



Resolution 1695 (2009)¹

Final version

Improving the quality and consistency of asylum decisions in the Council of Europe member states

Parliamentary Assembly

1. Acceptance rates for asylum seekers in Europe vary dramatically from one country to another, highlighting important shortcomings in terms of quality of the asylum decisions taken in the Council of Europe member states. As evidence of this, in 2007 acceptance rates varied considerably, between 1% and 39% in countries receiving significant numbers of asylum seekers. The situation was even more dramatic when looking at certain specific groups of asylum seekers. For example, again in 2007, the acceptance rates for Iraqis seeking protection in Europe varied between 0% and 81%.
2. The very low recognition rates in certain countries, or for certain groups of asylum seekers, may be due to difficulties in accessing the asylum process, insufficient procedural safeguards in the asylum proceedings, restrictive and divergent interpretation of eligibility criteria, lack of objective and reliable information on the country of origin, poor evidential assessment, in particular the culture of disbelief in asylum adjudication, political pressure, lack of training of the relevant authorities and their personnel, or a combination of these factors.
3. Asylum decisions are sometimes inconsistent within one and the same country, as well as across the member states of the Council of Europe. Such inconsistency means that similar claims are treated differently. This is an affront to the rule of law and inherently unfair. It is true that different member states receive asylum seekers from different countries, whose need for protection might vary. However, taking this into account, the acceptance rates are often found to diverge even more.
4. There are also significant differences between countries with respect to the number of cases in which refugee status is granted and the number of cases in which applicants are afforded complementary protection including, *inter alia*, protection under the European Convention on Human Rights (ETS No. 5), subsidiary protection and other humanitarian protection.
5. Divergences may be even more dramatic when looking at acceptance rates for specific countries of origin or ethnic groups lodging applications at the same time, depending on the countries in which the application for asylum are lodged. This can be seen in relation to asylum seekers from Chechnya, Iraq, Afghanistan and by Roma from Kosovo. For example, the acceptance rate for protection seekers from Russia (primarily Chechens) has been seen to vary from 0% to almost 80% in countries which have received significant numbers of persons belonging to this group.
6. In some Council of Europe member states, up to 50%, or in some cases even more, of first instance decisions on asylum are overturned on appeal, indicating that first instance decisions are unreliable and of poor quality. An appeal against a decision not only delays final decisions, but increases the cost of the procedure and increases uncertainty for the asylum seeker and members of his or her family. Furthermore,

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 20 November 2009 (see [Doc. 11990](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mr Cilevičs). See also [Recommendation 1889 \(2009\)](#).*



not all states provide for a remedy with automatic suspensive effect (such as appeal or judicial review proceedings which effectively suspend an enforcement measure whose effect is potentially irreversible), as required by the European Convention on Human Rights.

7. All asylum decisions should be guided by fundamental principles and objectives of human rights and the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, rather than by political considerations. Any asylum system needs to deal fairly, humanely and efficiently both with those in need of international protection and with those whose application in such matters has been rejected.

8. It is important to improve the quality and consistency of asylum decisions and tackle the significant discrepancies in acceptance rates, whether these occur within a specific country or between countries. In order to do this, the Parliamentary Assembly calls upon Council of Europe member states to:

8.1. ensure access to the asylum process by:

8.1.1. ensuring that enhanced border controls, whether on land or at sea, do not entail asylum seekers being denied access to the asylum system. Where border controls are put in place, it must be ensured that the protection offered is at the same level as that provided within the country and border monitoring should be put in place, involving national border control authorities, non-governmental organisations (NGOs) and the Office of the United Nations High Commissioner for Refugees (UNHCR);

8.1.2. providing asylum seekers with full information about procedures affecting them in a language they can understand, and allowing UNCHR and legal and NGO advisors access to asylum seekers at the earliest opportunity, in particular to those who are held in detention and in airport and port transit zones;

8.1.3. removing practical barriers to the asylum process, such as deadlines for filing applications which are unreasonably short or applied automatically, restrictive language requirements for filling in application forms and problems with access to competent interpreters;

8.1.4. providing for a personal interview for the purpose of examining each asylum application;

8.1.5. providing for legal assistance and representation, free of charge in accordance with the relevant national rules regarding legal aid, not only at appeal stage, but also from the beginning of the asylum process;

8.2. ensure that eligibility criteria both in relation to asylum and complementary protection are fully compliant with fundamental rights by:

8.2.1. ensuring that gender- and child-specific forms of persecution are taken fully into account and that the assessment of evidence is gender- and child-sensitive;

8.2.2. clarifying and harmonising the approach to persecution by state and non-state actors, and the acceptance of internal flight alternatives (safe areas within the country where persons can flee or return);

8.2.3. ensuring that common minimum standards (but not lowest-common-denominator standards) on the use of various forms of complementary protection are established to reflect clearly those legal obligations under the European Convention on Human Rights and other human rights instruments and obligations applicable when asylum seekers are non-removable;

8.2.4. guaranteeing similar status to recipients of both refugee status and complementary protection;

8.3. improve procedural safeguards, including those at appeal level by:

8.3.1. front-loading resources (concentrating resources as early as possible in the asylum procedure) as a crucial means to achieve greater consistency and quality in asylum decisions and to ensure that decisions are taken promptly without wasting time, energy and money on lengthy appeals;

8.3.2. removing all procedural practices that violate the European Convention on Human Rights and/or lead to erroneous assessments increasing the risk of *refoulement*. These include, *inter alia*, unreasonably short, automatic time limits, non-suspensive appeals and weak standards of appellate review;

- 8.3.3. dealing with asylum applications fairly and efficiently without jeopardising the quality or consistency of the decisions, and using accelerated asylum procedures as an exception and only limited to clearly abusive or manifestly unfounded cases. Accelerated asylum procedures should not be used for persons in a vulnerable situation (including unaccompanied and/or separated minors or children, survivors of torture, victims of sexual violence or human trafficking and persons with mental and/or physical disabilities) or in complex cases;
- 8.3.4. dealing with asylum applications in a way which guarantees personal dignity, the best interest of the child and the unity of the family;
- 8.3.5. refraining from using lists of safe countries of origin and safe third countries, to ensure that each asylum case is examined individually with rigorous scrutiny of the particular situation of each applicant with respect to the country in question. The asylum seeker must be allowed to rebut any presumption of safety that may be raised. Furthermore, states must be satisfied that receiving states will in fact provide effective protection of the individual asylum seeker, in order to comply fully with obligations under the European Convention on Human Rights;
- 8.3.6. ensuring that reasoned decisions on facts and law are given on all international protection decisions;
- 8.4. improve the quality of information and evidence used, and its assessment, by:
 - 8.4.1. ensuring fair assessment of the individual's testimony and credibility, giving, where necessary, the benefit of the doubt to the applicant;
 - 8.4.2. preparing, as appropriate, regular and updated country of origin information and guidance notes for decision makers at all levels, including judges, and publishing key case law in order to contribute to the consistency and quality of decisions;
- 8.5. provide adequate training and support for those involved in the asylum process and provide ongoing monitoring of such a process by:
 - 8.5.1. ensuring that training is provided to all those involved in the asylum process, including judges, on international refugee law and human rights standards. Training on cross-cultural communication skills and gender and age sensitivity should also be provided, together with training on interviewing children. Support and counselling should also be provided to deal with problems which those working in the field of asylum often face (such as burnout including fatigue, diminished interest, feeling overwhelmed, and the culture of disbelief);
 - 8.5.2. ensuring that asylum claims are thoroughly and individually reviewed by more than one qualified decision maker, with adequate resources, including time, at their disposal;
 - 8.5.3. implementing a regular audit of the asylum process, in consultation and in co-operation with the UNHCR where appropriate, taking into account the good practice established, including programmes such as the Quality Initiative in the United Kingdom;
 - 8.5.4. supporting the International Association of Refugee Law Judges in its work on training judges, holding conferences and bringing together case law precedents from across Europe so as to build up an accessible database of case law.
9. The Assembly invites the European Union to:
 - 9.1. take into account the recommendations made in this resolution in implementing its Common European Asylum System and ensure that consistency is not achieved to the detriment of procedural safeguards and that minimum standards do not also become maximum standards;
 - 9.2. revise, as a matter of urgency, the Dublin II Regulation and the "safe country" mechanism, as they are premised on a false assumption of equal standards of protection across Europe;
 - 9.3. give priority – in the setting up of a European asylum support office – to the issue of raising the quality and consistency of asylum decisions in Europe;
 - 9.4. promote responsibility-sharing among European Union member states to relieve the burden on those states that are struggling to handle large-scale arrivals of asylum seekers, and to provide those states with capacity-building assistance to cope with future asylum challenges;
 - 9.5. prioritise in its revisions of the Procedures Directive (2005/85/CE) and Qualification Directive (2004/83/CE) the removal of provisions which are in conflict with the European Convention on Human Rights and other international instruments.

10. The Assembly invites the Council of Europe's Commissioner for Human Rights to continue addressing the issue of the quality and consistency of asylum decisions in his work with individual member states and to use his network of national human rights institutions to develop a thematic report on the issue for the benefit of all member states.