

Procedural safeguards and legal assistance to asylum seekers in European countries

Marta García
Protection Officer
UNHCR Spain
Madrid, 11 October 2016

CEAS: state of play

Arrivals to EU in 2015 and 2016 have put the CEAS under strain

EC communication of 6 april: “towards a reform of the CEAS and Enhancing Legal Avenues to Europe”

Five Priorities:

- a sustainable and fair asylum system including through amendments of the Dublin System;
- reinforcing the Eurodac system;
- achieving greater convergence in the EU asylum system including through amendments of the Asylum Procedures, Qualification and Reception Conditions Directive; preventing secondary movements and reforming the European Asylum Support Office into the EU asylum agency
- Reform of the blue card Directive to include refugees
- Communication of the external dimension of the European Agenda on Migration

Objective of CEAS reform

- Promote greater harmonisation
- Reduce undue pull factors and secondary movements

Through >

- replacing directives by regulations
- Targeted changes to the reception conditions Directive
- Plus a proposal for EU structured resettlement Programme



Some reflections

- Art. 78 TFEU requires that EU Policy on asylum, subsidiary Prt. and Temp. Prt. “must be in accordance with the 1951 Geneva Cv. And 1967 Protocol”
- Important further harmonisation of CEAS
- Objective> Achieve high levels of protection across the EU
- Ensure Access to fair and effective asylum procedures
- Same level of protection and rights accross the EU regardless of where they apply
- Contribution to better integration opportunities
- Impact on reducing secondary movements
- Should NOT lead to lowering common standards or level of rights

Some Challenges of the reform

- Consequences foreseen to secondary movements leading to review of status vis a vis art. 1C, or reduced/substandard reception conditions limited to emergency healthcare
- Punitive measures should be combined with incentives for those who comply: prioritising claims, prioritised access to rights under RCD, or faster access to free movement within the EU



Application of Dublin

- ensure adequate application of “Safe country” concepts and security considerations
- short time limits incl. for presenting information and for appeals (7 days)
- changes in effective remedy provisions, automatic suspensive effect introduced and additional remedy to challenge non application of family provisions.

Qualification Directive

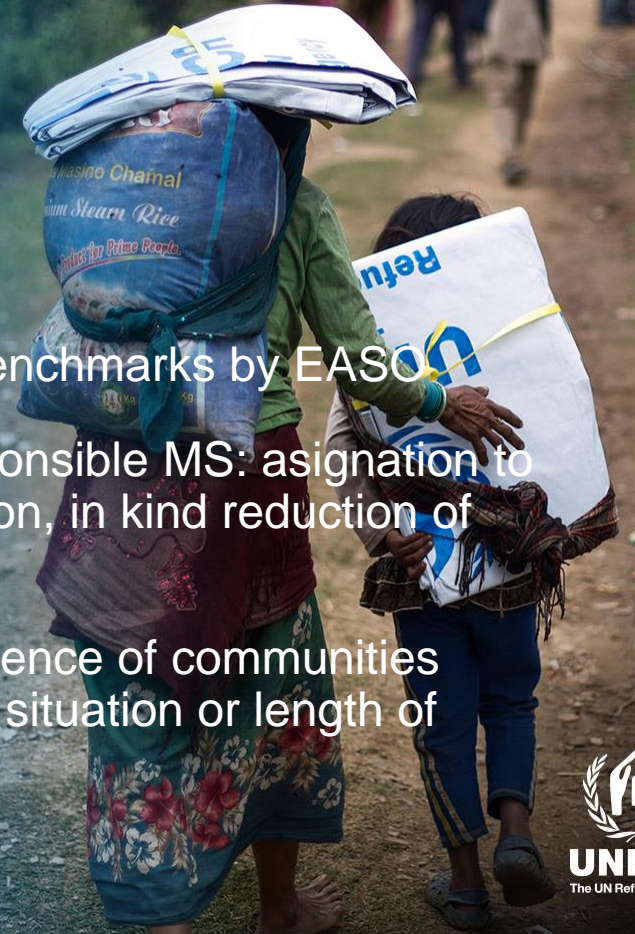
- Greater convergence of recognition rates and forms of protection
- Firmer rules sanctioning secondary movements:
- Protection is granted only for as long as it is needed:
- Strengthened integration incentives:
- Important to ensure non discrimination when interpreting 15(C) on level of violence and real risk of serious harm, and correct application of « internal protection » with all its requirements in line with ECJ jurisprudence

Asylum Procedures Directive

- Current differing treatment among MS
- Divergences result from discretionary clauses
- Key aspects should ensure uniformity: admissibility rules, use of border and accelerated procedures, subsequent applications, right to remain in the territory
- Plus: maximum duration at first instance and appeal
- Common approach for safe third country and safe country of origin concepts, including MS discretion in using them
- Safeguards for the applicant to whom the STC concept is applied
- Other deterrents: link between time of the application and credibility, accelerated procedures and non suspensive effect of appeal
- For UNHCR: accelerated procedures only for manifestly unfounded or clearly abusive claims (national security or public order should NOT be considered MU or CA)

Reception Conditions Directive

- Objective > ensure humane treatment
- Reduce secondary movements
- Monitoring through technical standards and benchmarks by EASO
- Sanctions attached to failure to remain in responsible MS: asignment to designated areas when abscondment, detention, in kind reduction of material reception conditions
- Other drivers for movement: family links , presence of communities employment opportunities, education, general situation or length of procedures



Freedom of movement

Art. 26 of the Geneva Convention: right to freedom of movement and choice of residence for refugees and asylum seekers regardless of manner of entrance in the territory.

Restrictions: must conform to the principle of proportionality, appropriate to achieve protection function, the least intrusive instrument, and proportionate to the interest to be protected.

Lawyers on the ground: taking law to practice

some Key issues to bear in mind:

- Access to territory – ensure safeguards against illegal pushbacks of arrivals
- Access to asylum-ensure identification and Access to procedures
- Asylum procedures-ensure quality and fairness, rights and safeguards respected ,
- Personal interviews, by qualified staff, incl. in subsequent applications
- Quality Information (rights, obligations and consequences, DUBLIN!)
- Interpretation : ensure quality, training, AGD perspective
- Reception conditions incl. Specific needs
- Family reunion: flexible, effective, agile
- Access to education
- Integration perspectives
- Access to employment
- Access to nationality
- Legal pathways



A look at specific groups: AGD Approach

- Specific safeguards for Vulnerable persons, persons with special needs.
- UASC : should not be included in the border and accelerated procedures; accorded adequate reception conditions to their needs and BIA and BID carried out
- Compatibility with Childrens' legal framework (CRC)- possibility to assign a guardian maximum 5 days after the application is made
- Gender related claims: special procedural provisions to be applied, SGBV protocols for prevention and response in place
- Diversity in asylum claims

The relevance of quality in asylum procedures

- In the information provided
- Training of professionals (officers, judges, lawyers, social workers etc.)
- Interviewing
- Interpretation
- Contents of decision
- Credibility assessment
- Quality Legal assistance
- Access to effective remedies in law and practice
- The AGD perspective



Good Practices

- Legal information guide for asylum lawyers
- Guides for interpreters in the asylum context
- Use of EASO tools
- Regular Training sessions
- Communities of practice / Networks/Exchange/FPs in MS
- Information mechanisms in place for applicants (videos, comics) part. In Detention
- Monitoring visits allowed /Protection by presence
- Complaint mechanisms/accountability framework
- ECHR ECJ Jurisprudence database /practice sharing/strategic litigation



Thank you for your attention!

- **ACNUR. Avenida General Perón, 32. Madrid - 28020**
- **Tel.: 00 34 91 556 35 03 / Fax: 00 34 91 417 53 45**
- **eMail: spama@unhcr.org**
- **www.refworld.org (COI)**
- **www.unhcr.org**
- **Facebook: ACNUR España-UNHCR Spain**
(<http://www.facebook.com/acnur.es>)
- **Twitter: @ACNURSpain**