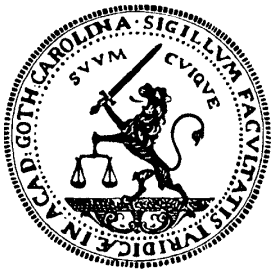

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By

Susana Assis Martins

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Refugee Law in Portugal: an overview

Supervisor

Göran Melander

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Contents

Preface

< Since long distant times, Portugal has been a country of emigration. Being it because of geographical, economic or political reasons, the fact is that millions of Portuguese nationals ended up living outside the country. From Africa to America, these people have been received in the “four corners” of the world.

During the last decades, however, this situation has started to change. Rather than a country of emigration, Portugal should nowadays be defined as country of migrations. This phenomenon can find its roots in the Portuguese political history.

On the 25 of April, 1974, a group of junior officers of the Armed Forces Movement (MFA), overthrew the government of Marcelo Caetano, bringing to an end the Estado Novo created by António de Oliveira Salazar in 1930. From an authoritarian regime, Portugal started a transition to democracy.

The first significant influx of immigration occurred in this period. The independency of the former colonies in Africa (Angola, Guinea-Bissau and Mozambique), determined the return of more than half million of Portuguese to their homeland. From that moment and on the number of foreigners settling in the country increased significantly. In the beginning of the nineties, a considerable number of families coming mostly from Romania searched for asylum in the Portuguese territory.

Even if Portugal is not traditionally a country of asylum for those who are forced to leave their countries of origin (for other than economic reasons), and search for protection abroad, there is a moral duty to receive them. In particular, Portugal has special obligations regarding Portuguese - speaking countries. If these are countries where Portuguese nationals have been received, if these were former colonies from which Portugal extracted power and richness, it is now time to look after these people and provide them protection when they search for help.

On the other hand, exploring the natural link to these countries (a common language), Portugal can contribute to fight against racism and xenophobia

and to the implementation of a relevant policy of cooperation for development.

Apparently in contradiction with this scenario, Portugal is one of the fifteen countries integrating a European Union which, at the same time that creates an area without internal borders to the citizens of its Member States, tries to restrict the access of third country nationals to its external borders, being a good example of that the imposition of entry visas to non European citizens.

The fact that half of the Portuguese borders are also part of the external borders of the European Union brings her important responsibilities in this field.

If until some years ago asylum and immigration policies remained matters to be dealt by the States (even if already considered “common interest issues), with the Treaty of Amsterdam a totally new scenario has been created. Member – States have agreed to transfer part of their sovereignty in this field to the European Union and will have to comply with new legally binding instruments, which have already or are likely to be adopted in a near future.

The answer that Portugal will give to these new challenges will have to be in accordance with the European rules, but shall not forget her historical past.

Abbreviations

CPR	Constitution of the Portuguese Republic
ECRE	European Council on Refugees and Exiles
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
MAI	Ministro da Administraçao Interna – Ministry of Interior
NGO	Non Governmental Organisation
PRC	Portuguese Refugee Council
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees>

I - Introduction

The present work will give an overview of the Portuguese asylum law and policy.

Since the right to asylum has a particular content in the Portuguese Constitution, different from the one of the 1951 Refugee Convention, the following chapter will deal with its constitutional approach.

A third chapter will focus on the ratification of the 1951 Geneva Convention and the 1967 Optional Protocol and the reservations made by the Portuguese Government to the former.

A third chapter will contain an analysis of the Law 15/98 of 26 March: the third Asylum Act adopted by the Portuguese Government[1]. The first Asylum Act was adopted on the 1st August 1980[2]. This law, amended in 1983, guaranteed the right to asylum in quite broad terms. In fact, similarly to the constitutional regime, in addition to the persons who were meeting the conditions established by the 1951 Refugee Convention, asylum was granted to those persecuted "in consequence of their activities on behalf of democracy, social or national liberation, peace among peoples or liberty or human rights". Furthermore, Article 2 of law 38/80 added a right to asylum for humanitarian reasons.

In 1986 Portugal entered to the European Community and since then started to work together with other European countries in the exploration of "common approaches" to the issues of asylum and immigration. The first main results of the EC harmonisation process were the signing on 15 June 1990 of the Dublin Convention on determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities and of the Schengen Agreement on 19 June 1990[3].

[1] Diário da República, No. 72, 26 March 1998, page 1328; Cf. Annex I.
[2] Published in *Diário da República*, I Série, N. 176, of 1 August 1980.
[3] Portugal ratified the Dublin Convention on the 13 February 1993 and joined the Schengen group in 1991.

In 1992, the conclusion of the Treaty of the European Union laid down the new legal basis for asylum matters. The adoption of the London Resolutions on accelerated procedures for manifestly unfounded applications for asylum and on an harmonised approach to questions concerning host third countries and the conclusion on countries where there is generally no serious risk of persecution, finally provided the additional formal reason for amendments in the national legislation. By this time, Portugal adopted a second Asylum Act: Law 70/93 of 29 of September. The new law, among other aspects, provided for an accelerated procedure applicable to manifestly unfounded asylum applications, having also introduced the concepts of host third country and safe country (of origin). In terms of statistics, since the implementation of the Asylum Law 70/93, the number of asylum seekers decreased from 2020 persons in 1993 to 259 in 1996.

Due to the necessity to incorporate the obligations assumed with the ratification of the Dublin Convention in the national legislation and in face of the deficiencies of Law 70/93, in 1998, Law 15/98, of 26 of March, established “a new legal framework in matters regarding asylum and refugees”. This will be the object of our concern in Chapter 4. The study will focus on the main characteristics of the law, such as, the refugee definition, exclusion clauses, the loss of the right of asylum and procedural rules.

Last but not least, Chapter 5 will rely on the UNHCR`s presence in Portugal, as well as its relationship with the Portuguese Government.

The final words of this chapter will be dedicated to statistical information, regarding the number of asylum applications presented in Portugal since 1998, the main nationalities of the applicants and the average number of cases in which the refugee status was granted.>

I I – The Right to Asylum in Constitutional Law

The current chapter will deal with both the constitutional approach and regime of the right to asylum in Portugal.

Together with Germany, France, Italy and Spain, Portugal is one of the five European countries giving a "constitutional dignity" to the right of asylum[4]. In face of the absence of jurisprudence regarding the topic, an overview of two of the main sources of the Portuguese Constitution namely, the French Constitution of 1946 and the German Constitution of 1949, must be given. The choice of these Constitutional Laws is justified by their similarity with the Portuguese Constitution regarding the topic under discussion: only the political asylum was consecrated, the right of asylum is faced as an autonomous right (not absorbed by the 1951 Geneva Convention), and as subjective right of the individual, rather than a "power" of the State[5].

Before relying on the foreign constitutional law and since asylum – seekers are necessarily among the category of "foreigners" within a given country, some attention must be given to the definition and treatment established by the Portuguese Constitution regarding this group of persons.

2.1 Relevant constitutional provisions regarding foreigners and stateless persons

A "foreigner" is defined in the Portuguese law by exclusion. That is to say, that a foreigner is, in general terms, someone who is not a Portuguese citizen (the definition of "Portuguese citizen" can be found in Article 4 of the Portuguese Constitution, which states that *"Portuguese citizens are all the ones considered as such by law or international conventions")*. This may occur because the person in question has a different nationality

[4] For a comparative study of the right of asylum in the five countries, see, F. Moderne, *"Le Droit Constitutionnel D`Asile Dans Les États De L`Union Européenne"*, Ed. Economica, 1997.

[5] In what concerns the German Constitution see also, Reinhard M., *"The criteria for determining refugee status in the Federal Republic of Germany"*, in IJRL, 1992, Vol.4, No. 2, page 151.

(foreigner, *stricto sensu*), or due to the fact that he/she does not have any nationality (stateless person).

As far as the constitutional status of foreigners is concerned, it is consecrated in article 15 paragraph 1: *"Foreigners and stateless persons that find themselves or reside in Portugal benefit from the rights and are subject to the duties of a Portuguese citizen"*. There are, however, some exceptions to this rule, namely, *"the political rights, the exercise of public functions that do not have a predominantly technical character and the rights and duties reserved by the Constitution and by the law exclusively for Portuguese citizens"* (Article 15, paragraph 2 C.P.R.). To these exceptions, three "sub – exceptions" can be found, applicable, each of them under conditions of reciprocity, to citizens of Portuguese – speaking countries (who can be attributed *"rights not conferred to foreigners"*); foreigners residing in Portugal (who can enjoy active and passive electoral capacity in the elections of office holders in municipal organs); and citizens of the Member – States of the European Union residing in Portugal (who have the right to elect and be elected as members of the European Parliament) – Article 15, paragraphs 3, 4 and 5.

The general principle adopted by the Portuguese Constitution regarding foreigners (*lato sensu*), is the one of national treatment or equality – they shall be treated as Portuguese nationals.

2.2 Right to Asylum in the Portuguese Constitution – Evolution and sources

Although the concept of asylum has, since long distant times, been present in the Portuguese society, and even if Portugal acceded to the 1951 Geneva Convention on the Status of Refugee and to the 1967 New York Protocol pretty early (respectively in 1960 and 1975), it only achieved a consecration in the Portuguese "Fundamental Law" with the present Constitution, adopted on the 2nd of April 1976.

In its original text, the Portuguese Constitution assured the right to asylum in article 22 only to ***"aliens or stateless persons who are persecuted in consequence of their activities on behalf of democracy, social or national***

liberation, peace between peoples or liberty or human rights of individuals". By that time, the right to asylum was included in the chapter dedicated by the Constitution to the "fundamental rights". These, despite the adoption of a different *nomenclature,* are the human rights.

In 1982 new developments took place. With the first revision of the Constitution, the right to asylum was moved from article 22 to article 33 and included in Chapter 1 of Title II, which concerns the ***"personal rights, freedoms and guarantees".*** More than a simple change of position, this first revision brought relevant substantial modifications to the right to asylum.

In fact, from now and on, not only **the persecuted**, but also ***"those under a serious threat of persecution"***, for the reasons already mentioned in the original text, enjoyed the right to asylum.

On the other hand, a new paragraph 6 added that, ***"the status of political refugees shall be established by law"***.

The subsequent revisions of the Constitution, although most of them dealing with article 33 (in what concerns deportation and extradition), did not make any kind of modifications in what concerns the contents of the right to asylum.

In its present version (a result of the 2001 revision), the Portuguese Constitution consecrates the right to asylum in Article 33, paragraphs 8 and 9.

From what has been said above, it can be concluded that the right to asylum is given by the Portuguese constitutional law a very broad meaning, with almost no limits:

1 It is granted not only to aliens, but also to stateless persons;
2 Not only when there is persecution, but also a serious threat of persecution; and, moreover,
3 It intends to protect not only the ones persecuted (or under a serious threat of persecution), in consequence of their activities on behalf of democracy, but also social or national liberation, peace between peoples, liberty or, even wider, rights of human persons.

Such a, at least apparently, so liberal understanding of the right to asylum cannot be found even in the constitutional laws which inspired the

Portuguese Constitution, namely the French Constitution of 1946 and the German Constitution of 1949.

The Preamble of the 1946 French Constitution (taken over in the current Constitution of the Fifth Republic adopted in 1958), expresses that *"The French people solemnly proclaims its attachment to Human Rights and the principles of national sovereignty as they have been defined in the Declaration of 1789"*. Among these human rights, paragraph 4 of the Preamble provides that *"Everyone persecuted because of his actions on behalf of liberty has the right of asylum in the territories of the Republic"*.

Although nowadays this provision is considered to be legally binding, for a long time its role has remained unspecified. The main reason for this ambiguity was the fact that the right to asylum was included in the Preamble of the Constitution and not in its text, which was interpreted as a sign of weakness.

On the other hand, the jurisprudence did not contribute to clarify the constitutional meaning of the right to asylum, bringing contradictory arguments into discussion. In fact, at the same time that it was affirming that the right to asylum was a subjective right, constitutionally protected, the Constitutional Council was giving it a secondary importance, mentioning that it should be concretised by the law and international conventions in order to be enforceable.

Developments in the case law had important repercussions in the interpretation of the right to asylum. In Decision 93-325 DC of 15 August 1993, the Preamble of the Constitution was considered to create legally binding obligations and no longer regarded as simple collection programmatic norms. Being it true to the Preamble, this interpretation is also applicable to the right to asylum and brings us to the conclusion that this right has constitutional value and that paragraph 4 of the Preamble of the French Constitution is legally binding.

The meaning of the expression "persecution by reasons of actions on behalf of liberty", which clearly inspired the Portuguese Constitution, has so far not been explained. The exigency of an "action", or fight for liberty seems to suggest that a political opinion (such as it is mentioned in the German

Constitution) is not enough to create a right to asylum in the sense of the French Constitution.

It can be concluded that the French asylum norm provides for the right to have an asylum request examined, and, for this purpose, allowing the asylum seeker both to enter in the territory and stay ("séjour"), during the duration of the procedure.

As far as German constitutional law is concerned, in its original text, the right to asylum has been consecrated in article 16, paragraph 2 of the Constitution, which states that, *"(…) persons persecuted for political reasons enjoy the right of asylum"*.

One of the characteristics of article 16, paragraph 2 is that it contains an open formulation of "political persecution". The case law shows that this formulation has been interpreted by the German courts, as concerning, in principle, only persecution by State actors.

Moreover, recognition of the right to asylum under this provision implies that the persecution has a certain degree of intensity and particularity. Thus, it does not contemplate general human rights violations, which occur routinely in a particular country. The same applies to the right to asylum such as it is established in the Portuguese Constitution.

Differently from the Portuguese constitutional law, however, in Germany, only the persecuted, and not the ones under the threat of being persecuted have the right to seek asylum.

To sum up, it can be concluded that France, Germany and Portugal are, considering the European countries which consecrate the right to asylum in their Constitutions, among the ones that have implemented it as a subjective human right, providing the persons seeking asylum with a "legally enforceable claim against the sovereignty of the State", and binding at the same time, the legislative, executive and judicial powers[6].

[6] On the German's Constitutional Law, see Grahl Madsen, *The Status of Refugees in International Law*, Vol. II, page 113.

2.3 Political Asylum: the constitutional approach

Since there is not any jurisprudence of the Constitutional Court regarding the substance of the right to asylum, its content has to be found in other sources of interpretation.

As it has been said above, Article 16, paragraph 2, of the Constitution states that the fundamental principles internally consecrated by constitutional or legal via ***"must be interpreted (...) in harmony with the Universal Declaration of Human Rights"***.

In this context, a mention to Article 14 UDHR[7] must be made. The right to asylum, such as it is consecrated in the Universal Declaration, does not give the individual refugee the right to obtain asylum.

Despite the initial proposal to include in the wording of article 14 the right "to be granted asylum", some States disagreed with that expression and the final version refers to the "right to enjoy asylum". In fact, "there was no intention to assume even a moral obligation to grant asylum (…). According to the article as adopted there is a right to "seek asylum", without any assurance that the seeking will be successful"[8]. The granting of asylum was thus kept "as an unilateral act by the protecting State and as a prerogative of State sovereignty"[9].

Even if this was not the original intention of the drafters of the UDHR, the fact that many States included this right as a fundamental right in their constitutional texts, can bring us to the conclusion that in a number of countries, the traditional right of asylum, the right of a State to grant asylum to individuals in its territory, has developed toward the right to be granted asylum. Portuguese law is a good example of this statement, once it included the right to asylum among the fundamental rights, the most basic rights, enjoying the strongest regime of protection within the Constitution.

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[7] *"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations"*, Article 14 of UDHR.

[8] Lauterpacht, *International Law*, p, 421.

[9] M. Kjaerum, in *The Universal Declaration of Human Rights, A Common Standard of Achievement, 1999, p.283.*

Inserted in the European tradition, the right to **political asylum** was the only one to deserve protection by Portuguese Constitution. As in some other countries, having gone through a dictatorship, once a democratic regime was established in Portugal, it was considered that those fighting for particular values deserved a special protection. Among these values, democracy, social and national liberty, peace, freedom and human rights were the selected ones.

It must be stressed that, although the right to asylum consecrated in the Constitution, generally speaking, can be considered to be based, on political reasons, the constitutional approach is different from the one of the 1951 Geneva Convention. Whereas the latter focuses on the subjective element of "fear" of persecution, the Portuguese Constitution exclusively uses an objective approach. The attention shall be on the persecution in itself, rather than on the "fear" element.

With the expression "persecution", the constitutional legislator meant primarily State persecution. However, also when there is negligence of State actors, "allowing", or at least not reacting to persecutions made by private agents the constitutional right to asylum can be recognized.

The fact that, in order enjoy the right of asylum (such as it is previewed in the Portuguese Constitution), an individual must be persecuted (or under a serious threat of being persecuted), in consequence of his/her **activity** on behalf of the values mentioned in article 33, paragraph 8, is another proof of the importance given to the objective approach.

Similarly to the French Constitution, that adopted the expression "action", the exigency of "activities" in the Portuguese Constitution suggests that more than a mere political opinion is required.

After enunciating the conditions for the recognition of the right to asylum, paragraph 9, of Article 33 states that "the status of political refugees must be established by law".

Once Law 15/98 of 26 of March included in article 1, paragraph 1, the same wording of the Article 33 paragraph 8 of the Constitution, additional elements concerning the interpretation of this article will be provided when

commenting the jurisprudence of the Administrative Supreme Court regarding this provision.

2.4 Constitutional regime of the right to asylum

Since it is positioned in Title II, Chapter I of the Constitution, the regime applicable to the right to asylum is not only the one of article 16 (fundamental rights), but also the exceptional regime of article 18, concerning, in particular, rights, freedoms and guarantees.

Article 16, paragraph 1, contains a general clause of openness regarding human rights (***"The fundamental rights consecrated in the Constitution do not exclude any other fundamental rights provided for in the laws or resulting from applicable rules of international law"***), and paragraph 2 adds that the very fundamental principles internally consecrated by constitutional or legal via ***"must be interpreted (...) in harmony with the Universal Declaration of Human Rights".*** From this provision it can be concluded that, even if the Constitution only protects the "political asylum", the law can (and, in fact, does), extend the grounds for the grant of asylum.

The Constitution only establishes the minimum standards, which have to be observed – once the conditions established in Article 33 paragraph 8 of the Constitution are met, the right to asylum cannot be refused[10].

On the other hand, Article 18 states that, ***"the constitutional provisions relating to rights, freedoms and guarantees are directly applicable,"*** binding public and private entities. It also establishes that legislative restrictions to this category of fundamental rights are only allowed in the cases expressly mentioned by the Constitution, and only with the aim to protect other rights and interests constitutionally protected (Article 18, paragraph 2). In the specific case of the right to asylum, the Constitution does not establish any possibility for restrictions.

At this stage, it is important to mention Article 3, paragraph 2 of the Asylum Law 15/98, of March 26, which determines that asylum can be refused in

[10] V. J.J. Gomes Canotilho & Vital Moreira, *CRP Anotada*, 3 ed., Coimbra, 1993, page 211.

the case of "danger or well founded threat to the internal or external safety, or to public order".

This provision has been considered by some authors as a violation of the Constitution, in what concerns the ***"aliens or stateless persons who are persecuted in consequence of their activities on behalf of democracy, social or national liberation, peace between peoples or liberty or human rights of individuals",*** once it is restricting a right to which no restrictions are allowed by the Constitution[11].

In what respects internal security, the Constitution expressly establishes (article 272, paragraph 3) that instead of justifying restrictions to rights, it must be assured with the respect of rights, freedoms and guarantees.

It is not internal security that shall establish the limits of fundamental rights, but rather the latter, which constitute a limit to the former. In this particular case, the fact that the right to asylum can be denied to someone by reasons not connected to his/her behaviour or personality, when the conditions established by article 33, paragraph 8, are fulfilled, has to be considered a violation of the Constitution.

III - Portugal and the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol

3.1 Ratification of the Geneva Convention and 1967 Protocol

As it has already been mentioned above, Portugal approved for adhesion[12] the 1951 Geneva Convention on the Status of Refugees, on the 1 October 1960, with the decree number 43 201[13]. The instrument of adhesion was

[11] V. Moreira, *"O Direito de Asilo entre a Constituicão e a lei"*, in *O Asilo em Portugal.*

[12] Although the Geneva Convention, in its article 39, paragraph 3, mentions, "accession" rather than "adhesion" these terms are considered to be synonymous. See P. Malanczuk in *Akehurst's Modern Introduction to International Law, Seventh Edition,* page 131 and on.

[13] Published in *Diário do Governo, I Série, numero 229, of 1 October 1960.*

deposited with the Secretary General of the United Nations on the 22 December 1960 and, in accordance with article 43, paragraph 2, of the Geneva Convention, it entered into force nineteen days after the deposit, on the 22 March 1961[14]. Article 2 of this decree, stated that "in accordance with the terms of article 1, section B (1) of the Convention, the words 'events occurring before 1 January 1951' in article 1, section A, shall be understood to mean 'events occurring in Europe before January 1, 1951'.Thus, when depositing the instrument of adhesion, Portugal made a declaration with this content and applied the temporal and geographical limitations.

In Article 3 of the decree 43 201 two important reservations were made to the Geneva Convention. The first of them (paragraph a) of article 3), concerned Brazilian nationals: *"due to the special nature of the relationship between Portugal and Brazil, the treatment conferred to Brazilian citizens shall in no case be considered for the purpose of interpretation of any clause stipulating the granting to refugees of the most favoured treatment accorded to nationals of foreign countries"*.

By the time of the Portuguese accession to the Convention, the former Portuguese colonies in Africa and Asia were still not independent hence, no particular mention was made to these countries with which later close relations were established.

According to the Convention, the treatment offered to a refugee in the State of refuge can fall under three different categories, depending on the matter of concern. In matters relating to elementary education, a refugee must receive the same treatment as the one offered to nationals (Article 22 of the Convention). Regarding matters involving naturalization, the Contracting States are required to accord to the refugee a more favourable treatment than the one accorded to aliens in general in the same circumstances.

Finally, other provisions of the Convention require that a refugee should be treated as favourable as possible and in any circumstance, not less

[14] Cf. United Nations Treaty Series, Volume 383, page 314.

favourable than aliens generally in the same circumstances[15]. This last category of provisions could bring important consequences for countries; such as it is the case of Portugal, which have sign treaties with provisions establishing obligations of special treatment to nationals of particular countries.

The fact that the Convention uses a quite strong language ("the Contracting States shall…"), in the provisions inserted in this category (Articles 7, 13, 15, 17, 18, 19 and 21), also brought some doubts as to whether or not reservations could be admissible. The doubts were disseminated with the use of the expression "aliens generally", which has been interpreted in the sense of implying permission for exceptions.

Another relevant question connected with the admissibility of reservations to the Convention justified by these type bilateral agreements is the one of discrimination. Article 3 of the Convention states that *"The Contracting States shall apply the provisions of the Convention to refugees without discrimination as to (…) the country of origin"*.

Since nationals coming from Portuguese speaking countries have some rights not provided to aliens coming from other countries, there can occur discriminations based on the country of origin. Taking the example of the acquisition of Portuguese citizenship, once there are no specific provisions regarding refugees on this topic, the regime applicable to them is the one established, for foreigners in general, in the Nationality Act No. 37/81 of 3 October 1981, modified in 1994. According to this diploma, Portuguese citizenship is granted, among other conditions, to aliens who have reside in Portugal or in a territory under Portuguese administration, with a valid residence permit, for more than six or ten years, depending on whether the applicant is a citizen of a Portuguese speaking country or a citizen of any other country. Thus, in face of a Brazilian and a Colombian, both with a refugee status recognized by the Portuguese authorities, the first can acquire the Portuguese nationality after six years of residence in the country, whereas the Colombian will need ten years to achieve the same goal.

[15] Cf. Samuel K.N. Blay and B. Martin Tsamenyi, *"Reservations and Declarations Under the 1951 Convention and the 1967Protocol Relating to the Status of Refugees"*, in IJRL,

In this context, mentioned must be made to Article 34 of the Geneva Convention stipulates that, *"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings (…)"*. Even if this article is written in the sense of a recommendation, it contains an obligation to facilitate the naturalization of refugees (in which the time required for the acquisition of nationality can be included). Moreover, "the term *naturalization* covers also other forms of acquisition of nationality"[16].

Taking in consideration both Articles 3 and 34 of the Convention, the different treatment accorded to nationals of Portuguese speaking countries and to foreigners coming from other countries could be considered to be a violation of the first.

However, reading together both the provisions of articles 3 and 34 (as article 3 seems to impose), this conclusion does not appear to be correct. Even if article 34 contains an obligation for the Contracting States to facilitate the process of naturalization of refugees, the decision to attribute the nationality of the host State to a refugee must rest within its sovereignty. Moreover, the reasoning for this positive discriminatory treatment has its explanation not only in the Portuguese history but also in practical reasons. It is understandable that people coming from countries which were once part of Portugal and still have Portuguese as their official language may not be considered as common aliens. Their integration in the Portuguese society is, *a priori*, easier than the one of *a* person who comes from a different country and does not speak the same language. In a word, different situations must also be treated differently. This does not mean that the time of residence required by the Portuguese law for a refugee (and foreigners in general), to acquire the Portuguese nationality is the adequate one. In fact, an effort should be made in order to reduce it and bring it to the levels established by other European countries.

1990, Vol. 2, n. 4, page 527-559.

[16] Cf. P. Weis, *The Refugee Convention, 1951*, 1995, page 352.

The second reservation made by Portugal to the 1951 Geneva Convention, established exemption from reciprocity. In these situations, it was stated, "constitutional principles should be respected"[17].

As it has been seen in chapter two, there are some situations in which the Portuguese Constitution establishes a special regime applicable to certain aliens (those coming from Portuguese – speaking countries, foreigners and citizens of the Member –States of the European Union), under conditions of reciprocity. Applying this regime to refugees coming from these countries without respecting the reciprocity exigency, would violate the Constitution.

Despite these considerations, in 1976 new developments occurred. In a notification and declaration received on 13 July by the Secretary General, Portugal extended her obligations under the Convention declaring that it *"will be applied without any geographical limitation"* and therefore adopting alternative (b) of section B (1) of article 1[18]. In the same instrument, Portugal withdrew the original reservations made at the time of accession and substituted them by the following text: *"in all the cases in which the Convention confers upon refugees the most favoured person status granted to nationals of a foreign country, this clause will not be interpreted in such a way to mean the status granted by Portugal to the nationals of Brazil"* [19].

Regrettably, the reservation concerning the provisions of the Geneva Convention, establishing exemption from reciprocity, was then eliminated, opening the possibility for a violation of the Constitution to occur.

As far as the 1967 New York Optional Protocol is concerned, it was approved for adhesion on the 1 April 1975 by the decree 207/75[20]. The deposited instrument of the Portuguese adhesion to the 1967 Protocol contains both a declaration and a reservation. In paragraph 1, Portugal declared that would apply the Protocol without any geographical limitation.

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[17] "Quanto às disposicões da Convencão que se referem a dispensa de reciprocidade, ficam ressalvados os princípios constitucionais relativos à matéria".

[18] Cf. United Nations Treaty Series, Volume 1015, page 347.

[19] "Em todos os casos em que a Convenção confere aos refugiados o tratamento mais favorável do que o concedido aos nacionais de um país estrangeiro, esta cláusula nao será interpretada de maneira a compreender o regime concedido aos nacionais do Brasil, país com que Portugal mantém relacões de carácter especial".

[20] Published in *Diário da República*, 17 April 1975.

In paragraph 2, the reservation already made to the Convention was extended in order to include not only the nationals of Brazil, but also *"the nationals of other countries with whom Portugal may establish commonwealth type relations"*.

IV - Law 15/98: "New framework in matters regarding asylum and refugees"

In 1998 Portugal passed a new Law that softened its approach to asylum, replacing the 1993 law, criticized as overly restrictive.

In terms of procedural rules, the main effect of the new law has been to introduce a two step procedure into the asylum process: a first phase during which the person seeking protection has the right to have his/her application of admissibility determined and a second one during which it is decided whether or not to grant asylum. A special regime was established in order to appreciate requests made at the Frontier Offices and the Dublin Convention on Determining the State Responsible for Examining Applications for Asylum in one of the Member States of the European Union (hereinafter, the Dublin Convention), was also incorporated in article 28 of the law with the creation of a "special proceeding" to deal with these situations.

As far as substantial issues are concerned, it is worth to mention the change of the provision concerning the right to family reunion[21]. Differently from the previous law, which had limited it to the possibility that asylum *may be* extended to the minor or disabled children and spouses, the new law established a binding obligation for the competent authorities to "extend the effects of asylum to the spouse and to the minor, adopted or disabled children, whenever the applicant so requests".

The present chapter will give an overview of the principal characteristics of the Portuguese current Asylum Law.

4.1 Who is a refugee?

In its article 1, paragraphs 1 and 2, Law 15/98 establishes who shall be the subjects of the right to asylum. Paragraph 1 consecrates the right to asylum in similar terms as the ones contained in the Constitution: aliens and stateless persons persecuted or under a serious threat of persecution by reason of the activities exercised in favour of democracy, social and national liberty, peace among peoples, freedom and human rights, must be recognized the right of asylum.

A relevant distinction must be retained: differently from the Constitution, the Asylum Law requires that the activities above enunciated are exercised either in the State of nationality or habitual residence of the alien or stateless person seeking for asylum. This leads us to the conclusion that if persons falling under the conditions stated in the first paragraph of article 1 enjoy the protection assured by both the Portuguese Constitution and Law 15/98, persons fulfilling the conditions mentioned in the Constitution might not be meeting the criteria for the applicability of the latter.

Which status shall then apply to political refugees falling under Article 33, paragraph 8 of the Constitution, when the activities are not exercised in their country of nationality or habitual residence?

Since the Constitution states that law shall determine their status and since the only law establishing the refugee status in Portugal is Law 15/98, an analogical interpretation of its regime shall be made in order to fill this gap.

As it has been affirmed in chapter two, the first relevant exigencies to take into account in this paragraph are the ones of the existence of **persecution** or a **serious threat of persecution**. Differently from paragraph 2, the fear element must not be considered in this context. This difference of treatment is easily understandable since, as the Administrative Supreme Court has stated, the right of asylum guaranteed in the first paragraph of article 1 is exclusively "the political asylum for noble reasons" and represents an extension of the obligations assumed by Portugal under the Geneva Convention. Moreover, the "special" regime applied to persons falling under

[21] Article 4 of Law 15/98

the provision of article 1, paragraph 1, is a result of the evolution taken place in Europe regarding political asylum. Since early times, political asylum was developed in Europe as a hope of protection for "revolutionary refugees", people who fought against dictatorial regimes, or for freedom. These are the persons who fall under the scope of application of article 1, paragraph 1. At the same time, the conditions for the application of this paragraph are more rigid than the ones determined by paragraph 2: a "freedom fighter" must demonstrate that he/she was effectively persecuted or is under a serious threat of persecution as a **direct consequence of the activities performed,** by themselves, on behalf of the above mentioned values[22].

Paragraph 2 of article 1 guarantees the right of asylum to aliens or stateless persons who are unable or unwilling to return to the State of their nationality or habitual residence due to a well founded fear of being persecuted by reasons of their race, religion, political opinions or membership of a particular social group. With this paragraph, Portugal transfers to her domestic legislation the obligations assumed with the signature of the 1951 Geneva Convention.

A few comments must be made in order to understand the way these provisions have been interpreted by the Portuguese courts.

First, as far as persecution is concerned, in principle, it is considered to imply persecution in the all territory of the State of nationality. However, Portuguese authorities have not applied the concept of internal flight alternative *per se* as a ground for refusing refugee status to asylum applicants. The concept is sometimes applied to support e negative decision, and the fact that an asylum seeker tried to find a safe area within the territory before leaving his country of origin can also be considered as an indication of the well founded fear of persecution.

Regarding the agent of persecution, it is generally the State (persecution carried out by State agents outside their own territory has also been taken in

[22] Administrative Supreme Court, 2a Subseccão do CA, Acórdão de 20 de Maio de 1997, available in *http://www.dgsi.pt/jsta.nsf.*

consideration when evaluating the fear of persecution[23]). In this field, the Portuguese authorities defend an "accountability position": only actions for which the State can be held accountable can amount to persecution. Actions committed by a third party (which is not a *de facto* authority), where the State is unable to offer protection, or there is no State, cannot be considered persecution.

The question of persecution by non-State actors was appreciated by the Administrative Supreme Court in a case involving an Angolan who alleged persecution by his colleagues of work for the reason of being a Jehovah s witness. The Court considered that "exclusion exercised by colleagues at work does not originate from the authorities and is not sufficiently serious in character" to be taken into account[24].

Still in the field of "persecution", the Court has appreciated whether discrimination based on ethnic reasons could amount to persecution. The Administrative Supreme Court stated that "(discrimination) must be actual and achieve an intensity and extension which permits to qualify it as a violation of the essential substance of human dignity"[25]. This position seems to be in conformity with the one expressed by the UNHCR in the Handbook on Procedures and Criteria for Determining Refugee Status: *"it is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned"*[26]

When determining whether or not there is a well founded fear of persecution, the Administrative Supreme Court gives relevance to the objective element: "fear of persecution must be understood objectively and not according to the subjective criteria of the asylum-seeker"[27]. The fact that the asylum – seeker evoques fear of persecution is not, by itself, enough. It is necessary that, objectively, for a normal person in the same

[23] Cf. Carlos Pena Galiano, in *Who is a Refugee? A Comparative Case Law Study,* 1997, page 550.
[24] Administrative Supreme Court, 1 Secção, Acórdão, 8 October 1987.
[25] Administrative Supreme Court, 2 Subsecção, Acórdão 27 October 1998, available in *http://www.dgsi.pt/jsta.nsf.*
[26] Cf. *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status,* paragraphs 54 and 55.
[27] Administrative Supreme Court, 1 Secção, Acórdão 12 December 1985.

circumstances, the fear can be considered to be "reasonable and acceptable"[28].

Despite the priority given to objective elements, the personal circumstances of the asylum-seeker remain important.

Finally, it is important to say that the burden of proof, in principle, relies on the asylum seeker. He/she is required to state the facts on which the application for asylum is based and also to indicate the elements of proof deemed necessary. "It is not sufficient for the alien to state (...) that he fears being persecuted", "it is necessary to allege and prove real facts that lead to the reasonableness of such fear, making return impossible, or justifying the wish not to return to the country of origin"[29]. Portuguese Administration will then have to gather the necessary elements to confirm or deny the asylum – seeker allegations.

It is also worth to mention that even if paragraph 1 is more rigid than paragraph 2, an alien who applies for asylum in Portugal applies automatically under both the provisions, as there is only one procedure. Thus, when the conditions imposed by the former are not fulfilled, an analysis of the possibility of application of the latter must be made. This uniform treatment shows confusion in Portuguese law between asylum and refuge. These expressions, though, represent different realities. If one can say that, due to its international character, the refugee status, once recognized, can be opposed *"erga omnes"*, the same is not applicable to asylum, which, giving priority to the relation between the asylee and the State, assumes a "national dimension", representing a compromise through which a State is obliged to grant asylum once the conditions established by law are fulfilled[30].

[28] Administrative Supreme Court, 1 Subsecção, Acórdão, 21 March 1996, available in *http://www.dgsi.pt/jsta.nsf.*

[29] Administrative Supreme Court, 1 Secção, 16 June 1983 and 14 February 1985.

[30] The Institut de Droit International defined "asylum" at its Bath session as "*the protection accorded by a State – in its territory or in some other place subject to certain of its organs – to an individual who comes to seek it"*.

Moreover, if regarding the refugee status there is some kind of agreement among States as far as its content is concerned, the same is not true for the right to asylum[31].

Also in Article 2 of Law 15/98, the Portuguese legislator shows a misunderstanding of the meaning of these expressions. Dealing with the effects of the granting of asylum, it is mentioned that, *"the grant of asylum pursuant to (article 1) shall endow the beneficiary with the status of refugee, making him or her subject to the provisions of this law"*. The grant of asylum does not determine, by itself, the recognition of the refugee status[32]. On the opposite, it is the fact that a person has been recognised the refugee status that makes him/her a candidate to the right of asylum.

The prosecutor in a case involving the loss of the right of asylum by a Mozambiquean who had lived in Portugal for seven years has highlighted the existence of a difference between these two concepts. The reasoning presented (with which the Appeal Court agreed), for the maintenance of the refugee status after the loss of the right of asylum was based on the different dimension of both concepts[33]. The difference between the right of asylum and the refugee status was considered to be a reason for the possibility of maintenance of the latter even after the loss of asylum[34].

4.2 "De facto" refugees

The fact that the 1951 Convention appeared to be inadequate to deal with the problem of the so-called "extra – Convention" refugees, determined the creation of a new category of refugees in Europe: the *"de facto"* refugees. This general term applies to those persons who may not be granted Convention status but who are still in need of protection.

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[31] For more distinctions between "asylee" and "refuge", Cf. J.H. Fischel de Andrade, *RegionalPolicyApproaches and Harmonization: a Latin American Perspective,* in International Journal of Refugee Law, Vol. 10, Number 3, page 399.

[32] As Atle Grahl – Madsen has affirmed, *"a person enjoying asylum may be referred to as an ´asylee`. He* ***may or may not be*** *a refugee",* in Encyclopedia of Public International Law, Vol. I, North – Holland, 1992, page 283.

[33] António Bernardo Colaco, *Direito de asilo e estatuto de refugiado: distincão entre os institutos,* in *Revista do Ministério Público, Lisboa, a. 17n.68 (October – December 1996), page 133 – 138.*

[34] Tribunal da Relação de Lisboa, Proc. n. 582/95, 5 Secção, Acordão 22 October 1996.

The treatment afforded by the European countries to these persons has varied during the last decades, since the character of refugee movements has also change.

In the 1970s, the large majority of refugees arrived in an orderly manner, inserted in the quota programmes adopted for particular regions of origin. As a result, rather than a narrow application of the refugee definition, humanitarian considerations determined the granting of Convention status, based on the assumption that members of a determined group feared persecution. During the 1980s, however, asylum seekers started to arrive in Europe in a quite "anarchic" way, escaping from civil war, natural disasters and economic decline. The application of the Convention to these situations became complicated[35]. The last drop happened, in the 1990s, when the refugee flow emerging from the Balkan crisis brought the evidence that European asylum infrastructures were not prepared to cope with situations of mass influxes of refugees.

To face this new context, arrangements based on the concept of temporary protection and burden sharing were gradually adopted and consecrated in the Member- States legislation. Portugal was not an exception.

4.2.1 Residence permit for humanitarian reasons

According to article 8 of the Asylum Law, aliens or stateless persons who do not meet the conditions prescribed in article 1, but are not allowed or are unable to return to the state of their nationality or habitual residence "for reasons of serious insecurity emerging from armed conflicts or from the repeated outrage of human rights that occurs thereon", can be granted a residence permit for humanitarian reasons.

The resident permit is granted, for a maximum of five years, by the Minister of Interior upon proposal of the National Commissioner for Refugees[36] and may be renewed depending on the situation in the country of origin.

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[35] Cf. Johan Cels, *European Responses to* de facto *refugees*, in *Refugees and International Relations*, Oxford, 1989, page 187.

[36] The National Commissioner for Refugees is the President of the Office of the National Commissioner for Refugees, an administrative instance created within the Ministry of Interior and composed by magistrates. Cf. Article 34 Law 15/98.

At this stage, it is important to focus on the evolution of the Portuguese asylum law regarding the grant of protection based on humanitarian reasons. Law 38/80 of 1 August stated, in its article 2, that asylum **could be** granted to aliens or stateless persons who did not want to return to their countries of origin for reasons of insecurity emerging from armed conflicts or repeated violations of human rights. From the text of this article, it could be concluded that people falling under its scope of application would receive the same treatment as the ones eligible for Convention status: all would be entitled to the grant of asylum. The only difference between both situations was that in the case of "asylum for humanitarian reasons", the administrative authorities had a discretionary power in deciding whether or not the person in question could be granted asylum.

Law 70/93 of 29 September, and the current Asylum Law changed this view and determined that, in spite of a right to asylum, the granting of a residence permit for humanitarian reasons should cover these situations. Having assumed a complete independence with relation to the grant of asylum, with completely different requisites, the denial of the first does not imply that an application for a residence permit for humanitarian reasons must also be refused[37]. The mere existence of an armed conflict in the aliens State of nationality or habitual residence has not been considered by the Portuguese jurisprudence to justify the grant of a residence permit for humanitarian reasons. There has to be a situation of "serious insecurity" emerging from armed conflicts. Therefore, the Administrative Supreme Court denied the grant of a residence permit for humanitarian reasons to a national of Zaire, based on the fact that the armed conflicts occurring in the country were circumscribed to an area, which was not the one of the applicant's residence[38].

It has been considered licit the refusal of granting humanitarian protection when the applicant only provides general information of public knowledge on his/her country of origin, without being able to provide details on the location where he/she used to live. In a recent decision, the Administrative

[37] Administrative Supreme Court, Acórdão of March 1996.

Supreme Court has stated that the "insecurity" mentioned in article 8 must not be considered "normal", therefore the use of the expression "serious insecurity", but rather rely on objective facts serious enough in order to put the applicant's life, physical integrity or freedom at risk[39].

Also relevant to mention is the fact that there has been a recent change in the case law regarding the way that the residence permit for humanitarian reasons has been interpreted. Traditionally, the position of the Administrative Supreme Court was the one that administrative authorities could decide under their discretionary powers whether or not to grant it, even if the conditions prescribed by the law were fulfilled[40]. Thus, it was almost impossible for the applicant to obtain a change in a decision that denied him/her the residence permit for humanitarian reasons. This initial interpretation of the Court has recently changed and it is nowadays considered that the concept of "humanitarian reasons" contained in article 8 of the present asylum law **does not** give the administrative authorities a discretionary power of interpretation, but rather imposes the obligation of determining its exact content[41].

It has been noted by the Portuguese Refugee Council that there is a tendency on the part of the competent authorities dealing with asylum matters, to grant humanitarian protection based on an assessment of the refugee claims focusing mainly on the objective situation prevailing in the country of origin of the claimant, instead of examining in detail the subjective element of the claim that might have led to the granting of the Convention status.

Finally, it must be mentioned that according to article 88 of the Aliens Act[42], an exceptional residence permit for national interest or humanitarian reasons can be granted to aliens. The reasons taken into account by the

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[38] Administrative Supreme Court, 2 Subseccão, Acórdão 06 October 1998, available in *http://www.dgsi.pt/jsta.nsf.*

[39] Administrative Supreme Court, 1 Subseccão, Acórdão 14 March 2002, available in *http://www.dgsi.pt/jsta.nsf.*

[40] As an example, Cf. Administrative Supreme Court, 3 Subseccão, Acódão 25 February 1998, available in *http://www.dgsi.pt/jsta.nsf.*

[41] Administrative Supreme Court, 3 Subseccão, Acórdão 31 October 2000, available in *http://www.dgsi.pt/jsta.nsf.*

[42] Law 4/2001, 10 January, Diário da República (Official bulletin) I, Series A, 10 January 2001, page 99.

Portuguese authorities in these cases are not the ones linked to the aliens` country of origin, but rather those connected to his/her stay in Portugal, such as the fact that the alien has a serious disease preventing him/her to travel.

4.2.2 Temporary Protection

The idea of temporary protection has been developed as an exceptional modality of protection that should apply to situations where there is a mass influx of refugees or displaced persons. Differently from the cases where protection is granted on the basis of humanitarian grounds, in these situations the persons in need of protection may still qualify as refugees under the 1951 Convention. However, given the large number of potential refugees, it becomes impossible to appreciate their status individually.

In fact, *"the international refugee regime was established for the management of problems with individual or small number of refugees*[43]*"* and is not prepared to deal with large-scale influxes of displaced persons.

The Executive Committee of the UNHCR with the adoption of two conclusions regarding this issue recalled the need for a specific answer to this sort of situations[44]. Essential need for the scrupulous observation of the principle of non-refoulement in situations of large-scale of refugees was reaffirmed, and it was also recalled that, "States which, because of their geographical situation are faced with a large scale influx of refugees should (...) receive immediate assistance from other States in accordance with the principle of equitable burden-sharing".

In Europe, the notion of temporary protection started to be explored during the 1990s. In reaction to the conflict in former Yugoslavia, the Member - States of the European Union initiated a process of harmonisation of policies in order to find a "common answer" to situations of max influx of displaced persons created by armed conflicts or civil wars. Two ideas were behind this process: first, there should be a time limit during which persons in these conditions should be granted protection and secondly, costs should

[43] Cf. Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Report No. 22, *Temporary Protection – Problems and Prospects*, Lund, May 1996.
[44] Conclusions 19 of 1980 and 22 of 1981.

be spread equitably to all States. Temporary protection was therefore very much linked to burden - sharing. In fact, these two concepts are considered to be in an interdependent relation: *"the more States succeed in burden-sharing, the less there is to cut the level of protection"* [45].

Portugal adopted for the first time a specific provision regarding temporary protection in Law 15/98. According to article 9, temporary protection can be granted for a maximum period of two years to persons displaced from their country due to armed conflicts, which generate large-scale refugee flows. This requires, in each case, that the government adopt a resolution defining the criteria for granting temporary protection. Another important characteristic of this temporary protection regime in Portugal is that during its period, no individual asylum applications can be lodged.

So far, temporary protection has only been used twice, for refugees from Guinea Bissau and for Kosovo Albanians. The 1271 Kosovars who came to Portugal under the UNHCR Humanitarian Evacuation Programme in spring 1998 received temporary residence permits, valid for six months, which could be renewed.

Regarding social conditions during the period of temporary protection, the asylum law does not contain any provision dealing with this topic. In practice, these conditions are defined in governmental resolutions adopted to each situation.

With the adoption of the Council directive *"on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof"*, on the 20 July 2001[46], Portugal will have to introduce until the 31 December 2002[47] changes in her legislation concerning temporary protection in order to comply with it.

First, the personal scope of application of temporary protection shall include not only persons displaced from their countries as a consequence of serious

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[45] Cf. G. Noll and J. Vedsted – Hansen, *Temporary Protection and burden-sharing:conditionalising access suspending refugee rights?,* in *Implementing Amsterdam, Immigration and asylum rights in the EC Law*, Oxford, 2001, page 195.

[46] OJ 2001 L 212/12.

armed conflicts, but also persons who have fled areas of endemic violence or who are at serious risk, or who have been victims of, systematic or generalised violations of their human rights[48]. Furthermore, according to article 17 of the directive, "persons enjoying temporary protection must be able to lodge an application for asylum at any time", which at the present time is still not possible under the Portuguese Asylum Law. Regarding the duration of temporary protection, the directive determines that it shall be one year, with the possibility of automatic extension by six monthly periods for a maximum of one year (Article 4).

The fact that the existence of a mass influx of displaced persons shall be established by a Council Decision (article 5, paragraph 1), implies that the Portuguese Government will loose the actual monopoly of power in deciding the criteria based on which temporary protection is to be granted.

Exclusion clauses specified in article 28 of the directive may also be applicable to persons included in a temporary protection scheme.

Finally, apart from the measures that will have to be adopted in order to provide persons enjoying temporary protection with access to social welfare and means of subsistence as well as medical care, regarding the right to family reunion, relevant modifications will have to be done. In particular, the concept of "family" shall cover not only the spouse of the sponsor[49] and his/her minor, adopted or disabled children. Other close relatives *"who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time"*, shall also be considered for this purpose.

4.3 Exclusion from and refusal of asylum

After determining who can benefit from asylum, Law 15/98 determines who shall not be granted asylum (article 3). In terms of sequence, the location of the provision complies with the UNHCR's opinion that the application of

[47] Article 32, paragraph 1, of the Directive.
[48] Article 2 (c) of the directive.
[49] "Sponsor means a third country national enjoying temporary protection in a Member State (...) and who wants to be joined by members of his or her family", Article 2 (h) of the Council Directive

exclusion clauses should be preceded by a determination of the refugee status.

The idea that some persons, even if meeting the criteria of the Geneva Convention, may not deserve to be granted refugee status has its origins in the UDHR, which in paragraph 2 of article 14 states that the right to seek and enjoy asylum *"may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the principles and purposes of the United Nations"*. In the same line, the Refugee Convention in Article 1F determines that it shall not apply *"to any person with respect to which there are serious reasons for considering that:*

a) he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

c) *he has been guilty of acts contrary to the purposes and principles of the United Nations"*.

The Portuguese law makes a distinction between "exclusion" and "refusal" of asylum.

Exclusion clauses are consecrated in paragraph one of article 3 and apart from the ones already established in the Geneva Convention, Portugal added one more, which shall apply to "those who have performed any acts that are contrary to Portugal's fundamental interests or sovereignty".

It is questionable whether the adoption of an exclusion clause not provided in the 1951 Geneva Convention is in conformity with that instrument. As it has been stated in the final observations of the Lisbon Expert Roundtable, in the context of the Global Consultations on International Protection, organised by the UNHCR, *"the exclusion clauses in the 1951 Convention are exhaustively enumerated. No other exclusion provisions can therefore be incorporated into national legislation"* [50].

Although the reasoning behind this provision may be similar to the one justifying exclusion for reasons of threats to the internal or external security

(allowing, according to article 33, paragraph 2 of the Geneva Convention exceptions to the principle of non – *refoulement*[51]), the fact that it contains expressions which substance is not so well defined, can bring problems to its application. In fact, it is not so clear what the legislator meant with the expression " Portugal's fundamental interests". It can include, economic, political, social interests. Unfortunately, until the present moment no case law is available connected to the application of this clause. However, it is strongly recommended for the Portuguese authorities to apply it with due caution.

As far as the other exclusion clauses are concerned, they are basically the same as the ones contained in article 1 F. of the Geneva Convention. There are, however, some relevant differences from the latter, which deserve our attention.

First, according to the Portuguese law, the exclusion clauses shall apply to those who **have committed** crimes against peace, war crimes, crimes against humanity, felonious common law crimes or **have performed** any acts contrary to the purposes and principles of the United Nations. Thus, the fact that there are "serious reasons for considering" that this acts were committed is not a strong enough reason for the person to be excluded from the grant of asylum. Being the principle of the presumption of innocence one of the structural bases of Portuguese criminal law, it is understandable that asylum authorities must have an actual proof of a crime in order to exclude a person from the recognition of the refugee status. The standard of proof imposed is therefore the same as the one applied in criminal law: proof beyond a reasonable doubt.

Article 1 F. (b) of the Geneva Convention also received a slightly different treatment by the Portuguese law. Since it is for each State to determine what

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[50] EC/GC/01/2Track/1, 30 May 2001.

[51] Article 33, paragraph 2 of the 1951 Geneva Convention states that, the benefit of *non – refoulement* may not be claimed by a refugee, *"whom there are reasonable grounds for regarding as a danger to the security of the country"*.

shall constitute a serious crime, according to its own criteria,[52] Portugal established a criterion based on the penalty applied to the crime in question in order to determine what should be considered a "serious crime". Crimes punishable with more than three years of imprisonment shall be considered as serious crimes for the purposes of the Portuguese asylum law.

The adoption of a criteria based on the penalty applied can be considered too rigid, since it leaves no margin of appreciation for the authorities when analysing a particular case. As the UNHCR expressed in its Guidelines on the application of the exclusion clauses[53], *"the primary question in determinations under Article 1F (b) is whether the criminal character of the refugee outweighs his/her need for international protection or character as a bona fide refugee. As stated in the Handbook, it is important to strike a judicious balance between the nature of the crime in question, and the likely persecution feared by the applicant"*. On a regional level, a similar statement is contained in the Joint Position on the harmonized application of the definition of the term "refugee" in article 1 of the Geneva Convention, defined by the Council of Europe in 1996: *"the severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected"*.

Paragraph 2 of article 3 determines the conditions in which the Portuguese authorities may refuse the grant of asylum, being they the demonstrated danger or well founded threat to the internal or external safety or to public order. Although internal and external safety did not receive a specific consecration in Article 1(F) of the 1951 Geneva Convention, they are usually admitted grounds for the exclusion or refusal of the grant of asylum. In a way, Article 33, paragraph 2 of the Convention, expressly providing that the benefit of *non – refoulement* may not be claimed by a refugee, *"whom there are reasonable grounds for regarding as a danger to the security of the country"*, also admits this category of exclusion clauses.

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[52] Cf. Guy S. Goodwin-Gill, *The refugee in international law*, 1996, Page 105.

[53] UNCR, The Exclusion Clauses: Guidelines on their Application, December 1995, paragraph 53, in *Refugee law in context: the exclusion clause*, edited by Peter J. van Krieken, 1999, page 19.

What constitutes a "danger" or "threat" to the internal or external safety of the country is a question that can have different answers. However, given the gravity of the harm to the refugee/asylum-seeker if returned to a country they fled, due to a well-founded fear of persecution, the application of this ground will always have to be based on a proportionality test. Once again, the standard of proof here required by the Portuguese law is high, once both the danger and well founded threat to the security must be **demonstrated**.

As it has been already mentioned in chapter two, the reference to internal security as one of the possible reasons for excluding a person from the grant of asylum, can be considered to violate the Portuguese Constitution, as far as an inclusion based on the reasons enunciated in article one, paragraph one should take place.

Since the right to asylum is a fundamental right, benefiting from the exceptional regime provided in article 18 of the Constitution, restrictions must only take place where they are expressly provided for by the Constitution and only to safeguard other rights or interests protected by the Constitution, which does not apply to the case *sub judice*.

4.4 Loss of the right of asylum: cessation and cancellation clauses

Law 15/98, in its article 36, establishes the conditions that determine the "loss of the right of asylum". From the text of this article, it is not so clear if the Portuguese legislator meant to establish the loss of right of asylum in itself, the cessation of the refugee status or both.

The conditions pointed out by the Portuguese law for the loss of the right of asylum are very different in terms of substance: some of them correspond to the **cessation** clauses established by the 1951 Geneva Convention, while others have a different connotation, much more related to the **cancellation** of the status. The inclusion of these two different realities in the same article seems to be a wrong strategy.

In fact, as Guy Goodwin – Gill has observed, if *"cessation (…) is based on the view that international protection may no longer be called for or justified if the reasons for a person becoming a refugee have ceased to exist*

(…) there is a strong presumption of the continuation of refugee status; however[54]*"*, the same is not exactly true for the situations of cancellation of the status.

In this respect, the UNHCR Handbook, states that cancellation is connected with "*circumstances that indicate that a person should never have been recognized as a refugee* ***in the first place***" [55]. Regarding the cessation clauses in conformity with the 1951 Geneva Convention, the Portuguese legislator determined that the following reasons, "shall cause the loss of the right of asylum":

1. The request and obtaining of the protection of the country of his/her nationality;
2. The voluntary re-acquisition of the lost nationality;
3. The voluntary acquisition of a new nationality, and the enjoyment of the protection of the respective country;
4. The voluntary resettlement in the country he/she left or out of which he/she stayed for fear of persecution;
5. The termination of the reasons that justified the grant of asylum[56].

According to Article 37, paragraph 2 of the asylum law, the loss of the right of asylum for the above-mentioned reasons shall determine the applicability of the provisions of the general law concerning the stay of aliens within national territory[57]. The same provision, in its paragraph 3, establishes the possibility for the grant of a residence permit, with exemption from exhibiting the respective visa, when the cessation clause in question is the one pointed in (5). The *ratio* of this provision is to cover the situations of Article 1 C (5) of the 1951 Geneva Convention in which, despite the cessation of the circumstances that determined the recognition of the refugee status, its beneficiary may still invoke "compelling reasons arising out of

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[54] G. S. Goodwin-Gill, *Voluntary repatriation, Legal and Policy Issues,* in *Refugees and International Relations*, 1989, pages 280-281.

[55] *The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention on the Status of Refugees*, paragraph 117.

[56] Article 36 d); e); f); g) and h), Law 15/98.

[57] Law 4/2001, 10 January, Diário da República (Official bulletin) I, Series A, 10 January 2001, page 99.

previous persecution for refusing to avail himself of the protection of the country of nationality".

However, differently from the 1951 Geneva Convention, the Portuguese law determines that in these cases still the loss/cessation of the previous status shall take place, only giving the refugee the possibility to apply for a residence permit.

At this stage, it is worth to mention that when it comes to cessation clauses, the Portuguese Law totally omits the situation of stateless persons.

Since the law establishes that the personal scope of application of the right of asylum covers both aliens and stateless persons, the same regime shall apply to the latter, being the gap, in these terms, filled with the regime established in similar situations for aliens.

In addition to the *supra* described cessation clauses, Law 15/98 establishes that the following reasons shall also determine the loss of the right of asylum:

1. Express waiver;
2. The practice of forbidden acts or activities in accordance with the provisions of article 7, namely interfering, in a way forbidden by law, in the Portuguese political life; performing activities which might be harmful to the internal or external safety, to public order or that might endanger Portugal's affairs with other States and performing activities contrary to the purposes and principles of the United Nations, or of Treaties or Conventions of which Portugal is a party or adheres to;
3. The demonstration of falsity of the alleged grounds for the grant of asylum or facts which would have implied a negative decision, if they have been known at the time of granting;
4. The decision of expulsion carried out by the competent court; and
5. The abandon of national territory, settling in another country[58].

With the exception of the ones describe in No. 2 (which shall determine the expulsion of the person from the Portuguese territory[59]) and No. 4, all the

other situations determine the applicability of the provisions of the general law related to the stay of aliens within the national territory[60].

Since the grounds above described, are quite different in terms of substance, a distinction must be done when it comes to their admissibility. In fact, if no doubts should arise concerning the admissibility of the cessation or cancellation of the refugee status *"when a refugee, for whatever reasons no longer wishes to be considered a refugee"*[61] (such as it is likely to happen in the situations described in Nos. 1 and 5), the same cannot be said when the cancellation is imposed by the host State.

According to the UNHCR Handbook, circumstances indicating that that the refugee status should never have been recognized, such as the subsequent knowledge that it was *"obtained by a misrepresentation of material facts, or that the person concerned possesses another nationality, or that one of the exclusion clauses would have applied to him had all the relevant facts been known"*[62], may determine its cancellation.

This brings us to the question of to what extent a cancellation of the status may occur even if based on crimes (such as the ones described in No. 2, *supra*), committed by the refugee/asylee, **after** the grant of asylum or recognition of the refugee status. This situation is quite different from the others, since in this case the grant of asylum was not based on wrong presupposes. At the time of the appreciation of the claim, all the conditions imposed by the Constitution/Law for its grant were fulfilled: it is a posterior fact that comes to justify the cancellation of the status.

In my opinion, a cancellation of the refugee status based on some of the circumstances described in No. 2, may violate the 1951 Refugee Convention. In fact, if the list of cessation clauses in the Convention is considered to be exhaustive, such as it is the one of the exclusion clauses,

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[58] Article 36, a); b); c); i) and j), Law 15/98.
[59] Article 37, paragraph 1, Law 15/98.
[60] Cf. footnote no. 47, supra.
[61] *The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention on the Status of Refugees*, paragraph 116.
[62] *The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention on the Status of Refugees*, paragraph 117.

States Parties do not have the right to add different grounds in order to cancel the refugee status.

On the other hand, if situations in which the internal or external security may be at risk are generally agreed to allow a cancellation of the status, this should not be extended in order to cover other situations such as the one of "interfering, in a way forbidden by law, in the Portuguese political life".

In practice, the person in question, even if deserving to be punished, may still be in need of protection. A careful analysis of the particular case must be made and the principles of necessity and proportionality shall be observed before a final decision is taken in this field.

4.4.1 The principle of non – *refoulement*

On an international level, the principle of non - refoulement is stated in article 33, paragraph 1 of the 1951 Geneva Convention and also in article 3 of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). The former establishes that "no Contracting State shall expel or return a refugee in any manner or whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Article 3 of CAT, on the other hand, determines that "no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture", adding in its paragraph 2 that, "for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights". Portugal has ratified the CAT on the 09th February 1989[63], being therefore legally bound by both the instruments.

Anyway, the principle of non – refoulement is regarded as embodied in customary international law. Consequently, non – contracting parties to the

[63] Having also recognised the competence to receive and process individual communications of the Committee Against Torture under article 22 CAT.

Convention and/or the Protocol are equally bound by it, not because of any treaty obligation, but because this is general international law.

The Portuguese Asylum Law consecrates the principle of non – refoulement in two provisions: articles 13 and 38. The first, inserted in the section of the law dealing with the admissibility of an asylum petition, links the principle to the notions of third host country and safe country of origin.

Regarding the former, it is defined as a country *"where it has been demonstrated that the applicant is not subject to threats to his life or freedom as defined by article 33 of the Geneva Convention or subject to torture or inhuman or degrading treatment (...) or where he has provenly been admitted and benefits an actual protection against refoulement as defined by the Geneva Convention"*[64]. Also the definition of a safe country of origin contains the essential elements of the non – refoulement principle, being this, a country *"to which can safely be determined that (...) it does not origin any refugees or in relation to which can be determined that the circumstances that could previously justify the claim of the 1951 Convention have ceased to exist"*[65]. Contrary to the definition of third host country, which establishes that there shall not be a threat to the applicant's life or freedom, the notion of safe country (of origin), relies on general assessments, and not on the threats to which, in the concrete case, the applicant can be submitted. Therefore, in these cases there will always be danger of refoulement[66].

In article 38, the law connects the principle of non-refoulement to the expulsion of the refugee, establishing that, expulsion in accordance with the provisions of article 37 (loss of the right of asylum), *"shall not bring about his placement in the territory of a country where his or her freedom shall be put at risk by any of the causes that, in accordance with article 1, might be considered as a ground for the grant of asylum"*.

Regrettably, in this context, the Portuguese legislator did not adopted the principle of non - refoulement in similar terms of the ones contained in the

[64] Article 13, paragraph 3, b), Law 15/98.
[65] Article 13, paragraph 3, a), Law 15/98.
[66] Cf. Guy S. Goodwin – Gill, *The Refugee in International Law*, Second Edition, Oxford, 1996, page 348.

notion of host third country, having limited its scope of application to situations in which freedom may be put at risk. No mention is made to life or threats of being subject to torture or inhuman or degrading punishments. In practice, however, an expulsion is not likely to take place if there are risks to life, or of torture or inhuman or degrading treatment.

In this context, a word must be said about the European Convention on Human Rights and Fundamental Freedoms (ECHR). Although this instrument does not enshrine the right not to be expelled and does not interfere in the right of the signatory States to regulate entry, sojourn and expulsion of foreign citizens from their territory, this right must be exercised in accordance with the provisions of the ECHR, which is directly applicable in the Portuguese legal system and prevails over domestic legislation[67].

Articles 3 and 8 of the ECHR are particularly important in the protection of foreign citizens from expulsion. Thus, pursuant to the case law of the EctHR, article 3 of the ECHR binds the Portuguese State, without exception, to not expel foreign citizens should this lead to them being tortured or treated inhumanely or degraded[68]. Article 8 of the ECHR also opposes expulsion of foreign citizens when this measure would cause undue interference in their right to a normal private and family life.

4.5 Procedural rules

4.5.1 General procedure

As it has been previously mentioned, the first phase in the Portuguese general asylum procedure is the one of admissibility of the petition.

Article 10 of the asylum law starts the chapter concerning the admissibility of the petition giving a definition of what shall be considered an asylum petition.

[67] Article 8, paragraph 3, Portuguese Constitution.
[68] Soering Vs. Uk., 7 July 1989.

For the purposes of law 15/98, it is stated, "an asylum petition shall be considered the application through which an alien requests a State the protection of the 1951 Convention, and the New York Protocol".

Regarding the circumstances in which the right of asylum shall be granted according to article 1, paragraph 1, this definition seems to be incorrect.

In fact, the Portuguese law guarantees the right of asylum to a broader category of persons than the ones mentioned in the Geneva Convention.

It is therefore apparently strange that an application for protection based on the reasons expressed in that provision shall not also be considered an asylum petition.

4.5.1.1 Admissibility phase

The political responsibility for the asylum procedure rests with the "Ministro da Administracão Interna (MAI)" – Ministry of Interior.

Within MAI, the "Servico de Estrangeiros e Fronteiras – Divisão de Refugiados (SEF)" – Immigration Office – is responsible for receiving asylum claims.

a) Applications submitted within the Portuguese territory

According to article 11.1 of the asylum law, *"the alien or stateless person who enters into national territory with the purpose of obtaining asylum shall submit his/her application to any police authority within eight days either verbal or in writing"*. In the case of "refugees *sur place"*, the time limit of eight days shall be counted from the date when the facts based on which the request is made occurred, or came to the applicants' knowledge. Unless due justification is presented, applications lodged beyond this time limit are rejected as inadmissible.

Establishing a possibility for the application to be admitted even when presented after the time limit, Law 15/98 expressly imposes a change of the interpretation that was being made by the courts in what concerns the application of similar provisions within the previous Asylum Acts. In fact, the Administrative Supreme Court in a decision of 1996 (concerning article 10, paragraph 1 of Law 38/80), affirmed that the expression "immediately"

in the mentioned provision, means that "*the* (asylum) *application has to be presented instantly and not in a posterior moment. In this context, any justification presented for the delay shall be irrelevant. In fact, the non-compliancy with the time limit automatically extinguishes the right that the applicant intended to exercise*".[69]

Despite the changes made by the current law, taking into account the fragile conditions in which asylum – seekers frequently arrive in a foreign country searching for protection, not knowing the language and most of the times without any kind of economic support, an eight day time limit appears to be too narrow.

In the cases in which the application has not been submitted directly to the SEF, it must be remitted by the receiving authority to that entity, which shall inform the UNHCR as well as the Portuguese Refugee Council (PRC) of the application[70].

After a summary fact-finding process, the Director of the Immigration Office must render a decision regarding the admissibility of the petition within 20 days, being that decision communicated to the PRC and notified to the asylum seeker.

A negative decision must be communicated to the asylum seeker within twenty-four hours, mentioning that he/she must leave the country within 10 days, after which a decision of expulsion shall be immediately carried out[71].

The possibility for an "immediate expulsion" in the end of the admissibility phase, without the previous appreciation of the asylum petition by a judicial authority, leaves the door opened for a violation of human rights, and may thus be considered contrary to the exigencies of article 16 of the Portuguese Constitution[72]. In similar situations, other European countries, such as

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[69] Administrative Supreme Court, 1 Subseccão do CA, 04 July 1996, available in *http://www.dgsi.pt/jsta.nsf.*

[70] Since the UNHCR Office in Portugal was closed in December 1998, in practice, nowadays it is just the PCR that is informed.

[71] Article 15, Law 15/98.

[72] "1. *The fundamental rights contained in this Constitution shall not exclude any other fundamental rights provided for in the laws or resulting from applicable rules of*

France and Germany, before deciding to expel an asylum seeker, submit the decision of expulsion to judicial appreciation, which shall determine whether or not the decision complies with the ECHR[73].

Within five days of notification of the decision refusing the admissibility of the asylum petition, the applicant may lodge an appeal to the National Commissioner for Refugees. According to paragraph 1 of article 16 of the Asylum Law, this appeal suspends the possibility of expulsion. The decision on the appeal shall then be rendered within 48 hours. In case the National Commissioner for Refugees decides to confirm the decision of non-admissibility, a further appeal may be filed with the Administrative Courts. However, this second appeal does not have a suspending effect and, in practice, an expulsion may occur before a final decision is taken.
A right of appeal without suspending effect is quite alarming, since it prejudices the applicants' defence. Once he/she has been removed, the possibility to communicate with counsel or mount an effective appeal is compromised.

In Article 13, the Law describes the grounds for the inadmissibility of a claim. A claim must not be admitted when:

a) "One of the exclusion clauses mentioned in article 3 is immediately found obvious;
b) It is obvious that a claim does not clearly meet any of the criteria set forth in article 1 A of the Geneva Convention and is considered as unfounded, because the allegations that the applicant fears persecution in his/her country have no reason to be, or because it constitutes an abusive usage of the asylum process;
c) The applicant comes from a country likely to be considered as a safe country or as a third host country;

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international law. 2. *The provisions of (…) laws relating to fundamental rights shall be construed and interpreted in harmony with the UDHR.*"

[73] Article 3 of the ECHR states that "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*".

d) It is “immediately found obvious” the application of article 1-F of the Geneva Convention;
e) The application is submitted, without due justification beyond the eight days deadline prescribed in article 11;
f) There has been a previous decision to expel the applicant from the national territory.

Considering the first ground, it can be said, from the text of this provision, that the Portuguese authorities may appreciate the possible exclusion of a person from the grant of refugee status before taking into account his/her possible inclusion. Even if the law establishes that the application of the exclusion clauses shall be “immediately obvious” this possibility puts the asylum-seeker in a fragile situation. According to the UNHCR’ s position on this matter, exclusion clauses should not be used to determine the admissibility of an application or claim for refugee status.
The reason why an autonomous reference was made to the application of the exclusion clauses contained in article 1- F of the Geneva Convention is also not clear. As it has been seen before, article 3 of the Asylum Act consecrates all the exclusion clauses of article 1-F of the Geneva Convention, having add a new one concerning “Portugal’s fundamental interests or sovereignty”. Thus, a separate reference to both the provisions in the same article seems useless.

The second reason pointed out for the inadmissibility of an asylum petition is established in the first part of article 13 (1) a) of the Asylum Law and draws on Excom. Conclusion N.30 (XXXIV) of 1983, which defines manifestly unfounded applications as those that are not related to the criteria for the granting of refugee status, laid down by the Geneva Convention.
Once again, even if the Law states that the non-compliance with the criteria set forth in the Geneva Convention must be *obvious*, this should not be considered to be a justification for the refusal of the application.

In fact, substantive grounds must not be appreciated in the admissibility phase, but rather during the decision phase[74]. The same provision points out the fact that the application constitutes "an abusive usage of the asylum procedure" as another ground for its non-admissibility. Paragraph 2 of article 13 establishes the criteria that shall determine whether or not the asylum petition is fraudulent, such as the "use of false documents, false declarations concerning the authenticity of the documents and the deliberate omission of the fact that the applicant has already submitted an asylum petition in one or several countries, eventually using false identity".

This provision is not in accordance with what is stated by the UNHCR in its Handbook on Procedures and Criteria for Determining the Refugee Status. In paragraph 199, the Handbook explicitly mentions that, "untrue statements by themselves are not a reason for refusal of refugee status and is the examiners responsibility to evaluate such statements in the light of all the circumstances of the case". In fact, initial untrue statements may be justified by the fear and psychological pressure under which, in most of the cases, the asylum seeker is.

Another relevant ground for the possible refusal of the petition is the fact that the applicant comes from a country likely to be considered as safe or as a third host country (or safe third country).

In paragraph 3 of article 13, a "safe country" is defined as "a country in relation to which it can be safely determined that the circumstances that could previously justify the claim of the 1951 Convention have ceased to exist taking into account the following elements: respect for human rights, existence and normal operation of democratic institutions and political stability". This definition is based on the one adopted by the EU Immigration Ministers in their London Resolutions[75].

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[74] Cf. J. Van Der Klaauw, *Towards a common asylum procedure,* in *Implementing Amsterdam, Immigration and asylum rights in the EC law,* Oxford – Portland, 2001, page 165.

[75] The *Resolution on Manifestly Unfounded Applications* defines a safe country of origin as a country "which can clearly be shown, in an objective and verifiable way, normally not to generate refugees or where it can be clearly shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Convention have ceased to exist".

The elements pointed out by the Portuguese law as the ones to be taken into account in the evaluation of the circumstances of the country of origin are also enunciated in the *London Resolution on Manifestly Unfounded Applications*[76].

The concept of safe country and the fact that the nationals of those countries will be presumed not to qualify as refugees, regardless of their particular circumstances is considered to be a potential violation of the 1951 Geneva Convention, since there cannot be a complete guarantee that a State, regardless its apparent total compliance with human rights, will not produce a refugee[77]. Hence, asylum - seekers coming from countries considered to be safe must always be given an opportunity to rebut the presumption in their individual case. An asylum-seeker coming from a safe country that wishes to claim asylum in Portugal is strongly recommended to present evidences susceptible to rebut the presumption of safety together with the application, since there is no provision in the law that guarantees an interview with the applicants before a decision concerning the admissibility of the petition is carried out.

A host third country (or safe third country) is a country in which the asylum-seeker either found protection, or reasonably could have done so.

Since the late eighties, the UNHCR has accepted that a refugee or asylum-seeker may be returned to a safe country of asylum under limited circumstances where protection against persecution is assured and in 1993 it stated that countries party to the 1951 Convention may return asylum-seekers to safe asylum countries only after they have established that the (i) the transit country will admit the asylum-seeker to its territory; (ii) observe the principle of non-refoulement and generally treat the asylum –seeker in accordance with accepted international standards; and (iii) will consider his

[76] The Portuguese legislator decided not to include "the previous numbers of refugees and recognition rates", also considered in the London Resolution, as factor to consider in evaluating the risk of persecution.

[77] Guy S. Goodwin – Gill, *Safe Country? Says Who?*, in *International Journal of Refugee Law*, Vol. 4, No.2, 1992, page 248 – 250.

or her claim and, if appropriate, will allow the asylum-seeker to remain as a refugee[78].

On a regional level and so far with a non-binding character, the EU Immigration Ministers adopted a notion of safe country of asylum in the 1992 London Resolution. The resolution provides, as "fundamental requirements" to determine a third host country that: (i) life or freedom of the applicant must not be threatened in the safe third country within the meaning of Article 33 of the 1951 Geneva Convention; (ii) the applicant must not be exposed to torture or inhuman or degrading treatment; (iii) either protection was already granted, or there was the opportunity to seek protection, or clear admissibility to the safe third country; (iv) effective protection against refoulement; and (v) known practices in the third country, especially with regard to non refoulement, being also taken into account UNHCR information.

Except in what concerns the last requirement (omitted in the Asylum Law), the Portuguese definition is totally in compliance to the one contained in the 1992 London Resolution[79].

b) Applications submitted at an external border

Articles 17 to 20 of the Portuguese asylum law establish a specific admissibility procedure concerning applications submitted at the borders.

According to these provisions, asylum seekers who have lodged their claim at a border point must remain within the border zone until a decision on the admissibility of their claim has been taken.

The Aliens and Border Service must immediately forward the application to the Portuguese Refugee Council (PRC), which is required to give his opinion on the case within the next 48 hours. During these 48 hours, the PRC can also interview the applicants[80].

[78] UNHCR (London), *The safe third country policy in the light of the international obligations of countries vis-à-vis refugees and asylum-seekers*, 28-29 (1993).
[79] Article 13 (3) b) Law 15/98.
[80] Article 18 (1) Law 15/98.

The Director of the Aliens and Border Service must take a decision on the admissibility after the expiration of the above-mentioned 48 hours period, but within five working days following submission of the application. The decision may not be in accordance with the opinion provided by the PRC, but must apply the criteria described above for the applications submitted within the Portuguese territory.

The circumstance that the decision of the Director of the Aliens and Border Service must be taken after the 48 hours period established for the PRC to give an opinion on the case and that the *"applicant shall stay within the Port or Airport International area"* [81], while waiting for this decision, brings us to the question of the possibility of an illegal detention.

According to the case law of the ECtHR, the obligation to stay in an airport zone may constitute a detention[82].

On the other hand, the Portuguese Constitution determines that "detention shall be subject, within forty eight hours, to the scrutiny of a judicial authority"[83]. These reasons, together with the fact that detention should be use only in exceptional situations where it is absolutely necessary and not just "convenient for the police or immigration authorities", shall determine an amendment to the Portuguese asylum law[84]. What is worrying in these cases is that detention is not the established by law as an exception but rather as the rule.

If admissibility is granted or if no decision is made within five working days, the asylum seeker is allowed to enter into the country and his/her application will then be processed under the second phase of the asylum procedure.

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[81] Article 20 (1), Law 15/98.

[82] Amuur v. France.

[83] Article 28 (1) Constitution, see annex II.

[84] In its Conclusion No. 44, the Executive Committee spelled out the situations in which detention may take place, namely, only on the grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum or to protect national security or public order.

A negative decision on admissibility may be appealed to the National Commissioner for Refugees on 24 hours. Such an appeal will be processed within 24 hours. If non-admissibility is confirmed, the applicant will not be allowed to enter in the Portuguese territory.

From what has been exposed, it can be concluded that applicants who present their claims on an external border do not enjoy the same rights as the applicants who claim for refugee status or asylum within the territory. They have a shorter time to apply from a negative decision on admissibility and there is no possibility for a judicial appeal. These differences of treatment entail a violation of the principle of equality.

4.5.1.2 The grant of asylum

If the final decision taken in the previously described phase is to admit the application, the asylum seeker is granted a provisional residence permit valid for a period of 60 days, which must be renewed every 30 days.

An assessment is made by the Aliens and Border Office and sent to the National Commissioner for Refugees. Within ten days after receiving the applicant file, the NCR makes a proposal as to whether the applicant shall be granted asylum or not. This proposal is distributed to the Portuguese Refugee Council and the applicant, who can both comment on the proposal within five days. The case is then submitted to the Minister of Interior, who decides whether to grant or refuse asylum, in a time limit of 8 days.

If asylum is refused, the applicant has a period of 20 days to appeal to the Administrative Supreme Court, with suspending effect. In case of refusal, the asylum seeker is granted the right to stay in the country for a transition period of 30 days.

4.5.2 Special proceeding to determine the State responsible for analysing the asylum petition

The Dublin Convention has been adopted by the Member States of the European Union on the 15 June 1990, with the main purpose of harmonization of their asylum policies. As it is stated in its preamble, it was

the intention of the States Parties of this instrument *"to take measures to avoid any situations arising, with the result that applicants for asylum are left in doubt for too long as regards the likely outcome of their applications, to provide all applicants for asylum with a guarantee that their applications will be examined by one of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of them acknowledging itself to be competent to examine the application for asylum"*. The Convention basically lays down (in articles 4 to 8) a number of substantive criteria in order to determine the State responsible to deal with the application, leaving the rules on procedures to domestic law. In general, it can be affirmed that *"the bottom line of the reallocation criteria in the Dublin Convention is that facilitation of entry and failure to remove entails responsibility"*[85]

Articles 28 to 32 incorporated the Dublin Convention in the Portuguese Asylum Law. Portugal signed the Dublin Convention on 15 June 1990 and ratified it on 13 February 1993.

According to the regime established by the law, SEF is responsible for carrying out the procedure and in particular, for sending a request for another State to take charge, if there is strong evidence that this state is responsible for examining the application based on the criteria of the Dublin Convention.

In case the requested State accepts to take charge, the Director of SEF must issue a decision regarding the applicant's transfer within the next five days. This decision must be notified to the applicant and communicated to the UNHCR office and the PRC. The asylum seeker may appeal the transfer decision to the National Commissioner for Refugees within five days, with suspending effect. The National Commissioner for Refugees must render his decision within 48 hours.

[85] G. Noll and Jens Vedsted – Hansen, in *Non – Communitarians: Refugee and Asylum Policies*, unpublished paper.

If the requested State denies its responsibility, the application is processed under the Portuguese asylum procedure and, if admitted, it follows the normal determination procedure.

It is also the Director of SEF who decides (within a time limit of either three months or eight days, in cases of urgency), on the acceptance of the Portuguese State's responsibility for the analysis of the asylum applications made at other member States of the European Union.

V – The role of UNHCR & Numbers

5.1 The UNHCR Office in Portugal

After 1975, in view of the large numbers of persons arriving in Portugal as a result of the decolonisation process, the Government adopted measures to face this new reality. Negotiations took place between Portugal and the UNHCR and in 1977 the latter opened an office in Lisbon.

At that time, national refugee legislation had not yet been adopted. From 1971 to 1975, the treatment of asylum requests by the immigration authorities (Servico de Estrangeiros e Fronteiras - SEF), was carried out according to a mutually agreed procedure: "the SEF received and directed all the cases registered by UNHCR with a view of regularisation of their legal situation, through asylum, residence and documentation as appropriate"[86]. The International Social Service, the Portuguese Red Cross and the catholic institution Santa Casa da Misericórdia of Lisbon were also involved during this time with the refugee work, dealing with individual cases.

The official establishment of the UNHCR office in Lisbon took place on the 28 November 1977. Since there was no legislation or procedure set up for the implementation of the 1951 Convention, a working method for international protection issues was introduced. It was agreed that until national legislation concerning asylum and refugee status was adopted, the

UNHCR representative should not take any decision as to the status of persons who applied for asylum with the UNHCR Lisbon office. The usual procedure involving *prima facie* recognition was used with the objective of allowing emergency assistance to be provided, as required.

In general, the work of the UNHCR office in Portugal intended to limit expectations connected with the opening of a UNHCR Branch Office for assistance to asylum seekers and refugees. It was felt that UNHCR aid could at best supplement assistance from national sources and that the basic responsibility for asylum seekers remained with the national authorities.

In 1980, with the adoption of the first asylum act, the UNHCR was given some tiny consultative competences.

Basically, the UNHCR representative in Portugal could participate in the meetings of the Consultative Commission for Refugees (an administrative organ with the competence to give opinions regarding applications for asylum). The UNHCR should also be informed of the final decision granting or refusing asylum[87].

Law 70/93, of 29th September, widened the role of the UNHCR, establishing its intervention in the general procedure during the admissibility phase. From now and on, the UNHCR representative should not only be informed of the submission of an asylum application, but could also give his opinion on the final decision[88].

The requests for resettlement, according to article 21, should be presented by the UNHCR representative to the Minister of Interior and the former should also be informed of any order of expulsion.

The current asylum law provides for the participation of the UNHCR representative in all phases of the asylum process. During the admissibility phase of the general procedure, when the application for asylum is not presented directly to the SEF, the UNHCR representative in Portugal shall be informed that an application for asylum has been presented. The decision

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[86] L. Drüke, *"Harmonization of International, National and Regional Asylum Law and Policy"*, in *Human Rights: the promise of XXI century*, Seminar organized by ELSA, from 6 to 8 March 1996.

[87] Articles 13, paragraph 3 and 19, paragraph 1 of Law 38/80, 1st August.

[88] Article 19 Law 70/93, 29 of September.

on the admissibility or inadmissibility shall also be notified to the UNHCR[89].

Regarding the requests made at the Frontier Offices, article 18 determines that the UNHCR shall be informed and may express his opinion on the application. An opinion may also be expressed after the final decision concerning the admissibility of the application.

During the study of the process, the UNHCR may intervene, joining any information regarding the applicant's country of origin and obtaining information connected to the state of the proceedings. The law also determines that the UNHCR must be informed of the final decision.

Article 48 determines that the execution of an expulsion order shall also be communicated to the delegate of the Office of the United Nations High Commissioner for the Refugees.

The Portuguese Refugee Council has been the NGO working together with the UNHCR, having signed a Protocol for co-operation in July 1993, which provides for juridical and social assistance for asylum seekers and refugees.

In December 1998, due to the small number of asylum applications in Portugal, the UNHCR Branch Office in Lisbon was closed. Following its closing, the PRC as the official partner of the UNHCR, performs regular legal work in the area, being the only NGO dealing exclusively with asylum in Portugal. The right of intervention of the PRC in the asylum procedure was given legal status in the current Asylum Law. The possibility of direct representation of asylum seekers, as stipulated by article 52, paragraph 2, as well as a consultative role within the proceeding, constitutes one of the major achievements of this NGO. The Legal Department of the PCR provides legal support to asylum seekers and refugees throughout asylum procedure and afterwards through a daily legal counselling.

5.2 Refugees by numbers

Most probably due to geographical reasons, Portugal remains the State with the lowest number of asylum applications within the European Union.

[89] Articles 11, paragraph 4 and 14, paragraph 3, Law 15/98.

According to the information of the ECRE, since 1998 there has been a decrease in the number of asylum seekers in Portugal: from 338 in 1998 to 271 in 1999, 202 in 2000, 193 in 2001 and 106 in the first semester of 2002.
In general, asylum seekers in Portugal are single males, coming mainly from African countries.
The countries with the highest number of asylum requests in Portugal are Sierra Leone (29, in the first semester of the current year), and Angola (21, during the same period). Both situations are connected with civil war and gross violations of human rights still occurring in those countries.
In the case of applicants from Sierra Leone, there have been some problems regarding their admissibility to procedure, since in most of the cases they were not able to give evidence of their nationality. Since 2001, however, SEF has been rather flexible accepting other means of proof of nationality, such as a geographic description of the country and the knowledge of the language of the country of origin.
In what concerns Angolan asylum seekers, it is interesting to note that despite the fact that this has been one of the countries with the highest number of asylum applications, there were very few cases recognised either as refugees or under humanitarian protection. This low rate of success has been explained by the fact that administrative authorities, not taking into account the UNHCR opinion in this matter[90], considered that an internal flight alternative existed and that the situation in Angola is not one of generalised conflict. Besides the particular case of Angolan refugees, in general Portugal's recognition rates are the lowest considering the European countries.
The following table contains the numbers of applications decided and the statuses accorded in the years of 2000 and 2001 by the Portuguese authorities. The elements were taken from the ECRE report presented by Portugal in 2001.

[90] UNHCR, *"Comments on the Dutch Government's new policy proposal with regard to certain countries of origin"*, June 2001.

Table 1

	2000		2001	
Statuses	**Number**	**%**	**Number**	**%**
No status awarded	150	73	152	79
Convention Status	16	7	7	3
R.P.H.R.[91]	46	20	34	18
Total decisions	202	100	193	100

To conclude, a word must be given to the situation of minors and women. It is important to mention that there are no specific provisions concerning the procedure applicable to applications presented by them. However, for what concerns social assistance, minors, such as *"asylum applicants who have been victims of torture, rape or any other physical or sexual abuse"* [92] are considered to be vulnerable persons and therefore shall benefit from special attention and care on the part of the social security centre within the area of their residence.

As far as the former are concerned, in 2000 there were 10 applications presented by unaccompanied children. The absence of a specific proceeding applicable to children exposes this category of asylum seekers in a very fragile situation. In practice, it often happens that children have to stay in the international zones, in a detention like situation while waiting for the decision regarding the admissibility of their applications. The current Asylum Law, however, brought an innovation, providing for their representation throughout the asylum procedure[93].

Regarding women, they still represent a minority within the asylum applications[94]. Like unaccompanied minors, even if in some circumstances they may be considered vulnerable cases, applications submitted by single women are not subject to any specific provisions.

[91] Residence Permit for Humanitarian Reasons.
[92] Article 58, Law 15/98.
[93] Article 56, Law 15/98.
[94] In 2001, among the 193 claims presented, women made only 22.

Final Remarks

The present work intended to give an overview of the asylum/refugee law currently in force in Portugal.

From what has been said, it may be concluded that although the Portuguese law, in general, is in accordance with the obligations assumed by the Portugal both on an international and regional levels, in some aspects there is a call for amendments. Among these, reference must be made to the lack of a suspending effect of the appeal to the Administrative Courts from the decision of the National Commissioner for Refugees that denies the admissibility of the asylum petition. A right of appeal without suspending effect in this phase clearly prejudices the applicants' defence. The absence of a special proceeding regarding the applications submitted by unaccompanied minors and other particular vulnerable persons is also a matter of concern.

Due to the recent developments on the European level, however, what has been described in the previous pages is likely to be soon outdated.

Under the provisions of the Amsterdam Treaty on the development of common policies on asylum and immigration in the EU, Member States have so far adopted one directive "*on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*". In addition, a few other instruments have already been drafted and will probably soon be approved, namely:

a) A proposal for a council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status[95];

[95] COM(2000) 0238 (CNS) 20 September 2000, amended in 03.07.2002, COM(2002)326 final/2.

b) A proposal for a council directive laying down the minimum standards on the reception of applicants for asylum in Member States[96];

c) A proposal for a council regulation establishing the criteria and mechanisms for establishing the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national, which clearly intends to replace the Dublin Convention[97];

d) A proposal for a council directive laying down the minimum standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention and the 1967 Protocol, or as persons who otherwise need international protection[98]; and,

e) A proposal for a council directive on the right to family reunification[99].

The adoption of these legally binding instruments will implement the so-called Common European Asylum System. Its main aim is to ensure that, at the same time a minimum level of protection is available in all Member States for those in need, a "common answer" will be given to the ones who do not genuinely search for a safe refuge.

It is also worth to mention that all these proposals were adopted pursuant Title IV of the EC Treaty, the objective of which is to establish an area of freedom, security and justice[100], and to abolish internal border controls.

Lets hope that the implementation of the Common European Asylum System by Member States will comply with the basic "principles of liberty, democracy and respect for human rights and fundamental freedoms, and the rule of law", as enunciated in Article 6 of the TEU and serve as an example for other regional approaches that may in the future be given to this issue.

[96] COM(2001) 0091, 3 April 2001.
[97] COM(2001)447 final, 26 July 2001.
[98] COM (2001)510, 12 September 2001.
[99] Amended in 2 May 2002, COM(2002) 225 final.

Annex I

Law n.º 15/98 of March 26 :
New legal framework in matters regarding asylum and refugees :
Asylum and Refugees

The Assembly of the Republic decrees, pursuant to Articles 161 (c), 165 (1) (b), 166 (3) and 112 (5) of the Constitution, to be in force as general Law of the Republic, the following:

CHAPTER I

Asylum

Article 1

Guarantee of the right of asylum

1. The right of asylum shall be guaranteed to aliens or stateless people persecuted or seriously threatened of persecution in result of activity exercised in the State of their nationality or habitual residence, in favour of democracy, social and national liberty, peace among peoples, freedom and the right of the human being.

2. Shall also be entitled to the grant of asylum any aliens or stateless people who, having a well-founded fear of being persecuted for reasons of their race, religion, nationality, political opinions or membership of a particular social group, are unable to or, owing to such fear, are unwilling to return to the State of their nationality or habitual residence.

3. Asylum shall only be granted to an alien who has more than one nationality in case the reasons referred to in the above paragraphs apply to all the States of his or her nationality.

Article 2

Effects of the granting of asylum

The grant of asylum pursuant to the above Article shall endow the beneficiary with the status of refugee, making him or her subject to the provisions of this law, without prejudice of the provisions of any treaties or International Conventions of which Portugal is a party or adheres to.

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[100] Article 61 EC Treaty

Article 3

Exclusion from and refusal of asylum

1. Shall not benefit from asylum:

a) Those who have performed any acts that are contrary to Portugal's fundamental interests or sovereignty;

b) Those who have committed crimes against peace, war crimes or crimes against humankind, as defined in the international instruments aimed at preventing them;

c) Those who have committed felonious common Law crimes punishable with more than three years of imprisonment.

d) Those who have performed any acts contrary to the purposes and principles of the United Nations.

2. Asylum can be refused in case its granting causes demonstrated danger or well founded threat to the internal or external safety, or to public order.

Article 4
Family reunion

1. The effects of asylum shall be extended to the spouse and to minor, adopted or disabled children, whenever the applicant so requests, without prejudice of the provisions of the above Article.

2. In case the applicant is below 18 years of age and so requests, the effects shall be extended, under the same circumstances, to his father, mother and minor brothers and sisters of whom he is the sole supporter.

3. The applicant's relatives mentioned in the above paragraph can, alternatively, benefit from an extraordinary residence permit issued by the Minister for the Internal Affairs at their own request, and shall be discharged from the requisites provided for in the general regulations concerning the stay of aliens within national territory.

Article 5
Consequences of asylum over extradition

1. The grant of asylum shall prevent the pursuing of any petition for extradition of the assailed, founded on the facts based on which asylum is granted.

2. The final decision on any process for the extradition of the applicant shall be stayed while the asylum application is pending, both in the administrative and in the judicial phases.

3. In order to accomplish the provisions of the above paragraph, the submission of the asylum application shall be communicated by the Aliens and Frontier Department to the entity before which the said process runs, within two working days.

Article 6
Status of the refugee

1. The Refugee shall enjoy the same rights and shall be subject to the same duties as any aliens living in Portugal, since those are not contrary to the provisions of the present Law, of the 1951 Geneva Convention and of the 1967 New York Protocol and shall be obliged to, namely, comply with Law and regulations, as well as with any measures taken to maintain public order.

2. The Refugee shall be entitled, pursuing to the 1951 Geneva Convention, to be given an identity card that attests his or her quality, which shall be issued by the Minister for Foreign Affairs, in accordance with a standard form defined by decree order.

Article 7
Forbidden acts

The assailed shall be prevented from:

a) Interfering, in a way forbidden by law, in the Portuguese political life;

b) Performing activities which might turn to be harmful to the internal or external safety, to public order or that might endanger Portugal's affairs with other States;

c) Performing activities contrary to the purposes and principles of the United Nations, or of Treaties or Conventions of which Portugal is a party or adheres to.

Article 8
Residence permit for humanitarian reasons

1. Shall be granted a residence permit for humanitarian reasons to aliens or stateless people to whom the provisions of Article 1 do not apply and that are prevented or feel unable to return to the country of their nationality or habitual residence, for reasons of serious insecurity emerging from armed conflicts or from the repeated outrage of human rights that occurs thereon.

2. The residence permit referred to in the above paragraph shall be valid for a maximum period of five years and shall be renewable after analysing the evolution of the situation in the country of origin.

3. The Minister for the Internal Affairs shall be competent to grant the residence permit mentioned in the present Article, free from any charges and under proposal of the Office of the National Commissioner for the Refugees, in accordance with a standard form defined by decree order.

4. The Aliens and Frontiers Department shall be competent to issue the document aimed at proving residence, which shall be granted pursuant to paragraphs 2 and 3 of the present Article.

Article 9
Temporary protection

1. The Portuguese State can grant temporary protection, for a period not exceeding two years, to persons displaced from their country as a consequence of serious armed conflicts which generate refugee flows, at a large scale.

2. The criteria based on which temporary protection is eager to be granted shall be defined, in each case, by Cabinet Resolution.

3. The Government shall co-ordinate the measures taken pursuant to the above paragraphs with the measures taken within the European Union, regarding the issue of combined actions for the reception and temporary permanence of displaced persons.

CHAPTER II
Proceedings
SECTION I
Admissibility of the asylum petition

Article 10
Asylum petition

For the purposes of the present Law, shall be considered as an asylum petition the application through which an alien requests a State the protection of the 1951 Geneva Convention, as defined by the New York Protocol.

Article 11
Submission of the petition

1. The alien or stateless person who enters into national territory with the purpose of obtaining asylum shall submit his or her application to any police authority within eight days, either verbally or in writing.

2. In case the applicant is a resident to the country, such time shall run from the date when the facts based on which the request is made occurred, or came to the petitioner's knowledge.

3. The petition shall comprise the identification of the applicant and the members of his or her family entourage mentioned thereon, the description of the circumstances or facts that justify asylum and the indication of any available evidence, but the number of witnesses must not exceed 10.

4. In case the application has not been directly submitted to the Aliens and Frontier Department, it shall be remitted to that entity, which shall immediately notify the petitioner to testify within five days, and inform the Office of the United Nations High Commissioner for Refugees, as well as

the Portuguese Council for the Refugees.

5. With the notification referred to in the above paragraph, it shall be delivered to the petitioner a statement attesting the submission of the application, and he or she shall be informed of his or her rights and duties, namely of keeping that service informed about his or her current address and of appearing at the service's premises every 15 days on the appointed weekday, otherwise the proceedings shall not follow their normal course before the actual situation of the interested person is clarified.

Article 12
Consequences of asylum over infringements related to the entrance into the country

1. The submission of the asylum petition shall prevent the decision on any administrative proceedings or criminal process based upon irregular entrance into national territory, started against the petitioner and the persons mentioned in Article 4 who accompany him or her.

2. The proceedings or process shall be archived in case asylum is granted and it results that the corresponding infringement has been caused by the same facts that justified the grant of asylum.

3. For the purposes of the above paragraphs, the asylum petition and the decision thereon shall be communicated to the entity before which the administrative proceedings or the criminal process runs, by the Aliens and Frontiers Department, within two working days.

Article 13
Refusal of petition

1. The petition shall not be admitted in case, through the proceedings prescribed in the present Law, some of the causes mentioned on Article 3 or on the below items are immediately finded to be obvious:

a) To be groundless, because it is obvious that it does not meet any of the criteria defined by the Geneva Convention or by the New York Protocol, because the allegations that the applicant fears persecution in his or her country have no reason to be, or because it constitutes an abusive usage of the asylum process;

b) To be made by petitioner that is national or habitual resident in a country likely to be considered as a safe country or as a third host country;

c) To comprise within the situations mentioned in Article 1-F, of the Geneva Convention;

d) The application is submitted, without due justification, beyond the deadline prescribed in Article 11;

e) The applicant had been decided to be expelled from national territory.

2. For the purposes of paragraph 1 (a), it shall be considered as a circumstantial evidence that the asylum petition is clearly fraudulent or that it constitutes an abusive usage of the asylum proceeding namely when the applicant:

a) Bases upon and justifies his or her request with evidence emerging from false or forged documents, when questioned about them declares that they are authentic, deliberately and in bad faith renders false statement related to the object of the request or destroys documents that prove his or her identity;

b) Deliberately omits the fact that he or she has already submitted an asylum petition in one or in several countries, eventually using a false identity.

3. For the purposes of paragraph 1 (b), shall be considered as:

a) Safe country - the country in relation to which can safely be determined that, in an objective and verifiable way, it does not origin any refugees or in relation to which can be determined that the circumstances that could previously justify the claim of the 1951 Geneva Convention have ceased to exist, taking namely into account the following elements: respect for human rights, existence and normal operation of democratic institutions, political stability;

b) Third host country - the country where it has been demonstrated that the asylum petitioner is not subject to threats to his or her life or liberty, as defined by Article 33 of the Geneva Convention, or subject to torture or inhuman or degrading punishments, where he or she obtained protection or got the opportunity, at the frontier or within its territory, to contact with local authorities to seek protection or where he or she has provenly been admitted and benefits from an actual protection against refoulement, as defined by the Geneva Convention.

Article 14
Summary fact-finding phase and decision

1. After a summary fact-finding process, the Director of the Aliens and Frontier Department shall be competent to issue a grounded decision refusing or admitting the petition, within 20 days, after which the petition shall be considered as admitted, if no decision has been issued.

2. The decision mentioned to in the above paragraph shall not be issued before the end of the time limit prescribed in Article 11 (4), or before the rendering of the statements referred thereon, which shall be considered, for

all due purposes, as the hearing of the interested.

3. This decision shall be immediately communicated to the representative of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees.

Article 15
Consequences of the petition refusal

1. The decision that refuses the petition shall be notified to the petitioner within twenty four hours, mentioning that he or she must leave the country within 10 days, otherwise he or she shall be expelled immediately after the termination of that period.

2. The notification referred to in the above paragraph shall include information on the rights of the petitioner pursuant to the below Article.

Article 16
Reappraisal and appeal

1. In case the petitioner does not agree with the reached decision, he or she can, within five days from the date of notification, request its reappraisal, with suspensive effect, by means of a petition addressed to the national commissioner for the Refugees, who may interview the petitioner personally, if he finds it necessary.

2. Within forty eight hours from receiving the reappraisal petition or interviewing the petitioner, the national commissioner for the Refugees shall take his final decision, which can be appealed before the Administrative Court of first jurisdiction (Tribunal Administrativo de Círculo), within eight days.

SUBSECTION I
Requests made at Frontier Offices
Article 17
Special regime

1. The admissibility of asylum applications made at Frontier Offices by aliens who do not fulfil the necessary requisites to be admitted into national territory shall be subject to the regime prescribed in the previous Articles, with the changes emerging from the present Subsection.

2. The staff who meets the applicants at Frontier Offices shall be subject to adequate training, namely under the terms of the applicable recommendation, approved by the European Council Parliamentary Assembly on the 7th November 1996.

Article 18
Request appraisal and decision

1. The Aliens and Frontier Department shall immediately communicate the submission of the asylum requests referred to in the above Article to the representative of the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees; these entities

can express their opinion within no more than forty eight hours, and interview the petitioner, if they wish so.

2. Within the time limit referred to in the above paragraph, the petitioner shall be informed of his or her rights and duties, and shall render statements which shall be considered, for all due purposes, as previous hearing of the interested.

3. The Director of the Aliens and Frontier Department shall issue a grounded decision accepting or refusing the request within no more than five days, but never before expiring the time limit prescribed in paragraph 1.

4. The decision mentioned in the above paragraph shall be notified to the petitioner, with information regarding his or her rights to appeal and, simultaneously, communicated to the representative of the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees.

Article 19
Reappraisal

1. Within twenty four hours after being notified of the decision, the petitioner can apply for its supersedeas reappraisal, by means of a request submitted before the national commissioner for the Refugees, who shall take his final decision within twenty four hours.

2. Both the representative of the Office of the United Nations High Commissioner for the Refugees or of the Portuguese Council for the Refugees can, if they wish so, express their written opinion about the decision of the Director of the Aliens and Frontier Department, within twenty four hours after the communication of that decision.

Article 20
Consequences of the request and decision

1. The applicant shall stay within the Port or Airport International area while waiting for the decision of the Director of the Aliens and Frontier Department or of the National Commissioner for the Refugees, thus applying the proceedings and further guarantees pursuant to Article 4 of Law 34/94, of the 14th September.

2. In case the decision rejects the request, the petitioner shall be compelled to travel back to the place where he or she started his or her journey from or, if this is impossible, to the State where the document he or she travelled with was issued, or to any other place where he or she can be admitted to, namely a third host country.

3. The decision which admits the request, or the expiring of the time limits prescribed in Articles 18 or 19 without notification of the admissibility refusal shall determine the entrance of the applicant into national territory, thus following the fact-finding phase of the asylum proceedings, pursuant to

Articles 21 and following of the present Law.

4. The applicant can also request the postponement of the return for no more than forty eight hours, in order to instruct an attorney at Law with the relevant elements to the subsequent lodging of the judicial appeal.

SECTION II
Grant of asylum

Article 21
Provisional residence permit

1. The Aliens and Frontiers Department shall issue a provisional residence permit in favour of the persons to whom the asylum request that has been admitted applies; this permit shall be valid for a period of 60 days from the date of submission of the petition and shall be renewable for periods of 30 days until decision thereupon or, in the situation described in Article 25, until the time limit prescribed thereon expires, and shall be issued in accordance with the standard form defined by decree order of the Minister for Internal Affairs.

2. Minor, adopted or disabled children to whom the provisions of Article 4 (1) apply and under the conditions prescribed thereon, shall be mentioned in the applicant's residence permit, by means of an additament.

3. While the asylum proceedings are pending, shall apply to the applicant the provisions of the present law and of the legislation concerning foreigners.

Article 22
Fact-finding phase and report

1. The Aliens and Frontiers Department shall proceed with the requested diligence and shall investigate every fact whose knowledge shall be convenient to a fair and quick decision.

2. The fact-finding phase shall take place within 60 days; it shall be extended for an equal period, whenever that shall be necessary.

3. During the fact-finding phase, the representative of the Office of the United Nations High Commissioner for the Refugees or of the Portuguese Council for the Refugees can join to the file any reports or information regarding the respective country of origin and obtain information regarding the state of the proceedings.

4. Immediately after the end of the fact-finding phase, the Aliens and Frontiers Department prepares a report which shall be sent, together with the file, to the Office of the National Commissioner for the Refugees.

5. Those who acted within the asylum proceedings shall keep confidential any information which they had access to in the exercise of their duties.

Article 23
Proposal, hearing and decision

1. The Office of the National Commissioner for the Refugees shall prepare a grounded proposal project of asylum grant or refusal within 10 days after receiving the file.

2. This project shall be communicated to the representative of the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees who may , if they wish so, make observations on its contents, within five days.

3. The applicant shall be notified of the contents of the proposal and can make observations on it within the same time limit.

4. In case either the applicant or the entities mentioned in paragraph 2 make observations, the Office of the National Commissioner for the Refugees shall reappraise the project in the light of the new elements and submit a grounded proposal before the Minister for Internal Affairs within five days.

5. The Minister for Internal Affairs shall decide within eight days from the date of submission of the proposal referred to in the above paragraph.

Article 24
Notification and appeal

1. Within 20 days, an appeal against the refusal of the asylum petition can be lodged at the Supreme Administrative Court, with suspensive effect.

2. The rendered decision shall be notified to the applicant by the Aliens and Frontiers Department, mentioning the right referred to in the above paragraph and it shall be communicated to the representative of the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees.

Article 25
Effects of the asylum refusal

1. In case asylum is refused, the applicant can stay within national territory for a transitory period, which shall not exceed 30 days.

2. The applicant shall be subject to the provisions of the legislation on aliens since the end of the time limit prescribed in the above paragraph.

Article 26
Extensive application

The provisions of sections I and II of the present chapter shall apply, with the due adaptations, to the situations mentioned in Article 8.

SECTION III
Request for refugee resettlement

Article 27
Resettlement petition

1. The petitions for resettlement of refugees under the mandate of the Office of the United Nations High Commissioner for the Refugees shall be submitted by the representative of the Office of the United Nations High Commissioner for the Refugees before the Minister for Internal Affairs, who shall, within eight days, request the Aliens and Frontiers Department to issue a report.

2. The report on the petitions referred to in the above paragraph shall be issued within twenty four hours; the said Government member shall decide on the admissibility and the grant of asylum, taking into account the specific circumstances of the case and the legitimate interests to be safeguarded.

CHAPTER III
Special proceeding to determine the State responsible for analysing the asylum petition

Article 28
Determination of the responsible State

Whenever, under the provisions of the international instruments concerning the determination of the State responsible for analysing an asylum application made at an European Union member State, it emerges the need to proceed with such determination, a special proceeding shall be organised, in accordance with the provisions of the present chapter.

Article 29
Asylum petition in Portugal

1. Where there are strong evidence that other member State of the European Union is responsible for analysing the asylum petition, the Aliens and Frontiers Department shall apply for the concerned authorities to accept it.

2. Once the requested State accepts the responsibility, the director of the Aliens and Frontiers Department shall, within five days, render the decision of custody transfer, which shall be notified to the applicant and communicated to the representative of the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees.

3. The notification mentioned in the above paragraph shall be served upon the applicant together with a safe-conduct, which shall be issued by the Aliens and Frontiers Department, in accordance with a standard form that shall be defined by decree order.

4. Within five days from the notification of the transfer decision, the applicant can request its reappraisal by means of an application, with suspensive effect, submitted before the national commissioner for the refugees, who shall decide within forty eight hours.

5. In case the requested State answers negatively to the application of the Aliens and Frontiers Department pursuant to paragraph 1, the provisions of chapter II of the present law shall apply.

Article 30
Execution of the transfer decision

The Aliens and Frontiers Department shall execute the decision of transferring the applicant, whenever the latest does not abandon national territory on a voluntary basis.

Article 31
Suspension of the running of the time prescribed for the decision

The fact-finding phase of the proceeding for determination of the State responsible for analysing the asylum request shall suspend, until final decision, the running of the time limit prescribed in Articles 14 (1) and 18 (3).

Article 32
Asylum request in another member State of the European Union

1. The director of the Aliens and Frontiers Department shall decide on the acceptance of the Portuguese State's responsibility for the analysis of the asylum applications made at other member States of the European Union.

2. The decision mentioned in the above paragraph shall be rendered within three months from the date of receiving the acceptance request made by the State where the asylum petition has been submitted.

3. In the cases described as urgent by the State where the application has been made, the time limit referred to in the above paragraph shall be reduced to eight days.

CHAPTER IV
Competent entities

Article 33
Competence to decide on asylum

The Minister for Internal Affairs shall be competent to decide on the grant or refusal of asylum, under proposal of the Office of the National Commissioner for the Refugees.

Article 34
Office of the National Commissioner for the Refugees

1. Within the Ministry for Internal Affairs shall be created the Office of the National Commissioner for the Refugees, which shall be competent to prepare grounded proposals of asylum grant or refusal, grant and renewal of residence permits due to humanitarian reasons and declaration of loss of the right of asylum, as well as to decide on the reappraisal requests which shall be submitted before itself, in accordance with the law.

2. The Office of the National Commissioner for the Refugees shall be composed by a national commissioner for the refugees, who shall preside over it, by an associate-national commissioner, who assists and replaces him in his absences and impediments, and by a lawyer qualified or skilled in the field of asylum law, who shall exercise functions of assistance; they shall be appointed by joint order of the Ministers for Internal Affairs and Justice.

3. The offices of national commissioner for the refugees and assistant-national commissioner for the refugees shall be performed by judicial or public prosecution magistrates with more than 10 years of service and meritorious grades; they shall be nominated pursuant to appointment of the Superior Councils of the Bar and of Public Prosecution, respectively.

4. The statutes of the Office of the National Commissioner for the Refugees shall be approved until 15 days before the entry into force of the present law.

Article 35
Aliens and Frontiers Department

1. The Aliens and Frontiers Department shall be competent to act within the fact-finding phase of the asylum proceedings, and its director shall decide on the admission or refusal of the asylum applications and on the acceptance, on the part of the Portuguese State, of the responsibility for the analysis of a request and its transfer to another member State of the European Union.

2. Within the fact-finding phase of asylum proceedings, the Aliens and Frontiers Department can, if that is found to be necessary, request the opinion of experts on some specific questions, namely of medical or cultural nature.

CHAPTER V
Loss of the right of asylum

Article 36
Causes of the loss of the right of asylum

Shall cause the loss of the right of asylum:

a) The express waiver;

b) The practice of forbidden acts or activities, in accordance with the provisions of Article 7;

c) The demonstration of falsity of the alleged grounds for the grant of asylum or the existence of facts which, had they been known at the time of granting, would have implied a negative decision;

d) The request and the obtaining by the assailed of the protection of the country of his or her nationality;

e) The voluntary re-acquisition of the nationality he or she had lost;

f) The voluntary acquisition of a new nationality by the assailed, as long as he or she enjoys the protection of the respective country;

g) The voluntary re-settlement in the country he or she left or out of which he or she stayed for fear of persecution;

h) The termination of the reasons which justified the grant of asylum;

i) The decision to expel the assailed, rendered by the competent court of law;

j) The abandon of national territory by the assailed, thus settling in another country.

Article 37
Effects of the loss of the right of asylum

1. The loss of the right of asylum pursuant to the provisions of Article 36 (b) shall be a motive of expulsion from national territory, without prejudice of the provisions of paragraph 3.

2. The loss of the right of asylum for the reasons mentioned in items (a), (c), (d), (e), (f), (g) and (h) of the previous Article shall determine the subjection of the assailed to the provisions of the general law concerning the stay of aliens within national territory, without prejudice of the provisions of the following paragraph.

3. In case the loss of the right of asylum shall be determined by the circumstance mentioned in item (h) of the previous Article, the assailed can apply for the grant of a residence permit, with exemption from exhibiting the respective visa, in accordance with the provisions of the general legal framework on aliens.

Article 38
Expulsion of the assailed

The expulsion of the assailed, in accordance with the provisions of the previous Article, shall not bring about his placement in the territory of a country where his or her freedom shall be put at risk by any of the causes that, in accordance with the provisions of Article 1, might be considered as a ground for the grant of asylum.

Article 39
Administrative and judicial competence

1. The Minister for Internal Affairs shall be competent to, under proposal of the Office of the National Commissioner for the Refugees, declare the loss of the right of asylum in the cases referred to in Article 36 (a), (g), (i) and (j).

2. Under all the circumstances mentioned in the remaining items of Article

36, the Second Jurisdiction Court (Tribunal da Relação) within the residence area of the assailed shall be competent to declare the loss of the right of asylum and to order expulsion, whenever that shall be the case.

3. To the proceedings provided for in the above paragraph shall apply, on a subsidiary basis and with the due adaptations, the rules governing the criminal process.

Article 40
Communication to the Department of Justice

Whenever, in accordance with the provisions of paragraph 2 of the above Article, there shall be grounds to declare the loss of the right of asylum and to order the expulsion of the assailed in accordance with the provisions of Article 37 (1), the Aliens and Frontiers Department shall provide the associate-general-attorney at the competent Second Jurisdiction Court (Tribunal da Relação) with all the relevant elements for the submission of the respective request of declaration or expulsion.

Article 41
Formulation of the request

The request for declaration of loss of the right of asylum and, shall it be the case, the request for expulsion in accordance with the provisions of Article 37 (1) shall be made through an application, submitted in triplicate and duly accompanied of all the evidence found to be necessary.

Article 42
Reply of the defendant

1. The rapporteur shall provide for the notification of the defendant within 15 days from filing.

2. The reply shall be submitted in triplicate, accompanied with the corresponding evidence; the duplicate shall be delivered to the assistant-general-attorney.

Article 43
Witnesses

The number of witnesses to be appointed by any of the parties shall not exceed 10.

Article 44
Production of evidence

1. The rapporteur, within 30 days after the submission of the Defendant's reply or after expiring the time limit prescribed for such purpose, shall perform the acts of evidence production that shall be necessary for the decision.

2. Once the production of evidence is complete, both the Petitioner and the Defendant shall be notified to submit their allegations within eight days, in succession.

Article 45
Approval

The file shall be successively submitted to the approval of each of the assistant-judges for eight days, no sooner than the last allegation is joined, or after the deadline for its delivery expires; it shall be then enrolled for trial.

Article 46
Contents of the expulsion decision

In case it provides for the expulsion, the judgement shall contain the elements referred to in Article 81 (1) of Decree Law 59/93, of 3 March.

Article 47
Appeal

1. The judgement can be appealed before the Supreme Court of Justice; the appeal shall be lodged within 10 days.

2. The decision referred to in Article 39 (1) can be appealed before the Supreme Administrative Court, in accordance with the provisions of the general law.

Article 48
Execution of the expulsion order

Once the decision transits in rem judicatam, its certificate shall be sent to the Aliens and Frontiers Department, which shall execute the expulsion order eventually contained therein and inform the delegate of the Office of the United Nations High Commissioner for the Refugees and the Portuguese Council for the Refugees about it.

CHAPTER VI
Social Support
SECTION I
Reception
Article 49
Guarantee of reception

The Portuguese State shall guarantee to asylum applicants, until final decision on the application, conditions of human dignity.

Article 50
Social support

1. The State shall grant social support to asylum applicants in a situation of economic and social insufficiency and to the members of their family entourage who the provisions of the present law apply to.

2. Non governmental organisations can co-operate with the State in the fulfilment of the measures provided for in the present law, namely through the signing of co-operation protocols.

Article 51
Information

At the beginning of the proceeding, the Aliens and Frontiers Department shall inform asylum applicants on the rights they enjoy and on the duties they are subject to, as well as on the procedural course.

Article 52
Interpreting and legal aid

1. Asylum applicants shall benefit, whenever necessary, from the services of an interpreter who shall assist them in the formulation of their request and in the course of the proceeding.

2. The Office of the United Nations High Commissioner for the Refugees and the Portuguese Council for the Refugees can provide legal counselling directly to asylum applicants, at all stages of the proceeding.

3. The asylum applicant shall benefit from legal aid, in accordance with the provisions of the general law.

Article 53
Medical and medicine assistance

1. Asylum applicants shall be given access to the National Health Service, in accordance with the provisions of a decree order which shall be issued jointly by the Ministers for Internal Affairs and Health.

2. The document mentioned in Article 11 (5) shall be sufficient to prove the quality of asylum applicant, for the purposes of the above paragraph.

Article 54
Means of subsistence

Asylum applicants in a situation of economic and social insufficiency and their respective family entourage in accordance with the provisions of Article 4 shall be granted social support for housing and feeding; the granting of this support shall be ruled by decree order of the Ministers of Finances, Internal Affairs and Solidarity and Social Security, which shall be published within 60 days after the publication of the present law.

Article 55
Right to work

Asylum applicants who have already been granted a temporary residence permit shall be secured access to the labour market, in accordance with the provisions of the general law; the application of the social support regime provided for in Article 50 shall terminate with the exercise of paid employment.

SECTION II
Particularly vulnerable situations
Article 56

Minors

Without prejudice of any tutelage measures which shall apply in accordance with the provisions of the legislation concerning minor tutelage, and when the circumstances so require, minor asylum applicants can be represented by a non-governmental entity or organisation.

Article 57

Access to teaching

Asylum applicants at school age and in favour of whom a temporary residence permit has been issued shall have access to the public structures of compulsory education, under the same conditions as national citizens.

Article 58

Other vulnerable persons

Asylum applicants who have been victims of torture, rape or any other physical or sexual abuse shall benefit from special attention and care on the part of the respective social security centre within the area of their residence or of entities which have signed support protocols with the latest.

SECTION III

Termination of social support

Article 59

Termination of support

1. Social support shall terminate with the final decision on the asylum application, independently from the lodging of the appropriate judicial appeal.

2. The termination of support in accordance with the provisions of the previous paragraph shall not occur in case, once the applicant's economic and social situation is appraised, it emerges that there shall be necessary to maintain it.

3. Shall cease the support granted to asylum applicants who, without a justification, fail to appear before the concerned authorities when called, go off to unknown location or change their residence without previously informing the Aliens and Frontiers Department of that fact.

CHAPTER VII

Final and transitory provisions

Article 60

Notification procedure

1. The notifications upon the applicant shall be made personally or by means of registered letter with notice of reception, which shall be sent to his or her last known address.

2. In case the letter is returned, such fact shall be immediately communicated to the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees; the applicant shall be considered as having been notified in case he or she does not appear

at the Aliens and Frontiers Department within 20 days from the date of the said return.

Article 61
Extinction of the proceeding

1. The proceeding which is stayed for more than 90 days, due to a reason which the applicant is liable for, shall be extinct.

2. The competence to declare on the extinction of the proceeding shall lie with the Minister for Internal Affairs.

Article 62
Gratuitousness and urgency of the proceedings

The proceedings for grant or loss of the right of asylum and for expulsion shall be gratuitous and urgent, both at the administrative and at the judicial phases.

Article 63
Interpretation and integration

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

Article 64
Revocation

Law 70/93, of 29 September, shall be revoked.

Article 65
Entry into force

1. The legal regime provided for in the present law shall entry into force 60 days after the date of its publication, without prejudice of the immediate enforcement for the purpose of beginning its regulation process.

2. The present law shall apply to the pending asylum applications.

Approved on the 29th January 1998. The President of the Assembly of the Republic, António de Almeida Santos
Enacted on the 13th March 1998 . Publish. The President of the Republic, JORGE SAMPAIO.

Annex II

The Constitution of the Portuguese Republic (excerpts)

FOURTH REVISION 1997

(Text according to Constitutional law no. 1/97 of 20 September)

PREAMBLE

On 25 April 1974 the Armed Forces Movement, setting the seal on the long resistance of the Portuguese people and interpreting their deep-seated feelings, overthrew the fascist regime.

The liberation of Portugal from dictatorship, oppression and colonialism represented a revolutionary change and an historic new beginning in Portuguese society.

The Revolution restored fundamental rights and freedoms to the people of Portugal. In exercise of those rights and freedoms, the legitimate representatives of the people have assembled to draw up a Constitution that meets the aspirations of the country.

The Constituent Assembly affirms the decision of the Portuguese people to defend their national independence, to guarantee the fundamental rights of citizens, to establish the basic principles of democracy, to safeguard the primacy of the rule of law in a democratic state and to open the way to a socialist society, with respect for the will of the Portuguese people and the goal of building a freer, more just and more fraternal country.

The Constituent Assembly, meeting in plenary session on 2 April 1976, approves and decrees the following Constitution of the Portuguese Republic.

Fundamental principles

Article 1
Portuguese Republic

Portugal is a sovereign Republic, that is based upon the dignity of the human person and the will of the people and is committed to building a free and just society united in its common purposes.

Article 2
Democratic State based on the rule of law

The Portuguese Republic is a democratic State that is based upon the rule of law, the sovereignty of the people, the pluralism of democratic expression and democratic political organisation, and respect and effective guarantees for fundamental rights and freedoms and the separation and inter-dependence of powers, and that has as its aims the achievement of economic, social and cultural democracy and the deepening of participatory democracy.

Article 7
International relations

1. In international relations, Portugal shall be governed by the principles of national independence, respect for human rights, the rights of peoples, equality between States, the peaceful settlement of international disputes,

non-interference in the internal affairs of other states and co-operation with all other peoples for the emancipation and progress of mankind.

2. Portugal shall advocate the abolition of imperialism, colonialism and any other form of aggression, domination and exploitation in relations among peoples, as well as the achievement of simultaneous and controlled general disarmament, the dissolution of political-military blocs and the setting up of a collective security system, with a view to the creation of an international order capable of safeguarding peace and justice in relations among peoples.

3. Portugal recognises the right of peoples to self-determination, independence and development, as well as the right to rebel against all forms of oppression.

4. Portugal shall maintain privileged bonds of friendship and co-operation with those countries that are Portuguese-speaking.

5. Portugal is pledged to the reinforcement of the European identity and to the strengthening of the commitment of the States of Europe to democracy, peace, economic progress and justice in the relations between their peoples.

6. Provided that there is reciprocity, Portugal may enter into agreements for the joint exercise of the powers necessary to establish the European Union, in ways that have due regard for the principle of subsidiary and the objective of economic and social cohesion.

Article 8
International law

1. The rules and principles of general or customary international law are an integral part of Portuguese law.

2. Rules provided for in international conventions that have been duly ratified or approved, shall apply in national law, following their official publication, so long as they remain internationally binding with respect to the Portuguese State.

3. Rules made by the competent organs of international organisations to which Portugal belongs apply directly in national law to the extent that the constitutive treaty provides.

PART I
Fundamental rights and duties

SECTION 1
General principles

(…)

Article 15
Aliens, stateless persons, European citizens

1. Aliens and stateless persons temporarily or habitually resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens.

2. Paragraph 1 does not apply to political rights, to the performance of public functions that are not predominantly technical or to rights and duties that, under this Constitution or the law, are restricted to Portuguese citizens.

3. Citizens of Portuguese-speaking countries may, by international convention and provided that there is reciprocity, be granted rights not otherwise conferred on aliens, except the right to become members of the organs with supreme authority or of self-government of the autonomous regions, to service in the armed forces or to appointment to the diplomatic service.

4. Provided that there is reciprocity, the law may confer upon aliens who reside in the national territory the right to vote for, and to stand for election as, members of the organs of local authorities.

5. Provided that there is reciprocity, the law may also confer upon citizens of the Member States of the European Union, who reside in Portugal, the right to vote for, and to stand for election as, Members of the European Parliament.

Article 16
Fundamental rights: scope and interpretation

1. The fundamental rights contained in this Constitution shall not exclude any other fundamental rights provided for in the laws or resulting from applicable rules of international law.

2. The provisions of this Constitution and of laws relating to fundamental rights shall be construed and interpreted in harmony with the Universal Declaration of Human Rights.

Article 17
System of rights, freedoms and guarantees

The general system of rights, freedoms and guarantees comprises those set out in Section II and fundamental rights of a similar kind.

Article 18
Legal application

1. The constitutional provisions relating to rights, freedoms and guarantees shall be directly applicable to, and binding on, both public and private bodies.

2. Rights, freedoms and guarantees may be restricted by law in only those cases expressly provided for in this Constitution; restrictions shall be limited

to the extent necessary to safeguard other rights or interests protected by this Constitution.

3. Laws restricting rights, freedoms and guarantees shall be general and abstract in character, shall not have retroactive effect and shall not limit, in extent or scope, the essential content of the constitutional provisions.

(…)

SECTION II
Rights, freedoms and guarantees

CHAPTER I
Personal rights, freedoms and guarantees

(…)

Article 28
Remand in custody

1. Detention shall, within forty eight hours, be subject to the scrutiny of a judicial authority; the judicial authority shall order either the release of the person concerned or a suitable coercive measure; the judge shall hear the reasons for the detention, inform the person detained thereof and shall conduct an examination of that person and provide him or her with the opportunity to present a defence.

2. Remand in custody is of an exceptional nature and shall not be ordered or maintained where it can be replaced by bail or some other more favourable measure available under the law.

3. A court order that involves deprivation of liberty or the continuation of detention shall be communicated promptly to the person specified by the detainee, who may be a relative or another person in whom the detainee has confidence.

4. Remand in custody shall be subject to the time limitations laid down by law.

(…)

Article 33
Deportation, extradition and right to asylum

1. Portuguese citizens shall not be deported from the national territory.

2. Deportation of persons who have entered, or are permanently resident in, the national territory, who have obtained a residence permit, or who have lodged an application for asylum that has not been refused, shall be determined by a judicial authority only; the law shall provide for the expeditious decision of these matters.

3. The extradition of Portuguese citizens shall only be permitted where reciprocal arrangements have been established by international treaty, in cases of terrorism and organised international crime and provided that the legal order of the requesting State enshrines guarantees of fair and just trial.

4. No one shall be extradited for political reasons, nor for crimes that carry the penalty death or any other penalty causing irreversible damage to the physical integrity of the person under the law of the requesting State.

5. Extradition in respect of offences punishable, under the law of the requesting State, by deprivation of liberty or detention order for life or an indeterminate term, shall only be permitted on condition of reciprocity based on an international agreement and provided that the requesting State gives an assurance that such sentence or detention order will not be imposed or enforced.

6. Extradition shall be determined by a judicial authority only.

7. The right of asylum is guaranteed to aliens and stateless persons who are persecuted, or under a serious threat of persecution, in consequence of their activities on behalf of democracy, social or national liberation, peace between peoples or liberty or human rights of individuals.

8. The status of political refugees shall be established by law.

(…)

SECTION IX

The Public Service

(…)

Article 272
The police

1. The police have the responsibility of defending democratic legality, protecting internal security and the rights of citizens.

2. The measures that may be taken by the police shall be provided for by law and shall not be used beyond what is strictly necessary.

3. Prevention of crime, including crimes against the security of the State, shall be undertaken with due regard for the general rules governing the police and with proper respect for the rights, freedoms and guarantees of citizens

4. The law shall determine the arrangements with respect to the security forces, each of which shall have a single organisation for the whole of the national territory.>

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