



European Migration Network

Ad-Hoc Query on Asylum Application Procedure

Requested by BG EMN NCP on 1st July 2008

Responses from BE, AT, BG, DE, HU, IT, MT, SK (8 in Total)

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1. Background Information

The following Ad-Hoc Query was requested by the Director of the Registration-and-Reception Centre of the Bulgarian State Agency for Refugees.

1. Are there existing provisions in your national law where asylum seekers who have lodged subsequent applications are charged and pay for the procedure?
2. Do you take any other measures to prevent abuse of the asylum system?

2. Responses¹

		Wider Dissemination?²	
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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A clear "YES", your response may be circulated further (i.e. to national network members) or "NO" should be added here. In case of "NO", then the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further."

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	Belgium		<p>1. Are there existing provisions in your national law where asylum seekers who have lodged subsequent applications are charged and pay for the procedure?</p> <p>No</p> <p>2. Do you take any other measures to prevent abuse of the asylum system?</p> <p>There some legal possibilities to dissuade 'fake' asylum applicants. These dissuasive measures relate to possible detainment of asylum seekers. The most important possibilities of detainment (of asylum seekers) are:</p> <ul style="list-style-type: none"> - In case the asylum seeker has already lodged an application in another member state ("Dublin Regulation") - In case of multiple applications - People who are refused entry at the border (because they do not fulfil the legal entry conditions) and who apply for asylum - Foreigners who deliberately destroyed their identity- and/or travel documents before (or while) lodging the asylum application <p>Further, of each asylum applicant fingerprints are taken and we do have the possibility to ask for an 'accelerated procedure' (for EU-nationals; public offenders,...)</p>
	Bulgaria	Yes	<p>1. No</p> <p>2.</p> <p>According to the additional provisions of the Law on Asylum and Refugees for the purposes of this Act:</p> <p>6. "Subsequent application" shall mean an application for status in the Republic of Bulgaria which was submitted by a foreigner whose refugee or humanitarian status has been revoked or discontinued or in case the status determination procedure in the Republic of Bulgaria has ended with an effective decision.</p> <p>Refugee status or humanitarian status is not granted with respect to a foreigner whose application is manifestly unfounded, (where conditions under article 8(1) and (9), respectively article 9(1), (6) and (8) are not met) and the foreigner has submitted a subsequent application which does not contain any new circumstances of substantial significance for his/her personal situation or relevant to his/her country of origin.</p> <p>The right to receive shelter and food and the right to receive social welfare allowance according to the procedure</p>

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			and in the amount applicable to Bulgarian nationals are not granted to a foreigner who does not belong to a vulnerable group and submits a subsequent application for status determination.
	Czech Republic		
	Denmark		
	Germany	Yes	<p>Re: point 1.)</p> <p>a) German asylum law, does not recognise any claim under public or civil law for reimbursement (of expenses) by the asylum-seeker in respect of the (procedural) costs incurred as a result of the asylum procedure, even if the asylum-seeker has instigated the asylum procedure purely out of economic considerations, or has deliberately made false statements in respect of his or her own identity or of his or her background of persecution.</p> <p>b) The return of overpayments made in respect of maintenance under such laws as the Asylbewerberleistungsgesetz (German Social Welfare Law for Asylum-Seekers) can, in the event of such payments having been provided without any basis in law, be demanded back by the official body allocating them.</p> <p>c) In terms of criminal law, such cases are investigated under the heading of deception and may, if appropriate, lead to a fine or a custodial sentence.</p> <p>Re: point 2.)</p> <p>a) In the case of false statements relating to the identity of the subject(s), or in the event of false evidence having been submitted, the applicant's demand for asylum can, in accordance with § 30, Paragraphs 2-5 of the Asylverfahrensgesetz (AsylVfG - German Asylum Procedure Act), be rejected as being manifestly without foundation. The consequences of this are that the asylum-seeker will be given a truncated deadline, of only two weeks, to leave the country, and that he or she will only have a period of one week following notification of the decision within which to lodge and application in accordance with § 80, Paragraph 5 of the Verwaltungsgerichtsordnung (VwGO - German Rules of the Administrative Courts) - stay of enforceability - against the threat of deportation.</p> <p>b) Other than this, Germany also has particular penal provisions (§§ 84-86 of the AsylVfG) against third parties who have unlawfully caused an asylum procedure to be commenced – for example, by misleading the subject(s) into making an improper application for asylum.</p>
	Estonia		

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	Ireland		
	Greece		
	Spain		
	France		
	Italy	Yes	<p>1. Are there existing provisions in your national law where asylum seekers who have lodged subsequent applications are charged and pay for the procedure? <i>1) NO</i></p> <p>2. Do you take any other measures to prevent abuse of the asylum system? <i>2) There are no measures that could prevent the admission to the recognition of the right of asylum. Any possibility of abuse will be checked by Territorial commissions responsible for recognition of status.</i></p>
	Cyprus		
	Latvia		
	Lithuania		
	Luxembourg		
	Hungary	Yes	<p>1. Are there existing provisions in your national law where asylum seekers who have lodged subsequent applications are charged and pay for the procedure?</p> <p>Yes. According to the new Act LXXX of 2007 on Asylum which entered into force on 1st of January 2008 “asylum procedure conducted by the asylum authority or the court shall be exempt from charges when the application is submitted for the first time”.</p> <p>However the Governmental Decree 180 of 2005 on discharge of costs in administrative proceedings stipulates that <i>applicants for international protection, recognised refugees, beneficiaries of subsidiary protection and beneficiaries of temporary protection may be exempted from costs of administrative proceedings</i> without the examination of income level if they are entitled to asylum benefits and support under the Asylum act. In practice asylum seekers fall under the scope of this regulation on discharge of costs in administrative proceedings in almost every case.</p>

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		<p>Furthermore according to Decree of the Ministry of Justice and Law Enforcement 6 of 1986 on discharge of costs in judicial proceedings <i>every person <u>may be exempted from costs of judicial proceedings on the basis of income level upon request.</u></i> In practice asylum seekers are exempted from costs of judicial proceedings on the basis of income level in almost every case.</p> <p>2. Do you take any other measures to prevent abuse of the asylum system?</p> <p>Yes. According to the Act LXXX of 2007 on Asylum “If the same applicant has submitted an application after having two previous applications refused or dismissed by final decision, and the asylum authority did not apply the obligation of non-refoulement:</p> <p><i>a) implementation shall not be suspended upon receipt of the application:</i></p> <p><i>aa) pertaining to the applicant’s obligation to leave the country;</i></p> <p><i>ab) pertaining to expulsion of the applicant upon his/her non-compliance with the obligation to leave the country;</i></p> <p><i>ac) pertaining to the third country national’s transfer under extradition proceedings;</i></p> <p><i>b) the third country national in question shall not be entitled to the rights listed under Paragraphs a)-c) of Subsection (1) of Section 5. [(a) to <u>reside</u> - in accordance with the conditions set out in this Act - in the territory of the Republic of Hungary, or to receive an <u>authorization to reside</u> - in accordance with specific other legislation - in the territory of the Republic of Hungary;b) to <u>aid and support, and accommodation</u> according to the conditions set out in this Act and in specific other legislation;c) to <u>undertake employment</u> inside the premises of the reception center within a period of one year from the date of submission of the application for asylum, and under the general rules applicable to third country nationals thereafter]</i></p>
	Malta	<p>In MALTA according to the Refugee Act, applications for Refugee Status are determined by the Office of the Refugee Commissioner. The decision of the Office of the Refugee Commissioner can be reviewed by the Refugee Appeals Board, on application by the asylum seeker. The Board's decision is considered final. In the case of that an application is re-submitted for a fresh determination by the Refugee Commissioner when the said applicant had already made an application for recognition as a refugee, either locally or in another state party to the Geneva Convention, and the Commissioner is satisfied that the application was properly considered and rejected and the applicant failed to show a material change of these circumstances such an application is dismissed as manifestly unfounded. In this case no administrative fees are levied on the applicant. In Malta no application</p>

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		<p>fees are levied on the applications for Asylum.</p> <p>2. Do you take any other measures to prevent abuse of the asylum system?</p> <p>The Refugees Act (Cp 420) reflects certain measures that can be taken to avoid abuse of the system particularly to consider an application for asylum as manifestly unfounded in the following cases:</p> <p>if the application is not related to refugee grounds as defined in the Geneva convention;</p> <p>Where the applicant gives clearly insufficient details or evidence to substantiate his claim and his story is inconsistent, contradictory or fundamentally improbable;</p> <p>where applicant bases his application on a false identity or on forged or counterfeit documents which he maintains as genuine when questioned about them or in relation to which applicant deliberately made false representations of a substantial nature;</p> <p>If the applicant, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult;</p> <p>The applicant deliberately failed to reveal that he had previously lodged an application for asylum in another country;</p> <p>The applicant, having had ample earlier opportunity to submit an asylum application, submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier;</p> <p>The applicant has flagrantly failed to comply with the substantive obligations imposed by Malta's legal provisions relating to asylum procedures;</p> <p>Persons who have committed a crime, being a serious non-political crime, or crime against humanity are excluded from protection.</p> <p>If the applicant leaves Malta voluntarily, his application will be deemed to be withdrawn.</p>
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	Netherlands		
	Austria	No	AT NCP provided a response that was not for wider dissemination.
	Poland		
	Portugal		
	Romania		
	Slovenia		
	Slovak Republic		<p>According to the Section 19 of the Slovak Act on Asylum in so called <i>res iudicata</i> , the Migration Office shall cease the asylum procedure when a final decision has already been issued in the asylum procedure and the application was dismissed as manifestly unfounded, granting of asylum was denied, asylum was withdrawn, subsidiary protection was not renewed or the subsidiary protection was revoked, while the facts of the case did not substantially change</p> <p>If the new (subsequent) application is lodged before the termination of the procedure by the same person, the asylum granting procedure shall not commence.</p> <p>There are no payment for any asylum procedure.</p> <p>As concern the abuse of asylum procedure for example:</p> <p>the Migration office shall reject an application for granting asylum as manifestly unfounded if the applicant he/she has submitted his/her application for granting asylum merely with an intention to avert an imminent danger of being expelled from the territory of the Slovak Republic,</p> <p>or the Migration office shall cease the asylum procedure when the applicant without any serious reasons does not appear at the reception camp or if the applicant left the territory of the Slovak Republic.</p>
	Finland		
	Sweden		
	United Kingdom		

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