Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries

Fabrice Liebaut

DANISH REFUGEE COUNCIL

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LEGAL AND SOCIAL CONDITIONS

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IN WESTERN EUROPEAN COUNTRIES

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Editors: Fabrice Liebaut and Tanja Blichfeldt Johnsen
Proof-reading: Anna Hamlyn and Sarah Forti
Danish Refugee Council
Borgergade 10,
DK-1300 Copenhagen K
Telephone: +45-33 73 50 00
Fax: +45-33 32 84 48
E-Mail: drc@drc.dk
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PREFACE TO THE FOURTH EDITION

The Danish Refugee Council is pleased to present the fourth edition of its Report on Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries, which was previously published in September 1990, February 1993 and January 1997.

The previous editions have proved extremely useful for asylum authorities, refugee agencies, lawyers, social workers, journalists and others wishing to obtain a comparative overview of current asylum legislation and practice in Western Europe.

At a time when, following the entry into force of the Treaty of Amsterdam in 1999, EU Member States are in the process of harmonising their asylum policies, it is hoped that this new edition will make a practical and useful contribution in showing where similarities and disparities exist in their respective legislation and practice. In addition to the 15 EU Member States, the report also includes Norway and – as a new feature in this fourth edition – Switzerland, Iceland and Malta, bringing the total number of countries covered to 19.

It is also hoped that this report – like its previous editions – will be of interest in the countries of Central and Eastern Europe, which are in the process of adapting their refugee legislation to international standards and, for many of them, to incorporate the EU *acquis*. In January 1999, the DRC published the first edition of a Report on Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern European Countries (still available from the DRC or on its home page: www.drc.dk), based on the same principles and structure as its Western European counterpart. These two reports now make it possible to compare asylum legislation and practice throughout the whole European continent.

The report continues to provide comprehensive coverage of both the legal and social aspects of asylum in the countries covered. It maintains the same basic structure as the previous editions, with detailed sub-headings designed to facilitate comparison between chapters. In addition to the increase in the number of countries covered, this fourth edition includes innovative features such as separate information on the Dublin Convention, access to legal aid, access to interpreters and female asylum seekers. The separate section on persons under temporary protection, once used to describe the situation of former Yugoslavs, has been maintained to provide information on the legal status and social rights of Kosovo Albanians. Finally, social benefits and other financial assistance available to asylum seekers and refugees have been given in local currency and, for comparative purposes, converted into Euro.

The country chapters are based primarily on material provided by national refugee organisations. The report has been structured, edited and co-ordinated by Fabrice Liebaut with the assistance of Tanja Blichfeldt Johnsen. The DRC and the author would like to take this opportunity of thanking all those individuals and organisations (listed on page 6) who contributed to the compilation of this report, as well as the European Commission (Odysseus programme), which granted financial support to the project.

Andreas Kamm
Secretary-General

Louise Holck
Head of Asylum Department

Copenhagen, May 2000

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LIST OF CONTRIBUTORS

AUSTRIA

Asylkoordination-Österreich
Schottengasse 3a/59
A–Wien 1010
Tel.: +43 1 53 21 291 – Fax: +43 1 53 37 752
E-mail: asylkoordination@t0.or.at

BELGIUM

Université Catholique de Louvain
Faculté de Droit / Département de Droit International
1, place Montesquieu
B–1348 Louvain-la-Neuve
Tel.: +32 10 47 47 78 – Fax: +32 10 47 30 58

Overlegcentrum voor Integratie van Vluchtelingen (OCIV)
Gaucheretstraat 164
B–1030 Brussel
Tel.: +32 2 274 00 20 – Fax: +32 2 201 03 76
E-mail: vluchteling@nociv.org

DENMARK

Dansk Flygtningehjælp (Danish Refugee Council)
Borgergade 10
DK-1300 Copenhagen K
Tel.: +45 33 73 50 00 – Fax: +45 33 32 84 48
E-mail: drc@drc.dk – Website: www.drc.dk

Dansk Røde Kors (Danish Red Cross)
Dag Hammarskjölds Allé 28
DK-2100 København Ø
Tel.: +45 35 43 22 44 – Fax: +45 35 43 24 44
E-mail: asyl@redcross.dk – Website: www.asylum.redcross.dk

FINLAND

Refugee Advice Centre
Unioninkatu 45 B 41
FIN-00170 Helsinki
Tel.: +358 9 278 2266 – Fax: +358 9 278 2299
E-mail: pakneuv@kaapeli.fi – Website: www.pakolaisneuvonta.fi

FRANCE

France Terre d'Asile
25 rue Ganneron
F–75018 Paris
Tel.: +33 1 53 04 39 99 – Fax: +33 1 53 04 02 40
E-mail: 100753.1030@compuserve.com – Website: www.ftda.refugeenet.org

GERMANY

GGUA Projektbüro – Qualifiezierungsmaßnahmen für die Flüchtlingssozialarbeit
Herwarthstraße 2
D–48143 Münster
Tel.: +49 251 48 28 272 – Fax: +49 251 48 27 273
E-mail: vmh@muenster.de

Deutscher Caritasverband (Caritas Germany)
Karltrasse 40
D–79104 Freiburg i. Breisgau
Tel.: +49 761 200 0 – Fax: +49 761 200 582
E-mail: webmaster@caritas.de – Website: www.caritas.de

GREECE

Greek Council for Refugees
25 Solomou Street
GR–106 82 Athens
Tel.: +30 1 38 02 508 – Fax: +30 1 38 03 774
E-mail: gcr1@gcr.gr – Website: www.gcr.gr/

ICELAND

Icelandic Red Cross
Efstaleiti 9
IS–103 Reykjavík
Tel.: +354 570 4000 – Fax: +354 570 4010
E-mail: central@redcross.is – Website: www.redcross.is

Ministry of Justice and Ecclesiastical Affairs
Arnarhvoll
IS–150 Reykjavik
Tel.: +354 560 90 10 – Fax: +354 552 73 40
E-mail: postur@dkm.stjr.is – Website: www.stjr.is/dkm

IRELAND

Irish Refugee Council
40 Lower Dominick Street
IRL–Dublin 1
Tel.: +353 1 872 44 24 / 873 00 42 – Fax: +353 1 873 00 88
E-mail: refugee@iol.ie

ITALY

Consiglio Italiano per i Rifugiati (Italian Refugee Council)
Via del Velabro 5/a
I–00186 Roma
Tel.: +39 6 692 001 14 – Fax: +39 6 692 001 16
E-mail: c.i.r.@flashnet.it – Website: web.tiscalinet.it/progetto-daar

LUXEMBOURG

SESOPI–Centre Intercommunautaire
5, avenue Marie Thérèse
L–2132 Luxembourg
Tel.: +352 44 743-201/203 – Fax: +352 45 92 01
E-mail: sesopi-ci@cathol.lu

MALTA

Dar l-Emigrant (The Emigrants' Commission)
Castille Place
Malta–Valletta VLT 01
Tel.:+356 222644/240255/232545 – Fax: +356 240022
E-mail: mec.malta@dream.vol.net.mt

NETHERLANDS

VluchtelingenWerk (Dutch Refugee Council)
Jacques Veltmanstraat 29
Postbus 2894
NL–1000 CW Amsterdam
Tel.: +31 20 346 72 00 – Fax: +31 20 617 81 55
E-mail: info@vluchtelingenwerk.nl – Website: www.vluchtelingenwerk.nl

NORWAY

Norwegian Organisation for Asylum Seekers (NOAS)
Torggt. 22
P.O. Box 8893 Youngstorget
N-0028 Oslo
Tel.: +47 22 36 56 60 – Fax: +47 22 36 56 61
E-mail: noas@noas-asyl.no – Website: www.noas-asyl.no

PORTUGAL

Conselho Português para os Refugiados (Portuguese Refugee Council)
Bairro do Armador – Zona M de Chelas, Lote 764 – lojas Drª e Esq.ª
P–1900-864 Lisboa
Tel.: +351 21 837 50 70/21 837 50 71 – Fax: +351 21 837 50 72
E-mail: cpr@mail.telepac.pt – Website: www.cidadevirtual.pt/cpr

SPAIN

Comisión Española de Ayuda al Refugiado (CEAR)
Plaza de la Constitución, 2, local
E–28760 Tres Cantos
Tel.: +34 91 804 54 04 – Fax: +34 91 804 68 86
E-mail: cear@isid.es – Website: www.isid.es/cear/

SWEDEN

Caritas Sweden
Ölandsgatan 42
S–116 63 Stockholm
Tel.: +46 8 55 60 20 00 – Fax: +46 8 55 60 20 20
E-mail:gjoseph@caritas.se – Website: www.caritas.se

Svenska Flyktingrådet (Swedish Refugee Council)
Kungstensgatan 5
S–114 25 Stockholm
Tel.: 46 8 21 16 05 – Fax: 46 8 21 16 85
E-mail: refugee@algonet.se – Website: www.algonet.se/~refuge/

Swedish Refugee Advice Centre
Gyllenstiernsgatan 14
S–115 26 Stockholm
Tel.: +46 8 660 21 70 – Fax: +46 8 665 09 40

SWITZERLAND

Schweizerische Flüchtlingshilfe / Organisation suisse d'aide aux réfugiés
Postfach 8154
Monbijoustrasse 120
CH–3001 Bern
Tel.: +31 370 75 75 – Fax: +31 370 75 00
E-mail: info@sfh-osar.ch – Website: www.sfh-osar.ch

UNITED KINGDOM

Joint Council for the Welfare of Immigrants (JCWI)
115 Old Street
GB–London EC1V 9RT
Tel.: +44 20 7251 8706 – Fax: +44 20 251 8707
E-mail: info@jcwi.org.uk – Website: www.jcwi.org.uk

Refugee Council
3 Bondway
GB–London SW8 1SJ
Tel.: +44 20 7820 3000 – Fax: +44 20 7582 9929
E-mail: info@refugeecouncil.org.uk – Website: www.refugeecouncil.org.uk

AUSTRIA

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Federal Law Concerning the Granting of Asylum of 14 July 1997 (BGBl. No. 1997/76), as amended by Federal Law of 8 January 1999 (the Asylum Law);

– The Federal Law on the Independent Federal Asylum Review Board of 14 July 1997 (BGBl. No. 1997/77);

– The Federal Law Concerning the Entry, Residence and Settlement of Aliens of 14. July 1997 (BGBl. No. 1997/75)(the Aliens Law);

– The Schengen Agreement and the Dublin Convention.

Refugee status

Convention status is the only refugee status granted in Austria. According to Section 7 of the Asylum Law, asylum is granted to asylum seekers "*if it is satisfactorily established that they are in danger of persecution in their country of origin (Article 1A(2) of the Geneva Convention on Refugees) and none of the grounds set forth in the cessation clauses in Article 1C or F of the Geneva Convention on Refugees is present*."

Aliens granted asylum in Austria are issued with a permanent residence permit.

Quota refugees

Section 9 of the Asylum Law states that "*[a]liens shall be granted asylum ex officio by administrative decision without any further procedure if the Republic of Austria has declared its willingness to do so under international law*."

In practice, Austria has no agreement with UNHCR regarding resettlement of refugees and no practice of receiving quota refugees.

Other types of residence permit

Temporary residence

Section 15 of the Asylum Law provides for the granting of a temporary residence permit to a rejected asylum seeker whose deportation, forcible return or rejection is declared inadmissible on the basis of Section 8 of the Law. According to the latter section, the authorities, when dismissing an application for asylum, must *ex officio* make a decision on whether or not the removal of the applicant to his/her country of origin is admissible or not. The applicant's removal may be declared inadmissible on the grounds stated in Section 57(1-2) of the Aliens Law, i.e. Article 3 of the United Nations Convention against Torture, Article 3 of the European Convention on Human Rights or the *non-refoulement* provision of Article 33 of the Geneva Convention.

The temporary residence permit is granted for a maximum period of one year and is renewable twice, each time for one year. After the initial three years, it may be renewed for consecutive periods of maximum three years each.

The permit can be extended for as long as the reasons for which it had been originally granted prevail. It may be revoked if the alien can reasonably be expected to return to his/her country of origin, if one of the grounds for the withdrawal of refugee status (to fall under one of the exclusion clauses of the Geneva Convention, to constitute a danger to the Austrian Republic or to have been convicted for a particularly serious crime) is established, or if the alien is granted permanent right of residence in a "safe third country".

Temporary protection

Section 29(1) of the Aliens Law enables the Federal Government to pass ministerial decrees "*during times of heightened international tension, armed conflict or other circumstances that endanger the safety of entire population groups, (...) and to order that directly affected groups of aliens who can find no protection elsewhere shall be accorded a temporary right of residence in the federal territory*."

This provision was first applied to refugees from Bosnia-Herzegovina in 1996, and then to Kosovo Albanians by Decree of 27 April 1999.

The temporary protection granted to Kosovo Albanians was initially limited to 31 December 1999. In November 1999, however, it was extended until 31 March 2000 and even until 30 June 2000 for exceptional cases subject to humanitarian consideration. The requisite for obtaining temporary protection in Austria was to have entered the country before 15 April 1999 or to be in possession of a permit to enter issued on demand at the occasion of border control. Approximately 5,000 to 6,000 Kosovo Albanians came to Austria. By May 2000, between 3,300 and 3,600 had already returned to Kosovo.

Residence permit on humanitarian grounds

Pursuant to Section 10(4) of the Aliens Law, a residence permit on humanitarian grounds may be granted, *ex officio*, by the authorities in cases deserving special consideration. This includes, in particular, cases where the alien is exposed to a danger referred to Section 57(1-2) of the Aliens Law, i.e. inhuman treatment or punishment, death penalty or persecution on account of his/her race, religion, nationality, membership of a particular social group or political opinion (*non-refoulement* provision).

In addition, aliens who have left their country of origin due to an armed conflict may be granted such permit for a maximum period of three months, renewable for the duration of the conflict.

A humanitarian residence permit, limited to the time needed, may also be granted to witnesses in order to guarantee the outcome of a criminal prosecution, when the case involves punishable acts as defined in Section 217 of the Austria Penal Code, as well as to victims of human trafficking, in order to enforce civil rights claims against the perpetrators.

In practice, the granting of residence permits on humanitarian grounds has been a complicated issue. An Integration Council ("Integrationsbeirat") composed of representatives of both the authorities and NGOs and chaired by the Minister of Interior is responsible for making a recommendation, and the final decision is made by the Minister of Interior.

In the period 1998-1999**,** approximately 150 aliens were granted residence permits based on humanitarian considerations.

Rejection at the border

Land border applicants

In accordance with Section 17(2) of the Aliens Law, aliens who apply for asylum at a land border point will not be allowed to enter the country, unless they have the required documentation to do so. Land border applicants are required to seek protection in a third country, or to fill an application for asylum with an Austrian diplomatic representation abroad.

Nevertheless, an alien who seeks to lodge an asylum claim at a border point will be afforded the opportunity of completing an application form and a questionnaire. These documents will then be forwarded to the Austrian Federal Asylum Office by the border police. The alien will be required to wait for the Office's decision abroad, and he/she will be notified of the date fixed for the decision on entry. The alien is also issued with a certificate proving that he/she has applied for asylum in Austria, which he/she may use in his/her country of current residence pending decision on entry.

According to Section 17(4), the Asylum Office may grant permission to enter the country if "*it is not unlikely that asylum may be granted, in particular owing to the fact that the application is not to be rejected as being inadmissible or dismissed as being manifestly unfounded*". The decision on entry must be made within five working days of submission of the application. In practice, due to the application of the "safe third country" principle as a grounds for declaring an application inadmissible (see "Inadmissibility/manifestly unfounded procedure" below) and the fact that Austria's neighbouring countries are all considered to be "safe third countries", entry at a land border point is very rarely granted.

A refusal of entry by the Federal Asylum Office may be appealed to the Independent Federal Asylum Review Board ("Unabhängiger Bundesasylsenat"). There is no specified time limit for the Review Board to render a decision. The Board's decisions are final and cannot be appealed.

According to Section 39(2) of the Asylum Law, the UNHCR Office in Austria must be informed of any applications submitted at a border point. Its representatives have free access to border applicants in order to provide information and counselling, if necessary. In practice, however, legal counselling and assistance is usually not available at land borders.

Airport applicants

According to Section 17(1) of the Asylum Law, aliens arriving in Austria via an airport or directly from their country of origin and who file an asylum application at the border must be referred to the Federal Asylum Office, unless they may legally enter and reside in Austria or their application is to be rejected by reason of *res judicata* (i.e. when a decision has already been made on the application and the applicant tries to enter the country again).

However, airport applicants may be required to stay at a certain place to ensure their removal from Austria following a decision by the Federal Asylum Office on their asylum applications. In practice, they must stay in the Vienna airport's transit zone or in special facilities ("Sondertransit") outside the transit area itself, until the Office's decision has been made.

Facilities in the Sondertransit zone consist of units designed for 18 persons. They are guarded and secured by iron-wire and applicants are not allowed to leave the area. Caritas Austria has access to asylum seekers both in the transit and the Sondertransit zones. Food is provided by the airport authorities.

Pursuant to Section 39(3) of the Aliens Law, an airport application processed under accelerated procedure – due to the application of the "third safe country" clause or the fact that it is considered to be manifestly unfounded – cannot be dismissed without UNHCR's consent (see "Inadmissibility/manifestly unfounded procedure" below).

Entry into the territory

In practice, most asylum seekers enter Austria illegally in order to avoid border controls and apply for asylum once in the country. In-country applications must be submitted to the Federal Asylum Office in Vienna or to one of its Departments throughout the country. Asylum seekers submitting their claim to security authorities must be referred to the Federal Asylum Office.

There are no time limits or formal requirements for submitting the application. The application may be made in any manner, which sufficiently indicates the desire to seek asylum or protection from persecution or to be recognised as a refugee in Austria. The application can be written in German or any official languages of the United Nations. If it is written in another language, it will be translated *ex officio* by the authorities.

Asylum seekers are interviewed as soon as possible after submission of their applications in one of the Federal Asylum Office Departments. The interview is conducted by a civil servant with the assistance of an interpreter. Although applicants are entitled to receive legal assistance, in practice they are rarely given the opportunity to contact a lawyer before the interview takes place. Refugee advisers appointed by the Ministry of Interior may also assist the applicant during the interview but, since there are very few of them, this hardly ever happens (see "Legal aid" below).

Provisional right to stay

Section 19(1) of the Asylum Law provides for the granting of a provisional right to stay to those asylum seekers who have arrived via an airport or directly from their country of origin and who have applied for asylum at the border point.

For those applicants who have entered the country illegally or without the necessary travel documents (valid passport, visa), the provisional right of residence is not granted automatically but upon a decision of the authorities. Pursuant to Section 19(2) of the Law, this is the case when the application has been deemed admissible and not manifestly unfounded (see below).

Asylum seekers without a provisional right to stay face the risk of being arrested and detained during the asylum procedure, on grounds of illegal entry or illegal residence in Austria.

Even applicants with a provisional residence permit may be subject to detention measures by the Aliens Police in order to ensure their deportation or forcible return, depending on the outcome of their application.

Whilst detention is possible, deportations are not enforced during the asylum procedure in accordance with Section 21(2) of the Asylum Law, which states that "*[a]n asylum-seeker may not be returned to his or her country of origin or in any event forcibly returned or deported*."

Admissibility/manifestly unfounded procedure

Sections 4 to 7 of the Asylum Law establish both an inadmissibility procedure and a procedure for manifestly unfounded applications, which are applied consecutively.

Inadmissibility on "safe third country" ground

According to Section 4 of the Asylum Law, an application is deemed inadmissible when the alien is able to find protection against persecution in a country with which no treaty exists concerning the determination of responsibility for the examination of asylum applications. This provision, in practice, covers all countries that are not a party to the Dublin Convention or the Schengen Agreement.

Pursuant to Section 4(2), protection in a third country is considered to exist when the following conditions are met:

- an asylum procedure in accordance with the Geneva Convention is available in that country;
- the applicant is entitled to reside there during the asylum procedure;
- he/she is not exposed to danger as specified in Section 57(1-2) of the Aliens Law – inhuman treatment or punishment, death penalty and *refoulement* – in that country and;

- he/she is protected in that country against deportation to his/her country of origin, including deportation via other countries.

Nevertheless, the "safe third country" issue is deemed irrelevant and is not applied if:

- the asylum-seeker is a citizen of a member country of the European Economic Associations (EEA), or;
- he/she is an unmarried minor, whose parents have been granted asylum in Austria;
- his/her spouse or minor children have been granted asylum in Austria;

The countries generally considered to be "safe" are those which have ratified the Geneva Convention and established by law an asylum determination procedure incorporating the principles set forth in the Convention, and which have also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocol No. 11.

By Law of 8 January 1999 amending the Asylum Law, the Minister of Interior was given the ability to adopt, by ministerial order, a list of "safe third countries". This has, however, not yet been done. In practice, most non-EU neighbouring countries – i.e. Slovenia, Hungary and the Czech Republic – are considered to be "safe". Slovakia used to be deemed "safe", but following a decision of the Independent Asylum Review Board confirmed by the Austrian Higher Administrative Court this is no longer the case. Finally, Switzerland is not included as a "safe third country" because the Swiss-Austrian readmission agreement is not functioning.

The decision on admissibility on "safe third country" grounds is made by the Federal Asylum Office following an interview with the applicant. In practice, although the intention of the Austrian authorities was to implement the inadmissibility procedure within short time limits, this is not the case, and it often takes several months for the Office to render its decision. This may, in many cases, make the removal to the third country impossible, as many readmission agreements concluded by Austria include a three-month time limit in which to forward the request for transfer.

Appeal rights regarding decisions on admissibility on "safe third country" grounds are described below.

Inadmissibility on "Dublin" grounds

According to Section 5 of the Asylum Law, asylum applications which are not deemed inadmissible on "safe third country" grounds may be deemed inadmissible if another state is responsible under the provisions of the Dublin Convention (or Schengen Agreement).

The Federal Asylum Office is responsible for carrying out the Dublin procedure and for sending requests to take charge to the states considered to be responsible. No provisional residence permit is granted to applicants processed under Dublin procedure whilst they are awaiting the decision of the requested state, even though the procedure may last for several months.

Appeal rights regarding decisions based on the Dublin Convention are described below.

Manifestly unfounded applications

According to Section 6 of the Asylum Law, applications which have not been declared inadmissible may be dismissed as being manifestly unfounded if they clearly lack any substance. This is the case if, in the absence of any other indication of a risk of persecution in the country of origin:

- it cannot clearly be concluded from the applicant's allegations that he/she is in danger of being persecuted in his/her country of origin; or
- on the basis of the applicant's allegations, the claimed risk of persecution in his/her country of origin is clearly not attributable to the reasons set forth in Article 1A(2) of the Geneva Convention; or
- his/her allegations clearly do not correspond to reality; or
- despite having been requested to do so, he/she does not co-operate in the establishment of the material facts of the case; or
- owing to the general political circumstances, legal system and application of the law in the country of origin, there can generally be no well-founded fear of persecution for the reasons set forth in Article 1A(2) of the Geneva Convention.

Airport procedure

Airport applicants may be held at the airport's transit zone until the Federal Asylum Office has rendered its decision under the admissibility/manifestly unfounded procedure. Such a decision has to be made within five days.

According to Section 39(3) of the Asylum Law, no application may be dismissed on "safe third country" grounds or because it is manifestly unfounded without the consent of UNHCR. Accordingly, the UNHCR Office in Austria is notified of all applications submitted at the airport and may visit and interview the applicants in the transit zone if necessary. In practice, interviews by UNHCR representatives are rare, and UNHCR's decisions are usually made on the basis of the written file. UNHCR's consent is not required when the rejection is made according to the provisions of the Dublin Convention.

Appeal procedure

According to Section 32 of the Asylum Law, the decisions of the Federal Asylum Office by which an application is rejected as being inadmissible – on "safe third country" grounds or based on the Dublin Convention – or manifestly unfounded can be appealed to the Independent Federal Asylum Review Board.

Following a decision of the Austrian Constitutional Supreme Court ("Verfassungsgerichtshof") in 1998, the time limits to lodge the appeal and to render the decision – initially two and four days – were extended to ten days in both cases, from 1 January 1999. Nevertheless, if necessary in order establish the material facts of the case, the Asylum Review Board may extend the time limit and make its decision after a further ten days. In practice, however, the procedure before the Asylum Review Board often requires a longer period of time.

An appeal to the Asylum Review Board has suspensive effect, though only once the ten-day period given to lodge the appeal has expired. As a result, a removal or deportation order may still be enforced during these ten days notwithstanding the alien's appeal to the Board. In such cases, it is possible to file a separate appeal against the deportation measure based on Section 8 of the Aliens Law (*non-refoulement* provision).

If the Review Board overrules the negative decision of the Federal Asylum Office, the case is sent back to the Office for a new decision on admissibility/manifestly unfounded procedure.

In accordance with Section 8 of the Aliens Law, when upholding a negative decision, the Asylum Review Board must state *ex officio* whether or not the rejection or the forced return of the alien to his/her country of origin is admissible under Section 57(1-2) of the Aliens Law (protection against inhuman treatment or punishment, death penalty and *refoulement).*

Normal determination procedure

First instance

The first instance decision under the normal determination procedure is made by the Federal Asylum Office. In practice, decisions are taken by one person, either a professional lawyer or someone with special legal training, who is employed by the Federal Office.

As a general rule under Austrian administrative law, decisions may be made either in writing or orally. In practice, however, first instance decisions are always written. According to Section 58(2) of the General Administrative Procedural Law, reasons only need to be given in support of negative decisions. The asylum seeker has the right to have the decision translated (although not the reasoning behind it) and to receive information on his/her right to appeal.

Appeal

Negative first instance decisions may be appealed to the Independent Federal Asylum Review Board within two weeks of notification. The appeal, which has suspensive effect, can be written in German or in any official language of the United Nations. In cases where no appeal has been lodged during these two weeks due to unforeseeable and unavoidable reasons beyond the applicant's control (Section 71 of the General Administrative Procedural Law), the latter has the opportunity to file an appeal for reinstatement.

Appeal decisions are normally made by one member of the Asylum Review Board. However, if that member considers that the decision would lead to a change in the Board's or the Administrative Court's jurisprudence, or if there are no precedents regarding the issue concerned, he/she may refer the case to a review panel composed of three members. If a case is considered to be particularly important, the Board's chairperson may also refer it directly to the review panel.

The Asylum Review Board may hold public hearings if further investigations are necessary, if the investigations conducted by the Federal Asylum Office are deemed to be insufficient, if the applicant submits new evidence which was not available earlier or if the circumstances have changed since the first instance decision was taken.

No free legal aid is available before the Review Board. However, appellants may be assisted by legal counsellors under the framework of a project run by Caritas and UNHCR. Several other refugee assisting NGOs also have lawyers who are able to assist and represent applicants before the Asylum Review Board.

The Board's decisions must be taken within six months and reasons must be given for both positive and negative decisions.

Decisions by the Independent Federal Asylum Review Board may be further appealed to the Administrative Court within six weeks of the appeal decision. The appeal may be lodged by the applicant or by the Federal Ministry for Interior in cases of positive decision. Appellants without resources may be granted free legal aid upon application.

Such an appeal does not have automatic suspensive effect. According to Section 30(2) of the Law on procedures before the Administrative Court, the applicant has to make a specific application for suspensive effect to the Court. This will be granted if it is not against urgent public interests and if, after taking into consideration all interests, the Court considers that there could be a disproportionately disadvantageous outcome for the applicant if suspensive effect was refused.

This is an extraordinary legal remedy and, where the court reaches a positive decision, it leads to the quashing of the appeal decision and reconsideration of the case by the Asylum Review Board.

Legal aid

In accordance with Section 40 of the Asylum Law, the Federal Minister of Interior may appoint refugee advisers to assist asylum seekers. Upon request, their role is to:

- provide aliens with information on any questions concerning their right to asylum;
- assist them with the submission of their asylum application;
- represent them in the asylum procedure, unless representation by a barrister/solicitor is required by law;
- assist them with the translation of documents and the provision of interpreters.

At present ten refugee advisers have been appointed by the Ministry of Interior, each of whom works for up to eight hours per week. It is up to these refugee advisers to decide which cases require their assistance. In practice, since there are very few such advisers, few asylum seekers receive legal counselling which is paid for by the state.

Legal counselling and assistance is also provided by several refugee assisting NGOs, including Caritas Austria.

Interpreters

Interpreters are usually provided during the various stages of the asylum procedure.

Unaccompanied minors

According to Section 25 of the Asylum Law, unaccompanied minors over 14 years of age are allowed to submit an application for asylum. Unaccompanied minor asylum seekers are represented by the locally operating youth welfare agency (“Jugendwohlfahrtsträger”).

Despite some improvements in 1998 and 1999, the situation of unaccompanied minors in Austria is still problematic. Representatives of the youth welfare agencies are generally not trained in asylum matters and very often, their first meeting with the child takes place during the interview with the officer of the Federal Asylum Office. Children are often not sufficiently informed about their legal representative and do not understand his/her role during the procedure. In some cases, interviews with minors are conducted without their legal representative, although this is expressly prohibited by Section 30(3) of the Asylum Law.

Female asylum seekers

According to Section 27(3) of the Asylum Law, asylum seekers whose fear of persecution is based on their gender must be interviewed by officials of the same sex if they so request.

Final rejection

When the Independent Federal Review Board confirms a decision of rejection, the asylum seeker is informed in writing and the Aliens Police are instructed to take over the case. Detention measures may be applied under deportation procedure (see “Detention” below).

With the exception of those who are granted temporary residence permits under Section 15 of the Asylum Law (see “Other types of residence permit” above), rejected asylum seekers are not entitled to any kind of residence permit. It is possible to apply for a residence permit under the Aliens Law, but this application must be submitted from abroad.
Rejected asylum seekers who are not entitled to a residence permit but who cannot be removed to their country of origin or any other country, remain in a very precarious situation. If federal care is denied – as is the practice in some districts – private organisations such as Caritas Austria take responsibility for providing material assistance.

Detention

Asylum seekers applying at the airport can be held in the airport’s transit zone whilst awaiting the decision of the Federal Asylum Office on whether their application is admissible and not manifestly unfounded.

In addition, asylum seekers may also be subject to detention measures during the asylum procedure, in particular if they have entered the country illegally and/or do not have any provisional right to stay. Such detention must not exceed a total period of six months.

Rejected asylum seekers may be arrested and held in custody to ensure deportation or forcible return to their country, in accordance with Section 61 of the Aliens Law. The maximum period of time allowed for such pre-deportation detention is two months. Under particular circumstances, however, this may be extended for a further four months, i.e. for a total of six months.

Those who cannot be removed or deported are released from detention, but do not receive any kind of residence permit (see “Final rejection” above).

Applications from abroad

According to Section 16(2-3) and 17 of the Asylum Law, applications for asylum in Austria may be filed with an Austrian diplomatic or consular representation in the country where the applicant is resident.

In such cases, the applicant is requested to fill in an application form and a questionnaire, which are forwarded to the Federal Asylum Office. If the Asylum Office considers that it is likely that asylum will be granted, the diplomatic or consular authority are requested to issue an entry visa to the applicant without further formality. Decisions of the Federal Asylum Office are not notified in writing to the applicant. In theory, an appeal is possible against negative decisions.

In practice, there are very few cases of applications successfully submitted from abroad.

Family Reunification

Convention refugees: according to Sections 10 of the Asylum Law, Convention status granted to a refugee in Austria can be extended to his/her spouse and unmarried children under 19 years of age. Extension of refugee status to a spouse is only admissible if the marriage took place, at the latest, one year after the submission of the asylum application. Adopted and stepchildren are treated as natural children. Reunification with unmarried partners, parents and siblings is not possible.

Extension of Convention status to a refugee's family member is not conditioned on any housing or financial requirements. However, in the cases where extension of the refugee status is not possible – for example if the marriage took place more than one year after submission of the asylum application – reunification is subject to the conditions laid down in the Aliens Law, namely applications submitted abroad, adequate accommodation, sufficient financial means for the maintenance of the family (e.g. lawful employment), free places within a yearly fixed quota for family members and valid travel documents.

Persons under temporary protection are not entitled to family reunification. However, family unity was considered as a priority in the selection of the Kosovo Albanians brought to Austria under the UNHCR Humanitarian Evacuation Programme in 1999.

Asylum seekers are not entitled to family reunification.

Procedure: the application for extension of the refugee status must be lodged by the family member either with the Federal Asylum Agency or with an Austrian Embassy. In the latter case, the application will be referred to the Federal Asylum Agency. If this is granted, the Ministry of Interior instructs the Austrian Embassy to issue a residence permit, which entitles the family member to entry and residence and Austria. In 1998, 294 persons were reunited in Austria.

Statistics (source: Ministry of Interior)

Number of asylum seekers

The increasing number of asylum applications lodged in 1998 and 1999 stems mainly from the crisis in Kosovo. Statistics distinguishing between applications submitted inside the country and abroad are not available.

Number of asylum applications submitted in Austria	
1996	6,991
1997	6.719
1998	13.805
1999	20,129

Number of statuses granted

	Convention statuses	**Residence permits – Section 15 of the Asylum Law**
1996	716	not available
1997	639	not available
1998	500	191
1999	3,393	886

Main national groups

Main national groups to seek asylum in Austria		
	1998	**1999**
Fed. Rep. of Yugoslavia	6,647	6,840
Iran	950	3,343
Afghanistan	467	2,209
Iraq	1,963	2,014
India	472	874
Sierra Leone	166	350
Turkey	210	337
Pakistan	242	317

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction

According to the provisions of the Federal Law regulating the provision of federal care to asylum seekers, only needy asylum seekers may be eligible for federal care and maintenance until the final and conclusive termination of the refugee determination procedure. Such federal care and maintenance is the responsibility of the Ministry of Interior and includes accommodation, food, medical care and pocket money, as well as other necessary measures of assistance.

The eligibility criteria are very strict and, on average, only about 30% of asylum seekers are granted federal assistance during the asylum procedure. The decision to grant or deny federal care is discretionary. Since they have no enforceable right to receive assistance, asylum seekers have no legal remedy against a refusal.

On occasion, children may be considered by the Austrian authorities as extremely vulnerable and may therefore be granted federal care and maintenance even if they do not meet the required criteria.

Asylum seekers who are not granted federal care and maintenance and are not self-sufficient are, to some extent, entitled to public relief in some of the nine federal provinces. However, the laws on social aid ("Sozialhilfegesetze") are different in each federal province, and some of them, such as Vienna, deny all assistance to asylum seekers.

Several hundred needy asylum seekers, without any federal or provincial assistance, as well as many rejected asylum seekers who cannot be deported, must rely on the support of charitable or religious organisations or of private individuals.

Accommodation

There is no compulsory accommodation on arrival in Austria. Federal care (accommodation, food, health insurance, pocket money), if granted, is only available after the interview with the Federal Asylum Office, however the Ministry of Interior has the authority to grant provisional care to newly arrived applicants from their arrival until the interview with the Asylum Office. In such cases, this provisional accommodation is made available in refugee camps, pensions or hostels.

Asylum seekers under federal care are provided with accommodation but, in practice, conditions often depend on the local and regional situations. There are five reception centres, amongst which the Traiskirchen centre is the largest (159 asylum seekers were living there on 1 November 1999). Accommodation is also provided in hotels, hostels and "care centres". On 1 November 1999, 4,008 asylum seekers were provided with accommodation through federal care, including 387 applicants who had not yet had the interview with the Federal Asylum Office (provisional accommodation).

Asylum seekers without federal care have to rely on the assistance provided by NGOs, charitable organisations or churches, and may be accommodated in private inns, hostels or even rooms in parish buildings, etc. The capacity of NGOs' accommodation facilities is limited. Caritas Austria runs two emergency shelters, and the Protestant Refugee Aid one, where asylum seekers without federal care, as well as rejected asylum seekers without legal protection and other aliens, may be accommodated for a short period only.

Asylum seekers apprehended by the police can be placed in detention. The police have the authority to order less restrictive measures than detention if they consider that there is no risk that the alien will avoid deportation. Such measures may include accommodation in a specific place

with an obligation to report to the police every second day. In such cases, asylum seekers are accommodated in hostels or hotels under the responsibility of the authority of the Land (region).

Financial assistance

Asylum seekers under federal care receive a monthly amount of ATS 530 [EUR 38,5] in pocket money.

As mentioned above, asylum seekers without federal care are not entitled to any kind of social assistance. In emergencies, however, some NGOs may, according to their own resources, grant them small amounts of money.

Work

In theory, asylum seekers have the right to apply for a work permit once they have entered the normal determination procedure. In practice, only few are given the permission to work.

Language tuition

Asylum seekers are not entitled to any language tuition provided by the Government.

Those who want to learn German may attend some free courses run by private NGOs. Access depends on the places available.

School attendance

Schooling is compulsory between the ages of 6 and 15 for all children regardless of their nationality and of whether or not they have a residence permit.

Children who do not speak German when they start school may be placed in “reception classes” for foreign children.

Child care

No child care is available for asylum seekers.

Unaccompanied minors

Federal care is not granted automatically to unaccompanied minors. According to the law, the locally operating youth welfare agency, acting as their legal representative, is responsible for the welfare of unaccompanied minors. Some Länder (regions) provide accommodation to minors who do not receive federal care, but no special programmes have been established for them.

Unaccompanied minors whose asylum applications are rejected are, like adults, subject to deportation proceedings according to the Aliens Law. Pursuant to Section 68 of the Aliens Law, however, aliens under 16 years may only be detained pending expulsion if accommodation and care appropriate to their age and stage of development can be guaranteed. Minors who are detained must be kept separate from adults. In practice, they are treated more or less like adults.

In theory, the police must investigate whether less restrictive measures than detention can be applied, however detention is often imposed because the police fear the disappearance of the minors if not detained.

Female asylum seekers

There are no special provisions for female asylum seekers.

Health/sickness

Asylum seekers under federal care, and those who are entitled to public relief in some provinces, are covered by the common health insurance plan.

Other asylum seekers may receive free basic medical treatment in private hospitals.

Freedom of residence/movement

According to Section 19(1) of the Asylum Law, airport applicants may be required to remain at a specific place in the border control area or within the territory.

In all other cases, asylum seekers are not subject to restrictions of movement. However, applicants under federal care who leave their place of accommodation for more than three days without permission, loose their entitlement to federal care.

SOCIAL CONDITIONS FOR REFUGEES

Introduction

Recognised refugees receive a permanent residence permit in Austria. In addition to the rights specifically provided for by the Asylum Law, they are entitled to almost all rights laid down in the Geneva Convention of 1951. Except in the field of political rights, they acquire rights comparable to those of Austrian citizens.

Convention refugees enjoy continuous protection under conditions which, in principle, are aimed to give them the opportunity to integrate into Austrian society. In particular, refugees are entitled to seek integration assistance from the Fund for the Integration of Refugees set up by the Ministry of Interior, according to Section 41 of the Asylum Law, which reads:

(1) Refugees who have asylum may be granted integration assistance. The purpose of integration assistance is to bring about their full involvement in the economic, cultural and social life of Austria and greatest possible equality of opportunity with Austrian citizens in these areas.

(2) Integration assistance shall, in particular, include: 1. Language courses; 2. Basic and advanced training courses; 3. Events organised to provide an introduction to Austrian culture and history; 4. Events arranged jointly with Austrian citizens to promote mutual understanding; 5. Dissemination of information concerning the housing market; 6. Benefits provided by the Refugee Integration Fund.

(3) Private, humanitarian and ecclesiastical organisations and voluntary welfare or local authority institutions shall, to the extent possible, be called upon to furnish integration assistance. The services to be provided shall be set out in a contract under private law, which shall also regulate the reimbursement of costs.

Housing

Some 7,000 housing units are administered by the Fund for the Integration of Refugees. Needy refugees as well as those considered vulnerable (single woman, single parents, families with children, disabled and humanitarian cases) are given priority. Currently, this housing is rented out. The Fund also provides refugees with grants for housing (renovation, payment of rent and housing loans).

In Vienna and other parts of the country refugees have access to council housing.

Freedom of movement/residence

Refugees are free to settle wherever they wish and can travel inside and outside the country. They are given an identity card when they are granted Convention status and a Convention Travel Document is provided upon request.

Financial assistance

Refugees are entitled to receive the same social benefits as Austrian citizens.

The basic social allowance is governed by the regional Laws on Social Aid and may differ considerably from one province to another. For example, the monthly allowance granted in Salzburg is as follows:

Single person	ATS 4,785	EUR 348
First family member	ATS 3,910	EUR 284
Additional person (without child benefit)	Additional ATS 2,580	EUR 187
Additional person (with child benefit)	Additional ATS 1,145	EUR 83

Child benefit also varies among the different provinces. In Salzburg, monthly rates are conditional on the number of children and their ages:

Child under 10	ATS 1,350	EUR 98
Child between 11 and 18	ATS 1,550	EUR 113
Child over 19	ATS 1,850	EUR 134
First child	Additional ATS 350	EUR 25
Second child	Additional ATS 525	EUR 38
Further child	Additional ATS 700	EUR 51

In addition, refugees have the right to integration assistance, which covers language and vocational training, accommodation allowances and other financial support and benefits from the Fund for the Integration of Refugees pursuant to Section 41 of the Asylum Law.

Work

Convention refugees have free access to the labour market on the same terms as nationals and EU citizens. Consequently, they do not require a work permit

Language tuition

Within the framework of the assistance towards integration provided by the Fund for the Integration of Refugees, many refugees are offered German language courses, which last between three to nine months.

School attendance

Compulsory schooling between the age of 6 and 15 applies to all children regardless of their nationality. Children of refugees have free access to all levels of the Austrian educational system.

In order to determine each child's level, a test (“Einstufungsprüfung”) is carried out prior to admission. Pursuant to the law, children who do not speak sufficient German may be admitted as special students for a maximum period of two years. In practice, however, children with insufficient knowledge of the German language are frequently sent to schools intended for educationally subnormal children.

Mother tongue tuition

There is no mother tongue tuition available within the Austrian school system.

Access to the adult education system

Convention refugees have free access to the universities and are exempted from study fees.

Access to the national health service

Refugees have the same access to the national health service as Austrian nationals.

Austrian citizenship

In principle, refugees can obtain Austrian citizenship after four years of legal residence in Austria.

Repatriation

Bosnians are repatriated in accordance with some specific programmes.

Kosovo Albanian refugees who wish to repatriate may receive the practical assistance of the International Organization for Migration (OIM) as well as financial assistance under a repatriation project run by Caritas Austria. According to this, an allowance of ATS 3,000 [EUR 218] per adult and ATS 1,000 [EUR 73] per child may be granted.

Once they have repatriated, refugees do not have the right to return to Austria.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction

Persons under temporary protection do not need to go through the individual eligibility procedure. However, if they wish to do so, they may apply for asylum with the Federal Asylum Office.

Unlike Convention refugees, persons under temporary protection are not entitled to integration assistance (e.g. language and vocational training, accommodation allowances and other financial support) and are not allowed to work without a work permit. However, they benefit from an assistance scheme set up and jointly financed by the federal and provincial governments. As a result of this, persons under temporary protection – i.e. mainly Kosovo Albanians – generally enjoy a more favourable social situation than most asylum seekers.

Financial assistance/housing

Persons under temporary protection are offered accommodation in a centre (former hospital), in hostels or pensions. Food is provided and they have access to medical treatment. No pocket money is granted.

Those who are accommodated by private individuals receive a monthly cash grant of ATS 1,500 [EUR 109] per person and a monthly pocket money of ATS 200 [EUR 15].

Work

Pursuant to an ordinance of the Minister for Labour and Social Affairs of 14 July 1997, persons under temporary protection are allowed to work but they require a work permit and are listed as a “third priority category”.

Language tuition

German language tuition is provided through private organisations.

School attendance

The same rules as for asylum seekers and Convention refugees apply to the children of persons under temporary protection.

Mother tongue tuition

If required and feasible, children of Kosovo Albanians registered under the temporary protection scheme obtain bilingual tuition as well as vocational training.

Access to the national health service

All persons under temporary protection are insured under the common health insurance plan.

Repatriation

Kosovo Albanians under temporary protection may receive financial assistance of ATS 3,000 [EUR 218] to ATS 9,000 [EUR 654] per person depending on the state of their flat/house in Kosovo.

BELGIUM

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Law of 15 December 1980 on the access of aliens to the territory, their residence, establishment and removal (the Aliens Law), as modified by the Laws of 14 July 1987, 18 July 1991, 6 May 1993, 8 March 1995 and 10 and 15 July 1996;

– The Royal Decree ("arrêté royal") of 8 October 1981 on the access of aliens to the territory, their residence, establishment and removal, as subsequently modified;

– The Schengen Agreement and the Dublin Convention.

The Belgian government has recently (May 2000) published a Draft Law amending the asylum procedure laid down in the Aliens Law. According to this proposal, the existing Aliens Office would be replaced by a Federal Department of Immigration, responsible for all issues relating to foreigners except asylum matters. A new autonomous Federal Administration for Asylum will have exclusive responsibility for the granting or denial of asylum (with the exception of the Dublin Convention, which will still come under the Federal Administration of Immigration).

In addition to Convention status, the Federal Administration for Asylum would have the option to grant a subsidiary refugee status ("qualité d'assimilé à un réfugié") to those applicants who do not meet the conditions to be recognised under the terms of the Geneva Convention but who, in their country of origin, are subject to treatments violating in particular Article 3 of the European Convention on Human Rights or Article 3 of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment.

Finally, the existing manifestly unfounded procedure would be modified in order to include 18 grounds to declare an application manifestly unfounded. An Administrative Court will be competent to deal with the appeals introduced against the negative decisions of the Federal Administration for Asylum.

As the Draft is at a very early stage and has not even been yet submitted to Parliament, it is not possible to predict when it will be adopted or what its final provisions will be. Information on this issue should be requested from Belgian refugee assisting organisations at a later stage.

Refugee status

The only refugee status granted in Belgium is Convention status. There is no de facto or humanitarian status.

Convention refugees are issued with a permanent residence permit.

Quota refugees

The Belgian legislation does not include any provisions for the reception of quota refugees.

Other types of residence permit

Temporary protection

There are no general provisions on temporary protection in the Aliens Law. However, special temporary protection regimes have been established, through ministerial circulars, in order to solve specific problems.

Between September 1992 and March 1995, a "status of displaced persons" was granted to citizens from former Yugoslavia in the form of "statement of arrival". This status, based on a ministerial circular and not a law, allowed lawful temporary residence in Belgium initially for a three-month period provided that the persons concerned withdrew their applications for asylum. From November 1992, these "statements of arrival" were valid for six-month periods (renewable).

The "status of displaced persons" is no longer granted, and persons with this status have been subject to an individual re-examination by the Aliens Office ("Office des Etrangers"). Following this, the status was either withdrawn (such as the case of persons from Macedonian, Slovene, Serbia (except), Montenegro, Macedonian and Croatia) and the person ordered to leave the territory, or the person was registered in the register of foreigners (such as the case of persons from Bosnia-Herzegovina, Kosovo or the Serb-occupied area of Croatia) and allowed to stay in the Belgium.

Temporary protection was granted to Kosovo Albanians by a circular of the Ministry of Interior dated 19 May 1999. The residence permit, granted in practice through the registration of the person in the commune's register of foreigners, was valid for six months, and could be prolonged as long as necessary. Temporary protection was no longer granted after 3 September 1999. The residence permit of those persons who had obtained or applied for temporary protection before 3 September 1999 was prolonged until 2 March 2000, or 30 June 2000 for families with school-aged children. The social rights granted to Kosovo Albanians under temporary protection are described under "Social Conditions for Persons under Temporary Protection" below.

Residence permit "under exceptional circumstances"

According to Section 9(3) of the Aliens Law, aliens may "under exceptional circumstances" apply to the Ministry of Interior for a residence permit. This is a very general provision and the detailed regulations can be found in a circular of the Minister of Interior of 15 December 1998.

This provision is widely used by asylum seekers whose applications are rejected after the procedure has taken many years and who therefore have strong ties in Belgium. They may, for example, have jobs (which presupposes the fact that they have reached the second stage of the procedure, given that they are not legally entitled to work during the "admissibility" stage, see below); they may have learnt one or both of the national languages, their children may have been born in Belgium or have grown up there and have followed normal schooling, etc.

Like any other decisions taken within the framework of the Aliens Law, the Minister has to give the reasons for the decision based on Section 9(3) and, where appropriate, explain why the circumstances invoked cannot be regarded as exceptional.

Rejection of a request by the Minister may be appealed for suspension and annulment to the Council of State within 60 days of notification.

The rejection of an application for refugee status cannot lead to the automatic rejection of an application for regularisation of residence, since the scope of these concepts is different.

Regularisation

A “one shot” regularisation procedure was organised by the Law of 22 December 1999. According to this, aliens were authorised to apply for an unlimited residence provided that they were already staying in Belgium on 1 October 1999 and came under one of the following categories:

– asylum seekers whose application is still pending after four years of procedure, or three years for families with school-aged children;

– aliens who, for reasons beyond their control, are unable to return to their country of origin, or in their last country of residence before arriving in Belgium;

– aliens who are seriously ill;

– aliens who may invoke humanitarian reasons and have long-time social links in Belgium, for instance if they have been in the country for more than six years, or five years for families with school-aged children.

Applications had to be submitted between 10 and 31 January 2000 to the local authorities and were then forwarded to a Commission of Regularisation (“Commission de régularisation”) established by the Law of 22 December 1999. The Ministry of Interior makes final decisions upon recommendation of the Commission. By 31 January 2000, 33,000 applications had been submitted.

Rejection at the border

The border police have not the authority to refuse entry to aliens applying for asylum at border points and must therefore refer all border applications to the Aliens Office for a decision on entry.

There is no specific border or airport procedure and border applicants are thus processed under the same admissibility procedure as in-country asylum seekers (see “Admissibility procedure” below).

However, in accordance with Section 74/5 of the Aliens Law, border applicants who do not have the required documentation to enter Belgium legally may be maintained in a detention centre (“centre fermé”) either at the border or within the country, until a decision on the admissibility of their application has been made. Such detention lasts until the decision is made, though no longer than two months. If no decision has been made within this two-month period, the applicant is released and allowed entry in the country.

In-country applications

Asylum seekers who find themselves, legally or illegally, within the country must submit their application to the Aliens Office. Applicants who contact other institutions must be referred to the Aliens Office.

Upon submission of his/her application, the asylum seeker is issued with a document (“Annexe 26bis”) with his/her photography and identity and stating that he/she has applied for asylum in Belgium. Whenever possible, the applicant is interviewed the same day by an officer of the Aliens Office, but this happens rarely due to high number of applications in recent years. In most cases, he/she is given an appointment to be interviewed at a later stage. Following the interview, the asylum seeker is either notified the decision on admissibility the same day or – more usually – requested to come to the Office at a later date to receive the decision.

The Dublin Convention

Pursuant to Section 51/5 of the Aliens Law, implementing the Dublin Convention, a preliminary stage has been introduced into the asylum procedure relating to the determination of the state responsible for examining the application. Belgian law incorporates the principle and specifies its own national procedure, but refers to international texts for the definition of the criteria for determining the responsible state.

When an asylum seeker submits his/her application either at the frontier or within the territory, the first stage of the procedure is thus for the Aliens Office, which is a department of the Ministry of Interior, to determine if Belgium or another country is responsible for processing the application.

If it appears that another state is responsible, a request to take charge is sent to that state. Applicants dealt with under the Dublin procedure are issued with a certificate, valid for three months and then renewable each month.

If the requested state accepts its responsibility, the applicant will be notified a refusal of entry or stay in Belgium and his/her transfer will be organised by the Belgian authorities. According to Section 51/5(3) of the Aliens Law, asylum seekers may be detained "*for the time which is strictly necessary to the enforcement of the transfer*", but for no more than two months.

Against a decision made on the basis of the Dublin Convention and Section 51/5 of the Aliens Law, the asylum seeker may lodge an appeal for annulment and suspension to the Council of State ("Conseil d'Etat" – the higher administrative court) within 60 days of notification. The appeal has no automatic suspensive effect, and suspension will apply only if it is granted by the Council of State, which may require time. In emergency cases, it is possible to lodge a separate request for suspension within five days of notification.

Admissibility procedure

First instance

If Belgium is the responsible state, the application for asylum will then progress through an admissibility procedure, which determines whether the asylum seeker may be admitted into the territory and his/her claim examined on its merits.

According to Section 52 paragraph 1 of the Aliens Law, applications submitted at a border point may be deemed inadmissible:

(a) if the application is clearly founded on grounds inappropriate to asylum, in particular because:
  – it is fraudulent; or
  – it does not relate to the criteria in Article 1A (2) of the l951 Geneva Convention, or to other criteria justifying the granting of asylum;

(b) if the alien has been the subject of a ministerial decree of removal or a royal decree of expulsion within the previous ten years without it having been revoked;

(c) if the alien has resided for more than three months in one or more third countries which he/she left without being obliged to, since the date he/she left his/her country of origin;

(d) if he/she is in possession of a travel ticket valid for another country and has the necessary travel documents to reach that country;

(e) if the application is manifestly unfounded because the alien does not furnish any proof that he/she has serious grounds for substantial fear of persecution within the meaning of the Geneva Convention of 1951;

Pursuant to Section 52 paragraph 2, in-country applicants may be opposed the same grounds for inadmissibility as border applicants, with the exception of (d) above. However, in-country applications may also be considered inadmissible on the following additional grounds:

(f) if, without justification, the alien submitted the application after the expiry of a period of eight days as provided for in Section 50 of the Aliens Law. Aliens who are transferred to Belgium from another state on the basis of the Dublin Convention are subject to the same obligation and time limit;

(g) if he/she submitted the application for recognition of refugee status after the expiry of his/her legitimate residence permit, without justification;

(h) if he/she voluntarily withdraws from a procedure initiated at the frontier;

(i) if he/she fails, for no valid reason, to respond to a summons or a request for information within one month of it being sent.

The preliminary stage of examination of the admissibility of an application is carried out by the Aliens Office. During the interview conducted by a representative of the Aliens Office, interpreting assistance, but not legal assistance, is made available if necessary.

Whilst awaiting the decision on admissibility, asylum seekers who entered the country legally may stay either in a reception centre or in private accommodation if they wish. Those who applied at the border without having the necessary documents to enter the country legally are usually held in a detention centre, especially if they are undocumented or if their identity cannot be established. In-country applicants who have entered Belgium illegally may also be detained during this period, but this is rather exceptional (see “Detention” below).

The decision on admissibility must be reached within eight days. However, the law does not provide any sanctions or other legal effects if this time limit is not respected.

If the application is deemed admissible, the applicant is allowed to enter (or remain in) the territory. He/she must present him/herself to the local authorities of the city in which he/she wants to stay, provided that he/she may reside there according to the stipulated quota of asylum seekers (see “Accommodation” under “Social Conditions for Asylum Seekers” below).

If the application is declared inadmissible, the asylum seeker is refused admission into the territory or, if he/she is already in Belgium, the right to stay.

Appeal

If the Aliens Office’s decision is negative, the asylum seeker may lodge an “urgent appeal” to the General Commission for Refugees and Stateless Persons (“Commissariat Général aux Réfugiés et aux Apatrides” – CGRA). This appeal, which has suspensive effect, must be filed within one or three working days after notification of the decision of inadmissibility, depending on whether or not the applicant is detained in a specified location.

Asylum seekers are usually interviewed by the CGRA. They may submit a request for free legal assistance and may be assisted by a lawyer during the interview.

The CGRA must reach a decision within 30 days but, again, the law does not provide any sanctions or other legal effects if this time limit is not respected.

A rejection of the “urgent appeal” by the CGRA may be appealed to the Council of State within 60 days.

The filing of an appeal does not have suspensive effect. Suspension may only be granted by the court where it appears that the applicant has a serious case which could lead to annulment and where the implementation of the inadmissibility decision might cause him serious, and possibly irreparable, damage.

The Council of State's role is limited to verifying the legality of the CGRA's decision and it does not re-examine the facts of the case. However, these facts will be taken into consideration if the reasons for the CGRA's decision are challenged.

The average time required by the Council of State to render a decision on suspension and annulment is 12-18 months and 24 months or more respectively.

When the CGRA confirms the decision of non-admissibility by rejecting the “urgent appeal”, it also gives an opinion on whether the applicant should be returned to the country he/she fled. Although this opinion is not binding, it is generally followed by the Aliens Office.

When the Aliens Office agrees with the CGRA's opinion and does not issue an order of deportation, no temporary residence permit is granted to the rejected asylum seeker. The latter remains in Belgium in a situation of legal uncertainty and insecurity, and vulnerable to any sudden changes on the part of the Aliens Office.

Normal determination procedure

The first instance decision is made by the General Commissioner for Refugees and Stateless Persons (CGRA). In principle, asylum seekers are interviewed again but, in cases where this cannot be done, perhaps for medical reasons, the decision is made solely on the basis of the written report forwarded by the Aliens Office.

No time limit is legally stipulated within which the CGRA must reach the first instance decision, although it is anticipated as lasting for two months. In practice, the time required can be anything from two months to two years.

Appeal

When a negative decision is reached by the CGRA, the asylum seeker can lodge an appeal to the Permanent Board for Refugees' Appeals (“Commission permanente de recours des réfugiés” – CPRR) within 15 days of notification. The Minister of Justice enjoys a similar right of appeal against positive first instance decisions, but almost never uses it.

The appeal has suspensive effect. It has to be well reasoned and must specify the language chosen, French or Dutch. The CPRR is an administrative tribunal. Since May 1993, UNHCR has no longer been a member of the CPRR. Nevertheless, at any stage of the procedure, except before the Council of State, UNHCR may give an opinion on its own initiative (in practice, having been asked to do so by the applicant) or at the request of the Minister of Interior, the CGRA or the CPRR itself.

The average time required to process a case before the CPRR is at least one year. Within 60 days of notification, a decision by the CPRR may be further appealed to the Council of State by the applicant or, theoretically, by the Minister of Justice. Such an appeal does not have suspensive effect. The Council of State only controls the legality of the decision and does not re-examine the facts of the case.

Legal aid

In accordance with the provisions regarding the Belgian free legal aid system, asylum seekers have access to free legal aid at all stages of the procedure.

Unaccompanied minors

Unaccompanied minors are subject to the same procedure as adults. No special facilities are provided, although in practice, interviews are frequently adapted to take account of their age.

In the event of a negative decision being taken under the admissibility or the normal determination procedure, the Aliens Office often waits until the minor reaches the age of 18 before removing him or her from the territory. However, even if they are not deported, rejected unaccompanied minors are left without any documentation or residence permits, thus making their position very insecure.

Accommodation and social rights for unaccompanied minors are described under “Social Conditions for Persons under Temporary Protection” below.

In 1999, 1,939 unaccompanied minors applied for asylum in Belgium (1,883 in 1998).

Female asylum seekers

There are no provisions in the asylum legislation regarding the processing of applications submitted by women. Female interviewers and interpreters are normally provided, especially if requested by the applicant.

Final rejection

Asylum seekers whose application has been rejected by a final decision are given five days under the admissibility procedure and 30 days under the normal determination procedure to leave voluntarily the country. If they remain in Belgium after the expiration of this time limit, an expulsion order may be enforced by the police.

Although it stirred up great concern among the public opinion, the death, in 1998, of a rejected Nigerian asylum seeker (Semira Adamu) in the hands of the police, who attempted to expel her by force, has led to limited changes in the expulsion policy. Amongst some other decisions, an internal note now forbids the use of a cushion during expulsion proceedings.

Rejected asylum seekers may apply for a residence permit “under exceptional circumstances” pursuant to Section 9(3) of the Aliens Law. If they do not fulfil the conditions for obtaining a residence permit but cannot be removed or deported (usually because their countries of origin refuse to re-admit them or because of disturbances there), they will stay in Belgium without a temporary residence permit or any legal status, and will therefore be in a situation of legal uncertainty and insecurity.

Detention

Asylum seekers

According to Section 74/5 of the Aliens Law, border asylum seekers who are undocumented or whose identity cannot be established can be detained in a detention centre (“centre fermé”) during the processing of their claim under the admissibility procedure. In-country applicants who entered the country illegally may also be detained during this period, but this is rather exceptional.

The detention lasts until a decision on admissibility is made, though no longer than two months. If no decision has been made within two months, the asylum seeker is released and allowed to enter into the country.

Rejected asylum seekers

Pursuant to Section 74/6 of the Aliens Law, an asylum seeker rejected following a decision of non-admissibility may be held in a detention centre for a similar period of two months in order to ensure his/her removal from Belgium. However, the two-month detention period can be renewed by the Minister, if steps have been made within seven working days to effectively remove the alien and if there still is a possibility of removing him/her within a reasonable time frame.

The maximum period of detention – including the detention occurred during the processing of the claim – was initially eight months, but this was reduced to five months in 1998.

Asylum seekers rejected under the normal determination procedure may also be detained under Section 25 of the Aliens Law, which provides for the same detention period of two months, renewable for up to a maximum detention period of five months.

Applications from abroad

Applications for asylum in Belgium must be submitted within the country.

Family reunification

Convention refugees are entitled to family reunification as soon as they are granted refugee status. Reunification applies to their spouse and dependent children aged under 18, including legally adopted children. Reunification with children aged 18-21 is only possible if the refugee has obtained Belgian citizenship.

Reunification with unmarried partners, parents (over 65 years) and siblings is in principle excluded. However, it may be granted in individual cases and on humanitarian grounds. Same sex partners and unaccompanied minors living in Belgium are not entitled to reunification respectively with their partners and parents, but here again, a permission may be given on humanitarian grounds.

“Snowball” family reunification is forbidden, in other words persons whose right of residence or establishment in Belgium is based on family reunification may not themselves subsequently apply for family reunification with other persons.

Finally, the entire family must be reunified in the calendar year following arrival of the first of its members to be reunified in Belgium.

Unlike other aliens, Convention refugees are not subject to any requirements in terms of financial resources and accommodation.

Persons with residence permit “under exceptional circumstances” are entitled to family reunification only after three years of residence in Belgium. In practice, this normally requires that the applicant shows that he/she can support relatives and provide accommodation.

Kosovo Albanians, either under temporary protection or asylum seekers, have been entitled to family reunification with their spouse, minor children, parents and grand-parents under a special regulation adopted in connection with the UNHCR Evacuation programme in 1999. There was no housing or revenue requirement.

Asylum seekers are not entitled to family reunification, except for Kosovo Albanians (see above). The same applies to the aliens whose deportation has been suspended.

Procedure: a request for a visa for family reunification must be submitted to the Belgian consulate located in their country of residence by those members of the family wishing to come to Belgium. The file is forwarded to the Aliens Office. If the Aliens Office accepts the application, the consulate is instructed to issue a visa to the relatives. The Belgian government does not provide any material assistance for the travel to Belgium, but the Red Cross as well as some NGOs do.

Statistics

Number of asylum seekers

Number of asylum seekers in Belgium	
1997	11,824
1998	21,964
1999	35,778

Source: Minister of Interior, Aliens Office

Number of statuses granted

Convention statuses granted in Belgium		
	No. of statuses granted	**% total decisions**
1997	1,870	19.4%
1998	1,697	12.8%
1999	1,473	8.1%

Source: Minister of Interior, Aliens Office and the General Commissioner for Refugees and Stateless Persons

Main national groups

Main national groups to seek asylum in Belgium in 1999	
Former Yugoslavia	13,067
Romania	1,703
Armenia	1,472
Democratic Republic of Congo	1,402
Russia	1,376
Ukraine	1,343
Slovakia	1,175
Albania	1,010
Rwanda	1,007
Georgia	887
Total	35,778

Source: Minister of Interior, Aliens Office

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

In principle, asylum seekers are free to choose their own place of residence. However, the Aliens Law introduced a refugee allocation plan under which applicants are registered at reception centres in order to ensure a balanced distribution of applicants among the municipalities throughout the country.

In theory, the system, which distinguishes between asylum seekers in the admissibility procedure and those in the normal determination procedure, is as follows:

(a) admissibility procedure: pursuant to the laws of 10 and 15 July 1996 amending the Aliens Law, the Minister of Interior is empowered to designate a reception centre as the compulsory place of registration for applicants in the admissibility procedure. From 16 December 1996, this has applied to all asylum seekers, except those who have entry documents which are valid for more than three months.

Even if registration is an administrative formality and does not in principle prevent applicants from actually living away from the centre, in practice, they are obliged to live in the centre since it is only there that they will be able to receive social assistance.

Asylum seekers without documents and whose identity cannot be established may be detained in one of the two state-run detention centres, Centre 127 (Melsbroek) and Centre 127bis (Steenokkerzeel) during the admissibility procedure. Border applicants are usually taken to Centre 127, whereas in-country applicants are referred to Centre 127bis. It is, however, rather exceptional to detain in-country applicants, and this normally only concerns nationalities which are very rarely granted asylum, or second application cases.

(b) normal determination procedure: for asylum seekers whose applications are being processed in the normal determination procedure, registration by the Minister of Interior is only required in exceptional cases.

If an applicant has accommodation in a municipality where the number of asylum seekers does not exceed the legally stipulated quota, he will not be registered elsewhere and will be referred to a Public Social Assistance Centre ("Centre public d'aide sociale" – CPAS) to receive social assistance (see "Financial assistance", below). It is only if the number of asylum seekers resident in a particular municipality exceeds the quota that the Aliens Office might designate another place of residence for administrative purposes. In such cases, the asylum seeker is not obliged to live there but it is only there that he will be able to receive social assistance.

In practice, however, due to the strong increase in the number of asylum seekers during recent years and the insufficient number of places available in the reception centres, some changes in the distribution system have occurred, although this has not yet been reflected in the legislation.

There are currently eight state-run reception centres with an approximate total capacity of 2,100 beds, including the Petit Château in Brussels, Florennes, Rixensart and Kapellen (the latter centres became operational in spring 1997).

The Belgian Red Cross has 16 centres throughout the territory with a same total capacity of about 2,100 beds.

In addition, since January 1999, it is possible to refer asylum seekers to reception centres run by NGOs, including the Overlegcentrum Integratie Vluchtelingen (OCIV) and the Coordination et initiative pour réfugiés et étrangers (CIRE). At present, OCIV and CIRE offer respectively 300 and 150 beds, located in small centres or individual housing. Financial and material support is also provided by these NGOs.

At present, the total capacity in the centres is 4,944. This, however, has not been sufficient to accommodate all asylum seekers processed under admissibility procedure. As a result, since September 1999, applicants who have stayed over four months in a reception centre may leave the centre even though their application is still at the admissibility stage. In such case, they are referred to a CPAS in order to be granted financial support enabling them to stay on their own. Still, this measure has not made it possible to provide accommodation in the reception centres to all new arrivals and in November 1999, authorities started to refer some of the new applicants directly to a CPAS without offering them temporary accommodation.

Financial assistance

Not all asylum seekers are eligible for financial assistance. Needy asylum seekers may apply to the Public Social Assistance Centre (CPAS) for social assistance. Thus:

– applicants who are accommodated in a reception centre receive board and lodging there and are not entitled to any assistance from the CPAS;

– asylum seekers who are not accommodated in a reception centre – either because they are processed in the normal determination procedure, or because they have been referred directly to a CPAS upon arrival – may apply for assistance to the CPAS where they actually live or where they are registered, if the CPAS of the commune where they live has already reached its quota.

Social assistance from the CPAS, which is equivalent to the basic social benefit granted to nationals (“Minimex” – see under “Social Conditions for Refugees” below), amounts to the following monthly rates (1999):

Single person	BEF 20,916	EUR 518
Couple	BEF 27,888	EUR 691
First child	BEF 4,084	EUR 101
Second child	BEF 5,861	EUR 145
Third and any further child	BEF 7,626	EUR 189

Following the amendments to the Aliens Law adopted in July 1996, asylum seekers to whom an enforceable order to leave the territory had been issued could no longer receive social assistance, regardless of whether or not they had lodged an appeal with the Council of State. These persons had therefore to rely entirely on the support of NGOs or charitable organisations. However, in April 1998, the Court of Arbitrage annulled this provision and stated that applicants who have appealed against the decision of the Permanent Board for Refugees' Appeals (CPRR) are still entitled to social assistance pending the appeal procedure. Only those who have not appealed or have appealed against other types of decisions (residence permit under exceptional reasons, Dublin transfer, etc.) may be refused social support. In summer 1999, the Court of Arbitrage extended the scope of the beneficiaries of social assistance by including people who are not able to leave the country due to illness.

Asylum seekers rejected by a final decision may be given urgent medical assistance. If they are willing to leave the country voluntarily, the CPAS may grant additional financial assistance towards repatriation (maximum delay is one month).

Work

Asylum seekers in the admissibility procedure are not allowed to work.

Provided that their prospective employer submits a request, applicants in the normal determination procedure may be granted a work permit, valid until the final decision recognising or rejecting refugee status.

Language tuition

There are several programmes for the provision of language courses in Dutch or French to asylum seekers. However, due to the limited number of places available, attendance to these classes is subject to a long waiting time.

School attendance/education

Children of asylum seekers have access to Belgian schools without any discrimination. They are exempted from the registration fees which foreigners usually have to pay in order to follow courses in Belgium.

The Belgian school system offers special reception classes for children who do not speak Dutch or French. However, these classes are overloaded, particularly in big cities, and therefore subject to long waiting lists.

Asylum seekers have access to universities under the same conditions as other aliens. This means that, under certain circumstances, they may have to pay an additional registration fee ("Minerval").

Child care

Some child care arrangements are normally available in most centres. Asylum seekers who do not live in the reception centres could, in principle, apply for child care as Belgian citizens. In practice, very few do due to high costs.

Unaccompanied minors

Unaccompanied minors who apply for asylum on arrival are usually accommodated in Centre 127 during the admissibility procedure. Those who apply once in the country may initially be accommodated in the Petit Château reception centre in Brussels and then transferred to another centre, or may also live with friends or relatives. Although the CPAS is legally responsible for unaccompanied minors, there is often a lack of effective protection for children.

In some cases, a guardian may be appointed. The Belgian government plans to introduce a new system, according to which all unaccompanied minors would be allocated a guardian, but this has not been adopted yet.

Health/sickness

During the admissibility procedure, health care is provided by the organisation where the asylum seeker is registered, i.e. the reception centre or the CPAS.

During the normal determination procedure, subscription of a health insurance ("Mutuelle") is possible, In such case, medical costs will be paid by the mutuelle under the same conditions as for Belgian nationals. Asylum seekers who do not work can register with the mutuelle without any costs or waiting period. For those who work, the costs are paid by the employer.

Freedom of movement

In theory, the registration in a reception centre is not compulsory and asylum seekers may reside wherever they want in the country. However, they are in practice obliged to live in the place of registration since it is only there that they will be able to receive social assistance.

The Dublin Convention

Asylum seekers processed under the provisions of the Dublin Convention are not subject to any specific measures and have therefore the same rights as other asylum seekers

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

According to the Law on the Public Social Assistance Centres of 8 July 1976, Belgian nationals, recognised refugees and stateless people are entitled to receive the basic social allowance from the CPAS if they are in need of financial support.

Housing

As there are no specific provisions or programmes for the provision of housing to recognised refugees, they must find housing by themselves. Several NGOs and the CPAS may provide assistance in finding places to rent.

Integration programme

There are no special integration programmes for refugees.

Financial assistance

Refugees over the age of 18 are entitled to the basic social benefit ("Minimex") on the same terms as Belgian nationals.

The monthly amount of the Minimex depends on the structure of the family. In 1999, the rates were as follows:

Single person	BEF 20,916	EUR 518
Couple	BEF 27,888	EUR 691
First child	BEF 4,084	EUR 101
Second child	BEF 5,861	EUR 145
Third and any further child	BEF 7,626	EUR 189

Refugees are also entitled to child benefit under the same conditions as nationals.

Work

Refugees are allowed to work and do no longer need a work permit.

Language tuition

Different organisations provide language tuition in Dutch and French, but there are no special programmes for refugees.

School attendance

Children of refugees have access to Belgian schools without any discrimination. They are exempted from the registration fees which foreigners usually have to pay in order to follow courses in Belgium.

The Belgian school system offers special reception classes for children who do not speak Dutch or French. However, these classes are overloaded, particularly in big cities, and therefore subject to long waiting lists.

Access to the adult educational system

The only difference vis-à-vis asylum seekers is that, insofar as university education is concerned, the additional registration fee for foreigners (“Minerval”) will not be required of students who are recognised refugees resident in Belgium.

Adult education system

Refugees have access to the adult education system, including universities, on the same terms as nationals.

Unaccompanied minors

There are no special provisions for unaccompanied minor refugees. Depending on the age, the minor will be treated as an adult, placed with family members or friends, or in very special cases and by a court decision, placed in a foster family.

Health/sickness

As regards health and invalidity insurance, refugees are treated in the same way as Belgian nationals.

Health insurance covers the reimbursement of costs incurred for medical, paramedical, pharmaceutical and hospital services. This insurance is family-based: reimbursement is granted for costs incurred both by the insurance holder and by his dependants, i.e. persons who form part of the insurance holder's household and live at the same address.

Compensatory insurance is intended to cover any loss of professional income resulting from disablement.

Freedom of movement

In Belgium, all aliens, including refugees, are free to choose where to settle. Social assistance will be granted by the CPAS of the place where the refugee lives.

Like any other alien, a refugee may be placed under forced residence restrictions, whereby the Minister of Justice can require an individual alien who has breached public order or national security to leave a specific location, to remain away from that location or to reside in a specified place. However, this in practice almost never used.

Citizenship

In addition to acquiring Belgian citizenship after three years of marriage, refugees can also acquire it through naturalisation. For ordinary naturalisation, the person must be aged over 18 and have resided in Belgium for three years if a refugee, as opposed to five years for other aliens.

Repatriation

Repatriation costs are met by the International Organization for Migration (IOM). Travel costs and an allowance of BEF 10,000 [EUR 248] for an adult and BEF 5,000 [EUR 124] for a minor may be granted to refugees who repatriate. There is no right to return to Belgium once the refugee has repatriated, nor are there any provisions for “exploratory trips”.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

In accordance with a circular of the Ministry of Interior of 19 May 1999, temporary protection was granted to Kosovo Albanians in the form of residence permit, valid for six months and which could be prolonged as long as necessary. This status was no longer granted after 3 September 1999. The persons who already held the status (or had applied for it) at that date were allowed to stay until 2 March 2000, and even 30 June 2000 for families with school-aged children.

Social rights granted to Kosovo Albanians under temporary protection are defined in the circular of 19 May 1999.

Accommodation

Persons under temporary protection are referred to a CPAS, which must offer them accommodation. If the CPAS is not able to offer such accommodation, or if its offer is refused because the person does not want to live in this commune, no accommodation is made available and the person concerned must find a place to stay on his/her own.

Financial assistance

The same as for asylum seekers under normal determination procedure.

Work

Persons under temporary protection are allowed to work under the same conditions as asylum seekers under normal determination procedure.

Language tuition

Language tuition in French or Dutch are provided by various organisations, but there is no programme designed exclusively for persons under temporary protection.

School attendance/education

The same as for children of asylum seekers and refugees.

Mother tongue tuition

No mother tongue tuition is offered in Belgian schools.

Social activities conducted in Albanian are provided by the four Kosovo Albanians clubs established in Belgium.

Unaccompanied minors

Families hosting unaccompanied minors under temporary protection are entitled to child benefit regardless of whether the child is a relative or not.

Health/sickness

The same as for asylum seekers under normal determination procedure.

Freedom of movement

The same as for asylum seekers under normal determination procedure.

Repatriation

A repatriation programme, financed by the Belgian government and implemented by the International Organization for Migration (IOM), was open to Kosovo Albanians under temporary protection, provided they register before 2 March 2000, except for families with school-aged children, who may register until 3 June 2000. Asylum seekers are excluded from these provisions.

According to the programme, persons who wish to repatriate may receive the following assistance:

– payment of travel costs (plane ticket);
– freight costs for personal belongings up to BEF 25,000 [EUR 620];
– allowance of BEF 100,000 [EUR 2,479] per adult and BEF 50,000 [EUR 1,239] per minor up to a maximum of BEF 500,000 [EUR 12,395] per family. 60% of this amount is paid on departure, whilst the remaining 40% are paid between two and six months after repatriation, provided that the initial 60% have been used for rebuilding the house.

Kosovo Albanians who have repatriated have no right to return to Belgium, should they regret their decision.

DENMARK

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Aliens Act No. 226 of 8 June 1983, with subsequent amendments;

– The Act on Integration of Aliens in Denmark No. 474 of 1 July 1998 (the Integration Act);

– The Repatriation Act No. 353 of 2 June 1999;

– The Act on Temporary Residence Permits for Distressed Persons from the Region of Kosovo in the Federal Republic of Yugoslavia No. 251 of 28 April 1999 (the Kosovo Act);

– The Dublin Convention;

The Schengen Agreement will enter into force in the course of 2001.

Refugee status

Convention status may be granted under Section 7.1 of the Aliens Act to an alien who "*falls within the provisions of the Convention relating to the Status of Refugees, 28 July 1951*".

In addition, d*e facto* status may be granted under Section 7.2 of the Aliens Act, which states that "*a residence permit shall also be given to an alien who does not fall within the provisions of the Convention relating to the Status of Refugees of 28 July 1951, but who, for reasons similar to those listed in the Convention or for other weighty reasons resulting in a well-founded fear of persecution or equivalent outrages, ought not to be required to return to his country of origin"*

Both Convention and de facto refuges are issued with a one-year residence permit, renewable twice. After three years of residence, they may apply for a permanent residence permit. Following amendments made to the Aliens Act in July 1998, the granting of such permit is no longer automatic, but conditioned on various requirements, which include the completion of an "integration programme". Refugees who do not meet the requirements have their temporary residence permit renewed and may apply for a permanent permit at a later stage.

In 1999, 1,136 and 2,618 persons were granted respectively Convention and de facto status (see detailed figures under "Statistics" below).

Quota refugees

Since 1979, Denmark has received 500 refugees annually under the terms of a special quota agreement with UNHCR. The Immigration Service and the DRC jointly assess the cases, either on the basis of case files submitted by UNHCR, or as a result of *in situ* fact-finding missions. Quota places may be reported from one year to the other.

In 1999, 518 persons arrived in Denmark under quota provisions.

Other types of residence permit

Humanitarian status

Under Section 9.2.2 of the Aliens Act, a residence permit may be issued to an alien provided he/she, "*in cases not falling within Sections 7.1 and 7.2 [Convention or de facto status], is in such a position that essential considerations of a humanitarian nature conclusively make it appropriate.*"

Humanitarian status is rarely granted. Those who benefit are usually families with young children from areas in a state of war or with extremely difficult living conditions (for example risk of starvation). Factors such as serious physical or mental illness and/or close relatives living in Denmark can also influence the granting of a residence permit on humanitarian grounds.

Persons granted such status are issued with a residence permit valid for six months, which can be renewed first for another six months, then for one year and after that for three years. After a total of five years with temporary residence, they may be granted permanent residence permit.

Residence permits on exceptional grounds

According to Section 9.2.4 of the Aliens Act, "*a residence permit may be issued to other aliens, provided exceptional reasons (...) make it appropriate.*"

Exceptional residence permits are usually granted, after an individual assessment, to children who arrive in Denmark unaccompanied and whose parents are not resident in the country. Furthermore, the residence permit may be granted to asylum seekers, who have received a final rejection in the determination procedure, but who during a minimum period of 18 months have not been able to be removed from the country even though they themselves have been willing to co-operate with the removal procedure.

When the status is granted due to the impossibility to enforce a removal order, the residence permit is issued for a six-month period, which can be extended for another six months and then for four years. When this five-year period has expired, the alien can apply for a permanent permit. Unaccompanied minors can obtain a permanent residence permit after just two years and ten months following the submission of their application.

Temporary protection

In recent years, a number of laws or new sections in the Aliens Act have been introduced for specific refugee groups:

(a) Under Act No. 933 of 28 November 1992, temporary residence permits were granted to certain persons from the former Yugoslavia who, as a result of the war, ethnic cleansing or for similar reasons, found themselves in a situation of mass flight;

(b) Under Act No. 34 of 18 January 1995, a new Section 9.2.5 was added to the Aliens Act, entitling certain persons from the former Yugoslavia with temporary protection pursuant to Act No. 933 to a further temporary residence permit. Such residence permits are granted to persons who have been rejected under the refugee determination procedure, but who are unable to return to their place of origin because of continuing hostilities or other disturbances, and therefore are considered to be in need of continued temporary protection;

(c) Under Act No. 290 of 24 April 1996, a new Section 9.2.6 was added to the Aliens Act. This stated that residence permits may be issued to citizens of the Federal Republic of Yugoslavia (Serbia and Montenegro) who had applied for asylum before 11 October 1995 and been rejected in the determination procedure, but who were unable to return to the Federal Republic of Yugoslavia (FRY).

(d) "Kosovo Act": in the light of the crisis in Kosovo, the Danish parliament passed a special emergency act (Act no. 251 of 28 April 1999), which came into force on 30 April 1999. The act, which applied to "foreigners from Kosovo", covers both those arriving under the UNHCR Humanitarian Evacuation Programme (approximately 2,820 persons) and those coming spontaneously to Denmark after 30 April 2000.

According to the Kosovo Act, the processing of asylum applications is suspended for a maximum period of two years, during which temporary protection may be granted. The examination of asylum applications – for those who have applied for asylum – must resume after two years. Temporary residence permits are granted for periods of six months at a time.

Persons with temporary residence permits according to the Kosovo Act are granted special rights described below under "Social conditions for persons under temporary protection".

In May 2000, in the light of UNHCR recommendations regarding Kosovo, the Minister of Interior submitted a proposal to Parliament in order to revoke the provisions of the Kosovo Act and resume the examination of asylum applications. For those Kosovo Albanians or other aliens from Kosovo in need of continued temporary protection despite the rejection of their application, Section 9.2.5 of the Aliens Act (see above) would be amended to cover them.

Rejection at the border

Asylum seekers may be refused entry into Denmark if they are not in possession of the travel documentation required of any alien entering to Denmark as described under Section 28(1) of the Aliens Act (passport, visa, etc.). Section 48.a(1) of the Act provides that an application for asylum shall not be examined until a decision has been made on whether the alien must be transferred or re-transferred to another state on the basis of the Dublin Convention (Section 29a of the Aliens Act), or refused entry due to lack of documentation (Section 28(1) of the Aliens Act).

Section 48.a(2) contains a specific safeguard against *refoulement*, stating that "*an alien must not be expelled to a country in which he will risk persecution on the grounds set out in Article 1A of the Convention relating to the Status of Refugees, 28 July 1951, or in which the alien will not be protected against further expulsion to such a country.*"

The border police are not entitled to refuse entry to an alien claming asylum at a port of entry but must refer all applications to the Danish Immigration Service, which comes under the Ministry of Interior.

In practice, rejections at the border occur solely when the alien can be returned to a "safe third country". According to administrative practice, the following states are considered to be "safe third countries": Canada, USA, Iceland, Norway, Switzerland, Hungary (in some cases) and Poland (since 30 December 1999). Applicants processed under the provisions of the Dublin Convention are not subject to any formal decision on entry, but allowed to await the outcome of the procedure within the country. If the requested state accepts its responsibility, a formal decision of refusal of entry will be notified to the applicant in connection with his/her transfer to that responsible state (see "The Dublin Convention" below).

According to Section 28(2) of the Aliens Act, the Immigration Service must render its decision on entry within three months, though this is usually done more rapidly. However, in those cases where the police are unable to immediately establish an asylum seeker's identity and travel route, and the Immigration Service is therefore unable to take a decision on entry or rejection, the asylum seeker will often be detained in a special detention centre in Sandholm, near Copenhagen. When the Immigration Service decides that an asylum seeker shall be rejected on "safe third country" grounds, the asylum seeker will also usually be detained until he/she can be returned to the third country (see "Detention" below).

Refusal of entry by the Immigration Service can be appealed to the Minister of Interior, but appeals do not have suspensive effect. So far, there have been very few appeals lodged and not a single one has proved to be successful.

The Danish Refugee Council (DRC) has access for counselling purposes (where requested by the asylum seekers themselves) to all asylum seekers arriving at Copenhagen airport who are not immediately admitted to the refugee determination procedure and who may risk rejection at the border on "safe third country" grounds. The police are required to inform them of their right to seek advice from the Danish Refugee Council, which is on call at all times (including evenings and weekends).

When a decision has been taken to reject an asylum seeker on "safe third country" grounds, he/she receives information in his/her own language explaining the reasons for the decision, together with the address and telephone number of UNHCR or a refugee-assisting NGO in the country to which he/she is to be sent. The asylum seeker also receives a statement in the language of that "safe third country", to be given to the receiving authorities there, explaining clearly that he/she has been rejected by Denmark on "safe third country" grounds alone, that his/her asylum claim has not been examined on its merits and that he/she wishes to apply for asylum in the third country. All the information mentioned above has been produced by the DRC and approved by the Immigration Service.

If the DRC is concerned that the asylum seeker may be refused access to the determination procedure in the designated third country, it may directly inform UNHCR or a refugee-assisting NGO in that country.

According to the Immigration Service, less than 20 applicants were rejected on "safe third country" grounds and effectively returned to a third country in 1999, mainly to Norway and Switzerland. Applicants rejected on "safe third country" grounds are not registered as asylum seekers and thus do not enter in the official statistics of the Immigration Service.

Applicants allowed to enter the country – as well as those who cannot be returned to the designated "safe third country" – are registered by the police as asylum seekers and admitted to the asylum procedure (either manifestly unfounded or normal procedure) in Denmark.

The Dublin Convention

Section 29.a of the Aliens Act provides for the possibility of transferring (or re-transferring) an alien to another EU state on the basis of the Dublin Convention. Detailed rules for this procedure are laid down in Section 48.a to 48.d of the Act. Section 48a(2) contains a provision on *non-refoulement*.

The Immigration Service's Dublin Section is responsible for carrying out the procedure and, in particular, for sending requests to take charge to other states and for processing those sent to Denmark.

Denmark has concluded a bilateral agreement regarding the implementation of the Dublin Convention with Sweden and Germany respectively. According to the Danish-Swedish agreement, asylum seekers coming for Sweden and applying for asylum in a Danish port are immediately returned to Sweden, where the authorities will carry out the Dublin procedure and determine the responsible state.

A similar solution applies with Germany: asylum seekers who apply for asylum with the Danish police at a land border point are considered to be still on German territory. Thus they are immediately returned to Germany in order for that country to carry out the Dublin procedure. This practice has been extended to applications submitted in ports and airports. In addition, by virtue of another Danish-German agreement, applicants who have entered the country illegally from

Germany and are caught by the police near the border are dealt with under the Dublin procedure in Denmark, but with shorter time limits for sending and answering the requests to take charge.

All decisions made under the Dublin procedure are communicated in writing to the applicants, who must be informed of their right to contact the Danish Refugee Council for information and counselling. The decisions of the Immigration Service can be appealed to the Minister of Interior, but appeals have no suspensive effect.

Applicants processed under the Dublin procedure are issued with a registration card, which is valid for one year and renewable on a one-year basis. They are granted the same type of accommodation and social rights as other asylum seekers pending the decision of the requested state.

Entry into the territory

An asylum seeker who arrives in Denmark and is not rejected at the border will be allowed entry into the territory and admission to the determination procedure. Those who have entered illegally may lodge their application directly with the Immigration Service. Applicants who contact other institutions are referred to the Immigration Service.

Immediately after entry, the asylum seeker will be taken to a registration centre at Sandholm or Avsntrup, respectively north and east of Copenhagen. Both centres are run by the Danish Red Cross on behalf of the Immigration Service. Upon registration, the asylum seeker will be required to give his/her name, address, date of birth and a brief statement explaining his/her motives for seeking asylum. If the person can establish his/her identity and travel route, he/she will be transferred to the Red Cross reception camp. If there is insufficient information to establish identity and travel route, the asylum seeker can be detained in the prison section of Sandholm camp (under the responsibility of the Ministry of Justice) until the information can be satisfactorily established. Asylum seekers may also be detained subsequently if they fail to attend an interview with the police.

After a short period in the reception camp, the asylum seeker will be asked to complete a questionnaire detailing family and work circumstances, military service, financial circumstances, political activities and reasons for seeking asylum. The completed questionnaire is then translated. However, asylum seekers from European countries, including most eastern European countries and certain African countries, do not complete the questionnaire because it is generally presumed that, in most cases, they will not be granted asylum in Denmark. These applications are processed under a fast-track procedure introduced within the manifestly unfounded procedure (see below).

Hereafter all asylum seekers attend an interview with a representative of the Immigration Service, where they will be given the opportunity to explain in greater detail the replies given in the questionnaire. Interpreters are provided, when necessary.

On the basis of the information given during the interview, asylum seekers will be placed either in the manifestly unfounded procedure or in the normal determination procedure.

Manifestly unfounded procedure

Normal manifestly unfounded procedure: if the Immigration Service decides to place an application in the manifestly unfounded procedure, the case will be forwarded to the Danish Refugee Council (DRC) for independent review.
A representative of the DRC's Asylum Department will interview the asylum seeker to ensure that all relevant information has emerged from the questionnaire and the interview with the Immigration Service. An interpreter is provided if necessary. As far as possible, female applicants are interviewed by a woman.

If, following this interview, the DRC disagrees with the Immigration Service's decision to classify the case as manifestly unfounded, it has the right to veto the decision. The Immigration Service will be informed, and the case will be automatically transferred to the normal determination procedure. In 1999, this happened in approximately 17% of cases.

However, if the DRC agrees that the case is manifestly unfounded, the Immigration Service is informed and shortly afterwards the asylum seeker will be notified that his/her application has been rejected. There is no right of appeal against negative decisions in the manifestly unfounded procedure, and the rejected asylum seeker will be required to leave the country immediately. An application for permission to stay in Denmark on humanitarian grounds (under Section 9.2.2. of the Aliens Act) can however be submitted to the Ministry of Interior. Such an application must be submitted immediately upon receiving notification of rejection, if it is to have suspensive effect regarding deportation while a decision is pending (this normally takes just a few days).

The average time required to process a case in the manifestly unfounded procedure varies, but on average it takes approximately 90 days.

Accelerated manifestly unfounded procedure: in September 1994, a special fast-track procedure was introduced within the manifestly unfounded procedure for certain categories of asylum seekers. This is an administrative measure, based on an agreement between the Central Police, the Immigration Service and the Danish Refugee Council. It is aimed at reducing the processing time in cases where it is almost certain that the persons concerned will be rejected under the manifestly unfounded procedure.

Except that applicants do not fill in an application form, the fast-track procedure is similar to the normal manifestly unfounded procedure – including the interview with the DRC and the possibility for the DRC to veto the Immigration Service's decision – but time limits are shorter. It normally takes between two-three days to one week to make a decision under the accelerated manifestly unfounded procedure. Applicants may be detained during the entire procedure, although for no longer than seven days.

A special "white list" was drawn up of countries from which citizens are unlikely to be granted refugee status. These countries are the Baltic states, Bulgaria, Romania, Russia, the Czech Republic, Slovakia, Poland as well as all Western European countries, USA, Canada, Australia, New Zealand, Japan and some African states.

Normal determination procedure

Asylum cases that are not considered to be manifestly unfounded are processed in the normal determination procedure. The Immigration Service, on the basis of the information given in the initial questionnaire, interviews asylum seekers. The Immigration Service will subsequently take a first instance decision on the case.

In 1999, according to the Immigration Service, the average time required to process an asylum seeker's case in first instance was 105 days.

Appeal

An asylum application rejected by the Immigration Service under the normal procedure will automatically be appealed to the Refugee Appeals Board ("Flygtningenævnet"). Appeals have suspensive effect. Applicants who are refused Convention status but granted de facto status by the Immigration Service may also appeal such decision.

The Refugee Appeals Board is composed of a chairman, who is a professional judge, and four board members nominated by the Danish Refugee Council, the Danish Bar Association, the Ministry of Foreign Affairs and the Ministry of Interior.

All appellants are provided with a lawyer paid for by the Danish state. Hearings before the Appeals Board are not public. The presence of the appellant and his/her legal representative is required and an interpreter is provided if necessary.

Decisions by the Refugee Appeals Board are final and cannot be further appealed.

Legal aid

Information and counselling are offered by the Danish Refugee Council to all asylum seekers at all stages of the procedure. This is done either through information meetings organised on a regular basis in the reception centres throughout the country, or via individual counselling available at the DRC's office.

In addition, the police must inform asylum seekers dealt with under border or Dublin procedure, or subject to detention (upon arrival or under deportation procedure) of their right to contact the DRC. If the applicant requests it, a DRC's representative visits him/her in the airport or in prison in order to provide information and counselling. DRC's representatives are allowed to meet with the applicant without the presence of the police. Interpreters are provided by the DRC. Information and counselling activities of the DRC are subsidised by the state.

All asylum seekers are entitled to free legal aid before the Refugee Appeals Board and a lawyer is automatically designated via the free legal aid system. Appellants may request a specific lawyer to be appointed.

Interpreters

Interpreters are provided at all stages of the procedure, including during the police interview at the border. However, in some cases, in particular at the Danish-German border, interpreting services may be provided by telephone only.

The DRC has its own list of interpreters covering all languages spoken by asylum seekers in Denmark.

Free legal aid granted before the Refugee Appeals Board includes interpreting costs.

Unaccompanied minors

The decision whether or not to apply the asylum determination procedure to a minor is made by the Immigration Service according to an evaluation of the child's maturity. If the child is not considered mature enough, his/her application will not be processed and he/she will be automatically issued with a residence permit for exceptional reasons (Section 9.2.4 of the Aliens Act). Otherwise, the minor will enter the asylum determination procedure. There is an increasing tendency to examine applications submitted by younger children (below the age of 15). In any case, the granting of a residence permit for exceptional reasons may be considered during or after the asylum procedure.

At all interviews related to the asylum procedure, the child must be assisted by one of the Red Cross guardians. Their role is not to represent the child legally, but only to make sure that the interview is conducted in a proper way and the child's specific needs are taken into account. Apart from this, unaccompanied minors are not appointed a legal representative and there are no special guidelines for the processing of their applications.

Female asylum seekers

There are no special provisions in Danish legislation regarding the processing of asylum claims submitted by female applicants.

Final rejection

If the Refugee Appeals Board upholds the decision by the Immigration Service to reject an asylum application, the asylum seeker will receive written and oral notification by the police of the final rejection. This includes a time limit – normally 15 days from the date of notification of the final decision – by which he/she is required to leave the country voluntarily.

A rejected asylum seeker may apply for a residence permit on humanitarian grounds pursuant to Section 9.2.2 of the Aliens Act. An application will only have suspensive effect if it is submitted within ten days of receiving notification of the rejection from the Refugee Appeals Board.

A rejected asylum seeker attends a meeting with the police in order to plan his/her return journey. The Danish state pays for the travel expenses and provide pocket money if the person has no money of his/her own. The asylum seeker is allowed to express a preference regarding the travel route, and may even travel to a country other than his/her country of origin provided it is not more expensive and he/she can obtain a visa for that country. In practice, however, this is not usually possible due to time constraints.

A rejected asylum seeker may be detained if alternatives to detention are not considered sufficient to ensure his/her presence for the purpose of removal from the country (see "Detention" below")

If, through no fault of his/her own, an asylum seeker cannot be removed or deported – usually because his/her country of origin refuses to re-admit him/her or because of disturbances there – he/she will be released from detention. If the removal has been impossible for at least 18 months, he/she may apply for a temporary residence permit in accordance with Section 9.2.4 of the Aliens Act (exceptional grounds).

Detention

Asylum seekers may be detained upon arrival if the police consider that this is necessary to enforce a refusal of entry or a transfer under the Dublin Convention. In practice, detention is mainly used when the applicant's identity and/or travel route are not established. Detention takes place in a prison located near the Sandholm reception centre, which is exclusively reserved for asylum seekers.

After three days, applicants must be brought before a court if the police intend to keep them in detention. Free legal aid is made available during this hearing, but lawyers are generally appointed shortly before the hearing and are given very limited time to study the case and meet with their clients. The judge may extend the detention for another period, which cannot exceed four weeks. At the expiration of this new period and any consecutive detention period, the detention measure must be reviewed by the court. There are no maximum limits to the length of detention, except for asylum seekers processed under the fast-track procedure, who cannot be detained for more than seven days (see "Manifestly unfounded procedure" above).

The Aliens Act also provides for the possibility of detaining asylum seekers who refuse to stay in the accommodation centre where they have been allocated, who do not appear for the interview with the police or with the Immigration Service or who have a violent or threatening attitude towards staff members of the accommodation centre.

Rejected asylum seekers may be detained if the police consider that the alternative measures to detention provided for under Section 34 of the Aliens Act, are insufficient to ensure deportation. Such alternative measures include:

- the deposit of the passport or other travel document with the police;
- the provision of bail in an amount determined by the police;

- to stay at an address determined by the police;
- to report to the police at specified times.

There is no maximum length to the detention, but the measure is reviewed by a court under the same conditions as for asylum seekers. To obtain its prolongation, the police must demonstrate that detention continues to serve its stated purpose, i.e. deportation. Aliens who cannot be removed for reasons beyond their control are generally released.

Applications from abroad

Section 7.4 of the Aliens Act provides for the submission of asylum applications from abroad via a Danish diplomatic representation. Since the entry into force of the Dublin Convention on 1 September 1997, applications can no longer be filed in another EU state.

The criteria for accepting such applications are that the asylum seeker must be outside his/her country of origin and must either have lived for an extended period in Denmark, have close family members living in Denmark, or have other close links with Denmark. If an application contains no indication of a close connection with Denmark, it may be rejected immediately by the diplomatic representation.

Applications accepted from abroad are sent to the Immigration Service and, as with applications submitted within the territory, will be placed in either the manifestly unfounded procedure or the normal procedure. When considering applications submitted from abroad, the authorities take into account both whether the applicant meets the conditions to be granted refugee status and whether he/she has sufficiently close connections with Denmark. Both requirements must be met in order to obtain an entry visa as a refugee.

Family Reunification

Convention and de facto refugees

A person who is married to, or has lived in a stable relationship – including homosexual relationship – of some duration with a Convention or de facto refugee in Denmark can obtain a residence permit in Denmark. There is no legal definition of the duration of the relationship, but in practice a period of time of at least one½ or two years is required. The residence permit is only granted if both spouses/partners are over 18 years old.

Unmarried children under the age of 18 can also be granted a residence permit in Denmark.

Parents who are over 60 years can also apply for a residence permit, but it will only be granted if the refugee living in Denmark both can and will support the parents.

Under current legislation, reunification with Convention and de facto refugees is not conditioned on any housing or financial requirements.

Persons with other types of residence permit

In the case of family reunification with a spouse/partner, the same rules as for Convention and de facto refugees apply, on condition that the residing spouse/partner has been holding a permanent residence permit in Denmark for three years.

In the case of family reunification with minor children, the same rules apply, on condition that the person in Denmark has a permanent residence permit, which is granted after a period of three or five years, depending on the status.

However, an exception is made in cases where the person in Denmark has a residence permit pursuant to Section 9.2.2 (humanitarian status) or Section 9.2.5 (temporary protection for Bosnians) and if the marriage was contracted or the child conceived before the person arrived in Denmark. In such cases, family reunification will be allowed on humanitarian grounds regardless of the length of time spent in Denmark.

If the person resident in Denmark has a permit under Section 9.2.4 (exceptional grounds) or Section 9.2.6 (temporary protection for people from Serbia and Montenegro), however, no exception will be made.

Family reunification with parents over 60 will only be granted if the person in Denmark is either a recognised refugee, Danish or Nordic citizen, and on condition that the person living in Denmark has a permanent residence permit and undertakes to support the parents. In addition, no family reunification will normally be granted if the parents have other children in their home country.

Procedure

Family members who wish to be reunified with a person living in Denmark must submit their application from abroad via a Danish diplomatic representation. The application is processed by the Immigration Service, which takes the decision after ascertaining that the person residing in Denmark also wishes for family reunification. An appeal against a rejection can be made to the Ministry of Interior. In cases involving minor children or parents, the negative decision of the Ministry of Interior can be further appealed to a court.

In 1999, 2, 781 persons came to Denmark to be reunited with refugees.

Draft law

In February 2000, the government submitted a draft law amending the actual Aliens Act's provisions on family reunion. The main proposals are as follows:

- persons between 18 and 25 years of age would no longer have an automatic right to family reunion with their spouse. The authorisation would only be granted "*if the marriage or the cohabitation can be considered, without any doubt, to have been contracted with the person's own will, or if special individual circumstances speak for it*". The aim of this provision is to avoid the so-called "forced marriages". In principle, this would apply to family reunion with refugees as with other foreigners or Danish citizens. However, it is expected that family reunion with a recognised refugee will be granted as a rule when the marriage has been contracted before the refugee came to Denmark;

- family reunion with a foreigner living in Denmark would be conditioned on the requirement that "*the spouses' total connection to Denmark is at least as strong as the* spouses' *total connection to another country*". Refugees would be covered by this provision, whereas family reunion with a Danish citizen would be excluded;

- family reunion with spouses, parents over 60 years of age and other close family members would be conditioned on the foreigner living in Denmark having housing of a sufficient size. Refugees would be, in principle, subject to this requirement as are any other foreigners, but it is expected that, as far as they are concerned, family reunion with spouse/partner and minor children would be accepted as a rule.

It is expected that the amendments to the Aliens Act will be passed before summer 2000. Further information on this issue will be available from the Danish Refugee Council.

Statistics (source: Danish Immigration Service)

Number of asylum seekers

	Applications submitted in Denmark	Applications submitted abroad
1996	5,893	1,498
1997	5,092	477
1998	5,702	380
1999	6,467	483

Number of statuses granted

	Convention status – Section 7.1	De facto status – Section 7.2
1996	1.190	4,449,
1997	976	3,409
1998	1,102	2,862
1999	1,136	2,618
	Application from abroad – Section 7.4	**Quota refugees**
1996	44	674
1997	54	501
1998	34	444
1999	33	518
	Residence permit on humanitarian grounds – Section 9.2.2	**Residence permit for exceptional reasons – Section 9.2.4**
1996	70	212
1997	17	67
1998	42	83
1999	39	81

Main national groups

Main national groups to seek asylum in Denmark in 1999	
Iraq	1,803
Slovakia	967
Federal Republic of Yugoslavia	868
Afghanistan	534
Somalia	486
Stateless Palestinians	185
Bosnia-Herzegovina	165
Iran	184
Sri-Lanka	102
India	93

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

The legal basis determining the social conditions for asylum seekers entering Denmark is Sections 40 to 43.a of the Aliens Act and Ministerial Regulations No. 550 of 26 June 1999. The latest amendment of the Aliens Act took place in 1998 and several changes are foreseen for 2000.

The Aliens Act is providing the frame of social rights granted to asylum seekers in Denmark, the details hereof are determined in a yearly contract between the Immigration Service and the Danish Red Cross.

Accommodation

Upon agreement with the Immigration Service, the Danish Red Cross is responsible for all humanitarian tasks – social, medical and other tasks – connected to the accommodation of asylum seekers in Denmark.

All asylum seekers arriving in Denmark are referred to one of the two reception centres run by the Red Cross: Sandholm, located 35 km north for Copenhagen, with a capacity of 480 beds (of which approximately 70 are reserved for emergency accommodation), and Avnstrup, which is located about 40 km east for Copenhagen and has a capacity of 441 beds.

Asylum seekers are not expected to spend more than a maximum of six weeks at these reception centres. Within this period, registration of the applicant's nationality and identity should be completed by the Police, and the Danish Immigration Service should conduct the preliminary interviews with the applicants. Asylum seekers accommodated in the reception centres are offered a medical check-up and treatment for acute illness. As both Sandholm and Avnstrup are open centres, asylum seekers may freely come and go.

After the reception period all asylum seekers are offered accommodation at an accommodation centre. It is also possible to apply for permission from the Immigration Service to reside with friends or family members, but asylum seekers who do so are not entitled to any financial assistance.

At the time of writing (May 2000), the Danish Red Cross runs 42 accommodation centres including four centres for refugees from Kosovo, located throughout the country. In addition, the Danish Civil Defence is running six centres for asylum seekers and two for refugees from Kosovo. The Immigration Service is responsible for allocating asylum seekers in the centres.

Most accommodation centres have been established in former rest homes, hospitals, military barracks or in so-called "refugee villages", which were initially built to receive Bosnian war refugees in the early nineties. Conditions in the centres are generally good. Four to five single persons may have to share one room (sometimes in bunk beds). Couples and families are usually given their own room.

With the exception of a centre (Kongelunden) designed to accommodate mentally ill asylum seekers, all centres are equipped to facilitate own cooking. At the centres for unaccompanied minors (see below) "cooking programmes" are offered. Very young children or disabled are offered catering services.

Asylum seekers have the right to be away from their accommodation centre for six weeks per year. They must inform the centre's staff of their absence and provide for an address or a

telephone number where they can be reached at any time. Applicants who leave their centre without notifying the centre's personnel risk losing their right to pocket money.

Starting in 1997 the Red Cross has established an increasing number of so-called "annexes", consisting of small houses or apartments where families or asylum seekers who have spent more than one year in the asylum procedure can live. Currently these "annexes" account for 15% of the total accommodation capacity.

In addition to its normal accommodation centres, the Red Cross has established three centres for unaccompanied minors, where specialised staff are able to take care of the children and make recommendations as to their future placement. Finally, the Red Cross also runs a centre for asylum seekers and families with psychological problems, resulting in particular from torture or other traumatic experiences. The centre has specially trained personnel and a special team of nurses and doctors.

The total capacity of the reception system varies considerably. Currently, the system has a capacity of about 7,000 beds. In addition, the Danish Red Cross has committed itself to be ready to provide emergency accommodation to approximately 600 asylum-seekers per week, 1,800 per month and 12,000 per year. During the Kosovo conflict, the Red Cross accommodated some 3,000 persons within two weeks.

Financial assistance

All asylum seekers staying in the reception or accommodation centres are entitled to receive financial assistance in the form of a clothing allowance, a food allowance and pocket money. Assistance is granted during the entire procedure. The amounts paid vary according to age as shown below (daily rates):

Clothing allowance		
Child aged 0-13	DKK 7,50	EUR 1
Child aged 14-17	DKK 7,50	EUR 1
Adult	DKK 7,50	EUR 1
Food allowance		
Child aged 0-13	DKK 31,75	EUR 4.27
Child aged 14-17	DKK 35	EUR 4.70
Adult	DKK 38.25	EUR 5.14
Pocket money		
Child aged 0-13	DKK 6.25	EUR 0.84
Child aged 14-17	DKK 16	EUR 2.15
Adult	DKK 29.75	EUR 4

Pocket money and food allowance is paid every fortnight. The clothing allowance is paid monthly and only to those applicants who have spent 150 days in the centre. Asylum seekers are provided with new clothing of their own choice upon arrival, if necessary.

Asylum seekers who request and are given permission to reside with family members or friends outside the centres do not receive any financial assistance.
Pursuant to amendments to the Aliens Act adopted in 1997 and 1998, the Immigration Service must withdraw any social assistance to asylum seekers who refuse to co-operate with the authorities in the processing of their application. In such cases, applicants receive only food parcels. Accommodation and access to health care are not affected. Pregnant women, children or asylum seekers with special medical conditions are excluded from such measures. According to the Immigration Service, 83 asylum seekers were subject to a "water-and-bread" decision in 1998.

Work

Asylum seekers are not permitted to take up paid employment.

Activities/training

By agreement between the Danish Red Cross and the Immigration Service, it has been possible under certain conditions to set up work or school related training programmes with private firms and educational institutions. All asylum seekers between 17 and 25 years of age are offered at least ten hours of training each week. This includes classes in Danish, mathematics, English, history, social science, computer, handicraft, etc. In addition, workshop activities, IT-rooms and other facilities are available at all accommodation centres.

Language tuition

All adult asylum seekers are offered a minimum of five hours of Danish lessons per week. In addition volunteers provide mother tongue language lessons in a number of languages.

School attendance

Children of asylum seekers do not have access to the ordinary Danish school system. Nevertheless, the Red Cross is required to provide education to all minor asylum seekers under the same conditions as Danish children in terms of classes, number of hours, etc. Teaching is provided with respect for the educational background of the children. The Danish Red Cross is currently running 12 schools for refugee children.

Children of asylum seekers who have been in Denmark for more than 12 months are, under certain conditions, given access to ordinary Danish schools. This is financed by the Danish Red Cross.

Adult education

In principle, asylum seekers are not allowed to attend Danish universities or any other ordinary higher education courses. However, in special circumstances, exemptions to this rule may be made.

Child care

Child care is offered at all Red Cross accommodation and reception centres.

Female asylum seekers

Single female asylum seekers are accommodated in separate sections in both the reception and the accommodation centres. Several training programmes are offered exclusively to female asylum seekers.

Unaccompanied minors

Unaccompanied minors are accommodated in one of the three special centres established by the Red Cross. These centres have facilities adapted to these children and have specialised staff. Some 20 minors aged 17-18 are accommodated in a special section of the centre “Magretheholm”, where a pilot project trains them in domestic skills with the aim of subsequently providing them with accommodation in private “annexes”.

The Red Cross has set up a Guardian Programme, under which unaccompanied minors are assisted by a specially trained Red Cross staff member. This person must be present at all

interviews related to the child's asylum application, including the interview with the police, with Immigration Service, and with the Danish refugee Council if the case is processed under manifestly unfounded procedure.

Health/sickness

In the reception centre, asylum seekers are offered a medical check-up and treatment for acute diseases. Non acute diseases are usually treated by Red Cross doctors and nurses in the accommodation centres.

The Red Cross is providing doctors, dentists, nurses, psychologists and other medical staff in all accommodation centres. All asylum seekers are entitled to medical treatment for acute illness free of charge. Non acute diseases will only be treated if expenses are covered by the asylum seekers themselves.

The Danish Red Cross is also providing psychosocial treatment for victims of torture and organised violence.

All children are offered regular health examinations and are covered by the same vaccination programmes as Danish children.

Freedom of residence/movement

Once the reception period is over, asylum seekers may apply for permission to reside outside the centres, but those who do so are not entitled to any financial assistance. Once in the centre, they may be absent for no more than six weeks per year.

As a rule asylum seekers can only apply for accommodation at specific centres if the centre has available capacity.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

The Danish integration system was greatly reformed by Act on Integration of Aliens in Denmark No. 474 of 1 July 1998, which entered into force on 1 January 1999 (the Integration Act). The new law lays down the main conditions regarding social rights granted to refugees in Denmark. The new system is based on a three-year "integration period" running from the granting of the refugee status.

In connection with the Integration Act, new provisions in the Aliens Act regarding the granting of permanent residence permit to refugees were passed in July 1998 (see "Refugee status" above) together with an Act on Danish Language Tuition for Adult Aliens in Denmark, and a Repatriation Act entered into force on 1 January 2000, providing for new rules on voluntary repatriation.

Several issues, such as child welfare for instance, are still regulated by the ordinary social laws. In addition, once the three-year integration period is completed, refugees are no longer covered by special laws but fall under the normal social legislation on the same footing as Danish citizens.

The Integration Act makes no distinction between persons granted Convention status, de facto status, residence permit on humanitarian grounds, permits for exceptional reasons or residence permits for specific refugee groups. All those groups, as well as the persons granted residence permit for family reunification, are entitled to follow an integration programme offered by the local authorities in the area, where they are settled.

Integration programme

Pursuant to the Integration Act, the local municipalities must offer an introductory three- year integration programme to all newly arrived aliens (with the exception of Nordic and EU citizens) over the age of 18 and below the age of pension. Municipalities are allowed to entrust other organisations or institutions with the task of organising or implementing the programme. On this basis, the Danish Refugee Council was involved in integration projects in 84 municipalities (out of a total of 275) in 1999.

The integration programme must start within one month following the alien's settlement in the municipality. It includes the following elements:

- elaboration of an individual plan of action regarding employment or education;
- introduction classes to Danish society and culture (a minimum of 20 hours);
- Danish language tuition normally for 18 hours per week. Classes are established according to the aliens' respective linguistic skills and background. Each level is subject to a final test. In principle, aliens may attend the classes for as long as necessary;
- "activation" measures aimed at promoting self-maintenance. This may include job training schemes, adult and further education, voluntary work, job counselling, vocational guidance, etc.

Danish classes and "activation" measures must represent a minimum average of 30 hours per week altogether. Persons who do not need or are not able to participate in the integration programme may be excepted fully or partly, for a shorter or longer period. People granted disablement pension can be excepted definitely.

Refugees in need of more comprehensive measures than the “activation” measures described above – for example disabled persons, victims of torture, etc. – may be offered assistance in the form of a longer education or vocational programme.

Housing

With the aim of ensuring equal distribution of refugees throughout the country, the Integration Act establishes a quota system, which implies restrictions on the freedom of settlement of refugees during the initial three-year period (see below).

On the basis of a national quota, all municipalities have to make voluntary agreements regarding the number of refugees to be received by each of them. If the municipalities are not able to reach an agreement, the Immigration Service will take over and decide on the number of refugees allocated to each municipality.

Individual refugees and families are then distributed by the Immigration Service according to the agreed quotas and conditions in the local areas (local labour market, educational possibilities etc) and according to the refugees individual circumstances (family ties, the presence of groups of the same nationality/ethnic group, access to special health treatment etc.).

According to the Integration Act the municipalities have the obligation to provide newly arrived refugees with permanent housing within three months from their arrival in the municipality. Until permanent housing is found, the refugee must be provided with temporary accommodation.

Freedom of residence/movement

Freedom of settlement

Refugees must stay in the municipality where they have been allocated by the Immigration Service. No complaint or appeal can be lodged against the Immigration Service’s decisions.

In principle, refugees must stay in that municipality during the three years of the integration programme. However, a refugee may leave the municipality where he/she has been allocated and move to another municipality before the completion of the three years, if that new municipality accepts to take over the responsibility of completing the integration programme. If this is done without the consent of the new municipality, the refugee faces sanctions. In such case, according to the Integration Act, the new municipality may reduce or refuse to pay any social benefits to that refugee. He/she may also be refused access to the integration programme run by that municipality.

Freedom of movement inside Denmark

Refugees and other aliens are free to move within Denmark.

Freedom of movement outside Denmark

Refugees are allowed to travel outside Denmark, but not to their country of origin.

Convention refugees are issued with a Convention travel document, while de facto refugees receive a Danish alien passport. Persons with residence permit on humanitarian grounds or for exceptional reasons may, under certain conditions and provided that they have a permanent residence permit – i.e. after at least three years of residence – be granted a Danish alien passport

Financial assistance

Refugees following the integration programme and who are not able to support themselves are entitled to an "introductory allowance". Until February 2000, this allowance was paid at a rate considerably below the lowest rate of social benefit granted to Danish citizens. At the same time, old-aged refugees were not entitled to social pension during the integration period.

This practice was very much criticised and in December 1999, the government amended the Integration Act, so that aliens following the integration programme are entitled to the same social benefits as Danish citizens.

Accordingly, since February 2000, the rates of the introductory allowance are as follows:

Monthly introductory allowance		
Single adult over 25 years	DKK 7.410	EUR 994
Each parent over 25 years with children under age*	DKK 9.865	EUR 1,321
Persons aged 18-25 living with his/her parents	DKK 2.324	EUR 312
Persons aged 18-25 living alone	DKK 4.753	EUR 635

* regardless of the number of children

These amounts are taxable, which means that about 40 % will be deducted before making the net payment.

Refugee families are entitled to receive child benefit for children under the age of 18 under the same conditions as Danish nationals.

Convention and de facto refugees over 65 years of age are entitled to social pension like Danish nationals. Other categories still receive the introductory allowance but at a lower rate than adults under 65.

Refugees on low incomes are entitled to housing benefits. The amounts granted depend on the rent to pay and the beneficiary's income.

In addition it is possible to apply for extra financial assistance in case of expenses, which could not be foreseen and which are linked to basic needs, such as dental treatment, medical bills, basic furniture, etc.

Work

Refugees have access to the labour market in Denmark and do not require work permits.
Despite the country's strong economic growth and a decreasing unemployment (6,1% in 1998), refugees and other aliens remain heavily unemployed. For some nationalities, unemployment ranges from 20% to 40%. Women are particularly affected.

Access to adult education system

Except for language requirements, there are no restrictions on the access of refugees to the Danish education system. In practice, however, it can be difficult to obtain the assessment and recognition of foreign diplomas or foreign education. In order to facilitate procedures, an advisory centre for foreign education and vocational qualifications was set up in January 2000 under the Ministry of Education.

In order to promote refugees' educational opportunities and job prospects, special courses have been arranged for refugees. Some of these courses aim at finding actual work placements, whereas others are aimed at enabling refugees to receive further education.

Refugees who have been accepted as students by an educational institution are entitled to special grants in the education period under the same terms as Danish students.

Language tuition

According to the Integration Act and the Act on Danish Language Tuition for Adult Aliens in Denmark, municipalities must provide Danish language tuition to both refugees and other aliens.

On average, refugees must receive 18 hours of tuition per week. This can be reduced where classes are designed for illiterate persons. As much as possible, classes should be composed of persons having similar linguistic skills and level.

Courses have different levels (concluded with formal tests), which are scaled according to the level of planned education or the job expectations.

Danish language tuition is provided in language centres throughout the country, which are run by private organisations (including the DRC), educational associations, independent institutions or the municipalities themselves.

School attendance

All children of refugees have access to the normal Danish school system.

Children who cannot speak sufficient Danish when they start school may be placed in special reception classes before they start normal classes or otherwise be given special language support. They may continue to receive special language lessons if necessary.

In order to improve the language skills of the children integrating into Danish primary schools, some municipalities arrange special Danish tuition for children under school age. Some municipalities tend to encourage the access of refugee children to local kindergartens in order for them to be in contact with Danish language and pedagogical methods at an early stage. Municipalities may also hire bilingual teachers in order to teach aliens some subjects in their mother tongue for a limited number of hours each week.

Mother tongue tuition

Bilingual children have the right to mother tongue tuition in addition to their ordinary schooling provided there are a certain number of children with the same language in the municipality.

Unaccompanied minors

Special arrangements have been established for the care of unaccompanied refugee children. According to this, young children are accommodated in special children´s homes, whereas the others stay mainly in shared houses, flats or with foster families.

Pursuant to the Integration Act, when allocating an unaccompanied minor to a municipality, the Immigration Service should take into consideration certain criteria such as the accommodation available there during the pre-asylum phase, the child’s family ties in Denmark (if any), the presence of other persons of the same nationality in this municipality, etc.

Health

After a period of six weeks following the granting of their status, refugees have the same access to the national health system as Danish nationals. This entitles them to free medical and hospital treatment.

Political rights

Municipalities must set up integration councils when requested by more than 50 citizens. The members of these councils are appointed by the municipality. Their functions are advisory. In addition, the representatives of refugee and immigrant associations in the local councils elect a national Council for Ethnic Minorities, which has an advisory function with the Minister of Interior.

Refugees and immigrants who have been resident for three years in Denmark have the right to vote in local elections. Participation to general elections and referendums requires Danish citizenship.

Citizenship

A refugee who has been resident in Denmark for six years may apply for Danish citizenship. Citizenship is granted by law and is conditioned, among other things, on the applicant's knowledge of Danish or on any criminal record.

Repatriation

The legal basis for voluntary repatriation from Denmark is the Repatriation Act No. 353 of 2 June 1999, which entered into force on 1 January 2000. The law applies to recognised refugees and to persons with residence permit on humanitarian grounds or for exceptional reasons. Under this new repatriation scheme, allowances and assistance are granted by the municipality where the refugee was settled. Municipalities are reimbursed by the state by up to 75% or 100% depending on which allowance has been granted.

Refugees who wish to repatriate may be granted following assistance:

- one way ticket to the home country;
- freight costs for personal belongings (maximum two m² per person);
- freight costs up to DKK 10,000 [EUR 1,342] for transport of professional equipment;
- cash amount up to DKK 18,000 [EUR 2,415]. per adult and DKK 6,000 [EUR 805] per minor child;
- purchase of professional equipment up to DKK 10,000 [EUR 1,342]. per adult;
- cost for a one-year health insurance, if no public health insurance is available in the home country and payment of prescribed medicine brought from Denmark and limited to a 1-year consumption period.

Under certain conditions (residence permit for at least five years, permanent residence permit, low incomes) refugees over 65 years of age wishing to repatriate may be granted a reintegration allowance for five years. Refugees aged 55-65 years considered as unable to provide for themselves are also eligible, as well as those who have been granted a disability pension regardless of their age. For 2000, the monthly amount of the reintegration allowance for repatriation to a European country is DKK 1,900 [EUR 255].

In special cases, if one member of the family returns to the home country ahead of the others, the family members remaining in Denmark can be granted a housing benefit until they repatriate themselves. Such benefit is limited to a maximum period of 12 months.

Both Convention and de facto refuges who have repatriated are allowed to return to Denmark within 12 months following repatriation. Upon application, this may be extended for another year. Under certain conditions, thus may also apply to persons with residence permit on humanitarian grounds or for exceptional reasons.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

Temporary protection has been granted in Denmark to "certain persons from the former Yugoslavia" according to Act No. 933 of 28 November 1992 with subsequent amendments, and to "aliens from Kosovo" according to Act No. 251 of 28 April 1999 (see "Other types of residence permit" in "Legal Conditions" above).

Under these two acts, persons granted temporary protection are issued with residence permits valid for six months at a time.

Refugees from Bosnia-Herzegovina

Since 1992, Denmark received approximately 18,000 refugees from Bosnia-Herzegovina. Most Bosnian refugees are granted asylum or a residence permit according to Section 9.2.5 of the Aliens Act (see "Other types of residence permit" above) and are offered an "integration programme" under the same terms as recognised refugees.

Bosnian under temporary protection were offered a special "activation programme" including, amongst other things, education for adults and for children, classes in Danish language and society, foreign language tuition and vocational activities for adults.

Following amendments made to the Aliens Act and the entry into force of the Integration Act in 1999, the social conditions for Bosnians under temporary protection and those granted to asylum seekers are very similar.

Refugees from Kosovo

Kosovo Albanians granted temporary protection are offered an "activation programme", which is very similar to the one offered to Bosnians. This mainly includes education, vocational training, classes in Danish language and society, etc.

Housing

Both Bosnians and Kosovo Albanians under temporary protection have been accommodated under the same conditions as asylum seekers, but in special centres run by the Red Cross or the Danish Civil Defence in agreement with the Immigration Service.

However, it has been possible for Bosnians to move out of the accommodation centres into "satellite" houses or flats rented by the Danish Red Cross, or to stay with friends or family members already settled in Denmark. Kosovo Albanians were also allowed to move outside the centres. In both cases, unlike asylum seekers, those who moved out the centres were still entitled to receive financial assistance.

Freedom of residence/movement

In principle the same as for asylum seekers, except that those who left the centres still receive financial assistance.

Financial assistance

The same as asylum seekers.

However, those who live outside the centres may receive, in addition to the normal financial assistance, additional support in order to cover housing costs.

Work

In principle, persons under temporary protection are not allowed to work.

Nevertheless, Bosnians under temporary protection were given the right to take up paid employment if a job vacancy has been advertised for three months and cannot be filled by a person with a work permit in Denmark.

Kosovo Albanians under temporary protection can be given permission to take up paid employment if they have a written employment contract and the appointment conditions are not conflicting or deviating from normal employment conditions according to Danish labour regulation (salary, working hours, etc.).

Access to the adult education system

Persons under temporary protection have limited access to the ordinary Danish education system.

They are offered special educational activities at the centres, which are performed either in co-operation with institutions of the normal education system or directly by schools and other educational institutions.

Young persons between 17 and 25 years are normally offered more extensive education than adults.

Language tuition

Persons under temporary protection are offered Danish language tuition.

School attendance

Children of Bosnians under temporary protection were first offered Bosnian school education and could then attend normal Danish primary schools.

Children of Kosovo Albanians under temporary protection are attending special schools established in the centres. According to the Kosovo Act, if there are specific reasons for a child to attend a normal Danish school or if no school is available in his/her accommodation centre, a child may attend a Danish primary school, provided he/she is accepted by the local authorities.

Mother tongue tuition

The teaching language in the schools established in the accommodation centres is Danish, but children also receive mother tongue tuition.

Unaccompanied minors

The same as asylum seekers.

Repatriation

Persons under temporary protection are eligible for assistance towards repatriation.

Refugees from Bosnia-Herzegovina

Assistance is granted on a discretionary basis and according to the individual needs. It may include payment of travel costs (for persons and belongings) and a repatriation allowance. Bosnians under temporary protection may return to Denmark within three months if they regret their decision to repatriate.

Refugees from Kosovo

The assistance granted is the same as for refugees.

However, unlike refugees who may return to Denmark within 12 months, Kosovo Albanians who wish to return to Denmark must do so within three months following their repatriation to Kosovo.

FINLAND

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Aliens Act of 22 February 1991 (No. 378), as amended by the laws 639/93, 640/93,154/95, 511/96, 606/97, 1183/97, 1269/97, 112/98, 593/98 and 537/99;

–The Aliens Decree of 18 February 1994 (No. 142), as amended by the decrees 222/95, 1/96, 607/97 and 538/99;

– The Act on the Integration of Immigrants and Reception of Asylum Seekers (No. 493) of 9 April 1999 (the Integration Act);

– The Dublin Convention which entered into force in Finland on 1 October 1997.

The Schengen Agreement should enter into force in Finland in the course of 2001.

Refugee Status

Convention status may be granted to refugees as defined in Section 30 of the Aliens Act, which uses the same terms as the refugee definition of the Geneva Convention. In practice, Convention status is rarely granted in Finland (7 cases in 1998 and 29 cases in 1999, i.e. respectively 0.8% and 1.1% of all decisions made during these two years).

A residence permit based on the need for protection may be issued pursuant to Section 31 of the Aliens Act, which states that "*an alien residing in Finland may be issued a residence permit on the basis of his need of protection if he, in his country of origin or habitual residence, is threatened by capital punishment, torture or other inhuman or degrading treatment or if he cannot return there because of an armed conflict or environmental catastrophe*".

This residence permit is considered to be a de facto status: its holders are entitled to family reunification and to the same social benefits as Convention (and quota) refugees.

Until May 1999, it was also possible, under certain circumstances, to grant residence permits for humanitarian reasons. This category was abolished following the amendments to the Aliens Act passed in May 1999, but the grounds that justified the granting of the humanitarian residence permit are, according to the preparatory work, included in the residence permit based on the need for protection. In practice, however, the Directorate of Immigration and the courts have applied a more restrictive interpretation so far.

In 1998, a residence permit based on the need for protection (or a residence permit for humanitarian reasons) was granted in 41% of the decisions made. In 1999, however, this proportion fell to approximately 16%.

Quota refugees

Finland accepts quota refugees on a yearly basis based on an agreement with UNHCR. The number of quota refugees is approved by the Parliament when deciding on the state budget. For 2000 the number is 700 (650 in 1999). According to the Government Immigration and Refugee

Policy Programme adopted in 1997, this number should gradually increase to 1,000 refugees each year.

Other types of residence permit

According to Section 20 of the Aliens Act a residence permit may be issued if *"refusing a residence permit would be clearly unreasonable*".

It is possible to apply for such a residence permit following a final rejection of an application for asylum. However, this does not suspend the implementation of a deportation order because, in principle, all aspects are taken into consideration when decisions on the asylum application or on deportation are made. Nevertheless, it is sometimes possible to argue, even in the absence of new elements that could justify a new application for asylum, that circumstances have changed (e.g. health) and that refusing a residence permit would be clearly unreasonable.

However, this falls outside refugee status and is considered as normal immigration status; holders of a "non-refugee" residence permit come under the same integration programme and receive the same social benefits as Convention or de facto refugees, but their right to family reunification is conditioned on their financial resources and their ability to support the family members coming to Finland.

Temporary protection

Under the current legislation, there are no specific provisions on temporary protection. The Ministry of Interior has made a proposal for incorporating a temporary protection system in the Aliens Act, but no developments are expected in a near future.

So far, temporary protection has been granted twice: to Bosnian medical evacuees during the war in Bosnia-Herzegovina and to 1,032 Kosovo Albanians who came to Finland under the UNHCR Humanitarian Evacuation Programme in spring 1999.

Bosnians were issued with residence permits, renewable every six months, and were entitled to permanent residence after two years.

Kosovo Albanians were issued with normal (non-refugee) time-limited residence permits, valid for 11 months. Due to lack of legislation on temporary protection, the issue of whether or not their applications for asylum should be processed is not regulated. In practice, none of the Kosovo Albanians evacuated to Finland has yet applied. As far as other Kosovo Albanian asylum seekers are concerned, the Ministry of Interior advised the Directorate of Immigration in 1999 to suspend the examination of their claims. The Directorate did, however, render some decisions and since 2000 asylum decisions to Kosovo Albanians are also made normally. In May 2000, the Ministry of Interior decided that the temporary residence permits for the evacuated Kosovo Albanians will not be renewed automatically. Only those individuals belonging to special groups which, according to UNHCR (March 2000), risk facing serious problems upon return can still receive protection in Finland provided they apply for a renewed temporary residence permit or for asylum.

Kosovo Albanians with temporary residence permits were given some special rights, which are normally not given to the holders of such residence permits, including for example the right to family reunification without any special requirements.

Rejection at the border

An alien who does not meet the necessary requirements for being allowed to enter Finland (mentioned in Sections 8 and 37 of the Aliens Act) and who applies for asylum at a border point should not be rejected until a decision has been made on his/her application.

According to Section 39 of the Aliens Act, the decision on entry regarding asylum seekers shall not be made by the passport control or police authority, as is the case for other aliens, but by the Directorate of Immigration.

Asylum seekers are held at border points (including airports) only until a preliminary interview concerning identity and travel route has been made. As this usually requires very little time, there are no special facilities in airports and border points. Following this preliminary interview, applicants are referred to a reception centre or, in some cases, detained (see "Detention" below). No rejection occurs at border points.

The Dublin Convention

When another state is deemed responsible for examining the application in accordance with the criteria of the Dublin Convention, the asylum seeker may be returned to that state. The Directorate of Immigration is responsible for sending the request for the country considered to be responsible to take charge.

Under current legislation, the Dublin Convention procedure is incorporated in the manifestly unfounded procedure (see "Manifestly unfounded procedure" below). If another state is responsible, the application is dismissed as being manifestly unfounded. Such a decision, as with any other decisions made in the manifestly unfounded procedure, is automatically referred to the Helsinki Administrative Court before the transfer is carried out. The applicant can submit a rejoinder within eight days of notification of the Directorate's decision. If the Court confirms the transfer decision, no further appeal is possible. If it disagrees with the initial decision, the case is sent back to the Directorate of Immigration for a new decision.

Asylum seekers processed under Dublin procedure have the same social rights as other applicants. They are accommodated in a reception centre and are issued with a certificate showing that they are asylum seekers.

Entry into the territory

In accordance with Section 32 of the Aliens Act, the application for asylum should be made to the passport control or the police authority at the border or as soon as possible after arrival. It can also be submitted directly to the Directorate of Immigration.

In order to apply for asylum, the applicant is required to submit a written application in his/her mother tongue, which will be translated. If he/she is illiterate, the police or the interpreter may help him/her in preparing the application. A police or passport control officer conducts a brief interview in order to establish nationality and travel route as well as the presence of any nuclear family members in Finland and the reasons for the asylum application.

According to Section 2 of the Aliens Act, applicants are entitled "*to use assistants and* interpreters *in matters covered by this [the Aliens] Act*". The assistant does not necessarily have to be a lawyer or legal counsellor but should at least be a person familiar with Finnish legislation. In practice, however, this facility is not available at this early stage, especially regarding legal assistance.

The asylum application and the report of the interview are sent to the Directorate of Immigration. Afterwards, the police still conduct a proper asylum interview for all asylum seekers.

If the asylum seeker "has come directly from a safe country" the police may use a "shorter version" of the proper asylum interview. The decision to conduct a proper or a short interview is at the discretion of the police officer and, in practice, there is no systematic policy. The short interview has lately been used for Slovak Romas who have arrived in Finland via the Czech

Republic and for Polish Romas. Even during a shorter interview, the asylum seeker is given the opportunity to explain the reasons why he/she is seeking asylum in Finland.

Manifestly unfounded procedure

Since 1998, the previous two procedures for clearly unfounded applications and for manifestly unfounded applications have been merged into a single manifestly unfounded procedure under Section 34 of the Aliens Act. According to this provision, an application for asylum shall be considered manifestly unfounded if:

1. the applicant has not claimed as grounds serious violations of human rights or other reasons related to injunctions against repatriation or fear of persecution for reasons of race, religion, nationality, membership of a particular group or political opinion;

2. the application is lodged with the intent to abuse the asylum procedure;

3. the applicant has entered Finland from a safe country in which he/she could have received protection and to which he/she can safely be returned.

   According to Section 33a of the Aliens Act, safe countries are *"countries which,* without *a geographic reservation, have acceded to the Convention relating to the Status of Refugees and comply therewith as well as with the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*". There is no list of "safe third countries", and the decision to consider a country as being "safe" is made on an individual basis. Both the Czech Republic and Hungary have been considered as "safe third countries" in relation to the Slovak Roma applicants;

4. the applicant can be sent to another State, which, according to the Dublin Convention, is responsible for processing his/her claim for asylum.

If it considers that any of the grounds mentioned in the above-mentioned Section 34 applies, the Directorate of Immigration takes a decision of rejection on manifestly unfounded grounds and makes an expulsion decision at the same time.

All negative decisions by the Directorate of Immigration are automatically referred to the Helsinki Administrative Court for examination. The applicant can submit a rejoinder within eight days of notification of the Directorate's decision. Legal assistance before the court is allowed and the applicant may be granted free legal aid. The procedure is written and there is no hearing. The Court can be composed of a single judge. The Court's decisions are final.

If the Court agrees with the Directorate's opinion, the latter's decision is final and cannot be appealed. If the Court disagrees with this decision, the case is referred back to the Directorate of Immigration for a new decision. Usually, the application will then be transferred under the normal determination procedure. It may also be that the Directorate of Immigration takes another decision declaring the application manifestly unfounded on other grounds.

Under current legislation, there is no time limit for the Directorate or for the Administrative Court to make their decision, and the time required to process an application under the manifestly unfounded procedure is between 3 and 12 months.

In March 2000, the Government submitted to Parliament a Bill amending the Aliens Act, according to which both the Directorate of Immigration and the Helsinki Administrative Court would be required to make their decision within one week, in cases where the applicants have come from a "safe third country" or a "safe country of origin". The Bill reintroduces the "safe country or origin" concept and provides for a system with three different kinds of manifestly

unfounded procedures. At the time of writing (May 2000), these amendments have not yet been adopted. Information on this issue can be obtained from the Finnish Refugee Advice.

In 1999, 44% (1,216) of all applications were rejected as manifestly unfounded, out of which 4 % (117) were on the basis of the Dublin Convention.

Normal determination procedure

In accordance with Section 33 of the Aliens Act, first instance decisions on the granting or denial of Convention status, residence permit based on the need for protection, or residence permit for other reasons, are made by the Directorate of Immigration.

The decision is based on a written record of the police interview. The applicant is not re-interviewed except in very special cases. The government intends to modify the procedure, so that the Directorate of Immigration will be responsible for conducting the interviews in the future. Training will start this year but the change will not be adopted before year 2001.

According to the same Section 33, the Ombudsman for Aliens must be given the opportunity to be heard during the determination procedure, "*unless evidently unnecessary*". In practice, the Directorate either forwards the case to the Ombudsman for comments, or simply asks for a statement over the telephone. So far, the Ombudsman's involvement in the asylum procedure has very rarely had any impact on the outcome.

The average processing time for the first instance decision within the normal procedure lies between one and two years. Together with the appeal procedure (see below), the time necessary to reach final decision on the application can take up to two to three years and sometimes even longer.

Appeal

Pursuant to Section 57 of the Aliens Act, negative decisions by the Directorate of Immigration can be appealed to the Helsinki Administrative Court. It is also possible to appeal a decision whereby Convention status was refused but a residence permit granted. The appeal must be lodged within 30 days of notification of the decision and it has suspensive effect.
Legal assistance is allowed and free legal aid is available during the appeal procedure. Interpreters are provided wherever necessary.

The Administrative Court considers whether Convention status or another form for residence permit should be granted to the appellant, and it may also examine whether there are other reasons which may prevent him/her from being expelled from Finland.

If the Court's decision is negative, the applicant can lodge a request for a leave to appeal with the Supreme Administrative Court. However, this can only be granted if the Supreme Court considers that ruling on this issue is important for the application of the law in other similar cases, for reasons of uniform judicial practice or if there are other weighty grounds. In practice, leaves to appeal are granted very rarely.

Following a refusal to grant a leave of appeal or a negative decision by the Supreme Administrative Court, the rejection is final. However, the applicant may still lodge a new asylum application, provided that the situation in the country of origin or his/her personal situation has clearly changed. According to the Government Bill amending the Aliens Act (see above), new asylum applications will, in the future, be processed very quickly so that the applicant can be expelled immediately after the decision of the Directorate of Immigration.

Legal aid

Asylum seekers are entitled to free legal aid during the whole determination procedure, including appeals proceedings. It is, however, only during the appeal procedure before the Administrative Court that they may be appointed a private solicitor free of charge.

In first instance, applicants generally receive legal assistance from the lawyers of the Refugee Advice Centre. This is also often the case during the appeal procedure. The legal assistance provided by the Refugee Advice Centre is subsidised by the Finnish state.

Detained applicants very often experience difficulties in receiving adequate legal assistance. They are generally appointed a lawyer in charge of the detention cases, but the latter is not necessarily aware of his/her client's asylum case. The Refugee Advice Centre, for instance, is very seldom informed of detention cases although it is the main provider of legal aid to asylum seekers.

Interpreters

Interpretation is provided free of charge to asylum seekers at all stages of the asylum procedure. With some rare languages, however, problems might occur in finding sufficiently qualified interpreters.

Unaccompanied minors

All unaccompanied minors are allocated a representative, responsible for taking care of the child's legal affairs and other important matters. The representative is always present during asylum interviews, when procedural decisions are taken, and also during appointments with the lawyer.

Female asylum seekers

There are no specific provisions regarding the examination of applications submitted by women. However, the preliminary works of the Aliens Act refer to the need, when considering the granting of a residence permit residence based on the need for protection (Section 31 of the Aliens Act), to also take into consideration the UN Convention on Elimination of All Forms of Discrimination Against Women. In addition, it is mentioned that being a woman can, in some cultures constitute a risk to health.

Final rejection

Negative decisions under the determination procedure are accompanied by a decision on expulsion. Once, the asylum decision has become final, rejected asylum seekers are in principle required to leave the country immediately and the expulsion is usually carried out by force.

Those who intend to leave the country voluntarily before the final decision, can sometimes arrange their own travel though they have to pay travel costs themselves. Usually this means that they still have a valid return ticket. They may, however, receive limited financial aid (normally a few hundred FIM [1 EUR = 5.94573 FIM]) from the reception centre.

Since 1999, the International Organization for Migration (IOM) has conducted a project in Finland, under which financial assistance is given to asylum seekers withdrawing their application during the determination procedure, or to those willing to return home voluntarily following a final decision. In these cases, travel costs and a small financial assistance are paid for by IOM.

Rejected asylum seekers who cannot return may receive, under certain conditions, a residence permit under Section 20 of the Aliens Act (see "Other types of residence permit" above).

Detention

According to Section 46 of the Aliens Act, detention may be used when investigations are to be made into whether an alien should be allowed entry, as well as under deportation proceedings.

In practice, asylum seekers whose identity and travel route cannot be verified are often detained upon arrival in Finland. Detention is also used in order to prepare for the expulsion of rejected asylum seekers.

For the initial four days, detention may be in police custody. Conditions there are usually quite basic: detainees have only one-hour outside exercise per day, washing facilities are limited, etc. The detention measure must be notified immediately to a Court, which must then hear the case within this four-day time limit and decide whether the asylum seeker should be released or kept in detention. In the latter case, the Court must review detention every 14 days. There is no maximum period of detention, as long as the case is examined every fortnight. The police may also release the applicant on their own initiative without a Court decision. Asylum seekers whose detention has been extended by the Court are held in normal prisons under the same conditions as all other inmates, although according to the Aliens Act they should be held in special detention facilities.

Detained aliens must be allowed to communicate with a lawyer and the Ombudsman for Aliens. In practice, however, they are not always informed of this right. In particular, asylum seekers detained upon arrival are often not given the necessary information on the asylum procedure and the services provided by the Refugee Advice Centre. A lawyer is normally appointed to assist them at the Court hearings, but these lawyers are not usually specialised in asylum matters.

Applications from abroad

It is not possible to apply for asylum from abroad. However, according to Section 17 and 18 of the Aliens Act, an application for a residence permit may be submitted to a Finnish diplomatic or consular mission. Upon authorisation of the Ministry for Foreign Affairs, other Finnish missions may also issue residence permits abroad.

Family Reunification

Definition of a family member

For purpose of family reunification, a family member is defined in Section 18b of the Aliens Act as the spouse or unmarried minor child of the person residing in Finland. If the alien residing in the country is a minor child, reunification with the person having guardianship and the child's non-married siblings under 18 years of age is possible.

Unmarried partners have to show that they have lived together for two years in order to obtain family reunification. It is not impossible for same sex partners to be granted family reunification on the same basis as unmarried partners but this would be exceptional.

Convention and de facto refugees

In accordance with Section 18c(1) of the Act, family members of Convention refugees or persons with a residence permit based on the need for protection shall be granted a residence permit, unless there are reasons of public order or safety or other weighty reasons against issuing the permit. There are no financial or housing requirements. Travel costs to Finland are paid for by the state.

Other categories

Under Section 18c(2), persons residing in Finland with other types of permanent residence permits are allowed family reunification with their family members provided they have guaranteed the necessary means of support. In practice, it is very difficult for them to meet the financial requirements. This applies for instance to those Somali and Iraqi asylum seekers who have been granted such residence permits and who experience great difficulties in obtaining family reunification.

The Kosovo Albanians brought to Finland under the UNHCR Humanitarian Evacuation Programme were entitled to family reunification.

Procedure

The application for family reunification may be submitted either by the person living in Finland or by his/her family member abroad to a Finish diplomatic or consular mission abroad.

The family member is usually interviewed at the Finnish mission abroad. The mission forwards the case with the report of the interview to the Directorate of Immigration for a decision. Before taking its decision, the Directorate of Immigration requests a statement from the person residing in Finland through the local police and also consults the municipal social authority.

In March 2000, the Aliens Act was amended in order to introduce DNA tests into legislation. According to this, it is now possible to carry out such tests when family ties cannot be proved by other means. The decision to use a DNA test is made by the Directorate of Immigration**.**

Negative decisions may be appealed to the regional Administrative Court.

Statistics (Source: Directorate of Immigration)

Number of asylum seekers

Number of applications submitted in Finland	
1995	849
1996	711
1997	973
1998	1,272
1999	3,106

Number of statuses granted

Number of statuses granted in Finland			
	Convention status	**De facto status***	**Other type of residence permits**
1997	4	247	30
1998	7	356	16
1999	29	425	42

* this includes the residence permits based on the need for protection and the former residence permits for humanitarian reasons abolished in May 1999.

Main National Groups to seek asylum in 1999

The main groups were Slovak Roma, Polish Roma, Russians, persons from the former Yugoslavia (mainly Kosovo Albanians), Turkish (mainly Kurds) and Iraqis.

Number of persons reunited

Number of persons reunited in Finland	
1997	440
1998	308
1999	197*

* including 42 persons reunited with Kosovo Albanians from the UNHCR Humanitarian Evacuation Programme.

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

The new Act on the Integration of Immigrants and Reception of Asylum Seekers (the Integration Act) includes provisions on the accommodation, benefits and other services granted to asylum seekers arriving in Finland.

Accommodation

The border authorities normally refer asylum seekers to the closest reception centre to their point of arrival in Finland (usually Helsinki, but also the Russian border). Allocation of accommodation also depends on the availability of places in the centres. Asylum seekers may either stay in a reception centre or find their own accommodation.

There were 19 reception centres at the beginning of 2000. Of these, 11 are run by the local municipalities, 3 by the state, 4 by the Finnish Red Cross and one by Folkhälsan, a welfare organisation.

Whenever possible, families are accommodated separately, but single people may have to share rooms and facilities. Generally, asylum seekers cook their own meals.

Asylum seekers are allowed to stay in the reception centres during the whole procedure, inclusive of the appeal process.

Financial assistance

Asylum seekers are entitled to a living allowance, which is intended to cover all living expenses, including food and clothing, but not accommodation (available free of charge in the reception centres). The allowance is based on the basic supplementary social allowance granted to nationals, although its amount is reduced by 15 % for an adult and 20 % for a child because of the free accommodation and other services provided in the reception centre. Those staying outside the reception centre also receive the reduced allowance.

The amount of the living allowance may differ slightly according to the municipality in which the reception centre is located. A typical monthly living allowance granted to an asylum seeker in 1999 was as follows.

Single persons and single parents	FIM 1,740	EUR 292.5
Other persons over 18 years (e.g. married)	FIM 1,479	EUR 249
Child over 18 living with parent(s)	FIM 1,270	EUR 213.6
First child aged 10-17	FIM 1,146	EUR 198
Second child aged 10-17	FIM 1,065	EUR 179
Third and subsequent child aged 10-17	FIM 982	EUR 165
First child under 10 years	FIM 1,032	EUR 173.5
Second child under 10 years	FIM 950	EUR 160
Third and subsequent child under 10 years	FIM 868	EUR 146

As an example, a family with two adults and two children aged 12 and 9 would receive a monthly total allowance of FIM 5,054 [EUR 850].

Asylum seekers are not entitled to child benefit or any other social benefits.

Work

According to Section 25 of the Aliens Act, asylum seekers may apply for a permission to work related to a specific job, after three months in the country. Because of the high unemployment rate in Finland, the permission is only granted by the local employment officer if the job cannot be filled by a national or someone with a residence permit. In practice, very few asylum seekers are able to find work.

According to Section 19 of the Integration Act, work and training activities are organised in the reception centres. Asylum seekers who refuse to participate in the organised activities may have their living allowance reduced.

The work activities proposed in the centres may include cleaning and repairing the reception facilities, office work, organising children, hobbies or cultural activities, etc. Handicraft workshops and projects outside the reception centres may also be established.

The training activities in the centres usually consist of language tuition and information on the Finnish society and the legal system. Asylum seekers may also attend courses outside the reception centres, such as computer work and handicraft. In some cases, asylum seekers may organise training activities in the centres themselves.

Language tuition

All reception centres offer language tuition in either Finnish or Swedish.

School attendance

Children of asylum seekers are entitled to attend Finnish comprehensive school (from 7 to 16 years of age) and they usually do. This is free of charge for everybody. In many schools, children are placed in special preparatory classes for foreign children where they are first taught Finnish or Swedish before going into a normal school class.

Adult asylum seekers are also free to apply for a place in any school, institute or university. It is up to the school whether or not to accept them as students.

Child care

Asylum seekers are not entitled to municipal child care, but the reception centres sometimes organise child care groups on a smaller scale when necessary (when parents are attending language classes or working in the centres). Usually this is provided by voluntary workers.

Female asylum seekers

There is no special procedures or accommodation for women asylum seekers, but single women and single mothers are often accommodated in a separate section of the reception centre.

Unaccompanied minors

About 1,000 unaccompanied minor asylum seekers – most of them Somalis – have arrived to Finland in the nineties. Four reception centres deal specifically with the reception of unaccompanied children, and minors accommodated there live in special sections for children.

Some minors also live with families of their own nationality, who are often relatives to the child.

In common with the other children of asylum seekers, unaccompanied minors are entitled to attend Finnish school, which they usually do.

Health/sickness

A nurse is attached to each reception centre, and on arrival all asylum seekers undergo basic health screening. They have access to the municipal – or in special cases also to private – health service if they require urgent medical treatment or essential dental treatment. These services are free.

Asylum seekers in need of urgent treatment due to torture may also go to the special Rehabilitation Centre for Torture Victims in Helsinki, although this is primarily for refugees. There is also a special Crisis Prevention Centre for Immigrants in Helsinki and Turku, where asylum seekers can receive assistance regarding social or psychological problems.

Freedom of residence/movement

Asylum seekers are free to live either in a refugee centre or in rented accommodation outside the centres, which they have to find by themselves. This does not affect the amount of their living allowance.

Those who want to be accommodated in a reception centre have no choice as to which centre they are allocated.

Asylum seekers are free to travel within Finland.

The Dublin Convention

Asylum seekers processed under the provisions of the Dublin Convention have access to the same accommodation arrangements and are entitled to the same financial assistance health care as for other applicants.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

The Integration Act, which has been into force since 1 May 1999, regulates the measures for the integration of refugees and the social benefits which they receive during the integration period. The new Act also includes provisions for the payment of governmental subsidies to the municipalities.

As far as social conditions are concerned, there is no differentiation between Convention status, quota refugees and de facto refugees. In practice, there are also few differences between this first group and aliens with other types of residence permits. However, only refugees receive special financial assistance when they move into their own apartment, and the subsidies paid by the state to the municipalities apply only for the above mentioned groups and not, for instance, to persons holding a non-refugee residence permit under Section 20 of the Aliens Act (see under "Other types of residence permits" above).

Housing

The authority responsible for the distribution of refugees to the different municipalities in Finland is the Ministry of Labour and, on district level, the Employment and Economic Development Centres, all of which have a special employee responsible for migration and refugee matters.

The municipalities are responsible for the settlement of refugees. They are free to decide whether or not to accept refugees and the number of persons to receive. When accepting refugees the municipalities are obliged to provide accommodation, usually in the form of rented flats owned by the municipality. Government subsidies, lasting for a three-year period, are paid to the municipalities which receive refugees. Thus, if a refugee moves to a municipality which does not have an agreement with the Government, no subsidy is paid to that municipality.

Refugees may choose the municipality where they want to settle provided they find accommodation by themselves. In practice, they often have difficulties in finding apartments on their own and therefore they live in the municipality in which they are settled. However, many of them move to larger cities after an initial period spent in the (smaller) municipality, where they had been allocated.

The state pays to the municipality, each year for three years, FIM 11,300 [EUR 1,900] per refugee over seven years of age and FIM 37,000 [EUR 6,223] for a refugee under seven years. The state also covers the living allowance granted to refugees (living allowance is paid by the municipality, other allowances e.g. the integration allowance are paid directly by the state).

Integration programme

All refugees – including those who wish to settle by themselves – come under a special integration programme, which includes language tuition, adult education in Finnish society and culture, vocational counselling and training and on-the-job training. If necessary, they may also follow specific programmes intended to improve their readiness to working life and training.

The content of the integration programme is drafted by the refugee him/herself together with a representative of the municipality and/or the employment office. The maximum period for this integration programme is three years.

Financial assistance

In principle, refugees are entitled to the same social benefits as nationals. In practice, however, they usually receive less because many of the benefits, such as pensions and unemployment benefit, are earnings-related.

The basic monthly living allowance, which is the same for nationals, is as follows:

Single persons and single parents	FIM 1,959–2,047	EUR 329–344
Other persons over 18 years (e.g. married)	FIM 1,665–1,740	EUR 280–293
Child over 18 living with parent(s)	FIM 1,430–1,494	EUR 240–251
First child aged 10-17	FIM 1,371–1,433	EUR 230–241
Second child aged 10-17	FIM 1,273–1,331	EUR 214–224
Third and subsequent child aged 10-17	FIM 1,175–1,228	EUR 197–206
First child under 10 years	FIM 1,234–1,290	EUR 207–217
Second child under 10 years	FIM 1,136–1,187	EUR 191–200
Third and subsequent child under 10 years	FIM 1,038–1,085	EUR 175–182

These amounts may differ slightly according to the municipality in which the refugee lives.

Like any Finnish family with children under 18 years of age, refugee families are entitled to receive child benefit for each child. In 1999, the monthly benefit was as follows:

First child	FIM 535	EUR 90
Second child	FIM 657	EUR 110
Third child	FIM 779	EUR 131
Fourth child	FIM 901	EUR 151
Fifth and each subsequent child	FIM 1.023	EUR 172

Single parents are granted an extra FIM 200 [EUR 33.6] for each child every month.

While he/she is following the integration programme and has no private income, the refugee receives an integration allowance instead of the basic living allowance. This allowance corresponds to the labour market support granted to long time unemployed persons. If necessary, an additional amount may be granted to cover living costs.

The granting of the integration allowance is conditioned on the refugee committing him/herself to the integration programme. The failure to meet this commitment may lead to a reduction of the allowance.

The approximate amount granted for one person each month is between FIM 2,600–3,000 [EUR 437–504], with a possible additional living allowance. Unlike the basic living allowance and child benefits, the integration allowance is taxable.

Work

Refugees and de facto refugees are allowed to work and do not need a work permit.

Access to the adult education system

In principle, there are no restrictions to the adult education system. Some schools might, however, require the refugees to pass an entry test or to provide school certificates.

There are special training programmes for immigrants, which are open also to refugees and which aims is to improve the readiness for working life and vocational training. They usually last for one year. Attendance on these programmes may be part of the refugee's integration programme.

Refugees who wish to study are entitled to the same grants and special adult grants as Finnish nationals. These grants cannot, however, be combined with the integration allowance.

Language tuition

Language tuition in Finnish and/or Swedish is part of the integration programme. There is no fixed number of hours provided. The language tuition is usually provided by state-funded schools.

School attendance

All refugee children are entitled to attend Finnish comprehensive school (from 7 to 16 years of age). It is free for everybody. In many schools, there are special preparatory classes for refugee and immigrant children so that they acquire some basic knowledge of the Finnish/Swedish language before going to normal classes.

Mother tongue tuition

Refugee children are entitled to receive mother tongue tuition provided that a group of four children with the same language can be formed within the school, the municipality or even amongst several municipalities

Unaccompanied minors

Once an unaccompanied minor has been granted a residence permit, he/she is settled in a municipality, selected on the basis of individual requirements. Usually, the representative continues to represent the child in all legal matters until he/she becomes of age or until reunification with his/her family.

Most minors are placed in so called "group family homes", where between six and eight children are looked after by about the same number of adults, including Finnish nationals and at least one employee with a foreign background. If the minor has stayed with a family of the same ethnic background during the asylum procedure and if this is deemed to have been positive for the child, he/she may then continue living with this family.

All expenses incurred by the municipality in relation with the settlement of a minor are reimbursed by the state.

Freedom of residence/movement

Refugees may move and settle wherever they want within the country.

Citizenship

Refugees, de facto refugees and all persons with a permanent residence permit can apply for Finnish citizenship after five years in Finland on the basis of such status. Basic knowledge of Finnish or Swedish language is also required. In practice, however, the procedure is lengthy and may take several years.

Repatriation

Travel expenses and a special repatriation allowance, which amounts to between FIM 4,000 [EUR 673] for a single adult and FIM 8,000 [EUR 1,345] per family, may be paid to a refugee wishing to repatriate. This repatriation allowance can be paid only once.

So far, only selected refugee groups, such as Bosnians and Kosovo Albanians, have been offered regular counselling on repatriation, however basic information may be obtained from the municipal social workers.

As long as the residence permit is valid, it is possible to return to Finland after repatriation. For refugees and de facto refugees, who have permanent residence permits, the right to return to Finland expires after two years spent in the home country.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

So far there are no specific provisions on temporary protection in Finnish legislation. The Ministry of Interior has made a proposal for incorporating a temporary protection system in the Aliens Act, but no developments are expected in the near future.

Temporary protection has been granted twice: to Bosnian medical evacuees during the war in Bosnia-Herzegovina and to 1,032 Kosovo Albanians who came to Finland under the UNHCR Humanitarian Evacuation Programme in spring 1999.

Bosnians were issued with residence permits renewable every six months and were entitled to permanent residence after two years.

Kosovo Albanians were issued with normal (non-refugee) time-limited residence permits, valid for 11 months, but were given some special rights, which are normally not given to the holders of such residence permits, including for example the right to family reunification without any special requirements.

Housing

Kosovo Albanians have been accommodated in refugee reception centres. Some centres were established specifically for this purpose, whereas others were “normal” reception centres.

Kosovo Albanians were not able to choose the centre in which they wanted to stay. In addition, having been granted residence permits for 11 months, they cannot become resident in a municipality, as this requires a residence permit of at least one year. Therefore, they are not entitled either to social security services at municipality level.

Financial assistance

Persons under temporary protection receive the social benefits as asylum seekers.

Work

Persons under temporary protection are allowed to work and do not need a work permit. In practice, however, it is very difficult for them to find jobs.

Access to the adult education system

In principle, persons under temporary protection may have access without restrictions to the adult education system. In practice, this may depend on the school’s policy and the entrance requirements. No special financial assistance is available for this category.

There are some special reintegration programmes/courses – most of them with EU funding – designed for persons under temporary protection in order to facilitate their re-integration in the home country following repatriation.

Language tuition

Some basic Finnish and/or Swedish language courses are offered in the reception centres. Attendance is not compulsory.

School attendance

All children who stay in Finland have the right to attend comprehensive school (from 7 to 16 years of age) which is free of charge for all children.

In practice, school arrangements for refugee children under temporary protection differ according to the municipalities. In some communes, children attend preparatory immigrant classes where they are first taught Finnish or Swedish language before joining normal Finnish classes. Other municipalities have set up special classes for Kosovo Albanian children under temporary protection, where children are taught in Albanian by Albanian speaking teachers for the purpose of supporting repatriation.

Mother tongue tuition

In most classes where the teacher is a Finnish national, at least one Albanian speaking assistant has been hired, so that the children also receive mother tongue tuition. In several cases, these assistants were themselves under temporary protection.

Unaccompanied minors

There have only been a few unaccompanied minors amongst the Kosovo Albanians under temporary protection and thus no major special arrangements were made. These children have been accommodated in reception centres with other Kosovo Albanians.

Repatriation

The same as for refugees. However, Kosovo Albanians receive an additional reintegration allowance, which amounts to the same as the basic repatriation allowance. Accordingly, a Kosovo Albanian who repatriates may receive up to about FIM 8, 000 [EUR 1,345] for a single person and FIM 16,000 [EUR 2,690] for a family. Half of the additional reintegration allowance is not paid automatically but only upon presentation by the person repatriating of a plan regarding the use of the money (e.g. reparation of their home, etc.).

FRANCE

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Ordinance of 2 November 1945 on the conditions of entry and residence of foreigners in France, as amended by Acts of 1981, 1984, 1986, 1989, 1992, 1993, 1994 and 11 May 1998;

– The Decree of 27 May 1982 on the conditions of entry into France;

– The Act of 25 July 1952 regarding the establishment of the OFPRA ("Office français de protection des réfugiés et apatrides", the first instance asylum determination body), modified by the Act of 11 May 1998 (the Asylum Act).

Following the Act of 11 May 1998, all the provisions related to the right of asylum have been transferred from the Ordinance of 2 November 1945 on the conditions of entry and residence of foreigners in France to the Act of 25 July 1952 defining the status of the OFPRA, which was renamed the Asylum Act.

– The Schengen Agreement and the Dublin Convention. A new section was added to the French Constitution by the Constitutional Act of 25 November 1993, whereby asylum applications submitted in France may not be examined when they fall within the scope of these agreements.

Refugee status

Convention status

Until the changes made in May 1998, the only refugee status granted in France was Convention status. Persons granted Convention status are issued with a residence permit valid for ten years and renewable.

The amended Asylum Act now provides for another status based on the provisions of the French Constitution.

Constitutional asylum

This new status is based on the preamble of the 1946 French Constitution, incorporated into the Constitution of 1958, which states that: "*every person persecuted on grounds of his action for freedom has a right of asylum within the territories of the Republic*".

The OFPRA and the Appeal Board for Refugees have the possibility of granting constitutional asylum to persons "fighting for freedom" but who would not fall within the provisions of the Geneva Convention.

Constitutional asylum is granted under the same procedure as Convention status (the OFPRA does not specify if asylum is granted under the provisions of the Geneva Convention or the French Constitution). In practice, no distinction is made between both statuses, which give access to the same rights, including a 10-year residence permit.

So far, constitutional asylum has had a rather limited application.

Quota refugees

French legislation does not include any provision for quota refugees.

Other types of residence permit

Territorial asylum

Although it has been granted in practice to some Algerians since December 1992, the concept of "territorial asylum" was explicitly introduced into French legislation by Law of 11 May 1998.

According to Section 13 of the Asylum Act, "*[i]n consistency with the national interest and after consultation with the Ministry of Foreign Affairs, the Ministry of Interior can grant territorial asylum to an alien who can prove that his life or freedom are at risk or that he fears treatments contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms".*

In a circular of 25 June 1998 implementing the new provision, the Minister of Interior restricted the scope of territorial asylum by indicating that the status could be granted to an alien whose life or freedom are at risk or who fears treatments contrary to Article 3 of the ECHR *"if these threats or risks are originated by a person or a group which cannot be assimilated to the state authorities".* By decision of 26 January 2000, however, the Council of State (Conseil d'Etat", France's highest court in administrative matters) cancelled this restrictive provision and stated that territorial asylum could not be limited to threats issued by non-state agents, but should apply equally to victims of state violence.

In practice, the OFPRA or the Appeal Board for Refugees, after having rejected an asylum application, can inform the Minister of Interior or the Minister's local representative ("Préfet" – Prefect) that the applicant does not fall within the provisions of the Geneva Convention, but that his/her "life and freedom" would be at risk in case of return and that he/she should therefore be granted territorial asylum. In 1998, this happened in about 30 cases.

It is also possible to lodge an application for territorial asylum with the Prefecture simultaneously with an application for asylum. In such case, however, the application for territorial asylum is automatically suspended until a decision on asylum has been made. Applicants may also choose to lodge a request for territorial asylum but no application for asylum, or to lodge the request for territorial asylum after their application for asylum has been rejected.

Neither the Asylum Act nor the above-mentioned circular of 25 June 1998 provide for the conditions and criteria for obtaining territorial asylum, which is granted at the discretion of the Minister of Interior. The Minister's decisions are not reasoned.

In case of a negative decision by the Minister of Interior, applicants may either lodge a request for administrative review ("recours gracieux*")* with the Minister or, within two months, appeal against the decision to the Administrative Court. Such an appeal, however, has no suspensive effect and the procedure is very lengthy.

Persons granted territorial asylum are issued with a one-year residence permit, which can be renewed twice for one year. The renewal may be refused if the circumstances that have justified the granting of the status have changed. After this three-year period, they may receive a permanent (ten years) residence permit. They are allowed to work and are granted the same status and social rights as migrant workers.

In 1998, 1,339 applications for territorial asylum were submitted and 224 decisions made. Territorial asylum was granted in 8 cases only (3,6% of the decisions). From January to May

1999, the number of applications submitted increased by 116% and territorial asylum was granted in 9% of the cases.

Lebanese and Southeast Asians

By way of an exception due to historical ties with France, citizens from Lebanon, Vietnam, Cambodia and Laos who manage to find work and are able to present an offer of employment to the authorities, may also obtain residence permits without applying for asylum.

Temporary protection measures for “displaced persons from Kosovo”

By telegram of the Ministry of Interior dated 14 May 1999, temporary protection measures were taken for Kosovo Albanians. These measures have varied according to the ways the Kosovo Albanians had entered the country:

– “displaced persons” from Kosovo who came to France under the UNHCR Humanitarian Evacuation programme were given a three-month residence permit, renewable for one year, with the right to work. This concerned 6,217 persons who arrived in France between 18 April and 13 July 1999;

– those Kosovo Albanians who arrived spontaneously during the same period were given a residence permit valid for three months, and renewable for six months, with the right to work;

– Kosovo Albanians who were already staying in France with a temporary residence permit before the UNHCR Evacuation programme started and had not applied for asylum, were given an additional six-month temporary residence permit once the initial period expired. Those who had already applied for asylum were also granted temporary residence for six months after the expiration of the initial permit. All of them were given the right to work.

Kosovo Albanians under temporary protection were allowed to apply for asylum and 882 applications were lodged between May and September 1999. Unlike other asylum seekers, those who have applied for asylum were still allowed to work. The processing of applications was suspended for only a few weeks.

Rejection at the border

Procedure

Admission procedures at entry points are governed by the Decree of 27 May 1982 on the conditions of entry into France and the Ordinance of 2 November 1945 on the conditions of entry and residence of foreigners. The latter text was amended by the Act of 26 February 1992, which introduced the liability of carriers transporting undocumented passengers, the Act of 6 July 1992 on "waiting zones”, and the Act of 27 December 1994, which extended the concept of waiting zone to railway stations open to international traffic.

According to this, asylum seekers may be detained in waiting zones in ports, airports and railway stations for the time "*necessary to determine whether the application is manifestly unfounded or not*”, but within a maximum period of 20 days.

In the waiting zones, asylum seekers are primarily kept in hotels or at the police offices/premises. The border police authorities can hold them there for up to 48 hours, renewable once. After these four days, a Civil Court (“Tribunal de Grande Instance”) must decide whether the asylum seeker should be kept for an additional eight days. This may be renewed by the judge for another period of eight days. Decisions of the Civil Court may be appealed to the Appeal Court (“Cour d’Appel”), but without suspensive effect.

There is no specific procedure for unaccompanied minors or very young children. If they try to enter the territory without travel documents, they may be detained like adults in a waiting zone and no special arrangements are made for this group.

The procedure at ports and airports is still regulated by the Decree of 27 May 1982. When an asylum seeker arrives without a valid passport or visa, after a brief interview with the applicant, the border authorities are required by law to contact the Ministry of Interior. The latter, acting in consultation with the Ministry of Foreign Affairs, is responsible for making a decision on admission to the territory. The Ministry of Foreign Affairs may send an official to the port or airport to conduct a more detailed interview with the asylum seeker. This official forwards his/her recommendation to the Ministry of Interior, which then takes the final decision on admission. In difficult cases, either at the request of the Ministry of Foreign Affairs or on its own initiative, UNHCR can become involved in the procedure. An appeal may be lodged with the Administrative Court within 24 hours of the Ministry's decision. However, it has no suspensive effect and the Court's decision is usually rendered some months later.

According to Section 35*quater* of the Ordinance of 2 November 1945, applicants held in waiting zones are entitled to interpreting and medical assistance, if appropriate. They may also seek advice from a lawyer, but no free legal assistance is available (see “Legal aid” below).

The conditions of access to the waiting zones for UNHCR and other selected non governmental organisations are laid down in a Decree of the Ministry of Interior dated 17 June 1998, which modified a previous regulation of May 1995. According to this decree, six organisations are allowed access to the waiting zones for a three-year period. Each organisation is allowed up to eight visits per year in each waiting zone. Finally, the Ministry issues ten representatives of each organisation with an individual access card, which is valid for two years. Visits have to be announced in advance.

Manifestly unfounded applications

There is no legal definition of a manifestly unfounded application, but the criteria outlined in the 1996 London Resolution on manifestly unfounded applications for asylum of 30 November and 1 December 1992 are applied on an unofficial basis.

When an application is deemed to be manifestly unfounded by the Ministry of Interior, the asylum seeker is removed either to his/her country of origin, to a third country of transit or first country of asylum outside Europe.

However, the practice regarding the “safe third country” concept has changed following a decision “*Rogers*” of the Council of State dated 18 December 1996. In this decision, the Council of State, confirming a previous decision of 1981 (“*Conté*”), stated that the Geneva Convention did not contain any “safe third country” principle, whereby an asylum seeker could be excluded from the benefit of the Convention. The fact that the asylum seeker could have applied for asylum in another country party to the Geneva Convention “*would not have in itself entitled the authorities to refuse the status of refugee and could not legally be justified by the Minister of Interior as a reason for the applicant’s claim to be regarded as manifestly unfounded, therefore preventing his access to the territory for the examination of his claim*”.

Accordingly, French authorities do no longer refuse entry into the country on “safe third country” grounds, although in practice, applicants may still be returned to third countries if their application has been declared manifestly unfounded for other reasons.

Statistics on the border procedure

According to the Ministry of Interior’s statistics, 2,484 asylum applicants (3,087 with minor children) were registered at ports, airports and railway stations in 1998, i.e. an increase of 146%

compared with 1997. Out of these 2,484 persons, 1,970 were admitted into the territory and given access to the normal determination procedure. The admission rate was 79.3% in 1998 (72.3% in 1997, 52.9% in 1996).

The average time spent by applicants in waiting zones increased from 2.9 days in 1997 to seven days in 1998, which can be explained by the strong increase in the number of applications in 1988. The extension of the processing time has led to a degradation of the conditions in waiting zones, as their capacity is not sufficient to deal with an increased number of applicants.

	No. of border applications*	Admission		Refusal	
1996	526	279	(52.9%)	247	(47.1%)
1997	1,010	730	(72.3%)	280	(27.7 %)
1998	2,484	1,970	(79.3%)	514	(20.7%)
1999	approx. 4,000	not available		not available	

* excluding children

In 1998, 57 nationalities were represented among applicants held in waiting zones. Africans amounted to 72% of the border applications registered at the border, the main countries of origin being Rwanda (628), the Democratic Republic of Congo (29), Congo (63) and Burundi (30). Applicants from these countries had, in general, a high admission rate, such as 97.5% for Rwanda or 97% for Burundi.

In 1998, 332 unaccompanied minors have been registered at the border as asylum seekers, out of whom about 220 have lodged an asylum application with OFPRA (the others have disappeared). The main countries of origin of these minors were Rwanda, Sierra Leone, Sri Lanka and Nigeria.

The Dublin Convention

When another EU state is deemed responsible for the examination of the asylum application on the basis of the Dublin Convention, the applicant is issued with a “Dublin convocation”, which amounts to no more than protection against *refoulement*. Asylum seekers with a “Dublin convocation” are refused accommodation in reception centres and are not granted any financial assistance.

If the state considered to be responsible, accepts to take charge, the asylum seeker is transferred to this country. Applicants may travel on their own or under escort. If the request for readmission is rejected, the applicant is transferred to the normal determination procedure and his/her application processed by the French asylum authorities. From that moment, access to accommodation and social support is granted.

From 1996 to 1998, the French authorities adopted a flexible approach to Articles 4 and 3.6 of the Schengen Convention and later Articles 3.4 and 9 of the Dublin Convention, which provide for derogation to the usual responsibility criteria for humanitarian reasons based in particular and on family and cultural grounds. This practice, however, was not confirmed in 1999.

There is no specific appeal procedure against the decisions of transfer made under the Dublin Convention. As any other administrative decisions, they may be appealed to the Administrative Courts, but without suspensive effect.

Entry into the territory

If the Ministry of the Interior reaches a positive decision, the asylum seeker is admitted into the territory and given a "safe conduct” pass. This is valid for eight days and allows him/her to apply for asylum with the Prefecture, which issues a provisional residence permit, valid for one month.

The Prefecture also gives the form produced by the OFPRA ("Office français de protection des réfugiés et apatrides" – French Office for the Protection of Refugees and Stateless Persons, the first instance asylum determination body), which must be completed and returned within one month. Upon receipt of the form, the OFPRA issues a certificate confirming registration of the application. The applicant must then return to the Prefecture with the certificate, whereupon he/she will be issued with a three-month provisional residence permit, renewable every three months until a final decision has been reached on his/her asylum application.

Accelerated procedure for in-country applicants ("priority procedure")

A so-called "priority procedure", which is regulated by Section 10 of the Asylum Act, applies to in-country applicants. It provides for the four following situations where provisional admission is not automatically granted by the prefecture and where the procedure differs from the normal determination procedure:

1. another state is responsible for the examination of the claim for asylum under the Dublin Convention or under any similar agreements;

2. Article 1C5 of the Geneva Convention (cessation clause) has been applied to the country of origin of the asylum seeker. The cessation clause applies to the following countries: Romania, Bulgaria, Argentina, Benin, Cap Verde, Chile, Hungary, Poland, Czech Republic, Slovakia, and Uruguay;

3. the asylum seeker represents a threat to the public order;

4. the asylum application is considered by the Prefecture as abusive, fraudulent or lodged in the intention of postponing the implementation of a removal order;

In case no. 1, where the Dublin Convention applies, the asylum seeker has no access to the normal determination procedure (see "The Dublin Convention" above).

In cases nos. 2, 3 and 4, the asylum seeker is allowed to lodge an application with the OFPRA, which then processes it in an accelerated procedure. Most of the time, a decision is taken only on the written application sent by fax to the OFPRA by the Prefecture and without interview.

Asylum seekers are not granted a provisional residence permit while the OFPRA is considering their claim and they maybe detained until the decision is taken (see under "Detention" below). There is no time limit for the OFPRA to make a decision on the application, but if the applicant is detained and if no decision has been made within 12 days, he/she must be released. In such case, he/she will remain without any document pending the outcome of the procedure.

A negative decision by the OFPRA may be appealed to the Appeal Board for Refugees but without suspensive effect.

Even when the OFPRA decides to transfer the case to the normal determination procedure, the applicant remains without residence permit and is not granted any accommodation or social rights until the OFPRA has made its decision.

The number of cases processed under the "priority procedure" was 2,225 in 1998 compared to 1,080 in 1997. Romanian and Bulgarian asylum seekers represented 45% of the cases in 1998.
Aliens who have applied for territorial asylum may also be processed under an accelerated procedure, called "emergency procedure", which is regulated by the circular of 25 June 1998. The "emergency procedure", which criteria are close to those of the "priority procedure", applies when the application is considered by the prefecture as abusive, fraudulent or lodged in the intention of postponing the implementation of a removal order, or when the asylum seeker represents a threat to the public order.

Normal determination procedure

First instance

First instance decisions under the normal determination procedure are made by the OFPRA, an independent body supervised by the Ministry of Foreign Affairs. It reaches decisions largely on the basis of written applications, which should normally be completed in French. However, the OFPRA adopts a pragmatic approach and accepts applications in other languages if the officer in charge of the request is able to understand them. Only about 37% of asylum seekers in 1999 were interviewed in person by an OFPRA officer (42% in 1998).

Appeal

Negative decisions by the OFPRA can be appealed to the Appeal Board for Refugees ("Commission des recours des réfugiés") within one month of notification of the OFPRA's decision. The Appeal Board consists of a three-member court presided over by a member of either the Council of State, the Court of Auditors, the Court of Public Administration, an Administrative Appeal Court or an Administrative Tribunal, and one member each from the OFPRA and UNHCR. Since January 1995, all asylum seekers have been requested to attend such hearings in person, where they can be assisted by a lawyer (see "Legal aid" below). Appeals under the normal procedure have suspensive effect. Hearings are public. In 1999, about 10% of negative decisions made by the OFPRA were overturned by the Appeal Board.

Negative decisions by the Appeal Board can be further appealed to the Council of State within two months of notification. This has no suspensive effect. The Council of State examines the legality of the appealed decision but not the facts of the case.

Processing time

At first instance, asylum applications from Romanians, Chinese, Indians or Bangladeshi are generally processed within about one month, whereas only 38.6% of the applications submitted by Turks, 32.4% of those submitted by Sri Lankan and 28.3% of the claims filed by Congolese (ex-Zairians) had been processed within one year by the OPFRA.

The average processing time until a final decision is made by the Appeal Board for Refugees was 142 days in 1998.

Request to re-open the case

In addition, applications may be made with the OFPRA for a case to be re-opened after a rejection has been confirmed by the Appeal Board for Refugees. This requires that the applicant is able to present new information in support of his/her request, i.e. any significant events justifying fear of persecution which occurred after the decision was taken on the first application, or which occurred before the decision was taken on the first application, but where information was not available. Such an application has no suspensive effect.

In 1998, 615 cases were reopened compared to 1,221 cases in 1997. This important decrease results from a new provision adopted in 1997, according to which applications for a case to be re-opened had to be lodged with the Prefecture. This requirement has had a strong deterrent effect.

Refusal to re-open a case may also be appealed to the Appeal Board for Refugees.

Legal aid

Border procedure: according to Section 35*quater* of the Ordinance of 2 November 1945, asylum seekers held in the waiting zones may seek advice from a lawyer or any person of their choice,

but no free legal assistance is available. This applies also during the review by the Civil Court of the detention measure. Lawyers have free access to their clients, provided that their visits are announced in advance.

Appeal procedure: before the Appeal Board for Refugees, asylum seekers may be provided with a lawyer nominated by the Bar Association and appointed by the legal aid bureau, provided that they meet the stringent conditions imposed. Free legal aid is subject to legal entry into France or possession of a residence permit valid for at least one year. However, foreigners with a "safe conduct" pass issued by the border police permitting admission to French territory are considered as having legally entered France and are consequently eligible for free legal aid. Such aid can only be granted if the application is not deemed manifestly unfounded and if the applicant has an income below a certain threshold.

Territorial asylum: the circular of 25 June 1998 on territorial asylum does not provide for any legal assistance. During the appeal procedure legal aid is available without conditions of entry, under the same conditions as nationals (income below a certain threshold).

Interpreters

Border procedure: according to Section 35*quater* of the Ordinance of 2 November 1945, applicants are entitled to receive the assistance of an interpreter, if appropriate. Until recently, interpretation was mainly provided over the telephone with the help of the non-governmental organisation, Inter-Services Migrants. On 7 October 1999, however, the Supreme Court of Appeal ("Cour de Cassation") put an end to this practice by ruling that "*an interpreter must necessarily be present besides the person who asks for his assistance*".

Normal determination procedure: the OFPRA provides interpreters free of charge, except where the language required is rare. In such case the applicant is allowed to come with an interpreter of his/her choice.

Appeal procedure: hearings of the Appeal Board for Refugees are public and held in French. If necessary, free interpreting services, which generally are of good quality, are provided by the Appeal Board.

Territorial asylum: the applicant can be assisted by an interpreter during the interview at the Prefecture, but it is not provided free of charge.

Unaccompanied minors

The Ordinance of 2 November 1945 protects all foreign minors against expulsion from the French territory.

Since minors under 18 are not entitled to take any independent legal action, the OFPRA requires a legal representative to register their asylum applications when they are unaccompanied. Thus, before applying for refugee status, the minor must be placed under the care of a guardian, which may be a family member living in France (as in one third of the cases) or the French state itself. In the former case, the child stays with his/her family, whereas in the latter, he/she is taken into care by the national child care services ("Aide sociale à l'enfance" – ASE), a body attached to the local social authorities. In such case, he/she is accommodated in one of the ASE's homes, or in the recently opened reception centre for unaccompanied minor asylum seekers, run by the NGO France Terre d'Asile in the Paris area. The Social Service for Migrants ("Service social d'aide aux émigrants") is responsible for initially receiving and counselling unaccompanied minors.

In practice, the position of unaccompanied minors is very complex and often results in lack of protection. Even if the OFPRA examines an application presented by a minor, it does not always notify the decision before his/her majority. On the other hand, state guardianship is very often

refused by the courts, which means that the minor is afforded no legal status or protection and cannot be accommodated in a state centre (see also “Unaccompanied minors” under “Social conditions for asylum seekers” below).

Final rejection

A final negative decision, be it rendered under the refugee status or the territorial asylum procedure, is accompanied by a request to leave the country voluntarily within one month (“Invitation à quitter la France”). When this time limit expires, an expulsion order will be issued and may be implemented immediately.

Expulsion orders can be appealed to the Administrative Court, with suspensive effect, within 48 hours if the decision is notified “on the spot” by the police and seven days if the decision is notified by mail. A decision must be taken within 48 hours in both cases. In practice, due to the high number of cases pending, Administrative Courts take several months to rule on such cases.

The statistics of the Ministry of Interior do not distinguish between asylum seekers and other foreigners staying illegally in France and thus there are no figures available on the number of rejected asylum seekers actually deported. In 1997, 28% of the expulsion orders (all categories) have been implemented, whereas this percentage fell to 20% in 1998. As a result, a circular of the Ministry of Interior of 11 October 1999 asked the prefectures to increase the number of random identity controls and to improve the implementation of expulsion orders.

Rejected asylum seekers who cannot be returned, may in some cases be granted territorial asylum, otherwise they are left without any kind of documentation or residence permit.

Detention

Asylum seekers

Asylum seekers who submit their claim at a port of entry are detained in the waiting zones until a decision on entry is made, but for no longer than 20 days (see under “Rejection at the border” above). Once admission is allowed, detention is normally not used during the determination procedure.

However, applicants processed under the “priority procedure” of Section 10 of the Asylum Act (see “Accelerated procedure for in-country applicants” above) may be detained in the following three cases:

- Article 1C5 of the Geneva Convention (cessation clause) has been applied to the applicant’s country of nationality. This concerns Romania, Bulgaria, Argentina, Benin, Cap Verde, Chile, Hungary, Poland, the Czech Republic, Slovakia, and Uruguay;

- the asylum seeker represents a threat to the public order;

- the asylum application is considered by the Prefecture to be abusive, fraudulent or lodged in the intention of postponing the implementation of a removal order;

The detention, which is of an administrative nature, takes place in a specific detention centre (“centre de rétention”) designed for foreigners staying illegally in France. Applicants are detained until a decision on their application is made by the OFPRA, but no longer than 12 days.

Rejected asylum seekers

Rejected asylum seekers staying illegally on the territory may be detained for two days based on an administrative decision. This may be prolonged by a Civil Court for two consecutive periods of

five days. If the expulsion cannot be carried out within this total period of 12 days, the person will be released but left without any document.

Application from abroad

Applications for asylum in France may not be submitted from abroad.

Family reunification

Convention (and Constitutional) refugees are entitled to family reunification with their spouse and minor children under 18 years, without being submitted to the restrictions applied to other foreigners in terms of length of residence (one year of residence), financial resources and housing capacity. On a case-to-case basis, other family relatives can benefit from family reunification.

Reunification with an unmarried (heterosexual) partner is also possible provided that the stability of the relationship is confirmed by the OFPRA according to the initial statements made by the refugee. In some cases, reunification with dependent parents is also granted, but never with siblings.

The application for family reunification must be lodged by the refugee in France.

Family members do not have to apply for asylum in order to obtain residence permits. According to a legislative change in 1989, a residence permit, valid for ten years on a renewable basis, is automatically issued to a spouse and minor children. The Ministry of Foreign Affairs handles the reunification of refugee families (and decides on the issue of visas), with the assistance of the UNHCR delegation if protection matters are involved. By agreement with UNHCR, the Social Service for Migrants ("Service social d'aide aux émigrants") has helped refugees in France to submit their applications for family reunification to the Ministry since April 1993. In cases of low income or a difficult social situation, transport costs may be covered by UNHCR, after evaluation by the Social Service for Migrants.

Since family reunification with spouse and minor children is an absolute right for recognised refugees, it is granted in every case provided the family links can be established. When reunification with other family members is refused, there is no judicial appeal as such. The negative decision may be brought before the Council of State, but only for a control of the legality of the decision. It is also possible to submit an application for an administrative review of the decision.

In 1998, 1,460 persons were admitted under the refugee family reunification procedure:

Number of persons reunited in France in 1998	
Asia	634
Africa	391
Middle East	332
Europe	65
Latin America	38
Total	1,460

Persons with territorial asylum, unlike Convention refugees, have no absolute right to family reunification. They are subject to the same conditions as immigrants, as defined in the Act of 24 August 1993 and the circular of 6 July 1999: legal residence for at least one year in France, sufficient, stable income and adequate housing.

Asylum seekers are not allowed to family reunification

Statistics (Source: the Ministry of Interior)

Number of asylum applications

Number of asylum applications submitted in France*	
1991	46,500
1992	28,870
1993	27,565
1994	26,045
1995	20,170
1996	17,405
1997	21,416
1998	22,375
1999	30,830
2000 (January-March)	10,420

Source: Ministry of Interior (1990-1998) and UNHCR (1999-2000)

* these figures do not include children under 18 or persons who came to France under family reunification procedures, unless they specifically asked for asylum.

Number of Convention refugees

According to the OFPRA 1998 statistics, there are 115,025 adult Convention refugees currently resident in France. The main countries of origin of these refugees are: Cambodia/Laos/Vietnam (49,863), Sri-Lanka (15,900), Turkey (11,852), Former Yugoslavia (6,565) and the Democratic Republic of Congo (5,193).

These figures do not include former refugees who adopted French nationality (2,496 in 1998 and 1,269 in 1997).

Recognition rate under the Geneva Convention

Refugee status granted in France (as % of applications)*	
1991	19.5%
1992	29%
1993	27.9%
1994	23.7%
1995	16.3%
1996	19.56%
1997	17.01%
1998	19.38%

* including Constitutional status

Main national groups in 1998

Main national groups seeking asylum in France in 1998	
Romania	3,027
China	2,075
Sri-Lanka	1,832
Democratic Republic of Congo (ex-Zaire)	1,778
Turkey (including Kurds)	1,621
Fed. Rep. of Yugoslavia (including Kosovo Albanians)	1,252
Cambodia/Laos/Vietnam	963
Algeria	919

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

– Circular of 19 December 1991 of the Ministry for Social Affairs and Integration relating to the re-organisation of the national reception system for asylum seekers and refugees;

– Circular of 8 July 1999 of the Ministry for Employment and Solidarity relating to the admission procedures in the national reception system for refugees and asylum seekers.

Accommodation

Accommodation in reception centres is neither compulsory nor automatic. Asylum seekers and refugees who need housing must apply to the non-governmental agency France Terre d'Asile (FTDA). The National Admission Board, consisting of FTDA members, a representative of the French Ministry for Employment and Solidarity and a representative from the Social Service for Migrants, allocates places available in the centres on the basis of social criteria.

Asylum seekers awaiting a decision on their asylum applications may be housed in reception centres for asylum seekers called CADA ("Centres d'accueil pour demandeurs d'asile"). The current capacity in the existing 63 CADAs is 3,779 beds (as of 30 August 1999).

Such CADAs have been set up throughout the country. They are normally quite small (fewer than 60 places) and more than half of them are combined with hostels for young workers and sometimes with council housing. By agreement with the state, FTDA is responsible for co-ordination of all these centres but, in practice, only runs two CADAs located in the Paris area, as well as a centre for unaccompanied minors, also in the outskirts of Paris. The others are run by various national or local organisations linked by a binding agreement with FTDA guaranteeing equivalent conditions of reception.

In addition, two transit centres are designed for the reception of specific cases.

The FTDA's centre in Créteil (with a capacity of 80 places), outside Paris, operates partly as a CADA and partly as a transit centre for asylum seekers arriving with the prior agreement of the French authorities (specific operations decided by the government, emergency situations, etc.).

The second transit centre is run by the regional organisation Forum Réfugiés near Lyon. This centre (with a capacity of 40 places) is designed for the reception of emergency and massive arrivals.

Asylum seekers normally stay about two-three weeks in transit centres before being allocated a place in a CADA or a temporary reception centre (“Centre provisoire d’hébergement” – CPH) designed for refugees (see under "Social Conditions for Refugees” below).

In principle, asylum seekers processed under the Dublin Convention are not entitled to accommodation until their transfer to the state responsible for processing their application or their admission to the French normal determination procedure. However, according to the places available, they may be accepted in a CADA. In practice, this happens very rarely due to the shortage of places in the centres.

FTDA has recently opened a specific accommodation centre for unaccompanied minor asylum seekers, near Paris. It is intended to provide temporary accommodation to children aged 13 to 18 until places are available in the centres run by the national child care services. These centres,

however, are not specialised and thus are not always able to meet the specific needs of unaccompanied asylum seekers.

Young asylum seekers may face important obstacles, particularly if the authorities, following medical examinations, contest the age they have declared. In such case, the child care services may refuse to provide accommodation, while access to the normal reception centres may also be refused based on the age mentioned in the initial application for asylum.

Financial assistance

Upon arrival in France, all asylum seekers receive a "waiting allowance" of FRF 2,000 [EUR 304,9] per adult and FRF 700 [EUR 106,7] per child, which is made as a one-off payment.

Asylum seekers who are not accommodated in a reception centre, receive a monthly integration allowance – for 12 months only – of FRF 1,800 [EUR 274,4] per adult. No allowance is given for children. This sum is supposed to cover all living costs for an asylum seeker and his/her entire family.

Asylum seekers who have found their own accommodation are not entitled to receive a housing allowance, since this allowance is conditional on obtaining a residence permit valid for at least six months (they are granted a temporary residence permit valid for three months, which is renewable).

Food and accommodation in the CADAs are provided free of charge. When meals are not prepared collectively by the centre's staff, asylum seekers are responsible for making their own arrangements.

The Ministry of Solidarity and Employment issued on 29 March 2000 a circular harmonising the financial assistance granted in the CADA. The new regulation provides for a global social monthly allowance, which is intended to cover the needs of asylum seekers housed in accommodation centres.

The amounts granted vary according to the family composition and size and the services available in the various CADAs, as well as the number of meals received:

All meals provided		
1 person	FRF 600	EUR 91.4
2 persons	FRF 855	EUR 123
3 persons	FRF 1,035	EUR 157.7
4 persons	FRF 1,260	EUR 192
5 persons	FRF 1,500	EUR 228.6
6 persons	FRF 1,710	EUR 260.6
Each additional person	FRF 255	EUR 38.8

One meal provided		
1 person	FRF 1,012	EUR 154.2
2 persons	FRF 1,402	EUR 213.7
3 persons	FRF 1,687	EUR 257.1
4 persons	FRF 2,130	EUR 324.7
5 persons	FRF 2,587	EUR 394.3
6 persons	FRF 3,015	EUR 459.6
Each additional person	FRF 480	EUR 73.1

No meals provided		
1 person	FRF 1,425	EUR 217.2
2 persons	FRF 1,950	EUR 297.2
3 persons	FRF 2,340	EUR 356.7
4 persons	FRF 3,000	EUR 457.3
5 persons	FRF 3,675	EUR 560.2
6 persons	FRF 4,320	EUR 658.5
Each additional person	FRF 690	EUR 105.1

Help in kind will no more be admitted but may be available from the French Red Cross and other agencies.

Work

In accordance with a ministerial circular of 26 September 1991, asylum seekers have no access to the labour market, regardless of whether they are accommodated in a CADA or not.

As an exception, Kosovo Albanians under temporary protection who have applied for asylum are allowed to work (see “Social Conditions for Persons under Temporary Protection” below).

Vocational training

Since 1991, asylum seekers are no longer allowed to work and are consequently excluded from vocational training programmes.

Language tuition

Asylum seekers are not entitled to any state-financed integration programmes or French language courses. However, they can benefit from free lessons given by the municipality or, most often, by various national or local non-governmental agencies, without any public funding. Such French language courses are available in almost all large or medium-sized towns.

School attendance

School attendance is compulsory from the ages of 6 to 16 for all children living in France, independently of their administrative or legal status. Foreign children attend the same schools as French children.

Special “adaptation classes” for the children of migrants, refugees and asylum seekers who do not speak French are sometimes organised within schools by the Ministry of Education. As an exception, the FTDA centre in Créteil has set up a primary school class on its premises, with a teacher on secondment from the Ministry of Education.

Child care

There are no specific measures for child care except in the FTDA centre (see “Accommodation” above).

Female asylum seekers

Female asylum seekers are not entitled to any specific measures, with the exception of a priority right of access to the CADAs.

Unaccompanied minors

Apart from the “waiting allowance” of FRF 700 [EUR 106,7] granted upon arrival, unaccompanied minors are not entitled to any further allowances or financial assistance.

Health/Sickness

Asylum seekers accommodated in CADAs undergo a compulsory medical examination (general check up, vaccinations and tests for parasitic and contagious diseases). The centre's medical staff carry out preventive measures, with special attention to protecting mothers and children. Some CADAs also provide psychological counselling.

Like French nationals, asylum seekers have access to the national health system. Provided they hold a provisional residence permit valid for at least three months, they are entitled to the same benefits as nationals on low incomes in terms of state medical aid, which covers all medical expenses.

Free medical aid, provided by hospital services, is available to asylum seekers who have just been admitted to the procedure and hold only the first provisional one-month residence permit, to applicants processed under the “Dublin procedure”, and to any foreigner without a residence permit (including rejected asylum seekers or persons applying for “territorial asylum”).

However, since in practice effective access to state medical aid is a lengthy and complex process, specialised non-governmental agencies – partly subsidised by the Government – provide a free service for all foreigners in need of medical care.

Starting from 1 January 2000, a so-called “universal medical coverage” (“Couverture médicale universelle” – CMU) has been created in order to ease access to health services. The CMU coverage provides for any person residing on a regular basis on the French territory a right to medical basic insurance and provides a 100% coverage of medical expenses for low income segments of the population only, i.e. under FRF 3,500 [EUR 533.5] per month. Since the text establishing the CMU does not mention asylum seekers, it is not clear yet whether or not this new system will have an impact on their situation.

Freedom of movement

There are no restrictions on the freedom of movement of asylum seekers, whether they are accommodated in reception centres or not.

The Dublin Convention

There is no special arrangement for asylum seekers processed under the provisions of the Dublin Convention who find themselves in a very unstable social situation without any access to accommodation centres and no allowance at all.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

In accordance with Section 15 of the Ordinance of 2 November 1945, recognised refugees are entitled to a residence permit valid for ten years and renewable. Their social rights, as well as those of all foreigners living in France, are provided for in various legal texts. There are no distinctions between Conventional and Constitutional refugees.

Freedom of residence/movement

There are no restrictions on the freedom of movement of refugees, regardless of whether they are accommodated in reception centres or not.

Integration programme

There is no special state-funded integration programme.

Housing

Convention refugees, asylum seekers who arrived with the prior agreement of French authorities, and persons who came for the purpose of family reunification may find accommodation in one of the 28 temporary reception centres ("Centre provisoire d'hébergement" – CPH) throughout the territory. Their housing capacity is 1,018 places (as of 30 August 1999). CPHs are designed to facilitate integration of refugees and their families.

Refugees housed in CPHs are entitled to work and receive the minimal integration income, but they must repay 25% of their total income (including family allowances) to the centre if it is equal to or amounts to more than the minimum integration income, or 10% if their income is lower.

Housing allowances may be granted to young couples, families with at least one dependent or single person, under the same conditions as for French citizens. The amounts are determined according to the income. Refugees also have access to council housing on the same terms as French nationals.

Financial assistance

Once granted Convention or constitutional status, refugees enjoy the same rights as French nationals. With a few exceptions mentioned below, no distinction is made between refugees who have found their own accommodation and those housed in provisional reception centres (CPH).

The main allowances are as follows:

Minimum Integration Income ("Revenu Minimum d'Insertion"): refugees over the age of 25, who have never worked in France or have only worked there for a short period but are at present unemployed, are entitled to receive the monthly minimum integration income, which is granted to nationals in the same situation.

Refugees between 18 and 25 are also eligible, provided they have at least one child living with them in France.

The amount paid depends on the family situation and its global financial resources. All forms of income, including family allowances but not housing allowances, are counted as global resources. Monthly payments amount up to the following rates (as of October 1999):

Single person	FRF 2,500*	EUR 381.1
Couple or single parent with one child	FRF 3,750	EUR 571,6
Each additional child	FRF 750	EUR 114,3
Each additional child after the third	FRF 1,000	EUR 152,4

* including housing assistance

Refugees staying in CPHs who meet the above requirements can also be granted the minimal integration income, but at a reduced rate deducing the various services provided by the accommodation centre. This reduced rate varies from one centre to another.

Young child allowance: from the fourth month of pregnancy until a child is three months old, a monthly allowance of FRF 981 [EUR 149,50] is granted which, in case of low income families, may be extended until the child is three years old. However, payment of this allowance is linked to compulsory medical control before and after the child's birth.

Education Allowance: provided the family has at least two children, an allowance is granted to whichever parent stops working after the birth or adoption of a third child.

The monthly allowance amounts to FRF 3,045 [EUR 464,5] and is paid for a two-year period following maternity leave. If the parent starts working part-time after the birth or adoption of the child, the monthly total of the allowance will be between FRF 1,522 [EUR 232] and FRF 2,013 [EUR 306,8]. This allowance cannot be claimed in addition to an unemployment allowance.

Allowance for large families: families with at least three children aged three or more and on a low income are entitled to receive FRF 889 per month [EUR 135,5].

Child benefit: this monthly allowance is granted to all families, regardless of their income, with at least two children under 16. As of October 1999, payments were as follows:

2 children	FRF 683	EUR 104,1
3 children	FRF 1,559	EUR 237,6
4 children	FRF 2,434	EUR 371
Additional children	FRF 875 per child	EUR 133,4

A supplement of FRF 187 per month [EUR 28,5] is paid for children between 10 and 15, and another of FRF 333 [EUR 50,8] for children over the age of 15.

Single parent's allowance: this monthly allowance is supposed to bridge the gap between a single person's low income and the guaranteed minimum income. It is paid either for 12 months or until the youngest child is three years of age as follows (October 1999).

Pregnant woman without children	FRF 3,220	EUR 490,89
Single parent with one child	FRF 4,293	EUR 654,46
Single parent with several children	FRF 1,073 per additional child	EUR 163,58

Allowance for public or private child care: special assistance is granted to families on low incomes for children under three.

Allowance for the elderly: refugees over 60 are entitled to benefit from a special allowance, determined according to their income. The maximum amount is FRF 1,462 per month [EUR 222,8].

Work

Convention refugees, including those accommodated in CPHs, are allowed to work without restriction, except in specific cases where qualifications equivalent to a French university degree are required (notably for the medical profession). No work permit is required.

Access to the adult educational system

Vocational training: recognised refugees are entitled to free vocational training. If they can prove that they have worked for at least six months in France and if they already receive unemployment benefit, they will continue to receive it during their training. Refugees who do not receive unemployment benefit receive a state-allowance whilst following the training programme. If they can prove that they have worked for at least six months out of the last 12, or 12 months of the last 24 in a foreign country (including their country of origin), they will receive FRF 4,070 [EUR 620.4] a month. Otherwise, they will receive FRF 2,000 [EUR 304.9] a month.

Subject to their ability in French, refugees can benefit from any of the programmes set up for unemployed persons. In addition, various programmes exist for migrants and refugees comprising both language courses and vocational training.

Further education: refugees are exempted from pre-registration with the French embassy in their country of origin, which is normally required for foreign students. Like French citizens, they are allowed to study in the university of their choice, according to the courses and places available there. However, universities have the authority to reject or accept applications at their discretion. The recognition of foreign degrees is decided by a special committee at each university and is only valid there.

Scholarships: refugees have the same rights as French students. In addition, some private organisations (like the Entraide Universitaire Française) grant scholarships to foreign students, particularly to refugees.

Language tuition

Convention refugees accommodated in the CPHs have to attend compulsory language courses lasting at least 520 hours, financed by the Ministry for Employment and Solidarity. These programmes comprise French language lessons and other educational programmes designed to facilitate integration into France.

Refugees who are not housed in centres, may attend free courses organised by the non-governmental agency CIMADE (an NGO specialising in development aid) which is financed by the Ministry for Social Affairs and Integration. Since 1995, additional special training in French language has been financed by the European Social Fund in order to facilitate the professional integration of refugees living outside the reception centres.

School attendance

School attendance is compulsory until the age of 16 for all children in France. Foreign children attend the same schools as French children. Special “adaptation classes” for migrants and refugees are sometimes specially organised within schools by the Ministry of Education.

Mother language tuition

The children of refugees are not entitled to mother tongue tuition.

Health/Sickness

All foreigners resident in France require a medical certificate from the International Organization for Migration (IOM). Refugees who have been accommodated in CADAs or CPHs undergo a compulsory medical check there, whilst others must undergo one at the IOM office, costing FRF 330 [EUR 50.3].

Like French citizens, refugees have access to the national health system. They are also entitled to the same benefits as nationals on low incomes from the state medical aid service, which covers all medical expenses.

Citizenship

Refugees may apply for French citizenship under the same conditions as other foreigners legally residing in France.

Repatriation

No specific repatriation programme has been set up for refugees.

A circular of 14 September 1992 of the Ministry for Social Affairs and Integration lays down conditions for granting assistance to voluntary repatriation to foreigners, including refugees, when "*their social and personal situation justify the aid for repatriation*". Applications are processed by the Office for International Migrations ("Office des migrations internationales"), a body under the Ministry for Social Affairs and Integration. The assistance granted may include a return ticket (only by plane and covering 40 kg luggage overweight) as well as a pocket money of FRF 1,000 [EUR 152.4] per adult and FRF 300 [EUR 45.7] per child.

A circular of the Ministry of Employment and Solidarity of 4 November 1998 provides for a specific scheme aimed at facilitating the voluntary return of Malian, Senegalese and Moroccan nationals who were staying illegally in France and were not able to have their situation regularised. Under a so-called "contract for reintegration in the country of origin", these persons can take part to a three-month vocational training programme, during which they receive a monthly allowance of FRF 2,000 [EUR 304.9]. Once they have returned into their home country, they may obtain a "project assistance" from the Office for International Migrations.

In addition, these persons are issued with a multi-entry visa, which enables them, after a minimum six-month period in their country, to re-enter France for a maximum stay of three months.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

Kosovo Albanians who arrived under the UNHCR Humanitarian Evacuation Programme have been given a three-month temporary residence permit, renewable for one year, with the right to work. Those who arrived spontaneously were given a three-month temporary residence permit, renewable for six months, with the right to work.

Kosovo Albanians already resident in France with a temporary residence permit (before the evacuation programme commenced) and who had not applied for asylum, were given an additional six-month temporary residence permit once the initial permit expired, with the right to work. If the person in France had already applied for asylum, the asylum seeker was granted a temporary residence permit for six months, after the expiration of the initial temporary residence permit, with the right to work.

After a suspension of a few weeks – during which time it was still possible to lodge an application for asylum – the processing of the asylum application resumed normally. From May and September 1999, 882 Kosovo Albanians lodged an asylum application.

Housing

Most Kosovo Albanians have been accommodated in 157 accommodation centres, of which 77 have been specially opened for this purpose. The remaining 80 centres are part of the existing accommodation system.

Freedom of residence/movement

There are no restrictions on the freedom of movement whether persons under temporary protection are accommodated in reception centres or not.

Financial assistance

The financial support provided to Kosovo refugees staying in accommodation centres is laid down in a circular of 26 August 1999 issued by the Ministry for Employment and Solidarity.

Persons staying in centres which provide collective catering receive a monthly allowance of FRF 600 FF [EUR 91.4] per individual, FRF 855 [EUR 130.3] for a family of two, FRF 990 [EUR 137.2] for a family of three and up to FRF 1,455 [EUR 221.8] for a family of seven. An amount of FRF 195 [EUR 29.7] is given per additional person.

When no collective catering is provided in the centre, the monthly financial support ranges from FRF 1,425 [EUR 217.2] for one person to 3,750,00 [EUR 571.6] for a family of seven, with an amount of FRF 510 [EUR 77.7] per additional person.

Various social allowances are also available according to the family situation.

Work

Refugees from Kosovo under temporary protection were granted permission to work. This right was maintained also for those who had applied for asylum in France.

Access to the adult education system

There is no specific provisions concerning the access of Kosovo Albanians to the adult education system. However, since they are allowed to work, they are allowed to participate in vocational training programmes.

Language tuition

Specific French language classes are organised in some accommodation centres. In other centres, they are integrated in mainstream language classes.

School attendance

School attendance is compulsory until the age of 16 for all children in France. Foreign children attend the same schools as the French children. Special “adaptation classes” for migrants and refugees are sometimes specially organised within schools by the Ministry of Education.

Mother tongue tuition

No mother tongue tuition is provided

Unaccompanied minors

No specific provision.

Repatriation

The assistance granted to voluntary repatriation is defined in the circular of 14 September 1992, which provides mainly for the payment of the travel costs and 40kg of luggage overweight.

A specific repatriation programme for persons from Kosovo has been established by a circular of 21 July 1999 issued by the Ministry for Social Affairs. According to this circular, the Office for International Migrations is entrusted with the task of organising, in liaison with the International Organization for Migration (IOM), repatriation trips on a voluntary and collective basis from French airports to Skopje in Macedonia. No individual departure is admitted under this programme.

Two types of trips are offered:

– collective “go-and-see visits” for heads of family and for a maximum period of 15 days. A limited financial support of FRF 600 [EUR 91.4] is granted. Between August and October 1999, 741 persons took part in these “go and see visits”.

– definitive collective returns, which include a one way ticket plus FRF 3,000 [EUR 457.3] per adult and FRF 1,000 [EUR 152.4] per child. By 8 October 1999, the number of persons having returned definitely to Kosovo under this programme was 2,236 (including 1,301 adults and 935 children).

Family reunification

Following the end of UNHCR Evacuation Programme, the number of cases of family reunification with persons from Kosovo has decreased strongly and, at the same time, the Ministry of Foreign Affairs has become more strict in examining such applications. Kosovo Albanians are not legally entitled to family reunification, but they can lodge an application for reunification with members of the close family (parents, children, spouses) or the extended family. The requests are examined on a case-by-case basis. As the decision is discretionary, the condition of 1-year residence (since

the new decree of 6 July 1999) and the housing and income conditions do not apply. The system is the same regardless of whether the relatives stay in the country of origin, in an EU country or in any other country.

A visa request should be addressed to the French diplomatic representation or in any other EU or non-EU country where the relative(s) is staying.

At the same time, the family reunification request should be addressed to the Ministry of Foreign affairs, indicating the consulate in which the visa request has been lodged.

GERMANY

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and the New York Protocol of 1967.

– The German Constitution ("Grundgesetz"), Section 16a(1) of which states that "*[p]ersons persecuted on political grounds enjoy the right of asylum*".

Following the amendment of the Constitution in 1993, the right to seek and be granted asylum in Germany was seriously restricted, with the existing Section 16-2 being replaced by a more restrictive Section 16a. Whereas Section 16a(1), as mentioned above, provides for an individual's right to enjoy asylum in Germany, 16a(2) incorporates the concepts of "safe third country" and "safe country of origin" into the Constitution. Since all EU Member states and countries neighbouring Germany were deemed "safe third countries", the constitutional right of asylum was no longer applicable to refugees who came to Germany by land. According to Section 16a(3) the list of "safe countries of origin" must be approved by Parliament.

A Federal Constitutional Court decision dated 14 May 1996 confirmed the 1993 amendment of the Constitution on all essential points.

– The Asylum Procedure Act ("Asylverfahrengesetz") of 16 July 1982, as amended by law of 29 October 1997, provides for a detailed regulation on the right of asylum. It refers not to the refugee definition contained in the Geneva Convention, but to Section 16a of the Constitution.

– The Act Concerning the Entry and Residence of Aliens in the Territory of the Federal Republic of Germany of 9 July 1990 ("Ausländergesetz" – the Aliens Act) amended in November 1997 and July 1999. Its Section 51(1) states that an alien may not be removed to a state "*in which his life or freedom is threatened by virtue of his race, religion, nationality, membership of a particular social group, or political opinion*", in accordance with Article 33(1) of the Geneva Convention.

– The Schengen Agreement and Dublin Convention.

Refugee status

In accordance with Section 13(2) of the Asylum Procedure Act, an alien who submits a claim for asylum in Germany is deemed to have applied both for recognition as a victim of persecution as outlined in Section 16a of the Constitution and for protection against deportation to a persecuting state in accordance with Section 51(1) of the Aliens Act. Only if the applicant specifically declines to claim recognition as a victim of persecution under Section 16a of the Constitution does the decision solely address the question of protection against *refoulement*. Otherwise, both issues are dealt with together.

Persons granted refugee status under Section 16a of the Constitution (including quota refugees) receive unlimited residence permits.

Those protected against *refoulement* under Section 51(1) of the Aliens Act receive temporary residence permits ("Aufenthaltsbefugnis") valid for two years and which can be renewed. After eight years in Germany – i.e. from the time they applied for asylum –, they may be granted an unlimited residence permit.

Both categories are considered as Convention refugees, although those whose cases are processed under Section 51(1) of the Aliens Act are not always entitled to the same rights as those dealt with under Section 16a of the Constitution.

Quota refugees

According to Section 33 of the Aliens Act, the Federal Minister of the Interior may decide to receive specific aliens in Germany for reasons of international law or on humanitarian grounds. This is usually done according to a defined quota. In the early eighties and the nineties, Vietnamese "boat-people" and Jewish immigrants from Russia respectively were able to come to Germany as quota refugees ("Kontingentflüchtlinge").

Germany has no agreement with UNHCR regarding the reception of quota refugees.

Other types of residence permit

Status for civil war refugees

In 1993, a status was introduced under Section 32a of the Aliens Act specifically for persons fleeing war and civil war situations. This new status, which requires a previous agreement between the Federal Government and the Länder (regions) on the payment of housing and welfare costs for those granted temporary protection on this basis, was not used until 1999 due to the lack of such an agreement. However, in April and June 1999, the Federal Government and the Länder agreed to receive a total of 15,000 refugees from Kosovo on this basis.

The granting of this status is dependant upon the person not applying for asylum or withdrawing his/her application. Persons granted the status for civil war refugees are issued with a temporary residence permit, which can be renewed. The situation of Kosovo Albanians is described under "Kosovo Albanians" below.

Temporary deportation waiver

Under Section 54 of the Aliens Act, the Ministry of the Interior of each Land may order a temporary deportation waiver for groups of people staying within the Land, either based on a point of international law or on humanitarian grounds. The deportation waiver is ordered for a maximum period of six months. If the Ministry of the Interior of a Land wishes to maintain its validity beyond six months, the agreement of the Federal Ministry of the Interior must be obtained. This procedure only applies to groups and not to individual refugees. In March 1996, the Ministries of the Interior of the Länder decided that no Land would order a temporary deportation waiver on its own without the agreement of the majority of the other Länder. No groups have benefited from this deportation waiver since March 1996.

Duldung

According to Section 53 of the Aliens Act, the Federal Office for the Recognition of Foreign Refugees ("Bundesamt für die Anerkennung ausländischer Flüchtlinge" – the first instance decision-making body in the asylum procedure, under the jurisdiction of the Federal Ministry of the Interior) must consider whether the applicant risks facing torture, the death penalty, or any violation of the rights set out in the European Convention on Human Rights if he/she is returned to his/her country of origin, when rejecting an application for asylum under Section 16a of the Constitution and under 51(1) of the Aliens Act. If the Federal Office considers that such a risk exists, the asylum seeker is automatically granted "Duldung" (tolerated residence) by the Aliens Office.

Duldung does not carry real legal status, since it only means that the state agrees not to implement a deportation order, which nevertheless remains valid. However, under certain

circumstances and after prolonged residence in Germany, people with Duldung may be granted a more stable status.

Most refugees from the former Yugoslavia have been granted Duldung. This means that they have no legal right of residence in Germany and will be obliged to leave the country. By January 2000, following the departure of more than 250,000 persons, the repatriation of the refugees from Bosnia-Herzegovina is nearly complete.

Kosovo Albanians

Most Kosovo Albanians brought to Germany under the UNHCR Humanitarian Evacuation programme were granted a three-month temporary residence in accordance with Section 32a (status for civil war refugees). After two extensions of three months, this status was no longer granted but replaced by tolerated residence (Duldung). Examination of asylum applications has resumed, but so far most cases have been rejected.

Those who came spontaneously to Germany and applied for asylum were given permission to stay in Germany pending the examination of their claim. In practice, as mentioned above, very few were granted asylum. Rejected applicants have been given Duldung. Kosovo Albanians who came to Germany illegally and who did not apply for asylum were also granted Duldung.

Since summer 1999 and the end of the Kosovo crisis, no deportation of Kosovo Albanians has taken place due to the ongoing insecure situation in the region. However, Kosovo Albanians with Duldung – i.e. the vast majority of them – have no prospect of being issued with a residence permit and are expected to leave Germany. Though currently not enforced, the German authorities have decided that all refugees from Kosovo should be returned, if necessary by force, as soon as the situation in the region makes this possible.

Rejection at the border

Section 18(2) of the Asylum Procedure Act states that permission to enter shall be refused by the border authorities (“Bundesgrenzschutz”) in cases where:

– the asylum seeker “*enters from a safe third country*”.

  The “safe third country” concept is laid down under Section 26a, which refers to Section 16a(2) of the Constitution. According to this, all EU countries as well as other European countries where the application of the Geneva Convention and the European Convention on Human Rights is ensured, are deemed to be “safe third countries”. The list of the non-EU countries concerned must be approved by Parliament. For the time being, this list includes Norway, Poland, Switzerland and the Czech Republic. It is not possible for an applicant to oppose or appeal a decision made on “safe third country” grounds;

– the requirements of Section 27 of the Asylum Procedure Act applies.

  According to this, entry can be refused if it is clear that the asylum seeker has already found protection in another state, if he/she is in possession of a refugee certificate issued by another country under the terms of the Geneva Convention, or if he/she has stayed for more than three months in a third country where he/she was safe from persecution. However, a rejection on the basis of the latter grounds does not apply if the person can present credible evidence that he/she was not safe from *refoulement* there;

– the applicant has been sentenced by a final decision to imprisonment in Germany for a minimum of three years due to conviction for a particularly serious criminal offence and he/she has left Germany within the last three years.

These grounds for rejection apply not only to border applicants, but also to those who are found by the border police within the border area having made an illegal entry into Germany.

Accelerated airport procedure

Under Section 18a of the Asylum Procedure Act, a special accelerated procedure for airport cases is applied to asylum seekers coming from “safe countries of origin”, or without valid passports. The list of “safe countries of origin”, approved by Parliament, includes Bulgaria, Ghana, Poland, Romania, Senegal, Slovakia, the Czech Republic and Hungary.

In these cases, applicants awaiting a decision on entry into the country must remain at the airport, provided it has sufficient capacity to accommodate them. Usually, they stay in special premises within the airport’s transit zone. Unaccompanied minors may also be required to stay there, but they are usually taken care of by social workers. UNHCR and other refugees assisting NGOs normally have access to asylum seekers in the transit zone.

Applicants are interviewed by an official of the Federal Office for the Recognition of Foreign Refugees, with the assistance of an interpreter wherever necessary. The Federal Office must reach a decision within two days of submission of the application, otherwise the applicant will automatically be allowed to enter the territory.

If the Federal Office rejects the claim as manifestly unfounded, entry is refused. The applicant may, however, file an appeal with the administrative court within the next three days, with suspensive effect. The administrative court (“Verwaltungsgericht”) must reach a decision within 14 days and, if it does not, the applicant is again allowed to enter the country. In theory, applicants may be assisted by a lawyer under this accelerated procedure, but no free legal aid is available.

The Dublin Convention

The Federal Office for the Recognition of Foreign Refugees is responsible for implementing the procedure of the Dublin Convention. Applicants processed under this procedure, like other asylum seekers, are issued with an authorisation to stay which is valid for the duration of the procedure (“Aufenthaltsgestattung”) and are given the same social rights as other applicants.

Entry into the territory

Only a few asylum seekers submit their applications for asylum at the borders. Most enter the Federal Republic of Germany on an illegal basis by avoiding border control, or legally, with a valid visa; they then apply for asylum from within the country.

Aliens applying for asylum to the Aliens Office (“Ausländerbehörde”) or to the police must be referred immediately to the appropriate reception centre for registration. Formal applications for asylum must be submitted to the local branch of the Federal Office for Recognition of Foreign Refugees allocated to that reception centre. If the applicant has come from a “safe third country”, this local branch will immediately issue a decision on inadmissibility and, in those cases where it is feasible, order his/her return to that country.

Each case must be processed by the Federal Office in accordance with the provisions of the Asylum Procedure Act, which provides for a personal interview with the asylum seeker. The local branches of the Federal Office in the reception centres carry out these interviews. Interpreters are available where necessary and legal assistance may be provided by some NGOs.

Manifestly unfounded cases

According to Section 30 of the Asylum Procedure Act, applications for asylum must be rejected as “manifestly unfounded” when:

– the prerequisites for recognition as a refugee under Section 16a of the Constitution are obviously not met, and there is no proof to support the need for protection against deportation under Section 51(1) of the Aliens Act. This particularly applies to cases where it is quite apparent that the applicant has come to Germany for economic reasons, or to escape from a situation of general hardship or from a warlike conflict;

– the applicant’s statements are either not substantiated or are contradictory or obviously do not coincide with the facts or are based on forged or falsified evidence;

– the applicant gives false information or refuses to provide information on his/her identity or nationality;

– he/she has stated different personal data and submitted another application for asylum;

– he/she has lodged an asylum application in order to avoid termination of his/her rights to residence in Germany, although he/she had previously had sufficient time to apply for asylum;

– he/she has grossly infringed his/her obligation to co-operate;

– he/she has been expelled pursuant to Section 47 of the Aliens Act (serious criminal offence).

If an application is rejected on “manifestly unfounded” grounds, the applicant will be required to leave the country within one week. However, during this week, he/she may lodge an appeal with the administrative court. The Court bases its decisions solely on the evidence of written material – no hearing is held. As the appeal does not have automatic suspensive effect, the appellant must apply for this separately within the same week and must also substantiate his/her claim. On average, suspensive effect is only granted in about 10% of cases.

The deadlines attached to this procedure (known as the “accelerated procedure”) are regarded as too short and possibly unconstitutional by refugee-assisting NGOs. In many cases, it is not possible to persuade a lawyer to take on an appeal at such short notice or, indeed, to be able to produce any useful information in support of the case. In addition, free legal assistance is only made available to applicants whose cases are deemed to have a chance of success.

In 1999, about 28 % of all applications were dealt with under the manifestly unfounded procedure.

Normal determination procedure

In the first instance, applications for asylum are processed by the Federal Office for the Recognition of Foreign Refugees, under the administrative procedure. All applicants are interviewed in person. After the case has been assessed, the Federal Office may reach one of the following decisions:

– it may recognise the asylum seeker as a victim of political persecution according to Section 16a of the Constitution;

– it may refuse to grant refugee status under Section 16a of the Constitution, but instead grant refugee status (in the form of protection against deportation) under Section 51(1) of the Aliens Act;

– it may refuse to grant either of the above. In these cases, however, the Federal Office must assess whether there are other obstacles to the removal of these rejected asylum seekers, such as those set out in Section 53 of the Aliens Act (e.g. risk of torture, the death penalty, or specific, material threat to life and limb following an expulsion). If the Federal Office accepts that such risks exist, Duldung is granted;

– it may refuse to grant refugee status or any right to remain on the grounds that the applicant may be deported without any risk to his/her safety. The applicant will then be ordered to leave the country within one month.

No detailed information is available on the average processing time required for these cases. The Federal Office for the Recognition of Foreign Refugees estimates that, in 1999, about 30% of the decisions were made within a month, about 54% within three months, but that approximately 25% of the decisions took up to six months. In some cases, it can take much longer. The Federal office has managed to reduce the backlog of cases pending from over 80,000 in 1996 to approximately 40,000 at the end of 1999, as shown below:

Cases pending at the Federal Office	
January 1996	80.880
January 1997	45.704
January 1998	33.476
January 1999	36.475
January 2000	40.339

Appeal

Negative decisions by the Federal Office may be appealed to an administrative court ("Verwaltungsgericht") with suspensive effect within two weeks of notification. Appeals may also be lodged against decisions which are only negative in part, such as the refusal of status under Section 16a of the Constitution but its granting under Section 51(1) of the Aliens Act, or a refusal of refugee status but the granting of Duldung. Any appeal must be substantiated within one month. The procedure before the administrative court includes a hearing, where the presence of the appellant is required.

The Federal Commissioner for Asylum Affairs ("Beauftragte der Bundesregierung für Ausländerfragen"), an administrative body under the Ministry of the Interior, has the right to challenge positive decisions made by the Federal Office within the same legal time-frame. According to NGOs, this happens in about 60% of cases.

Appellants without resources are entitled to receive free legal aid, but this is only granted if their appeal is deemed to have a chance of success.

There are no national figures regarding the success rate for appeals filed with the administrative courts. In three Länder, it was estimated to be about 8% in 1998.

Judgements made by the administrative courts may be further appealed to the Upper Administrative Court ("Oberverwaltungsgericht"), if the latter considers the case to be of special importance.

In cases where there is a question of principle involved, appeals may be lodged against a decision of the Upper Administrative Court to the Federal Administrative Court ("Bundesverwaltungsgericht") in Berlin or to the Federal Constitutional Court ("Bundesverfassungsgericht") in Karlsruhe.

None of these have suspensive effect, but, in practice, deportation orders are suspended.

Legal aid

Asylum seekers are not entitled to free legal aid during the first instance procedure conducted by the Federal Office for the Recognition of Foreign Refugees.

During the second instance before the administrative courts, free legal aid is only granted to those appellants, whose case is deemed to have real prospects of success. In practice, very few are appointed a lawyer free of charge. A very limited number of asylum seekers have enough resources to hire and pay for a lawyer themselves.

Interpreters

Interpreters are provided at all levels of the procedure and are paid for by the State. In practice, some problems may arise in terms of the quality of the services provided, especially where rare languages or dialects are concerned.

Unaccompanied minors

According to Section 12 of the Asylum Procedure Act, unaccompanied minors over the age of 16 years can submit an application for asylum. As far as younger children are concerned, a guardian must be appointed who will submit the application on behalf of the child and who will act as his/her legal representative during the procedure.

Otherwise there are no specific provisions or guidelines for the processing of applications submitted by unaccompanied minors.

Female asylum seekers

A woman whose asylum claim is related to sexual violence or torture or gender-related persecution may request to be interviewed by a female officer with the assistance of a female interpreter. However, as female applicants are not always informed of this right, this is not applied in all cases.

Otherwise there are no specific provisions regarding female asylum seekers and their applications are thus processed in the same way as those submitted by men.

Final rejection

The number of rejected asylum seekers deported in 1999 can be estimated at approximately 32,000 (34,000 in 1998).

Rejected applicants who cannot be deported for reasons beyond their control may, under certain conditions, be granted a residence permit according to Section 30 (3) and (4) of the Aliens Act.

In addition, some of them may benefit from a so-called “longstayers regulation” (“Altfallregelung”). According to this, certain aliens who have had tolerated residence or who could not be returned for a long period of time may be granted residence permits, under certain conditions. Under the last “Altfallregelung” in November 1999, rejected asylum seekers who had come to Germany before 1 January 1990 (or before 1 July 1993 for families with at least one minor child) could apply for a residence permit provided that they had work, had not been sentenced for any criminal offence and did not originate from Bosnia-Herzegovina or the Federal Republic of Yugoslavia (including Kosovo).

On average, about 50% of rejected asylum seekers have remained in Germany on the basis of other forms of residence criteria or Duldung over the past few years.

There is no reliable estimate of the number of aliens staying in Germany on an illegal basis.

Detention

According to Section 57 of the Aliens Act, rejected asylum seekers who do not leave the country voluntarily may be subject to detention measures.

Detention may be ordered as a preparatory measure ("Vorbereitungshaft") when the deportation order has not yet been issued but where it is deemed that deportation would be more difficult unless the alien was detained. Such preparatory detention requires a court decision and it must not exceed six weeks.

Detention is also used to enforce an existing deportation order ("Sicherungshaft"). This applies to those rejected asylum seekers:

– who, without informing the Aliens Office, have changed address after the time limit for leaving the country voluntarily has expired;
– who have not responded to a summons by the Aliens Office regarding their deportation;
– who have tried to avoid deportation;
– who are suspected to be likely to avoid deportation.

Detention must be ordered by a court and must be reviewed every three months. The alien must be released if deportation is not feasible within the next three months for reasons beyond the alien's control. The total period of detention should not exceed six months, although this can be extended for another 12 months. In practice, many rejected asylum seekers are detained for periods exceeding six months.

Application from abroad

It is not possible to make an application for asylum in Germany from abroad.

Family reunification

Family reunification is regulated by the Aliens Act.

Recognised refugees

A person granted refugee status under Section 16a of the Constitution is entitled to family reunification with his/her spouse and unmarried children under the age of 18. Family reunification with other family members may also be granted, provided that the refugee is able to support himself and provide accommodation for them. In principle, unmarried couples are not entitled to family reunification, but a positive decision might be obtained if the couple has children or if they are prepared to get married following the spouse's arrival. Unaccompanied minors with refugee status are entitled to family reunification in Germany with their parents and minor siblings.

Persons with refugee status under Section 51(1) of the Aliens Act are not automatically entitled to family reunification. The decision is at the discretion of the Aliens Office in the refugee's place of residence. In any case, reunification requires that the refugee can support his/her family members materially (adequate housing and income).

Other categories

In principle, other categories, including persons with Duldung or under temporary protection measures as well as asylum seekers have no right to family reunification. However, in exceptional cases, reunification might be granted on humanitarian grounds.

Procedure

Applications for family reunification must be lodged by the family members at a German diplomatic mission abroad. The application is forwarded to the Aliens Office of the refugee's place of residence, which is responsible for making a decision. If family reunification is granted by the Aliens Office, the embassy will normally issue a visa to the family members. However, even where the Aliens Office grants permission, the embassy still has the right to deny a visa.

If a visa application is refused, the applicant may ask for an administrative review of the decision. If it is negative again, he/she may appeal to the administrative court in Cologne, which is the only court responsible for family reunification cases. The procedure is very lengthy (one to two years) and the interpretation of the law is restrictive.

Status of reunited family members

Family members of a refugee recognised under Section 16a of the Constitution may apply for family asylum upon arrival. In such cases, they are issued with a permanent residence permit and a Convention travel document. Those who do not or cannot apply for family asylum receive a limited residence permit and retain their passport. They are allowed to work and are entitled to receive limited social benefits, child benefit and supplementary child allowance, but no language tuition. School attendance is compulsory for their children, but they cannot receive any education allowance. The same applies to all family members of a refugee recognised under Section 51(1) of the Aliens Act, as family asylum is not available to them.

Statistics

Number of asylum seekers

Number of asylum seekers in Germany	
1991	256,112
1992	438,191
1993	322,599
1994	127,210
1995	127,951
1996	116,367
1997	104,353
1998	98,644
1999	95,113

Main national groups

Main national groups seeking asylum in Germany		
	1999	**1998**
Serbia/Montenegro	31,451	34,979
Turkey	9,665	11,754
Iraq	8,662	7,435
Afghanistan	4,458	3,768
Iran	3,407	2,955
Azerbaijan	2,628	not available
Vietnam	2,425	2,991
Nationality unclear	2,396	2,010
Armenia	2,386	not available
Syria	2,156	1,753
Sri Lanka	not available.	1,982

Recognition rate

1999 Recognition Rate		
Total number of first instance decisions	**135,504**	**100%**
Refugee status under Section 16 of the Constitution	4,114	3.04%
Protection against *refoulement* under Section 51(1) of the Aliens Act	6,147	4.54%
Duldung status under Section 53 of the Aliens Act	2,100	1.55%
Rejections	80,231	59.21%
Otherwise concluded	42,912	31.67%

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

Accommodation on arrival

Once in the country, asylum seekers are referred to a particular reception centre in accordance with the centralised distribution procedure, where they submit their formal applications for asylum and undergo a medical check-up. Police records are also checked.

The allocation of applicants amongst the Länder is done in accordance with admission quotas, which are decided by the Länder. Asylum seekers are registered in a so-called EASY Programme (First Reception of Asylum Seekers) and then distributed throughout the country in accordance with these quotas.

It is compulsory for all asylum seekers to stay in reception centres, even for those who have family members already living in Germany. Furthermore, they are not allowed to leave the administrative district in which the centre is located.

The reception centres are run by the Länder and have a minimum capacity of 300 persons, although some are much larger. Meals are provided and asylum seekers are not allowed to cook for themselves. Some centres will also provide clothing in emergencies.

In principle, asylum seekers stay in reception centres for a maximum of three months and then move into an asylum centre (see “Further accommodation” below). However, many stay for much longer before being found a place in an asylum centre. In addition, certain centres operate both as a reception centre and an asylum centre. In such cases, applicants may remain there after the initial three months.

In general, there are no special arrangements for unaccompanied minors or single women. However, several regions have established “clearing and reception centres” for unaccompanied minors, where they can be accommodated. Many reception centres have units reserved for single women. Family members are not normally separated, but it is not always possible to provide them separate accommodation.

Applicants whose claims are rejected on manifestly unfounded grounds and whose deportation may take place without hindrance have no legal basis for being in the country. Accordingly, they are no longer allowed to stay in the reception centres and lose their entitlement to community housing.

Refugee-assisting NGOs have expressed their concern at the poor social conditions facing asylum seekers in the reception centres, which are likely to have a particularly damaging effect on those already suffering from traumatic experiences.

Further accommodation

After this initial reception phase, asylum seekers – unless rejected on manifestly unfounded grounds – are distributed between the local authorities, on the basis of the current population of the Länder and districts within them. No other criteria are taken into consideration.

Asylum seekers have very little say when it comes to choosing the district or even the Land to which they are allocated, since the authorities are only required to take the closest family members (spouses, children and parents) into consideration. It may be extremely difficult for family members who have come to Germany separately to be reunited in the same district.

Applicants are usually accommodated in community housing (asylum centres). Accommodation there is, in principle, compulsory. An asylum seeker is only allowed to stay with family members or friends living in Germany if the district where he/she has been allocated has no asylum centre and if the cost of such private accommodation does not exceed that of accommodation in a centre.

Asylum centres are regulated by regional guidelines establishing minimum standards. However, standards vary from one Land to another, and according to refugee-assisting NGOs, guidelines are not always applied and controlled effectively. In some Länder, asylum seekers have nine m2 living space per person, whereas in others they may have only six m2. In most cases, families are accommodated together in one room, whilst single people normally share rooms and facilities.

In some asylum centres, residents are provided with food or ready-made meals; in others, they have access to kitchenettes where they can prepare their own meals and receive an allowance for food.

The authorities of each city or local district ("Kreis") are responsible for the conditions in their asylum centres and must ensure that the necessary social services are provided. This function is often delegated to charities or private organisations. In the former East German Länder, most asylum centres are run by private organisations, and other Länder are increasingly following this precedent. As a rule, the Land's authorities reimburse the costs borne by the Kreis.

Accommodation in the asylum centres is also provided during the appeal procedure.

Financial assistance

The Asylum Seekers Benefit Federal Act of 1993 ("Asylbewerberleistungsgesetz"), amended in 1997 and 1998, has severely restricted assistance to asylum seekers during the first 36 months of their stay in Germany. There are plans to extend the time for the restrictions to cover the whole time of the asylum procedure.

In accordance with this Act, the monthly pocket money for everyday expenses has been reduced to DEM 80 [EUR 41] per person aged 14 and over, and to DEM 40 [EUR 20.5] per person under 14. All other items essential to personal well being, such as clothes and necessities for personal hygiene, are provided in kind unless this proves to be impractical or unfeasible for some reason. Asylum seekers staying outside the asylum centres may receive assistance in currency or with vouchers.

Following amendments to the Act passed in August 1998, assistance may be further reduced for certain categories of applicants, including those whose identity is not established.

Asylum seekers are not entitled to any form of child benefit.

After this initial 36-month period, they are then entitled to the same social support as nationals, under the Social Assistance Act ("Bundessozialhilfegesetz").

Repayment

Social benefits and accommodation costs do not need to be repaid, unless they have been obtained under false pretences, i.e. if the asylum seeker had his/her own means.

Work

According to Section 61(1) of the Asylum Procedure Act, asylum seekers are not allowed to work while housed in reception centres, i.e. for the first three months following their arrival.

Access to work after the first three-month period is dependant on the date of arrival in Germany:

– asylum seekers who came to Germany before 15 May 1997 may still apply for a work permit for a specific job. The position must first have been offered to German nationals or “privileged” foreigners, such as EU citizens, and advertised for a certain period without being filled. Despite this restriction, a relatively high percentage of the asylum seekers concerned have found employment, particularly in industrialised urban areas. However, such work is generally unskilled and poorly paid. Owing to the high rate of unemployment in the former East Germany, asylum seekers allocated to asylum centres there have virtually no chance of finding work. At the time of writing (May 2000), this provision still concerns a limited number of asylum seekers

– asylum seekers who arrived in Germany after 15 May 1997 – i.e. the vast majority of applicants – are not allowed to work.

Language tuition

Asylum seekers are not given tuition in German language and culture. However, NGOs organise various classes on a small scale in some asylum centres.

School attendance

Although it is not compulsory for the children of asylum seekers to attend school, they have the right to do so in most Länder. In practice, however, this depends on the goodwill, interest, size, financial and human resources available at local schools.

Children are very rarely taught in their mother tongue.

Child care

A number of asylum centres have child care arrangements in place for children between the ages of 3 and 6.

Children may also attend local kindergartens. Expenses are covered by the youth welfare office.

Unaccompanied minors

Unaccompanied minors under the age of 16 are allocated a guardian to represent them during the asylum procedure. Those aged 16-18 are entitled to take legal action in their own right and may therefore apply for asylum themselves.

Some Länder have established special clearing and reception centres for unaccompanied minors.

Health/sickness

Under the Asylum Seekers Benefit Federal Act of 1993, access to medical and dental treatment during the first 36 months in Germany is restricted to cases of serious illness or acute pain.

There are no medical personnel based in the asylum centres, although some centres have contracts with specific doctors, to whom asylum seekers may be referred if necessary.

After this initial 36-month period, and at the earliest from 1 June 2000 onwards, asylum seekers have the same access to the national health service as German nationals, in accordance with the Social Assistance Act.

Freedom of movement/residence

Asylum seekers' freedom of movement is restricted geographically. In general terms, they are only free to move within the boundaries of the local district to which they have been allocated, although, in some cases, this may be extended to a wider area.

If an asylum seeker wishes to travel outside this restricted zone, he/she must apply beforehand to the local Aliens Office ("Ausländerbehörde") for permission. This applies to asylum seekers accommodated in the reception centres and those staying in the asylum centres.

SOCIAL CONDITIONS FOR REFUGEES

Introduction

As far as social conditions are concerned, some distinctions are made between refugees under Section 16a of the Constitution and those protected against *refoulement* under Section 51(1) of the Aliens Act.

Financial assistance

Both categories, including quota refugees under Section 33 of the Aliens Act, are entitled to assistance on the same terms as nationals under the Social Assistance Federal Act.

Social benefit is given in the form of monthly allowances, one-off grants and, more rarely, help in kind (for instance with clothes).

The basic social allowance is intended to cover food, pocket money, essential toiletries, minor purchases, clothes and shoes, electricity bills and transport. The monthly rate is DEM 540 [EUR 276] for a single adult. Family members and children receive less.

When other income, including child benefit and housing benefit, rises above a certain level, deductions are made from this allowance.

A supplement of approximately 20% of the basic rate may be granted to specific groups, including amongst others:

– pregnant women;
– single parents with a child under the age of 7 or two children under 16,
– disabled persons under 16 years;
– persons over the age of 60 who receive social benefit.

One-off payments may be granted towards the purchase of furniture, clothes and shoes, or a major household item.

Child benefit may be granted to both refugee categories:

First and second child	DEM 270	EUR 138
Third child	DEM 320	EUR 133.5
Fourth and further children	DEM 350	EUR 179

Maternity benefit, amounting to DEM 600 [EUR 307], may be granted to constitutional refugees only.

Housing

Due to the housing shortage in Germany, particularly in the cities, refugees are often obliged to remain in the asylum centres for some time despite being granted residence permits.

As a rule, refugees are not entitled to receive assistance from the local authorities or private relief organisations in finding permanent accommodation. However, they are eligible for council housing and may apply for a rent allowance (“Wohngeld”).

Refugees with no private means may be granted a loan by the social assistance office towards a deposit, which they must repay once they start earning.

The social assistance office also gives “settling in” aid based on a detailed assessment of practical needs. This is often made in kind (second-hand furniture, kitchen equipment, etc.).

Rent and heating expenses may also be met by the social assistance office if a refugee has no private resources, although electricity bills must be paid out of the basic social allowance.

Freedom of movement

Both categories of refugees are free to settle and travel anywhere in Germany.

Work

Both categories of refugees are permitted to take up employment on the same terms as German nationals and do not need a work permit.

Language tuition

Only refugees under Section 16a of the Constitution are entitled to German language tuition, in accordance with the Labour Promotion Federal Act, and they are eligible for support, including the cost of the course and living expenses throughout the course. This is generally available for a six-month period, although the length and content of the various courses may differ from one Land to another.

School attendance

Schooling is compulsory for all children – including those of refugees, who are allowed free access to the German education system – for ten years.

Although some schools organise classes where foreign children may receive special attention, there are no general provisions for those who cannot speak adequate German; in fact, they are usually placed in standard German classes.

Mother tongue tuition

It is extremely rare for classes to be taught in a child's mother tongue.

Access to the education system

Both categories of refugees share the same access to the education system as German nationals and are en titled to the same education allowances.

Access to the national health service

Both categories of refugees have access to the national health service on the same terms as German nationals. There is no qualifying period following recognition of their refugee status.

Citizenship

A new regulation on the acquisition of German citizenship was passed in July 1999 and entered into force on 1 January 2000. According to this, children of aliens (including refugees) born in Germany, who have at least one parent with an unlimited residence permit in Germany, may have double nationality until they become 23 years of age. At that time, they have to choose between one of these nationalities.

Aliens not born in Germany may apply for citizenship after six years of lawful residence in the country. For refugees recognised under Section 16a of the Constitution, this eight-year period runs from the submission of their asylum application. Citizenship is granted under certain conditions, including renunciation of the previous nationality, sufficient knowledge of the German language and sufficient resources (the applicant must not be dependent on social benefits).

Repatriation

Both categories of refugees, persons granted Duldung and asylum seekers who have withdrawn their application are usually eligible for assistance towards repatriation.

This financial assistance only covers travel expenses and includes a maximum of DEM 150 [EUR 76.7] for extra luggage, and an allowance of about DEM 150 [EUR 76.7] per adult and DEM 75 [EUR 38.3] per child, up to a maximum of DEM 750 [EUR 383] per family.

In addition assistance may be given towards transport costs once in the country of origin from the arrival point to the final destination.

There is no right of return after repatriation.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

There is no one legal system providing temporary protection in Germany; instead, it is granted on the basis of a variety of provisions in the Aliens Act: Section 32a (civil war refugees), Section 53 (Duldung) and Section 54 (temporary deportation waiver for groups of people).

Most persons under temporary protection, however, are issued with a tolerance permit (Duldung), normally valid for six months on a renewable basis. The social conditions described below are applicable to all those with Duldung.

As mentioned above, a few Kosovo Albanians who arrived in 1999 have been granted a residence permit on the basis of Section 32a of the Aliens Act. However, this was given for a limited period of time only, and then replaced by a Duldung. In practice, most Kosovo Albanians are currently with Duldung.

Financial assistance

Pursuant to the 1993 Social Assistance Act, persons granted a temporary residence permit on humanitarian grounds ("Aufenthaltsbefugnis") or those granted Duldung are, in principle, entitled to social support on the same terms as German nationals, provided that they did not come to Germany solely to obtain such assistance and that they themselves have not caused the reasons which prevent them from being deported. In the last few years, the Länder authorities have regarded the situation in Bosnia-Herzegovina as safe enough to allow the return of Bosnian citizens, and therefore hold them to be directly responsible for their continued stay in Germany. As a result, social assistance granted to Bosnians holding humanitarian residence permits or Duldung was reduced in 1997.

Like asylum seekers, persons with Duldung are not entitled to claim child benefit, supplementary child allowance or education allowances.

Accommodation

Persons with Duldung are generally eligible for the same housing as asylum seekers, i.e. mostly community housing (asylum centres), or hotels and flats.

Freedom of movement

Persons with Duldung may not settle where they choose; their freedom of movement is restricted to a local district or a Land.

Work

Persons with Duldung, who came to Germany before 15 May 1997, are allowed to apply for work permits for specific jobs, as long as they have first been offered to German nationals and other EU citizens. Those who came after 15 May 1997 are not allowed to work.

Kosovo Albanians who first received a residence permit under Section 32a of the Aliens Act (status of civil war refugees) were, in theory, allowed to work. However, since this permit was only granted for three months, they could hardly find a job. In addition, some Länder did not issue the requested work permits.

Language tuition

Persons with Duldung are not entitled to German language tuition and are usually not offered any.

School attendance

Generally speaking, the compulsory school attendance rule does not apply to the children of persons granted Duldung. These children are subject to the same rules as the children of asylum seekers, which means that access to schools is regulated at Land level.

Depending on the regulation and the goodwill of the Länder, various NGOs assist children and try to integrate them in local schools.

Access to the adult education system

Persons with Duldung do not usually have access to the adult education system.

Access to the national health service

In accordance with the law on social benefits for asylum seekers, persons with Duldung status are entitled to the same access to the national health service as German nationals, as far as essential medical and dental treatment are concerned, provided that they have no private means.

Repatriation

At the time of Writing (May 2000), no specific assistance programme has been established for Kosovo Albanians, however it is expected that assistance will be made available under the same terms as for Bosnians.

GREECE

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Constitution of the Hellenic Republic, Section 5(2) of which states that "*the extradition of aliens prosecuted for their action as freedom-fighters shall be prohibited*";

– The Act No. 1975/1991 of 4 December 1991 as amended by Act No. 2452/1996 of 31 December 1996 (the Aliens Act);

– The Presidential Decree No, 61/1999 on the refugee status recognition procedure, revocation of the recognition and deportation of an alien, entry permission for family members and mode of co-operation with the UNHCR representative in Greece;

– The Presidential Decree No. 189/1998 of 25 December 1998 on the conditions and procedures for the granting of a work permit or any other assistance for occupational rehabilitation to refugees recognised by the state, to asylum seekers and to persons granted temporary residence on humanitarian grounds;

– The Presidential Decree No. 266/1999 on the Centre for refugees in Lavrion in the Attika region as well as the medical care for asylum seekers, refugees and persons with humanitarian status;

– The Schengen Agreement (in force since March 2000) and the Dublin Convention.

Refugee status

The only refugee status granted in Greece is Convention status.

Convention refugees are issued with a refugee identity card, which enables them to receive a residence permit which is valid for five years. This permit is then renewable on a five-year basis, unless withdrawn in accordance with the provisions of the Geneva Convention.

Quota refugee

There are no provisions for the reception of quota refugees within Greek legislation.

Other types of residence permit

Residence permit for humanitarian reasons

According to Section 8 of the Presidential Decree No. 61/99, which refers to Section 25(4) of the Aliens Act as amended in December 1996, an asylum seeker whose application has been finally rejected may be granted temporary permission to stay in Greece for humanitarian reasons. Such reasons may be, in particular, that is not practicable to remove the alien to his/her country of origin due to serious health conditions, an international embargo imposed on that country, a civil war followed by mass violations of human rights, etc., or the possible violation of the requirements for *non-refoulement* provided by Article 3 of the European Convention on Human Rights.

The granting of humanitarian status is not normally automatically considered in the asylum decision and requires a special application to the Secretary General of the Ministry of Public Order (MPO). However, in some cases, the Minister awards humanitarian status instead of refugee status after considering the applicant's appeal against the first instance negative decision.

A residence permit for humanitarian reasons constitutes a special status under which the person is protected against deportation, has the right to work and is entitled to receive medical care. The permit is granted for one year and is renewable annually for as long as the circumstances which justified its granting continue to prevail.

According to the statistics of the MPO, 407 residence permits for humanitarian reasons were granted or renewed in 1999.

Temporary protection

Current Greek legislation does not include any general provisions for temporary protection. According to section 25(6) of the Aliens Act, a special regime of temporary protection for specific groups of aliens fleeing to Greece for reasons of *force majeure* can be established by a joint decision of several Ministers. However, such decision has not yet been made.

Greece did not receive Kosovo Albanians under the UNHCR Humanitarian Evacuation Programme in spring 1999. The few Kosovo Albanians who came to Greece applied for asylum immediately and were processed under normal Greek asylum determination procedure.

Rejection at the border

The conditions for legal entry into Greece are laid down in Section 6 of the Aliens Act, which requires the possession of a valid passport or travel document and, if necessary, a visa. According to Section 6(5) of the Act, an alien (other than EU-national) may be prohibited entry when:

– he/she suffers from a disease deemed to constitute a danger to public health;
– he/she does not have the means to support him/herself and his/her family;
– he/she is in transit in Greece and does not have a visa for the country of destination, if this is required;
– he/she is included in the list of the unwanted aliens compiled by the MPO;
– he/she enters with the purpose of finding a job or practising a business activity or an independent profession and he/she does not have the necessary certification from the Greek consulate, which has issued the visa;
– it can be proven from the circumstances that he/she intends to remain in Greece as an immigrant without prior approval, or that he/she may constitute a danger to public order or to the country's security;
– his/her travel document does not secure return to the country of origin.

However, according to Section 1 of the Presidential Decree No. 61/99, an alien who applies for asylum in Greece, either at a border point or within the country, on the grounds of his/her fear of persecution because of race, religion, nationality, social class or political opinion is considered as an asylum seeker according to the Geneva Convention, and "*his[her] removal from the country is by no means permitted until a final judgement on his[her] claim has been reached*". Consequently, asylum applications submitted in Greece, be it at the border or within the country, cannot be rejected as inadmissible and applicants must be given access to the determination procedure.

Nevertheless, following the amendments to the Aliens Act of December 1996, all applications lodged at a point of entry (airport or seaport) are dealt with "by priority and through an accelerated procedure", as provided for in Section 25(3) of the Act.

According to this, applicants must remain in the transit zone of the port or airport for the duration of the examination of their claim under the accelerated procedure, but for no longer than 15 days.

Airports have established so-called "surveillance areas", which are the responsibility of the airport authorities and which are guarded by the police, where asylum seekers are held pending the decision. Men and women are usually separated. Food is provided and washing facilities are made available. NGOs have access to the asylum seekers in the "surveillance areas" and may provide assistance and counselling. In ports of entry without a "surveillance area", the police are responsible for providing applicants with accommodation, food and washing facilities.

A description of the criteria and rules for this procedure is provided under "Accelerated procedure" below.

In practice, approximately 90% of all asylum seekers enter Greece illegally from Turkey and avoid the border by crossing the Evros River or by landing secretly on one of the many Greek islands close to the Turkish coast. Since no readmission agreement exists between Greece and Turkey, it is impossible for these people to be formally returned to Turkey.

The Dublin Convention

If in the course of the accelerated or the normal asylum determination procedure, it appears that another state is responsible for examining the application according to the criteria of the Dublin Convention, the Greek authorities will send a request to take charge to this state. If the latter accepts responsibility, the asylum seeker is provided with a travel document and transferred to that state. Similarly, Greece will examine the asylum claim for those asylum seekers returned to the country by other states on the basis of the Dublin Convention.

Applicants processed under the Dublin Convention are given the same social rights as other asylum seekers.

Entry into the territory

Applications for asylum must be submitted in written or oral form to the border authorities or, if the asylum seeker is elsewhere in the country, to any other public authority. If the claim is submitted to a non-police authority, the latter must immediately inform the appropriate local police authority and refer the applicant to it.

An application for asylum is considered to cover the applicant him/herself and the family members who are with him/her and under his/her protection. Those considered as family members are the applicant's spouse, single children (of both or either parent) under 18 years, children over 18 years suffering from any disability and therefore unable to apply individually, and the applicant or his/her spouse's dependent parents.

Asylum seeker are normally interviewed by the police immediately after submission of their claim. An interpreter is always provided where necessary. After the interview, the asylum seeker is issued with an asylum seeker's card (the "pink card"). In Athens, however, due to the large number of asylum seekers and the insufficient number of interpreters, applicants cannot be interviewed immediately. Instead, they are provided with a "note of service" – i.e. a document proving that they have lodged an asylum application and bearing the name, nationality and photograph of the holder, as well as an appointment for the interview. The "note of service", duly signed and stamped by the police authorities, is replaced by the "pink card" when the interview

has taken place. After the interview, the police transfer the interview records to the Ministry of Public Order.

In many cases asylum seekers are arrested by the police as illegal entrants. According to a Ministerial Decision of 1992 (the conformity of which has been questioned, in relation to the Constitution), asylum seekers who have applied for asylum after being arrested for an illegal stay in Greece should remain detained until a final decision on their asylum application has been made.

There is no specific regulation for the maximum period of detention. However, there are general limits provided by the Greek Constitution on "lawful conditions for arrest and detention". Illegal detention is also examined by the courts according to the constitutional provisions for the judicial control of administrative acts (see "Detention" below).

The Greek Council for Refugees has appointed lawyers as legal correspondents in several towns along the Northern and Eastern Greek borders. Their task is to provide legal aid to asylum seekers (including those in detention), and to assist the authorities in dealing with asylum cases.

Applicants who are not dealt with under the port/airport procedure and who are not detained, are required to stay at a place of residence chosen by them or assigned by the authorities for the whole period of the examination of their claim. There is no direct control as such, but they must report any change of address to the police. If they do not respect this obligation, they are considered as being with "unknown residence" and their asylum procedure may be interrupted by a decision of the Secretary General of the Ministry of Public Order. However, if within the space of three months, the applicant is able to justify that his/her absence from the assigned place of residence was due to *force majeure*, the decision will be cancelled and the asylum application examined.

Accelerated procedure

According to Section 25(2–3) of the Aliens Act and Section 4 of the Presidential Decree No. 61/1999, an application for asylum should be examined as a priority and through an accelerated procedure when:

– it is submitted upon arrival at a point of entry in a port or an airport, or;

– it is manifestly unfounded, and the claims of the applicant are clearly unfounded, fraudulent or abusive, or;

– the applicant has arrived from a "safe third country", where he/she is not in danger of being persecuted for some of the reasons provided for in the Geneva Convention, nor is he/she in danger of being returned to his/her country of nationality or usual residence.

First instance

First instance decisions in the accelerated procedure are made by the Head of the Division for Police, Security and Order of the Ministry of Public Order, and are based upon relevant recommendations from the Department of State Security of the Ministry. The decisions are based on the police interviews.

The Head of the Division must make his/her decision within ten days. However, this is reduced to 24 hours in port and airport cases.

If the Head of the Division decides that the asylum application does not fulfil the requirements for the accelerated procedure, he may transfer the application to the normal procedure.

Appeal

Negative decisions by the MPO's Head of the Division for Police, Security and Order can be appealed, with suspensive effect, to the Secretary General of the MPO within ten days of notification. In the port and airport procedure, during which applicants are held in the waiting zones, this time limit is reduced to five days.

The Secretary General decides on the appeal after receiving the recommendation of the Appeals Board Committee (for a description of the Committee see under "Appeal" below). Although the Appeals Board is a consultative committee, its recommendations are usually adopted by the Secretary General. The Secretary General's decision must be made within 30 days of the filing of the appeal. According to section 25(3) of the Aliens Act, this time limit is reduced to 15 days at ports and airports.

It is possible to lodge a request for annulment against the Secretary General's negative decision with the Supreme Court, provided the legal requirements are met. Such requests must be lodged within 60 days of notification of the negative decision. It has no automatic suspensive effect.

All decisions reached under the accelerated procedure are notified to the UNHCR office in Greece.

Normal determination procedure

First instance decisions under the normal determination procedure are made by the Secretary General of the Ministry of Public Order following recommendation from the Ministry's Department of State Security. In practice, in the larger cities, the examination of the applications is conducted by the Aliens Sub-Directorates or Departments. In areas where there are no Aliens Departments, the interview is conducted by the Security Sub-Directorate (or Department) of the Police. Under the airport accelerated procedure, the interview is conducted by the security department of the state airports.

Applicants are interviewed by a police officer with the assistance of an interpreter, if necessary. Applicants are given sufficient advance notice of the interview, so that they can prepare themselves and consult a lawyer who will assist them during the procedure and may be present during the interview.

If it is established or if it seems that the asylum seeker has been subject to torture, he/she is referred to the Medical Rehabilitation Centre for Victims of Torture in Athens, which subsequently submits a report.

According to Section 2(2) of the Presidential Decree No. 61/1999, asylum applications must be examined by authorities within three months of their submission. In most cases, however, the three month time limit cannot be met due to technical problems, for example the insufficient number of qualified interpreters and specialised staff to assist at interviews. In practice, the processing time varies from several months to one year, sometimes more. This depends on whether the application is processed in one of the major cities, in particular Athens, where delays are longer, or in an area where interviews are conducted immediately after submission of the application.

Appeal

Negative decisions by the Secretary General of the MPO can be appealed to the Minister of Public Order. The appeal has suspensive effect and must be lodged within 30 days of notification. In practice, it is filed with the local police authority, and then forwarded to the MPO.

The Minister of Public Order takes the decision based on the recommendation made by the Appeals Board Committee. This six-member body comprises the legal counsellor of the MPO, acting as Chairman, a legal counsellor of the Ministry of Foreign Affairs, a high level official of the diplomatic corps, a high-level officer of the Police – all four are appointed by their respective Ministry – as well as a representative of the Athens Bar Association and the Legal Protection Officer or another representative of the UNHCR office in Greece.

The appellant is notified the date of the session by the Appeals Board Committee and is informed of his/her right to attend the hearing and to give oral explanations with the assistance of an interpreter. In practice, appellants are very often assisted by lawyers of the Greek Council of Refugees throughout the appeal procedure, including at the hearing of the Appeals Board Committee.

Although the Appeals Board is a consultative committee, its recommendations are usually followed by the Minister.

According to Section 3(5) of the Aliens Act, the Minister of Public Order must take the decision within 90 days following the filing of the appeal. In practice this time limit is generally upheld.

In certain cases, a request for annulment may be filed with the Supreme Administrative Court, within 60 days following notification of the MPO's negative decision. It is also possible, under certain conditions, to apply for suspensive effect.

According to Section 5 of the Presidential Decree No. 61/1999, an application that has been rejected by a final decision may not be re-examined, unless the applicant submits new and crucial evidence, which would have justified the granting of asylum, had this been known before the negative decision was issued. Claims rejected under the accelerated procedure may not be re-examined.

The decision to authorise the re-examination of an application is made by the Secretary General of the Ministry of Public Order on a discretionary basis.

Legal aid

The Athens Bar Association has established a legal aid network for those aliens who are unable to pay for their legal expenses. However, this system, which is not state supported but financed from the Bar's own resources, is not sufficient to cover all needs. Asylum seekers may also receive legal assistance from several NGOs, including the Greek Refugee Council (GRC) and the Greek Red Cross.

The GRC's Legal Unit provides legal aid to asylum seekers during the asylum procedure. Its lawyers, accompanied by interpreters of the GCR, visit the detention centres in the Athens area on a daily basis in order to maintain contact with detained asylum seekers and to facilitate their access to the asylum procedure. Applicants may also receive legal counselling at any stage of the asylum procedure, either from the GCR's own lawyers or from one of the 54 correspondent lawyers throughout the country. Finally, the GCR's lawyers are often required to visit the border areas, in order to provide assistance to asylum seekers subject to criminal proceedings for illegal entry and also to brief the appropriate authorities there on asylum issues.

Interpreters

According to Section 1(6) of the Presidential Decree No. 61/1999, all asylum seekers must be informed of the asylum procedure in a language which they understand. In practice, this is done through the distribution of a leaflet or with the assistance of an interpreter.

The interviews with the authority during the first instance or the appeal procedure are always conducted with an interpreter, if necessary. In practice, the lack of qualified interpreters and the consequent need to postpone the interviews, leads to longer processing times in many cases. Interpretation costs at all stage of the determination procedure are covered by the MPO's budget.

The GCR is able to provide interpreting assistance when this is needed (the interpreting services provided by the state are not always sufficient), especially in the Athens region.

Unaccompanied minors

The police must inform the Minors' Prosecutor of any unaccompanied minor asylum seekers, for the latter to decide on whether a guardian should be appointed.

There are no specific provisions for the processing of asylum claims submitted by unaccompanied minors. In practice, however, they are considered as vulnerable and their cases are examined as a priority.

Female asylum seekers

There are no specific provisions for women. In certain cases (for instance, pregnant women) they can be considered as vulnerable cases and have their cases examined as a priority.

Final rejection

Asylum seekers whose applications have been rejected by a final decision are given a fixed time limit – usually three months –, during which they are requested to leave the country voluntarily.

Rejected asylum seekers may also apply for temporary residence for humanitarian reasons (See under "Other types of residence permit" above).

Detention

Asylum seekers who apply for asylum after having been arrested by the police for an illegal stay can be detained for the whole determination procedure, in accordance with a Ministerial Decision of 1992. Detention usually takes place in special detention centres or police stations, although those applicants who are subject to a judicial order of deportation are transferred to normal prisons. There is no specific regulation for the maximum period of detention. However, there are general limits provided by the Greek Constitution on "lawful conditions for arrest and detention". Illegal detention is also examined by the courts according to the constitutional provisions for the judicial control of administrative acts.

Rejected asylum seekers may also be detained during the deportation proceedings. The conditions of detention and judicial control are the same as for asylum seekers.

Applications from abroad

Applications for asylum in Greece may not be submitted from abroad.

Family Reunification

Only Convention refugees are entitled to reunification with their family members. Under Section 7 of the Presidential Decree No. 61/99, family members are defined as the refugee's spouse and single children under 18 years, as well as his/her or his/her spouse's parents, provided that they were living with the refugee and were supported by him/her prior to their arrival in Greece.

Reunification is conditional on the refugee proving that he/she has earned a minimum income during the six months before the submission of the application for family reunification and upon him/her committing him/herself to cover all expenses related to the stay in Greece of the family members.

In practice, the refugee residing in Greece must submit the required documents to the Aliens Police, which forward them to the Ministry of Public Order with a recommendation. Provided that the conditions are met, the case is then transferred to the Ministry of Foreign Affairs, which is responsible for issuing the visa to the family members abroad. In many cases, the Greek Council for Refugees assists refugees in this procedure.

Family members arriving in Greece on the basis of family reunification have the same rights and obligations as the refugee living in the country and they are issued with a similar residence permit.

Statistics (source MPO statistics)

Number of applications submitted in Greece	
1996	1,640
1997	4,380
1998	2,953
1999	1,528

Number of Convention statuses granted

Number of Convention statuses	
1996	160
1997	130
1998	156
1999	146

Number of residence permits for humanitarian reasons

Number of residence permits for humanitarian reasons	
1996	not available
1997	not available
1998	386
1999	407

Main national groups

Main national groups seeking asylum in Greece in 1999	
Iraq	906
Turkey	195
Afghanistan	116
Iran	74

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

Provisions for the social rights granted to asylum seekers in Greece are laid down in various legal texts including:

– the Presidential Decree No. 266/1999 on the Centre for refugees in Lavrion in the Attika region as well as the medical care of asylum seekers, refugees and persons with humanitarian status;

– the Presidential Decree No. 189/1998 on the Conditions and procedure for the grant of a work permit or any other assistance for occupational rehabilitation to refugees recognised by the state, to asylum seekers and to those granted temporary residence on humanitarian grounds;

– the Act No. 2646/1998 on the National system of social care.

Accommodation on arrival

According to Section 24(2) of the Aliens Act, as modified in December 1996, the Ministries of Health and Welfare and of Public Order are responsible for establishing and organising temporary reception centres for asylum seekers. Appropriate shelters for applicants held at ports and airports should also be provided. However, no measures have yet been taken to open these facilities. Thus, for the time being, no accommodation is provided by the authorities to asylum seekers arriving in Greece, with the sole exception of the Lavrion reception centre near Athens.

In the absence of any state-supported facilities at border points, churches and members of the local communities provide initial accommodation and food.

Within the country, the Lavrion reception centre, established under the provisions of the Presidential Decree No. 266/1999, is the only accommodation made available by the authorities. It is located southeast of Athens and has a capacity of 300 beds. The centre operates under the authority of the Ministry of Health and Welfare. Social services and education programmes are run by the International Social Service but financed by the Greek authorities.

The number of places in the centre is very limited and priority is therefore given to vulnerable cases such as persons with psychological problems, unaccompanied minors, elderly people, single parents, large families with young children and persons with special needs.

Due to the insufficient number of places in the Lavrion centre, accommodation is problematic. In practice, some needs are covered by non-governmental organisations, such as the Red Cross, the Greek Council for Refugees (GCR), the Social Work Foundation (SWF) and Caritas.

In 2000, the GCR is running a programme, financed by the European Commission, under which a daily allowance of GDR 1,500 [EUR 4,5] is granted for 20 days to a maximum of 1,660 newly arrived asylum seekers, in order to assist them in finding accommodation.

Financial assistance

Provided by the state

In principle, no financial assistance is granted to asylum seekers by the Greek state. In special cases, however, assistance may be given to unprotected children, for example orphans, unaccompanied children, children whose parent is imprisoned or seriously ill, etc.

Provided by refugee assisting NGOs

The GCR and the SWF run a programme under which financial assistance is provided without distinction to vulnerable asylum seekers, convention refugees and persons with residence permits for humanitarian reasons.

The persons deemed vulnerable are single parents, old people without family support, persons with chronic physical or mental illness, large families with four or more school-aged children, unaccompanied minors, torture victims who are unable to work, as well as women at risk.

The monthly subsistence allowance granted under this programme is as follows:

Single person	GDR 52,000	EUR 154.6
Any subsequent family member	Additional GDR 10,400	EUR 30.9

In addition to this subsistence allowance, the GCR and SWF's programme also includes:

– a food allowance, granted in co-operation with local supermarkets. The amount paid is GDR 20,000 [EUR 59.4] per month;

– an emergency assistance can be granted in special cases, for example when a sudden illness prevents the person to work. Its amount lies between GDR 150,000 [EUR 446.1] for a single person to up to GDR 200.000 [EUR 594.8] for a family per year;

– assistance may also be granted to buy medication, which is not available in the state hospitals or cannot obtained from humanitarian health organisations, such as Médecins du Monde and Médecins sans Frontières. It may also be granted in order to pass medical examinations not available or not offered free of charge in Greek hospitals.

Work permit

According to the Presidential Decree No. 189/1998, asylum seekers can be granted a temporary work permit which is valid while their application is under determination procedure. Normally, such a permit is valid for all types of profession and employment.

In practice, however, it is very difficult for asylum seekers to find employment which has legal status and which offers access to social security insurance. In many cases, the permit is requested in order that they can work as self-employed street sellers.

Language tuition

Asylum seekers may attend Greek or English language courses provided by the University of Athens, the Greek Council for Refugees, the International Social Service, the Social Work Foundation, the International Organization for Migration (OIM) and the Greek Red Cross.

These courses are offered free of charge, although some fees may be required for special courses.

School attendance

All children have access to all levels of education irrespective of their status in Greece. Most children of asylum seekers of primary education age do attend school. Due to the language barrier and the lack of financial support, those of secondary education age often prefer to seek work.

Children who need supplementary language classes may attend afternoon classes at the Intercultural Centres, which are usually located in the areas where most refugees live. The costs for these classes are covered by the Greek Council for Refugees. The Lavrion reception centre also offers language classes for children to prepare them for school attendance.

Child care

Child care centres accept the children of asylum seekers and refugees. As these children are considered as a vulnerable population group, they are usually given priority by the social services. In addition, the Lavrion reception centre offers medical care and child care education.

Unaccompanied minors

Unaccompanied minor asylum seekers have very limited access to the Greek social institutions for minors. Out of the 28 unaccompanied minors registered by the GCR in 1999, only three were accepted by the private association “Children's smile”.

Other Greek state or non-state institutions contacted have refused to take charge of other minors due to lack of places. At present, the GCR covers the costs of their accommodation in youth hostels in Athens and for their meals.

Health/sickness

There is no compulsory medical check-up on arrival but this will be required before the granting of a work permit. Following this, the applicant is issued with a medical certificate stating that he/she does not suffer from any contagious disease.

Asylum seekers are entitled to free medical care and hospital treatment in accordance with the Presidential Decree No. 266/1999. This is also provided for under Section 24(2)c of the Aliens Act, as modified in December 1996 according to which all asylum seekers, refugees and those granted humanitarian status, have access to state hospitals for free hospitalisation, medical examinations and provision of medication.

If some specific medicines are not available from the state hospitals, efforts to find them are made by the Médecins du Monde and Médecins sans Frontières.

Freedom of movement

Asylum seekers can move freely within the Greek territory, provided that they keep the Aliens Department of the Police informed of their whereabouts.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

In principle, recognised refugees are entitled to the same rights and social benefits as Greek nationals in accordance with Article 23 of the Geneva Convention. In practice, however, local welfare authorities do not grant to refugees the various allowances which are paid to nationals.

Specific measures for refugees are included in the Presidential Decrees No. 266/1999 and 189/1998 as well as in the Act No. 2646/1998 (see “Social Conditions for Asylum Seekers” above).

Financial assistance

Assistance provided by the state

At present, there is no financial assistance granted by the Greek state to recognised refugees, although they are, in principle, entitled to the same rights as Greek citizens. The denial of an allowance to vulnerable refugees has been referred to the Ombudsman but, at the time of writing, the provisions of Article 23 of the Geneva Convention are still not applied in Greece.

Assistance provided by refugee assisting NGOs

The assistance programme run by the GCR and SWF covers Convention refugees, asylum seekers and persons with humanitarian status without distinction. The eligibility criteria and the allowances granted are described under “Financial assistance for asylum seekers” above.

Housing

At present, only the Lavrion reception centre – although it is mainly intended for asylum seekers – offers places of accommodation to recognised refugees.

In practice, most refugees live in cities, where they have to find their own accommodation, sometimes with the assistance of social workers.

In 2000, through a project run by the GRC, 20 refugee families will receive assistance in seeking a place to rent as well as general information on their legal rights and obligations. Financial assistance will also be provided in order to cover the rent and to purchase basic household equipment.

Freedom of movement

As the Greek Government has lifted its reservation regarding Article 26 of the Geneva Convention of 1951, refugees are allowed to travel all over Greece without restriction, and several are employed in border areas, particularly on the Aegean islands.

Work permit

According to the Presidential Decree No. 189/1998, refugees have the right to work and can obtain a work permit before completion of the determination procedure. In practice, many experience difficulties in finding a job.

Language tuition

The same as for asylum seekers.

Mother tongue tuition

Refugees can attend Turkish, Farsi, Assyrian and Arabic classes in the framework of the GCR's intercultural Centres

From 2000, volunteers will run mother tongue classes for refugees.

School attendance

Children of refugees are entitled to attend all levels of the Greek educational system, and most do take up places.

Access to adult education system

Refugees may be accepted into Greek universities, depending on their fluency in Greek. A preparatory course is offered at Athens University. At the end of this intensive course, refugees pass a language proficiency test and, if they succeed, they are entitled to enrol at the university. Refugees are exempted from passing the national examination test normally required for Greek nationals in order to enter the university/post-secondary education system. As a result, refugees can register with the university of their choice.

Refugees have also access to vocational training courses organised by various educational institutes. In 1999, 84 refugees took part in various vocational training courses, including accountancy assistants within the mass media, car mechanics using new technology, technical maintenance (various specialisation), construction technicians, hotel employees (auxiliary personnel) and ecological agriculture.

Access to the national health system

The same as for asylum seekers.

Citizenship

Refugees can apply for Greek citizenship under the same terms as foreigners in general, i.e. after ten years of residence in Greece, along with various other requirements.

Repatriation

Recognised refugees who wish to repatriate may be assisted under a specific programme financed by UNHCR.

ICELAND

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and the New York Protocol of 1967;

– The Foreign Nationals Supervision Act No. 45 of 12 May 1965.

The Schengen Agreement should enter into force in Iceland in the course of 2001.

Iceland is not a EU member state and thus it is not party to the Dublin Convention. However, alongside with Norway, a parallel agreement to the Dublin Convention is being currently being negotiated with the European Union.

Refugee status

Convention status is the only kind of refugee status granted in Iceland. Convention refugees are entitled to receive a permanent residence permit.

So far (May 2000), only one person has been granted refugee status under the normal determination procedure in Iceland.

Quota refugees

Although Iceland does not have a general agreement with UNHCR regarding a regular quota of refugees, it has received quota refugees occasionally since 1956. For the period 1996-1999, there has been an annual quota varying from 17 to 75. The Icelandic Government may decide on the composition of these groups on the basis of UNHCR´s written recommendations. Quota refugees are granted Convention status.

In addition, Iceland has received 75 Kosovo Albanians under the UNHCR Humanitarian Evacuation Programme. These persons were all granted refugee status upon arrival and permanent residence permit.

Other types of residence permit

Ordinary temporary residence permits may be granted for humanitarian reasons to aliens who cannot be returned to their countries of origin. Permits are granted for one year and renewable annually. After a period of three years, there is a possibility to apply for a permanent residence permit.

The current Icelandic legislation does not include any provisions on temporary protection.

Rejection at the border

Section 10(4) of the Foreign Nationals Supervision Act – the only provision of the Act dealing specifically with the asylum seekers' access to the territory – states that if an alien maintains that he/she has been forced to seek asylum as a political refugee, the police may not deny entry into Iceland, providing that his/her statement is considered to be credible.

A preliminary interview is conducted by the police in view of gathering information on identity, nationality and travel route. If the police consider that the asylum seeker's statement is not credible, the Chief of the Police may decide to refuse entry into the country. If the police consider the asylum seeker's statement credible the application for asylum is forwarded to the Directorate for Immigration under the Ministry of Justice who is responsible for taking the decision on asylum.

No formal appeal is possible against a decision of rejection at the border and the applicant will be required to leave the country immediately.

Entry in to the territory.

Asylum seekers who are not rejected at the border upon arrival are allowed to enter the territory and are admitted to the asylum determination procedure. Applicants who have entered Iceland illegally must submit their application to the Directorate for Immigration within the country.

Determination procedure

First instance decisions under the asylum determination procedure are made by the Directorate of Immigration. The first instance decision is based on the written record of the police interview as well as a second interview with the Directorate. Each asylum case is notified to the Icelandic Red Cross and one of its representative is present at all interviews. His/her role is mainly a humanitarian one.

It is the aim of the Directorate of Immigration to reach a decision within three months from submission of the application, but at present the processing of an application may take up to ten months.

Appeal

According to Section 12a(2) of the Foreign Nationals Supervision Act, asylum seekers shall be informed of their rights of appeal upon notification of a negative first instance decision. They must also be assisted in making such appeals.

The appeal must be lodged with the Ministry of Justice within 15 days following notification of the decision. If the appeal is lodged before the deportation measure is carried out (which, in practice, is almost always the case since deportation orders are not enforced within these 15 days), it has suspensive effect until the Minister makes his/her final decision.

The appeal procedure is an administrative one and the appellant is not required to appear in person. The average processing time for the appeal procedure lies approximately around three months.

In principle, the Minister's decision is final. However, if he/she considers that his/her application has not been processed according to the law, the asylum seeker has the possibility to lodge an appeal with the first instance civil court and in case of rejection, to the Supreme Court.

Legal aid

There is no entitlement to legal aid during the initial interview with the police. If the representative from the Icelandic Red Cross considers that legal representation should be granted to an applicant, this is made available for the interview with the Directorate of Immigration.

During the appeal procedure asylum seekers are entitled to five hours of free legal counselling.

Interpreters

Interpretation is provided at all stages of the asylum procedure. There might however be difficulties with finding sufficient interpreters for some rare languages but in these cases an interpreter is usually available in the asylum seeker' s second language.

Unaccompanied minors

So far, there have not been any unaccompanied minors among the asylum seekers who came to Iceland. There are no special provisions for the processing of applications, which might be submitted by unaccompanied minors.

Female asylum seekers

There are no specific provisions for the examination of applications lodged by women.

Final rejection

Rejected asylum seekers are required to leave the country voluntarily as soon as possible. If they do not comply, the police may begin deportation proceedings. Detention may be ordered as a way of ensuring the enforcement of the deportation order (see "Detention" below).

Some rejected asylum seekers who cannot be deported for practical reasons are granted a temporary residence permit, valid for one year.

Detention

According to Section 15 of the Foreign Nationals Supervision Act, the police must ensure that an asylum seeker can be contacted until a decision on entry in the country or expulsion from Iceland for those who have been rejected, has been made.

For this purpose, the person may be required to report to the police at certain times or not to travel beyond certain limits within the country. If this is considered to be insufficient to ensure the person's presence, detention can be ordered.

If deportation is delayed by more than fourteen days, the police must inform the Immigration Service of the reasons for this without delay.

Family reunification

There are no provisions regarding family reunification in the Foreign Nationals Supervision Act.

Current practice results from the agreements given by the Ministry of Social Affairs, Ministry of Justice, Ministry of Education, Ministry of Foreign Affairs and Ministry of Health on the Icelandic Red Cross' guidelines regarding family reunification in Iceland.

Refugees who came to Iceland within the framework of the governmental quota were generally allowed reunification with their spouses/partners and children under 18. Unmarried children over 18, who would otherwise be left alone in their country of origin since their parents and siblings are all living in Iceland, may also be granted family reunification. Parents are normally eligible for residence permit if they are dependent upon a child already living in Iceland.

Statistics

Number of applications

Number of asylum applications submitted in Iceland	
1996	2
1997	7
1998	19
1999	17
Total 1996-1999	45

Number of refugee statuses granted

So far, only one person has been granted refugee status in Iceland. This happened in the beginning of 2000.

Number of residence permits granted on humanitarian reasons

Number of residence permit on humanitarian reasons	
1996	2
1997	6
1998	15
1999	2
Total 1996-1999	25

Main national groups

Main national groups to seek asylum in Iceland in 1999	
Ukraine	6
Albania	4
Iraq	3
Iran	2
Sierra Leone	1
Former Yugoslavia	1
Democratic Republic of Congo	1

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

Based on a written agreement with the Ministry of Justice, the Icelandic Red Cross is responsible for providing accommodation to asylum seekers arriving in Iceland. The first three months of accommodation are financed by the Red Cross itself and by the Ministry of Justice afterwards.

Asylum seekers are accommodated in guesthouses where they are allowed to stay for the whole duration of the procedure. This is not compulsory, and applicants who have relatives or friends already living in Iceland may stay with them if they wish to do so.

Financial assistance

Asylum seekers are provided with free lodging and medical service other than medicines. They may also receive assistance in the form of second hand or new clothing.

In addition, applicants are granted a weekly allowance intended to cover all minor personal expenses such as transport, telephone calls, leisure activities, medicine and food. At the time of writing, the rates of this allowance are as follows:

Adult over 18	ISK 10.500	EUR 152.6
Couple	ISK 21.000	EUR 305.1
Child	ISK 5.000	EUR.72.6

Work

Asylum seekers are not permitted to take up paid employment. Should they wish to do so, The Icelandic Red Cross may provide them with voluntary work.

Language tuition

Asylum seekers are entitled to up to 100 hours of Icelandic language course as well as up to 64 hours of computer skills.

School attendance

In principle, children of asylum seekers have no access to the national school system. So far there have not been any school-aged children amongst the asylum seekers who came to Iceland.

Unaccompanied minors

Such cases have not occurred so far.

Health/sickness

All asylum seekers undergo a compulsory medical check up before receiving either the permanent or temporary residence permit. Medical care, except for medicines and dental treatment, is provided free of charge.

Freedom of movement

Asylum seekers are allowed to travel freely within Iceland.

SOCIAL CONDITIONS FOR REFUGEES

Introduction

So far, only one asylum seeker has been granted refugee status in Iceland.

Financial assistance

The Icelandic Social Assistance Act makes no distinction on the basis of nationality. Icelandic citizens, recognised refugees and immigrants are therefore entitled to the same benefits if they are unable to support themselves. For all groups, any personal assets can be taken into account when calculating the amount of benefit to be paid under the terms of the Social Assistance Act.

Work

Refugees are permitted to take up employment and are granted open work permit.

Language tuition

Refugees are entitled to Icelandic language tuition.

School attendance and mother tongue tuition

The children of refugees have access to the state school system on the same basis as Icelandic children. Schooling is compulsory for all children from 6 to 16 years of age.

School-aged children of refugees are entitled to mother tongue tuition if a qualified teacher is available.

Access to the adult education system

Refugees have access to the adult education system on the same footing as nationals.

Access to the national health system

Refugees have access to the national health service on the same terms as Icelandic residents.

Repatriation

All refugees may benefit from a repatriation programme as follows:

- payment of travel expenses;
- a one-off payment of ISK 120,000 [EUR 1,744] per repatriated person.
- 20 kg extra luggage for the transport of belongings.
- financial assistance for the purchase of materials necessary for establishing working and housing conditions/facilities in the country of origin.

IRELAND

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Aliens Act of 1935, as subsequently amended;

– The Irish Nationality and Citizenship Acts, 1956, 1986, and 1994;

– The Refugee Act of 1996 (from the date of entry into force of its different sections, see below);

– The Procedures for Processing Asylum Claims in Ireland of December 1997;

– The Immigration Act of June 1999 from its date of entry into force;

– The Dublin Convention.

The 1996 Refugee Act is not yet fully implemented, due to legal proceedings regarding some of its provision and the fact that it was partly amended in 1999 to take account of the growth in numbers of applications made in Ireland in recent years. At the time of writing (April 2000), only five Sections of the 1996 Refugee Act have been implemented. These include, in particular, Section 2, which extends the scope of the definition of a refugee in Article 1 of the Geneva Convention, Section 5 which provides for the prohibition of *refoulement,* and Section 22 on the implementation of the Dublin Convention.

In December 1997, in the absence of the full implementation of the Refugee Act, the government replaced the existing texts by new Procedures for Processing Asylum Claims in Ireland. These new Procedures (referred to as the Hanlan letter, as the procedures were first notified in a letter to Ms Hope Hanlan, the UNHCR Representative) provide for, *inter alia*, a procedure for manifestly unfounded applications, appeals against a decision to refuse refugee status and temporary leave to remain. They will apply to all asylum applications submitted in Ireland until the Refugee Act is fully implemented.

In January 1999, the High Court found that Section 5(1)(e) of the Aliens Act of 1935, from which the power to issue deportation orders derives, was unconstitutional. This decision was later upheld by the Supreme Court. In June 1999, the Immigration Act was passed by the Irish Parliament with the purpose of re-enacting the Minister's powers to deport non-nationals. The 1999 Immigration Act also provides for amendments to the 1996 Refugee Act.

Refugee Status

Convention status is the only refugee status granted in Ireland and Section 2 of the 1996 Refugee Act contains the same definition of a refugee as Article 1A of the Geneva Convention.

However, according to Section 1 of the Refugee Act, membership of a social group should be interpreted as including *"(…) membership of a trade union and also [includes] 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".*

Convention refugees are granted a residence permit for one year, which is automatically renewed.

Programme refugees

Section 24 of the 1996 Refugee Act defines a "programme refugee" as *"(…) a person to whom leave to enter and remain in the State for temporary protection or resettlement as part of a group of persons has been given by the Government (…) whether or not such person is a refugee with the meaning of the definition of "refugee" (...)".*

Programme refugees are usually invited to Ireland by the Irish authorities at the request of UNHCR and often in response to some humanitarian crisis. Generally, they have the same rights as Convention Refugees.

The first group of programme refugee were Vietnamese, who were granted refugee status on arrival in 1979 and are now mostly naturalised.

The second group consisted of 450 Bosnians who arrived in Ireland between 1992 and 1995 and were initially granted temporary protection by means of a residence permit for one year, which had to be renewed every year. In 1994, however, the authorities decided that Bosnians arriving in Ireland should be granted Programme Refugee status as the conflict in Bosnia showed no signs of being resolved. An additional 87 Bosnians arrived in Ireland in 1998 as part of the family reunification programme and the Bosnian community in Ireland now numbers over 1,400. Many of them are naturalised.

There is no long-term agreement with UNHCR on the reception of quota refugees in Ireland.

Other types of residence permit

Temporary leave to remain (Procedures for Processing Asylum Claims)

According to Section 22 of the Procedures for Processing Asylum Claims of December 1997, a person who has not been granted refugee status should have "*sufficient opportunity to make submissions to the Minister as to whether there are special reasons why leave should be granted to them to temporarily in the state*".

The decision to grant or refuse temporary leave to remain is at the discretion of the Minister for Justice, Equality and Law Reform, and the rights and conditions which pertain to this status are not specified. However, a recent governmental report states that permission to remain may be granted to those who are refused refugee status, but are not returned because their country is at war or for other unspecified compelling reasons.

Persons granted temporary leave to remain are given a one year residence permit, renewable every year pending an improvement in the situation in their country of origin. They are granted the right to reside and work in Ireland for the duration of the permit. After five years of residence with this status, they may apply for naturalisation.

In 1998 and 1999, respectively 27 and 39 applicants were granted temporary leave to remain.

Temporary leave to remain (1996 Refugee Act)

Under Section 17(6) of the 1996 Refugee Act (not yet implemented), the Minister may, at his/her discretion, grant temporary leave to remain to persons whose application for refugee status has been rejected. Section 3(6)(h) of the 1999 Immigration Act provides that the Minister shall have regard, *inter alia,* to "humanitarian considerations*",* in deciding whether to make a deportation order in relation to a person. Such "*humanitarian considerations*" are not defined in legislation.

Kosovo Albanians

About 830 Kosovo Albanians were residing in Ireland at the end of 1999. They have been allocated to various centres throughout the country. On arrival, they were granted a residence permit valid for one year. The Irish government has recently announced that the majority will be repatriated, starting in June 2000. Applications to remain will be considered on an individual basis, by the Department of Foreign Affairs.

At the time of writing, some Kosovo Albanians have returned under a "look and see" programme facilitated by the Refugee Agency, a body established by the Department of Foreign Affairs with the task of co-ordinating arrangements for the admission, reception and resettlement of refugees admitted to Ireland under specific governmental decisions. Under this programme, heads of households can return home temporarily to assess the current situation. Other persons have repatriated permanently.

Rejection at the border

Procedures for Processing Asylum Claims

Section 5(2) of the Aliens (Amendment) Order 1975 provides that an alien coming from any place outside Ireland other than Great Britain and Northern Ireland may be refused leave to enter, if it is considered that he/she:

(a) cannot support him/herself and any dependants that have accompanied him/her;
(b) is not in possession of a valid work permit;
(c) is suffering from an illness specified in the Fifth Schedule to the Order;
(d) has been convicted of an offence, either in Ireland or elsewhere, punishable by at least one year's imprisonment;
(e) is not in possessions of a valid Irish visa;
(f) is the subject of a deportation order;
(g) is the subject of an Order made by the Minister (for Justice Equality and Law Reform) under the Aliens Act 1935 prohibiting him/her from entering Ireland;
(h) belongs to a class of person, making them subject of an Order made by the Minister under the Aliens Act prohibiting them from entering Ireland;
(i) is not in possession of a valid passport;
(k) intends to travel illegally to Northern Ireland or the United Kingdom.

However, in accordance with Section 5 of the Procedures for Processing Asylum Claims, a refusal to enter the country based on the above-mentioned immigration criteria, has suspensive effect, until:

– it has been determined that the asylum seeker was not in fact seeking asylum in Ireland;
– a final decision has been made under the Dublin Convention, according to which the application should be processed by another country;
– it is decided that the application is manifestly unfounded;
– the application is deemed to be abandoned;
– the application has been substantively examined and a final decision reached on it.

In accordance with these provisions, an asylum seeker may not be returned until a decision has been made either to transfer him/her to another country on the basis of the Dublin Convention or to reject his/her application for asylum. In practice, there is no specific border procedure and all port applicants are thus allowed to enter the country – physically if not officially – and have their claim examined by the Asylum Division of the Department of Justice, Equality and Law Reform. In some cases, however, the situation has occurred whereby a person wishing to seek asylum in Ireland has been refused entry at a port of entry and returned, mostly due to language difficulties.

1996 Refugee Act

According to Section 9 of the 1996 Refugee Act, which will replace the above-mentioned Section 5 of the Procedures for Processing Asylum Claims when implemented, an asylum seeker shall be allowed to enter the country and to remain there until:

– his/her application is transferred to another country under the provisions of the Dublin Convention;
– the application is withdrawn or deemed to be withdrawn; or
– the application is rejected.

The Dublin Convention

The Dublin Convention entered into force on 1 September 1997 following a Dublin Convention (Implementation) Order 1997 issued pursuant to Section 22 (already implemented) of the 1996 Refugee Act. This Order sets out a detailed procedure for making decisions under the Dublin Convention. According to this, decisions to process applications in Ireland or to transfer them to another country are made by so-called "appointed officers", i.e. officials appointed by the Minister of Justice, Equality and Law Reform.

The appointed officers' decisions to transfer applicants to another EU country may be appealed with suspensive effect. Such appeal has to be lodged with the appeals officer within five working days following the decision. Under Section 22(4)(b) of the 1996 Refugee Act, the appeals officer is a solicitor or barrister of not less than seven years experience, who is appointed by the Minister for Justice, Equality and Law Reform to decide on such appeals. There is no provision for an oral hearing.

If the requested country refuses to take charge, the asylum seeker is automatically channelled into the Irish refugee determination procedure and his/her application processed by the Irish asylum authorities.

Entry into the territory/submission of the application

An alien wishing to apply for asylum in Ireland may lodge his/her application at the port of entry or within the country. In-country applications can be submitted to any Garda (police) station or directly at the Asylum Division of the Department of Justice, Equality and Law Reform in the Refugee Application Centre in Dublin (for a description of the Refugee Application Centre, see "Legal aid" below). In practice, most applicants choose the latter alternative, and those who apply at a port of entry or a Garda station are referred to the Refugee Application Centre.

Once in the Refugee Application Centre, asylum seekers are required to complete a brief form (ASY1 Form) giving personal details, nationality and travel route to Ireland. In addition, they are given a detailed questionnaire, which is available in 22 languages affording most applicants the opportunity to complete it in a language that they at least have a reasonable knowledge of. However, there are no special provisions made for disabled, blind or illiterate applicants.

The questionnaire contains 84 questions covering personal information, information pertaining to spouse, children, parents and siblings, education, employment, military service, travel details, political involvement and reasons why the applicant is seeking asylum in Ireland. Applicants are given a week to complete their questionnaire and during that time they may consult with the Refugee Legal Service (see "Legal aid" below). On completion, applicants are given a card with their picture, name, nationality and Department of Justice, Equality and Law Reform reference number.

There is no preliminary interview at this early stage.

Since the beginning of April 2000, new applicants for asylum having been issued with questionnaire, are housed in reception centres for up to two weeks pending dispersal to accommodation elsewhere in the country (see "Accommodation" under "Social Conditions for Asylum Seekers" below).

Interview

Asylum seekers are requested to attend an interview at the Asylum Division of the Department of Justice, Equality and Law Reform where interpreting facilities are provided where "necessary and possible". For those who have arrived since January 1999, the waiting period for interview is normally eight-nine months, although it is the intention of the Department to reduce this waiting period in the near future, to three months. Applicants are interviewed by an official of the Department and may be accompanied by a legal representative. The latter is not permitted to speak during the interview but has the opportunity to make comments at the end of the interview. The interview can last between two to five hours.

The applicant may make further representations within five days of the interview. This can include additional information, clarification of issues raised in the interview, legal arguments and additional documentation.

Applicants may be called for a second interview for the purposes of clarification.

Manifestly unfounded procedure

Procedures for Processing Asylum Claims

An accelerated procedure for manifestly unfounded applications was introduced under Sections 12–14 of the Procedures for Processing Asylum Claims. Under these provisions, an application can be deemed manifestly unfounded on one of the 12 following grounds:

1. the application does not show any grounds in support of the claim that the applicant is a refugee;
2. the applicant gave insufficient details or evidence to support his/her claim;
3. his/her reason for leaving his/her country of nationality does not relate to a fear of persecution;
4. he/she did not reveal, without reasonable cause, that he/she was travelling with false identity documents;
5. he/she, without reasonable cause, made deliberately false or misleading representations in relation to the application;
6. he/she, without reasonable cause and in bad faith, destroyed identity documents, withheld relevant information of obstructed the investigation of the case;
7. he/she deliberately failed to reveal that he/she had applied for asylum in another country;
8. he/she applied for asylum with the sole purpose of avoiding removal from Ireland;
9. he/she has already lodged an application for asylum in another State party to the Geneva Convention, which was rejected, and he/she has not showed any material change of circumstances;
10. he/she is a national or a resident from a country party to the Geneva Convention in respect to which he/she has not showed any evidence of persecution;
11. after submitting the application for asylum, he/she without reasonable cause has left Ireland without permission;
12. he/she has already been granted asylum in another country, and his/her reasons for not returning to that country are not related to a fear of persecution.

The Asylum Division of the Department of Justice, Equality and Law Reform is responsible for deciding on whether a claim is manifestly unfounded or not. The procedure includes a full interview with the applicant.

Negative decisions under the accelerated procedure may be appealed to the Appeals Authority. An Appeals Authority is a person appointed by the Minister of Justice, Equality and Law Reform, but who is independent of both the Minister and the Department, with at least ten years practice as a solicitor or a barrister. There are currently 14 Appeals Authorities.

An appeal to the Appeals authority has suspensive effect. It must be filed within seven working days of notification and there is no provision for an oral hearing. UNHCR is notified of the negative first instance decision and is provided with a copy of any appeal submission made. UNHCR has seven days to forward its observations on the appeal case to the Appeals Authority, which then makes a recommendation to the Minister for Justice, Equality and Law Reform. In practice, the appeal decision is made by an officer of the Department of Justice, Equality and Law Reform on behalf of the Minister based on the recommendation of the Appeals Authority.

If it is considered that the claim is not manifestly unfounded and therefore should be considered substantively, the applicant will be informed of the decision and his/her application will be processed further under normal determination procedure. If the first instance decision is upheld, the applicant will not be notified of the appeal decision.

From January to April 2000, 388 applications have been rejected as manifestly unfounded, against only 237 for the previous two years.

The average processing time for a first instance decision under the accelerated procedure for manifestly unfounded applications is six-eight weeks. The average processing time of appeals is the same.

1996 Refugee Act

Section 12 of the 1996 Refugee Act provides a procedure for manifestly unfounded claims, which, when implemented, will replace the procedure under Sections 12–14 of the Procedures for Processing Asylum Claims.

In practice, the provisions of the Act are almost identical to those in the Procedures. In particular, the grounds on which an application may be deemed manifestly unfounded are the same. Under the 1996 Refuge Act, however, the time limit in which to appeal a negative decision will be extended from the current seven days to ten days.

Normal determination procedure

Procedures for Processing Asylum Claims

Following the interview (see above), the interviewing official of the Asylum Division of the Department of Justice, Equality and Law Reform makes a recommendation on the application, which is then examined by a more senior official. The latter makes a decision based on the information given in the questionnaire and the interview and any other information submitted by the applicant. The final decision is then made by an assistant principal. The applicant is notified of the decision in writing. The decision making process has become considerably quicker with applicants now receiving a decision within three-four months of the interview.

1996 Refugee Act

According to Section 11 of the1996 Refugee Act, the task of investigating applications for the purpose of ascertaining whether applicants should be granted asylum will be the responsibility of

the Refugee Applications Commissioner. The Commissioner will instruct his/her officers to interview applicants and the officer will submit a written report of each interview to the Commissioner. The interview, "where necessary and possible", will be conducted with the assistance of an interpreter. Applicants may make written representations through UNHCR and the applicant's legal adviser. The Commissioner is obliged to take account of such representations.

The Commissioner may request the Ministers for Justice and for Foreign Affairs or other appropriate persons to furnish him/her with information necessary for the purposes of his/her investigations. The Commissioner shall keep the applicant informed of progress in his/her case, providing copies of reports, documents or representations submitted to him/her during the course of the proceedings. All such information is to be kept confidential. The Commissioner is obliged to inform the applicant of the procedures by which his/her claim is being investigated and of his/her entitlement to consult a solicitor, to contact UNHCR and to make written submissions to the Commissioner. It is the applicant's duty to co-operate fully in the investigation and to notify the Commissioner if he/she changes address.

Section 13 states that when the Commissioner finishes his/her investigation, he/she shall prepare a written report of the results of the investigation and forward it to the Minister.

The Commissioner must have at least seven years of experience as a practising barrister/solicitor. He/she is nominated for a term of office lasting three years on a renewable basis, and is required to act independently in his/her capacity as Refugee Applications Commissioner. The first Refugee Applications Commissioner has recently been appointed.

Appeal

Procedures for Processing Asylum Claims

According to Section 11 of the Procedures for Processing Asylum Claims an applicant may appeal against a negative decision of the Minister to the Appeals Authority within 14 days of notification. Such appeal has suspensive effect.

The applicant must specify if an oral hearing is required, otherwise the Appeals Authority may consider the case on the papers only. The majority of applicants request an oral hearing.

An Appeals Authority is a person appointed by the Minister of Justice, Equality and Law Reform, but who is independent of both the Minister and the Department, with at least ten years practice as a solicitor or a barrister. There are currently 14 Appeals Authorities.

The Appeals Authority makes a recommendation to the Minister on whether or not refugee status should be granted. An officer of the Department of Justice, Equality and Law Reform makes a final decision on the Minister's behalf, which is based on the recommendation of the Appeals Authority. When making the decision, issues of national security and public order are taken into account.

In 1998 and 1999, respectively 40 and 351 applicants were recognised as refugees following appeal.

1996 Refugee Act

Sections 15 and 16 of the 1996 Refugee Act have been amended by the 1999 Immigration Act. The new sections provide that a Refugee Appeals Tribunal shall be established to consider and decide appeals. This tribunal shall be independent in the performance of its functions. It will consist of a Chairperson and ordinary members appointed by the Minister. These members will

have had at least ten years experience as a solicitor or a barrister prior to their appointment. The Refugee Appeals Tribunal, when appointed, will replace the existing Appeals Authorities.

Legal aid

In November 1998, an agreement was reached between the Legal Aid Board and the Department of Justice, Equality and Law Reform on the provision of a comprehensive legal service for asylum seekers. Under this agreement, the Legal Aid Board service (Refugee Legal Service) has provided since February 1999 a full legal information, advice and representation service to asylum seekers at all stages of the procedure, and has a staff of 32. The service is means tested: the applicant's income must not exceed IEP 7,350 per year [EUR 9,332.5]. Applicants pay IEP 4 [EUR 5] for legal advice and a further IEP 19 [EUR 24.1] for representation at the appeals hearing.

The Refugee Legal Service is located in the so-called Refugee Application Centre (RAC), which opened in October 1998. As well as the Refugee Legal Service, the RAC accommodates the Asylum Division of the Department of Justice, Equality and Law Reform, the Eastern Health Board Refugee Unit (which provides asylum seekers with medical care, social welfare and emergency accommodation) and the UNHCR office.

The Irish Refugee Council's Legal Unit provides legal information, advice and representation to asylum seekers. In 1999 and until June 2000, the Legal Unit has run a Women and Children's project, funded by UNHCR. This project focuses on unaccompanied minors and vulnerable women and involves giving advice and information, attending interviews and making representations on their behalf.

Interpreters

The Procedures for Processing Asylum Claims provide that an applicant will be informed of the procedure *"where possible"* in a language he/she understands, and the asylum interview will be conducted with the aid of an interpreter *"where necessary and possible".* At present the Procedures and the questionnaire are available in 22 languages. Where an applicant has insufficient English, the interview is usually carried out with the aid of an interpreter. However, concern has been expressed about the standard of interpreting in some cases. The authorities have recently awarded a contract for the provision of a translation and interpretation service for the Department of Justice, Equality and Law Reform to a translating company.

Appeals hearings are also carried out with the aid of an interpreter where necessary.

Unaccompanied minors

There are no special provisions for unaccompanied minors set out in the Procedures for Processing Asylum Claims. However, under Section 8 of the 1996 Refugee Act (as amended by the 1999 Immigration Act), where it appears to an immigration officer or authorised officer that a child under the age of 18 has arrived in the country and is not in the custody of any person, that officer shall notify the Health Board and the provisions of the Child Care Act 1991 shall be applied to the child.

Where it appears to the Health Board that an application for refugee status should be made on behalf of the child, the Health Board will appoint a suitable person to make the application on behalf of the child.

The legislation does not provide for a different procedure for child applicants and, in practice, they follow the same procedure as adults.

Female asylum seekers

There is no specific reference to women applicants in either the current Procedures for Processing Asylum Claims or in the 1996 Refugee Act. The Asylum Division of the Department of Justice, Equality and Law Reform endeavours to provide female interviewers and interpreters on request, wherever possible. The Department have stated that they hope to introduce guidelines for their own staff.

Final rejection

When his/her application for asylum is rejected following appeal, the applicant is informed that the Minister intends to issue a deportation order under the provisions of Section 3 of the 1999 Immigration Act. The rejected asylum seeker may then:

– make written representations to the Minister within 15 working days following notification of the final rejection of his/her asylum application setting out reasons why he/she should be permitted to remain in Ireland;

– leave the country before the Minister issues the deportation order, but he/she must inform the Minister of his/her arrangements for leaving;

– consent to the making of the deportation order within 15 working days and the Minister will then arrange for his/her removal.

In practice, although there may be up to several thousand applicants awaiting a decision, very few temporary leaves to remain are granted: 27 in 1998 and 39 in 1999.

Once the deportation order has been issued, it is no longer possible to make an appeal to the Minister on humanitarian grounds. The only legal remedy available at that stage is judicial review.

In 1998, 14 people were deported after final refusal.

Detention

Asylum seekers

According to Section 9(8) of the 1996 Refugee Act (not yet implemented), an asylum seeker may be detained when an immigration or police officer suspects *"with reasonable cause"* that the applicant:

– poses a threat to public order or national security;
– has committed a serious crime of a non-political nature outside Ireland;
– has not made reasonable efforts to establish his/her true identity;
– intends to avoid transfer under the provisions of the Dublin Convention;
– intends to leave Ireland and enter another state illegally;
– has destroyed his/her identity documents without reasonable cause.

The 1996 Refugee Act provides that a detained person shall be brought before a judge of the District Court *"as soon as practicable".* If the judge is satisfied that any of the aforementioned conditions apply, he/she may detain the person for a period of not more than ten days. The judge may order the release of the person *"subject to such conditions as he or she considers appropriate".*

Rejected asylum seekers

Under Section 5(1) of the 1999 Immigration Act, an immigration officer or a police officer may arrest and detain an alien, if it is suspected that he/she has failed to leave the country in violation of a deportation order.

When the alien institutes proceedings to challenge the validity of the deportation order, the court hearing the proceedings or any appeal that may arise therefrom may decide either that the alien shall continue to be detained or shall be released. The release may be subject to conditions which the court thinks are appropriate. Those specified in the legislation are that:

– the alien should reside in a specific place in the state;
– he/she should report at regular intervals to the Garda or immigration officials;
– he/she should surrender any passport or travel document in his/her possession.

However, the maximum period of detention must not exceed eight weeks.

Applications from abroad

There is no provision for a person to make an application for asylum from outside Ireland.

Family reunification

Convention refugees

Family reunification with Convention refugees is provided for under Section 18 of the 1996 Refugee Act, which is applied by the Department of Justice, Equality and Law Reform, though it is not yet formally in force.

Apart from nuclear family members (spouse and children), the Minister for Justice, Equality and Law Reform may grant permission for dependent members of a refugee to enter and reside in Ireland, namely *"any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is suffering from a mental or physical disability, to such an extent that it is not reasonable for him/her to maintain himself/herself fully".*

There is no provision for unmarried partners (heterosexual or homosexual) to apply for family reunification.

Other categories

Family reunification for those granted temporary leave to remain is at the discretion of the Minister. Asylum seekers are not entitled to family reunification.

Procedure

The application for family reunification may be submitted either by the refugee living in Ireland at the Department of Justice, Equality and Law Reform, or by the family member(s) abroad at the nearest Irish Embassy.

Applications are processed by the Departments of Foreign Affairs and Justice, Equality and Law Reform. Family members other than nuclear family must prove that they are dependent on the refugee member living in Ireland. Family members who are granted visas to come to Ireland may receive travel assistance through the Red Cross if they do not have sufficient funds to cover travel costs.

Although there is no formal procedure for doing this, negative decisions may be appealed to the Immigration Division of the Department of Justice, Equality and Law Reform.

Statistics

Number of asylum seekers

No. of asylum applications submitted in Ireland			
	Men	**Women**	**Total**
1996	765	274	1,179
1997	2,641	1,242	3,883
1998	2,874	1,752	4,626
1999	4,963	2,761	7,724

Number of Convention statuses and Temporary Leaves to Remain (TLR) granted

No. of Convention statuses and Temporary Leaves to Remain				
	Convention statuses			**TLR**
	First instance	Appeal	Total	
1996	36	0	36	6
1997	209	4	211	120
1998	128	40	168	27
1999	160	351	511	39

Main national groups

Main national groups to seek asylum in Ireland	
1998	
	No. of persons
Nigeria	1,634
Romania	955
Democratic Republic of Congo	225
Libya	174
Algeria	152
1999 (January–November)	
	No. of persons
Romania	1,966
Nigeria	1,438
Poland	536
Fed. Rep. of Yugoslavia (Kosovo Albanians)	249
Algeria	236

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

Since there are no state-organised reception strategies for asylum seekers, the Department of Justice, Equality and Law Reform have relied, as an alternative, on existing social services designed to meet the needs of homeless individuals under the Social Welfare Consolidation Act of 1991.

Accordingly, the Health Boards are charged with the reception and welfare of asylum seekers. The Refugee Unit of the Eastern Health Board, responsible for the reception of asylum seekers in the Dublin region, where about 80 % of asylum applicants are accommodated, is located in the Refugee Applications Centre (RAC) in Dublin.

The establishment of the RAC in October of 1998 was the first concerted effort of the Irish authorities to co-ordinate the reception of asylum seekers. The RAC centralises existing services for asylum seekers, including additional services such as the Refugee Legal Service (see above under "Legal Aid") and a medical unit.

Towards the end of 1999, the Asylum Division of the Department of Justice, Equality and Law Reform created the "Directorate for Asylum Seekers Services" (DASS) to devise new reception strategies for asylum seekers. Following its establishment, the Directorate for Asylum Seeker Services began dispersing newly arrived asylum seekers to key locations throughout the country and implementing direct support for applicants.

The Department of Justice, Equality and Law Reform have recently announced that a statutory agency, called the Reception and Integration Agency will be established. The proposed Agency, which will come under the Department, will report to a Statutory Board consisting of representatives of relevant Government Departments. It will have the following functions:

– planning and co-ordinating the provision of services to both asylum seekers and refugees;
– co-ordinating and implementing integration policy for all refugees and persons who, though not refugees, are granted leave to remain; and
– responding to crisis situations, which result in relatively large numbers of refugees arriving in Ireland within a short period of time.

Responsibility for reception of asylum seekers and integration of refugees will, in the short term, be handled by the DASS.

Accommodation on arrival

Initially, upon arrival in Ireland, asylum seekers were placed in emergency accommodation, which consisted of bed & breakfast accommodation and hostels for homeless persons, until such time as they found accommodation in the private rented sector.

However, newly arrived applicants are now channelled to various locations throughout Ireland and no longer have the right to chose independent living arrangements.

The DASS is responsible for finding this accommodation and all applicants have access to it. Moreover, Health Boards' community welfare officers, at their discretion, can facilitate the option of accommodation in the private rented sector by granting a rent deposit and a rent allowance (see below). In practice, however, it can be very difficult for asylum seekers to find housing due to language barriers, racial discrimination, lack of availability, and landlords who may be reluctant to accept tenants in receipt of rent allowance.

Asylum seekers have no right to council housing.

Financial assistance

Asylum seekers without income are entitled to the following social benefits:

– Supplementary Welfare Allowance (SWA): this is a discretionary payment granted to homeless people not eligible for unemployment benefit. It is paid on a weekly basis as follows:

Single person	IEP 72	EUR 91.4
Couple	IEP 115.20	EUR 146.2
For each child	IEP 13.20	EUR 16.7

– Rent Allowance may also be granted in order to rent private accommodation. The maximum amounts are as follows:

Single person	IEP 70 per week	EUR 88
Couple	IEP 110 per week	EUR 139.6
Single person (sharing in a house)	IEP 55 per week	EUR 69.8
Single parent with child	IEP 600 per month	EUR 761.8
Couple with a child	IEP 600 per month	EUR 761.8
Families sharing a house	IEP 700 per month	EUR 888.8

– Exceptional payments may also be granted by the Health Board, on a discretionary basis, such as a clothing allowance, fuel allowance or maternity allowance. All these benefits are means tested.

– Child benefit may also be granted for children of asylum seekers under 16 and for those between 16 and 18 in full-time education. The monthly amounts are as follows:

First child	IEP 34.50	EUR 43.8
Second child	IEP 34.50	EUR 43.8
Each subsequent child	IEP 46	EUR 58.4

Work

Asylum seekers expressly prohibited to work under Section 9(4b) of the 1996 Refugee Act. However, in 1999, the Minister for Justice, Equality and Law Reform authorised the employment of asylum seekers who had been in Ireland since at least 26 July 1998.

In December 1999, the Department of Justice, Equality and Law Reform issued all applicants who were eligible to work with a letter informing them of their right to work. In practice, this letter functions as a work permit. However, asylum seekers who have not complied with any aspect of the procedure – for instance those who have failed to appear at the asylum interview or have not notified the DASS of a change of address – were not issued with the letter.

Asylum seekers who are eligible to work receive unemployment benefit rather than the Supplementary Welfare Assistance, and they are free to avail themselves of special payment schemes, such as the "Back to Work Allowance" designed to encourage people to enter the labour market.

Language tuition

Asylum seekers have no automatic right to state-funded language classes. However, a number of NGOs provide language classes on a voluntary basis. The Refugee Language Support Unit (see

under "Language tuition for refugees" below) have provided fourteen schools with specialist teachers to assist the children of asylum seekers and refugees.

School attendance

School attendance is compulsory for all children between the ages of 6 and 16, including the children of asylum seekers. There are no special introductory classes for asylum seekers, however, the Department of Education does provide 14 schools with specialist teachers who provide support for the children of asylum seekers, refugees and persons with temporary leave to remain.

Child care

No childcare arrangements are available for asylum seekers.

Unaccompanied minors

The Irish authorities have no formal policy regarding unaccompanied minors and the Health Boards are responsible for their welfare as for any other asylum seekers. In practice, unaccompanied minors are referred by a Health Board's community welfare officer to a social worker who will assess their needs and situation. The social worker will then advise the officer as to the most suitable accommodation for the child. Most minors are placed in hostels or bed & breakfast accommodation and, in most cases, remain there until they are at least 18 years old. If a minor wishes to live in private rented accommodation, the community welfare officer requests a recommendation from a social worker on the suitability of this accommodation for the minor.

As no agency has been established to deal with the educational needs of unaccompanied minors, there is a lack of co-ordinated information ensuring that minors are aware of their entitlements. In practice, difficulties have arisen in cases where the minors cannot speak English and they have been obliged to enrol in a school without any assistance whatsoever.

In 1999 and until June 2000, the Irish Refugee Council's Legal Unit has run a UNHCR-funded Women and Children's project. The services offered include regular legal advice to unaccompanied minors and vulnerable women, assistance during the interviews on request, liaison with the legal representatives, as well as the collation of statistics.

Female asylum seekers

There are no special measures for female asylum seekers.

Through its Women and Children's project, the Legal Unit of the Irish Refugee Council has been able to offer services and assistance to vulnerable women (see above).

Health/sickness

Asylum seekers are issued with a medical card, which entitles them to free access to general practitioners and to free hospital and dental care on equal terms with Irish citizens on income support.

The Refugee Applications Centre offers a full medical screening service to asylum seekers, which includes screening for certain infectious diseases and checking vaccination information. However, this service is only based in Dublin and therefore only available for new arrivals. Asylum seekers outside Dublin have no access to this type of specialist health-care, and therefore do not benefit from medical expertise to cover special situations.

The RAC's medical service also provides a community health nurse for pregnant minors or for small children. Asylum seekers also have the option of seeing a clinical psychologist and of attending a number of support groups.

Freedom of residence/movement

Asylum seekers are issued with a temporary residence certificate, containing their names and photographs and they are not restricted from moving within the country. However, in practice, they cannot move away from their place of residence for more than a week, due to the fact that they must obtain their benefit payments personally from one designated source each week, usually the post-office.

Section 9(5) of the Refugee Act states that "*an immigration officer may, by notice in writing, require an applicant (a) to reside or remain in particular districts or places in the state, or (b) to report at specified intervals to an immigration officer or member of the Garda Síochána [police] specified in the notice, and the applicant concerned shall comply with the requirement.*"

The Dublin Convention

Currently, there are no separate special arrangements for asylum seekers under the Dublin Convention procedure.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

The legal instruments governing the general welfare of refugees are included in the Social Welfare Consolidation Act of 1991.

At the time of writing (May 2000), only "programme refugees" (see under "Legal conditions") are offered specific assistance, which is provided by the Refugee Agency. The Agency was initially established by the Department of Foreign Affairs to co-ordinate arrangements for the admission, reception and resettlement of refugees admitted to Ireland under specific governmental decisions. At present its work is primarily concerned with refugees from Kosovo, former Yugoslavia and Vietnam.

All new programme refugees are assisted on their arrival by the Agency's Resettlement Team to ensure that they are registered for, and in receipt of their entitlements to social welfare, health and other public services; that the children are enrolled in local schools; and that appropriate English language training is provided. This work is carried out in close co-operation with the Eastern Health Board and appropriate Government Departments and public bodies.

The Refugee Agency is currently under the direction of the Directorate for Asylum Seekers Services (DASS) in the Department of Justice, Equality and Law Reform. It is expected that it will be subsumed into the new Reception and Integration Agency, which will be charged with the reception of asylum seekers and the integration of both programme and Convention refugees (see "Social Conditions for Asylum Seekers" below).

Housing

Upon arrival, programme refugees first stayed in a transit centre for period of about three months. The Refugee Agency then placed them in accommodation within the communities. However, those programme refugees who arrive under family reunification agreements are housed with their families as soon as they arrive.

Recognised refugees have access to council housing.

Freedom of residence/movement

Programme refugees and individuals with refugee status may move freely within Ireland.

In order to travel abroad, programme refugees must apply for travel documents while Convention refugees can apply for Convention travel documents. If they intend to remain abroad for a period of more than three months, they require a visa to re-enter Ireland. The Minister for Justice, Equality and Law Reform can refuse to issue a travel document, in the interest of national security or public policy.

Integration programme

There is no formal integration programme in Ireland. The Department of Justice, Equality and Law Reform is currently developing an integration policy. They intend to publish a paper on integration strategies in the coming months.

Financial assistance

– Programme refugees and Convention refugees are eligible to work and are able to receive unemployment benefit, which is paid on a weekly basis. The payment plan is as follows:

Single person	IEP 72	EUR 91.4
Couple	IEP 115.20	EUR 146.2
For each child	IEP 13.20	EUR 16.7

– Both categories can also receive rent allowance in order to rent private accommodation. The maximum amounts are as follows:

Single person	IEP 70 per week	EUR 88.8
Couple	IEP 110 per week	EUR 139.6
Single person (sharing in a house)	IEP 55 per week	EUR 69.8
Single parent with child	IEP 600 per month	EUR 761.8
Couple with a child	IEP 600 per month	EUR 761.8
Families sharing a house	IEP 700 per month	EUR 888.8

– Exceptional payments may also be granted by the Health Board, on a discretionary basis, such as a clothing allowance, fuel allowance or maternity allowance. All these benefits are means tested.

– Child benefit may also be granted for children of refugees under 16 and for those between 16 and 18 in full-time education. The monthly amounts are as follows:

First child	IEP 34.50	EUR 43.8
Second child	IEP 34.50	EUR 43.8
Each subsequent child	IEP 46	EUR 58.4

Refugees who attend state funded university courses may receive financial assistance from their local county council or municipality. This grant is means tested and is paid towards their living expenses. They are also entitled to receive a benefit payment (Third Level Allowance) if they have been in receipt of unemployment benefit for more than six months towards their living expenses.

Work

Both programme refugees and Convention refugees are allowed to take up employment and do not need a work permit.

Language tuition

The Refugee Language Support Unit was established in 1996 by Foras Aíseanna Saotheir (the Training and Employment Authority) in collaboration with the Department of Education and Science and the Centre for Language and Communication, in order to provide direct language services to refugees. The Refugee Agency is a partner in this project.

The Refugee Language Support Unit currently offers free of charge a number of language classes at various levels for refugees (all categories) in order to prepare them for living and working in Ireland. At the primary school level, the Unit has provided fourteen schools with specialist teachers to assist refugee and asylum seeker children.

The unit also has a “Community Outreach Programme” for refugees who are unable to access the formal English classes. This project enables women and older people to participate in Irish

society to a greater extent. The criteria for persons who are eligible for this service is as follows: lack of childcare facilities; distance to travel to classes; age complications and difficulties.

The unit also provides "Vocational Outreach Training" to individuals on training and work placements, and to refugee organisations working in their own communities. The focus of the training is predominantly vocational, and language training is related to their immediate employment needs.

Access to the adult education system

The Refugee and Language Support Unit have implemented a bridging programme (pre-vocational training) for people with status.

Pre-vocational training was initially provided to the Bosnian community, but is now available to all refugees. The objective of this training is to provide participants with the necessary language support to enter and successfully complete pre-vocational training leading to mainstream courses and/or employment in an English-speaking environment. This bridging programme was designed in association with Foras Aíseanna Saotheir (see above). The first programme was based in just one of the training centres, Baldoyle, however, it will be extended to other centres in the Dublin area. This programme is flexible and can last up to six months.

School attendance

School attendance is compulsory for all children between the ages of 6 and 16, including the children of both programme and Convention refugees. However, the Refugee Agency only assist children of programme refugees with school placements.

Mother tongue tuition

Mother tongue tuition is available to Bosnian children every Saturday morning. The Refugee Agency and the Bosnian Community Development Project (BCDP) run summer projects and classes in Serbo-Croat. Mother tongue classes in Vietnamese and Chinese have also been run.

There is no state-funded mother tongue tuition available for normal Convention refugees.

Unaccompanied minors

So far there have been no separated children amongst the programme refugees received in Ireland.

There are currently no specific provisions for unaccompanied minors who have been granted refugee status following the normal refugee determination procedure. Nevertheless, these minors are entitled to the same services and assistance as Irish minors.

Citizenship

In principle, according to the Irish Nationality and Citizenship Act of 1956 and 1986, refugees may only apply for naturalisation after a period of three years. However, naturalisation is always at the discretion of the Minister for Justice, Equality and Law Reform, who has the authority to grant naturalisation at an earlier stage. In practice, therefore, recognised refugees can lodge an application for citizenship following the determination of their asylum case.

It currently takes eighteen months for an application for naturalisation to be processed.

Repatriation

The Refugee Agency provides information and support to refugees considering voluntary repatriation. It has run a repatriation programme for Bosnians, under which persons who wished to repatriate were entitled to the following:

– to have their return flight paid for;
– to receive a resettlement grant of is IEP 600 [EUR 761.8] per person over the age of 18 and IEP 300 [EUR 380.9] per person under 18;
– to return to Ireland within six months following repatriation.

Bosnians who had arrived under the family reunification programme and who wished to repatriate to Bosnia-Herzegovina were only entitled to have their return flights paid for. This repatriation programme ended on 1 April 2000.

The Refugee Agency has also established a repatriation scheme for Kosovo Albanians. Under a "look and see" programme, heads of households can return home temporarily to assess the current situation.

There are no repatriation programmes in place for refugees with Convention status.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

The Department of Justice, Equality and Law Reform have failed to implement any legislation on the rights of individuals with temporary leave to remain in Ireland. However, their general welfare is included in the Social Welfare Consolidation Act of 1991. Indeed, this is an area of legislation where the rights and entitlements of these individuals are outlined.

Housing

Persons with temporary protection are entitled to emergency accommodation. They may also live in accommodation in the private rented sector. However, like asylum seekers, they too have problems finding housing due to language barriers, racial discrimination, lack of availability, and landlords who may be reluctant to accept tenants in receipt of rent allowance. They are not allowed to apply for council housing.

Freedom of residence/movement

Persons with temporary leave to remain are permitted to travel within Ireland. They must apply for a travel document if they wish to travel abroad. The Minister for Justice, Equality and Law Reform can refuse to issue a travel document, in the interest of national security or public policy.

Financial assistance

– Persons with temporary leave to remain are eligible to work, and as a result receive unemployment benefit, which is paid on a weekly basis as follows:

Single person	IEP 72	EUR 91.4
Couple	IEP 115.20	EUR 146.2
For each child	IEP 13.20	EUR 16.7

– Persons with temporary leave to remain may also receive rent allowance in order to rent private accommodation. The maximum amounts are as follows:

Single person	IEP 70 per week	EUR 88.8
Couple	IEP 110 per week	EUR 139.6
Single person (sharing in a house)	IEP 55 per week	EUR 69.8
Single parent with child	IEP 600 per month	EUR 761.8
Couple with a child	IEP 600 per month	EUR 761.8
Families sharing a house	IEP 700 per month	EUR 888.8

– Exceptional payments may also be granted by the Health Board, on a discretionary basis, such as a clothing allowance, fuel allowance or maternity allowance. All these benefits are means tested.

Child benefit may also be granted for children of persons with temporary leave to remain under 16 and for those between 16 and 18 in full-time education. The monthly amounts are as follows:

First child	IEP 34.50	EUR 43.8
Second child	IEP 34.50	EUR 43.8
Each subsequent child	IEP 46	EUR 58.4

Work

Persons with temporary leave to remain are allowed to work as soon as they have received their residency documents.

In addition, rejected applicants who are applying for temporary leave to remain can stay in employment if they gained this right whilst an asylum seeker (see under “Work for asylum seekers” above).

Access to the adult education system

Persons with temporary leave to remain have access to the bridging programme (pre-vocational training) run by the Refugee and Language Support Unit (see above under “Access to the adult education system for refugees”).

Those with temporary leave to remain do not have the right to state funded third level education.

Language tuition

The Refugee Language Support Unit has provided fourteen schools with specialist teachers to assist children of asylum seekers, refugees and persons with temporary leave to remain.

Persons with temporary leave to remain are permitted to avail of all the other services offered by this unit if they have their residency documents.

School attendance

School attendance is compulsory for all children between the ages of 6 and 16, including the children of persons with temporary leave to remain.

Mother tongue tuition

There is no mother tongue tuition available to persons with temporary leave to remain.

Unaccompanied minors

There are no special procedures in place for unaccompanied minors who have been granted temporary leave to remain.

Repatriation

There are no repatriation projects in place for persons with temporary leave to remain.

ITALY

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Constitution of the Italian Republic of 22 December 1947;

– Section 1 of the Aliens Act No. 39 of 28 February 1990 (the 1990 Aliens Act);

– The Act No. 40 of 6 March 1998 on Discipline Regulating Immigration and Rules on the Status for Foreigners (the 1998 Aliens Act);

– The Presidential Decree No. 136 of 15 May 1990;

– The Schengen Agreement and the Dublin Convention.

Refugee status

Convention status

Following the entry into force of the new Aliens Act of 6 March 1998, the previous Aliens Act of 28 February 1990 was abolished with the exception of its Section 1, which lays down the rules for admission into the territory and the procedure for granting asylum to refugees falling under the provisions of the Geneva Convention. The asylum determination procedure is still regulated by the Presidential Decree No. 136 of 15 May 1990.

Refugees are granted a residence permit, which is valid for two years and renewable.

Constitutional asylum

Pursuant to Article 10(3) of the Italian Constitution "*any alien debarred in his own country from the effective exercise of the democratic liberties guaranteed by the Italian Constitution shall have the right of asylum in the territory of the Republic on conditions laid down by law".*

No implementing regulation on constitutional asylum has yet been adopted. However, the provisions of Article 10(3) have been invoked in a number of judicial proceedings on the basis of a previous decision of the Supreme Court of Appeal ("Corte di Cassazione*")*, the highest court in civil matters, which declared them directly applicable. As a result, it is possible to apply for constitutional asylum to the civil courts and simultaneously apply for Convention status under normal asylum determination procedure.

Since no legal provisions have been adopted regarding the rights that should be granted to Constitutional refugees, many persons recognised as such, remain without any formal authorisation to stay in Italy and cannot benefit from any other rights. Nevertheless, Constitutional refugees are protected from *refoulement* and have the right to remain in Italy, even though they are not automatically granted a residence permit.

A Draft Law on asylum and humanitarian protection, covering both Convention and Constitutional refugee status as well as humanitarian status, has been published by the government. According to this Draft law, gender-related persecution as well as belonging to a persecuted "ethnic group"

will be explicitly mentioned as reasons for granting refugee status; an accelerated procedure will be established, under which an application could be considered inadmissible or manifestly unfounded; appellants under the normal determination procedure will be granted a residence permit if the court has not rendered its decision within six months; recognised refugees will receive a residence permit valid for five years.

The Draft law is currently pending in Parliament and it is not possible to foresee when it will be adopted. Any information on this can be requested from the Italian Refugee Council.

Quota refugees

The current Italian legislation does not include any provision on quota refugees.

Other types of residence permit

Residence permit on humanitarian grounds

According to Section 5(6) of the 1998 Aliens Act, a residence permit on humanitarian grounds can be granted to an asylum seeker whose application has been rejected by the Central Commission (responsible for making first instance decisions in the determination procedure) and who cannot return to his/her country of origin in accordance with the principle of *non-refoulement.*

In all the cases where the asylum seeker cannot be recognised as refugee under the Geneva Convention, but at the same time cannot return to his/her country of origin because of the situation there, the Central Commission makes a recommendation on whether or not the conditions for granting a humanitarian residence permit are met. On the basis of this recommendation the Local Police Headquarters ("Questura") can issue a permit of stay for humanitarian reasons. Such permit is generally granted for one year and is renewable on a yearly basis. It gives the right to work and study in Italy.

In principle, the Police Headquarters could also, under Section 5(6) of the 1998 Aliens Act, issue residence permits based on broader humanitarian considerations, but this never happens in practice.

Based on the same Section 5(6) of the 1998 Aliens Act and following a Directive from the Prime Minister of 6 August 1998, holders of residence permits issued under Sections 12*bis* (humanitarian grounds) and 12*ter* (Italy's international or constitutional obligations) of the abolished 1990 Aliens Act, as well those staying in Italy under the temporary protection schemes for Somalis (1992), displaced persons from Former Yugoslavia (1992) and Albanians (1997) can ask for a two-year work/residence permit or a residence permit on humanitarian grounds, even without passport. Those persons who can demonstrate having a job receive a work/residence permit, whilst those who are not able to justify having a job can be granted a residence permit on humanitarian grounds, which gives them the right to work.

Temporary protection for Kosovo Albanians

According to Section 20 of the 1998 Aliens Act and the Directive of the Presidency of the Council (Prime Minister) of 12 May 1999, special protection has been collectively given to Yugoslav citizens (Kosovo Albanians, Serbs and Roma) who entered Italy between 12 May and 6 August 1999. They were granted a residence permit valid until 31 December 1999, which has been extended for a six-month period ending on 30 June 2000. Kosovo Albanians, however, were entitled to lodge an individual request for asylum.

Rejection at the border

Under Section 1(4) of the 1990 Aliens Act (still in force), an alien who applies for asylum may be refused entry into the territory in the following instances:

1. if he/she has already been granted refugee status in another state. However, according to Section 17 of the Aliens Act, removal to a state where the asylum seeker might be subjected to persecution on account of race, sex, language, nationality, religion, political opinion, personal or social conditions, or where he/she might risk being sent to another state where he/she will not be protected from persecution, will not be permitted;

2. if he/she comes from a state, other than that of origin, which has signed the Geneva Convention and in which he/she has been staying for a period of time.

   Mere transit through the territory of this state en route to the Italian frontiers is not considered as "staying for a period of time", but as there is no definition of the period of time required, this is, in practice, left at the discretion of the Border Police. Removal to one of the states referred to in Section 17 of the Aliens Act will not be permitted;

3. if he/she is in one of the situations mentioned in Article 1F of the Geneva Convention: he/she has committed (i) a crime against peace, a war crime, or a crime against humanity, or (ii) a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee, or (iii) he/she has been guilty of acts contrary to the purposes and principles of the United Nations;

4. if he/she has been convicted in Italy of one of the crimes listed in Section 380(1) and (2) of the Italian Penal Code, or if it is proven that he/she represents a danger to state security, or if he/she belongs to a criminal, drug-trafficking or terrorist organisation.

In the absence of an immigration authority, decisions on rejection and admission of asylum seekers to the territory are taken by a Border Police officer. When in doubt, the police officer may refer the case to the Border Police Department of the Ministry of Interior. This usually happens where there is a need for additional information on the case, where the officer is uncertain as to the decision to take or if the case concerns stowaways.

The decision on entry is generally taken within, between a few hours and a few days, but no maximum time limit has been established by law. Asylum seekers are required to remain in the transit zone of the border point (airport), where special facilities are now available.

Due to the lack of time and the fact that police officers have no specialised training in asylum matters, asylum seekers are rarely offered adequate conditions. In many cases, they are not assisted by qualified interpreters (it is very difficult to find sufficient interpreters speaking, for instance, Arabic and Turkish, particularly in the southern regions of Italy) and legal counsellors, despite the efforts of the Italian Refugee Council, which provides interpreting services and legal assistance in the transit zones of the Fiumicino airport in Rome, Malpensa and Linate airports in Milan, the ports of Ancona and Brindisi and the port and land border in Trieste. The information/reception facilities provided for by Section 9(5) of the 1998 Aliens Act, where legal and social assistance should be offered to asylum seekers and aliens at border points, have still not been established.

According to Section 1(6) of the 1990 Aliens Act, negative decisions of the Border Police may be appealed to Regional Administrative Courts and, within 60 days of notification of the decision, further to the Administrative Court of Appeal ("Consiglio di Stato"). Such appeals have no automatic suspensive effect. According to NGOs, not a single appeal has been lodged so far.

The Dublin Convention

The current Italian legislation does not explicitly refer to the Dublin Convention, which entered into force on 1 September 1997. However, the Draft law currently discussed in Parliament includes some specific provisions regarding the implementation of the Convention.

Asylum seekers dealt with under the provisions of the Dublin Convention are issued with a provisional residence permit, valid for one month and renewable on a monthly basis until a decision has been made as to the state responsible for processing their application. During this period, they may apply for financial assistance.

If Italy appears to be the state responsible, the asylum seeker is transferred to the normal determination procedure and issued with a residence permit valid for three months, which has to be renewed every three months until a decision on the application has been made.

Entry into the territory

In principle, a person seeking asylum in Italy should submit a formal application to the Border Police. However, according to an established practice, any asylum seeker having entered the country legally or illegally may lodge his/her request at the Local Police Headquarters ("Questura") without contacting the Border Police. Although the law does not require the asylum claim to be lodged through a written application, this is requested by the authorities.

According to Section 1(2) of the Presidential Decree No. 136 of 15 March 1990, the Questura must take down the particulars of the applicant's identity (name, address, date of birth, etc.) and his/her statement explaining the reasons for seeking asylum in Italy, and send a report to the Central Commission within seven days, together with any supporting document provided by the applicant. The four grounds for rejection at the border mentioned above still apply at that stage (see "Rejection at the border" above). There is no accelerated procedure under current Italian legislation and all applications which are not rejected are then transferred under normal determination procedure. It is expected that an accelerated procedure will be incorporated in the new asylum legislation.

Determination procedure

Asylum seekers dealt with under the normal determination procedure are given a three-month residence permit, renewable in general every three months pending a decision by the Central Commission.

The Central Commission for the Recognition of Refugee Status is responsible for taking first instance decisions regarding the granting or refusal of Convention status. It is an inter-ministerial administrative body, whose members are nominated by the President of the Council of Ministers upon recommendation of the Ministries of Interior and Foreign Affairs. The Chairperson of the Commission is a prefect from the Ministry of Interior. The other members are senior officials from the Council of Ministers and the Ministry for Foreign Affairs respectively, and two representatives from the Ministry of Interior: one from the Department of Public Security and the other from the Directorate for Civil Affairs. A UNHCR representative attends the meetings of the Commission on an advisory basis.

Asylum seekers have the right to be heard personally by the Central Commission. During this interview, they are asked about the reasons why they left their country. No legal assistance before the Commission is foreseen by law and it is not possible for asylum seekers to be assisted or represented by a lawyer before the Commission.

If the applicant does not to appear before the Commission to be heard personally, the decision is made solely on the basis of the police report. In such cases, the decision is generally negative.

Although the Presidential Decree No. 136 of 15 March 1990 stipulates a time limit of 15 days for the first instance decision, the time required to process a case before the Central Commission may take up to 10-12 months due to the very strong increase in the number of applicants during recent months. In some cases, the procedure may last even longer.

Appeal

Until a decision of the Supreme Court of Appeal ("Corte di Cassazione") of December 1999, appeals against negative decisions by the Central Commission for the Recognition of Refugee Status had to be lodged with the Regional Administrative Courts within 60 days. The Regional Administrative Courts examined only the legality of the procedure and not the facts of the case. As a result, a positive ruling by the Administrative Court led to a re-examination of the case by the Central Commission. Negative decisions by the Regional Administrative Court could be further appealed to the Administrative Court of Appeal ("Consiglio di Stato") within 60 days. In both cases, appeals had no automatic suspensive effect, but this could be granted by the Court.

By judgement of December 1999, the Supreme Court of Appeal decided that appeals against the Central Commission's negative decisions must be lodged with the Civil Courts and no longer with the Administrative Courts. Under this new system, in force since the beginning of 2000, appeals can be lodged within five years from notification of the decision. There is no automatic suspensive effect, but the appellant may submit a formal request for suspension if he/she has been notified with a request to leave the country or with an expulsion order. Civil Courts examine both the legality of the appealed decision and the facts of the case.

Negative decisions by the Civil Courts can be further appealed to the Appeal Court and then to the Supreme Court of Appeal.

In addition, asylum seekers may lodge a hierarchical appeal before the President of the Republic within 120 days from notification of the Central Commission's negative decision. This appeal, of an administrative nature, has no suspensive effect and is limited to reviewing the legality of the first instance decision.

Legal aid

According to general legal provisions, free legal assistance is provided only for asylum seekers with no financial means who wish to make an appeal against the Central Commission's negative decision. Requests for free legal aid are lodged with the Commission for Free Legal Aid.

The 1998 Aliens Act provides for the provision of state-funded legal counselling to asylum seekers and aliens at border points, but this has not been established. At present, various non-governmental organisations provide information to asylum seekers on their rights and obligations and make sure that they are given access to the asylum procedure, be it at the borders or within the territory.

Interpreters

Interpreting has proved to be a serious problem due to the severe shortage of qualified interpreters at the borders. In some cases, the Italian Refugee Council is able to provide interpreters to the police.

There are no problems with interpretation before the Questura, where applicants are always assisted by interpreters during the interviews. Before the Central Commission, hearings are conducted in the applicant's own language, if it is known by at least one member of the Commission, otherwise in English, French, Spanish or through an interpreter.

Unaccompanied minors

According to Section 1(5) of the 1990 Aliens Act, police authorities should immediately inform the Juvenile Court of any unaccompanied minor under the age of 18, in order for the court to take the necessary measures under its competence.

There is no age limitation for submitting an application for asylum, but unaccompanied minors must be assisted by their legal guardian, when appointed by the civil court ("giudice tutelare").

There are no specific provisions for the processing of asylum claims submitted by unaccompanied minors and, in practice, they follow the same procedure as adults.

Female asylum seekers

There are no specific procedure/guidelines for female asylum seekers.

Final rejection

According to Section 13(12) of the 1998 Aliens Act, a rejected asylum seeker – as any alien staying in Italy without legal basis – should in principle be returned to his/her country of origin or, when this is not possible, to the country where she/he was staying before arriving in Italy. In autumn 1999, the police resumed a policy of notifying a expulsion order together with the final rejection of the asylum application.

Deportation orders are not always effective in practice, mainly because the asylum seekers' identity is not always fully established or due to the lack of co-operation from the authorities of the countries of origin.

According to Section 19(1) of the 1998 Aliens Act, expulsion to a state of a person where he/she might be subject to persecution on account of race, sex, language, nationality, religion, political opinion, personal or social condition, or to a state where he/she may risk being sent to another state where he/she will not be protected from persecution, is not permissible. In such case, the Questura should issue a residence permit for humanitarian reasons pursuant to Section 5(6) of the same Act. In practice, however, the Questura only issues a permit when this is recommended by the Central Commission, or when the expulsion order has been annulled by a court.

Detention

According to the 1998 Aliens Act, asylum seekers whose identity is being investigated can be taken to a temporary holding centre for a period of 20 days. This applies also to rejected asylum seekers subject to an expulsion order.

Temporary holding centres are not prisons but centres run by the Italian Red Cross and the police and where aliens are kept for maximum 20 days before being expelled. Detention may be extended for another ten days when the police need more time to make travel arrangements.

Within the first 48 hours of detention, the measure must be confirmed by a judge ("Pretore"). It is possible to appeal against the judge's decision to the Supreme Court of Appeal.

Applications from abroad

It is not possible to submit an application for asylum in Italy from abroad.

Family Reunification

Convention refugees are entitled to family reunification with their spouse, unmarried minor children, dependent parents and dependent relatives within the third degree if disabled. Unmarried couples are not entitled to reunification. This right to family reunification is not subject to any housing or financial requirements. Family members having entered Italy illegally may also benefit from family reunification.

Reunification is possible as soon as the refugee status has been granted. The application must be submitted by the person living in Italy to the Questura who takes the first instance decision. Negative decisions may be appealed on the basis of Section 30(6) of the 1998 Aliens Act to the civil court.

Persons reunited with a refugee in Italy receive a similar residence permit, valid for two years and renewable on a two-year basis. The permit allows its holder to work, to study and to be given access to the national health service.

Persons with other types of residence permit have also the right to family reunification, but they must meet the requirements applying to immigrants. These include, in particular, appropriate housing as well as a monthly income at least equivalent to the social pension, i.e., ITL 500,000 [EUR 258].

Statistics

Number of asylum seekers

Number of applications submitted in Italy	
1991	23,317
1992	2,493
1993	1,534
1994	1,689
1995	1,732
1996	675
1997	11,120
1998	12,150

Source: UNHCR

Number of Convention status granted

Number of Convention status granted in Italy	
1991	950
1992	336
1993	165
1994	298
1995	285
1996	167
1997	348
1998	1,366
1999*	467

Source: Ministry of Interior

* the 1999 statistics are not final.

Main national groups

Main national groups to seek asylum in Italy in 1998	
Former Yugoslavia	2,734
Iraq	2,425
Turkey	1,315
Romania	282
Sierra Leone	101
Albania	85
Iran	64
Pakistan	59
Congo,	59
Afghanistan	55
Algeria	56
Democratic Republic of Congo	52

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

Accommodation is not compulsory nor indeed, is accommodation available for all those who need it.

An increasing number of municipalities in areas attracting large-scale immigration have set up reception centres for newly arrived persons, which are run either directly by the municipalities or, more often, by non-governmental or charitable organisations on their behalf. All asylum seekers, like aliens in general, may apply for accommodation in these centres.

Accommodation is granted for a limited period of time. In Rome, for instance, this period never exceeds four months for singles and nine months for families. Meals (breakfast and dinner) are also provided for a short period. Asylum seekers eventually turn to canteens open on a voluntary basis, such as those run by Caritas.

The existing structures do not meet actual needs, especially in the centre and the south of the country. Refugee camps were set up to cope with emergency situations, in particular for the Albanians, ex-Yugoslavs and, recently, Kosovo Albanians.

In absence of other solutions, most ex-Yugoslavs belonging to the Roma minority have spontaneously set unofficial camps, located on the outskirts of some Italian cities, where living conditions are extremely poor.

Financial assistance

According to Decree No. 237/90 of 24 July 1990 implementing the Aliens Act, needy asylum seekers who do not benefit from any other form of support may apply for financial assistance to the Local Police Headquarter ("Questura"). The amount granted is ITL. 34,000 [EUR 17.5] per day and is paid for only 45 days. Children are entitled to the same amount as adults. Asylum seekers who are accommodated in the reception centres are not entitled to receive it.

NGOs and charitable organisations may also assist asylum seekers with accommodation, food, health care and, in some exceptional cases, financial assistance.

Work

Asylum seekers are not allowed to work. Given the absence of any substantial financial assistance, many are forced to work illegally.

Language tuition

Language courses are organised on a large scale by NGOs and church organisations, including the Federation of Evangelical Churches, Caritas, the Comunità di Sant' Egidio, the Salvation Army and some reception centres. In some areas, municipalities and local authorities have arranged language and vocational courses.

School attendance

The compulsory school attendance for nine years applies also to the children of asylum seekers. They are normally admitted to Italian schools without any problem.

Mother tongue tuition is officially provided for, but in practice has never been established due to the lack of qualified teachers.

Child care

No child care provided.

Unaccompanied minors

A Committee for the Tutelage of Unaccompanied Minors, which should be operational soon, has been established with the task of co-ordinating the activities of local administrations, NGOs and charitable organisations regarding unaccompanied minors.

The Committee will have the following responsibilities:

- making censuses of all unaccompanied minors and investigate on the social conditions in the countries of origin;
- checking the conditions of reception of these minors in Italy;
- promoting efforts to trace the presence of family members, either in the countries of origin or in other countries, in co-ordination with national and international organisations;
- organising programmes of assisted repatriation for unaccompanied minors.

Female asylum seekers

There are no special arrangements for female asylum seekers.

Health/sickness

Asylum seekers have access to the national health system and can receive health care free of charge.

Freedom of movement

There are no restrictions on asylum seekers' freedom of movement.

The Dublin Convention

Asylum seekers processed under the Dublin procedure are treated as other asylum seekers as far as accommodation, financial assistance, freedom of movement and access to national health care are concerned.

SOCIAL CONDITIONS FOR REFUGEES

Introduction

As far as social conditions are concerned, a distinction is made between Convention refugees and those granted residence permits on humanitarian grounds.

Convention refugees

Housing

Refugees are free to choose their place of residence.

There are no accommodation centres exclusively for refugees, and refugees may only be admitted to general centres provided for foreigners on a temporary basis. In some reception centres though, for example in Milan, a certain number of places are reserved for refugees.

These centres, which are run either by the municipalities or by NGOs and charitable organisations (see "Social Conditions for Asylum Seekers"), provide free accommodation.

In some cases, regional laws allow refugees to benefit from council housing. However, given the housing shortage in Italy, many refugees are homeless.

Integration programme

No integration programme for recognised refugees has been established.

Financial assistance

Needy refugees are entitled to apply for financial assistance to the local Prefectures in connection with a specific integration programme set up by the Ministry of Interior in co-operation with UNHCR.

Under this programme, new refugees receive a daily allowance of ITL 34,000 [EUR 17.5] paid during 90 days. Other members of the family receive an additional 25%, for up to nine people.

Moreover, refugees can ask for a subsistence allowance once a year and no more than four times within the first six years after recognition. Such allowance amounts to a maximum of ITL 4 millions [EUR 2,066] for a single person and an additional 25% for any additional family member up to three, and another 10% for any further family member.

The same programme also provides assistance to those refugees who want to start income-generating activities. Vulnerable groups (persons with a serious illness, elderly and disabled persons, etc.), families with children who go to school and exceptional cases have access to the programme also after six years.

Refugees are entitled to the same assistance as Italian citizens in terms of old age pensions and health insurance.

Refugees over 65 years without income can be granted a monthly pension allowance of about ITL 500,000 [EUR 258] and are entitled to disability pensions on the same basis as Italian nationals.

Work

Recognised refugees have the right to work and may be admitted to any kind of employment except for some public positions where Italian citizenship is required.

Language tuition

There is no specific language programme for refugees. However, they still have access to the same language courses as asylum seekers.

School attendance

As for asylum seekers.

Mother tongue tuition

Mother tongue tuition is officially provided for, but in practice it has never been established due to the lack of qualified teachers.

Access to the adult education system

There are no special restrictions on, or special facilities for access to higher education. Some centres for life-long education are being opened where both asylum seekers and refugees can attend regular Italian language courses and vocational training ones.

Access to the national health service

As for asylum seekers.

Unaccompanied minors

The same as for asylum seekers.

Repatriation

There is no general repatriation programme in Italy.

Citizenship

Refugees who have lived and worked in Italy for five years continuously may apply for Italian citizenship, whilst for other non-EU aliens the period is ten years.

Persons with humanitarian status

In 1992, ex-Yugoslavs and Somalis have benefited from an assistance programme, in connection with an *ad hoc* decree under which they were allowed to stay in Italy for the duration of the critical situation in their respective country. A similar protection was recently granted to Kosovo Albanians (see "Social Conditions for Persons under Temporary Protection" below).

The assistance may be granted either in state-run centres (in the form of accommodation and food) or through the local authorities in some specific areas (Bologna, Florence, Venice, Rome). In the latter case, beneficiaries are mostly ethnic Roma and Sinti and the type of assistance granted depends on the local programme.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

According to Section 20 of the 1998 Aliens Act and a Directive of the Prime Minister of 12 May 1999, (Kosovo Albanians as well as Serbs and Roma from Kosovo) who entered Italy between 12 May and 6 August 1999 were granted a residence permit valid until 31 December 1999. This has been extended for a six-month period ending on 30 June 2000.

Housing

The local government and Prefectures are responsible for providing housing to persons under temporary protection. In June 1999, newly arriving Kosovo Albanians were accommodated in a on-purpose centre, established in Comiso (Sicily). At present, some have repatriated, whilst the others have been accommodated in centres for asylum seekers.

Freedom of residence

People under temporary protection can freely choose their place of residence. They may travel freely within Italy but must inform the police if they change residence.

Financial assistance

There are no specific financial assistance program for Kosovo Albanians. However, under an EU-funded programme called Azione Comune, financial assistance is granted for integration projects. The amounts paid depends on the number of family members, the applicant's monthly incomes and other relevant elements.

Work

People under temporary protection are allowed to work and are able to enrol at the labour placement office.

Access to adult education system

There are no restriction on, or special facilities to access the education system.

No financial assistance is provided to adult students who may be assisted by NGOs.

Language tuition

Italian language tuition is optional. It is organised by municipalities through reception centres. Language courses are also provided by NGOs and charitable organisations.

School attendance

According to Italian Law, children under 15 years of age are obliged to go to school. This applies to children of persons under temporary protection too.

Mother tongue tuition

Mother tongue tuition is officially provided for, but in practice it has never been established due to the lack of qualified teachers.

Unaccompanied minors

The same as for asylum seekers.

Repatriation

Repatriation programmes are organised by the International Organization for Migration (IOM).

The Italian government promotes repatriation for minors through the Committee for the Tutelage of Unaccompanied Minors.

LUXEMBOURG

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Law of 3 April 1996 establishing an asylum procedure, as modified by the Law of 18 March 2000 (the Asylum Law);

– The Law of 18 August 1996 regarding the entry and residence of aliens in Luxembourg (the Aliens Law);

– The Law of 27 July 1993 regarding the integration of aliens in the Grand Duchy of Luxembourg and the social assistance available to them;

– The Grand-Ducal Regulation of 29 April 1999, amending the Regulation of 12 May 1972, defining measures regarding the employment of foreign workers;

– The Dublin Convention and the Schengen Agreement.

Refugee status

The only refugee status available in Luxembourg is Convention status, which is granted on the basis of the asylum procedure laid down in the Asylum Law.

Convention refugees are issued with a residence permit, which is valid for five years and is renewable.

Quota refugees

Luxembourg has no annual quota programme, but it received quota refugees on several occasions during the seventies and eighties. These quota refugees have automatically been granted Convention status. In 1996, 28 Iraqi refugees were resettled in Luxembourg.

Other types of residence permit

Temporary protection

In March 1992, an *ad hoc* status (in the form of temporary protection) was established for persons from the former Yugoslavia. This status, which did not have any legal basis, was amended on several occasions and has not been operative since December 1995. The status was later revoked following a decision of the Administrative Court ("Tribunal administratif et fiscal"), which declared that it was contrary to the Constitution due to the lack of legal basis.

Those persons who had previously enjoyed the aforementioned *ad hoc* status were granted the status of immigrant worker, under certain conditions related to work and housing. Accordingly they were issued with an alien's identity card, valid for five years. By June 1996, approximately 1,200 persons had been given such status. In addition, a status of tolerated residence was established for those persons who did not meet the conditions required for the status of immigrant worker but who could not return to their country of origin. This status of tolerated residence, however, had no legal basis and was later abandoned (see "Tolerated residence" below).

Temporary protection was re-introduced into Luxembourg legislation by Law of 18 March 2000 amending the Asylum Law. Accordingly, a new Chapter II on temporary protection was added to the Asylum Law.

According to the new Section 16 of the amended Asylum Law, a temporary protection regime may be established by regulation of the Grand Duchy *"in case of massive influx of persons fleeing an area with armed conflict, war or generalised violence*". The specific groups enjoying temporary protection must be defined in the regulation, as well as the duration of the protection. It will be possible to extend or renew the duration of the temporary protection, provided that the total period does not exceed three years.

The processing of the asylum claims will be automatically suspended for as long as the persons enjoy temporary protection. When this expires, they will be given one month to confirm their wish to have their asylum application processed in Luxembourg or to submit an application, if they had not done so before.

Persons with temporary protection will be entitled either to the same social assistance as asylum seekers or to an authorisation for temporary work (see "Work" in "Social Conditions for Asylum Seekers" below). They will be entitled to family reunification with their spouse and minor children.

Authorisation for residence on humanitarian grounds

Both rejected asylum seekers and persons who are refused temporary protection may apply to the Ministry of Justice for an authorisation for residence on humanitarian grounds. Such authorisation has no legal basis and is granted at the discretion of the Minister.

In practice, aliens who are authorised to stay on humanitarian grounds are issued with a work permit (A-permit) and therefore have the status of an immigrant worker. After one year, the person is normally granted a B-work permit, which allows him/her to reunification with his/her family members.

Tolerated residence

A status of tolerated residence was established in June 1996 for rejected asylum seekers and persons from the former Yugoslavia who were not allowed to stay in Luxembourg following the expiration of the *ad hoc* status, if their removal from Luxembourg proved impossible. Tolerated residence was renewable on a monthly basis. Beneficiaries were entitled to social benefits, but were not allowed to work. This status had no legal basis and although it was not formally revoked, it is no longer used nor considered to be in force.

However, tolerated residence was re-introduced into Luxembourg asylum legislation by virtue of Law of 18 March 2000. According to the modified Section 14 of the amended Asylum Law, *'[i]f the removal proves impossible due to practical circumstances, the Minister of Justice may decide to tolerate temporarily his/her [the alien's] presence in the territory until these practical circumstances have ceased to exist*".

Persons granted tolerated residence will be issued with a certificate of tolerance ("attestation de tolérance"). The period of validity, which will be renewable, will be stated in the certificate.

Kosovo Albanians

In spring 1999, 102 persons came to Luxembourg under the UNHCR Humanitarian Evacuation Programme. All of them had family links with persons from Kosovo (either Kosovo Albanians or Muslim Slavs from Kosovo) already staying in Luxembourg as asylum seekers or migrants.

These evacuees were issued with a document certifying that they originated from a region at war ("certificat de région de guerre") and which allowed them to apply for a temporary authorisation to work. These authorisations, initially valid for six months, have been extended until 15 June 2000 (see "Work" under "Social Conditions for Asylum Seekers" below).

Rejection at the border

In accordance with the provisions of the Aliens Law, an alien may be refused access to or removed from the territory if:

- he/she does not possess the necessary travel documents, including a visa if required;
- he/she constitutes a danger to security, tranquillity, public order or public health;
- he/she does not have sufficient means to cover his/her travel and living costs;
- he/she is mentioned in the common list of non-admissible persons under Article 96 of the Schengen Agreement.

Following amendments to the Aliens Law of August 1995, carriers bringing aliens to Luxembourg without the necessary travel documents or the required visa may be fined up to LUF 50,000 [EUR 1,239] This does not apply if the alien is allowed entry or if he/she submits an application for asylum, which is not deemed inadmissible or manifestly unfounded. In practice, sanctions against carriers have not yet been applied.

Aliens who apply for asylum at border points cannot be rejected, and the border police must forward their claim to the Ministry of Justice regardless of whether or not they have the necessary documentation for entering the country.

In practice, due to the absence of control at land borders, border cases occur only at Luxembourg airport. Generally, applicants are not held at the airport but transferred to the Refugee Reception Office of the Ministry of Justice, where the asylum application can be formally registered. If they arrive during a weekend, they may be accommodated temporarily in a shelter ("Foyer Don Bosco") or in a hotel.

An alien who claims asylum only after the border police have established that his/her travel documents were falsified may be detained in the Schrassig detention centre by decision of the Minister of Justice until his/her removal is feasible. Nevertheless, his/her asylum application will still be examined. If the Minister cannot be contacted, the alien may be held for a preliminary period of 48 hours with the approval of the pubic prosecutor's department**.** This applies to about four cases each year.

Submission of the application

According to Section 4(1) of the Asylum Law, an alien may submit an application for asylum either at the border or once inside the country. In practice, most applications are submitted inside the country by applicants who have crossed one of Luxembourg's land borders. All applications must be forwarded to the Ministry of Justice's Refugee Reception Office.

Once the case has been registered and a file opened by the Refugee Reception Office, the applicant is heard – generally the same day – by a member of the police ("police judiciaire") in order to clarify his/her identity, travel route and his/her initial statements. Adult members of the same family are usually interviewed separately.

In theory, legal assistance is possible during this initial interview, however this almost never happens. Interpreters are provided if necessary.

After the interview with the police, the asylum seeker is issued with a certificate confirming registration of the application, which is valid for one month and must be renewed each month until the end of the asylum procedure.

Following the initial interview, it is the responsibility of the "police judiciaire" to verify the applicant's identity, travel route and to check the sincerity of his/her statements. If needed, they may interview the applicant a second time and, if necessary, at later stages of the procedure. They may also take his/her fingerprints, particularly if his/her identity is not clearly established.

Provided that they are not processed under the provisions of the Dublin Convention (see "The Dublin Convention" below), applicants are then requested to attend an interview with an officer of the Ministry of Justice. This interview may take place between two days and several months after the registration of the application, although the average waiting time is three months.

During this thorough interview, the applicant may be assisted by an interpreter and/or a lawyer paid for by the state. At the beginning of the interview, the asylum seeker must be informed of his/her right to legal assistance. If he/she wishes such assistance, the interview is postponed until a later date, so that a lawyer can be appointed through the free legal aid system. Applicants who have requested the assistance of an interpreter and/or a lawyer have the right to remain silent if the interpreter and/or the lawyer are not present.

During this interview, the applicant is requested to provide a detailed explanation of his/her travel route to Luxembourg, the situation in his/her country of origin and the reasons why he/she is seeking asylum. Interviewers use a standard questionnaire, which is adapted according to the applicant's nationality and individual circumstances. Once again, adult members of the same family are usually interviewed separately.

The written record of the interview must be translated orally to the applicant and signed by him/her. If needed, subsequent interviews may be organised.

The Dublin Convention

If it transpires from the interview and the investigation conducted by the "police judiciaire" that another country is responsible for examining the application in accordance with the provisions of the Dublin Convention, a request to take charge will be sent to that country.

Asylum seekers processed under the Dublin Convention are not usually interviewed by an officer of the Ministry of Justice.

If the requested state does not accept responsibility, the asylum seeker is transferred to the normal determination procedure and his/her application is processed by the Luxembourg asylum authorities.

Decisions made under the Dublin procedure can be appealed to the Administrative Court, but do not have suspensive effect. In 1999, 113 asylum seekers were transferred to other EU countries on the basis of the Dublin Convention.

Admissibility/manifestly unfounded procedure

Where Luxembourg is designated as the responsible state, the application will be processed under a pre-screening procedure in order to determine whether the application is inadmissible, manifestly unfounded or should be admitted under the normal determination procedure.

According to Section 8 of the Asylum Law, an application may be deemed inadmissible on "safe third country" grounds. A "safe third country" is defined as a country where the asylum seeker:

– has already been granted protection or has had the opportunity to ask for such protection before claiming asylum in Luxembourg;

– is protected against *refoulement* under the terms of the Geneva Convention and treated in accordance with internationally accepted humanitarian criteria;

– will not be subject to any form of persecution and where his/her safety and freedom are not threatened.

According to Section 9 of the Asylum Law, an application may be deemed manifestly unfounded when the asylum seeker does not express fear of persecution on account of his/her race, religion, nationality, membership of a particular social group or political opinions, or when he/she originates from a country which is considered "safe" by the Luxembourg authorities. An application based on a false identity or false declarations or submitted in order to avoid imminent deportation may also be considered as manifestly unfounded.

Until very recently, the decision on whether an application is inadmissible or manifestly unfounded was taken by the Minister of Justice following consultation with the Refugee Consultative Commission ("Commission Consultative des Réfugiés"), composed of a representative of the Ministry for Family Affairs, a person designated on the advice of UNHCR and a judge acting as chairperson. However, following the Law of 18 March 2000 which amended the Asylum Law, the Minister of Justice now makes a decision alone, although he/she retains the option to submit individual cases to the Commission for advice.

According to Section 10(1) of the Asylum Law, the Minister's decision must be taken within two months of the submission of an application, although not before the thorough interview with the officer of the Ministry of Justice has taken place (which may require more than two months). In practice, the time required to process the application through the inadmissibility/manifestly unfounded procedure varies from case to case, but generally exceeds this two-month time limit.

An asylum seeker may, within three months of receiving a negative decision, submit a request to the Ministry of Justice for his/her case to be reassessed.

He/she may also lodge an appeal for annulment with the Administrative Court within one month of receiving a negative decision. Such an appeal has suspensive effect. The Court must render its decision within a further month (and does so in most cases). Negative decisions of the Administrative Court may be further appealed to the Administrative Court of Appeals ("Cour d'appel administrative et fiscale") with suspensive effect. Following the amendments to the Asylum Law of March 2000, the Court of Appeals must also render its decision within one month.

Both the Administrative Court and the Administrative Court of Appeals examine only the legality of the Minister's decision and not the merits of the case. If the initial decision is overruled, the application is returned to the Minister for reconsideration. If the Minister confirms his/her initial decision, the asylum seeker will usually be removed from the country, unless he/she is eligible for another form for residence permit (see "Final rejection" below).

Normal determination procedure

First instance

Once it has been deemed admissible and not manifestly unfounded, an application is processed under the normal refugee determination procedure. First instance decisions are made by the Minister of Justice. Since March 2000, the Refugee Consultative Commission is no longer

required to give an opinion on each case, although the Minister is still able to request their comments on individual cases.

Appeal

Negative decisions by the Minister of Justice can be appealed to the Administrative Court within one month of notification, with suspensive effect. Although there is no specified time limit within which the Court must render its judgement, the processing time does not usually exceed six months. If the Minister's decision to reject an application is overruled, the Court's decision prevails.

Negative decisions of the Administrative Court may be further appealed to the Administrative Court of Appeals. Again, the appeal must be lodged within one month of the Court's decision and will have suspensive effect. The processing time before the Court of Appeals does not usually exceed four months.

Legal aid

According to Section 5 of the Asylum Law, asylum seekers must be informed of their right to be assisted by a lawyer, either chosen by him/herself or designated by the Luxembourg Bar Association. They are entitled to free legal aid under the same terms as nationals.

Lawyers may assist their clients during all interviews conducted under the determination procedure. For practical reasons, however, it is very rare that a lawyer is present during the initial interview with the police.

Interpreters

According to Section 5 of the Asylum Law, asylum seekers must be informed of their right to be assisted by an interpreter, if necessary.

In practice, interpreting services are provided in a satisfactory manner. Interpreters in Serbo-Croatian and Albanian (the two main languages amongst asylum seekers in Luxembourg) are always available at the Ministry of Justice's Refugee Reception Office, whilst interpreters in other Central and Eastern European languages can be made available within a short period of time. The provision of interpretation in Luxembourg in other less common languages may take longer, as in some cases interpreters have to be enlisted from abroad.

Unaccompanied Minors

Cases involving unaccompanied minors are rare in Luxembourg. Out of the 22 unaccompanied minors registered in 1999, the majority consisted of boys aged 16-17 originating from the Balkan countries. Most of these minors already had family members living in Luxembourg.

Unaccompanied minors are automatically appointed a lawyer to represent them during the asylum procedure. No interview may take place without the presence of the child's lawyer. In addition, unaccompanied minors can be allocated a guardian by the "juge des tutelles", a special judge appointed to the Childrens' Court, responsible for guardianship issues. The guardian may be a family member or a social worker (for example from Caritas).

Women

There are no specific provisions regarding the processing of applications submitted by women. However, a female applicant who refers to a fear of persecution based on her gender during the interview must be asked whether she wishes the remainder of the interview to be conducted by a female officer.

Final rejection

Asylum seekers whose application has been rejected by a final decision are usually notified of a request to leave the territory voluntarily within one month ("invitation à quitter le territoire"), although this time limit may, in certain cases, be extended to three months. In principle, the police may enforce a deportation measure, although this has not happened so far.

Rejected asylum seekers are not entitled to receive social assistance from the Government's Commission for Aliens ("Commissariat du Gouvernement aux Etrangers" – CGE, see under "Social conditions for asylum seekers" below). In some cases, however, they may be granted food baskets or a very limited financial support.

Rejected asylum seekers may, in some cases, be granted residence permits on humanitarian grounds or benefit from the status of tolerated residence.

Detention

Asylum seekers without documents or with forged travel documents may be held at the Schrassig detention centre upon their arrival in Luxembourg. The detention period is normally limited to one month, but this one-month period can be renewed twice.

In addition, in order to ensure the enforcement of a decision of transfer to another EU country on the basis of the Dublin Convention, single adults as well as male heads of families may be detained the day before their transfer. For the same reason, families may be detained in a special institution on the day of the transfer. Asylum seekers subject to the implementation of the Dublin Convention, who refuse to co-operate with their transfer, may also be detained.

However, at the time of writing (May 2000), the Luxembourg authorities do not resort to these detention measures against asylum seekers.

Rejected asylum seekers can be dealt with under the provisions of Section 15 of the Law of 28 March 1972, according to which an alien who cannot be removed from Luxembourg for practical reasons can be held "at the Government's disposal" until removal can be effected. Administrative detention in the Schrassing detention centre must not exceed one month although, if absolutely necessary, it can be renewed twice by the Ministry of Justice. The decision to detain may be appealed to the Administrative Court within one month. The Court must render its decision within ten days. It is also possible to lodge a further appeal with the Administrative Court of Appeals within three days of notification of the Administrative Court's negative decision. Again, the Court of Appeals must make its decision within ten days.

Application from abroad

There are no provisions for the submission of an asylum application to a diplomatic representation of Luxembourg abroad, and such applications are therefore refused (two cases in 1999).

Family reunification

There is no legal regulation regarding family reunification for non-EU foreigners living in Luxembourg.

Convention refuges, according to administrative practice, are entitled to family reunification with their spouses and minor children. Reunification with children over 18 years of age and with parents may also be allowed provided that they are dependants of the refugee living in Luxembourg. In principle, unaccompanied minors staying in Luxembourg are not entitled to reunification with their family, as it is considered that the minor should join his/her parent abroad.

Reunification is not conditional upon a minimum length of residence, but the refugee living in Luxembourg must be able to demonstrate adequate housing as well as sufficient resources. However, unlike other non-EU foreigners, recognised refugees who receive the monthly Minimum Guaranteed Income (basic social allowance) are deemed to meet the latter condition.

Persons granted temporary protection will be allowed family reunification with their spouse and minor children, according to the Law of 18 March 2000 which amended the Asylum Law.

Asylum seekers are not, in principle, entitled to any form of family reunification. However, in 1999, the government agreed on an exceptional basis, to receive 102 persons with family links to Kosovo Albanians staying in Luxembourg, either as asylum seekers or migrants. Most of these Kosovo Albanians have now returned to Kosovo.

Procedure: applications for family reunification must be submitted to the Ministry of Justice by the persons residing in Luxembourg. The Ministry is responsible for granting residence permits to the family members. In cases of rejection, the applicant may lodge an appeal for annulment with the Administrative Court and may appeal further to the Administrative Court of Appeal if the Administrative Court confirms the rejection.

Status of the person reunited: family members reunited with a refugee are granted refugee status if they request such status. Otherwise they are granted the status of immigrant workers and a residence permit, generally valid for five years and renewable. Travel arrangements to Luxembourg for the family members may be organised by the International Organization for Migration (IOM), upon request from the Governement's Commission for Aliens, which will then cover the costs.

There are no figures available regarding the number of persons reunited in Luxembourg.

Statistics

Number of asylum applications

Number of asylum applications submitted in Luxembourg		
	No. of applications (files)	No. of persons
1996	144	263
1997	296	427
1998	893	1,709
1999	1,385	2,921

Number of refugee statuses granted

	No. of cases	No. of persons
1997	22	not available
1998	18	43*
1999	not available	29**

* includes decisions made on applications submitted in 1998 (6) and before 1998 (37)
** only includes decisions made on applications submitted in 1999

Number of Convention refugees living in Luxembourg

On 1 January 2000, there were 99 Convention refugees with valid Convention travel documents resident in Luxembourg. This figure does not include children under 15 years registered on their parents' travel documents or refugees who have not requested the renewal of their travel documents.

Main national groups

Main national groups to seek asylum in Luxembourg

Countries	1996 (applications)	1997 (applications)	1998 (persons)	1999 (persons)
Former Yugoslavia	76	82	1,437	2,612
Albania	--	--	129	81
Bosnia-Herzegovina	7	12	11	63
Macedonia	--	5	22	34
Russia	3	9	9	29
Ukraine	4	1	2	6
Armenia	1	7	1	6
Bulgaria	2	0	11	4
Croatia	--	--	1	1
Iraq	5	3	19	--
Georgia	--	8	9	--
Turkey	2	2	7	--
Pakistan	0	2	6	--
Dem. Rep. of Congo	7	5	5	--
Algeria	6	13	5	--
Iran	3	6	2	--
Togo	--	--	2	--
Romania	7	3	1	--
Liberia	3	3	1	--
Nigeria	1	2	1	--
Others	16	38	29	43

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Asylum seekers, like Convention refugees and persons under temporary protection, are entitled to benefits from the Social Department of the Government's Commission for Aliens ("Commissariat du Gouvernement aux Etrangers" – CGE). These include financial assistance, accommodation and payment of medical expenses, as well as language courses and information on different aspects of life in Luxembourg.

In the NGO field, the Refugee Department of Caritas assists asylum seekers and refugees both during and after the procedure.

Accommodation

Once they have registered their application with the Ministry of Justice's Refugee Reception Office, asylum seekers are referred to the CGE, where they have an interview with a social worker in order to evaluate their needs in terms of accommodation, basic support and health care.

Upon arrival, single males may be provided with emergency accommodation in shelters for homeless persons, including the Luxembourg City's reception shelter or the Caritas night shelter. During this period, families are usually accommodated in hostels or in the youth hostel. This kind of emergency accommodation is provided free of charge unless asylum seekers have their own means.

Asylum seekers who have no family members living in Luxembourg are then offered accommodation in one of the CGE's reception centres or one of the centres run by NGOs, such as Caritas and the Red Cross. In addition, there is an increasing practice of accommodating applicants in hostels (either rooms or small apartments). In some very rare cases, applicants may find private accommodation and have the rent paid by the CGE.

Depending on the type of accommodation provided, applicants receive full board, half board or can cook meals on their own.

Although no refugee is left without accommodation, conditions in the reception centres are not always optimal: single males may be requested to share rooms, in some cases men are separated from their families and must share a room with other men, and women and children may have to live in very cramped conditions, separated from each other by wardrobes or sheets.

According to the Law of 27 July 1993 regarding the integration of aliens in the Grand Duchy of Luxembourg and the social assistance available to them, accommodation in the reception centres is, in principle, on a temporary basis and may not exceed two years. In some cases, an extension of a further two years may be granted. This may, "on an exceptional basis and for serious reasons", be further renewed. However, since the necessary regulation has not yet been adopted, in practice these time limits do not apply. Admission to the reception centres is decided by the CGE. Accommodation is, in principle, free of charge, unless the applicant has his/her own resources. In the centres run by NGOs, asylum seekers may be required to pay a contribution to the costs.

At the end of 1999, 701 asylum seekers were accommodated in ten centres run by the CGE, 352 in centres rented by the CGE, 1,319 were staying in hostels and pensions and 15 applicants were living in the Caritas centre.

Financial assistance

The decree setting out details of the social assistance to which asylum seekers are legally entitled according to the Asylum Law has not yet been passed. It is impossible to predict to what extent support will be modified under this regulation once it comes into effect.

Asylum seekers are entitled to a basic allowance to cover food and other minor living expenses. Such allowances are considered as an advance on the various benefits (child benefit, education allowance, etc.), which the applicant will be entitled to receive –retrospectively from the date of submission of the application – when he/she will be granted refugee status. The amounts granted during the procedure will be deducted from the allowances paid after recognition of refugee status.

Asylum seekers must come to the CGE in person each month to receive the basic allowance. The rates vary according to the type of board and lodging provided as shown below:

Basic monthly allowance		
Meals not provided		
1 adult	LUF 11,000	EUR 273
Couple or 2 adults	LUF 20,000	EUR 496
Child 0-12 years	LUF 5,000	EUR 124
Child 12-18 years	LUF 6,500	EUR 161
3rd adult	LUF 8,000	EUR 198
One meal provided		
All categories	Above-mentioned amounts reduced by 40%	
All meals provided		
1 adult	LUF 2,000	EUR 50
Child 0-2 years	LUF 5,000	EUR 124
Child 2-3 years	LUF 2,500	EUR 62
Child 3-18 years	LUF 1,000	EUR 25

On a case by case basis, and under certain circumstances, the Social Department of the CGE is allowed to reduce the amount of the social benefits.

An annual clothing allowance is paid to families living in centres as follows:

Annual clothing allowance*		
Child 3-12 years	LUF 4,000	EUR 99.1
Child 12-18 years	LUF 6,000	EUR 148.7
3rd adult	LUF 8,000	EUR 198.3

* these amounts are paid to applicants staying in centres where all meals are provided. If meals are not all provided, the amounts are paid at a rate reduced by 40%

Clothing is free for asylum seekers lacking means. Clothes can be either given directly by the Red Cross or Caritas, or provided by means of purchase coupons.

After three months, asylum seekers are entitled to further assistance, such as free language tuition and free public transport.

They may also apply for extra financial assistance at the beginning of the school year or when a child is born.

Asylum seekers with their own resources are not entitled to free accommodation or free clothing, and social benefits are granted according to their needs and resources.

As the Asylum Law gives suspensive effect to all appeals, asylum seekers who have appealed against a first instance rejection are still entitled to receive social benefits. However, from the notification of the first instance negative decision until the notification of the appeal decision, benefits are cut by 20%.

Work

Asylum seekers do not have the right to work.

However, in April 1999, the Luxembourg government decided to grant an authorisation for work to certain asylum seekers originating from war zones, valid for six months. The beneficiaries were as follows:

1. entry into Luxembourg before 14 April 1999:

   - Kosovo Albanians;
   - citizens from the Federal Republic of Yugoslavia, Macedonia and Albania provided that:
     - their application for asylum had not been rejected by a final decision on 14 April 1999; or
     - their application for asylum has been rejected by a final decision but they had not been removed from the territory on 14 April 1999.

2. entry into Luxembourg after 14 April 1999: Kosovo Albanians provided they had not stayed in a third country on their way to Luxembourg;

In November 1999, the authorisations for temporary work were extended for Kosovo Albanians as well as for those persons whose applications for asylum had not been rejected by a final decision on 26 November 1999. Authorisations will expire on 15 June 2000 and will not be renewed. At present, approximately 280 asylum seekers are allowed to work on this basis.

Language tuition

Once their application has been deemed admissible, asylum seekers over 16 years of age may have free language tuition in either French or German at the Centre des Langues. However, due to the limited number of places available, not all applicants are able to attend these classes

In addition, several NGOs organise language classes for refugees, which are sometimes subsidised by the state. These include Caritas (French) and Pax Christi (French and German).

School attendance

The children of asylum seekers have free access to the Luxembourg school system. Like other foreign children, they may attend reception classes in primary schools or classes with special language provision (“classes à régime linguistique particulier”) in secondary schools.

In order to facilitate the integration of children of asylum seekers and refugees in Luxembourg schools and to improve communication between school personnel, the children and their parents, the Ministry of Education has appointed a number of “intercultural mediators” (“médiateurs interculturels”), originating from the asylum seekers’ main countries of origin. Upon request from the school, the mediators may provide various types of assistance, including the translation of documents regarding school organisation or programmes, translation of evaluation tests, attendance at parents meetings, assistance during meetings with educational psychologists, etc. This programme, which started in 1999, has already proved very useful.

Child care

There is no specific child care for the children of asylum seekers and parents must therefore make their own arrangements.

Unaccompanied minors

There are no special reception facilities for unaccompanied minors without families in Luxembourg. In practice, they are accommodated in various institutions for minors throughout the country.

Unaccompanied minors may be allocated a guardian by the "juge des tutelles", a special judge appointed by the Childrens' Court, responsible for guardianship issues. The guardian may be a family member or a social worker (for example from Caritas). In addition, all minors are automatically appointed a lawyer to represent them at all stages of the asylum procedure.

Most of the 22 unaccompanied minors registered in 1999 were minors aged 16-17, with family members living in Luxembourg, who could take care of them.

Health/sickness

Asylum seekers are entitled to free medical assistance and may choose their own doctor. Expenses are met by the CGE on the same basis as for nationals, which means that asylum seekers have to pay a contribution to the costs. In some cases, the CGE may grant additional support to cover this contribution. For dental treatment, asylum seekers are required to pay approximately 30% of the costs.

Freedom of movement

Asylum seekers may travel freely within Luxembourg, but may not leave the country.

Repatriation

Asylum seekers who wish to repatriate whilst their application is pending can be assisted in so doing by the CGE and the International Organization for Migration (IOM). Generally, they will be asked to confirm in writing that they withdraw their claim. If their departure is certain, they will be issued with an authorisation to stay in the country, valid until the date of departure.

Since April 2000, asylum seekers from the Balkans, either in the procedure or after rejection of their claim, have been able to receive financial assistance, the amount of which varies as follows, according to when repatriation takes place:

Date of repatriation	Adult		Child	
During the procedure	LUF 48,000	EUR 1,190	LUF 24,000	EUR 595
Within 3 months after rejection	LUF 48,000	EUR 1,190	LUF 24,000	EUR 595
Within 3-5 months after rejection	LUF 32,000	EUR 793	LUF 16,000	EUR 793
Within 5-6 months after rejection	LUF 16,000	EUR 397	LUF 8,000	EUR 198

In principle, rejected asylum seekers who repatriate later than six months after notification of the final rejection are not entitled to any financial assistance.

In August 1999, the Luxembourg government adopted a repatriation programme for persons from Kosovo, which included following measures:

– one-off payment of a sum equal to three times the monthly basic allowance;

– a clothing allowance of LUF 5,000 [EUR 124] per person;
– transport of furniture and personal belongings to Kosovo;

Following the introduction of the programme, 193 persons repatriated to Kosovo in 1999, comprising both asylum seekers and rejected applicants.

SOCIAL CONDITIONS FOR REFUGEES

Housing

Accommodation in reception centres is limited to three months following the granting of refugee status.

The CGE tries to place some refugees in so-called “second stage reception centres”, where rooms are rented to them on a three-year basis. In January 2000, there were 25 of these second stage centres. Refugees are usually expected to contribute to the rent according to the number of rooms made available, whether or not they are obliged to share bathrooms or kitchens with other families, and their own resources. In general, the contribution is very low.

The CGE helps those refugees who are not accommodated in the second stage reception centres in finding places to rent and it may also assist them in paying the rent. In addition, the Refugee Service of Caritas, in co-operation with the organisation Wunnengshëllef has been able to provide about 20 apartments to recognised refugees.

Freedom of movement

The local authorities provide Convention refugees living in their area with an alien's identity card initially valid for five years. Convention refugees are free to travel inside and outside the country.

Financial assistance

Like nationals, Convention refugees over 25 years of age who meet the required conditions are entitled to receive the monthly Guaranteed Minimum Income (GMI).

While their application for the GMI is being processed – i.e. for a period of about two months – refugees may still receive the allowances granted by the CGE to asylum seekers. As soon as the GMI is paid, this is stopped and the refugees fall under the provisions of the national welfare system.

However, refugees who do not have their own resources or have insufficient resources, for example because they do not meet the conditions for receiving unemployment benefit or the GMI, may still receive financial assistance from the CGE according to their needs and resources. Allowances granted to refugees are generally similar to those granted to asylum seekers. The CGE has the right to reduce or increase these allowances according to the efforts made by each individual towards integration in Luxembourg.

Convention refugees are also entitled to a maternity allowance, child benefit and education allowances, on the same terms as nationals. These allocations are paid retrospectively from the date of arrival in the country, but within a limit of one year. In principle, allowances paid by the CGE during the procedure are deducted from the allocations granted, but the CGE may waive this deduction in order to support integration.

Work

Convention refugees are allowed to work and, in principle, do not need a work permit. However, in practice, employers must follow the procedure which is applicable to all non-EU foreigners and request a work permit. The permit is issued by the Ministry of Labour after consultation with the Labour Office and a special commission. The ministry may grant an A-permit, valid for one year, and restricted to one employer and one profession, a B-permit, valid for four years, for any

employer but for only one profession, or a C-permit, unlimited and valid for any employer and any profession.

The CGE and the Refugee Office of Caritas may provide assistance in finding jobs.

Convention refugees are entitled to unemployment benefit.

Language tuition

In general, the CGE pays for language tuition for refugees without resources, in order to facilitate their integration into the country.

School attendance

Refugee children have the same access to the school system as nationals. If the child is over six years old and has at least one sibling, the family is entitled to an allowance at the start of the school year.

The school system is the same for all children regardless of their ethnic origin. Children of refugees who do not speak any of the three official languages of the Luxembourg school system, i.e. Luxembourgish ("Lëtzeburgesch"), French and German, may be placed in reception classes in primary schools or classes with special language provision ("classes à régime linguistique particulier") in secondary schools. After one or two years, they attend a normal class, but may still receive intensive language courses, if needed.

Mother tongue tuition

Except for Portuguese and Italian language, there is no mother tongue tuition available within the national school system. For children from non-EU Member States, unofficial classes have been organised, sometimes – but not always – on the authorisation of the Ministry of Education.

Access to the adult education system

Access for adults to the educational system is free but remains problematic for many refugees because of the language barrier.

Foreign diplomas will be recognised where they are a requirement for access to the education system.

Refugees are also entitled to grants from the Ministry of Education.

They may also attend vocational training courses designed for the unemployed.

Access to the national health service

Refugees have the same access to the national health system as nationals.

Unaccompanied minors

Unaccompanied minors under 15 years of age are given a refugee travel document, which is renewable annually. Those over 15 years of age are, like adults, given a refugee travel document, renewable every two years, together with an alien's identity card which is valid for five years.

Minors can be placed under the care of a guardian on the decision of the "juge des tutelles", a special judge appointed by the Children' Court, responsible for guardianship issues.

Citizenship

Recognised refugees may apply for Luxembourg citizenship following five years of residence from the granting of the refugee status. Other foreigners must wait for ten years.

Repatriation

In cases where refugees wish to repatriate but lack sufficient resources to do so, the CGE may grant financial assistance.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Temporary protection was re-introduced into Luxembourg legislation by Law of 18 March which amended the Asylum Law. According to this, a temporary protection regime may be established by regulation of the Grand Duchy "*in case of massive influx of persons fleeing an area with armed conflict, war or generalised violence*". The specific groups enjoying temporary protection must be defined in the regulation, as well as the duration of the protection. It will be possible to extend or renew the duration of the temporary protection, provided that the total period does not exceed three years.

As far as social rights are concerned, the amended Asylum Law states that persons with temporary protection will be entitled either to the same social assistance as asylum seekers or to an authorisation for temporary work (see "Work" in "Social Conditions for Asylum Seekers" below). In addition, they will be entitled to family reunification with their spouse and minor children.

Apart from these provisions, the social rights of persons under temporary protection will have to be detailed by way of regulation.

MALTA

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and the New York Protocol of 1967, which Malta ratified in 1971. Malta applies the geographical reservation of Article 1B(1)a of the Geneva Convention.

– The Immigration Act (Laws of Malta, Immigration Act, 1970, Chapter 217);

Given Malta's above-mentioned geographical reservation, non-European asylum seekers cannot have their application for asylum processed by the Maltese authorities and are therefore placed under UNHCR mandate. European asylum seekers are able, in principle, to submit their application to the Maltese authorities. However, in practice Malta does not yet have any asylum legislation and therefore there is no determination procedure as such.

On 29 December 1999, the Maltese Government published the Bill No. 46 entitled "An Act to make provisions relating to and establishing procedures with regard to refugees and asylum seekers" (the Asylum Bill). The bill is expected to be adopted in Parliament in the course of 2000 and the first Maltese Asylum Act should enter into force following its enactment. Although not mentioned in the bill, the Maltese Ministry of Home Affairs has repeatedly declared that the geographical reservation would be lifted once the bill becomes law.

The present chapter includes information on the current situation as well as a description of the Asylum Bill's main provisions. Information on the future Asylum Act will be available from the Emigrants' Commission at a later stage.

Refugee Status

Current situation

European asylum seekers may, in principle, be granted refugee status by the Maltese authorities based on the Geneva Convention. However, due to lack of legislation, there has not yet been a case where a person was officially granted refugee status.

Non-European asylum seekers have their application examined by UNHCR and may be granted Convention status under UNHCR mandate. Mandate refugees are issued with a temporary leave to remain, which allows them to stay in Malta on a lawful basis until they can be resettled elsewhere.

Asylum Bill

The Asylum Bill only provides for the granting of Convention status. A "refugee" is defined under the same terms as in Section 1A of the Geneva Convention.

Other types of residence permit

Current situation

Special leave to remain temporarily may be granted according to the provisions of the Immigration Act. UNHCR Mandate refugees are granted a renewable six-month visa, whereas

persons under temporary humanitarian protection (usually European refugees) are granted a renewable three-month visa. In both cases, such visas are renewed for as long as necessary.

Asylum Bill

According to Section 8(7) and (8) of the Asylum Bill, the Refugee Commissioner – i.e. the responsible body for examining all asylum applications and for making recommendations to the Minister of Home Affairs as to whether they should be accepted or rejected (see "Determination procedure" below) – may recommend that a person who does not satisfy the conditions defining recognition as a refugee, be granted humanitarian protection. In practice, the person will be issued with a renewable temporary visa until he/she can return home or settle in another country.

Temporary protection ceases when the Minister considers, after consultation with the Refugee Commissioner, that it is no longer necessary.

Rejection at the border/entry into the country

Current situation

When an alien claims asylum at the border, the border police inform the Principal Immigration Officer. Asylum claims submitted by non-European applicants are then referred to the Emigrants' Commission in its capacity as a UNHCR partner agency.

A UNHCR-trained representative from the Emigrants' Commission proceeds to the border in order to interview the applicant. The claims are then forwarded to UNHCR. The Maltese immigration authorities usually keep the applicant in custody at the airport until a UNHCR decision has been made.

Asylum Bill

According to Section 8(1) of the Asylum Bill, an alien seeking asylum at a point of entry must be interviewed by an immigration officer as soon as possible. The officer must inform the applicant of his/her right to submit a formal application for asylum to the Refugee Commissioner and to consult UNHCR.

In accordance with Section 10(1), an asylum seeker may not be removed from Malta before his/her application has been finally determined and he/she must be allowed to enter or remain in Malta pending a final decision. In addition, Section 9 explicitly prohibits refoulement in the same terms as in Article 33 of the Geneva Convention.

The Asylum Bill does not include any provisions for an accelerated border procedure.

Submission of the application

Current situation

The Emigrants' Commission is UNHCR's Operational Partner regarding the screening and examination of applications submitted by non-European asylum seekers in Malta. (see "Determination procedure" below). The Operational Partner's contract with UNHCR is reviewed and renewed every year, according to the caseload. The main part of the funds paid by UNHCR according to the contract goes towards the subsistence of refugees. The rest covers, in part, the administrative expenses incurred. The Emigrants' Commission receives no subsidy from the Maltese authorities.

The Commission has not been given official responsibility by the Maltese authorities to screen the European applications, and thus the Commission does not examine such applications

individually. However, local authorities do seek its advice, and the Commission makes recommendations based on UNHCR principles and guidelines. In serious cases involving, for instance, *prima facie* persecution, action is recommended according to the circumstances and/or specific advice provided, normally after informal consultations with UNHCR.

Asylum Bill

Asylum seekers arriving at the border or already in the country, whether lawfully or not, have to submit a formal application to the Refugee Commissioner. If already in the country, the Commissioner shall require the applicant to attend an interview within one week.

Admissibility and/or manifestly unfounded procedure

Currently, due to the lack of asylum legislation, there is no admissibility and/or manifestly unfounded procedure. The Asylum Bill does not include any provision for the introduction of such procedure into Maltese legislation.

Determination procedure: current situation

Asylum applications submitted by European asylum seekers are not processed by the authorities.

The Emigrants' Commission may make recommendation to the Maltese authorities regarding such cases. As most European asylum seekers in Malta have fled conflict zones, the Commission has, in many cases, recommended the granting of temporary protection on humanitarian grounds by means of a leave to remain temporarily. The Commission's recommendations are generally followed by the authorities. In cases involving, for example, *prima facie* persecution, action is recommended according to the circumstances.

UNHCR is not directly involved in this procedure, but it is often contacted in order to provide background information as well as advice on individual cases.

As there is no formal determination procedure, there are no formal rights of appeal. Normally, an *ad hoc* solution is sought and applied.

Non-European asylum seekers must submit their application to the Emigrants Commission, where they are provided with a standard application form. At a later stage, the applicant is interviewed by a UNHCR-trained officer of the Commission. The file is then forwarded to the UNHCR Branch Office in Rome for consideration, further verification and determination. The decision as to whether refugee status is granted or not is given to the applicant through a UNHCR written reply. A negative decision may be appealed.

The average time for a first instance decision for a refugee status determination under UNHCR mandate is between two and three months. This may, however, be longer depending on the circumstances of the cases and the need for the UNHCR staff to carry out a complementary interview with the applicant.

Periodically, the Emigrants' Commission presents to the Police authorities a list of asylum seekers (both European and non-European). Persons whose names are on the list are always granted the necessary waiting period for a final decision on their application. They are also issued with an Emigrants' Commission stamped note identifying them as having applied for refugee status.

Determination procedure: Asylum Bill

First instance decisions under the determination procedure provided for in the Asylum Bill are made by the Minister of Home Affairs upon the recommendation of the Refugee Commissioner.

The Refugee Commissioner is appointed by the Prime Minister, who may also assign public officers to be members of the Commissioner's staff if necessary.

The Commissioner examines applications as soon as possible in order to make a recommendation to the Minister. His/her investigation includes an interview with the applicant in private, with the presence of an interpreter where necessary. UNHCR has free access to the asylum seekers during the procedure and may attend the interviews with the Commissioner. The recommendation forwarded to the Minister, like any decisions made by the Commissioner on any application, must be in writing and must state the reasons supporting it.

If the Commissioner recommends the acceptance of the application, the Minister must either grant refugee status to the applicant or appeal against the recommendation (see below). The Commissioner may also recommend that a person who does not meet the requirements for recognition as a refugee be granted humanitarian protection.

Either the applicant or the Minister can appeal against the Commissioner's recommendations to the Refugee Appeals Board with two weeks of notification. The Appeals Board is composed of three members appointed by the Prime Minister for three years renewable and chosen amongst persons who have experience and knowledge in refugee matters. The Chairperson must have at least seven years of experience as a practising lawyer.

Appeals entered by the Minister to the Refugee Appeals Board have suspensive effect and any appellant detained in virtue only of a deportation or removal order must be released pending the appeal decision. Appellants have the right to free legal aid under the same conditions as Maltese nationals. Where necessary, interpreting services are provided by the Board. Hearings are, in principle, held *in camera*, although UNHCR has the right to attend. Decisions of the Refugee Appeals Board are final and may not be further appealed.

Legal aid

Legal aid is available during the appeal procedure to both European and non-European applicants.

Interpreters

Interpreters are provided at all stages of the procedure if necessary.

Unaccompanied minors

So far there has been no case of unaccompanied minor asylum seekers.

According to Section 12 of the Asylum Bill, any minor asylum seekers in need of care must be allowed to apply for asylum and be given assistance under the terms of the Children and Young Persons (Care Orders) Act.

Detention

Asylum seekers

Non-Europeans who are refused entry to Malta, or are otherwise intercepted while trying to proceed (via Malta) without the necessary visa to another destination, and who ask for asylum are kept at the airport until UNHCR makes a decision on their application. Usually, this does not take very long. Under current Maltese law, such persons are considered as illegal aliens, and they are allowed to enter Malta only if UNHCR accepts them under its mandate. There have been a few such cases so far.

Rejected asylum seekers

Applicants who have applied for asylum after being caught illegally in Malta or after a removal order is issued against them are kept in detention until departure.

Those who have applied for asylum while they were legally in Malta are expected to leave the country as soon as possible after the rejection of their application. If they fail to do so, they may be charged with overstaying and served with a removal order and risk being detained until departure.

There is no time limit for detention. Removal orders can only be issued by a judge, following formal hearings during which the accused has the right to be assisted by a lawyer.

Family Reunification

Refugees under UNHCR Mandate can submit a request for family reunification. Really deserving cases are viewed positively.

According to Section 11(2) of the Asylum Bill, a refugee's dependent family members, who are already in Malta when the status is granted or who join him/her later, will enjoy the same rights and benefits as the refugee. The bill does not include any definition of a family member for family reunification purposes or any provisions regarding the procedure to be applied.

Statistics

Number of applications for asylum

No. of asylum applications submitted in Malta				
	No. of cases	No. of adults	No. of children	Total no. of persons
1995	166	182	53	235
1996	50	68	25	93
1997	79	73	19	92
1998	167	174	29	203
1999	247	311	84	395

Number of asylum seekers and recognised refugees

No. of UNHCR Mandate refugees still living in Malta at the end of the year				
	No. of cases	No. of adults	No. of children	Total no. of persons
1995	164	221	87	308
1996	155	203	82	285
1997	123	164	69	233
1998	121	153	51	204
1999	95	120	44	164

The number of asylum seekers and refugees registered with the Emigrants Commission at the beginning of the year 2000 was 378, including 314 adults and 64 children, originating from 27 countries. This figure includes:

- recognised refugees under the UNHCR Mandate;
- asylum seekers awaiting a reply from UNHCR (first instance or appeal);
- asylum seekers of European origin asking for temporary protection in Malta;
- asylum seekers whose application for refugee status was rejected but who cannot return to their country of origin.

SOCIAL CONDITIONS FOR ASYLUM SEEKERS, REFUGEES AND PERSONS UNDER TEMPORARY PROTECTION

Current situation

Under the current situation, the Maltese authorities provide free medical care and free education to UNHCR mandate refugees and people enjoying temporary protection, as well as asylum seekers.

Neither asylum seekers nor refugees are allowed to work, but some have unofficial jobs.

UNHCR provides financial assistance to mandate refugees, as follows:

Financial assistance provided by UNHCR						
	First six months		Second six months		Next twelve months	
Single person	Lm 100	EUR 40	Lm 50	EUR 20	Lm 25	EUR 10
Married Couple	Lm 150	EUR 50	Lm 75	EUR 30	Lm 50	EUR 20
Children	Lm 25	EUR 10	Lm 25	EUR 10	Lm 25	EUR 10

In principle, UNHCR assistance is provided for a maximum period of two years. However, children continue to receive the allowance until they reach the age of 16 and adults over the age of 61 and disabled persons are entitled to permanent assistance.

No assistance is provided by UNHCR to asylum seekers.

Asylum seekers and refugees may receive assistance from local NGOs, in particular the Emigrants' Commission.

Asylum Bill

According to Section 10(1–2) of the Asylum Bill, asylum seekers must reside and remain in the places that may be indicated by the Minister of Home Affairs. They have access to state education and training and have the right to receive state medical care and services. They are not allowed to work or carry on business unless allowed by the Minister. The assistance granted to them will be determined by way of regulation made by the Minister of Home Affairs.

According to Section 11, recognised refugees have the right to remain in Malta and to be granted a residence permit, as well as a Convention Travel Document entitling them to leave and return to Malta without the need of any visa. Like asylum seekers, they have access to state education and training and have the right to receive state medical care and services. The bill does not explicitly allow them to take up employment. However, it is mentioned that the Minister of Home Affairs may make, in concurrence with the Minister responsible for labour, provisions for the granting of work permits to refugees. The Minister of Home Affairs has declared that such work permits would be granted.

THE NETHERLANDS

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Aliens Act of 13 January 1965, as amended in January 1994;

– The Aliens Decree as amended in January 1994;

– The Aliens Circular of 1994;

– The Dublin Convention, which has been in force in the Netherlands since September 1997.

– The Schengen Implementation Agreement, which has been in force in the Netherlands since March 1995.

On 16 September 1999, the Dutch government submitted a new Draft Aliens Act to Parliament. This Draft is currently under discussion, and it is expected to be adopted in the course of 2000, although some amendments may yet be made. The government intends to have the new Act ready to come into force at the beginning of 2001. The present section describes the situation as it is at the time of writing, i.e. under the current Aliens Act of 1965, modified in 1994. A description of the proposed legislation is enclosed below under "The new Aliens Act", below, and the main changes to come are also mentioned under their respective sections. More details on the new Dutch aliens legislation can be obtained from the Dutch Refugee Council.

Refugee status

The only kind of refugee status granted in the Netherlands is Convention status. This is a permanent status (A-status), although in practice, the residence permit has to be renewed every year. The status can only be withdrawn if the refugee renounces to the protection granted, for instance by moving back or spending holidays in his/her country of origin, or if it appears that the refugee had lied on the circumstances, which made him/her leave his/her country of origin. Although such provision exists in the Aliens Act, refugee status is not withdrawn when the situation in the country of origin improves.

Quota refugees

The Netherlands receives a yearly quota of up to 500 refugees under an agreement concluded with UNHCR.

Other types of residence permit

Residence permit for humanitarian reasons

Under certain circumstances a residence permit for humanitarian reasons may be granted to aliens who do not meet the criteria of the Geneva Convention. This permit does not include any recognition as a refugee under the Geneva Convention and does not entitle its holder to any of the benefits and rights provided by the Geneva Convention. It is issued for one year renewable.

A residence permit for humanitarian reasons may be granted:

– if the asylum seeker has been traumatised either as a direct victim of acts of violence by the authorities, or if close relatives were victims;

– if there has been no final decision on the asylum request within three years and whilst the applicant has been allowed to stay in the Netherlands pending the procedure;

– if expelling the rejected asylum seeker could constitute a real risk of violating Article 3 of the European Convention on Human Rights;

– if the asylum seeker has stayed three years in the Netherlands with a provisional residence permit (see below).

Residence permit for unaccompanied minors

A special residence permit may be granted to minors without sufficient care in the country of origin. This permit is granted for one year, and may be renewed for a maximum … period of three years. After these three years, the permit will be converted in a residence permit for humanitarian reasons.

Provisional residence permit

A provisional residence permit ("voorwaardelijke vergunning tot verblijf") was introduced following the January 1994 amendments to the Aliens Act. It may be granted if *"enforced removal to the country of origin would bring unusual hardship to the alien in connection with the general situation in the country*". Provisional residence permits are granted on a yearly basis and are renewable. If the obstacles to expulsion cease to exist during the first three years, the permit will be withdrawn. After three years of continuous residence in the Netherlands, the holder of a provisional residence permit is entitled to a residence permit for humanitarian reasons.

Following a decision of the Secretary of State of the Ministry of Justice in December 1998, asylum seekers who have spent more than two weeks in a third country before coming to the Netherlands are no longer eligible for a provisional residence permit. This applies regardless of whether this third country will allow the applicant to re-enter its territory or not. On 4 May 2000, the Court of Unity (responsible for standardising aliens jurisprudence) ruled that this policy was not reasonable and that the Secretary of State should at least take into account whether re-entry in the third country is possible or not. At the time of writing (mid-May 2000), the Secretary of State has not yet commented on this decision.

Provisional residence permits are used to grant temporary protection to certain groups or nationalities based upon the human rights and safety situation in their countries of origin. The Kosovo Albanians who came to Holland before 16 July 1999 under the UNHCR Humanitarian Evacuation Programme were all granted provisional residence permits, after having applied for asylum (this a prerequisite for receiving a provisional residence permit). Their asylum applications were suspended for one year, but this has now ended and the applications of those who have not repatriated are currently being processed.

Afghan asylum seekers are also granted temporary protection by way of provisional residence permits, as well as Burundese and Rwandese applicants and some persons from Sudan, Somalia and Congo.

Social rights of persons with provisional residence permits are described under "Social conditions for persons under temporary protection" below.

Submission of the application

All asylum seekers have to submit their application in one of the three Application Centres (AC), located at the German border (Zevenaar), at the Belgian border (Rijsbergen) and at Schiphol Airport near Amsterdam. A fourth Application Centre, located in Ter Apel, near the German border, is scheduled to open in the near future.

Asylum seekers claiming asylum at a border point where there is no AC are referred to the closest AC to submit their application. The same applies to in-country applicants who contact the asylum authorities or a police station.

There are no fixed time limits for submitting the initial request for asylum. However, asylum seekers are expected to come forward as early as possible. As a rule, this means within 24 hours after arrival. If an undocumented asylum seeker fails to submit his/her application within 24 hours, it may be classed as inadmissible. However, the District Court (see below) has decided that the Immigration and Naturalisation Service ("Immigratie en Naturalisatie Dienst" – IND, a semi-autonomous body operating under the jurisdiction of the Ministry of Justice) should nevertheless examine whether a decision of inadmissibility might amount to *refoulement*.

Accelerated procedure

In the Applications Centres, all applications are examined by the IND in order to determine whether they should be processed under the accelerated procedure or allowed to enter the normal determination procedure.

In the first 24 hours following registration in the Centre, IND's officials investigate the applicant's identity and nationality and his/her travel route and collect personal data (photographs, fingerprints, documentation, etc.). The aim of this preliminary investigation is to identify the claims which have no chance of success and which should be rejected immediately.

If the application is deemed to be apparently without basis, manifestly ungrounded or inadmissible, a negative decision is made by the IND within 48 (working) hours following registration. The criteria for determining if an application is manifestly ungrounded or inadmissible are described under "Normal determination procedure" below.

With the exception of this 48-hour time limit, the accelerated procedure does not differ radically from the normal determination procedure (see below)

If no decision is made within 48 hours, the application is automatically transferred to the normal procedure and the applicant allowed entry into the country.

Approximately 15% of all asylum seekers were placed in the accelerated procedure in 1999.

All applicants processed under the accelerated procedure receive legal aid either from private lawyers or from the lawyers of the Foundation for Legal Aid in Asylum Cases ("Stichting Rechtsbijstand Asiel").

A negative decision by the IND may be appealed to one of the five District Courts if it is combined with detention (this is always the case at Schiphol airport). The appeal has to be lodged within 24 hours. It has no automatic suspensive effect, but this can be granted by the court upon separate request. If the negative decision is not combined with detention, the asylum seeker must first appeal for review at the IND. Only if this review is negative, can he/she appeal to the Court.

The Dublin Convention

All applications for asylum are screened in order to determine if another state is responsible for examining the claim in accordance with the criteria of the Dublin Convention. If this is the case, a request to take charge will be sent to this state. This will usually be done under the accelerated procedure, although it may also happen at a later stage if the information is not available initially. If the requested state accepts responsibility, the asylum seeker will receive a negative decision and will be transferred to the responsible state. Conversely, if the request to take charge is rejected, he/she will be processed under Dutch determination procedure.

Members of families travelling through different Dublin states on their way to the Netherlands are usually split up and returned to the respective Dublin states. Exceptions on humanitarian grounds are extremely rare.

Asylum seekers processed under the provisions of the Dublin procedure are not given accommodation and are not entitled to any financial assistance. Some support may be provided in distressing humanitarian cases (very young children, medical cases, etc), but this is applied very restrictively by the authorities.

Normal determination procedure

Asylum seekers who have not been rejected under the accelerated procedure are referred to a Screening and Reception Centre ("Onderzoeks en Opvangcentrum" – OC), where they stay during the first phase of the procedure.

In the OC, all applicants undergo a thorough interview conducted by an official of the IND, where they have the opportunity to elaborate on the motives of their flight. At this interview the asylum seeker may be assisted by an interpreter and he/he is also entitled to be accompanied by a lawyer or a representative from the Dutch Refugee Council. In this way, the Dutch Refugee Council is continuously informed about the submission and processing of asylum applications.

The records of this interview, together with any changes or additional information provided by the asylum seeker, as well as any documents and evidences supporting the claim, form the basis for the assessment of the asylum application.

<u>First stage: inadmissibility and manifestly unfounded applications</u>

When it examines the application, the IND first considers whether or not it is inadmissible or manifestly unfounded.

Under Section 15b of the Aliens Act, an asylum application may be considered inadmissible on the following grounds:

1. another country, party to the 1951 Geneva Convention, is responsible for the consideration of the claim (i.e. the Dublin Convention);

2. the asylum seeker has submitted a previous asylum application under another name;

3. the asylum seeker has, without good reason, failed to comply with the obligation to make him/herself available for the examination of his/her claim;

4. an earlier request for admission on the same grounds has been definitively rejected;

5. the asylum seeker already has a residence permit;

6. the asylum seeker does not have travel documents, unless he/she immediately registers as an asylum seeker upon arrival in the Netherlands.

Under Section 15c of the amended Aliens Act, an asylum application may be rejected as manifestly unfounded if:

1. it is not founded on any of the grounds which reasonably give rise to a legal ground for admission in the Netherlands;

2. the asylum seeker has the nationality of a third country, and it appears that he/she will receive adequate protection in that country;

3. a third country will readmit the asylum seeker until he/she has found lasting protection elsewhere;

4. the asylum seeker produces travel or identity documents that do not apply to him;

5. the applicant comes from a designated safe country of origin (EU countries, Switzerland, Liechtenstein, Iceland, Norway, Ghana, Senegal, Bulgaria, Hungary, Czech, Poland, Rumania and Slovakia);

6. the asylum seeker does not provide any documents concerning his/her identity, itinerary or asylum motives.

The "safe third country" rule is only used in cases where the applicant has already obtained refugee status in another country or when it is certain that he/she will be allowed access to the asylum procedure in the country concerned. In practice, the rule rarely applies because it is overruled by the Dublin Convention and all the states neighbouring the Netherlands are Dublin countries.

Asylum seekers rejected on inadmissibility or manifestly unfounded grounds may appeal directly to one of the five District Courts, if the rejection is combined with detention (as it is the case at Schiphol airport). The appeal has to be lodged within 24 hours and suspensive effect must be requested separately. If the rejection is not combined with detention, the asylum seeker must first appeal for review at the IND and then, in case of a confirmation, to the Court. Administrative review and judicial appeals are described under "Administrative review" and "Appeal" below.

Second stage: examination on the merits

When the application is deemed admissible and not manifestly unfounded, it is then examined on the merits. Officially the decision is taken by the Secretary of State but in practice, IND will make the decision on behalf of the Secretary of State.

The basic rule is that a decision in the first instance should be made within six months, but this is rarely the case. Sometimes the first instance procedure will take more than a year, depending on nationality and numbers of asylum seekers entering the territory and on the processing capacity of the IND. If no decision has been made within the six months, an application for review can be made (see under "Administrative review" below).

Administrative review

Asylum seekers whose claims have been rejected may apply to the Secretary of State for a review of their case. If the asylum application is deemed admissible, the application for review will be submitted to the Advice Committee for Aliens Affairs.

The Advice Committee is an organisation operating independently from the IND. It is composed of persons chosen among judges, lawyers and individuals with links to e.g. humanitarian organisations, acting in a personal capacity. A UNHCR representative may take part in an advisory capacity, but this rarely happens.

The asylum seeker can be assisted by a lawyer at the hearing of the Committee.

The opinion of the Advice Committee is then forwarded to the Secretary of State, who in principle, is supposed to take his/her decision within three months from the date of the application for review. This is rarely the case, however. In the great majority of cases, the Secretary of State follows the recommendations of the Advice Committee.

Asylum seekers may also apply for a review if they have been refused Convention status but granted one of the other types of protection.

If the IND considers that the requested review will not lead to a positive decision, suspensive effect is denied. In such cases, the applicant can simultaneously request a "preliminary stay of execution" from the President of the District Court in The Hague (suspension of removal proceedings). The preliminary stay of execution will only be granted if the President of the Court deems the review to be with reasonable chance of success. No appeal can be lodged against the President's ruling on this issue.

Appeal

If the Secretary of State dismisses the case, it can be further appealed to one of the five District Courts established under the amended Aliens Act to deal exclusively with immigration cases. If the Secretary of State has not made a decision within three months, the asylum seeker may appeal to the District Courts against the delay.

The lodging of an appeal with the District Court does not automatically suspend the execution of the Secretary of State's negative decision, the Secretary of State has discretion to grant or deny suspensive effect depending on the prospects of success. However, if the suspension is denied, the applicant may request a preliminary stay of execution from the President of the District Court. No appeal can be lodged against the President's ruling on this issue.

Applicants are represented by their lawyer before the District Court, but they may attend the hearing and are given the opportunity to intervene, if they so wish.

The District Courts can refer essential issues to the Court of Unity, which is a chamber of the District Court in The Hague. The Court of Unity's main task is to ensure the unity of jurisprudence throughout the country. Cases involving a change in policy are almost always dealt with by the Court of Unity.

Negative decisions by the District Courts or the Court of Unity are final and cannot be appealed.

Legal aid

In principle, applicants are entitled to receive free legal aid during all the stages of the procedure. If an appointed lawyer denies assistance, arguing that the case lacks any chance of success; the asylum seeker has the right to a second opinion, which in practice means that another lawyer will be appointed.

All refugee lawyers must update their knowledge of asylum law by attending specific courses and workshops on a regular basis. Those who do not respect this obligation are no longer entitled to work under the state-funded legal aid system.

Legal aid is always available at all Application Centres. If the IND intends to process an application through the accelerated procedure, legal aid must be provided. In practice, it is not possible to reject an application without the asylum seeker having received information and legal aid.

Interpreters

The IND employs a group of interpreters, trained to work with asylum cases. An asylum seeker who is not satisfied with an interpreter can file a complaint with a special commission of the IND.

The Dutch Refugee Council and appointed lawyers also have a group of interpreters at their disposal, other than those employed by the IND.

Interpreting is, in general, provided in a satisfactory manner. However for some languages, such as Dari, it is very difficult to find sufficient interpreters. Consequently, some asylum seekers may be heard in another language than their own.

Unaccompanied minors

Children who enter the Netherlands without parents or adult relatives by blood and/or marriage are considered to be unaccompanied minors.

The minimum age for submitting an asylum application is 12 years. In the case of minors under the age of 12, an application may be filed on their behalf by the minor's guardian. In most cases, the foundation “De Opbouw” is appointed as the acting guardian.

If the IND has reasonable doubts about the applicant’s age, it may order a medical investigation to determine the age. The asylum seeker may refuse to co-operate, but in practice, this would generally mean a rejection of his/her asylum request. If the investigation shows that the applicant is over 18 years of age, he/she will be treated as an adult.

When the unaccompanied minor is refused refugee or humanitarian status, the central question to be answered is whether he/she has any parents or other relatives in the country of origin. This may require further investigation in the country of origin itself, which may in some cases be conducted by the Ministry of Foreign Affairs. If no adequate reception in the country of origin is identified within a period of six months following the arrival in the Netherlands, a special residence permit for unaccompanied minors may be granted for one year, renewable on a yearly basis. After three years, a permanent residence permit for humanitarian reasons is granted.

Female asylum seekers

Women are not dealt with under any special procedure, although they may ask for a female interviewer and interpreter. The IND operates with special guidelines on how to deal with issues specific to women.

Final rejection

Following a final negative decision on their application, rejected asylum seekers are usually given four weeks to leave the country voluntarily. If they fail to do so, they can, in principle, be deported.

As expulsion is optional in accordance with Section 22 of the Aliens Act, the government has the possibility of suspending expulsions of rejected asylum seekers originating from a specific country, when the security situation in that country is considered to be uncertain. In such cases, the suspension of the removal proceeding benefits both the rejected asylum seekers and also those applicants whose claim is being processed under the appeal procedure but who face deportation due to the lack of suspensive effect.

Aliens benefiting from this stay of deportation are entitled to the same rights as asylum seekers. According to the Secretary of State, a stay of deportation should be granted for a short period of time and should be replaced by a provisional residence permit if the situation in the country of origin does not improve rapidly. In practice, however, aliens often remain with a stay of deportation for over a year.

Stays of deportation are meant for specific groups or nationalities. Rejected asylum seekers who cannot be removed but who do not belong to a group or nationality under a stay of deportation, have no possibility of being granted a residence permit. Only those who are ill and cannot travel because of their health problems may be granted a stay of deportation, valid for the time of their illness.

A more restrictive policy will be introduced in the course of 2000. So far, a rejected asylum seeker was granted continued accommodation and financial assistance, if he/she could prove that he/she had made sufficient efforts to obtain travel documents from the authorities of his/her country of origin in order to return.

Under the new provisions, a rejected applicant will no longer be granted accommodation and financial assistance after the final decision of rejection. In addition, the full burden of proving that he/she is not able to return to his/her country of origin will always lie with the alien, except in some exceptional circumstances.

Detention

Asylum seekers who arrive by air are processed in the Application Centre (AC) of the Amsterdam Schiphol airport. When the application is considered to be inadmissible or manifestly ungrounded, asylum seekers are always detained at the “Grenshospitium” to facilitate their removal from the country. The “Grenshospitium” is a special prison, located near the Application Centre of Schiphol, designed for aliens who are not allowed to enter the country.

One of the five District Courts reviews, on appeal, if the detention is lawful. The court reconsiders the decision of the IND to process the application under the accelerated procedure and, depending on this, whether or not detention should be ordered. If not, the IND must release the applicant and send him/her to a Screening and Reception Centre (OC).

In principle, asylum seekers applying in the other Application Centres can also be detained, but this rarely happens. Asylum seekers rejected under accelerated procedure in the ACs of Zevenaar and Rijsbergen are usually asked to move out of the centre and required to leave the country by themselves.

In the deportation phase, detention is only possible if there is a risk that the asylum seeker may avoid deportation by going into hiding. However, a more restrictive policy regarding the treatment of rejected applicants will be introduced in the course of 2000. According to this, detention under deportation proceedings will be used more often and a rejected asylum seeker will be declared "*persona non grata*” if the aliens police note his/her continuing illegal presence in the Netherlands, on two occasions. The authorities also intend to enforce the existing rules more strictly.

Applications from abroad

An asylum seeker who is in a third country and wishes to apply for asylum in the Netherlands must submit his/her application to the UNHCR representation in that country. If there is no UNHCR representation, the asylum request can be made at the Dutch embassy. There are no clear regulations on the processing of such requests.

An application for asylum in the country of origin or in a third country can be made at the Dutch embassy. The embassy will gather the relevant information and submit it to the IND through the Ministry of Foreign Affairs. The embassy will be requested to deliver a visa to the asylum seeker in case of a positive decision, or to inform him/her if the decision is negative. This procedure is rarely used.

Family reunification

Eligibility and requirements: the Dutch regulations on family reunification distinguish between:

(a) Ordinary family reunification with spouses and unmarried minor children;

(b) Reunification with other, dependent relatives, where it can be demonstrated that continued separation would cause excessive problems for those left behind;

(c) Reunification with parents and more distant relatives, such as uncles and aunts, who have been left to face unendurable financial, social or emotional conditions.

In practice, family members in group (a) above are granted entry and residence permits without having to prove their dependence, whilst those in groups (b) and (c) must provide clear evidence, not only of their family connections, but of the degree of dependence. Unmarried couples (including same sex partners) must provide proof of their relationship and of their income and housing in the Netherlands.

Convention refugees do not need to satisfy income or housing requirements if they apply for family reunification within six months after the granting of the status, provided that family members have the same nationality. For family members other than the spouse or minor children, family members with a different nationality or where a request is submitted after the above-mentioned six-month period; convention refugees must be able to demonstrate an income which is at least 70% of the minimum income level required in the National Assistance Act.

Persons granted a residence permit for humanitarian reasons must, like other aliens, satisfy 100% of the income requirement in accordance with the General National Assistance Act and must meet a housing requirement.

Persons under temporary protection are not entitled to family reunification.

Procedure: an application for family reunification may be submitted at any Dutch diplomatic representation abroad as well as in the Netherlands. Decisions are made by the Ministry of Justice (formally the State Secretary) and may be appealed. Families have to pay their own travel expenses, but may apply to private foundations for assistance.

Status of the reunified family members: spouses and minor children of Convention refugees – including quota refugees – are also granted Convention status if they have the same nationality and the application is submitted within six months after the status has been granted.

Spouses and minor children of persons who have been granted humanitarian status are not also automatically eligible for humanitarian status. The Ministry of Justice determines this on a case-by-case basis.

Statistics: there are no specific data regarding family reunification for refugees and persons granted humanitarian status. Based on research conducted by the Dutch Office of Statistics, it is estimated that approximately 3,500 family members were allowed to be reunited with Convention refugees and persons with humanitarian status in 1997 and 1,700 family members in 1998.

Statistics (source: IND)

Number of asylum seekers

Number of applications submitted in the Netherlands	
1994	52,576
1995	29,250
1996	22,857
1997	34,400
1998	42,217
1999	39,299

Number of statuses granted

	Convention status	Humanitarian status	Provisional residence permit
1994	6,654	9,235	3,456
1995	7,980	6,203	4,310
1996	8,806	7,384	7,400
1997	6,630	5,176	5,182
1998	2,356	3,591	9,152
1999	1,507	3,471	8,512

Main national groups

Main national groups to seek asylum in the Netherlands in 1999	
Country	**No. of persons**
Afghanistan	4,400
Iraq	3,703
Fed. Rep. Yugoslavia	3,692
Somalia	2,731
Azerbaijan	2,449
Sudan	1,694
Angola	1,585
Iran	1,527
Turkey	1,490
Sierra Leone	1,280
Other	14,748

The new Aliens Act

The Dutch government has submitted a proposal for a new Aliens legislation, with the main objectives of simplifying the current asylum system and shortening the duration of the determination procedure. At the time of writing (May 2000), the Draft Aliens Act is under discussion in Parliament, where it is expected to be adopted in the course of 2000 and possibly entering into force on 1 January 2001. Although the final draft is yet to be finalised, it is possible to describe the main changes to come as follows:

<u>One-status system</u>

All asylum seekers deemed eligible to stay in the Netherlands following the examination of their claim will receive the same residence permit valid for up to three years. During this period, the permit can be withdrawn if the grounds, which have justified its granting, have ceased to exist, for public order reasons or if the asylum seeker has given false personal data.

When receiving the residence permit, the asylum seeker will not be informed about the grounds whereby it has been granted. As a result, he/she will not know whether he/she has been recognised as a Convention refugee or been granted a subsidiary form for protection. According to the Dutch authorities, the aim of this provision is to prevent persons who have been granted humanitarian or temporary protection status from embarking on further proceedings to obtain Convention status.

The spouse or minor children of a person granted a residence permit will be entitled to receive the same status provided that they have arrived in the Netherlands within three months after he/she has been granted this residence permit.

After the initial period of three years, it will be possible to apply for a permanent residence permit.

Procedure

The decision on the application must be made within six months, although this can be extended for another six months. However, the Minister of Justice has the authority to postpone the examination of the asylum applications of certain groups for a period of one year, if:

- it is to expected that, for a short period of time, there will be uncertainties about the situation in the country of origin;

- the situation in the country of origin, on the basis of which the application is submitted, will be of short duration;

- the number of applications submitted is so important that the normal time limit for processing the applications cannot be met.

During the suspension period, applicants will be given the same social rights as other asylum seekers. If the situation in their country of origin has not improved after the one-year period, the normal procedure will then start.

Another innovation in the new Draft Aliens Act is the replacement of the current administrative review procedure (see under "Administrative review" above) by a so-called "intention procedure". According to this, when intending to take a negative decision on an application, the administrative authority will communicate the draft decision and the reasons for it to the asylum seeker. The applicant or his/her legal representative can then submit comments on this draft before the final decision is taken.

Unlike the current administrative review, the new "intention procedure" will not be regulated by Dutch administrative law, which guarantees fairness and efficiency.

Social and economic rights

All holders of the residence permit in the initial three-year period will have the same social and economic rights and benefits in accordance with the level required under the Geneva Convention. Thus, the existing differences between Convention refugees and persons with residence permits for humanitarian reasons or with provisional residence permits will disappear during this period.

Negative decisions

The rejection of an asylum application (designed as "application for the issuance of a residence permit for definite period") will automatically encompass the following legal consequences:

- the rejected asylum seeker no longer has lawful residence in the Netherlands and must leave the country;

– he/she is no longer entitled to social benefits and accommodation facilities;
– his/her removal from the reception facility, including by force, is authorised

The asylum seeker will, in principle, no longer be allowed to start any procedures against these measures.

Family reunification

After the initial period of three months following the granting of the residence permit, during which time a spouse and minor children who come to the Netherlands are granted the same residence permit without any further requirements, family reunification is conditioned on the applicant's income reaching the minimum income level required in the National Assistance Act (against 70% of this level under current legislation).

Further details on the coming legislation should be requested from the Dutch Refugee Council.

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

Aliens seeking asylum in the Netherlands must submit their application in one of the three Application Centres ("Aanmeldcentrum" – AC). A fourth AC, located in Ter Apel, is due to open in the near future. If no place is available in the AC, they are housed in temporary facilities, usually in tents. Applicants normally stay for only a couple of days in the application centres, however their stay may sometimes last for one or two weeks.

Applicants whose claim is not immediately rejected under the accelerated procedure while they stay in the AC, are then referred to a screening and reception centre ("Onderzoeks en Opvangcentrum" – OC). However, since October 1998, asylum seekers processed under the Dublin procedure are no longer entitled to receive accommodation or financial support (see below under "The Dublin procedure and repeated asylum requests").

The first phase of the asylum procedure takes place in the 16 OCs throughout the country, where asylum seekers usually stay for several months. There they are offered recreational and social-cultural activities. The average time spent here is between two and three months.

Applicants are then moved to a centre for asylum seekers ("Asielzoekerscentrum" – AZC) or to other accommodation facilities, such as boarding houses or hostels.

At present, there are about 100 AZCs in the country and approximately 10,000 additional places available in boarding houses and hostels. In almost all AZCs asylum seekers have facilities for cooking their own meals. They may attend classes in Dutch language and society.

The AZCs are run by the Agency for the Reception of Asylum seekers ("Centraal Orgaan opvang Asielzoekers" – COA), which has been especially established for this purpose and which comes under the jurisdiction of the Ministry of Justice.

Up to 1996, all asylum seekers still housed in an AZC after six months were offered accommodation in houses owned or rented by the municipalities. Since 1996, asylum seekers must stay in the centres until they have been granted a residence permit or have been rejected according to a final decision. However, due to capacity problems caused by the long processing times, temporary changes were made to the reception system in 1998. According to this, asylum seekers, again, can be accommodated in unoccupied houses rented by the COA where they will have full privacy, as opposed to the AVO's which are run by a manager.

In addition, a "self-care arrangement" has been introduced, according to which asylum seekers who have stayed in the AZCs for more than six months are allowed to live with family members or friends. They are required to report to a centre nearby every week in order to collect their money. Extra-financial assistance is granted to help them cover living expenses. In practice, many Dutch municipalities have opposed this form of accommodation, which they consider to be "uncontrollable".

A new reception system is currently under discussion and will probably be introduced in 2000. According to this proposal, asylum seekers will stay for a maximum period of one year in a centre and if the procedure has not been terminated after one year, they will move to "small scale reception places", such as ordinary houses or flats. The review of these cases will not take place in the screening and reception centres, as is the case now, but will be carried out in the regional offices of the IND. Subsequently, the difference between screening and reception centres and centres for asylum seekers will no longer exist. It is not yet decided whether the "self-care arrangement" will be part of the new model or not.

Financial assistance

The financial allowance granted differs for children and adults. A difference is also made depending on whether the beneficiary must cook on his/her own or not. As of 1 January 1998, the amounts paid every week were as follows:

All meals available from the centre		
Adults	NLG 35	EUR 15.9
Children 0-11 years	NLG 8	EUR 3.6
Children 12-18 years	NLG 12	EUR 5.5
Extra allowance for one parent families	NLG 23	EUR 10.5
Unaccompanied minors	NLG 28	EUR 12.7
Only dinner available from the centre		
Adults	NLG 62	EUR 28.2
Children 0-11 years	NLG 11	EUR 5
Children 12-18 years	NLG 16	EUR 7.3
Extra allowance for one parent families	NLG 42	EUR 19.1
Unaccompanied minors	NLG 50	EUR 22.7
No meal available from the centre		
Adults	NLG 86	EUR 39.1
Children 0-11 years	NLG 16	EUR 7.3
Children 12-18 years	NLG 25	EUR 11.3
Extra allowance for one parent families	NLG 58	EUR 26.3
Unaccompanied minors	NLG 70	EUR 31.8

Asylum seekers staying outside the centres in accordance with the "self-care arrangement" receive a weekly additional allowance as follows:

First person	NLG 100	EUR 45.4
Second family member	NLG 50	EUR 22.7
Third family member	NLG 25	EUR 11.3
Maximum per family	NLG 200	EUR 90.9

Work

Since 1998, it has been made possible for asylum seekers to work under limited conditions. The work is restricted to a period of 12 weeks each year and the work permit is only given for (agricultural) seasonal work. It is expected that the allowed period of work will soon be extended to 12 weeks in every 39 weeks and that the permit will be issued for a variety of works.

Language tuition

Asylum seekers housed in AZCs may attend classes in Dutch language and culture. The lessons are given by volunteers but are based on a professional standard educational programme.

Asylum seekers who stay in other accommodation facilities are also entitled to Dutch lessons, but, so far, the COA has not been able to organise such classes everywhere. Asylum seekers under the "self-care arrangement" have no right to language tuition.

School attendance

School attendance in the Netherlands is compulsory between the ages of 5 and 16 and this also applies to the children of asylum seekers. The schools are given extra financial support. Very often special classes are created in the AZCs.

Child care

Many asylum centres offer child care facilities.

Female asylum seekers

There are no special programmes or accommodation for female asylum seekers.

Unaccompanied minors

Unaccompanied minors under the age of 12 are placed with foster families as soon as possible or in a special home. Those aged between 12 and 17 are accommodated in special centres. After three months, the guardian, i.e. usually the foundation "De Opbouw", decides where the minor should be raised. This can be in a childrens home with 24-hour care or in a normal house where mentors will give them some assistance. Due to capacity problems many minors who are considered to be "self supportive" are placed in normal centres for adults.

Health/sickness

Asylum seekers undergo compulsory TB screening on arrival, and are also offered a general medical check-up. They are insured for basic health costs and emergency dental treatment. Medical personnel are attached to the screening and reception centres, as well as to the centres for asylum seekers.

Freedom of residence/movement

Asylum seekers living in screening and reception centres may be required to report to the aliens police station at the centre every day. Those living in centres for asylum seekers must report on a weekly basis.

In principle, their movements are restricted to the municipality in which the centre is located; those who wish to travel elsewhere must seek prior permission.

It is virtually impossible for an asylum seeker to choose the centre to which he/she is allocated. Permission to move may be granted only if the applicant has close family members (spouse/partner, parents, children) at another centre.

Repatriation

A (rejected) asylum seeker who wishes to repatriate voluntarily is entitled to the payment of his/her travel costs and an allowance in order to cover the necessary costs of living during the first weeks or months following repatriation.

The allowance varies depending on whether the person is still under determination procedure or if his/her application has already been rejected. Persons who repatriate during the procedure receive EUR 568 for one person, EUR 795 for a family with two children and EUR 90 for each additional child. Rejected asylum seekers receive EUR 227 for one person, EUR 318 for a family with two children and EUR 45 per additional child.

The Dublin Convention and repeated asylum requests

Accommodation on arrival: asylum seekers processed according to the provisions of the Dublin Convention are not entitled to accommodation while waiting for the request to take charge, sent by the Netherlands to another state, to be accepted (or rejected). If it appears only at a later stage of the asylum procedure that another state might be responsible, and the Netherlands send a request to this state, the asylum seeker must leave the accommodation. In practice, unless they

have relatives or friends in the Netherlands to support them, they rely exclusively on charitable organisations, churches, homeless care, etc.

Neither are asylum seekers who make a repeated application for asylum entitled to accommodation, unless they still have such a right on the basis of their previous asylum request.

Asylum seekers who find themselves in very distressing circumstances – mostly for medical reasons – can nevertheless be granted accommodation. Accommodation will also be granted to families with a child under the age of one year.

Financial assistance: no financial assistance is available.

Health/sickness: a general medical check up at the reception centre will only be given upon request of the asylum seeker. When accommodation is refused due to the Dublin procedure or the repeated asylum claim, no health insurance is granted.

Freedom of residence/movement: asylum seekers under the Dublin procedure must report to the aliens police station in the reception centre each month. Those refused accommodation because of a repeated asylum request must report to the aliens police station in the reception centre every fortnight.

SOCIAL CONDITIONS FOR REFUGEES

Introduction

As far as social conditions are concerned, Convention refugees (including quota refugees) and persons granted residence permits for humanitarian reasons have the same entitlements, with a few exceptions, which are mentioned below.

The Dutch municipalities must offer to all refugees and persons granted humanitarian status in their area, the opportunity to participate in special integration programmes for aliens, which are subsidised by the state up to the amount of NLG 10,000 [EUR 4,545.45] per person. Participation in integration programmes is compulsory.

Financial assistance

The Social Assistance Act makes no distinction between categories. Dutch citizens, Convention refugees and aliens with residence permits (including those issued on humanitarian grounds) are all entitled to the same benefits if they are unable to support themselves.

The basic social allowance is supposed to cover all ordinary living expenses. As of 1 January 2000, monthly payments (after tax) are as follows:

Single person over 21 years + extra holiday allowance	NLG 1,027.80 NLG 57.50	EUR 458.60 EUR 26.15
Single parent over 21 years + extra holiday allowance	NLG 1,438.90 NLG 80.50	EUR 653.65 EUR 36.60
Couple over 21 years of age + extra holiday allowance	NLG 2,055.60 NLG 115.05	EUR 934.35 EUR 52.30

Young people between the ages of 18 and 21 may receive income support until they are provided with work through the special "Guaranteed Youth Employment Scheme". The monthly payments range from NLG 403 [EUR 183.20] for a single person to NLG 1761 [EUR 800.45] for a couple with children, although an additional allowance may be granted to those who can prove that their parents are unable to support them.

Extra financial assistance may also be granted to persons already in receipt of income support, to cover unforeseen and unavoidable expenses. When basic furniture and household equipment are required, an extra allowance is usually given in the form of a loan, with the result that most refugees live on a reduced allowance for a period of three years. After that time, any outstanding amounts owed are allowed to lapse.

Child benefit is granted subject to the following rules (as of 1 January 2000):

Child born after 1.1.1995, regardless of age	NLG 350.05 per quarter	EUR 159.10
Child born before 1.1. 1995, aged 0-6	NLG 350.05 per quarter	EUR 159.10
Child born before 1.1. 1995, aged 6-12	NLG 425.05 per quarter	EUR 193.20
Child born before 1.1. 1995, aged 12-18	NLG 500.05per quarter	EUR 227.30

Convention refugees and those granted residence permits for humanitarian reasons are entitled to receive child benefit as soon as their status has been confirmed, even if they are still living in a residence centre.

Housing

All Dutch municipalities are obliged by law to accommodate a certain number of Convention refugees and persons holding humanitarian status. The Ministry of Justice publishes this figure every six months. Distribution is based solely on the number of inhabitants already living in the each municipality. No other factors – such as educational facilities, employment opportunities or the number of aliens already living in that area – are taken into consideration.

Refugees have very little choice as to where they are accommodated. The COA is responsible for distribution and usually only takes account of the presence of close family members – parents, children and siblings – or, on very rare occasions, the fact that someone already has a job or has been accepted as a student in a specific municipality. Furthermore, since they receive only one offer of accommodation, it is almost impossible for them to refuse.

Refugees who are able to find their own accommodation are allowed to settle wherever they wish in the Netherlands. About 40% of refugees succeed in finding their own accommodation within four months. Others have to wait for accommodation, during which time they remain at the residence centres.

Freedom of movement/residence

Convention refugees and persons issued with residence permits on humanitarian grounds are free to travel anywhere except their country of origin. Convention refugees are entitled to a refugee passport. Persons with humanitarian status may apply for an alien's passport if they are unable to get a national passport of their own country.

Work

All groups are permitted to take up employment and work permits are not necessary. After settling in a municipality they must sign on at the Employment Exchange. After their integration program is over, the Employment Exchange supports them in finding jobs.

Language tuition

After settling in a municipality, all Convention refugees and holders of humanitarian status have to attend a compulsory integration programme. The programme includes 600 hours of Dutch tuition.

School attendance

School attendance is compulsory for all children between the ages of 5 and 16. Primary schools (up to 13 years) which are attended by four or more foreign children receive extra funding.

In some cases, children who cannot speak Dutch attend special classes where they learn Dutch, however they are usually placed in normal classes where they will be given special attention by their teachers.

Mother tongue tuition

All municipalities receive a specific budget for mother tongue tuition for foreign children. The lessons are free of charge and not compulsory, but classes must take place outside regular school hours. The municipalities are free to choose which languages will be taught. In practice, most choose the languages of the traditional migrant groups in the Netherlands, with the result that the offer of mother tongue tuition for refugees is limited.

Access to the adult education system

All refugees have access to further education on the same basis as Dutch citizens, except for those granted residence permits for humanitarian reasons whose opportunities to receive state support are restricted during their first year of residence in the Netherlands.

In principle, the local authorities may also grant educational aid, but they rarely do so in the case of refugees or persons holding humanitarian status.

Although state education allowances are restricted to persons under the age of 28, Convention refugees and persons granted humanitarian status may receive financial support until they are 30, through a fund set up specifically for this purpose. However, following a change in the system of state education allowances, from the school year 2000/2001, it will be possible to receive these allowances until the age of 30.

Access to the national health service

All groups have access to the national health service on the same terms as Dutch nationals. Those on lower or middle-income benefits are covered by a national health insurance scheme.

Dutch citizenship

Under the current legislation, Convention refugees and persons granted humanitarian status may apply for Dutch citizenship after living in the Netherlands for five years. The granting of citizenship will depend, amongst other things, on their knowledge of Dutch language and society and on whether they have a criminal record.

Repatriation

Refugees wishing to repatriate may benefit from a basic repatriation programme, under which travel costs as well as some resettlement costs are paid. In addition, there is a specific repatriation programme for refugees over 45 years, according to which a regular allowance, the amount of which varies according to the living costs in the countries of origin, can be granted under certain conditions. Assistance may also include health insurance.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction

Persons holding provisional residence permits live under different social conditions than Convention refugees or persons granted residence permits for humanitarian reasons.

During their first year in the Netherlands, persons under temporary protection are only allowed to study the Dutch language. In their second year they may also follow vocational training courses. During this two-year period, they may work, but only on a short-term basis and with a work permit.

The Kosovo Albanians who came to Holland before 16 July 1999 under UNHCR Evacuation Programme were all granted provisional residence permits.

A special law was adopted in 1995 in order to regulate the social conditions of persons with a provisional residence permit. According to this law, their freedom of residence is limited and they receive less financial assistance than Convention refugees or persons with humanitarian status. With the entry into force of the new Aliens Act in 2001, which provides for the same social rights for all categories during a three-year period following the granting of the residence permit, this special law will be withdrawn (see above "The new Aliens Act").

Financial assistance

The Social Assistance Act does not provide income support for those under temporary protection. However, they are entitled to receive a lower rate of income support per month, paid by the municipalities as follows (as of 1 January 2000):

Under 18 years	NLG 137	EUR 62.30
18 years and over	NLG 450	EUR 204.55

Child benefit is available when a parent has a job.

The municipalities receive state funding to cover housing and insurance costs.

Housing

Dutch municipalities are obliged to find accommodation for a fixed number of persons under temporary protection.

The only difference between the accommodation offered to Convention refugees or persons with humanitarian status and that provided for persons under temporary protection is that, in the latter case, accommodation must be equipped with basic furniture. Municipalities receive additional state funding for this purpose.

Freedom of movement/residence

Persons under temporary protection may find their own accommodation, but, unless they receive authorisation from the municipality in which they want to settle, they will not receive any allowances.

Persons under temporary protection may apply for alien's passports, but seldom receive them.

Work

During the first two years of their stay in the Netherlands, persons under temporary protection are allowed to work for a maximum of 12 weeks per year and their prospective employers must apply for work permits on their behalf. From their third year of residence, they have free access to the labour market.

It is expected that these rules will be changed in the course of 2000. Accordingly, the allowed period of work will be extended to 12 weeks every 39 weeks, and a permit issued for a variety of works.

Language tuition

Those issued with temporary residence permits are allowed to attend courses in Dutch language and society during their first year.

School attendance

School attendance is compulsory between the ages of 5 and 16 for all children.

Mother tongue tuition

This is subject to the same conditions as for Convention refugees and persons granted residence permits on humanitarian grounds.

Access to the adult education system

Although state financial support for integration programmes regarding this group was stopped in 1998, most municipalities still offer access to further education and vocational training from the second year of their residence in the Netherlands.

Access to the national health service

Each municipality is obliged to provide health insurance for persons with temporary protection living in their area.

Dutch citizenship

Persons granted provisional residence permits might apply for residence permits after three years in the Netherlands for humanitarian reasons; this means that they are eligible to apply for Dutch citizenship after five years of residence.

Repatriation

Persons under temporary protection who repatriate are entitled to the same assistance as asylum seekers. This includes a repatriation allowance of EUR 568 for one person, EUR 795 for a family with two children and EUR 90 for each additional child.

No specific programme has been established for Kosovo Albanians. However, in addition to the existing assistance, an extra allowance is granted by the Ministry of Development. The amount paid is DEM 1,000 [EUR 511] per adult and DEM 500 [EUR 255] per children, with a maximum of 4,000 [EUR 2,043] per family.

NORWAY

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Act No. 64 of 24 June 1988 regarding the entry of foreigners into the Kingdom of Norway and their presence in the realm (the Aliens Act);

– The Decree of 21 December 1990 pursuant to the Aliens Act, as subsequently modified (the Aliens Decree);

– The Act No. 81 of 13 December 1991 regarding social services (The Norwegian Social Assistance Act);

Amendments to the Aliens Act and Aliens Decree have been recently passed with respect to the entry into force of the Schengen Agreement in Norway in the course of 2001 and the establishment (January 2001) of an Appeal Board to process appeal cases instead of the Ministry of Justice.

Norway is not a EU member state and thus it is not a party to the Dublin Convention. However, alongside with Iceland, it is currently negotiating a parallel agreement to the Dublin Convention with the European Union.

Refugee status

The only kind of refugee status granted in Norway is Convention status and Section 16 of the Aliens Act refers to the definition of a refugee mentioned in the Geneva Convention.

Persons granted refugee status are issued with a residence permit valid for one year and renewable annually. After three years, they are entitled to permanent residence.

Quota refugees

According to an agreement with UNHCR, Norway agrees to receive 1,500 quota refugees per year for the period 1998-2000. This arrangement is flexible, in that more refugees will be accepted in one year if the number is correspondingly reduced in other years. The Norwegian Government may decide on the composition of these groups on the basis on UNHCR's written recommendations. Based on this agreement, Norway received 1,480 quota refugees in 1999. The largest groups were from Iran, Afghanistan, Iraq, Croatia and Ethiopia.

Most quota refugees are granted Convention status, although spouses are sometimes granted a residence permit on humanitarian basis.

Other types of residence permit

Residence permits for humanitarian reasons

Pursuant to Section 8(2) of the Aliens Act, a residence permit may be granted *"on the grounds of strong humanitarian considerations*" or when the asylum seeker has *"a strong attachment to the realm".* In practice, this applies to a person who cannot be returned to his/her country of origin for

humanitarian reasons, which may be similar to the criteria justifying the granting of Convention status, but this may also be based on humanitarian reasons not related to refugee-like situations, such as health. According to Section 15 of the Act, the asylum authority, when it denies Convention status to an asylum seeker must, on its own initiative, consider whether a residence permit for humanitarian reasons should be granted.

There is no authoritative definition of "strong humanitarian considerations" and consequently no set of formalised criteria to determine which asylum seekers should be granted residence permit on this basis. To be recognised as a Convention refugee, Norwegian practice generally requires that the applicant has fled from individual persecution as a consequence of political activity. In cases where any one of these criteria is not fulfilled, the asylum seeker will usually not be granted refugee status, but may be eligible for a residence permit on humanitarian basis.

In practice, most asylum seekers staying in Norway are granted residence permits for humanitarian reasons rather than refugee status. Between 1997 and 1999, 5,571 persons were granted a residence permit for humanitarian reasons whereas only 278 received Convention status (excluding quota refugees).

Residence permits for humanitarian reasons are valid for one year and are renewable annually. After three years, a permanent residence permit is usually granted.

As far as social rights and family reunification are concerned, the legal basis may vary but, in practice, there is little difference between the rights afforded to refugees and to persons with residence permits for humanitarian reasons (see "Social Conditions for Refugees" below).

Groups, which are often granted humanitarian status, include people from Somalia, Ethiopia, Iraq, and recently Colombia.

Temporary residence permits

Since 28 February 2000, in accordance with Section 21(5) of the Aliens Decree, Iraqi asylum seekers who are not considered by the Norwegian authorities as being in need for protection but who cannot be currently returned to Iraq are given a temporary, non-renewable residence permit with no right to family reunification. Since this is regarded as a positive answer, those who decide to appeal against this decision are not entitled to free legal aid. This residence permit is valid for one year. After this one-year period a new application for residence has to be filed.

Iraqi asylum seekers who do have a need for protection will still be given residence on other basis, mostly for humanitarian reasons (see above).

Temporary protection

According to Section 8a of the Aliens Act, the Norwegian authorities may decide to grant collective protection if there is a situation of mass influx. In such cases, protection is granted to the persons concerned on the basis of a group assessment. Residence (and work) permits granted can be renewed or extended for a maximum period of three years from the date of the first decision. Further residence permits, if granted, may constitute a basis for a settlement permit. The processing of asylum applications can be suspended for a period not exceeding three years from the granting of the first residence permit.

In spring 1999, 6,105 Kosovo Albanians arrived in Norway under the UNHCR Humanitarian Evacuation Programme. Alongside the approximately 1,700 Kosovo Albanians who had already filed an individual application for asylum in Norway and were awaiting a decision, they were granted temporary protection in accordance with Section 8a of the Aliens Act. Temporary residence permits will not been extended beyond the initial year, and Kosovo Albanians will have

to return to Kosovo or submit an application for asylum. At the time of writing (May 2000), the Norwegian authorities have begun processing these applications.

At present there is no other group receiving temporary protection in Norway.

Rejection at the border

Under Section 27(1) of the Aliens Act, a foreigner may be refused entry into the country at the border or within seven days following entry in the following cases:

- he/she does not have the required travel documents (passport, visa, etc.);
- he/she has been expelled from Norway or another Nordic country and is subject to a prohibition of entry;
- he/she does not have the required work, residence or resettlement permit;
- he/she cannot justify having the necessary means to support his/her stay in Norway and pay for his/her return journey;
- he/she has been sentenced previously (under certain conditions as defined in the Act) or there are grounds for fearing that he/she may commit an offence punishable with imprisonment for a term exceeding three months;
- he/she will probably enter another Nordic country from Norway, where he/she is likely to be rejected because he/she is lacking the required documentation or for any other grounds;
- when consideration for national security or compelling social considerations make it necessary.

However, according to Section 27(3) of the same Act, if a foreigner who does not meet the conditions required to be allowed entry, claims asylum at the border or provides information indicating that protection is needed, the border authorities must refer the case to the Directorate for Immigration (UDI), which has the responsibility for making a decision on entry.

The UDI is a body of the Ministry of Local and Regional Government, but with regard to entry and presence of aliens in Norway, it comes under the jurisdiction of the Ministry of Justice. It has recently been decided that the Ministry of Local and Regional Government shall assume jurisdiction also in this respect.

According to Section 17 of the Aliens Act, the UDI can refuse entry to an asylum seeker only in the following cases:

(a) if there are reasonable grounds for regarding him/her as a danger to national security; if he/she constitutes a danger to the community following conviction for a particularly serious crime; if he/she is in one of the situations mentioned in Article 1F of the Geneva Convention;

(b) if he/she has already been granted asylum in another country;

(c) if he/she has travelled to Norway on his/her own initiative after being granted protection in another country, or after having stayed in a state or area where he/she was not persecuted and had no reason to fear refoulement;

(d) if another Nordic state is obliged to accept him/her in accordance with the Nordic Passport Control Convention;

(e) if asylum must be denied on the grounds of compelling social considerations.

The expression “compelling social considerations” can refer to various situations including a mass influx of immigrants of such a scale that it would be impossible for Norway to absorb it, or cases where the asylum seeker constitutes a danger for the security of another state.

Asylum seekers may be detained by the police upon arrival at the border if their identity cannot be established or is doubtful, i.e. when documents are missing or forged (see "Detention" below).

The initial interview is in the form of a questionnaire, which must be completed without legal assistance. Applicants may then be allowed access to a lawyer, whose services are provided free of charge. This lawyer may attend the second interview with the police, if the asylum seeker so wishes. Interpreters are provided during the interviews if necessary. The police complete a registration form on the basis of the interviews, which is immediately forwarded to the UDI for a decision on rejection or entry.

If they are not detained, there is no further interview at this stage, and the asylum seekers are sent to transit reception centres.

The UDI's decision on entry is usually made within a few days.

Negative decisions may be appealed to the Ministry of Justice within three weeks, but without automatic suspensive effect; a separate application for suspension must therefore be submitted by the applicant, but to the UDI rather than the Ministry. Requests for suspensive effect are usually granted.

Applicants may receive legal assistance during the appeal procedure. No time limit is specified within which the Ministry must reach a decision on the appeal.

If the UDI's decision is overruled by the Ministry of Justice, entry to the country and access to the asylum procedure are granted.

"Safe third country" practice

In accordance with Section 17 of the Aliens Act, an asylum seeker will normally be returned to a "safe third country" when:

– no application for asylum was filed in that "safe third country";

– an application for asylum was filed in that country, but no final decision has been reached.

If the application for asylum submitted in the "safe third country" has been rejected by a final decision, an application can be lodged in Norway and will be given a full review. However, this practice may change in the near future, as Norway, together with Iceland, is negotiating a parallel agreement to the Dublin Convention with the European Union.

There is no list of "safe third countries", although in practice most Western European countries are considered to be "safe".

Entry into the territory

Once entry has been authorised, asylum seekers are interviewed at length by the police, either in the Tanum transit reception centre or after being sent to the reception centre where they are supposed to stay until a final decision has been reached in their case. The interview takes on average four hours, covering questions of asylum claims, travel route, identity and family relations. Police officers are specially trained to deal with asylum matters and interpreters are available.

From 1 July 2000, the UDI will itself conduct these interviews. A written form, to be filled in by the asylum seeker prior to the interview, will be introduced, giving the applicant the possibility to give an independent account. The UDI official who does the following interview will also review the asylum claim.

Manifestly unfounded procedure

No such procedure has been established within the Norwegian system.

Normal determination procedure

First instance decisions are taken by the UDI on the basis of the police reports. From 1 July 2000, this will be done on the basis of the written statement and the interview with the UDI (see above). In the present arrangement, asylum seekers are not often re-interviewed at this stage, although they might be, particularly if there still are unanswered questions regarding their identity. The asylum seekers may themselves send amendments/corrections to the police interview to the UDI, usually through the lawyer. At present, the average time required by the UDI to process a case is eight months.

Appeal (current situation)

All negative decisions by the UDI – even those which refuse Convention status but grant humanitarian status – may be appealed to the Ministry of Justice within three weeks of notification. Again, these appeals do not have automatic suspensive effect and a separate application for suspension must be filed. In most cases it is granted, but the authorities may deny it if they consider the appeal to be manifestly unfounded. There has been a slight increase in the amount of rejections of applications for suspensive effect.

The appeal procedure is an administrative one and applicants are not required to appear in person. The appeal is reviewed by a separate Aliens Department within the Ministry of Justice. The two legal sections of the Aliens Department consist of several offices, each one being responsible for a particular geographical area.

The average time required at this second stage is approximately four months. In 1999, the Ministry of Justice granted humanitarian status to 13.5% of the cases processed under the appeal procedure. Convention status was not granted once.

If the case is not settled within a time frame of 15 months, starting from the date of the initial police registration, the applicant will generally be granted a residence permit for humanitarian reasons. This does not apply if the applicant has voluntarily delayed the processing of his/her case or if the delay has been caused by other circumstances beyond the authorities' control. Exceptions from the rule can also be made when the authorities find it likely that the asylum seeker will be able to return within the foreseeable future, because his/her claims for asylum are based on circumstances that are deemed to be short-lasting.

If the appeal is turned down within the time frame, there is within the system no formalised second appeal. Yet, in cases where vital new information presents itself after an appeal has been rejected the asylum seeker might launch a motion to revert the negative decision. This will be reviewed by the Ministry of Justice. It is also possible to have the asylum claims examined by the judiciary system, but this is expensive. In most cases the courts will uphold the decision reached by the Ministry of Justice.

Appeal (from 1 January 2001)

From 1 January 2001, an Appeal Board will replace the Ministry of Justice as the second instance body under Norwegian refugee determination procedure. The Appeal Board will be an independent body of the Ministry of Communal and Regional Government, headed by a director.

The Board will consist of several sections, each of them composed of a chairperson and four members, designated by the Ministry of Communal and Regional Government, the Ministry of Foreign Affairs, the Norwegian Bar Association/Norwegian Legal Association and humanitarian

organisations working within the asylum field. The total number of members will be decided each year by the Ministry for Communal and Regional Government, depending on the Board's caseload. The Board will be assisted by a secretariat, responsible for preparing the cases.

The appeal decision may be made by the chairperson alone when there are no serious doubts regarding the case, i.e. when the decision of the Board can be predicted. In practice, the chairperson will decide on whether an appeal case should be presented to the Board or not.

The chairperson will also decide whether the appellant should be allowed to stand before the Board in person. In cases involving asylum or family reunification, this should usually be the case.

Legal aid

Asylum seekers are entitled to five hours of free legal counselling during the first instance procedure (including the initial stage), and a further three hours during the appeal procedure. Lawyers are provided by the state and by NGOs.

Interpreters

Interpreters are present only at particular stages of the asylum procedure, first and foremost during the police interview, which constitutes the basis for the application for asylum. During the initial police registration interpreters are, if needed, available over the phone. Interpreters are available in most languages.

Unaccompanied minors

Unaccompanied minors are appointed a guardian, who is present at all interviews. Besides this, the police interview is conducted in a manner which is not significantly different from regular interviews with adult applicants. However, there are plans to modify interviews with minor applicants in order to take into account their specific situation.

Female asylum seekers

Gender related persecution is recognised as a valid basis for seeking asylum. Guidelines effective from 15 January 1998 specifically mention gender related persecution, exemplified as situations where women, through their actions, omissions or statements, violate written or unwritten social rules that affect women particularly, regarding dressing, right to employment, etc. When the punishment for violating such rules can be seen as persecution in accordance with the Geneva Convention, asylum should be granted.

There is no special procedure or special accommodation for female asylum seekers.

Final rejection

Rejected asylum seekers are required to leave the country voluntarily within three weeks. If they do not comply, the police may begin deportation proceedings. Asylum seekers are very rarely detained as a method of ensuring removal.

No formal appeal is possible against a deportation order.

Some rejected asylum seekers who cannot be deported for practical reasons beyond their control are granted temporary residence permits for six months at a time. Although no exact figures are available, most have no legal protection during this period.

Detention

Asylum seekers may be detained by the police upon arrival at the border if their identity cannot be established or is doubtful, for instance when documents are missing or forged. Detention takes place either in particular detention centres or in regular prisons. The decision to detain has to be reviewed by a court every three weeks at a time. According to Section 37(6) of the Aliens Act, the total period of detention may not exceed 12 weeks unless there are special grounds. Detained asylum seekers have access to counselling and legal aid.

Rejected asylum seekers may also be detained as a measure to enforce an expulsion order. According to Section 41 of the Aliens Act, the police may arrest and detain an alien for a maximum period of two weeks. However, if the alien does not leave the country voluntarily or if it is highly probable that he/she will otherwise evade implementation of the expulsion order, detention can be extended for two consecutive periods of two weeks (i.e. the total period of detention cannot exceed six weeks). The decision of renewing or extending detention must be made by the court. In practice, detention is very rarely used for deportation purposes.

Applications from abroad

The Norwegian law does not allow applications to be lodged from abroad. A special arrangement – still in the preparatory stage – should be introduced for human rights activists/opponents in Colombia.

Family reunification

Convention refugees

The close family members of Convention refugees are entitled to family reunification in Norway and they are usually also granted Convention status, although sometimes they are granted a residence permit on humanitarian basis.

Spouses and partners (including same sex partners) and children under 18 years of age are allowed to join their family member in Norway. Unmarried children under 21 who would otherwise be left alone in their country of origin since their parents and siblings are all living in Norway may also be granted family reunification.

Single parents above the age of 64 are sometimes eligible for residence permits if they are dependent upon a child already living in Norway. This is more difficult for couples, since exceptional circumstances are usually required.

There are no financial conditions attached to family reunification with Convention refugees.

Persons with other types of residence permits

Persons with a residence permit for humanitarian reasons are entitled to family reunification with certain members of their close family, as defined below, without financial requirements:

- their spouse, provided that both spouses are over 18 years of age and married before the arrival of the holder of the residence permit in Norway;
- their partner (including same sex partner), provided that both are over 18 years of age, have lived together for at least two years and fully intend to continue their relationship;
- their unmarried children under 18 years of age; if only one parent lives in Norway, the consent of the other is usually required.

Applications submitted by the parent(s) of an unaccompanied minor in Norway are examined according to the child's age. Minors beneath the age of 12 are usually granted family

reunification. For those aged between 12 and 15, the decision is made according to the child's personal situation and needs. Those above the age of 15 are rarely granted family reunification.

Family reunification with other relatives than the close family members described above is generally subject to financial conditions. The financial situation of the person with residence permit for humanitarian reasons is normally deemed adequate if he/she:

– generates an income of sufficient size (a full-time work is generally sufficient);
– receives a pension or other permanent benefit of a sufficient size;
– transfers a set amount to a bank and freezes it, wholly or partly, for a certain period of time; or
– receives a student loan or scholarship of a sufficient size.

These financial conditions are no longer required as soon as the person holding a residence permit for humanitarian reasons is given permanent residence – i.e. normally three years after the granting of humanitarian status.

Procedure

Applications for family reunification must be lodged from abroad with the Norwegian embassy or consulate. The family member(s) living in Norway will then be called for an interview with the Norwegian police.

Negative decisions might be appealed to the Ministry of Justice.

A new procedure involving DNA-testing when family links are considered to be doubtful was implemented in autumn of 1999 regarding Somali applicants. At the time of writing (May 2000), it has not yet been decided whether DNA-testing will be extended to other national groups. The procedure will be reviewed at the end of 2000.

Statistics

Number of applications

Number of asylum applications in Norway	
1997	2,271
1998	8,374
1999	10,160
Total 1997-1999	20,805

Main national groups

Main national groups to seek asylum in Norway in 1999	
Iraq	4,073
Somalia	1,340
Former Yugoslavia	1,152
Iran	350
Russia	318
Turkey	279
Pakistan	265
Slovakia	233
Afghanistan	172

Number of refugee statuses granted

Number of Convention statuses* granted in Norway	
1997	18
1998	79
1999	181
Total 1997-1999	278

* these figures do not include quota refugees (1,480 in 1999)

Number of humanitarian statuses granted

Number of humanitarian statuses granted in Norway	
1997	726
1998	1,813
1999	3,032
Total 1997-1999	5,571

Number of persons reunited

Number of persons reunited in Norway*	
1997	882
1998	915
1999	1,542
Total 1997-1999	3,339

* both Convention refugees and persons with residence permit for humanitarian reasons

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

Persons seeking asylum in Norway are initially accommodated in transit reception centres for asylum seekers, where the police conduct interviews and health screening can take place. Accommodation in these transit centres is compulsory for all asylum seekers until these interviews have taken place, although in practice exceptions are made for asylum seekers who already have other housing and who wish to stay there. As long as the applicant stays outside of the designated transit reception centre, he/she does not enjoy the right to any financial benefits.

There are seven regional transit reception centres, financed by the UDI but run by the local authorities and NGOs.

After spending approximately one month in a transit reception centre, asylum seekers are allocated to ordinary reception centres. Two factors taken into consideration at this point are the asylum seeker's state of health and whether they already have any relatives or friends living in Norway. In such cases, they are usually allowed to stay in a reception centre located in the same area where the relatives or friends live.

There are currently about 130 ordinary reception centres for asylum seekers in Norway, most of which allow residents to cook their own meals.

Although this varies a great deal from centre to centre, there are usually specific accommodation for families with children but none for single males and females.

Financial assistance

Asylum seekers living in reception centres receive a basic monthly allowance, which is supposed to cover all minor personal expenses, such as transport, telephone calls, leisure activities, etc. This is allocated as follows:

Adult over 18	NOK 900	EUR 111
Child	NOK 600	EUR 74
Single parent	NOK 300 (additional)	EUR 37

For asylum seekers provided with free lodging but who do not receive meals, the allowance rates are as follows:

Single adult	NOK 2,500	EUR 308
Couple (married or cohabiting)*	NOK 4,200	EUR 518
Child (0-18 years)	NOK 1,100	EUR 136
Single parent	NOK 1,500 (additional)	EUR 185

***** to receive this allowance, unmarried partners must be heterosexual, over 18 years of age, have lived together for at least two years and fully intend to continue their relationship.

Asylum seekers may also receive extra financial assistance in the form of a one-off payment for:

- bedding: NOK 1,000 [EUR 123] per adult and NOK 750 [EUR 92.5] per child;
- kitchen equipment: NOK 1,250 [EUR 154] for basic utensils, and NOK 500 [EUR 62] for additional furniture;
- clothing: up to a total of NOK 1,700 [EUR 210];
- travel expenses to and from Norwegian language classes.

In principle, deductions may be made from the allowances of asylum seekers who do not keep their own rooms or the common areas of the reception centres clean, or who vandalise the property. Deductions may also be imposed upon those who fail to keep doctor's or dental appointments, thereby incurring extra costs, and to those who fail to attend scheduled meetings. Deductions would be NOK 100–200 [EUR 12–24].

Work

Asylum seekers are permitted to take up employment, but need a work permit. According to recent changes in Section 61 of the Aliens Decree (in effect since 15 June 1999) the granting of a work permit is not conditioned on the presentation of a job offer, but it requires that:

– the asylum seeker has been interviewed by the police;
– his/her identity has been fully established;
– his/her removal to another ("safe third") country is not considered;
– he/she is above 18 years of age;
– his/her application for asylum is not considered to be obviously unfounded.

Asylum seekers are asked during the police interview whether they wish a temporary work permit. In practice, however, few applicants are able to find a job.

Language tuition

Asylum seekers are entitled to 250 hours of Norwegian language tuition. The courses are organised by the local authorities. Attendance is compulsory. Asylum seekers who fail to attend are fined NOK 100 [EUR 12] per day.

School attendance

The school-aged children of asylum seekers, i.e. those aged between 6 and 16, staying in the reception centres attend local schools. Schools may also accept young people aged between 16 and 18. They are placed in regular Norwegian schools, but receive additional lessons in Norwegian when appropriate. Mother tongue tuition will be provided if a qualified teacher is available and at least three children speak the same language.

Child care

Most reception centres accommodating children have appropriate facilities and organise special activities for them.

Female asylum seekers

There is no special accommodation or social assistance for women.

Unaccompanied minors

Unaccompanied minors are accommodated in special reception centres established for them. They should, in principle, stay there for no longer than three months after their arrival in Norway and then be allocated to a municipality, responsible for their housing and integration in Norwegian schools. However, despite efforts made to speed up the processing of their asylum claims and shorten their stay in the reception centres (by allocating them to municipalities even during the asylum procedure), unaccompanied minors often remain in the reception centres for a considerable amount of time.

In principle, unaccompanied minors follow the same procedure as adults and in particular, undergo the same police interview.

The Government's objectives regarding unaccompanied minors are:

– to adapt procedural interviews to take into account their specific situation;
– to organise their return, when they can be looked after in their home countries;
– to provide education for those aged between 6 and 16 if they are unable to attend ordinary schools;
– to ensure that they are settled into municipalities promptly and efficiently, even during the course of the asylum procedure;
– to promote each child's rights and interests, through child protection projects and other means.

Unaccompanied minors are not removed from Norway if the whereabouts of their parents/guardians is not known.

From 1997 to 1999, 1,123 unaccompanied minors arrived in Norway, as shown below:

1997	220
1998	379
1999 (30 November)	561
Total 1997-1999 (30 November)	1,160

In 1999, the main national groups amongst unaccompanied minors were Somalis and Iraqis.

Health/sickness

All asylum seekers are offered health screening and they have access to the national health service on the same terms as Norwegian citizens. There are great local variations as to the availability of medical personnel in the reception centres. At some centres, medical personnel visits on a weekly basis; at others, no such arrangements exist.

Freedom of residence/movement

In the initial stage of the procedure, asylum seekers' stay in the transit reception centre is, with some exceptions, compulsory. Later, those who have family or friends in Norway may live with them instead of staying in the reception centre. However, financial assistance is granted only to those staying in the transit reception centres or reception centres.

In principle, asylum seekers are allowed to travel freely within Norway. In practice, however, permission from the administration at the reception centre is required. Any absence without prior authorisation may lead to a reduced monthly allowance.

Asylum seekers allocated to a particular reception centre may apply for a transfer to another, but this will only be allowed if strong supporting arguments are put forward.

SOCIAL CONDITIONS FOR REFUGEES

As far as social conditions are concerned, no distinction is made between Convention Refugees and persons with residence permits for humanitarian reasons.

Housing

The UDI is responsible for the allocation of refugees (Convention and humanitarian status) to its six regional branch offices, which, in turn, are responsible for their distribution amongst local authorities throughout the country.

The local authorities may decide whether or not they wish to receive refugees and how many they take, but once they have agreed to accept refugees they cannot refuse their allocated quota. The local authorities cannot refuse refugees who choose to settle in their area independently.

The UDI's branch offices make every effort to establish national groups of a certain size in order to facilitate integration. Special consideration is also given to the vocational and educational opportunities available in each area. The refugees' own wishes are rarely taken into consideration.

The widespread housing shortage in most Norwegian cities means that many refugees are obliged to remain in reception centres until they can obtain permanent accommodation. Even after refugee status has been granted, this may take up to eight months.

Once allocated to the municipalities, refugees are usually provided with accommodation in rented rooms and flats.

Freedom of movement

Refugees are entitled to refugee travel documents to be able to travel outside of Norway.

Financial assistance

Refugees who are obliged to remain in reception centres receive the same financial assistance as asylum seekers (see “Financial assistance” under “Social Conditions for Asylum Seekers, above). However, as soon as they have been housed by their local authority, they become entitled to the same social benefits as nationals, under the Norwegian Social Assistance Act.

Social benefits vary amongst the local authorities. For example, the monthly payments in the Oslo area are as follows:

Single adult	NOK 3,941	EUR 486
Single parent with 3 or more children	NOK 7,141	EUR 881
Married couple with 4 children	NOK 8,829	EUR 1,089

These benefits are not subject to taxation.

Furthermore, rent, heating, and any local repayments are also covered.

These allowances are administered by the asylum centres themselves or the local social assistance office. Assistance in kind is not given.

Work

Refugees are permitted to take up employment, but need work permits. Permits are given upon request (no job offer is required).

Access to the adult education system

Refugees have access to all aspects of the adult education system on the same terms as Norwegian citizens and are entitled to the same educational assistance.

Language tuition

Refugees and those issued with residence permits for humanitarian reasons are entitled to 500 hours of free Norwegian lessons. A further 250 hours may be offered if necessary. It is not compulsory.

The local authorities are responsible for organising these courses. The costs are met by the UDI.

School attendance

The children of refugees have access to the state school system on the same basis as Norwegian children. Schooling is compulsory for all children between the ages of 6 and 16.

Mother tongue tuition

Mother tongue tuition will be provided if a qualified teacher is available and at least three children speak the same language.

However, since refugees are scattered all over the country, there is no comprehensive provision for mother tongue tuition.

Unaccompanied minors

Same as for minor asylum seekers.

Citizenship

It is possible to apply for Norwegian citizenship after seven years of residence in the country.

Access to the national health system

Refugees have access to the national health service on the same terms as Norwegians. There is no qualifying period once a residence permit has been obtained.

Discretionary assistance may also be given towards essential medical or dental treatment, physiotherapy or the purchase of spectacles, etc.

Repatriation

Refugees, persons granted residence permits for humanitarian reasons, and their families following reunification, may benefit from a repatriation programme including:

– a one-off payment of NOK 15,000 [EUR 1,850] per repatriated person;
– payment of travel expenses.

Assistance is not conditioned on a minimum period of residence in Norway.

None of these grants are means-tested. Persons who have acquired Norwegian citizenship are not eligible.

Refugees and persons granted residence permits for humanitarian reasons who repatriate, have the right to return to Norway within one year of departure.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

At present, temporary protection is only granted to Kosovo Albanians. The individual applications for asylum filed by Kosovo Albanians were suspended when temporary protection was granted on a collective basis, but the processing of these applications has now resumed. In practice, however, Kosovo Albanians who had filed an individual application for asylum and were awaiting a decision when temporary protection was initially granted, must reapply in order to have their claim processed.

The temporary protection is valid for one year. It will expire between June and October 2000, depending on when it was initially granted.

Housing and financial assistance

Unlike asylum seekers, Kosovo Albanians under temporary protection have had the same rights as refugees or those holding residence permits for humanitarian reasons. These include settlement in a municipality, work permit and access to language courses. In addition, they were entitled to family reunification with their closest relatives.

Repatriation

Kosovo Albanians benefit from the same assistance towards repatriation as refugees and persons with residence permit for humanitarian reasons. However, if they want to return to Norway following repatriation, this must be done before expiration of the one-year temporary protection period. Those who submit an application for asylum may still benefit from the repatriation programme after the application has been rejected in the first instance. However, if they appeal a negative decision and the negative decision is confirmed, they will be considered as “normal” rejected asylum seekers and will no longer be entitled to benefit from the repatriation programme.

PORTUGAL

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Constitution of the Portuguese Republic;

– The Act No. 15/98 of 26 March 1998 on the new legal framework in matters regarding asylum and refugees (the Asylum Act);

– Decree Law No. 244/98 of 8 August 1998 on the entry, exit and expulsion of aliens within the national territory (the Aliens Act);

– The Act No. 34/94 of 14 September 1994 establishing temporary reception centres;

– The Code of Administrative Procedure;

– The Schengen Agreement and the Dublin Convention.

Refugee Status

Convention status

Section 1(2) of the new 1998 Asylum Act refers to the definition of a refugee as mentioned in Article 1A of the Geneva Convention.

Constitutional asylum

Section 1(1) of the Asylum Act includes an additional refugee definition, which refers to the provisions of Section 33(7) of the Constitution. According to this, "*the right of asylum shall be guaranteed to aliens and stateless persons persecuted or severely threatened with being persecuted as a result of their activities on behalf of democracy, national and social liberation, peace among peoples, freedom and human rights, exercised in the state of their nationality or their current residence.*"

An alien who applies for asylum in Portugal applies automatically under Sections 1(1) and 1(2) of the Asylum Act, as there is only one procedure. Portuguese authorities may grant asylum on the basis of either provisions. In practice, both categories are considered as Convention refugees, receive the same refugee card upon granting of the status and are entitled to the same rights.

Quota refugees

There is no provision for quota refugees under current Portuguese legislation.

Other types of residence permit

Temporary protection

According to Section 9 of the Asylum Act, temporary protection can be granted for a maximum period of two years to persons displaced from their country due to armed conflicts, which

generate large-scale refugee flows. This requires in each case, that the government adopt a resolution defining the criteria for granting temporary protection. So far, temporary protection has only been used twice, i.e. for refugees from Guinea Bissau and for Kosovo Albanians.

The 1,271 Kosovo Albanians who came to Portugal under the UNHCR Humanitarian Evacuation Programme in spring 1999 received temporary residence permits, valid for six months and which could be renewed. They are allowed to work and are entitled to family reunification after 12 months. No individual asylum applications can be lodged during the period of temporary protection.

Residence permit for humanitarian reasons

According to Section 8 of the Asylum Act, a residence permit for humanitarian reasons can be granted to aliens and stateless persons who are not eligible for Convention status, but are not allowed or are unable to return to the state of their nationality or their usual residence "*for reasons of serious insecurity emerging from armed conflicts or from the repeated outrage of human rights that occurs thereon*".

The residence permit is granted by the Minister of Home Affairs upon proposal of the National Commissioner for Refugees. Permits are for a maximum of five years and may be renewed depending on the situation in the country of origin.

Exceptional residence permit for national interest or humanitarian reasons

In addition, an alien may also apply under Section 88 of the Aliens Act for an exceptional residence permit for national interest or humanitarian reasons. In practice, this provision is applied very restrictively by the Portuguese authorities, who do not take into account the humanitarian reasons linked to the alien's country of origin, but only those related to his/her stay in Portugal, for example the fact that the alien has a serious disease preventing him/her to travel, or that he/she is married with a Portuguese national or has lived in Portugal for a very long time. There are no precise criteria and the decision to grant or refuse such residence permit is at the Ministry of Home Affairs' discretion.

Persons granted such status are issued with a residence permit valid for two years and renewable for similar two-year periods.

Rejection at the border

The Aliens and Border Service ("Serviço de Estrangeiros e Fronteiras"), a body under the Ministry of Home Affairs, has the responsibility for border control. According to Sections 9 to 16 of the Aliens Act, the Aliens and Border Service can refuse entry into territory when a person:

- does not have a valid passport or travel document or visa;
- is not allowed to enter according to the Schengen common list or national list of non-admissible persons;
- does not show sufficient financial means to support him/herself during his/her stay in Portugal;
- has benefited from support to voluntary repatriation;
- has been expelled;
- could be a threat to national or European security;
- is an unaccompanied minor under 18 years of age without an appropriate adult to take responsibility for him/herself inside the territory.

Sections 17 to 20 of the Asylum Act lays down a specific admissibility procedure applicable to asylum claims submitted at the borders. According to these provisions, asylum seekers who have lodged their claim at a border point – in most cases this happens at the Lisbon Airport – must

remain within the border zone (airport) until a decision on the admissibility of their claim has been made.

The Aliens and Border Service must immediately forward the application to the UNHCR office and to the Portuguese Refugee Council (PRC), which are required to give their opinion on the case within the next 48 hours. In practice, due to the absence of a UNHCR office in Portugal, this task is assumed by the PRC alone. During these 48 hours, applicants are interviewed both by the police and by the PRC. Interpreters are provided if necessary (the PRC has its own interpreters).

The Director of the Aliens and Border Service must take a decision on admissibility after the expiration of the above-mentioned 48 hours, but within five working days following submission of the application.

When making his/her decision, the Director of the Aliens and Border Service is not obliged to follow the opinion of the PRC, and in most cases, he/she does not. The criteria for granting or refusing admissibility are described below under "admissibility procedure".

If admissibility is granted or if no decision is made within five working days, the asylum seeker is allowed to enter into the country and his/her application will then be processed under the second phase of the asylum procedure (see under "Normal determination procedure" below).

A negative decision on admissibility may be appealed to the National Commissioner for Refugees within 24 hours. Such appeal will be processed within 24 hours. If non-admissibility is confirmed, the applicant will not be allowed entry. As a rule, applicants deemed not admissible are returned to the country where they were staying before coming to Portugal or to any third country where they can be admitted.

Negative decisions by the National Commissioner for Refugees may be further appealed to the Administrative Court, but without suspensive effect.

The Dublin Convention

Sections 28 to 32 of the Asylum Act provides for a procedure in accordance with the Dublin Convention. According to this, the Aliens and Border Service is responsible for carrying out the procedure and in particular, for sending a request for another state to take charge, if there are strong evidence that this state is responsible for examining the application based on the criteria of the Dublin Convention.

If the requested state accepts to take charge, the Director of the Aliens and Border Service must issue a decision regarding the applicant's transfer within the next five days. This decision must be notified to the applicant and communicated to the UNHCR office and the Portuguese Refugee Council (in practice, only the latter). The asylum seeker may appeal the transfer decision to the National Commissioner for Refugees within five days with suspensive effect. The National Commissioner for Refugees must render his/her decision within 48 hours.

If the requested state denies its responsibility, the application is processed under the Portuguese asylum procedure, starting with the admissibility procedure and, if admitted, the normal determination procedure.

Entry into the territory

In principle, an alien who wishes to enter into Portugal must meet the legal requirements provided for in the Aliens Act. In practice, however, most asylum seekers enter Portugal illegally, usually by ship, and submit their application for asylum from within the country.

According to Section 11(1) of the Asylum Act, applications must be submitted to any police authority, either verbally or in writing, within eight days following entry into the country. Applications lodged beyond this time limit are, unless due justification is produced, rejected as inadmissible (see "Admissibility procedure" below).

If the application is submitted to another authority than the Aliens and Border Service, it must be forwarded to the Aliens and Border Service immediately. Upon reception of the application, the Aliens and Border Service notifies the applicant that he/she has to come to an interview within the next five days, and inform both the UNHCR office and the Portuguese Refugee Council.

Admissibility procedure

According to Section 13 of the Asylum Act, an application will be considered non-admissible when:

1. it is obvious that one of the exclusion causes mentioned under Section 3 of the Asylum Act applies, namely:

   – the applicant has performed any acts contrary to Portugal's fundamental interests and sovereignty;
   – he/she has committed crimes against peace, war crimes or crimes against human kind, as defined in the international instruments aimed at preventing them;
   – he/she has committed felonious common law crimes punishable with more than three years imprisonment;
   – he/she has performed any acts contrary to the purposes and principles of the United Nations.

2. the claim is deemed groundless because it obviously does not meet any criteria defined by the Geneva Convention or the New York Protocol, because the motives of persecution are not true, or because it constitutes an abusive usage of the asylum process;

3. the applicant is a national or a habitual resident in a country likely to be considered as a safe country of origin or as a "safe third country";

4. the application falls under the situations mentioned in Article 1F of the Geneva Convention;
5. It is submitted beyond the eight-day time limit prescribed in Section 11 without due justification;

   The eight-day rule is generally applied strictly by the authorities, in particular if the applicant has arrived to Portugal through an airport. Reasons which might justify the submission of the application beyond the time limit include illness, detention or incorrect legal information. In practice, only strong and well-founded cases can be accepted after the eight-day limit.

6. the applicant is subject to an expulsion order.

Applicants are interviewed by an officer of the Aliens and Border Service. Interpreters are provided if necessary. No legal aid is available at this stage. The Aliens and Border Service must render its decision on admissibility within 20 days following the filing of the application. The decision is communicated to the UNHCR office and the Portuguese Refugee Council and notified to the applicant together with, in case of rejection, a period of ten days enabling him/her to voluntarily leave the country.

Within five days of notification, the applicant may lodge an appeal with the National Commissioner for Refugees with suspensive effect. The latter may interview the applicant if necessary. The decision on the appeal must be rendered within 48 hours, but, in practice, it takes longer, generally up to one to two weeks. In case of a negative decision by the National

Commissioner for Refugees, a further appeal may be filed with the Administrative Court but without suspensive effect.

If no decision has been made by the Aliens and Border Service within the above-mentioned 20-day period, the application is admitted automatically under normal determination procedure.

Normal determination procedure

First instance

Asylum seekers whose applications are deemed admissible are issued with a provisional residence permit, valid for an initial period of 60 days and renewable each month until a decision is made on the application.

According to Section 22 of the Asylum Act, the investigation of the case is conducted by the Aliens and Border Service and must be completed within 60 days. However, it is possible to extend this time limit for another 60 days. During this phase, UNHCR and the Portuguese Refugee Council (PRC) – in practice, only the latter – can join to the file, any reports or information regarding to applicant's country of origin and obtain information regarding the procedure.

Once the investigation period is over, the Aliens and Border Service prepares a report, which is sent together with the file to the National Commissioner for Refugees. Within the next ten days, the National Commissioner prepares a grounded proposal for a decision on granting or denying refugee status. This is then notified to the applicant and communicated to the PRC (and, in theory, to UNHCR), who may make observations within five days from notification/reception. If either the applicant or the PRC makes any observations, the National Commissioner for Refugees shall reappraise the project in the light of these new elements.

Finally, the National Commissioner submits the grounded proposal to the Minister of Home Affairs within five days, who again will take a decision within the next eight days. The Minister always follows the National Commissioner's proposals.

Appeal

Within 20 days of notification, negative decisions by the Ministry of Home Affairs may be appealed to the Supreme Administrative Court. Although such appeal has suspensive effect, the provisional residence permit is not renewed during the procedure before the Supreme Administrative Court. As a result, the asylum seeker concerned can stay in the country, but is not allowed to work, attend schools or receive any social support.

In average, the processing of a case before the Supreme Administrative Court takes about one year. In some cases, it can be much longer. There are no detailed statistics about decisions made by the court, but most appeals are rejected.

Legal aid

Access to legal aid is provided for under Section 52(2) of the Asylum Act, which states that UNHCR and the PRC can provide legal counselling to asylum seekers at all stages of the procedure, and that applicants should benefit from legal aid in accordance with the general law on this issue.

During the administrative procedure, the PRC's lawyers provide legal counselling to applicants and file the necessary petitions and appeals on their behalf.

Under judicial proceedings, appellants are entitled to free legal aid on the same terms as Portuguese nationals. In practice, however, lawyers appointed by the courts often lack experience in asylum cases and, in many cases, do not speak foreign languages. In addition, the system under the border (airport) procedure is not effective due to the time required for the appointment of a lawyer whilst the appeal procedure before the Administrative Courts has no suspensive effect.

Interpreters

According to Section 52(1) of the Asylum Act, an interpreter should assist asylum seekers, when necessary. In practice, interpreters are only provided during the interview with the Aliens and Border Service.

Unaccompanied minors

According to Section 56 of the Asylum Act, unaccompanied minors may, if circumstances so require, be legally represented by non-governmental organisations.

There are no other provisions regarding the processing of applications submitted by unaccompanied minors and, in practice, they follow the same procedure as adults.

Female asylum seekers

There is no specific provision concerning asylum applications submitted by women.

Final rejection

Asylum seekers whose applications are rejected as inadmissible are given a ten-day time limit to leave the country voluntarily, whereas those rejected under the normal determination procedure must leave within 30 days. In practice, expulsions are carried out mainly in airport cases and are less common regarding in-country applicants.

In principle, it is not possible for rejected asylum seekers to apply for a residence permit for humanitarian reasons, since the granting of such permit is also examined under the asylum procedure. The only remaining possibility is to apply for an exceptional residence permit for national interest or humanitarian reasons (see "Other types of residence permit" above).

No financial aid or specific assistance towards repatriation is available for rejected asylum seekers.

Detention

Asylum seekers are usually not detained during the determination procedure. According to Section 12 of the Asylum Act, once the alien has submitted an asylum application, any administrative or criminal procedure for illegal entry in the country is automatically suspended. Such procedure will be definitely closed if asylum is granted and if it appears that the illegal entry was caused by the same reasons which have justified the granting of asylum status. Section 119 of the Aliens Act provides for a similar rule.

The only detention-like situation is under the border (airport) procedure, where applicants can be held in the airport's transit zone for a maximum period of five days (see above under "Rejection at the border"). In the airport, facilities such as free telephones and UNHCR's or the Portuguese Refugee Council's addresses and telephone numbers, where asylum seekers could obtain legal advice, are not provided. In the absence of any proper buildings or premises, conditions are very difficult: all asylum seekers stay in the same area, men and women are not separated, no

consideration is taken for minors or vulnerable persons and asylum seekers have not access to bathrooms.

In accordance with the provisions of the Asylum Act, the Portuguese Refugee Council must be informed of all application for asylum submitted at the border and has access to all applicants held at the airport.

Rejected asylum seekers who have not left the country voluntarily within the required time limit, i.e. either ten or 30 days, are dealt with under the provisions of the Aliens Act. Being considered as illegal, they risk being arrested by the police and brought before a criminal court. After 48 hours, the judge decides whether to release the person or extend his/her detention. Generally, because most asylum seekers do not work or have family ties in Portugal, judges decide to keep them in detention. However, detention must be limited to the time necessary to enforce the expulsion and may not exceed 60 days.

Applications from abroad

In principle, it is not possible to apply for asylum in Portugal from abroad. In a limited number of cases however, applications submitted from abroad were admitted and the persons concerned transferred to Portugal, where the claim was processed. Most of these cases concerned high-profile persons.

Family reunification

Recognised refugees

Both Convention and constitutional refugees are entitled to family reunification. According to Section 4 of the Asylum Act, the effects of asylum are extended to their spouse, minor children, fostered/adopted or disabled children, and their dependants. This means that family reunification (and refugee status) can only be granted to parents or siblings if they are dependants of the refugee.

A request for family reunification can be made together with the submission of application for asylum. Later requests should be filed with the Aliens and Border Service. Relatives can also submit a request through UNHCR in their country of origin.

Documentary evidence is required in order to prove family ties (for example, birth or marriage certificates of family members). Assistance with tracing of family members is given by combined efforts of UNHCR and the Red Cross as well as the Portuguese Refugee Council, which has an informal role during the process, providing information to family members.

According to the Asylum Act, if the legal requirements are fulfilled, family reunification must be granted. The time required to process an application for family reunification is between six months and one year. There is no financial assistance with travel costs.

Family members reunited with a refugee in Portugal are given the same refugee status or, alternatively, an exceptional residence permit.

Negative decisions may be appealed to the Minister of Home Affairs and further to the Administrative Court.

Persons with other types of residence permits

Persons holding a residence permit for humanitarian reasons or those having an exceptional residence permit for national interest or humanitarian reasons are also entitled to family reunification, in accordance with Sections 56–58 of the Aliens Act.

The resident permit is extended to the spouse, minor children and dependent children under 21, of one or both spouses. Reunification can also be granted with fostered/adopted children provided that the child has been legally adopted by both spouses. In addition, the law of the country of origin must give adopted children the same rights and obligations as to natural children. Finally, the decision of adoption must be recognised by the Portuguese authorities.

Reunification with minor siblings is only possible if they are in the legal custody of the person residing in Portugal.

The holder of the residence permit can submit the application for family reunification at the Aliens and Border Service. This can also be made by the relatives abroad at a Portuguese diplomatic or consular missions.

Family members arriving for family reunification without entry clearance should present themselves as soon as possible to the Aliens and Border Service, apply for a residence permit and inform the authorities about their relative living in Portugal.

Family members reunited with a holder of a residence permit in Portugal are given the same residence permit.

Holders of other statuses must prove that they can provide proper lodging and sufficient means of subsistence to support the needs of their family members.

Statistics

Number of asylum seekers

No. of asylum applications submitted in Portugal			
	Singles	**Families**	**Total No. of cases**
1993	1,659	431	2,090
1994	614	153	767
1995	332	125	457
1996	216	54	270
1997	251	47	298
1998	338	27	365
1999	235	36	307

Number of statuses granted

No. of statuses granted in Portugal*			
	Refugee statuses	**Residence permits for humanitarian reasons**	**Total**
1993	40	--	40
1994	8	38	46
1995	12	30	42
1996	5	23	28
1997	4	12	16
1998	4	28	32
1999	16	50	66

* these figures do not include the temporary protection granted to Guineans in 1998 and to Kosovo Albanians in 1999.

Main national groups

Main national groups to seek asylum in 1999			
	Singles	**Families**	**Total No. of cases**
Sierra Leone	85	0	85
Angola	35	4	39
Bosnia-Herzegovina	11	17	28
Nigeria	15	0	15
Algeria	13	0	13
Federal Republic of Yugoslavia	12	1	13

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

Pursuant to Section 50 of the Asylum Act, social support is granted by the state to asylum seekers in economic and social need and to their family members. However, this provision has not been implemented yet.

In practice, the Portuguese authorities do not provide any social support during the admissibility phase, with the exception of some financial support for a reception centre run by the Portuguese Refugee Council (PRC) under the framework of a co-operation agreement with this organisation.

Accommodation

The Act No. 34/94 of 14 September 1994 provided for temporary reception centres for aliens, including asylum seekers. However, the law has not yet been implemented since the necessary decree law has still not been passed. As a result, these reception centres do not exist and there is no accommodation provided by the authorities to asylum seekers.

The only existing reception facility is the PRC's centre, located in Bobadela, with a capacity of 21 beds. Accommodation in the centre is provided to needy asylum seekers for a maximum period of 30 days following the submission of their application. In some cases, this may, be extended for another 30 days.

After this, applicants must find accommodation by themselves. Most stay in hostels.

Financial assistance

Asylum seekers are not entitled to any financial support from the state during the admissibility phase.

Through a co-operation agreement with the PRC, UNHCR provides for emergency social support for the initial five days following the asylum seekers' arrival in Portugal.

After this period and until the decision on the asylum claim is made, the PRC provides emergency social assistance, which includes shelter and accommodation facilities, provision of clothes, medical care, transportation facilities (bus tickets), food (breakfast at the reception centre) and a weekly amount of PTE 4,500 [EUR 22.5] to buy their own food for lunch and dinner.

In principle, PRC's assistance is granted only until a first instance decision is made. In some cases, exceptional assistance may be granted to destitute applicants during the appeal procedure.

Some vulnerable cases, such as unaccompanied women or those with children who are minors and disabled persons, are supported by the Emergency Social Service of the humanitarian and social organisation, Santa Casa da Misericórdia.

Once an asylum seeker has been admitted, he/she is issued with a provisional residence permit, which enables him/her to benefit from a specific social assistance under the Portuguese social security system. With some few exceptions, this social assistance is limited to a period of four months. The amount paid is PTE 28,000 [EUR 140].

Work

Work is not allowed during the admissibility stage of the asylum procedure. Asylum seekers whose application has been declared admissible are issued with a provisional residence permit, which allows them to work.

There is no special training or education programmes available to asylum seekers.

Language tuition

There are no state-funded language classes for asylum seekers.

For two years, the PRC has run a programme for asylum seekers and refugees consisting in Portuguese language and computer classes. Due to lack of funding, this has been stopped. At the time of writing (May 2000), no language tuition is available.

School attendance

Since school attendance requires a provisional residence permit, children of asylum seekers processed under the admissibility phase have no access to education. Once the application has been deemed admissible, they have the right to attend Portuguese state schools.

In practice, however, they need to have their previous school qualifications recognised, in order to obtain an equivalence to the Portuguese school grades, which can be difficult for children attending secondary schools. It is generally easier with those going into primary schools.

There are no reception classes for children of asylum seekers.

Child Care

Child care is not provided for asylum seekers.

Unaccompanied minors

Although unaccompanied minors are considered to be vulnerable cases, there are no special procedures or programmes for them. Once inside the territory they are initially helped by the PRC and granted accommodation in the reception centre. They also receive pocket money for food and travel costs.

Usually, Santa Casa da Misericórdia provides further assistance with accommodation in hostels as well as food and pocket money. Unaccompanied minors admitted in the asylum procedure, receive a provisional residence permit, which allows them to attend school. Nevertheless, as for other children, access to school requires the recognition of previous qualifications and this is often a long process.

Female asylum seekers

Like unaccompanied minors, single women are considered to be vulnerable cases, but are not subject to any specific provisions. They are generally accommodated in the PRC's reception centre during the admissibility phase.

Accommodation and pocket money is provided. Usually, after this initial period, Santa Casa da Misericordia provides single women rented accommodation in hostel rooms and pocket money. Social counselling and medical care are also available in the Santa Casa da Misericordia's facilities.

Health/sickness

Asylum seekers are entitled to medical and medicinal assistance on the same terms as Portuguese nationals. They can register with the health centre of their residence, where they can receive health care free of charge, and have access to hospital emergency departments. Medication is paid partly by the state and partly by the PRC.

The PRC and the Medical Institute for Tropical Diseases ("Instituto de Medicina e Higiene Tropical") have an agreement regarding the medical check-up of asylum-seekers upon their arrival in Portugal.

In addition, the Emergency Social Service of Santa Casa da Misericórdia in Lisbon also provides assistance to vulnerable cases.

Freedom of residence/movement

Asylum seekers are free to move and stay wherever they want in the country. However, those who do not want to stay in the PRC's reception centre must find accommodation on their own.

Asylum seekers must also present themselves to the authorities whenever asked for and inform them as to their whereabouts.

The Dublin Convention

There are no special arrangements for asylum seekers under the Dublin procedure, who are thus entitled to receive the same limited social assistance as other asylum seekers.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

As far as social conditions are concerned, no distinction is made between recognised refugees (both convention and constitutional ones) and persons with residence permit for humanitarian reasons or exceptional residence permit for national interest or humanitarian reasons.

Section 15 of the Portuguese Constitution states that: "*[f]oreigners and stateless persons sojourning or residing in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens*."

Financial assistance

Recognised refugees are entitled to social benefits provided by the Social Security, during four months. The monthly amount is PTE 28,000 [EUR 140].

There is no distinction based on nationality, but in practice refugees that come from the Portuguese speaking countries usually have more benefits.

After this period, refugees can apply for a minimum income supplied by Social Security on the same footing as Portuguese nationals.

Housing

Accommodation is not provided by the authorities and refugees must therefore find by themselves, a place to stay. In some cases, particularly with families, the local social security centre may grant a housing allowance for a limited period of time.

Freedom of residence/movement

Refugees are free to settle where they want and may move freely within the country.

Work

Recognised refugees have the right to work under the same conditions as nationals. They do need to apply for a work permit.

Access to adult education system

Recognised refugees have full access to the adult education system. In practice, the language barrier often constitutes an obstacle to their access to available courses.

Language tuition

There is no state-funded language tuition for refugees. Refugees may attend private language classes, for which they must pay themselves, or follow courses provided free of charge by various private organisations including the Portuguese Refugee Council.

School attendance

The situation of children of recognised refugees is the same as for children of asylum seekers. In theory, each child is entitled to attend Portuguese state schools. In practice, however, the

recognition of school qualifications obtained in the country of origin may constitute an obstacle for teenagers and college students.

There are no special reception classes for children of refugees.

Mother tongue tuition

The children of refugees are not entitled to mother tongue tuition.

Unaccompanied minors

The Asylum Act does not include any provisions on the situation of unaccompanied minors once granted refugee status. In some cases, they may be appointed a guardian.

Citizenship

Portuguese citizenship is granted under the conditions laid down in the Nationality Act No. 37/81 of 3 October 1981, modified in 1994. There are no specific provisions for refugees. The main conditions are as follows:

- to be over 18 years of age or emancipated according to Portuguese law;
- to have resided in Portugal or in a territory under Portuguese administration, with a valid residence permit, for more than six or ten years, depending on whether the applicant is a citizen of a Portuguese speaking African country or a citizen of any other country;
- to have sufficient knowledge of Portuguese language;
- to prove an effective integration in the Portuguese society;
- to have sufficient means of subsistence.

It is also possible to obtain Portuguese citizenship by being married for three years with or being adopted by a Portuguese national.

Repatriation

The Portuguese state does not provide any specific repatriation programme.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Legal basis

The Asylum Act does not include any specific provision regarding social conditions for persons granted temporary protection. In practice, these conditions are defined in governmental resolutions (Resolution of the Council of Ministers No. 44/99 regarding Kosovo Albanians) and are usually more generous than the ones granted to asylum seekers or refugees.

Housing

Usually, persons originating from countries represented in Portugal by a strong community, such as the former Portuguese colonies, have the possibility to stay with family members, friends or in specific places adapted for them, whereas those without ties with Portugal, for instance the Kosovo Albanians, are accommodated in specific centres. In their case, the freedom of choice is rather limited, although in some cases, they may choose where to live as well.

Most Kosovo Albanians have been accommodated in centres run by the Portuguese social security system.

Financial assistance

Persons under temporary protection are entitled to receive social assistance from the Portuguese social security system. In practice, the support granted varies according to the nationality.

Freedom of movement

Persons under temporary protection have the right to move freely inside Portugal, but they are not allowed to go abroad.

Work

Kosovo Albanians have the right to work, but those who work are no longer entitled to receive social benefits.

Access to the adult education system

The same as for refugees.

Language tuition

In principle, the situation is the same as for recognised refugees. In the case of the Kosovo Albanians, Portuguese language tuition was provided in some reception facilities, but not in all of them.

School attendance

Children are entitled to attend school on the same basis as Portuguese children, although they do not have any special reception classes.

Mother tongue tuition

There is no provision for mother tongue tuition. Only those children whose mother tongue is taught in private language schools, i.e. English, French, Russian, Italian, Spanish and some

others, may attend such classes, provided they can pay for them. Other less common languages are excluded.

Unaccompanied minors

So far Portugal has received two groups of temporary protected persons: the Guinea Bissau refugees in 1998, and the Kosovo Albanians in 1999. In the latter case, no unaccompanied minor was recorded.

In the case of refugees from Guinea Bissau, some minors arrived in the country. Few of them are under the care of the Portuguese social security services and remain in special facilities for children, whilst the others are now staying with family members living in Portugal.

Repatriation

The repatriation process is organised by the government services, in co-operation with the International Organization for Migration (IOM). No financial assistance is provided.

SPAIN

LEGAL CONDITIONS

The legal basis

– The 1951 Geneva Convention and 1967 New York Protocol;

– Section 13(4) of the 1978 Spanish Constitution, which states: "*The law shall establish the terms under which citizens of other countries and stateless persons may enjoy the right of asylum in Spain*";

– The Act No. 5/1984 regulating the Right of Asylum and Refugee Status, as amended by Act No. 9/1994 (the Asylum Act);

– The Asylum Regulation approved by Royal Decree No. 203/1995;

– The Organic Law No. 4/2000 on Rights and Freedoms of Foreigners in Spain and their Social Integration (the Aliens Act).

This Act entered into force on 1 February 2000. Following the general elections held in March 2000, the new Spanish government has indicated its intention to amend the new Aliens Act in a more restrictive way. At the time of writing, however, it is not possible to describe the proposed amendments. Information will be available from CEAR at a later stage.

– The Aliens Regulation, approved by Royal Decree No. 155 of 2 February 1996.

This regulation, based on the previous Aliens Act, should, in principle, be replaced by a new regulation to be adopted within six months following the entry into force of the new Aliens Act, i.e. before 1 August 2000. However, since the Spanish government has announced its intention to amend first the Aliens Act, it is likely that this time limit will not be met.

– The Schengen Agreement and Dublin Convention.

Refugee status

The only refugee status granted in Spain is Convention status.

According to Section 2(1) of the Asylum Act, *"[t]he right of asylum provided for in Section 13(4) of the Constitution is the protection granted to foreigners who are recognised refugee status and consists in them being neither expulsed nor returned under the terms of Article 33(1) of the Convention relating to the Status of Refugees, made in Geneva on 28 July 1951, and the adoption of following measures:*

(a) permission for residence in Spain;
(b) issuance of necessary identity and travel documents;
(c) permission for carrying out labour, professional or mercantile activities;
(d) any other measures which may be included in international instruments relating to refugees to which Spain is party".

According to Section 2(2) of the Asylum Act, refugees are entitled to social assistance as established by regulation. In practice, since the entry into force of the new Aliens Act, all aliens

residing legally in Spain are entitled to social assistance under the same terms as Spanish nationals (see "Social Conditions for Refugees" below).

Quota refugees

Spain has no permanent agreement with the UNHCR to accept a regular quota of refugees. The Spanish government, however, accepted some small groups of Laotian and Vietnamese refugees in the eighties as well as about 1,000 persons freed from concentration camps in the former Yugoslavia in 1994. All these persons were granted refugee status.

Other types of residence permit

Leave to remain on humanitarian grounds or for reasons of public interest

According to Section 17(2) of the Asylum Act, asylum seekers whose applications have been deemed inadmissible or rejected may obtain leave to remain in Spain on humanitarian grounds or for reasons of public interest. This may apply in particular to persons "*obliged to leave their country of origin due to conflicts or serious disturbances of a political, ethnic or religious character*", but who do not meet the conditions for Convention status.

There are no regulations with regard to the conditions required to obtain such status. In practice, health problems, close family ties in Spain or very good social integration in the country following an exceptionally long asylum determination procedure, have been considered as humanitarian grounds. However, decisions are left to the discretion of the Ministry of Interior, and there is no fixed policy in this matter. Cases where a residence permit is granted for reasons of public interest are very rare.

Persons allowed to stay on humanitarian grounds (or for reasons of public interest) are issued with a residence permit for exceptional circumstances under Section 53 of the 1996 Aliens Regulation, valid for one year and renewable annually. After three years, if the reasons for granting the permit still prevail, its holder will obtain an ordinary residence permit, valid for three years.

For *example* the Cuban "boat-people" transferred from US bases in Panama and Guantánamo in 1995 were granted residence permits on humanitarian grounds.

Temporary protection for "groups of displaced persons

Paragraph 1 of the First Additional Provision of the Asylum Regulation states that groups of displaced persons "*who had been forced to leave their country of origin due to conflicts or serious disturbances of a political, ethnic or religious character*" may be accepted into Spain on humanitarian grounds or in accordance with an international agreement or commitment.

The decision to accept these groups is taken by the Council of Ministers, based on a proposal from the Minister for Foreign Affairs and on the advice of the Inter-Ministerial Commission for Aliens Affairs ("Comisión Interministerial de Extranjería"). Displaced persons accepted into Spain enjoy temporary protection until the conditions in their country of origin are safe enough for them to return. They are protected against *refoulement* in accordance with Article 33 of the Geneva Convention and qualify for refugee reception and integration programmes.

Residence and work permits are governed by the general legislation on aliens. According to Section 31(2) of the new Aliens Act, displaced persons and recognised refugees are entitled to a residence permit in Spain. Section 53(2) of the Aliens Regulation of 2 February 1996, which is still in force, provides for the granting of a "residence permit under exceptional circumstances" to displaced persons with temporary protection. Such residence permits are granted for one year and are annually renewable. After three years of legal residence, and provided that the

exceptional circumstances still prevail, its holders will be entitled to residence permits which are valid for longer periods.

The 1,425 Kosovo Albanians transferred to Spain under the UNHCR Humanitarian Evacuation Programme during spring 1999 were considered as displaced persons and were accordingly issued with a one-year residence permit. At the time of writing (May 2000) 1,065 have already returned and another group is planning to return in June 2000.

Suspension of removal

Section 17(3) of the Asylum Act states that *"[t]he removal or expulsion of the person concerned shall in no case result in the violation of Article 33(1) of the Geneva Convention relating to the Status of Refugees, or lead to the removal to a third state in which he/she will lack effective protection against refoulement to the persecuting country, in accordance which the above-mentioned Convention."*

During recent months, this provision has been applied by the Spanish authorities to asylum seekers whose asylum applications had been rejected and who do not meet the conditions for temporary protection, but who cannot be returned to their country of origin due to conflicts, etc. In such cases, the person is protected against expulsion, but he/she is not granted a residence permit and thus remains in Spain without legal basis until he/she leaves the country voluntarily or obtains a residence permit by other means (regularisation, marriage, etc.).

Rejection at the border

In principle, every alien has the right without legal limitations, to apply for asylum in Spain, to have his/her claim duly processed and to remain in the country until a final decision has been made on the application. However, the amendments made to the Asylum Act in 1994 put an end to the automatic right of entry which previously applied to asylum seekers and introduced an accelerated version of the general admissibility procedure for applications submitted at border points.

The same admissibility procedure applies to both border and in-country applicants, with the exception that the border procedure is subject to shorter deadlines (see "Border admissibility procedure" and "Admissibility procedure within the country" below).

All asylum applications submitted to the Spanish authorities, be it at border points or in the country, are always examined on both formal and material grounds.

In accordance with the border admissibility procedure, asylum seekers who do not meet the requirements for entering Spain legally are kept at the border point until the Minister of Interior has made a decision on whether or not the claim is admissible. If the application is deemed admissible, the applicant is allowed to enter the country. If not, entry is refused and the applicant removed from the territory.

Border admissibility procedure

An alien who has expressed his/her intention to apply for asylum in Spain to the border police, is requested to fill in a uniform questionnaire for asylum seekers and to then undergo an interview.

At land border points, the interview is conducted by an officer of the provincial Aliens Office or the Aliens Division of the National Police. In Madrid Barajas airport, interviews are conducted by officers of the Asylum and Refugee Office ("Oficina de Asilo y Refugio" – OAR), an administrative body under the jurisdiction of the Ministry of Interior. The OAR regularly offers training courses on asylum law and procedure to National Police and Aliens Offices' officers.

During the interview, applicants have the right to be assisted by an interpreter. Legal counselling is also possible and is provided free of charge if the applicant has no personal means.

Once the asylum seeker has formally lodged his/her application and has been interviewed, the case is transferred the OAR. The OAR prepares a report, and if it considers that the application should be rejected as inadmissible, this is forwarded to the Ministry of Interior together with a proposal for a rejection on inadmissibility grounds. In practice, the Minister adopts all proposals submitted by the OAR without examining the cases.

The application can only be declared inadmissible if any of the circumstances and conditions stated in Section 5(6) of the Asylum Act are clearly and undoubtedly established. These circumstances are listed below under "Admissibility procedure within the country".

The decision on admissibility must be reached and communicated to the applicant within 72 hours. If the application is declared inadmissible, the claimant may apply for a review of the decision by the Minister of Interior within 24 hours. The decision on the administrative review must then be communicated to the applicant within the next 48 hours. If the authorities do not meet these deadlines, the application is automatically deemed admissible and the asylum seeker allowed to enter the country and to remain there during the ordinary determination procedure.

The UNHCR representative in Spain must be informed of all individual asylum claims submitted at border points as well as of all applications for administrative review against negative decisions under the border procedure, in order for him/her to give a reasoned opinion on the cases. UNHCR is also able to interview the applicant, although in practice this rarely happens.

UNHCR's opinion is not binding on the authorities. However, if UNHCR disagrees with a decision of inadmissibility taken by the Minister of Interior, the applicant is allowed to enter the country in order to lodge an appeal to the National High Court ("Audiencia Nacional") against the negative decision. Such an appeal does not automatically have suspensive effect, however this can be requested from the Court and no removal will take place until the Court has decided to grant or refuse suspensive effect.

If UNHCR agrees with the Minister of Interior's negative decision, the applicant is able, in theory, to lodge an appeal, although he/she can be returned immediately, without even waiting for the Court to make a decision on suspension.

According to Section 5(7) of the Asylum Act, border applicants must remain at adequate airport premises until a decision on the admissibility of their claim has been made. In practice, such premises only exist at the main international airports, i.e. in Madrid, Barcelona and Las Palmas de Gran Canaria. Stowaways on ships who apply for asylum are normally held in custody on board. If the vessel leaves Spanish waters before a final decision on admissibility has been made, the asylum seekers are allowed to land and are assigned a place to stay with the obligation to report daily at the nearest Police station. The Spanish authorities have entered an agreement with the Spanish Red Cross for the provision of social assistance to asylum seekers held at border points.

The Dublin Convention

The Dublin Convention has been in force in Spain since 1 September 1997. One of the circumstances that may lead to the inadmissibility of an application for asylum is the fact that Spain is not responsible for processing it in accordance with provisions of the Dublin Convention. However, since the Asylum Act provides for the possibility of holding an applicant at the border for a maximum of six days only, asylum seekers whose claims are considered to fall under the provisions of the Dublin Convention are usually allowed entry into the territory while awaiting for the requested EU Member State to accept or reject its responsibility.

Decisions made on the basis of the Dublin Convention may be appealed, though without suspensive effect, and so far there has been no case where a decision of inadmissibility based on Dublin Convention grounds has been overruled by the Court. In practice, many applicants evade transfer and remain illegally in Spain.

If the requested State rejects its responsibility, the asylum seeker will automatically be transferred to the Spanish asylum determination procedure.

Applicants processed under the Dublin Convention are treated as the other asylum seekers and are entitled to the same social rights (see "Social Rights for Asylum Seekers" below).

Entry into the territory

Every alien is entitled to apply for asylum in Spain upon arrival or at any time during his/her stay in the country. Those persons seeking asylum will not be returned or expulsed until a final administrative decision has been taken on their claim, and those who attempt to enter Spanish territory unlawfully with the purpose of seeking asylum cannot be punished for it.

However, asylum seekers who enter the country illegally are requested to submit their applications within one month of entry. Those who entered legally must submit their applications within the time of their allowed stay. An asylum application lodged beyond the prescribed time limit may be rejected as inadmissible in accordance with Section 7(2) of the Asylum Regulation. However, late applicants may combat this presumption by providing a reasonable explanation for not having met the deadline.

Admissibility procedure within the country

All applications for asylum submitted within the country undergo a preliminary procedure in order to decide if they are admissible or not. With the exception of time limits, this procedure is the same as the border procedure.

According to Section 5(6) of the Asylum, an application may be deemed inadmissible if the existence of any of the following circumstances can be clearly and undoubtedly established:

(a) the asylum claim falls under the provisions of Articles 1F and 33(2) of the 1951 Geneva Convention;

(b) it is based on grounds, which are not related to the granting of refugee status;

(c) the claim is simply repeating a former one already rejected, and circumstances in the country of origin have not changed since that first rejection took place;

(d) the claim is based on manifestly false or unbelievable facts, data or statements; or they are outdated and do not justify a need for protection;

(e) Spain is not responsible for examining the application for asylum in accordance with international instruments on the matter;

(f) the applicant has previously been recognised as a refugee by another state, or would have the right to reside or be granted asylum in another state.

Spanish authorities do not operate with a list of "safe third countries" and "safe countries of origin". However, paragraph (d) above allows for a rejection on "safe country of origin" grounds, whilst paragraph (f) make it possible to declare an application inadmissible on "safe third country" grounds. In practice, only Western European countries, USA and Canada are considered 'safe' for this purpose.

The OAR is responsible for examining the applications and for preparing a report on their admissibility or inadmissibility. Unlike border applicants, in-country asylum seekers normally have no access to legal counselling during the initial stage and the interview, however they are given a subsequent term of ten working days to submit any complementary statements or evidence in support of their claim. The authorities consider that applicants may use this period to contact a lawyer (through the local Bar or a refugee assisting NGO) and to receive assistance, if necessary.

When it considers an application to be inadmissible, the OAR forwards a proposal to the Minister of Interior, who then makes the formal decision.

The UNHCR representative has to be informed and given the opportunity to express an opinion on the case before the inadmissibility decision is made. UNHCR's opinion is not binding, but the OAR follows it in most cases.

The decision of inadmissibility regarding an application submitted within the country must be reached within 60 days. If no decision is made during this period, the application is automatically considered to be admissible and it is further processed under ordinary determination procedure. Nevertheless, in accordance with Section 5(8) of the Asylum Act, the circumstances that may have justified a decision of inadmissibility can still lead to the rejection of the application under ordinary determination procedure.

Negative decisions may be appealed to the National High Court. Such appeal does not automatically have suspensive effect, however this can be requested from the Court. No removal should take place until the Court has decided to grant or refuse suspensive effect, but in practice this rule is not always observed.

During recent years, a large proportion of applications submitted in Spain have been rejected under the admissibility procedure. This has been repeatedly criticised by both refugee assisting NGOs and the Ombudsman.

	No. of applications deemed inadmissible*	Inadmissibility rate
1995	2,712	61.36%
1996	2,687	57.75%
1997	3,384	68.00 %
1998	3,780	56.56%
1999	n/a	n/a

* this includes both border and in-country applications

Ordinary determination procedure

Applications deemed admissible are processed under the ordinary refugee status determination procedure.

The procedure starts with an investigation of the merits of each case by the OAR, which is responsible for processing all asylum claims submitted in Spain. Each application is studied by an officer who has undergone special training on the country or area from which the applicant comes. Not all asylum seekers are interviewed for a second time by an OAR officer, but this is the normal procedure when it is possible that Convention status or temporary protection on humanitarian grounds may be granted. A second interview may also take place at the applicant's request or at the request of his/her lawyer, UNHCR or any refugee assisting NGOs. The applicant may continue to submit any evidence to support his/her case throughout the OAR investigation.

The file is then forwarded to the Inter-Ministerial Commission on Asylum and Refugees ("Comisión Interministerial de Asilo y Refugio" – CIAR), which has the task of drawing up a proposal for the first instance decision, which is then submitted to the Ministry of Interior for its

ruling. The CIAR comprises a representative from the Ministry of Interior (who chairs the Commission), the Ministry for Foreign Affairs, the Ministry of Justice and the Ministry for Labour and Social Affairs. The UNHCR representative in Spain acts as a member of the CIAR in a consultative capacity.

The CIAR makes its proposal on the basis of the information and evidence produced by the applicant, the OAR's report, and the opinions of UNHCR and refugee assisting NGOs. The procedure is written and no hearing is stipulated by the Asylum Act. The CIAR may decide to return the case to the OAR for further investigation, specifying the particular steps to be taken. Alternatively, it may formulate a proposal for a decision, which may be:

– recognition of Convention status;

– refusal of asylum;

– refusal of asylum, but granting of leave to remain in Spain on humanitarian grounds;

– refusal of asylum, but recognition of the applicability of the *non-refoulement* clause (without specific reference to any leave to remain in Spain).

The Minister usually follows the CIAR's opinion, although it is not binding. According to Section 7 of the Asylum Act, any disagreement between the CIAR and the Minister of Interior must be settled by the Council of Ministers.

The processing of an application under the ordinary determination procedure, from the submission of the application to the formal notification of the Minister's decision, must be completed within six months. In practice, however, the processing time usually lasts for up to eight or ten months, although rarely exceeding one year.

Judicial appeals

All negative decisions on asylum matters can be appealed to the Administrative Chamber of the National High Court (Audiencia Nacional), whose remit covers judicial review of first instance administrative decisions made by Ministers and Secretaries of State. An appeal must be lodged within two months of the communication of the negative decision to the applicant.

Appeals do not have automatic suspensive effect, but the suspension of removal proceedings may be requested to the Court. If such suspension is granted, no removal can take place until the National High Court has reached its decision. Conversely, there have been cases when asylum seekers were removed from the country pending their appeals, where the High Court did not grant suspensive effect.

The time required to process an appeal case before the High Court is between 18 months and two years, sometimes even more.

Rulings made by the National High Court may be further appealed to the Supreme Court ("Tribunal Supremo"), which examines the legality of the decisions but not the facts of the case. Again, suspensive effect is not automatic but may be requested. If it is granted before the National High Court, it is, in principle, subsequently maintained, unless the Supreme Court decides otherwise. The Supreme Court may uphold or overrule the judgement of the High Court in part or as a whole. In the latter case, the Court renders a decision on the application and in that way, it establishes and defines new rules related to asylum matters.

Administrative review

According to Section 9 of the Asylum Act, an asylum seeker whose application has been processed through the ordinary determination procedure and finally rejected may apply for a new examination of his/her case ("reexamen del expediente"), if:

– he/she has obtained new documentary evidence in support of his/her claim, or
– the circumstances which justified the refusal are no longer valid (particularly if the situation in the country of origin has changed substantially).

Given the "declaratory nature" of the asylum procedure, i.e. it does not "make" a person a refugee but "declares" that s/he is a refugee entitled to certain rights in the light of that person's circumstances, asylum seekers may ask for re-examination of their case at any time. The procedure is the same as the ordinary determination one: an investigation by the OAR, a proposal by the CIAR and a decision by the Minister of Interior. The application for re-examination can also be rejected *in limine* if conditions are clearly not met.

In addition, Spanish administrative law provides for certain remedies which may also be used in asylum cases:

– Demand for reconsideration ("recurso potestativo de reposición"). As an alternative to lodging an appeal directly with the National High Court, applicants may submit a prior request to the administrative body, which issued the decision – in asylum cases the Minister of Interior – asking for reconsideration of the decision. Such requests, which must be lodged within one month of the decision's communication, can be based on any factual or legal reasons. If the decision is confirmed or if there is no reply within three months, the applicant can file an appeal for judicial review with the National High Court. This remedy, which avoids the time and expense attached to a judicial procedure, can be useful in cases where the rejection of the application was made on the basis of a blatant error in the appreciation of the facts;

– Extraordinary administrative review ("recurso extraordinario de revisión"). This is subject to very stringent conditions and requires documentary evidence of an administrative error. It is hardly ever used for cases rejected under the ordinary determination procedure, but it is sometimes useful where inadmissibility cases are concerned, i.e. when new evidence appears after the deadline for lodging an appeal to the Court has expired.

The Ombudsman

The Ombudsman ("Defensor del Pueblo") is appointed by Parliament and is answerable to it. His/her mandate is laid out by an Act that grants him/her functions with respect to controlling public administration but which do not cover the private sector. Within this framework, anybody may lodge a complaint with the Ombudsman regarding public institutions. His/her reports are not binding and may only include suggestions, recommendations and reminders to the authorities. When these are not adopted, the Ombudsman may inform the Parliament. He/she therefore has a moral authority rather than a binding legal power by which he/she could compel the authorities to take a certain course of action.

Legal aid

In accordance with Section 20(1) of the new Aliens Act, asylum seekers are entitled to receive the assistance of a lawyer from the moment they submit their claim and throughout the whole administrative procedure, including the subsequent judicial appeals. If the asylum seeker cannot afford the fees, a lawyer will be appointed free of charge by the local bar association. Some NGOs are also specialised in legal counselling and provide legal counselling and assistance for free.

Upon arrival, legal assistance is available in Spain's international airports, provided either through the local Bar in Madrid, or the Comision Española de Ayuda al Refugiado (CEAR) in Madrid, Barcelona, Las Palmas de Gran Canaria. In seaports, asylum seekers (mainly stowaways) receive legal assistance, provided the police have agreed to register their applications. Assistance is provided by CEAR, either directly or through related organisations.

The practice varies across the country according to the provinces. In some provinces (Melilla, Las Palmas, Barcelona, Málaga), the Bar or CEAR have set up a permanent service, where asylum seekers receive legal assistance for the initial interview. So far, due to the OAR's refusal, it has not been possible to establish a similar system in Madrid, although about 60% of the total number of applications are submitted in the capital. For the time being, applicants in the Madrid province only have access to free legal aid services at a later stage.

Interpreters

The right of asylum seekers to be assisted by an interpreter for the initial application interview is stated in Section 4(1) of the Asylum Act. In addition, Section 20(1) of the new Aliens Act provides for the assistance of an interpreter at all levels of the asylum procedure, as well as for any administrative procedure or judicial proceedings which may lead to the expulsion of an alien.

In practice, the authorities usually do their best to provide interpreting services during the initial and the subsequent interviews, but this is sometimes made difficult by budgetary restrictions or by the lack of qualified interpreters in some regions and/or for some specific languages. These problems often lead to a delay in processing the claims.

The issue of interpreters is not relevant in second instance cases, as judicial review of administrative decisions is made solely on the basis of written material and without any hearing.

Unaccompanied minors

There have only been a few cases of unaccompanied children arriving in Spain. According to Section 15(4) of the Asylum Regulation, unaccompanied or inadequately cared for asylum seekers under the age of 18 are placed under the guardianship of the appropriate Regional Child Protection Services. The Public Attorney ("Ministerio fiscal") is notified of the case, and the minor is represented during the asylum procedure by a tutor designated by the Child Protection Service.

There are no other specific provisions regarding the processing of applications submitted by unaccompanied minors.

Unaccompanied minors who cannot be returned to their country of origin – because their parents cannot be traced or for any other reason – will remain under public guardianship in Spain and are entitled to a residence permit.

Female asylum seekers

There are no specific provisions regarding female asylum seekers.

Final rejection

According to Section 17(1) of the Asylum Act, rejected asylum seekers who are not granted a leave to remain on humanitarian grounds are requested to leave the country or forcibly removed and are thus subject to the following three measures:

– if the application lodged at a border point was deemed inadmissible, the rejected applicant is not allowed entry into Spain unless the Court grants suspensive effect to his/her appeal or if it

proves impossible to carry out removal. In all other cases, the asylum seeker is returned to the country from which he/she came, which may be his/her country of origin or a third country;

– if the application was lodged within the country, the rejected asylum seeker will be notified of an exit order, requiring him/her to leave Spain voluntarily within a fixed term, usually 15 days, after which his/her continued stay in the country will be illegal;

– if a deportation order has been issued against the applicant, it will be enforced as soon as possible after the final negative decision on the asylum claim has been notified.

Under the previous Aliens Act of 1985 and its implementing Aliens Regulation of 1996, rejected asylum seekers who failed to meet the deadline for leaving the country voluntarily were considered to be staying illegally in the country and were issued with a deportation order. This administrative decision could be appealed to the Regional High Court ("Tribunal Superior de Justicia"). Appeals had no automatic suspensive effect, but the appellants could apply separately for suspensive effect and this was granted by the court if enforcement of the administrative decision could cause serious or irreparable damage to the applicant and public interest was not seriously affected by the suspension. The general rule, as laid down by the Supreme Court, was to grant suspension when the applicant had family or business ties in Spain, and to refuse it when the deportation order followed a criminal offence. Other circumstances were considered on a case-by-case basis.

The situation has changed following the entry into force of the new Aliens Act on 1 February 2000. According to Section 49(a) of the new Act, staying illegally in Spain can only be sanctioned with a fine, which may vary from ESP 50,000 [EUR 300] to ESP 1,000,000 [EUR 6,010]. The consequences for a rejected asylum seeker of staying in the country in spite of an exit order remain unclear and are yet to be established by a new implementing regulation and by the case law developed by the courts.

Detention

Asylum seekers

The detention of asylum seekers is only foreseen in Section 5(7) of the Asylum Act, which provides for the ability to detain border applicants within the premises of the border point until a decision on the admissibility of their application has been made (see "Border admissibility procedure" above). Such detention is limited to a maximum of six days. The compliance of the time limit and the conditions of this form of detention within the Spanish Constitution have been challenged by the Ombudsman before the Constitutional Court, but no ruling has been made so far.

Rejected asylum seekers

Section 58 of the new Aliens Act also provides for the authority to detain a foreigner in order to ensure the enforcement of a deportation order issued against him/her. Such detention must be authorised and controlled by a judge, and can never exceed 40 days.

Applications from abroad

It is possible to apply for asylum at a Spanish embassy abroad, provided the applicant is in a third country. Applications lodged with an embassy are sent to the Spanish Ministry of Foreign Affairs together with a report from the embassy concerned, which then forwards the cases to the Ministry of Interior. These applications are not processed under the admissibility procedure but directly under that of ordinary determination.

As a rule, applicants from abroad are not allowed to come to Spain until they are granted asylum, however exceptions can be made under especially compelling circumstances requiring an urgent transfer to Spain.

Family reunification

Convention status refugees: according to Section 10 of the Asylum Act, refugee status may be extended to a refugee's spouse or partner with similar relationship, his/her parents and children, except in cases of legal or *de facto* separation (of the couple), divorce, coming of age or leaving the household, in which the situation of each member of the family will be examined separately.

Based on Section 34 of the Asylum Regulation, however, refugee status cannot be granted if the marriage or the stable partnership has been contracted after recognition of refugee status. In such cases, the spouse or partner is only entitled to a residence permit under the general provisions of the Aliens Law. They may, however, apply for asylum separately on their own merits. Persons under the circumstances contemplated in Articles 1F and 33(2) of the 1951 Geneva Convention cannot benefit from family reunification.

Although there is no specific legal rule regarding polygamous marriages, the practice – similar to the one followed for family reunification under the Aliens Act – is to limit the benefit of the extension of the refugee status to one spouse, chosen by the refugee. Nevertheless, in these cases, separate asylum claims submitted by the other spouses are usually accepted.

The administrative procedure for family reunification under Section 10 of the Asylum Act is similar to the ordinary asylum procedure: the case is studied by the OAR, then forwarded to the CIAR which submits the proposal to the Minister of Interior. In these cases, the OAR officers limit their investigation to verifying the existence of the alleged family ties and the non-applicability of the exclusion clauses. No financial or time conditions are required. Negative decisions may be appealed to the National High Court as with any other decision made on asylum matters.

Information on any other relatives and situations must be processed under the provisions of the general legislation on aliens (see below).

Persons with leave to remain on humanitarian grounds are subject to the general rules for family reunification under the provisions of the Aliens Act, which include strict time limits and financial conditions. According to Sections 16 and 17 of the new Aliens Act, the following categories are entitled to family reunification with a foreigner lawfully residing in Spain:

– the resident's spouse, if the couple is not legally or *de facto* separated or divorced, and providing that it is not a marriage of convenience. Reunification is allowed only for one spouse, even if polygamy is legal in the foreigner's country of nationality. In case of divorce and subsequent new marriage, reunification for the new spouse will only be possible if it is proven that the divorce was settled through a legal procedure establishing the rights regarding housing and allowances for the former spouse and minor children.

– the resident's and his/her spouse's unmarried children under 18.

– the persons under the resident's guardianship.

– the parents and other ancestors economically dependant on the resident, if there are reasons to support their transfer to Spain.

– any other relative whose reunion with the resident is necessary on humanitarian grounds.

Time and financial conditions for family reunification are defined in the Aliens Regulation of 1996 and the procedure is established by an Order of January 1999. However, these provisions are no

longer compatible with the new Aliens Act and will therefore have to be modified. Currently, a foreigner who wishes to be reunified with his/her relatives must have a renewed residence permit, which means that he/she must have stayed legally in Spain for at least 15 months, usually up to 18-24 months. In addition, he/she must produce evidence of sufficient housing and of a regular income which would cover the needs of the person(s) coming to Spain.

Statistics (Source: OAR and UNHCR Branch Office in Spain)

Number of asylum seekers

	No. of asylum seekers*
1995	5,678
1996	4,730
1997	4,975
1998	6,764
1999	8,410

* this figures includes all asylum seekers, i.e. border and in-country applicants and those applying from abroad, as well as persons coming under family reunification provisions (Section 10 of the Asylum Act).

Number of Convention statuses granted in Spain

	No. of Convention statuses*
1995	464
1996	244
1997	161
1998	238
1999	not available

***** figures include statuses granted to persons coming to Spain under family reunification provisions.

Number of asylum seekers allowed to remain in Spain on humanitarian grounds

	No. of persons
1995	not available
1996	193
1997	218
1998	762
1999	not available

Main national groups to seek asylum in 1999

Country	No. of asylum seekers	%
Algeria	1,342	16.0
Romania	1,033	12.3
Armenia	886	10.5
Sierra Leone	803	9.6
Colombia	601	7.2
Ukraine	348	4.1
Russia	335	4.0

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

Section 5(1) of the Asylum Act states that the authorities may make provision for asylum seekers' basic needs.

According to Section 15 of the Asylum Regulation, asylum seekers whose claim has been deemed admissible and who do not have sufficient resources on their own, may benefit from the social, educational and health services provided by the state institutions according to their financial resources.

In principle, social assistance is not available during admissibility procedure, but vulnerable applicants, such as one-parent families, families with young children, sick persons, and elderly or handicapped persons may be provided with social support from the time of the submission of their application, without it being necessary to wait for the decision to be made on its admissibility.

Asylum seekers may obtain permission to work, depending on their procedural and individual situation (see under "Work" below).

There is no legal instrument describing the social benefits available for asylum seekers as such, and the Aliens Act's provisions on social rights generally apply to asylum seekers, especially its Sections 9 to 14. In addition, the Institute for Migrations and Social Services ("Instituto de Migraciones y Servicios Sociales" – IMSERSO), a body of the Ministry of Labour and Social Affairs in charge of providing social welfare to asylum seekers, displaced persons and refugees at national level, runs annual social support programmes in collaboration with NGOs acting as implementing partners. Finally, regional governments and local councils may also provide social benefits for asylum seekers according to their own regulations and programmes.

Accommodation

There is no provision which guarantees accommodation to asylum seekers from their arrival in Spain until such time as a decision on admissibility has been made, even though this may take up to 60 days. Vulnerable applicants may be assisted by the IMSERSO during that period and are given accommodation in the existing reception centres or in hostels. All others must find accommodation on their own. Due to the lack of or the very limited social assistance available in certain areas, this may lead to extremely difficult situations.

Reception centres are reserved for asylum seekers whose applications have been deemed admissible. At present, there are 19 centres offering a total of 816 places. All centres are supported financially by IMSERSO, but only four of them are run directly by this institution. The 15 remaining centres are run by NGOs on the behalf of the IMSERSO.

Due to the limited number of places, accommodation in the reception centres is not compulsory, nor indeed is accommodation available for all those who need it. In practice, priority is given to vulnerable applicants. In the reception centres, asylum seekers receive board and lodging and language tuition is provided. The stay at a reception centre should not exceed six months, but IMSERSO may allow asylum seekers to stay longer in the centres, i.e. until the CIAR has made a final proposal to the Minister of Interior on their application.

Asylum seekers who are not accommodated in the reception centres following the decision of admissibility of their application' may be granted a basic monthly allowance to cover their living expenses. They may also receive extra assistance in order to pay their rent (see below).

Financial assistance

Asylum seekers staying in reception centres receive the following monthly pocket money:

Single adult	ESP 6,860	EUR 41
Couple	ESP 11,435	EUR 69
Each child under 18	ESP 2,286	EUR 14
Each child above 18	ESP 4,574	EUR 27

Needy asylum seekers who are not accommodated in the reception centres may receive a basic social allowance in order to cover their main expenses. Asylum seekers who are eligible for accommodation in a reception centre but who stay with relatives living in Spain may also receive this allowance as a contribution towards the household's income.

The allowance is granted for a period of six months only, and in special cases, may be extended for two further three-month periods. Monthly rates are fixed by IMSERSO depending on the size of the family. For 2000, the monthly rates are as follows:

Single adult	ESP 40,255	EUR 242
Couple	ESP 60,362	EUR 363
Each child	ESP 5,000	EUR 30
Maximum per family	ESP 70,680	EUR 425

Needy asylum seekers who are able to justify their need to rent accommodation may receive a rental allowance, which covers both the deposit and the monthly rent. Such assistance is limited to the same duration as the basic social allowance.

Work

In accordance with the Asylum and Aliens Regulations, asylum seekers may be allowed to work. To do so, they must apply to the Provincial Division for Labour and Social Affairs for a special authorisation. This is not given until they have already been in the procedure for six months, and only after consultation with the OAR.

In practice, asylum seekers' access to the labour market varies from province to province, and it is easier to obtain authorisation for a temporary job in agriculture than for permanent clerical jobs. Apart from the language and cultural barriers, the main obstacle they meet is the high unemployment rate in Spain, which particularly affects foreigners.

Language tuition

Asylum seekers accommodated in the reception centres may attend Spanish language courses which are provided free of charge. Other public education institutions as well as several NGOs offer Spanish language courses for foreigners which are free of charge and may be attended by asylum seekers.

School attendance

All children under 18, regardless of their nationality or legal status in Spain, have the right to education under equal conditions. School attendance is compulsory and free of charge for all children between the ages of 3 and 16. This applies also to asylum seekers, who thus attend normal Spanish schools.

Children who do not speak Spanish may be offered special language lessons before joining an ordinary class.

In principle, asylum seekers may have access to Spanish universities under the same conditions as Spanish and EU nationals. However, due to the heavy requirements imposed on candidates regarding qualifications and the relatively short duration of the asylum procedure, in effect very few asylum seekers enrol in Spanish universities.

Child care

Children are offered special activities in the reception centres according to their age. These are mainly designed to support school lessons, but they may also include cultural trips as well as recreational activities.

Unaccompanied minors

There have only been a few cases of unaccompanied children arriving in Spain. According to Section 15(4) of Asylum Regulation, destitute asylum seekers under the age of 18 are placed under the care of the appropriate Regional Child Protection Services. The Public Prosecutor is notified of the case and a district attorney is allocated to represent the minor whilst his/her application for asylum is being processed.

Unaccompanied minors may stay in a special centre for refugee minors in Madrid, or in a centre for Spanish minors.

Female asylum seekers

There are no special measures regarding female asylum seekers, however women are given priority in the provision of accommodation in the reception centres.

Health/sickness

All asylum seekers undergo a compulsory medical check-up on arrival. During the procedure, they are entitled to receive to free medical treatment in the Red Cross hospitals, or, if the appropriate treatment is not available there, in public regional hospitals. In the latter case, expenses are paid for by the Red Cross.

No medical staff are attached to the reception centres, although, in some cases, medical volunteers and persons who have been permitted to undertake community services instead of military service may liaise with the centres.

Freedom of residence/movement

In principle, asylum seekers are free to travel and live wherever they wish in the country, provided they keep the police informed of their address and whereabouts.

However, under Section 14 of the Asylum Regulation, the Minister of Interior can restrict asylum seekers' freedom of residence/movement for control or security reasons and may impose control measures upon then as with any other aliens, under the provisions of the Aliens Act.

The Dublin Convention

Applicants processed under the provisions of the Dublin Convention are entitled to the same social assistance as asylum seekers whose applications have been deemed admissible.

SOCIAL CONDITIONS FOR REFUGEES AND PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

Since 1 February 2000 and the entry into force of the new Aliens Act, all aliens residing lawfully in Spain are entitled to the same social rights as Spanish nationals (Section14 of the Act). No distinction is made between Convention refugees, persons with leave to remain for humanitarian reasons or for reasons of public interest and displaced persons with temporary protection.

Social welfare is under the jurisdiction of the regional governments, in co-operation with local councils. Accordingly, social benefits may vary from one region to another, with the exception of Social Security benefits, which are common across Spain.

Housing

Convention refugees and persons under temporary protection may have access to council housing. However, given the general housing shortage in Spain, this remains a problem. One of the programmes initiated by the authorities specifically concerns housing and includes the option of granting a housing allowance for those renting accommodation.

Freedom of residence/movement

In principle, refugees are free to travel and settle wherever they wish in Spain. However, under Section 18(2) of the Asylum Act, the Minister of Interior can – as a temporary measure for exceptional state security reasons – impose on a refugee, a ban from border areas or certain other specific places, a mandatory place of residence, or the obligation to report periodically to the Police. These measures, which can also be applied to asylum seekers, persons with humanitarian leave to remain or any other aliens, are extremely rare.

Convention refugees receive a Convention Travel Document. Other aliens use their own national passports, or are issued with a special travel document if they are without documentation.

Financial assistance

Convention refugees, persons with humanitarian leave to remain and persons with temporary protection are entitled to the same social benefits as nationals.

The amount of the basic social allowance and the entitlement criteria vary according to the regions. The rates paid in the Madrid area are as follows:

Single adult	ESP 41,425	EUR 249
Couple	ESP 51,755	EUR 311
Each dependent member of the family	ESP 5,800	EUR 35

There is no child benefit in Spain, although special assistance may be granted in exceptional cases or to vulnerable persons.

Integration programmes

On behalf of the IMSERSO, several NGOs run various programmes specifically aimed at facilitating the social integration of refugees in Spain.

Under these programmes, the following allowances may be granted:

Allowances towards social and labour integration, which include

1. Housing allowance: this allowance is aimed at helping refugees to find accommodation after the granting of the status, when they must leave the reception centres. Priority is given to those who have stayed in reception centres or have participated in the monthly payment programmes run by the Red Cross. Only needy refugees are eligible. The allowance is intended to cover rent, deposits, services contracts and equipment. It is a one-off payment of up to ESP 200,000 [EUR 1,202] for a single adult, and up to ESP 350,000 [EUR 2,104] for a family;

2. Self-employment allowance: this is intended to support the purchase of materials and goods required for self-employment activities. Persons over the age of 50, single women with children, young persons and heads of large families have priority. The allowance is a one-off payment of up to ESP 850,000 [EUR 5,109];

3. Assistance towards access to the labour market: this financial aid is intended to help refugees to find jobs. It may cover travel costs such as travel and transportation costs from the place of residence to the place where the job is located.

4. Assistance for education and professional training is provided in order to enhance refugees' qualifications or to enable them to adapt to Spanish educational and work systems. This consists of scholarships, the amounts of which vary depending on the type of studies. Usually, they include the payment of the enrolment fees and a monthly allowance, which ranges from ESP 37,955 [EUR 228] to ESP 50,000 to [EUR 301].

Study allowances for vocational training, nursery schools, enrolment fees, study materials, travel expenses, etc.;

Emergency allowances for vulnerable persons: The allowances may cover the payment of rent deposits, housing rent and living expenses for refugees whose access to the labour market is deemed to be especially difficult. Eligible persons are likely to be over 55 years of age, single women with children, young people, persons suffering from serious illnesses, as well as persons authorised to remain in Spain under the provisions of Section 17(2). of the Asylum Act (leave to remain on humanitarian grounds or for reasons of public interest) while awaiting the issue of residency and work permits.

Work

Convention refugees have access to the labour market and do not need a work permit.

In order to be able to work, persons with humanitarian leave to remain and those with temporary protection must submit a request for a specific permit ("autorizacion para trabajar"), which is a simplified type of work permit. This is granted almost automatically upon request.

Access to adult education system

Under previous legislation, refugees were not entitled to receive state education allowances. Thus, the CEAR was running a programme aimed at facilitating their access to Spanish universities through the payment of allowances to cover enrolment fees, travel costs and study materials.

Since 1 February 2000, in accordance with Section 9(2) of the new Aliens Act, refugees as for any aliens legally residing in Spain, have access to non-compulsory education under the same terms as Spaniards, including the public allowance and grant system.

Language tuition

Refugees have access to free language tuition provided by NGOs, such as FEDORA, ACCEM, ASTI, Caritas and the Spanish Red Cross. These courses are subsidised by the State.

School attendance and mother tongue tuition

Refugee children have access to the Spanish school system under the same conditions as those of asylum seekers. No mother tongue tuition is provided for refugee children.

Access to the national health service

Since 1 February 2000 and the entry into force of the new Aliens Act, all aliens who are registered at a local council have access to the national health system under the same conditions as Spaniards. Those who have jobs are covered by the Spanish social security system. Those without work also have access to the health system but under varying conditions, depending on the region in which they live.

Unaccompanied minors

Unaccompanied refugee children remain under the guardianship of the Regional Child Protection Services, overseen by the Public attorney ("Ministerio fiscal")'

As asylum seekers, they may be accommodated at a special centre for refugee minors (one in Madrid), or together with Spanish children at a centre for unattended children. In 1992, due to the large number of unaccompanied minors who arrived in Spain from Bosnia-Herzegovina, some had to be temporarily accommodated with foster families.

Citizenship

Convention refugees may obtain Spanish citizenship after five years, running from the date they lodged their asylum application. Other foreigners may only apply after ten years of legal residence. In addition, refugees and legal residents originating from Latin America, the Philippines or Equatorial Guinea may apply for citizenship after only two years of residence (counted from the date of their asylum claim if they are refugees).

Repatriation

The Spanish authorities finance voluntary repatriation programmes through different NGOs. The CEAR currently runs a specific repatriation programme for Kosovo Albanians, under which refugees who wish to repatriate have their travel and documentation costs covered, in addition to pocket money.

Refugees who have repatriated lose their residence permit and do not have the option of returning to Spain, unless the conditions in their country of origin change. If this is the case, they may be allowed to return to Spain in order to submit a new application for asylum on the basis of these new circumstances.

The assistance granted includes travel costs (either in planes chartered by the Spanish authorities or on regular lines), payment of the fees required for obtaining the necessary documentation (passport, visas, etc.) and a pocket money of ESP 64,000 [EUR 385] for persons over 18 years of age and ESP 30,000 [EUR 180] for those under 18 years of age.

SWEDEN

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– Aliens Act No. 529 of 1989, amended in 1992, 1994, 1995, 1996 and October 1997.

– The Dublin Convention, which entered into force in Sweden on 1 October 1997.

In 1997, a Committee was appointed by the Government in order to make proposals for a reform of the asylum procedure. This Committee for New Procedural Rules in Aliens Matters consisted of representatives from political parties, officials and other independent experts. In 1999, the Committee presented to the Government a proposal, which included amongst other suggestions, the transfer of responsibility for the processing of appeal cases from the Aliens Appeal Board to the Administrative Courts. The proposal is now under reconsideration and a Working Group has been established to present a modified proposal to the Government before 31 May 2000. The Government will then have the option to submit a bill to Parliament, which then could lead to the adoption of a law. At the time of writing (May 2000), however, it is not possible to predict if and when such law will be adopted. Any further information on this issue should be requested from the Swedish refugee assisting NGOs.

Refugee status

In accordance with Chapter 3 Section 1 of the Aliens Act, "asylum" is defined as the awarding of a residence permit to a refugee.

According to Chapter 3 Section 2, a "refugee" is defined under the same terms as under Article 1A of the Geneva Convention. Following the amendments to the Aliens Act passed in December 1996, it is specified that the above-mentioned refugee definition applies *"irrespective of whether persecution is at hands of the authorities of the country or these cannot be expected to offer some protection against persecution by private individuals".*

Stateless persons are explicitly covered by the refugee definition, as Chapter 3 Section 2 of the same Act states that "*[a] stateless person who for the same reason is outside the country of his former habitual residence and who is unable or, owing to such fear, is unwilling to return to that country, shall also be deemed a refugee*".

According to Chapter 3 Section 6 of the Aliens Act, the National Immigration Board ("Statens Invandrarverk" – SIV) may, upon the aliens request, give a "declaration of refugee status" to Convention refugees.

Convention refugees are normally issued with a permanent residence permit.

Quota refugees

Sweden has an agreement with UNHCR regarding the reception of quota refugees. The yearly quota is decided by the Swedish Parliament. At present, it amounts to about 1700-1800 refugees.

Refugees coming to Sweden under the quota provisions are chosen by the Swedish authorities, in general on the basis of case files submitted by UNHCR.

Other categories of persons in need of protection

Following the 1996 amendments to the Aliens Act, asylum is no longer granted to de facto refugees and so called "war-objectors", unless they are covered by the refugee definition.

Instead of this, Chapter 3 Section 3 of the Aliens Act establishes three categories of persons in need of protection:

1– Aliens who have a well-founded fear of being punished by death penalty or corporal punishment or being subjected to torture or other kinds of inhuman or degrading treatment or punishment;

2– Aliens who need protection due to external or internal armed conflict or are unable to return to their country of origin because of an natural catastrophe;

3– Aliens who have a well-founded fear of persecution for reasons of their gender or homosexuality.

By analogy with the above-mentioned provisions on refugees, it is added that *"[a] stateless person who for the same reason is outside the country of his former habitual residence and for the reasons given in paragraph 1* [above-mentioned 1–3] *cannot return to that country or, owing to fear, is unwilling to return to that country, shall also be deemed an alien in need of protection".*

As Convention refugees, persons in need of protection are normally granted a permanent residence permit.

According to Chapter 3 Section 8 of the Aliens Act, the Government may order that residence permits may exceptionally no longer be provided to category 2) here above mentioned, in the event of a mass influx which could not be absorbed.

Temporary protection

As a rule, asylum and protection granted to other categories than refugees imply a right to a permanent residence permit.

However, in accordance with Chapter 2 Section 4a of the Aliens Act, the Government may order that a group of asylum seekers be given temporary residence permits, if their need for protection is considered to be temporary. Such decision is taken by ordinance and is subject to parliamentary control.

In principle, the maximum duration of the temporary protection period is two years. However, if some form of return programme have been established before the expiration of these two years, the temporary residence permits may be extended for up to another two-year period.

Persons granted temporary protection are entitled to family reunification with their spouse and children under 18 years of age and they may apply for a work permit.

On 15 April 1999, the Swedish Government published an Ordinance No. 1999/209 granting temporary protection to Kosovo Albanians arriving to Sweden under the UNHCR Humanitarian Evacuation Programme (about 3,800) or spontaneously, as well as those already in Sweden whose asylum applications were still pending at that time.

According to this, Kosovo Albanians were considered to be in need of temporary protection and were issued with a residence permit valid for 11 months, i.e. until 30 April 2000. The processing of their asylum claims was not suspended but led to the granting of a temporary residence permit.

The temporary protection regime was not renewed after 1 May 2000. Kosovo Albanians who wish to stay in Sweden have to submit a new application for asylum.

Submission of the application

All asylum applications, whether at border points or within the country, must be submitted to the National Immigration Board (SIV). At border points, in particular, the border police have no authority to decide on entry of asylum seekers and must refer all cases to the SIV. There are SIV officers present at all main border points.

The SIV, which will change its name to National Migration Board ("Statens Migrationsverket" – SMV) from July 2000, is an administrative authority with headquarters in Norrköping and decentralised regional headquarters in Malmö, Göteborg and Stockholm. It has entire and exclusive responsibility for deciding on entry into the country, interviewing applicants for asylum, carrying out all other investigations during the procedure as well as making first instance decisions.

In order to establish applicant's identity, fingerprints and photographs are compulsory. Applicants may also be subject to a language test in order to ascertain their nationality or ethnic group.

Accelerated procedure for manifestly unfounded applications

Asylum seekers whose applications are deemed manifestly unfounded may be refused entry into the territory and removed immediately. If they have already entered the territory (illegally) they may be refused a residence permit and removed immediately.

The concept of "manifestly unfounded application" is mentioned in Chapter 8 Section 8 of the Aliens Act, but the actual definition of a manifestly unfounded application is to be found in the preparatory works of the Aliens Act and in the legal practice. According to this, a refusal of entry may be issued together with an order for immediate enforcement in the following cases:

– when the asylum seeker comes from a country where it is established with certainty that human rights violations do not occur;

– when the applicant comes from a country where human rights violations may occur, but the reasons for the asylum application submitted do not meet the requirements for asylum according to a precedent established by the Government. This may apply, for example, when the Government has established, in an individual case, that membership of a certain religious or ethnic group in a particular country does not warrant international protection;

– when the applicant can be returned to one of the Nordic countries in accordance with an agreement, or when, prior to arrival in Sweden, he/she has stopped in another country where he/she would have been protected against persecution or removal to his/her country of origin or another country where such protection is lacking;

– when the applicant can be sent to another EU country in accordance with the provisions of the Dublin Convention (see under "The Dublin Convention" below).

Decisions of rejection on manifestly unfounded grounds are made by the SIV. Applicants may be assisted by a lawyer, but free legal counselling is very seldom available. In principle, cases should be processed "within a reasonable limit of time", though according to Chapter 8 Section 8 of the Aliens Act, no decision of rejection on manifestly unfounded grounds can be made more than three months after the submission of the application for asylum.

Negative decisions by the SIV may be appealed to the Aliens Appeal Board within three weeks from notification, but without automatic suspensive effect. Applicants may submit a separate application for suspension, which is, however, rarely granted.

Asylum seekers processed under the manifestly unfounded procedure are often detained. According to Chapter 6 Section 2 of the Aliens Act, an alien over 18 years of age may be detained in a special detention centre if:

(a) his/her identity is unclear;
(b) detention is necessary for the investigation of his/her right to stay in Sweden;
(c) it is likely that he/she will be refused entry or expelled, or detention is necessary to the enforcement of an existing refusal of entry or expulsion order.

In principle, detention under paragraph (c) can only be ordered if there are some reasons to presume that the alien otherwise will go into hiding or will engage into criminal activities in Sweden. Detention under paragraph (b) is limited to 48 hours. In the other cases, it is limited to two weeks unless there are exceptional grounds for a longer period. However, if the refusal of entry or the expulsion order has already been made, the detention period may last up to two months, and even longer if there are exceptional grounds (see "Detention" below).

The Dublin Convention

The SIV is responsible for carrying out the procedure of the Dublin Convention and, in particular, for sending a request to take charge to another EU country, when there are evidence that this country is responsible for examining the application.

Decisions made under the Dublin procedure by the SIV can be appealed to the Aliens Appeal Board. Since these decisions are usually subject to immediate enforcement, an appeal has no automatic suspensive effect. It is possible to apply separately for suspensive effect, in particular when the applicant has a close family connection in Sweden or when there are strong humanitarian grounds, but this is rarely granted.

Whilst their application is processed under the provisions of the Dublin Convention, "Dublin applicants" are not differentiated from other asylum seekers. In particular, they have access to the same accommodation and are entitled to the same social rights.

Normal determination procedure

First instance decisions under the normal determination procedure are made by the SIV.

Adult asylum seekers are usually interviewed once. In some cases, children are also interviewed. Applicants may be assisted by an attorney during the interview, in particular if there is a risk of rejection of their claim.

In December 1996, amendments to the Aliens Act were adopted, according to which:

- oral proceedings were given an increased role in the first instance (and appeal) procedure;

- a child's statement should normally be taken into consideration, according to the child's age and maturity;

- excessive demands for evidence should not be made to applicants claiming risks of persecution;

- due to an increasing number of complaints lodged with the Council of Europe and the UN Commission against Torture regarding asylum decisions made by the Swedish authorities, it was decided that an injunction should be granted in such cases on demand by an international body.

There is no actual time limit to make a first instance decision. The average processing time is about six months, which is in accordance with the SIV's aim.

Appeal

Negative decisions by the SIV may be appealed to the Aliens Appeal Board ("Utlänningsnämnden") within three weeks of notification. In practice, the appeal is lodged with the SIV, which has a formal option to re-examine the case. If the SIV does not find any grounds for reconsidering its initial decision, it then forwards the appeal to the Aliens Appeal Board for a final decision.

Normally, negative decisions by the SIV are not subject to immediate enforcement and an appeal has thus, *ipso facto*, suspensive effect. However, under the manifestly unfounded procedure where decisions are accompanied by an immediate enforcement order, appellants must make a separate application for suspension, which is though rarely granted.

The Aliens Appeal Board comprises a Chairperson, an Alternate Chairperson and lay persons appointed by Parliament. The Chairperson and the Alternate Chairperson must be professional judges.

In cases considered to be of special importance, the Appeals Board is composed of two Chairpersons and four lay persons. Otherwise, it consists of one Chairperson and two lay persons. If both lay persons disagree with the Chairperson, their opinion prevails. Appeals considered to be of minor importance – in practice the vast majority of cases – are decided by the sole Chairperson.

An appeal to the Aliens Appeal Board may also be made against decisions to deny travel documents or refugee status. Appeals may also be lodged against the rejection of an application for a residence permit on family reunification grounds submitted from abroad (see under "Applications from abroad" below).

The usual time needed for processing an appeal case is between 6 and 12 months. The percentage of first instance decisions overruled by the Aliens Appeal Board is as follows:

Year	ppeal applications	ecisions	ejections
1997	2,529	2,161	67%
1998	2,824	2,479	64%
1999	2,700	2,999	60%

Access to legal aid

Normally, no free legal aid is available when the application is dealt with under the manifestly unfounded procedure or when there is a strong presumption that refugee status will be granted. In other cases, free legal aid is available both during the first instance and the appeal procedures.

Access to interpreters

Interpreters are always available at all stages of the procedure and are paid by the authorities. Interpretation is usually done in person, although it may be conducted over the phone if necessary.

Unaccompanied minors

Unaccompanied minor asylum seekers are processed under the normal refugee determination procedure. Upon their arrival in Sweden, they are appointed both a guardian and a legal representative. The task of the guardian, a so-called "good man", is to assist the child during the interviews – sometimes along with the legal representative – and to ensure that his/her rights and special needs are taken into consideration.

The SIV must make a decision on the child's application for asylum within six months. If refugee status is denied, the SIV examine automatically whether the child needs protection for other (humanitarian) reasons, including the lack of social network in the home country.

If the authorities consider that there may be a prospect of family reunification in the home country, the child is issued with a temporary residence permit valid normally for six months until reunification is carried out. Such permit may be prolonged for another six-month period.

Female asylum seekers

There are no special provisions for female asylum seekers.

Final rejection

The final decision rejecting the application for asylum is always accompanied by a deportation order. If there are any reasons to fear that the rejected applicants will go into hiding or otherwise will try to avoid deportation he/she will be detained (see "Detention" below).

Rejected asylum seekers are entitled to financial support and social benefits until their deportation. This requires, however, that the alien is staying in a residence centre, in a detention centre or at an address known by the authorities.

Decisions from the Aliens Appeal Board have legal force for four years. During this period, the alien has the opportunity to submit a new application provided he/she refers to new circumstances, for example that his/her deportation from Sweden is not feasible. Following the submission of such new application, the Aliens Appeal Board may grant residence permit to the applicant on the basis of the new circumstances.

Detention

According to Chapter 6 Section 2 of the Aliens Act, an alien over 18 years of age may be detained in a special detention centre if:

(a) his/her identity is unclear;
(b) detention is necessary for the investigation of his/her right to stay in Sweden;
(c) it is likely that he/she will be refused entry or expelled, or this is necessary to the enforcement of an existing refusal of entry or expulsion order.

In principle, detention under paragraph (c) can only be ordered if there are some reasons to presume that the alien otherwise will go into hiding or will engage into criminal activities in Sweden.

Detention under paragraph (b) is limited to 48 hours. In the other cases, it is limited to two weeks unless there are exceptional grounds for a longer period. However, if the refusal of entry or the expulsion order has already been made, the detention period may last up to two months, and even longer if there are exceptional grounds. Due to the possibility of extending the detention on exceptional grounds, there is no limitation to the overall detention period.

Decisions regarding detention may be appealed to the County Administrative Court ("Länsrätten").

Applications from abroad

Applications for asylum in Sweden cannot be submitted from abroad.

Conversely, applications for family reunification cannot, in principle, be lodged in Sweden but must be submitted to a Swedish diplomatic or consular representation abroad.

Family reunification

Under the current legislation, residence permits may be granted for reasons of family ties to the following persons or in the following cases:

(a) to the spouse or cohabiting partner (including same sex partner) of a person who is or has been granted permanent residence in Sweden;

(b) to a child of parents who are resident in Sweden, provided that the child (i) is under 18 years of age, (ii) is unmarried and without children himself and (iii) has previously lived with his/her parents;

(c) to a close relative of a person living in Sweden, provided that they lived in the same household in the country of origin. According to the legal practice there also has to be a situation of dependence meaning that the relatives hardly can live without each other;

(d) exceptionally, when there are a special connection, to a close relative of a refugee or another person in need of protection, even if they have not lived in the same household in the country of origin. According to the practice, there have to be particular reasons (odd and distressing circumstances);

(e) exceptionally, a combination of humanitarian reasons and family ties.

Convention refugees and other categories of persons in need of protection: persons reunified with their family members in Sweden are on the whole covered by the same rules and regulations as recognised refugees. If the spouse, child or parent arrives in Sweden within two years after the first family member moved to a municipality, the municipality will receive the same state grant as for a refugee, i.e. SEK 150,900 [EUR 18,110] for an adult and SEK 90,300 [EUR 10,837] for a child to cover the costs incurred during the integration period (see under "Social Conditions for Refugees").

Persons under temporary protection have the right to be reunited with their husband/wife and children under 18 years only. In such cases, the family members coming to Sweden receive the same temporary residence permit.

Procedure: the application for family reunification must be made from abroad. An application submitted in Sweden can be accepted, if it is obvious that family reunification would have been granted if the request had been lodged from abroad.

The SIV is responsible for processing applications for family reunification. Negative decisions may be appealed to the Aliens Appeal Board.

Statistics

Number of asylum seekers

Applications for asylum submitted in Sweden	
1995	9,047
1996	5,753
1997	9,662
1998	12, 844
1999	11,231

Number of residence permits granted

Number of residence permits* granted in Sweden by the SIV		
	Convention status	**Total**
1995	148	5,642
1996	128	4,832
1997	1,310	9,596
1998	1099	8,193

***** residence permits include persons with Convention status, other persons in need of protection and quota refugees.

Main national groups

Main national groups seeking asylum in Sweden in 1998	
Iraq	3,843
Federal Republic of Yugoslavia	3,446
Bosnia-Herzegovina	1,331
Iran	613
Afghanistan	330
Columbia	303
Turkey	280
Stateless persons	243
Russia	229
Somalia	228

Family reunification

In 1998, 21,673 persons were granted a residence permit in Sweden following an application for family reunification. Out of these, 4,612 were reunited with persons with Convention status, other persons in need of protection and quota refugees.

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

The National Immigration Board (SIV) is responsible for the conditions of reception of asylum seekers and it must ensure that sufficient accommodation is provided to all of them.

Asylum seekers arriving to Sweden are normally briefly accommodated in an investigation centre before being transferred to a residence centre, where they stay whilst their application is processed. All these centres are run by the SIV itself.

Currently, there are six centres used exclusively as investigation centres. These are located in Stockholm, Göteborg and Malmö. In addition, a number of smaller investigation centres are located inside residence centres in other Swedish cities.

Applicants stay in the investigation centres for a few days only. During this time, they are registered and some practical issues are being dealt with. After this, they are transferred to a residence centre. There are no available statistics on the average period spent in the residence centres.

In the residence centres, asylum seekers usually live in furnished self-catering flats. Families generally live together, while single persons are accommodated in shared flats, normally at least two persons per room.

Accommodation in the investigation or residence centres is not compulsory, and asylum seekers may stay outside the centres, if they have relatives or friends living in Sweden. Currently, about 50% of them are staying outside the centres. The SIV is not responsible for the accommodation of asylum seekers who choose to live outside the centres. However, they have always the option to move to a centre if they wish so.

Financial assistance

Asylum seekers without their own means are entitled to an allowance designed to cover clothing and shoes, medical treatment and medicine, dental treatment, toiletries and leisure activities.

Asylum seekers living outside the centres and those living in a centre where they must prepare their own meals receive the following approximate monthly allowances:

Single adult	SEK 2,130	EUR 255.6
Couple	SEK 3,660	EUR 439.2
Child (0-17)	SEK 1,350	EUR 162
From the third child	SEK 675	EUR 81

Asylum seekers who live in a centre where meals are provided receive the following amount:

Single adult	SEK 720	EUR 86.4
Couple	SEK 1,140	EUR 136.8
Child (0-17)	SEK 360	EUR 43.2
From the third child	SEK 180	EUR 21.6

In addition, asylum seekers staying outside the centres receive an additional monthly allowance of SEK 500 [EUR 60] per single applicant, or SEK 1,000 [EUR 120] per family.

These amounts have not changed since 1997.

Work

Asylum seekers are not allowed to work. However, if the processing of their application is expected to last more than four months, an exception can be made following a request submitted by the applicant. The granting of such authorisation is not conditional on the applicant presenting a job offer. In practice, however, it is very rare that asylum seekers are able to find work.

Those applicants who manage to find a work and live in a residence centre must pay a contribution towards food and accommodation.

Language tuition

All adult asylum seekers living in residence centres must participate in organised activities for at least 20 hours a week. Swedish language classes are included in these activities. The daily allowance can be reduced for those asylum seekers who do not participate in the activities without good reason.

Applicants staying outside the centres are offered 20 hours of Swedish language classes per week.

School attendance

All children between 7 and 16, including those of asylum seekers, have basic right to education. The SIV is responsible for the education of children of asylum seekers. Depending on the local authorities' agreement, they are admitted to Swedish primary schools. These children normally start in special classes for asylum seekers.

Child care

The residence centres have organised child care based on the participation of parents themselves. When parents take part in the compulsory activities, child care is arranged for their children. In addition, after-school activities are also made available in the residence centres.

Unaccompanied minors

Once they have applied for asylum, unaccompanied minors are accommodated in special reception homes run by the SIV. All unaccompanied minors are granted a guardian, appointed by the authorities, to look after them and take care of their interests regarding both legal and social matters.

Female asylum seekers

There are no special rules or reception facilities for female asylum seekers.

Health/sickness

On arrival, asylum seekers are offered a medical check-up.

Adult asylum seekers are only entitled to receive emergency medical or dental treatment. Children under 18 years of age are entitled to medical and dental care on the same basis as other children residing in Sweden.

Asylum seekers have to pay SEK 50 [EUR 6] for medical and medicinal expenses and SEK 25 [EUR 3] for other treatment. However, if an asylum seeker spends more than SEK 400 [EUR 48] within a six-month period, the SIV must reimburse the difference.

Freedom of residence/movement

Asylum seekers are free to travel within Sweden.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

As far as their social rights are concerned, the situation of refugees is defined through both an integration programme established with the municipality where they are settled, and the provisions of the Social Assistance Act of 1980, as modified in 1997.

The Social Assistance Act does not include specific provisions regarding refugees but applies to any person residing legally in Sweden.

With few exceptions related, for example, to pension rights and easier access to higher education, Convention refugees and persons in need of protection have the social rights. Both categories are thus referred to as “refugees” hereinafter.

Integration programme

Sweden doe not have a law-based integration programme for refugees. Under the current system introduced in 1985, the National Immigration Board (SIV) concludes agreements with the municipalities regarding the reception of refugees (and certain other aliens) in their area.

Each municipality receiving refugees must establish an integration programme, individually tailored to each refugee. In practice, the programme must be set up in consultation with the refugee him/herself and in partnership with the local employment office.

For each refugee settled in a municipality, the latter receives from the state a grant of SEK 150,900 [EUR18,110] for a person over 16 years of age, and SEK 90,300 [EUR 10,837] for a person under 16 years of age. This amount is supposed to cover all costs incurred by the municipality during the integration period, i.e. up to four years after the refugee's settlement. The main costs are the financial assistance granted according to the Social Assistance Act, housing, language tuition, child care and education.

Municipalities receive an extra grant when they receive elderly and handicapped refugees as well as unaccompanied minors.

Housing

At present, most refugees are offered permanent housing in a municipality immediately after being granted a residence permit.

Freedom of movement/residence

Refugees are free to settle anywhere in Sweden. However, if they need assistance in finding accommodation, they must agree to settle in the municipality to which they are allocated on the basis of available accommodation.

Financial assistance

As long as they remain in the residence centres after the granting of their status, refugees receive the same allowances as asylum seekers.

Once settled in a municipality, refugees are entitled to the same rights as nationals and may obtain financial assistance if they are not able to support themselves by other means in accordance with the Social Assistance Act.

When assistance is requested, the local services carry out a thorough review of the current financial situation of the applicant and decide whether assistance should be granted or not. If assistance is granted, the amount depends on the individual situation and may also differ from one municipality to another.

A home equipment loan is offered to refugees, provided that they are over 18 years of age, have been received by a municipality after being registered in a residence centre or otherwise come under the refugee reception scheme. The loan is quantified as a percentage of the current basic amount under the National Insurance Act. The maximum available is SEK 21,000 [EUR 2,520.2] for a single person, and SEK 34,000 [EUR 4,080.4] for a family with two children. No repayment is required during the first two years after the loan is granted. Interest is charged at a rate fixed by the Government each year. Repayment schedules depend on the amount borrowed.

Work

Refugees have access to the labour market on the same terms as nationals.

According to the available statistics, the situation of immigrants in general on the Swedish labour market has steadily deteriorated in recent years. Unemployment amongst foreign nationals is about three times as high as for Swedish nationals.

Language tuition

Within three months of his/her settlement, the municipality must offer a refugee a language course entitled “Swedish introduction for immigrants”.

School attendance

School attendance until 15 years old is compulsory for all children, including those of refugees.

Mother tongue tuition

All pupils in the care of persons with a mother tongue other than Swedish are entitled to receive mother tongue tuition in primary, secondary and special schools. These lessons often take place in the afternoon, after normal school hours. In practice, many municipalities require five pupils with the same mother tongue to organise such lessons.

Access to the adult education system

Refugees have the same access to the adult educational system as Swedish nationals and are entitled to the same educational assistance (i.e. grants and loans).

Access to the national health service

Refugees have the same access to the national health service as Swedish nationals. There is no qualifying period after a residence permit has been obtained.

Unaccompanied minors

The ultimate responsibility for ensuring that unaccompanied minors who are granted refugee status receive the necessary protection and assistance rests with the municipalities.

In practice, 50% of these children are placed in foster homes, 30% in youth accommodation centres and 20% in community housing. The conditions of reception nevertheless vary from one municipality to another.

Citizenship

Refugees over 18 years may apply for Swedish citizenship, provided they have been living in Sweden for four years (five years for non-refugees).

The granting of the citizenship requires that the applicant's identity is established and that he/she has no criminal records.

Repatriation

Refugees without private means who wish to repatriate may have their travel expenses paid by SIV. They may also be granted an extra allowance of 10.000 SEK [EUR 1,200] per person and 5.000 SEK [EUR 600] per child under 18 within a maximum amount of 40.000 SER [EUR 4,800] per family.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

According to Chapter 2 Section 4a of the Aliens Act, the Government may order that a group of asylum seekers be given temporary residence permits, if their need for protection is considered to be temporary. This may concern, for example, persons coming from a state or a region where there is an armed conflict or a crisis of a particularly serious nature.

By ordinance published on 15 April 1999, the Swedish authorities granted temporary protection to Kosovo Albanians for an 11-month period expiring on 30 April 2000. This was not renewed or extended after this date and at the time of writing (May 2000) Kosovo Albanians must either repatriate or apply for asylum in Sweden.

Kosovo Albanians granted temporary protection were not given full access to the Swedish social security system.

Accommodation and financial assistance

No special accommodation centre was opened for Kosovo Albanians, who were free to decide whether they wanted to stay in a normal residence centre or with family members or friends outside the centres.

However, financial assistance, the amount of which was the same as for asylum seekers, was only granted to those staying in residence centres.

Freedom of movement

Persons under temporary protection are free to travel within Sweden.

Work

As is the case with asylum seekers, persons under temporary protection are not automatically allowed to work, but must submit a specific request for a work permit.

Language tuition

Persons under temporary protection must take part in organised activities, consisting of 20 hours of Swedish lessons every week, combined with other activities.

Only Kosovo Albanians living in the residence centres were asked to attend the organised activities.

School attendance

The same rules apply as for asylum seekers.

Repatriation

Kosovo Albanians who repatriate are entitled to receive a maximum amount of 5,000 SEK [EUR 600] per person and 30,000 SEK [EUR 3,600] per family. In addition, one member of each Kosovo Albanian family living in Sweden may apply for an allowance to cover the costs of a return plane ticket for a “go-and-see” visit to Kosovo.

Applications for financial support towards repatriation had to be submitted by 31 May 2000. Those Kosovo Albanians who have sought asylum in Sweden following the expiration of their temporary residence permit on 30 May 2000 are thus no longer entitled to such assistance.

SWITZERLAND

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Swiss Constitution of 1999, according to which the final authority to grant asylum is vested in the Confederation;

– The Law concerning the Stay and Settlement of Aliens ("Bundesgesetz über Aufenthalt und Niederlassung der Ausländer"; "Loi sur le séjour et l'établissement des étrangers") of 26 March 1931 with subsequent amendments (the Aliens Law);

– The Asylum Law of 26 June 1998, which entered into force on 1 October 1999;

– The Asylum Decree 1 on Procedural Issues of 11 August 1999;

– The Asylum Decree 2 on Financial Issues of 11 August 1999;

Switzerland is not a party to the Dublin Convention or the Schengen Agreement.

Refugee status

Convention status is the only kind of refugee status granted in Switzerland. According to Section 3(1) of the Asylum Law, refugees are defined as "*persons who, in their country of nationality or country of former residence, are exposed to or have a well-founded fear of being exposed to serious prejudices for reasons of race, religion, nationality, membership of a particular social group or political opinion*".

According to Section 3(2) of the same Law, "serious prejudices" include threats on life, physical integrity or freedom, as well as measures that amount to an unbearable psychological pressure. In addition, reasons for fleeing specific to women must be taken into consideration.

Recognised refugees are issued with a residence permit (B-permit) valid for one year and renewable on a yearly basis. Renewal is only refused in a very limited number of cases. After five years, recognised refugees are entitled to a settlement permit (C-permit), valid for 10 years and renewable.

Quota refugees

According to Section 56 of the Asylum Law, the Federal Council (the highest Swiss governmental authority) may grant asylum to groups of refugees. In the eighties and early nineties, based on decisions of the Federal Council after consultation with UNHCR, Switzerland received an annual contingent of almost several hundred refugees. This has not been the case in recent years.

There is no long-term agreement with UNHCR on quota refugees.

Other types of residence permit

Temporary protection

In accordance with Section 4 of the Asylum Law, "*Switzerland can provide temporary protection to people in need of protection for as long as they are exposed to a serious general danger, in particular during a war or civil war as well as in situations of generalised violence*".

This provision, introduced into Swiss legislation by the new Asylum Law in force since October 1999, has not yet been applied.

Provisional admission

A form of complementary protection, called provisional admission, may be granted if, following the rejection of an asylum application, the enforcement of the removal order is deemed technically impossible, is not allowed under international law (Article 33 of the Geneva Convention, Article 3 of the European Convention on Human Rights or Article 3 of the Convention against Torture) or is not "reasonable". Provisional admission does not hold any status under international law but provides an alternative measure to an expulsion order which cannot be enforced. The residence permits granted are renewable.

According to article 44 of the Asylum Law, provisional admission may also be granted for humanitarian reasons in cases of serious personal plight when an application for asylum has been pending for more than four years. In addition to the minimum stay of four years, the asylum seeker must be financially independent and have children who have been attending public schools for at least two years. After eight years, one of the two conditions mentioned above can be removed.

A residence permit granted under provisional admission is renewable. Access to work is seriously limited and social benefits are equivalent to those of an asylum seeker. It is not possible to travel and family reunification is very difficult.

Kosovo Albanians who came to Switzerland in spring-summer 1999 were not granted temporary protection according to Section 4 of the Asylum Law (see above), as this provision had not yet entered into force. Instead, all Kosovo Albanians staying in Switzerland (60,000 by June 1999) were granted collective provisional admission by special Decree of 6 April 1999 in the form of a residence permit valid for six months renewable. This was, however, lifted in August 1999 following the peace agreement. In practice, Kosovo Albanians have been given the opportunity to remain in Switzerland until 31 May 2000 by way of the suspension of forced returns to Kosovo.

Rejection at the border

The Federal Office for Refugees ("Bundesamt für Flüchtlinge", "Office fédéral des réfugiés" – FOR) is responsible for making decisions on entry into the territory regarding aliens who apply for asylum at land and airport borders.

According to Section 21 of the Asylum Law, entry should be granted to an alien who does not meet the normal requirements for entry (documentation and /or visa) but who appears to fall under the definition of Section 3(1) of the Asylum Law, or is at risk of inhuman treatment in the country which he/she comes directly from.

Entry should also be allowed if the alien gives convincing arguments which demonstrate that the country which he/she comes directly from may send him/her to another country, where he/she would be exposed to danger, in violation of the *non-refoulement* principle.

Airport procedure

In accordance with Section 22 of the Asylum Law, when it is not possible to decide immediately on entry into the territory, the Federal Office for Refugees issues airport applicants with a so-called "provisional refusal of entry". In such cases, applicants must remain in the airport, normally in the transit zone, until a decision is made.

Special rooms have been built in the transit zone of Geneva and Zürich airports. Food is supplied by the airport police. Asylum seekers held there are free to move around within the transit zone.

No systemic legal counselling is provided for the asylum seekers at the airports. However, some NGOs have access to the international zone and are able to give some legal and social support.

According to Section 23 of the Asylum Act, the FOR can refuse entry into Switzerland to an airport applicant when it is feasible, legal and reasonable, to send him/her to a third country, especially if:

- the third country is responsible for examining the asylum request according to an international treaty, and the asylum seeker does not possess a visa or other travel document required to enter Switzerland. No such treaty exists at present;

- the applicant has previously stayed and can re-enter the third country in order to seek protection;

- the applicant is in possession of a visa for the third country;

- he/she has close relatives or other persons with whom he/she has close relationships, who live in the third country.

An asylum seeker who is refused entry at the airport but who cannot be sent to a third country, may be returned immediately to his/her country of origin or country of last residence, provided the Federal Office for Refugees (FOR) and UNHCR agree that he/she does not risk persecution in that country. In practice, the FOR forwards the file to UNHCR together with the proposed decision. UNHCR then interviews the applicant (mainly by telephone) in order to form its opinion.

The decision to send the asylum seeker to his/her country of origin or any other country must be made within 15 days of submission of the application. If no decision has been made during this period, the FOR must allow entry. When the decision has been made to send the asylum seeker to his/her country of origin or another country, he/she may remain at the airport until the next available flight, but for no longer than seven days.

Asylum seekers have the right to appeal against both the decision to refuse entry and their detention in the airport transit zone. The appeal is lodged to the Asylum Appeal Commission. This normally has suspensive effect unless otherwise decided by the FOR. If suspensive effect is denied, removal may be enforced after 24 hours and thus the applicant must file the appeal within this period. In practice, appeals before the Asylum Appeal Commission are usually only effective in the (few) cases where the applicant has been able to contact a lawyer to represent him/herself.

Land border

A special procedure applies at land borders where, in the absence of any representatives of the Federal Office for Refugees, applicants are interviewed by border guards. A summary of the interview is sent to the FOR, which then makes a decision as to whether entry into the country is to be allowed or denied. There is no time limit for the FOR to make such decision, but in practice, this is done rapidly. If entry is refused, asylum seekers are given the address of the nearest Swiss

embassy in order to have their claim submitted there. A refusal of entry may be appealed to the Asylum Appeal Commission, but has very limited prospect of success.

Entry to the territory

In principle, asylum applications must be submitted either at a border crossing point or at one of the Swiss airports. If entry into Switzerland is permitted, the applicant is referred to one of four Federal Registration Centres in Chiasso, Basel, Geneva or Kreuzlingen for further processing of his/her asylum claim. Aliens who are already in the country may apply directly to one of the Federal Registration Centres.

In practice, only a few asylum seekers submit their applications for asylum at the borders. Most enter Switzerland legally with a valid visa or illegally by avoiding border control, and file their asylum claim directly with the Federal Registration Centres.

Asylum seekers caught by the police when crossing the Swiss border illegally are normally handed over to the appropriate authorities of the neighbouring country. They are informed beforehand of the location of the nearest Swiss embassy or consulate where they may submit a formal request for asylum. If it is not possible to hand over the asylum seeker, he/she will be allowed to submit his/her application in Switzerland and will be referred to one of the Federal Registration Centres.

Upon registration in the Federal Registration Centre, asylum seekers are fingerprinted, photographed and required to give personal data and information on their family. On this basis the FOR investigates whether or not an applicant has requested asylum in Switzerland previously and under which identity. Asylum seekers undergo a preliminary interview concerning their travel route and the reasons for leaving their country of origin.

Admissibility procedure / manifestly unfounded applications

Admissibility

In accordance with Sections 32 and 33 of the Asylum Law, Swiss asylum authorities have the right to refuse to examine the merits of an asylum application for formal reasons. This decision of "not to enter into the matter" ("Nichteintretensentscheid", "non-entrée en matière") may be taken in the following situations:

– the applicant has no travel document or other document establishing his/her identity. However, this does not apply if he/she gives convincing arguments explaining why he/she cannot provide such documentation, or if there are indications of persecution;

– he/she has given a false identity;

– he/she has infringed in another way his/her obligation to co-operate with the authorities;

– he/she has the option to travel to another country, where an application for asylum is still pending, or which is responsible for processing his/her application in accordance with an international convention, provided that this country will not send him/her to another country where he/she would be exposed to inhuman treatment;

– he/she has already had an asylum claim processed and rejected in Switzerland, or he/she has withdrawn his/her request for asylum, or he/she has returned to his/her country of origin during the asylum procedure, unless new elements which may justify the granting of refugee status or provisional admission have occurred in the meantime;

– he/she has stayed illegally in Switzerland for a longer period of time and cannot substantiate a *prima facie* persecution;

– he/she originates from a country deemed safe by the Federal Council.

In principle, according to Section 37 of the Asylum Law, the decision of "not to enter into the matter" should be taken within 20 working days, but this time limit is not always met. The reasons behind the decision have to be indicated.

Manifestly unfounded applications

In addition, Section 40 of the Asylum Law provides for the possibility of rejecting, within the same 20-day period and without further investigation, an asylum application, which, following interview, indicates that the applicant cannot prove or make credible his/her grounds for claiming refugee status, and when there are no obstacles to his/her removal from Switzerland. This is not a distinct procedure as such, but rather an accelerated processing of applications deemed manifestly unfounded. Nevertheless, decisions made under Section 40 are only briefly reasoned.

Negative decisions under the procedure of "not to enter into the matter" and under Section 40 may be appealed to the Asylum Appeal Commission within 30 days. Appeals have no automatic suspensive effect, and the applicant's removal can take place within 24 hours of notification of the decision. However, the Appeal Board may suspend the removal within 48 hours of submission of the appeal. Appellants have, in principle, access to the state-funded free legal aid system, but this is seldom granted. In practice, legal counselling is provided by NGOs in almost every canton (region).

Normal determination procedure

Following the preliminary interview at the Federal Registration Centre, asylum seekers are allocated to a particular canton by the Federal Office for Refugees. The cantons' and the asylum seekers' interests are both taken into account. FOR's decisions on allocation can only be contested for reasons of family unity.

Once allocated to a canton, asylum seekers are interviewed within 20 days. Interviews are conducted by officers of the aliens police who are specially trained in asylum matters. During this interview, the applicant is required to explain his/her reasons for seeking asylum in Switzerland as clearly and completely as possible and he/she is invited to produce any relevant documents to support such statements. An interpreter is always made available when necessary.

According to Section 30 of the Asylum Law, a representative of a relief organisation must attend the interview conducted by the canton's authorities. A certain number of organisations appointed by the Federal Council are authorised to send representatives to the interviews. The canton's authorities communicate the date of the interview to the organisations beforehand and the latter are responsible for co-ordinating their presence at the interviews. The costs inccurred are paid by the state.

The representative of a certified aid organisation attends the interview as an observer and his/her function is to check the correctness of the procedure. He/she may not intervene in order to help the asylum seeker, but he/she can require that certain questions be asked in order to clarify the facts, or can suggest that further investigations be conducted. The representative may also raise objections to the interview records. Any such objections must be noted in the records.

The file and the interview records are then forwarded to the FOR for examination and decision. The Asylum Law provides the opportunity for the cantonal authorities to submit a draft decision to the FOR together with the file. In practice, this is only done in the two cantons of Geneva and Neuchâtel. The FOR must decide in each individual case whether asylum is to be granted or

denied, or whether a situation of collective danger warrants a provisional admission in accordance with Section 44 of the Asylum Law.

According to the 1998-1999 statistics, the average time required to process an application in the first instance was approximately four months, but this can vary from a few days to several years.

Appeal

Negative decisions by the Federal Office for Refugees – usually accompanied by an expulsion order – can be appealed to the Asylum Appeal Commission ("Schweizerische Asylrekurskommission" or "Commission suisse de recours en matière d'asile") within 30 days. Appeals of decisions made under the normal determination procedure have automatic suspensive effect.

The Asylum Appeal Commission is an independent body, whose members are appointed by the Federal Council. It is normally composed of three judges, although decisions can be taken by one judge alone. Interviews of the appellants are theoretically possible, but this seldom happens. In most cases, the Commission decides solely on the basis of the written case.

In 1998, about 15% of the Asylum Appeal Commission's decisions were positive or partially positive (9% in 1997).

Legal aid

In principle, asylum seekers have access to the state-funded free legal aid system. According to Section 65 of the Federal Law on Administrative Procedure, legal aid may be granted if:

– the applicant does not have the necessary financial means;
– his/her appeal has reasonable chances of success;
– the assistance of a lawyer is needed, because the case raises complex legal or factual issues.

In practice, however, almost no applicant is granted free legal aid in first instance cases, and very few during the appeal procedure. In most cases, applications for free legal aid are rejected on the grounds that the case lacks the chance of success, or because it does not involve complex legal issues. Although this restrictive practice has been questioned, it has not yet been successfully challenged .

Due to the unavailability of an efficient free legal aid system for asylum seekers, most refugee assisting organisations provide some forms of legal counselling free of charge. This is organised without any state subsidies.

Unaccompanied minors

According to common Swiss civil law, all unaccompanied minors in Switzerland should be appointed a guardian to assist them. As cantons have been reluctant to apply this provision to asylum seekers, a Section 17(3) was introduced in the Asylum Law, according to which all unaccompanied minor asylum-seekers, once allocated in a canton, should be appointed a "person of confidence" in charge of defending their interests during the procedure. This task ceases when the child comes of age or when he/she is appointed a guardian. The person of confidence attends the interview with the asylum authorities in most cases, or at least when no lawyer has been appointed to assist the minor throughout the asylum procedure.

In a recent decision, the Asylum Appeal Commission stated that all unaccompanied minors must receive legal aid before their thorough interview with the cantonal authorities.

Female asylum seekers

Section 3(2) of the Asylum Law on the refugee definition states that "*women's specific reasons for fleeing should be taken into consideration*". So far, however, this provision has resulted in a very limited case-law, as most gender related applications are rejected in accordance with current Swiss practice on this issue, on the grounds that persecution is not perpetrated by state or quasi state agents.

According to Section 6 of the Asylum Decree 1 on Procedural Issues of 11 August 1999, "*if there are concrete indications or if the situation in the country of origin makes it possible to deduct that persecution is gender-related, the applicant is interviewed by a person of same sex*".

Final rejection

Once the negative decision has become final, rejected applicants are notified by decree informing them of the outcome of their claim and requiring them to leave the country voluntarily within a specified time limit. The consequences of staying in the country beyond the time limit are specified, as is the canton responsible for enforcing the removal. If the rejected asylum seeker originates from a country to which it is not possible to return him/her, the decree may include an alternative measure to expulsion.

Failure to leave the country voluntarily within the specified time limit normally results in the enforcement of the expulsion order by the police. Cantons are responsible for this and, in general, co-operate between themselves to enforce orders (for instance when a rejected applicant stays in a canton, which is not the one responsible for his/her expulsion). Detention for the purpose of enforcing the expulsion order is allowed (see "Detention" below).

If it is not feasible to enforce the expulsion order, or if removing the alien is not allowed under international law or not "reasonable", the Federal Office may, pursuant to Section 44(2) of the Asylum Law, grant a temporary residence permit in the form of a provisional admission.

Under Section 44(3) of the Law, provisional admission may also be granted in cases where expulsion would cause extraordinary hardship, where the asylum procedure has taken more than four years before the final rejection was made. Elements such as the integration of the applicant in Switzerland, his/her family situation and the school situation of his/her children, if any, should be taken into consideration. Cantons are able to apply for provisional admission to be granted to a rejected asylum seeker, if they consider that the above requirements are met.

Detention

Asylum seekers: airport applicants may be held in the transit zones of Zürich and Geneva airports until the Federal Office for Refugees makes a decision on entry. The decision must be made within 15 days from submission of the application. If entry is denied, the applicant may appeal the decision to the Asylum Appeal Commission, which must render its decision within seven days. Applicants can thus be held in the airport for a maximum period of 22 days.

Applicants may also be detained during the asylum determination procedure if there are serious risks that they might abscond. In such cases, the detention period is limited to a maximum of three months. In practice, the authorities do not often use this option.

Rejected asylum seekers: the police are allowed to detain rejected asylum seekers, if there are indications that they would try to escape expulsion. After an initial maximum period of 96 hours, detained applicants must be referred to a court for a review of the detention measure and its extension. The decision of the court can be challenged to a cantonal administrative court (in most cantons) and, if upheld, to the federal tribunal. The total period of detention must not exceed nine months.

Applications from abroad

Section 20 of the Asylum Law provides for the possibility of submitting an application for asylum in Switzerland via a Swiss diplomatic representation abroad. The diplomatic representation must send the application together with a report to the Federal Office for Refugees.

In principle, applications filed abroad will only be considered if the applicant is able to state convincing reasons for leaving his/her country of origin and to demonstrate previous ties to Switzerland.

Entry into Switzerland in order to process the application may be allowed by the FOR if it is not reasonable to expect that the applicant stays in his/her country of nationality or residence and if he/she cannot go to another country.

Family reunification

Convention refugees and persons under temporary protection are entitled to family reunification with members of their nuclear family. Reunification may also be allowed with other family members if they are dependent of the persons staying in Switzerland.

Persons with provisional admission, under certain conditions, may apply for family reunification three years after the decision on their asylum claim.

Other aliens, provided that they have a residence permit in Switzerland, may also be granted family reunification. This is, however, subject to income, housing and work criteria.

Asylum seekers are not entitled to family reunification.

Statistics (source: Federal Office for Refugees)

Number of asylum seekers

No. of applications submitted in Switzerland	
1992	17,960
1993	24,739
1994	16,134
1995	17,021
1996	18,001
1997	23,982
1998	41,302
1999	46,068

Number of statuses granted

	Convention status	Humanitarian status
1992	1,410	6,670
1993	3,830	12,240
1994	2,940	13,830
1995	2,650	11,940
1996	2,270	8,170
1997	2,640	5,980
1998	2,030	3,476
1999	2,050	25,555

Main national groups

Main national groups to seek asylum in Switzerland in 1999	
Federal Republic of Yugoslavia	29,913
Iraq	1658
Sri Lanka	1487
Bosnia Herzegovina	1513
Turkey	1453
Albania	1386
Sierra Leone	756
Angola	545
Democratic Republic of Congo	523

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Accommodation

Upon arrival in the country, asylum seekers are referred to one of the four Federal Registration Centres run by the Federal Office for Refugees in Chiasso, Basel, Geneva and Kreuzlingen. There they submit a formal application for asylum and undergo a medical check-up. A preliminary interview is conducted, during which applicants are questioned about their travel route and the main reasons for their asylum claim. The stay in the registration centres is compulsory except in relation to minor asylum seekers who already live – under another legal status – in Switzerland. According to the FOR, the average time spent in the registration centres is five days.

In about 20% of the cases, a decision on the asylum claim is made during this preliminary stage at the Federal Registration Centre, especially when the authority decides "not to enter into the matter" (see under "Admissibility procedure/manifestly unfounded applications" above). In the remaining cases, asylum seekers are allocated to a canton, which is then responsible for their accommodation.

Most asylum seekers are accommodated in collective centres established by the cantons. Families are usually provided with private accommodation. Furthermore, the stay in the cantons' centres is compulsory unless the asylum seeker has family or friends who are able to take complete financial responsibility. Where this is the case, the asylum seeker may be allowed to live outside the centre.

Cantons receive a lump sum from the federal authorities for the accommodation of asylum seekers. This amounts to CHF 11.60 [EUR 7.4] per day and per person in accordance with Section 24 of the Asylum Decree 2 on Financial Issues. The lump sum is paid for collective as well as for private accommodation.

Financial assistance

Besides accommodation, destitute asylum seekers receive a daily pocket money allowance of CHF 3 [EUR 1.9]. In most cantons, they are allowed to cook for themselves in the centres and receive a food allowance, the amount of which varies between CHF 8 [EUR 5.1] and CHF 10 [EUR 6.5] per day, and may vary from one canton to another. Free clothing is also provided.

Whenever possible and suitable, assistance is provided in kind. Financial support is administered by the cantons, but is ultimately paid for by the federal authorities.

After an initial period on the centres, families and persons who are allowed and who have been able to find work may be given the permission to leave the centre and stay in private accommodation (see "Work" below). If they must further rely on state support, they will receive about the same amount as above.

In order to cover the financial support granted to asylum seekers in terms of food, clothing, transport and pocket money, cantons receive a lump sum from the federal authorities of CHF 16 [EUR 10.3] per person and per day. In addition, the federal authorities also pay for the health insurance which is granted to all asylum seekers (see under "Health" below).

Unaccompanied minors

Special arrangements for unaccompanied minors depend on the cantonal authority and the age of the minor. Children are usually placed in special educational institutions. Older unaccompanied minors are often kept in the same centres as adults.

Female asylum seekers

There are no specific provisions regarding female asylum seekers.

Work

According to Section 43 of the Asylum Law, asylum seekers are not allowed to take up employment within the first three months of the submission of their asylum claim. If an initial negative decision on the application is made during this period, the canton may extend the prohibition of work for another three-month period.

After this period, the cantons can grant permission to work on a discretionary basis. This is usually done with consideration of the canton's current economic situation. In practice, work permits are mostly granted for jobs in farms or restaurants. As far as other sectors of the employment market are concerned, the cantons generally consider that nationals should have priority over any available jobs.

According to the Asylum Decree 2 on Financial Issues, asylum seekers who work must transfer 10% of their salary to a so-called "security bank account", in order to secure the reimbursement of the financial assistance granted, as well as any expulsion costs which might occur at a later stage.

On 25 August 1999, the Federal Council decided that asylum seekers (and persons under temporary protection) arriving in Switzerland after 1 September 1999 will not be allowed to take up employment until 31 August 2000. This one-year ban, which the authorities have justified with the emergency situation in summer 1999 caused by the large influx of Kosovo Albanians, has been severely criticised by the refugee assisting organisations.

Language tuition

Most asylum seekers have the opportunity to follow language courses in the first three months of their stay in Switzerland. These courses are set up by the respective cantons with the financial support of the federal authorities.

School attendance

In accordance with the Swiss federal constitution, the cantons must set up a sufficient number of primary classes for all children staying on their territory. This also applies to children of asylum seekers, who attend the normal school system until the age of 16. Those children who do not speak the language may attend special language classes for the first year. In some cantons, attendance at these classes is compulsory.

In exceptional situations, such as the large influx of Kosovo Albanians in 1999, special classes were established just for this category of asylum seekers.

The federal authorities support the cantons by financing education and employment programmes. The authorities can also support the social, vocational and cultural integration by making financial contributions.

Child care

Child care is under the jurisdiction of the cantons. Asylum seekers are not entitled to receive child allowance.

Health/sickness

All asylum seekers benefit from a health insurance, which is paid for by the federal authorities. Limited dental care is included.

In practice, the situation varies depending on the canton. In most cantons, asylum seekers are free to choose their doctor. In some, however, they are appointed to one or a group of doctors. In others, health care is provided in medical centres .

Freedom of residence/movement

In principle there are no restrictions on the freedom of residence/movement.

However, when allocating an asylum seeker to a canton, the Federal Office for Refugees or the canton's authority can assign him/her to specific accommodation, in general in a collective centre.

Furthermore, the cantonal authority can restrict the freedom of residence/movement for aliens who do not have residence or settlement permission and who disturb or endanger public security, especially in connection with illegal narcotics.

SOCIAL CONDITIONS FOR REFUGEES

Housing

The cantons are responsible for the settlement of recognised refugees, unless they earn more than the social minimum. In most cantons, refugees are accommodated in private homes.

Financial assistance

Under the new Asylum Law, the responsibility for social assistance and financial support to recognised refugees has been transferred to the cantons.

Swiss citizens and recognised refugees are entitled to the same benefits. The amounts granted vary depending on the cantons.

Immediately after they have been granted asylum, all refugees over 16 years of age receive a single payment of CHF 3,250 [EUR 2,101] in order to attend language courses provided by private organisations.

Integration programme

There is no integration programme as such. However, refugees may benefit from special programmes designed to improve their integration into the labour market. These programmes, which are generally set up on an individual basis, differ greatly depending on the cantons. Most of them, however, are scheduled over a six-month period.

Freedom of movement/residence

Refugees who have no income other than social benefits have no choice as to which canton they are allocated. In principle, they are not allowed to move to another canton during the first five years. This does not apply, however, if the canton where they wish to move agrees to accept responsibility.

Work

Refugees may take up employment and receive work permits without restrictions. They may also participate to integration programmes designed to improve their access to work.

Access to the national health system

All refugees are insured against sickness and accident.

School

There is unrestricted access to the Swiss school system. Mother tongue tuition is generally not available.

Swiss citizenship

No special provisions apply to refugees. A refugee who has been resident in Switzerland for at least 12 years may apply for Swiss citizenship.

Repatriation

There is no repatriation programme. However, refugees willing to repatriate receive some financial support. The amounts given range from CHF 990 [EUR 640] to CHF 1,590 [EUR 1,027] for a single person depending on his/her country of origin.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Accommodation

Persons under temporary protection are provided with accommodation in centres as for asylum seekers. In cases of larger influx, as was the case with Kosovo Albanians in 1999, some people were accommodated, on a emergency basis, in anti air-strike bunkers.

Financial assistance

The same as asylum seekers.

Work

As asylum seekers: Kosovo Albanians who arrived in Switzerland after 1 September 1999 are not allowed to work until 1 August 2000. Those who arrived before this date were not allowed to work during the first three months.

School attendance

Education is compulsory for the children of persons under temporary protection. Most cantons have opened special classes for Kosovo Albanian children.

Repatriation programme/assistance

A repatriation programme has been established for the Kosovo Albanians, regardless of their legal status in Switzerland. Kosovo Albanians who repatriated before 31 December 1999 received CHF 2,000 [EUR 1,293] as well as material assistance in Kosovo. Those who leave before 31 May 2000 will receive half of this amount. After 31 May 2000, financial assistance towards repatriation will no longer be provided.

UNITED KINGDOM

LEGAL CONDITIONS

The legal basis

– The Geneva Convention of 1951 and New York Protocol of 1967;

– The Immigration Acts: comprising Immigration Act 1971, Immigration Act 1988, Asylum and Immigration Appeals Act 1993, Asylum and Immigration Act 1996, Immigration and Asylum Act 1999 as well as Immigration (Carriers' Liability) Act 1987;

– Numerous pieces of secondary legislation, and especially the Immigration Rules contained in Statement of Changes in Immigration Rules (HC 395) of 23 May 1994 as amended by Statement of Changes in Immigration Rules (CM 3365) of August 1996;

– The Asylum Appeals (Procedure) Rules of 1996;

– The Dublin Convention;

The Immigration and Asylum Act 1999 is a large piece of legislation, being introduced in stages. At the time of writing (May 2000), most of it was still to be enacted. Of particular interest are Sections 11 and 12 concerning the removal of asylum seekers to countries that are said to be safe third countries of refuge, and Part IV of the Act, which will replace all of the appeals provisions in the 1971 Act. Section 11 is intended to give effect to the Dublin Convention, or any other European agreement which may be concluded to replace it in future, while Section 12 refers to other countries outside the EEA (see "Safe third country cases" below). Changes to the appeals rules still have to be drafted, but it has been announced that these changes are intended to take effect from 2 October 2000.

Refugee status

Convention status is the only type of refugee status granted in the United Kingdom. The criteria for granting refugee status are set out in paragraph 334 of the Immigration Rules (HC 395):

"*An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that :*

(i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and

(ii) he is a refugee, as defined by the Geneva Convention and Protocol; and

(iii) refusing his application would result in his being required to go (whether immediately or after the time limit of an existing leave to enter or remain), in breach of the Convention and Protocol, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group."

Refugee status is normally granted by way of a grant of indefinite leave to remain (permanent residence). Prior to 24 July 1998 the normal practice was to grant asylum for a period of four years, after which time the refugee could apply for indefinite leave to remain. Some refugees still have time-limited asylum, granted before July 1998.

In the 12 months to the end of June 1999, refugee status was granted in 30% of decisions. This was a higher figure than usual, given the number of decisions made in Kosovo Albanians' applications in the period.

Quota refugees

The United Kingdom does not operate any formal quota system, but does consider individual resettlement requests from UNHCR for mandate refugees. It also participates in the "10 or more" scheme, by which at least ten refugees with disabilities nominated by UNHCR are accepted each year.

Other types of status

Exceptional leave to enter or remain (ELR): there is no provision for the granting of Exceptional Leave to Enter or Remain in the Immigration Rules. The granting of such leave is a discretionary decision taken by the Secretary of State for the Home Office. This makes decisions to grant or refuse ELR status difficult to contest by way of appeal. However, the Home Office has published instructions to its caseworkers, see below, which indicate circumstances in which ELR must be granted.

ELR will also be granted in cases to which Article 3 of the European Convention on Human Rights or Article 3 of the UN Convention against Torture apply.

ELR may be granted in cases where there are particular compassionate circumstances or where conditions prevailing in a country (e.g. civil war) are such that it would be unreasonable to return a rejected asylum seeker there. ELR may also be granted if a first decision has still not been made within seven years of an application.

ELR is normally granted for four years, after which the person may submit an application for indefinite leave to remain (ILR), which is rarely refused. Prior to 24 July 1998 ELR was granted initially for one year, and could be extended for two further three-year periods. After seven years of ELR, an application could be submitted for indefinite leave.

In the 12 months to the end of June 1999, ELR was granted in 10% of decisions.

Temporary Protection Programme: after 1992 some 2,500 refugees from Bosnia-Herzegovina were allowed into the UK under a temporary protection programme. In 1999 the UK agreed to take up to 5,000 Kosovo Albanians under the UNHCR Humanitarian Evacuation Programme. These forms of temporary protection are intended to lead to return when conditions in the country of origin are judged to be safe. They are not covered by the Immigration Rules. Both programmes have ended, and those granted temporary protection were permitted to transfer their status to ELR, or to make claims for asylum through the normal procedure.

From time to time the Secretary of State announces a policy of halting removals to particular countries. In the past two or three years these have included the Democratic Republic of Congo, Algeria, Angola and Sierra Leone. Formerly these gave no status, and simply amounted to a suspension of any removals. More recently they have (e.g. in the case of Sierra Leone) led to ELR, and where this is extended for a period of four years, those covered may apply for indefinite leave to remain at the end of that time.

Submission of asylum applications

All requests for asylum, whether made on arrival or after entry into the country, are at present considered by the Integrated Caseworking Directorate within the Immigration and Nationality Directorate of the Home Office, which is responsible for all decisions relating to claims for asylum, including the recognition of refugee status, the granting of ELR or the decision to refuse an

application. Proposals to decentralise decision-making in some cases, and to amend procedures in other ways, are being considered in 2000.

Asylum claims made on arrival ("port" cases) are submitted to immigration officers at ports of entry. Immigration officers do not at present have the legal authority to consider or refuse asylum applications and must therefore refer them to the Home Office in accordance with paragraph 328 of the Immigration Rules (HC 395). Interviews are conducted by officers at the ports, and papers are then transferred for consideration.

Asylum claims made after entry ("in-country" cases), by people who have entered lawfully or by illegal means, are submitted directly to the Immigration and Nationality Directorate of the Home Office.

Section 15 of the Immigration and Asylum Act 1999 prohibits the removal or deportation of an asylum seeker before a decision has been made on the application for asylum by the Secretary of State.

Legal advice/representation

Asylum seekers may contact a solicitor or legal representative of their choice at any stage in the asylum procedure. However, some applicants have their cases dealt with in a period of days, often while they remain detained, and do not have access to any legal assistance. There is no obligation on interviewing officers to ensure that applicants are aware that they may seek legal assistance.

Applicants may ask to have a legal representative present at all interviews, but at the current time such a representative has observer status only, and may be excluded from interview at the discretion of the interviewing officer. It would be unusual for this to occur in a substantive interview, but is more common at the pre-interview (pro forma) stage. The right to representation is asserted by representatives but to date the only case law on the matter is unhelpful. The Home Office has drafted a "Protocol" on the relationship between itself and legal representatives, under discussion in 2000, but this adds little to the position.

Free legal advice and representation are available at all stages, including – from the beginning of 2000 – for representation at appeals, subject to testing of financial means and legal merit. The current legal aid financial limits are set only marginally above basic welfare payments, but as asylum seekers receive less than this in welfare support, most qualify for free legal advice. Free representation at appeals is also available through the Refugee Legal Centre and Immigration Advisory Service (independent refugee-assisting NGOs receiving government grants), and through a number of small NGOs.

Interpreters

All applicants are offered the services of an interpreter whilst being interviewed during the determination procedure. The standard of official interpreting is very variable, and asylum seekers who are legally represented will usually also be accompanied to interviews by an independent interpreter, paid for by the free legal advice scheme. This second interpreter will be allowed to attend at the discretion of the interviewing officer, and may be excluded.

"Safe third country" cases

When an asylum seeker at a port of entry is identified as having travelled through a third country where he/she could have applied for asylum but did not, the Home Office decides whether he/she should be sent back to that country in order to claim asylum there or whether the asylum claim should be considered substantively in the UK. This procedure is normally only applied to port

applicants, but could be invoked for a person who claims very soon after entering the country illegally.

The decision to return the applicant to a "safe third country" is normally taken within 24 hours of arrival, while the applicant remains at or near the port of arrival, and the asylum seeker will be refused leave to enter on the grounds that his/her claim has been certified to be without foundation (see "Unfounded ("certified") applications" below). Reasons for refusal are given in writing, and the decision is notified orally to the applicant by an immigration officer.

The Asylum and Immigration Appeals Act 1993 introduced a right of appeal, with suspensive effect, for all asylum seekers whose applications for asylum were refused on "safe third country" grounds. Appeals are submitted to the Immigration Appellate Authority, where they are heard by special adjudicators under a fast-track procedure (see "Unfounded ("certified") applications", below). These rights were considerably restricted by the Asylum and Immigration Act 1996, but as successful applications direct to the High Court for judicial review of "safe third country" decisions have multiplied rapidly since 1998, further restrictions are to be introduced under the Immigration and Asylum Act 1999.

At present the law provides:

– that appeal rights are now no longer suspensive if an asylum seeker is being returned to a third country which is a member of the EU. The appeal can only be lodged once the applicant has left the UK and it must be lodged within 28 days after departure. The appeal has to be determined by the special adjudicator within 42 days after submission. Applicants are not allowed to return to the UK to attend the hearing;

– that the Secretary of State can designate countries other than EU Member states as "safe third countries", subject to approval by both Houses of Parliament. Non-suspensive appeal rights would then apply where an asylum seeker is to be returned to such a "safe third country". The USA, Canada, Norway and Switzerland have been designated under this procedure;

– that if an asylum seeker is to be removed to a country other than an EU Member State or a designated "safe country", suspensive rights of appeal still apply. The appeal must be lodged within two days if the asylum seeker is detained, and within seven days if he/she is not detained. The appeal has to be determined by the special adjudicator within ten days;

– that it is no longer possible for the asylum seeker to apply for leave to appeal to the Immigration Appeal Tribunal against the special adjudicator's decision; but the Home Office would be able to do so.

Where no suspensive appeal right exists the only remedy is by way of application to the High Court for judicial review. The principal change to be introduced to these procedures by the Immigration and Asylum Act 1999 is the intent to reduce the scope of judicial review by enacting a presumption that all EU states comply with the convention criteria and are therefore "safe" by statutory definition, removing any challenge to the decision on the ground that the third country may not in fact fully apply convention criteria.

Asylum seekers whom the authorities wish to remove to other countries will usually be detained until they are removed, unless a successful application for bail or temporary admission is made. This may happen if legal challenges are made (by way of judicial review, rather than appeal, as that could only occur after removal) to the decision to return them. During 1998 and 1999 a small number of challenges to these decisions were upheld by the High Court or, beyond that, the Court of Appeal. Those cases focussed on differences in the ways Convention status is applied in various member states, and in particular on cases where the threat of persecution came from "non-state agents", rather than direct from the state in the country of origin.

The UK government has expressed concern over the workings of the Dublin Convention, partly because of these legal challenges, and partly because it feels the mechanism for transfer of cases is too slow and too uncertain. In a number of cases it has proved difficult to identify the appropriate country, or the country requested has declined to take responsibility. In these cases the asylum seeker will be allowed access to the substantive determination procedures in the UK.

The determination procedure

Pro forma and screening interviews: asylum seekers are initially given a short interview by the Immigration Service (or by the Screening Unit of the Home Office's Asylum Division for in-country cases) to ascertain their identity, immigration status and, in the case of port applicants, whether they have been in a third country en route to the UK.

Fingerprints are taken at this stage, and photographs must be provided. An identity document, valid for the duration of the determination process, should be issued, although delays may occur if the asylum seeker has no documentary evidence of identity. In many cases the applicant will then be given a lengthy form to fill and return, detailing personal data and history, family circumstances, the basis of the claim for asylum, and any other grounds on which they seek to rely. This is to be completed and returned within a specified time, usually 28 days. In other cases interview will proceed without any prior statement from the applicant.

Substantive procedures: a full asylum interview is generally carried out later, either by an immigration officer at the port of arrival for applicants who are not subject to removal on "safe third country grounds", or by an asylum caseworker from the Home Office's Asylum Division for in-country cases. Where the applicant has been required to supply a completed form in advance, the statement contained in it will be used as the basis for the interview. Otherwise all information for the standard form will be taken by the interviewing officer.

UNHCR does not have a formal role in the determination process, but may be consulted on questions of interpretation, or in particularly difficult or sensitive cases, usually by the representatives of applicants rather than by the Home Office. UNHCR also receives copies of all asylum appeal papers and can ask to be made party to any appeal (see "Appeal" below).

Unfounded ("certified") applications

As mentioned above, the special fast-track procedure introduced by the Asylum and Immigration Appeals Act 1993 also applies to the asylum applications which are "certified" by the Secretary of State to be without foundation.

Section 1 of the Asylum and Immigration Act 1996, which came into effect on 1 October 1996, extended the categories of cases which may be certified by the Secretary of State as without foundation and therefore heard under the fast-track procedure:

– according to Section 1(3), where an asylum seeker has failed to produce a passport without reasonable explanation, or has produced a passport which was not valid and failed to inform the immigration officer of that fact;

– according to Section 1(4), where a claim for asylum:

- does not show a fear of persecution for a Convention reason;
- shows a fear of persecution for a Convention reason but is manifestly unfounded or the circumstances which have given rise to the fear no longer subsist;
- is made only after (i) a refusal of leave to enter, (ii) a court recommendation for deportation, (iii) notification of a decision to make a deportation order or (iv) notice of illegal entry;

- is manifestly fraudulent, or where any of the evidence adduced in its support is manifestly false;
- is "frivolous" or "vexatious" (for example, a claim could be considered vexatious if an asylum seeker had made a previous claim for asylum based on the same facts, which had been refused).

Section 1(5) of the Asylum and Immigration Act 1996 provides that a substantive asylum claim cannot be certified "*if the evidence adduced in its support establishes a reasonable likelihood that the appellant has been tortured in the country or territory to which he is to be sent*".

Home Office decisions to "certify" an application may be appealed to the Immigration Appellate Authority (IAA), where cases are heard by special adjudicators sitting on their own. Such appeals have suspensive effect. Detained port applicants must lodge their appeal within two days. Otherwise, the seven-day period applies. Appeals must be decided within ten days of submission, but special adjudicators have the power to extend this time limit.

According to Section 1(7) of the Asylum and Immigration Act 1996, if the special adjudicator confirms the "certification" of the application, the asylum seeker may no longer apply for leave to appeal to the Immigration Appeal Tribunal (IAT). However, when the special adjudicator's decision is in favour of the asylum seeker, the Home Office may still apply for leave to appeal to the IAT.

These provisions will all be replaced by Schedule 4 to the immigration and Asylum Act 1999, when an additional power, to certify a claim under Article 3 of the ECHR on the grounds that it is manifestly unfounded or does not disclose a right under that Convention, will also apply.

The "short" procedure

The majority of asylum applications are dealt with under the so-called "standard procedure". Initially applied only to selected in-country asylum applications from seven nationalities, when it was referred to as "short procedure", it was subsequently extended to cover both port and in-country applications from all nationalities, except Iraqis, Iranians, Libyans, Somalis, Liberians, Rwandans, Afghans, Stateless Palestinians, nationals of the Gulf States (except Kuwaitis), Bosnians, Croats and citizens of the Federal Republic of Yugoslavia.

The asylum seeker is given his/her main interview as soon as possible after the application has been made.

With port applications, the interview usually takes place within 24 hours of arrival. Following the interview, a port applicant has five days in which to submit further representations in support of his/her application if he/she is detained (see "Detention" below), and 28 days if he/she has been granted temporary admission to the UK.

Where an in-country application for asylum is made in person at the Home Office, the applicant may be interviewed on the same day, depending on the availability of interpreters. If the interview cannot take place the same day, it will normally be held within the next 3-4 weeks. The applicant has five days in which to submit further representations following the interview.

The Home Office gives priority to making decisions on applications from detained asylum seekers, which usually take between 4-6 weeks, and from unaccompanied children. Other decisions usually take longer.

At the end of December 1999, there was a backlog of over 102,000 asylum applications awaiting decision by the Home Office, the highest figure recorded in the UK.

Appeal

Apart from those rejected on "safe third country" grounds to EU Member States or other designated safe third countries (see above), all asylum seekers have a suspensive right of appeal.

Asylum seekers whose applications were rejected after July 1993 have rights of appeal under Section 8 of the Asylum and Immigration Appeals Act 1993, which is to be replaced by Section 69 of the Immigration and Asylum Act 1999. The procedures relating to lodging and hearing of asylum appeals are governed by the Asylum Appeals (Procedure) Rules 1996, which are also to be replaced at some time in 2000.

Initial negative decisions taken by the Home Office may be appealed to the Immigration Appellate Authority, where cases are heard by special adjudicators sitting on their own. Appeals must be lodged within seven days following notification of the decision.

Once an appeal has been lodged, the Home Office or Immigration Service must forward all the documents relating to the case to the IAA within 42 days following the submission of the appeal. The IAA must send out a notice of hearing within five days, and give its ruling within 42 days of receipt of the appeal documents. However, special adjudicators have the power to extend these time limits. The time limits may be changed when new appeals rules are issued late in 2000.

Asylum seekers may have a legal representative during the procedure, and legal assistance payments are available. The Secretary of State is normally represented by a Home Office Presenting Officer, not by the interviewing officer or the decision maker. Oral evidence is heard in the majority of cases and submissions are made by both parties. The UN High Commissioner for Refugees may apply to be joined as a party to any asylum appeal, and will occasionally do so, if a particular issue of interpretation is raised.

Either party (the asylum seeker and the Home Office) may apply for leave to appeal against the special adjudicator's decision to the Immigration Appeal Tribunal (IAT) (except in certified cases – see above – when the appellant has no further right of appeal). Such an application must be submitted, along with a full statement of all the grounds to be argued, to the IAT not later than five days after receipt of the special adjudicator's decision. The IAT must decide within the following ten days whether to grant leave to appeal.

If leave to appeal is granted by the IAT, a notice of hearing must then be sent out within the five following days and the case must be decided within 42 days after the notice of appeal was served. The IAT may extend these time limits.

When deciding on the appeal, the IAT has the power to either uphold or overrule the special adjudicator's decision, or to remit the appeal for re-hearing before another special adjudicator. If the IAT dismisses the appeal, an application for leave to appeal further to the Court of Appeal may be made on a question of law.

If leave to appeal is refused by the IAT, the appellant may apply for permission to seek judicial review in the High Court to overturn the refusal of leave.

In some cases in-country applicants whose appeals before the IAT have been dismissed will have a further opportunity to appeal to the IAA when they are issued with a further decision to make a deportation order. Following changes in the law in 1996 and 1999 this is only likely in respect of child applicants.

Special arrangements exist where the Secretary of State alleges grounds of national security. In such cases the normal appeal procedure is not available, but an appeal may be brought before the Special Immigration Appeals Commission, which has rules of procedure allowing evidence to be withheld from the appellant, but considered instead by an independent adviser.

When new appeal procedures are introduced at the end of 2000 it will be possible for the first time, to appeal on grounds arising directly from the European Convention on Human Rights (Section 65 of the Immigration and Asylum Act 1999). Such an appeal may be brought either in conjunction with or separate from an asylum or other appeal.

It is intended also to introduce a new right of appeal on grounds that an officer discriminated unlawfully on the grounds of a person's race or racial origins (new Section 66 of the Immigration and Asylum Act 1999, amending legislation before parliament in March 2000).

Unaccompanied minors

The number of unaccompanied minors seeking asylum has been quite small in the UK, but is growing rapidly. There are various special measures in place for such cases, including specific reference in the Immigration Rules, priority consideration for applications from unaccompanied minors, detailed training for caseworkers and government funding for an independent panel of advisers, which offers each child an individual adviser (see Social conditions below).

Unaccompanied children are not normally interviewed, other than at the preliminary, pro forma stage, to establish identity. A panel of advisers has been set up to ensure that children find suitable assistance, and their claims will be dealt with by written procedures.

To qualify for Convention status unaccompanied minors must satisfy Article 1A(2) of the 1951 Geneva Convention, but this rarely happens. In cases where an application for refugee status from an unaccompanied child is rejected, the child will normally be granted ELR on compassionate grounds if the identification of parents or relatives in the country of origin is not possible, or if no satisfactory reception and care arrangements can be made in that country.

Female asylum seekers

The UK's highest court, the House of Lords, held, in 1999, that women could, in certain circumstances, form a "particular social group" for the purposes of the convention (*Shah and Islam v Secretary of State for the Home Department*). Special consideration has also been extended by the courts to the issue of rape as torture, and the particular trauma that may attach to it (see e.g. *ex parte Ejon*, 1998).

Following campaigns, the Home Office is to draft guidelines for the consideration of gender-related issues in asylum claims. Women can expect to be interviewed by female officers, and can always request this if not offered.

Final rejection

Exceptional Leave to Remain (ELR) may be granted at the Home Office's discretion at any time after an applicant has received a final rejection if he/she is still in the country, for whatever reason. There is no time limit for granting ELR, nor are there specific criteria set out in the legislation for taking such a decision. However, failed asylum applicants will normally be granted ELR where there are compelling humanitarian reasons for not enforcing their removal from the UK. This will include cases covered by Article 3 of ECHR.

There are no accurate figures showing the proportion of failed asylum seekers who are finally deported or removed. It is acknowledged, however, that for several years the numbers removed have been much smaller than the numbers refused. The government announced in May 2000 that detention would be used much more in future as a means to ensure that far more refused asylum seekers were removed after their appeals had been dismissed.

Detention

During the substantive consideration of a claim for asylum, a port applicant may be detained pending an interview with an immigration officer or pending a decision by the Home Office on the asylum application. Immigration officers have powers to detain persons arriving at ports of entry under provisions of the Immigration Act 1971. These powers also apply to persons who are due to be removed from the UK after a decision.

There is no limit in law to the length of time a person may be held in these circumstances, except that if someone is held for the purpose of removal, rather than because he/she is still waiting for a decision, the courts may order release if there is little or no prospect of removal being carried out soon.

Otherwise an asylum seeker or person due for removal may be released and temporarily admitted into the UK, subject to the Immigration Service being satisfied that suitable accommodation is available and that he/she will not abscond. Temporary admission is more likely to be refused where asylum seekers are not in possession of documents which prove their identity.

An asylum seeker may apply for bail if he/she has been detained for seven days or more since arriving in the UK and he/she has been refused leave to enter or no decision has been taken either to grant or refuse leave to enter. Persons due for removal may also be able to apply for bail, though it is less likely to be granted. Detained asylum seekers may also apply for bail pending the hearing of an appeal against a negative first decision. Applications for release on bail can be made to an immigration officer or to a special adjudicator in the Immigration Appellate Authority (IAA). The right to bail is not automatic, and often depends upon the detainee finding two persons willing to act as sureties and upon placing a substantial "deposit" (sometimes amounting to several thousand pounds) with the IAA. New arrangements for increasing bail hearings are to be introduced, probably from the spring of 2001.

Due to the rise in the number of applicants claiming asylum at ports of entry, and to government policy, the number of asylum seekers in detention is growing. During 2000 it is expected that several hundred new detention places will be made available. At the beginning of the year around 900 asylum seekers were in detention at any time, up to 350 of them in ordinary prisons. The rest are in specific immigration detention centres. Two of these are located close to the main airports, and are principally intended for short term detention before removal, and others are at some distance from the ports or major cities. There are small holding facilities at other ports, designed only for very short stay.

A new centre has been opened in March 2000 to hold asylum seekers whose cases are identified (on the basis of their nationality) to be likely to prove "manifestly unfounded". Decisions on these cases are designed to be made within seven days of arrival, after which, if an appeal is lodged, the applicants are either granted temporary admission or transferred to longer-term detention facilities elsewhere.

Applications from abroad

There is no formal provision for claiming asylum in the UK when outside the country. If a person applies to a British diplomatic representation abroad for a visa in order to seek asylum, he/she will usually be refused on the grounds that there is no provision in the Immigration Rules for granting entry clearance on this basis. There is, however, discretion to accept an application from a person who would meet the convention criteria, who has strong links with the UK, and who can show that the UK is the appropriate country of refuge.

Although a right of appeal against refusal of entry clearance does exist, it will in practice always be dismissed without examination of the merits. However, it may be possible for an immigration appeals adjudicator to make a recommendation that the asylum seeker be allowed to come to the

UK if there are strong connections with the UK (for example a close family member who already has refugee status in the UK) or particularly compelling compassionate circumstances attached to the case.

Family reunification

Definition of a family: family members are defined as a spouse and dependent children under 18. This definition excludes extended family members who have been living as a unit, as well as people who are unable to get married (for instance because they are unable to get a divorce from a previous marriage), and also homosexual couples. The definition is, however, rather more flexible than that generally applicable under the immigration rules, and will usually acknowledge marriages which would not otherwise be recognised in UK law. Only those family members who were related in this way before the asylum claim was made are eligible. Any person who married a refugee when still an asylum seeker, or after a grant of status, would be expected to qualify in accordance with the usual immigration rules.

Any other family member is likely not to be accepted under these provisions. Dependent parents, same sex partners, children who have turned 18 or any other relatives living in the same household who can show they are dependent may make an application, but will have to satisfy additional requirements. Not only will they need to prove the relationship, and the dependency (where relevant), but they will probably be required to pay visa fees, and the refugee in the UK will be expected to prove that he/she has sufficient accommodation available for the family to live together, and that there is sufficient money available for their support without needing to have recourse to public funds.

Asylum seekers are not entitled to family reunification. Family members who arrive at a UK port or enter the UK illegally while the principal application is being considered will be permitted to remain until a decision is made, and if favourable will also be given status. A spouse arriving in this way could also lodge his/her own application for asylum.

Convention refugees have full and immediate entitlement to family reunification without the need to prove any conditions other than the family relationship. This may sometimes involve the matching of DNA samples from children and parents, if there are doubts about the family. Visas should be issued without charge.

Exceptional leave to remain: persons with ELR have no family reunification rights under the Immigration Rules, but the Home Office will consider an application for family reunification after a person with ELR has been in the UK for four years, at which time the person in the UK should be granted ILR. Any person in the UK with ILR is required to show that they have the means to support and accommodate relatives without recourse to public funds. Fees are charged for visas.

Programme refugees from the former Yugoslavia are entitled to immediate family reunification.

Unaccompanied minors: almost no unaccompanied minors receive Convention status, but those who do have the normal right to family reunification. Most unaccompanied minors receive ELR and have to wait for over four years before they can be joined by their parents. There may be earlier family reunification on a discretionary basis for compassionate reasons.

Application procedure: applications for family reunification must be made abroad by the family member(s) wishing to enter the UK. The family member must apply at the nearest appropriate British consular post and provide documents that show the status of the family member they wish to join in the UK – usually a solicitor's copy of the relevant immigration documents.

The family member will also need to prove his/her own identity and that he/she really is related to the sponsor in the way claimed. If the entry clearance officer is not satisfied with the evidence, he/she may refer the case back to the Home Office. If the applicant does not have the relevant

information, the Home Office may decide to interview the family member who is in the UK. Where there are doubts concerning the relationship of a child overseas DNA testing should be offered, funded by the UK government.

Statistics (source: the Home Office).

Annual figures are generally only published by the Home Office in about June each year. Final figures for 1999 were not available at the time of writing (May 2000).

Number of asylum seekers

Applications for asylum submitted in the UK*	
1993	22,370
1994	32,830
1995	43,965
1996 (to Nov.)	25,600
1997	32,505
1998	46,015
1999 (provisional)	71,160

* official figures published by the Home Office count applications, not applicants. The total number of individuals is not stated.

Number of statuses granted

	Convention status	ELR
1993	1,590	11,125
1994	825	3,660
1995	1,295	4,410
1996	2,240	5,050
1997	2,390	1,670
1998	5,350	3,910
1999 (provisional)	7,075	2,110

Main national groups

Main national groups to seek asylum in the UK in December 1999	
F.R Yugoslavia	795
Sri Lanka	755
China	385
Somalia	385
Afghanistan	380
Poland	350

SOCIAL CONDITIONS FOR ASYLUM SEEKERS

Introduction/legal basis

– The Immigration and Asylum Act 1996;

– Part 6 of the Immigration and Asylum Act 1999. Some measures came into effect on 6 December 1999, others took effect on 1 April 2000;

– Order by Department of the Environment, Transport and the Regions DETR SI 1999 No. 3126.

Accommodation

There is no compulsory accommodation on arrival, although asylum seekers can be detained at the request of an immigration officer. Such detention measures may increase during the year 2000.

The government has started introducing a new scheme for housing asylum seekers, which is being implemented gradually according to the regions and the different groups. On 3 April 2000, all new applicants in Scotland and Northern Ireland entered the new scheme, as well as port applicants in England. On 17 April, all new in-country applicants in Kent were entered into the scheme. It is expected that new in-country applicants in London will enter in September, and new in-country applicants everywhere else probably in October. Those applicants who have not yet entered the new scheme stay under previous arrangements. Due to the complexity of the current situation, this section describes both the previous system and the new scheme. Information as to which regions and/or which groups have entered the new scheme may be requested from the British Refugee Council.

Previous system

Asylum seekers who have not (yet) entered the new scheme are covered by different support arrangements, depending on how they have applied for asylum.

Single adults or couples who applied for asylum at port of entry have to rely on the private market, hostels or "bed and breakfast" accommodation. They can claim housing benefit from the local authority to cover the cost of this. Port applicants with children, or who are considered to be vulnerable on the grounds of age or health may claim emergency accommodation from the local authority under homelessness legislation.

In-country applicants are housed by local authority social services departments under the "interim arrangements" of the Immigration and Asylum Act 1999. Neither group can join the waiting list for permanent local authority housing, and under the Homelessness (asylum seekers)(Interim period)(England) Order 1999 (SI 1999 No. 3126), they can be moved to any part of England or Wales.

New System

The new scheme for housing asylum seekers involves dispersing applicants away from London and the Southeast to other regions of the UK. The National Asylum Support Service (NASS) is a new department in the Home Office which take responsibility for supporting asylum seekers and allocating accommodation. Asylum seekers are no longer able to claim housing benefit or local authority housing.

The NASS scheme is not compulsory: in fact, not all asylum seekers who apply for NASS housing will receive it. Asylum seekers have to show that they are destitute and have no other

way of paying for accommodation. Asylum seekers who can stay with friends or relatives are free to do so.

If a person applies to NASS for accommodation, he/she will stay in emergency housing for up to seven days while the application for accommodation is considered. Voluntary sector agencies acting as "Reception Assistants" will help asylum seekers to fill out the NASS application and to find emergency accommodation. NGOs that are acting as Reception Assistants include the Refugee Council, Scottish Refugee Council, Refugee Action, Migrant Helpline and Refugee Arrivals Project and the Welsh Refugee Council.

NASS accommodation is located all around the UK. Due to the housing shortage in the Southeast, asylum seekers who apply for accommodation in this region are likely to be sent elsewhere in England, Scotland or Wales. NASS consider factors such as special health needs and the location of close relatives, but it makes only one offer of accommodation. If an asylum seeker does not take up that offer, no alternative housing is offered.

Asylum seekers from countries that have ratified either the Council of Europe Social Charter (CESC) or the European Convention on Social and Medical Assistance (ECSMA) are not subject to the new scheme and will continue to be entitled to housing benefit, provided that they have entered the country legally (i.e. as a student or visitor).

Financial assistance

Until 3 April 2000 port applicants who had no income or capital were eligible to claim income support at 90% of the rate available to UK claimants. The actual amount depended on age and size of the household. Examples of the 1999/00 monthly rate are:

Single adult aged 18-24	GBP 162	EUR 278
Couple with child aged 5	GBP 493	EUR 847

Income support was means-tested. An asylum seeker who met the conditions of entitlement had a legal right to receive benefit at the set rate. An appeal could be lodged with the appellate authorities if income support was arbitrarily refused or reduced. In practice, according to refugee-assisting NGOs, some asylum seekers experienced significant difficulties in receiving benefit to which they had an entitlement.

Up to 2 April port applicants could also claim housing benefit (covering housing expenses, but not fuel or water charges) and council tax benefit (covering local services tax). These were paid at the same rate as for British claimants, but the actual amount varied according to: the age of the recipient (benefit was paid at a special rate for accommodation which was not self-contained, for under 25 years old), the size and make-up of the family, the "market rate" for accommodation in the locality, the vulnerability of the recipient or his/her family and the amount of the rent.

Asylum seekers who were eligible for the above benefits could also apply for grants and loans for other needs such as furniture, clothing or household items. These payments were discretionary and, according to refugee assisting NGOs, in practice were rarely given.

Up to 2 April in-country applicants were supported by local authorities. They could be given a mixture of vouchers, food parcels, but only a limited amount of cash (a maximum of GBP 10 [EUR 17] per person per week).

Since 3 April 2000, asylum seekers who have entered the new scheme (see "Accommodation" above) are not able to claim welfare benefits. New applicants who need financial assistance must apply to the National Asylum Support Service. NASS may grant support if the asylum seeker "appears likely to become destitute within 14 days", but no actual amounts are given. The

threshold is likely to be about GBP 200-230 [EUR 343–395] for a single adult: i.e. anyone with more than this does not qualify for support. Thresholds for families with children will be higher. As well as any cash or savings they have, asylum seekers will have to declare any jewellery worth more than GBP 1,000 [EUR 1,718], but they will not be forced to sell these items to support themselves.

NASS support consists of vouchers and a maximum of GBP 10 [EUR 17] per person, per week in cash. The total amount comes to 70% of income support, and the vouchers can be exchanged for food and other goods in supermarkets and local shops. Shops are not able to give change for vouchers. Asylum seekers may also apply for NASS accommodation, which means they may have some meals provided and therefore receive fewer vouchers.

Asylum seekers who submitted their application before 3 April 2000 have not been transferred to the new support system. They will continue to receive whichever means of support (i.e. benefits or local authority assistance) until a decision on the asylum claim is made. The same applies to those applicants who belong to a group or have applied in a region, which has not yet entered the new scheme (see "Accommodation" below).

Asylum seekers from countries which have ratified either the Council of Europe Social Charter or the European Convention on Social and Medical Assistance may be able to claim income support after 3 April under certain conditions, although this has not yet been clarified.

Work

Asylum seekers cannot work initially, but if they have not received a decision on their asylum application within six months, they can apply to the Home Office for permission to work. This is usually granted, but is not an automatic entitlement.

According to refugee-assisting NGOs, some asylum seekers experience difficulty in receiving this permission. In certain circumstances this permission to work can be given earlier than six months for compassionate or humanitarian reasons, again at the discretion of the Home Office.

Once granted, permission to work also includes the right for asylum seekers to participate in government vocational training schemes, some of which may include language teaching, if they meet the normal conditions for those schemes.

Language tuition

The UK does not have a special programme of language tuition for asylum seekers. Many adult education institutions and further education colleges offer English as a Second Language (ESOL) courses, and asylum seekers may attend these. ESOL courses usually charge low fees or, in some cases, can be offered free. English as a Foreign Language (EFL) courses are much more expensive and are not usually suitable for asylum seekers: they are aimed at people who are visiting the UK for short periods.

Language tuition can also be provided as part of vocational training schemes, or by voluntary or community organisations. It can also be in the form of language support for other educational subject areas.

Full-time study (over 16 hours) is not permitted for those in receipt of benefit, although this amount of pure English language tuition is rarely available in any case.

School attendance

School is compulsory and free between the ages of 5 and 16, and all children must follow the national curriculum between those ages. Children of asylum seekers are entitled to attend

schools within the state education sector and the local education authority has a duty to find free school places for all children.

There is no provision for reception or special classes for children who do not speak English, but areas that have a large multi-ethnic population all have English as an Additional Language (EAL) support workers. One of the concerns about the new dispersal scheme is that people may be sent to areas where schools and other services have no previous experience in working with asylum seekers.

There is no restriction on asylum seekers attending university or further education institutions, providing they have the entrance qualifications and can pay the relevant course fees. However, asylum seekers generally have to pay overseas students fees, which are higher than home student fees, and they are not eligible for students support loans. It is therefore unlikely that many asylum seekers will be able to study full-time courses. Asylum seekers who receive welfare benefits can sometimes pay reduced fees on part-times courses: this varies between different courses and colleges. Fees are sometimes reduced if an asylum seeker has been living in the UK for more than three years.

Child care

There is no national system of child care provision in the UK, and private child care is invariably expensive. Asylum seekers can currently make full use of playgroups and creches, as well as "mother and toddler clubs" and "one o'clock clubs" where you do not leave your child, but can be with other parents while the children play together. Many refugee community groups provide some basic child care.

At the moment, children of asylum seekers can attend local authority nurseries, but this may change in future. These nurseries usually have long waiting lists.

Unaccompanied minors

Under the Children Act, local authorities have a duty to assess all unaccompanied under the age of 18. If the assessment shows that the child has no means of support, the local authority will provide this (both housing and food etc) under the Children Act. No unaccompanied child will be supported by NASS.

However, some will be able to get support from their communities, or from friends in the UK, and they are free to take this option instead of going into local authority care.

In addition, some 16-17 year olds (provided they applied for asylum at port before 3 April 2000 and meet the general benefit criteria) can still claim benefit, and this would be granted instead of Children Act support. However, like those over 18 years of age, they lose this right to benefit if their claim is rejected. During the appeal stage, they would move onto Children Act support if necessary.

The Children Act will always cover unaccompanied minors while they are in the UK, even after a final refusal of the asylum claim.

Host families are generally deemed inappropriate for long-term care of unaccompanied minors, though they are frequently used for emergency placements. Some local authorities provide specialised residential units or place children in similar units within the private or voluntary sector. For minors under 16 years of age it is the duty of the local authorities to provide education. For those over 16, free college places are discretionary

The Panel of Advisers for Unaccompanied Refugee Children works directly with vulnerable children, and strives to allocate personal advisers to those most in need (currently around one

third of the total). The Panel is run by the British Refugee Council. The adviser befriends the child, helps represent them to the Home Office, social services and other agencies, and helps them access other voluntary sector support, such as refugee community groups. Advisers do not provide legal advice, but they can help arrange it. Unfortunately, it is no longer possible to allocate an individual adviser to every unaccompanied child.

Female asylum seekers

There is no different procedure for processing asylum claims from women. However, the Home Office is currently drawing up new gender guidelines for immigration officers and other staff.

Local authorities and NASS should take into account any special needs of women when allocating accommodation.

Health/sickness

Despite the restrictions on access to many services introduced through the Immigration and Asylum Act 1999, there has been no change in asylum seekers' access to the National Health Service (NHS), which is essentially the same as for any British citizens.

Asylum seekers are entitled to register with a General Practitioner (doctor) and do not have to pay visitors fees. To gain exemption from standard fees for prescriptions and dental treatment, asylum seekers without benefit must obtain an exemption certificate, which is granted on the basis of a low income and must be renewed every six months, (an exemption certificate is not however required in order to obtain baby milk and vitamins).

Freedom of residence/movement

Asylum seekers who apply for asylum at a port of entry will be notified that they are liable to be detained. Residence at a stated address chosen by the asylum seeker is a precondition for temporary admission as opposed to detention (see "Detention" under "Legal Conditions" above).

If the asylum seeker is not detained by the immigration services, and can arrange and pay for his/her own housing, he/she is free to live anywhere and to move around the country. If he/she applies for housing from a local authority or NASS (since 1 April 2000), he/she can be allocated accommodation anywhere in the UK.

Asylum seekers who are given NASS accommodation (since 1 April 2000) may not be absent from the accommodation for more than seven consecutive nights, or 14 nights in any six-month period, unless they have prior permission. An asylum seeker who breaches this condition may have his/her support stopped.

A new power under the Immigration and Asylum Act 1999 is that the government may now impose curfews on asylum seekers or require them to live in designated hostels.

The Dublin Convention

There are no special support, health or residence arrangements for asylum seekers under the Dublin Convention, such persons are treated as other applicants.

SOCIAL CONDITIONS FOR REFUGEES

Introduction/legal basis

With regard to social conditions, there are some distinctions between Convention refugees and those awarded exceptional leave to remain (ELR), and these will be mentioned below.

The situation of the Kosovo Albanians who came to the UK under the UNHCR Humanitarian Evacuation Programme of 1999 is described in the section on Social conditions for persons under temporary protection below. Those who were awarded ELR or refugee status independently of this programme are covered here.

Housing

Once people have been granted either Convention status or ELR, they recover their rights under homelessness legislation and can claim housing benefit. Those with children will then be provided with accommodation by local authority housing departments. It is generally easier for people without children to find private accommodation.

Since 1 April 2000, people who receive refugee status/ELR while in NASS accommodation must, in principle, move out within 14 days. It is yet not clear, how this provision will be applied in practice.

Freedom of residence/movement

There are no restrictions on freedom of movement or residence with respect to Convention refugees or people with ELR. However, people who are housed by their local authority (or wish to apply for local authority housing) may find it hard to move to another part of the UK. For example, an asylum seeker who was housed by a local authority or NASS in Liverpool might want to move to London after receiving refugee status. It is not yet clear how such cases will be resolved.

Convention refugees and people with ELR can travel outside the UK. Convention refugees must apply to the Home Office for a travel document; if a person with ELR has a passport from their home country he/she may use this, or he/she can apply for a Home Office document.

Integration programme

There is no formal integration process for refugees. When a person is granted Convention status or ELR, broadly speaking they have the same entitlements to services as UK citizens. However, despite this, refugees often experience difficulty in accessing services and in fulfilling their potential as individuals. The government recognised this in December 1999 in a consultation paper on strategies for refugee integration. This paper was largely a statement of principles and firm proposals have not yet been issued.

Financial assistance

Convention refugees and persons with ELR are entitled to social security benefits on the same terms and at the same rate as British citizens.

The basic monthly allowance, which has to cover all living expenses, is approximately as follows:

Single adult over 25 years of age	GBP 220 plus housing costs	EUR 378
Couple with 2 children aged under 11	GBP 600 plus housing costs	EUR 1,031

Additional benefits are also available for the elderly or those with disabilities.

Since October 1996, Convention refugees have been able to claim retrospective payment of the difference between full benefit and the amount of support they actually received during the period awaiting the determination of their application for asylum. This provision only covers Convention refugees and not persons who were granted ELR. In practice, many refugees find it difficult to claim this benefit.

Child benefit may also be claimed. The monthly rates from April 2000 are GBP 64 [EUR 110] for the first child and GBP 43 [EUR 74] per additional child. For lone parents, the rate for the first child is GBP 75 [EUR 128]. However, there is no provision for the back-payment of any child benefit denied during the pre-asylum period.

Convention refugees and persons with ELR are entitled under certain conditions to claim a new benefit called the "Jobseeker's Allowance".

Work

Convention refugees and those who are granted ELR are eligible to work without having to obtain permission before taking a job. They can also participate in government training schemes if they meet the normal conditions for those schemes, and are free to set up in business or any professional activity within the general regulations that apply to that business or profession.

Although there are no national statistics on refugee unemployment, local studies show that it is much higher than the national average, and higher than the unemployment rate for UK ethnic minorities.

Refugees are entitled to unemployment benefits on the same basis as other UK residents.

Language tuition

There is no automatic or compulsory English language tuition for Convention refugees or people with ELR. However, both groups can attend English as a Second Language (ESOL) courses which are offered at adult education institutes and other further education colleges. ESOL courses usually charge low fees or, in some cases, can be offered free, depending on funding constraints. English as a Foreign Language (EFL) courses are much more expensive and less suitable for refugees: they are aimed at people who are visiting the UK for short periods.

Language tuition can also be provided as part of vocational training schemes, or by voluntary or community organisations. It can also be in the form of language support for other educational subject areas.

Full-time study (over 16 hours) is not permitted for those in receipt of benefit, although this amount of pure English language tuition is rarely available in any case.

The number of hours permitted for study is limited to 16 hours per week for unemployed people who are in receipt of benefits, as they are technically required to be available for work

School attendance

The same rules apply for Convention refugees and persons with ELR as for asylum seekers and UK citizens.

Mother tongue tuition

There is no formal provision within the state education system for mother tongue tuition, unless the language is taught as part of the mainstream curriculum. For example, some schools teach Chinese, Turkish or Arabic. Many refugee communities do organise mother tongue classes, and some local authorities give grants to support these activities.

Access to the adult education system

Convention refugees are entitled to free full-time education up to the age of 18 (compulsory in schools up to the age of 16). There are usually reductions in fees for the unemployed, and for certain government sponsored training programmes there are training allowances on top of benefits.

Convention refugees may apply for financial support for higher education courses (university level) on the same terms as British nationals. They pay "home student" fees, which means that they do not have to pay overseas student fees. People with ELR also pay home student fees, but they have to wait for three years before being eligible for support grants.

Unaccompanied minors

Unaccompanied minors granted Convention status or ELR will be eligible for benefits at the age of 16, when they may choose to live independently. Those under the age of 16 will be cared for by the social services (see "Social Conditions for Asylum Seekers" above).

Citizenship

Convention refugees are now automatically granted indefinite leave to remain (ILR) in the UK. People with ELR are generally granted indefinite leave to remain after four years. Five years after obtaining ILR (or three years after, if married to a British citizen), a refugee can apply for citizenship.

The children of Convention refugees may apply for British citizenship from the moment that their refugee parent has been granted indefinite leave to remain.

Repatriation

No state assistance is provided for refugees wishing to repatriate, apart from Kosovo Albanians (see "Social Conditions for Persons under Temporary Protection", below). For other nationalities who wish to return to their home country, Refugee Action (an NGO) runs the Voluntary Return Project.

Convention refugees may return to their home country and then re-enter the UK without difficulty, as long as they are not away from the UK for more than two years. If someone with ELR returns to their home country, there is a risk that they will not be allowed back into the UK and legal advice is thus recommended before making such a trip. In either case, the person has to use their own passport: Home Office travel documents are not valid for a person's home country.

SOCIAL CONDITIONS FOR PERSONS UNDER TEMPORARY PROTECTION

Introduction/legal basis

This group consists of Kosovo Albanians who came to the UK under the UNHCR Humanitarian Evacuation Programme of Spring/Summer 1999. They were given one year's exceptional leave to enter the UK (temporary protection).

Housing

Kosovo Albanians under temporary protection were initially housed in reception centres, but many have now moved out into private accommodation. Their rights to housing and related benefits are the same as for people with ELR (see previous section).

Freedom of residence/movement

As for people with ELR.

Financial assistance

As for people with ELR.

Work

As for those granted Convention status or ELR.

Access to the adult education system

As for those granted ELR.

Language tuition

As for those granted Convention status or ELR.

School attendance and mother tongue tuition

As for those granted Convention status or ELR.

Unaccompanied minors

As for those granted Convention status or ELR.

Repatriation

Kosovo Albanians who are under temporary protection can apply to visit Kosovo and then return to the UK under the "Explore and Prepare" scheme. This is organised by a group called ODA, financed by the government.

Financial support is available to those Kosovo Albanians who register for voluntary return before 25 June 2000 (even if the actual departure takes place at a later date).