that procedural rules withdrawing subsidiary protection offer identical procedural safeguards as those that withdraw refugee status.

(21) A study should be conducted regarding rejections at borders and at sea by member states of third country nationals who want to invoke the prohibition of refoulement.

Qualification (Chapter 4)

(22) It is advisable that European standards that require that protection be offered by states for purposes of qualifying for refugee status and subsidiary protection status be adopted in the context of agents of protection.

(23) Article 9(3) of the Qualification Directive (QD) should be deleted. European standards should require a nexus between an RC ground and a well-founded fear of persecution to qualify for refugee status.

(24) When evaluating the QD, whether article 9(3) of the QD affects the interpretation of the refugee definition deserves attention.

(25) When the implementation and application of the QD is examined, special attention should be given to the practice of member states on the nexus requirement, particularly in cases related to gender.

(26) The issue of guidelines to increase awareness of gender-related aspects deserves further study.

(27) Further study on the issue of guidelines or European standards related to minors, victims of trafficking, and minimum age requirements is advisable.

(28) A common European standard on the minimum age of applicants based on article 1F of the RC should be adopted.

Costs and numbers (Chapter 5)

(29) It is generally advisable to issue European standards, including on such issues as definitions for counting the number of applicants, decisions on applications, and costs related to procedures, and issues related to reception.
Introduction

The European Parliament asked the authors of this study to research the present state of EU harmonization on asylum law and practice, with a view to necessary and desirable future harmonization. The study addresses three major issues in European asylum law: the reception of asylum seekers; asylum procedures; and the criteria for granting refugee status and subsidiary protection. It focuses on vulnerable groups, namely minors, women, and victims of such traumatizing events as trafficking; the implementation of Eurodac; mass influx situations; and the financial burden associated with asylum policies. In each EU member state, the government and most appropriate non-governmental organisation (NGO) were given a questionnaire on these issues (see Annex I). Based on the responses to these questionnaires, country reports were drafted and submitted to the respondents for their comments. The respondents, who are identified in each country report, have approved the country reports published as Annex 2. It was impossible to follow this method in a number of countries. Respondents in Austria could not agree on a single country report. Therefore, there are separate Austrian country reports for the government and for the NGO. The authors were unable to get responses from the governments of France, Germany, Italy, and Spain. Further details are given in the country report for these countries, which reports are based solely on the responses of the relevant NGO or The Office of the United Nations High Commissioner for Refugees (UNHCR). In Latvia, where there are few asylum seekers, no NGO is active in the field. Because of this, the Latvian country report is based solely on the government’s responses.

The questions asked in the questionnaires vary in their detail. Because of time and budget constraints, the study does not exhaustively explore each of the topics. Rather, it focuses on a limited set of concrete questions. The questions that are studied in depth have been selected largely because of the priorities set in the tender documents and have been supplemented by a limited number of questions that raise civil liberties concerns and on which there is divergence in the member states. In addition, respondents were asked whether their national legal practice does not conform with EU legislation. This allows for the identification of other issues that may require further legislation.

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4 The study relied on the Odysseus Academic Network for Legal Studies on Immigration and Asylum Law in Europe in identifying the most appropriate NGO in each member state. For more information, see http://www.ulb.ac.be/assoc/odysseus.
Set-up

This report is structured as follows. Relevant European asylum law is introduced in chapter one. An outline of the relevant directives and regulations, their objectives, the minimum standard character, and the requirements of international law are given. The content of the instruments relevant for these issues is discussed, with a focus on the European rules that address the topics in the questionnaire.

The respondents’ to the questionnaires are attached as Annex II. The analysis of these results and recommendations as to further harmonization are presented in chapters two, three, and four. Chapter two addresses the laws and practice of member states related to arrival and detention; chapter three deals with procedures for granting and withdrawing protection; and chapter four covers the rules related to qualifying for protection. The way in which these chapters are presented mirrors the questionnaire. Each sub-paragraph begins by describing state practice as it has emerged from the country reports; the heading ‘Conclusions’ comments upon the conformity of this practice with European and international asylum law and, if relevant, recommends what European measures should be adopted. Finally, chapter five contains a number of tables, wherein data on the number of applications received, the costs of reception, the numbers of decisions made, and the costs related to the decisions are stated.
PART I: LEGAL FRAMEWORK
1 European asylum law

1.1 Instruments

The legal basis for European asylum legislation is article 63 of the TEC, which entered into force on 1 May 1999. It required the adoption of ‘measures’, that is regulations or directives, on a number of asylum issues before 1 May 2004. The Commission lodged proposals; the European Parliament was to be consulted but would not have the power to co-decide.

On most of the relevant issues, measures were adopted before the expiration of the relevant time limit. The measures adopted are:

(1) Council Regulation 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, (Dublin II Regulation, or DR). This instrument establishes a system for allocating responsibility for the examination of applications. When a third country national applies for asylum in member state A, for example, that state is not necessarily the one that should examine the claim if it can be determined that the applicant had previously lodged an application in member state B or had entered the EU through it, in which case state B is responsible. This entails a duty to take over the applicant, complete the examination, and, consequently, to issue a residence permit or expel the applicant. The DR is not part of the object of inquiry and, therefore, is addressed below only in passing.

(2) In order for the system of allocating responsibility to function smoothly, the Council Regulation 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention (Eurodac Regulation) has been adopted. This establishes a data bank for the fingerprints and other personal data of applicants (see paragraph 3.1).


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standards for the reception of asylum seekers between the time of their application and the application decision. This instrument is addressed in paragraph 4.

(4) Council Directive 2004/83 of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (Qualification Directive, or QD) sets minimum standards on two issues. First, it deals with rules on qualifying for refugee status and for subsidiary protection status. Refugee status concerns recognition as a refugee under article 1 of the RC. Subsidiary protection status applies to people who do not qualify for refugee status but are entitled to protection on another ground. In practice, subsidiary protection status applies mainly to people to whom the prohibition of refoulement of article 3 of the EC HR applies and who have not forfeited their claim to protection by committing a serious crime. Apart from these rules on qualification, the QD establishes rules on the ‘content’ of the protection status given, namely secondary rights on such issues as access to schooling and the labour market. These secondary rights are not addressed below; some rules for qualification are discussed in paragraph 6.

(5) Apart from refugee status and subsidiary protection status, European law encompasses a third asylum status: temporary protection status under Council Directive 2001/55 of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive, or TPD). In cases of mass influx of displaced persons, the Council may invoke ‘temporary protection’ for a specific group of people or a certain region. Third country nationals so defined are entitled to the benefits laid down in the Directive, such as the right to remain during the period of temporary protection and the right to housing and access to the labour market. This arrangement is meant for extraordinary circumstances, such as the Yugoslav refugee crisis. Since temporary protection measures have not yet been used, this is discussed only in passing (see paragraph 4).

(6) This study also addresses a proposed measure, the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and

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withdraw refugee status (PD) as it read on 9 November 2004. This instrument addresses procedures for the granting of asylum (asylum procedures) and the withdrawal of refugee status. The rules on asylum procedures address the establishment of procedures, such as admissibility, border procedures, the grounds for refusal, and ‘basic principles and safeguards’, among them important procedural safeguards, such as access to legal counsel and interpreters. Because the Council has only agreed to a ‘common approach’ to the draft and the draft awaits advice from the European Parliament, which advice at the time of writing, June 2005, has not yet been issued, discussion of these rules might seem premature. Nevertheless, the PD as it read on 9 November 2004 is included in this inquiry, because of its importance to European asylum law and practice. Some of the most controversial aspects of the Proposal, such as the obligatory safe country of origin arrangement, are not addressed.

(7) By Council Decision, the European Refugee Fund has been established. This fund promotes a balance between receiving asylum seekers and bearing the costs by way of financial redistribution. This measure is touched upon in the context of burden sharing in the event of mass influx (see paragraph 2.2).

1.2 Territorial scope
These measures apply as Community law to all member states, with a few exceptions. Under the Protocol on the Position of Denmark attached to the TEC, measures on asylum do not bind Denmark. Because Denmark takes part in several border crossing instruments (the Schengen acquis), European asylum measures do impact Danish asylum law and practice. Therefore, the report addresses Danish asylum law and practice.

By virtue of the Protocol on the Position of the United Kingdom and Ireland, European measures do not apply to these member states unless they decide to participate in them. Both member states have decided to take part in all the European measures addressed in this report, except for the RSD, which does not apply to Ireland.

1.3 Objectives and legal character
All of the instruments mentioned above share some important features: they serve the same objectives, they set minimum standards, and they must be in accordance with international law.

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10 Council doc. 14203/04, Asile 2004/64.
All asylum measures serve two objectives. First, they secure human rights. This follows indirectly from article 61 of the TEC and is more clearly laid down in the Preambles to these measures\(^{12}\). Second, asylum measures preclude secondary movements of applicants\(^{13}\). Since the control of internal borders has been abolished, asylum applicants can travel freely, lodge multiple applications in several states, and choose the state that they prefer. One way of precluding such secondary movements is the Dublin system of allocating responsibility. Under this system, the state where the applicant first entered or first lodged his or her application is the only one that can handle the claim. Another way of precluding secondary movements is the harmonization of asylum law. The harmonization of procedures, reception conditions, rules on qualification, and other matters would reduce the incentive to travel between member states.

Another feature that most of these instruments share is the degree of harmonization that they may bring about. According to article 63 of the TEC, the rules on asylum-related issues other than allocation rules (DR) set ‘minimum standards’. The relevant instruments reflect this legal character because they state that they allow for ‘more favourable’ domestic standards as long as these comply with the European standards. From this, it follows that most European laws on asylum only establish minimum requirements. Member states may, however, deviate from these standards for the benefit of applicants.

Third, all of these asylum measures must comply with international law, in particular the RC and the ECHR. As to rules on allocation, reception standards, requirements for refugee status, and procedures, this is explicitly stated in article 63(1) of the TEC. The other rules must comply with the general principles of Community law. It follows from article 6 of the TEU that the ECHR serves as a source of inspiration for these principles. According to the well-established case law of the European Court of Justice, other treaty law that binds member states also serves as a source for Community principles\(^ {14}\). Arguably, the RC does this\(^ {15}\). Finally, relevant rules in the Charter of Human Rights may serve as a standard, if only because according to their Preambles all instruments of European law on asylum serve to secure the observance of the human rights laid down in that instrument.

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\(^{12}\) Article 61(b) of the TEC refers to ‘safeguarding the rights of third country nationals’. Cf. Preamble recitals (1) and (2) of the QD, PD, RSD, TPD, and DR.

\(^{13}\) Cf. Preamble recitals in (7) of the QD, (6) of the PD, (8) of the RSD, and (9) of the TPD. The DR does not state so explicitly, but the objective applies by virtue of the reference to the objectives of the Dublin Convention.

To summarize, the Directives and Regulations on asylum serve, at least partially, the cause of human rights. Furthermore, the RC and the ECHR serve as standards for those European instruments. A number of international or human rights law issues are identified which the European instruments do not address or do not adequately regulate. One could argue that these instruments are at variance with primary Community law and, as such, are invalid. Alternatively, one could hold that these Directives cannot be at variance with international law because they merely establish minimum standards, which by definition allows member states to exceed the level of protection offered by Community law. While it may be true that member states must exceed the European level if they are to comply with the RC and other treaty law, this is an issue for the member states and does not affect the validity of Community law.

This study does not further explore this question because it is not meant to assess the validity of or compliance with international law of the Directives and Regulations on asylum. Rather, this study highlights gaps in protection that may warrant further harmonization.

### 1.4 Arrival and reception

Rules on the arrival and reception of applicants are laid down in the RSD and in the PD. Both of these instruments apply to third country nationals or stateless people who lodge claims for asylum on the territory of or at the borders of member states, including airports. As soon as the application has been formally lodged, the applicant is entitled to the benefits laid down in the RSD. These benefits include housing, food, and clothing; access to schooling for minors; health care; and, after an amount of time to be determined by the member state, access to the labour market. With respect to certain reception conditions, the Directive leaves the member states discretion as to how to grant benefits. Thus, housing, food, and clothing may be granted either in kind, as financial allowances, or in daily vouchers. Whether the rules on reception standards achieve the Directive’s objective of ensuring ‘full respect for human dignity’ is not discussed here. Rather, the focus is on some issues of prime importance that are not addressed, are addressed only in passing, or are addressed in

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15 Battjes, H., *European asylum and its relation to international law*, 2005 (forthcoming), para. 2.2.2.2.
16 Articles 3(1) of the RSD and PD.
17 Article 13 read in conjunction with 2(j) of the RSD.
18 Article 10 of the RSD.
19 Article 15 of the RSD.
20 Article 11 of the RSD.
21 Article 2(j) of the RSD; cf. article 14 of the RSD on housing.
such a way that member states may breach relevant international law standards by their conduct.

**Detention**

States often restrict applicants’ freedom of movement during the first stage of examination. The reasons for this are varied. Applicants may lodge their claims after an attempt to enter illegally, after an illegal entry, or after arrival at the border or airports without proper documentation. Arrival without proper documentation may because of an applicant’s fraudulent intent to obscure the fact that he or she comes from a safe country of origin. In many cases, however, documents are issued and taken back by travel agents to whom applicants take resort as the only means to get entry into the European Union.

While placing applicants in confined areas at airports or in reception centres near borders may be helpful in processing of claims and may prevent applicants from entering the member state irregularly, international law conditions the use of detention and other restrictions on freedom of movement of applicants. Article 5 of the ECHR, for example, prohibits arbitrary detention, including detention for the sole purpose of examining a claim for protection. Article 31 of the RC prohibits detention because of illegal entry when an applicant for refugee status has arrived directly from the country where he or she fears persecution.

Article 17(1) of the PD states accordingly that applicants must not be detained solely because they are applicants. The RSD, however, allows for restrictions on the freedom of movement of applicants that amount to, or approximate, detention. Article 7 states that applicants may generally move ‘freely’ within the territory of the host state. However, this freedom may be restricted to ‘certain areas’. When necessary for processing an application, states may decide on an applicant’s residence and, when necessary ‘for legal reasons’, ‘confine’ him or her to a particular place ‘in accordance with their international obligations’. Such confinement amounts to detention. Furthermore, as regards the issue of reception conditions, such as housing and food, applicants may be required to reside in a specific place. Thus, the Directive allows member states to severely restrict the freedom of

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24 Article 7(1) of the RSD.

25 Articles 7(2) and (3) of the RSD.

26 Article 7(4) of the RSD.
movement of applicants or even to detain them. In order to determine whether this issue was relevant for asylum practice in Europe and, if so, how relevant it was, the respondents were asked whether reception conditions in their countries qualify as detention (question 2.1).

*Mass influx*

Reception facilities are usually designed for an average number of applicants. In cases of mass influx, however, domestic asylum systems may face problems. In such cases, the Council may establish temporary protection programs that entitle beneficiaries to those benefits, such as housing, clothing, and health care, that are laid down in the TPD\textsuperscript{27}. If the Council does not decide to establish temporary protection, the third country nationals claiming protection must be treated as applicants in accordance with the RSD. Also, if temporary protection were installed, the third country nationals would qualify as applicants until it has been established that they qualify for temporary protection. As a result, cases of mass influx will cause pressure to the asylum reception systems of member states.

Because of the large number of people in cases of mass influx and because this will lead to processing delays, reception facilities may face capacity problems. In order to determine whether member states have taken measures to ensure that they can meet their obligations in such cases, respondents were asked whether their member states operate schemes for receiving applicants in cases of mass influx. This question is not limited to implementing the TPD because states may face cases of mass influx that have not, at least not yet, led to the establishment of temporary protection (see question 2.2).

*Vulnerable groups*

Because of their special needs, minors, women, and victims of traumatizing events, such as torture or trafficking deserve special attention. The RSD appreciates these needs in requiring special health care and counselling for minors and victims of torture\textsuperscript{28}. Moreover, this Directive quite extensively addresses the special needs of unaccompanied minor applicants. These applicants must be appointed a legal guardian, and special provisions are made for their housing\textsuperscript{29}. The Directive, however, leaves a number of issues unresolved. Placing (single) women and (unaccompanied) minors in reception centres with other applicants may make them vulnerable to sexual and other forms of abuse. The psychological disorder of victims of

\textsuperscript{27} Article 13 of the TPD.
\textsuperscript{28} Articles 18 and 20 of the RSD.
\textsuperscript{29} Article 19 of the RSD.
torture or trafficking may warrant placement in special reception facilities. Additionally, the RSD does not regulate the ways in which minors or victims of torture or trafficking are identified\(^{30}\). Therefore, respondents were asked to explain whether member states have special provisions for the reception of (single) women, (unaccompanied) minors, and victims of trafficking and how minors and victims of trafficking are identified (see questions 2.3-2.5).

Reception conditions before the formal filing of the application

Applicants may claim protection under international law as soon as they enter a member state’s territory. For purposes of international law, formal requirements on the filing of applications are irrelevant: the applicant is immediately entitled to protection from *refoulement* and other benefits\(^{31}\). Under domestic law, this may be different. For example, it may follow from domestic legislation that only personnel of a specialized agency are competent to file applications; states may require that applications be lodged at specific places; and certain formalities must be met for the applicant to enjoy benefits. The relevant European law allows member states to ‘require that applications for asylum be lodged in person and/or at a designated place’\(^{32}\). It further states that authorities that are ‘likely to be addressed by someone who wishes to make an asylum application’ must be able to ‘advise’ that person as to how and where to lodge his or her claim and must forward the claim to the competent authorities\(^{33}\). Likewise, for purposes of the Dublin Regulation, an application is ‘lodged’ only when a ‘form’ has been submitted by the applicant or when a ‘report has reached the competent authorities’\(^{34}\). Hence, a third country national who approaches a border guard with a claim for asylum may, pursuant to national and European asylum law, be merely ‘someone who wishes to make an asylum application’. He or she would become an ‘applicant’ only after formally lodging his or her claim at the designated location. The RSD and the PD apply only to ‘applicants’\(^{35}\). Thus, European asylum law does not address the reception of people who cross borders and ask for asylum but do not lodge formal applications. The situation of such ‘applicants’ is interesting from the point of view of international law. When a person at a border is denied any form of reception because of time constraints, the person may be left no other option than to return to the third country where he

\(^{30}\) Article 15(5) of the DPD, however, explicitly allows member states to ‘use medical examination to determine the age of unaccompanied minors within the framework of the examination of an application for asylum,’ and states additional identification provisions.

\(^{31}\) Cf. Battjes op. cit., para. 8.2.

\(^{32}\) Article 5(1) of the PD.

\(^{33}\) Article 5(5) of the PD.

\(^{34}\) Article 4(2) of the DR.
or she came from, in which case, one could argue, no effective protection from *refoulement* is offered. Furthermore, such ‘applicants’ may be held in detention, for example, because of illegal border crossing, until they lodge their application. This might adversely affect the opportunity to lodge a formal application for asylum, which would be at variance with article 5 of the ECHR.

In order to determine whether member states provide reception that does not infringe upon the aforementioned international law standards, respondents were asked to answer the questions stated above on the reception of applicants, as well as regards third country nationals who do not yet have the opportunity to formally lodge an application (see questions 1.1-1.5).

*Other issues, costs, and numbers*

The issues of detention, mass influx, the reception of vulnerable groups, and the reception of people before the formal lodging of an application are relevant for all or many member states. The rules on reception may also raise particular issues for individual states. In order to determine which issues these may be, the respondents were asked whether the RSD had already been domestically incorporated (the time limit for this expired on 6 February 2005) and whether reception conditions in their state were at odds with the Directive and, if so, in what respects (see questions 3.1-3.2).

Finally, in order to ascertain how the costs of applications and the number of applicants are spread across the EU, respondents were asked to indicate the costs of reception over the last five years and how many asylum seekers were in the reception system during that time period (see questions 4.1-4.2).

1.5    Procedures for granting and withdrawing protection

The PD gives minimum standards for the granting and withdrawing of refugee status. The rules on procedures for granting refugee status (see paragraph 1.5.1) may also apply to procedures for subsidiary protection status (see paragraph 3.1). No European law instrument sets rules on procedures for withdrawing subsidiary protection status. The Dublin Regulation states a few rules on asylum procedures. The rules on asylum procedures are discussed below (see paragraph 3.1), followed by the rules on withdrawal (see paragraph 3.2) and some miscellaneous issues (see paragraph 3.3).

35Articles 3(1) of the RSD and the PD.
1.5.1 Asylum procedures

The rules on asylum procedures in the PD can be divided into three groups. First, the PD sets rules on the organization of procedures into two tiers. First, the application is examined in a ‘procedure at first instance’ \(^{36}\); second, an applicant whose application has failed can appeal to a court or tribunal \(^{37}\). The PD distinguishes between no less than five procedures at first instance, for example, between ‘ordinary’ procedures and special ‘border’ procedures designed to deal with requests to enter the territory of member states \(^{38}\). In principle, specialized staff must first carry out an examination, but the PD provides for many exceptions \(^{39}\). These rules do not give great detail on particular procedures, as the organisation of processing is ‘left to the discretion of member states’ \(^{40}\).

The second group consists of rules on grounds for refusal. The PD lists cases of ‘unfounded’ or ‘manifestly unfounded’ cases and of ‘inadmissible’ cases \(^{41}\). It sets further rules on some of these cases, namely the exceptions of the safe third country (refusal on the ground that the applicant could and should turn to another, non-member state), and the safe country of origin (the application is unfounded because the country of origin does not, in general, engage in persecution, and the applicant cannot show that it did in his particular case) \(^{42}\).

The third group of rules is ‘basic principles and guarantees’: obligations of and procedural guarantees for applicants \(^{43}\). These include the applicant’s obligation to report to the authorities at a specified time or be searched \(^{44}\). Among the safeguards is the right to consult legal counsel and communicate with UNHCR \(^{45}\). The scope of application of these basic principles and guarantees is complicated. Some apply in every case, \(^{46}\) and others apply only when the application is processed in a specific procedure \(^{47}\), and even then they may be subject to exceptions.

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36 Articles 23 and 24(1) of the PD; article 24(2) read in conjunction with 35A provides for an exception (see below).
37 Article 38 of the PD.
38 Cf. articles 23(1), 33, 35(1), 35(2), and 35A of the PD.
39 Article 3A of the PD.
40 Preamble recital (11) of the PD.
41 Articles 23(3)-(4) and 25 of the PD.
42 Articles 26-30B of the PD.
43 Cf. the heading to Chapter II of the PD.
44 Article 9A of the PD.
45 Articles 13(1) and 21 of the PD.
46 Article 15 of the PD.
47 Article 10, detailing the right to a personal interview, for instance, does not apply to the procedure established by articles 33-34 of the PD.
The two basic principles and guarantees that are most relevant for ensuring that asylum procedures in the EU comply with international law are discussed below, namely the personal interview and the right to remain during the asylum procedure. Eurodac and the single procedure are then examined.

**Personal interview**

The right to a personal interview is the most important safeguard relating to assessment. Member states must ‘assess’ the relevant elements of an application. This encompasses the duty to take, *inter alia*, the individual circumstances of the applicant into account and assess his or her credibility. The Comment on articles to the proposed PD observes that, therefore, ‘it is imperative for a proper assessment that applicants have, as much as possible, the opportunity to bring these forward in a personal manner, i.e. in an interview’. Accordingly, article 10 of the PD requires that applicants have the opportunity for a personal interview in procedures at first instance. The Proposal, however, allows for many exceptions, namely in cases of:

- subsequent applications;
- when the applicant comes from a ‘safe country of origin’ or may be expelled to a safe third country;
- when the applicant does not comply with a reporting duty; and
- Consider that when an applicant, for example, a husband, applies for asylum on behalf of a family member, for example, his wife, the latter does not have to be interviewed. As a result, facts or circumstances that could qualify the wife for protection, such as a well-founded fear of rape or genital mutilation, may not be taken into account. An applicant may apply on behalf of a family member only if the latter consents. However, the validity of this consent may be questionable, such as when a wife gives her consent but is not aware that some event is relevant for the application or when she is unable to speak about traumatizing events or unable to speak about them in her husband’s presence.

The personal interview is important for authorities to get to know relevant facts and circumstances and is often decisive in deciding applications. Therefore, the interview should have safeguards to ensure that it is properly conducted. Article 11 of the PD offers some

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48 Cf. article 4(1) of the QD.
49 Cf. articles 4(3) and 4(5) of the QD.
51 Articles 10(2) and (3) of the PD.
important guarantees: an interpreter should be present, the conditions should ensure
‘appropriate confidentiality’, and the official conducting the interview should be competent to
take account ‘of the general and personal circumstances surrounding the application,
including the applicant’s cultural origin or vulnerability’. When interviewing vulnerable
people, for present purposes (single) women, (unaccompanied) minors, and victims of
traumatizing events, namely trafficking and torture, the PD states that unaccompanied minors
should be assisted by a representative who has the opportunity to be present at the interview. Minors should be interviewed by people who have the ‘necessary knowledge of the special
needs of minors’. The PD does not explicitly address some other circumstances that may be
relevant for establishing ‘appropriate confidentiality’ and, thus, for ensuring that relevant facts
and circumstances are identified as much as possible at the personal interview. Female
applicants, possibly because of their cultural origin, may be reluctant to tell gender-related
facts to male interviewers or interpreters. Victims of traumatizing events may, at least
initially, be unable to speak about those events. The interviewer should be able to detect and
acknowledge this.

In order to determine whether access to a personal interview presents an issue within
the EU and to what extent member states already take heed of the special needs of vulnerable
people when conducting interviews, the respondents were asked whether every asylum seeker,
including the applicant’s dependent family members, must be offered the opportunity of a
personal interview; whether there are arrangements promoting female applicants being
interviewed by female interview officials and assisted by female translators; whether there are
specific procedures for interviewing (unaccompanied) minor applicants for refugee status; and
whether there are specific procedures for interviewing applicants for refugee status who have
been victim of traumatizing events, such as torture and trafficking, before or during their
flight (see questions 5.1 – 5.4).

The right to remain

International law prohibits refoulement - expulsion of third country nationals to a state where
they have well-founded fear of being persecuted, or where they are at real risk of being
subjected to torture or inhuman or degrading treatment. Asylum procedures are meant to
determine whether expulsion would result in refoulement. Consequently, applicants should

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52 Article 15(1). Cf. article 10(1) of the PD.
53 Article 15(4) of the PD.
54 Articles 33 of the RC, 3 of the ECHR, 3 of the Convention Against Torture, and 7 of the International
Covenant on Civil and Political Rights.
not be expelled until it has been established that they will not face persecution or torture or inhuman or degrading treatment upon expulsion.

According to article 6 of the PD, an applicant has the right to remain until a decision at first instance has been reached. This rule does not apply in cases of subsequent applications that will not be further examined and in cases of extradition or surrender. After a negative decision at first instance, the applicant may make use of his right to an ‘effective remedy’ before a court or tribunal. This is in accordance with article 13 of the ECHR. According to the European Court of Human Rights, a remedy under article 13 of the ECHR is ‘effective’ only if either the appeal suspends the expulsion or, in case the appeal does not suspend the expulsion, if the court or tribunal is competent to suspend the expulsion upon the applicant’s request. Pursuant to the PD, member states should themselves set rules on suspension of expulsion during appeal proceedings.

Expulsion before a (final) decision has been reached may amount to refoulement when, for example, the court or tribunal decides that the applicant does, after all, qualify for refugee status or a form of subsidiary protection. In order to determine whether expulsion during asylum procedures presents an issue within the EU, the respondents were asked to explain whether their member states always allow applicants to stay until a decision at first instance has been reached and whether applicants may stay until a court or tribunal has decided on appeal against a negative decision (see questions 5.5-5.6).

Eurodac

One of the grounds for taking a negative decision on an application is the circumstance that another state may be responsible according to the Dublin Regulation criteria. An example of these criteria are previous presence in or illegal entry into a member state. Eurodac, the database containing data on such matters as identity and previous presence, is an important resource for establishing responsibility. For the functioning of the Dublin responsibility system, the moment that a member state feeds data on applicants to Eurodac is most relevant. If a member state does so only at the end of the asylum procedure, then the applicant could travel to another state without the latter state being able to establish the former state’s responsibility, at least not through Eurodac. In other words, the earlier that data is fed into Eurodac the better the system works. If a member state feeds data at the end of the procedure

55 Article 6(2) of the PD.
56 Article 38(1) of the PD.
57 ECtHR 11 July 2000, Jabari v Turkey, Rep. 2000-VIII.
58 Article 38(3) of the PD.
but consults the database at the beginning of it, this could indicate bad faith. To get an idea of member state conduct on this matter, respondents were asked when data is fed into Eurodac and when Eurodac is consulted (see questions 5.7.1-5.7.2).

**Single procedure**

According to its heading and first article, the PD applies to procedures for ‘granting refugee status’. It seems to follow from this that European asylum law states no rules on procedures for granting subsidiary protection status. In practice, the matter is more complicated. If member states operate a single procedure to determine qualification for both refugee status and subsidiary protection, the PD also applies to the processing of claims for the latter status. However, the Directive does not apply to claims for subsidiary protection in member states that operate separate procedures (i.e. where after denial of refugee status applicants can lodge a separate, subsequent request for subsidiary protection). The absence of rules on such procedures obviously presents a major gap in European asylum law, the more so because the RSD’s benefits do not apply when applications for subsidiary protection are processed in a separate procedure. In 2002, an in-depth study of the single procedure was carried out on behalf of the European Commission. It did not cover the situation in the ten member states that acceded to the EU in May 2004; in any event, the situation in the fifteen other member states may have changed since then. Therefore, respondents in this research were asked to indicate whether their member state runs a single procedure (see question 5.8.1). Furthermore, respondents in member states that run separate procedures were asked to indicate whether procedures for granting subsidiary protection offer appropriate safeguards as regards the right to a personal interview, the right to remain, and other issues mentioned (see questions 5.1-5.7 and 5.8.2).

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59 Article 3(3) of the PD.

60 Article 2(c) of the RSD, like article 2(c) of the PD, defines an ‘applicant’ as a person who lodges an application upon which no final decision has been taken. An ‘application’ is defined as ‘the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately’ (articles 2(b) of the RSD and PD). It follows that an application for ‘international protection’ is an ‘application for asylum’ unless the member state runs a ‘separate procedure’ for another kind of protection, and the applicant explicitly requested the other kind of protection.

61 Hailbronner, K., *Study on the asylum single procedure ('one-stop shop') against the background of the common European asylum system and the goal of a common asylum procedure*, European Commission 2002 (available at http://www.eu.int/comm).
1.5.2 Procedures for the withdrawal of protection

The PD also addresses procedures for the withdrawal of refugee status: a few procedural safeguards apply, and a decision to withdraw must be appealable. Whether the (former) protection status holder is allowed to remain in the member state until a final decision on withdrawal has been taken is not, however, addressed. Therefore, respondents were asked whether domestic law requires this (see question 6.1).

Article 1F of the RC lists some grounds for withdrawal. Protective status may be withdrawn when there are serious reasons for considering that the refugee or subsidiary protection beneficiary has committed, *inter alia*, crimes against humanity or serious non-political crimes. In view of intensified attention being given to terrorism and other security issues in recent years, it is interesting to examine whether domestic laws of member states already allow for the withdrawal of protection status on grounds of terrorism (see question 6.2.1) and, if so, whether this possibility is used (see question 6.2.2).

The PD does not address, either directly or indirectly, procedures for the withdrawal of subsidiary protection status. In order to determine whether procedural rules for a separate withdrawal procedure warrant harmonization, the respondents were asked to indicate whether such separate procedures exist and, if so, in what respect they may differ from procedures for the withdrawal of refugee status on the grounds mentioned above (see question 6.3.2).

1.5.3 Other issues, numbers, and costs

In addition to the issues discussed above, particular issues raised by the PD might be relevant for some or many member states. Therefore, respondents were asked to indicate whether procedures for granting and withdrawing refugee status and subsidiary protection status are at odds with the PD and, if so, in what respect they are so at odds (see questions 7.1-7.2).

Finally, in order to understand how costs associated with the application procedure and the number of applicants are spread across the EU, the respondents were asked to indicate the costs for the procedure of granting protection over the last five years (see question 8.1). Furthermore, they were asked to state how many requests for refugee status and subsidiary protection status were processed from 1999 until 2003 (depending on the circumstances, the numbers processed in the single procedure or in separate procedures), and, finally, how many decisions to withdraw were taken during the same time period (see questions 8.2-8.5).

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62 Articles 35-38 of the PD.
63 Articles 12 and 17 of the QD.
1.6 Qualification

Definitions

European asylum law establishes two statuses\(^{64}\): refugee status and subsidiary protection status. The definition of a ‘refugee’ in article 2(c) of the QD is almost identical to the refugee definition in article 1 of the RC. It defines a refugee as a third country national who has (1a) well-founded fear of being persecuted (1b) for reasons of race, religion, nationality, political opinion, or membership in a particular social group; (2) is unable or, owing to such fear, is unwilling to avail himself of the protection of the country of nationality; and (3) to whom the exclusion clauses of articles 1D-1F of the RC do not apply, that is, someone who does not possess the de facto nationality of another state, does not receive protection from the United Nations Relief and Works Agency for Palestine Refugees, and has not committed serious crimes\(^{65}\).

The definition of people eligible for subsidiary protection in article 2(e) of the QD is based on the case law of the European Court of Human Rights on the prohibition of expulsion in article 3 of the ECHR and on the refugee definition in article 1A(2) of the RC. A third country national is eligible for subsidiary protection if he or she does not qualify for refugee status, runs a real risk of being subjected to serious harm, that is, \textit{inter alia}, torture or inhuman or degrading treatment or punishment, and is unable or, owing to such risk, unwilling to avail himself of the protection of the country of nationality, and to whom the exclusion clauses do not apply\(^{66}\).

Actors of harm and protection

Elements of both definitions are elaborated in articles 4 through 15 of the QD. Some of these elements are of great importance to the harmonization of asylum law in Europe; for example, article 6 of the QD defines the ‘actors of persecution or serious harm’ (i.e. those actors who commit persecution or serious harm) (element (1) in the definitions above). Before the adoption of the QD, all member states considered that such crimes as torture would constitute

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\(^{64}\) Articles 13 and 18 of the QD. Apart from these provisions, temporary protection status can exceptionally be applied for, but this status is not addressed here for the reasons set out in paragraph 2.

\(^{65}\) Article 2(c) read in conjunction with 17 of the QD (the latter provision renders the content of articles 1D, 1E, and 1F of the QD). The refugee definition of article 2(c) of the QD does not make reference to article 1C of the RC, the ‘cessation clause’: the grounds for cessation are addressed in the context of cessation, or withdrawal, of refugee status (article 14 of the QD).

\(^{66}\) Article 2(e) read in conjunction with 15 read in conjunction with 17(1) and (2) of the QD. Element (1) can be traced to the European Court of Human Rights’ case law (cf. ECHR 30 October 1991, Vilkvarajah et al. v UK, Rep. A 215, para. 103, elements 2-3 to article 1A(2) and 1D, 1E, and 1F of the RC.)
persecution; in other words, there was consensus that states are ‘actors of persecution or serious harm’. There was, however, no consensus on the question whether torture constituted persecution or serious harm if non-state actors, for example, gangsters, committed it when the state did not offer protection or when there was no state, for example, in parts of Somalia. Article 6 of the QD seems to solve the matter satisfactorily: non-state actors can commit persecution or serious harm also in those cases where there is no state.67

Some provisions that elaborate the elements of the refugee and subsidiary protection definitions are controversial from the point of view of international law because they appear to suggest an interpretation that conflicts with international law. To begin with, consider the definition of ‘actors of protection’. According to article 7(1)(b) of the QD, third parties, that is non state-parties, and international organizations can provide ‘protection’ for purposes of the definitions of refugee and people eligible for subsidiary protection. However, article 1A(2) of the RC speaks of ‘protection’ by the ‘country of nationality’, not of protection by any organization that could conceivably offer it. This strongly suggests that only states can provide protection. Assuming that third parties could offer protection would run counter to the purpose and system of the RC and, indeed, of human rights law generally because they are based on the premise that the duty to protect human rights rests with states. Indeed, protection by organizations is inherently less durable and less secure than protection by states.68 The case law of the European Court of Human Rights also supports the position that only states, not organisations, can offer protection for purposes of the prohibition on expulsion in article 3 of the ECHR.69

Therefore, article 7(1)(b) of the QD is too restrictive in suggesting that a person does not qualify for refugee status or subsidiary protection status if he or she is ‘protected’ by third parties or international organizations, whereas that person would, other conditions being fulfilled, qualify for refugee status according to article 1 of the RC or fall within the scope of article 3 of the ECHR. Respondents were asked to indicate whether non-state actors within the meaning of article 7(1)(b) of the QD are capable of providing protection for purposes of qualification for refugee status and subsidiary protection status (see questions 9.1-9.2).

Refugee Convention grounds

Another controversial issue concerns the RC grounds as spelled out in the refugee definition (element (1b), see above). According to articles 1A(2) and 2(c) of the RC, a person qualifies as a refugee if he or she has a well-founded fear of persecution ‘for reasons of’ one or more RC grounds. According to article 9(3) of the QD, the requirement ‘for reasons of’ an RC ground is satisfied only if the persecutor committed torture or any other act for those reasons. Hence, the requirement would not be fulfilled in case the actor committed the persecution and withheld protection for another reason. A number of member states, however, hold that people in the latter situation also qualify for refugee status, other conditions being fulfilled. The House of Lords gave the telling example of a Jewish shopkeeper in 1938 who is being persecuted by another shopkeeper for reasons of commercial competition. He would be being persecuted, though not for an RC ground. Obviously, the German state would deny him protection because he is a Jew (i.e. for reasons of an RC ground). According to the Law Lords, in such a situation, the person concerned is a refugee, which article 9(3) of the QD seems to deny. In order to determine the relevance of the matter, respondents were asked to indicate whether the act of persecution has to have been or will have been committed for reasons of a persecution ground (see questions 9.3-9.4).

Vulnerable groups

One of the RC grounds is quite extensively elaborated upon in the Directive: ‘membership of a particular social group’. This ground is of particular interest, inter alia, for cases of gender-based persecution, for example, the burning of widows or domestic violence. Article 10(1)(d) states, inter alia, that people are members of a ‘particular social group’ when they share ‘an innate characteristic’ and when ‘that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society’. Could, for example, married women in Pakistan constitute a ‘particular social group’ according to this definition? Gender is an innate characteristic, and married women are socially cognisable. However, article 10(1)(d) of the QD further states that ‘gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article’. This can be read either as stating that gender-related aspects do not suffice for membership in a

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69 Battjes op. cit., para. 5.4.3.
particular social group or as stating that ‘women’ do not generally constitute such a group, although ‘married women in a state where abuse by husbands is not penalized’ would qualify. In order to get a picture of state practice on the matter, the respondents were asked to explain the extent to which and the circumstances under which ‘gender’ plays a role in constituting a particular social group (see question 9.5).

As to the other vulnerable groups mentioned in the introduction, state practice shows that (unaccompanied) minors are not granted refugee status or subsidiary protection status but, rather, only dependant or humanitarian status. The respondents were asked whether minors are considered refugees or people eligible for subsidiary protection under domestic law (see question 9.6). Trafficking victims may find themselves in a difficult position if they cooperate with the authorities of member states in criminal investigations related to trafficking. Directive 2004/81/EC\textsuperscript{73} on residence permits issued to victims of trafficking envisages a right of residence for victims of trafficking only so long as their presence in the country is useful for the criminal investigation and judicial proceeding against the trafficker (see article 8(1)(a)). Member states are obliged to apply this requirement (see article 8(2)). Once the relevant proceedings have been terminated, the residence right will not be renewed (see article 13). Because of their cooperation with the authorities, the victims of trafficking may be at risk of suffering harm from traffickers in their country of origin. Directive 2004/81/EC only envisages a residence right for victims of trafficking in so far as they can assist member states in prosecuting the traffickers and does not deal with the potential consequences for the victims of trafficking. If the domestic law does not grant asylum status to the victims of trafficking either, then they may be less cooperative in the investigations. The respondents were asked whether the victims of trafficking are considered refugees or people eligible for subsidiary protection status under domestic law (see question 9.7).

Furthermore, the application of article 1F of the RC to minors, that is, the exclusion of minors from protection status, deserves attention. It is well-established in state practice that only people who ‘knowingly and willingly’ participate in genocide or other crimes mentioned in article 1F of the RC can be considered to have ‘committed’ such crimes\textsuperscript{74}. It is doubtful whether minors under a certain age could ever ‘knowingly and willingly’ participate in such acts because they cannot sufficiently control their acts or foresee the consequences. European asylum law does not address this issue, thus allowing member states to apply article 1F of the

\textsuperscript{73} OJ L 261, 6.8.2004.

\textsuperscript{74} Cf. UNHCR, Guidelines on International protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/05 of 4 September 2003, UNHCR Geneva, paras. 19f.
RC to minors. Thus, respondents were asked whether minors can be excluded from protection based on article 1F of the RC (see question 9.8).

Other issues
In order to determine the effect of the QD on an applicant’s qualification for refugee status or a form of subsidiary protection, the respondents were asked whether there is tension between the asylum practice of their member state and the requirements of the QD.
PART II: MEMBER STATE PRACTICE
2 Arrival and reception in member states

Introduction

Five issues concerning the reception of asylum seekers deserve attention: detention; mass influx; the reception of vulnerable groups; reception during the period before applicants formally lodge their application; and the transposition of the RSD.

Two preliminary remarks should be made. First, the number of applicants varies widely among member states. These differences may impact upon the set-up and regulation of reception systems. The absence of certain facilities and procedural devices may not be due to political or legal choices by member states but, rather, the absence of a need to address these issues.

Examples of member state practice

Whereas Estonia examined over the last five years an average number of 10 applications a year, Germany processed over 100,000 applications. Not surprisingly, Estonian legislation hitherto did not include concepts like “first country of asylum” or “safe country of origin”, and did not elaborate on some details of the refugee definition, whereas German legislation did (see paragraphs 3.3 and 4.3).

Second, a distinction should be drawn between member states that have land or sea borders with third countries and those member states that do not. In the latter states, influxes of applicants mainly take place at airports, which allows these states to concentrate their reception facilities. In member states with long, external borders, this may not be possible because of long distances between the border and reception centre. This bears upon the difference in treatment for applicants before and after an application has been formally filed. From the statements of the respondents, this seems to be of particular concern to Finland, Poland, Italy, Malta, and Spain; other member states with extensive external borders, such as Greece, did not express this concern (see further paragraphs 2.1, 2.2 and 3.3).
2.1 Detention and other limitations on freedom of movement

As far as whether reception conditions can be considered detention (see questions 1.1 and 2.1), several member states distinguish between detention proper and other restrictions on freedom of movement, such as ‘retention’\textsuperscript{75}. When this distinction is made, detention is limited to specific grounds and implies certain safeguards, such as the ability to challenge the detention’s lawfulness before a court. Member states may, however, apply other restrictions on freedom of movement on different grounds.

Example of member state practice

According to the country report on France, a further terminological subtlety is to be found in French law. Asylum seekers in airport reception centres are not allowed to leave the waiting zone, but this restriction to the freedom of movement is neither “detention” nor “retention”, but “maintainance”.

In such cases, the safeguards referred to above do not apply. Several member states ‘retain’ applicants who arrive at airports in special zones, thereby prohibiting them from entering the territory of the member state concerned\textsuperscript{76}. According to the domestic law of some countries, this practice does not amount to detention because ‘retained’ applicants are free to leave the airport for their country of origin or another state. In *Amuur v France*, however, the European Court of Human Rights held that retention under this condition amounts to detention under article 5 of the ECHR\textsuperscript{77}. Although retention may not be considered detention under domestic law, it does for purposes of article 5 of the ECHR.

The grounds for detention or retention (detention) at airports or otherwise differ between member states. In only a few member states, an applicant may be detained for submitting another application after final rejection of a former one, as in Austria and Cyprus, by application of the Dublin Regulation, as in Denmark and Luxembourg, or for being absent from a reception centre without permission, as in Austria, Denmark, and Estonia. Some member states also apply detention to applicants who are minors\textsuperscript{78}.

\textsuperscript{75} See the Austrian, Belgian, Czech, French, German, and Portuguese examples.
\textsuperscript{76} See the Austrian, Czech, Belgian, French, German, Hungarian, Dutch, and Slovenian examples.
\textsuperscript{78} See the Czech, Danish, French, German, and Portuguese examples.
Examples of member state practice

The NGO report on Austria states that the detention in the ‘rejection zone’ at the Vienna airport is highly problematic. It states that a sound legal basis for detention there is lacking. Moreover, it states that access by counsellors and so on is highly restricted. As a consequence, the possibility to claim asylum is insufficiently guaranteed, so the NGO states. The Country Report on Germany also mentions an “airport procedure”, an accelerated procedure which applies to persons arriving by air from so-called “safe countries of origin” or without a valid passport. The basic idea of this procedure is to carry out the asylum procedure within very short deadlines before admission to the territory, to be able to immediately return asylum seekers whose applications are without any prospect for success. For the purpose of carrying out the airport procedure, asylum seekers are held in special facilities at the airports and their applications are decided in a speedy procedure, before entry into German territory is either permitted or denied. The retention in such a closed facility at an airport can amount to a maximum of 23 days prior to a final rejection of an asylum claim as “manifestly unfounded”. Legally, this retention is not considered to constitute a deprivation of liberty. However, asylum seekers who are rejected in the airport procedure, but who cannot be removed may spend months in the closed centre at the airport, in conditions that are aimed at a short stay. The country reports on other member states do not signal these kinds of restrictions to effective access to asylum procedures (other than detention or retention during airport procedures).

All member states allow for the detention of those who enter illegally or seek to enter illegally or without proper documentation. Respondents from several member states indicated that the vast majority of applicants do not possess proper documentation. The detention of aliens because of an attempted illegal entry or failure to satisfy the requirements for legal entry can in many states be extended even after an application for asylum has been lodged. The maximum length of detention in such circumstances, however, differs considerably, from thirty-two days in Cyprus to twelve months in Hungary. To the extent that applicants who are not detained are better able to present their applications, this affects the substance of asylum proceedings in member states.

79 See the Austrian, Cypriot, Czech, Danish, German, Greek, Luxembourg, Polish, and Slovakian examples.
A number of member states detain or retain applicants if they expect that the application may be manifestly unfounded or until it has been decided that the case is not manifestly unfounded\textsuperscript{80}. (In such cases, applicants are not detained on the formal ground that their applications are expected to be manifestly unfounded but, rather, on the ground of illegal entry or in order to ensure enforcement of denial of entry.) In these member states, applicants whose applications are not considered manifestly unfounded leave detention or retention and do not otherwise have their freedom of movement restricted. The duration of this preliminary procedure differs considerably among member states, from forty-eight processing hours, about a week, in the Netherlands to thirty-four days in Italy.

### Examples of member state practice

The availability and capacity of reception centres is also of consequence for the freedom of movement of applicants in some member states. In Spain, aliens arriving at the southern coast or at the Canary Islands are received in detention centres. The respondent on Italy indicates that arrival of several hundreds of people who arrive by sea are considered as a mass influx. In such a case, applicants are held in “de facto” detention, i.e. in first accommodation centres, where foreigners are kept for the purpose of identification and eventually applying for asylum, so our respondent states. Hence, it appears that applicants are detained because of a shortage in reception facilities.

The same holds true for Malta when great numbers arrive (see paragraph 2.2 below).

The respondents did not indicate that conditions in reception centres after the initial, preliminary procedure amount to detention. Respondents in several member states, however, indicated that restrictions on the freedom of movement of applicants received in reception centres adversely affect or impair the enjoyment of the benefits of the RSD\textsuperscript{81}.

### Conclusions

Article 5 of the ECHR sets certain requirements for detention: it should be based in domestic law, subject to prompt judicial review, not imposed arbitrarily, and not take place solely for the examination of the application. Member states consider certain restrictions not detention

\textsuperscript{80} See the Belgian, Danish, French, Luxembourg, and Swedish examples.

\textsuperscript{81} See the German, Hungarian, and Italian NGO examples and the examples of Slovakia and Spain.
in the sense of article 5 of the ECHR, often without explicitly addressing the requirements of that provision. The RSD likewise uses terms like ‘confinement’ for restrictions on freedom of movement that amount to or may amount to detention under article 5 of the ECHR. Such labels do not of themselves violate the ECHR but may obscure the fact that the requirements of article 5 of the ECHR apply.

(1) European standards on detention that ensure that the requirements of article 5 of the ECHR are observed should be adopted, regardless of the way these forms of detention are labelled under domestic law.

Member state practice on the grounds for and the terms of restrictions on freedom of movement at the initial stage of the application shows considerable disharmony. Different grounds apply to the detention or retention of applicants at airports and in other detention centres. The maximum duration for detention of applicants on identical grounds also differ among member states. The situations in Italy and especially Malta deserve special attention. That applicants arrive in large numbers does not in and of itself justify extended detention. Detention in order to ascertain such matters as identity should comply with the requirements of article 5 of the ECHR (see previous paragraph). When mass influxes are a regular occurrence, reception facilities should comply with article 5 of the ECHR as well as the European standards on reception. To the extent that detention affects the substance of asylum proceedings and applicants’ opportunity to support their applications, different detention practices may affect the outcome of asylum procedures in different member states.

(2) European standards on the grounds for and the length of detention are advisable.

The RSD does not explicitly address short-term reception or detention at airports or land borders. Because most member states detain in some form applicants in the initial stage of their applications, the following suggestion is made:

(3) European legislation that specifically addresses reception conditions during the initial detention phase is advisable.
2.2 Mass influx

Most member states referred to (their implementation of) the TPD in relation to whether special provisions apply during cases of mass influx. In many member states, the beneficiaries of the TPD are treated as asylum seekers and, thus, are received in habitual reception centres. Although respondents indicated that some member states have contingency plans for mass influxes so that the habitual reception system does not become over-burdened\(^{82}\), other member states do not\(^{83}\).

**Examples of member state practice**

According to the Country report on Belgium, in case the government cannot provide sufficient accommodation for persons benefiting from temporary protection, this will be provided by the city or town where they are registered, and these persons are treated like asylum seekers whose claims have been declared admissible. The respondents on a.o. the Netherlands and the United Kingdom indicated that reception conditions for temporary protection beneficiaries are the same as for asylum seekers. In contrast, according to our NGO respondent reception standards in Austria can be lowered in case of a mass influx.

Italy and Malta indicated that their regular reception of large groups of applicants qualifies as mass influxes. In principle, all applicants arriving in such a way are detained in initial accommodation centres.

**Conclusions**

If the Council establishes temporary protection based on the TPD, the ability of member states to receive those in need of temporary protection would be relevant when assessing support for those states which have exceeded their capacity (see article 25(1) of the TPD).

(4) **In order to ensure both equitable burden sharing and the maintenance of reception standards as required by European asylum law, European law should require member states to have contingency plans for cases of mass influx.**

\(^{82}\) See the Austrian, Belgian, Hungarian, Irish, Luxembourg, Latvian, Lithuanian, Dutch, Portuguese, Slovakian, and British examples.

\(^{83}\) See the Danish, French, German, Greek, Polish, and Swedish examples.
Article 63(2)(b) of the TEC requires measures that promote burden sharing, or ‘a balance of effort between member states in receiving and bearing the consequences of receiving refugees and displaced persons’. As stated in paragraph 3.1, the European Refugee Fund serves to financially assist disproportionately burdened member states. Such support may be relevant and sufficient for Italy and other large member states that have large borders. For Malta, additional assistance is needed.

Example of member state practice

Our respondents on Malta indicate that arrival in 2002 amounted to as much as forty-five percent of Malta’s total number of births in the same year. Furthermore, the mass influxes put enormous strain on the limited infrastructure, and that the problem is compounded in view of the fact that Malta has no facility to participate in resettlement programmes in other countries, whilst repatriation of rejected asylum seekers tends to become increasingly problematic.

Not only does the relatively high number of applicants excessively burden Malta, but according to the Maltese NGO respondent, the detention facilities do not meet minimum standards. Because these mass influxes began only in 2002, it is likely that they are related to Malta’s accession to the EU. Therefore,

(5) Special measures are warranted so that other member states can take over certain numbers of applicants from Malta. This should be done soon.

2.3 Reception of vulnerable people

Minors

All member states provide for legal guardianship of unaccompanied minor applicants and distinguish between minors and adults as to reception facilities. In most member states, unaccompanied minors are placed in special reception centres or separate units in reception centres\(^\text{84}\), are entrusted to foster families, or are subject to another reception arrangement that serves the minor’s special needs.

\(^{84}\) This is not the case in Estonia and Latvia.
Examples of member state practice
Where an unaccompanied minor enters Ireland, that person is referred to the relevant child-care services for accommodation and other supports, including guidance as to whether asylum should be sought. Unaccompanied minors are housed in mainly self-catering accommodation centres specifically reserved for them, all located in the Dublin area. They receive a higher rate of social welfare compared to other (adult) asylum seekers.

In most member states unaccompanied minors fall under the care of governmental branches. An exception is Portugal, where unaccompanied minors receive support from an organisation called “Santa Casa da Misericórdia de Lisboa”. This is a national public entity that has agreed a protocol with the Ministry of Social Affairs. However, this entity has the discretion to choose not to provide any support. If support is denied, the Portuguese Refugee Council makes every effort to provide the necessary support.

The definition of minors for purpose of entitlement to those beneficiary reception facilities, however, differ significantly among member states, from the age of thirteen in Poland to the age of eighteen in many other member states. As to the identification of minors, state practice varies significantly. Some member states rely on an applicant’s statement or the personal assessment of an official. Other member states regularly submit alleged minors to medical examination in cases of doubt, which other states do so only exceptionally. Medical examination usually consists of bone scans of the jaw, wisdom teeth, wrist, or clavicle. Some member states, however, consider bone scans to be the improper application of medical means or even bodily injury, and some respondents stated that the use of medical evidence is highly discretionary.

Examples of member state practice
Our Greek respondent observes that ‘sometimes’, the decision about the age of the applicant is taken at the discretion of the competent authorities, meaning that the authorities proceed to

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85 Article 19(1) of the RSD allows member states to place unaccompanied minors above sixteen years of age in reception centres for adults.
86 See the Greek, Lithuanian, and Slovenian examples.
87 See the Belgian, Danish, French, Italian, Luxembourg, Dutch, and Spanish examples.
88 See the Austrian, Czech, Hungarian, and Portuguese examples.
89 See the German and Irish examples.
90 See the Spanish and Irish examples. According to the United Kingdom, the medical professional’s discretion is limited to a band of five years either way.
evaluate the age of the applicants on the basis of their features and general appearance of maturity.
In the Netherlands, the minor is asked about his age. In case of doubt, he is asked to cooperate with an investigation that is performed through an X-ray of the bones.
In contrast, in Germany forced X-rays are not allowed as a means of age testing, since a survey documented that this practice is unlawful and constitutes a bodily injury and a risk to the health of the person concerned. The Irish respondents state that bone density testing was previously conducted but discontinued due to unjustifiable pressure being placed on medical resources in a non-medical context and also because of the margin of error in the results.

Our UK respondents state that the immigration authorities carry out an “age assessment” based on physical appearance and available documentation. If the age is disputed, minors are treated as adults and may therefore be detained. According to government policy, if reliable medical evidence suggests a person’s true age is under the age of 18, s/he will be released. However, medical age can be out five years each way (older or younger).

(Single) women and victims of trafficking
Most states assert that it is their policy to account for the special needs of such vulnerable groups as women and the victims of trafficking. Most member states place single women in special blocks or units in reception centres\(^91\) or even operate special reception centres for women\(^92\). Respondents in other member states did not mention such a policy.

Examples of member state practice
Both Austria as well as Ireland run accommodation centres exclusively for single females. In contrast, our respondents on the Netherlands reported frequent instances of sexual harassment in mixed reception centres.

Victims of trafficking are entitled to special treatment in some member states, which can include being received in special centres\(^93\). In other member states, no such provisions apply.

\(^91\) See the Belgian, Cypriot, Czech, Finnish, Hungarian, Italian, Portuguese, Slovakian, and British examples.
\(^92\) See the Austrian and Irish examples.
\(^93\) See the Czech and Austrian examples.
As to the identification of the special needs of single women and victims of trafficking, most member states rely on notice given by the applicant or immigration officers. Related to this, the United Kingdom operates schemes to train immigration service personnel in detecting applicants with special needs, and Slovenia uses a scheme to make applicants aware of the relevance of signalling their special needs as single women or victims of trafficking. Some member states rely on cooperation with NGOs.

**Examples of member state practice**

Our respondents on the UK report that in the White Paper “Secure Borders Safe Havens” which preceded the 2002 Nationality, Immigration and Asylum Act, the Government for the first time set out policy in relation to victims of trafficking. The White Paper identified the Government’s approach in this respect to be able to identify victims of trafficking and offer them the care and support they need. Subsequently, the Home Office has developed an online toolkit aimed at practitioners, to increase awareness of trafficking and in particular the difference between trafficking and smuggling. The toolkit states that the responsibilities of the UK Immigration Service may include identifying victims/potential victims according to an agreed inter-agency profile.

No information is available on what this agreed profile is. Immigration Offices throughout the UK have been made aware of the trafficking toolkit and receive regular intelligence briefings and inter-agency briefings that highlight issues and trends in respect of trafficking. In July 2003, The Immigration Service published Best Practice for dealing with unaccompanied children (both asylum-seeking and non-asylum) who arrive at ports. This was approved by Ministers and gives consistent operational and policy guidance to all staff that deal with children. It gives guidance on what an immigration officer should do if they suspect that a child is being trafficked.

As to Slovenia, it is reported that there are some joint projects of NGOs and the Ministry dealing with victims of trafficking. As soon as applicants for asylum claim that they are victims of trafficking they are referred to an NGO representative who provides psychological aid, and if necessary also accommodation in a hidden location. Single women and unaccompanied minors are also obliged to participate in a lecture about trafficking (about 45 minutes), which is carried out by an NGO. At the end of information session, all of them receive a brochure about trafficking, including telephone numbers and addresses of organisations in Slovenia and other European countries. Officials have a duty to inform the NGO if there are any signs of trafficking. In such cases staff of the Asylum Home is contacted.
and the person will be transferred to another (safe) location. The address of this location remains undisclosed. NGOs cannot act without the victims’ claim or permission, even when it is obvious that a person is a victim of trafficking.

Conclusions
The methods for assessing age differ considerably between member states. Some member states adhere to certain types of medical examinations that are regarded by other member states as scientifically unreliable, medically unethical, or both. The personal assessment of age by officials precludes such objections but invests authorities with a considerable amount of discretion.

(6) A medical-ethical study of the reliability of and the acceptability of the different types of medical examinations used to determine an applicant’s age should take place, and European standards on the matter should be adopted.

There is a widespread state practice of placing single women in separate units in reception centres.

(7) The practice of placing single women in separate units in reception centres should be codified in European legislation so that it applies throughout the EU.

State practice as to the identification of the needs of single women and the victims of trafficking varies considerably throughout the EU.

(8) European standards on the identification of the needs of single women and victims of trafficking as regards reception facilities are advisable. These could be based on the best practices of member states, particularly the practices in the British and Slovenian examples.

2.4 Reception of applicants before the formal lodging of an application
Some member states distinguish between an alien’s notification of a wish to apply for asylum and his or her subsequent formal application. For purposes of reception, the distinction is relevant in those states that have long borders with third countries or long sea borders.
Examples of member state practice
In Malta and Italy, for example, aliens are in practice detained in special accommodation centres before formally lodging their applications. In Poland, formal applications are made in Warsaw. Aliens arriving at the Polish border at a time of day when Warsaw cannot be reached are asked to return the following day. This practice may result in direct refoulement. By contrast, Finland does not make the distinction between an alien’s notification of a wish to apply for asylum and his or her subsequent formal application: applicants who arrive at the border when they cannot travel to a reception centre are allowed to stay at the border post.

Conclusions
The RSD does not address the treatment of aliens between when they express a wish to apply for asylum and when they subsequently make a formal application (see paragraph 1.4). During this period, the treatment of applicants may vary considerably between member states based on their asylum law and the availability of reception facilities.

(9) European standards on the treatment of applicants in the period between when they express a wish to apply for asylum and when they subsequently make a formal application are desirable.

2.5 Transposition of the Reception Standards Directive
The RSD was due to be transposed on 9 February 2005. Ten member states have not yet transposed it, four have transposed it partially, and six have completed the implementation. Denmark and Ireland are not bound by the RSD. While the Danish government as a policy aligns itself with European asylum law, Ireland is considering ‘opting in’ in the RSD.

On the question whether there is a tension between present reception conditions and the RSD, many respondents indicated that reception conditions already generally exceeded the required level. The respondents for member states and the respondents for NGOs often gave different

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94 See the Belgian, Cypriot, Estonian, Finnish, German, Greek, Lithuanian, Maltese, Portuguese, and Slovenian examples.
95 See the Hungarian, Luxembourg, Polish, and Spanish examples.
96 See the Austrian, Czech, Dutch, Slovakian, Swedish, and British examples.
responses. As to the following issues, respondents in at least six member states stated that domestic law or practice falls below the standards set by the RSD:

-the issue of information on reception (article 5 of the RSD)\(^7\); access to the labour market (article 11 of the RSD)\(^8\); obligations to minors (article 18 of the RSD)\(^9\); and the obligation to give the required treatment to victims of torture and violence (article 20 of the RSD)\(^10\).

Conclusions

(10) The issues of information on reception, access to the labour market, and the treatment of minors and victims of torture and violence merit special attention when the application of the RSD will be evaluated.

\(^7\) See the Austrian NGO, Finnish, German NGO, Hungarian, Polish NGO, Spanish, and British NGO examples.
\(^8\) See the Austrian, Belgian, Danish, Greek, Italian, and Luxembourg NGO examples and the examples of Estonia, Ireland, Lithuania, and Slovenia.
\(^9\) See the Austrian, Danish, and Slovenian NGO examples and the examples of Finland, Lithuania, and Spain.
\(^10\) See the Austrian NGO, Danish NGO, German NGO, Hungarian NGO, Portuguese, Slovenian NGO, and Spanish examples.
3. Procedures for the granting and withdrawal of protection

The main subject of this chapter is procedures for granting protection. A first topic is to what extent applicants are entitled to a personal interview. It then turns to procedural safeguards for vulnerable people and then deals with the right to remain in the responsible country during the asylum procedure. A further issue is the implementation of Eurodac. The single asylum procedure is also explored. The chapter ends by examining procedures for withdrawing protection and some final remarks.

3.1 Asylum procedures

3.1.1 The right to a personal interview

The right to a personal interview is an important element in the asylum procedure (see paragraph 1.5.1). The right to a personal interview and the exceptions thereto are laid down in article 10 of the PD. At first sight, the answers to the questionnaire suggest that personal interviews are conducted in every member state. Several member states conduct two interviews; in some member states, the second interview is optional.

Examples of member state practice

Member state practice differs however as to the issues addressed in both interviews. In the Netherlands the first interview addresses the applicant’s identity, nationality, travel route, and other information, and the second one concerns the merits of the case and the motives to claim asylum. In Austria on the other hand after the first (initial) interview the applicant is notified whether his application is admissible and whether it is intended to dismiss the application.

Closer examination, however, shows that not every applicant receives a personal interview. Several member states have adopted exceptions to the general rule of holding a personal interview in every case. These largely fall into four categories, which are all mentioned, in one way or another, in the PD: another State is responsible for the examination of the asylum claim, either on the basis of the DR or because there exists a safe third country, safe country of origin, or safe country of first asylum to where the applicant can be returned; the applicant has submitted a subsequent application without presenting relevant new

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101 See the examples of Belgium, Finland, Greece, and the Netherlands.
102 See the Austrian and Slovakian examples.
103 See the Czech, Finnish, German, Luxemburg, and Slovenian examples.
information\textsuperscript{104}; the asylum seeker is not able to participate in the interview because of circumstances beyond his or her control\textsuperscript{105}; and a positive decision on the application can be taken on the basis of available information\textsuperscript{106}.

Several member states indicated that applications that are considered ‘manifestly unfounded’ might also be rejected without a personal interview\textsuperscript{107}. What the exact meaning of ‘manifestly unfounded’ is, however, remains unclear, as does whether this meaning is the same in all member states. According to article 29 (2) of the PD the classification ‘manifestly unfounded’ may be used in large numbers of situations. For some of these situations, the PD prescribes that a personal interview is not obligatory, for example, subsequent applications and cases where there is a safe third country (cf. article 10(2)(c) of the PD). However, there are also situations that may be labelled as ‘manifestly unfounded’ but are not exempt from the requirement of a personal interview. It is impossible to say, therefore, whether the practice of some member states in not holding an interview when an application is ‘manifestly unfounded’ is consistent with the Directive.

In several member states, the personal interview can be annulled if the applicant does not show up or fails to meet the deadline for submitting a written application\textsuperscript{108}.

**Examples of member state practice**

The consequences of not complying with the duty to appear for an interview differ significantly among member states. In the United Kingdom, in such a case a decision will be reached on the basis of a previously completed form, whereas in Ireland, the application is considered to be withdrawn.

If such serious consequences are attached to failure to comply with the duty to report, member states should be absolutely certain that the applicant has been notified of this duty. The Italian respondent however indicated that invitations for personal interviews often do not reach the applicant because of sparse reception facilities and the subsequent movement of asylum seekers both inside Italy and to other countries.

\textsuperscript{104} See the Finnish example.
\textsuperscript{105} See Luxembourg’s proposed legislation and the examples of Austria and France.
\textsuperscript{106} See the French and German examples.
\textsuperscript{107} See the Finnish and French examples.
\textsuperscript{108} See the French, Irish, and British examples.
Although the PD allows member states to hold personal interviews with dependent family members and minors, there exists no obligation to do so\textsuperscript{109}. However, interviews with dependent family members are important to ensure that all the facts relevant to an application are mentioned during the interview (cf. paragraph 3.5.1).

The country reports indicate that member state practice varies in this respect. In some member states, dependent family members are always heard\textsuperscript{110}, while in others they are only heard when the competent authorities deem it to be necessary for the examination of the case or if the family members have chosen to lodge an individual claim for asylum\textsuperscript{111}.

### Examples of member state practice

In Cyprus, dependant family members are interviewed only “if required”. Our respondent does not mention a duty for the authorities to ascertain whether the interview is indeed required. In the United Kingdom, dependants who do not lodge an application on their own behalf are always asked if they have their own fear of return. If applicants say they do, they must be asked if they wish to apply for asylum. If they do not wish so, they will not be asked to attend an interview. Obviously, requiring a personal interview in each and every case far better secures that all relevant facts are submitted.

The PD also provides that family members should not be present at the interview unless this would be necessary for the examination of the case\textsuperscript{112}. The underlying purpose of this is to allow applicants to speak freely about their motives for applying for asylum. As mentioned before, women may not wish to speak about rape in the presence of their husband or children.

Only four member states explicitly require that family members should not be present at the interview\textsuperscript{113}. In other member states, separate interviews are an unregulated practice, but there also exist indications that applicants are sometimes interviewed in the presence of their family members.

### Example of member state practice

It appears that the reasons for having separate interviews with members of one family may differ among member states. In Hungary, family members are always interviewed; when

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\textsuperscript{109} See the second and third clauses of article 10(1) of the PD.

\textsuperscript{110} See the Belgian, Danish, Hungarian, Latvian, Dutch, Portuguese, Slovenian, and Swedish examples.

\textsuperscript{111} See the Cypriot, Greek, Luxemburg, and British examples.

\textsuperscript{112} Article 11(1) of the PD.

\textsuperscript{113} See the French, Lithuanian, and Slovenian examples. Although the Austrian government says that this is also the case in Austria, the Austrian NGO disputes this.
family members submit a joint application, they can choose whether they want to participate together in the personal hearing or not. According to our respondents, there are no strict rules to determine whether family members are always interviewed separately; for example, a separate personal interview may be arranged to test the credibility of the applicants. Hence, separate interviews may rather serve to test the applicants’ credibility than to make sure that all relevant facts are submitted.

Conclusions
In the asylum practice of member states, a personal interview is the norm, although there exist many exceptions. These exceptions can be of a procedural nature (other state responsible, subsequent application, et cetera) or related to the applicant’s status (dependent family member, minor). In addition, there are situations in which applicants are not heard because they are not present at the interview. The present proposal for the PD does not address this disparity among member states but, rather, codifies the numerous exceptions in member states’ asylum laws and practices related to the right to a personal interview. This is unsatisfactory for two reasons. First, without an interview, the means available to authorities to assess the well-foundedness and credibility of a claim are limited. As a result, the many exceptions above lead to a situation in which the overall quality of decisions cannot be assured. As a consequence, expulsion after a negative decision on an application for asylum processed without a personal interview might amount to refoulement contrary to member states’ primary obligations under the RC and the ECHR. According to the Jabari judgement of the European Court of Human Rights, article 13 of the ECHR requires that an appeal can suspend an asylum seeker’s expulsion.\(^\text{114}\) Second, the various exceptions in the member states on the right to a personal interview amount to a worrying lacuna in an important aspect of asylum law.

(11) European standards requiring a personal interview in every case are advisable.

(12) European standards should be adopted to ensure that asylum applicants are interviewed outside the presence of family members or relatives, including the children of the applicant.

\(^\text{114}\) ECHR 11 July 2000, Jabari v Turkey, Rep. 2000-VIII.
3.1.2 Safeguards for vulnerable people

Female applicants

Female applicants may be reluctant to disclose gender-related facts to male interviewers or interpreters. A number of member states have internal guidelines for asylum authorities according to which female applicants are (if possible) heard by female interviewers115. In some member states, the interviewer must ask the applicant whether he or she would prefer a male or female interviewer116. In other member states, females are heard by female interviewers only if a request is made117 or if authorities make this decision in special cases118. A few member states have no guidelines on the matter whatsoever, meaning that the applicant’s sex plays no role in the selection of interviewer or interpreter119. As to the sex of interpreters, many member states stated that interpreters of the same sex are not always available because of the small number of interpreters for certain languages.

Examples of member state practice

Most gender sensitive is the practice in Denmark and Ireland. In the manifestly unfounded procedure in Denmark, the Danish Refugee Council performs the review. It seeks to ensure that female applicants are interviewed by female interviewers assisted by female translators. This is in particular the case for single women asylum seekers and/or where information on the case indicates that the asylum seeker is a victim of rape or other forms of sexual assault. It should be noted however that this procedure stands out in Europe in one important respect: no appeal from the decision is possible (see below under 3.1.3).

In Ireland, female applicants are generally interviewed by female caseworkers, subject to the availability of a female caseworker. Where a gender related issue has been highlighted in the information provided by a female applicant in their questionnaire, a female interviewer will always be assigned to the case and the interview will also always then be facilitated by a female interpreter. All caseworkers, and many members of the appeals tribunal, whether male or female, have received specialised training dealing with gender issues as they arise in the asylum process.

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115 See the Danish, Irish, Latvian, Lithuanian, Luxembourg, Maltese, and Portuguese examples.
116 See the Hungarian, Dutch, and Swedish examples.
117 See the Czech, Finnish, Polish, Slovakian, Slovenian, and British examples. In Denmark, female interviewers assess female applicants when the application is not manifestly unfounded.
118 See the Estonian and Spanish examples.
119 See the French and Greek examples.
By contrast, in answer to our question whether there are arrangements to promote that family applicants are interviewed by female interview officials, our Greek respondent simply answered ‘no’.

Minors

While most member states have some sort of provision for hearing minors, there are many differences in the provisions. Minors are either not heard at all or have their hearing dependent on a decision of the parents, based on the existence of individual motives for asylum or on the minor’s level of maturity, his or her age, or both. Age limits for the interviewing of minors, ranging from six years of age to sixteen years of age, also differ between member states whereas other member states do not set age limits at all.

A distinction is further made in several member states between minors accompanied by a parent or guardian and those who are unaccompanied. Accompanied minors are usually heard in the presence of their parents or guardian. Unaccompanied minors are heard in the presence of an appointed guardian or legal representative, sometimes until they reach a certain age. Unaccompanied minors almost always receive an interview, whereas the hearing of accompanied minors often depends on the age, maturity, and the decision made for the parents.

A (further) guarantee taking due account of the minor’s special position is provided by some member states in that minors are interviewed by specially trained personnel.

Examples of member state practice

Our Finnish respondents reported that several officials have been trained to conduct personal interviews with unaccompanied minors and that these officials follow special guidelines prepared for conducting such interviews (as a part of an EU-project). Specific guidelines do also apply in Sweden; in the United Kingdom, the Immigration Service has issued best practice guidance for port and asylum-screening unit staff for dealing with unaccompanied asylum and non-asylum seeking children. These guidelines may serve as sources for European rules on the matter.

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120 See the Danish, Estonian, Finnish, German, Hungarian, Irish, and Slovenian examples.
121 See the Czech, Estonian, Finnish, German, Hungarian, Luxembourg, Dutch, Slovenian, Swedish, and British examples.
122 See the Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Swedish, and British examples. This is also the case in the Netherlands when the minor is less than twelve years of age.
Victims of traumatizing events

Most member states have internal guidelines on how to deal with victims of traumatising events. In a number of states, authorities may decide to hand the case over to specially-trained personnel if they deem it to be necessary\textsuperscript{123}. Other member states indicated that all members of staff receive training to deal with victims of traumatising events\textsuperscript{124}. Many states rely on medical evidence to identify victims of traumatising events, and a few member states did not report the existence of guidelines or an internal policy aimed at the taking into account of such special needs\textsuperscript{125}.

Example of member state practice

The German practice seems most developed in this respect. The German Federal office has started to train adjudicators to act as so-called Special Commissioners for Traumatised Refugees. Various therapy centres for traumatised refugees were closely involved in the preparation of the training for these Special Commissioners and actively participated in the training seminars, which encompassed psychological and practical aspects. The Special Commissioners are supposed to carry out the interview whenever there is an indication of trauma, e.g. owing to a notification to this effect by a social worker, or a medical/psychological attestation submitted in the case. If these clues only emerge during the interview, the ‘normal’ adjudicator has to ask a Special Commissioner to either continue with the interview, to carry out a second one, or at least to include the latter in the decision-making on the application. The Special Commissioner also has the competence to decide whether an expert opinion by a psychologist is requested. In practice, the latter is done in single cases only.

The respondent notes that, due to a reshuffle of personnel, a certain number of adjudicators who at present are responsible for interviewing traumatised applicants have not received specific training; due to the difficulty of ascertaining during the interview whether an asylum seeker suffers from trauma, the procedural regulation is not always abided by in practice.

\textsuperscript{123} See the Austrian, Finnish, Latvian, Lithuanian, Dutch, Polish, and Swedish examples.

\textsuperscript{124} See the Czech, Danish, French, Irish, Luxembourg, and Slovenian examples.

\textsuperscript{125} See the Estonian, Italian, Maltese, Portuguese, Slovakian, and Spanish examples.
Conclusions

Almost all member states acknowledge that the proper submission of facts in an interview by a female applicant may warrant a female interviewer and interpreter. The arrangements applied to ensure the proper submission of gender sensitive facts, however, differ considerably between member states. If the choice of the interviewer is left to the interviewer or another official, gender-sensitive facts might be overlooked. Asking a female applicant whether she would prefer a female interviewer may also be an obstacle. The most secure guarantee to take into account all gender-related aspects would be to assign female interviewers to female applicants under all circumstances or to assign female interviewers to female applicants if possible and in any case to do so if there are indications that gender-related issues play a role in the applications.

(13) It is advisable to adopt European standards to require that female asylum applicants are interviewed by female interview officers, using female interpreters, whenever possible.

As to the interviewing of unaccompanied minors, most member states rely on the presence of a guardian or representative to guarantee that proper account is taken of the specific needs of minors. A number of states (also) require that specially trained personnel hear minors. In order to properly assess the minors’ statements, specially trained interviewers are required.

(14) European standards requiring that specially trained personnel, in the presence of a guardian or representative, interview unaccompanied minors should be adopted.

Member state practice on procedures for hearing victims of traumatising events varies considerably. Identifying victims of traumatising events should not be based on physical examination alone, as this may overlook psychological troubles.

(15) It is advisable to adopt European standards on special procedures for hearing victims of traumatising events. These could be based on the best practices of member states, such as Germany. Personnel that are specially trained to deal with such victims should be used, and cases should be handed over to such personnel if there is reason to believe that the applicant is traumatised.
3.1.3 The right to remain during asylum procedures

Asylum procedures can be divided into two phases: the examination at first instance by government authorities and appeal procedures, usually to a court or tribunal. Most member states permit applicants to remain until a decision has been reached upon examination. Asylum law in a few member states give exceptions to the right to remain during this first phase. These exceptions concern the application of the Dublin Regulation\textsuperscript{126}, situations in which the applicant could or should turn to a third, non-EU member state for protection\textsuperscript{127}, and when a subsequent application or an applicant himself or herself poses a danger to public order\textsuperscript{128}. It is uncertain whether the right to remain in member states that apply these exceptions in all cases differs significantly from the right to remain in the other states. It is most likely that the other states also apply the DR or the other mentioned grounds when refusing applications for asylum and then, subsequently, stop examining the claims. It may be a mere terminological difference whether application these grounds is said to take place before or after the examination takes place. Apart from these explicit exceptions to the right to remain, exceptions flow from the application of procedures that deny a claim to examination of the request for asylum at all.

\begin{table}[h]
\centering
\begin{tabular}{|l|}
\hline
Examples of member state practice \\
\hline
According to our German respondent, an asylum seeker is not in all cases allowed entry into Germany territory or granted access to the German asylum procedure upon submission of an asylum request. The Asylum Procedures Act provides for several grounds upon which entry into the country and access to the asylum procedure can be denied. According to Section 18 Asylum Procedure Act, governing access to the territory, persons entering by land and applying for asylum at border entry points are refused entry if they have arrived from a safe third country (e.g. all countries neighbouring Germany), had previously found ‘safety elsewhere’ or pose a threat to the general public. This safe third country concept does no longer apply to cases in which the asylum seeker enters Germany through one of the States participating in the Dublin II system. Thus, people who enter Germany illegally from certain states designated as safe are denied the right to have their claims examined and, thus, the right to stay until the examination is finished. \\
\hline
\end{tabular}
\end{table}

\textsuperscript{126} See the Danish, Irish, Italian, and Luxembourg examples.

\textsuperscript{127} See the Danish and Irish examples. See also the German example, in which people who arrive through specifically designated safe non-member states are not given access to the German asylum system.
According to our NGO respondent on Austria, at land borders asylum seekers are to be rejected and sent back to the neighbouring country without reception or procedure (despite a Constitutional Court judgement prohibiting this). Our respondent from the Austrian Government however does not confirm this practice.

All member states operate a form of appeal procedure in at least one instance, with the exception of Denmark, where no appeal against a decision that a claim is manifestly unfounded is possible.

**Examples of member state practice**

Our Danish respondents note that the involvement of certain NGOs in the manifestly unfounded procedure provides some safeguards. However, ‘examination’ by an NGO does not constitute an effective remedy under article 13 of the ECHR. Obviously, the application of the safe third country arrangement in Germany and (possibly) Austria, mentioned in the previous paragraph, provides for another exception to the right to an effective remedy.

As to the right to remain during appeal procedures, there are three types of arrangements. First, appeal can automatically suspend expulsion. This is the safest way to ensure compliance with the prohibition on refoulement. Under a second type, appeal may not suspend expulsion, but the applicant may be allowed to approach the court to ask for suspension of the expulsion order by interim measure. Third, appeals may neither suspend expulsion nor trigger the possibility of an interim measure.

A few member states apply the first arrangement to all cases; some of these states, however, are presently considering abolishing this automatic suspensive effect. A few other states apply the second arrangement. The third arrangement occurs only in Latvia, where courts cannot grant interim measures in cases of rejection based on the DR. Most member states operate a hybrid between the first and second arrangements: appeal against some types of negative decisions automatically suspends expulsion, but appeal against other types of

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128 See the Dutch example.
129 See the Cypriot, Czech, Estonian, Greek, Hungarian, Maltese, and Spanish examples. See also the Danish example, when the case is not manifestly unfounded, as noted above, and the Portuguese example, although not when the case has been subsequently appealed to a superior Portuguese court.
130 See the Czech and Estonian examples.
131 The Latvian respondent stated that no appeal has thus far been lodged against the application of the DR.
negative decisions does not suspend expulsion but allows for the request of interim measures. Automatic suspensive effect is denied by several of those states when the application is manifestly unfounded\(^\text{132}\); when the DR or another safe third country arrangement applies\(^\text{133}\); and in cases of subsequent applications\(^\text{134}\).

Furthermore, rejection in the United Kingdom does not have automatic suspensive effect when the applicant comes from certain ‘safe countries of origin’. Automatic suspensive effect does not apply in Latvia when the applicant poses a threat to national security or public order, nor does it apply in Germany and the Netherlands for grounds not further specified in the reports.

**Conclusions**

The PD in its present form ensures the right to remain for asylum seekers until a decision at first instance has been made. Member states may derogate from this, however, in cases of subsequent applications, in cases of extradition or surrender, and when the special safe third country arrangement is applied (see paragraph 1.5.1). It should be noted that surrender or extradition of an applicant in particular does not provide for a self-evident exception. The prohibitions of refoulement certainly also address extradition cases\(^\text{135}\). The German practice of expelling applicants without examination seems to be at variance with the requirement expressed by the European Court of Human Rights in *Jabari* that any appeal based on article 3 of the ECHR merits ‘rigorous scrutiny’ by the expelling state\(^\text{136}\).

There is an almost uniform practice among member states in allowing applicants to remain during the examination of the asylum claim.

*(16) In view of the almost uniform practice, European legislation should be issued to require that, without exception, applicants are allowed to remain until a decision at first instance has been reached.*

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\(^{132}\) See the Austrian, French, Swedish, Slovakian, and British examples.

\(^{133}\) See the Austrian, Irish, Luxembourg, Slovakian, and Slovenian examples.

\(^{134}\) See the Austrian, Luxembourg, and Slovenian examples.


The PD does not deal with the right to remain during appeal procedures and, hence, with article 13 of the ECHR. In the vast majority of member states, appeal either has suspensive effect, or if it does not, applicants can request interim measures from the court or tribunal to suspend expulsion during appeal proceedings. In both ways, compliance with article 13 of the ECHR is assured. However, in some member states, neither option is available in some cases, which may result in a violation of article 13 of the ECHR.

(17) It is advisable that European standards address the right to remain during appeal proceedings. Appeal proceedings should either have suspensive effect or allow applicants to request an interim measure from a court or tribunal to suspend expulsion during appeal proceedings.

3.1.4 Eurodac
In order to determine whether member states could evade responsibility for processing claims by deferring the input of data, respondents were asked to indicate at what moment in asylum procedures member states consult Eurodac and when they transfer data to it (see paragraph 1.5.1). As it turns out, this does not occur: all member states, except Italy, for which no information was available, consult Eurodac and feed in data on the applicant immediately at the beginning of asylum proceedings or as soon as possible afterwards.

3.1.5 Single procedure
Only five member states use separate procedures for refugee protection and subsidiary protection as these are meant in Directive 2004/83\textsuperscript{137}. One of these member states is considering the introduction of a single procedure\textsuperscript{138}. As far as the respondents addressed the matter, subsidiary protection procedures seem to offer lesser procedural safeguards than refugee protection procedures\textsuperscript{139}.

**Examples of member state practice**
Our respondents on Slovakia note that Slovak law does not promote that female applicants for subsidiary protection are interviewed by female officials. In the Slovenian subsidiary protection procedure, interviews are an exception.

\textsuperscript{137} See the Belgian, Hungarian, Irish, Slovakian, and Slovenian examples.
\textsuperscript{138} This member state is Belgium.
Conclusions

As observed in paragraph 1.5.1, the rules in the PD apply to both procedures for refugee protection and procedures on subsidiary protection in those states that operate a single procedure. The absence of procedural standards on the granting of subsidiary protection in those member states that run separate procedures for both forms of protection presents a major gap in the European asylum system.

(18) The PD should be amended so that procedures on subsidiary protection apply in all member states.

3.2 Procedures for withdrawal of protection

The right to remain during appeal proceedings

As to withdrawal procedures, the current proposal for the PD does not address whether the refugee can remain in the member state until a final decision has been reached (see paragraph 1.5.2). The respondents were asked to indicate whether aliens have the right to remain until a court has decided on the appeal against a withdrawal decision. In the vast majority of member states, appeal suspends an (eventual)\(^{140}\) expulsion order\(^{141}\), in most of the member states where it does not, aliens can ask the court for an interim measure\(^{142}\).

Article 1F of the Refugee Convention

Respondents were requested to indicate whether refugee status and subsidiary protection status could be withdrawn on the basis of the grounds mentioned in article 1F of the RC. In

\(^{139}\) Cf. Slovakia and Slovenia.

\(^{140}\) In some member states, for example, the United Kingdom, a separate decision is needed to terminate the alien’s leave to remain after protection has been withdrawn.

\(^{141}\) See the Austrian, Belgian, Cypriot, Czech, Danish, Finnish, French, German, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Portuguese, Slovakian, Slovenian, Swedish, and British examples.

\(^{142}\) See the Estonian, Italian, Dutch, and Polish examples. As to the remaining member states, respondents stated that appeals do not have suspensive effect in Luxembourg but that in practice aliens are allowed to remain until the court has reached a decision. No response was received on Spanish state practice.
most member states, withdrawal on such grounds is possible. However, this possibility is seldom or never made use of in many of them.

Withdrawal of subsidiary protection status

The PD does not state any rules related to the withdrawal of subsidiary protection status. In fourteen member states, rules on the withdrawal of subsidiary protection status are no different than those that apply to withdrawal of refugee status. In these states, then, the European rules on procedures for withdrawing of refugee status also address withdrawal of subsidiary protection status. In ten member states, different rules apply to the withdrawal of both forms of protection. In most cases, the difference is due to the more temporary nature of subsidiary protection status: in many states, while this status must be renewed annually, refugee status is either permanent or renewed automatically. This difference has implications for withdrawal on the grounds of article 1F of the RC. If the grant of protection is regularly being reconsidered, the same holds true for the applicability of article 1F of the RC. As a result, the application of the grounds in article 1F of the RC to holders of temporary subsidiary protection permits is likely to occur more often than to refugees whose status is permanent or renewed without reconsideration.

Examples of member state practice

Only in Slovakia do the procedural rules on the withdrawal of subsidiary protection status differ from those on the withdrawal of refugee status as relates to the aforementioned issue of the right to remain until a court has ruled on the withdrawal of one’s status.

It should be noted that withdrawal procedures may differ in other respects, notably, the grounds for withdrawal may differ (e.g. Sweden). As the grounds for withdrawal of refugee status are laid down in the Refugee Convention, it follows that in those states the grounds for withdrawal of subsidiary protection status are wider and hence may show more differences.

143 See the Austrian, Belgian, Cypriot, Danish, Estonian, Finnish, French, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Dutch, Polish, Portuguese, Swedish, and British examples. In the Czech Republic, Germany, and Slovakia, withdrawal because of acts committed prior to the grant of protection is not possible. However, in Germany and Slovakia, withdrawal is possible if the alien conceals his or her commission of a crime or crimes mentioned in article 1F of the RC.

144 See the Cypriot, Estonian, Finnish, Italian, Latvian, Lithuanian, Luxembourg, Maltese, Polish, Portuguese, and Slovakian examples in relation to question 6.2.2.

145 See the Cypriot, Czech, Danish, Estonian, French, Greek, Latvian, Lithuanian, Luxembourg, Dutch, Slovenian, Spanish, Swedish, and British examples.
Withdrawal in numbers

As to the withdrawal of refugee status and subsidiary protection status generally, which may take place not only because one of the grounds mentioned in article 1F of the RC applies but also because circumstances in the country of origin have changed so that the alien no longer needs protection, there was no withdrawal of protection status by six member states between 1999 and 2003; respondents in seven other member states did not possess relevant data or could not give an answer. For the remaining member states, the numbers are as indicated in tables 1 and 2 below.

Table 1 - Number of decisions taken to withdraw refugee status between 1999 and 2003

<table>
<thead>
<tr>
<th>Year</th>
<th>DK</th>
<th>D</th>
<th>HU</th>
<th>NL</th>
<th>P</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>0</td>
<td>1,750</td>
<td>106</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>0</td>
<td>1,749</td>
<td>11</td>
<td>127</td>
<td>0</td>
</tr>
<tr>
<td>2001</td>
<td>1</td>
<td>718</td>
<td>23</td>
<td>88</td>
<td>0</td>
</tr>
<tr>
<td>2002</td>
<td>-</td>
<td>2,230</td>
<td>30</td>
<td>84</td>
<td>0</td>
</tr>
<tr>
<td>2003</td>
<td>-</td>
<td>9,526</td>
<td>13</td>
<td>372</td>
<td>12</td>
</tr>
</tbody>
</table>

The German NGO respondent reported that the steep increase in withdrawal decisions since 2001 was due to the withdrawal of the protection that was previously offered to people from the former Yugoslavia after it was deemed safe by German authorities.

Table 2 - Number of decisions taken to withdraw a subsidiary form of protection as understood by Directive 2004/83 between 1999 and 2003

<table>
<thead>
<tr>
<th>Year</th>
<th>DK</th>
<th>HU</th>
<th>NL</th>
<th>P</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>2</td>
<td>32</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>1</td>
<td>800</td>
<td>74</td>
<td>11</td>
</tr>
<tr>
<td>2001</td>
<td>0</td>
<td>792</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>-</td>
<td>-</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>-</td>
<td>-</td>
<td>8</td>
<td></td>
</tr>
</tbody>
</table>

Respondents in other member states indicated the number of withdrawals between 1999 and 2003. The number who lost their protected status in Belgium was sixty-seven, for Luxembourg two, for Poland six, for Finland between twenty and approximately thirty, and for Sweden seventeen since 2002. In Latvia, five have lost subsidiary protection status since 1999, while thirty-eight have lost this status in Sweden since 2002. In a considerable number of member states, no such figures appear to be available.

146 See the Estonian, Irish, Latvian, Lithuanian, Maltese, and Slovakian examples.
147 See the Austrian, Cypriot, Greek, Slovenian, Spanish, and British examples.
148 The figures for 1999 and 2000 only concern the withdrawal of refugee status; figures between 2001 and 2003 account for the withdrawal of both refugee status and subsidiary protection status.
One should be careful when comparing these figures. To begin with, in some member states, one ‘decision’ may involve a number of people, for instance, several members of a family, whereas several decisions may concern the same person in other member states. Further, a decision to end a temporary protection status may in one member state rank as a decision not to renew and, hence, not be indicated in these statistics. In other states, however, a decision to end a temporary protection status may count as a ‘withdrawal’, as in Germany, which may at least partially explain the enormous difference in withdrawal decisions between Germany and almost all of the other member states.

**Conclusions**

In almost all member states, appeal against the withdrawal of refugee status has suspensive effect or allows the alien to request an interim measure from a court to the effect that they may remain pending appeal. It is advisable that European standards codify this practice.

> (19) European standards should address the right to remain during proceedings appealing the withdrawal of asylum status. Appeal proceedings should have suspensive effect or allow applicants to request an interim measure from a court or tribunal to the effect that they may remain pending appeal.

In almost all member states, refugee status can be withdrawn if it comes to light that article 1F of the RC applies. This possibility, however, is only made use of in a minority of states. The data on withdrawal does not allow one to determine whether article 1F of the RC has been more frequently considered over the last few years in light of combating terrorism.

In a majority of member states, the same procedural rules apply to the withdrawal of subsidiary protection status and the withdrawal of refugee status. In almost all states that have different sets of rules, appeal against the withdrawal of subsidiary protection status has suspensive effect or allows for the seeking of interim measures preventing removal.

As to withdrawal on the basis of one of the grounds in article 1F of the RC, both forms of protection differ mainly in that subsidiary protection is issued in most member states for shorter periods of time than refugee protection. Accordingly, the renewal of protection is reconsidered more often, which may actually amount to withdrawal on the grounds of article 1F of the RC.
(20) It is advisable that European standards provide that procedural rules for withdrawing subsidiary protection status offer identical procedural safeguards as those for withdrawing refugee status.

3.3 Other issues

Tensions with the draft Procedures Directive
Respondents were asked whether there was a tension between asylum law or practice in their member states and the PD and, if so, in what respects. Respondents saw no such tension in seven member states\(^{149}\). Tension with the PD was noted by respondents, mostly NGOs, in thirteen member states\(^{150}\). As to the remaining five member states, no definitive answer was given. Five issues regarding where tension occurs were most frequently mentioned, by four or more member states. The most frequently mentioned issue of tension was the safe country of origin exception\(^{151}\). According to this arrangement, member states must turn down applications from nationals from certain states that are designated as safe by the Council or by those member states. For a number of states, this concept is new; for others, the modalities laid down in the PD are new.

Examples of member state practice
Our respondent on Germany states that for the implementation of Article 30A Directive, the German list of safe countries of origin has to be communicated to the Commission. Moreover, the fact that the assessment of whether a country is a safe country of origin has to be based on a range of sources of information, including information from other member states, UNHCR and the Council of Europe, has to be legally anchored in the German Asylum Procedure Act. It appears, then, that the procedures Directive provides for additional safeguards as compared to the domestic modality. Our Portuguese respondent suggests that the same applies to Portugal.

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\(^{149}\) See the Belgian, Cypriot, Danish, Irish, Slovenian, Swedish, and British examples.

\(^{150}\) See the examples of the Austrian, Estonian, French, German, Hungarian, Italian, and Dutch NGOs. See also the Polish, Portuguese, Lithuanian, Luxembourg, Maltese, and Slovakian examples.

\(^{151}\) See the Belgian, Estonian, German, Hungarian, Italian, Luxembourg, Portuguese, and Slovenian examples.
Respondents from states where hitherto the safe country of origin exception was not applied did not state whether it’s (obligatory) implementation would amount to improvement or deterioration of the applicant’s position.

Second, some respondents considered the accelerated procedure in article 23(2) of the PD, which does not exist in some states, to be another source of tension. Third, the rules on the safe third country exception were considered to be a source of tension. According to these rules, the substance of claims for protection do not have to be addressed by a member state if the alien could or should have turned a non-member state other than his or her country of origin. For some states, this concept was theretofore unknown in the domestic legislation; in other member states, it did exist but was subject to rules other than those laid down in the PD.

Examples of member state practice

Our respondent on Germany states that the requirement of a connection between the applicant and the third country laid down in Article 27(20) PD does not exist in current German asylum law. Our Portuguese respondent likewise suggests that present Portuguese state practice is more restrictive than the Procedures Directive rules on the exception of the safe third country.

Respondents from states where hitherto the safe country of origin exception was not applied did not state whether it’s (obligatory) implementation would amount to improvement or deterioration of the applicant’s position.

A fourth issue mentioned as giving rise to tension between domestic law and the PD concerned the rules on border procedures. Finally, the right to free legal counsel at taxpayer expense as laid down in article 13 of the PD was mentioned as another source of tension.

Example of member state practice

An issue was raised as regards asylum practice in only one member state that, nonetheless, warrants special attention because of its importance. According to the Lithuanian respondent, applications at the borders are ignored or even prevented by border guards. Just as troubling,

152 See the examples of Estonia, the Italian NGO, Lithuania, the Dutch NGO, and Portugal.
153 See the examples of the French NGO, the German NGO, Hungary, the Italian NGO, Portugal, and Slovenia.
154 See the Estonian, Hungarian, Lithuanian, Luxembourg, Dutch, and Portuguese examples.
155 See the examples of the Austrian NGO and Estonia, Malta, and Poland.
it was observed above that in Poland it is established policy that applicants at the border after 16.00 are advised to return the following day. Such treatment may amount to outright refoulement. Because the questionnaire did not specifically address this issue, however, the country reports do not allow for general conclusions to be drawn as to the frequency of or the seriousness of such neglect at the borders. Nonetheless, in light of these responses, as well as in light of information from other sources about rejection at the border or at sea, this issue deserves special study. These practices would undoubtedly constitute a violation of article 3 of the ECHR, as well as of article 3(1) of the DR, which guarantees that every asylum application is examined by one member state.

(21) A study should be made about the occurrence by member states of the rejection at the border or at sea of third country nationals who want to invoke the prohibition on refoulement.

Various respondents qualified the legislation or practice in their member state as being at odds with the standards laid down in the PD. Under the PD, accelerated procedures and the application of the safe third country exception are not obligatory, but facultative. The absence of either of these could, therefore, not amount to a conflict with the Directive. It appears, then, that the PD is often not or not merely accepted as simply laying ‘minimum standards’ as discussed in paragraph 1.3 but, rather, as offering a blueprint for the asylum system in member states. To the extent that governments and NGOs in member states perceive European law as obliging them to adopt more restrictive laws, European law may ironically contribute to the erosion of asylum law in the EU.
4 Qualification

4.1 Actors of harm and protection

One of the elements in the definitions of ‘refugee’ and ‘person entitled to subsidiary protection’ in the QD concerns the availability of protection in the country of origin. According to article 7(1)(b) of the QD, non-state actors, such as international organisations, are capable of providing ‘protection’. It was argued above (paragraph 1.6) that this is too broad from the perspective of international law and unjustifyably restricts the number of applicants who can qualify for protection. Respondents were asked whether in their member state non-state entities as understood by article 7(1)(b) of the QD are capable of providing protection for purposes of refugee status and subsidiary protection.

In five member states, non-state actors cannot provide protection under either definition. As to seventeen member states, it was reported that at least in some instances (protection by the United Nations Interim Administration Mission in Kosovo (UNMIK) was most frequently mentioned) non-state actors can provide protection for purposes of the refugee definition and as to fourteen member states for purposes of subsidiary protection. As to other member states, no answer was obtained, no subsidiary protection exists, or the matter had never been addressed in asylum law or practice.

Conclusions

Although a majority of member states accepts that non-state actors can offer sufficient protection, this is not general state practice in the EU. Furthermore, many respondents pointed out that this type of protection was accepted only in isolated cases, particularly protection by UNMIK. This suggests that general state practice is not in accordance with article 7(1)(b) of the QD, which invites member states to generally accept protection by non-state actors.

(22) In the context of agents of protection, it is advisable that European standards require that protection can only be offered by states for purposes of qualifying for refugee status and subsidiary protection status.

156 See the Estonian, Greek, Hungarian, Italian, and Slovenian examples.
157 See the Austrian, Belgian, Czech, Danish, Finnish, French, German, Irish, Latvian, Lithuanian, Luxembourg, Maltese, Dutch, Polish, Portuguese, Swedish, and British examples.
158 See the Austrian, Czech, Danish, Finnish, French, German, Latvian, Lithuanian, Luxembourg, Maltese, Dutch, Portuguese, Swedish, and British examples.
4.2 Refugee Convention grounds

Article 9(3) of the QD requires that the act or acts of persecution must be committed on an RC ground to qualify for refugee status. As discussed in paragraph 1.6 above, the RC allows one to qualify for refugee protection even when the persecution is not committed for one of the reasons under article 9(3) of the QD, although it does withhold protection on certain RC grounds. Article 9(3) of the QD, therefore, too narrowly reads the refugee definition. In questions 9.3 and 9.4, the respondents were asked to indicate their domestic law or practice in this respect.

In four or five member states, applicants for refugee status must establish a nexus between a persecution act and an RC ground in accordance with article 9(3) of the RC\(^{159}\). Respondents in four member states stated that a nexus between absence of protection and a Convention ground would also suffice for qualification\(^{160}\). As to eight other member states, no definitive answers could be reached because the matter had not yet been addressed in domestic asylum law\(^{161}\), which may be due in at least some states to the fact that the RC grounds play no or very little role in asylum practice.

Example of member state practice

Our Italian respondent for example stated that to his knowledge no detailed assessment is normally made of the specific persecution grounds. It should be noted that absence of that assessment does not (or not necessarily) mean that the refugee definition is applied in an overly restrictive manner. On the contrary, it would seem that if the persecution grounds are not assessed each person who has well founded fear of being persecuted qualifies for refugee protection, including those whose fear is not for reasons of a persecution ground.

In the remaining eight member states, the answers obtained at first seemed contradictory because the questions whether persecution on an RC ground was required (see question 9.3) and whether a person could qualify for refugee status if protection were withheld on a persecution ground (and no nexus with the persecution were established were answered affirmatively\(^{162}\). Perhaps these answers only seem contradictory at a superficial level,

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\(^{159}\) See the Latvian, Dutch, Portuguese, Slovenian, and Spanish examples. According to the Austrian NGO, this is also the case for Austria, although this is disputed by the respondent for the Austrian government.

\(^{160}\) See the Irish, Polish, Swedish, and British examples.

\(^{161}\) See the Cypriot, Czech, Estonian, Finnish, Greek, Italian, Lithuanian, Maltese, and Slovakian examples.

\(^{162}\) See the Belgian, Danish, French, German, Hungarian, and Luxembourg examples.
however, and are due to an assumption that both questions refer to different situations\textsuperscript{163}: question 9.4 referring to situations in which non-state actors persecute and the state is unable to provide protection on an RC ground and question 9.3 referring to situations in which the state persecutes. If one adopts a broad interpretation of the refugee definition, then both questions could be answered affirmatively.

Conclusions
It is clear that no uniform and unequivocal state practice has developed within the EU according to which an alien can qualify for refugee protection when protection is withheld for reasons of an RC ground, but his persecutor persecutes him for other reasons. Article 9(3) of the QD, therefore, not only lacks justification from the point of view of international law, but does not even codify state practice.

(23) Article 9(3) of the QD should be deleted, and European standards should stipulate that qualification for refugee status requires a link between one of the RC grounds and a well-founded fear of persecution.

It may be further observed that some member states have not developed any interpretation on the matter. If the implementation and application of the QD will lead to a more precise application of the refugee definition, then the question whether a link between an RC ground and persecution is required will have to be addressed. It is likely that article 9(3) of the QD will inform this.

(24) When evaluating the QD, the question whether article 9(3) of the QD will inform the interpretation of the refugee definition deserves attention.

4.3 Vulnerable groups

Gender
Article 10(1)(d) of the QD explicitly addresses when the RC ground of ‘membership of a particular social group’ applies in cases of gender-based persecution. This clause can be read in two ways. First, gender-based discrimination might not qualify as ‘membership of a particular social group’. Second, it could be argued, ‘women’ do not constitute a particular

\textsuperscript{163} Cf. the comment by the British respondents at question 9.4.
social group, although some of their attributes, for example, being married, could.
Respondents were asked how and under what circumstances gender plays a role in constituting a particular social group.

As to six member states, respondents noted that gender combined with another attribute could suffice to constitute a particular social group; the example of female genital mutilation was mentioned a number of times. This approximates the second, broad reading above. Four member states appear to apply an even broader definition of particular social group in gender-related cases.

<table>
<thead>
<tr>
<th>Examples of member state practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Germany, it has been laid down in statute law that that persons who are subject to gender-related persecution may qualify for Convention refugee status under the concept of “social group”. By this provision it was clarified that persecution because of gender is falling within the category of the social group and that the concept also applies if the threat of persecution is solely related to gender. Thereby it was argued against theories that stipulated an ideological coherence in the sense of a political, religious or social persecution.</td>
</tr>
<tr>
<td>Our Finnish respondents state that under Finnish law, in the interpretation of membership of a particular social group gender-based persecution of women may be taken into account separately as a ground for granting asylum. In certain cases, a woman may also face persecution on grounds other than those of race, religion, nationality or political opinion. In these cases, membership of a particular social group may be considered grounds for persecution. In Finnish case law gender can also be and has been considered as an element which can play a role in determining a particular social group, and thus as a reason for persecution.</td>
</tr>
<tr>
<td>Irish law defines a particular social group as including ‘membership of a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation’. Establishing a link to the Convention in cases of gender related persecution is therefore usually straightforward.</td>
</tr>
<tr>
<td>In contrast, in Spain claims based on gender-based persecution are normally labelled as a ‘private matter’ and are not considered to involve persecution in the sense of the Convention. Moreover, our Spanish respondent notes, when the violence or threat comes from within the family, the asylum seeker is often not admitted to the procedure, as the Spanish Asylum</td>
</tr>
</tbody>
</table>

164 See the Austrian, Belgian, Cypriot, French, Hungarian, and Lithuanian examples.
165 See the Finnish, German, Irish, and Swedish examples.
Office considers that s/he does not fall under the Convention definition, sometimes linking this argument with that of non-state agents of persecution.

In the other member states, the RC ground of membership in a particular social group generally plays no role or only a limited role or membership in a particular social group plays no role or only a limited role in gender-related cases.

**Minors**

Respondents were asked whether unaccompanied minors can qualify as refugees or people eligible for subsidiary protection. In a number of member states, minors must reach a certain minimum age before he or she can apply for one of these forms of protection; prior to that age, an alternative status applies\(^{166}\). In many other member states, while unaccompanied minors can apply for refugee status or subsidiary protection, they will usually be granted an alternative form of protection\(^{167}\).

Respondents were also asked whether article 1F of the RC is applied to minors. In all member states, asylum laws allow for the exclusion of minors from protective status on the basis of article 1F of the RC, but this is seldom, if ever, applied. A number of member states, apart from those that set a minimum age for applications for refugee status by minors, have a minimum age for the application of article 1F of the RC, based, it appears, on the minimum age for criminal responsibility\(^{168}\).

**Victims of trafficking**

As discussed before, victims of trafficking who co-operate with member states in criminal investigations into trafficking (see Directive 2004/81/EC) may have a well-founded fear of persecution or run the risk of being subjected to serious harm on account of their cooperation with the authorities. Respondents were asked whether victims of trafficking are considered refugees or people eligible for subsidiary protection. As to ten member states, respondents reported that trafficking had no influence on applications or stated that its potential influence depended on the circumstances of each case, thus demonstrating the lack of awareness that

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\(^{166}\) Such is the case in Denmark at twelve years of age and in Luxembourg at fourteen years of age.

\(^{167}\) See the Greek, Hungarian, Irish, Italian, Lithuanian, Maltese, Dutch, and Spanish examples.

\(^{168}\) Minimum ages of fourteen, fifteen, sixteen, fifteen, and fifteen years were mentioned by, respectively, Hungary, the Netherlands, Portugal, Slovakia, and Sweden.
being a victim of trafficking might warrant special consideration. In the remaining member states, victims of trafficking can apply for asylum and are also eligible for forms of alternative protection status; apparently, since the victims of trafficking can apply for refugee status or subsidiary protection, their status as a victim of trafficking is not addressed.

**Example of state practice**

Our German respondent notes that under German law, trafficking as such does not constitute a reason for granting refugee protection or subsidiary protection; the ordinary criteria continue to apply. Refugee status was granted in very exceptional cases only where the person concerned was at risk to be exposed to additional persecutory measures upon return, e.g. in the case of a Pakistani woman who was forced into prostitution and additionally raped by the Pakistani police when seeking help there.

**Conclusions**

Gender-related issues play an important role on the issue of a ‘particular social group’ in the member states that have developed practice on the matter. In a number of member states, gender-related aspects play no role or a very little role. This may be due to insensitivity to gender-related issues. The QD may have the effect of increasing attention to the link between gender-related persecution and an RC ground.

(25) **When the implementation and application of the QD are examined, member state practice on the link between persecution and a corresponding RC ground, especially in gender-related cases, deserves special attention.**

(26) **Furthermore, guidelines to raise awareness of the relevance of gender-related issues are needed.**

In many member states, the special situations of (unaccompanied) minors and victims of trafficking are taken into account in so far as these groups are eligible for forms of alternative protection. These forms may partially cover the applicants’ needs. However, to the extent that these forms of alternative protection status are of a temporary nature, they detract from the

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169 See the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Portuguese, Slovakian, Slovenian, and Spanish examples.
rights of the minor or victim who would otherwise qualify for refugee status or subsidiary protection status. Since other member states address the qualification of such applicants for asylum, the issue of forms of alternative protection status leads to disharmony in the asylum practice of member states. A minimum age for applying asylum procedures to minors may give justified attention to their needs.

(27) Further study on this and the issue of guidelines or European standards for the special position of minors and victims of trafficking, as well as the minimum age for the triggering of asylum procedures, is advisable.

The application of article 1F of the RC to minors is possible in all member states but is seldom used in practice. Member states use different minimum ages.

(28) A common European standard on the minimum age for the application of article 1F of the RC is advisable.

4.4 Other issues
Finally, respondents were asked to indicate whether asylum law and practice in their member state were at odds with the rules on qualifying for refugee status and subsidiary protection in the QD and, if so, in what respects. Only a few respondents answered in the affirmative\(^{171}\); some of them, however, said that there were differences between national legislation and the Directive and observed that the implementation of the QD would not mean change but codification of practice\(^{172}\). Most frequently mentioned, by four or more member states, were articles 9\(^{173}\) and 10 of the QD\(^{174}\) on acts of persecution and grounds for persecution. A number of respondents noted that the QD’s standards are in certain respects more restrictive than current domestic standards\(^{175}\). Some expressed the fear that this difference may actually lead to the lowering of standards, and a few concluded that domestic standards should be

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\(^{170}\) See the Austrian, Belgian, Danish, Finnish, French, Greek, Hungarian, Irish, Italian, Luxembourg, Dutch, Polish, Swedish, and British examples.

\(^{171}\) See the examples of the Danish and Spanish NGOs and the Cypriot and Lithuanian examples.

\(^{172}\) See the examples of Belgium, Greece, Hungary, Latvia, and Slovenia and the German NGO.

\(^{173}\) See the Belgian, Cypriot, Danish, and Lithuanian examples.

\(^{174}\) See the Belgian, Cypriot, Danish, Lithuanian, and Luxembourg examples.

\(^{175}\) This was the case for article 15 of the QD, which deals with the scope of subsidiary protection, for the Cypriot, Danish, Finnish, and Swedish examples and for the Dutch NGO.
lowered\textsuperscript{176}.

\textsuperscript{176} See the examples of Finland and Slovakia with regard to the definition of the scope of subsidiary protection as laid down in article 15 of the QD.
5 Costs and numbers

Respondents were asked to indicate the number of applicants in reception centres and associated costs and the number of decisions taken on applications over the last few years (see questions 4.1-4.2 and 5.8.1-5.8.2). The results are presented in tables 3 through 8 below.

Table 3 - Costs of the reception of asylum seekers in each member state between 1999 and 2003 (in thousands of Euro, unless otherwise indicated) (italics indicate a currency other than the Euro)

<table>
<thead>
<tr>
<th>Year</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>CZ</th>
<th>DK</th>
<th>EST</th>
<th>FIN</th>
<th>F</th>
<th>D</th>
<th>EL</th>
<th>HU</th>
<th>IRL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>297,927</td>
<td>15,387</td>
<td>28,400</td>
<td>-</td>
<td>2,114,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>15,540</td>
</tr>
<tr>
<td>2000</td>
<td>26.552</td>
<td>-</td>
<td>365,644</td>
<td>15,816</td>
<td>31,200</td>
<td>1,945,000</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>44,460</td>
</tr>
<tr>
<td>2001</td>
<td>23.478</td>
<td>-</td>
<td>351,988</td>
<td>16,392</td>
<td>24,400</td>
<td>1,710,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>66,430</td>
</tr>
<tr>
<td>2002</td>
<td>34.587</td>
<td>-</td>
<td>1,347</td>
<td>388,296</td>
<td>16,003</td>
<td>24,000</td>
<td>-</td>
<td>1,945,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>83,847</td>
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<tr>
<td>2003</td>
<td>47.583</td>
<td>227.044</td>
<td>6,471</td>
<td>433,366</td>
<td>16,557</td>
<td>27,700</td>
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<td>1,440,000</td>
<td>-</td>
<td>-</td>
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<th>Year</th>
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<th>LT</th>
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<th>NL</th>
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<th>SK</th>
<th>SL</th>
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<tbody>
<tr>
<td>1999</td>
<td>-</td>
<td>746</td>
<td>-</td>
<td>879,162</td>
<td>-</td>
<td>-</td>
<td>26,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>715</td>
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<td>8,056</td>
<td>-</td>
<td>917,779</td>
<td>24,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2001</td>
<td>-</td>
<td>111</td>
<td>-</td>
<td>14,094</td>
<td>-</td>
<td>1,105,751</td>
<td>46,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2002</td>
<td>-</td>
<td>130</td>
<td>-</td>
<td>13,974</td>
<td>-</td>
<td>1,011,399</td>
<td>80,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2003</td>
<td>± 18,000</td>
<td>124</td>
<td>-</td>
<td>15,663</td>
<td>-</td>
<td>2,507</td>
<td>991,637</td>
<td>65,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 4 - Number of asylum seekers in the reception system in each member state between 1999 and 2003

<table>
<thead>
<tr>
<th>Year</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>CZ</th>
<th>DK</th>
<th>EST</th>
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<th>HU</th>
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<tbody>
<tr>
<td>1999</td>
<td>3,799</td>
<td>4,523</td>
<td>7,220</td>
<td>6,653</td>
<td>21</td>
<td>2,976</td>
<td>3,760</td>
<td>436,000</td>
<td>21</td>
<td>11,499</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>2,953</td>
<td>7,250</td>
<td>8,788</td>
<td>9,360</td>
<td>3</td>
<td>3,337</td>
<td>5,020</td>
<td>352,000</td>
<td>7,801</td>
<td>3,077</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>4,371</td>
<td>11,697</td>
<td>1,766</td>
<td>18,094</td>
<td>10,672</td>
<td>12</td>
<td>2,476</td>
<td>6,782</td>
<td>314,000</td>
<td>9,554</td>
<td>4,752</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>7,238</td>
<td>10,896</td>
<td>952</td>
<td>8,484</td>
<td>7,953</td>
<td>9</td>
<td>2,442</td>
<td>10,230</td>
<td>219,000</td>
<td>6,412</td>
<td>4,361</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>9,481</td>
<td>12,928</td>
<td>4,406</td>
<td>11,400</td>
<td>4,960</td>
<td>14</td>
<td>2,691</td>
<td>12,170</td>
<td>264,000</td>
<td>2,401</td>
<td>6,081</td>
<td></td>
</tr>
</tbody>
</table>

177 In Cypriot pounds.
178 In Czech crowns.
179 The monthly costs per asylum seeker were approximately 300 Euro between 1999 and 2001. The monthly costs per asylum seeker were less than 300 Euro in 2002 and approximately 250 Euro in 2003.
180 In Slovak crowns.
181 In Swedish crowns.
182 The costs of emergency accommodation for this period, and from 1 January 2002 the costs of induction centres, were £72,200,000 between 2001 and 2002 and £107,100,000 between 2002 and 2003.
183 Some member states, such as Austria, distinguished between asylum seekers and recognised refugees in reception centres, whereas others only gave figures that may or may not have included recognised refugees. Because member states were only asked to indicate the number of asylum seekers in the reception system, the number of recognised refugees is not conveyed.
184 These figures represent the number of places at specialised reception centres. Approximately the same number of applicants were hosted in other places.
185 This figure is for the end of 1999. For the beginning of 1999, the figure is 2558.
Table 5 - Costs of the reception of asylum seekers in each member state between 1999 and 2003 (in thousands of Euro, unless otherwise indicated) (italics indicate a currency other than the Euro)

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>C</th>
<th>CZ</th>
<th>DK</th>
<th>EST</th>
<th>F</th>
<th>IRL</th>
<th>LT</th>
<th>M</th>
<th>NL</th>
<th>SK</th>
<th>SV</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>21,284</td>
<td>297,927</td>
<td>2,910</td>
<td>307</td>
<td>15,000</td>
<td>179,320</td>
<td>+ 250</td>
<td>156,700</td>
<td>24,000</td>
<td>279,000</td>
<td>250</td>
<td>156,700</td>
<td>26,000</td>
</tr>
<tr>
<td>2000</td>
<td>45,474</td>
<td>365,644</td>
<td>4,307</td>
<td>184</td>
<td>341,990</td>
<td>+ 250</td>
<td>156,700</td>
<td>24,000</td>
<td>279,000</td>
<td>250</td>
<td>156,700</td>
<td>26,000</td>
<td>235,000</td>
</tr>
<tr>
<td>2001</td>
<td>39,195</td>
<td>381</td>
<td>351,988</td>
<td>6,092</td>
<td>32,580</td>
<td>27,000</td>
<td>341,990</td>
<td>+ 250</td>
<td>156,700</td>
<td>24,000</td>
<td>279,000</td>
<td>250</td>
<td>156,700</td>
</tr>
<tr>
<td>2002</td>
<td>25,805</td>
<td>184</td>
<td>183</td>
<td>1,042</td>
<td>1,050</td>
<td>124,000</td>
<td>+ 250</td>
<td>156,700</td>
<td>24,000</td>
<td>279,000</td>
<td>250</td>
<td>156,700</td>
<td>26,000</td>
</tr>
<tr>
<td>2003</td>
<td>71,589</td>
<td>870</td>
<td>1,837,221</td>
<td>3,561</td>
<td>2,772</td>
<td>353,170</td>
<td>+ 250</td>
<td>155,400</td>
<td>65,000</td>
<td>654,000</td>
<td>42</td>
<td>155,400</td>
<td>46,000</td>
</tr>
</tbody>
</table>

Table 6 - Number of requests examined in single asylum procedures between 1999 and 2003

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>CZ</th>
<th>DK</th>
<th>EST</th>
<th>F</th>
<th>IRL</th>
<th>LT</th>
<th>M</th>
<th>NL</th>
<th>SK</th>
<th>SV</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>20,096</td>
<td>35,793</td>
<td>7,220</td>
<td>12,331</td>
<td>21</td>
<td>2,725</td>
<td>135,504</td>
<td>11,499</td>
<td>22</td>
<td>182</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>18,284</td>
<td>41,940</td>
<td>8,788</td>
<td>12,200</td>
<td>3</td>
<td>3,637</td>
<td>105,502</td>
<td>7,801</td>
<td>5</td>
<td>201</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>30,127</td>
<td>23,540</td>
<td>18,094</td>
<td>12,512</td>
<td>12</td>
<td>2,165</td>
<td>107,193</td>
<td>9,554</td>
<td>14</td>
<td>253</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>39,354</td>
<td>18,212</td>
<td>126</td>
<td>8,484</td>
<td>6,068</td>
<td>9</td>
<td>3,334</td>
<td>130,128</td>
<td>6,412</td>
<td>16,918</td>
<td>30</td>
<td>258</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>32,359</td>
<td>16,209</td>
<td>403</td>
<td>11,400</td>
<td>4,593</td>
<td>15</td>
<td>3,320</td>
<td>93,885</td>
<td>2,401</td>
<td>11,209</td>
<td>5</td>
<td>476</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

186 The number between 1999 and 2003, not including detained applicants, was sixty-one.
187 The number between 1999 and 2003 in the reception system was 13,040.
188 These are the numbers of asylum seekers in national Asylum Support Service dispersed accommodation. In addition to these figures, emergency accommodation housed 8,243 applicants between 2000 and 2001 and 5,591 applicants between 2001 and 2002.
189 In Czech crowns.
190 In Slovak crowns.
191 In Swedish crowns.
192 These figures include decisions on the prolongation of subsidiary protection.
193 Per the single asylum procedure introduced on 1 September 2003.
Table 7 - Number of requests for refugee status processed in member states that operate separate procedures

<table>
<thead>
<tr>
<th>Year</th>
<th>FA</th>
<th>IRL</th>
<th>POL</th>
<th>SL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>31,855</td>
<td>7,724</td>
<td>2,530</td>
<td>744</td>
</tr>
<tr>
<td>2000</td>
<td>38,720</td>
<td>10,938</td>
<td>3,092</td>
<td>9,244</td>
</tr>
<tr>
<td>2001</td>
<td>47,263</td>
<td>10,325</td>
<td>3,851</td>
<td>1,511</td>
</tr>
<tr>
<td>2002</td>
<td>51,087</td>
<td>11,634</td>
<td>3,618</td>
<td>640</td>
</tr>
<tr>
<td>2003</td>
<td>7,900</td>
<td>2,511</td>
<td>1,101</td>
<td></td>
</tr>
</tbody>
</table>

Table 8 - Number of requests for subsidiary protection status processed in member states that operate separate procedures

<table>
<thead>
<tr>
<th>Year</th>
<th>FA</th>
<th>IRL</th>
<th>POL</th>
<th>SL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>6,983</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2000</td>
<td>11,809</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2001</td>
<td>17,267</td>
<td>-</td>
<td>9</td>
<td>-</td>
</tr>
<tr>
<td>2002</td>
<td>22,786</td>
<td>3,496</td>
<td>33</td>
<td>-</td>
</tr>
<tr>
<td>2003</td>
<td>27,741</td>
<td>464</td>
<td>18</td>
<td>-</td>
</tr>
</tbody>
</table>

Data on various topics for a number of member states is lacking. As to France, Germany, Italy, and Spain, this may be explained by the fact that the governments were unwilling or unable to answer the questionnaire and because the NGO respondents did not possess the relevant data. In other cases, the requested information was simply lacking.

Where data is provided, caution must be exercised in comparing costs and numbers related to reception in member states. As to the number of applicants in the reception system, some applicants are housed outside reception centres in some member states. Furthermore, it is unclear as to some member states whether the figures represent the total number of applicants that resided in the reception system during the year or, rather, the average number of applicants that resided in the reception system. Similar considerations apply to the figures on the number of examined decisions.

Unfortunately, the figures obtained are too few and diverse to allow for general conclusions. The absence of reliable and comparable figures seriously impairs the formation of a European asylum policy. In particular, it hampers the evaluation of presently adopted legislation in various respects, to the extent that it is impossible to decide on the impact of European legislation on secondary movements of applicants, on the number of applications, and on the costs of procedures and reception. As a result, definite conclusions on the necessity or desirability of burden sharing cannot be drawn at present.
(29) Therefore, European standards, including definitions for counting the number of applicants, decisions on applications, and costs of procedures and reception, should be adopted.

104 This figure represents requests for refugee status processed in separate procedures until 1 September 2003, when single procedures were introduced.
Annexes to
the Report on
Asylum in the EU Member States:
Reception of Asylum Seekers
and Examination of Asylum Applications

Commissioned by the European Parliament

By Hemme Battjes, MA, LLM and Karin M. de Vries, LLM
under supervision of Prof. Dr. Thomas P. Spijkerboer

Vrije Universiteit Amsterdam
November 2005
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ANNEX 1 - Questionnaire
Amsterdam, 31 January 2005

Subject: research Asylum in the EU Member States: reception of asylum seekers and examination of asylum applications

Dear madam, sir,

At the request of the European Parliament we conduct a research on the reception of asylum seekers and the examination of asylum applications in the member states of the European Union (tender No. IP/C/LIBE/ST/2004-06-). The final report of this research will be presented to the European Parliament, and will be made publicly available.

As discussed in our earlier contact, we ask your assistance in answering the following questions regarding your member state.

In your member state:

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

1.3.2 If so, how are (unaccompanied) minors identified?

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

1.5.2 If so, how are victims of trafficking identified?

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

2.3.2 If so, how are (unaccompanied) minors identified?

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

2.5.2 If so, how are victims of trafficking identified?


3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

3.2.2 If so, in which respects?

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

4.2 How many asylum seekers were in the reception system during these years?
Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatizing events before or during their flight (torture, trafficking)?

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

6.2.2 If so, is this possibility (these possibilities) being made use of?

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

7.1.2 If so, in which respects?

7.2.1 If your member state operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in Directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

7.2.2 If so, in which respects?

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

8.4 How many decisions to withdraw refugee status were taken in these years?

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?
9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

10.2 If so, in which respects?

Please return the completed questionnaire before March 1st 2005. Please answer the questionnaire in English, French or German.

We thank you in advance for your assistance.

Yours faithfully,

Prof dr. T.P. Spijkerboer
Prof dr B.P. Vermeulen
Mr. H. Battjes
K. de Vries LLM
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Gemäß § 18 Abs. 1 des Bundesgesetzes über die Gewährung von Asyl sind Fremde die im Inland bei einer Sicherheitsbehörde oder einem Organ des öffentlichen Sicherheitsdienstes einen Asylantrag gestellt haben, wenn diese keinen Einreise- oder Aufenthaltsstitel oder keine Bescheinigung der vorläufigen Aufenthaltsberechtigung vorweisen, zur Sicherung fremdenpolizeilicher Maßnahmen dem Bundesasylamt (Asylbehörde 1. Instanz) vorzuführen.


Die Vorführung und somit auch der Freiheitsentzug enden, wenn nicht eine andere fremdenpolizeiliche Zwangsmaßnahme dem entgegensteht, grundsätzlich vor dem Bundesasylamt.


In diesem Zusammenhang wird darauf hingewiesen, dass UNHCR in das “Flughafenverfahren” eingebunden ist (vgl. auch § 39 Abs 3 AsylG).

§ 18 Absatz 2 sieht demnach zur Sicherung der Zurückweisung am Flughafen eine Konfinierungsmöglichkeit vor, die entsprechend ihrer Konzeption keine Freiheitsentziehung, sondern eine Freiheitsbeschränkung darstellt, da die Person jederzeit ausreisen darf.

Nach § 21 leg. cit. können jene Asylwerber in Schubhaft (§ 61 Fremdengesetz 1997 – FrG) genommen oder belassen werden, die den Asylantrag erst nach einem fremdenrechtlichen Zugriff eingebracht haben; d.h. über die vor Asylantragstellung die Schubhaft verhängt wurde und diese aufrecht.


1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?


Artikel 8 der Grundversorgungsvereinbarung nach Art 15a B-VG zwischen Bund und Ländern sieht Sonderbestimmungen für Massenfluchtbewegungen vor.

Nach Absatz 2 hat der Bund im Falle einer Massenfluchtbewegung eine Koordinationsstelle einzurichten der die Abstimmung der zu treffenden Maßnahmen obliegt. Diese entscheidet über die Unterbringung der Fremden in den geführten Betreuungseinrichtungen der
Vertragspartner, soweit Kapazitäten frei sind, und die Bereitstellung von weiteren Unterkünften und die Unterbringung der Fremden in diesen.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?


1.3.2 If so, how are (unaccompanied) minors identified?

N/A.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

Sondervorschriften für die kurzfristige Aufnahme allein stehender Frauen bevor der Asylantrag gestellt wurde gibt es nicht.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

Diesbezügliche Sonderbestimmungen gibt es nicht.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Nach § 21 leg.cit. können jene Asylwerber in Schubhaft (§ 61 Fremdengesetz 1997 – FrG) genommen oder belassen werden, die den Asylantrag erst nach einem fremdenrechtlichen Zugriff eingebracht haben; d.h. über die vor Asylantragstellung die Schubhaft verhängt wurde und diese aufrecht ist. Siehe ansonsten Punkt 1.1.


2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?
2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?


Nach Absatz 3 leg. cit. gilt Abs. 2 bei unbegleiteten unmündigen Minderjährigen mit der Maßgabe, dass der Rechtsberater ab Ankunft des Unmündigen in der Erstaufnahmestelle dessen gesetzlicher Vertreter wird; der Rechtsberater bringt den Asylantrag ein.

Artikel 7 der Grundversorgungsvereinbarung nach Art 15a B-VG zwischen Bund und Ländern sieht einen umfassenden Katalog von Sonderbestimmungen für die Aufnahme/Unterbringung unbegleiteter minderjähriger Fremder vor (spezielle Wohnformen, Freizeitangebote, verschiedenste Zukunft-/Integrations- und Ausbildungsmaßnahmen)


In diesem Zusammenhang ist auch die vom Bund unterstützte Clearingstelle für unbegleitete Minderjährige im Zulassungsverfahren in der Erstaufnahmestelle Ost zu erwähnen.

2.3.2 If so, how are (unaccompanied) minors identified?


2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?


Aufgrund der Verlegungspolitik sind derzeit alle betreuten allein stehenden Frauen in Bundesländern untergebracht, die über die genannten spezifischen Betreuungseinrichtungen verfügen.

Vom Bund wird auch ein eigenes Frauenhaus in der Erstaufnahmestelle Ost unterstützt.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

Diesbezügliche Sonderbestimmungen gibt es nicht. Doch kann die spezielle Situation dieser Personen im Rahmen des § 2 Abs. 1 der Verordnung des Bundesministers für Inneres über die Bundesbetreuung für Asylwerber 2004 (BundesbetreuungsV 2004- BBetrV 2004), wonach bei Gewährung der Unterbringung nach Möglichkeit auf die individuellen Bedürfnisse des Betreuten, auf seine ethnische Zugehörigkeit und nationale Herkunft, auf Familienbindungen sowie auf die Situation allein stehender Frauen Bedacht genommen wird, berücksichtigt werden.

2.5.2 If so, how are victims of trafficking identified?

Dies erfolgt infolge einer Beweiswürdigung entsprechend der Aktenlage.


Die Umsetzung der Richtlinie erfolgte durch

- Bundesgesetz, mit dem die Bundesbetreuung von Asylwerbern geregelt wird (Bundesbetreuungsgesetz) BGBl. Nr. 405/1991 dFF BBGBI I Nr. 32/2004

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?


Beispielhaft wird auf folgende Maßnahmen sind hingewiesen:

- Medizinische Betreuung (Art 15 und 20 AufnahmeRL)

- Information (Art. 5 AufnahmeRL)
Asylwerber werden sowohl durch verschiedene Informationsblätter, als auch durch die ReferentInnen in den verschiedenen Einvernahmen und die im Zulassungsverfahren für jeden einzelnen Asylwerber zur Verfügung stehenden RechtsberaterInnen über den faktischen Ablauf des Verfahrens, als auch die rechtlichen Gegebenheiten umfassend und verständlich informiert werden.

- **Beschäftigung (Art. 11)**
  Gem. § 7 Abs. 1 BBetrG richtet sich die Aufnahme einer unselbständigen Erwerbstätigkeit durch Asylwerber nach dem AusländerbeschäftigungsG. Demnach darf abgesehen von der allgemeinen Voraussetzung des AuslBG eine Beschäftigungsbewilligung für den Asylwerber dann erteilt werden, wenn über den Asylantrag seit 3 Monaten nicht rechtskräftig abgesprochen und das Verfahren nicht eingestellt wurde (§ 4 Abs. 3 Ziff. 7 AuslBG).
  Überdies ist gem. § 7 Abs. 2 BBetrG die Ausübung einer selbständigen Erwerbstätigkeit drei Monate nach Einbringung des Asylantrages zulässig.

- **unbegleitete Minderjährige (Art. 14/4, 19 AufnahmeRL)**

- **Ausbildung (vgl. Art 24 AufnahmeRL)**
  Auf mehrere Module verteilt wurden Bescheidschulungen, eine Schulung zum Traumabegriff und mehrere Schulungen zum Umgang mit Länderdokumentationsmaterial (inklusive spezifische Englisch-Schulung), für alle ReferentInnen der EAST durchgeführt. Dadurch ist die notwendige Nachhaltigkeit der Schulungsmaßnahmen gewährleistet. Schulungen und interne Bescheidüberprüfungen werden im Rahmen des behördeninternen Qualitätsmanagements laufend fortgesetzt.

**3.2.2 If so, in which respects?**

N/A.

**4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?**

<table>
<thead>
<tr>
<th>Year</th>
<th>Asylum seekers</th>
<th>Recognised refugees</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>3799</td>
<td>255</td>
<td>4054</td>
</tr>
<tr>
<td>2000</td>
<td>2953</td>
<td>300</td>
<td>3253</td>
</tr>
<tr>
<td>2001</td>
<td>4371</td>
<td>355</td>
<td>4726</td>
</tr>
<tr>
<td>2002</td>
<td>7238</td>
<td>285</td>
<td>7523</td>
</tr>
<tr>
<td>2003</td>
<td>9481</td>
<td>488</td>
<td>9969</td>
</tr>
</tbody>
</table>

**Asylum procedures**
5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?


5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?


5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?


5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

Siehe Antwort zu 5.2. Bei Verdacht einer Traumatisierung ist gemäß der Bestimmung des § 24b AsylG auf die besonderen Bedürfnisse traumatisierter Asylwerber Rücksicht zu nehmen Dementsprechend sind die Interviewer hinreichend sensibilisiert und angehalten bei der Befragung entsprechend vorzugehen.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?


Hinsichtlich der Zulassung eines Verfahren ist ergänzend anzumerken, dass ein Verfahren in der Erstaufnahmestelle entweder durch ausdrückliche Zulassung oder eine negative Zulassungsentscheidung (z.B. gem. Dublin) beendet werden kann. Als dritte Möglichkeit ist eine negative inhaltliche Entscheidung – bei klarem Sachverhalt – sofort in der EASSt vorgesehen, die die Zulassungsentscheidung ersetzt, aber nicht mit einer
5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Im Regelfall sind Asylwerber bis zum rechtskräftigen Abschluss des Verfahrens zum Aufenthalt in Ö berechtigt (§19 AsylG). Lediglich in den Fällen der §§ 4, 4a (Unzulässige Anträge wegen Drittstaats sicherheit), und § 6 (offensichtlich unbegründete Asylanträge) kommt einer Berufung gegen eine negative Entscheidung (die auch eine Ausweisung beinhaltet) keine aufschiebende Wirkung zu, es sei denn der unabhängige Bundesasylsenat (2. Instanz) erkennt diese aufschiebende Wirkung zu (§ 32 AsylG).


5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

EURODAC wird zu Beginn des Verfahrens, unmittelbar nach Einbringung/Stellung des Asylantrages, konsultiert.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

Die Daten der Asylwerber werden zu Beginn des Verfahrens, unmittelbar nach Einbringung/Stellung des Asylantrages in die EURODAC Datenbank eingespeist.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Ja. Der Asylwerber bringt einen Antrag auf Asyl ein. Wenn die Voraussetzungen für die Gewährung von Asyl, d.h. nach Artikel 1 Abschnitt A der Genfer Flüchtlingskonvention, nicht vorliegen, wird in der Folge im selben Verfahren geprüft, ob dem Antragsteller subsidiärer Schutz zu gewähren ist. (§§ 2, 8 AsylG). Dies ist dann der Fall, wenn seine Ausweisung Art. 2 EMRK, Art. 3 EMRK oder das Protokoll Nr. 6 zur Konvention zum Schutz der Menschenrechte und Grundfreiheiten über die Abschaffung der Todesstrafe verletzen würde; ihm wird eine befristete Aufenthaltsberechtigung (§ 15) zuerkannt.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?


6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Ja. § 14 AsylG sieht die Möglichkeit vor, dass der Flüchtlingsstatus von Bescheid wegen abzuwenden ist, wenn Endigungsgründe des Art. 1 C GFK eintreten, sich der Lebensmittelpunkt des Flüchtlings in einem anderen Staat
befindet, ein Ausschlussgrund i.S. von Art. 1 F GFK eingetreten ist, oder der Flüchtling eine erhebliche Gefahr für die öffentliche Sicherheit darstellt. § 14 sieht weiters vor, dass in diesem Fall Asyl von Amts wegen mit Bescheid abzuerkennen ist. In den Fällen einer Anerkennung hat die Behörde mit der Anerkennung die Feststellung zu verbinden, daß damit dem Betroffenen die Flüchtlingseigenschaft kraft Gesetzes nicht mehr zukommt.

Nach Absatz 3 hat die Behörde mit der Anerkennung eine Feststellung darüber zu verbinden, ob die Zurückweisung, Zurückschiebung oder Abschiebung der Fremden in den Herkunftsstaat zulässig ist (§ 57 FrG); die Anerkennung des Asyls ist in diesem Fall mit einer Ausweisung zu verbinden.

6.2.2 Is so, is this possibility (these possibilities) being made use of?

Ja.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?


6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?


Da subsidiär Schutzberechtigten nur eine befristete Aufenthaltsberechtigung zukommt (siehe 6.3.1), ist (anders als beim Flüchtlingsstatus) eine regelmäßige Überprüfung, ob deren Voraussetzungen noch vorliegen, gegeben. Bei Wegfallen aller Umstände, die einer Zurückweisung, Zurückschiebung oder Abschiebung entgegenstehen, kann das Bundesasylamt von Amts wegen bescheidmäßig feststellen, dass die Zurückweisung, Zurückschiebung oder Abschiebung zulässig ist (§ 8 AsylG). In diesem Fall ist die befristete Aufenthaltsberechtigung zu widerrufen. Der Widerruf erfolgt ebenfalls durch das Bundesasylamt (§ 15 AsylG). Der Widerruf ist vom Bundesasylamt mit einer Ausweisung zu verbinden. Berufungsbehörde ist auch in diesem Fall der unabhängige Bundesasylsenat.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Die österreichischen Verfahrensvorschriften erfüllen bzw. überfüllen im Allgemeinen die Vorgaben der VerfahrensRL.


7.1.2 If so, in which respects?

N/A.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?
8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

Folgende Kosten wurden in den Jahren 1999-2003 für den Bereich Asyl- und Fremdenwesen (inkludiert Flüchtlingsbetreuung und Integration, Bundesasylamt, UBAS, Fremdenwesen) aufgewendet:

1999: € 21.283.898,07
2000: € 45.474.486,38
2001: € 39.195.379,40
2002: € 50.685.737,32
2003: € 71.589.111,82

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

1999: 20.096
2000: 18.284
2001: 30.127
2002: 39.354
2003: 32.359

Zusätzlich darf auch die Website des Bundesministeriums für Inneres www.bmi.gv.at/publikationen/ hinsichtlich zusätzlicher Statistiken verwiesen werden.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

Es gibt keine diesbezügliche Statistik.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

Es gibt keine diesbezügliche Statistik.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Gemäß der Judikatur des Verwaltungsgerichtshofes können bei Verlust der staatlichen Autorität in einem Teil des Staatsgebiets auch nichtstaatliche Organisationen, Parteien..., welche das betroffene Gebiet kontrollieren, einen Schutz vor asylrelevanter Verfolgung bieten, aber auch selbst entsprechende Verfolgungshandlungen

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Ja. (siehe Frage 9.1).

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Art 7 AsylG verweist auf den Flüchtlingsbegriff der Genfer Flüchtlingskonvention (Art. 1 A Z 2). Folglich ist eine staatliche Maßnahme als asylrelevant einzustufen, wenn sie zumindest auch wegen der Rasse, Religion, oder Nationalität des Flüchtlings, wegen seiner Zugehörigkeit zu einer bestimmten sozialen Gruppe oder seiner politischen Überzeugung gesetzt wurde. Demnach ist nicht erforderlich, dass der Vorsatz der Person, welche die Verfolgungshandlung setzt, direkt die asylrelevanten Verfolgungsgründe einschließt. So wäre es z.B. denkbar, dass die verfolgende Person zur Verfolgungshandlung von staatlichen Stellen aufgrund einer der oben genannten Gründe instrumentalisiert wird. Asylrelevant ist auch z.B. die Verfolgung durch private Dritte, deren Verfolgungshandlung nicht auf einem konventionsrelevanten Grund beruht, wenn der Staat es unterlässt die Opfer aus religiösen, ethischen, politischen....Motiven zu schützen.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?


Ob eine Asylgewährung aus dem genannten Grund (Schutzverweigerung aus GFKrelevanten Gründen) erfolgt, ist im Regelfall nur bei genauer Kenntnis des Verfahrens möglich, da positive Bescheide des Bundesasylamtes zumeist nur kurz begründet sind.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Auch die Geschlechtszugehörigkeit bildet einen Anhaltspunkt für das Vorliegen einer sozialen Gruppe, die bei einem Eingriff von erheblicher Intensität in bestimmte Schutzgüter für die Flüchtlingseigenschaft maßgeblich sein kann. Ausschlaggebend ist nur, dass eine Verfolgungshandlung gegen eine Person gerichtet ist, die ein gemeinsames Merkmal teilt (z.B. auch das Geschlecht).

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Allein der Umstand unbegleiteter Minderjähriger zu sein, rechtfertigt für sich allein nicht die Gewährung von Asyl oder des subsidiären Schutzstatus. Die besondere Schutzwürdigkeit dieser Personengruppe wird aber jedenfalls bei der diesbezüglichen Entscheidungsfindung berücksichtigt.

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9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Allein der Umstand Opfer von Menschenhandel zu sein, rechtfertigt für sich allein
nicht die Gewährung von Asyl oder des subsidiären Schutzstatus, fließt aber in die jeweilige
Entscheidungsfindung ein. Darüber hinaus kann angeführter Personengruppe bei
Nichterfüllung der Voraussetzungen zu Gewährung von Asyl oder des subsidiären
Schutzstatus Fremden eine humanitäre Aufenthaltsberechtigung nach § 10 Abs. 2 Zif. 4
Fremdengesetz 1997 – FrG erteilt werden.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee
Convention?

Die gesetzlichen Bestimmungen sehen keine Sonderregelungen für Minderjährige in Bezug auf
Asylausschlussgründe vor. Jedoch wäre bei der Beurteilung eine umfassende Interessensabwägung mit
Berücksichtigung auf das jugendliche Alter durchzuführen. Diesbezüglich sei auf das österreichische Strafrecht
verwiesen, das eine Strafmündigkeit erst ab dem vollendeten 14. Lebensjahr vorsieht und bei Minderjährigen bis
zum 18. Lebensjahr spezielle mildernde Regelungen zur Anwendung kommen (Herabsetzung des
Strafmaßes….)

10.1 Is there a tension between present practice in your member state on the point of qualification for
international protection, and Directive 2004/83?

Nein.

10.2 If so, in which respects?

N/A.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

a) At the Vienna Airport, a reception centre was established, in 2003, with a capacity for approximately 50 persons. Caritas Vienna has received a contract for social counselling and care of asylum seekers who stay in the reception centre until a first instance asylum decision has been taken. If an admissibility decision is taken (Safe third country, Dublin) or the claim is considered to be manifestly unfounded, the asylum seeker stays at the airport also during a possible appeal's procedure – until this person's deportation or until the reversal of the negative first instance decision. If the claim is considered to be unfounded, the asylum seeker is allowed to enter the country. He then will be told to present himself at the reception centre Traiskirchen or be transferred there.

Apart from that, in June 2004, a "rejection zone" was been established to which not even the social service of Caritas has access. In practice, persons are brought there whose documents are considered to be unsatisfactory at the "Gate-check". This gate-check is conducted for planes from certain destinations, immediately at the movement area after the passengers leave the plane and before they enter the bus. NGOs are concerned about this, because these persons do not have access to information, counselling and representation and the possibility of issuing an asylum claim does not seem to be guaranteed, also due to the fact that no interpreters are involved in this official act. NGOs also doubt the existence of a legal basis for detention in the "rejection zone".

b) At land borders, asylum seekers are be rejected and sent back to the neighbouring country without reception or procedure, based on Article 17 Asylum Act, which entered into force on 1 May 2004. In its judgment of 15 October 2004, the Constitutional Court held that Article 17 – due to its wording – is not applicable and therefore does not constitute a legal basis for rejection. Nevertheless, the answer of the Minister of the Interior to the parliamentarian questioning of 16 September 2004 implies that deportations without proceedings have taken place on the basis of Article 17, Asylum Law. NGOs consider every rejection at the border since 1 May 2004 to be unlawful and, aside from that, claim that access to a procedure constitutes an indispensable requirement for the compliance with the obligation under international law for the protection of refugees.

c) Inside the territory, reception conditions for asylum seekers do not exist before an asylum claim has been issued. An asylum claim can only be filed at one of the reception centres (Traiskirchen, Thalham, Airport Vienna; Article 3 paragraph 3 and Article 24 paragraph 2 Asylum Act). An alien who files his application at an agency of the public security service (e. g. with border guards or at a police station) is arrested and brought to the initial reception centre pursuant to Article 18 and 34a, Asylum Act. An asylum seeker who issues his claim in a written form will be requested to present himself at the reception centre. If he does not obey within 14 days, the procedure will be discontinued.

The reception therefore takes place at one of the reception centres, no short-term conditions are established. Once arrested after filing the claim, the public security authority might not have the possibility to transfer the asylum seeker to the reception centre immediately. In this case, NGOs observed two possible approaches:

a) the asylum seeker is told to present himself at a reception centre without providing for the necessary costs of transport (which, in practice, gives rise to a number of problems), or

b) the asylum seeker is arrested at the police station or border facility (so-called "GÜP – Grenzübergangsposten") until the next transport is organised.

The Amendment to the Asylum Act 2003 also introduced an obligation to search the luggage and clothes of the asylum seeker for items giving information about identity, route or flight cause. The search is conducted as soon as someone files a claim at an agency of the public security service or presents himself at the reception centre "if the possession of [such] items […] cannot be excluded". As this can never be "excluded", NGOs criticized this provision as disproportional and, therefore, as a violation of the right to privacy pursuant to Article 8 European Convention on Human Rights (ECHR). The Constitutional Court held that the provision can be interpreted in a constitutional manner, if search is limited to cases where the identity or the right to protection otherwise cannot be established at all or only with disproportional effort, e. g. if the asylum seeker refuses to cooperate or considerable doubts emerge regarding the facts of the case that can be cleared up by searching the asylum
seekers luggage and clothes. Items discovered during the search that give information about nationality, route or flight cause of the asylum seeker shall be confiscated. No provision for restitution of these items is foreseen in the law.

It is further problematic that refugees do not have any support along the road to registration. The police assigned to duties in this regard do not have any translators at their sides. As a result, for example, in many cases names are falsely recorded and in further proceedings the refugee is charged with having given an alias name and is therefore considered unbelievable.

After serious protests by non-governmental organizations, the shocking way that refugees were required to completely disrobe during searching was stopped. Nevertheless, a search is conducted far in excess of the requirements of the Constitutional Court: without clarification of whether the identity, etc., is impossible or only with disproportionate effort ascertainable; at a point in time in which “doubt on being able to bring forward” on the part of the asylum seeker (see Constitutional Court’s decision) cannot yet exist because it takes place before the first interview.

The initial contact of refugees with the Austrian authorities is already highly problematic, as the application for asylum with an organ of the public security force results in detention.

The asylum seeker’s initial contact in the Refugee Reception Centre is with uniformed and armed police. For the persons involved, who in many cases have suffered persecution by uniformed and armed state agencies, this initial contact with the authorities must trigger fear and already permanently damage trust.

1.3 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

There are no provisions for short-term reception. (See 2.2. – in the case of application, reception conditions are bound to an asylum application OR an application for temporary status).

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

There are no specific provisions for the short-term reception of minors before formally lodging an asylum application.

1.3.2 If so, how are (unaccompanied) minors identified?

N/A.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

There are no specific provisions regarding short-term reception of (single) women.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

There are no provisions for the short-term reception for victims of trafficking.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Detention pending deportation can be imposed (Article 34b Asyl Act):

a) “If an asylum seeker has absented himself without justification from the initial reception centre during the admission procedure”: the assessment of “unauthorised absence from the reception centre” is
conducted by the Aliens Police. NGOs criticized that in practice, their notifications of detention pending deportation do not contain information regarding the facts leading to this determination. According to experience gathered by NGOs, asylum seekers leave the initial reception centres partly to travel to other EU-countries, but partly simply because of missing information about their duty to stay in the centre. The information sheets distributed in the reception centres are not comprehensible for asylum seekers, details on this fact have been analysed in four expertise opinions (from a linguistic, psychological and ethnologic point of view).

A parliamentarian questioning of 9 September 2004 cited statistical data insofar as between 1 May and 25 July 2004, 49 asylum seekers have been detained pursuant to this regulation. Upon request for updated statistics in December 2004, the Head of the Federal Asylum Agency stated that no statistics are maintained regarding detention pending deportation pursuant to the Asylum Act.

b) **as soon as a negative decision is taken**, stating incompetence of the Austrian authorities (safe third country notion, Dublin-procedure), these decisions are systematically being connected with an expulsion; Article 34b section 1 paragraph 2: "An expulsion order – even if it is not final – has been issued against an asylum seeker pursuant to Articles 5a and 6."

According to the experience of NGOs, the asylum seeker is notified by an aliens’ police agency of the Dublin decision, which is then directly followed by the notification of a detention order. In Traiskirchen, asylum seekers are notified of the negative decision by the referee of the Federal Asylum Agency after the (obligatory) second interview and anticipated by an aliens’ police agent when leaving the interview room. This automatism of systematic detention has been criticized by NGOs as disproportional. In addition to that, the possibility of issuing an appeal is severely challenged by the immediate and systematic detention. Pending deportation, social services in detention are, by way of their contract, not allowed to compose remedies for their clients.

c) "an alien files or submits a further application for asylum (subsequent application) following a final ruling of rejection in the admissibility procedure or following a final negative decision." NGOs already criticized this provision during the analysis of the draft law, as the simple fact of filing a second asylum claim is sufficient to order detention. The provision has been declared unconstitutional by the Constitutional Court in its ruling of 24 October 2004, as the provision does not distinguish between obviously inadmissible subsequent claims and claims raised legitimately due to change of facts (refugee ‘sur place’). The Federal Government was requested to review this provision until 30 June 2005, meaning that the provision stayed in force and was applied as it is until then.

d) An **alien who raises an asylum claim while he is in detention pending deportation** is held in prison during the entire procedure. To conduct the necessary interview, such asylum seekers are taken to one of the reception centres by law enforcement officials and then brought back to the detention centre. According to the experience of NGOs, the asylum decision pursuant to the Dublin regulation is notified in detention, directly before deportation to the Dublin state, which worryingly challenges the possibility of issuing an appeal.

e) The Asylum Act stipulates that asylum seekers who **file their application at an agency of the public security service** are detained and brought to the initial reception centre. Article 18 of the Asylum Act reads as follows:

"(1) Aliens who file an application for asylum in Austria with a security authority or an agent of the public security service shall be brought to an initial reception centre by agents of the public security service in order to guarantee their expulsion [...] if they cannot produce any entry or residence authorization or certification of provisional right of residence."

This regulation implies the deprivation of personal liberty by the fact that asylum seekers are brought to the initial reception centre. It's a typical characteristic of refugees/ asylum seekers that they are not in possession of residence authorization or certification of provisional right of residence. In practice, the provision therefore applies to every asylum seeker filing his claim with a security authority (e.g. with border guards or at a police station).

Article 34a of the Asylum Act explicitly utilises the term "detention"/ "arrest":

“(1) Agents of the public security service shall be empowered to arrest aliens who have filed an application for the granting of asylum:

1. For the purpose of bringing them before the asylum authorities,
2. For the purpose of guaranteeing the admission procedure,
3. For the purpose of guaranteeing their expulsion in the case of decisions pursuant to articles 4 to 6.”
According to a parliamentarian questioning of 9 September 2004 cited statistical data insofar as between 1 May and 25 July 2004, 1,242 asylum seekers have been arrested pursuant to this regulation.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Article 29 of the Aliens Act provides the only legal basis for reacting to mass influx situations: Pursuant to this Article, the Federal Government, in agreement with the Executive Committee of the National Council, may by ministerial order grant temporary right of residence in the federal territory to "directly affected groups of aliens who cannot find protection elsewhere (displaced persons)." The ministerial order may only regulate the aliens' entry and the duration of their residence.

For reception conditions, there is no specific legal basis other than the Federal Law Regulating the Provision of Federal Care for Asylum Seekers, applicable in general for accommodation and care of asylum seekers.

A specific provision can only be found in the Basic Welfare Support Agreement, a contract between the Federal Government and the federal states (Bundesländer) pursuant to Article 15a of the Federal Constitution. In the relation between the authorities and asylum seekers, these provisions are not legally binding, but only between the contractual parties. The relevant provision, Article 8 of the Basic Welfare Support Agreement, assigns the competence of coordinating reception in case of a mass influx to the coordinating body established by the Federal Government (at the Ministry of the Interior) pursuant to Article 3, paragraph 2, of the Agreement. Furthermore, Article 8, paragraph 4, legitimates the reduction of reception conditions as laid down in the Federal Law Regulating the Provision of Federal Care for Asylum Seekers, limited only by the non-endangerment of most basic supply and the observance of Article 8 European Convention on Human Rights (ECHR).

There is a procedural rule according to which an asylum procedure is suspended during the granting of temporary protection: "If Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof is applicable or if a ministerial order is issued pursuant to Article 29 of the Aliens Act, the computation of the time-limit for procedures in respect of the persons concerned pursuant to the present federal law shall be suspended for the duration of the temporary protection." (Article 23 paragraph 4 Asylum Act)

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

A specific provision can only be found in the Basic Welfare Support Agreement, which as stated before is not legally binding vis-à-vis the asylum seeker. Article 7 of this Agreement states:

1) The contracting parties agree that unaccompanied minor aliens shall require more extensive basic welfare support than that provided for in article 6. Such persons shall be assisted by initial clarification and stabilization measures whose purpose should be to strengthen their emotional state and create a basis of trust. Social education and psychological support shall also be provided if required. They shall be accommodated in residential units, hostels, other suitable organized lodgings, supervised premises or individual accommodation.

2) Residential units shall be established for unaccompanied minor aliens who have a particularly great need of care. Hostels shall be established for unaccompanied minor aliens who are not capable of self-support. Supervised premises shall be established for care recipients who are in a position to support themselves under guidance.

3) The care of unaccompanied minor aliens shall additionally include the following:
   1. Structuring a daily routine (education, leisure time, sport, group and individual activities, household tasks) suited to their needs,
   2. Dealing with questions relating to the age, identity, origin and residence of family members,
   3. Clarifying future prospects in conjunction with the authorities,
   4. Arranging for family reunification, where appropriate, and
   5. Formulating, where applicable, an integration plan and measures for the organization of educational, training and vocational preparation activities, exploiting existing offers, with the aim of achieving self-sufficiency.
Nebulous regulation of the Asylum Act regarding legal representation:
The completely nebulous legal provisions can only lead to crassly divergent interpretations as to whether
decisions are to be notified to the legal adviser at the initial reception centre or to the Youth Welfare Centre and
when the legal representation is transferred over to the Youth Welfare Centre. Meanwhile, three different
interpretations actually exist thereto by the appeals instance (Independent Federal Review Board). The legal
uncertainty is at the expense of the unaccompanied minor refugee.

Die Erfahrungen der NGOs aus Beratung und Betreuung weisen darauf hin, dass es
keine flächendeckende Unterbringung unbegleiteter minderjähriger Asylwerber in
speziellen Einrichtungen gibt. Darauf deuten auch die Statistiken, wenngleich sie nur
lückenhaft öffentlich zugänglich und schwer zu interpretieren sind.

2.3.2 If so, how are (unaccompanied) minors identified?

In practice, ascertaining age is reached at the personal discretion of the respective referee of the Federal Asylum
Agency in the initial reception centre based on outward appearance.
In the cases examined within the framework of a decision analysis by NGOs in December 2004, it could not be
learned from the examining protocols of the relevant proceedings what concrete criteria of appearance, etc. lead
the authorities to the conclusion that they were of full age. In the reason for the decision, the ascertainment of
age was simply undertaken in form of a statement that the person making the application was considered to be of
full age because he could not make his age believable. In practice, the referee demanded the „agreement“ to the
decision by the present Refugee Reception Centre legal adviser and following this was then called upon to leave
the room. NGOs consider this practice to be highly problematic as the legal advisers are neither professionally
qualified nor competent to determine age.
According to the criticism of NGOs, this practice not only exceeds the competence of the referee but is also
problematic in respect to the completely missing corrective, respectively, control mechanism. According to the
Management of the Refugee Reception Centre-East (Traiskirchen), the ascertainment of age by the referee
generally takes place together with the legal adviser whereby gestures, facial expressions and appearance were
appraised.

In its report, „Minors in Detainment“, in the year 2000, the Human Rights Advisory Board
allows “for consideration that official medical opinions that underlie a decision by a decision-
making authority, according to the constant adjudication of the Higher Administrative Court,
must conform to (the) requirements of an expert opinion.” The Board also referred to
UNHCR’s „Guidelines on General Principles and Proceedings of Asylum Seeking
Unaccompanied Minors” recommending the following procedure:
When one is dependent on estimations to ascertain the age of a child, the following should be
observed:
- By the estimation of age, not only the physical appearance but also the mental maturity of
  the minor is to be taken into account;
- When one uses scientific methods to estimate the age of a child, a certain tolerance in
  accuracy should be allowed. The methods must be reliable and humane.
- In case of doubt, when the age of the child is uncertain, it should be decided in favour of the
  child.

In the official statistic of the Ministry of the Interior from September 2004, out of 1,207 quoted unaccompanied
minor aged asylum seekers, 245 were “asserted” to be of full age.
2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

Special care for women only consists in separated accommodation, sometimes with a higher key of personnel (normal quota: 1 employee for 170 asylum seekers). No systematic approach has been chosen to elevate special needs of female asylum seekers and how they could be met in the context of reception.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

There are no provisions.

2.5.2 If so, how are victims of trafficking identified?

Not aware of one single case where a person has explicitly been qualified as a victim of trafficking in an asylum procedure. The only sporadic cases where a comparable qualification is taken are women in detention pending deportation (when needed as a witness in the penal procedure against the traffickers).


The Federal Government claims to have implemented the Directive 2003/9 by adopting an amendment to the Federal Law Regulating the Provision of Federal Care for Asylum Seekers (Federal Care Provision Act as of 1 January 2005) and by the Basic Welfare Support Agreement (BGBl. I Nr. 80/2004, 15. Juli 2004), a contract between the Federal Government and the federal states (Bundesländer) pursuant to Article 15a of the Federal Constitution. In the relation between the authorities and asylum seekers, these provisions are not legally binding, but only between the contractual parties.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Fehlende Umsetzung in Bezug auf Artikel 16 Abs. 1 lit. a (begründete Entscheidung unter Berücksichtigung des Verhältnismäßigkeitsprinzips), Art. 21 (Rechtsmittel) und Art. 20 (Opfer von Folter und Gewalt)


3.2.2 If so, in which respects?

Säumigkeit, was die Umsetzung von Artikel 16 Abs. 1 lit. a (begründete Entscheidung) und Art. 21 (Rechtsmittel) angeht nach Beendigung des Zulassungsverfahrens: § 2 BBetrG (Federal Law Regulating the Provision of Federal Care for Asylum Seekers) sieht vor, dass der Bund die Aufnahmebedingungen während des Zulassungsverfahrens sowie bei als unzulässig zurückgewiesenen oder als offensichtlich unbegründeten Asylanträgen leistet. Behörde erster Instanz ist das Bundesasylamt. Für Berufungen gegen Bescheide dieser Behörde (Entziehung oder Einschränkung der Bundesbetreuung/Aufnahmebedingungen) ist der Unabhängige Verwaltungsgerichtshof zuständig.

Nach der Zulassung des Antrags im "Normalverfahren" (nicht offensichtlich unbegründet) tragen die Länder die sog. Grundversorgung, wobei jedoch nicht das BBetrG anzuwenden ist (= Bundesgesetz), sondern entsprechende Landesgesetze erlassen werden müssten. Mit Ausnahme von Wien wurden solche Regelungen auf Landesebene jedoch noch nicht getroffen, sodass Asylwerber weder eine begründete Entscheidung im Falle der Einschränkung oder Entziehung von Aufnahmebedingungen erhalten, noch ihnen ein Rechtsmittel im Sinne des Art. 21 zur Verfügung steht.

Artikel 20 der Richtlinie: Personen, die Folter, Vergewaltigung oder andere schwere Gewaltdelikte erlitten haben, erhalten im Bedarfsfall nicht die erforderliche Behandlung. Psychologische und/ oder psychotherapeutische Betreuung wird durch die allgemeine Krankenversicherung idR. nicht abgedeckt, in der


Informationen über Organisationen und Personengruppen, die Rechtsbeistand gewähren sowie Zugang zu medizinischer Versorgung fehlen oder sind unzureichend.

Spannungsverhältnis geltendes Ausländerbeschäftigungsrecht mit **Artikel 11 Abs. 3 der Richtlinie**, da Asylwerber nur im Rahmen einer Saisonbewilligung (idR. Landwirtschaft, Gastgewerbe) arbeiten können.


Probleme in Zusammenhang mit **Artikel 14 Abs. 7** ergeben sich durch die sog. "Betretungsverordnung" (Care Facility Entry Regulation): Nach Art 1 (2) ist nur authorisiert, Betreuungsstellen zu betreten, wer ein berechtigtes Interesse daran hat. Das berechtigte Interesse wird in Abs. 3 auf bevollmächtigte Rechtsvertreter eingeschränkt, d. h. der Zugang setzt eine zuvor (wann? wie?) vom Asylwerber einem Berater bzw. Rechtsanwalt bereits erteilte Vollmacht voraus.


**Artikel 18 Abs. 2**: Die in Art. 18 Abs. 2 vorgesehene geeignete psychologische Betreuung und qualifizierte Vertretung steht nicht in allen Bedarfsfällen zur Verfügung, sondern basiert auf Projekten von NGOs, die über
4.1 *Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?*

Information is not available publicly.

4.2 *How many asylum seekers were in the reception system during these years?*

In 2002, the official statistic provided by the Ministry of the Interior 6,544 asylum seekers and 285 recognised refugees took profit of the public care system. The statistics do not indicate the number of days asylum seekers have been accommodated.

In 2003, according to official statistics, 9,481 asylum seekers and 488 (recognised) refugees had been in public care during the year. The rise in the numbers has to be seen in the context of two judgments by the Supreme Court (24 February 2003 and 27 August 2003), stating in short that the practice regarding the granting and refusal of public care by the Ministry of the Interior has been arbitrary and that – despite a converse regulation in the Federal Law Regulating the Provision of Federal Care (in the version in force since 1991: "Asylum seekers do not have a legal claim for federal public care.") - asylum seekers who fulfil the conditions laid down in the Law do have a legal claim for federal public care. (The judgment assigned the costs for accommodation and nutrition to the NGO, which substituted the federal care unlawfully refused by the Ministry of the Interior during the asylum procedure.) Despite this judgment, the Ministry of the Interior continued to reject claims for and/or dismissed asylum seekers from public care. As a consequence, the Austrian Asylum Lawyer's Network issued claims at the Civil Court and in dozens of cases achieved interlocutory injunctions against dismissal from public federal care. In my opinion, these decisions forced the Federal Government to change its policy regarding reception of asylum seekers; as a consequence the statistics of accommodated asylum seekers rose.

For 2004, no statistic is available publicly; the official data at the cut-off date 1 January 2005 includes 1,648 asylum seekers and 748 refugees in federal care. Apart from that, due to the entering into force of the Basic Welfare Support Agreement, statistics by the Ministry of the Interior no longer represent the whole picture: These statistics only include asylum seekers accommodated by the Federal Government (during the admissibility procedure), but not those provided by the federal states (Bundesländer) after assignment to the Basic Welfare Support System.

**Asylum procedures**

5.1 *Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?*

**Regarding individual asylum seekers:** Pursuant to Article 24a paragraph 2 Asylum Act, an interview of the asylum seeker shall be conducted at the initial reception centre within 48 hours – but at the latest after 72 hours following the submission of the application for asylum (initial interview). Upon completion of the initial interview, the asylum seeker shall be notified that:

- a) the procedure is admissible,
- b) it is intended to reject the claim as inadmissible, or
c) it is intended to dismiss the application. (Article 24a paragraph 5). A second interview has to take place in the presence of the legal advisor at the reception centre (appointed by the Minister of the Interior). A second interview is always conducted, but after analysing the practice, NGOs regard these second interviews at the reception centre to be more or less pro forma.

In practice, NGOs evaluated system errors in the admissibility procedure in the initial reception centre (Extract of the Evaluation Report, December 2004):

“The approach should be rated as questionable that asylum seekers already in the first interview – often before questioning about the reasons for flight – are called upon to claim the right to legal consultation on returning “independent of the result of the asylum proceeding”, often naming a concrete consultation date. It is highly problematic if those called upon to decide on such applications for asylum awake the impression that they intend a negative decision already before knowing the reasons for escape.

As of Amendment 2003, a first interview, which has been conceived as a “crude examination”, is to be arranged within latest 72 hours after an application for asylum has been submitted. Practice shows, however, that the first interview does not serve as orientation but rather routinely represents the only basis in regard to content for the issuing of the decision. As a general rule, the second interview only fulfills an alibi-character.

Supplementary descriptions during the second interview were rated as “enhanced presentation” and therefore considered unbelievable because the authorities themselves had required the refugee to give a “short” description of his reasons at the first interview.

The notification of approval or non-approval of the procedure, respectively dismissal of the Application for Asylum already forcibly follows after the first interview. At this point in time, absolutely no sort of investigation in regard to the individual escape story of the refugee can have taken place.”

No Party Hearing
According to the concept of the Refugee Reception Centre, following the first interview the asylum seeker is to be handed over a file copy between the first and second interrogation stating that a deadline has been granted for the possibility of a party hearing of opinions and a discussion with the Refugee Reception Centre’s legal adviser. In practice, however, the granting of a party hearing is only on paper. The notification about the foreseen dismissal, respectively rejection of the application for asylum follows without giving reason. As a result, the refugee is not put into a position to protest against the objections of the authorities by bringing forth anything supplementary or evidence in the second interview.

Only in 50% of the examined proceedings was the asylum seeker given at least one concrete objection in the first interview, mainly in the Refugee Reception Centre-West. Provided that the refugee was confronted at all with information about his country of origin, despite a large amount of information (up to 16 pages), no deadline was granted for a response.

A notification at the beginning of the second interview to the meanwhile attained results of the examination of the authorities since the first interview was not found in a single one of the examined decisions.

In the second interview, in 3 out of a total of 56 examined proceedings (5,4%) only one concrete objection could be found, whereby one was only repeated from the first interview. In this proceeding, in which at least one objection was recognizable from the first interview, did not regularly concern itself with the factors that in the end lead to the dismissal of the Application for Asylum.

No Enquiry Proceeding.
No individually related enquiry proceeding is to be gathered from the 56 examined proceedings.

In all 56 decisions contained in the 406 pages Country of Origin Information only 5 pages related themselves to the individual allegations of the applicant (1,2%) In 60% of the proceedings, the sources of the Country of Origin Information were either not listed at all or they are not related to the statements. In a complete line-up of decisions, across-in-board reference was made to Decisions of the Independent Federal Asylum Review Board as source, which are publicly unavailable, without reflecting the relevant passages in the text or otherwise substantiate. 54 out of the 56 decisions (96,4 %) have in common that no individually related country of origin research is to be ascertained in regard to the individual asylum seeker’s reason for seek refuge.

In no single proceeding were other sources of proof, such as witnesses, experts, embassy information, etc. consulted and no medical clarification was lined-up even by indications of maltreatment or torture."

Regarding family members.
Pursuant to Article 10 Asylum Act, asylum applications in respect of an asylum seeker's family members shall be examined separately by the authority; the procedures shall be conducted jointly and all family members shall receive the same scope of protection. [...] A separate administrative decision shall be issued to each applicant. However, in practice women are interviewed together with their husband. As a consequence, women do not dare to describe gender-related violence. According to the Head of the Initial Reception Centre East on 22 November 2004, the interview for family members takes a quarter of an hour.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Pursuant to Article 24b paragraph 2 asylum seekers who base their fear of persecution on infringement of their right to sexual self-determination shall be interviewed by senior officials of the same sex unless they request otherwise; such asylum seekers shall be informed in a provable manner of the existence of that possibility. A female asylum seeker is not automatically interviewed by a female referee, which makes the provision rather useless. The concerned female asylum seeker would have to speak about, for example a rape, to the male referee and only on this occasion is informed about her right to ask for a female referee. In practice, NGOs have observed cases where the interview was continued by the male referee after the female asylum seeker was talking about several rapes. Only after about half an hour later she was informed about her right to request a female official.

Im Berufungsverfahren musste aufgrund der fixen Geschäftsverteilung dieser unabhängigen Instanz (Independent Federal Asylum Review Board) eine etwas abweichende Regelung getroffen werden: Hier muss spätestens mit der Berufung das Verlangen gestellt werden, einem weiblichem Einzelmitglied des Unabhängigen Bundesasylsenates (UBAS) zugewiesen zu werden (Art. 24b Abs. 2a Asylgesetz). Im Falle, dass Eingriffen in die sexuelle Selbstbestimmung geltend gemacht werden, ist die Öffentlichkeit von der Verhandlung auszuschließen.

Article 24b Asylum Act
(2) Asylum seekers who base their fear of persecution (...) on infringement of their right to sexual self-determination shall be interviewed by senior officials of the same sex unless they request otherwise; such asylum seekers shall be informed in a provable manner of the existence of that possibility.
(2a) Paragraph (2) above shall apply to hearings before the Independent Federal Asylum Review Board with the proviso that the request has to be made at the latest together with the appeal. In the cases referred to in paragraph (2) above, the hearing shall be held in camera, should the asylum seeker so wish. The asylum seeker shall be informed in a provable manner of the existence of that possibility.

Eine Regelung betreffend die Zurziehung weiblicher Dolmetscher in Verfahren von Asylwerberinnen (generell oder zumindest, wenn Eingriffe in die sexuelle Integrität vorgebracht werden) fehlt völlig.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Pursuant to Article 27 paragraph 2 asylum seekers under full age may be interviewed only in the presence of a legal representative.

According to Article 25 paragraph 2 Asylum Act the legal advisor at the refugee reception center is firstly competent to represent unaccompanied minor aged asylum seekers. Whereas for asylum seekers of full age, the legal advisor is only present during the second interview, they take part also in the first interview of unaccompanied minor asylum seekers.

“After admission of the proceedings”, the local Youth Welfare Office of the province is responsible, to which the minor is firstly assigned.

Den uns vorliegenden Informationen zufolge haben die ReferentInnen des Bundesasylamtes keine spezifische Ausbildung, Fortbildung oder Richtlinien für die Befragung von minderjährigen Asylsuchenden.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

Die einzige Sonderregelung in Bezug auf Traumatisierung bezieht sich auf die Frage der Zulassung oder Nichtzulassung des Verfahrens. Art. 24b Abs. 1 Asylgesetz besagt:
"If, at the initial interview or at a further interview in the admission procedure (article 24a), medically provable facts emerge which justify the assumption that the asylum seeker could be a victim of torture or be traumatised by events (!) connected with the occurrence which gave rise to his flight, the procedure shall be admitted and the asylum seeker may be assigned to a care facility."

Die Sonderbestimmung, wonach Asylverfahren von Traumatisierten und Folteropfern zugelassen werden und die Feststellung der Flüchtlingseigenschaft durch Österreich erfolgt, soll in der Neukodifikation des Asylgesetzes (vorliegender Entwurf) gestrichen werden. Im Ergebnis gibt es keine besonderen Verfahrensbestimmungen oder Schutzbestimmungen für Folteropfer und Traumatisierte mehr.

A number of deficiencies exist in practice, which can be found in the Evaluation Report published in December 2004.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Während des Zulassungsverfahrens (bis zur erstinstanzlichen Bescheiderlassung) besteht lediglich ein sogenannter "faktischer Abschiebungsschutz", nach Zulassung des Verfahrens eine asylechtliche Aufenthaltsberechtigung (Art. 19 para. 2 AsylG).


Article 19 Asylum Act
(1) Aliens who have filed an application for asylum may not be rejected at the border, forcibly returned or deported pending their receipt of a residence entitlement card or pending the issue of an enforceable ruling (de facto protection against deportation). Article 17 shall apply.
(2) Asylum seekers whose asylum procedure is admitted (article 24a) shall be entitled to reside in the federal territory pending the final conclusion or the discontinuation of the procedure; proof of such right of residence shall be provided by the issue of a residence entitlement card (article 36b).
5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

The rejection of a claim within an accelerated procedure (due to incompetence, as manifestly unfounded or subsequent applications) is connected with an expulsion order by the asylum authority. An appeal does not have suspensive effect in all three accelerated procedures; if the application is considered under the safe third country notion or a claim is considered to be obviously unfounded, the Independent Federal Appeals Board may adjudicate suspensive effect within 7 days – but no provision is providing protection during the time limit for the appeal (14 days) as well as in case the Appeals Board does not decide within 7 days.

After a decision by which Austria refers to the competence of another Dublin state, Article 32 paragraph 2 excludes the suspensive effect of an appeal, not even the Appeals Board may adjudicate so. According to the ruling of the Constitutional Court of 15 October 2004, this regulation violates the constitution as it excludes not only the suspensive effect of an appeal against the asylum decision, but also of an appeal against the expulsion which is automatically ordered in such a decision. As the law does not permit a weighing of interests, but excludes the suspensive effect without any exception the Court annulled this regulation. Since the entering into force of the judgment on 23 November 2004 the general regulation for administrative procedures is applicable according to which an appeal does have suspensive effect as long as it is not excluded by the authority.

Furthermore, according to Article 32 paragraph 8 appeals do not have suspensive effect if the asylum seeker applied subsequently within 12 months.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

EURODAC fingerprints are taken at the initial contact of refugees with the Austrian authorities by an organ of the public security force:

a) after the alien who filed his application at an agency of the public security service (e.g. with border guards or at a police station) was arrested and brought to the initial reception centre pursuant to Articles 18 and 34a, Asylum Act, or

b) after the asylum seeker presented himself directly at an initial reception centre.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

Die Daten der Asylwerber werden zu Beginn des Verfahrens, unmittelbar nach Einbringung/Stellung des Asylantrages in die EURODAC Datenbank eingespeist.

Wenn sich in der ersten Einvernahme, die binnen längstens 72 Stunden nach Einbringung des Asylantrags stattzufinden hat, Anhaltspunkte dafür ergeben, dass ein anderer Dublin-Staat für das Asylverfahren zuständig sein könnte, wird von der Erstaufnahmestelle (bei den neuen EU-Mitgliedstaaten) oder vom Dublin-Referat der Zentrale des Bundesasylamtes (bei den “alten” EU-Mitgliedstaaten) der Konsultationsmechanismus in Gang gesetzt.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Ja. Der Asylwerber bringt einen Antrag auf Asyl ein. Wenn die Voraussetzungen für die Gewährung von Asyl, d.h. nach Artikel 1 Abschnitt A der Genfer Flüchtlingskonvention, nicht vorliegen, wird in der Folge im selben Verfahren geprüft, ob dem Antragsteller subsidiärer Schutz zu gewähren ist. (§§ 2, 8 AsylG).

Dies ist dann der Fall, wenn seine Ausweisung Art. 2 EMRK, Art. 3 EMRK oder das Protokoll Nr. 6 zur Konvention zum Schutz der Menschenrechte und Grundfreiheiten über die Abschaffung der Todesstrafe verletzen würde; ihm wird eine befristete Aufenthaltsberechtigung (§ 15) zuerkannt.

Die NGOs haben in ihrem Wahrnehmungsbericht zur Vollziehung des Asylgesetzes 2003 angemerkt, dass in den Beratungsstellen keine einzige positive Refoulemententscheidung (subsidiary protection) der Erstaufnahmestellen (vgl. Außenstellen des Bundesasylamtes) wahrgenommen wurde. Auf Anfrage der NGOs teilte das Bundesasylamt mit, dass keine getrennten Statistiken zwischen Erstaufnahmestellen und Außenstellen des Bundesasylamtes
geführt werden, sodass keine Statistik über die Gewährung von subsidiärem Schutz in den beiden Einrichtungen des Bundesasylamtes vorliegt.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Asylaberkennung: Im Falle einer Asylaberkennung hat die Behörde mit ihrem Bescheid die Feststellung über allenfalls vorliegende Refoulementverbote - und im Fall ihrer Vermeinung195 eine Ausweisung - zu verbinden (Art. 14 para. 3 AsylG). Mangels Sonderbestimmung im Asylgesetz kommt die allgemeine Regelung des Verwaltungsverfahrens (Art. 64 para. 1 Allgemeines Verwaltungsverfahrensgesetz - AVG) zur Anwendung, wonach eine Berufung die aufschiebende Wirkung zukommt, es sei denn, diese wird von der Behörde ausgeschlossen.

Widerruf einer befristeten Aufenthaltsberechtigung (subsidiärer Schutz): Gelangt die Asylbehörde zur Ansicht, dass die Refoulementgründe wegen Änderung der Umstände weggefallen sind, so kann sie gemäß Art. 8 par. 4 AsylG feststellen, dass die Abschiebung (nunnemehr) zulässig ist. Die befristete Aufenthaltsberechtigung ist mit demselben Bescheid zu widerrufen (Art. 15 para. 2 AsylG) und mit demselben Bescheid auch eine Ausweisung zu verbinden (Art. 15 para. 4 AsylG). Mangels Sondervorschrift im Asylgesetz kommt auch hier einer Berufung gegen diesen Bescheid die aufschiebende Wirkung zu (§ 64 Abs. 1 AVG).

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Ja. § 14 AsylG sieht die Möglichkeit vor, dass der Flüchtlingsstatus von Bescheid wegen abzuerkennen ist, wenn Endigungsgründe des Art. 1 C GFK eintreten, sich der Lebensmittelpunkt des Flüchtlings in einem anderen Staat befindet, ein Ausschlussgrund i.S. von Art. 1 F GFK eingetreten ist, oder der Flüchtling eine erhebliche Gefahr für die öffentliche Sicherheit darstellt. § 14 sieht weiters vor, dass in diesem Fall Asyl von Amts wegen mit Bescheid abzuerkennen ist. In den Fällen einer Anerkennung hat die Behörde mit der Anerkennung die Feststellung zu verbinden, daß dem Betroffenen die Flüchtlingseigenschaft kraft Gesetzes nicht mehr zukommt. Nach Absatz 3 hat die Behörde mit der Anerkennung eine Feststellung darüber zu verbinden, ob die Zurückweisung, Zurückschiebung oder Abschiebung der Fremden in den Herkunftstaat zulässig ist (§ 57 FrG); die Anerkennung des Asyls ist in diesem Fall mit einer Ausweisung zu verbinden.

Gemäß Art. 13 Asylgesetz sind von der Asylgewährung neben den in Artikel 1F GFK genannten Tatbeständen auch Personen ausgeschlossen, die eine Gefähr für die Sicherheit der Republik darstellen oder die außerhalb ihres Heimatstaates ein schweres, nicht politisches Verbrechen begangen haben und wegen diesem von einem Gericht rechtskräftig verurteilt wurden.

Die befristete Aufenthaltsberechtigung (subsidiärer Schutz) ist durch das Bundesasylamt mit Bescheid zu widerrufen, wenn sich die Situation im Herkunftstaat derart verändert hat, dass dem Fremden zugemutet werden kann, in den Heimatstaat auszureisen (Art. 15 Para. 4 Asylgesetz). In diesem Fall stellt das Bundesasylamt von amtswegen mit Bescheid fest, dass die Zurückweisung, Zurückschiebung oder Abschiebung zulässig ist und widerruft sowohl die Refoulemententscheidung (Art. 8 AsylG) als auch die befristete Aufenthaltsberechtigung (Art. 15 AsylG). Mit dem Widerruf ist eine Ausweisung zu verbinden. (Art. 15 Para. 4 AsylG) Gegen diesen

195 Die Formulierung des § 14 Abs. 3 AsylG ist unglücklich gewählt, da die Formulierung "hat die Behörde eine Feststellung darüber zu verbinden, ob die [...] Abschiebung des Fremden in den Herkunftstaat zulässig ist; die Anerkennung des Asyls ist in diesen Fällen mit einer Ausweisung zu verbinden" dem Wortlaut nach so verstanden werden kann, dass auch im Falle der Bejahung von Refoulementverboten eine Ausweisung auszusprechen wäre. Eine solche Widersprüchlichkeit ist dem Gesetzgeber aber wohl nicht zu unterstellen.

6.2.2  If so, is this possibility (these possibilities) being made use of?
Ja.

6.3.1  Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

### Withdrawal of refugee status:

<table>
<thead>
<tr>
<th>Article 14 Asylum Act – Deprivation of the right of asylum (cessation clause)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The right of asylum shall be forfeited ex officio by administrative decision if:</td>
</tr>
<tr>
<td>1. Asylum has been granted on the basis of an asylum application or ex officio and any of the grounds set forth in the cessation clauses in article 1, section C, of the Geneva Convention apply;</td>
</tr>
<tr>
<td>2. The aliens have the core of their life in another country;</td>
</tr>
<tr>
<td>3. One of the grounds set forth in the exclusion clauses in article 1, section F, of the Geneva Convention on Refugees applies;</td>
</tr>
<tr>
<td>4. There are sound reasons to believe that the aliens constitute a danger to the security of the Republic or have been convicted, by a final judgment of an Austrian court, of a particularly serious crime and, by reason of such a punishable act, represent a danger to the community. A conviction by a foreign court, which satisfies the requirements set out in article 73 of the Penal Code, shall be deemed equivalent to a conviction by an Austrian court. […]</td>
</tr>
<tr>
<td>(3) An asylum forfeiture ruling pursuant to subparagraph 3 or 4 of paragraph (1) above shall be issued by the authority in conjunction with a declaration whether the aliens' rejection at the border, forcible return or deportation to their country of origin is admissible […]; the forfeiture ruling shall in such cases be issued in conjunction with a deportation order.</td>
</tr>
</tbody>
</table>

### Withdrawal of subsidiary protection:

<table>
<thead>
<tr>
<th>Article 15 Asylum Act – Limited right of residence (due to subsidiary protection pursuant to Article 8 Asylum Act)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The extension of limited rights of residence […] and their revocation shall be the responsibility of the Federal Asylum Agency.</td>
</tr>
<tr>
<td>(2) Limited right of residence shall be granted for a maximum period of one year, and, after the first extension, for a maximum period of five years. […]Limited right of residence shall also be revoked if the alien incurs one of the grounds for disallowance of asylum (Article 13). […]</td>
</tr>
<tr>
<td>(4) Rulings revoking limited rights of residence shall be issued by the Federal Asylum Agency in conjunction with an expulsion order.</td>
</tr>
</tbody>
</table>
**Disallowance of asylum:**

Article 13 Asylum Act (exclusion clause)

(1) Asylum shall be denied if any of the grounds set forth in the exclusion clauses in article 1, section F, of the Geneva Convention is present.

(2) Asylum shall further be denied if aliens for cogent reasons constitute a danger to the security of the Republic or have been convicted, by a final judgment of an Austrian court, of a particularly serious crime and, by reason of such punishable act, represent a danger to the community. A conviction by a foreign court, which satisfies the requirements set out in article 73 of the Penal Code, shall be deemed equivalent to a conviction by an Austrian court. [...]
there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No information available publicly.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

Die Dezember-Statistik 2004 des Innenministeriums weist aus
("positiv" bedeutet Anerkennung als Flüchtling und Erstreckung auf Familienangehörige; negativ bedeutet Ablehnung des Asylantrags (inklusive Zurückweisung wegen Drittstaatssicherheit, Dublin oder Abweisung als offensichtlich unbegründet, "sonstige" sind insb. Einstellungen und Gegenstandsloserklärungen – wo also das Asylverfahren, idR als Folge der Abwesenheit des Asylwerberbers nicht inhaltlich abgeschlossen wurde)

- nach dem Asylgesetz 1997:
  in 1. Instanz  positiv: 4.605  negativ: 3.897
  in 2. Instanz  positiv: 1.920  negativ: 863

  subsidiärer Schutz: positiv: 1.120  negativ: 3.616

Erledigungen gesamt daher: 20.261
inhaltliche Erledigungen (ohne sonstige): 8.502

- nach dem Asylgesetz 2003:
  in 1. Instanz  positiv: 306  negativ: 993
  in 2. Instanz  positiv: 2  negativ: 65

  subsidiärer Schutz: positiv: 62  negativ: 294

Erledigungen gesamt daher: 5.525
inhaltliche Erledigungen (ohne sonstige): 1.433

Erledigungen 2004 insgesamt (Asylgesetz 1997 und 2003):
  in 1. Instanz  positiv: 4.911  negativ: 4.830
  in 2. Instanz  positiv: 1.922  negativ: 3.681

  subsidiärer Schutz: positiv: 1.182  negativ: 3.910

Erledigungen gesamt daher: 25.786
inhaltliche Erledigungen (ohne sonstige): 9.935

Jahres-Statistik des Innenministeriums für 2003:
  in 1. Instanz  positiv: 1.339  negativ: 3.351
  in 2. Instanz  positiv: 745  negativ: 1.600

2003-Statistik enthält keine Angaben zum subsidiären Schutz

Erledigungen gesamt: 36.315
inhaltliche Erledigungen (ohne sonstige): 7.035

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Jahres-Statistik des Innenministeriums für 2002:
positive Erledigungen: 1.073
negative Erledigungen: 4.285
sonstige Entscheidungen: 24.523 (keine näheren Angaben)
keine näheren Angaben
2002-Statistik enthält keine Angaben zum subsidiären Schutz

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?


8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

No data available.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

No data available.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Das Asylgesetz 2003 regelt den Flüchtlingsbegriff nicht selbst, sondern verweist auf die Genfer Flüchtlingskonvention (siehe jedoch Entwurf der geplanten Novelle des Asylgesetzes im Sinne einer Neukodifizierung, welche auch punktuelle Regelungen zum Flüchtlingsbegriff enthält).

In der Judikatur der unabhängigen Berufungsinstanz sowie des Verwaltungsgerichtshofs ist nichtstaatliche Verfolgung durchaus anerkannt. Der UBAS (Unabhängiger Bundesasylsenat) hat beispielsweise Flüchtlingsstatus in Fällen nichtstaatlicher Verfolgung gewährt, wo das Unvermögen zur Schutzgewährung auf völlig Versagen des Staates beruhte. Der Verwaltungsgerichtshof judizierte z. B. in der Vergangenheit mehrmals, dass es nicht auf die Bemühungen des Staates in der Terrorismusbekämpfung ankam, sondern darauf, ob diesen Bemühungen dergestalt Erfolg beschieden ist, dass im Hinblick auf die gesetzten Maßnahmen (gegen Terroristen) nicht mit einer für die Asylgewährung maßgeblichen Wahrscheinlichkeit ein Nachteil von asylrelevanten Intensität befürchtet werden muss (VwGH vom 19.06.01, Zlen. 2000/01/0170 und 0171 zur Verfolgung durch Terroristen in Algerien; mit Verweis auf VwGH vom 22.03.00, Zl. 99/01/0256; ähnliche VwGH vom 12.03.02, Zl. 99/01/0205; VwGH vom 26.02.02, Zl. 99/20/059).

196 vgl. UBAS vom 26.06.03, Zl. 219.087/0-II/39/00; UBAS vom 28.03.03, Zl. 219.174/0-XII/05/00; UBAS vom 17.02.03, Zl. 213.568/0-V/14/99; UBAS vom 26.02.02, Zl. 99/20/059; VwGH vom 04.04.01, Zl. 2000/01/0348; VwGH vom 22.05.01, Zl. 2000/01/278; VwGH vom 26.02.02, Zl. 99/20/059

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9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Entscheidungen des Bundesasylamtes (erste Instanz) beziehen sich auf eine innerstaatliche Fluchtaußerung selbst dort, wo der Schutz im (vermeintlich) sicheren Gebiet durch einen nicht-staatlichen Akteur gewährt werden müsste. Häufigstes Beispiel (bis März 2003) war der Nordirak für irakische AsylwerberInnen, unabhängig davon, ob diese kurdische Asylwerber waren oder nicht sowie die UNMIK als "Schutzmacht" in Kosovo.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?


In den Entscheidungen der erstinstanzlichen Asylbehörde findet diese Judikatur betreffend Gruppenverfolgung und Sippenhaft jedoch vielfach keinen Niederschlag, sondern werden abweisende Bescheide ausgestellt, die von der Berufungsinstanz korrigiert werden müssen. (Siehe Aufhebungsquote im Zeitraum Jänner bis Oktober 2004: 67 %)

Vielfach findet sich im Bescheid neben Ausführungen zur – angeblichen Unglaubwürdigkeit des Asylwerbers - die Begründung "nicht asylrelevant", ohne jegliche rechtliche Subsumption des vom Asylwerber geschilderten Sachverhalts unter den Flüchtlingsbegriff der GFK. Es wird in der rechtlichen Beurteilung nicht geprüft, ob die Fluchtgründe die Elemente des Flüchtlingsbegriffs erfüllen, sondern wird das Nichtvorliegen von asylrelevanten Gründen lediglich "postuliert".

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Es ist uns keine Asylentscheidung bekannt, in welcher explizit die Nichtgewährung von Schutz für die Asylbewerbung ausgereicht hätte. Die Verweigerung des Schutzes des Heimatlandes vor nicht-staatlicher Verfolgung aus einem GFK-relevanten Grund ist hingegen jüngst (siehe zu 9.1.).

Da das Asylgesetz den Flüchtlingsbegriff (derzeit noch nicht) selbst regelt, sondern auf die GFK verweist, wäre eine solche Entscheidung grundsätzlich möglich, sofern sich die Berücksichtigung der Verfolgenden in einer durchgesetzten regelrechten Schutzverhältnisse mit ausreichender Intensität und Individualität äußert.

Nichtgewährung von Schutz wurde bislang in der Judikatur nur in Zusammenhang mit der innerstaatlichen Fluchtlösung erörtert, indem von den höheren Instanzen wiederholt ausgesprochen wurde, dass die Bedingungen im Verhältnis "sicherer" Beliebberechtigung nicht so verheerend oder unzumutbar sein dürfen, dass der Flüchtling erneut zu Flucht gezwungen sein wird. Neben der ökonomischen/Versorgungsleage im fraglichen Gebiet werden auch spezifische Umstände des Asylbewerbers wie seine soziale Kontakte (Familie), Sprache, kulturelle Faktoren, gesundheitliche Faktoren etc. vom Bundessy Checklist für den verantwortungsvollen Schutzgutachten mit ausreichender Intensität und Individualität äußert.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?


[197] vgl. VwGH vom 08.09.99, Zl. 98/01/0614 ("ausweglose Lage"); UBAS vom 14.09.01, Zl. 218.609/5-XII/37/00; UBAS vom 18.05.01, Zl. 214.744/0-I/01/00; UBAS vom 27.08.02, Zl. 213.405/0-VI/17/99; UBAS vom 20.12.02, Zl. 219.533/17-I/01/02; UBAS vom 03.01.03, Zl. 217.268/24-X/28/02
[198] vgl. UBAS vom 21.03.03, Zl. 213.079/0-VI/17/99 (fehlende adäquate medizinische Versorgung, fehlende Existenzgrundlage); UBAS vom 14.04.03, Zl. 223.840/0-V/13/01 (fehlende soziale Bindungen, ablehnende und feindliche Stimmung gegenüber Angehörigen der Gruppe, allgemeine Rahmenbedingungen - Kumulierung von Umständen)
[199] UBAS 200.992/20-II/04/00; UBAS 201.162/0-II/28/00; UBAS 214.299/20-II/04/01; UBAS 214.505/4-II/04/00; UBAS 215.604/7-X/28/01; UBAS 217.655/0-IV/11/00; UBAS 220.648/0-XIV/08/03; UBAS 221.871/0-IV/11/01; UBAS 222.828/0-XIV/08/01; VwGH vom 18.12.1996, Zl. 96/20/0793; UBAS vom 21.03.02, Zl. 208.291/13-I/01/02
[200] UBAS 216.286/0-VIII/22/00; UBAS 218.565/0-VII/22/00
[201] VwGH vom 20.12.1999, Zl. 99/01/0197; UBAS 202.014/2-XII/37/98; UBAS 217.655/0-IV/11/00; UBAS 200.992/20-II/04/00; UBAS 222.828/0-XIV/08/01; UBAS 214.299/20-II/04/01; vgl. auch VwGH vom 24.03.1999, Zl. 98/01/0380
Auch hier zeigen die Erfahrungen der NGOs, dass die erste Instanz mit Fällen geschlechtsspezifischer Verfolgung offenkundig überfordert ist. Asylanerkennungen oder Gewährung von subsidiärem Schutz sind - mit einzelnen Ausnahmen - nur von der Berufungsbehörde bekannt.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?


Vom Unabhängigen Bundesasylsenat (Berufungsinstanz) ist eine Entscheidung bekannt, in der "in Sklaverei gehaltene Kinder" als soziale Gruppe formuliert und in der Folge die Flüchtlingseigenschaft zuerkannt wurde.202

Unter Umständen wird auf Betreiben des Jugendwohlfahrtsträgers oder einer NGO nach negativem Abschluss des Asylverfahrens eine humanitarian Aufenthaltsberechtigung ausgestellt, um den Aufenthaltsstatus zu legalisieren. Es handelt sich dabei jedoch um Einzelfälle.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?


In Einzelfällen wird vom Innenminister (auf Betreiben und Anregung einer NGO) für Opfer von Frauenhandel eine humanitarian Aufenthaltslaubnis gemäß art. 10 Par. 4 Fremdengesetz (Aliens Act) ausgestellt, sofern das Opfer als Zeuge in einem Strafverfahren gegen den/ die Schlepper benötigt wird. Darüber hinaus und nach Abschluss des Strafverfahrens gibt es jedoch keinen Schutz, sondern unterliegen die Betroffenen den allgemeinen Regeln des Fremdengesetzes, sodass regelmäßig Inschubhaftnahme und Abschiebung erfolgt.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?


10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

As the Directive does not really constitute "standards" and largely offers the possibility to deferring regulations by Member States, I see only little tension regarding beneficiaries of subsidiary protection mainly: Article 25 (2), Article 26 (3), Article 30, Art. 33 (3).

10.2 If so, in which respects?

Artikel 25 (2) der Richtlinie: Flüchtlinge, denen Asyl gewährt wurde, erhalten einen von der Republik Österreich ausgestellten Reisepass. Im Gegensatz dazu können Personen mit subsidiärem Schutz aus Österreich nicht ausreisen. Reisen könnten sie nur mit einem von ihrem Heimatland ausgestellten Reisepass, was jedoch unmöglich und auch deshalb unzumutbar ist, weil dies zum Widerruf des subsidiären Schutzes führen würde (Inanspruchnahme des Schutzes des Heimatstaates). Das Fremdengesetz schränkt die Begünstigten für die

202 UBAS vom 12.11.02, Zl. 2000/01/0086; VwGH vom 09.07.02, Zl. 2001/01/0281
Erteilung eines Fremdenpasses auf Fremde mit einer unbefristeten Aufenthaltsberechtigung (welche nach frühestens 5 Jahren Aufenthalt erteilt wird) oder auf Staatenlose oder Personen mit ungeklärter Staatsangehörigkeit ein. Auf Personen mit subsidiärem Schutz trifft diese Regelung kaum zu.


Belgium – Country Report

Government respondents: Mr. R. Pleysier, Mr. P. Neelen, Federal Agency for the Reception of Asylum Seekers, Ms. M. Maes, Belgian Permanent Representation to the European Union

NGO respondent: Mr. K. Pollet, Vluchtelingenwerk Vlaanderen

Arrival and reception of asylum seekers

Les réponses aux questions ne visent que l’hypothèse où le demandeur d’asile est accueilli en structure d’accueil où il reçoit une aide matérielle.

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

La désignation d’un lieu obligatoire d’inscription correspondant à la résidence administrative du demandeur d’asile implique que le demandeur d’asile ne peut recevoir l’aide matérielle ou l’aide financière qu’après de ce lieu. Elle n’a pas pour but de restreindre sa liberté de mouvement.

Il n’existe pas de provisions spécifiques concernant la période avant que le demandeur d’asile ait fait sa demande. Les demandeurs d’asile peuvent voir leur liberté de mouvement restreinte dans quatre cas :

1ᵉʳ) Maintien dans un centre fermé situé aux frontières ou non, lorsqu’un demandeur d’asile introduit une demande d’asile à la frontière et qu’il ne dispose pas des documents nécessaires pour entrer sur le territoire ou lorsqu’il est entré sur le territoire, a demandé l’asile et a reçu une décision de refus de séjour de l’Office des Etrangers (O.E.);

2ᵉʳ) Détention dans un centre pénitentiaire dans le cadre d’une procédure pénale de droit commun;

3ᵉʳ) Obligation de résider dans un lieu déterminé si cela s’avère nécessaire à la sauvegarde de l’ordre public ou de la sécurité nationale;

4ᵉʳ) Mise à la disposition du Gouvernement dans des circonstances exceptionnellement graves et si cela s’avère nécessaire à la sauvegarde de l’ordre public ou de la sécurité nationale.

En général, les demandeurs d’asile arrivant à l’aéroport ne possèdent pas les documents nécessaires pour entrer sur le territoire et ils seront donc envoyés aux centres de détention. Les personnes qui arrivent à la frontière sans documents de voyage et qui ne demandent pas d’asile seront détenues dans des centres pour personnes non-admissibles. Dès qu’ils font une demande d’asile, ils seront transférés aux centres de détention. Pourtant en pratique presque toutes les personnes non-documentées arrivant à la frontière font leurs demandes d’asile au moment de leur arrivée.

Il arrive aussi que des personnes arrivent à la frontière en possession des documents nécessaires mais non des moyens financiers requis, qui font une demande d’asile au moment où leur admission est refusée. Ces personnes sont alors considérées comme demandeurs d’asile non-documentées et sont placées en détention.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

Non.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Le centre d’accueil de Neder-Over-Heembeek, situé près de Bruxelles, dispense un accueil d’urgence aux mineurs (accueil en première phase). Ce centre, ouvert depuis mai 2004, est orienté spécifiquement vers l’accueil de mineurs non-accompagnés et a une capacité de 50 places. Tous les mineurs étrangers non-accompagnés y ont accès qu’ils aient ou non introduit une demande d’asile. C’est donc également le cas pour les mineurs illégaux qui introduisent par la suite une demande d’asile.
En principe, les mineurs n’y sont hébergés que durant une période de 15 jours, une fois renouvelable. Le mineur qui introduit une demande d’asile est alors orienté vers les structures d’accueil pour demandeurs d’asile, dans lesquels un accueil spécifique lui est réservé.

Durant la prise en charge à Neder-over-Heembeek, un premier bilan de la situation psychologique du mineur (collecte d’information, détermination de l’âge par le Service Tutelle, détection des groupes vulnérables (victimes de la traite, victimes de l’exploitation sexuelle, jeunes enceintes etc.)) est élaboré. En fonction de cette situation une solution plus permanente sera déterminée. Le bilan est établi par la structure d’accueil de première phase en collaboration étroite avec le tuteur du mineur se basant sur le résultat des informations échangées entre le service des Tutelles et la structure d’accueil.

Le mineur est transféré en deuxième phase dans la structure d’accueil déterminée en fonction de la situation individuelle du mineur (étalée par la structure de la première phase d’accueil et le service des Tutelles ou le tuteur du mineur).

L’Agence fédérale pour l’accueil des demandeurs d’asile ouvrira prochainement un deuxième centre d’accueil d’urgence pour ce même public.

1.3.2 If so, how are (unaccompanied) minors identified?

Il a été institué par la loi-programme du 24 décembre 2002 auprès du Service public fédéral Justice un service, dénommé " service des Tutelles ", chargé de mettre en place une tutelle spécifique sur les mineurs non accompagnés. La tutelle est entrée en vigueur au 1er mai 2004.

Il a pour mission de procéder à l'identification des mineurs non accompagnés et, en cas de contestations quant à leur âge, de faire vérifier cet âge au moyen d'un test médical.

En vertu du dispositif légal mis en place, toute autorité qui a connaissance de la présence, à la frontière ou sur le territoire, d'une personne qui paraît être âgée ou qui déclare être âgée, de moins de 18 ans, et qui paraît se trouver dans les autres conditions prévues à l'article 5, en informe immédiatement le service des Tutelles ainsi que les autorités compétentes en matière d'asile, d'accès au territoire, de séjour et d'éloignement, et leur communique toute information en sa possession sur la situation de l'intéressé.

Dès qu'il a reçu cette information, le service des Tutelles prend la personne concernée en charge et procède à son identification, vérifie le cas échéant son âge et si elle réunit les autres conditions prévues par l'article 5.

Lorsque le service des Tutelles ou les autorités compétentes en matière d'asile, d'accès au territoire, de séjour et d'éloignement ont des doutes concernant l'âge de l'intéressé, il est procédé immédiatement à un test médical par un médecin à la diligence dudit service afin de vérifier si cette personne est âgée ou non de moins de 18 ans. Le test médical est réalisé sous le contrôle du service des Tutelles et consiste en un scanning des os.

En cas de doute quant au résultat du test médical, l'âge le plus bas est pris en considération.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

Non.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

Un accueil spécifique existe en Belgique pour les victimes de la traite des êtres humains, qu’elles soient ou non demandeurs d’asile.

La loi du 13 avril 1995 contenant des dispositions en vue de la répression de la traite des êtres humains est la norme principale. Les dispositions pertinentes sanctionnent notamment l’usage de manoeuvres frauduleuses, de violence, de menaces ou d’une forme quelconque de contrainte à l’égard de l’étranger ou l’abus de la situation particulièrement vulnérable dans laquelle se trouve l’étranger en raison de sa situation administrative illégale ou précaire, d’un état de grossesse, d’une maladie d’une infirmité ou d’une déficience physique ou mentale.

Ces directives prévoient une assistance des victimes de la traite des êtres humains, au sein de trois centres spécialisés («Payoke» pour la Région flamande, «Pagkasa» pour la Région de Bruxelles-Capitale et «Sürya» pour la Région Wallonne) qui ne sont pas seulement habilités à introduire une demande de permis de séjour, mais assurent également un accompagnement psychosocial et offrent une aide juridique aux victimes qui souhaitent défendre leurs intérêts dans le cadre de la procédure judiciaire.

Si une victime de la traite des êtres humains fait une demande d’asile elle peut être transférée au centre d’accueil pour demandeurs d’asile, mais ceci n’est pas obligatoire.

1.5.2 If so, how are victims of trafficking identified?

Des personnes peuvent seulement être classifiées comme victimes de la traite par les centres mentionnés sous 1.5.1. Elles seront dirigées vers ces centres s’il existe une présomption fondée que l’intéressé est une victime de la traite des êtres humains. Le renvoi peut être réalisé par la police ou les services de l’ordre public, mais aussi par les centres d’accueil ou les services sociaux.

Afin d’être accordé le statut de victime de la traite, l’intéressé doit être capable d’identifier le trafiquant et disposé à collaborer à l’investigation.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

La désignation d’un lieu obligatoire d’inscription correspondant à la résidence administrative du demandeur d’asile implique que le demandeur d’asile ne peut recevoir l’aide matérielle ou l’aide financière qu’auprès de ce lieu. Elle n’a pas pour conséquence de restreindre sa liberté de mouvement.

Un demandeur d’asile peut voir sa liberté de mouvement restreinte dans quatre cas :

1°) Maintien dans un centre fermé situé aux frontières ou non, lorsqu’un demandeur d’asile introduit une demande d’asile à la frontière et qu’il ne dispose pas des documents nécessaires pour entrer sur le territoire ou lorsqu’il est entré sur le territoire, a demandé l’asile et a reçu une décision de refus de séjour de l’Office des Etrangers (O.E.);

2°) Détention dans un centre pénitentiaire dans le cadre d’une procédure pénale de droit commun ;

3°) Obligation de résider dans un lieu déterminé si cela s’avère nécessaire à la sauvegarde de l’ordre public ou de la sécurité nationale;

4°) Mise à la disposition du Gouvernement dans des circonstances exceptionnellement graves et si cela s’avère nécessaire à la sauvegarde de l’ordre public ou de la sécurité nationale.


En pratique, tous les demandeurs d’asile arrivant à l’aéroport sont détenus pour manque de documents. Pendant la première phase de l’examen de la demande d’asile le demandeur d’asile restera dans le centre de détention. Si la demande est jugée admissible, l’intéressé peut entrer librement sur le territoire belge. Si ce n’est pas le cas, il doit rester dans le centre de détention jusqu’à la décision soit suspendu ou annulé par le Conseil d’État ou qu’il soit repatrié.

Les demandeurs d’asile peuvent aussi être détenus si un autre État-Membre de l’UE est responsable pour l’examen de leur demande d’asile (procédure Dublin) ou dans certaines circonstances exceptionnelles pendant la durée d’un appel urgent devant le Commissaire-géneral.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?
If the government cannot provide sufficient accommodation for persons benefiting from temporary protection, this will be provided by the OCMW (Social Welfare Centre) of the city or town where they are registered. As far as reception is concerned these persons are treated like asylum seekers whose claims have been declared admissible.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

S’agissant des mineurs étrangers non accompagnés (M.E.N.A.), la loi-programme du 24 décembre 2002 prévoit que chaque mineur non accompagné âgé de moins de 18 ans se voit désigner un tuteur.

En ce qui concerne l’hébergement des mineurs accompagnés, des logements adaptés aux familles sont proposés dans la mesure des places disponibles. Dans la pratique actuelle, l’unité familiale est préservée au deuxième degré en matière d’hébergement.


Les Communautés, compétentes en matière de protection de la jeunesse, n’interviennent qu’à titre exceptionnel pour le placement des mineurs demandeurs d’asile lorsque aucune autre solution d’hébergement n’a pu être trouvée.

Enfin, les mineurs non accompagnés, victimes de la traite des êtres humains, sont accueillis en Communauté française et flamande.

Pour les mineurs victimes de toute forme d’abus, de négligence, d’exploitation, de torture, de traitements cruels, inhumains et dégradants ou de conflits armés, le médecin de la structure d’accueil peut établir un réquisitoire de soins afin que le mineur reçoive une aide psychologique au sein d’un centre de guidance ou de santé mentale.

Les M.E.N.A. participent à l’enseignement régulier dans les écoles de leurs localités.

2.3.2 If so, how are (unaccompanied) minors identified?

Unaccompanied minors are officially identified by the Guardianship Department (Ministry of Justice). In practice this is done on the basis of standard forms that have to be used by the authority having the first contact with the unaccompanied minor (mostly the police) and sent to the Guardianship Department. A person is identified as an unaccompanied minor when four conditions are met:

- not accompanied by the parents
- not accompanied by a legal guardian (according to the national law of the minor)
- the minor must be a non-EEA-national
- the person must be less than 18 years old.

If the Guardianship Department has doubts about the age of the person concerned, a medical examination to determine the age of the person concerned can be ordered. Such tests are performed under the supervision of the Guardianship Department and consist of a bone scan. If the result of the test leaves room for doubt, the lowest age determination will be taken into account.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

Les femmes sont hébergées au sein du même centre d’accueil que les hommes mais elles ont des blocs séparés à leur disposition.
S’agissant des femmes enceintes, l'alimentation spécifique que leur état nécessiterait est en principe prise en compte.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

Un accueil spécifique existe en Belgique pour les victimes de la traite des êtres humains, qu’elles soient ou non demandeurs d’asile.

La loi du 13 avril 1995 contenant des dispositions en vue de la répression de la traite des êtres humains est la norme principale. Les dispositions pertinentes sanctionnent notamment l’usage de manœuvres frauduleuses, de violence, de menaces ou d’une forme quelconque de contrainte à l’égard de l’étranger ou l’abus de la situation particulièrement vulnérable dans laquelle se trouve l’étranger en raison de sa situation administrative illégale ou précaire, d’un état de grossesse, d’une maladie d’une infirmité ou d’une déficience physique ou mentale.


Ces directives prévoient une assistance des victimes de la traite des êtres humains, au sein de trois centres spécialisés (« Payoke » pour la Région flamande, « Pag-asa » pour la Région de Bruxelles-Capitale et « Sûrya » pour la Région Wallonne) qui ne sont pas seulement habilités à introduire une demande de permis de séjour, mais assurent également un accompagnement psychosocial et offrent une aide juridique aux victimes qui souhaitent défendre leurs intérêts dans le cadre de la procédure judiciaire.

L’accompagnement des victimes de la traite des êtres humains est un accompagnement spécialisé. Connaissant le phénomène de la traite, les membres du personnel des centres spécialisés y travaillant peuvent mieux l’identifier et répondre plus rapidement aux besoins des personnes accueillies. L’accompagnateur étant sensibilisé à ce phénomène, ceci permet à la victime d’en parler plus facilement. La sécurité de la victime est également garantie puisque l’adresse où réside la personne est confidentielle.

Si une victime de la traite des êtres humains fait une demande d’asile elle peut être transférée au centre d’accueil pour demandeurs d’asile, mais ceci n’est pas obligatoire.

2.5.2 If so, how are victims of trafficking identified?

Voir 1.5.2.


The Reception Directive has not yet been implemented. A proposal for a new law on reception, which includes implementation of the Reception Directive, is currently being discussed within the government. A proposal is to be presented to Parliament later this year.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

In general, present reception conditions in Belgium meet the minimum standards set out in the Directive. However, the NGO respondent found that some tension might exist. The government contested this. See 3.2.2.

3.2.2 If so, in which respects?
The NGO respondent noted that current legislation in Belgium provides that only asylum seekers whose asylum claim has been declared admissible have access to the labour market, whatever time it takes for the asylum authorities to take a decision on the admissibility of the claim. Hence, the time frame of one year as prescribed by Article 11 of the Directive is currently missing in Belgian legislation. In practice, the admissibility decision is taken within a couple of months (excluding the procedure before the Conseil d’Etat, which is not strictly speaking part of the asylum procedure) and thus the one-year time frame is seldom surpassed. However, the NGO respondent noted that in the past asylum seekers have had to wait for years until an admissibility decision was taken and that there exists no guarantee that such delays could not occur again.

Both the NGO and the government respondent indicated that Belgian legislation does not offer the possibility to withdraw reception conditions as foreseen in Article 16 of the Directive.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?


In the budget of 2004 a total of 474.059.000 € was anticipated for the reception of asylum seekers.

4.2 How many asylum seekers were in the reception system during these years?

Beginning 1999 – 2558
End 1999 – 4523
2000 – 7250
2001 – 11697
2002 – 10896
2003 – 12928

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

According to the Arrêts Royales of 11 June 2003 (laying down rules for the procedure to be followed by the Office des Etrangers and the Commissioner-general for refugees) every asylum seeker should at least have an interview at the Office des Etrangers and at least one at the Commissariat-general for Refugees (as the Commissioner-general can be intervening in both stages of the procedure). Belgian legislation contains no clear provisions concerning the issue of separately interviewing members of the same family or not. In practice however, all adults are being interviewed separately and receive a separate decision on their asylum claim. It is common practice to compare in detail the interviews of spouses. Minor children are automatically included in the file of their parents. When they reach adulthood (18) they can ask to have their asylum claim examined separately.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Yes – before the interview takes place and if there are indications that the persecution is gender-related, the female applicant will be asked if she prefers to be interviewed by a female interview official and/or assisted by a female translator.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?
According to the Arrêtés Royales of 11 June 2003 (laying down rules for the procedure to be followed by the Office des Etrangers and the Commissioner-general for refugees), an accompanied minor applicant can, during the first interview by the Office des Etrangers, be assisted by his/her parents or the person who is his/her legal custodian according to his/her national law.

In the case of an unaccompanied minor applicant, s/he will always be assisted during the interview by the Office des Etrangers by the custodian appointed under Belgian law. The presence of the parents or the person who is a guardian according to the national law of an accompanied minor can be refused by the interview official in the interest of the minor, or whenever the examination of the claim requires it, during the second interview by the Commissioner-general for refugees.

In the case of an unaccompanied minor applicant, s/he will always be assisted during the interview by the Commissioner-general for refugees by a custodian appointed under Belgian law.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

There is no specific procedure laid down in Belgian legislation (the Arrêté Royal of 11 June concerning the Office des Etrangers only mentions that if an asylum seeker belongs to a vulnerable group, this should be taken into consideration. Persons who have been traumatised would be considered as belonging to a vulnerable group). Nevertheless, within the Commissioner-general for Refugees a psychologist specialised in these issues is available to examine the trauma and to determine how this could influence the examination of the asylum claim.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

During the whole asylum procedure (three instances) the applicant will benefit from suspensive effect when appealing against a negative decision. For every final administrative decision (including on an asylum application), an appeal to the Administrative Court (Raad van State) is possible, consisting of a marginal appreciation of the facts and an examination on points of law. This appeal is not part of the asylum procedure itself, the Conseil d’Etat not being an asylum instance.

An appeal before the Conseil d’État against a negative asylum decision and/or an order to leave the territory has no suspensive effect (recours d’annulation). However, the applicant can invoke a situation of “extreme urgent necessity” if s/he can prove that the execution of an order to leave the territory would lead to a violation of Article 3 ECHR. There exists a ministerial instruction stating that whenever an appeal for suspension and annulment of an order to leave the territory is lodged in a situation of extreme urgent necessity, the order to
leave the territory may not be executed until a decision has been taken the appeal. Hence, in these cases appeals before the Conseil d'Etat do have suspensive effect.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Before examining if an application is admissible, Eurodac will be consulted to determine if the Dublin regulation is applicable. Eurodac and Dublin thus form a sort of “preliminary” stage before the admissibility stage and the stage of examination on the merits.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

At the “preliminary” stage (see 5.7.1.).

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

At this moment, subsidiary protection is not included in the Belgian Aliens Act. The government is working on a proposal to implement the Qualification Directive. In that proposal a clear choice for a single procedure is made.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

A decision to withdraw refugee status is made by the Commissioner-general and is subject to appeal at the ‘Commission Permanent’. This appeal has suspensive effect. If this Commission confirms the decision to withdraw refugee status, the decision and the accompanying order to leave the territory are subject to appeal before the ‘Conseil d’Etat’. As mentioned in the answer to question 5.6, there is the possibility of suspensive effect in situations of extreme urgent necessity, which in practice leads to suspension of the order until a judgment has been made on the appeal.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

This is possible if, after recognition, evidence becomes available that the person concerned should have been excluded from refugee status according to Article 1F. In those cases it is considered that refugee status was erroneously granted because the information was not available at the time of the decision or because it was based on false declarations of the person concerned.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Yes. However, statistics only provide a general figure and do not distinguish between withdrawals of refugee status because protection is no longer needed or because the person concerned did not deserve protection after all.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

N/A.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?
7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

No. However, some of the concepts included in the proposed Directive are as yet unknown in Belgian asylum law. See 7.1.2.

7.1.2 If so, in which respects?

The main difference between the proposed Directive and the current Belgian asylum procedure exists concerning the concept of the common and national lists of safe countries of origin, and the concept of super safe third countries. Both notions are so far unknown in the Belgian asylum procedure. The notion of safe third country is used in the Aliens Act in the first stage of the procedure (on admissibility). However, the Aliens Act does not contain clear criteria for determining a country as a safe third country. It rather defines a country as safe, when the asylum applicant has stayed in that country or several other countries for more than three months, without fear of persecution, before coming to Belgium.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No data available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Total asylum applications</th>
<th>Admissibility decisions by Office des Etrangers</th>
<th>Admissibility decisions by Commissioner-general</th>
<th>Substantial decisions by Commissioner-general</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>35.793</td>
<td>not available</td>
<td>11.383</td>
<td>3087</td>
</tr>
<tr>
<td>2000</td>
<td>41.940</td>
<td>not available</td>
<td>15.913</td>
<td>4475</td>
</tr>
<tr>
<td>2001</td>
<td>23.540</td>
<td>not available</td>
<td>26.229</td>
<td>2797</td>
</tr>
<tr>
<td>2002</td>
<td>18.212</td>
<td>17.779</td>
<td>23.332</td>
<td>5631</td>
</tr>
</tbody>
</table>

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.
8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

In the period 1999-2003 67 refugee statuses were withdrawn.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

N/A.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Non-state actors as meant in Article 7(1)(b) of the Qualification Directive are deemed capable of providing protection for the purposes of qualification for refugee status when certain conditions are met. The conditions required by the asylum bodies are more or less the same as the conditions mentioned in Article 7(2) of the Directive.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Subsidiary protection does not exist within the Belgian Aliens Act at this moment. See above.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

In the current case-law of the Commissioner-general it is required that persecution is committed for reasons of a persecution ground, but it is, however, irrelevant whether or not the persecution ground matches reality or is “attributed” by the persecutor.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Yes, according to current Belgian case law withholding protection amounts to persecution. The Belgian government distinguishes two concepts of persecution:

1) persecution can occur when acts of persecution are committed for reasons of a persecution ground, and
2) a situation where protection is withheld for reasons of a persecution ground can also amount to persecution.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1(2) RC?

According to current case law, in cases of gender-related persecution it is still necessary to examine why persecution took place. Female refugees can be exposed to sexual violence based on their religion, political opinion or nationality. In these cases sexual violence would be considered as a specific form of persecution and it would be possible to find persecution for each of the five persecution grounds. However, sexual violence, such as genital mutilation, could be based exclusively on sexual grounds. In such cases the “particular social group”-ground can be applied.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?
Yes if they fall within the refugee definition of the Geneva Convention.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

In principle no, unless they fall within the refugee definition of the Geneva Convention. There are separate regulations for victims of trafficking (protection is granted to those willing to co-operate with the police and judicial authorities).

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

In principle, Article 1F could be applied to (unaccompanied) minors, but this rarely happens in practice.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

No, however the Belgian practice concerning qualification for international protection at some points differs from the Directive. See 10.2.

10.2 If so, in which respects?

There is a difference between the practice concerning qualification for international protection and the Directive on following aspects:

-interpretation of particular social group: Belgium applies both elements of Article 10, 1, d) separately and does not require that a particular social group should meet both definitions.

-internal protection (Article 8): Belgium does not apply Article 8.3

-prosecution or punishment for refusal to perform military service: currently in Belgium this is not limited to refusal to perform military service in a conflict and it could include pure conscientious objection

-the possibility not to grant refugee status solely on the basis that the person concerned would be a threat to public security (Article 14, 5) is not provided in the current Aliens law
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

An applicant who enters or has entered the Republic illegally shall not be subjected to punishment by reason only of his/her illegal entry or residence, provided that s/he appears without any undue delay to the authorities and gives reasons for his/her illegal entry or residence.

According to the National Law:

a) The detention of an applicant for the sole reason of being an asylum seeker is prohibited.

b) The detention of an applicant is only allowed by Court Order and only in the following cases:

i) for establishing his identity or nationality, and in case he has no nationality, the country of his previous habitual residence, in case he destroyed or disposed of his travel or identity documents, or used forged documents on his arrival in the Republic in order to mislead the competent authorities, provided that he did not reveal these actions and his real identity at the time of submission of the application.

ii) for the examination of new elements, which the applicant wishes to submit with the intention of proving his claim concerning his asylum application and in case his application has been rejected on first and on second instance and a deportation order has been issued against him. Illegal immigrants against whom a deportation order has been issued by the Chief Immigration Officer and who subsequently apply for

c) The detention of minor applicants is forbidden. Asylum seekers may be detained until their asylum claims have been assessed.

An applicant’s detention on the above-mentioned grounds may not exceed eight days. The detention may be extended by further eight-day terms upon order of the Court, but the total detention period shall in no case exceed thirty-two days.

According to the Aliens and Immigration Legislation, the Chief Immigration Officer may order that a prohibited immigrant will be deported from Cyprus and in the meantime will be held in custody.

No refugees have been punished for illegal entry or stay. A very limited number of asylum seekers have been prosecuted for illegal stay or entry where as they delayed their application for asylum, although they had remained in the Republic illegally for several months or even years. Such prosecution is based on the provisions of the Refugee Law in conjunction with the Aliens Immigration Law.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

In the event of mass influx or impending mass influx of persons who are unable to return to their country of origin, Cyprus will implement the provisions of Council Directive 2001/55/EC, which have been transposed into national legislation. For the purposes of granting temporary protection the procedure of individual examination of each case will not be followed, however each person has the right to submit an individual application for recognition of refugee status, under the provision of the Refugee Law. According to the National Refugee Law, the Head of the Asylum Service grants the status of temporary protection. Such a decision is taken prior to the submission of any individual asylum application.
Persons enjoying temporary protection have the right, for a period not exceeding the period for which temporary protection has been granted, to employment without prejudice to the Alien and Immigration Law or any other law concerning the relevant profession, vocational training, substance allowance and free medical treatment in case they are not in possession of sufficient means to support themselves. Medical aid for vulnerable groups and access to public education are also provided.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

In cases where unaccompanied minors arrive in Cyprus, the Director of the Social Welfare Services is immediately informed and s/he can act as guardian of the minor concerned and take all the measures required under the Refugee Law on his/her behalf and in his/her interest. Moreover, the Social Welfare Service Office ensures that appropriate mental health care is developed and qualified counselling is provided when needed. Unaccompanied minors shall be placed with adult relatives, with a foster family, or in accommodation centres suitable for minors. The Director of the Social Welfare Services ensures that siblings live together, always taking into account the age as well as the maturity level and trying to minimise as much as possible the movement of unaccompanied minors. Furthermore, minor children of asylum seekers or asylum seekers who are unaccompanied minors have access to the education system under similar conditions as Cypriot nationals.

1.3.2 If so, how are (unaccompanied) minors identified?

No information available.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

During the implementation of the regulations on minimum standards for the reception conditions of asylum seekers, the competent authorities keep in mind the special conditions of vulnerable persons, including single women, and call for special treatment for such people. The classification of asylum seekers as persons requiring special treatment is always completed after an individual assessment of each person’s case by the competent authorities.

In the reception centre single women are accommodated in separate units.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

There are no specific provisions for asylum seekers who are victims of trafficking, but there are various considerations on the subject of victims of trafficking with reference to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against trans-national organised crime, which will be ratified in the amended Refugee Law.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Asylum seekers may be detained if they submit a subsequent application with new elements requiring examination, after their first application has been rejected in first and second instance and a deportation order has been issued. Illegal immigrants against whom a deportation order has been issued by the Chief Immigration Officer and who subsequently apply for asylum may also be detained until their asylum claims have been assessed. Such cases are examined under an accelerated procedure and with priority in order to limit the detention period. The Supreme Court of Cyprus has sanctioned this practice.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

As mentioned above, in the case of mass influx, temporary protection is provided immediately. Cases are not examined individually, however, each person retains the right to submit an application for recognition of refugee status.
In case an individual submits an application for recognition of refugee status and his/her claim is rejected, and no other form of protection is granted, this person shall continue to receive temporary protection for the remaining period for which this protection is provided. If, after one year, the reasons for granting temporary protection continue to exist, the Asylum Service may extend the temporary protection for a maximum period of one year. Persons enjoying temporary protection have the right, for a period not exceeding the period for which temporary protection has been granted, to employment without prejudice to the Alien and Immigration Law or any other law concerning the relevant profession, vocational training, substance allowance and free medical treatment in case they are not in possession of sufficient means to support themselves. Medical aid for vulnerable groups and access to public education are also provided.

For the time being there is only one reception centre.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

When the competent officers of the Asylum Service become aware that an applicant is an unaccompanied minor, the Head of the Social Welfare Services will be informed and will act as a guardian of said minor. S/he will take all the measures required under the Refugee Law on his/her behalf and in his/her interest. Thus far, Cyprus has only dealt with one case of an unaccompanied minor. From the date of arrival, the minor was placed in an accommodation centre suitable for minors. If the unaccompanied minor is not recognised as a refugee, s/he will not be deported back to his/her country of origin, but will be allowed to stay in the country until he/she reaches majority.

Minor children of asylum seekers or asylum seekers who are unaccompanied minors have access to the education system under similar conditions as Cypriot nationals.

2.3.2 If so, how are (unaccompanied) minors identified?

No information available.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

There are no specific provisions concerning single women. During the implementation of the regulations on minimum standards for the reception conditions of asylum seekers, the competent authorities keep in mind the special conditions of the vulnerable people, including single women, and require special treatment for such people. The classification of asylum seekers as persons requiring special treatment is always completed after the individual assessment of each person from the competent authorities.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

There are no specific provisions for asylum seekers who are victims of trafficking, but there are various considerations on the subject of victims of trafficking with reference to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against trans-national organised crime, which will be ratified in the amended Refugee Law.

2.5.2 If so, how are victims of trafficking identified?

N/A.


The House of the Representatives will soon adopt the Regulations on minimum standards for the reception of asylum seekers, whereby national legislation will be fully harmonised with Directive 2003/9.
3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

There are no substantial differences between the conditions set out in Directive 2003/9 and the reception conditions currently existing in Cyprus, the provisions of the Directive are fully respected.

3.2.2 If so, in which respects?

N/A.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Statistical data are not available for the years 1999, 2000, and 2001.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost (£CY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>1,346,595</td>
</tr>
<tr>
<td>2003</td>
<td>6,471,360</td>
</tr>
</tbody>
</table>

4.2 How many asylum seekers were in the reception system during these years?

No statistical data are available for the years 1999 and 2000.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>1,766</td>
</tr>
<tr>
<td>2002</td>
<td>952</td>
</tr>
<tr>
<td>2003</td>
<td>4,406</td>
</tr>
</tbody>
</table>

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Every asylum seeker is interviewed personally. During the personal interview no person, apart from the interviewing officer, the applicant, a UNHCR representative, the applicant’s lawyer or legal adviser or the custodian of an unaccompanied minor and an interpreter may be present, unless otherwise requested by the applicant.

All applicants have to present themselves in person. The family members of an applicant may be invited for an interview, if required.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

There are arrangements to promote that female applicants are interviewed by female interview officials and/or assisted by female translators. The Asylum Service’s interviewing staff consists of nine female and four male officers.

The authorities decide whether a male or a female official will conduct the interview, but any request made by an applicant is seriously taken into account. Interviews with female asylum seekers are usually conducted by female interview officials.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

An unaccompanied minor who is not legally independent, should be appointed a custodian who will be responsible for promoting a decision that is in the best interests of the minor. The unaccompanied minor can be interviewed in the presence of his/her custodian.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?
Any applicant who claims that s/he has been subjected to torture or other traumatising events in his/her country of nationality or origin must be referred to a doctor for examination. In case s/he refuses to participate, his/her claim will be ignored unless s/he presents a reasonable explanation for the refusal.

If the interviewing officer suspects that the applicant has been subjected to torture, s/he must advise the applicant and refer him/her to a doctor for examination. In cases where there are signs of severe torture, the interviewing officer, if possible, obtains expert medical advice before conducting the interview.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes. When a person submits an application for recognition as a refugee, s/he has the right to remain in the country until a first decision is taken.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Every applicant for refugee status is entitled to appeal to the Reviewing Authority and to remain in Cyprus until a decision is taken.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

The applicants’ fingerprint identification is taken at the police department immediately after the submission of the application or at a specified later time.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Cyprus operates one single procedure for both refugee protection and subsidiary protection.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

When a decision to withdraw refugee status is taken, the person concerned is entitled to appeal to the Reviewing Authority and to remain in Cyprus until a decision is taken.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes. An applicant shall be excluded from refugee status, subsidiary protection or humanitarian status if:

a) S/he is already receiving international protection from organs or agencies of the UN other than the UNHCR, or
b) S/he is recognised as a permanent resident by the competent authorities of Cyprus or has all the rights and obligations, which are attached to the possession of the nationality of Cyprus.
c) There are serious indications that s/he:
   i) has committed a crime against peace, a war crime, or a crime against humanity as defined in the Geneva Convention, or
   ii) has committed a serious non political crime in another country prior to his/her entry in Cyprus, or
   iii) is guilty of acts contrary to the purposes and principles of the UN
Moreover, a refugee or a person with a subsidiary protection or humanitarian status may be deported if the Director of the Civil Registry and Migration Department considers this necessary or desirable in the interest of national security or public order.

If a person’s refugee status is revoked, any residence permit granted to that person on the basis of his/her status shall be cancelled and s/he shall be obliged to return the refugee identity card and the refugee travel documents.

6.2.2 If so, is this possibility (these possibilities) being made use of?

No, this possibility has never been made use of.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

The procedural rules for withdrawing subsidiary protection do not differ from the rules for withdrawing refugee status.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

There are no differences between the present procedure for granting and withdrawing refugee status and the proposed Directive.

7.1.2 If so, in which respects?

N/A.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No data are available for the years 1999 and 2000.

2001 381,420,68
2002 181,207,22
2003 870,831,36

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

No data are available for the years 1999 – 2001.
<table>
<thead>
<tr>
<th>Year</th>
<th>Subsidiary protection</th>
<th>Applications rejected</th>
<th>Examination terminated</th>
<th>Total applications examined</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>0</td>
<td>126</td>
<td>0</td>
<td>126</td>
</tr>
<tr>
<td>2003</td>
<td>10</td>
<td>265</td>
<td>128</td>
<td>403</td>
</tr>
</tbody>
</table>

The examination will be terminated if, after reasonable efforts, the applicant cannot be traced, or if the applicant has chosen to withdraw his or her request for asylum. Finally, the examination of a claim may be terminated if an asylum seeker does not present him- or herself for an interview without giving notice.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

Thus far, there have not been any decisions to withdraw refugee status.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

Thus far, there have not been any decisions to withdraw subsidiary protection.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

The existing Refugee Law does not determine whether non-state actors are capable of providing protection for the purpose of qualification as a refugee. The Law states that if the competent officer establishes that the fear of persecution, or the fear that the applicant has been subjected or may be subjected to serious and unjustified harm is well founded, s/he may investigate whether this fear is clearly limited to a specific geographical area of the country of origin. If that is the case, the competent officer investigates whether the applicant could reasonably relocate to another geographical area of his/her country of nationality, where s/he has no well-founded fear of persecution or where s/he would not be subjected to serious and unjustified harm. During this investigation, it is considered as a serious indication against internal relocation, if the agent of persecution is or is linked to the government of the country concerned. During the investigation, the competent officer takes into consideration the security, political and social conditions of the particular geographical area, including respect for human rights, as well as the personal circumstances of the applicant, including his/her age, gender, health, family situation and his/her ethnic, cultural and social links.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

- 125 -
In order for an applicant to be considered a refugee, such a person must have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. The Asylum Service grants subsidiary protection status to any person whose application is clearly not based on grounds of race, religion, nationality, membership of a particular social group or political opinion, but who are forced to leave or remain outside their country of origin because of justified fear of suffering or having suffered and who are not in a position or due to this fear are not willing to avail themselves of the protection of that country.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

In case the persecutory acts were not committed for the reasons provided in the Geneva Convention, the asylum seeker will be granted subsidiary protection.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Membership of a particular social group alone will not normally be enough to support a claim for refugee status. Nevertheless, there may be special conditions where mere membership of a particular social group can be an adequate ground for persecution. Gender-related aspects may be considered, however, they cannot generate by themselves an indication for the applicability of the refugee definition. For instance, a special gender-related condition that can be a satisfactory ground to fear persecution concerns women who come from countries such as Egypt, Sudan, Somalia and Ethiopia, where “Female Genital Mutilation” is a common problem.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

The same refugee definition is applied to all applicants, regardless of their age. When examining the application of a minor, problems may arise due to the difficulty of applying the criterion of “well-founded fear”. The question of whether an unaccompanied minor qualifies for refugee status must be determined in first instance according to the degree of his/her mental development and maturity. In the case of children, it will be necessary to engage the services of experts on child mentality. In the absence of a parent or legally appointed guardian, it is for the authorities to ensure that the interests of a minor applicant are fully safeguarded.

When the minor is not sufficiently mature to be able to establish well-founded fear in the same way as for an adult, greater regard may be had to certain objective factors. Thus, if an unaccompanied minor finds him/herself in the company of a group of refugees, this may, depending on the circumstances, indicate that the minor is also a refugee. Also, the circumstances of the parents and other family members and the situation in the minor’s country of origin should be taken into consideration. If there is reason to believe that the parents wish their child to be outside the county of origin because of a well-founded fear of persecution, the child him/herself may be presumed to have such fear. However, if the will of the parents cannot be ascertained or if their will conflicts with the will of the child, the officer will have to take a decision in cooperation with the assisting experts, taking account of all the known circumstances. This may call for a liberal application of the benefit of the doubt.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Yes, however victims of trafficking are not granted refugee status or subsidiary protection for the sole reason of being victims of trafficking. The same refugee definition applies to all applicants and the same procedure is followed for every person. However, there are various considerations on the subject of victims of trafficking with reference to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against trans-national organised crime, which will be ratified in the amendment Refugee Law.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

There are no specific provisions excluding unaccompanied minors from the provisions of Article 1F of the 1951 Convention. However, according to the newly drafted Immigration Law, unaccompanied minors will not be repatriated unless their security and welfare are safeguarded in the country of origin.
10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Current asylum legislation in Cyprus is generally found to be in line with the provisions of Directive 2004/83. Nevertheless, since the implementation of this Directive is still being debated, a clear picture will only be developed after the completion of this discussion.

10.2 If so, in which respects?

The following differences were found:

1. There are specific provisions that are not included in the Law but that are generally covered by the general wording of the Law and the provisions of the UNHCR Handbook, which is referred to in the Article 17 of the Law as providing guidelines for the determination of refugee status.

2. The most important issues that are considered to be outstanding are the following:

**Article 2 (h) (family members)**

National legislation covers only minor children of refugees. The provision of the Directive “on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national Law” should be incorporated in the Law. This notion is already included in the “Regulations on minimum standards for the reception of asylum seekers” which are in line with Directive 2003/9.

**Article 9 (acts of persecution)**
The acts included in this article are not specified in the Handbook. Therefore an amendment to the Law or the enactment of Regulations is necessary.

**Article 10 (reasons for persecution)**
The provision of the Directive is more specific than that of the Handbook, therefore an amendment to the Law or the enactment of regulations is necessary.

**Article 12 (1) (a) (exclusion)**
The national Law should be amended in order to include the residual part of the above paragraph: “when such protection or assistance has ceased for any reason without the position of such persons being definitely settled in accordance with the relevant resolution adopted by the General Assembly of the UN these persons shall ipso facto be entitled to the benefits of this Law”.

**Article 14 (withdrawal of refugee status)**
The national Law does not include an explicit provision for the renewal of the refugee status, nor any reference to the provisions of sub paragraph 3(b) of this article. The Law should be amended accordingly. Additionally the sentence “or has never been a refugee in accordance with paragraph 1 of the article”, (Article 14(2) Directive) should also be introduced.

**Article 15 (serious harm)**
Paragraph (a) concerning “death penalty or execution” should be introduced into national legislation.

**Article 20 (general rules on international protection)**
Paragraph 7 should be transposed into national law. This provision should also affect persons who have been recognised as being eligible for refugee status.

**Article 23 (4) (family unity)**
This Article provides inter alia that Member States may refuse or withdraw the benefits relating to family unity for reasons of national security or public order. The national Law does not provide for refusal or withdrawal of these benefits and should be amended accordingly.
Article 25 (travel documents)
These provisions should be transposed into national law.

Article 27 (access to education)
An amendment should be introduced to safeguard full access to the education system to all minors who have been granted refugee status or subsidiary protection status. Such access is already safeguarded by the “Regulations on Minimum Standards on Reception Condition for asylum seekers”.

Article 30 (unaccompanied minors)
The national law should be amended so that the provision of this Directive will cover unaccompanied minors who have been granted refugee status or subsidiary protection status. The existing law covers only unaccompanied minor asylum seekers.

The content of the following articles of the Directive is not included precisely in national legislation. However, since they are fully covered by the Handbook they are in force and are fully implemented:

Article 4 paragraphs 3, 4 and 5 (assessment of facts and circumstances)

Article 5 (international protection needs arising sur place)

Article 6 (actors of persecution or serious harm)

Article 7 (actors of protection)

Article 11 (f) (cessation clauses for stateless persons)

Article 12 (3) (exclusion clauses for persons who instigate or otherwise participate in the commission of the crimes or acts mentioned in this article)
CZECH REPUBLIC – COUNTRY REPORT

Government respondent: Ms. P. Kusova, Department for Asylum and Migration Policies, Ministry of the Interior
NGO respondent: Ms. B. Hejna, Counselling Centre for Refugees

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

There hardly exists any difference between the reception conditions before and after lodging the application. The status determination procedure commences at the moment of submission of the application. An asylum application can by submitted by an alien who has made an asylum statement. The Minister of the Interior, who is responsible for the status determination process, shall, without unnecessary delay, invite the alien to submit an application.

Three kinds of asylum establishments exist in the Czech Republic:

(1) A reception centre is used to provide accommodation to an alien until the initial acts are completed.

(2) An accommodation centre is used to provide accommodation to an applicant for asylum until a decision on his/her application becomes legally effective; the Ministry may allow an exception in a case requiring consideration.

(3) An integration asylum centre is used to provide temporary accommodation to refugees (to those who have been already granted asylum).

The Czech Asylum Act provides that an applicant for asylum may not leave a reception centre until:
- identification acts (fingerprints, photograph) are completed,
- a medical examination is completed to establish whether the participant suffers an illness that endangers his/her life or health or the life or health of other persons,
- a visa is issued to him/her in order to remain for the purpose of the proceedings for the grant of asylum and until a certificate of an applicant for asylum is issued (Section 57),
- quarantine or other measures related to the protection of public health are completed if these can take place in the reception centre.

The Ministry shall carry out the above-mentioned acts without undue delay.

These provisions shall not apply to an alien who stays in the Territory on the basis of a residence permit granted under a special legal regulation.

An applicant for asylum may not leave a reception centre in the transit zone of an international airport after the above-mentioned acts are completed. Asylum seekers who are placed here are not free to move and the space inside the Centre is limited. New premises at the airport are currently under construction.

From the airport, the Ministry shall transport an alien into another asylum establishment on the territory designed by the Ministry if the asylum decision is not issued within 5 days or if the court does not decide on the appeal within 30 days or if suspensive effect is granted by the High Administrative Court concerning a cassation complaint lodged by the applicant.

Asylum seekers living in accommodation centres are not detained.

Every alien who has entered the territory of the Czech Republic illegally or with false documents and has been caught by the Alien Police is placed in the Detention Centre (DC). If the intent to apply for asylum is expressed by him/her immediately after the first contact with the Alien Police, he/she is not sent to the Refugee facility, but he/she is placed in the DC. These asylum seekers usually stay in the Detention Centre for 180 days, which is the maximum period of time allowed by law.

An alien who has been placed in a Detention Centre by the Alien Police has a right to submit an asylum application. The entitlement of an alien to make an asylum statement in the Detention Centre ceases to exist 7 days after he/she has been informed by the police about the possibility of applying for asylum on the territory and the consequences connected with the expiration of this deadline.
The legal status of an alien resulting from his placement in the Detention Centre is not affected by an asylum statement or by his submission of an asylum application. The maximum time for the detention of an alien who has been placed there by the Alien Police under the Alien Act is 180 days. Submission of the asylum application does not have any influence on the placement of the alien in the Detention Centre.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

The Act on the temporary protection of aliens (Temporary Protection Act) was adopted in 2003, pursuant to Directive 2001/55/EC. There are no specific provisions for situations of mass influx in the Asylum Act or other legislative acts.

Temporary protection can be offered to aliens who have left their country of origin or the country where they were recognised as refugees, or to aliens who have left the country of their last permanent residence if they are stateless. The government respondent specified that this does not lead to ‘double protection’, as the reasons for granting temporary protection are different from the reasons for granting refugee status. Temporary protection can only be granted in situations of mass influx if the temporary protection regime has been declared applicable by the Council of the European Union.

The duration of the temporary protection is limited by the statement of the temporary protection itself, or by the decision of the Council of the European Union.

The application for temporary protection can be lodged by an alien who

a) resides in the territory on the basis of a visa or a long-term residence permit or who is allowed to reside in the territory without a visa;

b) is not in possession of a valid entitlement to reside provided that s/he has voluntarily and without undue delay expressed the intention to claim temporary protection.

The police shall transfer such aliens to a Humanitarian Centre. Humanitarian centres are mentioned in the Temporary Protection Act and serve persons who are awaiting a decision on temporary protection, or beneficiaries of temporary protection who are not able to find an accommodation themselves.

The Temporary Protection Act also states that asylum establishments (reception, accommodation or integration centres) can be used for the purposes of temporary protection as humanitarian centres.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

The following specific provisions exist with regard to minors:

-If an applicant for asylum is under 18 years of age and remains in the territory unaccompanied by his/her statutory representative, a guardian shall be appointed by the court to protect his/her rights and legally protected interests related to his/her stay in the territory in accordance with a special legal regulation. With regard to the protection of a minor, the court, on the initiative of the Ministry, shall appoint a guardian without delay by way of a preliminary ruling.

- The task of a guardian shall be performed by a relative of a minor, who is staying in the territory; if there is no such person or if such a person cannot be entrusted with the function of a guardian, the task of the guardian shall be performed by another suitable private individual or legal entity or a municipal authority with extended powers according to the registered address of the minor.

- If the applicant is an unaccompanied minor, the application may not be rejected as manifestly unfounded.

- The obligation to expel a minor shall not apply (…) if, in the country of origin or in a third country willing to receive an unaccompanied minor, no adequate reception and care are available after his/her arrival that correspond to the needs of the minor, considering his/her age and level of independence.

- An amendment of the Asylum Act has been adopted recently and entered into force on 4 February 2005. It brings harmonisation of the Asylum Act with Directive 2003/9/EC (among other European legislative acts). This amendment completes the protection of minors with the definition of an unaccompanied minor, with the possibility of granting asylum to an adult person who is responsible for an unaccompanied minor and with the obligation to endeavour to trace the members of the minor’s family.

- A new provision has been inserted stating that the specific needs of asylum seekers who are unaccompanied minors, minors (persons below the age of 18), pregnant women, persons with a handicap, persons who have been tortured, violated or who have undergone other serious forms of mental, physical or sexual violence or other persons in cases requiring special consideration, must be taken into account. The Law does not describe...
exactly what this means. As we know from our practice there is a “safe zone” in the reception centre and two accommodation centres where are mothers with children are placed.
-Under the amended Asylum Act, every unaccompanied minor should be transferred to a Foster Care Centre (there are two Centres specialised in unaccompanied minors; both are run by the Ministry of Education.) immediately after the necessary procedures (paragraph 46 of the Asylum Act, see under 1.1) are finished. The decision to place a minor in a specialised centre has to be taken by the court. There is no legal provision concerning the placement of those unaccompanied minors who are not seeking asylum.
-All asylum establishments have child centres at the disposition of pre-school children. They are similar to kindergartens. The children attend primary schools in the neighbourhood of the asylum establishments.
-If the unaccompanied minor violates the Alien Act (e.g. crosses the border illegally or comes with a false passport) s/he is placed in the Detention Centre. The Alien Police making the first contact with the minor is obliged to inform the relevant Department of social-legal protection of the child and this Department should submit the proposal of placement of the child to the court. The capacity of those two centres is: 16 + 30 (should be enlarged to 60).
- The duration of the stay in a detention centre may amount to several months.
- Unaccompanied minors under 15 years of age cannot be detained; they are instead placed in special centres (first in a diagnostic centre in Prague and after approximately 2 months in an educational establishment in central Bohemia).

1.3.2 If so, how are (unaccompanied) minors identified?

In the case of an unaccompanied minor asylum seeker who is not in possession of a passport or any other relevant document, an affidavit of age is accepted. So far, there has only been one case where an x-ray of the wrist bone was taken and the court decided that the person was not a minor. The Ministry of the Interior does not adhere to this practice and the age that is proclaimed by the minor is accepted.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

There are no specific provisions concerning (single) women. The above-mentioned provision about taking account of specific needs is applied (– other persons in cases requiring special consideration). In practice, single women and mothers are subject to special care; they are accommodated in “protected zones” (the entry into these zones is made safe by security guards) and they receive more intensive social, psychological and medical guidance.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

There are no specific provisions concerning victims of trafficking. The above-mentioned provision about taking account of specific needs is applied (persons who have been tortured, violated or who have undergone other serious forms of mental, physical or sexual violence or other persons in cases requiring special consideration).

1.5.2 If so, how are victims of trafficking identified?

There is no legal provision for the identification of victims of trafficking.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

See 1.1. The legal status of an alien resulting from his/her placement in the Detention Centre is not affected by an asylum statement or by the submission of an asylum application. That means that an alien who has applied for asylum in the Detention Centre could be placed there for the maximum amount of time, which is 180 days. If no decision is taken within 180 days, the alien will be transferred to an accommodation centre, where s/he will benefit of the rights and conditions set out in the Reception Directive.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

See 1.2. Under the Temporary Protection Act there should be “humanitarian centres” where foreigners seeking temporary protection would be placed. The Czech authorities have not faced such a situation so there is no practical experience in this respect.
In situations of mass influx that are not covered by a temporary protection regime, the standard procedures apply.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

See 1.3.1. There are two special centres for unaccompanied minors (both asylum seekers and non-asylum seekers), which opened in June 2004. Both centres are run by the Ministry of Education. One Centre is in Prague and is drafted as a Diagnostic Centre. Minors who were placed in Detention Centres or unaccompanied children who have been found on the territory of the Czech Republic are placed there. A sojourn in this Centre may last 2 months at most. However, unaccompanied minors over 15 years of age may be placed in Detention Centres for a period of 180 days. After 180 days they will be placed in accommodation centres, along with adult asylum seekers. If a person applies for asylum in a Detention Centre, s/he will continue to be detained as because the asylum claim does not affect his/her status of illegal immigrant. However, if no decision is taken within 180 days, the person will be transferred to an accommodation centre and enjoy the rights and benefits laid down in the Reception Directive. The other centre for unaccompanied minors is located about 70 km from Prague. Minors stay here until the asylum procedure is finished.

2.3.2 If so, how are (unaccompanied) minors identified?

As mentioned above, the authorities accept the age that is given by the minor in an affidavit. The amendment of the Asylum Act that entered force on 4 February 2005 establishes the definition of an unaccompanied minor:

“Unaccompanied minor” shall mean a person under 18 years of age, who arrived in the territory unaccompanied by an adult responsible for him/her under the legal system valid on the territory of a state, of which the person under 18 years is a national, or in case of a stateless person, the country of his/her last residence, for such a period of time, during which s/he is not effectively taken into the care of such a person; an unaccompanied minor is also a person under 18 years who was left unaccompanied after s/he entered the territory.”

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

As mentioned above, there exist two centres for single women, single mothers with children or families in need of special care. It is unclear on the basis of which criteria persons may be placed in this centre.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

See 1.5.1. The new amendment of the Asylum Act that came into force on 1 February 2005 states an obligation to the operator of the refugee facilities (the Department of Refugee Facilities of the Ministry of Interior) to take into consideration the special needs of an asylum seeker if he/she is an unaccompanied minor younger than 18, a pregnant woman, disabled person or person who was tortured or raped or who faced any other serious form of psychological, physical or sexual abuse.

The NGO respondent stated that e.g. a man who was trafficked for labour did not appear to receive any special reception conditions. As the law came in force just 1 ½ months ago, some time is required to see the results that the amendment will have for daily practice.

There has been a model created by the Ministry of the Interior for victims of trafficking who cooperate with the police against the traffickers. This model, which includes “hidden accommodation” provided in the cooperation with Caritas, is aimed mainly at persons who are not seeking asylum, because it offers tolerated stay to victims of trafficking who cooperate with the police during the whole criminal procedure against the traffickers, until the court proceedings of the case are finished.

2.5.2 If so, how are victims of trafficking identified?

There is no legal provision concerning the identification of victims of trafficking. The model described above presumes cooperation between the governmental authorities and NGOs.


3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

See 3.2.2.

3.2.2 If so, in which respects?

There is no tension between the past and present reception conditions as the majority of the reception standards were already in place before the harmonisation.

According to the NGO respondent there is tension in so far as the Alien Act allows for unaccompanied minors over 15 years of age to be placed in a Detention Centre. Such minors can be placed in detention if they staying in the Czech Republic illegally. They may file a claim for asylum while in detention, however this will not affect their status as illegal migrants and they will continue to be subjected to detention. The detention can run up to a maximum of 180 days. If in that period no decision is taken on the application the minor will be transferred to an accommodation centre where s/he will enjoy the rights and benefits set out in the Directive.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

<table>
<thead>
<tr>
<th>year</th>
<th>costs (in Czech crowns)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>297 927 000</td>
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<tr>
<td>2000</td>
<td>365 644 000</td>
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<td>2001</td>
<td>351 988 000</td>
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<td>2002</td>
<td>388 296 000</td>
</tr>
<tr>
<td>2003</td>
<td>433 366 000</td>
</tr>
<tr>
<td>Total</td>
<td>1 569 091 000</td>
</tr>
</tbody>
</table>

4.2 How many asylum seekers were in the reception system during these years?
Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Yes, every asylum seeker has the right to an individual interview. Minors younger than 15 who are accompanied by their parents usually do not have an individual interview, if so, the interview is held in the presence of their parents. Unaccompanied minors do have an individual interview where the appointed guardian must be present. There is a proposal under discussion for amendment of the Asylum Act, which states that in cases where the application is refused under the conditions of Dublin II, the Ministry of the Interior is not obliged to hold an individual interview. This would also apply to situations where the Protocol on Asylum for EU Citizens would be applicable.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Not automatically. There is a provision of the Asylum Act saying: “for reasons warranting special consideration, the Ministry shall arrange that the interview is conducted and that – if this is within its possibilities – interpretation is provided by a person of the same sex.

In practice, a request has to be made by the asylum seeker before the interview is held. It may occur that an asylum seeker is not aware of this possibility and that, as a result, it is left to the Ministry to decide whether a male or a female official will conduct the interview.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

There are no specific provisions for interviewing (unaccompanied) minors in the Czech asylum legislation. There exists a difference of opinion between the government and the NGO respondent as to whether special procedures are applied when interviewing (unaccompanied) minor applicants. The NGO respondent noted that in her experience, a few more questions are included in the questionnaire for unaccompanied minor applicants that are mainly aimed at family-related questions in the country of origin, or the opinion of the parents as to the minor’s departure. However, the special kind of sensitivity required in these cases depends only on the interviewer him/her self. According to the government, the internal rulings and practice of the department for asylum and migration policies assure adequate treatment and interviewing of these categories of persons. There are specialists designated for interviewing minors. The staff has also received necessary training for interviewing victims of traumatising events (e.g. in the framework of the Phare programme).

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

It is not provided for in the legislation. The government and NGO respondents differ in their opinion as to whether account is taken of these circumstances in practice. The NGO respondent noted that, taking account of
her practical experience, she is not aware of any special procedures. According to the government, the internal rulings and practice of the department for asylum and migration policies assure adequate treatment and interviewing of these categories of persons. Specialists are designated for the interviews and the staff has received the necessary training for interviewing victims of traumatising events (e.g. in the framework of the Phare programme).

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

At this moment appeal has automatic suspensive effect, however a proposal exists to introduce certain exceptions to this rule (in case of decisions on manifestly unfounded applications and inadmissible applications and decisions to discontinue the procedure when the applicant has withdrawn his/her application). Nevertheless the Court will still have the possibility to grant suspensive effect on request in these cases.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Fingerprints are taken immediately in the transit zone of the International Airport. In case the alien has expressed the intention to claim asylum in a reception Centre, this intention is expressed in front of the Alien Police and the fingerprints are taken and sent to Eurodac at the same time. For those who are placed in a detention centre, the fingerprints are taken at the beginning of the asylum procedure.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes. There is only one procedure. The decision contains two aspects. One is asylum under the Geneva Convention and the other is “obstacles of departure”. Obstacles of departure are considered present:

1) if the Alien would be forced to enter
   a) a country where his/her life or freedom are in danger for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
   b) a country where he/she is in danger of torture, inhuman or degrading treatment or punishment or where his/her life is in danger as a result of a war, or
   c) a state which is requesting his/her extradition due to a crime which carries the death penalty according to the law of that state, or
2) if it was contrary to the international obligations of the Czech Republic, or
3) if in his/her country of origin or in a third country willing to accept an unaccompanied minor exists no adequate care or acceptance corresponding to his/her needs and level of maturity (this provision was added to the Asylum Act in February 2002, however the NGO respondent noted that she was not aware of any decisions in which the situation in the country of origin was taken into account).

The provisions mentioned above shall not apply if the alien:
   a) can travel to another country, or
   b) presents a threat to the security of the state or has been convicted for an especially serious crime, and/or the above is justified by the fulfilment of international obligations; in such cases the alien shall be allowed a maximum period of 60 days to seek reception in another country. If the alien proves that he/she cannot leave the Territory, he/she shall be given exceptional leave to remain by the Police under the Alien Act.

Obstacles to leave are considered both under the Asylum Act and under the Aliens Act before a decision to expel a person is executed.

There is a special procedure for applications under the Temporary Protection Act.
5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

See 5.8.1. There is no separate procedure for subsidiary protection.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

The procedure for withdrawal of refugee status is regulated in the Asylum Act. During the court procedure the applicant is entitled to remain in the territory of the Czech Republic on the basis of Article 32 (3) Asylum Act, concerning suspensive effect of (judicial) appeals against administrative decisions on asylum, including the decision to withdraw asylum.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

No, these reasons are taken into account only in the phase of assessing the asylum application as reasons to exclude a person from refugee status. After the status is granted, these facts do not constitute reasons for withdrawing refugee status under Czech legislation.

6.2.2 If so, is this possibility (these possibilities) being made use of?

N/A.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

There are no special rules for the withdrawal of subsidiary protection. The legal status of aliens who have been granted subsidiary protection is regulated by the Aliens Act (including beneficiaries of subsidiary protection whose reasons have been assessed under the Asylum Act). The withdrawal of subsidiary protection falls under the scope of the Aliens Act: the alien is obliged to request the termination of his/her visa if the conditions for granting the subsidiary protection status have ceased to exist. If s/he fails to do so (within a certain time limit), the Police will terminate the validity of the visa.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

As this directive has not yet been adopted, no detailed legal comparison has yet been made.

7.1.2 If so, in which respects?

N/A.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

There are no separate procedures for granting and withdrawing subsidiary protection.

7.2.2 If so, in which respects?
8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

<table>
<thead>
<tr>
<th>year</th>
<th>costs (in Czech crowns)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>297,927,000</td>
</tr>
<tr>
<td>2000</td>
<td>365,644,000</td>
</tr>
<tr>
<td>2001</td>
<td>351,988,000</td>
</tr>
<tr>
<td>2002</td>
<td>388,296,000</td>
</tr>
<tr>
<td>2003</td>
<td>433,366,000</td>
</tr>
<tr>
<td>total</td>
<td>1,837,221,000</td>
</tr>
</tbody>
</table>

There is no specific procedure for subsidiary protection; the reasons for granting it are examined in the framework of the asylum procedure as potential “obstacles to leave”. The same reasons are examined in the framework of the administrative expulsion procedure also as “obstacles to leave” but these cases are not included in the following data.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>year</th>
<th>number of asylum seekers</th>
<th>recognitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>7,220</td>
<td>79</td>
</tr>
<tr>
<td>2000</td>
<td>8,788</td>
<td>133</td>
</tr>
<tr>
<td>2001</td>
<td>18,094</td>
<td>83</td>
</tr>
<tr>
<td>2002</td>
<td>8,484</td>
<td>103</td>
</tr>
<tr>
<td>2003</td>
<td>11,400</td>
<td>182</td>
</tr>
<tr>
<td>total</td>
<td>53,986</td>
<td>580</td>
</tr>
</tbody>
</table>

There is no specific procedure for the subsidiary protection; the reasons for granting it are examined in the framework of the asylum procedure as potential “obstacles to leave”. The same reasons are examined in the framework of the administrative expulsion procedure also as “obstacles to leave” but these cases are not included in the following data.

The number of cases in which subsidiary protection (in the form of an ‘obstacle to leave’) has been granted is indicated below:

- 1999 – not found
- 2000 – 52
- 2001 – 17
- 2002 – 16
- 2003 – 9

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

Four decisions to withdraw refugee status have been taken in these years.
8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

These data are not available, as subsidiary protection does not exist as a legal institute.

**Qualification as a refugee or as a person in need of other forms of protection**

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

The Asylum Act does not contain any provisions concerning actors of protection, nevertheless non-state actors can be considered capable of providing protection, regarding all relevant circumstances of the case.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Asylum Act does not contain any provisions concerning actors of protection, nevertheless non-state actors can be considered as capable of providing protection, regarding all relevant circumstances of the case.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes. Asylum shall be granted to an alien if it is established in the proceedings for the granting of asylum that the alien

a) is persecuted for his/her exercise of political rights and freedoms, or
b) has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion in the country of which he/she is a citizen, or, in case of a stateless person, in the country of his/her last permanent residence.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

It would have to be proven that something like that happened in the country of origin; the answer is hypothetically yes but it would be very difficult to prove. This kind of persecution is very difficult to ascertain.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

The legislation does not contain any specific provisions concerning gender aspects. In practice, the relevance of this aspect is examined in accordance with the Article 10 (1) (d) of the Directive. Since the High Administrative Court started to play its role in the asylum procedure, there has been one decision in which a “definition” of a particular social group was given. In general, no special consideration is given to the gender based violations.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes, if they fulfil the relevant conditions. In practice, there have been 10 cases at most of unaccompanied minors being recognised as refugees.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Yes, if they fulfil the relevant conditions. The fact that a person was trafficked to the Czech Republic does not have any influence on the outcome of the asylum procedure. There could be cases where humanitarian asylum was granted in such a situation, but this is generally not granted and there are no statistics available of victims of trafficking who were recognised as refugees or persons eligible for subsidiary protection.
9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

The exclusion clause in paragraph 15 of the Asylum Act does not contain any exceptions. As there have not been any such cases in practice, it can only be estimated that, in cases where grounds for exclusion as mentioned in Article 1F of the Geneva Convention are found in relation to the application of an unaccompanied minor, the same procedure would be applied as for an adult asylum seeker.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

The compatibility of the Czech law with this Directive is currently being assessed.

10.2 If so, in which respects?

The key change that will be required by harmonisation is the creation of the institute of subsidiary protection. A kind of subsidiary protection already exists but there is a clear need for systematisation.
DENMARK – COUNTRY REPORT

Government respondents: Mr. K. Lunding, Ms. T. Krabbe
NGO respondent: Ms. N. Lassen, Danish Refugee Council

Arrival and reception of asylum seekers

Please note that in Denmark there are no specific provisions for short-term reception of asylum seekers. Therefore the answers to the questions 1.1-1.5.2 are largely the same as to the questions 2.1-2.5.2.

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Under Section 36 (1) of the Aliens Act, the police may order that an alien is to be deprived of his or her liberty if the measures referred to in section 34 of the Aliens Act (deposit of passport, other travel documents and ticket with police; provision of bail in an amount determined by the police; stay at an address determined by the police; reporting to the police at specified times) are insufficient to ensure enforcement of a refusal of entry, of transfer or retransfer or of the return of an alien, who is not otherwise entitled to stay in Denmark.

The situations in which an alien can be deprived of his or her liberty upon arrival are summed up below:

- An alien who has not yet applied for asylum can be deprived of his or her liberty upon arrival in order to ensure the enforcement of a refusal of entry. The purpose may be to determine identity/nationality and map out the travel route.

- An alien whose application for a residence permit pursuant to section 7 (asylum permit) is expected to be or is being examined according to the procedure mentioned in section 53 b (1), can be deprived of his or her liberty. The procedure mentioned in section 53 b is a specific accelerated procedure for examining manifestly unfounded asylum applications.

- In any case a detained alien must, if he or she is not released within 3 days after the enforcement of the deprivation of liberty, be brought before a court of justice, cf. the Danish Aliens Act section 37.

162 aliens applied for asylum in January 2005. In 2004 the total number of asylum seekers in Denmark was 2,984 (2003: 3,945). Due to technical problems concerning computer statistics it is not possible for the time being to give the specific number of asylum seekers deprived of their liberty upon arrival or during the examination of their application for asylum. The only number available at this time is the total number of aliens deprived of their liberty in Denmark. The current number for 2005 is 68. In 2004 the number was 750 (2003: 530). It must be noted however, that the number of aliens deprived of their liberty after their application for asylum has been refused and the number of deprivations of liberty in order to ensure the enforcement of expulsion, is significantly higher than the number of aliens deprived of their liberty upon arrival or during an examination of an application for asylum.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

No.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

If minors arrive unaccompanied in Denmark and apply for asylum, they will be accommodated in special centres for unaccompanied minors. It is also possible for the unaccompanied minor to live together with close relatives living in Denmark, e.g. an aunt. It is assessed individually if private housing should be allowed. During the initial interview with the police on arrival, the purpose of which is to clarify travel route and identity, an unaccompanied minor will have the assistance of a counsellor or a representative. In principle minors may be detained. This, however, only very rarely happens in practice.
1.3.2 If so, how are (unaccompanied) minors identified?

Identification takes place on a case-to-case basis. This identification may involve an age-determination procedure, in case the police or the Danish Immigration Service have difficulties determining the age of the asylum seeker. Such a procedure consists of an X-ray examination of the jaw/wisdom teeth and left wrist. A physician may also examine how developed the body is.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No. However, there is a practice that single women are never accommodated in the same room as men.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

Accommodation will be offered under the same conditions as to other applicants.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

During examination of the application for asylum, detention can be ordered under the following circumstances:

-Asylum seekers who have not yet applied for asylum can be deprived of liberty in accordance with the Danish Aliens Act section 36 upon arrival in order to ensure the enforcement of a refusal of entry (section 36 (1) of the Danish Aliens Act);
-Asylum seekers, whose claims are processed under the accelerated procedure for manifestly unfounded claims, can be detained after a specific, individual assessment, provided it is required for ensuring their presence during the examination of their case (section 36 (1) of the Danish Aliens Act);
-Asylum seekers, who fail to comply with a decision of the Danish Immigration Service to stay at a determined place or if, without reasonable cause, he or she fails to appear for an interrogation at the police or at the Danish Immigration Service to which he or she has been summoned (section 36 (2) of the Danish Aliens Act);
-Asylum seekers, who have been expelled on the basis of having committed certain crimes (section 36 (3) of the Danish Aliens Act);
-Asylum seekers, who have been expelled on the basis of having stayed illegally in Denmark for more than the last six months and there being reason to assume that they have an intention to stay and work in Denmark without the requisite permit, or their means are insufficient to support them in Denmark and to pay for their return to their country of origin, may be deprived of liberty to ensure efficient enforcement of the decision of expulsion (section 36 (3) of the Danish Aliens Act);
-Asylum seekers, who through their behaviour essentially obstruct the procuring of information for their case (without reasonable cause, repeatedly failing to appear for interrogations at the police or the Immigration Service to which they have been summoned, not giving or obscuring information on identity, nationality or travel route or by giving undoubted misrepresentations thereon, or by otherwise not assisting in procuring information for the case) can be detained expulsion (section 36 (4) of the Danish Aliens Act);
-Asylum seekers who have applied for asylum can be deprived of their liberty upon arrival in order to investigate if other countries are responsible for examining the application for asylum in question in accordance with the Dublin Convention (section 36 (1) of the Danish Aliens Act).

Except for those detained for criminal reasons, asylum seekers can only be detained if the police considers that alternative lesser measures (deposit of the passport or other travel document with the police, stay at an address determined by the police, to report to the police at specified times) are insufficient to ensure their presence.

In any case a detained alien must, if he or she is not released within 3 days after the enforcement of the deprivation of liberty, be brought before a court of justice, cf. the Danish Aliens Act section 37.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?
2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

During the processing of the application for an asylum/residence permit, the child will be accommodated in a centre run by the Danish Red Cross, designated specifically for unaccompanied minor asylum seekers and with especially trained staff. It is also possible for the unaccompanied minor to live together with close relatives living in Denmark, e.g., an aunt. It is assessed individually if private housing should be allowed. Furthermore a personal representative is appointed to the unaccompanied minor immediately after arrival.

Under section 42g of the Aliens Act (asylum seeking) “children of school age …. shall participate in separately arranged tuition or in tuition measuring up to the general requirements under the separately arranged tuition.” School age is considered to be 7 to 16 years of age and this group of children has to participate in tuition similar to that of resident children (nationals and others) in Denmark.

With the consent of the minor, the Danish Immigration Service must initiate a search for the parents as soon as possible after the arrival in Denmark. It may be the Danish Red Cross or the Ministry of Foreign Affairs who perform the practical work in the search.

In principle, minors could be detained. In practice this seems to happen only very rarely and only when awaiting deportation. Unaccompanied minors below 15 would then be detained at a closed institution for minors. Minors at the age of 15-17 would be detained in detention centres for adults. If the parents of accompanied minors are detained, the children will be detained as well, but normally for a maximum period of 3 days. If detained with parents they will stay in family rooms separated from rooms for single men.

2.3.2 If so, how are (unaccompanied) minors identified?

Identification takes place on a case-to-case basis. This identification may involve an age-determination procedure, in case the police or the Danish Immigration Service have difficulties determining the age of the asylum seeker. Such a procedure consists of an X-ray examination of the jaw/wisdom teeth and left wrist. A physician may also examine how developed the body is.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

One accommodation centre (Center Fasan) is specifically designed for the reception of single women with or without children and, as long as there is still room, those groups of women will be accommodated here. Furthermore, the two biggest reception/accommodation centres in Denmark (Center Sandholm and Center Avnstrup) have separate wards for families separated from those of single men, where accompanied as well as unaccompanied women will be accommodated. None of the other accommodation centres have similar facilities. Instead staff at those centres is instructed to pay particular attention to the vulnerability and potential exposure to abuse of single women.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

There are no specific provisions for reception of victims of trafficking. Accommodation will be offered under the same conditions as other applicants. It may be noted that the Danish Aliens Act provides for measures for the support and protection of the rights of victims of trafficking. A visa or a temporary residence permit may be granted to victims of trafficking in order to enable them to testify in judicial proceedings against those responsible for the crime. It is normally the police who contact the Danish Immigration Service in order to make sure that a visa is issued in these cases. A residence permit may be granted on the basis of asylum or subsidiary protection or if the trafficking victim is in such a position that essential considerations of a humanitarian nature conclusively make it appropriate. A residence permit pursuant to this provision is particularly given to applicants suffering from physical or mental illness of a very grave nature. Furthermore, the Aliens Act provides for the possibility to grant a residence permit if exceptional reasons make it appropriate.

2.5.2 If so, how are victims of trafficking identified?

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark did not participate in the adoption of the mentioned directive and is therefore neither bound by it nor subject to its application. However, as it is the policy of the Danish Government to align itself with European Asylum Law, the Danish legislation is in line with the directive (except on two points: secondary education and access to the labour market).

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

There exists a difference of opinion between the NGO and the government respondents concerning this issue. Please see below under 3.2.2.

3.2.2 If so, in which respects?

The government respondent stated that standards in Denmark are in most respects higher than those set by the Directive. The NGO respondent found that tensions exist concerning the following provisions:

Article 10 (education)
Children who have reached the age of 17 are not granted access to the education system under similar conditions as nationals of Denmark. They may participate in a particular “introduction scheme” for adults and, under certain conditions in Danish or English language tuition as well as introduction to Danish culture and social conditions.

Article 11 (access to the labour market)
Asylum seekers do not have access to the labour market in Denmark. The only exception which may (indirectly) occur in practice is if there is a general lack of qualified employees within a certain field of work in Denmark. An asylum seeker possessing those specific qualifications may lodge an application for - and be granted - work and residence permit on those grounds if he has been offered a job within this field.

Article 17 (special needs, general principles)
There are no provisions in Danish legislation to this account. On arrival, however, all asylum seekers undergo a medical check and, generally, medical or ordinary staff at the reception and accommodation centres, will pay particular attention to the psychological and physical health of vulnerable persons and seek to provide adequate counselling where possible. Rather than healing or rehabilitating, the treatment and counselling is merely sufficient to ease the situation of the particular person.

Article 18 (2) (access to rehabilitation services for minors who are victims of abuse, etc)
Real rehabilitation services are not offered to these groups of minors. In particular unaccompanied minors will however receive relatively much attention and possible treatment/counselling in this regard as they live in a centre specifically designated for minors, where there is both more staff and the staff is specifically trained to deal with children and include a trained psychologist. Minors who are accompanied will, on the other hand, in practice be at risk of relative more neglect and of not being “seen” by staff at the ordinary accommodation centres.

Article 20 (treatment of torture victims)
Counselling to ease the symptoms and effects of torture and other serious acts of violence will to a certain - limited extent - be offered to asylum seekers, but real and necessary treatment will normally not be offered to persons without proper residence permits.

Article 21 (appeals)
Decisions relating to reception conditions (all but detention) are mainly made by the Danish Immigration Service and may, in accordance with section 46 (2) of the Aliens Act be appealed to the Minister for Refugee,
Immigration and Integration Affairs. In principle applicants may further lodge an appeal within the ordinary court system. In practice, however, this never (or extremely rarely) happens both because asylum seekers are normally not informed about this possibility and because, in practice, free legal aid would normally not be granted.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

The expenses of the accommodation of asylum seekers in 1999-2003 per person were (including costs to the operation of centre buildings, allowances and accommodation):

1999: 15.387 Euro (114.580 Danish kroner)
2000: 15.816 Euro (117.778 Danish kroner)
2001: 16.392 Euro (122.064 Danish kroner)
2002: 16.003 Euro (119.167 Danish kroner)
2003: 16.577 Euro (123.442 Danish kroner)

4.2 How many asylum seekers were in the reception system during these years?

The following numbers of asylum seekers were accommodated in asylum centres:

1999: 6.653 persons
2000: 9.360 persons
2001: 10.672 persons
2002: 7.953 persons
2003: 4.960 persons

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

With the exception of dependent minors, all asylum seekers and their family members will be offered a personal interview. All (dependent) family members over the age of 18 will be dealt with as individual asylum seekers. Applications of spouses (of the same nationality) - and their minor children - will be dealt with within the same case (thus, in accordance with the principle of family unity, ensuring derivative status to those family members who do not qualify individually). Children over the age of 18 will be treated as asylum seekers in their own right and have their applications examined separately. If there is an indication that a minor child has an individual motive for applying for asylum, the minor may be interviewed individually in the presence of one of the parents.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

If a female applicant expresses a wish to have the personal interview in the first instance carried out by a female interview official, this will be granted if possible.

In the manifestly unfounded procedure there is no automatic appeal to the Refugee Board (appeals instance) but the Refugee Council reviews the case. In those cases, the Danish Refugee Council seeks to ensure that female applicants are interviewed by female interviewers assisted by female translators. This is in particular the case for single women asylum seekers and/or where information on the case indicates that the asylum seeker is a victim of rape or other forms of sexual assault.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

All children can seek asylum in Denmark. The Danish Aliens Act does not hold special provisions on children. This means that in principle an unaccompanied minor must meet the same requirements and go through the same procedures as an adult asylum seeker. However, children are considered a particularly vulnerable group. This means two things: firstly, only children over the age of 12 – and only after a concrete assessment of their
personal and mental capacity (maturity) – are required to go through an actual asylum procedure. Minors of 15 years of age are always required to go through the normal procedure. Normally, unaccompanied minors under the age of 12 – or older children not in possession of the sufficient maturity – are not taken through the asylum procedure and, thus, not asked to account for their claim in an interview. Instead, they are granted a special residence permit with reference to their being an unaccompanied and minor.

Secondly, every unaccompanied child registered as an asylum seeker in Denmark after 1 April 2003 will be assisted by a personally appointed representative, whose task it is to protect and uphold the interests of the child. The representative will support the child during the examination of the asylum application, for example, by accompanying the child during the asylum interview. The interview is conducted by especially trained staff within the Danish Immigration Service. The representative will also support the child on a more personal level. If a child's asylum case is decided upon in the framework of the manifestly unfounded procedure, the Danish Immigration Service will appoint an attorney to accompany and represent the child.

If a child's application is examined, and the Immigration Service rejects the application, the unaccompanied minor may nevertheless be granted a special residence permit on the ground that the minor is unaccompanied, the parents cannot be located and the child would face severe difficulties surviving in his or her country of origin due to the lack of an adequate support network in the form of family, other adults, public assistance, etc. Information on the child's health and need for particular care or support will also be taken into consideration. Finally, the general situation in the child's country of origin, as for example, conditions of war, will be taken into account.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

There are no specific procedures, however all interviewing staff in the Danish Immigration Service receive training in interviewing victims of torture and traumatised persons.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes, provided that the applicant is not transferred to another EU member state according to the Dublin Convention or rejected admission and returned to a safe third country.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Yes. However, in manifestly unfounded cases there is no right of appeal if, after a review of the case (including a personal interview with the applicant), an independent refugee NGO (the Danish Refugee Council) agrees that the case is manifestly unfounded.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Denmark does not participate in the EURODAC. It is anticipated that Denmark will join EURODAC later in 2005.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.
6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in
the country until a court or tribunal has dealt with an appeal against that decision?

Yes.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in
Article 1F Refugee Convention?

Yes (section 19 (2) ii, of the Aliens Act).

6.2.2 If so, is this possibility (these possibilities) being made use of?

The government respondent stated that on a concrete and individual basis, article 1 F in the Refugee Convention
might be relevant after a close and thorough assessment of the case.

The NGO respondent stated that Article 1F has been applied rarely (if ever) and that, if relevant, Article 1F will
normally be applied during the initial examination of the asylum application and thus result in exclusion (rather
than subsequent withdrawal of refugee status).

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of)
subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee
status?

No.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the
issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your
member state and the proposed Directive on minimum standards for asylum procedures?

No tensions exist.

7.1.2 If so, in which respects?

N/A.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of
protection as meant in directive 2004/83, is there a tension between the present procedures and the
proposed Directive on minimum standards for asylum procedures?

No separate procedures.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

In average the costs per decided asylum case have been:

1999: 515 Euro (3.833 Danish kroner)
2000: 563 Euro (4.190 Danish kroner)
2001: 656 Euro (4.885 Danish kroner)
2002: 709 Euro (5.279 Danish kroner)
2003: 934 Euro (6.952 Danish kroner)

The estimate is based on costs related to the handling of asylum cases by the Danish Immigration Service.

The total costs of asylum procedures have been as follows:

- 1999: 2.910.601 Euro (21.693.000 Danish kroner)
- 2000: 4.307.335 Euro (32.103.000 Danish kroner)
- 2001: 6.091.962 Euro (45.404.000 Danish kroner)
- 2002: 6.718.010 Euro (50.070.000 Danish kroner)
- 2003: 3.561.203 Euro (26.542.000 Danish kroner)

These figures include salary expenses allocated to officials handling asylum cases as well as a proportional part of the general staff, except general executive staff and administration expenses in the Administration and Logistics Department.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

A single procedure is operated in Denmark. The number of asylum applications lodged in Denmark in total (including applicants already in possession of a residence permit e.g. on the basis of family reunification) are as follows:

- 1999: 12.331 persons
- 2000: 12.200 persons
- 2001: 12.512 persons
- 2002: 6.068 persons
- 2003: 4.593 persons

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

The figures below were provided by the NGO respondent and have not been confirmed by the government.

<table>
<thead>
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</tr>
</tbody>
</table>

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

The figures below were provided by the NGO respondent and have not been confirmed by the government.

<table>
<thead>
<tr>
<th></th>
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**Qualification as a refugee or as a person in need of other forms of protection**
9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

This depends on a concrete assessment of the claim and the country/area in question. Normally they are not, however there have been exceptions in the cases of applications from Northwest and Northeast Somalia, Kosovo and, prior to the overthrow of Saddam Hussein, Northern Iraq.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

In order to obtain asylum in Denmark, an applicant must fulfil the conditions listed in the Refugee Convention of 1951. As a main rule the person committing the act of persecution is required to have done so for reasons of a (perceived) persecution ground. If this cannot be established, subsidiary protection may be considered. Each case will be assessed individually.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

It depends on an individual and specific assessment of each case. If protection has been withheld for reasons of a persecution ground, this will be taken into close consideration in the assessment.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Gender can play a role in the specific assessment of the asylum claim and in the decision to grant asylum. However, gender does not by itself constitute a particular social group according to Danish Asylum law.

According to the NGO respondent, gender-related persecution will not normally lead to the granting of refugee status, but rather to the granting of subsidiary protection status.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes. If the unaccompanied minor is considered mature enough to undergo the asylum procedure, the asylum case is assessed on an individual basis. Only children over the age of 12 – and only after a concrete assessment of their personal and mental capacity (maturity) – are required to go through an actual asylum procedure. Unaccompanied minors under the age of 12 – or children not in possession of the sufficient maturity – are not taken through the asylum procedure and, thus, not asked to account for their claim in an interview. Minors of 15 years of age are always required to go through the normal procedure.

If an unaccompanied minor has received a final rejection of the asylum claim and special conditions are met, e.g. lack of parents/relatives in the country of origin, he or she might be granted an exceptional residence permit as an unaccompanied minor instead.

If an unaccompanied minor is not considered mature enough to undergo the asylum procedure because of young age etc., the Danish Immigration Service will assess whether he or she should be granted an exceptional residence permit as an unaccompanied minor instead.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

The government respondent stated that this depends on an individual assessment of each case.

The NGO respondent stated that in the cases where the Danish asylum authorities have determined that a victim of trafficking could not receive adequate protection on return to his or her country of origin, subsidiary
protection rather than refugee status has been granted.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

If the unaccompanied minor is considered mature enough to undergo the asylum procedure an individual assessment of the claim and the excludable act is conducted. In this assessment the age of the child is taken into close consideration as well as the question if the child was forced to commit the act or if he/her due to his/her age was unable to oversee the consequences of the act. There are no known cases.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

The Ministry and the Danish Refugee Council have come to different results in their respective analyses.

The Ministry finds that the case law of the Danish immigration service and the Danish Refugee Board show that there is no tension between Danish law and the Directive. For the tensions perceived by the Danish Refugee Council, see 10.2 below.

10.2 If so, in which respects?

The NGO respondent observed tensions with regard to the articles mentioned below. Please note that the ministry does not hold the same views.

Article 2 (e) (refugee status vs. subsidiary protection)
Generally, Danish case law has, since many years, been characterised by a tendency to granting subsidiary protection rather than refugee protection and quite a proportion of persons who may in fact qualify for refugee status are merely recognised as persons in need of subsidiary protection. This is particular so, where the particular social group concept of the Convention could come into play, but is also seen, however not systematically, in many cases where the risk of persecution is related to political or religious opinions attributed to the applicant by the persecutor rather than to opinions actually held by the applicant. With the exception of travel documents, the rights attached to subsidiary protection under national legislation are however the same as those granted to refugees.

Articles 9 and 10 (particular social group concept, gender related/specific issues, sexual orientation)
In practice the particular social group concept has no (explicit) importance in Danish case law. If granted, gender related and/or specific claims as well as to claims related to sexual orientation will normally result in residence permit on basis of recognition of need of subsidiary protection.

Article 12 (exclusion)
Under section 10 of the Danish Aliens Act exclusion from residence permit on basis of refugee or subsidiary protection status is provided for beyond what is provided for under the Qualification Directive.

In addition to exclusion as provided for under Article 12 of the Directive, section 10 (1) of the Aliens Act thus stipulates that applicants also be excluded from any form of residence permit under section 6 to 9 of the Aliens Act (and implicitly refugee or subsidiary protection status as well) in the following cases:

- "if the alien must be deemed a danger to national security" (section 10 (1)(i))
- "if the alien must be deemed a serious threat to the public order, safety or health"
  (section 10 (1)(ii));

Furthermore, under section 10 (2), an alien cannot, "unless particular reasons make it appropriate", be issued a residence permit:

- "if the alien has been convicted abroad of an offence that could lead to expulsion under section 22, 23 or 24 [of the Danish Aliens Act] if his case had been heard in Denmark" (section 10 (2)(i));
"if there are serious reasons for assuming that the alien has committed an offence abroad which could lead to expulsion under section 22, 23 or 24"(section 10 (2)(ii));
"if circumstances otherwise exist that could lead to expulsion under the rules of Part IV [of the Aliens Act]"
"if the alien is not a national of a Schengen country or a Member State of the European Union and for whom an alert has been entered in the Schengen Information System for the purpose of refusal of entry pursuant to the Schengen Convention";
"if, because of communicable diseases or serious mental disorder the alien must be deemed potentially to represent a threat or cause substantial inconvenience to his surroundings."

Furthermore, section 10 (3), first sentence stipulates that residence permits under section 7 or 8 of the Aliens Act (as refugees or persons in need of subsidiary protection) cannot be issued "unless particular reasons make it appropriate" to aliens who have been prohibited from entering Denmark in connection with expulsion under sections 22 to 25 of the Aliens Act (requires that expulsion was based on sentence to imprisonment, suspended imprisonment or other criminal sanction for offences committed in Denmark).

Finally, under section 10 (3), second sentence, residence permits under sections 7 or 8 (as a refugee or person in need of subsidiary protection) may be issued "unless particular reasons make it inappropriate":
-to aliens who are prohibited from entering Denmark in connection with expulsion under section 25 a or 25 b (sentenced, admission or apprehension during or in direct connection with particularly listed cases (other than those mentioned in section 22 to 24);
-sentence, admission or strong suspicion for unlawful possession or use of drugs;
-upon unlawful stay for more than six months, where reasons to believe that the alien intended to stay and work unlawfully in Denmark or the alien's means are insufficient to support him, or other reasons of public order, security or health indicating that the alien should not be allowed to stay in Denmark

Sections 22, 23 and 24 include references to criminal offences less serious than those stipulated by the Directive Article 12 (2).

The provision in section 10 (1)(ii) of the Aliens Act (exclusion "...if the alien must be deemed a serious threat to the public order, safety or health") as well as those of section 10(2) and (3) go even beyond the wording of Article 14 (4) of the directive concerning revocation etc.

An alien excluded from obtaining a residence permit and recognition of refugee or subsidiary protection status under section 7 (refugee and subsidiary protection status) or 8 (quota refugees) of the Aliens Act, is still protected against refoulement under section 31 (1) of the Aliens Act, which stipulates that: "(1) An alien may not be returned to a country where he will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected against being sent on to such a country."

A person protected against refoulement, but excluded from obtaining a residence permit will have a so-called "tolerated stay" in Denmark, which excludes that person from most of the basic rights provided for under the Refugee Convention Articles 2ff.

Article 15 (c) (subsidiary protection)
Neither the Danish Aliens Act nor practice provides for subsidiary protection where serious harm consists of "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" (Article 15 (c) of the Qualification Directive) and applications falling within this category will normally be rejected and persons (forcibly) returned to their country of origin if possible.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and "waiting areas") imply detention?

According to Article 8 section 4 of the Refugee Act, an asylum seeker shall be detained upon submission of an application for asylum at the border, for as long as it takes to perform certain acts prescribed by law. These acts include: examination of the person and his or her personal effects, admission for deposit of personal effects and documents, identification, receipt of standard format application for asylum, collection of explanations concerning the arrival to Estonia and the circumstances which constitute the basis for the application for asylum, fingerprinting and photographing, medical examination, if necessary. If the performance of the acts requires more than forty-eight hours, the asylum seeker shall be detained with the permission of an administrative court judge.

Applicants can be detained either in a reception centre or in an expulsion centre. The legal basis for detention can be found in the Refugees Act:

Paragraph 9
Stay at initial reception centre
(1) An applicant who has submitted an application during his or her stay in the country is required to stay in the initial reception centre, but not for longer than forty-eight hours.
(2) With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre after the expiry of the term specified in subsection (1) of this section in the following cases:
   a) the identity of the applicant has not been ascertained, including in the case where the applicant does not coop- erate in the identification or hinders identification;
   b) for the performance of the acts specified in subsection 81 (1) of this Act;
   c) for establishing circumstances relevant to the asylum proceedings if the applicant does not coop- erate in the establishment of such circumstances or hinders the establishment thereof;
   d) there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;
   e) the applicant has repeatedly or seriously violated the internal procedural rules of the reception centre;
   f) the applicant fails to comply with the surveillance measures applied with respect to him or her, or the applicant fails to perform other duties provided for in this Act;
   g) the applicant’s stay in the initial reception centre is necessary in the interests of the protection of national security and public order.
3) the Citizenship and Migration Board shall submit a petition to the administrative court in order to obtain the permission specified in subsection (2) of this section.
4) an applicant who is required to stay at the initial reception centre is permitted to leave the centre with the written permission of the Citizenship and Migration Board, or in order to receive emergency medical care.

and

Paragraph 9.1
Stay of applicant at expulsion centre
An applicant who has submitted the application for asylum during his or her stay at an expulsion centre or in a prison, or in the course of the execution of the expulsion procedure shall not be
placed in the initial reception centre but shall remain at the expulsion centre or in the prison until the termination of the asylum proceedings.

The expulsion centre is a department of the Citizenship and Migration Board in the administrative area of the Ministry of Interior. It is responsible for detention of aliens, who are subject to forcible deportation.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

There are no such provisions yet, but Directive 2001/55/EC on minimum standards for giving temporary protection is being implemented at the moment and hopefully this will be finished during 2005.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Due to the fact that Estonia has so far not received any asylum applications from unaccompanied minors, we can only refer to the Refugees Act. There is only one article in this Act concerning unaccompanied minors, containing provisions on representation of the child in asylum proceedings and the obligation to take into consideration above all the rights and interests of the minor in proceedings. In the asylum procedure, unaccompanied minors shall be represented by the head of the reception centre or a person authorised by the head, unless otherwise provided by the Refugee Act. If the parent or guardian of a minor applicant for asylum is staying in Estonia, he or she shall represent the applicant during the asylum proceedings, unless this is contrary to the applicant’s rights and interests. Where necessary, a person with the necessary professional expertise shall be involved in the performance of procedural acts involving minors. An alien’s active legal capacity or the absence thereof pursuant to the law of his or her country of origin shall not be considered in the asylum proceedings if the definition of active legal capacity provided by the law of the alien’s country of origin differs from the corresponding definition provided by Estonian law. Minors shall normally stay with their parents. There are no specific facilities for the reception of unaccompanied minors. The government respondent expected that unaccompanied minor asylum seekers would be hosted in an orphanage, while the NGO respondent mentioned that the Reception Centre in Illuka could possibly provide special premises.

1.3.2 If so, how are (unaccompanied) minors identified?

Under the Refugee Act, an unaccompanied minor is a person of less than 18 years of age who has arrived in Estonia or stays in Estonia without a parent or guardian. They are identified on the basis of their own statements, appearance, behaviour etc. but in case of doubt medical tests may also be used. The law does not provide whether the consent of the applicant is required for such an examination, however, it states that the applicant is required to cooperate in every way in clarifying the circumstances founding his/her application for asylum. There exists no practical experience concerning this issue. It is possible that, if the applicant does not give his/her consent, this may have an impact on the outcome if the procedure. The draft proposal for a new act, which is to replace the existing Refugee Act, provides that refusal to consent to a medical examination may result in a rejection of the asylum claim. However, it may not be the sole reason for such a rejection.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No. However, if a female applicant needs to be searched this will be done by a female official. In case of detention men and women will be detained separately.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No.
1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

The grounds for detention of an applicant for asylum are listed under 1.1. Normally such detention does not last for more than forty-eight hours, however, the detention may be prolonged if the administrative court so decides. Therefore, it is possible that the detention continues during the examination of the application. If a person files an asylum claim while s/he is in a deportation centre, s/he is required to stay there for the duration of the procedure.

After forty-eight hours, if the detention is not continued, the applicant will be sent to a reception centre. Persons residing at a reception centre during their asylum procedure are required to stay there during night-time (between 22:00 and 6:00).

With the written permission of the Citizenship and Migration Board, an applicant may reside outside the reception centre if:

1) the accommodation and support of the applicant are ensured by a person legally residing in Estonia;

2) the applicant has sufficient financial resources to ensure his/her accommodation and support;

3) it is necessary for the applicant to reside outside the reception centre in order to ensure his/her safety.

4) the applicant is required to provide evidence in proof of the circumstances specified in clauses (2) 1) and 2) of this section

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

No specific provisions.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Pursuant to Article 10 of the Refugee Act, an applicant who is an unaccompanied minor shall be placed in a reception centre or a social welfare institution for the duration of the asylum proceedings. The reception centre does not provide special services for unaccompanied minors, but these are available in a social welfare institution (orphanage).

If a medical examination is conducted in order to establish the age of the applicant, s/he will be placed in the initial reception centre for the time of the examination. Such placement implies detention. See also 1.3.1.

2.3.2 If so, how are (unaccompanied) minors identified?

If the Citizenship and Migration Board has reasonable doubts as to the correctness of the information provided by the applicant in respect of his or her age, the applicant’s age shall be established by medical examination. The law does not provide whether the consent of the applicant is required for such an examination, however, it states that the applicant is required to cooperate in every way in clarifying the circumstances founding his/her application for asylum. There exists no practical experience concerning this issue.

It is possible that, if the applicant does not give his/her consent, this may have an impact on the outcome if the procedure. The draft proposal for a new act, which is to replace the existing Refugee Act, provides that refusal to consent to a medical examination may result in a rejection of the asylum claim. However, it may not be the sole reason for such a rejection.
2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

No. However, if a female applicant needs to be searched this will be done by a female official. In case of detention men and women will be detained separately.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No specific provisions.

2.5.2 If so, how are victims of trafficking identified?

N/A.


The Ministry of the Interior, in collaboration with the Citizenship and Migration Board and the Ministry of Social Affairs, is in the process of analysing the four main asylum-related Directives and drafting a new Asylum Act to cover the gaps in national law related to the above-mentioned Directive. Part of Directive 2003/9/EC has already been implemented.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

See 3.2.2.

3.2.2 If so, in which respects?

There are no serious tensions between existing Estonian legislation and the Directive. However, the Refugee Act does not provide certain specifications for the promotion of minimum standards that are prescribed by the Directive.

The Refugee Act contains a requirement to issue a certificate to the applicant, which attests that the alien is applying for asylum in Estonia. Unlike the Directive, which requires that the certificate must be issued within three days after the application is lodged, the Refugee Act prescribes issuance of this document only after the applicant is sent to the reception centre. Hence, there is no concrete fixed term in the Act that would require issuance of the document within three days. In practice the named document may not be issued for an indefinitely long time. The government has indicated that it is aware of this shortcoming and in practice, it strives to provide applicants with their certificates as soon as possible.

Under existing legislation, asylum applicants cannot enter the labour market as prescribed by Article 11 of the Directive. This situation will be amended with new Refugee Act.

The Refugee Act does not contain special provisions for some groups of persons with special needs. Article 8 of the Refugee Act provides some specifications on asylum procedures involving applicants with restricted active legal capacity and unaccompanied minors. The scope of this article is narrower than Article 17 of the Directive, under which persons with special needs include elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of violence. However, more detailed implementation of the Directive in this respect is under way.

According to the NGO respondent, Estonian legislation also contains some shortages with regard to specific legal norms for monitoring and control of the level of reception conditions as prescribed by Article 23 of the Directive. The government has contested this view.
It is expected that the issues mentioned above will be resolved with the adoption of the new act replacing the Refugee Act.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Unfortunately, no information is available on the costs of reception per asylum seeker. In general, for the reception of asylum seekers, Estonia allocates about 1 million Estonian crones (64103 EUR) every year. In case of mass influx of asylum seekers, the government can ask for additional funds from a State Reserve Fund. The 2005 year budget for the reception of asylum seekers comprises the sum of 1.2 million Estonian crones (76923 EUR).

4.2 How many asylum seekers were in the reception system during these years?

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Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

According to the Refugee Act a person of at least 16 years of age may perform the acts provided by law independently, unless otherwise provided by this Act. Minors of 16 and older will be offered the opportunity of a personal interview. In practice, there is a possibility to interview minors younger than 16 if the circumstances so require and the minor is mature enough to understand and answer the questions.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

There are no specific provisions in Estonian legislation that would provide a possibility to be interviewed by an interviewer of the same sex, or to be assisted by an interpreter of the same sex. While it is considered advisable that a female applicant is interviewed by a female official, in reality Estonia experiences a shortage in qualified interpreters, which limits the flexibility of the authorities. However, in cases of necessity, the Citizenship and Migration Board of Estonia will be able to provide an interviewing official of the same sex for female applicants.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

In accordance with the Refugee Act, an applicant who is an unaccompanied minor is represented in asylum proceedings by the head of the reception centre or a person authorised by the head, unless otherwise provided by the Act. Where necessary, a person with the necessary professional expertise shall be involved in procedures involving minors. In asylum proceedings involving an unaccompanied minor, the rights and interests of the minor shall be taken into consideration above all.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatizing events before or during their flight (torture, trafficking)?

No.
5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes. The applicant has a right to remain in the country until the entry into force of the decision of the final judicial instance (the National or Supreme Court) of Estonia, in case s/he lodges an appeal against the initial decision.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Yes. The applicant has a right to remain in the country until the entry into force of the decision of the final judicial instance (the National or Supreme Court) of Estonia. This may change with the adoption of the new Asylum law, which is due to take place next year.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Eurodac is consulted at the very beginning of the procedure, upon submission of the application for asylum.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Estonia operates one single procedure for both types of international protection. When the applicant applies for asylum an examination will automatically be made of whether s/he qualifies for subsidiary protection. There is no need for a separate application.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Since the enactment of the Refugee Act there have been no cases of withdrawal of refugee status. The Act does not contain any specific provisions with regard to this situation. However, if such a situation would occur, the same procedure would apply as for a decision on the initial application. This would mean that the person would be granted permission to remain in the country pending the appeal. In addition, the person would have the possibility to ask the court to apply a suspensive measure, to suspend deportation until the court has examined the appeal.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes, this is possible but it has never taken place in practice.

6.2.2 If so, is this possibility (these possibilities) being made use of?

No.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

N/A.
No specific provisions. The procedural rules concerning both types of protection imply the need to ask the applicant his or her opinion regarding the intention to withdraw the status. After a final decision has been taken, the person has a right to appeal this decision within 10 days at the administrative court. The reasons for withdrawal are same for all applicants.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

The Directive on minimum standards for asylum procedures is being implemented at the moment.

7.1.2 If so, in which respects?

- The NGO respondent noted that, although Estonian legislation affords the right to appeal any decision of the “determining authority” as listed in Article 35 of the proposed Directive, applicants staying at the border or in transit zones do not have a real possibility to exercise this right in practice. There exist no legal provisions to guarantee the realisation of this right by the applicant. According to the law, if the application is rejected as inadmissible or manifestly ill founded, the applicant shall immediately be deported from the country. Therefore, no person will be able to prepare and submit an appeal to the court.

- Legal assistance is currently not obligatory in asylum cases in Estonia. While applicants are allowed to engage a lawyer, legal aid is not always provided from the start of the asylum procedure, when the application is lodged. As applicants are incapable of preparing judicial document without the assistance of a lawyer, their remedy before the court is not effective, especially in cases where the application has been rejected as manifestly ill founded. It is expected that this gap will be filled by Article 13 of the proposed Directive.

- In general, administrative bodies other than the Citizenship and Migration Board and the Board of the Border Guard do not have information on the rules and procedures concerning asylum. Article 5 section 5 of the proposed Directive will therefore need to be transposed into Estonian legislation. The Citizenship and Migration Board does have the possibility to provide advice and arrange trainings for other officials.

- Existing legislation shall be amended with regard to subsequent applications (section IV of the proposed Directive), as there are currently no specific regulations in this respect.

- Amendments shall be adopted to meet the requirements of Article 23, sections 2 and 4 of the proposed Directive.

- Finally, Estonian legislation does not currently include the concepts of “first country of asylum” (Article 26) and of “national designation of third countries as safe countries of origin” (Article 30A).

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?
No information available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Requests Examined</th>
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<tbody>
<tr>
<td>1999</td>
<td>21</td>
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<tr>
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<tr>
<td>2002</td>
<td>9</td>
</tr>
<tr>
<td>2003</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
</tr>
</tbody>
</table>

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

None.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

None.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

No.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

No.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

No specific provisions. The Refugee Act prescribes that refugee status will be granted to a person who is a refugee according to the Geneva Convention. Therefore, for the purpose of qualification for refugee status, the applicant will have to meet the requirements established by Article 1 of the Geneva Convention.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Because of a lack of experience with this kind of cases and the absence of legal regulations, it is difficult to obtain an answer to this question.
9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Gender is not individually mentioned in the Refugee Act law as a social group, but gender-related persecution might in certain cases be a ground for granting protection. In practice we do not have any experience with cases involving gender-related persecution.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

There are no specific provisions in Estonian legislation. The Refugee Act establishes no criteria based on age in order to qualify as a refugee or person eligible for subsidiary protection. This will depend on the individual circumstances of the case. So far there have not been any unaccompanied minor applicants in Estonia.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

There is no legal concept of “victim of trafficking”. In principle, victims of trafficking are eligible to apply for protection. Whether protection is granted depends on the individual circumstances of the case.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

There are no specific provisions with regard to this matter in Estonian legislation. In practice, there have not been any unaccompanied minor applicants for asylum.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Directive 2004/83/EC is being implemented at the moment.

10.2 If so, in which respects?

The practice and experience of the application of refugee legislation are very moderate in Estonia. The general spirit of the Directive 2004/83 is respected in Estonian practice. However, the Refugee Act needs to be amended in order to implement specific norms prescribed by the Directive. The main tensions concern exclusion and the content of international protection (mainly social welfare for persons eligible for subsidiary protection).
FINLAND – COUNTRY REPORT

Government respondents: Ms. E. Vattulainen, Ms. K. Savolainen
NGO respondent: Ms. R. Helander, Refugee Advice Centre

Arrival and reception of asylum seekers

Preliminary remark: In Finland, a person is considered an asylum seeker after s/he has expressed the wish to apply for asylum, for example at the border or at a police station. This is considered a formal application. Finnish law does not contain any specific provisions concerning the treatment of asylum seekers before they have formally lodged their application.

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Asylum seekers are held at border points (including airports) only until a preliminary interview concerning identity and travel route has been conducted. This is not considered detention and in principle asylum seekers are free to leave the place. However if they do not have a place to go they usually stay at the border point for one night (in cases where they arrive late at night). Subsequently, applicants are referred to a reception centre or in some cases detained. No rejection occurs at border points.

According to the Finnish Aliens Act, the police may put an asylum seeker in detention if his/her identity or the travel route is unclear. Also, asylum seekers who got a negative decision can be detained before deportation.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

In Finland, when a person somehow indicates that s/he would like to seek asylum, s/he will be provided with information about reception of asylum seekers and if s/he wants also transportation to a reception centre. In case of mass influx, persons in need of reception will be sent to reception centres or other facilities where they will be housed and receive the necessary health services and social benefits.

The scope of the Integration Act was enlarged by to include the reception of persons granted temporary shelter and of collectively displaced persons.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

The Integration Act gives particular attention to the situation of unaccompanied minor (under 18) asylum seekers. The Integration Act also provides for the assignment of representatives to refugee children and minor applicants for residence permits, or minor asylum seekers lacking an accompanying parent, guardian or other legal representative. A minor asylum seeker may be placed in a family, with relatives or in a group home in a reception centre. However, as mentioned above, there are no specific provisions for the period before an asylum application has been formally lodged.

1.3.2 If so, how are (unaccompanied) minors identified?

The minors are identified primarily according to the information they give in the asylum procedure.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

The specific situation of vulnerable persons such as unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons is taken into account. The government proposal on implementation of Directive 2003/9 (just under reading in the parliament) pays more attention to a reception of single female asylum applicants. There are no specific provisions for the short-term (before the application is lodged).
1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

**Such provisions do not yet exist, but the above-mentioned government proposal for the implementation of Directive 2003/9 takes better account of special needs of asylum seekers who are in a weaker position, for different reasons.**

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

According to the Aliens Act section 121 an alien may be ordered to be held in detention if

1. there are reasonable grounds to believe that the alien will prevent or considerably hinder the issuing of a decision concerning him or her, or the enforcement of a decision to remove him or her from the country by hiding,
2. holding the alien in detention is necessary for establishing his or her identity, or
3. there are reasonable grounds to believe that he or she will commit an offence in Finland.

According to section 123 of the Aliens Act the decision to hold an alien is taken by the Police or, if the detention is to last for a maximum of 48 hours, it may also be taken by the Frontier Guard. A detained alien shall be placed in a detention unit as soon as possible. Detained aliens can exceptionally be placed in police detention facilities if the detention units are temporarily full, or if the alien is held in detention far from the nearest detention unit, in which case the detention may last for a maximum of four days.

Finland has an Act on Detention Units and the Treatment of Foreign Nationals Placed in Detention (116/2002). There is one detention centre in Helsinki Custody Unit with 30 places, which provides for accommodation and everyday facilities including social and health care. Apart from certain situations, the clients can move freely inside the Custody Unit area and they are not locked in their rooms. There is also a possibility to go outside under the supervision of 2 counsellors in a fence-closed courtyard. The fundamental principle of services is interactivity.

There is no time limit to detention. The first instance court processes the detention case within four days. After that the first instance court considers the legality of the detention every two weeks.

Before a person under 18 years of age is placed in detention, a representative of the social welfare authorities shall be heard (Aliens Act, section 122).

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Yes. According to the Act on the Integration of Immigrants and Reception of Asylum Seekers (Integration Act) in situations of mass influx an adequate amount of reception centres has to be established. The government decides which municipality is responsible for reception of these asylum seekers. The costs of reception will be covered by the state.

Persons under temporary protection receive the same reception and social conditions as asylum seekers.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

The Integration Act gives particular attention to the situation of unaccompanied minor asylum seekers (under 18). The Act provides for the assignment of representatives for refugee children and minor applicants for residence permits, or minor asylum seekers lacking an accompanying parent, guardian or other legal representative.

Four reception centres deal specifically with unaccompanied minors. The minors are accommodated in special group-homes for children. It is also possible to accommodate a minor with her/his relatives or with a family of his/her own nationality, after careful investigation of the conditions in the family.
2.3.2 If so, how are (unaccompanied) minors identified?

The age of a person is identified according her/his own statement. A minor can be detained if this is necessary in order to establish her/his identity.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

There is no special procedure for the accommodation of women asylum seekers, but single women and single mothers are often accommodated in a separate section of the reception centre. In the detention centre there is also a separated section for women only.

The government proposal for the implementation of Directive 2003/9 pays more attention to the reception of single women asylum applicants.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No. However the government proposal for the implementation of Directive 2003/9 will contain provisions concerning asylum seekers in weaker positions, including victims of trafficking.

2.5.2 If so, how are victims of trafficking identified?

N/A.


The government proposal on implementation of Directive 2003/9 is currently under reading in the parliament.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

The implementation of the Directive will require only minor changes to Finnish legislation, see 3.2.2.

3.2.2 If so, in which respects?

The necessary changes are related to the responsibility to inform asylum seekers, within a reasonable time about their rights and duties regarding reception (Article 5 Directive). Asylum seekers are informed even now, but there are no legislated provisions concerning this issue.

Also, provisions will be added to ensure that the family unity is to be maintained as much as possible if members of a family want to live together, and to accord facilities for persons with special needs. The new act should pay more attention to the interests of children and unaccompanied minors.

With regard to detention, it must be noted that there is currently one detention centre in Finland. Treatment of detainees is stipulated by the Act on Detention Units and the treatment of foreign nationals placed in detention (116/2002). The detention period may vary from a couple of days to a couple of weeks. The Custody Unit provides material reception conditions, and a small amount of pocket money is given if a detainee needs it. Apart from certain situations, the clients can move freely inside the Custody Unit area.

The following amendments will be made:

Section 121 – Requirements for holding an alien in detention
(1) Instead of the interim measures referred to in sections 118-120, an alien may be ordered to be held in detention if: 1) taking account of the alien’s personal and other circumstances, there are
reasonable grounds to believe that the alien will prevent or considerably hinder the issue of a decision concerning him or her or the enforcement of a decision on removing him or her from the country by hiding or in some other way; 2) holding an alien in detention is necessary for establishing his or her identity; or 3) taking account of the alien’s personal and other circumstances, there are reasonable grounds to believe that he or she will commit an offence in Finland.

(2) Holding an alien in detention on the ground that his or her identity is unclear is possible only if the alien gave unreliable information when the matter was processed, or refused to give the required information, or that it otherwise appears that his or her identity cannot be considered established.

Section 122 – Holding a minor in detention
Before a person under 18 years of age is placed in detention, the representative of social welfare authorities shall be heard.

Section 123 – Deciding on holding an alien in detention and placing a detained alien
(1) A decision to hold an alien in detention is made by the Commanding Officer at the District Police, the National Bureau of Investigation, the Security Police or the National Traffic Police. If the detention is to last for a maximum of 48 hours, the decision may also be made by the Director of the Legal Division of the Frontier Guard Headquarters, a Frontier Guard officer holding the rank of major at least, the head of the Frontier Guard District or Coast Guard District or the head of the Border Check Unit. The detained alien or his or her legal representative shall be informed of the grounds for detention.
(2) A detained alien shall be placed in a detention unit as referred to in the Act on the Treatment of Aliens Placed in Detention and on Detention Units (116/2002) as soon as possible.
(3) An official as referred to in subsection 1 may decide on placing a detained alien exceptionally in police detention facilities if: 1) the detention units are temporarily full; or 2) the alien is held in detention far from the nearest detention unit, in which case the detention may last for a maximum of four days.

<table>
<thead>
<tr>
<th>Year</th>
<th>Costs (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>28 400 000</td>
</tr>
<tr>
<td>2000</td>
<td>31 200 000</td>
</tr>
<tr>
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<td>24 300 000</td>
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<tr>
<td>2002</td>
<td>24 400 000</td>
</tr>
<tr>
<td>2003</td>
<td>27 700 000</td>
</tr>
</tbody>
</table>

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

4.2 How many asylum seekers were in the reception system during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
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<tr>
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<td>2 476</td>
</tr>
<tr>
<td>2002</td>
<td>2 442</td>
</tr>
<tr>
<td>2003</td>
<td>2 691</td>
</tr>
</tbody>
</table>

Total: 16 730

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?
An asylum investigation in Finland consists of two parts. The first part of the asylum investigation is conducted by the police or the Frontier Guard. Under Section 97(1) of the Aliens Act (1) the police or the Frontier Guard interviews an alien applying for a residence permit on the basis of international protection in order to establish his/her identity, travel route and entry into the country. When establishing an applicant’s identity, personal data on the applicant’s family members and other relatives are collected. This hearing takes place before the personal interview conducted by the Directorate of Immigration.

The second part is conducted by the Directorate of Immigration. Under section 97 (2) the Directorate of Immigration conducts an asylum interview to establish orally the grounds given by the applicant for the persecution s/he has faced in his/her home country or country of permanent residence or for other violations of his/her rights or related threats.

As a general rule all adult asylum seekers are interviewed personally, both in the police hearing and in the asylum interview conducted by the Directorate of Immigration. In cases where a married or unmarried couple apply for international protection, both spouses shall be heard separately and individually. At the same time, account shall be taken of the authorities’ obligation to maintain secrecy in asylum matters. Without the applicant’s consent, the authorities must not inform the applicant's family members of any matters related to the asylum application. In practice, it is possible that one of the spouses has individual grounds for his/her application for asylum, which s/he does not want to tell his/her spouse. The authorities shall keep this in mind when carrying out asylum investigations and making decisions.

An application for asylum may, however, be decided without a personal asylum interview if it will be dismissed because the applicant may be sent to another State which under the Council Regulation 343/2003 (so called Dublin II Regulation) is responsible for examining the application or if an alien files a subsequent application after a negative decision to the first application and does not submit any new relevant information concerning his/her case. When a subsequent application has been filed an applicant is, however, always heard by the police in order to ask whether there is new information s/he wishes to submit.

The basis for this provision can be found in Section 34 of the Administrative Procedure Act under which, before the matter is decided, a party shall be reserved the opportunity to express an opinion on the matter and to submit an explanation on the demands and information which may have an effect on its decision. However, a matter may be decided without hearing the party, if the demand is ruled inadmissible or immediately rejected as groundless.

Under Section 14 of the Administrative Procedure Act the right of a legally incompetent person to be heard shall be exercised by his/her guardian, custodian or other legal representative. However, a minor who has attained the age of fifteen years and his custodian or other legal representative shall both be individually entitled to exercise the right to be heard in a matter relating to the person or personal interest or right of the minor.

This provision must be taken into account when considering the need to hear a minor applicant for asylum. If a minor has arrived in Finland together with his/her guardian, it is a general rule that the Directorate of Immigration hears in an asylum interview those minors who have attained 15 years of age. As regards children less than 15 years of age, the Directorate of Immigration inquires the child at the end of the asylum interview of one of his/her parents and in the presence of both of them whether the child has some facts s/he wishes to state. If necessary, and taking into account the child's age and level of development, the Directorate of Immigration hears also a child who is under 15 years of age in asylum interview.

If the child's guardian has been heard in a comprehensive manner and the child him/herself is incapable or unwilling to be heard, the hearing of the minor may be considered to be manifestly unnecessary. The emphasis is always on the best interest of the child.

An unaccompanied minor asylum seeker is always heard in a personal interview. The sole exception to this general rule is that there is a Eurodac search result confirming his/her prior application for asylum in another State (i.e. in these cases the minor is always at least 14 years old) and the applicant may be sent to the State that under the Council Regulation 343/2003 is responsible for examining.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?
Yes, when needed, as a general rule female applicants are not necessarily interviewed by a female official. If the applicant or her legal counsellor so wishes or if there are other weighty reasons, it can be arranged that a female official conducts a personal interview with a female applicant. Such weighty reasons may be that the applicant has experienced things that she may find difficult to tell to a male official, relating for example to her health or to sexual violence. In practice, it has been possible to arrange a female official to conduct the interview when needed.

Arranging a female interpreter may be more difficult, in particular when the interview has to be conducted in a language that is not widely spoken. If necessary, however, the Directorate of Immigration tries to arrange also a female interpreter.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

The Directorate of Immigration has trained several officials to conduct personal interviews with unaccompanied minors. These officials follow special guidelines prepared for conducting such interviews (as a part of an EU-project). Particular attention is paid to the best interests of the child and to child’s age and level of development.

Interviews with unaccompanied minors who are clearly under 18 years of age are conducted in the reception centre/group home where the child is staying and not, as is the case with adult applicants (and also those minors who are almost 18 years old), on the premises of the Directorate of Immigration.

A district court assigns a legal representative for every unaccompanied minor. S/he must be present at the personal interview and his/her duty is to safeguard the best interests of the child during the asylum process.

If the child has arrived in Finland with his/her parents or guardian no special procedures are followed, for example no legal representative is assigned. However, special child-centric interviewing methods are used if the child is heard.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

The potentially difficult psychological condition of applicants who have been victims of traumatising experiences is always taken into account, but there are no specific interviewing procedures. If needed an expert physician of the Centre for Torture Survivors is consulted and the carrying out of the personal interview may be postponed if the applicant’s situation so requires (as proved by a medical certificate).

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Not in all cases, there are differences in the enforceability of first instance decisions.

In all cases, however, the applicant can appeal to the Helsinki Administrative Court within 30 days of the notification of the first instance decision.

If an asylum application has been processed in a normal procedure, a decision on refusal of entry may not be enforced until a final decision has been issued on the matter (suspensive effect). Applying for a leave to appeal to the Supreme Administrative Court does not, however, suspend the enforcement.

When the application has been processed in an accelerated procedure (safe country of origin or manifestly unfounded application) the first instance decision of the Directorate of Immigration on refusal of entry can be enforced eight days after serving the decision on the applicant unless otherwise ordered by the Administrative Court. This eight-day period must contain at least five working days. In subsequent application cases (also processed in an accelerated procedure) the decision can, however, be executed immediately after the notification, unless otherwise ordered by the Administrative Court.
According to the Aliens Act, an asylum application can be left unprocessed if:
1) the applicant has arrived from a safe country of asylum where he or she could have been granted asylum or a residence permit based on a need for protection, and where he or she can be returned.
2) the applicant can be sent to another country that is responsible for the processing of the asylum application (Council regulation 343/2003).
In the first case the decision can be executed after eight days of which five days have to be working days from the notification, unless otherwise ordered by the Administrative Court. In the latter case the decision can be enforced immediately, also unless otherwise ordered by the Administrative Court.

In cases where an appeal does not have automatic suspensive effect, the appellant may always request the Administrative Court to suspend the enforcement of the first instance decision. The Administrative Court then gives an interim decision on enforceability. Thus even if the decision is often enforced before the Court has given its final decision on the case, it has already ruled on its enforceability.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Section 95 of the Aliens Act provides that an application for international protection shall be filed with police or border check authorities upon entry into the country or as soon after entry as possible. An application may be filed later if:
1) the circumstances in the alien’s home country or country of permanent residence have changed during his or her residence in Finland;
2) the alien has not been able to present a statement in support of his or her application until later; or
3) there are other reasonable grounds for it.
In practice, the applications are often but not always filed upon arrival.

Concerning the moment when the fingerprint data can be fed to the Eurodac system, Article 4 (1) of Council Regulation 2725/2000 (the so called Eurodac regulation) provides that each Member State shall promptly take the fingerprints of all fingers of every applicant for asylum of at least 14 years of age. An asylum application shall be deemed to have been lodged (defined in Article 4 (2) of the Council regulation 343/2003, the so called Dublin regulation) once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned.

This means that Eurodac can be (and is) consulted only after an application for asylum has been lodged. In many cases, Eurodac is consulted immediately after an application has been lodged. However, as in Finland it is possible to apply for asylum at any police station or border crossing point, it is possible that the authority in question does not have the necessary technical means for immediate transmission of the fingerprint data to the central unit. If this is the case, the fingerprint form is immediately sent to a police station/border crossing point (or for the National Bureau of Investigation) having such means, which then transmit the data to the Eurodac Central Unit. This may take a few hours or even a few days, thus Eurodac is consulted at the earliest possible stage after an application has been filed.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?
Yes. In the Finnish asylum system the applicant's need for international protection and other grounds for granting a residence permit are examined in a single procedure (Section 94 of the Aliens Act). In addition to subsidiary protection grounds this includes residence permits on compassionate grounds and on all other grounds for staying in Finland. In a case of a negative decision, the decisions on removal and on possible refusal of entry are made together with the decision on asylum.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

See 5.8.1.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes. A decision on withdrawal of refugee status and the consequent decision on deportation may not be enforced until a final decision has been issued on the matter (Section 200 of the Aliens Act). Applying for leave to appeal at the Supreme Administrative Court does not, however, prevent the enforcement of a decision unless otherwise ordered by the Supreme Administrative Court. Under Section 202 a decision on deportation may be enforced before the decision becomes final only if the person refused entry or ordered to be deported gives, in the presence of two competent witnesses, his or her consent to the enforcement of the decision and signs the corresponding entry made in the decision. In practice, however, even if a decision to withdraw refugee status has been made, the alien is often granted a permit to stay in Finland on other grounds.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes. Under Section 87 of the Aliens Act asylum is not granted to aliens if they have committed or if there are reasonable grounds to suspect that they have committed an act mentioned in Article 1 F of the Refugee Convention. Under Section 88 subsidiary protection is not granted on the same grounds.

Under Section 108 refugee status is withdrawn if the applicant has, when applying for asylum or some other form of refugee status:
- deliberately or knowingly given false information that has affected the outcome of the decision, or
- concealed a fact that would have affected the outcome of the decision.
This section applies also to the situation where exclusion clauses could have been applied if the applicant had given all relevant information concerning his/her case in the asylum interview, but without this information he/she has been granted asylum.

Subsidiary protection status can be withdrawn on the same grounds, but the relevant provision is Section 58 (3) and (4) of the Aliens Act.

6.2.2 If so, is this possibility (these possibilities) being made use of?

No. During the past years there have been only a few cases where exclusion clauses have been applied. These cases did not concern withdrawal of refugee status the basis of acts mentioned in Article 1F Refugee Convention, but rather first instance decisions on asylum applications.
6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Section 117 of the Aliens Act provides that the District Police issues a new fixed-term residence permit or a permanent residence permit to an alien on the basis of a need for international protection. Under section 54 (2) of the Act, if an alien has been issued with a residence permit on the basis of international protection, a new residence permit is issued, unless it is likely on the basis of facts that have emerged that the requirements under which the alien was issued with the previous fixed-term residence permit are no longer met.

The need for protection of a person granted refugee status is rarely taken under reconsideration. This may actualise in practice only if the District Police considers that there is a possibility that his/her removal from the country would become an issue for example because he/she has committed a serious crime or the police or the frontier guard would coincidentally note the person’s stay in his/her country of origin.

If the District Police considers that the requirements for issuing a permit are no longer met, it forwards the matter to the Directorate of Immigration. The grounds for withdrawal of refugee status are laid down in sections 107 and 108 of the Aliens Act (concerning subsidiary protection the relevant section is 57) and the existence of such grounds is examined in a procedure meant in the section 97 of the Act.

If the Directorate of Immigration decides to withdraw an alien’s refugee or subsidiary protection status, it examines whether there are other grounds for issuing a residence permit. Only if there are no such other reasons will the alien be issued a decision on deportation.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

See 6.3.1.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

The Aliens Act was amended in 2004. Owing to the minimum standard nature of the directive, its provisions are not likely to cause any major amendments to Finland’s national legislation. Even though the proposal introduces minimum standards in order to increase the efficiency and legal protection of the procedure, the Member States can still prioritise cases based on their own judgment and under national policy. It is true, however, that the directive is very detailed and as regards its implementation, its impact need to be examined further.

7.1.2 If so, in which respects?

See 7.1.1.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

See 5.8.1.

7.2.2 If so, in which respects?
8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

From 1999 to 2001 the average costs have been around 1000 euro per application, but no exact statistics are available.
In 2002 the costs of processing an application for asylum were 976 euro per application, amounting to 3.253.984 euro in total.
In 2003 these costs amounted to 835 euro per application, or 2.772.200 euro in total.
These numbers concern the costs of the Directorate of Immigration only, information on costs of other authorities (local police, frontier guard) is unfortunately not available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>2725</td>
</tr>
<tr>
<td>2000</td>
<td>3637</td>
</tr>
<tr>
<td>2001</td>
<td>2165</td>
</tr>
<tr>
<td>2002</td>
<td>3334</td>
</tr>
<tr>
<td>2003</td>
<td>3320</td>
</tr>
<tr>
<td>Total:</td>
<td>15 181</td>
</tr>
</tbody>
</table>

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

See 8.2.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

See 8.2.

8.4 How many decisions to withdraw refugee status were taken in these years?

Unfortunately no exact statistics are available, but according to the Directorate of Immigration the approximate number is 20-30.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

No statistics are available.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

The ability of non-state actors to provide protection within the meaning of Article 7(1)(b) has been discussed in relation to the Iraqi Kurds in Northern Iraq before the Iraq war. Finnish authorities adopted the view that protection could be provided by the Kurdish administration. At the moment there is no case law concerning other countries. Also, as this kind of situation has not occurred in practice there has not yet been a definition of policy in this respect.
In theory, non-state actors could be deemed capable of providing protection. If such decisions are to be made, they will most likely be challenged at the appellate bodies, which will then provide a final interpretation of the issues.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1. As no such cases have occurred in practice, no policy has been developed in this respect.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Section 87(1) of the Finnish Aliens Act reads as follows:

'Aliens residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.'

The refugee definition is interpreted as prescribed by UNHCR’s Handbook.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

According to the Directorate of Immigration, section 87 (1) could be interpreted so as cover both acts committed on persecution grounds and cases where protection has been withheld on such grounds. This would require, however, that the consequences resulting from withholding of protection would amount to persecution within the meaning of Article 1 of the Geneva Convention. No case law is available on this issue.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

According to the explanatory memorandum of the Aliens Act, in the interpretation of membership of a particular social group referred to in section 87(1) of the Act (Asylum), gender-based persecution of women may be taken into account separately as a ground for granting asylum. In certain cases, a woman may also face persecution on grounds other than those of race, religion, nationality or political opinion. In these cases, membership of a particular social group may be considered grounds for persecution. In Finnish case law gender can also be and has been considered as an element which can play a role in determining a particular social group, and thus as a reason for persecution.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Not solely on the grounds of being a (unaccompanied) minor. However they can be, depending on the merits of their cases. The assessment is always made individually for each applicant.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

They may be, if they fulfill the legal definition of a refugee pursuant to Article 1 A (2) of the 1951 Geneva Convention or are in danger of torture, inhuman or degrading treatment pursuant to Article 3 of the European Convention on Human Rights and Section 9.4 of the Finnish Constitution. Being a victim of trafficking is not an independent ground for refugee status/subsidiary protection, however. The assessment of the case is always made individually for each applicant. Granting a residence permit on compassionate grounds may also be possible in these cases.
9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Yes, although this possibility has not been applied in practice and no case law exists on the issue.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Finnish legislation and practice are mainly equivalent to the content of the directive and it does not in itself cause pressure for making any major amendments to national legislation. In addition, this is a directive laying down minimum standards for a procedure from which the Member States may deviate at national level, for the benefit of persons who apply for or enjoy international protection. It is true, however, that the directive is very detailed, and as regards its implementation, its impacts need to be examined further.

10.2 If so, in which respects?

The Finnish Aliens Act includes a provision on subsidiary protection (Section 88), which is similar to Article 15 of the Directive. However, subsidiary protection under the Finnish Aliens Act is wider in scope than under the Directive, covering also situations of armed conflict (no need for individual threat) and environmental disaster. This may require a change of legislation in Finland.
FRANCE – COUNTRY REPORT

NGO respondent: Ms. F. Bourgeois, Forum Réfugiés

The government initially agreed to participate in our questionnaire, but subsequently failed to respond to our repeated requests for information. Therefore this report is based solely on the information provided by the NGO respondent.

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Arrivé en France par la voie ferroviaire, maritime ou aérienne et qui, soit n’est pas autorisé à entrer sur le territoire français, soit demande son admission au titre de l’asile, peut être maintenu dans une zone d’attente pendant le temps strictement nécessaire à son départ et, s’il est demandeur d’asile, à un examen tendant à déterminer si sa demande n’est pas manifestement non fondée. Le maintien en zone d’attente est prononcé pour une durée qui ne peut excéder 48 heures par une décision écrite et motivée d’un agent relevant d’une catégorie fixée par voie réglementaire. Cette décision peut être renouvelée dans les mêmes conditions et pour la même durée. Le maintien en zone d’attente au-delà de 4 jours à compter de la décision initiale, peut être autorisé, par le juge des libertés et de la détention, pour une durée qui ne peut être supérieure à 8 jours. A titre exceptionnel, le maintien en zone d’attente au-delà de 12 jours peut être renouvelé dans les mêmes conditions et pour la même durée. Toutefois, lorsque l’étranger non admis à pénétrer sur le territoire français dépose une demande d’asile dans les 4 derniers jours de cette nouvelle période de maintien en zone d’attente, celle-ci est prolongée d’office de 4 jours à compter du jour de la demande. Le juge des libertés et de la détention est informé immédiatement de cette prorogation. Il peut y mettre un terme. La durée maximale de maintien pour en zone d’attente est donc de 24 jours.

La zone d’attente est un espace frappé d’extraterritorialité, c’est-à-dire que juridiquement, il ne relève pas du territoire français. Le degré de liberté est assujetti à l’espace géographique, c’est-à-dire que les personnes n’ont pas le droit de sortir de la zone d’attente. Elles ont accès à un téléphone, sont hébergées et nourries. Les plus ou moins bonnes conditions d’hébergement dépendent du nombre de personnes placées en zone d’attente. Le Conseil constitutionnel dans sa décision du 25 février 1992 a estimé que le degré de contrainte exercé sur la liberté d’aller et venir de l’intéressé était moindre que celui résultant d’une mise en détention mais également moindre que celui résultant d’une mise en détention ou d’une rétention administrative. Formellement, l’étranger est ainsi ni détenu, ni retenu, mais « simplement » maintenu.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

Pas de réponse disponible.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Oui, lors de l’entrée en zone d’attente d’un étranger mineur non accompagné d’un représentant légal, le procureur de la République lui désigne sans délai un administrateur ad hoc. Celui-ci assiste le mineur durant son maintien en zone d’attente et assure sa représentation dans le cadre des procédures administratives et juridictionnelles relatives à ce maintien et celles afférentes à son entrée en France. Il en va ainsi de la procédure de demande d’asile.

L’interlocuteur de Forum Réfugiés a indiqué que son organisation pense que les mineurs sont accommodés en espace séparés, mais ceci ne peut pas être dit avec certitude.

1.3.2 If so, how are (unaccompanied) minors identified?

En cas d’absence de documents d’identité ou d’état civil attestant de l’âge du mineur, des expertises osseuses peuvent être faites.
1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

Non.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

Non.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Non.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Non.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Non.

2.3.2 If so, how are (unaccompanied) minors identified?

N/A.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

Non.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

Non.

2.5.2 If so, how are victims of trafficking identified?

N/A.


Non.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Il n'y a pas d'opposition entre la Directive et la pratique actuelle, la France étant d'une manière générale plutôt au-dessus des normes minimales de la Directive. Les choses qui peuvent changer sont les suivantes: le versement d'une allocation durant toute la durée de la procédure et pas seulement pendant un an, comme c'est le cas.
3.2.2 If so, in which respects?

Voir 3.2.1.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Pas d’information disponible.

4.2 How many asylum seekers were in the reception system during these years?

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nombre de places CADA</td>
<td>3781</td>
<td>5020</td>
<td>6782</td>
<td>10230</td>
<td>12170</td>
</tr>
<tr>
<td>Nombre total de demandeurs d’asile arrivés en France</td>
<td>30800</td>
<td>38700</td>
<td>47300</td>
<td>51000</td>
<td>52000</td>
</tr>
</tbody>
</table>

CADA: centre d’accueil pour demandeurs d’asile

Des dispositifs précaires ont été mis en place, notamment les mises à l’hôtel et le recours à l’hébergement d’urgence, pour les demandeurs d’asile qui ne sont pas accommodés dans les centres d’accueil spécialisés. Actuellement la France compte autant de demandeurs d’asile hébergés dans le dispositif spécialisé que dans les hôtels. À la différence de celles bénéficiant d’un hébergement spécialisé, les personnes à l’hôtel ne bénéficient pas d’accompagnement pour la procédure d’asile. Les familles sont prioritaires sur les isolés pour l’hébergement et peu d’isolés bénéficient d’un hébergement en centre spécialisé. Ils ont recours aux dispositifs d’urgence de droit commun, aux squats, campements et cohabitation.

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Les demandeurs d’asile ne sont pas systématiquement entendus par l’OFPRA (Office Français de Protection des Réfugiés et Apatrides) ou par la commission des recours des réfugiés en cas de recours. En effet, lorsque les demandeurs d’asile sont autorisés à séjourner sur le territoire le temps qu’il soit statué sur leur demande d’asile, un rejet de leur demande d’asile peut leur être notifié sans avoir été entendu si leur demande d’asile est jugée manifestement infondée notamment. La notion de demande manifestement non fondée fonctionne uniquement en zone d’attente et permet le refoulement du requérant.

Il y a 4 cas pour lesquels l’office ne convoque pas les demandeurs d’asile, ce sont les suivants:

a) L’office s’apprête à prendre une décision positive à partir des éléments en sa possession

b) Le demandeur d’asile a la nationalité d’un pays pour lequel ont été mises en œuvre les stipulations du 5 du C de l’article 1er de la convention de Genève susmentionnée;

c) Les éléments fournis à l’appui de la demande sont manifestement non fondés;

d) Des raisons médicales interdisent de procéder à l’entretien.

Devant l’OFPRA, les membres d’un même couple sont entendus séparément. Les mineurs ne sont pas entendus.
Les demandeurs d’asile peuvent exercer leur droit de recours mais là aussi, un rejet peut leur être notifié si aucun élément sérieux pouvant remettre en cause la décision du directeur de l’OFPRA est mis en avant. Un président de section peut alors et après avis d’un rapporteur prendre une décision par ordonnance rejetant le recours intenté.

D’autre part, un refus d’enregistrement de la demande d’asile peut avoir lieu si le demandeur d’asile n’a pas envoyé sa demande complète dans le délai de 21 jours.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

A la connaissance de l’interlocuteur de Forum Réfugiés, les demandeurs d’asile de sexe féminin sont entendus indifféremment par des officiers de protection de sexe masculin ou féminin. A propos des interprètes, il n’y a pas de mesure particulière, l’interprète peut être un homme ou une femme.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Les mineurs non accompagnés, appelés communément mineurs isolés, sont entendus par des officiers de protection. Ils doivent bénéficier d’un représentant légal (administrateur ad hoc, tuteur voire délégataire de l’autorité parentale, ce dernier cas est très rare). Cette procédure de demande de représentant légal se fait parallèlement à la demande d’asile ou avant le commencement de la procédure. Dans tous les cas, l’office ne notifie pas sa décision sans qu’un représentant légal soit nommé. A ce jour, il n’existe aucun service à l’OFPRA spécialisé dans les demandes d’asile de mineurs isolés. Cependant, les officiers de protection portent un regard attentif sur les demandes de ces mineurs et sont sensibles au déroulement particulier de l’entretien.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

Les entretiens à l’office se déroulent tous selon le même principe. Un officier de protection assisté par un interprète si nécessaire entend le demandeur d’asile. L’officier revient sur les écrits du demandeur d’asile et insiste sur les points qui lui semblent importants.

En ce qui concerne les personnes victimes de tortures, de traumatismes, les entretiens se déroulent de la même façon, cependant les officiers sont informés des difficultés pour les demandeurs d’asile victimes de traumatismes, de tortures, de raconter leur histoire, de se souvenir de dates. Les officiers de protection sont formés aux difficultés de mener les entretiens avec des personnes victimes de traumatismes.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Les demandeurs d’asile obtiennent un titre de séjour provisoire le temps de la procédure de demande d’asile. Les demandeurs d’asile qui ne sont pas retenus en zone d’attente (frontière) peuvent rester sur le territoire le temps de l’étude de leur demande. Le titre de séjour est d’abord un récépissé de 1 mois puis les suivants sont valables 3 mois. Le titre de séjour de 3 mois est délivré si le demandeur d’asile a déposé son dossier à l’OFPRA dans le délai de 21 jours. Le titre de séjour est renouvelé tout au long de la procédure, jusqu’à une décision devenue définitive. Les titres de séjour sont délivrés par la préfecture qui est une administration distincte de l’office.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Les demandeurs d’asile qui voient leur demande d’asile rejetée par l’office ont la possibilité d’exercer un recours contre la décision négative. Le recours s’exerce dans un délai de 1 mois. Si le recours est exercé, le titre de séjour est renouvelé, le temps de la procédure d’appel. Une fois la procédure de demande d’asile arrivée à son terme, si la décision définitive est un rejet le titre de séjour provisoire n’est pas renouvelé.

En cas de procédure prioritaire, le recours n’est pas suspensif et il n’y a pas de renouvellement du titre de séjour.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?
Les demandeurs d’asile se déclarent auprès de la préfecture en tant que demandeur d’asile. Avant de délivrer les documents (titre de séjour et formulaire de demande d’asile), les empreintes digitales sont relevées dans le cadre EURODAC. Les autorités procèdent donc à l’enregistrement de l’identité de la personne. Si le demandeur d’asile est reconnu par le système comme une personne ayant déjà déposé une demande d’asile dans un autre État, un rendez-vous lui est fixé afin de disposer de temps pour procéder à des vérifications complémentaires. La suite de la procédure est conditionnée par le résultat de ces recherches.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

Voir 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?


5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Le demandeur d’asile a toujours la possibilité d’exercer un recours contre la décision de l’office, peu importe que cette décision soit une décision de rejet d’une demande d’asile ou une décision de retrait du statut de réfugié. Le recours s’exerce devant la commission des recours des réfugiés (CRR). En effet, la Commission des recours des réfugiés statue sur les recours formés contre les décisions de l’office prises en application des articles L 711-1, L712-1, L712-3 et L 723 à L.723-3. Ces articles font référence au refus d’octroyer le statut de réfugié et/ou de la protection subsidiaire mais également des décisions de retrait d’une de ces deux protections. Les réfugiés dont le statut a été retiré ont le droit de rester sur le territoire pour la durée de la procédure devant la Commission.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Oui, il est possible de retirer le statut de réfugié ou le bénéfice de la protection subsidiaire s’il s’avère que la personne a commis des actes figurant à l’article 1F.

Pour la protection subsidiaire, les raisons sont les suivantes :

   a) Qu’elle a commis un crime contre la paix, un crime de guerre ou un crime contre l’humanité ;
   b) Qu’elle a commis un crime grave de droit commun ;
   c) Qu’elle s’est rendue coupable d’agissements contraires aux buts et aux principes des Nations Unies ;
   d) Que son activité sur le territoire constitue une menace grave pour l’ordre public, la sécurité publique ou la sûreté de l’État.

Pour le statut de réfugié, les raisons sont celles de la convention de Genève (article 1F).

6.2.2 If so, is this possibility (these possibilities) being made use of?

A la connaissance de l’interlocuteur de Forum Réfugiés, la possibilité de retirer les statuts de réfugié n’a jamais été appliquée en pratique.
6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

La procédure ne diffère pas qu’il s’agisse de la protection subsidiaire ou du statut de réfugié.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

Voir 6.3.1.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Oui. Voir 7.1.1.

7.1.2 If so, in which respects?

Des tensions existent sur deux points notamment :
- Le texte proposé de la directive procédure prévoit des situations d’examen de la demande d’asile sans admission au séjour qui sont moins nombreuses que dans la législation française.
- La notion de pays tiers sûr n’existe pas en droit français.

7.2.1 If your member state operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

Il n’y a pas de procédures séparées.

7.2.2 If so, in which respects?

Voir 7.2.1.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?


8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

L’asile territorial délivré par le ministre de l’intérieur a disparu depuis le 1 janvier 2004. Les chiffres pour l’asile territorial sont les suivants:

1999 – 6.983
2000 – 11.809
2001 – 17.267
2002 – 22.786
2003 – 27.741
Ces chiffres s’expliquent par le fait que cet asile territorial a été créé en 1998 et appliqué à partir de 1999.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

Voir 8.2.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

Voir 8.2.

8.4 How many decisions to withdraw refugee status were taken in these years?

Pas de chiffres disponibles.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

Pas de chiffres disponibles.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

La nouvelle loi sur l’asile a intégré la notion d’agent non étatique de persécution, la France était l’un des derniers Etats européens avec l’Allemagne à ne pas reconnaître les agents non étatiques. C’est par anticipation que cette notion a été intégrée à la nouvelle loi française.
En ce qui concerne les acteurs de protection autres que l’Etat, la nouvelle législation française prend en considération les organisations régionales et internationales (OIGs). La nouvelle loi dispose ainsi que «des autorités susceptibles d’offrir une protection peuvent être les autorités de l’Etat et des organisations internationales et régionales». Au moment de son adoption cette disposition a été sévèrement critiquée par nombre d’ONGs. L’interlocuteur de Forum Réfugiés a exprimé la crainte que la protection des OIGs n’apporte pas de garantie suffisante en terme de sécurité et de protection pour les individus, en faisant référence aux massacres dans l’enclave de Srebrenica en juillet 1995 (zone protégée par l’ONU) ou encore l’Opération Turquoise (mandat ONU) au Rwanda en 1994.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Voir 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Pour qu’une personne obtienne le statut de réfugié, les persécutions doivent nécessairement être rattachées à l’un des motifs de la Convention de Genève. Si les persécutions ne reposent pas sur les motifs de ladite Convention, alors la personne se verra attribuer la protection subsidiaire.
9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Oui, ces personnes peuvent être reconnues au titre de la Convention de Genève.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Les femmes en elles-mêmes ne constituent pas un groupe social, en revanche une catégorie de femmes persécutées en raison de telle ou telle attitude ou de telle ou telle activité, constituerait un groupe social. Il n’est pas obligatoire que ces femmes soient identifiées comme étant organisées, ce sont les persécutions qui peuvent également fonder l’appartenance au groupe social. Dans cet ordre d’idée, les transsexuels algériens constituent un groupe social sans qu’ils soient organisés de manière formelle, mais parce que les persécutions auxquelles ils sont exposés fondent l’appartenance à un groupe social.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Les mineurs isolés peuvent effectivement se voir reconnaître le statut de réfugié ou la protection subsidiaire.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Il n’y a pas de dispositions spécifiques à l’égard des victimes de ce type de trafic sur le plan du droit d’asile. Le trafic ne constitue pas une persécution en soi, néanmoins, si de tels actes reposent sur un des motifs de la Convention de Genève alors la personne sera susceptible d’obtenir le statut de réfugié. Ainsi une personne victime de ce type de trafic en raison de son appartenance à tel ou tel groupe social ou parce qu’étant de telle ou telle confession religieuse se verra attribué une protection conventionnelle.

Il existe par ailleurs des dispositions pour les victimes de la prostitution si elles collaborent avec la police pour démanteler le réseau mais ces dispositions sont particulières et n’intègrent pas les dispositions relatives au droit d’asile.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Les mineurs isolés peuvent effectivement se voir appliquer la clause d’exclusion, sauf si les actes qu’ils ont commis sont le résultat de contraintes exercées par des adultes. Certains enfants soldats ont ainsi échappé à la clause d’exclusion parce que, enrôlés de force, les exactions auxquels ils se sont livrés ont été effectuées sous la contrainte.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?


10.2 If so, in which respects?

N/A.
GERMANY – COUNTRY REPORT

Respondent: Dr. R. Bank, UNHCR Germany

The government chose not to participate in our questionnaire. Therefore this report is based solely on the information we received from the respondent from the UNHCR.

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Persons arrested in connection with an attempt to illegal entry, at or close to the border, are detained at the border and then sometimes submit an asylum application while detained. Foreigners can be taken in pre-deportation detention in order to ensure the exit of aliens not entitled to stay in Germany. According to Section 62 (2) No. 1 Residence Act, pre-deportation detention can thereby be imposed on the ground of illegal entry. According to Section 14 (4) of the Asylum Procedure Act, pre-deportation detention may be upheld during the asylum procedure, but if it has been ordered solely on the ground of illegal entry, the detainee has to be released immediately once the intention to apply for asylum/refugee status has been expressed, unless it is established that s/he has stayed illegally in Germany for more than a month before her/his imprisonment (Section 14 (4) No. 4 Asylum Procedure Act).

Otherwise, German law and practice do not differentiate between the periods before and after an application is formally lodged. According to Section 13 Asylum Procedure Act, any informal expression of the wish to seek protection from political persecution or for other Convention reasons is considered an asylum application. In principle, all reception conditions apply from that moment onwards. The airport procedure is an accelerated asylum procedure with temporary refusal to enter the territory, but it still constitutes a full asylum procedure.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

There are no specific provisions.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

There are no specific provisions for short-term reception of (unaccompanied) minors.

1.3.2 If so, how are (unaccompanied) minors identified?

N/A.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

There are no specific provisions for short-term reception of (single) women.
1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No, there are no specific provisions for short-term reception of victims of trafficking. However, in December 2001 the new Law on the Harmonisation of the Protection of Endangered Witnesses (Gesetz zur Harmonisierung des Schutzes gefährdeter Zeugen, GHSZ) has been adopted, also with regard to victims of organised crime and trafficking, to protect witnesses whose testimony is needed to ascertain the facts in criminal proceedings, and who are thus endangered. Under Article 1 (1) of the GHSZ they may, together with their close relatives, be temporarily provided with a changed identity and can only be extradited or deported with the agreement of the Witness Protection Department. In practice, victims of trafficking who are apprehended by the police often face deportation without having been informed about the possibility to collaborate with the German authorities or without an individual examination by the competent aliens authority of the danger of being re-trafficked upon return to their home country.

1.5.2 If so, how are victims of trafficking identified?

No information is available regarding this matter.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

In principle asylum seekers are not detained during the examination of their application. Asylum seekers who arrive at one of the major German airports may be subjected to the so-called “airport procedure”. This procedure is an accelerated procedure which applies to persons arriving by air from so-called “safe countries of origin” or without a valid passport. The basic idea of this procedure is to carry out the asylum procedure within very short deadlines before admission to the territory, to be able to immediately return asylum seekers whose applications are without any prospect for success. For the purpose of carrying out the airport procedure, asylum seekers are held in special facilities at the airports and their applications are decided in a speedy procedure, before entry into German territory is either permitted or denied. The retention in such a closed facility at an airport can amount to a maximum of 23 days prior to a final rejection of an asylum claim as “manifestly unfounded”. Legally, this retention is not considered to constitute a deprivation of liberty. However, asylum seekers who are rejected in the airport procedure, but who cannot be removed may spend months in the closed centre at the airport, in conditions that are aimed at a short stay.

2.2 Are there specific provisions for reception of asylum seekers during the examination of the application in situations of mass influx?

There are no special reception conditions for asylum seekers in situations of mass influx. They are treated in the same way as other asylum seekers.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

In Germany, minor aliens are generally subjected to the same asylum and aliens law regimes as adults, including in the airport procedure, which provides for retention in special facilities at the airport (see above). The accelerated airport procedure with its accommodation in the transit zone can also be applied to children under 16 years of age, whereas children under 14 are allowed to enter German territory in a regular way.
Since minor asylum seekers between the ages of 16 and 18 have legal competence with regard to asylum and aliens law, they are rarely placed under guardianship or granted other youth welfare benefits under the German Youth Welfare Act (theoretically applicable up to the age of 27). Rather, in the majority of the Länder, these minors have to stay in the airport facilities or another initial reception centre and then in a collective accommodation centre together with adult asylum seekers.

By contrast, unaccompanied children under 16 years of age are, as a rule, placed under guardianship after their arrival and received in special accommodation centres under the Youth Welfare Act.

A so-called “clearing procedure” for new arrivals is carried out in 9 out of the 16 Länder. Excellent conditions exist for new arrivals under the age of 16 in Bavaria, where several high standard clearing centres have been established. During such a ‘clarification phase’, which may last up to three months, relevant issues, such as identity, the whereabouts of family members in the country of origin or in Germany and the reasons for arrival in Germany may be clarified.

### 2.3.2 If so, how are (unaccompanied) minors identified?

There is no general age assessment system in Germany for minors who arrive in Germany without documentation. In some cases the age assessment is carried out by means of a medical examination, but in most cases staff members of the Youth Welfare Office (“Jugendamt”) assess the age of a specific minor based on mere “visual inspection”. Forced X-rays etc are not allowed as a means of age testing, since a survey of Pro Asyl (an NGO) documented that this practice is unlawful and constitutes a bodily injury and a risk to the health of the person concerned.

### 2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

There are no specific legal provisions for (single) women in this respect. However, special sections for women and families were newly established in various centres and special measures were undertaken to prevent sexual violence (e.g. special facilities for single women, families and separated girls at Frankfurt airport, where 24-hour care by a social worker is now available - the social worker's room being adjacent to the girls' rooms to prevent intrusions).

### 2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

There are no specific reception provisions for victims of trafficking. Children under the age of 16 are, however, generally accommodated in youth welfare institutions and women can be housed in special homes for battered women, or in special facilities under the Law on Endangered Witnesses (Zeugenschutzgesetz). There are a number of professional counselling centres (Fachberatungsstellen), run by NGO’s, which can be contacted in cases of trafficking, but there is no structural procedure in place to ensure that victims of trafficking are referred to such centres.

### 2.5.2 If so, how are victims of trafficking identified?

No information is available on this issue.

This Directive has not yet been transposed into German law. The implementation will form part of a general effort for the transposition of the EU acquis into German law in 2005.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Yes, certain tensions exist between Directive 2003/9 and existing reception conditions.

3.2.2 If so, in which respects?

Article 5 (information)
German law does not provide for extensive and detailed information to be provided to asylum seekers as foreseen in Article 5 of the Directive. Even if in practice some information leaflets are handed out to asylum seekers at the beginning of the procedure, these leaflets contain mainly procedural information and no specific information in connection with the reception of asylum seekers. Above all, there are differences in quality and quantity of the information available. Hence, these leaflets do not fulfil an extensive general provision as foreseen in the Directive. An appropriate provision has to be established.

Article 6 (documents)
While according to Article 6 of the Directive the applicant shall, within three days after his/her application, be provided with a document certifying his/her status, the relevant Section 63 of the German Asylum Procedure Act contains no time frame for issuing such a document. Therefore, Section 63 Asylum Procedure Act has to be adjusted accordingly when implementing the Directive.

Article 7 (residence/freedom of movement)
With regard to freedom of movement, the Directive allows the Member States to restrict the asylum seeker’s freedom of movement geographically and to assign the asylum seeker to a particular place. This corresponds by and large with Sections 56 to 58 and 60 of the German Asylum Procedure Act so that only some adjustments are needed. In particular, the Directive obliges Member States to designate an area to which the asylum seeker’s free movement is limited which allows him or her to fully enjoy the rights contained in the Directive. A provision obliging the authorities to take this into consideration is lacking in German law.

With regard to residence, it seems questionable in practice whether the accommodation of asylum seekers in collective accommodation centres in very remote areas in Eastern Germany is sufficient to meet the asylum seekers’ interests. Moreover, there are doubts as to whether the authorities always dispense traumatised persons from the obligation to live in collective accommodation.

Article 8 (family unity)
The Directive restricts the term “family” to the core family members and refers to the respective legislation of the Member States concerning unmarried couples. This means in Germany, that the family unity of legally registered same-sex unions has to be respected in the decision on the distribution of asylum seekers; on the other hand, heterosexual non-married partnerships do not need to be taken into account. An adjustment of German law, however, is not needed in this respect.

According to the German law, the decision to be assigned to a specific initial reception centre does not take into account family bonds but relies on abstract criteria such as country of origin and capacity, in cases where a family does not arrive together. In the context of the decision to be assigned to a certain district for the time after the stay in the initial reception centre, the core family shall be united. The possibility to respect family bonds already upon assignment to an initial reception centre should be introduced when transposing the Directive.

Article 10 (education)
In all Länder, minor children of asylum seekers have the right to go to school as mandated by the Directive. However, since the attendance of school is not compulsory for the children of asylum seekers in all Länder, the actual access varies from one school to another and there are problems concerning free access to teaching materials and free transport to school. In some of the Länder, access to primary education is not granted for the period of accommodation in the initial reception centre; this period may last up to three months and is therefore in line with the Directive.

Since the Directive provides for “similar conditions as nationals of the host Member State”, the implementation of the Directive should be taken as a reason to introduce a general compulsory primary education for all minor
asylum seekers in order to harmonise the schooling situation within Germany and to secure that minor asylum seekers receive adequate education.

Access to secondary education is not prescribed by German law, but may be provided in practice on a discretionary basis. The Directive provides that minor asylum seekers and minor children of asylum seekers shall be treated equally to German children as far as possible. This may have to be implemented by specific provisions to that end to be introduced in the education legislation in the Länder.

**Articles 13 and 14 (material reception conditions)**

As the provisions of the Directive are very open with regard to the material reception conditions, German law corresponds by and large with the Directive. However, a right of access to the accommodation centres for UNHCR, lawyers and NGOs is not legally anchored in Germany. Neither is prevention of violence in the accommodation centres prescribed by law. This has to be adjusted to meet the standards set out in the Directive.

Material assistance is generally given in kind during the reception phase, i.e. while the applicants are staying in the reception centres. Later, following the distribution to de-centralised accommodation centres, the form in which assistance is provided differs between the Länder. Most of them provide assistance in kind, some in vouchers, only very few in cash. All asylum seekers receive a monthly pocket money allowance. Even if UNHCR has reservations with regard to the voucher system due to observed prejudices and discrimination, the practice in Germany corresponds by and large with the minimum standards set out in the Directive.

**Article 15 (health care)**

According to Section 4 of the German Law on Social Assistance for Asylum Seekers (Asylbewerberleistungsgesetz), access to medical and dental treatment during the first 36 months in Germany is restricted to cases of acute illness or pain. This means - according to court decisions on the interpretation of this rule (e.g. VG Frankfurt 8 G 638/97 of 9 April 1997) - that asylum seekers are not entitled to treatment concerning chronic diseases as such; however, such treatment is usually granted on the basis of the discretionary provision of Section 6 Law on Social Assistance for Asylum Seekers.

However, the Directive does not distinguish between acute and chronic diseases but provides for the essential treatment of all illnesses without offering any discretion. Hence, the German law needs to be adjusted accordingly.

**Articles 13 (2), 15 (2) and 17-20 (applicants with special needs)**

In German law, a special provision concerning persons with special needs (e.g. minors, disabled and elderly people, pregnant women, victims of torture) does not exist. According to Section 6 of the Law on Social Assistance for Asylum Seekers, “indispensable services” can be granted in individual cases on a discretionary basis. There is no evaluation procedure for the determination of persons with special needs. Although there are some projects outside the official system working with traumatised refugees, this does not substitute the necessary legal regulation in this respect. The welfare of children is also not especially protected by German law as intended by the Directive.

Hence, to meet the standards set out in the Directive, Section 6 of the Law on Social Assistance for Asylum Seekers has to be reshaped accordingly.

**Article 19 (unaccompanied minors)**

With respect to unaccompanied minors, there are no special arrangements in German law.

As the Directive allows the accommodation of minors above 16 years of age in accommodation centres for adult asylum seekers, there is no major adjustment needed in this respect. However, since restrictions on changes of residence exist in Germany only for unaccompanied minors below 16 years of age, this provision has to be extended also to minors between 16 and 18 years of age when implementing the Directive.

Although in some of the Länder there are clearing centres for unaccompanied minors, a specific legal regulation for unaccompanied minors is needed in order to secure that unaccompanied minor asylum seekers receive the necessary care. Since the Directive provides for the necessary representation of all unaccompanied minors by legal guardianship or other organisations, unaccompanied minors above 16 years of age also have to be placed under guardianship. To this end, an obligation of the authorities to inform the responsible courts of the presence of a minor has to be put down in the law.

Finally, regulations have to be established with regard to securing adequate training of those working with unaccompanied minors and the soonest search for members of the family of the minor.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?
According to the Federal Statistical Office, the costs for benefits according to the German law on Social Assistance for Asylum Seekers (Asylbewerberleistungsgesetz) added up to:

1999: € 2,114 Million  
2000: € 1,945 Million  
2001: € 1,710 Million  
2002: € 1,585 Million  
2003: € 1,440 Million

4.2 How many asylum seekers were in the reception system during these years?

According to the Federal Statistical Office the above-mentioned figures correspond to:

1999: 436,000 recipients  
2000: 352,000 recipients  
2001: 314,000 recipients  
2002: 279,000 recipients  
2003: 264,000 recipients

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

The Federal Office for Migration and Refugees (hereafter: Federal Office) is obliged to hear every foreigner applying for asylum or refugee status personally, unless it is either convinced without a personal hearing that the applicant qualifies for asylum (Article 16 a of the Constitution) or that the applicant has entered the federal territory via a “safe” third country as defined by Section 26 a Asylum Procedure Act. The Federal Office can abstain from a personal hearing in case an asylum application has been lodged for a child below the age of six years born on German territory and the facts of this application have been sufficiently clarified in the procedure of one of the parents (Section 24 Asylum Procedure Act). See also 5.3 regarding the hearing of minor asylum seekers.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

A woman whose asylum claim is related to sexual violence, torture or gender-related persecution may request to be interviewed by a female officer with the assistance of a female interpreter, if available. However, in the past, female applicants were not always informed of this option, so that it was not effective in all cases. By now the Federal Office informs female asylum seekers upon filing their application, i.e. prior to the interview, of this option. Furthermore, the applicant is advised of the fact that the Federal Office provides especially trained female adjudicators in the field of gender-specific human rights violations (rape, sexual abuse, impending female genital mutilation). This information is now included in mother tongue information leaflets that are routinely handed out to applicants, or, in case the applicant is illiterate, read out by an interpreter. However, due to a personnel reshuffle, it is no longer guaranteed that all female adjudicators have received special training on gender-related aspects by physicians and therapists, political scientists, university professors of psychology and UNHCR, as was foreseen in the beginning (in 2001).
5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

There are no special procedures for unaccompanied minors/separated children in Germany. However, minors under 16 years of age do not have legal competence within the framework of the asylum and aliens laws. As a result, these unaccompanied minors have to be placed under guardianship (see Youth Welfare Act). The asylum application is filed by the guardian on the minor's behalf. In large cities such as Hamburg or Berlin, appointed guardians for children under 16 years are mainly youth welfare officers. Since they are usually responsible for a large number of wards at any given time, they may not be able to pay the necessary attention to the children’s asylum procedures as may private guardians, e.g. in ascertaining the details of the minors’ flight.

The asylum procedure itself is not always age-appropriate, especially with regard to the interview. Only in cases of children under six, the deciding officers automatically refrain from carrying out a personal interview. Minors above this age may be summoned to a hearing, if possible, but not always, together with their guardian. The children are sometimes expected to substantiate their claims in the same way as adults. This does not take into account that a child's perception may vary from that of an adult and that children may not be able to articulate relevant information. Furthermore, it fails to take due consideration of cases where children may be re-traumatised by having to undergo questioning about previous experiences. As a result of discussions between UNHCR and the Federal Office regarding the issues described above, the Federal Office designated more than 40 adjudicators to act as so-called Special Commissioners for Child Refugees some years ago. UNHCR was closely involved in the preparation of the training for these Special Commissioners and participated in the training seminars. These encompassed legal, but also psychological and practical aspects. However, due to a reshuffle of personnel, a certain number of adjudicators who at present interview minors have not received any training, but due to UNHCR’s and the Implementing Partner’s lobby efforts, the Federal Office agreed in late 2004 that training measures will be resumed in early 2005. Furthermore, UNHCR’s suggestion to devise measures so that 16 to 18 year old unaccompanied minors also could be interviewed by the Special Commissioners was agreed to by the Federal Office in late 2003, and a new procedural regulation to that effect was issued in early 2004.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

The special vulnerability and the difficulties experienced on the part of traumatised persons to give detailed statements on their fate have been increasingly recognised by the Federal Office and the courts during the last few years. In 2001, for example, the Federal Office organised a symposium on traumatised refugees with experts, among them scientists and therapists, and subsequently issued various specialist publications on this issue. The Federal Office also started to train adjudicators to act as so-called Special Commissioners for Traumatised Refugees. Various therapy centres for traumatised refugees were closely involved in the preparation of the training for these Special Commissioners and actively participated in the training seminars, which encompassed psychological and practical aspects. However, due to a reshuffle of personnel, a certain number of adjudicators who at present are responsible for interviewing traumatised applicants have not received specific training.
The Special Commissioners are supposed to carry out the interview whenever there is an indication of trauma, e.g. owing to a notification to this effect by a social worker, or a medical/psychological attestation submitted in the case. If these clues only emerge during the interview, the ‘normal’ adjudicator has to ask a Special Commissioner to either continue with the interview, to carry out a second one, or at least to include the latter in the decision-making on the application. The Special Commissioner also has the competence to decide whether an expert opinion by a psychologist is requested. In practice, the latter is done in single cases only.

Due to the difficulty of ascertaining during the interview whether an asylum seeker suffers from trauma, the procedural regulation is not always abided by in practice.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes, asylum seekers are generally entitled to stay in Germany for the purpose of the asylum procedure.

This does not, however, mean that an asylum seeker in all cases will be allowed entry into Germany territory or have access to the German asylum procedure upon submission of an asylum request. The Asylum Procedures Act provides for several grounds upon which entry into the country and access to the asylum procedure can be denied. According to Section 18 Asylum Procedure Act, governing access to the territory, persons entering by land and applying for asylum at border entry points are refused entry if they have arrived from a safe third country (e.g. all countries neighbouring Germany), had previously found 'safety elsewhere' or pose a threat to the general public. This safe third country concept does no longer apply to cases in which the asylum seeker enters Germany through one of the States participating in the Dublin II system. In these cases, the German authorities have to establish which Member State is responsible for processing the application under the Dublin II Regulation before an asylum seeker can be taken back to any Dublin state.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Different rules apply with regard to judicial review and the suspensive effect of an appeal depending on whether the request is rejected as ‘manifestly unfounded’ or simply as ‘unfounded’. Negative decisions by the Federal Office may generally be appealed to an administrative court with suspensive effect. This means that generally the applicant is allowed to remain in Germany until a court has dealt with his appeal.

However, in cases held to be ‘manifestly unfounded’ or ‘irrelevant’ by the Federal Office (Section 29 Asylum Procedure Act), an appeal does not automatically have suspensive effect. To prevent deportation in these cases, one has to apply for a court injunction (Section 80 (5) Administrative Court Procedure Act in conjunction with Section 36 (3) Sentence 8 Asylum Procedure Act). An order to suspend deportation may then be issued if there are serious doubts as to the legality of the administrative act against which a complaint has been filed. An application for such an injunction has to be filed within one week of the decision being served, accompanied by the appeal. A decision on the injunction should be delivered by an ‘individual judge’ (“Einzelrichter”) within one week. However, in practice, decisions on injunctions often take several weeks or even months. The deportation must not be enforced as long as such an application is pending (Section 36 (3) sentence 8 Asylum Procedure Act).
5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Generally, the Federal Office consults Eurodac before the interview of a particular applicant.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

After a claim for asylum is filed by an applicant, the Federal Office – or the border police in case of applications for asylum at the German border – is responsible for taking photos and fingerprints of the applicants by way of identification service.

As to the data interpretation, the Federal Criminal Office provides administrative assistance in the evaluation of the fingerprints. The Federal Criminal Office is responsible for transfer of the data to Eurodac. As soon as the data are transferred to Eurodac, there will be an automatic response if the data of the particular applicant are already in the records of Eurodac. The Federal Criminal Office then submits these results to the Federal Office.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes, there is only one procedure for both applications for protection. The application for refugee status generally includes the application for subsidiary protection. This means that the Federal Office is - subsequent to denying refugee status - obliged to examine the possibility of granting a subsidiary protection status.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes. An appeal against a revocation decision regarding refugee status and the residence permit generally has suspensive effect. This means that the person concerned is entitled to remain in the country.

Revocation and/or withdrawal of status do not automatically go along with the loss of the respective residence permit and the obligation to leave Germany. The alien generally remains in possession of his/her residence permit, which can only be withdrawn in a separate procedure pursuant to Section 52 (1) Residence Act by the local Aliens Authority, after having had regard to all circumstances of the individual case (e.g. duration of the stay in Germany, degree of integration, criminal record, dependence on social benefits). Deportation is possible only after the residence permit has been withdrawn or has expired. In many cases, however, the respective residence permits were also revoked or - in case of temporary residence permits - were not prolonged, sometimes even before the revocation decision had become legally binding.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?
According to Section 73 (1) Asylum Procedure Act refugee status has to be revoked if its prerequisites no longer exist. This provision applies also to cases where, subsequently to their recognition, refugees engage in conduct falling within the scope of Section 60 (8) Residence Act. This section contains elements from Article 1 F (a) and (c) as well as Article 33 (2) of the 1951 Convention.

Thus, a revocation of refugee status is possible if a refugee constitutes a risk for the security situation in Germany or the general public because s/he has been lawfully sentenced to imprisonment for more than 3 years or if there are serious reasons to believe that the refugee committed a crime against peace, a war crime or a crime against humanity as defined in international instruments drawn up to make provisions in respect of such crimes, or if the refugee has been guilty of acts contrary to the purposes and principles of the United Nations.

Regarding subsidiary forms of protection, see 6.3.1.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Yes. For example, the Federal Office recently revoked the status of members of the People's Mujaheddin from Iran. The decisions concerned mainly applicants who had been recognised in the early 90’s, but who then left Germany for Iraq to allegedly join the armed struggle against the regime in Iran. After the fall of the Iraqi regime in spring 2003 some of them returned to Germany while in other cases the German authorities refused re-entry. Unfortunately, UNHCR has no figures indicating the numbers of withdrawal of refugee status solely on the basis of acts mentioned in Article 1 F of the 1951 Convention. As a general indication, the overall numbers of revocation/withdrawal procedures under Section 73 (1) and (2) Asylum Procedure Act were rather low up to 2001, but increased dramatically since 2002 (from 718 revocations and 62 withdrawals in 2001 to 16,687 revocations and 144 withdrawals in 2004).

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

According to Section 73 (3) Asylum Procedure Act, forms of subsidiary protection can be withdrawn if the decision granting subsidiary protection was incorrect or they can be revoked if its prerequisites have ceased to exist.

In contrast to refugee status, subsidiary protection cannot be withdrawn for security reasons. However, the residence permit may be denied or withdrawn on such grounds. This leads to the situation that the stay of the person under subsidiary protection is based on a toleration permit.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

There are no particular procedural differences. According to the wording of the provisions on withdrawal / revocation, the administration is obliged to withdraw the refugee status “immediately” if the conditions are fulfilled. The word “immediately” is not attributed to the corresponding provision on withdrawal / revocation of subsidiary protection. In practice, this does not seem to be of any relevance. In particular, the case law shows that withdrawals / revocations are not excluded in cases in which the conditions for withdrawal / revocation have been fulfilled for a longer period of time already.
7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Generally, the German asylum procedure complies with the minimum standards set by the Directive. However, there are still tensions in some respects.

7.1.2 If so, in which respects?

Article 3A (training)
According to Article 3A (3) Directive, it has to be ensured that the personnel of the determining authorities possesses adequate knowledge and receives the necessary training. According to Article 11 (3) (a) Directive, the interviewing person has to be sufficiently competent to take account of the personal or general circumstances surrounding the application.
Although in German practice the determining authorities receive special training and the interviews are conducted by persons who have extensive knowledge of the asylum procedure and of the situation in the applicants’ states of origin, the necessary normative anchorage of this practice is missing. This has to be carried out when implementing the Directive.

Article 9 (1) (a) (information)
According to Article 9 (1) (a) Directive, asylum seekers have to be informed early enough in a language that they might reasonably be supposed to understand of the procedure that has to be followed and of their rights and obligations.
However, even if there are some regulations in the Asylum Procedure Act with regard to informing asylum seekers, neither German law nor practice prescribes to inform them about all existing rights and obligations. Hence, a general regulation with regard to comprehensive information for all asylum seekers has to be established, also with regard to the airport-procedure and to cases of subsequent applications.

Article 9 (1) (e) (language)
While according to Article 9 (1) (e) Directive asylum seekers have to be informed about the result of the decisions by the determining authority in a language that they may reasonably be supposed to understand, the official language of the German asylum procedure is German and neither the decisions nor the information about legal remedies have to be translated into the mother tongue of the asylum seeker (see Section 17 and 23 of the Asylum Procedure Act). To meet the standards set out in the Directive, the Asylum Procedure Act has to be adjusted accordingly.

Articles 9 (1) (d) and 23 (2) (efficiency)
According to Articles 9 (1) (d) and 23 (2) Directive, the determining authorities are bound to efficient and speedy decision-making. Although in German Law no such legal obligation exists, the authorities are obliged by case law to decide as efficiently as possible without any detriment to the necessary thoroughness. However, an obligation to inform applicants according to Article 23 (2) Directive has to be anchored for situations where no decision can be taken within six months.

Article 12 (interview)
While Article 12 Directive provides for timely access of the applicant to the report of the personal interview, according to German Law a legal title in this respect is offered only in case of a denial of the application as irrelevant or manifestly unfounded. Even if the Federal Office in practice generally hands out the report to the applicants right after the interview or sends it to them not later than the delivery of the decision, a legal title is necessary to fully implement the Directive.

Article 30A (safe country of origin)
For the implementation of Article 30A Directive, the German list of safe countries of origin has to be communicated to the Commission. Moreover, the fact that the assessment of whether a country is a safe country of origin has to be based on a range of sources of information, including information from other member states, UNHCR and the Council of Europe, has to be legally anchored in the German Asylum Procedure Act.

Article 27 (safe third country)
Since the standards set by the Directive are very open with regard to the safe third country rule and leave the application of the safe third country concept to the discretion of the Member States, the German law corresponds by and large with the Directive. However, according to Section 26a Asylum Procedure Act no specific connection between the person seeking asylum and the third country is required for the application of the safe third country rule as foreseen in Art 27 (2a) Directive. The fact that Section 26a Asylum Procedure Act requires that the asylum seeker has entered Germany via the third country does not constitute an adequate connection as foreseen by the Directive. Therefore, an appropriate connection has to be established when implementing the Directive. Moreover, in formal respects, an obligation according to Article 27 (3b) Directive has to be incorporated into the Asylum Procedure Act, namely that the rejected asylum seeker is provided with a document concerning his/her rejection based on the safe third country concept. Finally, the obligation to notify the Commission according to Article 27 (5) Directive has to be implemented.

7.2.1 If your member state operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

Unfortunately, UNHCR does not possess any information regarding the costs of asylum procedures.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Refugee protection</th>
<th>Subsidiary protection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total claims for asylum</td>
<td>Article 16 a Constitution / Family asylum</td>
</tr>
<tr>
<td>1999</td>
<td>135,504</td>
<td>4,114</td>
</tr>
<tr>
<td>2000</td>
<td>105,502</td>
<td>3,128</td>
</tr>
<tr>
<td>2001</td>
<td>107,193</td>
<td>5,716</td>
</tr>
<tr>
<td>2002</td>
<td>130,128</td>
<td>2,379</td>
</tr>
<tr>
<td>2003</td>
<td>93,885</td>
<td>1,534</td>
</tr>
</tbody>
</table>

(Data of the Federal Office for Refugees and Migration)

Explanation:
The figures above do not refer to the number of applications that were filed but to the number of applications the Federal Office decided on.
The German system of individual recognition of refugee status is twofold. Firstly, asylum is granted according to Article 16 a (1) of the German Constitution, which states: “Anyone who is politically persecuted enjoys the right to asylum.” The second important national provision is Section 60 (1) Residence Act (former Section 51 (1) Aliens Act), which grants protection against deportation to a country of persecution. The wording is based on Article 33 of the
1951 Convention. The constitutional right is understood as a right to asylum for those who fear “political” persecution, whereas the Residence Act regulates the (non-)return of aliens to a country where they may fear persecution for any Convention reason. Concerning subsidiary status, Section 60 (2), (3), (5) and (7) Residence Act (former Section 53 Aliens Act) provides non-deportation for human rights reasons or humanitarian considerations.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Procedure s initiated</th>
<th>Total Decisions</th>
<th>Revocations</th>
<th>Withdrawals</th>
<th>Status Confirmed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999*</td>
<td>n.a.</td>
<td>1,873</td>
<td>1,750</td>
<td>97</td>
<td>26</td>
</tr>
<tr>
<td>2000*</td>
<td>n.a.</td>
<td>1,893</td>
<td>1,749</td>
<td>88</td>
<td>56</td>
</tr>
<tr>
<td>2001*</td>
<td>n.a.</td>
<td>n.a.</td>
<td>718</td>
<td>62</td>
<td>n.a.</td>
</tr>
<tr>
<td>2002*</td>
<td>4,269</td>
<td>n.a.</td>
<td>2,230</td>
<td>87</td>
<td>n.a.</td>
</tr>
<tr>
<td>2003**</td>
<td>14,866</td>
<td>9,909</td>
<td>9,526</td>
<td>85</td>
<td>298</td>
</tr>
</tbody>
</table>

(according to information of UNHCR)

*Figures refer to revocations/withdrawals of refugee status only (Article 16a Constitution; Section 51 Aliens Act).
** Figures include revocations/withdrawals of humanitarian status.

Explanation:
Concerning the cancellation of refugee status, German law distinguishes between “revocation” (Widerruf) and “withdrawal” (Rücknahme). “Revocation” of refugee status is regulated in Section 73 (1) Asylum Procedure Act: The Federal Office is obliged to instantaneously revoke the initial decision on the granting of asylum or refugee status, when the conditions for the recognition as a Convention refugee prescribed in Section 60 (1) Residence Act (until 1.1.2005: Section 51 Aliens Act) have ceased to exist. In addition, Section 73 (1) Asylum Procedure Act also applies to cases, where, subsequently to their recognition, refugees engage in conduct falling within the scope of Section 60 (8) Residence Act (former Section 51 (3) Aliens Act).
In contrast, according to Section 73 (2) Asylum Procedure Act, the Federal Office is obliged to withdraw the refugee status decision if it was based on false statements or concealed facts and if the status would not have been granted had the Federal Office been aware of the correct facts.
Subsidiary forms of protection are to be revoked if the grounds on which it was granted have ceased to exist, and to be withdrawn if the decision was wrongly made (Section 73 (3) Asylum Procedure Act).

As the figures of the Federal Office's statistics indicate, the number of revocation/withdrawal procedures under Section 73 (1) and (2) Asylum Procedure Act were rather low up to 2001. From 2002 to 2004, the number of revocation procedures increased dramatically as the Federal Office, mainly based on the assumption that the situation in Serbia and Montenegro including Kosovo had improved considerably, started to examine revocation of refugee status with regard to refugees particularly from Serbia and Montenegro, and, once more, in 2004 with the large scale extension of the revocation practice regarding refugees from Iraq.

The current revocation practice of the Federal Office regarding Iraqi refugees is not in line with Article 1 C (5) of the 1951 Convention. The Federal Office argues that the revocation decisions against Iraqi refugees are generally justified on the supposition that subsequent to the fall of the former government of Saddam Hussein neither (political) persecution emanating from Ba'ath or Saddam-affiliates, nor from the Coalition Provisional Authorities can be feared by Iraqis and therefore the reasons for granting Convention refugee status to Iraqi nationals would have ceased to exist. This assessment by the Federal Office of the current situation in Iraq does not sufficiently take into account elements of the cessation clause such as the fundamental character of change, the enduring nature of the change and the restoration of effective protection as foreseen by the concept of Article 1 C (5) of the 1951 Convention.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

See 8.4.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

In Germany, a statutory provision that determines which actors can provide protection does not exist. Nevertheless, it has been decided by several Higher Administrative Courts and the Federal Administrative Court that international organisations as e.g. in Kosovo or de-facto authorities are capable of granting protection to refugees.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See above (9.1).
9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Yes, German law does not differentiate between persecution based on acts and that based on omissions. Consequently, refugee status can also be granted if the protection was withheld on a persecution ground.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A (2) RC?

Section 60 (1) sentence 3 Residence Act stipulates that persons who are subject to gender-related persecution may qualify for Convention refugee status under the concept of “social group”. By this provision it was clarified that persecution because of gender is falling within the category of the social group and that the concept also applies if the threat of persecution is solely related to gender. Thereby it was argued against theories that stipulated an ideological coherence in the sense of a political, religious or social persecution.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

In respect to the qualification as a refugee or a person eligible for subsidiary protection (unaccompanied) minors are put on par with persons who are of age.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

In German law, trafficking as such does not constitute a reason for granting refugee protection or subsidiary protection. Of course, the ordinary criteria continue to apply and may – depending on the case – lead to granting of refugee status or subsidiary protection. In the past, refugee status was granted in very exceptional cases only where the person concerned was at risk to be exposed to additional persecutory measures upon return, e.g. in the case of a Pakistani woman who was forced into prostitution and additionally raped by the Pakistani police when seeking help there. In a few cases, especially in the cases of minors, subsidiary protection was granted on the basis of an impending danger for life and limb, for instance pertaining to girls from Nigeria, Albania, or Vietnam. The majority of the applications was, however, rejected. It remains to be seen whether the new Residence Act, which entered into force on January 1st, 2005 and replaces the Aliens Act of 1990, will have a positive impact on the asylum cases of victims of trafficking in practice. The law brings about positive changes
regarding the recognition of persecution at the hands of non-state actors as well as persecution on account of gender, which are now to be recognised as reasons leading to refugee status.

There have been several decisions in 2004 where women stated to have been victims of trafficking. In no case relating to adult women the applicant was granted refugee status or humanitarian protection (e.g. a Moldavian woman, who also brought forward the need of psychological treatment (AC Aachen, dec. 8 K 1220/02 A of 21.01.2004)). In two cases of minors humanitarian status was granted. A girl from Albania and one from Vietnam who both had become victims of trafficking were granted humanitarian protection (FedOff dec. 5034391-121 of 09.03.2004 and FedOff dec. 5051117-432 of 26.02.2004).

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Yes. In relation to the exclusion from international protection (unaccompanied) minors are put on par with persons who are of age.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Yes, tensions exist.

10.2 If so, in which respects?

In Germany, a different dogmatic concept applies with regard to the examination of the requirements of refugee status. When considering the characteristics of a refugee the purpose of the act of persecution - as far as it is identifiable - has to be examined (actor’s perspective). However, according to Directive 2004/83 (hereafter: the Directive), the examination firstly has to draw on the serious harm, then on the lack of national protection and finally on the coherence of serious harm and the reasons for persecution. Questions relating to the actor of persecution are only relevant in the context of the availability of protection by the State against the acts of persecution.

In German law, asylum is granted according to Article 16 a (1) of the Constitution, while Section 60 (1) Residence Act grants protection against deportation to a country of persecution. The wording of Section 60 (1) Residence Act is based on Article 33 of the 1951 Convention. Only Article 16a of the Constitution is shaped as a basis for a claim. Hence, to meet the standards set out in the Directive, a basis for a claim like Article 13 of the Directive has to be implemented into German law.

Refugee status:

Article 7 (actors of protection)
The German practice concerning the actors of protection does not correspond to Article 7 of the Directive. In Germany, the State of origin is the sole relevant criterion to determine if protection in the country of origin is effective whereas Article 7 (2) of the Directive also focuses on the person of the applicant.

Article 9 (acts of persecution)
German court decisions do not take into account that a well-founded fear of persecution can also be based on an accumulation of different measures which each on their own do not amount to persecution. This practice is not in line with Article 9 (1) (b) of the Directive.
Article 10 (reasons for persecution)
With respect to the persecution ground of race, German practice corresponds with Article 10 (1) (a) of the Directive, although the term race is not defined in a statutory provision. However, this is not sufficient to meet the standards for the transposition of a directive set out by the European Court of Justice.

The persecution ground of nationality is codified in the Residence Act only in the sense of “citizenship” in contrast to Article 10 (c) of the Directive.

With regard to the persecution ground of political opinion, German practice is concordant with the provision of the Directive. The term “political opinion” is not defined in a statutory provision but has been substantiated by case law. As mentioned above, this is not sufficient to meet the standards for the transposition of a directive set out by the European Court of Justice.

The term “social group” is not defined in German law. Up to now, the criterion of a social group did not have much relevance in German jurisprudence.

In German legal practice, only the existential minimum of religious practice is protected. Persecution on the ground of religion is only accepted as a basis for granting refugee protection if religious practice within the “forum internum” is affected (so-called “religious subsistence minimum”). This forum includes the practice of religion in the private sphere at home or in the framework of private religious service with other persons of the same belief. In contrast to that, freedom to practice one’s religious beliefs in public is not recognised as a reason for granting refugee status. However, under Article 10 (1) (b) of the Directive, freedom of religion explicitly also pertains to the public domain. This has to be adjusted accordingly to meet the standards set out in the Directive. According to current German practice refugee status is only granted based on the refusal to perform military service if a so called “polit malus” is asserted. Such a “polit malus” is identified if the duty to perform military service constitutes an unreasonable hardship. Contrary thereto, refugee status should be granted according to Article 9 (2) (e) of the Directive if the refusal to perform military service in a conflict would lead to prosecution or punishment, where performing military service would include war crimes or other acts that are not in line with international instruments.

Article 5 (protection needs arising ‘sur place’)
According to Section 28 of the Asylum Procedure Act an alien shall be granted asylum even if the threat of political persecution is based on circumstances resulting from a deliberate decision taken by the alien after he left his country of origin if this decision is in line with firm convictions which he manifestly expressed while he was still in his country of origin. This is contrary to Article 5 of the Directive which states that a well-founded fear of being persecuted or a real risk of suffering serious harm may generally be based on events which have taken place since the applicant left the country of origin.

Article 4 (assessment of facts and circumstances)
German law does not comprise a provision like Article 4 (4) of the Directive. However, the jurisprudence has developed similar criteria with respect to an earlier persecution of the applicant.

Article 8 (internal protection)
The internal relocation alternative is not defined in German law. According to the Federal Administrative Court, the question of reasonable circumstances in the area of the relocation alternative has to be examined on a general basis. In contrast thereto, both the general circumstances and the personal circumstances are relevant according to Article 8 (2) of the Directive.

Cessation
In Germany, cessation is governed by the provisions of Sections 72 and 73 of the Asylum Procedure Act. As explained above (8.4) the German practice of applying the cessation clause sometimes is not fully in line with the criteria of the 1951 Convention which are: the fundamental and durable character of the change and the availability of effective protection by the home state.

Article 12 (exclusion)
German law combines the exclusion grounds of Article 1 and Article 33 RC in one provision. According to Section 60 (8) of the Residence Act all these grounds can cause the exclusion from refugee status. This provision contains elements from Article 1 F (a) and (c) as well as Article 33 (2) of the 1951 Convention. This situation may conceal the differences between refugee status and non-refoulement. The Directive by contrast relates only to the exclusion grounds of Article 1 (D and E) RC. The German law has to be adjusted accordingly.

Article 30 (unaccompanied minors)
In Germany, (unaccompanied) minors between the age of 16 and 18 do not have to be represented by legal guardianship or other organisations. According to Section 80 of the Residence Act, minor asylum seekers
between the age of 16 and 18 have legal competence with regard to asylum and aliens laws. This is contrary to the provision of Article 30 of the Directive, which states that all minors should generally be represented by legal guardianship.

Article 24 (residence permits)
Section 26 (1) of the Residence Act stipulates that the validity of residence permits should not exceed three years while Article 24 (1) of the Directive demands that they should be valid at least three years.

Article 22 (information)
A right of access to information for refugees has not yet been established in a statutory provision in Germany.

Article 32 (freedom of movement)
Freedom of movement is not codified positively in German law. Only the restrictions are mentioned in Section 12 (2) of the Residence Act.

Subsidiary Protection:

The Directive grants protection in cases of general violence (civil war or similar), if the violence has been substantiated in the individual case (Article 15). According to Section 60 (7) Residence Act in general protection is not granted if the population or the ethnic group to which the applicant belongs is generally exposed to a danger, even if the violence has been substantiated in the individual case. Only in cases of extreme danger (exposure to certain death or severest injuries) exceptions are made.

Article 6 (c) (non-state actors and serious harm)
In German law, no explicit provision has been introduced with a view to securing subsidiary protection against dangers emanating from non-state agents. Victims of infringements of (human) rights that are caused by non-state actors do not benefit from subsidiary protection. According to the Federal Administrative Court it is necessary that the threat of torture and inhuman treatment can be imputed to the State. This practice is not in line with Article 6 (c) of the Directive. A new provision has to be introduced into German law accordingly.
GREECE – COUNTRY REPORT

NGO respondent: Mr. K. Brant Hansen, Greek Council for Refugees

The government respondent initially agreed to participate in our questionnaire, but subsequently failed to respond to our repeated requests for information. Therefore this report is based solely on the answers provided by the NGO respondent.

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Detention of asylum seekers before they lodge their application is not foreseen by Presidential Decree 61/1999, which regulates the asylum procedure in Greece. Asylum seekers who arrive legally in the country may lodge their asylum application at any moment with the competent authorities (in this case police authorities). As long as they reside legally in Greece they will not be detained, either before or after the application. However, the majority of asylum seekers arrive illegally and may be detained and prosecuted for illegal entry into the country, notwithstanding a subsequent asylum application. The judicial authorities usually refrain from prosecution and instead order deportation – again notwithstanding an application for asylum. However, once a person lodges an asylum claim the deportation order will not be executed in accordance with the principle of non-refoulement. These applicants may be kept in custody for a maximum of 3 months according to law 2910/2001. This form of detention applies to cases of illegal entry everywhere in Greece (including at airports).

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

No. Greece has not yet implemented the Temporary Protection Directive.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

There are no specific short-term reception conditions for unaccompanied minor asylum seekers (UMAs). There is, however, a special reception centre exclusively for UMAs in the town of Anogeia (Crete). When the authorities (in casu the Public Attorney for Minors) become aware that an unaccompanied minor is present on Greek territory, a guardian will be appointed to him/her. Usually this will be a social worker who then becomes responsible for taking care of the minor. This is provided in general legislation and applies to Greek and alien minors alike.

According to the law minors may not remain unprotected and on their own.

The NGO respondent noted that these procedures are often not implemented in practice.

1.3.2 If so, how are (unaccompanied) minors identified?

(Unaccompanied) minors are identified through their documentation or, when they do not have any (which is usually the case), from their declarations and/or their natural characteristics. The decision is sometimes taken at the discretion of the competent authorities, meaning that the authorities proceed to evaluate the age of the applicants on the basis of their features and general appearance of maturity. Medical examinations are not used to determine the age of applicants for asylum.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No specific short-term provisions, see 2.5.1.
1.5.2 If so, how are victims of trafficking identified?

No specific short-term provisions, see 2.5.2.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

See 1.1. Applicants for asylum applicant are not detained unless they entered the country illegally, in which case they may be detained for a maximum of 3 months pending deportation – after 3 months all detainees are released. Presidential Decree 61/99 allows the authorities to assign a place of residence for an asylum seeker, usually a reception camp. Asylum seekers accommodated in reception camps retain their freedom of movement. However, the majority of asylum seekers are not assigned to a reception camp. Those who are not are obliged to inform the authorities of their residence but, as they are entitled to work, they can go about as they deem suitable.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

No, see 1.2.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

A reception centre especially for unaccompanied minor asylum seekers (UMAs) exists in the city of Anogeia (Crete – Rethymnon Prefecture) under the responsibility the Ministry of Public Health and Social Solidarity. Asylum seekers may stay there pending their asylum procedure and sometimes longer. All UMAs who wish to go to this center will be sent there. However, in practice a number of them prefer to stay in Athens, with friends or relatives. This is allowed, provided that the minor’s legal guardian has been informed and has given permission.

The above-mentioned centre provides language courses, skills training and familiarisation with Greece and its inhabitants. UMAs who are lodged there are free to move.

2.3.2 If so, how are (unaccompanied) minors identified?

See 1.3.2.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

No. However, there are some reception centres for unaccompanied women run by NGO’s. The authorities will point out to women the possibilities that exist and direct them to contact either the Greek Refugee Council – which then sends them on to the appropriate centres, if there are openings – or to the reception centres. Those women who are not hosted in centres are free to go where they wish.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

Two new laws have been adopted in 2003, Law 3064 and Presidential Decree 233, which provide for protection of victims of trafficking. Article 12 of Law 3064 specifically regulates the reception of victims of trafficking. Presidential Decree 233/2003 explains the aforementioned provision and provides for substantive housing benefits for victims of trafficking for as long as it takes for the threat to the life of the victim to elapse. A person falls within the provisions of the above Presidential Decree when an indictment has been filed for the crimes contained in Article 1 of the Decree or when the victim has recourse to one of the Protection Units that are specifically referred in the Annex of the Decree. If an asylum seeker is also a victim of trafficking then the provisions for the protection of victims of trafficking apply and the person will be protected under these provisions. Greek Law provides for immediate housing benefits for victims of trafficking, whereas for asylum seekers the procedure is different and not so immediate.

2.5.2 If so, how are victims of trafficking identified?
Articles 1 to 8 of Law 3064/2002 define victims of trafficking as well as the perpetrators. The law itself does not prescribe a specific procedure through which victims of trafficking shall be identified. It is the duty of police officers, who are often especially trained for this purpose, to assess whether a person is a victim of trafficking or not. This identification takes place during the regular interview of asylum seekers conducted by police officers, unless the victim seeks assistance before the arranged date of the interview.


The NGO respondent is not aware of any such proposals.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Some tension exists.

3.2.2 If so, in which respects?

Existing Greek policy differs with regard to the right to employment. From the moment when an applicant receives the special identity card for asylum seekers, s/he is allowed to work. However, the time periods for delivering asylum seeker identity documents are much longer than stipulated in the directive.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

No information available.

4.2 How many asylum seekers were in the reception system during these years?

No information available.

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Yes (both at first and at second instance). However, dependent family members are not obliged to pass through an interview unless there are specific reasons (i.e. the dependent member has lodged an individual claim). In the majority of cases, one asylum claim is lodged on behalf of the entire family and a single interview takes place. When interviews are conducted for more than one members of the family, they usually takes place successively, but this is not necessarily the case.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

No.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Yes. The applicant can be questioned in the presence of his/her legal guardian and interviewers must have had special training for dealing with minors.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?
Yes. When there are indications that the asylum seeker could be a victim of trafficking the interview official is always a woman, trained to deal with this kind of sensitive cases.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Appeal against a negative decision always has suspensive effect if it is lodged within the prescribed time period. Cases are known where the applicant left Greece after having applied for asylum. If, in such cases, a decision has been issued and no appeal has been lodged before the applicant returns (pursuant to the Dublin procedure), s/he has thus lost the right to appeal and can in theory be deported. In these cases that an action for interim measures can be brought before the Council of State.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Immediately after the application the asylum seeker is fingerprinted and his/her fingerprints are introduced into the Eurodac data bank.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

A decision to withdraw refugee status is taken following the same procedure as the granting thereof, that is: first instance decision, possibility to appeal, second instance decision. During this entire procedure the refugee has the right to remain in Greece, provided that s/he lodges the appeal in time. After the second instance decision the appellant may appeal again, this time to the Council of State (the supreme administrative Court), to have this decision annulled. This appeal does not have automatic suspensive effect but this may be granted upon a specific request made by the appellant. In that case s/he will be allowed to remain in Greece pending the appeal.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

In theory yes. However, neither the law nor the above-mentioned Presidential Decree, include a specific provision for such cases – therefore it is doubtful that this would be legally feasible. Such cases have never occurred in practice.

6.2.2 If so, is this possibility (these possibilities) being made use of?

See 6.2.1.
6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

No.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

As this Directive has not yet been finalised, no assessment has been made of the existence of possible tensions.

7.1.2 If so, in which respects?

N/A.

7.2.1 If your member state operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

See 7.1.1.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No information available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

No information available.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

No information available.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

No information available.
Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

It has not been explicitly considered that non-state actors would be able to provide protection.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

The law and the implementing legislation do not include any detailed provisions on this issue. It is up to authorities to evaluate the relationship between the act committed and the persecution ground.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

See 9.3.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Again see 9.3. In practice, the authorities pay special care to the gender aspect in specific cases (Iran, African countries), without there being any particular reference in the legislation.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes, if they fulfill the criteria. There is no special treatment of unaccompanied minor asylum seekers (UMAs) as such. Again in practice, UMAs will be treated with more leniency and will usually get some form of temporary protection until they reach majority.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

There is no clear connection between refugees and victims of trafficking in Greek law. A victim of trafficking is not always a refugee and thus may be denied protection under the Geneva Convention. However Law 3064/2002 and Presidential Decree 233/2003 provide subsidiary protection to persons who have been identified as victims of trafficking. This protection is not unlimited but it is provided for as long as the life of the victim is threatened.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

There is neither legislation nor case law available concerning this topic.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

There are no major tensions. However, as already stated, Greek legislation is much less detailed in matters concerning agents of persecution, special groups etc. In theory, implementation of the Directive should lead to a more detailed enunciation in Greek legislation of events and principles that are now sometimes implemented on a case-by-case basis.

10.2 If so, in which respects?

See 10.1.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

The Hungarian Act on Asylum does not contain any specific provisions for short-term reception of asylum seekers. However, detention is possible before the application is lodged, if the alien policing authorities (usually the border police) consider it appropriate and there is a legal basis in the Aliens’ Act. Detention cannot be ordered by the asylum authority. If the foreign alien policing authority orders the detention of a foreigner because of e.g. entry or illegal stay, and the foreigner lodges the asylum application after that, the detention does not have to be ceased only for this reason. The maximum duration of the detention is 12 months, and it is the tribunals who have the right to order it for a duration of more than 5 days. The possibility of appeal before a judicial body is ensured.

If an asylum seeker lodges his/her application at the airport, the asylum authority has to take a legally binding decision on the application within 8 days, or has to allow the applicant to enter the territory of the Republic of Hungary.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

No.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

There are no legal provisions. However, there is also a special unit in one of the border guard facilities refurbished especially for this purpose. Unaccompanied minors, regardless if they submit a formal asylum claim or not, are transferred here after meeting the relevant authorities.

1.3.2 If so, how are (unaccompanied) minors identified?

No specific measures are applied at this stage; it is usually the border guard or the police who decides whether the claim should be regarded as credible.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No. They are not normally detained but there is no legal provision, this is a matter of custom.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No. There shall be a special centre for victims of trafficking established on the premises of one of the refugee reception centres, but it will be operated under the Alien Policing and Immigration Act, not the Asylum Act.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Detention during the asylum procedure is not the norm, but it is possible in the following circumstances:
-quarantine for health-related reasons
-in case the applicant has infringed the law (this includes situations of illegal entry or residence).
Quarantine is not a form of detention, but a restriction based on health security reasons. Normally it takes 15 days and it is part of the asylum procedure (except in cases of subsequent applications). Asylum seekers who are kept in quarantine do not stay in detention facilities but in reception centres. The conditions of their stay are the same as in the open reception centres, with the exception that they are not allowed to leave the centre pending.

As mentioned under 1.1, the filing of an asylum application has no suspensive effect on detention.

The respondent of the Helsinki Committee has noted that foreigners of certain nationalities are detained more frequently than others.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Section 22 of the Act on Asylum stipulates that in the absence of international obligations/commitments, the government shall designate an area where, and the group of foreigners which, upon arrival in Hungary shall be granted temporary protection as temporarily protected persons. Furthermore, the government shall secure the financial resources to cover the care and maintenance of such foreigners, and shall establish the duration of the protection and the date on which such protection shall be terminated.

In situations of mass influx, new reception facilities can be opened based on confidential emergency plans. NGOs do not have any information concerning these plans.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Yes, there are specific provisions for minors. Their accommodation is regulated in the Aliens Policy Act. After lodging their application minors are immediately accommodated in special, separate youth shelters where they stay until they reach the age of 18 or until the end of the procedure. However, the respondent from the Helsinki Committee noted that in practice minors of 17 or 18 years of age are often accommodated in regular reception centres rather than in youth shelters.

In addition, a guardian should be appointed and the case should be treated with priority.

2.3.2 If so, how are (unaccompanied) minors identified?

Identification happens on the basis of official documents or, if the applicant does not have any documents, on the basis of a personal declaration. In case of doubt there is the possibility of a medical examination, but this requires the consent of the applicant. If the applicant refuses to cooperate in a medical examination, the application may not be rejected solely on this ground.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

There are no special legal provisions, but protected accommodation facilities are available in reception centres where single women and families can live if necessary. Single women are accommodated separately from other applicants.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

Specific provisions for the reception of asylum seekers during examination of the application for victims of trafficking are not stipulated by law. Hungary has opened a specific shelter for victims of human trafficking. Asylum seekers who can be considered as such can be placed there, however up to date such placements have not been realised. Although the shelter is located on the premises of one of the refugee reception centres, it is not part of the asylum system. There is no procedure to secure that every victim of trafficking is automatically placed in the shelter, or to ensure that the possibility of someone being a victim of trafficking is examined in every case.
2.5.2 If so, how are victims of trafficking identified?

Identification is done during the in-depth interview, with the help of psychiatrists.

The respondent of the Hungarian Helsinki Committee has noted that the organisation was not aware of any cases where psychiatrists had been appointed to identify victims of trafficking.


Yes, amendments were made to the asylum act in May 2004 and a thorough amendment of the related government decree on “care and maintenance” has been prepared, but the details are still unknown to the wider professional public. Elements of national law still have to be harmonised with the Directive. See 3.2.2.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

A difference of opinion exists between the NGO and government respondents on this issue. Please see below under 3.2.2.

3.2.2 If so, in which respects?

Article 5 (information)

The 15-day deadline mentioned in Article 5(1) still needs to be implemented. The NGO respondent indicated that there exist no appropriate measures and practices to inform asylum seekers regularly and in a systematic manner. He noted that there is no co-ordination between the various actors involved and that overlaps occur.

Article 6(1) (documents)

The 3-day deadline for the emission of documents still requires implementation.

Article 7 (residence and freedom of movement)

The NGO respondent found that accommodation standards in detention facilities do not meet the requirements of the Directive and that there was insufficient privacy for the residents.

Article 10 (education)

The NGO respondent indicated that during the asylum seekers’ first year of stay in Hungary, education is only provided to children at school age upon request of the parents. If there is no such request, education is not compulsory. The NGO respondent also expressed concern that there is insufficient support to enable the children’s education (costs of books, transportation, meals), causing many asylum seeker children to drop out.
Article 19 (unaccompanied minors)
The NGO respondent noted that there are three special facilities for the accommodation of unaccompanied minors, but there is no legal provision and at times practice collides with the relevant child protection regulations. However, the government respondent stated that both legislation and practice concerning the accommodation of unaccompanied minors were in compliance with the Directive.

Article 20 (victims of torture and violence)
Care of people in need of special psychological support is provided in practice but does not form part of the national asylum system. This kind of care is provided by NGO’s and financed on a yearly basis from different funds.

In general, the government respondent found that the problems referred to by the NGO respondent were practical problems and were not a matter of inappropriate legislation.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?
The Office of Immigration and Nationality spends approximately 4 million Euro annually on reception. Exact amounts per year are not available.

4.2 How many asylum seekers were in the reception system during these years?

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</table>

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?
Yes. According to Article 33 of the Asylum Act
“(1) the applicant shall take part in the proceedings in person, it is compulsory to interview him/her,
(2) the applicant may use his/her mother tongue or a language which s/he understands verbally and in writing during the proceedings.”

Adult family members are always interviewed; minors are interviewed only if a need thereto emerges. When family members submit a joint application, they can choose whether they want to participate together in the personal hearing or not. Hungarian practice is flexible in this respect.

There are no strict rules to determine whether family members are always interviewed separately, this depends on the case. For example a separate personal interview may be arranged to test the credibility of the applicants.

According to Section 15 (1) of the Government Decree No. 172/2001 on the detailed rules applicable to asylum procedures and documents of temporarily protected persons (hereafter “Government Decree on Asylum Procedures”) the refugee authority is obliged to hold (at least) two interviews (a preliminary one and one on the merits) following submission of the application.

Generally every applicant has a right to a personal interview under the Hungarian Asylum Act. Family members who arrive together can choose whether they want their cases to be dealt with in one procedure or separately. In most cases the adult members of the family are invited for the audition. Section 15 (3) stipulates that “with respect to applications submitted in a joint or concurrent manner, any immediate family member applicant shall be interviewed separately. If, however, an immediate family member applicant joins the refugee at a later date, the refugee shall also be heard”.

With regard to minor applicants Section 15 (4) states that those “who arrived together with their immediate adult family members may only be interviewed if they have reached the age of 14 and, on the basis of data of the procedure, their hearing is indispensable in the interest of establishing the facts.” Unaccompanied minors are always interviewed, regardless of their age, but in their case the presence of a guardian is obligatory. If necessary a psychologist will participate in the interview as well.
The respondent of the Helsinki Committee noted that the organisation was not aware of cases where a psychologist had been asked to participate in an interview with an unaccompanied minor.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Section 6 of the Government Decree on Asylum Procedures stipulates:

1. …
2. upon the specific request of the applicant, an interpreter and an officer of the same sex as the applicant shall be appointed, if this does not hinder the procedure,
3. if the applicant invokes gender-based persecution in the application, upon his/her request the appointment of an interpreter and of an officer of the same sex shall be compulsory,
4. an officer of the same sex as the applicant shall proceed when inspecting the clothing of the applicant.

At the beginning of the interview case workers are obliged to ask the applicant whether s/he accepts the person of the translator and the person of the case worker. A request for an officer and/or an interpreter of the same sex can be made at any stage of the procedure until a decision is taken.

While the availability of case-workers is dependent on human resources, the presence of both male and female case-workers is currently guaranteed in all centres. In case no female case-worker would be available in a certain centre on a permanent basis, one could be transferred on an ad hoc basis from another centre.

The availability of interpreters is also dependent on human resources. Regarding certain African tribe-languages the number of translators in Hungary is restricted. For example, there are only two interpreters, both male, in the Somali language. However, the government respondent has indicated that only a small percentage of the total caseload is affected.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Some caseworkers have received special training (e.g. from UNHCR) and they have much experience in the field of interviewing minors. Most of them are women, taking into consideration the possible special (emotional) needs of the minors. Unaccompanied minors can only be interviewed in the presence of their guardian and/or legal representative. If the guardian appointed to represent the minor’s interests fails to appear at the interview despite prior notice of the date thereof, the date of a new hearing has to be set, of which the guardianship authority shall be informed simultaneously.

It is possible for the Refugee Authority to engage a psychologist who has to be present during the interview. For procedures concerning interviews with accompanied minors, see 5.1 above.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

There is no legal provision on this. When traumatised persons are interviewed their sensitivity is always taken into consideration. Medical and psychological assistance/help can be provided during the whole procedure by psychologists of the Cordelia Foundation (a foundation for the rehabilitation of torture victims).

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Every applicant is allowed to stay in Hungary while his/her case is pending. If an alien policy procedure (e.g. expulsion) is underway, it shall be suspended until the asylum procedure is terminated and a final decision is taken.

Following an amendment of the asylum legislation, the Refugee Authority is now obliged to assess on the merits whether the expulsion ban (non-refoulement provision) of Section 43 (1) of the Alien Policing Act prevails in any particular case. The amended Section 38 of the Asylum Act restricts the competence of the Refugee Authority regarding the expulsion of illegal aliens to the right to initiate the expulsion procedure with the alien policing authorities.

The government respondent noted that she did not know whether the Border Guards ever returned persons before they had the chance to lodge an asylum application.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?
Every asylum seeker is allowed to stay in Hungary until a final decision is taken by the court. If a person is not granted protection, the alien police has the competence to expel him or her. However, Section 43 (2) of the Alien Policing Act prescribes that, if the “foreigner is in the asylum procedure, the returning, refusal of entry or expulsion can be implemented only pursuant to the valid and enforceable decision of the refugee authority rejecting the application.” Under Hungarian legislation, this means a negative decision from the Metropolitan Court (second/final instance). Even if the alien police expels the applicant, the execution of the expulsion order will have to wait until such a decision is taken. However, it is unclear where the applicant will be accommodated pending the appeal, this could be in an open reception centre or in detention.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

The applicant’s fingerprints are taken immediately after s/he applies for asylum (immediately upon interception for persons who cross the border illegally) and are sent - within 24 hours - to the Hungarian Fingerprint Institution (national dactyloscopic authority). This institution analyses, compares, collects and registers all fingerprint-records. It is also the National Eurodac Unit and provides information about Eurodac hits and records. This authority immediately forwards the fingerprints to the EURODAC center in Luxembourg. The results come back to the asylum authority within 24 hours, after which a second, detailed interview will be held.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

There is one single procedure to adjudicate applications submitted by persons seeking recognition as a refugee or temporary protection. There is no procedure under the competence of the Refugee Authority concerning subsidiary protection. A certain kind of subsidiary protection (“person authorised to stay”) is regulated in the Alien Policing Act in two separate provisions (Section 2 (1) g.) and Section 43 (1)), but the conditions for qualification for this status are not entirely identical with those enlisted in the Directive.

Since 2001, the category of “person authorised to stay” (also translated as “admitted person” or “permission to stay”) has been removed from the Asylum Act and is now included in the Alien Policing Act. The exact legal conditions applicable to persons granted this status is not regulated. Individuals with such status are permitted to remain in Hungary on a humanitarian basis, but they will not be formally acknowledged. Since these amendments have entered into force, no formal decisions have yet been taken to recognise somebody as a person authorised to stay.

According to Section 2 (g) of the Alien Policing Act, a “person authorised to stay shall mean any person who, for a transitory period, cannot be returned to his/her home country—or in the case of a stateless person, to the country of his/her habitual residence—because there he or she would be exposed to the death penalty, torture, inhuman or degrading treatment and there is no safe third country that would admit him or her”.

In addition, there is the non-refoulement provision of Section 43(1) of the Alien Policing Act, which states that “return, refusal of entry and expulsion shall not be ordered and shall not be implemented with respect to a country which, with regard to the person concerned, does not qualify as a safe country of origin or a safe third country, in particular, where the foreigner would be exposed to persecution owing to reasons of race, religion, national or social affiliation or political views, or to the territory of a state or the border of an area where there is good reason to suppose that the returned, refused or expelled foreigner would be exposed to torture, inhuman or degrading treatment or the death penalty.”

The categories “can not be expelled”, “non-refusables”, “non-returnable” fall under a general category, called “person authorised to stay” without any formal recognition.

In practice only Section 43 (1) is applied, Section 2 (g) has never been mentioned in individual cases. Hence, subsidiary protection is always provided on the basis Section 43(1).

The criterion in Section 43(1) of the Alien Policing Act strongly resembles Article 1A Refugee Convention, however, according to the government respondent it should be read as a transposition of Article 33 of the
Refugee Convention. If a person cannot be qualified as a refugee because s/he falls under the Convention’s exclusion clauses, s/he can still be granted subsidiary protection in the basis of Section 43(1). In recent years, the refugee authority has received fierce criticism from the Hungarian Helsinki Committee because it found that only subsidiary protection was given in cases where refugee status should have been recognised. However, the respondent from the Hungarian Helsinki Committee has indicated that this tendency is changing.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes. According to Hungarian regulations a decision becomes enforceable only if the applicant has exhausted every possibility of legal redress or has withdrawn his/her right to a remedy in writing. If after the final decision in an asylum procedure the applicant lodges a subsequent application, he/she cannot be expelled from the territory of Hungary. A decision to expel can be taken by the alien authority, but cannot be executed until the asylum procedure is terminated.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes. According to the Hungarian Asylum Act Article 6(1) (a) this is one of the imperative grounds for withdrawal of refugee status:

(1) Recognition as a refugee shall be withdrawn if
a) any of the conditions defined in Article 1, Section C and F of the Geneva Convention prevails...

If one of these grounds is applicable, the asylum authority starts the withdrawal procedure ex officio. The law does not contain any provisions concerning withdrawal of temporary protection status. The question is not applicable with regard to persons who have the “person authorised to stay” status, see point 5.8.1.

6.2.2 If so, is this possibility (these possibilities) being made use of?

This possibility is not applied often in Hungary. In 2004 seven refugee statuses were withdrawn.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Withdrawal of refugee status is regulated in Sections 6 and 7 of the Act on Asylum. There is no clearly regulated procedure for withdrawal of the status of a ‘person authorised to stay’ (which is the equivalent in Hungary of subsidiary protection). For withdrawal of such permits, alien policing officers rely on Section 43(7) of Government Decree No. 170/2001 on the implementation of the Alien Policing Act. This provision states that the alien policing authority shall review the existence of obstacles to return continuously, but at least annually at the request of the central registration agency. In case the obstacles to return cease to exist, the regional alien policing authority shall continue the expulsion procedure against the foreigner. This review is not regulated clearly by law. There exists a difference of opinion between the government and the NGO respondent as to the existence of a legal remedy.

In the opinion of the Hungarian Helsinki Committee, both the issuance and the withdrawal of these permits are conducted arbitrarily.
6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

In this procedure the principle of the non-refoulement is examined, meaning that the subject of this procedure is the evaluation of the situation in the country of origin or in a safe third country.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

In general, the conditions for granting and withdrawing refugee status in Hungary are in accordance with or more favourable than the requirements of the proposed Directive.

The NGO respondent indicated that she believed there was tension to some extent, but that the resources were lacking to conduct an in-depth assessment of the compatibility of Hungarian legislation with the proposed directive.

7.1.2 If so, in which respects?

The Hungarian Asylum Act does not include the concepts of inadmissibility procedures, and border procedures (except the special airport procedure) and there exists no national list of safe countries of origin or safe third countries.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No information available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

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<tr>
<td>2002</td>
<td>6412</td>
<td>104</td>
<td>1304</td>
</tr>
<tr>
<td>2003</td>
<td>2401</td>
<td>178</td>
<td>772</td>
</tr>
</tbody>
</table>

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?
8.4 How many decisions to withdraw refugee status were taken in these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Withdrawal of refugee status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>we have no statistics</td>
</tr>
<tr>
<td>2000</td>
<td>11</td>
</tr>
<tr>
<td>2001</td>
<td>23</td>
</tr>
<tr>
<td>2002</td>
<td>30</td>
</tr>
<tr>
<td>2003</td>
<td>13</td>
</tr>
</tbody>
</table>

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Withdrawal of subsidiary protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>we have no statistics</td>
</tr>
<tr>
<td>2000</td>
<td>800</td>
</tr>
<tr>
<td>2001</td>
<td>792</td>
</tr>
<tr>
<td>2002</td>
<td>*</td>
</tr>
<tr>
<td>2003</td>
<td>**</td>
</tr>
</tbody>
</table>

* * * Since 2002 the asylum authorities are no longer responsible for re-examining the subsidiary protection status. (The authority responsible for the examination is the alien police.)

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Non-state actors are neither mentioned in the Asylum Act nor in its implementing Government Decree. The NGO respondent is not aware of any case where an asylum application has been rejected on this ground.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes, the causal link between the act of persecution and the reasons for persecution is required in every case for the purpose of recognising someone as a refugee. However the Act on Asylum does not stipulate any specific rules concerning the link between the act of persecution and the reasons for persecution, as does Directive 2004/83. The Hungarian Act on Asylum does not contain the grounds for persecution, in practice these are derived from the Geneva Convention.
9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Yes. Considering the case of persecution committed by the state, the omission of certain measures, the non-application or the discriminatory application of regulations can also result in actions seriously violating human rights, which will therefore qualify as acts of persecution. As regards non-state persecutors, in the situation the refugee definition applies: the applicant due to the reasons for persecution is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of the country of origin. This issue is not regulated in Hungarian legislation; decisions are made on a case-by-case basis. The NGO respondent is not aware of any internal regulations or guidelines provided to officers in order to guide their decision-making in cases where the persecution act was not committed for the reasons of persecution listed in Article 10.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

To the extent that gender appears as a group-constituting element in the determination of the particular social group. Gender as such is insufficient ground for recognition as a refugee. For example, a Kenyan woman whose husband died and who escaped from an inhumane religious ceremony, provided that the other conditions of recognition are met, will be recognised as a refugee, not because she is a woman but because she is a member of the particular social group of Kenyan widows who are subjected to such a ceremony. It can also occur that gender is related to another reason for persecution, for example religious belief.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Someone cannot be recognised as a refugee or be granted a subsidiary protection status solely on the ground that s/he is an unaccompanied minor. In the case of an unaccompanied minor asylum applicant the same conditions have to be met for recognition as a refugee or for granting subsidiary protection status as in the cases of other asylum seekers. The asylum procedure of unaccompanied minors differs from the normal procedure only in that several procedural safeguards exist to protect the interests of the unaccompanied minors: In addition, Section 39(2) of the Alien Policing Act stipulates that an unaccompanied minor who does not meet the conditions for legal stay may be expelled only when the unification with his/her family or appropriate state or other institutional care taker is guaranteed in the country of origin or another admitting state. In addition, since 1 May 2004, the amended Section 15 of the Alien Policing Act stipulates that unaccompanied minors are entitled to a residence permit for humanitarian reasons even when the legal conditions for stay are not met.

In accordance with Hungary’s international obligations the whole asylum process must be conducted so that the minor’s best interests are taken into account.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

A person cannot be recognised as a refugee or be granted subsidiary protection status according to Hungarian asylum law solely on the ground that s/he is a victim of trafficking. The asylum authority applies the general rules in these cases.

In the opinion of the Hungarian Helsinki Committee, no attention is paid during the status determination procedure to the possibility that a person may be a victim of trafficking.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Yes, if the unaccompanied minor is 14 or older and falls under the exclusion clauses. Certainly the principle of non-refoulement must be applied in these cases as well. Therefore the unaccompanied minor can be sent back only if on the basis of the so called ‘balancing test’ it is established that sending back the unaccompanied minor will not infringe the principle of non-refoulement.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

No, there is not.
10.2 If so, in which respects?

Existing Hungarian legislation is basically in accordance with the Directive. The Directive contains very detailed and elaborate provisions that do not appear in domestic Hungarian asylum law. However in practice many principles and rules are applied in the refugee procedures.
IRELAND – COUNTRY REPORT

Government respondent: Mr. D. Costello, Department of Justice, Equality and Law Reform
NGO respondent: Mr. I. Viriri, Irish Refugee Council

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

No. The vast majority of asylum seekers make an asylum application prior to requesting accommodation. The Reception and Integration Agency (RIA) which is responsible for the accommodation of asylum seekers through the system of direct provision has staff at the first instance decision-making agency, the Office of the Refugee Applications Commissioner (ORAC), and assigns accommodation on the day for asylum seekers.

In circumstances where an asylum seeker comes to the attention of the Irish authorities outside of these hours, the Garda National Immigration Bureau (GNIB) will arrange for such persons to be accommodated by the RIA at one of its accommodation centres overnight. For example, the RIA operates a centre near Dublin Airport which accommodates any overnight cases.

Although there is no detention of asylum seekers, in recent months a few asylum seekers have been detained upon arrival for possessing false identification documents or for not possessing any valid identity documents.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

All asylum seekers are housed in 4 ‘open’ receptions centres in Dublin for approximately 2 weeks before they are dispersed to one of 64 ‘open’ accommodation centres across the country.

In addition, the Reception and Integration Agency (RIA) has allocated blocks of contingency accommodation at a number of regional locations in addition to normal vacancy management to cater for the eventuality of a sudden mass influx of persons needing accommodation.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Unaccompanied minors are the responsibility of the Health Services Executive under the Child Care Act, 1991. Where an unaccompanied minor enters the State, that person is referred to the relevant child-care services for accommodation and other supports, including guidance as to whether asylum should be sought.

Unaccompanied minors are housed in mainly self-catering accommodation centres specifically reserved for them, all located in the Dublin area. They receive a higher rate of social welfare (€130 per week) compared to other (adult) asylum seekers (€19.10 per week).

1.3.2 If so, how are (unaccompanied) minors identified?

Certain persons may immediately declare themselves to be under the age of 18 years, and without a guardian or parent, and so they are the responsibility of the child care services as an unaccompanied minor, unless or until it is the opinion of those officers that the persons concerned are in fact over the age of 18.

In certain other cases, the Office of the Refugee Applications Commissioner (ORAC) may, during the initial application procedure, decide to refer an asylum seeker to the child care services if there is any concern that the applicant is an unaccompanied minor. The child care services will make a determination in any unclear cases after an interview with the applicant.

Bone density testing was discontinued due to unjustifiable pressure being placed on medical resources in a non-medical context and also because of the margin of error in the results.

Currently age assessment is left to the discretion of civil servants and social workers, who base their assessment on the information provided by the applicant, and on their appearance and demeanour. Our NGO respondent noted that the persons performing the age assessment have not always received specific training for this purpose.
1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

The Reception and Integration Agency (RIA) accommodation portfolio covers a number of different accommodation types which includes accommodation for single women. Out of a total of 76 accommodation centres for asylum seekers across the country, there are 4 reception centres where all newly arrived asylum seekers are housed for just under 2 weeks, before they formally lodge their asylum application. They are then moved to any one of 63 direct provision centres across the country.

The Reception Centres operated by the Reception and Integration Agency include suitable accommodation allocated specifically for single women.

The Medical Centre located at the main Reception Centre at Balseskin (north Dublin) provides a maternity service on an outreach basis from the Rotunda Maternity Hospital.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

No.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Such accommodation can be provided if the need arises. See also 1.2.

The Reception and Integration Agency (RIA) is responsible for housing needs of asylum seekers and has the capabilities to provide specific accommodation for asylum seekers/refugees in situations of mass influx – examples include hundreds of Kosovar and Bosnians asylum seekers and refugees who came to Ireland in the early 1990s. Their accommodation needs were met by the Irish Government. This influx preceded the setting up of the RIA.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

The provision of accommodation (reception) and support services for unaccompanied minors is a matter for the child care services of the Health Services Executive (HSE). The HSE has a comprehensive programme in respect of accommodation and support for unaccompanied minors.

2.3.2 If so, how are (unaccompanied) minors identified?

See 1.3.2. The Office of the Refugee Applications Commissioner (ORAC) and the Health Services Executive (HSE) liaise in relation to the identification of unaccompanied minors.
2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

As referred to earlier, the Reception and Integration Agency (RIA) accommodation portfolio includes accommodation designated for single women. In addition, the RIA has links with a number of support groups where the Agency has accommodation. Included in the work of these groups is support for single women, pregnant women and women with children.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No.

2.5.2 If so, how are victims of trafficking identified?

N/A.


Ireland is one of two countries not currently participating in Council Directive 2003/9/EC. This Directive is covered by Title IV of the EC Treaty and by the 'Protocol on the position of the United Kingdom and Ireland' under which the State has an option to participate in its provisions. Most of the key provisions of the Directive, although the responsibility of a number of Government Departments and agencies, are already covered by national procedures and indeed, in many areas, our national standards would exceed those provided for in the Directive. The modalities and implications of the exercise of this option in respect of this particular Directive are under consideration at the present time.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

As stated in 3.1 above, national standards in many areas would exceed those provided for in the Directive. Therefore, the majority of provisions cause no tension. However, there are a minority of provisions which require more consideration and debate, for example, the arrangements in relation to access to employment by asylum seekers after twelve months in the asylum process, provided they have not received a first instance decision (Article 11 of the Directive). Ireland does not currently allow asylum seekers to work at any stage of the asylum process.

3.2.2 If so, in which respects?

See 3.2.1 above.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Cost of providing accommodation for asylum seekers. (No costs are readily identifiable for reception.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost (Euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>12.24m (approx. €15.54)</td>
</tr>
<tr>
<td>2000</td>
<td>44.46m</td>
</tr>
<tr>
<td>2001</td>
<td>66.43m</td>
</tr>
<tr>
<td>2002</td>
<td>83.847m</td>
</tr>
<tr>
<td>2003</td>
<td>76.5m</td>
</tr>
</tbody>
</table>

4.2 How many asylum seekers were in the reception system during these years?

Numbers in the Reception and Integration Agency (RIA) accommodation:
Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

All adult applicants are interviewed individually prior to a decision being made on their case. Provision is, however, made for a case to be deemed withdrawn where an applicant fails to attend an interview without reasonable cause, or otherwise fails to co-operate with the determination process.

Insofar as accompanied minor children are concerned, the parents of the accompanied child are asked whether they wish for that child to be included with their own applications or processed as a separate application. In most cases, parents elect for their children to be so included. The children will not then be interviewed but their parents will be advised to raise any protection issues relevant to the children during the course of their own interviews.

If parents elect for their child to make a separate application, the child is interviewed, in the presence of one of his or her parents, who may also be asked questions regarding the child’s case if necessary.

At appeals stage, the applicant may or may not receive a further interview, depending on the type of recommendation made at first instance.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Female applicants are generally interviewed by female caseworkers, subject to the availability of a female caseworker. Where a gender related issue has been highlighted in the information provided by a female applicant in their questionnaire, a female interviewer will always be assigned to the case and the interview will also always then be facilitated by a female interpreter. All caseworkers, and many members of the appeals tribunal, whether male or female, have received specialised training dealing with gender issues as they arise in the asylum process.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

According to the government respondent, the following procedures exist:

Where it appears that an applicant is an unaccompanied minor, that child is referred to the Health Services Executive and a social worker assists them throughout the process, including by accompanying them to their interview.

The Office of the Refugee Applications Commissioner (ORAC) has put in place guidelines in relation to the determination of applications from unaccompanied minors. In developing these guidelines, account was taken of past experience, UNHCR guidelines and advice, as well as the EU Children First Programme.
In order to ensure that the special needs of this group of applicants are properly taken into account, certain experienced interviewers receive additional specialised training to assist them in working on cases involving unaccompanied minors. This training involves presentations from a number of child care experts, with a focus on issues such as psychological needs, child specific aspects of the refugee process, the role of the social worker and other issues particular to refugee determination for unaccompanied minors. It is also considered that there are advantages to adopting a multi-agency approach in the training of practitioners in this area and as a result the specialised training programme is also attended by representatives from the Health Services Executive (HSE), Refugee Appeals Tribunal (RAT) and the Refugee Legal Service.

In investigating and determining applications of unaccompanied minors, it is recognised that some children, especially young children, may manifest their fears in ways different from adults and may not be able to fully elucidate the reasons why they left their country of origin. Consequently, in examining the claims of children, it can be necessary to have greater regard to certain objective factors such as country of origin information in determining the application of the child.

The NGO respondent was not aware of these procedures.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

The training provided to all caseworkers includes material and guidance on interviewing persons who have been the victim of traumatising events before or during their flight. This training has been devised in consultation with the UNHCR and has regard to international best practice in the area. It is further supplemented by training provided by other relevant experts, such as the Dublin Rape Crisis Centre, in how to deal with accounts of trauma and violence (with particular reference to sexual violence) during the course of the interview.

The NGO respondent was not aware of these procedures.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes, unless it has been determined that another EU Member State is responsible for the application under the terms of the Dublin II Regulation (or the Dublin Convention).

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Yes, unless it has been determined that another Member State is responsible for the application under the terms of the Dublin II Regulation, or unless the applicant for refugee status has not requested to appeal the first instance decision or their application has been deemed withdrawn. No attempt would be made to expel an asylum seeker who received a negative first instance decision before the relevant time-frame for lodging an appeal had lapsed. An asylum seeker can appeal a negative decision by the Office of the Refugee Applications Commissioner (ORAC) to the Refugee Appeals Tribunal (RAT) not later than 15 working days from the date of the sending of the letter. If the ORAC report contains findings under section 13(6) of the Refugee Act 1996 (as amended) then the asylum seeker has to appeal the decision within 10 working days. Where section 13(8) applies the asylum seeker will only have 4 working days to appeal it.
5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

All applicants for asylum over 14 years of age are fingerprinted upon making their initial application for asylum and their prints are forwarded to the EUROPAC Central Database in Luxembourg on the same day (usually immediately). A reply is normally received in under an hour. If there is a positive hit showing that the applicant applied for asylum in another EU Member State the file is immediately forwarded to our Dublin Unit for processing under the Dublin II Regulation.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1 above.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

No, there is no legislated procedure for subsidiary protection in Ireland.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

The State does not have a system of subsidiary protection at the present time as exists in many other EU States, however the general grounds for such protection as set out in the Qualification Directive are compatible with the Minister's existing responsibilities in relation to granting leave to remain in any given case. In Ireland, an unsuccessful asylum seeker may appeal to the Minister of Justice to be allowed to remain in Ireland on the basis of various criteria, including humanitarian. Leave to remain is granted where a decision is made not to make a deportation order in respect of an individual. This decision is made on a discretionary basis by the Minister. Under the Immigration Act, 1999 (section 3(6)) there are a wide range of factors which must be taken into account by the Minister for Justice, Equality and Law Reform in determining whether or not a deportation order should be made in respect of, inter alia, a person who has been refused a declaration of refugee status. These include

(a) the age of the person;
(b) the duration of residence in the State of the person;
(c) the family and domestic circumstances of the person;
(d) the nature of the person's connection with the State, if any;
(e) the employment (including self-employment) record of the person;
(f) the employment (including self-employment) prospects of the person;
(g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
(h) humanitarian considerations;
(i) any representations duly made by or on behalf of the person;
(j) the common good; and
(k) considerations of national security and public policy.

In addition, of course, there is an absolute prohibition on refoulement as defined in section 5 of the Refugee Act, 1996. Section 5 provides as follows:

(1) A person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

(2) Without prejudice to the generality of subsection (1), a person's freedom shall be regarded as being threatened if, inter alia, in the opinion of the Minister, the person is likely to be subject to a serious assault (including a serious assault of a sexual nature).
Section 3(6) of the Immigration Act and section 5 of the Refugee Act combined are much wider than the subsidiary protection definition in Article 2 and Article 15 of the Directive.

The nature of any legislative change required to put in place a subsidiary protection regime as envisaged in the Qualifications Directive is under consideration at the present time.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes. Section 21 of the Refugee Act 1996, as amended, provides that the Minister may revoke a declaration in certain circumstances. Where the Minister proposes to revoke a declaration, he/she must send a notice in writing to the person concerned of his/her proposal and of the reasons for it and at the same time sends a copy to the person's solicitor (if known) and to the United Nations High Commissioner for Refugees (UNHCR). The person concerned may, within 15 working days of the issue of the notification, make representations in writing to the Minister and the Minister must, before deciding the matter, take into consideration any representations duly made to him/her and send a notice in writing to the person of his/her decision and the reasons for it. This communication must include an indication that the person concerned may appeal to the High Court against the decision of the Minister to revoke a declaration within 15 working days from the date of the notice.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes. Section 21 (1) (g) of the Refugee Act 1996, as amended, provides that the Minister may revoke a declaration if he/she is satisfied that a person to whom a declaration has been given is a person whose presence in the State poses a threat to national security or public policy ("ordre public"). This element of the Act would encompass the acts mentioned in Article 1F of the Geneva Convention.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Yes. Where evidence becomes available that a person to whom a declaration has been given participated in acts mentioned in Article 1F of the Geneva Convention, such evidence is brought to the attention of the Minister who must decide as to whether the revocation of that person's declaration should be pursued. A small number of cases is currently under consideration.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Ireland does not have a legislated procedure for subsidiary protection, see 5.8.1 and 5.8.2 above.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

No.

7.1.2 If so, in which respects?

N/A.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

See 5.8.2.
7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

(Figures for 1999 are not available.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>€179.32M</td>
</tr>
<tr>
<td>2001</td>
<td>€226.26M</td>
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<tr>
<td>2002</td>
<td>€341.99M</td>
</tr>
<tr>
<td>2003</td>
<td>€353.17M</td>
</tr>
</tbody>
</table>

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

N/A.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>7,724</td>
</tr>
<tr>
<td>2000</td>
<td>10,938</td>
</tr>
<tr>
<td>2001</td>
<td>10,325</td>
</tr>
<tr>
<td>2002</td>
<td>11,634</td>
</tr>
<tr>
<td>2003</td>
<td>7,900</td>
</tr>
<tr>
<td>Total</td>
<td>48,521</td>
</tr>
</tbody>
</table>

The above table shows the numbers of applications for asylum in the period 1999-2003. Each of these applications would have been examined in depth, provided the applicant remained in the process. Those examined least would include cases which were either formally withdrawn by the asylum seeker, or deemed withdrawn or unprocessable due to the non-cooperation or incapacity of the asylum seeker.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

There is no subsidiary protection in Ireland, however, at the discretion of the Minister, leave to remain may be granted to persons, for various reasons, who have failed the asylum process to remain in the State for a renewable period of one year. The number of persons granted leave to remain from 1999-2003 is as follows:

1999: Not available
2000: Not available
2001: Not available
2002: 3496
2003: 464

8.4 How many decisions to withdraw refugee status were taken in these years?

None.
8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

N/A.

**Qualification as a refugee or as a person in need of other forms of protection**

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Extract from EU Directive:

‘Protection can be provided by:

(a) the State; or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State’

Article 1(A) of the 1951 Geneva Convention refers to the protection of the ‘country’ and not strictly the ‘authorities of the country’. In theory, therefore there is no requirement that protection must be provided exclusively by the State.

However, it is considered that protection must be ‘sufficient’ and because most non-state bodies have neither the force of law nor the means to enforce protective measures, they will generally not be considered capable of providing sufficient protection.

These are exceptions to this, however, including where a non-state body has been constituted under international law for the purpose of protecting the citizens of a state or region and is accorded the appropriate police powers and resources to carry out such functions (e.g. UNMIK).

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

N/A.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

See 9.4 below.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

As a general rule, in order for a person to qualify for refugee status, they must demonstrate a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (the ‘Convention grounds’).

However, in considering whether the applicant has a well founded fear of persecution, an analysis must be made as to the extent of the serious harm involved and availability of state protection. If it is found that state protection is withheld for a Convention ground, even if the serious harm feared is not itself related to one of the Convention grounds, then an applicant may nonetheless qualify for refugee status.
9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

For the purposes of the Refugee definition, the Refugee Act defines a particular social group as including ‘membership of a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation’. Establishing a link to the Convention in cases of gender related persecution is therefore usually straightforward.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes, minors may be granted refugee status. As outlined in 5.8.2, Ireland does not yet operate a full subsidiary protection regime, but may offer leave to remain to minors and adults alike.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Whether a victim of trafficking is declared to be a refugee is again dependant on an investigation and consideration of all the facts of the case, relative to the Refugee Convention criteria. Being a victim of trafficking in itself does not necessarily qualify an applicant for refugee status, but it may constitute a factor in the consideration of persecution, which may in turn be linked to one or more Convention grounds.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

In principle yes, as section 2 (c) of the Refugee Act (which largely mirrors Article 1F of the Refugee Convention) makes no mention of age as a factor in determining whether there are serious grounds for considering that an applicant has:

(i) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(ii) committed a serious non-political crime outside the State prior to his or her arrival in the State; or
(iii) been guilty of acts contrary to the purposes and principles of the United Nations.

However, in considering whether these grounds apply so as to exclude a minor applicant, particular consideration would be given to such factors as the nature of the acts concerned, the level of complicity of the minor involved, the age and maturity of the minor at the time the acts were committed, whether the applicant was individually responsible, and whether the acts were committed under duress.

In practice, a minor has never been excluded on the basis of Article 1F, and it is not expected that such a situation will arise.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Only insofar as Ireland would go further than Article 9 (3) by recognising that a person may qualify for international protection, not merely because a link has been established between the reasons mentioned in Article 10 and the acts of persecution, but also if there is a link between the reasons mentioned in Article 10 and the absence of state protection.

10.2 If so, in which respects?
See 10.1 above.
ITALY – COUNTRY REPORT

NGO respondent: Dr. C. Hein, Italian Council for Refugees

The government initially agreed to participate in our questionnaire, but subsequently failed to respond to our repeated requests for information. Therefore this report is based solely on the information provided by the NGO respondent.

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Yes, in the form of “de facto” detention. In case of irregular arrival by sea there are first accommodation centres, where foreigners are kept for the purpose of identification and eventually applying for asylum. These centres are closed in principle, but – for example – recently in March 2005, several hundred applicants managed to escape from the centre in the province of Crotone. In airports there are waiting areas where foreigners may be kept for 2-3 days.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

Mass influx occurs by sea. When several hundred people arrive within a few days this is regarded as mass influx and the reception conditions as explained under 1.1 apply.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

If it appears that there are unaccompanied minors among the foreigners, the Tribunal for minors has to be informed immediately. In such cases the mayor of the nearest municipality is named tutor and has to provide special reception facilities. Under no circumstances may unaccompanied minors be kept in detention. In the “General Protection System”, that means the network of reception centres for asylum seekers administered by municipalities, there are some centres for unaccompanied minor asylum seekers. If there are no places available in these centres, they will be lodged in municipal centres for unaccompanied minors aliens (not specifically for asylum seekers). In both facilities the minors are hosted separately from adults.

1.3.2 If so, how are (unaccompanied) minors identified?

This issue is currently being debated. Normally medical staff conduct bone tests (x-rays). The consent of the legal guardian appointed to the unaccompanied minor is always required.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No. The so-called “social protection for victims of trafficking” requires a particular procedure, which means that it cannot be applied immediately after arrival.

1.5.2 If so, how are victims of trafficking identified?
2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Under previous legislation (in force until April 21\textsuperscript{st} 2005), detention was only possible if an asylum claim was filed after an expulsion order was issued. In these cases asylum seekers are already in closed repatriation centres. Under the new law there exist “identification centres” for asylum seekers who fall under the accelerated procedure. Asylum seekers may be kept there under detention-like conditions for up to 35 days, however with the possibility to leave the centres for short periods upon authorisation.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Only if a temporary protection regime applies in accordance with the EU Directive. This requires a particular governmental decree.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

There are some special centres for unaccompanied minors, they cannot be hosted in identification or detention centres. Unaccompanied minors are always under the care of the social services of the Municipality where the centre is. Social workers provide minors with individual psychological or other support when this is deemed necessary. Education is available to all minors.

2.3.2 If so, how are (unaccompanied) minors identified?

In particular cases DNA tests may be carried out to determine family relations. For age determination normally bone tests are applied. See 1.3.2.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

All centres are required to have separate areas for men, women and families.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No.

2.5.2 If so, how are victims of trafficking identified?

N/A.


The Directive has not yet been implemented. A legislative decree is foreseen for May 2005, establishing the right to work after 6 months after the submission of the asylum application, and the allocation of additional funds for reception centres.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?
Yes.

3.2.2 If so, in which respects?

Currently the most important tensions concern the right to work (see above) and the fact that reception facilities are presently available only to some destitute asylum seekers. After implementation of the Directive there will still be tensions, especially regarding qualification of “identification centres” – in principle closed centres – as reception centres under the terms of the Directive.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

The average cost per annum is about 18 million Euro.

4.2 How many asylum seekers were in the reception system during these years?

From 1999 to 2003 altogether not many more than 10.000. No exact figures are available.

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

In principle yes, but frequently invitations for interviews with the asylum commission do not reach the applicant, partly due to lack of reception facilities and consequent spontaneous movement in the territory or secondary movement to other countries.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Not under current legislation, but the new Bossi/Fini law provides that female interview officials must be available. The provision does not mention female translators. In practice it may be difficult to find enough female translators for all languages.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Yes, unaccompanied minors have to be accompanied by a guardian.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

There is no legal provision on this issue. Eventually it will be regulated when the EU Directive is implemented. However, no concrete proposal for implementation is available as yet. In practice, in a number of cases NGO’s provide medical or psychiatric certificates to the Asylum Commission prior to the interview. In other cases where traumatised asylum seekers are rejected certificates are subsequently provided to enable reconsideration of cases without going through the procedure before the court.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

In principle yes, but not if Dublin Regulation applies and the asylum seeker is transferred to another State.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Not automatically. Under current legislation only if a judge decides favourably on a request for suspensive effect.
Under the new law the Prefect may also decide in favour of a request to remain in the country. The Prefect enjoys ample discretion regarding this decision. “Automatic” suspensive effect pending appeal will be excluded by law.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

In the course of the identification procedure.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

No information available.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Not automatically, only if the judge decides positively on a request for suspensive effect. Application of cessation clauses or other forms of withdrawal is extremely rare.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes.

6.2.2 If so, is this possibility (these possibilities) being made use of?

The respondent is not aware of any such cases.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Not in the strict sense of “withdrawal”, however subsidiary protection is provided only for one year and renewal is subject to a new decision, concerning the continuity of the elements, which provided the grounds for the initial decision. Refugee status is not subject to renewal. The renewal of the residence permit is “automatic”, without the need to obtain a decision or advice from the Asylum Commission.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?
Yes.

7.1.2 If so, in which respects?

In many respects. Under present law as well as under the new law, the concept of safe country of origin and manifestly unfounded claims do not exist. The concept of safe third country is framed differently, e.g. transit via a safe third country does not lead to inadmissibility of the application. Up to now there is no accelerated procedure at all. Under the Bossi/Fini law the accelerated procedure has a totally different meaning and is based on the irregular entry or irregular sojourn in the country and not on elements linked to the merits. In many respects Italy will have to change the regulation of asylum procedures in order to comply with the EU Directive.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

Unknown. These costs were never published and are presumably unknown to the Government. In any case, compared to other EU States in similar situations the costs are certainly extremely low, considering that very little additional staff is employed to conduct asylum procedures in addition to the normal security and bureaucratic apparatus of the Ministry of Interior.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

2002: 16,918
2003: 11,209

Figures for 1999, 2000 and 2001 are not available.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

This information is not available, but the respondent expects the number to be extremely low.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?
To the knowledge of the respondent, there have not been any withdrawals, but it is estimated that in around 2000 instances residence permits issued on the basis of subsidiary protection have not been renewed.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

No.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

No.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

In principle yes, but to the knowledge of the NGO respondent no detailed assessment is normally made of the specific persecution grounds.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Yes. Either the act of persecution or the unavailability of protection must be related to the Convention grounds.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Quite frequently. In some decisions, serious discrimination on gender grounds has led to recognition of refugee status. There is a traditional overall tendency, also in the legislative proposal for a new asylum law, to consider persecution on the basis of gender in addition to the regular persecution grounds, not necessarily as part of the “particular social group” criterion.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

This happens in relatively few cases. The number of asylum applications by unaccompanied minors is low, partly due to the fact that unaccompanied minors are anyhow protected and assisted up to the age of 18 and can relatively easily obtain an extension of their residence permit on work or study grounds.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

The situation of victims of trafficking is in a certain way similar to that of unaccompanied minors, given that they can obtain the so called social protection and residence permit if they collaborate in identifying the traffickers. Special assistance programmes exist to their benefit, so that the number of asylum applications of this group is relatively low.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?
No distinction is made between minors and adults with regard to exclusion clauses. However, to the knowledge of our respondent there has never been a case of exclusion of minors under article 1F of the Convention

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

See 10.2.

10.2 If so, in which respects?

Not regarding the principle elements of the Directive: subsidiary protection on grounds similar to those mentioned in the Directive is already enshrined in Italian law. Non-state actors of persecution are already considered a possibility. The rights attached to the different statuses are very similar to those foreseen in the Directive. In general, the need for legislative adjustment in the course of implementation of the Directive is relatively low.
LATVIA – COUNTRY REPORT

Government respondent: Ms. B. Bieza, Refugee Affairs Department, Office of Citizenship and Migration Affairs

The Latvian Red Cross has informed us that very few asylum seekers have come to Latvia for a considerable period of time. In addition, all tasks concerning asylum seekers are performed by state institutions. As a result, there is no NGO in Latvia that would be in a suitable position to act as a respondent to this questionnaire. For this reason the answers below are based solely upon the information given by our government respondent.

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

The Asylum Law contains general provisions for the detention of asylum seekers. The State Border Guards are authorised to detain an asylum seeker for a period of up to 10 days if:
- the identity of the asylum seeker has not been ascertained;
- there is reason to believe that the asylum seeker will endeavour to misuse the asylum procedure;
- there is reason to believe that the asylum seeker will not, in accordance with the provisions of the Asylum Law, have a legal ground to reside in Latvia;
- it is necessary in the interests of State security and public order.

The State Border Guards detain asylum seekers and the judge takes a decision concerning the detention of an asylum seeker according to the rules set by Immigration Law.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

The Asylum Law provides the possibility to grant temporary protection to a group of asylum seekers (temporary protection – the right granted to a group of persons to reside in Latvia for a specific period of time if such persons need protection and they are or have been forced to leave the country of their citizenship / former residence due to ethnic conflict or civil war). In such a case the Cabinet of Ministers issues an order to grant temporary protection to a group of persons, determining their total number, the time period of residence, accommodation procedures in Latvia etc.

There have not been situations of mass influx of asylum seekers so far.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

According to Latvian legislation the rights and lawful interests of a minor (a person who has not attained the age of 18 years) shall be represented by his/her parents.

Protection of the rights of unaccompanied minors shall be ensured in accordance with the procedures prescribed by law.

If an unaccompanied minor wishes to submit an asylum application himself/herself, his/her rights and lawful interests shall be represented during the asylum procedure by an independent representative appointed by the Refugee Appeals Board. The duty of such a representative is to act objectively in the interests of the minor.

In practice we do not have special provisions concerning (unaccompanied) minors, however during the entire procedure the best interests of the child are taken into account to the extent possible.

1.3.2 If so, how are (unaccompanied) minors identified?

Instruction No. 12 of The Ministry of Interior, adopted on 17 June, 2004 “On cooperation between Ministry of Interior services involved in asylum granting process and procedures for identifications of asylum seekers” determines the basic procedures for the identification of asylum seekers. The State Border Guards are not aware of any specific procedures for identifying unaccompanied minors.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?
1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

The Immigration Law provides a possibility for the Minister of the Interior to issue residence permits in cases where humanitarian reasons exist for doing so. This legal norm could be applied to persons who are victims of trafficking. Latvian legislation does not provide any other specific provisions for victims of trafficking. So far there have not been any cases where victims of trafficking were involved in the asylum procedure.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

See 1.1.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

See 1.2.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

See 1.3.1.

2.3.2 If so, how are (unaccompanied) minors identified?

See 1.3.2.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

See 1.4.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

See 1.5.1.

2.5.2 If so, how are victims of trafficking identified?

See 1.5.2.


The Asylum Law was amended on 20 January, 2005 in order to harmonise national legislation with the standards set by Directive 2003/9.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?
3.2.2 If so, in which respects?
N/A.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

There is one asylum seeker reception centre in Latvia. This centre was under the supervision of the Ministry of Interior during 1999 and 2000, which means no information concerning the reception costs for this period is available. Currently the centre is under the supervision of the Office of Citizenship and Migration Affairs, the costs of reception for the years 2001-2003 are as follows:

- 2001 – approx. 110 187 euro
- 2002 – approx. 130 743 euro
- 2003 – approx. 124 434 euro

4.2 How many asylum seekers were in the reception system during these years?

Sixty-one asylum seekers were in the reception centre over the years 1999–2003. This does not include those asylum seekers who are detained on the premises of the State Border Guard (see 1.1).

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

The Asylum Law stipulates that every person of legal age shall submit an asylum application herself or himself. Accordingly every adult is interviewed personally.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Article 5 of Instruction No. 12 of the Ministry of Interior determines that an interview with an asylum seeker, within limits, is carried out by a border guard of the same gender.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

The rights and lawful interests of a minor (a person who has not attained the age of 18 years) shall be represented by his/her parents. An asylum application shall be examined and the decision to grant or to refuse the granting of refugee or alternative status (i.e. subsidiary protection) shall also apply to the minor children of an asylum seeker if they arrive in Latvia together with their parents. In examining an application the opinion of the minor shall be taken into consideration. If an unaccompanied minor wishes to submit an asylum application himself/herself, his/her rights and lawful interests shall be represented during the asylum procedure by an independent authorised representative appointed by the Refugee Appeals Board. The duty of such a representative is to act objectively in the interests of the minor. Interviews with an unaccompanied minor shall be conducted by border guards especially trained for this task.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

Article 6 of Instruction No. 12 of the Ministry of Interior determines that an interview with an asylum seeker who has suffered from violence is carried out by especially trained border guards.
5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

The Asylum Law states that an asylum seeker has the right to reside in Latvia until the final decision to grant or to refuse refugee or alternative status has been taken.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

See 5.5. However, if the Dublin procedure is applicable, asylum seekers may appeal but this will not have any suspensive effect. Latvian legislation does not provide for interim measures which would allow the applicant to remain in Latvia pending the appeal in such cases. In practice there have not been any cases where asylum seekers lodged an appeal against a decision that another Member State was responsible for their claim.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

According to the Asylum Law, the asylum seeker shall submit an application to an official of the State Border Guards. The State Border Guards are responsible for the identification of the asylum seeker. Asylum seekers’ fingerprints are taken and sent to Eurodac to start the identification process.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

Data are fed into Eurodac at the same moment as when they are sent.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Latvia operates a single procedure.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

The person retains refugee (or alternative) status and is entitled to stay in the country until a final decision is taken on the case.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes, the Asylum Law provides the same grounds as Article 1F Refugee Convention for withdrawal of refugee status.

6.2.2 If so, is this possibility (these possibilities) being made use of?

There have not been such cases in practice.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

No, the procedural rules are the same.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?
7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

When the Procedure Directive is published in the Official Journal, a detailed analysis will be made of the Asylum Law in the light of the above mentioned Directive.

7.1.2 If so, in which respects?

See 7.1.1.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

See 7.1.1.

7.2.2 If so, in which respects?

See 7.1.1.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

As the number of asylum seekers is quite low, the costs of asylum procedures are relatively low as well. The largest part of the costs is related to the maintenance of the reception centre. However, no precise statistics are available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

Number of Asylum Seekers in Latvia:
1999 - 22 persons
2000 - 5 persons
2001 - 14 persons
2002 - 30 persons
2003 - 5 persons

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

Latvia operates a single procedure.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

None.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

One decision was taken, which concerned five persons.
Qualification as a refugee or as a person in need of other forms of protection

9.1. Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

We consider that non-state agents (as mentioned in Article 7(1)(b)) are capable of providing protection if they meet the criteria mentioned in Article 7 (2).

9.2. Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3. For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes.

9.4. Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

No, such persons do not qualify for refugee status, but they may be granted protection on other grounds.

9.5. To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

There have not been any cases where the particular social group notion was involved.

9.6. Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

If a minor arrives in Latvia together with a parent, usually he/she will be granted the same status as the parent. If an unaccompanied minor meets the criteria for refugee or alternative status, he/she will be granted the appropriate status.

9.7. Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

If a person meets the criteria for refugee or alternative status, he/she will be granted the respective status.

9.8. Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Yes.

10.1. Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Our present practice on qualification for international protection in general corresponds to the Directive. There are some provisions which will be changed in Latvian legislation, however no essential changes are required.

10.2. If so, in which respects?

The Asylum Law will have to be complemented with certain provisions of the Directive, for example – assessment of facts and circumstances, international protection needs arising ‘sur place’, internal protection etc. Although these provisions are applied in practice, they are not incorporated in the asylum legislation.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

According to the legislation an asylum application may be lodged:
- at the State border crossing point of the Republic of Lithuania;
- in the territorial police office;
- in the Foreigners’ Registration Centre.

Officials of the above mentioned institutions have to conduct an initial interview, collect documents and carry out other activities before the application for asylum is submitted to the Migration Department under the Ministry of the Interior (central institution responsible for taking all decisions concerning asylum in the first instance; hereafter – the Migration Department). These activities have to be carried out within 24 hours from the moment of submission of the application for asylum (Article 69 of the Law on the Legal Status of Aliens).

Asylum seekers shall wait for the decision from the Migration Department (up to 48 hours from the moment of submission of the asylum application) in the institution where the application was submitted, unless the asylum seeker has arrived legally in the Republic of Lithuania and has a possibility to stay in the state territory without state support (Article 14 of the Order on the Rules of examination of Aliens’ applications for asylum, adoption and enforcement of decisions; further – Order on examination of applications for asylum).

If the asylum seeker has arrived in the Republic of Lithuania illegally, his/her accommodation in the state territory has to be examined by the court. The court decision on the accommodation of such asylum seekers has to be taken within 48 hours from the moment of submission of the asylum application (Article 114 of the Law on the Legal Status of Aliens; Article 12 of the Order on Examination of application for asylum). The police and other law enforcement institutions have the right to detain aliens for a period not exceeding 48 hours if there are grounds for detention as listed in the Article 113 of the Law on the Legal Status of Aliens (Article 114). Considering the fact that all bodies listed in the Law that may receive applications for asylum are qualified in the Republic of Lithuania as “law enforcement” institutions, short-term reception conditions of asylum seekers (in territorial police offices, State Border crossing points or Foreigners’ Registration centre) may imply detention in case of detention grounds provided in the Law.

In practice, if asylum seekers arrive illegally, they are always detained for up to 48 hours, until the court decides to detain or not to detain them further. (Art. 114 of the Law on the Legal Status of Aliens)

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

Situations of mass influx of asylum seekers are regulated by a separate Section of the Law on the Legal Status of Aliens (Chapter IV, Section Four, Granting Temporary protection in the Republic of Lithuania). These provisions incorporate the EU Directive on temporary protection into Lithuanian legislation. Article 92 of the

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**ARTICLE 113. GROUNDS FOR DETENTION OF AN ALIEN**

An alien may be detained on the following grounds:

1) in order to prevent the alien from entering into the Republic of Lithuania without a permit;
2) if the alien has illegally entered into or stays in the Republic of Lithuania;
3) when it is attempted to return the alien to the country from whence he has come if the alien has been refused entry into the Republic of Lithuania;
4) when the alien is suspected of using forged documents;
5) if a decision on the expulsion of the alien from the Republic of Lithuania has been taken;
6) in order to stop the spread of dangerous and especially dangerous communicable diseases;
7) when the alien’s stay in the Republic of Lithuania constitutes a threat to public security, public policy or public health.
Law provides that the Government of the Republic of Lithuania shall decide on the accommodation of asylum seekers in situations of mass influx of aliens into the Republic of Lithuania. In practice, there have not been cases of mass influx of asylum seekers, however while drafting the respective legislation in the field of asylum it was planned that asylum seekers would primarily be accommodated in the existing two reception centres (Foreigners’ Registration Centre and Refugees’ Reception Centre), and if accommodation in these facilities would not be sufficient, then the Government would have to assign another place (e.g. sanatorium, rest-houses, etc.). In 2001 a large number of Chechen asylum seekers arrived simultaneously in Lithuania, however this influx was not characterised as a mass influx requiring a temporary protection regime. At the time the Lithuanian Red Cross, with the consent of the State Border Protection Service, supplied dry food parcels to the border check point of Vilnius International Airport. The dry food parcels were distributed to asylum seekers who submitted applications for asylum at the border check point of Vilnius International Airport and stayed there for up to 48 hours, waiting for the decision of Migration Department on their (non)-admittance to the asylum procedure.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Article 114 of the Law on the Legal Status of Aliens provides that aliens below 18 years may be detained only in extreme cases, when this alien’s best interests are the main consideration. Article 32 of the same Law provides that all aliens under 18 years who are not accompanied by their parents or other legal representatives, regardless of the lawfulness of their stay in the territory of the Republic of Lithuania, shall be supplied with free accommodation. That means that any unaccompanied alien under 18 years, regardless if he or she is lawfully in the territory of the state or has formally applied for asylum, has a right to free accommodation. According to the Law this accommodation is provided in the Refugee Reception Centre – a State agency providing social services, intended for accommodating aliens who have been granted asylum and unaccompanied minor aliens (Article 79 of the Law on the Legal Status of Aliens).

In practice, minors and unaccompanied minors often wait in the same conditions as other asylum seekers until a decision is taken by the court or the Migration Department on their further accommodation.

1.3.2 If so, how are (unaccompanied) minors identified?

The Law describes the unaccompanied minor as an “alien under the age of 18 years who arrives to the territory of the Republic of Lithuania unaccompanied by parents or any other adult responsible for him or her by law or who is left unaccompanied by any of the above-mentioned persons after s/he has entered the territory of the state” (Article 2, part 16, of the Law on the Legal Status of Aliens).

The minors are usually identified through their own declarations. Article 123 of the said Law provides the procedure for an age determination test. This test may only be carried out if there are reasonable grounds to doubt the alien’s age, for example because of the alien’s appearance, behaviour and/or level of maturity. Such doubts can be raised by the decision maker who participated in the interview, a social worker or medical personnel. The age determination test includes a medical test and a psychological test. The test may only be performed with the consent of the alien’s parents, other legal representatives or a temporary guardian (in case of an unaccompanied minor).

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No such provisions exist.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No such provisions exist.

1.5.2 If so, how are victims of trafficking identified?

N/A.
2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

As mentioned before, an asylum seeker may be detained in the Foreigners’ Registration centre by court decision if there are grounds for detention as listed in Article 113 of the Law on the Legal Status of Aliens. These grounds include:

1) preventing the alien from entering the Republic of Lithuania without a permit;
2) the alien has illegally entered or stays in the Republic of Lithuania;
3) facilitating the return of the alien to the country from whence s/he has come if the alien has been refused entry into the Republic of Lithuania;
4) the alien is suspected of using forged documents;
5) a decision on the expulsion of the alien from the Republic of Lithuania has been taken;
6) stopping the spread of dangerous and especially dangerous communicable diseases;
7) the alien’s stay in the Republic of Lithuania constitutes a threat to public security, public policy or public health (Art. 113 of the Law on the Legal Status of Aliens).  

In deciding on the lawfulness of the detention the court shall take into account all circumstances related to the alien’s case; the alien’s presence at the court hearing is mandatory; the alien is entitled to legal assistance guaranteed by the state during the court hearing. The court may decide not to detain the alien and to apply to him/her a measure alternative to detention (a list of these measures is cited in Article 115, part 2, of the Law on the Legal Status of Aliens204). In taking such a decision the court shall take into account whether the alien’s identity has been established, s/he constitutes a threat to public security and public order, s/he cooperates with the court in determining his/her legal status in the Republic of Lithuania, as well as other relevant circumstances,

The Migration Department shall take a decision on the accommodation of the asylum seeker, unless the asylum seeker has been detained or a measure alternative to detention has been applied.

Asylum seekers are accommodated in the Foreigners’ Registration Centre during the examination of their application. This centre has two accommodation regimes: one with freedom of movement and a detention centre205. If they are not detained, asylum seekers can leave the Foreigners’ Registration Centre or the Refugee Reception Centre only with permission and they have to return within 24 hours (Art. 84 of the Law on the Legal Status of Aliens).

There are some legal safeguards concerning the detention of aliens in the Foreigners’ Registration Centre:

- an alien has a right to appeal against a court’s decision concerning detention to the Supreme administrative court;
- when, according to the alien or the institution that initiated the detention procedure (police or other law enforcement institution), the grounds for detention have ceased to exist, the alien or the institution has a right to ask the court to review the decision on detention;
- the period of detention shall be specified in the court decision with the exact calendar date. If the alien’s detention period expires, s/he must be promptly released from the place of detention (without an additional court decision).

In practice, Lithuanian courts usually decide to apply measures alternative to detention to asylum seekers during the examination of their application for asylum, which means they are accommodated in the Foreigners’ Registration Centre without restriction of their freedom of movement.

204 “Measures alternative to detention shall be as follows:

1) requiring that the alien regularly at the fixed time report at the appropriate territorial police agency;
2) requiring that the alien communicate his whereabouts at the fixed time by communication means to the appropriate territorial police agency;
3) entrusting the care of an unaccompanied minor alien to a relevant social agency;
4) entrusting the care of the alien, pending the resolution of the issue of his detention, to a citizen of the Republic of Lithuania or an alien legally resident in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and to support the alien;
5) accommodating the alien at the Foreigners’ Registration Centre without subjecting him to restriction of freedom of movement.”

205 “The conditions and procedures for accommodation in the Foreigners’ Registration Centre are regulated in Resolution No 103, on Order and conditions of temporary accommodation of aliens in the Foreigners’ Registration Centre, approved by the Government of the Republic of Lithuania on January 29, 2001"
2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

As mentioned before (see point 1.2), the Government of the Republic of Lithuania shall decide on the conditions for the reception of asylum seekers in situations of mass influx. The EU Directive on temporary protection has been implemented into Lithuanian legislation by means of the Law on the Legal Status of Aliens.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

For the duration of the examination of their asylum application, unaccompanied minors are accommodated in the Refugee Reception Centre – a social institution, which is responsible for accommodating aliens who have been granted asylum in Lithuania (for the initial period of their social integration) and unaccompanied minors. When an unaccompanied minor asylum seeker is accommodated in the Refugee Reception Centre, this centre becomes responsible for temporary guardianship and shall represent the minor during the examination of his/her application for asylum. Unaccompanied minors, regardless of the lawfulness of their stay in the territory (e.g. asylum seekers, illegal migrants and unaccompanied minors residing in the Republic of Lithuania) have the following rights:

1) to be supplied with free accommodation (in the Refugees’ Reception Centre) and be supported in the manner established by the Minister of Social Security and Labour;
2) to study at schools for general education and vocational schools;
3) to receive free immediate medical aid;
4) to be provided with free social services;
5) to receive legal assistance guaranteed by the State;
6) to contact the representatives of non-governmental or international organisations of the Republic of Lithuania.

The Order and conditions on temporary accommodation of Aliens in the Foreigners’ Registration Centre, as approved by the Government of the Republic of Lithuania, provides that families shall be accommodated separately from other persons. Unaccompanied minors (who can be accommodated in this Centre only if they are detained) are accommodated separately from adult aliens.

The Law on the Legal Status of Aliens provides that an alien below the age of 18 years can be detained only in an extreme case when the alien’s best interests so require.

2.3.2 If so, how are (unaccompanied) minors identified?

See 1.3.2.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

The Order and conditions on temporary accommodation of Aliens in the Foreigners’ Registration Centre, approved by the Government of the Republic of Lithuania, provides that women shall be accommodated separately from men in the Centre.

The Order on Examination of applications for asylum provides the definition of a particular vulnerable group. According to Article 2 of the said legal act, “a particular vulnerable group – is a group of asylum seekers who need particular attention corresponding to their specific needs (minor asylum seekers, disabled persons, elderly persons, pregnant women, single parents with pre-teen children, also persons who faced torture and violence); particular attention shall be paid to the specific needs of women”. Article 102 of the Order provides that all institutions working with persons who belong to particular vulnerable groups shall cooperate with international and non-governmental organisations in order to ensure that these persons get the services and assistance which correspond to their specific needs.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No such provisions exist.

2.5.2 If so, how are victims of trafficking identified?

Yes, Directive 2003/9 has been implemented. The list of EU legal instruments in the field of asylum and migration that have already been implemented in the Republic of Lithuania is attached to the Law on the Legal Status of Aliens.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Yes, see 3.2.2.

3.2.2 If so, in which respects?

One field where there may be tension with the provisions of the Directive is the implementation of Article 11 of the Directive. Paragraph 2 of this Article provides that if a decision in first instance has not been taken within one year of the submission of the application for asylum, and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant. Lithuanian legislation does not provide for access of asylum seekers to the labour market. It has to be noted that, according to the Law on the Legal Status of Aliens, an application for asylum in first instance has to be examined within three months from the moment of submission of the application. This period can be extended by a decision of the Migration Department, but the time period for the examination of the application may not exceed six months. Nevertheless, there is a risk that the examination will take longer in first instance, especially if it turns out that another Member State may be responsible for the examination of the application (the Dublin procedure).

Also, considering the existing practice it is obvious that conditions for the short-term reception of applicants for asylum have to be improved (in the territorial police stations and at international State border crossing points). The Law on Foreigners’ Legal Status has drastically reformed the asylum seekers’ reception system in Lithuania, providing the Foreigners’ Registration Centre in the town of Pabrade (hereafter – Pabrade Centre) with the status of the only accommodation facility for all asylum seekers except for unaccompanied minors in Lithuania. Under the old legislation, asylum seekers were accommodated in the Foreigner’s Registration Centre during the first period (maximum 2 months) of their procedure, after which they were transferred to the Refugee Reception Centre. This institutional reform might be characterised as not being in line with the international standards for the reception of asylum seekers, as well as the EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (hereafter – Reception directive) for the following reasons:

it was previously used mainly as a detention facility for illegal migrants and also as a temporary arrangement to accommodate asylum seekers at the initial stage (for 4-5 weeks) of the asylum procedure, the Pabrade Centre lacks the character of a social institution. Under the new asylum legislation, the asylum procedure in first instance may last for up to three months (six months in exceptional cases). The government respondent has indicated that it was considered undesirable to transfer asylum seekers in the course of such a short procedure. Hence, asylum seekers are now hosted in one centre for the entire duration of the procedure.

social workers or psychologically trained staff is not employed in the Centre. The situation partially improved in November 2004, when a social assistance project was started in the Centre funded by the European Refugee Fund. However, the lack of social, physiological and rehabilitation services remains obvious in the Centre; staff members of the Pabrade Foreigners Registration Centre mainly dealt with detention and expulsion of irregular migrants before the adoption of the Law on Foreigners’ Legal Status and, therefore, are not trained to deal with asylum seekers, especially with persons with special needs. This does not apply to the officials of the Asylum Department who are working at the Centre. The government pointed out that the staff at the Foreigner’s Registration Centre was already responsible for the initial examination of asylum application under the old legislation, and is sufficiently experienced to work with asylum seekers.

once accommodated in the Centre, asylum seekers with special needs, particularly women, children, elderly people and the disabled find themselves in a very poor social environment, surrounded by uniformed border guards and in the presence of detained illegal migrants.
To sum up, the institutional reform of the reception system was not in line with Articles 17, 18, 20 and 24 of the Reception Directive, as the reception conditions for asylum seekers with special needs, including women, children, elderly and disabled people have been significantly jeopardised following the adoption of the Law on Foreigners’ Legal Status.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Asylum seekers were accommodated in two reception centres during the asylum procedure over the years 1999 – 2003. The costs for their reception in these centres have been as follows (in Euro):

- 1999 – 745,900;
- 2000 – 715,100;
- 2001 – 749,900;
- 2002 – 732,400;
- 2003 – 832,300.
Total: 3,775,600.

4.2 How many asylum seekers were in the reception system during these years?

- 1999 – 282;
- 2000 – 199;
- 2001 – 256;
- 2002 – 294;

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Article 82 of the Law on the Legal Status of Aliens provides that during the examination of an application for asylum in substance, a personal interview with the asylum seeker shall be carried out in the absence of his/her family members. If the asylum seeker so desires, his/her legal advisor may participate in the interview, this service is provided free of charge. Interpreter’s services are guaranteed by the state as well. A minor asylum seeker can be interviewed in the presence of his/her lawful representative or temporary guardian. Participation of the legal advisor in the interview of an unaccompanied minor asylum seeker is mandatory. Article 63 of the Order on Examination of applications for asylum establishes that the purpose of the above mentioned interview is to collect information about facts justifying a fear of persecution or other threat in the country of origin. Before the interview the asylum seeker must be made familiar with his/her rights during the interview and the examination of his/her application for asylum, the purpose of the interview, the principle of confidentiality, his/her obligations during the examination of the application, etc.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Article 99 of the Order on Examination of applications for asylum states that all interviews and other activities related to the examination of the applications of female asylum seekers must be carried out by female state servants. This provision covers interview officials, but not translators. If the female asylum seeker agrees, the interview may be conducted by a male state official.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Article 82 of the Law on the Legal Status of Aliens provides that participation of the legal advisor during the interview of an unaccompanied minor is mandatory.

Articles 100 and 101 of the Order on the Examination of applications for asylum establish the procedure for the examination of the applications of unaccompanied minors. According to the mentioned legal act:
- participation in the interview of a legal advisor is mandatory;
- the child’s legal representatives or temporary guardian appointed by the state shall participate in the interview;
- high priority shall be given to the examination of asylum applications of unaccompanied minors;
- state institutions shall cooperate with international and non-governmental institutions, other state institutions in order to trace the child’s family members.

Moreover, Article 97 of the Order on Examination of asylum applications establishes that state servants working with persons who belong to a particular vulnerable group (that includes minor asylum seekers; see point 2.4) shall receive special training in this respect.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatizing events before or during their flight (torture, trafficking)?

Article 97 of the Order on Examination of asylum applications establishes that state servants working with persons who belong to a particular vulnerable group (that includes victims of torture, see point 2.4) shall receive special training in this respect.

Article 98 of the Order on Examination of asylum applications states that it is necessary to consult medical personal before the interview if the person being interviewed belongs to a vulnerable group, has psychological problems or diseases, is ill, or there are grounds to believe that he/she has faced torture, violence or other inhuman treatment. This consultation is necessary to establish which questions shall be avoided during the interview. If it seems necessary a doctor or psychologist can participate in the interview as well. If, during the interview, there are reasons to believe that certain questions are causing the asylum seeker discomfort or pain, state officials must stop the interview and postpone it to a later time. A psychological examination of the asylum seeker may be carried out if necessary (in order to establish the psychological status of asylum seeker, post-traumatic effect, etc.).

If the asylum seeker so wishes, legal representation must be provided during the interview.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes. See Articles 76-77 of the Law on the Legal Status of Aliens.

The asylum procedure in the Republic of Lithuania has two:
1. Initial examination of the asylum application;
2. Examination of the asylum application in substance.

During the initial examination of an asylum application, the following aspects shall be examined:
- if the safe third country principle is applicable. If there is a safe third country to which an asylum seeker may be transferred, his/her application for asylum is not examined in substance and he/she is expelled (obliged to leave) to that country by decision of the Migration Department. The asylum seeker can appeal against this decision to the Vilnius district administrative court;
- if the Dublin procedure is applicable. In this case an asylum application is not examined in substance but the Migration Department cooperates with the competent EU Member States’ institutions. The asylum seeker whose application for asylum is considered under the Dublin procedure will be issued a Foreigner’s registration card, signalling that the asylum seeker enjoys temporary territorial asylum in the Republic of Lithuania.

According to the above mentioned provisions, asylum seekers have a right to remain in Lithuania during the initial examination as well as during the court hearing (in case the safe third country principle is applied). Examination of an asylum application in substance means examination for the purpose of establishing whether or not the applicant should be granted refugee status or subsidiary protection. This examination may be carried out under an accelerated or a normal procedure. If the normal procedure is followed the asylum seeker is granted temporary territorial asylum and is issued a Foreigner’s registration card; this procedure can last up to three months (can be extended to a period of 6 months by decision of the Migration Department). The accelerated procedure is applied when the asylum seeker has come from a safe country of origin or submitted a manifestly unfounded application for asylum. In case of an accelerated procedure, the decision not to grant asylum must be made within 48 hours from the moment of submission of the application for asylum. Asylum seekers have a right to appeal against this decision. Every asylum seeker has a right to remain in Lithuania while his/her application for asylum is examined in substance (under the normal or accelerated procedure).
5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

The Law on the Legal Status of Aliens provides that decisions taken under this Law may be appealed against according to the procedure prescribed by Lithuanian legislation. Article 139 of the Law states that, pending the appeal, the execution of the decision shall be suspended, when:
- the alien who submitted an asylum application is not granted temporary territorial asylum in Lithuania and is obliged to leave the territory, or is expelled from it to a safe third country;
- the alien is refused asylum and is obliged to leave Lithuania, or is expelled from it to his/her country of origin or another foreign country, the examination of the asylum application is terminated or the protection status is revoked.

According to the legal provisions listed above, every asylum seeker has the right to remain in the territory of the state until a court has taken a final decision. These asylum seekers have the right to temporary territorial asylum and have all the rights provided by law for asylum seekers.

Thus, appeal has automatic suspensive effect. However, there is an exception in cases where the asylum seeker is recognised as posing a threat to state security and public order. In such cases the court can suspend the deportation upon the request of asylum seekers.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Eurodac is consulted before the decision of the Migration Department on temporary territorial asylum (admittance to the territory).

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

At the initial stage, before the decision of the Migration Department on temporary territorial asylum (admittance to the territory).

Article 69 of the Law on the Legal Status of Aliens provides that an asylum seeker has to be fingerprinted within 24 hours after submission of the asylum application. The Institution which is responsible for receiving applications for asylum shall transfer the data to the Eurodac National Unit as soon as possible, but not later than 24 hours from the moment of submission of the asylum application.

There are 3 places where a Eurodac working station is installed (Foreigners’ Registration Centre, Vilnius city police office and Forensic Expertises Centre, which is assigned as National Eurodac Unit in Lithuania). From these working places data may be transferred to Eurodac immediately, from other institutions data are transferred via e-mail to the National Eurodac Unit. Data from Eurodac about asylum seeker’s fingerprints entered into the system come directly via e-mail to the Migration Department.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

According to Lithuanian legislation there is a single asylum procedure which is applied by the asylum authority – the Migration Department. The Migration Department shall decide which form of protection has to be granted to an asylum seeker: refugee status or subsidiary protection. The grounds for granting protection are established in the Law on the Legal Status of Aliens (part 1 of the Article 86 and part 1 of the Article 87 of the Law). If the Migration Department, after examination of the application for asylum, finds that the asylum seeker shall not

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206 “Refugee status shall be granted to the asylum applicant who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, unless there are conditions specified in Article 88 of this Law (Grounds for Refusing to Grant the Refugee Status or Subsidiary Protection)”.

207 “Subsidiary protection may be granted to an asylum applicant who is outside his country of origin and is unable to return to it owing to a well-founded fear that:
1) he will be tortured, subjected to cruel, inhuman or degrading treatment or punishment;
2) there is a threat that his human rights and fundamental freedoms will be violated;
3) his life, health, safety or freedom is under threat as a result of endemic violence which spread in an armed conflict or which has placed him at serious risk of systematic violation of his human rights”.

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be granted any form of international protection, it shall take a decision on the expulsion of the asylum seekers from Lithuania if there are no other grounds for him/her to stay in the country (family ties, etc.). The asylum seeker may appeal against this decision to the Vilnius district administrative court. The asylum seeker may also appeal against the decision of the Migration Department to the same court if he/she was granted subsidiary protection but refugee status was refused.

See Article 80 of the Law on the Legal Status of Aliens.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

As described above there is one single asylum procedure for both forms of international protection. Examination of the first application for asylum includes several interviews and questionnaires in order to collect all the necessary information. There is a difference with regard to review of the protection status. Refugee status is granted permanently and is not subject to review, but subsidiary protection status has to be reviewed on an annual basis. Subsidiary protection in Lithuania means the issuance of a residence permit for one year. The review is conducted by the Migration Department. The asylum seeker has to explain the reasons for prolongation of the subsidiary protection status and the decision maker has to re-check country of origin information and establish if the reasons for subsidiary protection still remain. A foreigner can be issued a permanent residence permit after 5 years of lawful residence in Lithuania (with some exceptions – after 4 years). If a person is granted subsidiary protection, his/her right to apply for refugee status remains.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

As mentioned before, suspensive effect of the appeal is provided for in Article 139 of the Law on the Legal Status of Aliens. Apart from the grounds mentioned under point 5.6 of this questionnaire, an appeal from the decision to withdraw international protection status also has suspensive effect. This article is applied when the decision is made to withdraw refugee or subsidiary protection status. Appeal thus has automatic suspensive effect, except in cases where the asylum seeker is recognised as dangerous to state security and public order. In such cases the court can suspend the deportation upon the request of the asylum seeker.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

The grounds for withdrawing refugee status and subsidiary protection are listed in Article 90 of the Law on the Legal Status of Aliens. This Article does not provide a possibility to withdraw refugee status or subsidiary

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208 Article 90. Withdrawal of Refugee Status and of Subsidiary Protection in the Republic of Lithuania

1. Refugee status granted to an alien in the Republic of Lithuania shall be withdrawn if the alien:
   1) has voluntarily re-availed himself of the protection of the country of his nationality;
   2) has voluntarily re-acquired his lost nationality;
   3) has acquired a new nationality and enjoys the protection of the country of his new nationality;
   4) has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
   5) can no longer continue to refuse to avail himself of the protection of the country of his nationality because the circumstances in connection with which he has been recognised as a refugee in the Republic of Lithuania have ceased to exist;
   6) being a stateless person he can return to the country of his former habitual residence because the circumstances in connection with which he has been recognised as a refugee in the Republic of Lithuania have ceased to exist;
   7) acquired refugee status in the Republic of Lithuania by fraud, except where the information he submitted about himself did not have a decisive effect on the decision to grant him refugee status in the Republic of Lithuania.

2. Subsidiary protection granted to an alien shall be withdrawn if the alien:
   1) can return to his country of origin because the circumstances in connection with which he has been granted subsidiary protection in the Republic of Lithuania have ceased to exist;
   2) departs to settle for residence in a foreign country;
protection on the ground of the exclusion clauses listed in Article 1F of the 1951 Geneva Convention. The exclusion clauses are reflected in the Article 88 of the said Law and according to the Law these clauses may be applied only during the status determination procedure. Nevertheless, exclusion clauses that were not examined during the status determination procedure may be applied after this procedure if it would be established that the asylum seeker “acquired refugee status (or subsidiary protection status) through fraud”, e.g. s/he did not provide information about facts that would associate him/her with acts listed in Article 1F of the Refugee Convention.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Exclusion clauses have never been applied in Lithuania after the status determination procedure, e.g. as cessation clauses.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

As mentioned before, the Law on the Legal Status of Aliens provides different grounds for withdrawal of refugee status and subsidiary protection (see the footnote with point 6.2.1 of this questionnaire), although they are similar. The procedure for withdrawal is the same. The decision to withdraw protection status (refugee status or subsidiary protection) shall be made by the Migration Department. The alien may appeal against this decision to the Vilnius district administrative court.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Yes.

7.1.2 If so, in which respects?

-Safe country of origin: Articles 30 and 30A of the latest version of the draft Procedure Directive provide that “a minimum common list of third countries that shall be regarded by Member States as safe countries of origin will be established”. Lithuanian legislation does not provide the possibility to draw up or use lists of safe countries of origin. A country may be regarded as a safe country of origin for an asylum seeker after individual examination and in accordance with the report about such a country. Legislation also provides criteria for safe countries of origin and methodology for drafting of such reports. Reports shall include information gathered from different sources, thus information provided in the mentioned lists established by the Council will be included in these reports as well. Taking these facts into account, Lithuania considers that this tension between the proposed Directive and Lithuanian legislation may be understood as “more favourable provisions”, as mentioned in Article 4 of the draft Directive because the standards used in Lithuanian practice with regard to the safe country of origin notion are compatible with the provisions of the draft Directive.

-Limited access to the territory and the asylum procedure. Despite the increasing number of asylum applications, asylum applications are only very rarely received at the border check points. UNHCR and NGOs have received complaints from asylum seekers that border guards tend to ignore their asylum applications. The Human Rights Committee has also expressed concern about prevention of asylum requests at the border.

3) obtained the subsidiary protection status in the Republic of Lithuania by means of fraud, except where the information he submitted about himself did not have a decisive effect on taking the decision to grant him asylum;
4) if the alien’s stay in the Republic of Lithuania constitutes a threat to public security or public policy.
3. The decision to withdraw the refugee status or subsidiary protection in the Republic of Lithuania shall be taken by the Migration Department.”
The accelerated procedure. The Law establishes a special procedure for manifestly unfounded cases, which have to be examined in 48 hours. The examination may be prolonged up to 7 days. Such procedures are sometimes used, when asylum seekers come from non-safe countries of origin, e.g. Russia, Pakistan and Georgian, or when the application is deemed to be abusive. Around 2% of the asylum applications are examined in an accelerated procedure. It can be doubted whether such a short period of time is sufficient for a comprehensive examination of the asylum application. In addition, the accelerated procedure creates some institutional difficulties on the side of the government. These are related to the fact that the procedure is not used often, but requires specific implementation measures, for example short-term accommodation. For this reason, the government respondent that a proposal could be made to abandon this provision from the Law and to leave it up to the state institutions to decide on the length of examination of such applications, leaving open the possibility to apply the procedure at the border if necessary.

The appeals procedure. The Law only provides a 7 day period for submitting appeals against negative decisions on asylum applications. Such a short term may make the right to appeal less effective.

The law expands the grounds for detention and limits alternative measures to detention, which leaves significant space for the detention of undocumented asylum seekers.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

The costs of asylum procedures may be calculated only approximately because the main institution responsible for the implementation of the asylum procedure in Lithuania – the Migration Department – consists of different divisions and has different functions in addition to asylum issues (passport, citizenship, immigration, visa issues, etc.).

The costs for asylum procedures per year constitute approximately 250 thousand Euro (1 250 thousand Euro over the years 1999 – 2003). These costs include:
- salaries for the main staff responsible for the examination of asylum applications (15 persons in the Migration Department);
- legal aid services and interpretation services for asylum seekers (these services are funded by the Ministry of Interior);
- staff, legal representatives’ and translators’ transportation costs (to and from accommodation centres);
- gathering and collection of country of origin information (subscription costs, electronic database, etc.).

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

According to the statistics of the Migration Department:
1999 - 182 decisions on asylum (11 refugee status, 171 rejected)
2000 - 201 (15 refugee status, 73 subsidiary protection, 113 rejected)
2001 - 253 (3 refugee status, 192 subsidiary protection, 58 rejected)
2002 - 258 (1 refugee status, 220 subsidiary protection, 37 rejected)
2003 - 476 (3 refugee status, 417 subsidiary protection, 56 rejected)

However, these numbers do not reflect the factual situation, because they include not only new asylum decisions, but also decisions to prolong subsidiary protection, which a person has to receive every year.
8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

None.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

None. It must be noted that the Migration Department usually withdraws subsidiary protection by not prolonging it during the yearly review. In the statistics such decisions are counted as rejected asylum decisions.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Article 66.1 of the Order on Examination of applications for asylum provides that in case of persecution that falls under the definition of refugee provided in the Geneva Convention, protection in the country of origin may be granted by “state institutions or other organisations/structures controlling part of the territory of the state”. According to this provision non-state actors can provide protection for the purpose of qualification for refugee status.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Yes. There are specific provisions related to the protection provided by state or non-state actors in the country of origin with regard to subsidiary protection. According to the Law on the Legal Status of Aliens, subsidiary protection status is granted to the asylum seeker who is outside his country of origin and is unable to return to it owing to a well-founded fear that:

1) he will be tortured, subjected to cruel, inhuman or degrading treatment or punishment;
2) there is a threat that his human rights and fundamental freedoms will be violated;
3) his life, health, safety or freedom is under threat as a result of endemic violence which spread in an armed conflict or which has placed him at serious risk of systematic violation of his human rights.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes. Both the Law on the Legal Status of Aliens and the Order on examination of applications for asylum provide that there must be a connection between the reasons or grounds for persecution and the acts of persecution.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Lithuanian legislation refers only to persecutory acts or fear of persecution related to the persecution grounds or reasons. Nevertheless, the definition of persecution includes aspects of not providing protection by state or other organisations/structures that are in control of the territory. That means that it includes the situation when persecution was not committed for reason of a persecution ground, but the state or another organisation did not
provide protection for such a reason. As no decisions have been taken concerning such situations, it is unclear how the legal provisions will be interpreted in practice.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

A definition of a particular social group is not included in detail in Lithuanian legislation. However, between 1998 and 2000, the Refugee Affairs Council has granted refugee status to 6 women because of gender related persecution. E.g. social groups of single women or educated women in Afghanistan during the Taliban regime were recognised. Since 2000 no such cases have been observed.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Unaccompanied minors have the same right as other asylum seekers to be recognised as refugees or persons eligible for subsidiary protection. However, the mere fact of being an unaccompanied minor is not enough to be granted any kind of protection in Lithuania. In practice, unaccompanied minors are usually granted subsidiary protection.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

The grounds for granting refugee status (the same as in the Geneva Convention) and subsidiary protection are established by the Law on the Legal Status of Aliens (see point 9.2 of this questionnaire). Victims of trafficking can be recognised as refugees or persons eligible for subsidiary protection only if these grounds are established. Lithuanian legislation does not provide specific grounds for victims of trafficking to be recognised as refugees or persons eligible for other forms of protection. Such cases have not been observed in practice.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Article 88 of the Law on the Legal Status of Aliens contains the same provisions as Article 1F of the Geneva Convention. According to Lithuanian legislation, criminal liability for some crimes (including those mentioned in the Article 1F of the Geneva Convention) is possible from the age of 14. This concerns mostly points a) (war crimes), and b) (serious non-political crimes) of Article 1F of the Geneva Convention. Thus, minors can be excluded from protection on the basis of the above mentioned grounds. However, the government mentioned that, considering that points a) (crimes against peace and humanity) and c) (acts contrary to the UN principles) can only be committed by ‘special subjects’ (that is, persons in a position of authority, government leaders, etc.) minors cannot be excluded under these grounds.

Our NGO respondent mentioned that the exclusion clauses are formally applicable, but that he found it hard to imagine minors committing such crimes in practice.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Yes.

10.2 If so, in which respects?

Article 9(2) of the Qualification Directive establishes forms of acts of persecution. Lithuanian legislation does not provide similar lists of forms of persecution acts.

Article 10 of the Qualification Directive defines the grounds for persecution. Lithuanian legislation provides only a list of grounds, but does not define how these reasons or grounds have to be applied in practice. In practice, the refugee definition is interpreted restrictively.
Au Grand-Duché de Luxembourg les dispositions en matière de procédures d’asile sont actuellement régie par la loi modifiée du 3 avril 1996 portant création
1) d’une procédure relative à l’examen d’une demande d’asile, et
2) d’un régime de protection temporaire.

Or, depuis cette date, le phénomène des demandeurs d’asile au Luxembourg a connu de profondes mutations de sorte que la loi actuelle n’est plus adaptée et lacunaire. Ainsi, un projet de loi a été élaboré portant sur le « droits d’asile et des formes complémentaires de protection ». Il a été déposé au parlement luxembourgeois en date du 28 janvier 2005 et est actuellement en cours d’examen.

L’objectif de ce projet est de mettre en œuvre une législation aussi complète que possible en matière de protection internationale. Il a l’intention de compléter la législation actuelle, qui se limite à un examen des demandes d’asile au sens de la Convention de Genève de 1951, par un statut de protection complémentaire, dit « statut conféré par la protection subsidiaire ». Seront ainsi examinés dans le cadre d’une seule procédure tous les aspects de la protection internationale à savoir asile et protection subsidiaire. Le projet de loi consacre également un chapitre entier à la protection temporaire en cas d’afflux massif de personnes déplacées.

Un autre objectif important de ce projet est d’adapter la législation luxembourgeoise aux directives européennes adoptées en matière d’asile pendant la première phase du régime d’asile européen commun. Ainsi, il transpose en droit national les directives suivantes :

1- Directive 2001/55/CE du Conseil du 20 juillet 2001 relative à des normes minimales pour l’octroi d’une protection temporaire en cas d’afflux massif de personnes déplacées et à des mesures tendant à assurer un équilibre entre les efforts consentis par les États membres pour accueillir ces personnes et supporter les conséquences de cet accueil (ci-après directive « protection temporaire »),


3- La Directive 2004/83/CE du Conseil du 29 avril 2004 concernant les normes minimales relatives aux conditions que doivent remplir les ressortissants de pays tiers ou les apatrides pour pouvoir prétendre au statut de réfugié ou les personnes qui, pour d’autres raisons, ont besoin d’une protection internationale, et relatives au contenu de ces statuts (ci-après directive « qualification »),

4- La proposition modifiée de Directive du Conseil relative à des normes minimales concernant la procédure d’octroi et de retrait du statut de réfugié dans les États membres.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and "waiting areas") imply detention?

En règle générale les demandeurs d’asile ne sont pas placés en détention administrative. Pourtant il peut arriver que des personnes soient placées dans un centre de rétention parce qu’elles sont en situation irrégulière au Luxembourg, et qu’elles déposent leur demande d’asile dans le centre.

Le demandeur d’asile pourra être placé en structure fermée dans les cas suivants :

- lorsqu’une personne en séjour irrégulier se trouvant déjà en rétention administrative a déposé une demande d’asile dans le seul but de prévenir son éloignement.

Le projet de loi mentionné plus haut prévoit quelques cas supplémentaires permettant le placement de demandeurs de protection internationale (demande en obtention du statut de réfugié selon la Convention de Genève et demande de protection subsidiaire) en structure fermée :

- lorsque le demandeur refuse de coopérer avec les autorités luxembourgeoises dans l’établissement de son identité ou de son itinéraire de voyage,

- lorsque la demande de protection internationale est traitée dans le cadre d’une procédure accélérée parce que :

  1- le demandeur a induit en erreur les autorités en présentant de fausses indications ou de faux documents ou en dissimulant des informations ou documents concernant son identité ou sa nationalité qui auraient pu influencer la décision dans un sens défavorable;
  2- le demandeur a introduit une autre demande de protection internationale mentionnant d’autres données personnelles ;
  3- le demandeur n’a produit aucune information permettant d’établir, avec une certitude suffisante, son identité ou sa nationalité ou s’il est probable que, de mauvaise foi, il a procédé à la destruction ou s’est défait de pièces d’identité ou de documents de voyage qui auraient aidé à établir son identité ou sa nationalité ;
  4- le demandeur ne dépose une demande qu’afin de retarder ou d’empêcher l’exécution d’une décision antérieure ou imminente qui entraînerait son éloignement du territoire ;
  5- le demandeur est entré ou a prolongé son séjour illégalement sur le territoire du Grand-Duché et, sans motif valable, ne s'est pas présenté aux autorités et/ou introduit sa demande de protection internationale dans les délais les plus brefs compte tenu des circonstances de son entrée sur le territoire;
  6- le demandeur constitue un danger pour la sécurité nationale ou constitue un danger pour l'ordre public ;
7- le demandeur refuse de se conformer à l’obligation de donner ses empreintes digitales.

La durée maximale du placement en structure fermée est actuellement de 3 mois. D’après le projet de loi elle pourra être reconduite chaque fois pour la durée d’un mois si les documents de voyage nécessaires à l’éloignement n’ont pas encore été établis, sans que la durée totale du déplacement ne puisse excéder six mois.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

Non, avant d’avoir fait une demande d’asile, ils ne sont pas soutenus par l’Etat. Seule exception: ils peuvent être logés pour une nuit en été ou plus longtemps en hiver dans un foyer pour sans abri.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

La loi actuelle ne contient aucune disposition expresse concernant la situation de demandeur d’asile mineur d’âge. Or, la pratique veut que les mineurs non accompagnés se voient désigner, dès que possible, un tuteur qui l’assiste dans le cadre de l’examen de sa demande. Le tuteur est autorisé à assister à l’entretien portant sur les motifs de la demande d’asile et à le droit de poser des questions ou à formuler des observations.

Le nouveau projet de loi consacre trois articles différents selon le statut aux mineurs non accompagnés et met sur papier la pratique actuelle. Ce texte ajoute que l’entretien du mineur non accompagné est mené par un agent possédant les connaissances nécessaires sur les besoins particuliers des mineurs. Pourtant, du côté de l’ONG il existent des doutes si ces provisions sont suffisantes pour garantir une bonne protection des mineurs.

1.3.2 If so, how are (unaccompanied) minors identified?

Dès qu’un doute existe concernant l’âge, le demandeur d’asile se disant être mineur d’âge est convoqué chez un médecin afin de subir un examen médical en vue de la détermination de son âge probable. Or, les demandeurs d’asile devant subir un tel examen n’y sont pas contraints et leur présentation chez le médecin dépend de leur seule bonne volonté. Ainsi, il est apparu que nombreux mineurs ne se présentent pas au rendez-vous médical fixé. Par ailleurs, 95% des «mineurs » ayant subi un examen médical ne l’étaient manifestement pas.

Dans ce sens, le nouveau projet de loi prévoit les examens médicaux afin de déterminer l’âge du demandeur. Le demandeur sera informé sur les méthodes d’examens et les conséquences possibles des résultats de cet examen médical pour l’examen de la demande de protection internationale, ainsi que sur les conséquences qu’entraînerait le refus de subir un tel examen médical.

Lorsqu’il s’avère que le demandeur n’est pas mineur, il perd tous les avantages et droits consentis aux seuls mineurs.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

Non.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

Non.

1.5.2 If so, how are victims of trafficking identified?

Elles ne sont pas identifiées sauf si elles en parlent pendant la procédure. Elles sont dans la procédure comme les autres demandeurs d’asile et logent dans les foyer pour réfugiés.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?
2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

La loi du 18 mars 2000 portant
1) création d’un régime de protection temporaire, et
2) modification de la loi modifiée du 3 avril 1996 portant création d’une procédure relative à l’examen d’une demande d’asile
prévoit l’instauration d’un régime de protection temporaire. Cette loi prévoit que la protection temporaire sera instaurée par un règlement grand-ducal.

Le chapitre 4 du projet de loi précité porte sur la protection temporaire et transpose en droit national la directive « protection temporaire ». Les bénéficiaires du régime de protection temporaire bénéficient, soit d’une aide sociale dans les mêmes conditions que les demandeurs d’asile, soit d’une autorisation d’occupation temporaire dans les conditions fixées par la réglementation déterminant les mesures applicables pour l’emploi des travailleurs étrangers sur le territoire du Luxembourg. Ils sont logés dans les mêmes foyers que ceux prévus pour les personnes ayant fait une demande d’asile selon la convention de Genève.

Actuellement existe une pratique concernant les personnes se déclarant mineurs non accompagnés qui ne reçoivent que la moitié de l’allocation financière mensuelle.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Voir réponse 1.3.1. Il n’existe pas de logement spécifique pour mineurs. Ils vivent ensemble avec les autres demandeurs d’asile. Il n’existe pas non plus de suivi particulier pour les jeunes, prévu par la loi. En pratique, le projet Passepartout de la Fondation Caritas accompagne les jeunes âgés de 14 à 30 ans qui vivent au Luxembourg, en les accompagnant dans le choix des études, en organisant des cours, en les soutenant dans leurs démarches afin de trouver des patrons de stage pour jeunes, en organisant des activités sportives et culturelles etc.
Si un mineur de moins de 14 ans se présente, alors il est logé dans un foyer de jeunes.

2.3.2 If so, how are (unaccompanied) minors identified?

Les mineurs sont identifiés selon l’âge officiel qu’ils donnent au moment de leur arrivée au Luxembourg. S’il existe un doute concernant leur âge ils sont soumis à un examen médical. Dans la mesure du possible, l’examen médical se fait systématiquement. En pratique, on se réfère plus à l’examen médical qu’aux affirmations du demandeur d’asile.

Pourtant, nombreux mineurs ne se présentent pas à l’examen médical étant donné que celui-ci est volontaire, comme telle l’a été expliqué sous 1.3.2. Dans ces cas, le Ministère des Affaires étrangères et de l’Immigration est obligé de prendre la date de naissance indiquée par le demandeur d’asile, mais ceci ne change rien en pratique. Les demandeurs d’asile qui ne se sont pas présentés à l’examen médical continuent à être considérés et traités comme mineurs.

Pourtant, l’interlocuteur de l’ONG remarque qu’il existe un risque que les demandes de ces personnes soient implicitement rejetées pour raison de leur non-collaboration.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

Non.
2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

Non.

2.5.2 If so, how are victims of trafficking identified?

Si elles ne le disent pas clairement lors de leur audition au Ministère de l’Immigration, elles ne sont pas identifiées. Il n’existe pas de structure spécifique qui prend en charge les femmes demandeurs d’asile trafiquées.


La directive a été partiellement transposée anticipativement par le règlement grand-ducal du 4 juillet 2002 fixant les conditions et modalités d’octroi d’une aide sociale aux demandeurs d’asile.

Un projet de loi qui a pour objet d’adapter la législation luxembourgeoise aux directives européennes adoptées en matière d’asile, a été déposé à la Chambre des Députés le 27 janvier 05 (directive 2001/55/CE du 20.07.01 ; 2003/9/CE du 27.01.2003 ; 2004/83/CE du 29.04.2004). Il n’a pas encore été voté et n’est donc pas encore applicable.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Un des objectifs du projet de loi est la transposition de la directive « conditions d’accueil » en droit luxembourgeois.

3.2.2 If so, in which respects?

La directive reste relativement vague. Pour qu’elle puisse influencer positivement la loi nationale, elle devrait être beaucoup plus précise. La tension rencontrée se situe plutôt du côté des ONG’s.

Un des principaux changements sera le droit au travail pour les demandeurs d’asile: le projet de loi prévoit le droit au travail pour les demandeurs d’asile, en procédure depuis au moins un an et pour lesquels le ministre n’a pas pris de décision sur la demande d’asile un an après la présentation de celle-ci (sous condition que ce retard ne puisse pas être imputé au demandeur). Une autorisation d’occupation temporaire pour une période de 6 mois renouvelable est valable pour un employeur déterminé et pour une seule profession pourra être donnée. D’après les ONG’s, ces conditions sont trop restrictives.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Pas de chiffres disponibles pour 1999.

2000: 8 055 752,33 euros
2001: 14 093 504,00 euros
2002: 13 974 030,33 euros
2003: 15 663 327,67 euros

Sans donner des chiffres exacts, on peut admettre qu’un demandeur d’asile individuel coûte 1500,00 € par mois à la collectivité nationale tout au long de son séjour au Luxembourg.

4.2 How many asylum seekers were in the reception system during these years?


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Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Selon la loi modifiée du 3 avril 1996 chaque demandeur d’asile a le droit d’être entendu. En pratique, toutes les personnes ayant 18 ans au moins font l’objet d’un entretien personnel. Cependant, une personne de moins de 14 n’est pas interrogée. Dans des cas exceptionnels, les enfants de plus de 14 ans mais moins de 18 ans et accompagnés de leurs parents sont interrogés. Si tel est le cas, les entretiens se font toujours en présence d’un de leurs parents.

Tous les mineurs non accompagnés sont interrogés, quel que soit leur âge et ceci en présence d’un tuteur ou d’un représentant légal.

L’entretien a normalement lieu hors de la présence des autres membres de la famille. Des exceptions peuvent être faites si le demandeur est incapable, notamment pour des raisons médicales d’une certaine gravité de passer un tel entretien ou s’il renonce à son droit d’être entendu. Il ne sera pourtant pas procédé à un entretien si, en vertu d’engagements internationaux auxquels le Luxembourg est partie, un autre pays est responsable de l’examen de la demande d’asile.

Le nouveau projet maintient ces pratiques et précise que l’entretien peut ne pas avoir lieu lorsqu’il n’est pas raisonnablement possible d’y procéder, en particulier lorsque le ministre estime que le demandeur n’est pas en état ou en mesure d’être interrogé en raison de circonstances durables indépendantes de sa volonté. En cas de doute, le ministre peut exiger un certificat attestant de l’état de santé physique ou psychique du demandeur. Lorsque le ministre n’offre pas la possibilité d’un entretien au demandeur, des efforts raisonnables doivent être déployés pour permettre au demandeur de fournir davantage d’informations.

Notons que le projet prévoit également que toute personne adulte a le droit de déposer une demande de protection internationale distincte de celle du membre de famille dont il dépend.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Ce n’est pas prévu dans la loi, mais en règle générale les demandeurs d’asile de sexe féminin sont interrogés par des agents féminins assistés par des interprètes féminins pour autant qu’il soit possible de le faire. Si tel n’est pas le cas (agent ou interprète masculin) et lorsque la demanderesse d’asile le désire l’entretien est annulé et un nouveau rendez-vous avec un agent ou interprète féminin est fixé.

Le projet de loi dispose que « le ministre veille à ce que la personne chargée de mener l’entretien soit suffisamment compétente pour tenir compte de la situation personnelle ou générale dans laquelle s’inscrit la demande, notamment l’origine culturelle ou la vulnérabilité du demandeur, pour autant qu’il soit possible de le faire ».

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Voir réponse 1.3.1. Les agents du Ministère des Affaires étrangères et de l’Immigration essaient que le jeune soit représenté/assisté par 1 ONG ou un avocat lors de l’audition. Ce représentant peut être la même personne que le tuteur (voir réponse 1.3.1) mais ceci n’est pas toujours le cas.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatizing events before or during their flight (torture, trafficking)?
Non. Le projet de loi dispose que « le ministre veille à ce que la personne chargée de mener l'entretien soit suffisamment compétente pour tenir compte de la situation personnelle ou générale dans laquelle s'inscrit la demande, notamment l'origine culturelle ou la vulnérabilité du demandeur, pour autant qu'il soit possible de le faire ».

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Oui, dès lors qu’il n’y a pas d’autre Etat-Membre responsable (Dublin).

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

En règle générale oui. Deux exceptions au principe existent:

- lorsqu’en vertu d’engagements internationaux auxquels le Luxembourg est partie, un autre pays est responsable de l’examen de la demande,
- lorsqu’une demande subséquente est déclarée irrecevable.

Lorsqu’un autre État-Membre a accepté de traiter la demande, le demandeur d’asile est obligé de quitter le Luxembourg. Dans les cas où il n’existe pas d’effet suspensif, il est toujours possible de demander une mesure de sauvegarde au président du Tribunal administratif. L’interlocuteur de l’ONG n’était pas au courant de cette possibilité.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Dès le dépôt de la demande d’asile ou de la demande de protection internationale.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

Dès le dépôt de la demande d’asile ou de la demande de protection internationale.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Comme déjà mentionné en introduction le projet de loi prévoit une seule procédure pour examiner tous les aspects de la protection internationale à savoir: asile, protection subsidarière et protection temporaire.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Une telle décision prise par le Ministère des Affaires étrangères et de l’Immigration est prévue dans la loi. Cette décision est susceptible d’un recours en annulation qui n’est pas suspensif. Pourtant, en pratique, ces personnes sont permises de rester en Luxembourg pour la durée de la procédure, même si la loi permet un éloignement.

6.2 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Oui.

6.2.1 If so, is this possibility (these possibilities) being made use of?
Non, pas d’après nos connaissances.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Non. Aussi bien l’octroi du statut de réfugié politique que l’octroi du statut conféré par la protection subsidiaire constituent une décision administrative. Le retrait d’une telle décision doit respecter les règles en matière de retrait d’une décision administrative prévues par la procédure administrative non contentieuse.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Oui car la proposition de directive prévoit un recours non suspensif si le demandeur d’asile provient d’un pays sûr et même super-sûr: ceci n’est pas prévu dans la loi actuelle luxembourgeoise. A Luxembourg, les recours ont un effet suspensif.

Pourtant, un des objectifs du projet de loi est la transposition de la directive « procédure » en droit luxembourgeois.

7.1.2 If so, in which respects?

Voir 7.1.1.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

Un des objectifs du projet de loi est la transposition de la directive « procédure » en droit luxembourgeois.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

Pas de données disponibles.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

Voir 8.3.1. et 8.3.2.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

1999: 2921 demandeurs d’asile
2000: 1709 demandeurs d’asile
2001: 687 demandeurs d’asile
2002: 1042 demandeurs d’asile
2003: 1549 demandeurs d’asile

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

Comme déjà indiqué, le Luxembourg ne dispose jusqu’à adoption du nouveau projet de loi d’aucune protection subsidiaire au sens de la directive. Pourtant dans certains cas, des autorisations de séjour dites pour raisons humanitaires sont émises.
Une partie de ces demandes sont octroyées soit sur la base de l’article 3 de la Convention européenne des droits de l’Homme (torture, traitements inhumains ou dégradants), soit sur l’article 8 de cette même Convention (protection et respect de la vie privée et familiale) soit pour des raisons d’ordre médical. Elles ne peuvent donc pas être entièrement assimilées à des protections subsidiaires. Le nombre d’autorisations de séjour pour raisons humanitaires pour les années 2001-2003 est indiqué ci-dessous (les chiffres pour les années 1999 et 2000 ne sont pas disponibles):

2001 - 353 personnes
2002 - 89 personnes
2003 - 106 personnes

En plus, le Luxembourg connaît le statut de tolérance, qui ne constitue pas une protection mais qui est accordé lorsque l’exécution matérielle de l’éloignement du demandeur d’asile débouté est impossible en raison de circonstances de fait. En 2003 43 personnes ont reçu le statut de tolérance. Pour les années 1999-2002 il n’y a pas de chiffres connus.

8.4 How many decisions to withdraw refugee status were taken in these years?
Entre 1999 et 2004 deux statuts de réfugié politique ont été retirés.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

N/A.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

À juger au cas par cas. En pratique, suite à des recours au tribunal on a vu des personnes auxquelles le statut a été quand-même été accordé.
L’article 7 de la directive « qualification » sera transposé tel quel par le projet de loi.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

En principe oui. À juger au cas par cas.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Oui.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

En principe oui. À juger au cas par cas.
9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

A juger au cas par cas. Il n’y a pas de distinction prévue dans la loi actuelle

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Dépend des motifs invoqués par le mineur non accompagné pour fonder sa demande en protection internationale. Chaque personne ayant au moins 14 ans, peut faire une demande de ce statut

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

A juger au cas par cas. Rien n’est prévu dans la loi actuelle mais en pratique, on a vu des personnes obtenant une autorisation de séjour dû au fait qu’elles étaient des victimes de la traite des femmes

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Oui.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

Un des objectifs du projet de loi est la transposition de la directive « qualification » en droit luxembourgeois. Pourtant, l’interlocuteur de l’ONG a indiqué qu’elle craint qu’en général la directive soit trop vague et n’influencera donc pas assez les lois nationales

10.2 If so, in which respects?

La Directive contient des éléments positifs qui ne sont pas encore présents dans la présente loi nationale, notamment:
- la présence d’une forme de protection alternative
- la persécution non-étatique
- la persécution liée au sexe.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Persons who enter Malta in a regular way (i.e. who are in possession of the necessary documents) and who lodge a claim for asylum are not detained. Persons arriving irregularly at the airport or seaport are subject to detention and are kept in detention if they apply for asylum at a later stage. There are no short-term reception conditions for asylum seekers. Malta has put in place new legal provisions allowing persons in detention to challenge their detention before the Immigration Appeals Board and to be released if their claim is upheld. Effective access to this procedure is at present limited through lack of legal aid and lack of access to detainees.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

There are no specific provisions for reception in situations of mass influx. However, contingency plans are ‘in hand’ to meet emergencies arising out of ‘mass influx’ (in the case of Malta, huge arrivals of boat people).

Malta’s scenario is that of migrants who transit from Northern African coasts in small boats and the phenomenon given the local geographic dimension of the island is comparable to ‘mass influx’. These ‘boat migrants’ arrive in large numbers, and are in majority undocumented.

On arrival their basic needs are attended to and all persons are given the necessary medical attention, meanwhile every attempt is made to identify the vulnerable groups, particularly children, mothers with children and sick persons who are transferred to open accommodation centres until their request for asylum is dealt with by the Office of the Refugee Commissioner. All others are, in general, kept in custody unless there are circumstances justifying their release (e.g. medical grounds).

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

All irregular immigrants, including unaccompanied minor asylum seekers, are initially received in closed reception centres. Transfers to open centres are generally evaluated according to individual circumstances and after the asylum status has been determined. However, different arrangements are in place for vulnerable groups and as a general rule, once medically cleared, unaccompanied minors are referred to the Ministry for Family and Social Solidarity for the appointment of a guardian. A care order is issued in order to place the child under protection in open centres. This refers to the situation before the asylum application is examined.

Once the minor has been identified, the competent authorities act as fast as possible to enable his/her release from the closed centre. Action is taken by the Ministry for Family and Social Solidarity to issue care orders before the application for asylum is lodged. A care order allows such persons to be placed in care in specialised accommodation (this is not to be confused with detention) and to be offered appropriate services (e.g. education, social support, etc.) to help them to integrate in the community. Freedom of movement is restricted until a care order is issued. Very young children are immediately taken into care. Every effort is made to avoid the practice of placing genuine unaccompanied minors in detention along with adults.

1.3.2 If so, how are (unaccompanied) minors identified?

When they apply for asylum they fill out a preliminary questionnaire that specifically asks their date of birth. If there is any doubt regarding their age, a social worker may carry out additional interviews to establish the age of the minor.
Unaccompanied minors are generally identified through their initial interview and, in the absence of verifiable supporting documentation, the interviewer's judgment. As the number of doubtful cases tends to increase, discussions are underway within the local Ministry of Health and the Ministry for the Family and Social Solidarity, to introduce an age verification examination procedure, in which case the individual would be requested to provide suitable evidence or be offered the possibility to take a medical test which would include a bone age test. However, in view of the fact that the test involves an examination supported by X-rays this process is being opposed by NGOs particularly because subjection to radiation particularly during formative years is contra-indicated.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

Single women who do not arrive through the legal immigration channels are initially detained. Those who request asylum are kept in detention centres until the Refugee Commissioner hears their case. Where possible accelerated status determination procedures are applied to minimise detention periods.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

There are no specialised procedures foreseen in legislation or in practice for short-term reception of asylum seekers upon arrival for victims of trafficking as yet, but action would be taken according to each individual medical or psychological assessment.

1.5.2 If so, how are victims of trafficking identified?

Identification of victims of trafficking is done according to the circumstances of the case in the course of criminal investigations. However, Malta has not as yet experienced any cases of asylum seekers being victims of trafficking.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Asylum seekers who arrive on the island irregularly, that are all asylum seekers who enter the country without an entry permit, are subject to detention in identified accommodation centres, with the exception of vulnerable groups such as children, pregnant women and persons suffering serious health conditions.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

There are no specific provisions for reception in situations of mass influx. Asylum seekers are treated in the same manner as described in 1.2 (above). However, contingency plans are ‘in hand’ to meet emergencies arising out of ‘mass influx’ (in our case huge arrivals of boat people).

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

See 1.3.1. Once an unaccompanied minor has been identified as such, (s)he is placed under a Care Order, which implies that the Minister for Family and Social Solidarity becomes responsible for him/her and (s)he is accommodated in an open centre/hostel for young persons. This process may be speedy or may take months, particularly when the centres are overcrowded.

2.3.2 If so, how are (unaccompanied) minors identified?

See 1.3.2.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

See 1.4.
2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

See 1.5.1.

2.5.2 If so, how are victims of trafficking identified?

See 1.5.2.


Proposals for implementation have been made but their realisation has not been finalised. Malta is currently in the process of implementing the Directive. Malta intends to submit proposals for funding through the European Refugee Fund to continue to comply with this Directive.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Yes.

3.2.2 If so, in which respects?

Generally speaking the capacity of the reception facilities is not sufficient to meet the ever-increasing number of persons arriving 'en masse', which is placing enormous strain on the limited infrastructure. In 2002 arrivals amounted to approximately 45% of Malta's number of births for that same year. This problem is compounded in view of the fact that Malta has no facility to participate in resettlement programmes in other countries, whilst repatriation of rejected asylum seekers tends to become increasingly problematic. Malta is taking steps to continually improve and increase the available space and facilities for asylum seekers as much as its human and financial resources permit. Malta supports a policy that includes detention. However, the NGO respondent has expressed concern that the conditions for detention are below minimum standards. The duration of detention is set at a maximum of eighteen months (there are plans for this period to be reduced to one year) although a recent legal amendment to the Immigration Act (as of 1 February 2005) now establishes a Board to review "unreasonable" periods of detention. Access to the Board for persons in detention is hampered by lack of legal aid and information.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Prior to the year 2001, in the absence of a national mechanism to process claims by asylum seekers, applications for refugee status were received, processed and determined by UNHCR (Rome) and the decisions were subsequently taken by the Maltese authorities. In October 2001 the Refugee Act came into force, by virtue of which the Government assumed responsibility for asylum in Malta. The Office of the Refugee Commissioner was established through the same legal instrument and became operational on 1st January 2002. Records show that Malta started experiencing the phenomenon of sustained mass arrival of irregular migrants by boat during the course of this year.

For the year 2002, the cost of reception of asylum seekers was estimated at close to one Million Maltese lira.

In 2003, the actual cost of reception of asylum seekers exceeded LM 1,075 859 (£2,506,751.47)
These figures exclude costs incurred by Government on Health provision, private individuals, non-governmental organisation and voluntary groups or financial and in-kind donations to such entities for asylum seekers.

4.2  How many asylum seekers were in the reception system during these years?

The numbers of persons who have stayed at reception centres for any period during the years indicated in 2002 and 2003 are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>1,686</td>
</tr>
<tr>
<td>2003</td>
<td>502</td>
</tr>
</tbody>
</table>

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Yes. First instance decisions are issued after all information is gathered from the adult applicants. Minor accompanied children are usually interviewed along with their parents.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

At the first instance stage, every effort is made to have female applicants interviewed by female caseworkers. Despite every effort, given the limited number of translators available, it is not always possible to have female translators present during an interview with a female applicant.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Unaccompanied minors arriving in Malta are referred to the appropriate authorities for the appointment of a legal guardian. Only once such an appointment has been made, does the Office of the Refugee Commissioner as the first instance body proceed to an interview. Unaccompanied minors are always interviewed in the presence of their guardian.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatizing events before or during their flight (torture, trafficking)?

No. However, all interviews are conducted in a confidential manner, with due attention being given to exceptionally sensitive cases. The interview is carried out with due attention to the condition of the applicant.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Yes. Appeal from a negative decision can be lodged before an Appeals Board, which is an administrative tribunal. During the time for consideration of the appeal the applicant is entitled to remain in Malta.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Upon arrival. In general terms, since Eurodac has been operational, fingerprinting and the processing of data occurs in a very short period as soon after the arrival as possible and should there be a ‘hit’ this would be immediately evident prior to or concurrent with the application for Refugee Status.
5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

Upon arrival. The exact moment depends on how the asylum seeker has entered Malta:
1) Those making an irregular entry by boat (the data of immigrants arriving irregularly by boat are processed in Eurodac as soon as possible upon their arrival and generally before action on their application for refugee status has been taken);
2) those making a regular entry and later submit an asylum application (the data of immigrants arriving regularly is processed as soon as they apply for refugee status);
3) irregular entries through the national airport - no such cases have been reported to date.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes. The Office of the Refugee Commissioner is the body that processes applications for asylum in Malta. This Office considers refugee claims and has the authority to recommend to the Minister for Justice and Home Affairs that, in spite of the fact that a person does not satisfy the requirements to be recognised as a refugee, such a person should be granted humanitarian protection in Malta. Current legislation defines “humanitarian protection” as “special leave to remain in Malta until such time when the person concerned can return safely to his country of origin or otherwise resettle safely in a third country”. Directive 2004/83 has not yet been transposed into national legislation and therefore the Office of the Refugee Commissioner, until now, does not examine applications in light of all the grounds for subsidiary protection as envisaged in this Directive.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Theoretically, yes.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Until now no such cases have arisen in Malta.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Recommendations for humanitarian protection issued by the Refugee Commissioner according to the Refugee Act are normally for a period of one year. It is also the Refugee Commissioner who, after examining all the relevant circumstances, recommends their (non)-renewal. Article 8 (8) of the Refugee Act states that humanitarian protection “shall cease if the Minister is satisfied, after consulting the Commissioner, that such protection is no longer necessary”. The Refugee Act contains specific provisions concerning withdrawal of refugee status. However, there is no substantial difference between the procedural rules for withdrawal of subsidiary protection and those for withdrawal of refugee status.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?
7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Procedures at the first instance stage are already in line with the Directive, however, there may be tensions concerning the issuing of decisions in a language the applicant may reasonably be expected to understand and freely available access to legal aid to contest such decisions.

7.1.2 If so, in which respects?

See 7.1.1.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

Regrettably this information is not available for the years 2001 and 2002. In 2003 the running costs of the Office of the Refugee Commissioner and the Refugee Appeals Board stood at LM 17,922 (€ 41,758).

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

The statistics are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cases Involving Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>350 cases involving 474 persons</td>
</tr>
<tr>
<td>2003</td>
<td>460 cases involving 568 persons</td>
</tr>
</tbody>
</table>

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

None.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

No humanitarian status decisions were withdrawn by the Office of the Refugee Commissioner during the years 2002 (when this office officially came into being) and 2003.
Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

If and where the actors are capable and willing to prevent the persecution or suffering of serious harm, then yes. Each case is examined on its own merits.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

If and where the actors are capable and willing to prevent the persecution or suffering of serious harm, then yes. Each case is examined on its own merits.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

In order to be granted refugee status in Malta, a person must have a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group or political opinion.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

A person would qualify for refugee status if (s)he has a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group or political opinion and (s)he is unable or unwilling to avail himself/herself of the protection of his/her country of nationality/habitual residence.

Cases of alleged persecution by non-state agents are given full consideration, also in the context of whether the state is willing and/or able to protect the person concerned.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

The Office of the Refugee Commissioner is of the opinion that consideration should be given to the UNHCR Guidelines on International Protection (May 2002), which provide: “Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another.” Moreover, “adopting a gender-sensitive interpretation of the 1951 Convention does not mean that all women are automatically entitled to refugee status.” Gender does play a role where persecution is directed against a person on the basis of gender (single pregnant women in Islamic states; gross discrimination against homosexuals etc).

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes. Moreover, unaccompanied minors who do not fulfil the criteria for refugee recognition and protection are normally granted humanitarian protection until they reach the age of 18, unless there are exceptional reasons not to do so.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

The Refugee Act makes no reference to victims of trafficking. To date, the Office of the Refugee Commissioner has never had applications for recognition of refugee status on such grounds. If such cases would arise, each case would be considered on its own merits.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?
Unaccompanied minors who do not fulfil the criteria for refugee recognition and protection are normally granted humanitarian protection until they reach 18 years of age, unless there are exceptional reasons not to do so. To date, the Office of the Refugee Commissioner has never had a case of an unaccompanied minor whose claims needed to be considered in the light of the provisions of Article 1F of the Refugee Convention. If such a case arises, the Office of the Refugee Commissioner will fully take into account all the rights of minors.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

The Directive has yet to be implemented. There does not appear to be a tension between the Directive and current practice.

10.2 If so, in which respects?

See 10.1.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

Detention is possible in case admission is refused at the airport of Amsterdam (Schiphol). These asylum applicants are deprived of their liberty and taken to the Application Centre (henceforth AC) at Schiphol Airport, where their asylum application is examined. They may be kept at the AC for 48 procedural hours (these are the hours between 8 am and 6 pm, in practice the AC procedure may take approximately 5 days). If the alien applies for asylum and the application is rejected, the measure of deprivation of liberty during the procedure in the AC can be changed to a regime of detention in a detention centre at the border (the Grenshospitium is located in Amsterdam) until the alien is deported. It is not possible to return a person without examining the asylum claim. In practice, the majority of asylum seekers arriving at the airport or at one of the seaports are refused admission, since almost none of them are in the possession of the documents necessary for entry. These documents include a valid travel document (with a visa if required) and proof of sufficient means to defray both the costs of the stay in the Netherlands and the costs of the journey to a place outside the Netherlands where entry is guaranteed. Asylum seekers who do not travel via the airport of Amsterdam can be placed in a “TNV” (pre-reception centre) in case they have to wait for their appointment to apply for asylum in the Application Centre (AC). Such placement does not imply detention; asylum seekers staying at a TNV are free to leave. The same regime applies to the AC in Ter Apel.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

No specific provisions. The TNVs (pre-reception centres, see 1.1) were set up during a time of mass influx, but reception in the TNV is now the norm.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Unaccompanied minor aliens (UMAs) who are 15 or older are placed in a TNV (pre-reception centre); for UMAs under the age of 15 the organisation for custody takes care of the child, until s/he can apply for asylum.

1.3.2 If so, how are (unaccompanied) minors identified?

Unaccompanied minors aliens (UMAs) are identified on the basis of their own declarations. In case of doubt the UMA is asked to cooperate with an investigation of his/her (real) age. If s/he does not cooperate with the investigation it is presumed that s/he is of age.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No, there are no specific provisions for (single) women.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No, there are no specific provisions for victims of trafficking.

1.5.2 If so, how are victims of trafficking identified?
Most of the time victims of trafficking are not identified. Sometimes the police take note of the case, but often there is not enough evidence to start further investigations. A lot of unaccompanied minors are also victims of trafficking. One major problem concerning identification is that the person concerned has to come forward with the story him/herself, sometimes in the course of an accelerated procedure.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Regular reception conditions do not imply detention. However, the Aliens Act contains two provisions that make it possible to detain asylum seekers: Section 6 and Section 59.

Section 6
1. An alien who has been refused entry into the Netherlands may be required to stay in a space or place designated by a border control officer.
2. A space or place as referred to in subsection 1 may be secured against unauthorised departure.

Section 59
1. If necessary in the interests of public policy (public order) or national security, the Minister may, with a view to expulsion, order the remand in custody of an alien who:
   2. is not lawfully resident;
   3. is lawfully resident on the grounds of section 8 (f), (g) and (h).
   4. If the papers necessary for the return of the alien are available or will shortly become available, it is deemed to be in the interests of public policy (public order) that the alien be remanded in custody, unless the alien has been lawfully resident on the grounds of section 8 (a) to (e) and (l).
5. An alien shall not be remanded in custody or the remand shall be ended as soon as the alien has indicated that he wishes to leave the Netherlands and also has the opportunity to do so.
6. Remand in custody pursuant to subsection 1 (b) or subsection 2 shall in any event last for no longer than four weeks. If section 39 has been applied prior to the decision on the application, the remand in custody pursuant to subsection 1 (b) shall in any event not exceed six weeks.

Those asylum seekers who arrive at Schiphol Airport or at a seaport and file an application, are refused leave to enter the country. Every person who is refused entry to the Dutch territory can be detained. The asylum seekers are deprived of their liberty and taken to the Application Centre (AC) at Schiphol where their asylum application is assessed. If the asylum application is rejected in the accelerated procedure, the asylum seeker will be taken to a detention centre, the “Grenshospitium”. S/he has to stay in the detention centre pending the appeal and higher appeal (if s/he appeals at all) until his/her deportation. If the authorities do not succeed in deporting the rejected asylum seeker, s/he will eventually be released (this can take more than a year).

In principle, asylum seekers applying in other AC’s can also be detained, but this rarely happens. Asylum seekers rejected in the accelerated procedure in the AC of Ter Apel are usually asked to move out of the centre and are required to leave the country by themselves. Detention of asylum seekers who have been rejected in this AC is only possible for the protection of public interest, e.g. if there is a risk that the asylum seeker would avoid deportation by going into hiding, or if s/he lodged a clearly fraudulent asylum application.

Neither form of detention is limited in time. After 6 months however, the detention is subjected to a more stringent test by the courts. After this period the interest of the detained person normally starts to weigh heavier than the interest of the Minister to detain the person.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?
There is an agreement with the organisation for the reception of asylum seekers (COA) to provide reception facilities in situations of mass influx. There is also a law on the implementation of the Temporary Protection Directive (2001/55/EG). Under this law (Stb. 2004, 691) in situations of mass influx people who fall under a temporary protection regime will stay as asylum seekers in the reception centres. The government has the possibility to postpone the decision on the asylum request for three years.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Yes, there are specific provisions for unaccompanied minor aliens (UMAs). The Minister recently sent a letter to parliament (TK 29062 nr. 29) in which she wrote that during the asylum procedure the organisation for the reception of asylum seekers (COA) will be responsible for the reception of all unaccompanied children until they reach the age of eighteen years old or until they are able to leave the country.

UMAs of 15-18 years of age are accommodated in small, separate units next to the return centres for adult asylum seekers. In these units unaccompanied minors live under the governance of especially trained employees of the COA. Every unaccompanied minor is also under the protection of a legal guardian, who has the supervision.

UMAs under 15 for whom return is expected are placed under the responsibility of the organisation for reception COA, in children’s homes especially for unaccompanied minors or in foster families. A UMA who gets a (temporary) residence permit or a UMA who is granted asylum is received under the responsibility of the organisation for custody, Nidos. When a permit to stay is given, the foster organisation Nidos is given the opportunity to find reception facilities for the child.

2.3.2 If so, how are (unaccompanied) minors identified?

Unaccompanied minor aliens (UMAs) are identified according to their own declarations. Upon their arrival, the police ask children whether they are unaccompanied. In case of doubt, the UMA is asked to cooperate with an investigation of his/her (real) age. Cooperation is also requested when the Immigration Service (IND) thinks that the child who says that s/he is under 15 years old may in fact be older. The investigation is performed through an X-ray of the bones. If the asylum seeker does not cooperate with the investigation it is presumed that s/he is of age.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

There are no specific provisions for (single) women. However in 2003 research has been conducted into the position of women and girls in the reception centres. The outcome was that there was a perturbing amount of incidents of sexual harassment and intimidation (18% of all centres reported this kind of incidents during the research period of six months). There is also a high rate of domestic violence (1 out of 20). The Minister announced improvement measures with regard to the illumination and sanitary facilities in the centres and training for personnel of the organisation for the reception of asylum seekers (COA). The implementation of the recommendations is still ongoing. Some recommendations mentioned in the research report are not being implemented, for example sanitary facilities for women within their living space or more possibilities for the empowerment of women.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No, there are no specific provisions for victims of trafficking.

2.5.2 If so, how are victims of trafficking identified?
At the end of 2004 the Minister send a national action scheme concerning 'Human Trafficking' to Parliament. With regard to the identification of victims, the Ministry of Justice will increase the availability of relevant information to the agencies and organisations concerned, provide better information for potential 'clients' and improve the recognition of signals of trafficking (see more in detail p. 16 of the national scheme).


Yes, Directive 2003/9 has been implemented.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

There exists a difference of opinion/interpretation between the government respondent and the NGO respondent on this issue. The government respondent contended that there is no tension between existing reception conditions in The Netherlands and the Directive, whereas the NGO respondent has indicated that such tension does exist. The issues that are subject to disagreement are discussed below under 3.2.2.

3.2.2 If so, in which respects?

No accommodation is provided for asylum seekers who have submitted a subsequent request (apart from certain exceptional situations). According to the NGO respondent this is contrary to article 3 of the Directive, which provides that all asylum seekers who remain lawfully within the territory of a Member State fall under the scope of the Directive. However, the government has contested that such restrictions are allowed under Article 16 of the Directive.

No accommodation is provided for persons whose appeals have been rejected in the Application Centre-procedure (‘AC-procedure’). According to the NGO respondent these persons are asylum seekers, entitled to remain on Dutch territory until the court has reviewed their application, and therefore falling under the scope of the Directive. However, according to the government respondent these persons are no longer asylum seekers and therefore do not fall within the scope of the Directive.

The NGO respondent also expressed the following concerns:
- The amount of the allowance allocated to asylum seekers is insufficient.
- Insufficient care is available to persons with special needs, in particular children (article 17 Directive).
- Reception conditions may be restricted if asylum seekers refuse to participate in programmes to prepare them for their return. According to the NGO respondent this is contrary to article 16 of the Directive, which contains a limited number of grounds on which reception conditions may be limited.
- It is unclear how the Minister aims to prevent violence within the reception centres (article 14(2)(b) Directive).
- Insufficient attention is paid to ensuring family unity.

In reaction to these concerns the government respondent declared that there are several special programmes for asylum seekers, including those who are obliged to return to their country of origin. In particular there is a special project going on. This project aims at 26.000 asylum seekers who applied for asylum before the new Aliens Act 2000 came into effect. This group of 26.000 gets extra facilities when they decide to return to their country of origin after a negative decision. These facilities include inter alia a number of conversations with these asylum seekers to help them to overcome problems that prevent them from going back to their country of origin and a financial contribution for reintegration in the country of origin, as well as a ticket. Persons with special needs always get personal and individual attention and care is taken to ensure family unity. The organisation that provides accommodation to refugees has started a programme last year to prevent violence in reception centres. This programme was financed by the Dutch government.
4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

The costs of reception were:
- 1999: €879,162,412
- 2000: €917,779,108
- 2001: €1,105,751,000
- 2002: €1,011,399,000
- 2003: €991,637,000

4.2 How many asylum seekers were in the reception system during these years?

On average, the number of asylum seekers in the reception system was as follows:
- 1999: 65,790
- 2000: 75,769
- 2001: 89,017
- 2002: 82,664
- 2003: 66,480

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Yes, a personal interview with every asylum applicant is a legal requirement in The Netherlands. Regarding dependent family members: spouses/partners and children of fifteen years of age or older have to file their own asylum application. Children of twelve, thirteen and fourteen years old can choose to submit an asylum application of their own. Otherwise their parents will also apply for asylum on their behalf. They will be interviewed if they wish. Minor children under the age of twelve cannot apply for asylum on their own. A parent or legal guardian has to apply for asylum on their behalf. Children under the age of twelve who are accompanied by their parent(s) or legal guardian will not be interviewed.

Normally there are two interviews: the first one is to establish the nationality, identity and travel route of the applicant; the second one is about the asylum motives. (The answers to questions 5.2 – 5.4 relate especially to the second interview.)

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Since August 2003, all female asylum seekers are asked during the first interview whether they prefer a female interpreter and an officer of the Immigration Service (IND) for their second interview (about their asylum motives). If the asylum seeker prefers a female interpreter and IND officer, the IND will make an effort to grant this request. If the IND is not able to find a female interpreter and/or IND officer, the interview is not automatically considered void. Especially if the asylum request is processed in the 48-hour accelerated procedure, it can be difficult to find a female interpreter and IND officer in time. If no female interpreter is present during the interview, this will be taken into account. According to the Minister the asylum seeker will be sent through to the normal asylum procedure if necessary. If a woman did not inform the IND that she preferred a female IND officer and interpreter, but refers to sexual violence during the second interview, the male IND officer may ask her again if she wishes to be interviewed by a female officer.
5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

During the first interview, the age of the applicant is taken into account to the extent that there is more explanation and attention is paid to the level of comprehension of the minor. In the end the results of the first interview are not directly used in the second, most important, interview. The relevant questions of the first interview are repeated in the second interview. A specific procedure exists with regard to the second interview. In this interview, unaccompanied minor asylum applicants under twelve years of age are interviewed by especially trained staff in special, child-friendly interview rooms. There is a special unit for this within the Immigration and Naturalisation Service. If pedagogical or psychological research shows that a child experiences certain problems that make an interview difficult, the interview may not take place. Minors under twelve years of age are interviewed in the normal (OC) procedure, never in the 48 hours (AC) procedure. There are no specific procedures for interviewing minors above twelve years of age, but it is policy to take the young age of the applicant into consideration. The NGO respondent noted that she found this does not always happen in practice. Preparation of the applicant and the way the interview is done are adjusted to the level of perception and understanding of the applicant. More care is taken than in interviews with adults.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

If there is doubt, because of inconsistencies in the asylum seeker’s story or if s/he makes a confused impression, specialised medical services are asked whether or not the asylum seeker can be interviewed. Applicants who are victims of traumatising events before or during their flight, can be interviewed and rejected within the accelerated procedure (48 hours). This happens often in practice. Many NGO’s, but also the Advisory Committee on Aliens Affairs and a special Research Committee on medical aspects of migration policy are of the opinion that requests of traumatised asylum seekers should not be processed in the accelerated asylum procedure. However, the Minister wrote in a reaction to the report of the last mentioned committee, that when it is not clear whether the asylum seeker can be interviewed because of his/her medical situation, the medical service will be asked for advice. If the medical service comes to the conclusion that the asylum seeker cannot be interviewed, the asylum request will not be processed in the accelerated procedure. The asylum requests of victims of torture and sexual violence will not be rejected in the accelerated procedure. However, the NGO respondent noted that this does happen in practice. Traumatising experiences can be a reason to grant asylum. In the accelerated procedure, only those asylum seekers are rejected whose asylum story clearly does not raise issues which would justify granting asylum, and whose medical situation does not prevent expulsion. Here again, the NGO respondent stated that according to the Dutch Council for Refugees this is not what happens in practice. If the asylum seeker does not agree with the negative decision, s/he can submit an appeal. Therefore, according to the Minister, the accelerated procedure contains enough safeguards for the asylum seeker. The Immigration Service (IND) has some officers who are specialised in interviewing traumatised persons.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

In principle every applicant for asylum is entitled to remain in the Netherlands until the first decision is taken on the application. There are two exceptions:
- If a person lodged a subsequent asylum application and according to the tentative opinion of the Minister of Aliens Affairs and Integration it concerns a repeated application (the applicant did not submit any new facts or circumstances, there is no new asylum policy favourable to the applicant etc.).
- If according to the tentative opinion of the Minister of Aliens Affairs and Integration the application can be rejected because the applicant is considered a danger to public order or national security.
5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Every applicant for asylum who has lodged an appeal against a negative decision on his/her first asylum application usually has a right to remain in the Netherlands, i.e. when the decision has been taken in the normal asylum procedure. However, lodging an appeal has no suspensive effect in some instances, e.g. when the application has been rejected in the (accelerated) application centre procedure or when the negative decision concerns a subsequent application.

Other exceptions are:
- The rejection of the asylum application because another country is responsible for processing the application (Dublin regulation).
- The appeal was not lodged in time
- The asylum applicant is placed in aliens’ detention

However, in cases when an appeal has no suspensive effect, the asylum seeker can ask the court to suspend expulsion until a decision on the appeal has been taken (which is usually granted; unless public order or national security are at stake). However, pending the appeal the applicant will not be entitled to reception facilities or social support. This makes it particularly difficult for the applicant to get in touch with his/her lawyer to prepare for the appeal session.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

For asylum seekers of 14 years or older Eurodac is consulted at the start of the 48-hour procedure in the Application Centres (ACs). This is done during the intake by the Alien Police.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

There is one single asylum procedure for both refugee protection and subsidiary protection. Persons who are recognised as refugees and persons who get subsidiary protection are granted the same asylum status, with identical rights.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.
6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes, the person will be entitled to remain in the Netherlands until a court or tribunal has dealt with an appeal against a negative decision. There are a few exceptions:

- The appeal was not lodged in time
- The asylum applicant is placed in aliens' detention
- Public order or national security is at stake

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Section 32 (1) (b) of the Aliens Act 2000 stipulates that asylum status may be withdrawn on account of reasons of public order or national security. No cases are known where this provision was applied after new information about the refugee's involvement in actions mentioned in Article 1 F of the Refugee Convention became available. However, residence permits (for a fixed period or an indefinite period) are known to have been withdrawn on the basis of article 1 F. The ground for withdrawal in such cases is the following:

The alien has supplied incorrect information or has withheld information in circumstances where such information would have led to the rejection of the original application to issue or renew the permit.

In some cases the use of this provision appears questionable, because the withdrawal is based on the information as provided by the asylum seeker at the first and second interview, which led to the granting of the asylum permit. In these cases the Immigration Service (IND) did not question the asylum seeker on the 1 F issue at the time of the asylum application.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Yes, especially in cases concerning asylum seekers from Afghanistan.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

No, refugees and those who are granted subsidiary protection get the same status with the same rights. There is one set of procedural rules concerning this status (withdrawal, appeal etc).

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

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209 Art. 82 AA 2000
7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

As the Asylum Procedure Directive has not yet been formally adopted, implementation has not yet begun. However, the government does not expect significant tensions to appear between the existing asylum procedure and the proposed Directive.

7.1.2 If so, in which respects?

The NGO respondent mentioned the following issues:

It remains unclear whether Article 23 under (3) and (4) of the Directive allows for an accelerated examination of asylum requests without a substantial criterion. Article 23 (3) seems to allow this, while Article 23 (4) seems to suggest that a criterion is needed. In the Netherlands such accelerated examination is based on a mere formal requirement - the request can be rejected within a certain number (48) working hours, and not on a substantial criterion.

Another question is whether, given the time limits in the accelerated procedure and the withholding of reception facilities during the appeals procedure (if allowed under the Reception Directive), the appeal procedure provides an effective remedy. Since the effective remedy needs further interpretation by the European Court of Justice (ECJ), there is no clarity on this issue yet.

A final question is, whether the Dutch practice regarding subsequent requests is compatible with art. 33 (3) (4) and (6) and art. 34 (2) first and last sentence. The Dutch legislation regarding subsequent applications, as laid down in art. 4:6 General Administrative Act, as interpreted by the Administrative Law Section of the Council of State, could be seen as a severe curtailment of access to a new procedure.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

The total costs are available only for costs made by the Immigration Service (IND) for asylum for the period 2000-2003:

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost (mn)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>€ 156.7</td>
</tr>
<tr>
<td>2001</td>
<td>€ 202.6</td>
</tr>
<tr>
<td>2002</td>
<td>€ 196.4</td>
</tr>
<tr>
<td>2003</td>
<td>€ 155.4</td>
</tr>
</tbody>
</table>

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>Applications submitted</td>
</tr>
<tr>
<td>------</td>
<td>------------------------</td>
</tr>
<tr>
<td>1999</td>
<td>39,299</td>
</tr>
<tr>
<td>2000</td>
<td>43,898</td>
</tr>
<tr>
<td>2001</td>
<td>32,580</td>
</tr>
<tr>
<td>2002</td>
<td>18,667</td>
</tr>
<tr>
<td>2003</td>
<td>13,402</td>
</tr>
</tbody>
</table>

Source: applications: UNHCR [http://www.unhcr.ch/statistics](http://www.unhcr.ch/statistics); decisions: Year reports IND.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

<table>
<thead>
<tr>
<th>Withdrawal of refugee status</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal of refugee status</td>
<td>106</td>
<td>127</td>
<td>30</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

The figures above concern refugee status (‘A-status’) under the former Aliens Act, which was in force until April 2001. For the years 2002 and 2003 see under 8.5.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

<table>
<thead>
<tr>
<th>Withdrawal of subsidiary protection status ('asylum related residence permit')</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal of (temporary) residence permit for asylum</td>
<td>32</td>
<td>74</td>
<td>31</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withdrawal of (temporary) residence permit for asylum</td>
<td></td>
<td></td>
<td>27</td>
<td>84</td>
<td>372</td>
</tr>
</tbody>
</table>

The figures for 1999-2001 concern refugee status subsidiary protection status under the former Aliens Act. Since the coming into effect of the Aliens Act 2000 on 1 April 2001 the Netherlands have one asylum status covering both refugee and subsidiary protection grounds, therefore it is not possible to provide separate numbers for the years 2001-2003.

Qualification as a refugee or as a person in need of other forms of protection
9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Yes. For example in decisions on Kosovar cases, the courts have ruled that the protection of UNMIK and KFOR could be sought. Only because it was unclear whether the protection offered was sufficiently effective, did the court not allow such grounds for rejecting an asylum claim lodged by members of the Slavic Muslim minority in Kosovo.
The internal flight alternative has also been applied in the sense that de facto authorities, such as KDP and PUK, were in principle deemed capable of providing protection.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Yes. This would be the same as under 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes, the act of persecution must be linked to one of the persecution grounds.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

No. In the asylum procedure the first question is whether the asylum seeker should be considered a refugee in the sense of the Geneva Convention. In the framework of that question, it is assessed whether the asylum motives are linked to one of the grounds for asylum in the Geneva Convention. If that is not the case, it is investigated whether the asylum seeker qualifies for a residence permit on another ground.
The Administrative Law Division of the Council of State, the highest court in asylum cases in the Netherlands, made the following statement:
‘There can only be fear of persecution in the sense of the Refugee Convention if the persecution is based on one of the persecution grounds mentioned in section IA of the Refugee Convention. This assessment precedes the question whether the authorities can provide protection against the stated facts.’

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

According to Dutch asylum policy, a social group is a group with a common background, status or pattern of standards and values or common interests. Gender cannot be the only criterion to conclude that a person belongs to a certain social group. Women in general do not form a social group because as a social group their composition is too diverse. The starting point of the asylum policy is the requirement of individualisation. Criminal prosecution for the infringement of a rule which is especially applied to women can be persecution in the sense of the Refugee Convention if:
- the punishment is disproportionate and related to one of the persecution grounds
- in addition to the normal punishment there is discriminate persecution based on one of the persecution grounds
As part of a gender-inclusive approach in the Dutch asylum system, an asylum request is processed with special attention for the position of men and women in the country of origin. This entails that the activities of asylum
seekers are classified as private or public. Activities that are typically feminine in the country of origin could be considered as private in The Netherlands (e.g. cooking), while they could be considered public by the authorities in the country of origin (e.g. cooking for the resistance). Thus, gender-related aspects are taken into account. Applicability of one of the persecution grounds of the Geneva Convention remains a requirement for qualification as a refugee. If a female asylum seeker states that discrimination is directed specifically at women, there must still be a link to one of the persecution grounds to be granted refugee status. Resistance against female genital mutilation can under certain circumstances lead to the conclusion that a person is a refugee.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

They can be considered as refugees and as persons eligible for subsidiary protection, if they fulfil the conditions.

It does not happen very often that an unaccompanied minor is recognised as a refugee. Sometimes unaccompanied minors get an asylum status because they are in need of subsidiary protection. If the applicant is an unaccompanied minor and his/her asylum request was rejected, a regular (non-asylum related) residence permit is issued if sufficient care cannot be provided in the country of origin. This permit is granted until the minor turns eighteen; s/he is then expected to return to his/her country of origin. If the minor has had a regular permit for three years before s/he turns eighteen (i.e. the minor was under 15 when s/he applied for asylum) s/he can apply for a permanent residence permit that cannot be withdrawn when the minor turns eighteen or once sufficient care can be provided the country of origin.

If an adult, who applied for asylum on behalf of his or her child, is granted asylum status, the child will be granted asylum status on the same ground. If a minor child applied for asylum on his/her own behalf s/he can be granted asylum status for his/her own personal reasons. If s/he does not have personal reasons to be granted a status, but (one of) the parents do, s/he will be granted an asylum status on the same ground as his/her parent(s).

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Victims of trafficking can apply both for asylum and for a regular residence permit, depending on the ground on which they want to stay in the Netherlands. The fact that someone is a victim of trafficking can play a role in the asylum procedure. Article 29 of the Aliens Act provides a basis for asylum, called special humanitarian grounds, which is a form of subsidiary protection. Usually victims of trafficking will want to apply for a regular residence permit on the basis of the special policy for victims of trafficking.

Victims of trafficking will be given three months time to decide whether they want to report to the police. If they choose to do so, this will be considered as an application for a regular (not an asylum) permit. Until a decision is taken on this application, the applicant will be allowed to stay in the Netherlands. This means that if s/he has also applied for an asylum permit, this application will be rejected on the ground that the person already has the right to remain in The Netherlands (article 30(1)(c) of the Aliens Act). However, after or pending an asylum procedure a person will have the possibility to apply for a permit on regular grounds. A regular permit, which is issued because the applicant is a victim of trafficking, is valid for the duration of the criminal procedure against the traffickers. The permit can be withdrawn at the moment the criminal procedure has ended.
9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Yes. However, article 1 F cannot be invoked against child soldiers younger than 15 years. If the ex-child soldier is fifteen-eighteen years old the individual facts and circumstances will be taken into account. Those facts and circumstances are e.g.:

- The age of the child on the moment s/he entered the army
- The (in)voluntary nature of the entrance into the army
- The consequences of a refusal to enter the army
- Events such as severe violence/traumatising experiences, which influenced the will of the child
  - The duration of being a child soldier
  - The absence of opportunities to escape (sooner) and/or to withdraw from personal involvement in crimes.
  - The forced use of drugs and/or medication
  - Promotions because of good performances.

In practice the applications of a few minors have indeed been rejected on the basis of article 1F.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

See 10.2.

10.2 If so, in which respects?

The government respondent stated that most articles of the Directive would not lead to a change in the existing practice. The content of most articles of the Directive is in accordance with existing policy rules and jurisprudence.

Meanwhile, the NGO respondent found that a lot of uncertainty continues to exist concerning the Directive and that more research will have to be conducted on the relation between the Directive and current practice in The Netherlands. She indicated the following issues as being of concern, while recognising that the viewpoints expressed here may be subject to change in the future:

From a technical perspective, the NGO respondent noted that the Dutch aliens legislation would have to be amended in order to clarify the relationship between the EU refugee status and subsidiary status and the national statuses. For example, if the Dutch subsidiary status would be considered the equivalent of the status of art. 15c of Directive 2004/83 - only granted on more favourable grounds - it is questionable whether the less favourable conditions under national legislation for withdrawal - in practice - and the application of ‘internal protection’ - de jure - would be compatible with the Directive. This depends on the transposition of the Directive. In response, the government respondent that no amendment to existing legislation would be necessary, as the relationship between the EU refugee and subsidiary status on the one hand, and national statuses on the other, could be sufficiently clarified through a modification of the government’s commentary to the Aliens Act. The government respondent also noted that there is no reason to consider the Dutch subsidiary status as being the equivalent of the status described under Article 15 (c) Directive.

A difference of interpretation also exists between the NGO and the government respondent with regard to Article 4(1) of the Directive.

Under Dutch legislation, the asylum seeker has to provide all the relevant documentation and data when s/he files the application. On the basis of the information provided at the start of the procedure, the government will investigate whether there is a ground for granting international protection.

According to the NGO respondent the duty placed on the asylum seeker is too heavy, whereas the government finds that the existing practice is conform the Directive.
**Arrival and reception of asylum seekers**

1.1 *Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?*

According to the Polish Act on Protection of 2003\(^{210}\) (Article 40), an alien applying for refugee status shall not be detained unless he/she:

1) submits an application for refugee status
   a) during the border control, not having the right of entry to the territory of the Republic of Poland,
   b) while remaining illegally in the Republic of Poland;
2) prior to submission of an application for refugee status
   a) crossed or attempted to cross the border in an unlawful manner,
   b) obtained a decision obliging him/her to leave the territory of the Republic of Poland or a decision to be expelled;
3) was rendered the decision to be expelled after the submission of an application for refugee status.

Asylum seekers applying for refugee status at the borders are not detained, however, there are insufficient means to provide a place to stay for all those who have reported at the border on the same day, until the moment when they can lodge their applications. As a result, a number of asylum seekers may be returned from the border and asked to come back the next day. This practice is explained by the Border Guards by the fact that after, the last train to Warsaw (where asylum seekers are registered for the purpose of receiving a place in a reception facility) leaves the border post (which is let’s say around 16.00) there is no possibility of leaving the border post, but also no place for the asylum seekers to spend the night.

As regards airports, according to the Helsinki Foundation’s for Human Rights employee information, a place for detained foreigners has been created. The place is one room with beds and sanitary facilities, which can accommodate up to 10 persons (no separated areas for men and women). Foreigners who have no right to enter Poland can be kept there; there is no information about detention of foreigners who applied for refugee status.

1.2 *Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?*

No, there are no specific provisions for asylum seekers in situations of mass influx. In fact, such a situation has never occurred in Poland.

According to Polish law in cases of mass influx (Article 106 of the Act on Protection): “Aliens arriving to the Republic of Poland in great numbers, who have left their country of origin or specific geographical area for reason of a foreign invasion, war, civil war, ethnic conflicts or serious violation of human rights, may be provided with temporary protection on the territory of the Republic of Poland, regardless whether their arrival was spontaneous or aided by Republic of Poland or by international community.”

1.3.1 *Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?*

\(^{210}\) In this questionnaire the term ACT ON PROTECTION refers to Polish Act on granting protection to aliens within the territory of the Republic of Poland of the 13th of June 2003.
No, there are no such provisions.

1.3.2 If so, how are (unaccompanied) minors identified?

N/A.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No, there are no such provisions.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No, there are no such provisions.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Reception conditions do not necessarily imply detention, however the applications of some asylum seekers may be examined while they remain in detention. The grounds on which an asylum seeker may be put in detention are listed in Article 40 of the Act on Protection of 2003 (see question 1.1).

To get a clear picture of the situation it should be explained when a decision on expulsion (Article 40 paragraph 3) can be issued. According to Article 88 of Act on Aliens of 13 June 2003:

1. An alien shall be rendered a decision on expulsion from the territory of the Republic of Poland, if:
   1) he / she resides on that territory without the required visa, the residence permit for a fixed period or the permit to settle;
   2) he / she carried out work contrary to the Act of 14 December 1994 on employment and combating unemployment or he / she took up another economic activity contrary to the laws in force in the Republic of Poland;
   3) he / she does not possess the financial means necessary to cover the costs of residence on the territory of the Republic of Poland and he / she is not able to indicate any credible sources of obtaining of those means;
   4) his/her data are recorded in the register of aliens whose residence on the territory of the Republic of Poland is undesirable, if an alien’s entry to this territory takes place within the period of validity of the record;
   5) the continuation of his/her residence would constitute a threat to the state security, defence and the public policy or if it would be in breach of the interests of the Republic of Poland;
   6) he / she has crossed or has attempted to cross the border contrary to the laws;
   7) he / she did not leave voluntarily the territory of the Republic of Poland within the time limit specified in the decision:
      a) on obligation to leave this territory,
      b) on refusal of granting of the residence permit for a fixed period;
      c) on withdrawal of the residence permit for a fixed period.
   8) an alien does not comply with fiscal obligations to the State Treasury
   9) an alien has completed to serve a sentence of imprisonment adjudged in the Republic of Poland for committing an intentional crime or tax offence.

2. The decision on expulsion shall not be rendered to an alien who possesses the permit to settle.”
An asylum seeker placed in a detention facility is to be released if a decision in his/her case has not been issued within a period of one month following the application. If an asylum seeker lodged his/her application while in detention, s/he is to be released if a decision has not been issued within 3 months.

An asylum seeker may also be released:

1) upon the decision of the President of the office for repatriation and aliens, rendered ex officio or upon the request of the asylum seeker, if the evidence of the case indicates that it is probable that s/he meets the conditions for being recognised as a refugee;
2) on general grounds, on the basis of a court decision, if
   a. the reasons justifying application of those measures ceased to exist;
   b. detention may cause a serious threat to his/her life or health;
   c. detention is not possible because of the circumstances other than referred to in the above point 2);
   d. the decision on expulsion of the alien from the territory of Poland has been reversed or invalidated;
   e. an alien has been granted refugee status or asylum;
   f. an alien has been granted a permit for tolerated stay.

In general, the majority of people who apply for asylum are not detained, despite the lack of a legal title to stay in Poland. This is due to a lack of detention facilities as well as to the fact that most of the applicants are Chechens who generally meet the criteria for eligibility for subsidiary protection.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

No, there are no such provisions.

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Yes, there are. The specific provisions, extracted from the Act on granting protection to aliens within the territory of the Republic of Poland, are listed below:

Article 47
1. The authority admitting an application for granting refugee status submitted by a minor staying on the territory of the Republic of Poland without a legal representative, hereinafter referred to as “unaccompanied minor”, shall apply immediately to the court competent with respect to the minor’s place of residence, the motion for:
   1) appointment of a guardian to represent the minor in the procedure for granting refugee status;
   2) placing the minor in the custodian educational centre or in the centre for aliens applying for refugee status, hereinafter referred to as the “centre”.
2. The President of the Office shall apply the motion referred to in Section 1 if during the proceedings carried out by the President of the Office or by the Refugee Board information that an unaccompanied minor participates in the proceedings for granting refugee status has arisen.
3. Until the date of rendering by the court the statement in case referred to in Section 1 paragraph 2 an unaccompanied minor shall be placed in:
   1) a custodian educational centre in case he/she is under 13 years old;
   2) in the centre in case he/she is over 13 years of age.
4. Any expenses connected with placing and stay of an unaccompanied minor in the custodian educational centre shall be financed from the state budget, from the part of
which the minister competent with respect to internal affairs the disposer, from the means being at disposal of the President of the Office.

5. An unaccompanied minor shall not be placed in a guarded centre or in the arrest for the purpose of expulsion.

Unaccompanied minors are placed in special zones for children.

Article 48
1. During the proceedings for granting refugee status a custodian for an unaccompanied minor shall be appointed immediately.
2. The custodian shall exercise custody over the person and property of the unaccompanied minor, and in particular:
   1) shall supervise the provision of such minor with appropriate accommodation conditions as well as access to education and medical care;
   2) shall cooperate on the arrangement of the minor’s free time, including cultural, sport and recreation events;
   3) shall grant assistance, in order to find the minor’s family members, in contacting national and international non-governmental organizations whose statutory aim is to act for the well being of minors and refugees.
3. The custodian shall perform the tasks referred to in Section 2, taking into account the best interests and opinions of the unaccompanied minor, as well as ethnic, religious and language reasons.
4. The custodian shall be appointed by the President of the Office from among officials of the Office, for the period up to the date of completion of the proceedings for granting the refugee status.
5. The custodian should have qualifications of a social worker, determined in the Act of 29 November 1990 on social assistance.

Article 49
1. In the procedures for granting refugee status, the hearing of testimonies and explanations of an unaccompanied minor shall be conducted
   1) in a manner considering the age of the unaccompanied minor, his/her maturity and mental state as well as the fact that his/her knowledge of the real situation in the country of his/her origin may be limited;
   2) after providing him/her with the information on factual and legal circumstances which may influence the results of the proceedings for granting the refugee status;
   3) after informing him/her about the possibility to make a request for being heard in the presence of a person indicated by him / her;
   4) in a language understandable for him/her and, if needed, with the participation of an interpreter;
   5) in the presence of:
      a) a guardian referred to in Article 47 Section 1 paragraph 1,
      b) a custodian,
      c) another adult, indicated by an unaccompanied minor, if it does not make difficulties in the proceedings,
      d) a psychologist or a pedagogue, who prepares an opinion on a psychophysical state of the unaccompanied minor.
2. A course of activities referred to in Section 1 may be recorded by means of an audio - video recording device, if there are no technical obstacles.

Article 50
The activities undertaken during the procedure for granting refugee status with participation of an unaccompanied minor shall be carried out by a person who meets at least one of the following conditions:

1) has completed the master degree education at the faculty of law and has worked for 2 years in institutions dealing with child care;
2) has completed a master degree education or higher vocational education and has worked for 2 years in public administration and who has passed a training in the scope of carrying out the proceedings for granting refugee status with participation of minors;
3) has completed a master degree at the faculty of pedagogy, psychology or sociology and has worked for 2 years in public administration.

Article 51
The provisions of Article 56 Section 4 and Article 64 – 66 shall not apply to providing assistance to an unaccompanied minor applying for refugee status. [it regards general provisions on granting aid to adult asylum seekers].

Article 52
An unaccompanied minor, who has been refused refugee status, shall remain in the centre or shall be placed in the location, indicated for his/her stay by the custodian court competent with respect to a minor’s place of residence, until he / she is handed over to the authorities or the organizations of his/her country of origin whose statutory functions include issues of minors.”

2.3.2 If so, how are (unaccompanied) minors identified?

Minors are identified by their own declarations. According to Polish Law, if there are doubts as to the age of an alien who claims to be a minor, s/he may be subjected to a medical examination for the purpose of determining his/her age. This medical examination may be carried out only with the consent of the alien or his/her legal representative. The results of the medical examination should contain information about the age of the alien, as well as the acceptable margin of error. An alien who claims to be a minor shall be treated as a person of full legal age, if he/she or his/her legal representative refuse to consent to carrying out medical examinations.

The relevant provision in the Act on Protection is quoted below:

Article 21
1. If there are doubts as to the age of an alien who claims to be a minor, he/she may be undergone to medical examinations for the purpose of determination of his/her actual age.
2. Medical examination referred to in Section 1 may be carried out only at the consent of the alien or at the consent of his/her legal representative.
3. Results of the medical examination should contain the information about age of an alien, as well as the information about the acceptable margin of error.
4. An alien who claims to be a minor shall be treated as a person of full legal age, if he/she or his/her legal representative refuse the consent to carrying out medical examinations referred to in Section 1.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

No, there are no such provisions.
2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No, there are no such provisions. As the officials who are responsible for registering and examining the applications have not received specific education in this respect, it is possible that they may not recognise persons as being victims of trafficking.

2.5.2 If so, how are victims of trafficking identified?

N/A.


The provisions of the mentioned Directive were partially implemented in the Polish Act on granting protection to aliens within the territory of the Republic of Poland of the 13th of June 2003. All provisions will be incorporated into the amended Act on Protection. To this end a proposal has been put forward by the government and has now reached an advanced stage of the legislative process (2nd reading in the Sejm – the lower chamber of the Polish parliament). The amended Act will probably come into force in October 2005.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

See 3.2.2.

3.2.2 If so, in which respects?

Article 5 (1) of the Directive states:

“Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.”

This provision is implemented in Polish law by way of two provisions: one concerning asylum seekers who are in detention and one general provision. The latter provision reads as follows:

“An alien applying for refugee status may contact freely a representative of the United Nations High Commissioner for Refugees as well as any organisations dealing statutorily with refugee matters.”

According to the NGO respondent, this norm cannot be considered sufficient to guarantee proper access to information on NGOs.

Article 17 (1) of the Directive states that Member States shall take into account the specific situation of vulnerable persons. Polish legislation prescribes that the specific situation of all vulnerable persons shall be taken into account. The government has pointed out that there are specific provisions concerning unaccompanied minors and victims of torture and violence. However, the NGO respondent has pointed out that there are no provisions in Polish law regarding pregnant women and single parents with minor children.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

The average monthly cost of reception in 1999-2003 was as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost Description</th>
<th>Cost (PLN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999 – 2001</td>
<td>1250 PLN (around 300 Euro)</td>
<td>1250 PLN</td>
</tr>
<tr>
<td>2002</td>
<td>1125 PLN (less than 300 Euro)</td>
<td>1125 PLN</td>
</tr>
<tr>
<td>2003</td>
<td>1000 PLN (around 250 Euro)</td>
<td>1000 PLN</td>
</tr>
</tbody>
</table>
These are the costs per asylum seeker including accommodation, food and pocket money.

4.2 How many asylum seekers were in the reception system during these years?

The average number of asylum seekers staying in reception system during 1999-2003 was as follows:

1999 - 278 persons
2000 - 556 persons
2001 – 1085 persons
2002 – 1521 persons
2003 – 1645 persons

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Yes, this is guaranteed by the provisions of the Codex of Administrative Procedures, which is a lex generalis in relation to the Act on Protection. A personal interview is treated as an obligation during the asylum procedure (Article 27 paragraph 1 of the Act on Protection: an alien applying for refugee status is obliged to (inter alia) report at summons of the President of the Office in order to submit testimonies and explanations).

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

If there is such a possibility and a woman is a victim of violence, she may be assisted by a female official. There are no specific provisions for women, but the provisions concerning asylum seekers who have been victims of traumatising events may be applicable (see 5.4). A female asylum seeker will have to state that she is a victim of violence before female officials can assist her. However, this does not mean that if she does not make such a statement, female officials cannot assist her.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Yes, the relevant provision is Article 49 of the Act on Granting Protection, which reads:

1. In the procedures for granting refugee status, the hearing of testimonies and explanations of an unaccompanied minor shall be conducted:
   1) in a manner considering the age of the unaccompanied minor, his/her maturity and mental state as well as the fact that his/her knowledge of the real situation in the country of his/her origin may be limited;
   2) after providing him/her with the information on factual and legal circumstances which may influence the results of the proceedings for granting the refugee status;
   3) after informing him/her about the possibility to make a request for being heard in the presence of a person indicated by him / her;
   4) in a language understandable for him/her and, if needed, with the participation of an interpreter;
   5) in the presence of:
      a) a guardian representing him/her during the procedure,
      b) a custodian,
      c) another adult, indicated by an unaccompanied minor, if it does not make difficulties in the proceedings,
      d) a psychologist or a pedagogue, who prepares an opinion on a psychophysical state of the unaccompanied minor.
2. An interview may be recorded by means of an audio-video recording device, if there are no technical obstacles.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatizing events before or during their flight (torture, trafficking)?

Asylum seekers whose psychological and/or physical state allows to presume that he/she has been a victim of violence, or who are disabled, should be interviewed with the participation of a psychologist and - if necessary - an interpreter of the sex indicated by the alien or by a doctor.

Article 54.1.4 of the Act on Granting Protection:
1. Administrative activities in proceedings for granting refugee status to an alien whose psychological and/or physical state allows to presume that he/she has been a victim of violence, or of aliens with disabilities, shall be effected:
   1) in conditions assuring freedom of speech, in a particularly tactful manner, adjusted to the alien's psychophysical state;
   2) in the place of his/her residence;
   3) on a date adjusted according to his/her mental and physical state, taking into consideration the dates of medical treatments undergone by such an alien;
   4) with participation of a psychologist and - if necessary - of an interpreter of the sex indicated by an alien or by a doctor.
2. If it is justified by the mental or physical state of an alien placed in the centre, he/she shall be provided with transport in order to:
   1) give testimonies and statements in the proceedings for granting the refugee status;
   2) undergo the medical treatment.
3. Such an alien shall not be placed in a guarded centre or in detention for the purpose of expulsion.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes. An asylum seeker resides legally in Poland until his/her appeal in the administrative procedure for refugee status is rejected (the procedure is divided into an administrative one in two instances: the President of the Office for Repatriation and Aliens, and Refugee Board, and a judicial one in two instances: the Provincial Administrative Court and the Supreme Administrative Court).

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Every applicant for refugee status is entitled to stay in the territory of Poland until the second instance authority (i.e. the Refugee Board) has dealt with an appeal against a negative decision. They are not entitled to remain in Poland for the duration of the judicial procedure; however, the court may suspend the execution of negative decision of the Refugee Board.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Eurodac is consulted at the first stage of the procedure for refugee status, i.e. at the moment of lodging an application.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See point 5.7.1

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?
Yes. The single asylum procedure was introduced into Polish Law in 2003 and came into force on the 1st of September 2003. See Article 97.1 of the Act on Protection. Complementary protection (tolerated stay) may also be granted independently from the status determination procedure, especially a ground for granting tolerated stay is revealed during the deportation procedure.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

The decision to withdraw refugee status must provide a deadline for leaving the territory of Poland, taking into account the alien’s need to deal with his/her personal, family and financial matters. Generally, a complaint to the administrative court does not have suspending effect but the court may order the organ that has issued the decision to rule not to execute the decision until the court has taken a decision. Cases of withdrawing refugee status are extremely rare. Only one procedure is known in which refugee status was withdrawn in the first instance, but this decision was overruled in second instance.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Refugee status may be withdrawn on the basis of Article 1C of the 1951 Geneva Convention (the cessation clauses) (Article 38 paragraph 1 of the Act on Protection). It is not directly stated in the law that refugee status may also be withdrawn on the basis of acts as mentioned in article 1F Refugee Convention, however, if such facts become known to the authority conducting the procedure after the decision has been taken and they existed at the moment of issuance of the decision, the procedure may be renewed and the applicant may be refused refugee status on the basis of those facts (the cases of renewal of the administrative procedure are specified in the Codex of Administrative Procedures).
As for subsidiary protection: see point 6.3.1.

6.2.2 If so, is this possibility (these possibilities) being made use of?

The respondents are not aware of any such cases.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Yes, there are different rules. Article 102 of the Act on Protection states:

1. The permit for tolerated stay shall be withdrawn, if:
   1) the reason for granting the permit for tolerated stay has ceased to exist;
   2) an alien has voluntarily applied for protection to the authorities of the country of origin;
   3) an alien has permanently left the territory of the Republic of Poland;
   4) it may constitute a threat to the state security and defense as well as to the public security and policy.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?
See point 6.3.1. Also, the time limit for leaving the territory of Poland shall not exceed 14 days. In some cases it may be immediately enforceable.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Yes, see 7.1.2.

7.1.2 If so, in which respects?

Polish law does not provide State-sponsored legal assistance to asylum seekers in the appeal (and first instance) procedure.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

There is no separate procedure.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

An estimation of the costs of asylum procedures is not possible.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as requests for subsidiary forms of protection, how many requests were examined during these years?

The number of applications that have been dealt with in the single asylum procedure over the year 2003 (1st September to 31st December) was 1333 (3089 applicants - one application may cover 2 or more family members and then refugee status granted to one family member covers all the others). It must be noted that the single asylum procedure was introduced in Poland on 1 September 2003. The applications examined before that date were applications for refugee status only (see 8.3.1).

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

1999: 2530
2000: 3092
2001: 3851
2002: 3618
2003 (until 31 August): 2511
Total: 15602

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

In 1999-2003, 6 decisions to withdraw refugee status were taken.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?
Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

In general non-state actors as meant in Directive 2004/83 are deemed capable of providing protection for the purposes of qualification for refugee status. This depends on the case and the country of origin.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

According to article 97 of the Act on Protection, an alien is granted a permit for tolerated stay, which is a subsidiary form of protection in Poland, if his/her expulsion may be effected only to a country where his/her right to life, to freedom and personal safety could be under threat, where s/he could be subjected to torture or inhuman of degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal grounds in terms of the European Convention on Human Rights and Fundamental Freedoms. This definition shows that the granting of a subsidiary form of protection is not dependent on the actors but on the factual situation in the country and the real threat of violation of fundamental rights enumerated in the law. The issue of state agents is usually not considered in those situations, however there are decisions in which general danger (i.e. the situation in Somalia or Iraq) did not provide enough basis for granting the person a permit for tolerated stay. In those decisions the issue of state agents was not referred to.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Refugee status is granted when all of the conditions of definition of refugee are fulfilled. Particularly when there is a link between persecution and one or more of grounds of persecution enumerated in Article 1A of the Refugee Convention.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Yes.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Gender can be a factor determining a particular social group. In addition, the cultural context is considered as a factor determining whether acts feared by an applicant might constitute acts of persecution. In practice it happens very rarely that gender is considered a relevant factor. There are only a few decisions where membership of a particular social group was considered as a basis of granting refugee status.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes, if they fulfill the criteria for granting refugee status (Article 1A Refugee Convention) or the criteria for granting the permit for tolerated stay. Polish law provides for special treatment of such persons. Minors are granted refugee status or subsidiary protection together with their legal representative (usually a parent).
A minor alien who has no legal representative can apply for refugee status on his/her own. In such a case a guardian is appointed to represent him/her in the proceedings. Moreover, an employee of the Office for Repatriation and Aliens is appointed as a custodian of a minor and his/her property. For the time of the proceedings a minor is put in a home for children - if s/he is under 13 - or in a refugee reception centre, if s/he is over 13. S/he cannot be placed in a guarded centre or an arrest for the purpose of expulsion. In cases of a minor applying for the refugee status the UNHCR office has the right to access to the case files without the minor’s consent.
The number of unaccompanied minors in Poland is not big but there have been cases where minors have been granted refugee status or tolerated stay.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Victims of trafficking can theoretically be considered to be refugees or persons eligible for subsidiary protection. In Poland however there is problem with identification of such persons. In most cases victims of trafficking are not identified. There is a lack of appropriate training for Border Guards and police officers, which would prepare them to identify the victims of human trafficking among the aliens including those being held at deportation arrests and the detention centre.
There was a case last year in which a woman from Moldova, victim of trafficking, received tolerated residence on the basis of inter alia threat of being trafficked in case of deporting her to her country of origin.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

There have not been any cases of minors who have been excluded from international protection, and there is no provision in Polish law relating to this problem. However, according to the government exclusion of minors is possible.
The 1F clause is applied in Poland very rarely. There have only been a few cases where refugee status was not granted because of Article 1F. Administrative authorities usually do not use this clause.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

See 10.2.

10.2 If so, in which respects?

The government and NGO respondents agree that Polish legislation is conform the Qualification Directive. However, there exists a difference of opinion between both respondents regard to the practice, as the NGO respondent is of the opinion that Article 1A of the Refugee Convention is applied in an excessively restrictive manner by the Polish authorities. This difference of opinion mainly revolves around the status of Chechen asylum seekers.
ARRIVAL AND RECEPTION OF ASYLUM SEEKERS

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

A special procedure for asylum claims presented at borders is laid down in the Portuguese Asylum Law, which is applicable to those aliens who do not fulfil the necessary legal requirements for entry. In these cases, asylum seekers must remain in the “international area of the airport or seaport” while they wait for a notification of the decision on the admissibility of the claim, which is taken by the General Director of the Aliens and Border Service (Serviço de Estrangeiros e Fronteiras), or, in case of review, from the National Commissioner for Refugees.

During their stay at border points, asylum seekers are retained (they cannot enter Portuguese territory but can return to the point where their journey begun or to a country that accepts them) and the competent court is informed about the retention of the asylum seekers, whenever it lasts for more than 48 hours.

During their stay in the “international area of the airport or seaport” reception facilities are provided for the asylum seekers. Most of the asylum claims are presented at Lisbon Airport, where there is a reception centre, with different areas for the reception of asylum seekers and non-admissible passengers (persons who were refused entry).

The asylum seekers receive three meals (on a daily basis), personal hygiene kits, phone cards and medical assistance if they need it.

Asylum seekers stay there until:

- a positive decision on the admissibility of the claim is taken, which allows them to enter Portugal; or
- the deadlines for the decisions are not respected, which allows them to enter Portugal; or
- a final negative decision on the admissibility of the claim is taken and they must return to the point where their journey begun.

Whenever there is no reception centre at the seaport or airport, asylum seekers are allowed to enter the territory, they are lodged in an open reception centre and the admissibility procedure takes place there.

Persons can be detained if they enter Portugal illegally over land.
1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

There are no specific provisions concerning situations of mass influx of asylum seekers, these situations will be addressed on an as-needed basis. There are, however, specific provisions regarding situations of mass influx of persons benefiting of a temporary protection regime. The Act 67/2003 of 26 August applies to the temporary protection regime and implements Council Directive EC/2001/55; some provisions related to reception conditions exist. If a mass influx situation of asylum seekers occurs, a scheme similar to that of Act 67/2003 would be applicable.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

No. The special admissibility procedure at borders is also applicable to (unaccompanied) minors. If they are with their family and/or with an adult responsible for them, they must remain in the “international area” while they wait for a decision on the admissibility of their claim. In the case of unaccompanied minors, as they are considered to be particularly vulnerable, it is decided on a case-by-case basis, and according to their maturity, whether the minor should be allowed to enter into territory.

1.3.2 If so, how are (unaccompanied) minors identified?

Portugal does not have a lot of experience with unaccompanied minor asylum applicants. If the unaccompanied minors do not have valid travel/identification documents, they can be subjected to medical tests if the authorities have doubts about their age. Those tests must be taken with their consent and usually consist of teeth analysis. Such tests are conducted by the Institute of Forensic Medicine “Instituto de Medicina Legal”. There are no provisions in the law concerning these situations. However, the NGO respondent noted that over the last five years only two forensic age determination tests have been conducted.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No. However, as they are considered to be a vulnerable group, they are lodged separated from men.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No specific short-term provisions. See 2.5.1.

1.5.2 If so, how are victims of trafficking identified?

Based on their statements and, sometimes, on the basis of information collected in individual cases.
2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

A special procedure for asylum claims presented at borders is laid down in the Portuguese Asylum Law (Law 15/98 of 26 March), which applies to those aliens who do not fulfil the necessary legal requirements for entry. In such cases, asylum seekers must remain in the “international area of the airport or seaport” while they wait for a notification of the decision on the admissibility of their claim, which is taken by the General Director of the Aliens and Border Service (Serviço de Estrangeiros e Fronteiras), or, in case of review, from the National Commissioner for Refugees.

During their stay at border points, asylum seekers are retained (they cannot enter Portuguese territory but can return to the point where their journey begun or to a country that accepts them), and the competent court is informed about the retention of the asylum seekers, whenever it takes place for more than 48 hours.

During their stay at the “international area of the airport or seaport” reception facilities are provided for the asylum seekers. Most of the asylum claims are presented at Lisbon Airport, where there is a reception centre, with different areas for the reception of asylum seekers and non-admissible passengers (persons who were refused entry).

The asylum seekers receive three meals (on a daily basis), personal hygiene kits, phone cards and medical assistance in case they need it.

Asylum seekers stay there until:

- a positive decision on the admissibility of the claim is taken, which allows them to enter Portugal; or
- the deadlines for the decisions are not respected, which allows them to enter Portugal; or
- a final negative decision on the admissibility of the claim is taken and they must return to the point where their journey begun.

In border cases, the decision on the admissibility of the claim is taken within short deadlines. The General Director takes the first decision within five working days. An appeal can be lodged against that decision to the National Commissioner for Refugees within 24 (working) hours, with suspensive effect, and a final decision must be taken within 24 (working) hours.

During this appeal the first decision can be revoked. If the decision on the appeal is negative, the asylum seeker can appeal, without suspensive effect, to the Administrative Courts (although he can ask the court to give suspensive effect to the appeal).
The Portuguese aliens’ law incorporates the concept of “international area of the airport or seaport”, which is to be understood as the area that goes from the points of embarking/disembarking to the place where the control passport checkpoints are.

Whenever there is no reception centre at a seaport or airport, asylum seekers are allowed to enter the territory, they are lodged in an open reception centre and the admissibility procedure takes place there.

Requests presented on the territory are also directed to the Reception Centre located near Lisbon and managed by the Portuguese Refugee Council. This reception centre is not a detention centre. Asylum seekers can stay there during the first phase of their procedure.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

There are only specific provisions regarding situations of mass influx of persons benefiting from a temporary protection regime. The Act 67/2003 of 26 August applies to the temporary protection regime and implements Council Directive EC/2001/55. There are also several provisions related to reception conditions.

If a mass influx of asylum seekers would occur, a scheme similar to that of Act 67/2003 would be applicable.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

There are no special provisions for the reception of minor asylum seekers. However, if they are with their family and/or with an adult responsible for them, they will stay with them. In the case of unaccompanied minors, they will receive support from an organisation called “Santa Casa da Misericórdia de Lisboa”. This is a national public entity that has agreed a protocol with the Ministry of Social Affairs. However, this entity has the discretion to choose not to provide any support (lodging, food, …). If support is denied, the Portuguese Refugee Council makes every effort to provide the necessary support.

Whether (unaccompanied) minor asylum seekers receive assistance from Santa Casa da Misericórdia de Lisboa depends on their age and maturity, whereby priority is given to the most vulnerable cases.

2.3.2 If so, how are (unaccompanied) minors identified?

If they do not have valid travel/identification documents, they can be subjected to medical tests if the authorities have doubts about their age. These tests must be taken with the consent of the asylum seeker and usually involve teeth analysis. Such tests are conducted by the Institute of Forensic Medicine/“Instituto de Medicina Legal”.

There are no provisions in the law concerning these situations. However, the NGO respondent noted that over the last five years only two forensic age determination tests have been conducted.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

No. However they are lodged with other women, separated from the men.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

No, however, special attention is given to them, as the asylum law says that those who have been victims of “torture, rape or other forms of physical or sexual abuse” will benefit from special attention and follow-up. In
practice, asylum seekers who have been victims of trafficking receive special assistance and care from the social security centre in their residential area. Care may also be provided by entities that have signed support protocols to this end. The relevant provision is quoted below.

Article 58
Other Vulnerable Persons
“Asylum applicants who have been victims of torture, rape or any physical or sexual abuse shall benefit from special attention and care on the part of the respective social security centre within the area of their residence or of entities which have signed support protocols with the latest.”

2.5.2 If so, how are victims of trafficking identified?

Victims of trafficking are identified on the basis of their statements; other investigation measures may be used.


Draft legislation has been proposed to transpose Directive 2003/9, however this legislation has not yet been approved.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

According to the government respondent most of the provisions of the Directive have already been implemented, however the NGO respondent noted that the Portuguese Refugee Council was not aware of this.

In addition, the NGO respondent indicated that the reception system in Portugal currently functions mainly on an informal basis. Many reception conditions foreseen in the Directive cannot be found in legislation but are provided in practice by NGO’s. For example, the Portuguese Refugee Centre has created a reception centre and an agreement has been signed between the Portuguese Refugee Council and CAVITOP (Centre for Support of Victims of Torture) in order to provide psychological support for victims of torture. However, the lack of regulation and allocation of responsibility sometimes lead to aid being made available at the discretion of the public entities providing it (especially with regard to Santa Casa da Misericordia). For these reasons, the NGO respondent believes that the transposition of the Reception Directive could have a positive impact on the Portuguese asylum system, by repairing the current lack of legislation in this field.

3.2.2 If so, in which respects?

See 3.2.1.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

No information available.

4.2 How many asylum seekers were in the reception system during these years?

The number of asylum seekers in Portugal has been decreasing since 1999.

1999: 271  
2000: 202  
2001: 193  
2002: 180  
2003: 88
Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

According to the Asylum Act the asylum request is personal, but applicants may lodge an application on behalf of their family members (spouse and/or children). All applications for asylum are analysed individually and all applicants (including dependent family members) are interviewed by the Portuguese authority entrusted with asylum cases, which is the Serviço de Estrangeiros e Fronteiras (SEF). As a rule family members are not present during the interview. The asylum law foresees that all asylum seekers must be interviewed within five days after the registration of their application.

When the applications are presented at the Asylum Department of the SEF, the persons working in the Asylum Department interview the applicants. When the application for asylum is made at the border, SEF staff members working at the borders conduct the interviews. The Portuguese asylum law foresees that “the staff who meets the applicants at the Frontier Offices shall have received adequate training, under the terms of the applicable recommendation, approved by the European Council Parliamentary Assembly on the 7th November 1996”.

The Portuguese Refugee Council also interviews all applicants. According to the asylum law, The Portuguese Refugee Council (PRC) has the following competences during the procedure:
- to interview asylum seekers at the borders and to express their opinion on the applications within 48 hours;
- during the second phase of the procedure, to provide reports or information regarding the country of origin to be used in the procedure, and to obtain information regarding the state of the proceedings;
- to make observations concerning the content of the proposed decision of the National Commissioner for the Refugees, within 5 days; and
- to provide legal counselling directly to asylum applicants at all stages of the proceedings;
- to express a written opinion about the decision of the Director of the Aliens and Border Service on an asylum request presented at the borders within 24 hours after the communication of that decision.

The asylum law also provides that the SEF is obliged to inform the PRC about asylum applications and decisions to refuse or admit such applications, in order to allow the PRC to provide legal counselling to the asylum seekers. The opinions and observations made by the PRC are not binding for the authorities, but can be used during the examination of the claim.

With regard to the interview conducted by the Portuguese Refugee Council, the asylum seekers are asked if they want to be interviewed together or individually. Usually both members of the couple are present. But if the NGO interviewer finds it necessary or relevant, taking into account the applicants’ statements, separate interviews may be conducted.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Yes, such arrangements are foreseen by the government. The Portuguese Refugee Council also tries to ensure that female applicants are interviewed by female legal officers. This can be achieved because the Legal Department of the Portuguese Refugee Council employs 2 female legal officers. It can prove more difficult to provide a female translator, depending on the language (for example, there is only one translator of Nepali in Portugal). Among the legal staff of the Refugee Council English, French, Spanish, Russian and German are spoken.

Meanwhile, it must be noted that only 10% of the asylum claims presented in Portugal are lodged by women.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

No. However, there is an internal order stipulating that minors below 14 years of age will not be subjected to an interview. For minors between 14 and 17 an analysis has to be made concerning the maturity of the minors and their capacity to understand and express themselves.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?
No. However, special attention is paid if, during the personal eligibility interview for status determination, the interviewer becomes aware that the asylum seeker has been a victim of traumatising events. In this case, the asylum seeker is directed to CAVITOP (Centre of Support for Victims of Torture), an NGO with whom the Portuguese Refugee Council agreed a protocol in 2003 in order to allow asylum seekers to receive free and specialised psychological and psychiatric support, if they are willing to.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes. Whenever an application is presented at the border and the asylum seeker has no right to enter the territory, s/he has to wait for the first instance decision at the border (see answer to 1.1) and cannot be removed until the time limit for review has passed (right of review with suspensive effect).

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Portuguese aliens’ law recognises the concept of “international area of an airport or seaport” which is to be understood as the area that goes from the point of embark/disembark to the passport control checkpoints. At the border, the decision on the admissibility of the claim is taken within short deadlines. The General Director takes the first decision within five working days. An appeal can be lodged against that decision to the National Commissioner for Refugees within 24 (working) hours, with suspensive effect, and a final decision must be taken within 24 (working) hours. During this appeal the first decision can be revoked. If the decision on the appeal is negative, the asylum seeker can appeal, without suspensive effect, to the Administrative Courts (although s/he can ask the court to grant suspensive effect to the appeal).

As regards applications within national territory, the right to remain depends on the phase of the procedure. During the first stage (admissibility procedure), the General Director of the SEF takes the first decision within twenty working days. An appeal can be lodged against that decision to the National Commissioner for Refugees within five days, with suspensive effect, and a final decision must be taken within 48 (working) hours. During this appeal the first decision can be revoked. If the decision on the appeal is negative, the asylum seeker can appeal, without suspensive effect, to the Administrative Courts (although he can ask the court to grant suspensive effect to the appeal), otherwise s/he will have 10 days to leave Portugal voluntarily, or s/he will be expelled immediately after that deadline.

During the second stage of the procedure (in case of admission), the National Commissioner for Refugees prepares an opinion on the case and the Ministry of Interior takes the final decision. At this stage, the asylum seeker has the right of appeal to the Supreme Administrative Court, with suspensive effect, which allows him/her to remain in the territory. If s/he does not appeal or if the court decision is negative, the applicant has 30 days to leave Portugal voluntarily, or an expulsion procedure can be started on the basis of illegal stay.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

The fingerprints of all asylum seekers older than 14 will be registered and the system will be consulted immediately. This happens at the initial stage of the procedure, in order to check if the asylum seeker has presented a previous application in another Member State.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

The fingerprints are registered in Eurodac when the application is presented. Some exceptions to this practice may occur if the application is presented at the islands of the Azores or Madeira. In those cases they must be sent by mail and therefore the registration will not be immediate.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes. While the law is not clear in the sense that it does not establish a single procedure, the administrative practice is that every asylum claim is analysed in the light of the Geneva Convention and subsidiary protection (according to article 8 of the Asylum Law – Residence permit on humanitarian grounds). In each case both
regimes are assessed under the same procedural rules, and a detailed motivation is provided in case of a negative decision on either ground. The relevant provisions are cited below:

Article 1
Guarantee of the right of asylum
1. “The right of asylum shall be guaranteed to aliens and stateless people persecuted or seriously threatened with persecution as the result of an activity exercised in the state of their nationality or habitual residence, in favour of democracy, social and national liberty, peace among peoples, freedom and the right of human being.
2. Also entitled to asylum are any aliens or stateless people who, having a well-founded fear of being persecuted for reasons of their race, religion, nationality, political opinions or membership of a particular group, are unable to or, owing to such fear, are unwilling to return to the state of their nationality or habitual residence”

Article 8
Residence Permit for Humanitarian Reasons

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?
N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes. The law provides two different ways to withdraw refugee status. In some cases the Minister of the Interior takes an administrative decision to withdraw. In other cases only the Court is competent to withdraw refugee status. The differences between these procedures are based on the grounds for withdrawal. If it is a case with objective reasons and it does not affect the basic rights of the refugee, the Minister takes the decision. Examples of such grounds exist if the refugee withdraws his/her application; the refugee voluntarily resettles in the country where s/he had reasons to fear persecution; the competent court previously took a decision to expel the refugee; s/he leaves Portugal and resettles in another country.

Whenever withdrawal might imply an interpretation of the situation by the public authorities, the decision to withdraw must be taken by the Court. For example if the refugee commits prohibited acts (like interfere, in a forbidden way, in the Portuguese political life); develops activities that might cause damage to the internal or external security of the Portuguese state or that might endanger the external relations of Portugal; or if the refugee based his/her statement on forged facts.

If a decision to withdraw is taken because of prohibited acts, the refugee must be expelled. If the decision is based on the cessation of the situation of persecution in the country of origin, a residence permit may be granted without further procedural requirements. In all other cases, the persons concerned may be subjected to an expulsion procedure.

If the person concerned is to be expelled, s/he may lodge an appeal against this decision, this appeal does not have automatic suspensive effect, but the applicant may make a request to be allowed to remain in Portugal for the duration of the appeal.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?
6.2.2 If so, is this possibility (these possibilities) being made use of?

No.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

The procedure to withdraw both statuses is similar and depends on the grounds for withdrawal. According to Portuguese asylum law, the National Commissioner for Refugees proposes to withdraw the status and the Minister of Internal Affairs takes the decision. Unless refugee status is withdrawn under specific circumstances foreseen in the law, the Second Jurisdiction Court (Tribunal da Relação) is competent to declare the termination of asylum and to order expulsion.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Yes.

7.1.2 If so, in which respects?

Tension may exist in terms of the right of appeal to a “court or tribunal”. During the admissibility procedure asylum seekers have the right to appeal, with suspensive effect, to the National Commissioner for the Refugees. This entity is an independent, quasi-judicial body which cannot be considered as a “court or tribunal” according to the jurisprudence of the Court of Justice.

Articles 23, 24 and 25 provide for the use of the accelerated procedure in more situations than is currently foreseen under Portuguese asylum law.

There may be tension concerning the interpretation of Articles 27, 30, 30A, 30B and 35. Concepts such as ‘safe third country’ and ‘safe country of origin’ are interpreted in a restrictive manner by the Portuguese authorities.

Existing Portuguese asylum legislation provides more safeguards than Article 35 Directive. Article 38 Directive does not guarantee suspensive effect of appeals in all situations.

The NGO respondent expressed concern that implementation of the Directive may cause a reduction of existing standards for asylum procedures.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?
8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No data available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications examined</th>
<th>Applications presented in Portugal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>262</td>
<td>271</td>
</tr>
<tr>
<td>2000</td>
<td>186</td>
<td>202</td>
</tr>
<tr>
<td>2001</td>
<td>184</td>
<td>193</td>
</tr>
<tr>
<td>2002</td>
<td>160</td>
<td>180</td>
</tr>
<tr>
<td>2003</td>
<td>82</td>
<td>88</td>
</tr>
<tr>
<td>TOTAL</td>
<td>874</td>
<td>934</td>
</tr>
</tbody>
</table>

The difference between the number of applications presented and examined lies with the ones that were transferred to another member state under the Dublin procedure.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

1999: 1  
2000: none  
2001: none  
2002: none  
2003: 12

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

1999: none  
2000: 11  
2001: none  
2002: 30  
2003: 8
Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

The national asylum law does not refer to non-state actors. Each case will be considered individually. In principle, an international organisation may be considered capable of providing protection (for instance, the United Nations, if it controls a territory).

The NGO respondent noted that she could not recall any case where non-state actors were deemed capable of providing protection.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

No, in such cases the person will be granted humanitarian status instead of refugee status.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Refugee status can be granted on the basis of gender under certain circumstances, for instance whenever a society seriously discriminates against women. Such examples can include situations of female genital mutilation.

The refugee definition in national asylum law corresponds with the Geneva Convention and hence also refers to “membership of a particular group”. The NGO respondent notes that in practice she cannot recall any case where gender played a role in constituting a particular social group. Usually, depending on the facts the asylum seekers described and based their requests upon and the prevailing situation in their country of origin, they qualify either for humanitarian protection (subsidiary protection) or they may be considered as refugees under other inclusion clauses. However, the NGO respondent also noted that most of the claims are rejected.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes. According to the law, unaccompanied minors are treated as adults. Therefore, their cases will be decided after an examination of the facts and the situation in the country of origin. The young age and the fact that an adult does not accompany the child may be considered relevant by the authorities when deciding on the asylum request.

As mentioned previously, until now Portugal has not received many unaccompanied minor asylum seekers.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

In Portugal, to be a victim of trafficking is not a reason “per se” to qualify for asylum or subsidiary protection. It will depend on the individual circumstances of the case, particularly whether there exist grounds of persecution as enumerated in the Geneva Convention, or grounds for subsidiary protection.
9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

In principle yes, but only if they are older than 16 years (minimum age for minors to be sued in criminal procedures).

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

There are no tensions, however at some points Portuguese legislation provides broader definitions than the Directive. See 10.2.

10.2 If so, in which respects?

The refugee definition in Portuguese law is broader than the definition in the Directive. Also, the national definition of humanitarian protection is broader than the Directive’s definition of ‘subsidiary protection’. For these reasons, the NGO respondent has expressed concern that the implementation of the Qualification Directive will lower existing standards.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

The freedom of movement of foreigners may be restricted for the period between their statement that they want to apply for asylum and the formal application. The restriction of the freedom of movement is a short-term detention, which should not exceed 24 hours. Aliens whose freedom of movement is restricted are placed in specifically designated alien police stations after they made their informal statement, until a suitable interpreter is found and the formal asylum application is lodged. In practice this usually takes a few hours but it can last up to a maximum of one or two days.

The police is entitled to take aliens (in general) into custody if:

- a) They unlawfully enter the territory of the Slovak Republic
- b) They unlawfully stay on the territory of the Slovak Republic,
- c) It is necessary for the execution of his/her administrative expulsion
- d) If s/he was returned to the territory after unlawful emigration
- e) If s/he tried to illegally enter the territory of another state.

It follows that aliens may be detained before they formally lodge their asylum applications if they have unlawfully entered the territory of the Slovak Republic, or if they are unlawfully staying there.

The alien may be taken into custody for the time needed, with a maximum of 180 days. There are two detention centres in the Slovak Republic. Minors under 18 years of age are never detained.

The government respondent noted a tendency of aliens applying for asylum while in detention to prevent their pending administrative expulsion. In 2004, 1054 detained illegal migrants have applied for asylum. In response, the NGO respondent noted that preventing expulsion was not the only reason why people applied for asylum while in detention. He stated that applications for asylum could often not be made at police stations because there are no interpreters available. In such cases, the aliens are detained first and then apply for asylum while in detention.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

In case of mass influx, the Government shall grant temporary protection. There are no specific provisions for short-term reception of asylum seekers upon arrival before they lodge their asylum application.

Paragraph 29 of the Act on Asylum:

‘1. Temporary protection shall be granted for the purpose of protecting aliens from war conflicts, impacts of a humanitarian disaster or permanent or mass violation of human rights in the country of alien’s nationality or, in case of a stateless person, in the country of his/her residence.'
2. The Government, in line with a decision of the European Council, shall determine the start, conditions and termination of temporary protection and shall earmark funds to cover the costs related thereto. ’

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

There are no specific provisions for short-term reception of unaccompanied minor asylum seekers. If an unaccompanied minor enters Slovakia illegally, he/she will be considered an illegal migrant and will be placed in a special centre for minors. A guardian will be appointed by the court, within 24 hours after the minor was found to be in Slovakia, to perform legal acts on behalf of the minor in his/her best interest. Until a guardian has been appointed unaccompanied minors stay at the police station. Guardians are either relatives or professionals with experience of working with children. The guardian makes the final decision on whether the unaccompanied minor applies for asylum or not.

1.3.2 If so, how are (unaccompanied) minors identified?

A statement made by the applicant himself/herself concerning his/her age is usually sufficient. However, if there are doubts about the age, the Ministry of the Interior can order a medical examination. If the applicant refuses to participate in the examination or his/her guardian or legal representative does not consent thereto, it will be assumed that s/he has reached majority.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No, there are no such provisions.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No, there are no such provisions.

1.5.2 If so, how are victims of trafficking identified?

Identification is done on the basis of the declarations of the alien made during an interview, his/her personal documents, information taken from police databases, etc. The interview is personal; the applicant has the opportunity to state that he/she is a victim of trafficking.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

According to Article 23 § 3 (a) of the Asylum Act, an asylum applicant is obliged to remain in the police department in the transit area of an international airport, when the alien concerned arrived to the territory of the Slovak Republic by plane and he/she fails to satisfy the requirements for entering the territory of the Slovak Republic. However, in practice this provision is not implemented, as the centre has not yet been opened it is expected that it will be in the near future. Meanwhile the asylum seekers concerned are transferred to regular asylum centres.

Asylum seekers are obliged to remain in the reception centre until a medical check has been performed and the result thereof is known. There is no time limit for the performance of the medical examination, in practice this usually takes three weeks. Asylum seekers are also obliged to remain in the centre if isolation or quarantine is ordered for the purpose of preventing infectious diseases.

Furthermore, if someone applies for asylum while in administrative detention, the application can, but does not have to constitute a ground for release. The grounds for detention are listed under 1.1.
2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

According to paragraph 29 of the Act on Asylum temporary protection shall be granted for the purpose of protecting aliens from war conflicts, impacts of a humanitarian disaster or permanent or mass violation of human rights in the country of alien’s nationality or, in case of a stateless person, in the country of his/her residence. The government, in line with a decision of the European Council, shall determine the start, conditions and termination of temporary protection and shall earmark funds to cover the costs related thereto. The procedure regarding temporary protection can be found in the following provision:

Article 30 of the Act on Asylum

1) The alien applying for temporary protection shall make a statement on it
   a) when entering the territory of the Slovak Republic at the competent police department at the place of border checkpoint,
   b) after entering the territory of the Slovak Republic at the police department competent for the location where the alien is staying,
2) The police department shall record the statement made under 1 on an official form, the specimen of which is in Annex 1, and shall send it to the Ministry without delay.
3) After taking the statement under 1 the police department shall take the travel document or any other identity document from the alien and it shall issue a receipt confirmation to the alien. The police department shall send the documents collected to the Ministry without delay. The police department shall also arrange to take the alien’s fingerprints.
4) The alien identified as under 1 has the obligation to arrive at the reception centre within 24 hours after making the statement, unless s/he is prevented from doing so because of serious reasons; the police department shall issue an identity document to the alien, which will be valid for 24 hours.

The procedure for granting temporary protection is shorter and easier than the asylum procedure. For example:
   - the Ministry shall decide on granting temporary protection to an alien no later than 15 days after the application is lodged (90 days for the asylum procedure)
   - the assessment is easier (the questionnaire for the interview is shorter than the one for the regular asylum procedure).

2.3.1 Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Yes. A guardian should be appointed by the court to decide whether it is in the interest of the child to apply for asylum. Special health care is provided for minors and other vulnerable groups. Appropriate conditions shall be created for the accommodation of unaccompanied minors. When placed in an asylum facility minors shall be placed separately from adults, whilst family ties shall be taken into account.

2.3.2 If so, how are (unaccompanied) minors identified?

See 1.3.2.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

Appropriate conditions shall be made available to persons requiring special care. In the asylum facilities women shall be placed separately from men, whilst family ties shall be taken into account.
2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

According to the Act on Asylum, appropriate conditions shall be made available to persons requiring special care, which could include victims of trafficking.

2.5.2 If so, how are victims of trafficking identified?

Identification is done on the basis of the interview with the asylum seeker, which can be repeated, establishing evidence, including the person’s travel route. Other information can be used, such as the person’s documents and information from police databases.


Yes.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

There exists a difference of opinion between the government and the NGO respondents on this issue. See 3.2.2.

3.2.2 If so, in which respects?

As mentioned in 2.1, an asylum applicant is obliged to remain in the reception centre until the result of a medical check is announced. There is no time limit for the duration of the medical check. The NGO respondent found it questionable whether this restriction of the freedom of movement was in accordance with Article 7 of Directive 2003/9. In response, the government has stated that it found the medical checks to be in the interest of asylum seekers as well as the Slovak population. Such checks could prevent the spreading of serious and contagious illnesses. According to the government, the checks usually do not take more than three weeks.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

Information can only be provided about the total costs of reception and asylum procedures taken together:

<table>
<thead>
<tr>
<th>Year</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>26 million Slovak crowns</td>
</tr>
<tr>
<td>2000</td>
<td>24 million Slovak crowns</td>
</tr>
<tr>
<td>2001</td>
<td>46 million Slovak crowns</td>
</tr>
<tr>
<td>2002</td>
<td><strong>80 million Slovak crowns</strong></td>
</tr>
<tr>
<td>2003</td>
<td>65 million Slovak crowns</td>
</tr>
</tbody>
</table>

4.2 How many asylum seekers were in the reception system during these years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Asylum seekers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>1320</td>
</tr>
<tr>
<td>2000</td>
<td>1556</td>
</tr>
<tr>
<td>2001</td>
<td>8151</td>
</tr>
<tr>
<td>2002</td>
<td>9743</td>
</tr>
<tr>
<td>2003</td>
<td>10358</td>
</tr>
</tbody>
</table>
Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Yes. Each asylum seeker will be granted a preliminary interview, which is personal. After the application is lodged, an interview official of the Ministry of the Interior interviews the applicant. S/he has to provide the official of the Ministry with all the relevant information required to decide on the application for asylum and this information shall be recorded on an official form (the “questionnaire”). A second, more detailed interview, also personal, may take place later in order to establish the merits of the case, but this is not necessary if a decision can be taken on the basis of the information provided during the first interview. The relevant legal provision is cited below.

<table>
<thead>
<tr>
<th>Article 6 Act on Asylum</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) In order to establish the merits of the case in a reliable way the authorised employee of the Ministry shall interview the applicant who has the obligation to appear in the place and at the time as determined by the Ministry; minutes shall be kept of the interview. The interview may be repeated in justified cases. The interview is not necessary if it is possible to make decision on the bases of answer to the questionnaire made after making the statement/ lodgment of the application.</td>
</tr>
<tr>
<td>(2) Prior to the interview the authorised employee of the Ministry shall instruct the applicant of his/her rights and obligations during the asylum procedure.</td>
</tr>
<tr>
<td>(3) When there are grounds worth special consideration the Ministry shall, taking into account its possibilities, arrange the interview and its interpreting by a person of the same sex as the applicant.</td>
</tr>
<tr>
<td>(4) When interviewing a minor the authorised employee of the Ministry shall take into account minor’s age and degree of mental and will maturity.</td>
</tr>
<tr>
<td>(5) Interview of a person given in paragraph 4 can only be conducted in the presence of his/her representative at law or of his/her legal guardian.</td>
</tr>
</tbody>
</table>

Minors who are accompanied by their legal representatives (parents or guardian) are not interviewed.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Yes. Article 6(3) of the Act on Asylum provides:

“When there are grounds for special consideration the Ministry shall, taking into account its possibilities, arrange for the interview and the interpretation to be conducted by a person of the same sex as the applicant.”

Especially with regard to interpreters, it may be sometimes difficult in practice to find a female interpreter, as the number of interpreters for several languages is limited. If a female interpreter cannot be provided rapidly, a male interpreter may be used to avoid causing delay to the procedure. If the female asylum seeker concerned does not insist on a female interview official, the Ministry of the Interior will not automatically provide one. In practice male officials have interviewed victims of trafficking or rape.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?
When interviewing a minor the employee of the Ministry shall take into account the minor’s age and the degree of his/her maturity. An interview with a minor can only be conducted in the presence of his/her representative at law or legal guardian.

Legal acts on behalf of an alien who did not attain maturity shall be performed by his/her representative at law (parent or guardian). If such an alien is staying on the territory of the Slovak Republic without a representative at law, the court shall appoint a guardian; usually this will be a relative of the minor who is staying on the territory of the Slovak Republic.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

There are no provisions in the Act on Asylum, however in practice individual circumstances such as torture and trafficking are always taken into account during the interview. If an applicant is not able to answer a question immediately, the interview can be postponed to a later time. During the interview attention is paid not to evoke further trauma. It is also possible for a psychologist to take part in the interview.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Applicants are entitled to remain in the Slovak Republic until a court has dealt with their appeal against a negative decision. Exceptions exist for applications, which have been rejected as inadmissible, which are considered manifestly unfounded, or which are rejected because another member state is responsible for the examination. However, in such cases, the court may still decide that the appeal will have suspensive effect.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

At the initial stage, when an alien applies for asylum at the police station.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

At the initial stage, when an alien applies for asylum at the police station.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

No, there are two different procedures conducted by two different bodies – the Migration Office of the Ministry of Interior decides on asylum, while the Alien and Border Police Office decides on subsidiary forms of protection. The status given to an applicant differs according to the reason for which protection has been granted.

If asylum is not granted, the Migration Office decides whether there are any obstacles preventing expulsion. It is the Alien and Border Police Office, which decides on the administrative expulsion. In practice, the alien is granted tolerated stay for the duration of the examination. The decision to grant tolerated stay will be cancelled if it turns out that the conditions for granting it were not fulfilled.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

The Aliens Act does not contain provisions to promote that female applicants are interviewed by female interview officials and/or assisted by female translators, nor are there specific procedures for interviewing
A kA313AkA A (unaccompanied) minor applicants or for interviewing applicants who are victims of traumatising events before or during their flight. However, general rules for interviews are applicable in procedures concerning subsidiary protection.

Appeals against decisions on administrative expulsion have suspensive effect only in cases of rejected asylum seekers. However, for persons who entered or resided in Slovakia illegally and who did not apply for asylum, an appeal against an administrative expulsion does not have suspensive effect. An administrative body superior to first instance body decides the appeal. The final decision can be contested before a court, but again such a procedure does not have suspensive effect.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes, an appeal against the decision to withdraw refugee status has suspensive effect.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes. According to the Act on Asylum, Article 15(2)(g):

> ‘The Ministry shall withdraw asylum when there is well-founded suspicion that the person granted asylum committed an act under Section 13 par. 1, meaning that the applicant:
> a) has committed a crime against peace, a war crime or a crime against humanity under an international instrument containing provisions on these crimes,
> b) has committed a serious non-political crime outside the territory of the Slovak Republic prior to applying for asylum, or
> c) is guilty of acts, which are contrary to the objectives and principles of the United Nations.’

6.2.2 If so, is this possibility (these possibilities) being made use of?

No such cases are known up until this day.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

Yes, in such cases the decision to grant subsidiary protection is revoked.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

An appeal against a decision to revoke the decision to grant subsidiary protection is taken by the Alien Police, a body that is superior to the first instance decision authority. A complaint to the court can be lodged only against an effective decision to revoke subsidiary protection. Therefore, the person concerned cannot stay in the country until a court has examined this decision.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

Regarding the implementation of the draft Procedure Directive, the government respondent noted that changes to legislation as well as the organisational structure are planned, in order to be able to conduct a single procedure. The New Concept on Migration policy in the Slovak Republic has already been adopted and relevant Action plans are in the stage of preparation. It was not possible to obtain any more detailed information at this moment.
7.1.2 If so, in which respects?

No information available.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

No information available.

7.2.2 If so, in which respects?

No information available.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

Information can only be provided about the total costs of reception and asylum procedures taken together:

<table>
<thead>
<tr>
<th>Year</th>
<th>Asylum applications</th>
<th>Asylum granted</th>
<th>Asylum denied</th>
<th>Procedure terminated</th>
<th>Pending procedure</th>
<th>Total requests examined</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>1320</td>
<td>27</td>
<td>176</td>
<td>1034</td>
<td>343</td>
<td>1237</td>
</tr>
<tr>
<td>2000</td>
<td>1556</td>
<td>11</td>
<td>123</td>
<td>1366</td>
<td>400</td>
<td>1500</td>
</tr>
<tr>
<td>2001</td>
<td>8151</td>
<td>18</td>
<td>130</td>
<td>5247</td>
<td>3156</td>
<td>5395</td>
</tr>
<tr>
<td>2002</td>
<td>9743</td>
<td>20</td>
<td>309</td>
<td>8053</td>
<td>4516</td>
<td>8382</td>
</tr>
<tr>
<td>2003</td>
<td>10358</td>
<td>11</td>
<td>421</td>
<td>9788</td>
<td>4652</td>
<td>10220</td>
</tr>
</tbody>
</table>

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

There is no single procedure.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

Most of the asylum applications are terminated, because asylum seekers disappear pending the procedure. The number of requests examined consists of the total number of refugee statuses granted, refugee statuses denied, and procedures terminated.

As regards the subsidiary protection, the tolerated stay was introduced in 2002 only, before no subsidiary protection was possible. According to the NGO respondent 15 tolerated stays were granted in 2002 and 39 in 2003. The government could not confirm these numbers.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

There exist no separate statistics regarding requests for subsidiary protection.

8.4 How many decisions to withdraw refugee status were taken in these years?
There were no decisions to withdraw refugee status taken in this period.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

No such decisions were taken in the years 1999-2003. However, it must be noted that subsidiary protection is always granted for 180 days. It is more common not to prolong the subsidiary protection status than to withdraw it.

**Qualification as a refugee or as a person in need of other forms of protection**

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

No information available.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

No information available.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Article 8 of the Act on Asylum cites the refugee definition of the Geneva Convention. However, according to the same act, persecution means serious or repeated acts causing a threat to life or freedom or other acts causing mental pressure on a person, when performed, supported or tolerated by country authorities in the country of the alien’s nationality or in the country where the alien had his/her residence, when the person concerned is a stateless person, or when this country is not capable of ensuring appropriate ensure protection from such acts.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but protection was withheld on such a ground?

The NGO estimated that refugee status could be granted in such a situation, but no certainty exists. In any case, such persons could qualify for protection on humanitarian grounds.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Decisions on granting asylum are not motivated, however the concept of particular social group is used very rarely.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes, but only if they fulfill the conditions asylum according to Article 8 of the Act on Asylum, which contains the Convention definition of a refugee. Unaccompanied minors are also eligible for subsidiary protection.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Yes, if they fulfill the criteria therefore. Persons are not qualified as refugees or persons in need of subsidiary protection for the sole reason of being victims of trafficking.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?
Minors can be excluded, but this does not mean that another form of international protection cannot be granted, e.g. tolerated stay. Most likely minors under 15 years of age would not be excluded, as they cannot be held responsible under criminal law. In practice there have not been any cases of persons (not only minors) falling within the scope of Article 1F of the Geneva Convention.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

See 10.2.

10.2 If so, in which respects?

In Slovak legislation the term tolerated stay is used instead of subsidiary protection. Tolerated stay can be granted in more situations than subsidiary protection as meant in Directive 2004/83.

In view of the implementation of Directive 2004/83, changes will be made to Slovakian legislation as well as the organisational structure of both offices – the Migration office and the Bureau of Border and Aliens Police of the Presidium of Police Corps in order to be able to conduct a single procedure. A new common office is envisaged to take charge of the whole procedure and all aspects connected with aliens.

The New Concept on Migration policy in the Slovak Republic has been already adopted and relevant Action plans are in the stage of preparation. More detailed information cannot be provided at this moment.
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and "waiting areas") imply detention?

There is no record about any form of detention in airports or other similar areas. In the Republic of Slovenia very few asylum applicants apply at airports, last year only a few applications were made. Therefore there is no need for special facilities.

When the police come into contact with persons who have illegally crossed the border or who are staying in Slovenia illegally, they will be brought to a police station where they can express the intention to apply for asylum. The NGO respondent has noted that persons who cross the border illegally are prosecuted, unless they express the intention to file an asylum claim directly at the border or as soon as they contact the police.

However, the government respondent has pointed out that Article 8 ZAzil (the Law on Asylum) determines that asylum seekers will not be prosecuted for illegal entry. In practice it has happened several times that illegal migrants were brought before a judge for minor offences and applied for asylum during the procedure for illegal border crossing. Usually the judge then stops the prosecution.

After a person expresses the intention to apply for asylum, s/he is transferred to the Asylum Home, where s/he stays until a formal application is lodged (according to the government respondent this takes one or two days on average, the NGO respondent contested that it may take longer). The regime in the Asylum Home is open, persons can move freely and even leave the area, but they cannot enter the residential area around the Asylum Home until a doctor has examined them.

The NGO respondent noted that the Ministry of internal affairs has recently adopted a measure to prevent persons from leaving the country before they have lodged their application. To this end, the persons concerned have to remain in a locked ‘pre-reception’ area within the Asylum Home. They may call the security guards and ask them to unlock the door, so they can go out e.g. for a cigarette, but they cannot leave the fenced area of the Asylum Home. If they do, it will be presumed that they no longer have the intention to file an asylum claim.

The freedom of movement of asylum seekers can only be limited on the basis of the grounds mentioned in Article 27 ZAzil. This provision is cited below:

**Article 27 (Limitation of movement)**

1. If necessary, the movement of an asylum applicant can be temporarily limited on the grounds of:
   - establishing the identity of the applicant; or
   - preventing the spread of contagious diseases; or
   - suspicion that the procedure is being misled or abused within the meaning of Article 36 of this Law; or
   - threatening life or property of other people.

2. Movement can be limited:
   - by means of prohibition of movement beyond a certain area; or
   - by means of prohibition of movement outside the asylum home or its branch; or
   - by means of prohibition of movement outside a certain border crossing if accommodation is available there.

3. Limitation of movement shall be ordered by a decision issued by the Ministry of the Interior. Limitation of movement may stay in effect until the grounds for it cease to exist but in any event for no longer than three months. If the grounds for limitation of movement still exist after that period the limitation can be extended for a further period of one month.
Limitation of movement on the grounds of preventing the spread of contagious diseases shall stay in effect until the grounds thereof subsist.

4. An asylum applicant has the right to appeal against a decision on limitation of movement at the Administrative Court within three days after a decision has been served on him/her. The Administrative Court shall within 3 days call for a hearing and decide on the appeal. The appeal does not stay the execution of the decision.

The government respondent stated that the procedure for limitation of movement is strictly regulated and is in accordance with Article 5 European Convention on Human Rights (ECHR)

Detention is possible for persons who have been sentenced for an offence, once the sentence becomes final. A sentence becomes final when the person concerned does not lodge an appeal, even if s/he has meanwhile expressed the intention to file an asylum claim. Hence, persons who file an asylum claim after their sentence has become final are not brought to the Asylum Home, but stay in a Centre for Foreigners.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

In cases of mass influx, the Ministry of the Interior will file a motion for taking emergency measures. In such situations, people fleeing their country of origin can apply for temporary protection at the border crossing where they also lodge their application for asylum. After the application for temporary protection has been submitted they are transferred to reception centres, where they stay until a decision is taken on their application for temporary protection. At the reception centre, further activities to establish the identity of the applicants will be conducted, as well as medical assessments.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

The Law on Asylum (ZAil) provides that a legal guardian must be appointed before the asylum application is lodged. Unaccompanied minors are accommodated in the Asylum Home immediately upon their arrival. They will be accommodated in special sections, separated from adults where NGO’s provide a day-care/educational programme. There are also psychosocial programmes aimed at preventing (further) trauma of unaccompanied minors. Minor asylum seekers have the right and the obligation to attend primary school. Accompanied minors are made to stay in a waiting area with other adults until they are subjected to a medical examination, but their applications are treated with priority.

1.3.2 If so, how are (unaccompanied) minors identified?

Unaccompanied minors are identified through their own statements and a visual assessment by the competent authority. If in doubt, it will be decided in their favour. Subsequently, the Sector for asylum will receive a record from the police to state that the person concerned is an unaccompanied minor.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

Single women are one of the vulnerable categories mentioned in Article 6 of the Regulation. In the short term, they are placed in common waiting areas but with their own rooms, showers and toilets. However, these areas cannot be locked so the rooms are freely accessible. Applications made by single women are treated with priority.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

There are no specific provisions for short-term reception of victims of trafficking. A suspicion of trafficking is established at the earliest when the application is lodged.

1.5.2 If so, how are victims of trafficking identified?
Such persons cannot be identified before they have lodged an application.

2.1 **Do (some) reception conditions of asylum seekers during examination of the application imply detention?**

The Law on Asylum provides that the body conducting the asylum procedure has the competence to temporarily limit the freedom of movement of asylum applicants under certain conditions. This measure is used occasionally, especially in cases where an asylum applicant has committed a criminal offence or is suspected of having done so. In these cases the decision about the limitation of the freedom of movement is issued by the Ministry of the Interior and confirmed by the Court. Another reason for limiting the freedom of movement of an asylum seeker would be to establish his/her identity, especially in cases of repeated applications if the subsequent application is submitted under a different name.

Freedom of movement is limited in accordance with Article 5 of the European Convention of Human Rights (ECHR) and the possibility of quick judicial control is available. A hearing before a judge is obligatory.

The relevant legal provision is set out under 1.1.

The NGO respondent noted that no persons are currently detained in the Asylum Home, as the detention building there is still under construction. Instead detentions are carried out in the Centres for Foreigners in Prosenjakovci and Postojna.

2.2 **Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?**

Regarding situations of a mass influx, the Law on Temporary Protection determines that applicants for temporary protection will be accommodated in reception centres where they will immediately be subjected to a medical examination.

2.3.1 **Are there specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?**

Unaccompanied minors are considered to be a vulnerable group and their applications are given absolute priority. Unaccompanied minors are accommodated in suitable accommodation in an Asylum Home, in a separate department or they may be hosted under the Slovenian rules for foster care. Their guardian visits them on a regular basis. The tracing of family members starts immediately after the minors are accommodated and taken care of.

2.3.2 **If so, how are (unaccompanied) minors identified?**

Unaccompanied minors are identified through their own statements and a visual assessment by the competent authority. If in doubt, it will be decided in their favour. Subsequently, the Sector for asylum will receive a record from the police to state that the person concerned is an unaccompanied minor.

2.4 **Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?**

There are no specific provisions, however single women are considered a protected vulnerable group. They are not accommodated together with men, unless they wish so. If they are victims of torture, organised crime or trafficking, an adequate rehabilitation programme is provided.

2.5.1 **Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?**
There are some joint projects of NGOs and the Ministry dealing with victims of trafficking. As soon as applicants for asylum claim that they are victims of trafficking they are referred to an NGO representative who provides psychological aid, and if necessary also accommodation in a hidden location.

Single women and unaccompanied minors are also obliged to participate in a lecture about trafficking (about 45 minutes), which is carried out by an NGO. The lecture is divided in two parts. In the first part single women and unaccompanied minors are explained what word trafficking means and in the second part asked if they have encountered such experience. At the end of information session, all of them receive a brochure about trafficking, including telephone numbers and addresses of organisations in Slovenia and other European countries. The information session is meant as a preventive act, however the NGO has placed mailboxes in all of the toilette rooms where the persons, who recognise themselves as victims of trafficking, can identify themselves. Officials have a duty to inform the NGO if there are any signs of trafficking. In such cases staff of the Asylum Home is contacted and the person will be transferred to another (safe) location. The address of this location remains undisclosed.

NGOs cannot act without the victims’ claim or permission, even when it is obvious that a person is a victim of trafficking.

2.5.2 If so, how are victims of trafficking identified?

Through the declaration of the victim him-/herself. Officials can also point to a suspicion of trafficking. In both cases the victim has to cooperate if any further actions are to be undertaken.


Directive 2003/9 is still in the process of being implemented, according to the information provided by Ministry of internal affairs.

However, the government stated that Slovenian legislation and practice are already in accordance with the above-mentioned Directive.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

The government and NGOs agree that Slovenian law provides sufficient legal basis to guarantee that the minimum standards prescribed by Directive 2003/9 will be upheld, however the NGO respondent found that some deviations occur in practice. See 3.2.2.

3.2.2 If so, in which respects?

The issues mentioned below have been mentioned by the NGO respondent as causing tension in relation to Directive 2003/9:

Article 11 (employment)

The Law on asylum determines that asylum seekers are (on their request) given a permit to work on temporary basis (the conditions for granting access to the labour market are set out in the Law on temporary protection, which is used also for asylum seekers). This law is applicable during the asylum procedure, which means that asylum seekers are allowed to work on a temporary basis, including during the appeal procedures. The period of time during which an applicant shall not have access to the labour market has not however been determined by law.

Article 13 (material reception conditions and health care)

In Slovenia applicants are entitled to material reception conditions after they formally lodge an asylum application. That implies that asylum seekers cannot receive material reception conditions during the period before the application is formally lodged.

Article 15 (health care)
The Directive provides that applicants must receive the necessary health care, which shall include, at least, emergency care and essential treatment of illness. Emergency care and essential treatment of illness are guaranteed by the Law on Asylum after the application for asylum is lodged at the Ministry of the Interior. According to the government respondent, persons who have expressed the intention to apply for asylum but who have not yet formally lodged a claim, are entitled to health care which does not differ much from the health care provided to asylum seekers, whilst ‘care and accommodation’ are also ensured. However, the NGO respondent is of the opinion that the health care granted to persons during this period (minimum health care under the Aliens Act) is far less extensive than that provided for asylum seekers after they have formally lodged an application.

Article 18 (minors)
Asylum seekers who fall in a category of vulnerable persons (i.e. minors, unaccompanied minors, victims of torture) shall be provided with material reception conditions and psychological and medical treatment adapted to their needs. The NGO respondent has expressed concern that the special treatment provided to minors is not sufficiently adapted to their needs. In response, the government respondent stated that most minor asylum seekers leave the Asylum Home as soon as they have lodged their application.

Article 19 (unaccompanied minors)
According to the NGO respondent, there are no legal provisions to make special training available for those working with unaccompanied minors, nor is such training provided in practice. However, the government respondent stated that social workers and psychologists are especially trained to work with unaccompanied minors.

Article 20 (victims of torture and violence)
It is provided that those who have been subjected to acts of violence shall receive the necessary treatment, but insufficient capacity for this kind of treatment exists in Slovenia.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

No information available.

4.2 How many asylum seekers were in the reception system during these years?

Applicants can either be accommodated in the Asylum Home or in private accommodation. About half of the applicants are housed in private accommodation.
In the years 1999-2003 there were 13,040 asylum seekers in the reception system

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Article 29 of the Law on Asylum (ZAzil) provides that every asylum seeker must be interviewed before a decision is taken in his/her case. An exception is only made if the safe third country exception is applicable. In the accelerated procedure a submission of a statement is treated as an interview. The Court has confirmed this practice.

Family members all have the opportunity of a personal interview. Interviews are usually conducted with spouses. Children are interviewed if they are considered mature enough to understand the purpose of the interview; there is no specific age limit. Special interviewing techniques are used for children.

Spouses are interviewed separately. The NGO respondent has indicated that statement made by family members in the course of their asylum procedures, may be taken into account when examining a person’s application, however this has been contested by the government.

All available evidence has to be examined. The competent authority shall enable the asylum applicant to exhaustively present, explain and prove all circumstances and facts that might be relevant to the application. The applicant for his/her part has the duty to actively co-operate with the competent authority throughout the procedure. The applicant shall present and explain all facts and circumstances known to him/her, facilitate the authorities’ access to all available evidence and produce all documents and certificates in his/her possession that might be relevant to the procedure. The applicant shall be informed of this duty in the invitation letter, which will be sent to him or her.
5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Article 13 of the Law on Asylum (ZAžil) provides that female asylum applicants are entitled be assisted by a female decision maker and interpreter upon request.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Decision makers use special interviewing techniques designed for interviewing unaccompanied minors. Also, the interview has to be attended by a guardian appointed by the Slovene Philanthropy (an NGO authorised by the CSD-Centre for social work). The guardian has to act in the minor’s best interest and has to co-sign every document.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

Decision makers use special interviewing techniques designed for victims of traumatising events. The interview is not public. Especially in cases of victims of traumatising events privacy is considered very important. NGOs are also not admitted to the interviews.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes, every applicant for refugee status is entitled to remain in Slovenia until a first decision is taken on the asylum application.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Yes. Asylum applicants are entitled to remain in Slovenia until a final decision is taken on their application. There are three instances of decision-making in Slovenia: the Ministry of Interior, the Administrative Court and the Supreme Court. An exception to the suspensive effect of appeals exists in cases where the Dublin procedure is applied or when the applicant has filed a subsequent application.

The NGO respondent noted that applicants do not have the possibility to apply for interim measures to allow them to remain in Slovenia until a decision is taken on their appeal. A case was mentioned where a legal counsellor filed a motion for temporary injunction. This has been granted by the Administrative Court, but latter on dismissed by the Supreme Court. A constitutional complaint has been filed to the Constitutional court of Republic of Slovenia, but this has not yet been decided upon.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

After the asylum seeker has officially lodged an application, his/her fingerprints are taken and sent to the EURODAC database, in order to establish whether the applicant has already applied for asylum in any other Member State.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

The Law on Asylum provides the following: asylum shall be granted to aliens who qualify as refugees under the Geneva Convention. Asylum shall be granted on humanitarian grounds to aliens whose deportation to their country of origin might pose a threat to their safety or physical integrity in the sense of the European Convention on Human Rights (ECHR) and who do not qualify as refugees under the Geneva Convention. Whether the
applicant is in need of one of these forms of protection (refugee status or asylum on humanitarian grounds) is assessed in the course of a single procedure.

In addition, there is a ‘special form of protection’, which is regulated in Article 61 of the Law on Asylum (ZAzil). This protection is granted if deportation of the asylum seeker would be contrary to the principle of non-refoulement or to any other international legal instrument for the protection of aliens (e.g. the International Covenant on Civil and Political Rights, ICCPR). The decision is taken after a separate procedure, conducted by the authority that conducted the asylum procedure, on request of the applicant or ex officio.

The relevant legal provision is cited below:

**Article 61 ZAzil (Special form of protection)**

1. Under this law, the special form of protection means permission for the foreigner whose asylum application has been rejected by a final decision, to stay temporarily in the Republic of Slovenia.

2. The special form of protection may be granted to the foreigner by the authority that conducted the asylum procedure on his/her request or ex officio.

3. The special form of protection shall be granted:
   - if removal from the country would contradict paragraph 1 of Article 6 of this law (ZAzil 6/1: “Forced removal or deportation of persons to a country where their life or freedom would be threatened or to a country where he could be exposed to torture or inhuman and degrading treatment or punishment is not allowed”);
   - if conditions to protect the foreigner in the republic of Slovenia exist pursuant to another regulation or an international agreement.

4. The competent authority may grant the special form of protection in the Republic of Slovenia for as long as these reasons exist but for no more than six months. Upon the proposal of the alien, the special form of protection may be extended.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

There are differences between the asylum procedure and the procedure for granting special protection regarding the conditions for starting the procedures, the content and the duration. In the procedure for special protection, the decision is usually based on the grounds for asylum mentioned in the original application. Interviews are an exception and fingerprints are not again sent to EURODAC.

Also, the procedure for special protection includes one more instance, at the stage before an appeal can be lodged with the Administrative Court.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes, the person concerned is allowed to stay in Slovenia until the decision of the Supreme Court is final. Appeal against the decision has suspensive effect.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Protection cannot be granted to persons who have committed acts mentioned in Article 1F Refugee Convention, but the Law on Asylum does not indicate such acts as grounds for withdrawing protection.

6.2.2 If so, is this possibility (these possibilities) being made use of?

See 6.2.1

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant inDirective 2004/83, that differ from the rules for withdrawal of refugee status?
No, there are just substantial differences.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

See 6.3.1.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

The proposed Directive contains many new propositions for conducting asylum procedures, which are not included in the existing Slovenian legislation. However, these differences do not amount to tensions.

7.1.2 If so, in which respects?

To mention some of the differences, existing Slovenian current legislation does not include:
- the safe country of origin concept,
- such a narrowly defined concept of a safe third country,
- the country of first asylum concept,
- admissibility rules (every asylum application is examined).

7.2.1 If your member state operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No information available.

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as requests for subsidiary forms of protection, how many requests were examined during these years?

See 8.3.1 and 8.3.2.

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

<table>
<thead>
<tr>
<th>YEAR</th>
<th>number of applications</th>
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<tr>
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<td>1511</td>
</tr>
<tr>
<td>2002</td>
<td>640</td>
</tr>
<tr>
<td>2003</td>
<td>1101</td>
</tr>
</tbody>
</table>

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

As the possibility of special protection has only been included in the Law on Asylum in 2001, no data are available for the years 1999 and 2000.
8.4 **How many decisions to withdraw refugee status were taken in these years?**

No information available.

8.5 **How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?**

No information available. Special protection is granted for 6 months and can be extended. This form of protection is not usually withdrawn, however it is possible that it would be extended. An alien who has lived in the Republic of Slovenia for two years without interruption on the basis of special protection may, upon his/her request, be granted asylum on humanitarian grounds.

**Qualification as a refugee or as a person in need of other forms of protection**

9.1 *Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?*

The Law on Asylum (ZAzil) does not define non-state actors of protection; a definition will be included in the transposed asylum legislation.

9.2 *Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?*

See 9.1.

9.3 *For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?*

Yes.

9.4 *Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?*

No. However, such persons can be granted asylum on humanitarian grounds.

9.5 *To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?*

Women who are considered particularly vulnerable due to personal circumstances (i.e. unaccompanied adolescent girls) could form a particular social group on the basis of their gender and special circumstances that make them more vulnerable to persecution. Account is taken of the way in which women are perceived in their societies. Note is also taken of the practice and case law existing in other countries, including other EU states, Canada and Australia. However, there is no thorough record of cases in which gender played a role in constituting a particular social group.

9.6 *Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?*
The sole fact of being an unaccompanied minor is insufficient to qualify for refugee status or subsidiary protection. The same forms of protection are available to unaccompanied minors as to other asylum seekers.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Victims of trafficking are eligible for all forms of protection, however the mere fact that they are victims of trafficking is not enough to qualify as refugees or persons meriting special protection.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

The Law on Asylum does not distinguish between minors and adults regarding this matter.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

There is no tension between current practice in Slovenia on the point of qualification for international protection and Directive 2004/83.

10.2 If so, in which respects?

Slovenian legislation provides different forms of protection that are different from the forms of international protection defined in the Directive. Many important issues defined in the Directive (internal protection, acts of persecution, acts of protection, assessment of facts and circumstances) are not covered by current national legislation. The implementation of the Directive will include a revision of the definition of protection, which will be drafted according to the definition in the Directive. In addition, legislation would be drawn up concerning the issues that are not covered at present, and a specific assessment would be made of the situation in Slovenia, to compare it to the minimum standards set out in the Directive.
The government chose not to participate in our questionnaire. Therefore this report is based solely on the information we received from the respondent from the UNHCR.

Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

The Asylum Law 9/1994 establishes that, during the processing of asylum applications filed at border points under the admission procedure, the applicants will remain at those border points, where adequate facilities have to be provided to accommodate the applicants.

In practice, about some 95% of the asylum applications lodged at border points are registered at Madrid's International Airport. This airport is equipped with facilities where the asylum seekers remain pending a decision on the admissibility of their asylum request. The UNHCR respondent considers that the conditions at these facilities are acceptable, although they would not suffice in a situation of a large influx of asylum seekers. Similar facilities have been built at Barcelona and Las Palmas International Airports. Medical and legal assistance are available.

In principle the regime at these facilities does not constitute detention, but asylum seekers who are lodged there are not free to leave. The Spanish Constitutional Court considers this to be a lawful restriction of freedom of movement. In February 2002, the Court ruled that confinement at border points did not constitute "detention", but rather a "restriction to personal freedom", which is an intermediate status between detention and personal freedom. According to the Court, sufficient legal safeguards exist to guarantee the legality of such a restriction to the personal freedom of the asylum seeker, such as UNHCR's binding recommendation on the admissibility of claims at border points, which, if positive, enables the asylum seeker to enter Spanish territory. The Court reasoned the objective of a restriction to personal freedom is different from that of detention, that is "the protection of those who claim persecution, while simultaneously making sure that aliens' entry and stay in Spain is done in full respect of the law". According to the court, the time limit of the restriction to personal movement must be proportional to the aim pursued by such a measure.

At other border points than Madrid, Barcelona and Las Palmas Airports, the facilities described above are not yet available. Therefore, the authorities resort to alien detention centres. These centres are meant to accommodate those aliens who, owing to their irregular situation in Spain, are subject to an administrative expulsion procedure. Although these persons are not free to leave these centres without a judicial decision, the centres are not considered by the law as penitentiary institutions. Persons charged with criminal offences are transferred to regular penitentiary institutions, in accordance with the Spanish penal regulations.

While the UNHCR respondent has indicated that the circumstances in these detention centres are normally acceptable, problems have arisen in some of the centres due to overcrowding. This has been the situation in the Southern coasts of Spain and the Canary Islands, where the highest influx of immigrants was registered during the reporting period. Although at these locations, asylum seekers tend to arrive by boat and enter the territory illegally where they apply for asylum, the authorities deal with their applications under the border procedure following an administrative decision in this sense. However, a person who lodges an application for asylum at a border point would only be held in one of these centres for a maximum period of seven days, during which his/her application is under scrutiny by the authorities. If admitted into the regular status determination procedure, the asylum seeker is automatically released.

The situation of asylum seekers in Ceuta and Melilla is particular. They are free to move within these North African enclaves, but they do not have access to the Peninsula. It has to be noted that both enclaves are not Schengen territory. Only those asylum seekers admitted to the regular status determination procedure gain access to the peninsula and are then placed in reception centres.
The Constitutional Court, issued an important ruling in February 2002 on the appeal lodged by the Ombudsman in August 1994, challenging the period of internment at border points established by the Law 9/94. The Constitutional Court ruled that the confinement at border points could not be considered to be "detention", but rather a "restriction of personal freedom", which is an intermediate status between detention and personal freedom. According to the Court, the existing legal safeguards for asylum seekers under such situation of "restricted freedom" are sufficient to guarantee the legality of such retention. One such safeguard is UNHCR's binding recommendation on the admissibility of claims at border points, which, if positive, enables the asylum seeker to enter Spanish territory. The Court reasoned that the right to personal freedom foreseen in Article 17 of the Spanish Constitution is neither absolute nor unlimited, and made a distinction between pre-emptive detention measures foreseen by criminal law on the one hand, which would be what is known as genuine detention, and to which the maximum period of 72 hours should be applied, and on the other hand “restrictions to personal freedom”, which have a different objective, such as "the protection of those who claim persecution, while simultaneously making sure that aliens' entry and stay in Spain is done with full respect of the law”. According to the Court, the time limit of the latter must not be as strict as in the case of criminal pre-emptive measures, but must be proportional to the aim that is pursued by such measures.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

Spain transposed the Directive on Temporary Protection through Royal Decree 1325/2003, of 24 October. This Decree establishes the regime that will govern the grant of temporary protection in cases of massive influx in the EU Member States but it does not include any specific provision for short-term reception of asylum seekers upon arrival in situations of mass influx. However, general provisions in Spanish Aliens Law and Asylum Law will be applicable in those cases.

According to Article 15 of Implementing Decree 203/95 to the asylum law, if asylum seekers lack the necessary financial means, they are entitled to social and medical assistance, to be provided by the competent authorities. Amendments to the Asylum Regulation have resulted in this assistance becoming available to asylum seekers pending a decision on their admissibility to the procedure. Therefore, the provisions should also apply in cases of mass influx.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Social, educational and sanitary services are available to asylum seekers who lack sufficient financial means, already pending the decision on their admissibility to the asylum procedure. While the services provided depend on the means and the budget available to the administration, the social assistance should at least cover the basic needs of the asylum seekers.

(Unaccompanied) minors are considered an especially vulnerable group for the purpose of receiving these services. Assistance should be provided to them in accordance with international guidelines.

For more information about the situation of minors, please see answer to question 2.3.1.

1.3.2 If so, how are (unaccompanied) minors identified?

Age assessment procedures are not uniform in the different Autonomous Communities/Cities of Spain. The medical examinations used for age determination differ from case to case. Normally cultural or ethnic considerations, the child's maturity or psychosocial aspects are not taken into account during these examinations. UNHCR Madrid considers that the age tests that are applied to undocumented minors are not appropriate or conclusive to establish the real age of the asylum seeker. Psychological maturity is not taken into account, and the benefit of the doubt is not granted. The most common medical exam is the wrist bone measurement to be compared with white male standards of years ago (Greulich and Pyle’s studies), irrespectively of age, nutritional habits, etc.

While there is a guideline from the Public Prosecutor to give the benefit of the doubt to the applicant by using the lowest estimated age (Instruction 2/2001), the UNHCR respondent indicated that this Instruction is not always followed in practice by child protection services.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?
There are no special provisions within Spanish legislation regarding female refugees or asylum seekers, apart from the general provision for vulnerable groups contained in Article 15.3 of the Implementing Decree 203/95 to the asylum law. This article establishes that asylum applications lodged by single parent families, handicapped persons, aged persons or other vulnerable groups will be considered in accordance with the guidelines provided by international instruments and recommendations on this issue. According to this provision, these persons can receive social assistance from the moment when they lodge their application. If they require urgent social assistance (e.g. medical care) before the application is lodged, they will receive this on the basis of the general provisions of Spanish aliens legislation regulating the rights of third country nationals.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

See 1.4. At the moment victims of trafficking are not considered as a vulnerable group. UNHCR is currently working to create awareness concerning this issue among the Spanish authorities.

1.5.2 If so, how are victims of trafficking identified?

There is no specific procedure to identify victims of trafficking. No information is available regarding how victims of trafficking are identified in practice.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

The general rule is that asylum seekers who lodged their application within the country (except those who lodge them after being confined to an Internment Centre for Foreigners (see below), or at border points and who have been admitted to the regular status determination procedure, have freedom of movement.

Several reception centres exist for refugees, displaced persons and asylum seekers throughout Spain, which serve as temporary accommodation (6 months, which can be extended up to 12 months in exceptional cases). These centres are run either by the Government or by Spanish NGOs. There is alternative assistance to reception centres, only provided to specific cases, consisting of a monthly allowance in cash. This financial assistance is initially granted for 3 months (6 months for vulnerable groups), and can be extended up to 12 months under exceptional circumstances.

The referral of cases to the different reception centres in Spain is decided by the Ministry of Labour and Social Affairs – General Directorate for Immigration, through its social workers assigned to the premises of the Refugee and Asylum Office (OAR) in Madrid. With regard to asylum applications filed in provinces other than Madrid, it is usually the local Red Cross Department which co-ordinates, together with social workers from the OAR, the granting of accommodation or financial assistance.

Persons suffering from contagious diseases or severe mental disorders are not allowed to stay in reception centres run by the Ministry of Labour and Social Affairs. However, centres run by NGOs often have more flexible criteria regarding admission.

Asylum seekers cannot move from one reception centre to another, unless there are strong reasons justifying such a transfer. They may choose to leave the reception centre voluntarily, but they will not be allowed to return.

The following services are provided in reception centres: accommodation, food, Spanish courses, leisure activities, counselling by an in-house social worker and a psychologist. The infrastructure and assistance provided in the 4 government-run centres are very similar.

In general terms, beneficiaries of centres managed by NGOs under the supervision of the General Directorate for Immigration can receive legal, social, educational and medical assistance either inside or outside of the centres, through different NGO programmes and/or local/public welfare institutions.

A person may stay at a reception centre for a maximum period of 6 months. This can exceptionally be extended for 3 months and, in special cases, for a further 3 months. However, asylum seekers cannot stay in a reception centre for longer than 1 year (although exceptions have been made to this rule in the past).

Special accommodation arrangements are usually established for refugees who have arrived in large numbers under specific quotas (e.g. the Kosovo Albanians in 1999) or resettlement programmes (e.g. Bosnian “ex-detainees” in
1992). In such cases, the persons concerned must remain in the designated centres in order to benefit from the assistance accorded to them.

Differences continue to exist between the centres in terms of location, infrastructure, conditions of assistance, programmes, the number of staff assigned to each centre and their professional experience. These differences, especially the lack of adequate professionals, have a direct impact on the integration process of refugees in Spain. The lack or poor quality of interpretation services is also a problem.

Another issue is that vulnerable persons are sometimes not accommodated in a reception centre, but in hostels or provided with financial assistance instead of accommodation. Also, persons from the same country of origin but from opposite political parties or ethnic groups, have in the past been placed in the same reception centre, resulting in serious internal problems for the beneficiaries of the centres and for the managers.

Asylum seekers who lodge their application after being confined to an Internment Centre for Foreigners (normally those who are intercepted while attempting to enter Spain, or immediately thereafter), if admitted to the regular status determination procedure, are fed and placed in a centre for asylum seekers.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Spain transposed the Directive on Temporary Protection through Royal Decree 1325/2003 of 24 October. This Decree establishes the regime that will govern the granting of temporary protection in cases of mass influx in the EU Member States.

According to Article 15 of Implementing Decree 203/95 to the asylum law, if asylum seekers lack the necessary financial means, they are entitled to social and medical assistance, to be provided by the competent authorities. Amendments to the Asylum Regulation have resulted in this assistance becoming available to asylum seekers pending a decision on their admissibility to the procedure. Therefore, the provisions should also apply in cases of mass influx.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

Article 15 of the Asylum Regulation, as amended by Royal Decree 2393/2004 of 30 December, about social benefits and employment of asylum seeker provides:

“3. In providing the services mentioned in paragraph 1 of this article, account will be taken of the specific situation of especially vulnerable persons, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physical or sexual violence, in accordance with the Directives that appear in the international recommendations used to harmonise the treatment of these social groups of refugees or displaced individuals.”

There are a number of practical shortcomings linked to the exercise of the legal guardianship of unaccompanied minor asylum seekers. Among the most relevant is the tendency of guardians not to pursue the asylum procedure on behalf of the minor, but to try to regularise their stay in Spain through the regular aliens regime. While there is no legal impediment to pursuing the two procedures at the same time, an incorrect interpretation of the Refugee and Asylum Office (OAR) has resulted until recently in having to choose one of them.

Separated foreign children in Spain have access to health care on an equal basis with Spanish children. However, while they can access public psychological services, there very few psychologists are available who are specialised in refugee trauma related issues. This issue may be aggravated when no (specialised) interpreters are available.
As regards education, refugee reception centres work very closely with schools and education institutes where separated children are registered, in order to monitor their progress and adaptation to their new environment. Some of these schools provide support teachers and compensation school-hours for minor asylum seekers.

All separated minors (Spanish and alien, including asylum seekers) are generally placed in Public Protection Centres for Minors run by the Regional Autonomous Governments. These are institutions for all children who are under the protection of the Child Custody or Guardianship Courts if they are abandoned, if their parents are not able to care for them, or if they are in transition waiting for the appointment of a guardian.

Due to an increase in the arrival of separated minors in Spain, mainly from Morocco and sub-Saharan countries (most of them males), the number of reception centres for minors has increased, particularly in the southern Autonomous Communities/Cities with a higher influx of arrivals (Canary Islands, Ceuta, and Melilla). The UNHCR respondent noted that at present, and with a few exceptions, reception centres for minors in Spain are not adequately equipped to respond to the needs of minor asylum seekers and refugees and/or to meet the requirements of the growing number of minor aliens reaching Spanish territory. There is a lack of human and material resources: interpreters, trained professionals with experience and information on the minors’ cultural/persecution background, lack of information/co-ordination with specialised NGOs etc.

There are three NGOs with reception centres or “monitored flats” (‘pisos tutelados’) in Spain that are specialised in accommodating unaccompanied minor refugees and asylum seekers, as well as alien immigrants. The religious congregation "Merciful fathers" and NGO "Karibu" have flats with capacity for accommodating 35 males and 5 females respectively; 4 centres in Las Palmas (Canary Islands) run by the Spanish NGO CEAR (Spanish Commission for Refugee Aid), with an overall capacity for 64 minors. The NGO AVAR (Valenciana Association for Refugee Aid), with 4 flats, provides accommodation to 24 minors. Staff at these centres is adequately trained and has a good understanding of the children’s cultural, linguistic and religious background. In specialised centres, assistance is provided for the processing of asylum applications, residence permits, family tracing, language courses, education, vocational training and integration. These centres receive funds from their respective regional administrations and the national Ministry of Labour and Social Affairs.

Finally, reference must be made to general legal provisions: in accordance with the Aliens Law 8/2000 amending Law 4/2000, all aliens, regardless of their legal status, have the right to free education up to the age of 18 under the same conditions as Spanish nationals, including the possibility to benefit from scholarships (Article 9). Schooling is compulsory from the age of 3 to 16. Aliens residing legally in Spain will be able to receive special teaching with a view to improved social integration, with due respect and acknowledgement of their religious and cultural identity. Therefore, refugee and asylum seekers’ children benefit from the public education system under the same conditions as Spanish children.

Spanish NGOs, public institutions and refugee reception centres provide Spanish language courses, mainly with volunteer personnel. Special language lessons are often organised for children before joining regular classes at school.

2.3.2 If so, how are (unaccompanied) minors identified?

See 1.3.1.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

Article 15.3 of Implementing Decree 203/95 to the asylum law provides that applications lodged by single parent families, handicapped persons, old age persons or other vulnerable groups, will be considered in accordance with the guidelines provided for by international recommendations on this issue. According to this provision, these persons will be granted social assistance from the moment when they submit their application. Pregnant women are entitled to medical assistance before, during and after the delivery.

Other than this there are no specific provisions.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?
Apart from the general statement of Article 15.3 of Implementing Decree 203/95 (see 2.3.1) there is no specific provision for reception of asylum seekers during examination of the application for victims of trafficking.

2.5.2 If so, how are victims of trafficking identified?

N/A.


On 30 December 2004 a new Aliens Regulation was published in the official gazette. Along with it, several provisions of the existing Aliens Regulation, as well as some provisions of the Asylum Regulation were amended.

The amendments made to the Asylum Regulations aimed to implement the Reception Directive, however they did not encompass all the provisions and standards set out by the Directive. The implementation of the Reception Directive will be finalised through a general amendment of the Asylum Law and Regulation, as part of an overall transposition effort including the Procedure and Qualification Directives. This amendment is not expected before 2006 at the earliest. A working group was formed at the end of 2004, composed of selected academics and government officials. Officials from the Ministry of the Interior have expressed their commitment to actively involve UNHCR in the process.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

Yes.

3.2.2 If so, in which respects?

1.- Information that the State must provide to asylum seekers on the available benefits and the obligations to be met regarding reception conditions

Article 5 of the Asylum Regulation falls short of the standards set out in article 5 Reception Directive (RD) in two respects:

(a) it provides that the brochure will be available in several languages, whereas the Directive specifies that it must be in a language that the applicant may reasonably be supposed to understand.

(b) it provides that the information contained in the brochure must be all the useful information, whereas the Directive specifies the information.

2.- Although the practice regarding the safeguarding of family unity is coherent with Article 8 RD, the UNHCR respondent contended that it is not appropriately legislated. The applicable regulation is a Ministerial Order, which cannot be considered as a legal act adequately transposing a Directive. According to the UNHCR respondent, transposition should be effectuated through the Asylum Regulation or Law.

3.- Although Article 13 RD provides that material reception conditions should 'ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence'; and provide for persons with special needs and persons who are in detention. However, the recently modified Article 15(1) of the Asylum Regulation establishes the possibility to adjust the social, educational and health-related services, when the asylum application is awaiting admission to the normal status determination procedure.
Prior to the amendment of this article, only asylum seekers who had been admitted to the procedure had access to benefits. While the new formulation makes the benefits available to all asylum seekers, it retains the possibility of ‘adjusting’ them pending admission of the applicant. This is contrary to Article 13 of the Directive.

In addition, it must be noted that the situation of those asylum seekers in Ceuta and Melilla for whom there is no room in the Temporary Reception Centres, is precarious. These asylum seekers do not always have access to health care, programmes to cover their basic needs have been discontinued and their condition is rapidly deteriorating.

4.- Modalities for material reception conditions including housing, access to UNHCR, relatives, lawyers and NGOs:
With some exceptions (in Ceuta and Melilla, see above), all asylum seekers have appropriate accommodation. Asylum seekers are allowed to remain in the Reception Centres for Refugees for a period of six months, which may be renewed because of particular social circumstances or vulnerability. However, it would be preferable if the relevant provisions (Article 14 Directive) were to be implemented in the Asylum Regulation or the Asylum Law.

There are no legal or administrative provisions establishing the possibility for asylum seeker to communicate with relatives, UNHCR, legal advisers or NGOs (Article 14 (2) Directive). In practice asylum seekers have access to UNHCR, specialised lawyers and pro bono lawyers. The information brochures prescribed by Article 5 (1) of the Asylum Regulation (see above), telephone numbers and addresses of UNHCR, NGOs and Bar Associations are included.

5.- Applicants with special needs: minors, unaccompanied minors, elderly, pregnant women; single parents and persons who have been subject to psychological, physical or sexual violence:
While the general provision of Article 15(1) of the Asylum Regulation meets the standards of Article 17 (1) RD, the specific standards set out in Articles 18, 19 (2-6) and 20 are not so clearly incorporated in Spanish legislation. Some may be implemented through internal regulations of the Ministry of Labour and Social Affairs, but this cannot be considered as meeting the requirements of transposition of an EU Directive.

6.- There are no legal or administrative provisions concerning appeals against negative decisions on the grant of benefits or on reception conditions, except in cases where the asylum seeker is confined to a particular place following Article 7 (3) RD. In such cases the confinement or detention shall be decided by a judge, which means that appeals are possible according to general procedural laws. However, with regard to other cases transposition of the Directive is still required.

7.- State resources required to ensure training for the authorities implementing the Directive; allocation of necessary resources to implement the Directive:
No legal or administrative provisions exist concerning these matters. Moreover, regarding the allocation of resources, Article 15 of the Asylum Regulation is contrary to the standard set out in Article 24 (2) of the Directive, as it provides that the reception conditions shall be adapted to the availability of funding, instead of ensuring that the necessary resources are allocated. Nevertheless, in practice staff are adequately trained and the Branch Office in Madrid believes that at present there is no shortage of funding for the reception of asylum seekers.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?
No information available.

4.2 How many asylum seekers were in the reception system during these years?
No information available.

Asylum procedures

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5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

No, the Asylum Law does not prescribe a mandatory interview. Instead, it requires the applicant to provide a full account of the grounds for his/her application in writing at the moment of lodging the application. A first interview usually conducted, however this does not concern the merits of the case. Rather, it aims to collect data concerning the asylum seeker (name, date of birth, country of origin, when did s/he leave the country of origin, travel itinerary, date of arrival in Spain, etc).

Once the applicant has been admitted to the regular status determination procedure, an in-depth evaluation of the claim is carried out by the Refugee and Asylum Office (OAR). This office may interview the applicant or requests the Unified Aliens Office or Police Department of the province where s/he resides to do so. However, only a small number of applicants are interviewed at this stage, since the OAR is satisfied with the one undertaken in the course of filling the asylum application.

Therefore, the great majority of asylum seekers have only one interview in the course of the status determination procedure at the time of formalising the asylum request. The civilian staff and police officers that interview asylum seekers lack adequate training, i.e. regarding asylum specific interviewing techniques and inter-cultural awareness. Also there are often too few staff members for the number of cases they deal with. Due to inadequate interview techniques, the declarations of asylum seekers are usually brief, sketchy and general. There are no counter-questions, requests for clarification of unclear or contradictory statements, etc. In the admission phase, this results in a significant number of applications being considered manifestly unfounded and therefore inadmissible\textsuperscript{211}. Of those admitted to the status determination phase, only few are interviewed by the asylum officers in the course of the procedure (two years on average) as it is considered that the applicant should have provided comprehensive declarations in the first interview and that a new interview would not add anything significant. Many claims are then rejected on the grounds that the declarations of the asylum seeker are generic, lack precision and/or are contradictory and lack credibility.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

The Refugee and Asylum Office (OAR) has a team of female interviewers that are instructed to deal with sensitive cases involving female asylum seekers. Internal guidelines for processing asylum applications lodged by women exist but the content thereof is unknown.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Unaccompanied asylum seekers under 18 years of age shall be referred to the relevant services for the protection of minors and this shall be communicated to the Prosecutor’s Office. A legal guardian shall be assigned to the minor to represent him/her during the procedure. The asylum request shall be processed in conformity with the criteria set out in the conventions and international recommendations applicable to the minor asylum seeker, in particular the United Nations Convention on the Rights of the Child (CRC).

Children have the same right to judicial review as adults once a first instance negative decision on their asylum applications have been served on them. Minors also have the right to a legal representative to assist them during the asylum procedure.

The procedure to be followed in practice for unaccompanied minors asylum seekers (UMAs) can be summarised as follows:

\begin{itemize}
\item[a)] When an unaccompanied minor is brought to the attention of the Asylum Office or the Alien Police Departments, they are obliged to communicate the situation to the national Administration authority for the protection of minors, the Public Prosecutor for Minors. If immediate assistance is needed, they will inform the Minor’s Protection Department of the regional Administration where the application has been filed.
\item[b)] If the minor is undocumented and there are doubts regarding his/her age, the Prosecutor for Minors must be informed so that they can refer the child to the medical services for an age test.
\item[c)] If the asylum seeker is found to be a minor, s/he is transferred to the centre for unaccompanied minors designated by the Minor’s Protection Department at the corresponding Autonomous Community or
\end{itemize}

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City. The regional government department assumes the minor’s legal guardianship, but delegates the legal custody to an individual, foster family or institution (most frequently the director of the reception centre) with whom/where the child will stay. All decisions concerning the minor should be communicated and confirmed by the legal guardian (the regional government department).

d) According to the law, the minor’s protection department should evaluate the best protection option for each individual case. If the decision is to apply for asylum or to confirm the asylum application previously initiated by the minor, the minor’s department will act on behalf of the child, and the asylum authorities will review the application throughout the regular procedure.

e) If the minor’s protection department considers that the asylum procedure should not be completed, this decision will be communicated to the competent asylum authorities, and the proceedings for family reunification or repatriation of the minor will be initiated.

f) If repatriation or family reunification is not feasible, the minor will be granted a residence permit at the request of his/her legal guardian. The residence of minors under the guardianship of the public Administration is considered regular for all intents and purposes. The effects of the residence permit shall be retroactive to the time at which the minor was placed under custody.

Although the child protection law and the aliens’ legislation –apart from asylum law- are reasonably protective, in practice child protection authorities are reluctant to enforce protection mechanisms. The practice varies in the different Autonomous Communities/Cities, and the lack of protection comes from the child protection authorities more than from the asylum authorities.

The UNHCR respondent noted that the Department for the Protection of Minors tends to not follow up on children’s refugee claims. In addition, the Refugee and Asylum Office (OAR) does not have staff trained to deal with asylum seeking children.

Asylum applications concerning minors are processed through the accelerated procedure at border points and in country. Therefore, their applications can be (and are, in practice) found inadmissible in the same way as applications filed by adults.

The Refugee and Asylum Office (OAR) practice to “freeze” the minors’ asylum applications until they reach majority was ended several years ago.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatizing events before or during their flight (torture, trafficking)?

No. Asylum seekers can benefit from psychological and psychiatric treatment. All Government run reception centres have a social worker and psychologists working full-time in these centres. Several NGOs make services available to asylum seekers, whether through their own programmes run within the centres or through programmes enabled by local public welfare institutions.

The Red Cross in Madrid employs a psychologist and a psychiatrist to deal with individual cases in this autonomous community.

In general terms, the issue of psychological/psychiatric assistance to refugees and asylum seekers in Spain and the need for specialised interpreters to work in this field have not been a priority over the last 10 years. During the reporting period, however, the Government approved the funding of a project to grant psychosocial assistance to refugees suffering trauma and other psychological disorders under the European Refugee Fund.

5.4 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Asylum seekers are protected against expulsion or return until a decision is taken on their application. Moreover, the law prescribes that asylum seekers are protected against extradition until a final decision on their refugee status is taken.

5.5 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Judicial review before the National High Court against a first instance negative decision does not have automatic suspensive effect. The order to leave Spanish territory, which is served upon the rejection of the claim, will only
be suspended if the applicant makes a request to that end to the chamber of the National High Court and this court deems it appropriate to grant the suspension. In practice, the Court, on various grounds, rejects many requests for suspension. However, in practice persons with an appeal pending before the National High Court against an asylum rejection are not usually expelled. There is no appeal against a decision taken on the judicial review, but a cassation appeal may be lodged with the Supreme Court. If a negative decision is taken on the cassation appeal, all remedies will be exhausted and the expulsion order can be executed, unless the Court grants leave to remain in Spain. As with the appeals before the National High Court, even if suspension is not granted, persons are rarely expelled pending the cassation appeal.

If an asylum seeker whose claim has been rejected is expelled, s/he can pursue the appeal through a Spanish diplomatic mission abroad. In practice this is seldom done.

1. Recourse against non-admission at border points:

The applicant can invoke an administrative review before the same authority that took the initial decision, i.e. the Ministry of the Interior, within a period of 24 hours starting from the date of the decision. The Ministry of the Interior must decide on the review and the decision must be served on the applicant within a 2-day period. If the decision on the review confirms the first negative decision, the competent authorities can proceed with the return of the person concerned. The applicant, however, is entitled to lodge a judicial recourse before a single judge of the National High Court within 2 months. This recourse does not have suspensive effect, unless a request thereto is made by the applicant and granted by the Court. Appeal against the decision by the single judge may be lodged with the chamber of the High Court.

UNHCR's opinion, as expressed at the admissibility stage (border points) seems to have an important impact at the time of lodging the judicial appeal before the National High Court. In cases where UNHCR's recommendation was to admit the asylum seeker to the regular procedure, and the claimant expresses his/her will to lodge an appeal before the National High Court, the competent authorities will authorise his/her immediate entry and stay in Spain to lodge the appeal to the court within two months and until the Court decides on the suspension of the expulsion order.

2. Recourse against non-admission of in-country applications:

There is no administrative review against the decision declaring an in-country application inadmissible. The applicant can file a request for judicial review to the competent judicial authorities, which are the single judges of the National High Court. The asylum seeker can request a suspension of the order to leave Spanish territory; the Court decides on this request prior to entering into the question of admissibility. As with the procedure at the border, appeal against the decision on admissibility by a single judge may be brought to the chamber of the High Court.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Within seven days after the data have been fed into Eurodac. At the time of formalising the asylum application, the asylum seeker is given a seven-day residence permit to allow for such a consultation. After seven days, the asylum seeker will be informed if Eurodac shows that s/he has already filed an asylum claim in another Member State.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

At the time of the interview whereby the asylum application is formally lodged.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes. After amendment of the Asylum Regulation by Royal Decree 2393/2004, asylum comprises three categories of persons. Apart from Conventional refugee status, the Asylum Regulation includes a definition of subsidiary protection, specifying the humanitarian status provided for in Article 17.2 of the Asylum Law. This Article specifically mentions situations of generalised violence as a reason to grant humanitarian status. Furthermore, the new Article 31.4 specifies that asylum can also be given for humanitarian reasons different from those described in the preceding paragraph.
All asylum claims presented in Spain are in principle examined to establish if they meet the refugee definition. Only if the person concerned does not qualify for refugee status can a complementary form of protection be granted.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

See 5.6.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes. The Asylum Law provides that the Government may withdraw asylum when one of the grounds included in the international treaties ratified by Spain for the withdrawal of the refugee status is met.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Yes.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

No.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

A study on the matter is underway.

7.1.2 If so, in which respects?

See above.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

No information available.
8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

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8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

N/A.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

No information available.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

This matter is not addressed in Spanish asylum legislation.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Not normally. However, refugee status has been granted in a few cases concerning Colombian asylum seekers. In those cases the Spanish authorities have also granted subsidiary protection.
9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Gender-related claims are not normally considered to fall within the scope of the 1951 Convention. The ground of membership of a particular social group is seldom applied as groups based on family ties, gender and past affiliation are not recognised. Therefore, claims based on gender-based persecution are normally labelled as a ‘private matter’ and are not considered to involve persecution in the sense of the Convention.

Moreover, when the violence or threat comes from within the family, the asylum seeker is often not admitted to the procedure, as the Spanish Asylum Office considers that s/he does not fall under the Convention definition, sometimes linking this argument with that of non-state agents of persecution. However, some asylum seekers who fled because of Female Genital Mutilation (FGM) or forced marriage have been randomly admitted to the procedure.

In cases related to gender, Spanish authorities usually grant humanitarian status on the basis of Article 17.2.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Yes. However, family reunification or return to the country of origin will be contemplated as the primary option for unaccompanied minors, unless s/he has expressed his/her willingness to apply for asylum. In practice, many minors choose not to apply for asylum and instead attempt to obtain a regular residence permit. According to the UNHCR respondent this may be because the outcome of such an application appears more foreseeable.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Several asylum claims based on trafficking for sexual exploitation were lodged during 2004. While these claims were at first considered inadmissible by the Refugee and Asylum Office (OAR), this decision was reversed by the General Director for Home Affairs. This has opened the door for a more lenient consideration of claims of victims of trafficking. In 2003, in the first significant case of a gender-related claim based on human trafficking, the Administrative High Court issued a judgement against the decision of the Ministry of the Interior not to admit a Nigerian national, who alleged that she had been sexually exploited since she was twelve years old.

See also 9.5.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

No such cases have arisen, however no legal impediment exists to the exclusion of minors.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

See 10.2.

10.2 If so, in which respects?

There are three issues of particular relevance where UNHCR finds that the practice of Spanish asylum authorities departs from the “Qualification Directive”. First, Spain does not adequately consider claims of well-founded fear of persecution for reasons of membership of a particular social group. Spain does not apply a consistent definition of a particular social group, nor the definition included in the said Directive, and in fact refugees are rarely recognised on the basis of this ground.

Secondly, there is no consistency in the recognition of claims made on the basis of imputed persecution grounds. While the validity of imputed grounds is accepted in principle, only few persons invoking such persecution grounds are recognised in Spain. Of particular concern to UNHCR – in the context of claims based on imputed political opinion – is the rejection of cases where the persecution occurs through criminal means, such as extortion or kidnapping. Asylum authorities tend to label such acts as criminal without recognising the political motivation of the agent of persecution.
Third, gender-based claims are seldom recognised. While it is not denied that persons fearing gender-based persecution may be entitled to protection, in practice only a handful of persons are recognised as refugees. In this context, it appears that the authorities consider some types of gender-based violence as a domestic issue and tend to reject the claims for that reason. The administrative practice concerning the recognition of gender as an element constituting a particular social group is erratic. However, the UNHCR respondent noted that the Directive also lacks clarity on this point and it is therefore expected that it will not contribute to a more open approach by asylum decision-makers.
SWEDEN – COUNTRY REPORT

Government respondents: Mr. N. Kebbon, Ms. L. Hallstedt Björklund, Ministry of Foreign Affairs, Ms. L. Larsson, Ministry of Justice
NGO respondents: Mr. A. Sundqvist, Ms. N. Rostami, Swedish Advice Centre For Refugees and Immigrants

Preliminary remarks:

How directives become law in Sweden

The inquiry stage
Before the Government can draw up a legislative proposal, the matter in question must be analysed and evaluated. This task may be assigned to officials from the ministry concerned, a commission of inquiry or a one-man committee. Inquiry bodies, which operate independently from the Government, may include or co-opt experts, public officials and politicians. The reports setting out their conclusions are published in the Swedish Government Official Reports series (Statens Offentliga Utredningar, SOU).

The referral process
Before the Government takes a position regarding the recommendations of a commission of inquiry, its report is referred to the relevant bodies for consideration. These referral bodies may be central government agencies, special interest groups, local government authorities or other bodies whose activities may be affected by the proposals. This process provides valuable feedback and allows the Government to gauge the level of support the proposals are likely to receive. If a number of referral bodies respond unfavourably to the recommendations, the Government may try to find an alternative solution.

Government bill
When the referral bodies have submitted their comments, the responsible ministry drafts the bill that will be submitted to the Riksdag. If the proposed law has important implications for private citizens or the welfare of the public, the Government should first refer the proposal to the Council on Legislation (Lagrådet) to ensure that it does not conflict with existing legislation.

The parliamentary process
Responsibility for approving all new or amended legislation lies with the Riksdag. Legislative proposals, whether proceeding from the Government or a private member, are dealt with by one of the parliamentary committees. Any of the Riksdag’s 349 members can table a counter-proposal to a bill introduced by the Government. Such a proposal is called a motion. If a motion is formally adopted in the Riksdag, the Government is bound to implement its provisions. When the committee has completed its deliberations, it submits a report and the bill is put to the chamber of the Riksdag for approval. If adopted, the bill becomes law.

Promulgation
After its successful passage through the Riksdag, the new law is formally promulgated by the Government. All new or amended laws are published in the Swedish Code of Statutes (Svensk författningssamling, SFS).

Arrival and reception of asylum seekers

Preliminary remark: in Swedish legislation there is no difference between short-term reception conditions and long-term reception conditions.

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

No specific short-term provisions, see 2.1.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?
No specific short-term provisions, see 2.2.

1.3.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

No specific short-term provisions, see 2.3.1.

1.3.2 If so, how are (unaccompanied) minors identified?

N/A.

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for (single) women?

No specific short-term provisions, see 2.4.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) for victims of trafficking?

No specific short-term provisions, see 2.5.1.

1.5.2 If so, how are victims of trafficking identified?

N/A.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Yes. Asylum seekers refused entry at the border can be detained for a maximum of two weeks while the Migrationsverket (MV) examines their application for asylum. If a decision to refuse entry has been taken or an expulsion order has been issued, the detention period may last up to two months. If there are exceptional grounds the detention can be prolonged. Specific measures are provided for children under the age of 16. Detention in Sweden is mainly used as a measure to secure the execution of a decision to remove an alien/asylum seeker or to investigate the facts of a case (i.e. the identity of the asylum seeker). For these purposes the MV uses special detention centres intended for asylum seekers. The regular prisons are used in extreme cases i.e. involving violence (Aliens Act Chapter 6 Sections 2, 3, 4).

If an alien is detained because s/he cannot identify him- or herself, the detention is limited to 48 hours.

Aliens are particularly detained to secure their expulsion if it is likely that the asylum application will be rejected and if there are reasons to believe that the alien will obstruct the expulsion. In such cases, if the expulsion has not yet been ordered, the detention must be reviewed every fortnight. If an expulsion order has been made, the detention must be reviewed after two months.

According to the NGO respondent, prolongation of detention is possible and usual. There are no legal time limits for detention, however the detention must be reviewed regularly (see above). The NGO respondent noted that aliens might be in detention for more than six months.

A decision to detain an alien is subject to appeal before the administrative courts.

2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

Before 2002 the situation of mass influx was regulated in the Aliens Act, Chapter 2, Section 4a. Subsequent to the adoption of Directive 2001/55 it has been moved to Chapter 2a of the Aliens Act. However, there are no specific provisions regarding reception.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?
There are no specific rules for unaccompanied minor asylum seekers. However there are guidelines. In cases involving children without custodians priority is always given to keep the wait as brief as possible. Children are defined in this context as persons less than 18 years of age.

In accordance with Swedish law, the social services committee in the local authority area where the child lives has the overall responsibility for the well-being of the child, which means that it is required to investigate his or her social situation, decide on placements, approve foster homes and inquire into the whereabouts of the parents. The social services committee may decide to place the child in one of the Migration Board’s group accommodation centres or in the Migration Board’s youth accommodation centre.

2.3.2 If so, how are (unaccompanied) minors identified?

An unaccompanied minor asylum seeker is identified through his/her documents. If the child lacks documents, the Migration Board tries to identify him/her through an interview about his/her background, country, family, relatives in Sweden and other countries, etc.

If the child and his/her legal guardian approve, contact can be established with the International Committee of the Red Cross, in order to try to identify the child and establish contact with the child’s family.

The Migration Board can also seek assistance from the Swedish Embassy in the child’s home country. The investigation carried out by the Embassy is strictly confidential. The child’s identity or the fact that s/he is seeking asylum in Sweden will never be revealed to the country’s authorities.

Furthermore, if the child and his/her legal guardian approve, an age determination process can be carried out.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

In April 2002 the Migration Board issued special guidelines concerning applications by female asylum seekers. The objective of these guidelines is to increase the staff’s awareness regarding the specific problems women may encounter in the asylum process.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

There are no specific regulations for trafficking victims. In some cases the victims can get a temporary permit when they are involved in a case that is being investigated by the police. On demand of the prosecutor, an alien can receive a temporary permit if s/he resides in the country in order to testify in a trial, as foreseen in the Aliens Act, Chapter 2, Section 4 part 2.

2.5.2 If so, how are victims of trafficking identified?

Victims of trafficking are identified in the course of the asylum investigation, which is conducted in order to establish the applicant’s travel itinerary and the reasons for his/her asylum claim.

A governmental commission of inquiry has examined Directive 2003/9 and recommended some implementations; some of these recommendations have already been implemented.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

In general, Swedish standards for the reception of asylum seekers meet the criteria of Directive 2003/9. In some cases they go further than what it is recommended. See 3.2.2.

3.2.2 If so, in which respects?

For details about the implementation of Directive 2003/9/EC please see the notification from Sweden to the European Commission of 22 February 2005. Appendix 15, enclosed with that notification, explains the Swedish legislation on healthcare for asylum seekers, which has not yet been implemented. The only tension between the Directive and Swedish law could regard medical examination of asylum seekers. The authorities do not want to institute a compulsory medical examination of asylum seekers. This examination is, however, available to asylum seekers on a voluntary basis.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?

<table>
<thead>
<tr>
<th>Year</th>
<th>Expenses for reception (in thousands Swedish Crowns)</th>
<th>Average number of asylum seekers registered per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>1 213 335</td>
<td>16 687</td>
</tr>
<tr>
<td>2000</td>
<td>1 372 126</td>
<td>17 943</td>
</tr>
<tr>
<td>2001</td>
<td>1 787 000</td>
<td>22 610</td>
</tr>
<tr>
<td>2002</td>
<td>2 719 590</td>
<td>32 953</td>
</tr>
<tr>
<td>2003</td>
<td>3 716 552</td>
<td>39 961</td>
</tr>
</tbody>
</table>

4.2 How many asylum seekers were in the reception system during these years?

1999 16867
2000 17943
2001 22610
2002 34191
2003 41754

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Yes, every single adult person must have a personal interview, irrespective of family dependence etc. Children under the age of 12 can be interviewed but those over 12 years normally should be interviewed. With regard to interviewing minors account is taken of their maturity, the consent and presence of the parents etc. In every case the best interests of the child shall be taken into account.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?

Yes, the central asylum authority (Migration Board) follows specific guidelines regarding the examination and interviewing of female applicants. According to these guidelines, the
applicant must be consulted with regard to the choice of a male or female investigator, whereby ‘a good degree of deference’ shall be paid to the applicant’s wishes. The same guidelines exist with regard to interpreters. When it is obvious from the beginning that sensitive issues will arise, a female investigator may be appointed at the start of the procedure. However, a female investigator may also be appointed at a later stage if specific or sensitive issues arise in the course of the interview.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Yes. Besides specific legal provisions for representatives for minors, the Migration Board has specific internal provisions for interviewing and examining minors. Every asylum unit/office should have specialised persons handling such cases. The Migration Board has recently rounded off a project aiming to safeguard that every unit dealing with asylum cases concerning children has special competence and has received special training. The Migration Board has also produced a special guide on how to interview children.

According to the Swedish Aliens Act, in cases where children are involved, special attention shall be given to what is required bearing in mind the child’s health and development and the best interests of the child. Applications from unaccompanied minors are always dealt with on a priority basis.

By law the child is provided with a counsellor, usually a lawyer. The unaccompanied minor will also be appointed a legal guardian whose task it is to safeguard the interests of the child. Only after a trustee has been appointed can the child apply for asylum. In March 2005 the Swedish government presented a proposal to the Swedish parliament (Riksdag), according to which a custodian will be assigned to the unaccompanied minor to take the place of both the legal guardian and the parent. This custodian will be appointed in a speedy manner. The government proposes that the new legislation will enter into force in July 2005.

The Migration Board strives to reunite the child with his/her family, without risking the safety of the child, throughout the process.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

Yes, similar guidelines exist as with regard to interviews with women, see 5.2.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Yes. No exceptions to this rule exist in the first instance.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

Yes, as a main rule. However, if an application is considered manifestly unfounded, expulsion order may be carried out irrespective of whether an appeal is lodged or not. However, the applicant always has the possibility to apply for a stay of the execution of the expulsion order.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

On the same day as the asylum application is made.
5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See above. Data are fed according to the Eurodac Regulation, i.e. “promptly upon application”. (Technically, the data are fed into Eurodac simultaneously as the consultation is made.) In the most recent statistical report, the average time between the point for asylum application and point for sending Eurodac data to the base is less than 1 day in Sweden.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

N/A.

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in the country until a court or tribunal has dealt with an appeal against that decision?

Yes.

6.2.1 Is it possible to withdraw refugee status and other forms of protection on the basis of acts mentioned in Article 1F Refugee Convention?

Yes. In principle, grounds for exclusion are examined in the recognition process. Under these provisions, no refugee status will be issued from the beginning. If it later on turns out that a person who already has been granted refugee status has stated false reasons or concealed circumstances that have led to his recognition, his status can be withdrawn. Article 1F is mentioned in the Swedish Aliens Act Article 3 Section 6.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Yes.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of) subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee status?

No direct difference exists in the rules for withdrawal per se. Of course, the material grounds for withdrawal might differ.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your member state and the proposed Directive on minimum standards for asylum procedures?

No major problems are foreseen.

7.1.2 If so, in which respects?
Since the Procedure Directive has not been adopted yet, this issue has not been examined. Any possible tensions will be examined during the inquiry stage of the national implementation process, following the adoption of the Directive.

7.2.1 If your member state operates a separate procedures for granting and withdrawing subsidiary forms of protection as meant in directive 2004/83, is there a tension between the present procedures and the proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?

<table>
<thead>
<tr>
<th>Year</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>First instance</td>
<td>154</td>
<td>190</td>
<td>199</td>
<td>324</td>
<td>485</td>
</tr>
<tr>
<td>Second instance</td>
<td>62</td>
<td>69</td>
<td>76</td>
<td>96</td>
<td>123</td>
</tr>
<tr>
<td>Legal assistance (1+2 inst)</td>
<td>19</td>
<td>20</td>
<td>30</td>
<td>38</td>
<td>46</td>
</tr>
<tr>
<td>Total costs (million Swedish Crowns)</td>
<td>235</td>
<td>279</td>
<td>305</td>
<td>458</td>
<td>654</td>
</tr>
</tbody>
</table>

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

<table>
<thead>
<tr>
<th>Examined asylum applications</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15194</td>
<td>24439</td>
<td>25453</td>
<td>40121</td>
<td>47355</td>
</tr>
</tbody>
</table>

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

Statistics are only available from 2002 onwards. From 2002 up until now, 17 persons had their refugee status withdrawn.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

From 2002 up until now, 38 persons had a subsidiary form of protection withdrawn.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Yes, according to the custom of the Aliens Appeal Board.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

Yes, according to the custom of the Aliens Appeal Board.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

According to the Swedish Aliens Act, a person can be defined as a refugee and can be given a permanent residence permit because of his or her status if he or she has a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular group or religious or political opinion, and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether persecution is at the hands of the authorities of the country or these cannot be expected to offer protection against persecution by private individuals.

Given the definition, there can be persecution on the grounds mentioned above and for no other reason. It is possible that persecution could be at the hands of others than the authorities of the state. It is however not necessary for the alien to show that persecution has already taken place, before the alien arrived in Sweden.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?

Yes. If the actor of protection (i.e. government) withheld protection on account of a persecution ground the persecuted people are qualified as refugees according to the same act (see 9.3).

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

According to the Swedish Aliens Act, an alien can be given a residence permit as an alien otherwise in need of protection (subsidiary protection) because of his or her well-founded fear of persecution because of his or her gender or homosexuality. In April 2002 the Migration Board issued special guidelines covering applications by female asylum seekers. The objective of these guidelines is to increase the awareness of the staff regarding the special problems women can encounter in the asylum process. Gender-based persecution may be directed against both men and women. However, in the majority of asylum cases, women are the more common, and perhaps also the more obvious victims. The Swedish Government appointed a Commission of Enquiry, which was given the task to propose the necessary legal changes, needed for this group of individuals to be defined as refugees rather than persons otherwise in need of protection. The Commission of Enquiry
presented its findings in March 2004. The report is currently being processed by the Government.

Chapter 3, Section 3 of the Aliens Act contains a consideration that refers to gender criteria. Gender-based persecution may be directed against both men and women. However, in the majority of asylum cases where gender-based persecution plays a role women are concerned, and perhaps also the more obvious victims.

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

An unaccompanied minor can, just as any other alien, be considered to be a refugee or a person otherwise in need of protection, and hence be entitled to a residence permit.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Being a victim of trafficking does not mean that a person will be considered as being a refugee or a person otherwise in need of protection, unless the other relevant criteria are fulfilled. A temporary residence permit can be granted to a victim of trafficking if his or her presence is needed in Sweden in order to participate in any legal proceedings concerning the crime behind the victimisation. The victim concerned is however, at any time, entitled to apply for a permanent residence permit on any of the other grounds provided for in the Swedish legislation.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

The Swedish Aliens Act does not contain specific rules for children regarding exclusion from protection on the basis of Article 1 F Refugee Convention. In theory, Article 1 F could be applied in asylum cases concerning minors. However, to the knowledge of experts from the Migration Board and Aliens Appeals Board there is no case law on this issue.

According to the Aliens Act, the best interest of the child shall always be considered, and hence also in these cases. It is also worth mentioning that, in asylum cases where article 1 F has been applied, asylum seekers have nevertheless been given a residence permit, e.g. on humanitarian grounds or because it was established that they risked torture.

According to the NGO respondent, minors under the age of 15 could never be excluded on the basis of Article 1 F Refugee Convention; this statement has neither been contested nor affirmed by the government respondent.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

See 10.2.

10.2 If so, in which respects?

The findings of the Commission of Enquiry will describe the tensions mentioned and propose the necessary legal changes. However, in the terms of reference for the Commission, the government has already pointed out some of the differences that exist between the Directive and the current Swedish legislation. Some examples of differences are the following:

- The definition of persons otherwise in need of protection (subsidiary protection), does not coincide with the definition of a person eligible for subsidiary protection. According to the Swedish legislation a person can be given this status due to the fact that he or she cannot return to his country of origin because of an environmental disaster.
- The actors of persecution or serious harm, mentioned in Article 6, coincide on a general basis with Swedish legislation or practice. Swedish legislation is however not so detailed as the Directive. Swedish legislation has no similar rules applicable for subsidiary protection.
- There are no specific provisions in Swedish legislation on actors of protection.
- There are no provisions in Swedish legislation that are directly comparable to the provisions on exclusion from refugee status in the Directive. There are similar provisions in the Swedish Aliens Act, but they are not connected to the granting of status but to the granting of a residence permit.
- There are no provisions in Swedish legislation on exclusion from status as a person otherwise in need of protection (subsidiary protection).
Arrival and reception of asylum seekers

1.1 Do (some) short-term reception conditions of asylum seekers upon arrival (i.e. before they formally lodge their asylum application, e.g., in airports and “waiting areas”) imply detention?

The current legal provisions set out the statutory framework regarding detention of those subject to immigration control. (the Immigration Act 1971 (as amended) and the Nationality, Immigration and Asylum Act 2002). Any person who is to be deprived of their liberty will be detained formally in accordance with national legislation, hence the detention would be explicit rather than implied.

A person subject to immigration control may be detained at all times, but normally for the purposes of examination, i.e.:  
- whether or not a person should be given permission to enter the UK,  
- whilst identity checks are carried out,  
- where a person is subject to removal, or  
- if the immigration authorities believe a person presents a risk to abscond from immigration control.

A person who is an illegal entrant is liable to detention, so are persons for whom removal directions are set. Asylum seekers may therefore be detained prior to lodging a formal application for asylum. This may occur both at ports of entry and at a reporting centre for asylum seekers (where a person lodges a claim for asylum after having gained entry to the UK, i.e. “in-country” applications).

The NGO respondent noted that the UK government has announced in its five-year plan, setting out its strategy for the development of asylum/immigration law and policy, that it intends to increase the use of detention. She also indicated that there exists common concern between NGO’s that detention is used as an ‘administrative convenience’ rather than as a measure of necessity.

1.2 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) in situations of mass influx?

There are no specific provisions as such. Whilst the UK has adopted the Council Directive on temporary protection, in terms of reception, in situations of mass influx, asylum seekers will be subject to the same procedures.

Meanwhile, NASS (the National Asylum Support Service) is establishing a network of induction centres, which provide short-term accommodation, and processes including briefings and health assessments to asylum seekers following their arrival in the UK.

1.3.1 Are the specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they formally lodge their asylum application) of (unaccompanied) minors?

Unaccompanied Asylum Seeking Children (UASCs) are not admitted to induction centres in the United Kingdom. Instead they are taken into care by local authorities under the Children Act 1989. The United Kingdom government is currently considering how best to ensure that the best aspects of the services available at induction centres can be made available to UASCs.

In addition, government policy on the detention of children states that persons under age 18 (in general, whether unaccompanied or not) may only be detained overnight, in a place of safety as defined in the Children and Young Persons Act 1993. There are no facilities in place catering specifically for minors for short-term reception. Home Office policy states that sometimes, for instance if a child arrives “out of hours” they have no choice but to keep the minor, until they can be collected by a social worker in the morning. 

It is the Immigration and Nationality Directorate’s responsibility to ensure
that all unaccompanied children who apply for asylum in the United Kingdom and
who are not already in the care of Social Services are referred to Social Services as
soon as the claim is made.
Minors are not normally fingerprinted on arrival, but will be issued with documentation.

1.3.2 If so, how are (unaccompanied) minors identified?
The immigration authorities carry out an “age assessment” based on physical
appearance and available documentation. If the age is disputed, minors are treated as
adults and may therefore be detained. According to government policy, if reliable
medical evidence suggests a person’s true age is under the age of 18, s/he will be
released. However, medical age can be out five years each way (older or younger).

1.4 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they
formally lodge their asylum application) for (single) women?

There are no specific short-term reception provisions specifically catering for single women in place. However,
the National Asylum Support Service (NASS) emergency accommodation and induction centres are expected to
provide a safe and secure environment and accommodation is provided accordingly. For instance, a single
woman would not be placed in emergency accommodation full of single men. Induction centre providers are
expected to allocate accommodation sensitively and some providers may choose to accommodate single women
in a women only area or separate site.

1.5.1 Are there specific provisions for short-term reception of asylum seekers upon arrival (i.e. before they
formally lodge their asylum application) for victims of trafficking?

There exist specific provisions for victims of trafficking, provided of course that they are identified as such.

Support for child victims
The provision of assistance and support to this most vulnerable group of children should be secured by local
statutory services, whether provided directly or through specialist agencies. Child victims of trafficking are
likely to be in need of welfare services and, in many cases, protection under the Children Act 1989. Social
services have a duty to safeguard and promote the welfare of these children following an assessment of their
circumstances.

Support for adult victims of trafficking

Victims of trafficking, unless immediately identified as such, will be subject to the same conditions in place as
any other asylum seekers.

In March 2003 a 6-month pilot project was established in London with the aim
of prosecuting traffickers of women into the vice industry and at the same time
providing the victims with safe housing, counselling, medical & other services. The
"project", which has subsequently been re-named the "THE POPPY Scheme", has
now
been placed on a more formal basis. Originally the scheme excluded asylum
applicants,
but was extended to include these as well, provided asylum had not already been
refused.

There are 5 criteria for consideration of admission of a victim onto the scheme:

• The victim has been brought to the UK,
• She is being forcibly exploited,
• She is working as a prostitute,
• She has come forward to the authorities,
• She is willing to co-operate with the authorities.

Women who fall outside of the current entry criteria cannot be accepted into the scheme. These include:

• Port of entry referrals by Immigration/NGOs (because the woman has not yet been working as a prostitute within the UK),

• Women trafficked into another country (perhaps other EU countries) before being re-trafficked into the UK,

• Women who escaped/left prostitution more than 30 days before referral (there is scope for limited discretion if the period since leaving prostitution is not significantly more than 30 days),

• Women who have claimed asylum in the UK already and have exhausted all avenues of appeal through the asylum process (this is to prevent the Scheme being used as a last resort attempt to remain in the UK when the asylum process has been fully explored),

• Women trafficked for purposes other than prostitution (domestic slavery, forced marriage, etc).

1.5.2 If so, how are victims of trafficking identified?

In the White Paper “Secure Borders Safe Havens” which preceded the 2002 Nationality, Immigration and Asylum Act, the Government for the first time set out policy in relation to victims of trafficking. The White Paper identified the Government’s approach in this respect to be able to identify victims of trafficking and offer them the care and support they need.

Subsequently, the Home Office has developed an online toolkit aimed at practitioners, to increase awareness of trafficking and in particular the difference between trafficking and smuggling. The toolkit states that the responsibilities of the UK Immigration Service may include identifying victims/potential victims according to an agreed inter-agency profile.

No information is available on what this agreed profile is.

Immigration Offices throughout the UK have been made aware of the trafficking toolkit and receive regular intelligence briefings and inter-agency briefings that highlight issues and trends in respect of trafficking.

In July 2003, The Immigration Service published Best Practice for dealing with unaccompanied children (both asylum-seeking and non-asylum) who arrive at ports. This was approved by Ministers and gives consistent operational and policy guidance to all staff that deal with children. It gives guidance on what an immigration officer should do if they suspect that a child is being trafficked.

2.1 Do (some) reception conditions of asylum seekers during examination of the application imply detention?

Any person who is to be deprived of their liberty will be detained formally in accordance with national legislation, hence the detention would be explicit rather than implied. Persons may be detained whilst an application is considered. By law, a person may be detained for 7 days without right to bail and without automatic judicial review.

The NGO respondent has expressed concern that, due to legal aid cuts in asylum and immigration, asylum seekers in detention are experiencing a lack of access to quality legal representation.

The UK government has in recent years expanded the detention estate and formulated law that allows people to be detained during the consideration stage of an asylum application and subsequent appeals where it is, on first interview (upon arrival) decided that the claim may be decided quickly (fast tracked applications). The way in which these claims are identified is by nationality. The Government has a list of “designated states”. This list sets out the countries that the Home office considers as “safe” for the purpose of the 1951 Refugee Convention. There are various fast track schemes in operation at the moment. Currently fast track schemes are operated from Harmondsworth Removal Centre, Colnbrook Removal Centre (near Heathrow Airport), Campsfield House (near Oxford), and Yarls Wood (Bedfordshire, a detention centre for single women). Within that scheme an initial decision and appeal take place within 5 to 7 days. Removal should take place within one month. There is also Oakington Reception Centre (Cambridgeshire) where a fast track scheme operates, the difference between this and the others, is that on refusal there is no exercisable right of appeal from within the UK. (A decision is made within 14 days of arrival).
2.2 Are there specific provisions for reception of asylum seekers during examination of the application in situations of mass influx?

No.

2.3.1 Are the specific provisions for reception of asylum seekers during examination of the application of (unaccompanied) minors?

During the asylum process unaccompanied asylum seeking children (UASCs) are supported under the Children Act 1989, maintenance and accommodation being provided by Social Services Departments of the Local Authorities. Once a minor has made a claim, and whether or not the minor is accepted to be under the age of 18 by the Immigration and Nationality Directorate (IND), they should be referred to the Refugee Council’s Panel for Unaccompanied Minors. The Panel is a Home Office funded body administered by the Refugee Council. Its role is to provide independent guidance and support to ensure that the child is aware of his/her rights and the services to which s/he is entitled throughout the asylum process. In disputed cases, minors will go through the asylum determination procedure as if they were adults.

2.3.2 If so, how are (unaccompanied) minors identified?

At the screening interview. See also 1.3.1.

2.4 Are there specific provisions for reception of asylum seekers during examination of the application for (single) women?

No specific provisions, however in detention/reception centres single women will be held in separate wings from single men.

2.5.1 Are there specific provisions for reception of asylum seekers during examination of the application for victims of trafficking?

If a person is identified as a victim of trafficking, and is suitable for the Poppy Scheme (see 1.5.1), they will be supported and accommodated by Social Services. However, if this is not the case, a person who is a victim of trafficking will be subject to the ordinary asylum procedures, which may include detention.

2.5.2 If so, how are victims of trafficking identified?

See 1.5.2.


The UK has made changes to domestic legislation to comply with the Directive.

3.2.1 Is there a tension between the present reception conditions in your member state and Directive 2003/9 on minimum standards for the reception of asylum seekers?

There exist certain differences of interpretation between the government and the NGO respondent as to whether implementation is conform the Directive. See 3.2.2.

3.2.2 If so, in which respects?

Article 5 (access to information)
The Home Office’s target to reach an initial asylum decision within 6 weeks means that asylum seekers will need to be provided with the relevant information at the onset of their application. This is particularly the case in view of the proliferation of deeming provisions within UK legislation that require an asylum seeker to behave in a certain way, with a failure to do so being held against their application. This information must also be provided in a language the asylum seeker is “likely” to understand. There exists concern on the part of the NGO respondent that this provision does not mean that the information is actually understood by the applicant. Furthermore, there is concern the Home Office may not be able to meet this requirement in practice before the Directive comes into force.

In response, the government respondent indicated that the Immigration and Nationality Directorate (IND) has produced a leaflet providing an introduction to the United Kingdom and the asylum process and which has been translated into 14 languages as well as being available in English. All ports have access to it in all translations. The languages selected are consistent with the Induction Centre Briefing Pack and were informed by Refugee Council, Migrant Helpline, the IND Interview Booking Unit, IND Nationality data and in-country information available to IND. In most cases the leaflet will be given to an asylum applicant after his or her screening interview has taken place and when an interpreter is present.

The leaflet is issued in accordance with the amended Immigration Rules, which have been amended to reflect the requirements of the Directive. Rule 358A is drafted in the same terms as the Directive. The government respondent noted that, whilst the Directive requires IND to provide information in a language the applicant may reasonably be supposed to understand, there is no requirement to establish what languages an applicant can read.

Article 10 (education for minors)

Whilst it is government policy that children in asylum seeking families should have access to education as provided for under the Education Act, the NGO respondent is concerned that the government does not intend to extend this principle to children in accommodation centres. The NGO respondent noted that the principle that children of asylum seekers will be removed from mainstream schooling points to the creation of a two-tier education system, and warned that this could lead to sub-standard education as neither the Department of education nor the Office for Standards in Education (OFSTED) will be responsible for education provision.

For children at secondary school level, the transposition states that those whose needs cannot be met by the accommodation centre, will have access to education within the community. The transposition further states that this only applies in exceptional circumstances. The NGO respondent found that the assessment of the adequacy of the education facilities for secondary school level students should be on an educational needs basis alone, and where this was deemed inadequate within the accommodation centre the appropriate arrangements should be made at local secondary schools.

The NGO respondent also mentioned that the provision in the Directive stating that “access to education shall not be postponed for more than three months from the date the application for asylum was lodged” was not reflected in the transposition.

The government responded that the education specification for children in accommodation centres has been set and will meet National Curriculum requirements. This means it will mirror as closely as possible the education provided in mainstream schools, but additionally it will have the ability and flexibility to focus on the particular needs of individual children, such as intensive English language learning. OFSTED will inspect and report on the education provision, as they do in mainstream schools (separate arrangements would be made for any centres located in Wales, Scotland and Northern Ireland). This ought to act as a safeguard and make certain that the provision in the centres is of comparable quality to that of mainstream school education.

The government also contended that there were other significant advantages to providing education on site. In particular, the pressure on local services will be reduced in the areas where centres are located, which removes the risk of children being out of education for weeks or months whilst a suitable placement is found. Children in an accommodation centre can start education immediately. With swift application procedures, it is anticipated that children will spend only a few months in an accommodation centre, so if they remain in the UK they will be well placed to make the transition to mainstream schools, knowing what to expect and armed with basic (or improved) English language skills.

In addition, with regard to some issues the NGO respondent expressed concern that UK standards would be lowered to correspond to the minimum requirements set out in the Directive. This concern relates to the following issues: the refugee definition (encompasses only refugees in the sense of the Geneva Convention), a narrower definition of ‘family members’, and extended possibilities for medical screening (Article 9 Directive).

In response to this concern the government noted that where an equivalent provision is already made which fulfils the requirements of the Directive, or goes further than the provisions of the Directive, this will be retained.

4.1 Over the years 1999-2003, what have been the costs of the reception of asylum seekers for your member state?
The National Asylum Support Service (NASS) was set up in April 2000. Figures for the costs of the reception of asylum seekers in 2000-2001 are not available, as the cost of emergency accommodation was not distinguished from the cost of overall expenditure. The cost of emergency accommodation and (from January 2002) induction centres for the remaining years is as follows:

2001-2002: £72.2M  
2002-2003: £107.1M

4.2 How many asylum seekers were in the reception system during these years?

The number of asylum seekers in emergency accommodation at the end of each financial year was as follows:

2000-2001: 8,243  
2001-2002: 5,591

The number of asylum seekers supported in NASS dispersed accommodation at the end of March 2001 was 19,540.

The number of asylum seekers supported in NASS dispersed accommodation at the end of March 2002 was 45,640.

The number of asylum seekers supported in NASS dispersed accommodation at the end of March 2003 was 54,295.

Asylum procedures

5.1 Must every asylum seeker – including dependent family members – be offered the opportunity of a personal interview before a decision on the application for refugee status is taken?

Ordinarily, every asylum seeker will be given a SEFA (Statement of Evidence) Interview, which is the only opportunity for an asylum seeker to explain the basis of his/her claim. A person who claims asylum may be given a SEF-Self Completion Form prior to the interview, in which all the reasons for asylum must be disclosed. The subsequent interview then clarifies and elaborates on the issues disclosed therein. Those asylum seekers who are subject to fast-track procedures in detention do not complete forms, they proceed to an interview straight away. The only applicants that will not be subject to an interview, will be those where a non-compliance decision has been taken. For instance, where a SEF form was not returned to the Immigration and Nationality Directorate (IND) on time, or if an applicant fails to attend his/her interview without good reason, a decision will be made on the basis of the available information. SEF forms are in English. Dependent family members who lodge a claim in their own right will be invited to complete a SEF/attend an interview. Dependants who do not lodge a claim in their own right are not normally interviewed. While the IND is obliged to investigate whether any of the family members would have a claim in their own right, it remains unclear whether this always happen in practice. During screening the screening officer will always ask if the dependant has their own fear of return - if they say they do, they will be asked if they wish to apply for asylum. If they do not, and they only wish to remain as a dependant they wont get a SEF or asked to attend an interview. The UK Immigration Rules have been changed to allow unaccompanied minors to be interviewed in a wider set of circumstances. Children under the age of 12 are not interviewed. The guidelines laid down in paragraphs 195-219 of the UNHCR Handbook are followed closely. This requires the “Examiner” (caseworker) to obtain sufficient information “to arrive at a correct conclusion as to the applicant’s refugee status”. Children (under 18s) are issued with a Children's SEF to complete.

5.2 Are there arrangements to promote that female applicants for refugee status are interviewed by female interview officials and/or assisted by female translators?
Applicants or representatives need to make a request in writing prior to the interview, for the interviewer and interpreter to be the same sex as the applicant. It is normally possible to provide a same-sex interviewing officer if requested. Because the availability of interpreters is more restricted, it will not always be possible to provide a same-sex interpreter. If the applicant was reluctant to go ahead the interview would be postponed, if there is a reasonable prospect of obtaining a same-sex interpreter in the future, or if it appears that the failure to provide a same-sex interpreter will adversely affect the applicant’s ability to give a full and accurate account of their case.

5.3 Are there specific procedures for interviewing (unaccompanied) minor applicants for refugee status?

Where an unaccompanied asylum-seeking child (UASC) has made an application s/he may be interviewed about the substance of his/her asylum claim or to establish his/her age and identity. Unaccompanied minors also receive a form before the interview. Only specially trained officers interview children, with a ‘responsible’ adult in attendance on behalf of the child.

The Immigration Service has issued best practice guidance for port and asylum-screening unit staff for dealing with unaccompanied asylum and non-asylum seeking children.

5.4 Are there specific procedures for interviewing applicants for refugee status who have been the victim of traumatising events before or during their flight (torture, trafficking)?

According to the Immigration and Nationality Directorate (IND) Interviewing protocol, particular care should be taken when interviewing a torture victim or those who are traumatised. However, application of this protocol presupposes that it is recognised that a person is a victim of traumatising events. In this respect the IND’s interview protocol states that “such people will be very much the exception rather than the rule”.

The IND also has the policy not to detain torture victims or those who are traumatised. Nevertheless, the NGO respondent noted that it was aware of cases of such people being detained. The IND has a “good practice” guide in relation to interviewing victims of torture which states: “Interviewers must remain alert and sensitive to the difficulties and barriers victims of torture may face in expressing highly traumatic experiences but they should not ask leading questions which may encourage applicants to fabricate unfounded claims of torture to support their applications. There is a difference, however, between probing and leading questions, and the issue of torture, once suspected by the interviewer or raised by the applicant, should be probed.” The good practice guidelines have been agreed with the Medical Foundation for Victims of Torture that interviewing officers follow where torture is suspected.

5.5 Is every applicant for refugee status entitled to remain in your member state until a first decision is taken on the asylum application?

Until an asylum application has been determined by the Secretary of State for the Home Department or a decision issued either that another Member State is responsible for the applicant in accordance with the Dublin II Regulation or that the applicant can be returned to another safe third country, then no action will be taken to require the departure of the asylum applicant or his dependants from the United Kingdom.

5.6 Is every applicant for refugee status entitled to remain in your member state until a court or tribunal has dealt with an appeal against a negative decision?

No. If a national of a designated state applies for asylum there is no appeal against the refusal of this application. In addition, if an asylum claim is refused and certified as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002, they can only exercise their right of appeal against this decision from outside
of the UK. Such a person may be removed from the UK after the initial decision and may only return if a court has overturned that decision in his/her absence.

At the present time the following states are designated under section 94 of the Nationality Immigration and Act 2002: Albania, Bolivia, Brazil, Bulgaria, Ecuador, India, Jamaica, Moldova, Romania, Serbia and Montenegro, South Africa, Sri Lanka, Ukraine. The Secretary of State must certify asylum claims from people entitled to reside in these countries as clearly unfounded unless he is satisfied that the claim is not clearly unfounded. In addition, the Secretary of State can certify any asylum claim, if he is satisfied that it is clearly unfounded. All applicants whose claims are certified can apply for a judicial review of the certification prior to removal from the UK. The government respondent stated that in practice removal does not take place until the outcome of the judicial review is notified.

The NGO respondent has expressed concern that, due to their placement in detention and as a result of legal aid cuts, asylum seekers are unlikely to be able to access the complicated legal procedure that is judicial review.

5.7.1 At what stage of the procedure for refugee status is Eurodac consulted?

Fingerprints are taken at the point of application for asylum as part of the initial screening process of applicants. Where those prints have been obtained via the automated system (using scanning equipment, Livescan or ARC) the prints will be transmitted to Eurodac via the Immigration Fingerprint Bureau, as soon as the Immigration and Asylum Fingerprint System has been updated.

5.7.2 At what stage of the procedure for refugee status are data fed into Eurodac?

See 5.7.1.

5.8.1 Does your member state operate one single procedure for both refugee protection and for (forms of) subsidiary protection as meant in Directive 2004/83 (xcv)?

Yes, as part of the asylum procedure, all reasons must be disclosed at once. This includes requests for protection under the European Convention on Human Rights (ECHR). Grounds for subsidiary protection may not be raised at a later stage, unless they are significantly different from the first request, and the application has prospect of success. The way in which the law has developed in the UK, a claim on Article 3 grounds stands or falls with the asylum claim, i.e. if it cannot be established that there would be a risk of persecution on return under the Refugee Convention, then the Article 3 claim must fail also.

The type of leave granted depends on what basis a person requires protection. At the moment a person who is recognised as a refugee is granted Indefinite Leave to Remain (this may change in accordance with the government’s five year strategy on asylum and immigration – and in accordance with the Qualification Directive). A person who is granted some type of protection by virtue of the ECHR is usually granted Humanitarian protection. Humanitarian protection is granted to a person when, if removed, faces in the country of origin a serious risk to life or person arising from:

- Death penalty
- Unlawful killing
- Torture, inhuman/degrading treatment/punishment

Humanitarian protection is granted for 3 years unless the case falls into a category covered by a specific instruction by the Immigration and Nationality Directorate (IND), which may provide for a period less than 3 years. After 3 years, Indefinite Leave to Remain should be granted if the circumstances for protection continue to exist. Discretionary leave is granted to those who do not qualify for any other type of leave to remain. It applies to Article 8 ECHR cases (2 years), medical condition, and severe humanitarian cases, which would make removal breach Article 3 ECHR. Unaccompanied minors are granted 3 years Discretionary leave if there are no adequate reception arrangements available in the country of origin or leave until their 18th birthday.

5.8.2 If your member state operates a separate procedure for (forms of) subsidiary protection as meant in Directive 2004/83, in which respects does this procedure differ from the procedure for examining applications for refugee protection as regards the issues mentioned under 5.1 – 5.7?

An asylum claim is defined in the UK to include Article 3, ECHR. Otherwise, if an application made on any other grounds (typically Article 8) raising the ECHR, an application form is required to be completed, submitted together with representations
and evidence, which will be initially considered by the Home Office and subject to a
decision “on the papers”. However, arguably, if protection is required under Article 8
**ECHR, Article 3 would be raised.**

6.1 When a decision to withdraw refugee status has been taken, is the person concerned entitled to remain in
the country until a court or tribunal has dealt with an appeal against that decision?

Where refugee status has been withdrawn by cancellation or cessation there is no right of appeal against that
decision. However, an individual will not be expected to leave the UK as a result of a decision to revoke refugee
status unless there is also an accompanying decision to revoke their leave in the UK. Any decision to revoke an
individual's leave would attract a right of appeal, and the individual would be entitled to remain in the UK until
such time as those appeal rights had been exhausted.

**6.2.1 Is it possible to withdraw refugee status and other forms of protection on the
basis of acts mentioned in Article 1F Refugee Convention?**

Yes. Section 76 of the Nationality, Immigration and Asylum Act 2002 sets out under
what circumstances a person may be removed to a country where they fear persecution
if they commit a particular serious crime, including those identified in Article 1F of the
Refugee Convention.

6.2.2 If so, is this possibility (these possibilities) being made use of?

Yes.

6.3.1 Does the domestic law of your member state provide for procedural rules for withdrawal of (forms of)
subsidiary protection as meant in Directive 2004/83, that differ from the rules for withdrawal of refugee
status?

No, they are the same.

6.3.2 If so, in which respects do these rules for withdrawal of subsidiary protection differ as regards the
issues mentioned under 6.1 – 6.2?

N/A.

7.1.1 Is there a tension between the present procedure for granting and withdrawing refugee status in your
member state and the proposed Directive on minimum standards for asylum procedures?

There are no significant tensions.

7.1.2 If so, in which respects?

N/A.

7.2.1 If your member states operates separate procedures for granting and withdrawing subsidiary forms of
protection as meant in directive 2004/83, is there a tension between the present procedures and the
proposed Directive on minimum standards for asylum procedures?

N/A.

7.2.2 If so, in which respects?

N/A.

8.1 Over the years 1999-2003, what have been the costs of asylum procedures?
The costs of dealing with asylum seekers’ cases are not distinguished separately from the overall operational costs for the Immigration and Nationality Directorate (IND) of the Home office, which also processes immigration cases.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Asylum Support non IND</td>
<td>475</td>
<td>52</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Asylum Support IND only</td>
<td>—</td>
<td>537</td>
<td>747</td>
<td>1046</td>
<td>1070</td>
<td>1008</td>
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<tr>
<td>Other IND expenditure</td>
<td>214</td>
<td>268</td>
<td>551</td>
<td>578</td>
<td>793</td>
<td>887</td>
</tr>
<tr>
<td>Total IND expenditure</td>
<td>689</td>
<td>857</td>
<td>1318</td>
<td>1624</td>
<td>1863</td>
<td>1895</td>
</tr>
</tbody>
</table>

8.2 If your member state operates a single procedure for processing both requests for refugee protection as well as for requests for subsidiary forms of protection, how many requests were examined during these years?

The number of decisions taken is indicated below:

<table>
<thead>
<tr>
<th>Decisions</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003 (P)(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grants of asylum (refugee status)</td>
<td>7,815</td>
<td>10,375</td>
<td>11,450</td>
<td>8,270</td>
<td>3,865</td>
</tr>
<tr>
<td>Grants of Exceptional leave, Humanitarian protection, Discretionary Leave</td>
<td>2,465</td>
<td>11,495</td>
<td>20,190</td>
<td>20,135</td>
<td>7,210</td>
</tr>
<tr>
<td>Grants of Exceptional Leave under backlog Criteria (1)</td>
<td>11,140</td>
<td>10,320</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Refusals of asylum</td>
<td>11,025</td>
<td>75,680</td>
<td>89,310</td>
<td>55,130</td>
<td>53,865</td>
</tr>
<tr>
<td>Refused under backlog criteria (3)</td>
<td>1,275</td>
<td>1,335</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Total Initial decisions</td>
<td>33,720</td>
<td>109,205</td>
<td>120,950</td>
<td>83,540</td>
<td>64,940</td>
</tr>
</tbody>
</table>

Figures rounded to nearest 5, with * = 1 or 2.
Information is of initial determination decisions, excluding the outcome of appeals or other subsequent decisions.

(1) May include grants of asylum.
(2) Humanitarian protection (HP) and discretionary leave (DL) replaced Exceptional leave to remain (ELR) from 1st April 2003.
(3) Cases decided under measures aimed at reducing the pre 1996 asylum application backlog

(P) Provisional figures.

The number of applications made is as follows:

1999: 71,155
2000: 80,315
2001: 71,013
2002: 84,130
2003: 49,405

8.3.1 If your member state operates separate procedures for processing requests for refugee protection and for requests for subsidiary forms of protection, how many requests for refugee protection were examined during these years?

N/A.

8.3.2 If your member state operates separate procedures for processing requests for subsidiary forms of protection, how many such requests were examined during these years?

N/A.

8.4 How many decisions to withdraw refugee status were taken in these years?

These figures are not collated or published.

8.5 How many decisions to withdraw a subsidiary form of protection as meant in Directive 2004/83 were taken in these years?

These figures are not collated or published.

Qualification as a refugee or as a person in need of other forms of protection

9.1 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for refugee status?

Yes, in principle. Whether they are in a specific case will depend on the facts of that case. UK case law states the following on protection from non-state agents:

‘there must be a system in place to offer protection… A force or criminal law that makes attacks punishable… sentences commensurate with the gravity of offence… There must be a reasonable willingness by law enforcement to detect, prosecute and punish offenders.’

UK case law also states that inefficiency or incompetence is not the same as unwillingness unless it is extremely widespread.

De facto authorities with a structured organisation would generally be more likely to be able to provide a sufficiency of protection against threats from non-state agents, but it cannot be precluded that in some circumstances other bodies/groups would be capable of offering the required degree of protection.

9.2 Are non-state actors as meant in Article 7(1)(b) of Directive 2004/83 deemed capable of providing protection for the purposes of qualification for subsidiary forms of protection as meant in Directive 2004/83?

See 9.1.

9.3 For the purposes of qualification for refugee status, is it required that the person committing the act of persecution did so for reasons of a persecution ground (as required by Article 9(3) Directive 2004/83)?

Yes, where it is the state doing the persecution.

9.4 Can a person qualify for refugee status in case the persecution act was not committed for reasons of a persecution ground, but the protection was withheld on such a ground?
Yes, if the state withholds protection for a Convention related reason (as opposed to being unable to provide protection) that could amount to a Convention ground for the persecution.

9.5 To what extent, and under which circumstances, does gender play a role in constituting a particular social group for the purpose of Article 1A(2) RC?

Whether gender amounts to a particular social group will depend upon the facts in a given country. In terms of determining whether a person is a member of a particular social group, discrimination is the focal point. Other relevant criteria are whether the discrimination is on the basis of an immutable characteristic of the individual (is innate) or is one that would be contrary to their human rights to forego (is non-innate). In addition, the social group must exist independent of the persecution. In the House of Lords Case in Shah & Islam it was held that women in Pakistan formed a social group in these

**particular circumstances in the case.**

9.6 Are (unaccompanied) minors considered to be refugees, or persons eligible for subsidiary protection?

Unaccompanied minors will be granted asylum or subsidiary protection if on the individual facts they qualify for it. Their position is the same as adults - they are not automatically given such status nor are they barred from it. If they are not granted refugee or subsidiary protection status and there are no adequate reception arrangements in place in the country of removal, a minor is granted Discretionary Leave which is subject to review, and may mean that once the child turns 18, s/he is subject to removal.

9.7 Are victims of trafficking considered to be refugees, or persons eligible for subsidiary protection?

Claims from victims of trafficking would be assessed on their individual facts. In some circumstances victims of trafficking may form a particular social group, in others they will not. If they meet the criteria of the Convention, they will be granted ILR, otherwise, Humanitarian Protection or Discretionary Leave.

9.8 Can (unaccompanied) minors be excluded from international protection on the basis of Article 1F Refugee Convention?

Yes, if the child’s crimes or acts bring them within Article 1F they would be excluded.

10.1 Is there a tension between present practice in your member state on the point of qualification for international protection, and Directive 2004/83?

There are no significant tensions.

10.2 If so, in which respects?

N/A.