

# NATIONAL ASSEMBLY

Law 27/2008

30<sup>th</sup> June

Establishes the conditions and procedures for granting asylum and subsidiary protection and the statuses of asylum applicant, refugee and of subsidiary protection, transposing into internal juridical order Council Directives ns 2004/83/CE, of 29<sup>th</sup> April and 2005/85/CE, of 1<sup>st</sup> December

The Parliament decrees, pursuant to paragraph c) of article 161 of the Constitution the following:

## CHAPTER 1

### General provisions

#### Article 1

##### Object

- 1 - The present law establishes the conditions and procedures for granting asylum or subsidiary protection, as well as the statuses of asylum applicant, refugee or subsidiary protection applicant, by transposing the following European directives into the internal juridical order:
  - a) Council Directive 2004/83/CE of 29 April, which lays down the minimum standards for the qualification of aliens or stateless persons as refugees or as persons who otherwise need international protection, and on the content of the status and protection granted.
  - b) Council Directive 2005/85/CE of 1 December, which establishes the minimum standards applicable to the procedures for granting and withdrawing the refugee status.
- 2 - Simultaneously, the transposition of Council Directive 2003/9/CE of 27 January, carried out by Law 20/2006 of 23 June on the minimum standards regarding the reception of asylum or subsidiary protection applicants within Member States, is hence consolidated in national law.

## Article 2

### Definitions

- 1 - For the purposes of the present Law:
- a) «residence permit» shall mean an authorization issued by the Portuguese authorities, under national legislation, allowing an alien or stateless person to reside in its territory;
  - b) «reception centre» shall mean any place used for the collective accommodation of asylum or subsidiary protection applicants;
  - c) «reception conditions» shall mean the set of measures adopted in favour of asylum or subsidiary protection applicants in accordance with the present Law;
  - d) «material reception conditions» shall mean the reception conditions that include housing, food, clothing and transport expenses, provided in kind or as financial allowances, vouchers, or daily expenses allowances;
  - e) «Geneva Convention» shall mean the convention relating to the status of refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;
  - f) «subsidiary protection status» shall mean the recognition by the competent Portuguese authorities of an alien or a stateless person as a person eligible for the granting of a residence permit on humanitarian grounds;
  - g) «refugee status» shall mean the recognition by the competent Portuguese authorities of an alien or a stateless person as a refugee and authorized as such to remain in the Portuguese territory;
  - h) «family members» shall mean the family members of the asylum or subsidiary protection applicant referred to in the juridical regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory for the purposes of the right to family reunification.
  - i) «unaccompanied minor» shall mean any third country national or stateless person below the age of eighteen who enters the Portuguese territory unaccompanied by an adult responsible for him or her whether by law or by custom, and for as long as he or she is not effectively taken into the care of such a person; or who was left unaccompanied after entering the Portuguese territory;
  - j) «reasons for persecution» shall mean the motives on which the applicant's well-founded fear of persecution or real risk of suffering severe harm is grounded, evaluated in view of the notions of:
    - i) «race», which shall include, namely, considerations of colour, descent or membership of a particular ethnic group;

- ii) «religion», which shall include, namely, the holding of theistic, non-theistic and atheistic beliefs, the participation in or abstention from formal worship in private or in public, either alone or in community with others, or other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious beliefs;
- iii) «nationality», which shall not be confined to the possession or absence of citizenship, but shall also mean the membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins, or its relationship with the population of another State,
- iv) «group» shall mean a particular social group in so far as:
  - the members of such group share an innate characteristic, or a common background that cannot be changed, or a characteristic or belief that is so fundamental to the identity or conscience that its members should not be forced to renounce to it, and
  - such group has a distinct identity in the relevant country and is perceived as being different by the surrounding society.
- v) «political opinion» shall mean, namely, the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant;
- k) «country of origin» shall mean the country or countries of nationality or, in the case of stateless persons, the country of former habitual residence;
- l) «safe country of origin» shall mean the country of nationality or habitual residence of the applicant, in relation to which the applicant has not invoked any serious reason by which it may be considered unsafe, in what concerns the applicant's personal circumstances for his or her recognition as refugee, and which shall be assessed according to several information sources, in particular information from other Member States, the United Nations High Commissioner for Refugees (UNHCR), the European Council and other relevant international organisations;
- m) «safe third country» shall mean the country in which the asylum applicant has remained or transited before his or her arrival to Portugal; where his or her life or freedom is confirmedly not threatened; which respects the principle of *non-refoulement* and the right not to be subjected to torture or cruel, inhuman or degrading treatment; and in which the applicant may request the refugee status and, being granted such a status, receive protection, in pursuance of the provisions of the Geneva Convention, insofar as the following rules are observed;

- i) A connection between the asylum applicant and the respective third country which may, in principle, allow the applicant to address that country;
  - ii) a guarantee that the concept of safe third country can be applied to the country or applicant in question, including the casuistic analysis of the country's safety in relation with the applicant and the national designation of countries generally considered safe;
  - iii) an individual assessment, under the terms of international legislation, of the safety degree of the third country in question with regard to the applicant and which shall at least allow the applicant to contest the use of the «safe third country» concept by claiming the possibility of being subject to torture, cruel, inhuman or degrading treatment or punishment.
- n) «application» or «asylum application» shall mean an application lodged by an alien or stateless person which can be understood as a request for international protection addressed to the Portuguese authorities, under the Geneva Convention;
  - o) «withdrawal of international protection» shall mean the effect resulting from the cessation, revocation, suppression or renewal refusal of the right to asylum or subsidiary protection;
  - p) «permanence in the country» shall mean the permanence in Portugal, including borders and transit areas of the national territory;
  - q) «particularly vulnerable persons» shall mean persons with special needs, namely minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to acts of torture, rape or other severe forms of psychological, physical or sexual violence;
  - r) «first asylum country» shall mean the country in which the applicant has been recognised as a refugee and may still benefit of such protection, or enjoy effective protection under the terms of Geneva Convention, and where, confirmedly, he or she is not subject to threats to his or her life and freedom, where the principle of *non-refoulement* is respected and where he or she enjoys the right not to be subjected to torture or cruel, insofar as he or she is readmitted in that country;
  - s) «prohibition of repulsion» (*non-repulsion* or *non-refoulement* principle) shall mean a principle of international asylum law, established under article 33 of the Geneva Convention, in accordance to which asylum applicants must be protected against either direct or indirect expulsion or repulsion to a place where his or her life or freedom is threatened due to his or her race, religion, nationality, membership of a social group or political opinions. This protection is not applied to the applicant who constitutes a threat to national security or has been subjected to a final conviction for a particularly serious crime or offence.

- t) «procedures» and «judicial review» shall mean the procedures and possibilities of contentious reaction established in the Portuguese law;
- u) «international protection» shall mean the subsidiary protection status and the refugee status, as defined under paragraphs (f) and (g);
- v) «refugee» shall mean an alien who, owing to a well-founded fear of being persecuted as a result of his or her activity within the State of nationality or habitual residence in favour of democracy, social and national liberation, peace among peoples, freedom and human rights, or owing to his or her race, religion, nationality, political opinions or membership of a particular social group, is presently outside his or her country of nationality and is unable to or, owing to such fear, unwilling to avail him/herself of the protection of that country; or a stateless person who, being outside his or her country of habitual residence, for the same reasons previously mentioned, is unable to or, owing to such fear, unwilling to return to that country, insofar as the terms under article 9 are not applicable to any of such persons;
- w) «representative» shall mean a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian; the person acting on behalf of a national organisation which, in pursuance of law, is responsible for the assistance and well-being of minors; or any other appropriate representation appointed, in pursuance of law, to ensure the best interests of an unaccompanied minor;
- x) «applicant» or «asylum applicant» shall mean an alien or stateless person who has made an application for asylum or subsidiary protection in respect of which a final decision has not yet been taken;

2 - For the purposes of sub-subparagraph *iv)* of paragraph *j)* of the previous article, and depending on the circumstances in the country of origin, qualification as a specific social group may include a group based on a common characteristic of sexual orientation – although such characteristic shall not be understood as including acts considered to be criminal in accordance with the Portuguese law –, as well as gender related aspects, although these shall not by themselves alone create a presumption for the qualification as a group.

## CHAPTER II

### **Beneficiaries of International Protection**

#### Article 3

#### **Granting of right to asylum**

1 – Right to asylum shall be guaranteed to aliens and stateless persons, victims of persecution or severely threatened of persecution as a result of activity performed in the country of nationality or of

habitual residence in favour of democracy, social and national liberation, peace among peoples, freedom and human rights.

2 – Right to asylum shall also be granted to any third country nationals or stateless persons who, having a well-founded fear of being persecuted on grounds of their race, religion, nationality, political opinion or membership of a particular social group, are unable to or, owing to such fear, unwilling to return to their country of nationality or habitual residence.

3 – Asylum shall only be granted to a third country person who has more than one nationality when the reasons for persecution referred to in the previous paragraphs apply to all countries of his or her nationality.

4 – For the purposes of paragraph 2 of the present article, it is irrelevant whether the third country national effectively shows evidence of the characteristic relating to his or her race, nationality, social or political group, as long as such characteristic is attributed to him or her by the agent of the persecution

#### Article 4

##### **Effects of the granting of the right of asylum**

The granting of the right of asylum, in pursuance of the previous article, shall endow the beneficiary with the refugee status, in accordance with the present law, without prejudice to the provisions established in any treaties or international conventions of which Portugal be a party or adheres to.

#### Article 5

##### **Acts of Persecution**

1 – For the purposes of the previous article, the acts of persecution susceptible to ground the right of asylum must be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, or be an accumulation of various actions, which by their number or repetition affect an alien or stateless person in a similar manner as that which results from a serious violation of fundamental rights.

2 – The acts of persecution referred in paragraph 1 may take the following forms:

- a)* acts of physical or mental violence, including acts of sexual violence;
- b)* legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- c)* prosecution actions or sanctions which are disproportionate or discriminatory;
- d)* denial of judicial access resulting in a disproportionate or discriminatory sanctions;

*e)* prosecution actions or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts susceptible of causing the exclusion of the refugee status as set out in subparagraphs *c)* of paragraph 1 of article 9;

*f)* acts committed specifically in terms of gender or against minors.

3 – The necessary information for the making of decisions on the refugee status cannot be obtained in a manner that enables the applicant’s persecutors access to information on the process, or endangers his or her physical integrity or his or her family, whether in Portugal or in the State of origin.

## Article 6

### **Actors of persecution**

1 – Actors of persecution shall include:

*a)* the State;

*b)* parties or organisations controlling the State or a substantial part of the State’s territory;

*c)* non-State actors, if it can be demonstrated that the actors mentioned in subparagraphs *a)* and *b)* are unable or unwilling to provide protection against persecution, in pursuance of the following paragraph.

2 – For the purposes of subparagraph *c)* of the previous paragraph, it shall be considered that protection is generally provided when the actors mentioned in subparagraphs *a)* and *b)* of the previous paragraph take suitable steps to prevent the persecution, namely by implementing an effective legal system for the detection, prosecution and punishment of such acts, as long as the applicant has access to effective protection.

## Article 7

### **Subsidiary protection**

1 – Residence permit shall be granted on humanitarian grounds to aliens and stateless persons to whom the provisions defined under article 3 are not applicable and who are impeded or feel unable to return to their country of nationality or habitual residence, due to the systematic violation of human rights therein occurring or to the risk of suffering severe harm.

2 – For the purposes of the above paragraph, severe harm shall consist of, namely:

*a)* death penalty or execution;

*b)* torture, inhuman or degrading treatment, or punishment of an applicant in the country of origin;

- c) serious threat against the life or physical integrity of an applicant resulting from indiscriminate violence in situations of international or internal armed conflict or a generalized and indiscriminate violation of human rights.

3 – The provisions established under the previous article shall be applicable.

#### Article 8

##### **Protection *sur place***

1 – A well-founded fear of being persecuted, in pursuance of article 3, or a risk of suffering severe harm, in pursuance of the previous article, may be grounded on events or activities in which the applicant was engaged after leaving the country of nationality or former habitual residence, in particular if it is proven that the activities which ground the asylum or subsidiary protection application constitute the expression and continuation of convictions or orientations held in that country.

2 – The terms of the above article shall not be applied if fear or risk is grounded on circumstances which the applicant has created by his own decision after leaving the country of nationality or former habitual residence, for the sole purpose of unduly benefiting from refugee or subsidiary protection status.

#### Article 9

##### **Exclusion from and refusal of asylum and subsidiary protection**

1 – An alien or stateless person shall not be entitled to asylum or subsidiary protection when:

- a) he or she is covered by the scope of paragraph D of article 1 of the Geneva Convention, regarding protection or assistance by bodies or agencies of the United Nations other than the United Nations High Commissioner for Refugees, and as long as such protection or assistance has not by any reason ceased without the situation of the person in question having reached a final decision in accordance with the applicable resolutions of the General Assembly of the United Nations;
- b) the competent authorities of the country where residence was fixed consider he or she benefits of the rights and duties its nationals or equivalent
- c) there are serious suspicions that:
  - i) he or she has committed crimes against peace, war crimes or crimes against humanity, as defined under the international instruments drawn up to make provision in respect of such crimes;
  - ii) he or she has committed felonious common law crimes, punishable by imprisonment superior to three years before being admitted as a refugee;



*iii)* he or she has performed acts contrary to the purposes and principles of the United Nations mentioned in the preamble and in articles 1 and 2 of the United Nations Charter.

2 – Asylum or subsidiary protection may be refused whenever the granting of such a status results in danger or well-founded threat to the internal or external security or public order of the Portuguese State.

3 – Subsidiary protection can also be refused if the alien or stateless person has committed one or more crimes not included in subparagraph *c)* of paragraph 1, punishable by imprisonment had they been committed within the Portuguese territory, and has left his or her country of origin with the sole objective of avoiding sanctions resulting from such crimes.

4 – For the purposes of the provisions of subparagraph *c)* of paragraph 1 and in the previous paragraph, persons to whom the provisions of articles 26 and 27 of the Penal Code are applicable.

## CHAPTER III

### **Procedure**

#### SECTION I

#### **Common provisions**

##### Article 10

#### **Asylum application**

It shall be assumed that any request for international protection is an asylum application, unless the person in question explicitly requests another form of protection that may be subject to a distinct application.

##### Article 11

#### **Right to remain in Portuguese territory**

1 – Asylum applicants shall be allowed to remain in the Portuguese territory, for the purpose of procedure for the granting of asylum, until decision on the admissibility of the application.

2 – The referred right to permanence shall not entitle the applicant to the issuance of a residence permit.

## Article 12

### **Effects of the asylum application over infringements related to the entrance in the country**

- 1 – The submission of the asylum application shall hinder the knowledge of any administrative or criminal process brought against the applicant and family members accompanying him or her on the grounds of irregular entrance into Portuguese territory.
- 2 – The procedures or process shall be archived in case asylum is granted and it is proven that the corresponding infringement has been determined by the same facts that grounded the asylum granting.
- 3 – For the purposes of the above paragraphs, the asylum application and the decision thereon shall be reported by the Portuguese Immigration Service to the authority where the procedure or process is running within two work days.

## Article 13

### **Application lodgement**

- 1 – The alien or stateless person who enters into Portuguese territory with the purpose of obtaining asylum shall lodge an application in the Portuguese Immigration Service or any police authority within 15 days, either orally (subsequently confirmed through a written official document) or in writing.
- 2 – Any police authority who receives the application referred to in paragraph 1 shall remit it to the Aliens and Borders Service within 48 hours.
- 3 – The Aliens and Borders Service shall inform the United Nations High Commissioner for Refugees representative and the Portuguese Refugee Council as soon as the request is lodged.
- 4 – The applicant may request an extension of the asylum application to include the family members who accompany him or her, whether minors or adults, and the application shall, in this case, be preceded of a previous explicit consent of those persons, otherwise it shall be considered inadmissible.
- 5 – The minor applicant may lodge an application on his or her behalf.

## Article 14

### **Confirmation of application's lodgement and information**

Three days after delivery, the applicant shall receive a document certifying that the asylum or subsidiary protection application has been lodged and that its holder is allowed to stay in the Portuguese territory while the application is pending; information on the applicant's rights and obligations shall be provided.

## Article 15

### **Content of the application**

1 – The applicant shall report all the necessary elements in order to justify the asylum or subsidiary protection application, namely:

- a)* identification of the applicant and members of his or her family;
- b)* nationality, country or countries, previous place or places of residence;
- c)* previous asylum applications;
- d)* description of circumstances or facts on which the asylum is grounded.

2 – For the purposes of the previous paragraph, the applicant shall also present, along with the asylum application, available identification and travel documents and elements of proof; the applicant may also present up to ten witnesses.

## Article 16

### **Statements**

1 – Before the decision on the admissibility of the asylum application, to the applicant is guaranteed the right to render statements under conditions which guarantee confidentiality and allow the description of the circumstances on which the respective application is grounded.

2 – The rendering of statements is to be taken individually, except when the presence of members of the applicant's family is considered necessary for an adequate assessment of the situation.

3 – For the purposes of the previous paragraphs, the Portuguese Immigration Service shall immediately notify the applicant for the rendering of statements within five days, after the reception of the asylum application.

4 – If the application is lodged by a minor or disabled person, it shall be incumbent on the Portuguese Immigration Service to report the situation to the Portuguese Refugee Council for representative purposes.

5 – The rendering of statements shall be omitted only if:

- a)* there are prior conditions based on the available elements of proof for the favourable admissibility of the application;
- b)* the applicant has already provided the essential information for the referred evaluation by other mean;
- c)* the applicant is considered incapable or unable for this purpose, due to enduring circumstances which do not depend on his or her will.

6 – When the rendering of statements does not take place according to the previous paragraph, the Portuguese Immigration Service provides for the applicant or the person under his or her care to report other information, by any other mean.

## Article 17

### **Report**

1 – After the applicant’s rendering of statements according to the previous articles, the Portuguese Immigration Service shall prepare a written report containing essential information on the application.

2 – The applicant is notified of the above mentioned report, and might present comments thereon within five days. Simultaneously, the said report is forwarded to the United Nations High Commissioner for Refugees representative and to the Portuguese Refugee Council.

## Article 18

### **Assessment of admissibility**

1 – In the assessment of the admissibility of each asylum application, the Portuguese Immigration Service shall be responsible for the examination of all pertinent elements, in particular the applicant’s statements rendered in pursuance of the previous articles and all the available information.

2 – In the assessment of the application, the Portuguese Immigration Service shall take into consideration:

- a)* the pertinent facts concerning the country of origin at the time of taking a decision on the application, including respective legislation and regulation as well as guarantees of effective application;
- b)* the individual position and personal circumstances of the applicant, so as to assess, on grounds of the personal situation, if he or she has suffered or may suffer serious persecution;
- c)* the activities performed by the applicant since the departure from the country of origin, had the sole or main purpose of creating the necessary conditions to request international protection and if such activities, in case of return to that country, put him or her at risk of suffering serious persecution or harm;
- d)* whether the applicant could reasonably be expected to avail him or herself of the protection of another country where he or she could request citizenship.

3 – The fact that an applicant has already been subjected to persecution or severe harm, or direct threats of such persecution or such harm, shall be a serious indication of the applicant’s well-founded fear of persecution or real risk of suffering severe harm, unless there are good reasons to consider that such persecution or severe harm have ceased and will not be repeated.

4 – The statements of the applicant shall be supported by documentary evidence or other means of proof admitted by law, unless the following conditions are cumulatively met:

- a)* the applicant has made a genuine effort to substantiate his or her application;
- b)* the applicant has presented all relevant elements available and has given a satisfactory explanation regarding any lack of other relevant elements;
- c)* the applicant's statements are found to be coherent, plausible and non-contradictory with available information;
- d)* the applicant has requested international protection at the earliest possible time, unless he or she can prove good reason for not having one so;
- e)* the applicant's general credibility has been established;

#### Article 19

#### **Accelerated Procedure**

1 – The application shall follow an accelerated procedure, and deemed inadmissible if throughout the proceeding foreseen by the present law the following situations are confirmed:

- a)* another Member State has granted the refugee status to the applicant;
- b)* a non-Member State country is considered first asylum country for the applicant;
- c)* the applicant is authorised to remain in the national territory for other reasons and has in result benefited from a status which confers him or her rights and benefits equivalent to those of the refugee status;
- d)* the applicant is authorised to remain in the national territory for other reasons which protect him or her against repulsion while the result of a procedure for determination of status is pending, under the terms paragraph *c)*;
- e)* the applicant has lodged an identical request after the pronouncement of a final decision;
- f)* a person under the care of the applicant has presented a different application after having consented, in pursuance of paragraph 4 of article 13, to the inclusion of his or her particular situation in the applicant's own application and the available elements relating to his or her situation are insufficient to justify an individual request;

2 – The application shall also be considered inadmissible and subject to accelerated procedure when it is evident that none of the criteria defined by the Geneva Convention and the New York Protocol are met due to the following reasons:

- a)* any of the causes foreseen by paragraphs 1 and 3 of article 9 is verified;
- b)* when lodging the application and rendering declarations, the applicant has only invoked irrelevant or minimally relevant questions for the analysis of his or her situation regarding the grant of the refugee status;
- c)* the applicant does not clearly fulfil the necessary conditions to be considered a refugee or be granted the refugee status in a Member State;

- d) the asylum application is considered groundless because:
  - i) the applicant comes from a safe country of origin;
  - ii) the non-Member State country is considered a safe third country for the applicant;
- e) the applicant has misinformed the authorities, either by providing false or forged information and documents, or by deliberately omitting important information or documents with regard to his or her identity or nationality which may possibly cause a negative impact on decision;
- f) the applicant has lodged another asylum application with different personal data;
- g) the applicant has not provided information so as to allow the determination of his or her identity or nationality with a reasonable degree of certainty, or has probably and in bad faith destroyed or misplaced identity or travel documents which may attest his or her identity or nationality;
- h) the applicant has rendered incoherent, contradictory, unlikely or insufficient statements which clearly discredit his or her claim of having been persecuted;
  - i) The applicant has lodged a subsequent application which does not invoke new relevant facts regarding his or her specific circumstances or situation in the country of origin;
  - j) The applicant has lodged his or her application beyond the prescribed time-limits without due justification;
- l) the applicant has lodged an application with solely dilatory purposes so as to impede or delay the enforcement of a previous or eminent decision of expulsion;
- m) the applicant has not complied the obligations referred to in article 15 without a valid motive;
- n) the applicant has illegally entered or prolonged his or her permanence in the national territory and, with intent, has not presented him or herself to the authorities as soon as possible, given the circumstances of his or her entry in the territory;
- o) the applicant represents a threat to national security or public order;
- p) the applicant has been subjected to an executory decision of expulsion from the Portuguese territory due to serious motives of public security and order, by force of internal legislation;
- q) the applicant refuses to subject him or herself to the compulsory fingerprint register pursuant to European and internal legislation;
- r) the application has been lodged by a minor single person who, under the terms of paragraph 4 of article 13, was already included in a previous application, and when the previous application has been lodged by the progenitors or the progenitor in charge and considered inadmissible; and the minor's application does not report new relevant

elements with regard to his or her particular circumstances or the situation in his or her country of origin.

#### Article 20

##### **Competence to assess and decide**

1 – The director of the Portuguese Immigration Service shall be competent to pronounce a grounded decision on the inadmissible applications within twenty days from the closing date foreseen by paragraph 2 of article 17.

2 – In the absence of a decision within the time limit prescribed in the previous paragraph, the asylum application shall be considered admitted.

3 – The decision on the application is notified to the applicant, and simultaneously forwarded to the representative of the United Nations High Commissioner for Refugees and the Portuguese Refugee Council.

#### Article 21

##### **Effects of the decision**

1 – The decision of the application, as well as information on his or her rights in accordance with the following paragraph, shall be notified to the applicant within 48 hours, mentioning that he or she shall leave the country within 20 days, being otherwise subjected to immediate expulsion after the termination of the referred closing date.

2 – If the applicant does not comply with the provisions of the above paragraph, the Portuguese Immigration Service shall promote a process for his or her immediate expulsion in accordance with the legal regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory.

#### Article 22

##### **Judicial review**

1 - The decision pronounced by the national director of the Portuguese Immigration Service shall be susceptible to judicial review before the administrative courts within 8 days, with suspensive effect.

2 – The judicial decision shall be pronounced within eight days.

## SECTION II

### **Applications lodged at border offices**

#### Article 23

##### **Special regime**

1 – The decision of asylum applications lodged at border offices by aliens who do not meet the necessary legal requirements for entry in Portuguese territory, shall be subjected to the regime prescribed in the previous articles along with the modifications of the present section.

2 – The officers who receive asylum applicants at border offices shall have appropriate training and adequate knowledge of the relevant rules applicable within the scope of asylum and refugee law.

#### Article 24

##### **Assessment of application and decision**

1 – The Portuguese Immigration Service shall immediately report any asylum applications referred to in the above article to the representative of the United Nations High Commissioner for Refugees and to the Portuguese Refugee Council, who may render an opinion within 48 hours and interview the applicant, if they wish so.

2 – Within the referred period, the applicant shall be informed of his or her rights and obligations and render statements which constitute, for all purposes, a previous hearing.

3 – The provisions of article 16 shall be applicable to the rendering of statements referred to in the previous paragraph.

4 – The national director of the Portuguese Immigration Service shall pronounce a grounded decision on the admissibility of the application within a maximum period of five days, though never prior to the closing date mentioned in paragraph 1.

5 – The decision prescribed in the above paragraph shall be notified to the applicant along with information on his or her rights of judicial review, and shall also be reported to the representative of the United Nations High Commissioner for Refugees and to the Portuguese Refugee Council.

#### Article 25

##### **Judicial review**

1 – The decision taken by the national director of the Portuguese Immigration Service shall be susceptible to judicial review before the administrative courts within 72 hours, with suspensive effect.

2 – The person in question shall enjoy legal aid under the application, with due adaptations, of Law 34/2004 of 29 July, with regard to the regime prescribed for the appointment of an offender defender for urgent proceedings, and may equally request the quick appointment of an attorney



under conditions to be defined under a protocol established between the Ministry of Interior and the Lawyers' Bar Association.

3 – The judicial decision shall be pronounced within a period of 72 hours.

#### Article 26

##### **Effects of application and decision**

- 1 – The applicant shall remain in the international area of the port or airport while waiting for a notification of the decision pronounced by the national director of the Portuguese Immigration Service; the procedures and further guarantees foreseen in article 4 of Law 34/94 of 14 September shall be applied.
- 2 – The temporary accommodation of unaccompanied or separated minors shall follow special conditions, in accordance with international recommendations namely by the United Nations High Commissioner for Refugees, UNICEF and the International Committee of Red Cross.
- 3 – Without prejudice to the provisions of the previous paragraph, the decision on the inadmissibility of the application shall determine the return of the applicant to the point where the journey initiated or, if this is not possible, to the State where the respective travel document has been issued, or to any other place where the applicant may be admitted, namely a safe third country.
- 4 – The decision on the admissibility of the application, or the expiration of the dates prescribed in paragraph 4 of article 24 without notification of a decision, shall determine the entry of the applicant into Portuguese territory, thus following the fact-finding process of asylum procedures, in pursuance of the following articles.

#### SECTION III

##### **Fact-Finding of Asylum Procedure**

#### Article 27

##### **Provisional residence permit**

- 1 – The Portuguese Immigration Service shall issue a provisional residence permit in favour of the persons whose asylum application has been admitted. This permit shall be valid for a period of four months from the date of the decision on its admission and shall be renewable for equal periods until a final decision is reached or, in the situation described in article 31, until the time limit thereon prescribed expires.
- 2 – The standard form for the residence permit mentioned in the previous paragraph shall be established by decree of the Government member responsible for the internal affairs area.

- 3 – To the family members of the applicant to whom the effects of asylum were extended shall also be issued a residence permit, in terms of paragraph 1, of the present article.
- 4 – The provisions of the present law and of the juridical regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory shall apply to the applicant while the asylum procedure is pending.

#### Article 28

##### **Fact-finding process**

- 1 – The Portuguese Immigration Service is the competent entity for the fact-finding of asylum procedures and shall proceed to the requested diligences and shall investigate every fact whose knowledge is convenient for a fair and quick decision.
- 2 – The fact-finding process shall take place within 60 days, extendable for an equivalent period, until the limit of 180 days, whenever necessary.
- 3 – Throughout the fact-finding process of asylum procedures, the Portuguese Immigration Service shall, if necessary, require the opinion of experts on certain specific questions, namely of medical or cultural nature.
- 4 – In the course of fact-finding process, the representative of the United Nations High Commissioner for Refugees or the Portuguese Refugee Council may add to the process any reports or information on the respective country of origin and obtain information on the course of the proceedings.

#### Article 29

##### **Decision**

- 1 – After the fact-finding process, the Portuguese Immigration Service shall formulate a grounded proposal granting or refusing asylum.
- 2 – The applicant shall be notified of the contents of the proposal referred to in the previous paragraph and may submit his or her comments thereon within five days.
- 3 – The representative of the United Nations High Commissioner for Refugees and the Portuguese Refugee Council shall be informed of the above mentioned proposal and may render observations on its contents within five days.
- 4 – After the expiration of the time period referred to in previous paragraphs, the proposal shall be remitted to the national director of the Portuguese Immigration Service, who shall present it, together with the opinions foreseen by the previous paragraph, if there are any, to the Government member responsible for the internal affairs area within 10 days.

- 5 – The Government member responsible for the internal affairs area shall decide within eight days from the date of presentation referred to in the previous paragraph.
- 6 – The Portuguese Immigration Service shall notify the applicant of this decision, with a mention to the right referred to in the following article, and shall report it to the representative of the United Nations High Commissioner for Refugees and to the Portuguese Refugee Council.

#### Article 30

##### **Judicial review**

- 1 – The decision taken in pursuance of the previous article shall be susceptible to judicial review, with suspensive effect before the administrative courts within 15 days.
- 2 – The judicial decision shall be pronounced within a period of 15 days.

#### Article 31

##### **Effects of decision on refusal**

- 1 – In case of decision of refusal of international protection, the applicant shall be allowed to remain in the Portuguese territory for a transitory period, which shall not exceed 30 days.
- 2 – The applicant shall be subjected to the juridical regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory from the closing date prescribed in the above paragraph on.

#### Article 32

##### **Extinction of the procedure**

- 1 – The procedure shall be declared extinct whenever the asylum applicant expressly gives up the request or, due to reasons of his or her exclusive responsibility, the procedure is pendent for a period longer than 90 days.
- 2 – The declaration of extinction shall be due to the authority which, under the terms of the present law, decides on the admissibility of the request or grants right to asylum.
- 3 – Even though the procedure may have been declared extinct in pursuance of the above paragraph, the asylum applicant who voluntarily appears before the authorities shall be entitled to the right of requesting the reopening of the procedure, which in this case shall be resumed at the point where it was interrupted.

## SECTION IV

### **Subsequent application**

#### Article 33

##### **Lodgement of a subsequent application**

1 – The alien or stateless person to whom the right to asylum has been denied, may lodge a subsequent application, without prejudice of the due course of the established deadlines for the respective judicial review, whenever the existence of new elements of proof allow him or her the possibility of benefiting from the right to international protection, or when he or she considers that the motives which have grounded the decision on inadmissibility or refusal of the asylum request have ceased to exist.

2 – The subsequent application shall be addressed to the Portuguese Immigration Service and shall contain every proof document which ground its presentation. The Portuguese Immigration Service may concede the applicant a reasonable time limit for the presentation of new facts, elements of proof or information.

3 – The Portuguese Immigration Service shall inform the representative of United Nations High Commissioner for Refugees and the Portuguese Refugee Council as soon as a subsequent application is lodged.

4 – The Portuguese Immigration Service shall proceed to the preliminary assessment of the referred application within a maximum period of ten days from the date of lodgement or of the presentation of new elements which have been requested to the applicant under the terms of paragraph 2.

5 – When, after the preliminary assessment, there is evidence that the applicant may meet the conditions to benefit from the right to asylum, the proceeding follows the terms foreseen by articles 27 and following. The gathering of evidence may be avoided if the elements of proof that favour the applicant have already been presented in the previous process.

6 – If new elements of proof are not confirmedly presented, the national director of the Portuguese Immigration Service shall pronounce a decision on inadmissibility of the application, and immediately inform the applicant of the result of the preliminary assessment, of the reasons on the basis of the inadmissibility and of the possibilities of judicial review, before the administrative courts, under the general terms, with mere devolutive effect.

7 – When the applicant is present in Portuguese territory, the notification on the decision referred to in the previous paragraph shall also mention that he or she must leave the country within 20 days and shall be subject to the regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory after the expiration of the said time period, except when the applicant

already benefits from a more favourable time period in accordance with the provisions of the present law.

#### Article 34

##### **Extensive application**

The provisions established in sections I, II, III and IV of the present chapter shall be correspondingly applicable to the situations mentioned in article 7.

#### SECTION V

##### **Resettlement of Refugees**

#### Article 35

##### **Request for resettlement**

1 – The requests for the resettlement of refugees under the mandate of the United Nations High Commissioner for Refugees shall be presented to the Government member responsible for the internal affairs area.

2 – The Portuguese Immigration Service shall ensure the necessary proceedings for the course and the decision on applications within a period of ten days.

3 – The Portuguese Refugee Council shall be informed on the lodged applications and may render an opinion upon said applications within five days.

4 – The Government member responsible for the internal affairs area shall decide on the acceptance of the resettlement request within 15 days.

5 – The acceptance of the resettlement request shall grant the persons in question with a status similar to that mentioned in Chapter VII.

#### CHAPTER IV

##### **Special procedure for determining the State responsible for examining the asylum application**

#### Article 36

##### **Designation of the responsible State**

Under the provisions of the international instruments concerning the determination of the State responsible for the examination of an asylum application lodged in a Member State of the European Union, and whenever the need to proceed with such designation emerges, a special procedure shall be organised, in accordance with the provisions of the present chapter.

Article 37

**Asylum application lodged in Portugal**

1 – When there is strong evidence that another Member State of the European Union should in fact take charge or take back an asylum applicant, in accordance with the provisions set in Regulation (EC) no. 343/2003 of 18 February, the Portuguese Immigration Service shall call upon the respective authorities to take charge of the applicant.

2 – Once the requested State accepts such responsibility, the national director of the Portuguese Immigration Service shall pronounce, within five days, the decision of custody transfer, which shall be notified to the applicant and reported to the representative of the United Nations High Commissioner for Refugees and to the Portuguese Refugee Council.

3 – The notification mentioned in the above paragraph shall be delivered to the applicant with a safe-conduct, to be issued by the Portuguese Immigration Service, in accordance with a standard form established by decree of the Government member responsible for the internal affairs area.

4 – The decision taken by the national director of the Portuguese Immigration Service is susceptible to judicial review before the administrative courts within five days, with suspensive effect.

5 – The judicial decision shall be pronounced within a period of five days

6 – In case of a negative answer from the requested State to the petition formulated by the Portuguese Immigration Service, the provisions of chapter III shall apply, as defined in paragraph 1.

Article 38

**Execution of the transfer decision**

The Portuguese Immigration Service shall execute the decision of the applicant's transfer whenever the applicant does not voluntarily abandon the Portuguese territory.

Article 39

**Suspension of the date prescribed for the decision**

The fact-finding proceedings for the designation of the State responsible for the examination of an asylum application shall suspend the time limit prescribed in paragraph 1 of article 20 and paragraph 4 of article 24, until a final decision is reached.

Article 40

**Asylum application lodged in other Member State of the European Union**

- 1 – It shall be incumbent on the national director of the Portuguese Immigration Service to decide on the acceptance of the Portuguese State responsibility with regard to the analysis of an asylum application lodged in other Member States of the European Union.
- 2 – The decision mentioned in the above paragraph shall be pronounced within a maximum of two months from the date of reception of the acceptance request made by the State in whose territory the applicant is present or where the asylum application has been lodged.
- 3 – In cases considered urgent by the State where the application has been lodged, the closing date referred to in the previous paragraph shall be reduced to eight days.

CHAPTER V

**Withdrawal of right to international protection**

Article 41

**Causes of cessation, revocation, suppression or refusal of the right to international protection**

- 1 - The right to asylum shall cease when the alien or stateless person:
  - a)* has voluntarily re-availed him or herself of the protection of the country of his or her nationality;
  - b)* having lost his or her nationality, has voluntarily re-acquired it;
  - c)* has voluntarily acquired a new nationality, and enjoys the protection of the country of his or her nationality;
  - d)* has voluntarily returned to the country which he or she left or outside which he or she has remained owing to fear of persecution;
  - e)* can no longer refuse to avail him or herself of the protection of the country of his or her nationality, as the circumstances under which he or she has been recognized as a refugee have ceased to exist;
  - f)* being a person who has no nationality, he or she is able to return to the country of his or her former habitual residence, as the circumstances under which he or she has been recognized as a refugee have ceased to exist;
  - g)* explicitly renounces to the referred status;
- 2 – The alien or stateless person ceases to be eligible for subsidiary protection when the circumstances which determined the grant of such right have ceased to exist or undergone such significant changes that protection is no longer required.

3 – For the purposes of subparagraphs *e)* and *f)* of paragraphs 1 and 2, and in terms of article 47, cessation can only be declared in case the Portuguese Immigration Service concludes that the change of circumstances in the State of nationality or habitual residence of the applicant is of such a significant and enduring nature that the refugee’s fear of persecution or serious harm can no longer be regarded as well-founded.

4 – The renewal of the right to asylum or subsidiary protection shall be revoked, suppressed or refused when it is ascertained that the alien or stateless person:

- a)* should have been or may be excluded from the right to asylum or subsidiary protection as pursuant to article 9;
- b)* has distorted or omitted facts, namely through the use of forged documents, which were decisive for the grant of asylum or subsidiary protection;
- c)* represents a threat to internal security;
- d)* having been punished by final executory sentence for the practice of felonious common law crime punishable by imprisonment superior to three years, represents a threat to internal security or public order.

5 - The Portuguese Immigration Service shall notify the applicant of the beginning and conclusion of the procedure and the applicant may issue an opinion on this matter within eight days. The Portuguese Immigration Service shall simultaneously inform the United Nations High Commissioner for Refugees and the Portuguese Refugee Council of such procedure and both may render an opinion within the same time limit.

#### Article 42

##### **Effects of the withdrawal of the right to international protection**

1 – The withdrawal of the right to international protection pursuant to paragraph 5 of the previous article shall be a motive for expulsion from the Portuguese territory, unless it results from the situations described under subparagraphs *a)* and *b)* of paragraph 1 in article 9.

2 – The withdrawal of the right to international protection due to the reasons mentioned in paragraphs 1 and 2 of the previous article shall determine the subjection of the beneficiary to the juridical regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory, without prejudice of the provisions of the following paragraph.

3 – When the withdrawal of the right to international protection does not constitute a motive for expulsion from the Portuguese territory, the person concerned may request the granting of a residence permit with exemption of the exhibition of the respective visa, in pursuance of the juridical regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory.



Article 43

**Competence to declare the withdrawal of right to international protection and expulsion**

1 – Without prejudice of the provisions of the following paragraph, it shall be incumbent on the Government member who is responsible for the internal affairs area, under proposal of the national director of the Portuguese Immigration Service, to declare the withdrawal of the right to international protection.

2 – When the withdrawal of the right to international protection constitutes a cause for expulsion, the decision shall be judicial and the provisions of Law 23/2007 of 4 July, concerning the imposition of accessory sentence of expulsion and the autonomous measure for judicial expulsion, shall be applicable with due adaptations.

Article 44

**Judicial review**

1 – The decision pronounced under the terms of paragraph 1 of the previous article shall be susceptible to judicial review, with suspensive effect before the administrative courts within eight days.

Article 45

**Reports**

The United Nations High Commissioner for Refugees and the Portuguese Refugee Council shall always be informed of the situations referred to in article 43 to act according their duties and competences.

Article 46

**Execution of the expulsion order**

When there is a judicial decision of expulsion, a certificate shall be remitted to the Portuguese Immigration Service, which shall execute the expulsion order contained therein and report it to the representative of the United Nations High Commissioner for Refugees and to the Portuguese Refugee Council.

Article 47

**Prohibition of expulsion and repulsion (*non-refoulement*)**

1 - The expulsion of the asylum beneficiary, in pursuance of article 42, cannot result in his or her placement in the territory of a country where his or her freedom is endangered by any of the causes which, in accordance with article 3, may constitute ground for the granting of asylum or which

violate in any other way the prohibition of expulsion and repulsion (principle of *non-refoulement*), in accordance with the international obligations of the Portuguese State.

2 – No one shall be refouled, extradited or expelled to a country where might be subject to torture or to cruel or degrading treatments.

## CHAPTER VI

### Status of the applicant for asylum and subsidiary protection

#### SECTION I

#### General provisions

##### Article 48

#### Effects of asylum and subsidiary protection over extradition

1 – The granting of asylum or subsidiary protection shall hinder the pursuance of any request for extradition of the beneficiary which is grounded on the same facts which justified the granting of international protection.

2 – The final decision on any pending extradition process of the applicant shall remain suspended for as long as the asylum or subsidiary protection application is under appreciation, whether administrative or jurisdictional.

3 – For the purposes of the provisions mentioned in the previous paragraph, the lodgement of the international protection request shall be reported by the Portuguese Immigration Service to the authority where the respective process is running within two workdays.

##### Article 49

#### Rights of the applicants

1 – Without prejudice to the provisions of the following articles, asylum or subsidiary protection applicants shall benefit from the following guarantees:

- a) immediate information or, when application has been lodged in other authority, within five days of application's registry, in a language that the applicant may reasonably be supposed to understand, on the rights and obligations relating to accommodation, in particular on:
  - i) dates and means available for the compliance of the obligation of rendering relevant elements for the application's assessment;
  - ii) procedure;

- iii)* organisations or groups of persons which provide specific legal assistance;
  - iv)* organisations that might be able to help or inform the applicant on the available reception conditions, including medical care;
  - v)* consequences of the non-compliance of obligations and lack of cooperation mentioned in the following article;
- b)* be informed of the decision regarding the application's admissibility and its content, even if by means of a attorney when the applicant is represented by a legal adviser.
  - c)* benefit, whenever necessary, from the services of an interpreter to assist the applicant in the formalization of the application and in the course of the respective procedure.
  - d)* benefit from legal assistance in pursuance of the law.

2 – Without prejudice of the provisions of subparagraph *a)* of the previous paragraph, the Portuguese Immigration Service shall provide the asylum or subsidiary protection applicant with an informative brochure written in a language that the applicant may understand and which may also be provided orally.

3 - The use of an interpreter shall take place for the purposes of subparagraph *b)* of paragraph 1 whenever the applicant does not speak or is not familiar with the Portuguese language, or in the cases specially prescribed under the law of criminal procedure.

4 – The United Nations High Commissioner for Refugees and the Portuguese Refugee Council may provide direct legal advice to the applicants in the course of every procedural stage.

5 – Legal advisers or other legal representatives of the asylum or subsidiary protection applicant shall have access to relevant procedural information, except if its disclosure puts national security, or the safety of information sources or of the person to whom it refers to at risk, or if it jeopardizes the analysis of the application or the foreign affairs of the Portuguese State.

6 – Legal advisers or other legal representatives of the asylum or subsidiary protection applicant shall be entitled to the right of access to areas, such as detention or transit areas, in order to assist the applicant with due counselling. Visits may be restricted in the cases where access restriction is foreseen by law and when it is considered absolutely necessary for the maintenance of security or public order; for the administrative management of the area; or to ensure an effective assessment of the request and only if such restriction does not seriously limit or obstruct the access of the lawyer or other legal representative to the applicant.

7 – Asylum or subsidiary protection applicants may be accompanied and represented by a lawyer or other legal representative during the rendering of statements referred to in article 16, as well as by a representative of United Nations High Commissioner for Refugees or Portuguese Refugee Council, although the absence of a representative does not hinder the compliance of this procedural act.

## Article 50

### **Obligations of the asylum or subsidiary protection applicant**

Asylum or subsidiary protection applicants shall keep the Portuguese Immigration Service informed of their address in Portugal and shall immediately report any change of address to this Service.

## Section II

### **Provisions related to reception conditions**

## Article 51

### **Means of subsistence**

1 – Asylum or subsidiary protection applicants in a situation of socio-economic deprivation and their respective family members shall be entitled to social assistance for housing and food purposes, under the terms of the law in force.

2 – For the purposes of the provisions laid down in the above paragraph, the provision of accommodation shall take appropriate measures, as far as possible and with the applicants' agreement, to maintain family unity concerning the members who are in the Portuguese territory, in particular the measures pursuant to subparagraph *a)* and *b)* of paragraph 1, article 59.

## Article 52

### **Medical and medicinal assistance**

1 – Access to the National Health Service shall be granted to asylum or subsidiary protection applicants and their family members, in terms to be established by joint decree of the Government members responsible for the internal affairs and health areas.

2 – The document confirming the asylum or subsidiary protection application request, in pursuance of article 14, shall suffice to attest the applicant status, for the purposes of the provisions of the above paragraph.

3 – For the purposes of the present article and on public health grounds, sanitary authorities may require medical screening for applicants in order to attest that they do not suffer from any of the diseases defined by the applicable instruments of the World Health Organisation, or from any other contagious infectious or parasitical diseases which are subject to protective measures within the Portuguese territory. Screening results shall be confidential and will not affect the asylum procedure.

4 – The medical screenings and measures referred to in the previous paragraph shall not have a systematic nature.

5 – Particularly vulnerable applicants shall be provided medical assistance or other assistance considered necessary.

#### Article 53

##### **Access to education**

1 – Minor children of asylum or subsidiary protection applicants and asylum or subsidiary protection applicants who are minors shall have access to the education system under similar conditions as Portuguese nationals and the remaining citizens to whom the Portuguese language is not a mother tongue.

2 – The possibility of continuing studies shall not be denied on grounds of the minor having reached majority.

#### Article 54

##### **Right to employment**

1 – Asylum or subsidiary protection applicants to whom a provisional residence permit has already been issued shall be granted access to labour market, in pursuance of general law. Entitlement to the social assistance regime foreseen in article 56 shall cease from the exercise of the first remunerated job on.

2 – Access to labour market shall be interdicted to asylum or subsidiary protection applicants only during the period starting from the date when the request is lodged to the decision on its admissibility, unless the applicant is the holder of a residence permit or other document entitling him or her to permanence in the Portuguese territory and which allows him or her the exercise of a professional activity, either subordinated or not.

3 – The period during which access to labour market is interdicted, in pursuance of the above paragraph, shall not be superior to 20 days from the date when the application is lodged.

4 – Where a judicial review request is lodged against a negative decision pronounced by the Government member responsible for the internal affairs area, the right to access labour market shall be maintained until the applicant is notified of a negative judicial decision.

#### Article 55

##### **Programmes and measures for employment and vocational training**

1 – Asylum or subsidiary protection applicants shall be granted access to programmes and measures of employment and vocational training in terms to be established by the departments which regulate the concerned area, irrespective of whether they have access to the labour market.

2 – Access to vocational training relating to an employment contract shall depend on the possibility of the applicant access to the labour market, in pursuance of paragraph 1.

### SECTION III

#### **Material reception conditions and health care**

##### Article 56

#### **Social assistance**

1 – Asylum or subsidiary protection applicants and their family members who do not possess sufficient means to enable their subsistence shall be granted material reception conditions, as well as health care pursuant to the present section, in order to enable the fulfilment of basic needs in conditions of human dignity.

2 – Particularly vulnerable asylum or subsidiary protection applicants and their respective families, as well as applicants detained in border offices, shall be granted equal adequate material reception conditions, as well as adequate health care.

3 – For the purposes of paragraph 1, an applicant who is deprived of resources of any nature, or whose resources amount to a value inferior to the social assistance allowance fixed under the applicable legislation shall be regarded as not possessing sufficient means.

4 – A total or partial contribution to cover the expenses of material reception conditions and health care may be asked to an applicant if it is proved that he or she has sufficient means

5 – If it is proven that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being granted, the competent authority may ask the applicant for a refund.

##### Article 57

#### **Forms of provision of material reception conditions**

1 – Material reception conditions may take the following forms:

- a)* housing in kind;
- b)* food in kind;
- c)* monthly social assistance cash allowances for food, clothing, hygiene and transport expenses purposes;
- d)* monthly complementary allowance for housing purposes;
- e)* complementary allowance for personal and transport expenses purposes;

2 – Housing and food in kind may take the following forms:

- a)* premises similar to reception centres for asylum or subsidiary protection applicants, whenever the asylum or subsidiary protection application is lodged in border offices;
- b)* reception centres for asylum or subsidiary protection applicants or similar accommodation which guarantees an adequate standard of living;
- c)* private houses, flats, hotels or other premises adapted for the accommodation of applicants.

3 – The following forms of reception may be combined:

- a)* housing and food in kind plus the complementary allowance for personal and transport expenses;
- b)* housing in kind or complementary allowance for housing plus a social assistance cash allowance.

4 – In exceptional circumstances and for a fixed period, other modalities may be set for material reception conditions, which are different from those provided for in the above paragraphs when:

- a)* an initial assessment of the specific needs of the applicant is required;
- b)* material reception conditions, as provided for in paragraph 2, are not available within the geographical area where the applicant is found;
- c)* normally available accommodation capacities are temporarily exhausted;
- d)* the asylum or subsidiary protection seeker is in detention or confined to a border post where premises similar to accommodation centres are not available.

#### Article 58

##### **Allowances amounts**

Cash allowances referred to in subparagraphs *c)* and *d)* of paragraph 1 of the previous article shall be calculated with reference to the social assistance allowance prescribed in the applicable law and shall not exceed the following percentages:

- a)* monthly social assistance cash allowance for food, clothing, hygiene and transport expenses purposes, covering 70% of the total amount;
- b)* monthly complementary allowance for housing purposes, covering 30% of the total amount;
- c)* monthly allowance for personal and transport expenses purposes, covering 30% of the total amount.

Article 59

**Supplementary guarantees in terms of housing**

1 – The authority responsible for the granting of housing in kind shall ensure the applicants, in pursuance of paragraph 2 of article 57:

- a)* protection of their family life;
- b)* ensure, if appropriate, that minor children of applicants or applicants who are minors are accommodated with their parents or with an adult member of the family responsible for them whether by law or custom;
- c)* the possibility of communicating with their relatives or legal advisers, as well as with the representatives of the United Nations High Commissioner for Refugees and the Portuguese Refugee Council;
- d)* take the adequate measures in order to prevent assault within the premises and accommodation centres referred to in paragraph 2 of article 57.

2 – The relocation of asylum or subsidiary protection applicants from one accommodation premise to another shall only be made when it is considered necessary to the continuation of the procedure or to improve housing conditions.

3 – Applicants transferred under the provisions of the above article shall have the possibility of informing their legal advisers of such relocation and of their new address.

4 – Legal advisers or counsellors of the asylum or subsidiary protection applicant, representatives of the United Nations High Commissioner for Refugees or of the Portuguese Refugee Council and other non-governmental organisations working in this domain, and recognised as such by the Portuguese State, shall be entitled to the right of access to reception centres and other accommodation premises, so as to assist asylum or subsidiary protection applicants. Access restrictions can only be established if duly grounded and when considered necessary for the security of reception centres and other premises and for the safety of applicants.

5 – The staff members working in reception centres shall receive appropriate training and shall be bound by the confidentiality principle concerning any information they may obtain in the course of their work.

SECTION IV

**Reduction or withdrawal of reception conditions**

Article 60

**Reduction and withdrawal of reception conditions**



1 – Social assistance ceases with the final decision on the asylum or subsidiary protection application, irrespective of the interposition of the competent judicial recourse.

2 – The withdrawal of assistance, in pursuance of the above paragraph, shall not occur when, once assessed the socio-economic situation of the applicant, the maintenance of such assistance is considered necessary.

3 – The provided reception conditions may be totally or partially withdrawn when an asylum or subsidiary protection seeker:

- a)* abandons the place of residence determined by the competent authority without informing the Portuguese Immigration Service, or without its duly permission;
- b)* abandons the place of residence without informing the authority responsible for accommodation;
- c)* fails to comply with the obligation of appearance;
- d)* fails to comply with requests for information, or to appear for personal interviews when convoked;
- e)* has concealed financial resources and therefore unduly benefited from material reception conditions;

4 – If, after the withdrawal of the reception conditions, the applicant is traced or voluntarily reports to the competent authorities, such authorities shall reach a grounded decision, based on the reasons for the absence, as to restore the granting of some or all of the reception conditions.

5 – Decisions on reduction and withdrawal of reception conditions referred to in paragraph 1 shall be taken individually, objectively and impartially and shall be grounded.

6 – The decisions referred to in the above paragraph shall be grounded on the particular situation of the person concerned, especially with regard to vulnerable persons, taking into account the principle of proportionality.

7 – Reduction or withdrawal of benefits does not interfere with access to emergency medical care.

8 – The decisions referred in paragraph 3 are susceptible to appeal, in pursuance of paragraph 1, of article 63.

## Section V

### **Guarantees of the efficiency of the reception system**

#### Article 61

#### **Competences**

1 – It shall be incumbent on the Ministry of Internal Affairs to grant the asylum or subsidiary protection applicants who are detained at border posts, housing conditions and access to health care,

as well as the provision of the costs inherent to the granting of material reception conditions, until decision on the admissibility of the asylum or subsidiary protection request. These conditions may be ensured by other public or private non-profit organisations, in terms defined under protocol.

2 – It shall be incumbent on the Ministry of Labour and Social Solidarity to support the costs resulting from the granting of material reception conditions to asylum or subsidiary protection applicants whose application has been admitted, until a final decision is reached. These conditions may be provided by the referred Ministry directly or by other public or private non-profit organisations with which the Ministry may establish protocols.

3 – It shall be incumbent on the authorities responsible for the National Health Service to ensure asylum or subsidiary protection applicants and their families access to health care, in pursuance of the applicable law.

4 – The access of minors to the education system shall be guaranteed by the responsible authorities within the Ministry of Education.

5 – Decisions referred to in article 60 shall be incumbent on the authorities responsible for the granting of material reception conditions in pursuance of the present law.

#### Article 62

##### **Staff and resources**

The authorities and other organisations referred to in the above article shall ensure that their staff receives the necessary training with respect to the needs of both female and male applicants.

#### Article 63

##### **Guarantees**

1 – Negative decisions concerning the granting of benefits pursuant to the present Law, or decisions taken under the article 60, which affect asylum or subsidiary protection applicants individually, are entitled to the exercise of administrative and jurisdictional guarantees in pursuance of general law.

2 – In the above mentioned cases, the modalities of access to judicial assistance are ruled by the legislation concerning access to justice.

#### Article 64

##### **Cooperation of non-governmental organisations with the Portuguese State**

1 – Non-governmental organisations may cooperate with the Portuguese State in the accomplishment of the measures prescribed under the present Law, namely through the establishment of cooperation protocols.

2 – The cooperation between non-governmental organisations and the Portuguese State in the accomplishment of the measures applicable to asylum or subsidiary protection applicants may consist in the organisation of information and voluntary work, judicial support, assistance in reception and other forms of social assistance, accomplished through protocols or other means of reciprocal binding.

## CHAPTER VII

### **Refugee and subsidiary protection status**

#### Article 65

##### **Rights and obligations**

Beneficiaries of the refugee status and subsidiary protection are entitled to the rights and must comply with the obligations of aliens living in Portugal, with particular respect for laws and regulations, and provisions regarding the maintenance of public order, without prejudice to the provisions laid down in this law, in the Geneva Convention of 1951 and in the New York Protocol of 1967.

#### Article 66

##### **Information**

Upon notification on the granting of asylum or subsidiary protection status, the Portuguese Immigration Service shall inform the beneficiary of the rights and obligations resulting from such status, in a language that the applicant may understand.

#### Article 67

##### **Residence permits**

1 – Beneficiaries of refugee status shall be granted a residence permit, which shall be valid for an initial period of five years, renewable, unless compelling reasons of national security or public order otherwise require and without prejudice of the provisions mentioned in Chapter V.

2 – Beneficiaries of subsidiary protection status shall be granted a residence permit for humanitarian reasons, which shall be valid for an initial period of two years, renewable after an assessment of the evolution of the situation in the country of origin, unless compelling reasons of national security or public order otherwise require and without prejudice of the provisions mentioned in Chapter V.

3 – The members of the applicant's family mentioned in the following article shall be granted an exceptional residence permit, which validity is similar to that of the asylum or subsidiary protection

beneficiary, to be granted by the Government member responsible for the internal affairs area, with exemption of the requirements prescribed by the regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory.

4 – It is due to the national director of the Portuguese Immigration Service to produce a grounded proposal for the granting or renewal of the residence permits mentioned in the previous paragraphs.

5 – It shall be due to the Government member responsible for the internal affairs area, under proposal of the national director of the Portuguese Immigration Service, to grant, with total fee exemption, the residence permit pursuant to the present article, in the standard form established by decree of the referred Government member.

6 – It shall be incumbent on the Portuguese Immigration Service to issue the documents attesting residence, granted under the terms of the present article.

#### Article 68

##### **Maintaining family unity**

1 – Beneficiaries of the refugee or subsidiary protection status are entitled to family reunification as defined under the regime of entrance, permanence, departure and expulsion of foreign citizens from the Portuguese territory.

2 – The effects of asylum or subsidiary protection shall be declared extensible to the beneficiary's family members referred to in the previous paragraph.

3 – The provisions defined under the above paragraphs do not apply when the family member is excluded from the refugee or subsidiary protection status or loses entitlement to it, pursuant to the present law.

#### Article 69

##### **Travel documents**

1 – The competent Portuguese authorities may issue to beneficiaries of refugee status, by request of the beneficiaries, travel documents in the form set out in the Annex to the Geneva Convention, for the purpose of travel outside the Portuguese territory, unless compelling reasons of national security or public order otherwise require.

2 – The competent Portuguese authorities may issue, by request of the beneficiaries, to beneficiaries of subsidiary protection status who are unable to obtain a national passport, a Portuguese passport for foreigners for the purpose of travel outside the Portuguese territory, unless compelling reasons of national security or public order otherwise require.

3 – The due fee upon the issue of the referred documents shall be established by decree of the Government member responsible for the internal affairs area.

Article 70

**Access to education**

- 1 – All minors granted refugee or subsidiary protection status shall be granted full access to the education system, under the same conditions as nationals.
- 2 – Adults granted refugee or subsidiary protection status shall be granted access to the general education system, further training or training, under the same conditions as nationals.
- 3 – In the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualification, the competent authorities shall ensure equal treatment between beneficiaries of refugee or subsidiary protection status and nationals.

Article 71

**Access to employment**

- 1 – To beneficiaries of refugee and subsidiary protection status shall be ensured access to the labour market, in pursuance of the general law. The application of the social assistance regime prescribed in article 56 shall cease from the exercise of a remunerated activity on.
- 2 – It is equally assured to beneficiaries of refugee and subsidiary protection status the opportunity of engaging in activities such as employment-related education opportunities, vocational training and practical workplace experience, under equivalent conditions as nationals.
- 3 – The law in force in Portugal concerning remuneration and other conditions relating employment shall apply.

Article 72

**Social welfare**

- 1 – The legal provisions regarding the Social Welfare System shall be applied to beneficiaries of refugee and subsidiary protection status.

Article 73

**Health care**

- 1 – Beneficiaries of refugee and subsidiary protection status and respective family members shall have access to the National Health System, under the same conditions as nationals.
- 2 – The Portuguese State shall provide adequate health care to beneficiaries of refugee and subsidiary protection status who are integrated in groups of vulnerable persons, under the same conditions as nationals.

3 – For the purposes of the above paragraph, people with special needs shall be pregnant women, disabled people, persons who have been subjected to torture, rape or other severe forms of physical, psychological or sexual violence, minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.

#### Article 74

##### **Access to housing**

To the beneficiaries of refugee and subsidiary protection status shall be ensured access to housing under equivalent conditions as other third country nationals legally resident in Portugal.

#### Article 75

##### **Freedom of movement within Portuguese territory**

Freedom of movement within its territory is ensured to beneficiaries of refugee and subsidiary protection status, under the same conditions as those provided for foreigners legally resident in Portugal.

#### Article 76

##### **Integration programmes**

In order to facilitate the integration of refugees and beneficiaries of subsidiary protection into the Portuguese society, the competent authorities may make provision for integration programmes.

### CHAPTER VIII

#### **General common provisions for asylum and subsidiary protection status applicants and beneficiaries**

#### Article 77

##### **Provisions relating to particularly vulnerable persons**

1 – The provision of material reception conditions and health care shall take into account the specific situation of vulnerable persons, in pursuance of the following articles.

2 – Upon lodgement of the asylum or subsidiary protection claim, or at any stage of the procedure, the competent authority shall identify the persons whose special needs have to be taken into consideration, as prescribed in the above paragraph.

## Article 78

### **Minors**

1 – The best interests of the minor shall be a primary consideration when implementing the provisions of the present Law.

2 – For the purposes of the previous paragraph, it shall be considered that the best interests of the minor consist of, namely:

- a)* the reunification with his or her parents, idoneous; or, in their absence,
- b)* his or her reunification with adult relatives, idoneous; or, in their absence,
- c)* his or her placement in a foster family, in reception centres with special provisions for minors or in other housing suitable for minors;
- d)* the non-separation of siblings;
- e)* life stability, with changes of residence limited to a minimum.

3 – The competent authorities of Public Administration shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

## Article 79

### **Unaccompanied minors**

1 - Without prejudice to the applicable guardianship measures in pursuance of minor guardianship legislation, minors who are asylum or subsidiary protection applicants or beneficiaries may be represented by an organisation or a non-governmental organisation, or by any other legally prescribed form of representation.

2 - Minors needs shall be taken into consideration through the respective guardian or designated representative and shall be periodically assessed by the competent authorities, taking into account the minor's opinion in accordance with his or her age and maturity level.

3 - For the purposes of the previous paragraphs, the rules mentioned in the previous article shall apply to unaccompanied minors from the moment they are admitted to the Portuguese territory to the moment they are obliged to leave it.

4 - An unaccompanied minor aged 16 years or over may be placed in accommodation centres for adult asylum seekers.

5 - The Portuguese Immigration Service, in articulation with other authorities involved in the procedure and the Portuguese Ministry of Foreign Affairs, and with the purpose of protecting the unaccompanied minor's best interests, shall endeavour all efforts to trace the members of his or her family as soon as possible.

6 - In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

7 - The staff members working with unaccompanied minors shall have had or receive appropriate training concerning minors' needs, and shall be bound by the confidentiality principle in pursuance of Portuguese law concerning any information they may obtain in the course of their work.

#### Article 80

##### **Victims of torture or violence**

Persons who have been subjected to torture, rape or other severe acts of violence shall be granted with adequate special treatment of damages caused by the aforementioned acts, namely by benefiting of special care and counselling provided by the social assistance centre of their residence or organisations with which assistance protocols have been established.

#### Article 81

##### **Voluntary return**

Assistance may be provided to applicants and beneficiaries of asylum and subsidiary protection status who wish to return to their country, namely through programmes of voluntary return.

### CHAPTER IX

#### **Final provisions**

#### Article 82

##### **Notification procedure**

1 – The notifications addressed to the applicant shall be made personally or by means of registered letter with delivery advice, which shall be sent to the last known address.

2 – In case the letter is returned, such fact shall immediately be reported to the representative of United Nations High Commissioner for Refugees and to the Portuguese Refugee Council. The applicant shall be considered as having been notified in case he or she fails to appear before the Portuguese Immigration Service within 20 days from the date of the said return.



Article 83

**Fee exemption and urgency procedure**

The procedures for the granting or withdrawal of the right to asylum or for expulsion shall be exempt of fees and have an urgent character throughout both administrative and judicial stages.

Article 84

**Simplification, dematerialisation and identification**

The provisions of article 212 of Law 23/2007 of 4 July, concerning the simplification, dematerialisation and identification of persons are applicable with due adaptations.

Article 85

**Interpretation and integration**

The provisions of the present law shall be interpreted and integrated in pursuance of the Universal Declaration of Human Rights, the European Convention on Human Rights, the Geneva Convention of 28 July 1951 and the Additional Protocol of 31 January 1967.

Article 86

**Law 67/2003 of 23 August**

The provisions of the present Law shall not prejudice the legal framework prescribed under Law no. 67/2003 of 23 August (transposes to legal internal order Council Directive 2001/55/CE, 20<sup>th</sup> of July).

Article 87

**Revocation norm**

Law 15/1998 of 26 March and Law 20/2006 of 23 June shall be revoked.

Article 88

**Entry into force**

The present Law shall enter into force 60 days following the date of its publication and shall apply to pending asylum or subsidiary protection applications.

Approved on the 8<sup>th</sup> of May of 2008

The President of Republic Assembly, *Jaime Gama*

Promulgated on the 20<sup>th</sup> of June of 2008

Publication

The President of Republic, *Aníbal Cavaco Silva*

The Prime-Minister, *José Sócrates Carvalho Pinto de Sousa*