



Recent developments in the Common European Asylum System

*Seminar organized under the project: Providing
legal aid to asylum-seekers in Latvia*

29 April 2013, Riga

Karolina Lindholm Billing, Senior Regional Legal Officer,
UNHCR Regional Representation for the Baltic
and Nordic Countries

The wider context of UNHCR concerns

- Acute emergency operations underway:
DR Congo, Mali, South Sudan, Syria,
Central African Republic
- Ongoing crises – Eritrea, Iraq, Somalia,
Myanmar, Afghanistan
- Donor funding under pressure, while
needs increase



Common European Asylum System (CEAS)

- Body of EU legislation that lays down common standards binding Member States on protection and related matters.
- In March 2013, the European Parliament and Council agreed in principle on the text of recast legislation:
 - Reception Conditions Directive
 - Dublin Regulation
 - Eurodac Regulation
 - Asylum Procedures Directive
- Expected that they will formally be adopted by the Parliament and Council before end of June and subsequently enter into force on their publication in the Official Journal of the EU in the months to come.
- Thereafter, Member States will be bound by the provisions of the recast Regulations. Regarding changes to the Directives, they will have two years to enact amendments to their national legislation and practice to reflect the new EU provisions.

UNHCR's role

- UNHCR has contributed to the legislative process, providing inputs and views to the negotiations on the recasts over the last few months(/years).
- Once recasts are adopted and enter into force, UNHCR will seek to engage in and support the transposition and implementation process.
- Will issue detailed commentary on the recast Qualification Directive to assist states in the process of transposition and implementation.
- Engagement in various policy development and legal processes at EU level.

EU Irish Presidency, Jan-June 2013



Uachtaránacht na hÉireann ar
Chomhairle an Aontais Eorpaigh
Irish Presidency of the Council
of the European Union
eu2013.ie

- Asylum legislation: pending recasts
- Implementation & practical cooperation
- Solidarity & responsibility-sharing – within and beyond the EU
- Future EU funding framework (AMF)
- Integration and family reunification
- Combating human trafficking

Recast Receptions Conditions Directive (1)

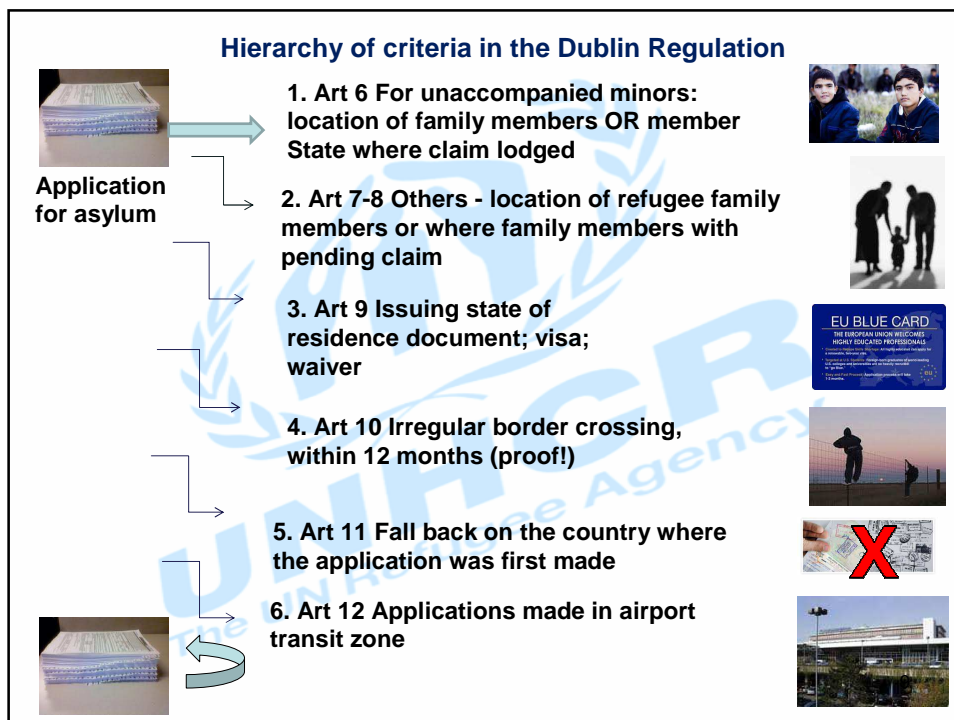
- New provisions on **detention**: **detention of asylum-seekers** will be regulated more closely including with limited permissible **grounds for detention**; obligatory **judicial oversight** of its ongoing legality; and specific minimum standards for **detention conditions**.
 - Art 8(1) recast RCD: Member States shall not hold a person in detention “*for the sole reason that he/she is an applicant for international protection (...)*”
 - In transposition, need to ensure integration of principles of necessity, proportionality and non-discrimination to prevent arbitrariness
 - UNHCR’s 2012 Guidelines on detention of asylum-seekers provide guidance

Recast Receptions Conditions Directive (2)

- New provisions requiring **identification of persons with special reception needs**; and placing further emphasis on the principle of the best interests of the child.
 - UNHCR and UNICEF Guidance on Best Interests Determinations in Industrialized Countries, expected to be issued during second half of 2013, will provide guidance

Dublin II Regulation EC 343/2003 applied with Eurodac Regulation EC 2725/2000

- Bind all MS plus NO, CH, IS, LI
- Aimed at determining the **state responsible for determining an asylum claim**
- Application shall be examined 'by a single Member State' (Art 3(1))
- Eurodac: fingerprint database for asylum seekers and those irregularly entering/present people



- ## ‘Dublin III’ Regulation
- Strengthened **criteria** and **procedures**:
 - requirements for more systematic and complete information for applicants and increased procedural safeguards;
 - interviews in all Dublin cases;
 - an extended concept of family, increasing scope for relatives beyond the nuclear family to have claims dealt with in the same Member State, and others
 - More entitlements for unaccompanied/separated children
 - Wider ‘discretionary clause’ – allowing MS to take responsibility in more cases
 - UNHCR welcomes anticipated **Early Warning and Preparedness Mechanism** as a means to help detect and avert emerging problems for states’ asylum systems & EASO role (**MSS v Belgium/Greece judgment**)

“Eurodac” Recast (2008 – 2012)

➤ Access for law enforcement bodies to the fingerprint database anticipated – ongoing discussion on safeguards to ensure that data relating to asylum-seekers would be protected from misuse and from the risk of transmission to countries of origin.



Asylum Procedure Directive

ASYLUM PROCEDURES DIRECTIVE, 2005/85/EC

- Aim: to establish **minimum standards for procedures** for determining applications for refugee status
- Positive aspects:
 - Provides a set of minimum safeguards for those in the mainstream asylum procedure
 - Assurances of broad rights of access to: UNHCR, legal assistance, personal interviews, guardians for children
 - Confirmation of right to an 'effective remedy' against negative first instance decisions.

13

Asylum Procedures Directive project – ERF 2008-10

- Comparative analysis of law/practice in **12 MS** (Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Italy, NL, Slovenia, Spain and UK)
- Examined ca. 1500 decisions/files; 200 interviews
- Aims:
 - assess whether APD has achieved **harmonisation** and **fair/effective procedures**
 - Identify : **good practices** ; **gaps** in law & implementation
 - Produce concrete recommendations for strengthening systems

14

IMPROVING ASYLUM PROCEDURES
COMPARATIVE ANALYSIS AND RECOMMENDATIONS
FOR LAW AND PRACTICE



A UNHCR research project
on the application of key provisions of the
Asylum Procedures Directive in selected Member States

March 2010



15

General conclusions

- The APD has not harmonised law & practice: wide variations persist in national legislation & implementation
- Some APD minimum requirements are not fully met in MS law or practice
- Significant shortcomings in practice in some MS
- Gaps and problematic provisions in APD contribute to weaknesses in some MS procedures
- Current APD guarantees do not ensure compliance with international refugee and human rights law.

Recommendations:

- *Further efforts needed to improve standards and ensure fair and effective asylum procedures consistently across the EU*
- *Practical measures and amendments to EU legislation are required*

16

UNHCR findings on selected issues: Record of the personal interview (Art 14)

- Good practice observed where MS provide:
 - Word-for-word transcript
 - Detailed interview record to applicants, and
 - Opportunity for applicant to correct it, with interpretation if needed
- In other states, summary reports only made. *This could meet the requirements, provided summary was comprehensive and, ideally, supported by audio recording*
- In some states, applicants had no opportunity to read/correct interview report before decision.

Recommendations include:

- *Ensuring a complete transcript of the interview is made*
- *Check by applicant, and correction if necessary, with interpretation as needed.*

17

UNHCR findings on Accelerated procedures (Article 23)

- Wide variations in use of accelerated procedures.
- In some MS, procedural guarantees apply in law – but problems seen in practice
- In others, significant derogations (e.g. personal interviews omitted)
- Widely divergent time-frames (from 2 days to 3 months)
- Some short time-frames preclude exercise of basic rights and thorough assessments
- Many states apply accelerated procedures very broadly (e.g. applicant 'failed to submit a claim earlier' in claiming asylum one day after arrival).

Recommendations include:

- *Examination must not be so accelerated that rights cannot be exercised*
- *Wide-ranging acceleration grounds in APD should be significantly reduced.*

18

UNHCR findings on safe country of origin (Article 30)

- Half surveyed Member States surveyed have concept in law
- Considerable variance in the **assessment of safety**.
 - Three Member States have operational **lists** of designated safe countries of origin, listing 78 countries together
 - Only one country (Ghana) appeared on the list of all three - but only for men, in one MS.
- In one Member State, **recognition rate** for applicants from designated safe countries of origin was nearly 35% (2008) - *calling into doubt the assessment of safety*.
- Procedures for **listing & removing** states not always transparent:
 - In two Member States, countries removed only after court orders
 - Lack of systematic process of review by authorities
- Some states do not necessarily offer an effective opportunity to **rebut the presumption of safety**.

19

UNHCR recommendations on Safe country of origin (Article 30)

- *Transparent and accountable processes for designating/removing third countries as safe countries of origin*
- *Lists should be publicly available, with sources of information used in the designation*
- *The EASO may have a role to play in gathering information to help analysis of safety*
- ***Applicants should be notified of intention to apply the concept before a decision on safe country of origin grounds***

20

Asylum Procedures Directive Recast (Dec 09- June 11)

- *UNHCR calling for an agreement in line with international standards*
- EC proposed:
 - New provisions enhancing **access** – including obligation to 'ensure an effective opportunity' for person 'wishing' to lodge an application
 - Information/ access at **borders** for those providing assistance
 - **Determining authorities** must meet standards, receive specific training
 - Minimum **content for training** of all people registering, interviewing or dealing with asylum claimants

21

Asylum Procedures Recast(2)

- Require clear **reasons for decisions**, even in grants of status
- Reduce grounds for **omitting personal interviews**
- Limits on the use of **accelerated procedures** with reduced safeguards
- Clarified rules on **subsequent applications**, as a means of dealing with those which may be unfounded
- **Medico-legal reports/evidence** must be permitted for people who have suffered torture/serious harm

22

Asylum Procedures Recast (3)

- Provision of **legal and procedural information** free of charge
- More safeguards for applicants with **special needs**
- **Safe third country** concept – make clear right to rebut presumption
- **Safe countries of origin** – concept retained, but no common EU list

23

Asylum Procedures Recast (4)

- New requirements for an **admissibility interview**
- **Border Procedures** – may still be used; but must be subject to safeguards in Chapter II APD
- **Effective remedies** – in principle, suspensive effect must apply to appeals – OR at least a right to request suspensive effect (based on ECHR caselaw)

24

Recast Asylum Procedures Directive

- pending issues include exempting/dealing with unaccompanied children within border procedures
- HC's dialogue 2013 – will focus on standards in asylum procedures globally

Qualification Directive recast

- Adopted December 2011 and transposition deadline is end 2013
- Amends concept of '**non-state actors of protection**' (art 7) to those willing and able to provide protection which is 'non-temporary' in nature
 - In UNHCR's opinion, non-state actors in principle should not be considered as actors of protection as they do not have the attributes of a state and do not have the same obligations under international law. Hence, their ability to enforce the rule of law is limited, and thus their ability to render protection would not qualify an international body as capable of providing protection.
- **Internal flight/protection alternative:** (Art 8) - must be able to *safely and legally travel, gain admittance and be reasonably expected to settle* in relevant part of the country
 - Art 8(2) "...Member States shall **at the time of taking the decision** on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant..."

Qualification Directive Recast (2)

- Clarify '**particular social group**' – gender identity to be given consideration
 - *But not clarifying that 'social perception' and 'protected characteristics' tests both apply – retains a cumulative approach*
- **Best interests of the child** – to be taken into account in assessing asylum applications

27

Qualification Directive recast (3)

- **No changes to exclusion provisions** – notwithstanding wording inconsistent with 1951 Convention
- Retain unchanged the provisions on **criteria for subsidiary protection (art 15)** – despite UNHCR's findings of divergent approaches
 - *In each case, EC feared that MS would introduce more restrictive provisions*

28

Qualification Directive Recast(4)

- Entitlements of **subsidiary protection beneficiaries** strengthened:
 - Greater rights for **families**
 - **Rights to work** – some restrictions removed
 - **Health** – no longer merely ‘core benefits’ (although social assistance can still be limited)
 - Greater access to **integration facilities**

29

Practical cooperation



- *EASO* in key support & coordinating role, including on:
 - *Gathering information* on practice = essential to effective policy-making
 - *Quality* in asylum procedures
 - *Training* - new obligations in EU law
 - *Country of origin information*
 - *Thematic meetings* – Syria ; Western Balkans

30

Solidarity



- *Within the EU:*
 - *Asylum and Migration Fund 2014-2020* – resources to support MS' implementation
 - Challenge of identifying and effectively addressing priority areas
 - *Relocation* of beneficiaries in need of protection
 - *Joint processing within the Union*
- *Beyond EU: resettlement* should be expanded - and its sustainability improved

31

Combating trafficking in human beings

- *Implementation of Directive 2011/36/EU*, including provisions on victims' protection
- *EU Anti-trafficking Strategy*: UNHCR calls for:
 - inclusion of EU asylum systems
 - Guidelines on identification/referral of trafficking victims in need of protection
 - Training for asylum adjudicators on protection needs of trafficking victims
 - Information for trafficking victims on their rights

32

Integration & family reunification

- Social cohesion even more important in economically difficult times
- Refugees have special integration needs, but can make unique contributions
- Improved implementation needed of the Family Reunification Directive
 - EC will not propose amending the Directive but suggest Interpretative Guidelines by mid-2013
- Subsidiary protection beneficiaries currently disadvantaged in FR process

33

CURRENT ISSUES: *The SYRIA CRISIS*

- Continuing escalation of violence and growing displacement: as of 18 April, 400,000 refugees had fled Syria in last seven weeks - population of Syrians registered as refugees or waiting to be registered is 1,367,413. Up to 3.5 million Syrians refugees and 6.5 million IDP may be in need of help by end 2013.
- Limited arrivals in Europe: 28,000 in EU+
- UNHCR calls for:
 - no forced return to Syria, neighbouring countries
 - More consistent approaches to claim assessment – noting current wide divergence



34

SYRIA: UNHCR'S CALLS TO EU (2)

- Guaranteed access and fair conditions
- Resettlement, family reunification
- *Further planning for major arrivals – possible use of Temporary Protection Directive?*



35

For more info, see
www.unhcr.org/eu

36