

Law 20/2006, of 23 June

Approves provisions to complement the legal framework on asylum and refugees, fully transposing into Portuguese internal law Directive 2003/9/EC, of the Council, of 27 January, laying down minimum standards for the reception of asylum seekers in Member States.

Under the terms of Article 161 c) of the Constitution, the Assembly of the Republic hereby decrees the following:

CHAPTER I **Purpose and definitions**

Article 1 **Purpose and scope**

1 - This law approves provisions complementing the legal framework on asylum and refugees, established by Law 15/98, of 26 March, fully transposing into Portuguese internal law Directive 2003/9/EC, of the Council, of 27 January, laying down minimum standards for the reception of asylum seekers in Member States.

2 - This law shall not apply to the cases covered by Law 67/2003, of 23 August, in relation to the rules on granting of temporary protection in the event of a mass influx of refugees from third countries.

Article 2 **Definitions**

For the purposes of this law:

- a) "Geneva Convention" shall mean the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;
- b) "application for asylum" shall mean the application made by a third-country national or a stateless person which can be understood as a request for international protection from the Portuguese authorities, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum unless a third-country national or a stateless person explicitly requests another kind of protection that can be applied for separately;
- c) "applicant" or "asylum seeker" shall mean a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;
- d) "family members" shall mean, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in Portuguese territory in relation to the application for asylum:
 - i) the spouse of the asylum seeker or his or her unmarried partner in a proven stable relationship of more than two years' standing;
 - ii) the minor children of the couple or of one of the spouses or partners, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the relevant legislation;
- e) "refugee" shall mean a person who fulfils the requirements of Article 1(A) of the Geneva Convention;
- f) "refugee status" shall mean the status granted by the relevant Portuguese authorities to a national of a third country or stateless person who is a refugee and is permitted as such to remain in Portuguese territory;

- g) "subsidiary protection status" shall mean recognition by the relevant Portuguese authorities of a national of a third country or stateless person as a person eligible for the granting of a residence permit on humanitarian grounds, under the terms of the legal provisions on asylum;
- h) "procedures" and "appeals" shall mean the procedures and appeals established in Portuguese law;
- i) "unaccompanied minors" shall mean persons below the age of eighteen who arrive in Portuguese territory unaccompanied by an adult responsible for them by law, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered Portuguese territory;
- j) "reception conditions" shall mean the full set of measures adopted to benefit asylum seekers under this law;
- l) "material reception conditions" shall mean the reception conditions that include housing, food, clothing and transport expenses, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;
- m) "retention" shall mean measure not constituting detention whereby the asylum seeker is deprived of his or her freedom of movement;
- n) "particularly vulnerable persons" shall mean persons with special needs, namely minors, unaccompanied minors, the disabled, aged, pregnant women, member of single-parent families with minor children and persons who have undergone acts of torture, rape or other serious forms of psychological, physical or sexual violence;
- (l) "accommodation centre" shall mean any place used for collective housing of asylum seekers.

CHAPTER II

General provisions on reception conditions

Article 3 Information

1 - The Aliens and Frontiers Service (*Serviço de Estrangeiros e Fronteiras*) shall, immediately or, when the application has been made through another body, within five days of the application being registered, inform the asylum seeker of his/her rights and duties relating to reception conditions, of the subsequent procedure, and of organizations or groups of persons who provide specific legal assistance and organizations which can support them or provide information in relation to the available reception conditions, including medical care.

2 - The Aliens and Frontiers Service shall provide asylum seekers with an information leaflet in a language which he/she understands or, when it proves necessary, the same information may be provided orally.

Article 4 Documentation

The document proving that an asylum application has been lodged and testifying that the holder is authorized to remain in Portuguese territory while his/her application is pending shall be issued within three days of registration.

Article 5 Residence and freedom of movement

For the purposes of the provisions of Article 11 (5) of Law 15/98, of 26 March, asylum seekers shall:

- a) keep the Aliens and Frontiers Service informed of their residence in Portugal, giving immediate notice of any change of address;
- b) notify the organization responsible for accommodation of any change of address.

Article 6

Family unity

For the purposes of Article 54 of Law 15/98, of 26 March, when granting accommodation, appropriate measures shall be taken, with the agreement of the asylum seekers, to keep families present in Portuguese territory together, namely the measures provided for in Article 14 (1) a) and b) of this law.

Article 7

Medical screening

Within the framework established by Article 53 of Law 15/98, of 26 March, the health authorities may require, for reasons of public health, that asylum seekers undergo a medical examination, the findings of which shall be confidential and shall not affect the asylum proceedings.

Article 8

Schooling and education of minors

1 - The minor children of asylum seekers and minor asylum seekers shall have access to the education system under the same conditions as Portuguese citizens, under the terms of Article 57 of Law 15/98, of 26 March, as long as their situation, and that of their parents, as regards their recognised status, is unchanged.

2 - Access to the education system shall be assured within three months of the date of application for asylum by the minor or his/her parents.

3 - When access to the education system, under the terms of paragraph 1, is not possible due to the specific situation of the minor, the relevant ministerial department shall take the measures necessary to adapt the system, providing other forms of education.

4 - Students shall not be denied the possibility of continuing their secondary education on the grounds that they have come of age.

Article 9

Right to work

1 - Asylum seekers who have been granted a provisional residence permit are assured access to the employment market, under the terms of Article 55 of Law 15/98, of 26 March, and the general law.

2 - Access to the employment market is only prohibited for asylum seekers during the period between submission of their application and the decision on admissibility of the application, unless the asylum seeker holds a residence permit or other document qualifying him/her to remain in Portuguese territory which allows him/her to work as an employee or self-employed person.

3 - The period during which access to the employment market is prohibited, as referred to in the preceding paragraph, shall be no greater than 20 days from the date of submission of the asylum application.

4 - In the case of appeals against a negative decision by the minister responsible for internal administration, the right of access to the employment market shall be maintained until the applicant is notified of a negative judicial decision on his/her appeal.

Article 10

Employment and vocational training programmes and measures

1 - Asylum seekers shall have access to employment and vocational training measures on terms to be established by the departments responsible for the area in question, irrespective of whether they have access to the employment market.

2 - Access to vocational training related to an employment contract shall depend on whether the asylum seeker has access to the employment market under the terms of the preceding article.

CHAPTER III

Material conditions of reception and health care

Article 11

General provisions

1 - Asylum seekers and their respective family members, who lack sufficient means for subsistence, shall be assured the material conditions of reception, together with the health care set out in this chapter, with a view to assuring that their basic needs are met in conditions of human dignity.

2 - Particularly vulnerable asylum seekers and family members, together with asylum seekers at border posts, shall also be assured appropriate material conditions of reception, together with appropriate health care.

3 - For the purposes of paragraph 1, asylum seekers shall be deemed to lack sufficient resources when they lack resources of any kind or when such resources are less than the value of the welfare support allowance calculated under the terms of the relevant legislation.

4 - If it is proven that an asylum seeker possesses sufficient resources, he may be required to contribute all or part of the expenses deriving from the material conditions of reception and health care.

5 - If it is proven that an asylum seeker possesses sufficient resources pay the cost of the material conditions of reception and health care at the time when these basic needs are provided for, the relevant authority may require reimbursement of these costs.

6 - For the purposes of the preceding paragraph, the provisions of Article 16 (3) to (6) shall apply.

7 - Collaboration with the State by non-governmental organizations in carrying out the measures relating to asylum seekers, provided for in Article 50 (2) of Law 15/98, of 26 March, may take the form of organizing information and voluntary work, legal support, support in reception and other forms of welfare support, through protocols or other mutually binding forms.

Article 12

Forms of provision

1 - The material conditions of reception may take the following forms:

- a) Housing in kind;
- b) Food in kind;
- c) Financial welfare allowance, paid monthly, for food, clothing, hygiene and transport;
- d) Supplementary allowance for housing, paid monthly;
- e) Supplementary allowance for personal and transport expenses.

2 - Housing and food in kind may be provided in one of the following forms:

- a) In facilities equivalent to reception centres for asylum seekers, in cases where the asylum application is made at the border post;
- b) In an asylum seekers' hostels or equivalent establishment offering adequate living conditions;
- c) In private houses, apartments, hotels or other facilities suited to receiving asylum seekers.

3 - The following combinations of reception provision are possible:

- a) Housing and food in kind with supplementary allowance for personal and transport expenses;
- b) Housing in kind or supplementary allowance for housing with financial welfare support allowance.

4 - On an exceptional basis and for a given period, material conditions of reception different from those provided for in the preceding paragraphs may be established whenever:

- a) It is necessary to conduct an initial assessment of the asylum seekers' specific needs;
- b) The material conditions of reception provided for in paragraph 2 are not available in the geographical area in which the asylum seeker is present;
- c) The available reception capacity is temporarily used to the full;
- d) The asylum seekers are subject to retention at a border post where facilities equivalent to reception centres are not available.

Article 13

Value of allowances

The cash benefits referred to in paragraph 1 c) and d) of the previous article shall be calculated with reference to the welfare support allowance provided for in the relevant legislation, the following percentages not being exceeded:

- a) Welfare support allowance, paid monthly, for food, clothing, hygiene and transport expenses, corresponding to 70% of the total;
- b) Supplementary housing allowance, paid monthly, corresponding to 30% of the total;
- c) Monthly allowance for personal and transport expenses, corresponding to 30% of the total.

Article 14

Supplementary guarantees with regard to housing

1 - The organization responsible for providing housing in kind, in the forms provided for in Article 12 (2), shall:

- a) Make arrangements to protect the family life of asylum seekers;
- b) Arrange, where necessary, for the minor children of asylum seekers or minor asylum seekers to be accommodated with their parents or an adult member of their family responsible for them by law;
- c) Assure that asylum seekers are able to communicate with their family and legal representatives, and also with the representatives of the United Nations High Commission for Refugees (UNHCR) and the Portuguese Council for Refugees (*Conselho Português para os Refugiados* - CPR);
- d) Take appropriate measures to prevent assaults within the facilities and reception centres referred to in Article 12 (2).

2 - Asylum seekers shall only be transferred from one accommodation facility to another when this is necessary for their application procedure to advance or to move them to better accommodation.

3 - Asylum seekers transferred under the terms of the preceding paragraph shall be assured the possibility of informing their legal representatives of the move and of their new address.

4 - The legal and other advisers of asylum seekers, representatives of UNHCR, CPR and other non-governmental organizations which work in this area and are recognized as such by the State shall be assured access to the reception centres and other accommodation facilities in order to assist the asylum seekers, and access shall only be restricted on due grounds and when the security of the centres and facilities, and of the asylum seekers themselves, is at issue.

5 - The workers at reception centres shall be provided with appropriate training, and shall be subject to the duty of confidentiality with regard to any information of which they may learn in the course of their work.

Article 15 Health care

1 - Asylum seekers and their family members are assured access to the national health system, under the terms and conditions of Article 53 of Law 15/98, of 26 March, and the respective complementary legislation.

2 - Asylum seekers with special needs shall be provided with medical or other care as may be necessary.

CHAPTER IV Reduction or withdrawal of reception conditions

Article 16 Reduction or withdrawal of reception conditions

1 - Welfare support shall be withdrawn under the terms of Article 59 of Law 15/98, of 26 March, and those of the following paragraphs.

2 - Reception conditions may be wholly or partially withdrawn if, without justification, the asylum seeker:

- a) abandons the place of residence established by the relevant authority without informing the Aliens and Frontiers Service or without the required authorization;
- b) abandons his/her place of residence without informing the body responsible for housing;
- c) fails to comply with the duty of presenting him/herself;
- d) fails to provide the information required or fails to attend individual interviews, when duly called;
- e) has concealed his/her financial resources and has therefore unduly benefited from the material conditions of reception.

3 - If, subsequently, the asylum seeker is found of voluntarily presents himself to the relevant authorities, a decision shall be taken, with due grounds, on the basis of the reasons for his/her disappearance, with regard to restoring enjoyment of some or all the conditions of reception.

4 - Decisions relating to the reduction or withdrawals of reception conditions in the situations referred to in paragraph 1 shall be taken on an individual, objective and impartial basis, and due grounds shall be given.

5 - The decisions referred to in the preceding paragraph shall be based solely on the particular situation of the individual in question, especially with regard to persons covered by Article 17, taking the principle of proportionality into account.

6 - Reduction or withdrawal of reception conditions shall not affect access to urgent health care.

7 - Appeals may be brought under the terms of Article 21 against the decisions referred to in paragraph 3.

CHAPTER V

Provisions relating to persons with special needs

Article 17

General principle

1 - Under the terms of Articles 56 and 58 of Law 15/98, of 26 March, the situation of particularly vulnerable persons shall be taken into account when providing material conditions of reception and health care.

2 - On submission of an asylum application, or at any phase of the asylum procedure, the relevant authority shall identify, by means of an individual situation assessment, the persons whose special needs have to be taken into account, as required by the preceding paragraph.

Article 18

Minors

1 - In applying this law, and the legal rules provided for in Law 15/98, of 26 March, the higher interests of the child shall be taken into account.

2 - The relevant public authorities shall assure that minors who have been the victims of any kind of abuse, negligence, exploitation, torture, cruel, inhumane and degrading treatment or of armed conflicts, have access to rehabilitation services, and to appropriate psychological care, providing qualified support where necessary.

Article 19

Unaccompanied minors

1 - For the purposes of Article 56 of Law 15/98, of 26 March, minor asylum seekers may be represented by a non-governmental body or organization, which shall effectively provide for the minors' care and welfare, without prejudice to the protection measures applicable under the legislation on the guardianship of minors.

2 - The authorities responsible for representing minors shall regularly assess their situation.

3 - Unaccompanied minors who submit asylum applications shall be housed, as from when they are permitted to enter Portuguese territory until such time as they have to leave:

- a) with adult family members;
- b) in a foster family;
- c) in reception centres with special facilities for minors;
- d) in other accommodation with appropriate facilities for minors including, where necessary, institutions which take in persons with special needs.

4 - Unaccompanied minors aged 16 years or over may be placed in reception centres for adult asylum seekers.

5 - Siblings shall be kept together, in view of the higher interests of the minor and, in particular, their age and maturity, and any changes to the place of residence of unaccompanied minors shall be kept to a minimum.

6 - In order to protect the higher interests of unaccompanied minors, the Aliens and Frontiers Service, in a coordinated manner with the other organizations involved in the procedure and the Ministry of Foreign Affairs, shall make every effort to find the members of their families.

7 - In cases where the life or physical safety of a minor or his close relatives is at risk, namely if they remain in their country of origin, information relating to such persons shall be gathered, processed and disclosed on the basis of confidentiality, so as to avoid undermining their safety.

8 - Persons working with unaccompanied minors shall have or receive training appropriate to the needs of the minors and shall be subject to the duty of confidentiality with regard to the information to which they have access in the course of their work.

Article 20

Victims of torture or violence

Persons who have been the victims of acts of torture, rape or other serious acts of violence shall be assured special treatment appropriate to the damage caused by such acts.

CHAPTER VI

Guarantees

Article 21

Guarantees

1 - Negative decisions on the granting of benefits hereunder, or decisions taken under the terms of Article 16, which affect asylum seekers individually, are subject to exercise of administrative and jurisdictional guarantees under the general terms of the law.

2 - Forms of access to legal assistance, in the cases referred to above, shall be governed by the legislation on access to justice.

CHAPTER VII

Actions to improve the efficiency of the reception system

Article 22

Powers

1 - The Ministry of Internal Administration shall assure asylum seekers who are retained at border posts accommodation and access to health care, as well as meeting the charges involved in providing material conditions of reception, until a decision is taken as to the admissibility of the asylum application; such conditions may be assured by other public or private non-profit organizations, on terms defined in a protocol.

2 - The Ministry of Employment and Social Solidarity shall bears the charges resulting from the provision of material conditions of reception to asylum seekers whose application is admitted, until a final decision is reached on the same, which conditions may be provided directly by the said ministry or else by other public or private non-profit organizations with which it may enter into a protocol.

3 - The bodies responsible for the National Health Service shall assure access by asylum seekers and their family members to health care, under the terms of the relevant legislation.

4 - Access by minors to the education systems shall be assured by the responsible bodies attached to the Ministry of Education.

5 - The decisions referred to in Article 16 shall lie within the powers of the bodies responsible for providing the material conditions of reception provided for in this law.

Article 23

Personnel and resources

The authorities and other organizations referred to in Article 22 shall provide their staff with basic training appropriate to the needs of asylum seekers of both sexes.

CHAPTER VIII

Final provision

Article 24

Closure of the National Commissariat for Refugees

- 1 - The National Commissariat for refugees is hereby closed.
- 2 - Article 34 of Law 15/98, of 26 March, and Decree-Law 242/98, of 7 August are hereby repealed.
- 3 - On completion of the finding of facts, proposals for the granting or denial of asylum, the award or renewal of residence permits on humanitarian grounds and declarations on the forfeiture of the right of asylum shall be drawn up by the Aliens and Frontiers Service, which shall forward them to the minister responsible for internal administration.
- 4 - Proceedings pending at the Commissariat shall be transferred to the Aliens and Frontiers Service, which shall process and forward them to the minister responsible for internal administration, for a final decision.

Approved on 20 April 2006.

The President of the Assembly of the Republic, Jaime Gama.

Promulgated on 1 June 2006.

Publish.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 2 June 2006.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.