

THE LUXEMBOURG ASYLUM LAW

Adolfo Sommaribas

EMN Luxembourg

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Object and scope

- Law of 18 December 2015 on international protection and temporary protection published in Memorial A-255 of December 2015.
- Abrogates the amended law of 5 May 2006 on the right of asylum and complementary forms of protection
- Object (art. 1)
 - To establish the procedures for granting and withdrawing international protection (refugee or subsidiary protection status)
 - Conditions that TCN or stateless persons must fulfill to benefit from international protection
 - Regulates the content of the international protection
 - Granting the temporary protection in case of a massive inflow of displaced TCN and who cannot enter their country of origin
- Scope
 - It applies to all the applications for international protection filed on the territory of the Grand Duchy of Luxembourg (including the borders and the transit areas)

Definitions

- **International protection application:** application for protection submitted by a TCN or a stateless person as seeking refugee status or subsidiary protection status (art. 2 b)
- **Final decision:** any decision on whether a TCN or stateless person is granted refugee or subsidiary protection status, which is no longer subject to appeal (art. 2 e)
- **Refugee:** a) any TCN who, due to a **well-founded fear of being persecuted** for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside its country of origin and is unable or unwilling to return to it, because of that fear, does not wish to avail himself of the protection of that country or b) any stateless person who, being outside the country of his former habitual residence for the reasons mentioned above, is unable or, due to such fear, is unwilling to return to it (art. 2f)
- **Subsidiary protection:** any TCN or stateless person who does not qualify as a refugee but in respect of whom there are serious and well-founded reasons for considering that the person concerned, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm (art. 2 g)
- **Family member:** are the members of the family of the beneficiary of international protection (BIP) (the family must already be established in the country of origin):
 - the spouse or his/her partner (if the partnership is recognized in the CoO);
 - children of the BIP (except the ones that are emancipated);
 - parents of a minor BIP or any adult who is responsible for him/her
- **Unaccompanied minor (UAM):** a minor (less of 18 years of age) who enters the territory without being accompanied by an adult who is responsible for him/ her;
- **Return decision:** a negative decision of the Minister declaring the stay illegal and imposing the order to leave the territory;

Competent authority

- Ministry in charge of Asylum is the responsible authority to examine the applications and take the decision
- Interviewing agents - > training from EASO & have knowledge of the general problems that could affect the capacity to interrogate the IPAs (vulnerabilities)
- UAM-> agents who deal with the applications of UAM must have the necessary competences on the particulaire needs of minors

Basic principles & guarantees (1/5)

- Application -> any adult can submit the application in his/her name and in the name of person who are his/her responsibility
 - Other adults must grant consent (at the moment of filing or not later than personal interview) -> they are informed in private of the procedural consequences of having had filed an application in their name and they can file their own application
 - Minor (non emancipated) -> by parents or legal representative
 - UAM can submit application by himself/herself or by and ad-hoc administrator (it has to be filed in presence of the minor)
- Registration -> 3 working days after the submission of the application
 - If the it is presented to the UCPA, Grand ducal police, detention center or prison -> 6 working days
 - In case of large amount of IPAs -> 10 working days

Basic principles & guarantees (2/5)

- Introduction of application -> IPA is summoned after the submission & registration
 - IPA must file the foreseen form -> 3 days later IPA receives an attestation as IPA and his/her right to stay in the territory until the final decision is made
 - Exception: extradition -> Minister has to verify that it does not violate the principle of non-refoulement
 - If it is not filed -> implicitly withdrawn/renounce
- Determination if it is a Dublin case (introduction of other application in another MS) -> collect of fingerprints & picture
 - Only for persons aged 14 years or older
- Judicial police -> verify identity and itinerary of the person
 - If needed a body search or a search of personal effects can be done -> respecting the human dignity and psychological and physical integrity

Basic principles & guarantees (3/5)

- Examination of the application
 - It cannot be rejected only based that it was not introduced asap;
 - Decisions are taken individually, objectively & impartially;
 - Based on information from different sources on the situation of the CoO/transit countries
 - Possibility to use experts on medical, cultural, religious, gender or minors' issues
 - All documents submitted besides identity documents, which are not in FR, DE or EN must be translated in one of those languages
- IPA is informed in a language that s/he reasonable understand -> procedure, rights & obligations and the consequences if these obligations are not respected or the lack of cooperation with the minister
 - Obligation to cooperate -> submit ID and relevant documents & to be present when summoned by the Minister
 - It can be subject to a linguistic test
 - s/he must choose a domicile to receive all the communication with the Minister (normally lawyer)
- IPA has the right to be assisted by a translator and a lawyer (free of charge) as well as to communicate with NGOs

Basic principles & guarantees (4/5)

- The applicant has the right to a personal interview conducted by an agent
 - The applicant has to attend the interview in person and can be accompanied by a lawyer of his/her choosing -> at the end the lawyer can make observations
 - In a Dublin case no decision cannot be taken before hearing the point of view of the applicant
 - This interview cannot take place if:
 - Minister can take a positive decision with the evidence in file
 - The minister considers that the applicant is not in condition to be interrogated due to lasting circumstances beyond its control -> in case of doubt a health professional can be consulted to determine if the situation is permanent or temporary
However, the applicant is allowed to provide information for his/her claim
 - The absence of interview does not hamper the possibility that the minister takes a decision -> Minister can take this fact into consideration except if there is valid justification for the absence
 - Interview is conducted in the absence of family members (except if minister consider otherwise) -> confidential
 - Agent must be trained to take into consideration the personal condition of the IPA (i.e. cultural origin, gender, sexual orientation, gender identity & vulnerability)
 - Translator
 - If the IPA is a minor -> agent must have the needed knowledge to deal with the particular needs of the minor
 - During the interview the IPA can present all the elements needed and to explain any contradiction in his/her claim
 - A report of the interview is drafted and it is given to the IPA for comments, precisions or corrections
 - This can be registered (video or audio). The lack of confirmation by the IPA does not hamper the minister to take a decision

Basic principles & guarantees (5/5)

- Detection of signs of persecution or serious harm
 - Minister can request a medical examination for signs of persecution or serious harm (previous consent of IPA) free of charge
 - The refusal of consent does not hamper that the Minister takes a decision
- Right to be assisted by a lawyer free of charge during all the procedure
 - Lawyer has access to the applicant's file -> limitations for reasons of national security -> only the substance of the information is transmitted
- Detection of vulnerability
 - ASAP evaluation of special procedural guarantees because of the age, gender, sexual orientation or identity, handicap, serious illness, mental issues, consequences of torture, rape or other serious forms of psychological, physical or sexual violence
 - For doing so, Minister can request the opinion of an expert
 - Once identified the IPA obtains:
 - Adequated support and more time in order to access the procedure
 - Fast track procedure is not applicable

Unaccompanied minors

- To guarantee the best interest of the child -> asap the Directorate of Immigration will request the Youth Court to appoint an ad-hoc administrator to the minor -> It is not the same as a guardian -> deals with the day to day business of the child
 - Ad-hoc administrator
 - Deals with everything related to the procedure
 - Informs the minor of the sense and consequences of the personal interview and how to prepare for it
 - Assist the interview, ask questions and formulate observations -> minor has to be present
- Minister can order medical exams to determine the age of the minor in case of doubt
 - Principle is to use non-invasive methods. However, if doubt persists medical exams -> wrist x-ray, collarbone x-ray, dental examination, MRI knee joint.
 - Minor has to be informed before the test in a language that s/he understands on the method of the test and the consequences of this test in the application as well as the consequences of refusal (the simple refusal cannot be the only motive to reject the application)
- UAM are not submitted to the fast-track procedure, except if:
 - s/he comes from a safe-country of origin
 - s/he has already presented a previous IP application
 - s/he represents a threat to national security or public order or if s/he has already receive a removal order based on those considerations

Detention

- Detention is any measure of isolation of an applicant in a specific place where the applicant is deprived of his or her freedom of movement
 - Placement in the Luxembourg Detention Centre
 - Minors can be placed in detention -> last resort and for the shortest period of time and only in adequate facilities (rarely happens)
 - Families with children -> 7 days in order to prepare the return
- Circumstances that allow the placement in detention
 - To establish the identity of the applicant
 - To determine the elements in which the IP application is based that can only be obtain by detaining the person and to avoid the risk of absconding
 - Protection of national security and public order
 - Risk of absconding of a Dublin case (risk to avoid the removal order)
 - In the case that the individual is place in detention to execute a return decision an apply for IP in order to obstruct the execution of the decision
- Order is motivated on a case by case basis and if there is no other less coercive measure applicable. First measure is for 3 months and renewable for the same perior up to a maximum of 12 months
- Against the order of detention -> appeal can be filed before the First instance Administrative Court (3 months after notification)
 - If FiAC found that the detention is illegal -> applicant is release

Alternatives to detention

- Periodic reporting to the Minister, to the service that s/he indicates, to other authorities (i.e. Grand ducal police) after having surrendered his/her identity documents
- House arrest/custody -> complemented with electronic surveillance (electronic bracelet)
- Financial deposit (5000€) by the TCN or a third-party

These measures can be applied individually or jointly.

In case of irrespect of the obligations or risk of absconding the measure is revoked and the individual is placed back in detention

First instance procedure

- Minister makes an individual examines of the application
 - Normally 6 months after the file is completed -> if it cannot be treated in 6 months -> 9 additional months only if:
 - Complex legal or factual issues
 - Massive inflow of IPAs at the same time
 - The delay is originated by the applicant
 - This deadline can be extended for 3 more months in duly justify circumstances to do an adequate and exhaustive examination of the case
 - The examination cannot exceed 21 months from the introduction of the application
 - Fast track procedure. It applies:
 - a) Application is unfounded;
 - b) Applicant comes from a safe country of origin;
 - c) Applicant has induce authorities in error regarding his/her identity, nationality, making false statements, using false documents, or disimulating or hiding informations and documents
 - d) Applicant has destroyed or lost ID or travel documents in bad faith;
 - e) Applicant made contradictory and incoherent declarations about the country of origin
 - f) Applicant made an inadmissible succesive application
 - g) Application was made to delay or obstruct the execution of a removal decision
 - h) Applicant is an overstayer and without a valid reason do not introduce his/her application asap
 - i) Applicant refuses the collection of the biometric data
 - j) Applicant is a darger of national security or public order

Minister will take its decision in a deadline of 2 months from the date the applicant fall in one of the cases mentioned above.

Dublin cases

- If the Minister consider it is a Dublin case, s/he will not make a decision until the responsible MS makes in the decision on the take charge request
 - If YES notify the applicant that s/he is going to be transfer and that the Minister will not make a decision on his application
 - If NO the Minister continues the examination
 - In some cases the Minister can take a decision on the IP application even if it is a Dublin case

Inadmissibility

- IP has been granted in another MS
- 1st asylum country is not a MS
- 1st asylum country is not a MS but is considered a safe country of origin
- It is a successive application without any new facts
- Someone who previously let another adult to apply for IP on his/her behalf present a subsequent application
- Applicant is a EU citizen

Withdrawal

- Decision in which the Minister revokes, refuses to renew or terminates international protection status
- Examination can be triggered by new facts or elements, which question the validity of the international protection
- Beneficiary is informed in writing of the motives of the reexamination and of his/her rights to present during the personal interview or in writing the motives why s/he opposes to this reexamination

Negative decision

- All decisions related to IP applications are motivated and notify in writing in a reasonable deadline. All negative decision indicates the recourses against the decision
- A negative decision implies a return decision (deadline to leave the country & the country to which s/he will be returned if it the decision is executed ex-officio)
 - 30 days to leave voluntarily -> it can be extended at the request of applicant
 - Children in school
 - Duration of stay in Luxembourg
 - Other social and family links
 - Can benefit of assistance to return (AVRR-L)
 - Immediately if threat to public order, homeland or national security

Appeals

- Against a negative decision or withdrawal of IP and the removal order -> appeal for reversal can be filed at the FiAC (both appeals have to be filed together -> admissible)
 - 1 month after notification
 - Against the decision of the FiAC an appeal can be filed at the AC -> 1 month after notification
- Against the decision ruling on the merits in fast track procedures, the rejection of the IP application and the removal order -> appeal reversal can be filed at the FiAC (all appeals have to be filed together)
 - 15 days after notification
 - President of the chamber of the FiAC must decide in a month after the appeal was filed (not applicable between 16/07 – 15/09)
 - If YES -> sent back; if NO -> rejection uphold
 - Appeal can be filed at the AC -> 1 month
- Against the decision of inadmissibility and Dublin transfers -> annulment appeal can be filed before the FiAC
 - 15 days after notification -> FiAC has to decide in 2 months (1 month if applicant is in detention)
 - No appeal possible
- Appeals have suspensive effect except with the decision of inadmissibility

Conditions for benefiting of IP (1/3)

- Applicant must present asap all necessary elements for the application
 - All type of documents (i.e. identity, itinerary, travel documents, documents which justify the application)
- Minister examines individually the application taking into account:
 - Facts related to the CoO at the moment of taking the decision
 - Information and documentation provided by applicant → risk of persecution or serious harm
 - Individual status and personal situation of applicant (i.e. past, sex, age) -> determine risk of persecution or serious harm
 - Since leaving the CoO the applicant has participated or not in activities which the only aim is to create the conditions to introduce an application for IP
 - Fact that is reasonable to think that the applicant can benefit from the protection of another country in which s/he can obtain nationality

Conditions for benefiting of IP (2/3)

- Actors of persecutions or serious harm can be:
 - State
 - Political parties or organisations which controlled the State or an important part of the territory
 - Non-state actors-> if the other two actors above cannot guarantee a protection against persecution or serious harm
 - Protection must be effective and not temporary
 - Take measures to prevent and hinder the prosecution and serious harm
 - Dispose of a effective judiciary system -> find, prosecutes and sanctions these acts
- Minister considers there is no need of protection if:
 - There is no well founded fear of prosecution or serious harm
 - Has access to protection against them and that s/he can travel securely and legally to his/her country of origin
- Acts of prosecution
 - Physical and phycological violence (including sexual violence)
 - Legal, administrative, judiciary and police measures which are discriminatory or their application
 - Prosecution or sanctions that are disproportionate or discriminatory
 - Refuse to appeal -> disproportionated or discriminatory sanction
 - Prosecution or sanctions for refusing doing military service in case of war, when doing so will imply the commission of crimes
 - Acts against minors and individuals based on gender

Conditions for benefiting of IP (3/3)

- Serious harm
 - Death penalty or execution
 - Torture, inhuman or degrading treatment or sanctions
 - Serious and individual threats against the life
 - Blind violence during an internal or international armed conflict

Cessation of international protection

- Refugee status
 - If the BIP applies for the protection of the CoO
 - If having lost his/her nationality, the BIP recovers it
 - If the BIP acquires a new nationality and obtains its protection
 - If s/he returns to the CoO
 - If circumstances in his/her CoO have completely changed
 - In the case of a stateless person returns to the country where s/he had its habitual place of residence
- Subsidiary protection
 - If circumstances have changed and the reasons for the protection because moot or it is no longer needed (it has not to be provisory -> person will not risk serious harm)

Exclusion of international protection status

- Refugee status
 - a) Article 1 Section D of the Geneva Convention
 - b) When the applicant has rights and obligation which are attached to the possession of the nationality of the country (or equivalent rights and obligations)
 - c) Applicant has committed or instigated a crime against peace, war crime or crime against humanity
 - d) Applicant has committed or instigated a serious crime outside Luxembourg before being admitted as a refugee (i.e. cruel actions even if they were committed with a politique objective)
 - e) Has declared himself guilty of acts that are against the goals of UN
- Subsidiary protection
 - a) Applicant has committed or instigated a crime against peace, war crime or crime against humanity
 - b) Has committed or instigate a serious crime
 - c) Has declared himself guilty of acts that are against the goals of UN
 - d) Threat to the Luxembourg society or national security
 - e) If the person has committed a series of crimes that will imply imprisonment in Luxembourg and s/he escape the country of origin to avoid being punished.

Revocation of international protection status

- Refugee status
 - Minister proves that the applicant has ceased being a refugee or had never been one;
 - It should have been excluded in accordance with the law
 - Using of false documents and omissions in the story of the applicant -> played significant role in granting the status
 - BIP is a threat to national security
 - BIP was condemned for a very serious crime and constitute a threat to society

N.B. If the Minister detects any of these circumstances before granting the status, the application will be rejected
- Subsidiary protection
 - The applicant should have been excluded
 - Using of false documents and omissions in the story of the applicant -> played significant role in granting the status

Content of international protection

- **Non-refoulement principle**
 - Minister can send back a refugee or AIP if:
 - Serious reasons to consider a threat to national security
 - Condemned for a very serious crime and constitute a serious to Luxembourgish society

N.B: the Minister can refuse to grant a residence permit, to revoke or refuse to renew it in any case
- **Right of information** on rights and obligation in a language that s/he understands
- **Family unity** -> granting of residence permit to family members
- **Residence permit** (min. 3 years renewable) -> practice -> 5 years
- **Travel document**
 - Refugee -> blue passport (Geneva convention)
 - Subsidiary protection -> only impossibility to obtain a national travel document
- **Access to labour market** in the same condition as nationals (exception as public servants)
- **Formation and vocational training** in the same conditions as nationals
- **Education** -> minors have the same access as nationals; adults access to general education and professional recycling in the same conditions as legally residing TCN
- **Recognition of qualifications** in the same conditions as nationals (also VAE for those who does not have documents)
- **Access to social assistance and health care** in the same conditions as nationals
- **Housing** -> access in the same conditions as legally resident TCN

Questions and answers

Thank you for your attention!

Adolfo.sommarribas@uni.lu



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