

Fleeing Homophobia, Seeking Safety in Europe: Best Practices on the (Legal) Position of LGBT Asylum Seekers in the EU Member States

QUESTIONNAIRE – PORTUGAL

ANNEXES

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A. Abbreviations and acronyms

ACNUR	Alto Comissário das Nações Unidas para Refugiados (UNHCR)
CPR	Conselho Português para os Refugiados (Portuguese Council for Refugees)
ILGA	International Lesbian and Gay Association
SEF	Gabinete de Asilo e Refugiados, Serviço de Estrangeiros e Fronteiras (Asylum and Refugees Unit, Aliens and Border Service)

B. Bibliography and other sources

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C. Legislation

- 1) Act 27/2008, 30 June 2008, establishing the conditions and procedures for granting of asylum or subsidiary protection, and the status of asylum seeker, refugee and subsidiary protection, implementing into the national legal order Council Directives 2004/83/EC, 29 April, and 2005/85/EC, 1 December, <http://www.sef.pt/documentos/56/Act27_2008_30June.pdf>, last accessed on 8 June 2011

[Lei nº 27/08, de 30 de Junho, Estabelece as condições e procedimentos de concessão de asilo ou protecção subsidiária e os estatutos de requerente de asilo, de refugiado e de protecção subsidiária, transpondo para a ordem jurídica interna as Directivas n.os 2004/83/CE, do Conselho, de 29 de Abril, e 2005/85/CE, do Conselho, de 1 de Dezembro, <<http://www.dre.pt/pdf1s/2008/06/12400/0400304018.pdf#1>>, last accessed on 8 June 2011]

- 2) Act 23/2007, 4th July This Act approves the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory. <<http://www.sef.pt/documentos/56/Nova%20Lei%20de%20EstrangeirosEN.pdf>>, last accessed on 8 June 2011

[Lei nº 23/2007 de 4 de Julho A presente lei define as condições e procedimentos de entrada, permanência, saída e afastamento de cidadãos estrangeiros do território português, bem como o estatuto de residente de longa duração. <<http://www.sef.pt/documentos/56/NOVA%20LEI%20ESTRANGEIROS.pdf>>, last accessed on 8 June 2011]

D. SEF informational brochure [English version]

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SEF SERVIÇO DE ESTRANGEIROS E FRONTEIRAS
MINISTÉRIO DA ADMINISTRAÇÃO INTERNA

GUIDE FOR ASYLUM SEEKERS

PORTUGAL

SERVIÇO DE ESTRANGEIROS E FRONTEIRAS
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Law 27/2008 of 30 June establishes the legal framework in Portugal, governing asylum.

The principles of Law 27/2008 of 30 June are interpreted in complete harmony with the Universal Declaration of Human Rights, the European Convention on Human Rights, the Geneva Convention of 28 July 1951 and the Additional Protocol of 31 January 1967.

The Immigration and Borders Service (Serviço de Estrangeiros e Fronteiras – SEF), affiliated to the Ministry of Home Affairs is the Portuguese police authority with jurisdiction over the entry, stay and exit of foreigners in the country.

The Immigration and Borders Service's Asylum and Refugees Office is the department responsible for organising and assessing asylum applications.

The decision on granting refugee status and subsidiary protection is taken by the Minister for Home Affairs.

The Portuguese Refugee Council – CPR is the non-governmental organisation responsible for the reception and assistance of asylum seekers in Portugal.

Application for asylum

The **Asylum and Refugees Office** considers whether the application submitted is eligible for refugee status:

"The right of asylum is granted to foreign nationals and to stateless persons who are being persecuted or are threatened with persecution as a result of their actions in the country of their birth or normal residence on behalf of democracy, social and national liberation, peace among peoples, freedom and human rights. Also entitled to be granted asylum are foreign nationals and stateless persons who have grounds for fearing that they will be persecuted by virtue of their race, religion, nationality, political views or for belonging to a particular social group, and therefore cannot or, because of this fear, do not wish to return to the country of their birth or normal residence." Article 3, Law 27/2008 of 30 June.

Or if they are eligible for subsidiary protection:

"Permission to reside is granted for humanitarian reasons to foreign nationals and stateless persons to whom the provisions of Article 3 do not apply and who are prevented from returning or feel they are unable to return to the country of their birth or normal residence, either owing to the systematic violation of human rights prevailing there or because they are at risk of suffering serious harm." Article 7, Law 27/2008 of 30 June.

Where to apply for asylum

- Foreign nationals or stateless persons who intend to apply for asylum in Portugal must do so without delay with the following police authorities:
 - **Immigration and Borders Service** – in the territory or at border points (air or sea borders)
 - Public Security Police - PSP
 - National Republican Guard – GNR
 - Maritime Police – PM, or any other police force
- The application can be made in person, or in writing.

Starting the asylum procedure

- Pictures and fingerprints of persons over 14 are taken.
- Notification to make statements within 5 business days in the Asylum and Refugees Office - SEF
- **Issue of a Declaration proving submission of an application for asylum**
 - Issued within 3 days of submission of application
 - Valid until a final decision has been taken
 - It does not attest to identity or nationality
 - It does not grant the right to work
 - It does not grant the right to residence
 - Grants access to the education system (applicants who are minors or children, not of age, of asylum applicants)
 - Grants access to the national health system
 - Legal assistance, provided by the Portuguese Refugee Council
- **Rights and duties of the asylum applicant in Portugal**
Throughout the entire procedure, applicants must cooperate with the authorities. False evidence or omissions, fraudulent documents and so forth will be regarded unfavourably in the assessment of the asylum application.

Right to an interpreter, whenever necessary.

Right to legal advice at all stages of the proceedings, through the Portuguese Refugee Council.

Right to information about the status of their case, whenever they request it.

Right to legal aid, on a general basis.

Right to social assistance for accommodation and food, where there is economic and social vulnerability.

Access to the National Health Service.

The asylum procedure and all its proceedings are confidential.

Keep the SEF's Asylum and Refugees Office informed about their residence and notify at once if there is any change of address.

Go to the SEF's Asylum and Refugees Office whenever asked to do so.

Determination of the Member State responsible for examining the asylum application _____

The procedure for deciding which Member State should analyse the asylum application is laid down in Regulation 343/2003 of 18 February 2003.

If there is anything to suggest that another state is responsible for analysing the asylum application, the SEF's Asylum and Refugees Office should send a transfer request for the applicant's claim to be sent to another Member State. The National Director of SEF decides on the transfer, and the applicant is duly notified of the decision.

The decision may be challenged in the administrative courts within 5 days, with suspensive effect.

Stage 1 of the asylum procedure _____

Applicants make their statements to the SEF's Asylum and Refugees Office. They must present all the documents at their disposal with respect to:

- Identity,
- Nationality,
- Family,
- Previous residences,
- Previous asylum applications,
- Itinerary,
- Account of circumstances and facts on which the asylum application is based,
- Other.

After the interview, a written report is prepared and the applicant is notified. Applicants have 5 days in which to comment on the content of the report.

Twenty days after the notification, the initial decision is handed down by the National Director of the **Immigration and Borders Service**.

Application for asylum at border points _____

Asylum seekers submitting applications at border points are granted similar rights and duties to those in the country.

Applicants make statements and the National Director of SEF issues a decision within 5 days.

Applicants remain in the international area of the port or airport while waiting to be notified of the National Director of SEF's decision.

The Portuguese Refugee Council may interview applicants at border points and comment on applications.

Decision on stage 1 of the asylum procedure National Director of SEF _____

Approval

In the country

- Passes to inquiry stage

Border point

- Passes to inquiry stage
- Allowed to enter the country

Rejection

In the country

- Must leave the country within 20 days, or be expelled immediately
- Decision may be challenged in the administrative courts within 8 days, with suspensive effect.

Border point

- Applicants must return to point of departure, or, if this is impossible, to the country where the travel document used for the journey was issued, or to some other place where they may be admitted, that is, to a safe third country
- Decision may be challenged in the administrative courts within 72 hours, with suspensive effect.

Stage 2 of the asylum procedure _____

The decision to admit the application for further inquiry results in the issue of a Temporary Residence Permit, valid for 4 months, renewable for further 4-monthly periods.

The Temporary residence Permit assures:

- Permission to work,
- Access to education,
- Access to the national health service,
- Legal aid.

The Temporary Residence Permit must be renewed in the SEF's Asylum and Refugees Office, if applicants are resident in the Lisbon metropolitan area.

Outside Lisbon, the Permit can be renewed at the local SEF Unit.

Stage 2 lasts 60 days and may be extended for further 60-day periods, up to a limit of 180 days.

During this period, the Asylum and Refugees Office can request technical reports from experts on specific questions, in particular those of a medical or cultural nature.

Applicants remain bound to cooperate until the final decision on their application for asylum is reached.

Decision – Stage 2 of the asylum procedure Minister for Home Affairs

Approval

- Granting of refugee status
- Issue of Residence Permit

- Granting of status of subsidiary protection
- Issue of Residence Permit for humanitarian reasons

Rejection

- Refusal of asylum and of subsidiary protection
- Decision may be challenged in the administrative courts within 15 days, with suspensive effect.

Suspensive effect of the appeal

Applicants whose claim for asylum is rejected can lodge an appeal. The same rights and duties applicable in the current procedural stage remain in force while the appeal is being considered.

Reception

The Portuguese government guarantees vulnerable asylum seekers that they will be looked after.

Their reception is catered for by the Portuguese Refugee Council (CPR), an NGO for development, and applicants are accommodated in the Refugee Reception Centre (CAR).

While in the CAR, asylum seekers are entitled to:

- Initial accommodation and food
- Legal advice
- Social assistance

Pursuant to the Asylum Law, the CPR:

- Interviews asylum seekers at border points,
- Comments on applications submitted at border points within 48 hours,
- Attaches reports and information about countries of origin to the asylum case file and gets information about the status of the procedure.
- Offers legal advice at all stages of the procedure.

Documents

Residence Permit (Refugee)

Issued after the decision to grant refugee status. Valid for 5 years, renewable, unless there are compelling reasons of national security or public order preventing it.

Residence Permit for Humanitarian Reasons

Issued after the decision to grant subsidiary protection status. Valid for an initial period of 2 years, renewable after developments in the situation of the country have been studied, unless there are compelling reasons of national security or public order preventing it.

Travel document under the 1951 Geneva Convention

Travel document issued on request to persons granted refugee status.

Valid for 1 year, renewable.

All the documents are issued and renewable free of charge.

Family reunification

Asylum seekers in whom the status of refugee is recognised are entitled to family reunification.