7.5 Special procedures

In addition to regular examination procedures, the recast Asylum Procedures Directive sets the framework to examine applications for international protection at first instance under special conditions involving accelerated procedures when:

An application is presumably unfounded;

Applications are made at border or transit zones; or

When the admissibility of the application is in question. Cases which require special procedural guarantees should normally be processed within regular procedures, but for other categories of applicants, Member States have developed various systems based on special procedures.

7.5.1 Border procedures

Many applications for international protection are made at the border of a country or in a transit zone before an applicant gains entry into the territory. In well-defined circumstances, a Member State can handle the application directly in such a location, either to assess its admissibility or to fully determine the case as to its substance.

In 2019, Italy and Switzerland implemented new procedures for applications made at the border. In Italy, the Decree of the Ministry of the Interior of 5 August 2019 identified border or transit areas: in several provinces along the Slovene border; along the Ionian Sea coast; in Apulia; in Sicily; and in Sardinia (Trieste, Gorizia, Crotone, Cosenza, Matera, Taranto, Lecce, Brindisi, Caltanissetta, Ragusa, Siracusa, Catania, Messina, Trapani, Agrigento, Metropolitan City of Cagliari and South Sardinia) (IT LEG 02). In addition, two additional sections of the Territorial Commissions, which determine asylum cases in first instance, were set up in Apulia and Sicily for the examination of applications for international protection submitted in those areas.

In Poland, the Minister of the Interior and Administration presented a revised draft of the amendment to the Law on Protection first proposed in 2017, which proposes to introduce a border procedure to grant international protection.[xlix] The drafted amendment has not yet been finalised and is still under discussion.

Since the introduction of the new asylum procedure in Switzerland on 1 March 2019, persons who apply for asylum at the airport are confined to the transit area systematically. Applicants have access to free legal representation like all other asylum seekers, and authorised organisations can access the area to provide support to an applicant.[394]

In July 2019, ECRE expressed concern about increasing – and sometimes mandatory – use of border procedures in the context of the EU asylum acquis. The special procedure could be seen to obstruct a fair examination of an application, impede the rights of vulnerable applicants and lead to increased detention.[395]

Among relevant case law, in Spain the court confirmed that the re-examination request of an application does not need to be submitted where the applicant originally lodged the application, in this case at the border.

7.5.2 Safe country of origin concept

Within EU law, a safe country of origin is where the law is applied democratically and political circumstances do not generally and consistently lead to persecution, torture, inhuman or degrading treatment or punishment, and threat by reason of indiscriminate violence in situations of international or internal armed conflict, as defined in the recast Qualification Directive. The assessment of a country as a safe country of origin considers aspects such as: relevant laws and regulations of the country and the manner in which they are applied; observance of human rights, in particular non-derogable ones; respect for the non-refoulement principle; and provision for a system of effective remedies against violations of rights and freedoms. When a third country is regarded as a safe country of origin, it is usually included in a national list and presumed to be safe for applicants originating from that country, unless evidence to the contrary is provided.

In 2019, some countries made changes to their national lists of safe countries of origin, while others, such as Cyprus and Italy, introduced these lists for the first time. In Cyprus, the safe country of origin concept was used for the first time in mid-2019 with the issuance of a Ministerial Decision determining Georgia as a safe country of origin, which subsequently triggered the accelerated procedure for the first time for Georgian applicants (CY LEG 01).

In Italy, the Ministry of Foreign Affairs and the Minister of the Interior and Justice issued the new Inter-Ministerial Decree of 4 October 2019 which lists the following as safe countries of origin: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine (IT LEG 03). The assessment of the security status of an applicant’s country of origin is based on information provided by the National Asylum Commission, EASO, UNHCR, Council of Europe and other relevant organisations. Applications for international protection lodged by applicants from one of these countries are processed under the accelerated procedure and are considered manifestly unfounded unless evidence to the contrary is provided by the applicant. The accelerated procedure applies even if the foreigner has arrived in Italy as part of a search and rescue operation.

The Swedish government began to explore the possibility of introducing a list of safe countries of origin. The necessary legislative changes were documented in a memorandum and are envisaged to be implemented by the fall of 2020.

Countries with existing lists of safe countries of origin made the following amendments:

In Austria, Sri Lanka was removed from the list, while Namibia, South Korea and Uruguay were added;

In Czechia, 12 countries were added to the list: Algeria, Australia, Ghana, Georgia (excluding Abkhazia and South Ossetia), India, Canada, Morocco, Moldova (excluding Transnistria), New Zealand, Senegal, Tunisia and Ukraine (excluding the Crimea peninsula and parts of Doneck and Luhansk Districts under the control of pro-Russian separatists);

In Slovenia, Turkey was removed from the list, while Georgia, Nepal and Senegal were added;

In November 2019, the Management Board of OFPRA in France decided to maintain the current list of safe countries of origin but added that the situation in Benin will be reviewed within six months;

In December 2018, the Dutch Secretary of Justice had suspended Togo as a safe country of origin while further assessment of the security situation in the country took place in 2019. In addition, Serbia was reassessed and remained a safe country of origin, except for those who risk criminal detention, and special attention was given to LGBT asylum seekers.

In Croatia, applications made by Turkish nationals were processed in the regular procedure in 2019, while Turkey remained listed as a safe country of origin (Official Gazette 45/2016), together with Algeria, Morocco, Tunisia, Bosnia and Herzegovina, Montenegro, Albania, Kosovo, North Macedonia and Serbia.

The Directorate of Immigration in Iceland has added Moldova to the list of safe countries of origin.[396] Citizens from countries on this list still undergo general procedures, to the list is for guidance only.[397]

Safe country concepts were also analysed by the courts. The challenges in the applicable procedure in the Hungarian transit zone were assessed by the ECtHR. The Court reviewed the safe third country concept with regard to Serbia and reaffirmed that, when applying EU law, Hungary remains bound by ECHR obligations and that “it is the duty of the removing state to examine thoroughly the question whether or not there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against refoulement”.

The Federal Administrative Court in Switzerland clarified that the Asylum Act does not require recognition as a refugee in the first receiving state that is a party to the Refugee Convention. Rather, it is to be considered sufficient that the recognised refugee in the state of initial admission has been granted effective protection. Similarly, Turkey as a safe country was reviewed in light of chain refoulement to Greece by the Administrative Court of Munich.

7.5.3 Accelerated procedures

According to the recast Asylum Procedures Directive, when an application for international protection is likely to be unfounded (‘manifestly unfounded application’) or where there are specific grounds, such as the applicant is from a safe country of origin or presented false information, Member States may accelerate its examination, in particular by introducing shorter, but reasonable, time limits for certain procedural steps without compromising the right to a fair process or the applicant’s access to basic principles and guarantees.

Cyprus introduced an accelerated procedure in practice for the first time. While this is already foreseen in its law, the procedure was applied in view of a high influx of applicants from Georgia, which was deemed a safe country of origin.

As of March 2019, Switzerland applied the accelerated asylum procedure across six regions with a federal

asylum centre that conducts the asylum procedure. The aim was to reach a decision in a majority of cases within 140 days. If a decision could not be taken immediately after the interview and required further clarifications, those cases were transferred into the extended procedure, which typically lasted a maximum of one year.

In Czechia, the time limit for the accelerated procedure for international protection was extended from 30 to 90 days in cases of a decision rejecting the application on the ground that it was manifestly unfounded, while the time limit for the border procedure remained at 30 days (CZ LEG 01).

As of 1 January 2019, in France the notice of a hearing for applicants under the accelerate procedure and applicants who have filed a re-examination request must be sent at least two weeks before the hearing date.

7.5.4 Admissibility procedures

Admissibility procedures are conducted when a Member State does not have to examine whether an applicant qualifies for international protection because of specific circumstances, for example:

- Another Member State is responsible for the application under the Dublin III Regulation;
- Another Member State has already granted protection;
- Another country is considered to be the first country of asylum or a safe third country for the applicant;
- The application is a subsequent one with no new elements; or
- A dependent lodges an application after consenting to be a part of an application.

In these special cases, a Member State conducts the admissibility procedure to verify if the application may still be admitted for examination.

Only one policy change was noted within EU countries in 2019 in this area. The German Dublin Unit became the competent organisational branch within BAMF for admissibility decisions concerning asylum claims of applicants who already are beneficiaries of international protection in another Member State.

7.5.5 Subsequent applications

Lodging a subsequent application has sometimes been used by applicants to prevent or delay a return decision. When an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige a Member State to carry out a new, full examination. In these cases, a Member State has the possibility to dismiss an application as inadmissible in accordance with the res judicata principle. In addition to cases where an application is not examined in accordance with the Dublin III Regulation, a Member State is not required to examine whether the applicant qualifies for international protection when the application is already considered inadmissible.

In June 2019, an amendment to the Finnish Aliens Act further specified the criteria for subsequent asylum applications in an effort to prevent misuse. Well-founded grounds must be stated for not having previously presented the arguments made in the subsequent application. The Finnish Immigration Service assesses the reasons given when considering whether a subsequent application will be examined or not, and the applicant must show that he/she was incapable of presenting the new grounds in the previous application.[398]

In the Netherlands, as of 1 July 2019 a new procedure regarding lodging and assessing subsequent asylum applications was introduced, and the updated Aliens Circular, as well IND Work Instruction, were published. The main change in the new system is verifying if the applicant has fully completed the subsequent application and whether the IND will examine the subsequent application if it lacks sufficient relevant information for a new claim. Another relevant amendment is that an interview does not always take place

when assessing a subsequent asylum application. The IND will check if the preliminary examination in subsequent applications can be conducted on the sole basis of written submissions and without a personal interview, a change which was contested by the Dutch Council for Refugees.

In Czechia, the list of grounds for subsequent applications was clarified in July 2019 if there is reason to believe that asylum or subsidiary protection for the purpose of family reunification will be granted. It is not possible to decide on the inadmissibility of the subsequent application.

In Cyprus, following an opinion issued by the Attorney General in 2019, the Asylum Service was determined to be the competent authority to receive and examine subsequent applications and/or new elements or findings on a claim. Based on this, the Asylum Service set up a procedure for the submission of subsequent applications, new elements or findings, and introduced a form which applicants are required to submit. Given the rise in the numbers of subsequent applications, processing times remained lengthy.

The French Council of State examined the procedural consequences of the new regime known as 'family request' instituted by the Law of 10 September 2018, Article L.741-1 regarding accompanying minors. The council concluded that the existence of a previously processed family asylum application does not constitute an obstacle to hearing an accompanied minor during a request for reconsideration, as long as the minor can provide new facts or elements which increase the likelihood that the claimant can justify the conditions required to claim protection.

7.5.6 Practices concerning prioritised caseloads

Within the framework of both regular and special procedures, a Member State may prioritise certain categories of cases so that they are processed with priority before other types of cases. Prioritisation may concern both well-founded and unfounded cases and is a practical tool to make processing more efficient.

In July, the Minister of Justice in Iceland issued Decree No. 638/2019 according to which the Directorate of Immigration must shorten the processing time for refugee applications and designated additional funding to the directorate (IS LEG 01). Applications by minors should be prioritised[399] and the directorate consider the substance of an application by a minor who has received protection in another state.

The Netherlands introduced specific measures[400] to manage the high number of applications submitted in November 2019 by nationals of Moldova, many of whom had had their application rejected previously in other EU+ countries. Measures included handling these applications with priority and by a special team within the IND, aiming to reduce the application procedure to a maximum of three to four weeks and to effectuate the return to Moldova as soon as possible. In addition, more austere reception facilities were offered, return procedures were strengthened and detention was applied when necessary.

Responding to a rapid influx, Spain prioritised applications lodged by Venezuelan and other Latin American nationals. Due to increased applications from Georgian nationals, the Swedish Migration Agency applied the fast-track procedure to this specific profile of applicants.

Existing challenges reported by civil society organisations

In 2019, civil society organisations observed generally short deadlines with regard to border procedures and challenges in providing legal assistance.[401] In addition, they warned that the structure and timelines for special procedures may not allow for specific circumstances related to sexual orientation and gender identity to be adequately addressed.[402]

The now-discontinued draft amendment to the Law on Protection in Poland was criticised by the Helsinki Foundation for Human Rights as it advocates automatic detention for the majority of applicants under border procedures and does not ensure the right to effective remedy before the court. CAT also expressed concerns

that the amendment may limit access to Polish territory since applications involving border proceedings under accelerated procedures were rejected within 20 days and appeals to the court do not have a suspensive effect.

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[xlix] According to the new proposal, if the decision issued in the border procedure is negative, the Office for Foreigners will also decide on return in the same decision. Appeals would be determined by the Voivodeship Administrative Court (not by the Refugee Board responsible for the regular procedure) with no automatic suspensive appeal. The draft law also provides for the adoption of a list of safe countries of origin and safe third countries.

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