

# Law No. 70/93 of 29 September 1993 on the Right of Asylum

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Comments This is an unofficial translation. Please notes that this Law is repealed and replaced by the LEGAL/REFLEG/e/1419;

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The Assembly of the Republic, pursuant to articles 164, paragraph d), 168, no. 1, paragraph b) and 169, no. 3 of the Constitution, proclaims the following:

## Chapter I - ON ASYLUM

### Article 1 - Definitions

For the effects of the present law it is understood:

aApplication for asylum - A request whereby an alien seeks from a State protection under the Geneva Convention of 1951 by claiming refugee status within the meaning of article 1 of this Convention, as amended by the New York Protocol;

bHost third country - The country in which it is proved that the life and freedom of the applicant for asylum is not threatened, within the meaning of art. 33 of the Geneva Convention, nor is he exposed to torture or inhuman or degrading treatment, has obtained protection or has made use of the opportunity, at its border or within its territory, to make contact with that country's authorities in order to seek protection or in which it is proved that he has been admitted, and in which he is beneficiary of real protection against refoulement within the meaning of the Geneva Convention.

cSafe country - The country in regard of which it can be established with certainty that, in principle, in an objective and verifiable way, it does not generate any refugee or in regard of which it can be determined with certainty and in a legally objective and verifiable way that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist, namely taking into consideration the following elements: respect of human rights, existence and normal functioning of democratic institutions, political stability.

### Article 2 - Grounds for asylum

1. The right of asylum shall be guaranteed to aliens and stateless persons persecuted or severely threatened of being persecuted as a result of their activities on behalf of democracy, national and social liberation, peace between peoples, freedom and human rights, exercised on the State of their nationality or their habitual residence.

2. Aliens and stateless persons who have a well-founded fear of being persecuted by reason of their race, religion, nationality, political opinions or membership of a particular social group and who are unable or, owing to such fear, are unwilling to return to the State of their nationality or their habitual residence, shall also be entitled to asylum.

3. An alien possessing more than one nationality may be granted asylum only when the grounds referred to in the preceding paragraphs are found to exist in respect of all the States of which he is a national.

### **Article 3 - Refugee status**

Persons granted asylum under the preceding article shall be accorded the status of refuge and shall be subject to the stipulations of the present law, without prejudice to the provisions of international treaties or agreements to which Portugal is or becomes a party.

### **Article 4 - Exclusion and denial of asylum**

1. Asylum shall not be granted to:

a Persons who have committed acts contrary to the fundamental interests or sovereignty of Portugal;

b Persons who have committed crimes against peace, war crimes or crimes against humanity, as defined in the international instruments for the prevention of such crimes;

c Persons who have committed serious crimes under ordinary law;

d Persons who have committed acts contrary to the purposes and principles of the United Nations.

2. Asylum may be denied where internal or external security so warrants or the protection of the population so requires, particularly because of the social or economic situation of the Country.

### **Article 5 - Extension of asylum**

The effects of asylum may be declared to extend to the spouse and minor children, single or incompetent, of the applicant or, being the latter less than 18, also to his father or mother.

### **Article 6 - Effects of asylum on extradition**

1. The granting of asylum shall bar action from being taken on any request for the extradition of the beneficiary based on the grounds on which asylum was granted.

2. Until a final decision is taken thereon, an application for asylum shall have the effect of suspending any proceedings for the extradition of the applicant which may be pending, whether they are in the administrative or in the judicial phase.

3. For the purpose of ensuring compliance with the preceding paragraph, the body where the proceedings

concerned are pending shall be notified of the application for asylum within two workingdays.

## **Article 7 - Legal status of refugees**

1. Refugees shall enjoy the rights and be subject to the duties of aliens resident in Portugal, to the extent that there is no inconsistency with the provisions of the present law, the 1951 Convention and the 1967 Protocol. In particular, refugees have an obligation to comply with laws and regulations, as well as provisions for the maintenance of public order.

2. Under the 1951 Convention, refugees are entitled to an identity document attesting to their status, which shall be issued to them by the Ministry of Interior in accordance with the model to be established by decree.

## **Article 8 - Prohibited acts**

Beneficiaries of asylum shall be forbidden to:

a) Interfere in Portuguese political life in a way prohibited by law;

b) Engage in activities which may be detrimental to internal or external security, or public order, or which may jeopardize Portugal's relations with other States;

c) Commit acts contrary to the purposes and principles of the United Nations or deriving from international treaties and agreements to which Portugal is or becomes a party.

## **Article 9 - Effects of asylum on offences relating to the entry into the Country**

1. An alien or stateless person who enters the country irregularly with the aim of obtaining asylum must present immediately his application to the authorities, either verbally or in writing.

2. The authority to whom the application is presented will hear the applicant recording compulsorily the date, hour and place in which he made his request, as well as the circumstances related to the irregular entry in the Country and the reasons which determined it over and above the elements referred to in Nos. 2 and 3 of article 13.

3. The application presented under the conditions set forth in No. 1 suspends any proceedings, administrative or criminal, initiated for irregular entry against the applicant and the persons referred to in article 5 who accompany him.

4. If asylum is granted, the proceedings shall be discontinued provided that the relevant offence is shown to result from the same circumstances that justified the granting of asylum.

5. For the purposes of the provisions of the preceding paragraphs, the application for asylum and the decision thereon shall be notified within two working days to the Aliens and Borders' Service which shall forward them in the same terms to the body where the penal or administrative proceedings are pending.

## **Article 10 - Exceptional provisions for humanitarian grounds**

The exceptional provisions foreseen in article 64 of decree No. 59/93, of 3 March, may be applied to aliens and stateless persons to whom the provisions of article 2 are not applicable and who are not allowed or who feel unable to return to the State of their nationality or their habitual residence because of a lack of security

resulting from armed conflicts or systematic violations of human rights found to exist in the said State.

## **Chapter II - OF COMPETENT BODIES**

### **Article 11 - Competence to decide on asylum**

The Minister of Interior shall be competent to decide on applications for asylum under proposal by the National Commissioner for Refugees.

### **Article 12 - National Commissioner for refugees**

1. The National Commissioner for Refugees shall fulfill duties under the Ministry of Interior with competence to present proposals with afforded grounds on the determination of the State responsible for the examination of the application, the acceptance of the analysis of the application, the transfer of asylum seekers between Member States of the European Community and the granting of asylum.

2. The duties of National Commissioner for Refugees shall be fulfilled by a judiciary magistrate, with more than ten years' seniority, nominated by the Council of Ministers under joint proposal by the Minister of Interior and the Minister of Justice, after hearing the Supreme Council of Magistrature.

## **Chapter III - OF THE PROCEEDINGS**

### **Section I - Of ordinary proceedings**

#### **Article 13 - Application for asylum**

1. The alien or stateless person who is lawfully in the Country shall submit his application for asylum in writing or orally.

2. The application must enclose the identification of the applicant and members of his family mentioned therein, describe the circumstances or facts affording grounds for asylum and furnish such evidence as may be deemed necessary.

3. The number of witnesses shall not exceed ten and all other evidence must be submitted together with the application.

4. The application must be submitted by the applicant, at the Aliens and Borders' Service, within eight days from the date of entry in national territory or, if he is a resident in the Country, from the occurrence or knowledge of the facts that serve as grounds.

5. The Aliens and Borders' Service shall notify the applicant in order for him to make declarations, this act determining the date of opening of the case.

6. On the date indicated in the preceding paragraph, once the application and the declarations will have been recorded, the respective duplicate will be handed over to the applicant with a mention in writing of its submission.

#### **Article 14 - Temporary residence permit**

1. Once the application for asylum has been received, the Aliens and Borders' Service shall issue in favour of all persons it concerns a temporary residence permit the type of which will be established by a decree of the Minister of Interior. This permit is valid for a 60 days' period from the date of submission of the application, renewable for periods of 30 days until the final decision of the same or, in the case foreseen in article 18, until the term set therein expires.

2. Children under 14 years of age must be mentioned in the residence permit issued to the applicant under "observations".

3. While proceedings relating to the application for asylum are pending, the applicant shall be subject to the provisions of the present law and the legislation on aliens.

## **Article 15 - Investigatory procedures and report**

1. The Aliens and Borders' Service shall conduct the necessary inquiries investigating all useful facts allowing to reach a fast and just decision.

2. The period allowed for investigation of the case shall be thirty days. It may be extended by order of the Minister of Interior if he considers it warranted.

3. Once the investigation has been completed, the Aliens and Borders' Service shall immediately prepare a report and shall forward it, together with the case, to the National Commissioner for Refugees.

4. Persons intervening in the proceedings relating to applications for asylum shall respect the confidential nature of information to which they have access in the course of their duties.

## **Article 16 - Proposal and decision**

1. Within 15 days after receiving the case forwarded by the Aliens and Borders' Service, the National Commissioner for Refugees shall prepare and submit a proposal with afforded grounds to the Minister of Interior of which he shall inform simultaneously the representative of the United Nations High Commissioner for Refugees.

2. The representative of the United Nations High Commissioner for Refugees may give his opinion on the proposal within 5 days.

3. The Minister of Interior shall decide on the proposal mentioned in No. 1 within 8 days, but never before he receives the advisory opinion of the representative of the United Nations High Commissioner for Refugees or within the time-limit foreseen in No. 2.

## **Article 17 - Publication, notification and appeal**

1. Once the decision has been pronounced, the Aliens and Borders' Service shall notify the applicant and shall inform of it the representative of the United Nations High Commissioner for Refugees.

2. In the event of a negative decision, mention shall be made in the notification of the right to appeal to the Supreme Administrative Tribunal within 20 days.

## **Article 18 - Effects of denial of asylum**

1. An applicant who is denied asylum may remain in the national territory for a temporary period, up to 30 days, with a view to seeking asylum in another country or returning to a country which has already granted him asylum.
2. On the expiry of the period referred to in the preceding paragraph, the applicant shall become subject to the legislation on aliens.

## **Section II - Of accelerated proceedings**

### **Article 19 - Accelerated proceedings**

Proceedings for the granting of asylum may be accelerated if:

- a The application is manifestly unfounded, when it appears obvious that it does not fulfill any of the conditions defined by the Geneva Convention and the New York Protocol, the allegations by the applicant regarding his fear of persecution in his country being manifestly unfounded, or because the application is evidently fraudulent or constitutes an abusive utilization of the proceedings of asylum;
- b The application has been lodged by an asylum seeker from a country likely to be qualified as safe country or third host country;
- c The applicant has been compelled to leave the national territory as a result of a decision of expulsion;
- d It has been proved that the applicant has committed a serious crime in the territory of the Member States, the case corresponding manifestly to the situations foreseen in article 1-F of the Geneva Convention;
- e There are serious reasons of internal or external security.

### **Article 20 - Investigatory procedures and decision in accelerated proceedings**

1. In the instances foreseen in the preceding article, an account on the application must be drawn up within 24 hours by the Aliens and Borders' Service for immediate submission for advice to the National Commissioner for Refugees, also to be issued within 24 hours.
2. Once the time-limits referred to in the preceding paragraph are over, the advisory opinion of the National Commissioner for Refugees will be affixed in the premises of the Aliens and Borders' Service.
3. If the application elicits a favourable advisory opinion of the Commissioner, the Aliens and Borders' Service will issue to the persons covered by it a temporary residence permit, pursuant to article 14, and the investigation of the case will continue.
4. If the advisory opinion is negative, the applicant may give his own opinion, in writing, within 48 hours after the advisory opinion has been affixed as per no. 2. Thereafter the application is submitted for decision to the Minister of Interior who resolves on its admissibility or rejection, pursuant in the former case to the terms of the above number.
5. Once the admission of the application has been rejected, on ground of the verification of the conditions referred to in the preceding article, the applicant must leave the Country within the fixed period, which shall not exceed 15 days, under pain of expulsion.

## **Section III - Of requests for resettlement of refugees**

### **Article 21 - Requests for resettlement**

1. Requests for resettlement of refugees under the mandate of the United Nations High Commissioner for Refugees will be submitted by UNHCR to the Minister of Interior.

2. The Aliens and Borders' Service shall give an advisory opinion on the requests within 24 hours, the decision on the admissibility and granting of asylum being incumbent upon the above-mentioned member of Government, having due regard to the particular circumstances of the case and the legitimate interests to safeguard.

## **Chapter IV - Of the forfeiture of the right of asylum**

### **Article 22 - Forfeiture of the right of asylum**

The right of asylum shall be forfeited in any of the following circumstances:

aWithdrawal of the application;

bPerformance of the acts or the activities prohibited in article 8;

cDemonstration of the falsity of the grounds invoked for the granting of asylum or the existence of facts which, had they been known at the time asylum was granted, would have caused a negative decision to be taken;

dRequest by the beneficiary of asylum for the protection of the country of which he is a national;

eVoluntary reacquisition of the nationality which he has lost;

fVoluntary acquisition of a new nationality by the beneficiary of asylum, provided that he enjoys the protection of the country concerned;

gVoluntary resettlement in the country which he left or remained outside for fear of being persecuted;

hWhere the reasons for which asylum was granted cease to exist;

iA decision of the competent court to expel the beneficiary of asylum;

jWhen the beneficiary of asylum leaves Portuguese territory and settles in another country.

### **Article 23 - Effects of forfeiture of the right of asylum**

1. Forfeiture of the right of asylum for the reason referred to in subparagraph b) of the preceding article shall be a ground for expulsion from Portuguese territory.

2. Forfeiture of the right of asylum for the reasons referred to in subparagraphs a), c), d), e), f), g) and h) of the preceding article shall have the effect of making the person concerned subject to the general regulations concerning the residence of aliens in national territory.

### **Article 24 - Expulsion of the beneficiary of asylum**

Expulsion of the beneficiary of asylum, under the provisions of the preceding article, shall not have the effect of making him reside in the territory of a country where his life or freedom are endangered for any of the reasons which, under article 2, may constitute grounds for the granting of asylum.

## **Article 25 - Competent Court**

The Court of Appeal of the area in which the beneficiary of asylum resides shall be competent to declare his right of asylum forfeited and, where appropriate, to order his expulsion, without prejudice to the provisions of article 22

## **Article 26 - Notification to the Office of the Government Attorney**

Where grounds exist for declaring the right of asylum to have been forfeited and for ordering the expulsion of the beneficiary of asylum in accordance with the provisions of article 23, No. 1, the Aliens and Borders' Service shall transmit to the Assistant General Attorney attached to the competent Court of Appeal the information needed to draw up the relevant application.

## **Article 27 - Formulation of the application**

An application for declaration of forfeiture of the right of asylum and, where appropriate, an application for expulsion in accordance with the provisions of article 23 No. 1, shall be formulated in a motion to be submitted in triplicate, duly substantiated by the evidence deemed necessary.

## **Article 28 - Reply of the applicant**

1. Once the case has been assigned, the rapporteur shall arrange for a notification to be made to the defendant, who shall be allowed 15 days in which to reply.

2. The reply shall be submitted in triplicate, substantiated by the relevant evidence, the duplicate being transmitted to the Assistant Government Attorney.

## **Article 29 - Witnesses**

The number of witnesses to be produced by either of the parties shall not exceed 10.

## **Article 30 - Investigation of the case**

1. Once the defendant's reply has been submitted or the relevant time-limit has expired, the rapporteur shall proceed to investigate the case, such investigation to be completed within 30 days.

2. On completion of the investigation the applicant and the defendant shall be notified in order to submit their pleadings within 8 days.

## **Article 31 - Examination by the judges**

When the last pleading has been received or the time-limit for its submission has expired, the case shall be submitted for examination by each of the assistant judges within 8 days and shall subsequently be registered for judgement.



## **Article 32 - Content of the expulsion order**

A decision to order expulsion must contain the elements referred to in article 81, No. 1 of Decree-Law No. 59/93 of 3 March.

## **Article 33 - Appeal**

1. An appeal shall lie against the decision with the Supreme Court of Justice.
2. The appeal shall be lodged within 8 days and shall be tried and judged in accordance with the provisions regarding appeals in criminal proceedings.

## **Article 34 - Execution of the expulsion order**

Once the decision becomes a res judicata, an attestation shall be transmitted to the Aliens and Borders' Service which shall execute any expulsion order contained therein, and shall inform of the decision the representative of UNHCR.

## **Chapter V - of Social Support**

### **Article 35 - Social support**

Social support for accommodation and food shall be provided to the applicant and his family, pursuant to the provisions of article 5, when in situation of economic and social privation, until a final decision on the application for asylum is taken.

### **Article 36 - Support by the Social Security**

Social support for accommodation and food, till the final decision on the application, shall be incumbent on the Regional Directorate of Social Security of the area where the application has been submitted, or on the body with which the latter may have made an agreement for support, on condition that the applicant has been granted a temporary residence permit.

### **Article 37 - Regulations concerning the granting of social support**

The amounts relating to the support mentioned in the preceding article will be approved by decree of the Minister of Employment and Social Security who will determine the maximum amounts per person, the annual total expenditure allowed and will make regulations on the modalities to assess the situation of economic and social privation on which depends the granting of support.

## **Chapter VI - Final and transitory provisions**

### **Article 38 - Free and urgent nature of proceedings**

Proceedings for the granting or forfeiture of the right of asylum and expulsion shall be exempt from stamp-duty and free of charge and shall be treated as matters of urgency.

### **Article 39 - Interpretation and integration**

The provisions of this law shall be interpreted and integrated in accordance with the Universal Declaration of Human Rights and with the Geneva Convention of 28 July 1951 and the Additional Protocol of 31 January 1967.

## **Article 40 - Revocation**

The following Acts are revoked:

aLaw no. 38/80 of 1 August

bDecree-Law no. 415/83 of 24 November

cDecree-Regulation no. 15/81 of 9 April

## **Article 41 - Entry into force**

This law shall govern pending applications for asylum and shall enter into force 30 days after the date of its publication.

Approved on 24 August 1993

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