

## PORTUGAL

### 1 Arrivals

#### 1 Total number of applications for asylum lodged, with monthly breakdown and percentage variation between years

Table 1:

Month	2003	2004	Variation +/- (%)
January	11	8	-27.2
February	5	5	0
March	6	3	-50
April	12	10	-16.6
May	10	11	10
June	11	5	-54.5
July	6	8	33.3
August	4	7	75
Sept.	4	11	175
October	4	4	0
November	8	6	-25
December	7	6	-14.2
<b>Total</b>	<b>88</b>	<b>84</b>	<b>-4.5</b>

Source: Aliens and Borders Service/Portuguese Refugee Council

#### 2 Breakdown according to the country of origin/nationality of applicant, with percentage variation

Table 2:

Country	2003	2004	Variation +/- (%)
Angola	10	4	-60
Colombia	5	7	40
Liberia	5	6	20
Russian Fed.	2	6	200
Cuba	4	5	25

Source: Aliens and Borders Service/Portuguese Refugee Council

#### 3 Persons arriving under family reunification procedure

There were no arrivals in Portugal under this procedure in 2004.

#### 4 Refugees arriving as part of a resettlement programme

Portugal does not operate any resettlement programmes.

#### 5 Unaccompanied minors

No requests from unaccompanied minors.

### 2 Recognition Rates

**6 The statuses accorded at first instance and appeal stages as an absolute number and as a percentage of overall decisions**

Table 3:

Statuses	2003		2004	
	Number	%	Number	%
No status awarded	80	90.9	75	89.2
Convention status	2	2.2	2	2.3
Subsidiary status	6	6.8	7	8.3
Other				
<b>Total</b>	<b>88</b>	<b>100</b>	<b>84</b>	<b>100</b>

Source: Aliens and Borders Service/Portuguese Refugee Council

**Comments**

Statuses are not accorded by the administrative courts during the appeal stage, according to Law 15/98 of 26<sup>th</sup> March (Asylum Act) Only the Ministry of Interior has the competence to grant or refuse asylum or humanitarian protection, under a proposal from the National Commissioner for Refugees.

**7 Refugee recognition rates (1951 Convention: as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages**

Table 4:

Country of origin	2003		2004	
	Number	%	Number	%
Democratic Rep of Congo	1	1.1		
Sao Tome et Principe	1	1.1		
Cuba			1	1,1
Myanmar			1	1,1
<b>Total</b>	<b>2</b>	<b>2.3</b>	<b>2</b>	<b>2.3</b>
<b>(Total Decisions)</b>	<b>(88)</b>		<b>(84)</b>	

Source: Aliens and Borders Service/Portuguese Refugee Council

**Comments**

Total means the total number of refugee statuses recognised in Portugal. Total decisions represent all decisions taken by the authorities (including refugee status recognition, humanitarian protection and rejected asylum cases).

**8 Subsidiary and other status granted (as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages**

Table 5:

	2003		2004	
	Number	%	Number	%
Country of origin				
Colombia	2		1	
Iraq	2			
Democratic Rep of Congo	1		1	
Sierra Leone	1			
FRJ			1	
Pakistan			1	
Sri Lanka			1	
Uzbekistan			2	
<b>Total</b>	<b>6</b>	<b>6.8</b>	<b>7</b>	<b>8.3</b>

Source: Aliens and Borders Service/Portuguese Refugee Council

**3 Returns, Removals, Detention and Dismissed Claims**

**9 Persons returned on safe third country grounds**

No figures available.

**10 Persons returned on safe country of origin grounds**

No figures available.

**11 Number of applications determined inadmissible**

74 (2003: 75).

**12 Number of asylum seekers denied entry to the territory**

See 3.13 and 14.

**13 Number of asylum seekers detained, the maximum length of and grounds for detention**

Asylum seekers are not detained in Portugal.

The only situation akin to detention provided for in national asylum legislation is a special procedure for asylum claims presented at the borders. In such cases, asylum seekers must remain in the “international area of the airport or seaport” while they await a decision on the admissibility of their claim, which is taken by the General Director of the Aliens and Borders Service or, on appeal, by the National Commissioner for Refugees. During their stay at border points, asylum seekers are detained (they cannot enter Portuguese territory) until:

- a positive decision on the admissibility of their claim is taken, which allows them to enter the national territory;
- the deadlines for the referred decision are not respected, which allows them to enter the national territory; or
- a final negative decision on the admissibility of their claim is taken and they have to return to the point where their journey began.

The asylum procedure at border points has shorter deadlines. The General Director of SEF takes the admissibility decision within five working days. An appeal against that decision must be lodged with the National Commissioner for Refugees within 24 (working) hours. A final decision must be taken within 24 (working) hours.

#### **14 Deportations of rejected asylum seekers**

Despite the fact that all rejected asylum seekers are notified by national authorities that they should leave the country within 20 days, Portugal does not practice a systematic policy of deportation of rejected asylum seekers. The only exception occurs where asylum requests are presented at border points, namely at airports. According to a special procedure, when a final negative decision on admissibility of a claim is taken, the asylum seeker has to return to the point where his/her journey began. This is easy to accomplish when an asylum seeker is staying in an international area of the airport.

In 2004, there were a total of 13 asylum claims presented at border points, all at Lisbon International Airport. Of these, six were rejected and the applicants were denied entry to the territory and consequently deported either to their country of origin or to a safe third country.

#### **15 Details of assisted return programmes, and numbers of those returned**

The International Organization for Migration (IOM) is responsible for the “Voluntary Repatriation Programme” in Portugal. When an asylum seeker, a former asylum seeker or a refugee shows willingness to return to his/her country of origin, the Portuguese Refugee Council (CPR) directs him/her to IOM in Lisbon, assuring that the return is voluntary and made in safety and dignity. CPR also informs the asylum seeker that the voluntary repatriation contract stipulates that he/she will not be able to re-enter Schengen territory within the next five years.

Seven asylum seekers decided to return voluntarily to their country of origin in 2004, none of them had permission to remain. These included: 5 nationals of Angola, 1 Russian Federation national and 1 national of Togo. The latter two were both asylum seekers whose applications had been rejected and who had been staying in Portugal for some years and had difficulties integrating (2003:4).

#### **16 Number of asylum seekers sent back to the Member State responsible for examining the asylum application under the Dublin II Regulation.**

Requests Presented by Portugal to other Member States 2004:

Table 6:

<b>Member States</b>	<b>Requests Presented</b>	<b>Decisions</b>		
		<b>Acceptances</b>	<b>Refusals</b>	<b>Transfers</b>
Austria	1	1		
Belgium	1	1		
Finland	1	1		
France	3	1	1	
Germany	2	4		2
Greece	1	1		
Spain	3	3		
The Netherlands	3	3		
<b>Total</b>	<b>15</b>	<b>15</b>	<b>1</b>	<b>2</b>

Requests Presented by other Member States to Portugal 2004:

Table 7:

Member States	Requests Presented	Decisions		
		Acceptances	Refusals	Transfers
Austria	9	4	3	
Belgium	2	5		2
Denmark	2	2		2
Finland	1	1		1
France	14	10	3	2
Germany	10	5	8	2
Greece				
Italy	1		1	
Luxembourg	1	1		
Norway	4	4	2	3
Spain	4	1	3	1
Sweden	6	4	3	2
The Netherlands	3	2	2	2
United Kingdom	3	4	2	
<b>Total</b>	<b>60</b>	<b>43</b>	<b>27</b>	<b>17</b>

#### 4 Specific Refugee Groups

##### 17 Developments regarding refugee groups of particular concern

No developments.

#### 5 Legal and Procedural Developments

##### 18 New legislation passed

No developments.

##### 19 Changes in refugee determination procedure, appeal or deportation procedures

No developments.

##### *Impact of Changes in Administrative Procedure Law on Asylum*

##### *Competence of administrative courts*

According to point 1 of article 24 of the Asylum Law “an appeal against the refusal of the asylum petition can be lodged at the Administrative Supreme Court, with suspensive effect”.

However, the Administrative Supreme Court declared it was not competent to decide these cases.

At the present time, both types of judicial asylum appeals provided for in Asylum Law (appeal of a decision on admissibility taken by the National Commissioner for Refugees and appeal of a rejection of an asylum petition taken by the Ministry of Interior) are directed to the same first instance court, the Administrative and Fiscal Court (Tribunal Administrativo e Fiscal). Suspensive effect only applies in the latter type of appeal.

The current administrative procedure law ignores the “hierarchy” that the asylum law aims to establish for different types of appeal:

The appeal of a decision on admissibility taken by the National Commissioner for Refugees should be directed to a first instance administrative court (number 2, of article 16); and

The appeal of a rejection of an asylum petition taken by the Ministry of Interior should be directed to a second instance court (number 1, of article 24);

In our opinion this “hierarchy” is meant to emphasize the different type of case (non-admissibility decision / rejection of asylum claim) and the different entities involved in the decision making process (National Commissioner for Refugees / Ministry of Interior).

#### *Judicial Appeal Procedure*

The judicial administrative appeal is now named the “special administrative law-suit”.

In the petition the appellant has to submit the name and address of the parties, who might be damaged by a positive decision or who might have an interest in upholding a negative decision (articles 78 and 88 of Administrative Procedure Law). Therefore, in an appeal of a rejected asylum claim, the judge of the first jurisdiction court considered that the State of the country of origin of the asylum seeker should be called upon to act as a “counter-interested party”.

In the opinion of the Portuguese Refugee Council, the possible intervention of the state of origin in the asylum process would be a great violation of a person’s right to seek asylum. It therefore requested the support of the UNHCR Branch Office, who wrote an advisory opinion which proved to be crucial and effective in encouraging the following decision to be reached in case number 1061/04 of the Administrative and Fiscal Court of Sintra:

“... the country of origin cannot be considered a “counter-interested” part in this kind of analysis (asylum). The relation between asylum seeker and Portugal does not involve the country of origin of the asylum seeker. Also, the concept of “counter-interested” party does not exist in the administrative procedure.

... because of the confidentiality of the asylum procedure and in view of the dignity of the asylum seeker (cfr. Article 22, of Law 15/98, of 26<sup>th</sup> of March, which establishes a duty of confidentiality in the asylum procedure) it is not acceptable that the country of origin of the asylum seeker be allowed to consult the appeal process and obtain copies of relevant documents”

#### *Effects of Courts Decisions*

One of the major improvements is that administrative courts can now analyse both the formal aspects and the merits of a case (before only formal aspects could be analysed).

Also, the effect of a court decision is much more profound as the administration must comply with what the court decision determines. In the past, if the administrative court decided on behalf of the previously rejected asylum applicant this only meant that the administration should look at the case again. It is still premature to assess whether the changes in the administrative procedure will have a positive or negative impact on asylum law. However, the Portuguese Refugee Council believes that Portuguese administrative judges have very little knowledge or understanding of asylum principles.

### **20 Important case-law relating to the qualification for refugee status and other forms of protection**

Asylum jurisprudence has been low both in quality and quantity recently. In the period under review, two decisions can be highlighted however:

The first decision (0151/03 – 29-10-2003), in the case of a Sierra Leonian (IC), gave a definition of the term “systematic violation of human rights” (one of the pre-requisites for applying for humanitarian protection): “there is “systematic violation of human rights” when the violation of human rights is related to the security of citizens. Also, the violations should occur frequently in a way that provoke in the generality of the citizens in the country a feeling of serious insecurity”

The second (01142/03 – 16-03-2004) referring to an individual from FRJ IC determined that “the prerequisites of number 1, of article 8 (article on Humanitarian Protection) must be considered proven even if the violation of the rights of the person can not be attributed to a direct action of the authorities but rather to an impossibility of the same authorities to protect their citizens from the actions of others”.

### **21 Developments in the use of the exclusion clauses of the Refugee Convention in the context of**

**the national security debate**

No developments.

**22 Developments regarding readmission and cooperation agreements**

No developments.

**6 The Social Dimension**

**23 Changes in the reception system**

No changes.

The Reception Directive has not yet been transposed into Portuguese legislation. The government is currently preparing a proposal of decree-law.

The reception system in Portugal is related to the asylum procedure. There are two phases of reception. The Portuguese Refugee Council (CPR) to whom asylum applicants are referred by the Aliens and Border Service is responsible for the first phase. During this stage, applicants are usually accommodated at CAB – the Reception Centre of Bobadela.

Applicants are allowed to stay here until the issuance of a provisional residence permit, which can take between one or two months. Exception is made for vulnerable cases (women, one-parent families, sick persons, elderly and unaccompanied minors) who are placed in the care of Santa Casa da Misericórdia (SCM), a public entity that provides support to people in need.

Once the provisional residence permit has been issued, asylum applicants enter the second phase of reception – waiting for refugee or humanitarian protection status to be granted. During this period, they are under the protection of the Instituto de Solidaridade e Segurança Social (ISSS) which pays for accommodation. Asylum applicants are usually sent to boarding houses in Lisbon.

Where an asylum application is considered inadmissible, an appeal to the Administrative and Fiscal Court can be lodged. This appeal has no suspensive effect and applicants find themselves in a situation of “absence of status”, losing the right to receive support from ISSS. If the application is considered admissible but refugee status or humanitarian protection is not granted, an appeal to the Administrative and Fiscal Court takes place but this time with suspensive effect. Applicants are therefore allowed to stay in the country and entitled to a provisional residence permit that allows them to work.

Apart from the designated accommodation providers, non-governmental organisations such as the Salvation Army, AMI and the Jesuit Refugee Service also provide accommodation.

**24 Changes in the social welfare policy relevant to refugees**

No developments.

**25 Changes in policy relating to refugee integration**

No developments.

## **26 Changes in family reunion policy**

No developments.

## **7 Other Policy Developments**

### **27 Developments in resettlement policy**

Portugal does not operate any resettlement programmes.

### **28 Developments in return policy**

No developments.

### **29 Developments in border control measures**

No information available.

### **30 Other developments in refugee policy**

No developments.

## **8 Political Context**

### **31 Government in power during 2004**

2004 was a difficult year for Portugal caused by an ongoing economic crisis as well as an unstable political climate. A right wing coalition comprising of the Social Democratic Party and the Popular Party was in power. However, the nomination of Mr Durão Barroso as President of the EU Commission and his departure to Brussels caused a political crisis in Portugal. A new Prime Minister, Mr Santana Lopes (President of the Social Democratic party) was appointed by the coalition to substitute Mr Durão Barroso but, after only four months in power, Mr Jorge Sampaio, the President of Portugal dissolved both the government and the National Parliament.

New elections were scheduled for 20<sup>th</sup> February 2005 and brought the Socialist Party to power.

### **32 Governmental policy vis-à-vis EU developments**

The government is now transposing the “Reception Directive” into national legislation.

### **33 Asylum in the national political agenda**

During 2004, asylum was once again absent from the national political agenda. On the contrary, an active migration policy continued to be developed. This might be a consequence of the low numbers of asylum applications in Portugal juxtaposed with the large number of immigrants living in the country. This can have a negative impact on asylum seekers who are confused with this group.

Lately, due to the nomination of former socialist Prime Minister, Mr Antonio Guterres, as United Nations High Commissioner for Refugees, the asylum issue has been raised in the media. However, , journalists are typically more interested in the personal aspects of UNHCR than asylum issues.



## **Biography**

Mónica Farinha

### PORTUGUESE REFUGEE COUNCIL (CPR)

The Portuguese Refugee Council is a non-profit NGO with the following mission:

To give social and legal support to asylum seekers and refugees, in all phases of the asylum procedure, from reception through to integration in Portuguese society;

To call attention in Portuguese society to the problems faced by refugees, promoting and defending the right of asylum in Portugal

[WWW.CPR.PT](http://WWW.CPR.PT)