

891 WP8
052

**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

CIREA 64

NOTE

from:	the General Secretariat
to:	CIREA
Subject :	Compilation of replies received to the questionnaire on Alternative forms of protection to refugee status under the Geneva Convention (Telex No. 3548 dated 02.08.2000 – Part I)

Delegations will find attached replies received to the above-mentioned questionnaire.¹

¹ The General Secretariat has not yet received a reply from Italy.

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QUESTIONNAIRE

Alternative forms of protection to refugee status under the Geneva Convention

Definition of the term "refugee" in national legislation

1. Does the definition of the term "refugee" as given in Article 1 of the Geneva Convention apply directly ?

- ☐ yes
☐ no

If not, does your domestic law contain a definition based on that given in Article 1 of the Geneva Convention ? Please specify:

- 1.1 Does the term "refugee" apply to categories of persons other than those referred to in Article 1 of the Geneva Convention ?

- ☐ no
☐ yes

If yes, what other persons are considered as refugees under domestic law ?

☐ persons covered by the UNHCR's mandate
where appropriate, specify under what conditions:

☐ members of a refugee's family
if so, specify which:

☐ other cases
specify:

Are these persons eligible for the protection system set up by the Geneva Convention ?

- ☐ no
☐ yes, totally
☐ yes, partially

Specify the provisions of the Geneva Convention which apply to them:

- 1.2 What authorities are competent to determine refugee status within the meaning of the definition(s) contained in your legislation ?

- (a) Administrative authorities:
(b) Judicial authorities

"Non-Geneva Convention" systems for protection

Q.2 Does your national legislation provide for alternative forms of protection to that introduced by the Geneva Convention ?

- ☐ no
- ☐ yes

If yes, specify the wording used for distinguishing them from "Geneva Convention" refugee status:

2.1 Which persons may be eligible for these alternative forms of protection ?

- ☐ persons covered by the UNHCR's mandate
- ☐ members of a refugee's family

if yes, specify which:

- ☐ persons coming from a country in a state of conflict
 - ☐ persons who may invoke the risk of inhuman or degrading treatment within the meaning of Article 3 of the European Convention for the Protection of Human Rights if they were to return to their country of origin
 - ☐ persons who may invoke humanitarian grounds
 - ☐ specific case of unaccompanied minors
 - ☐ other cases
- specify:

2.2 What are the various regimes provided for by your national legislation?

2.3 What are the rights involved in these forms of protection ? (Making a distinction, as appropriate, between the various forms of protection)

- ☐ right of residence
specify the type of residence granted (duration, how regularly and how automatically renewed):
- ☐ right to work
- ☐ social rights (social insurance, unemployment benefits etc.)

2.4 Which authorities are competent to determine the entitlement of those concerned to these forms of protection ?

- (a) Administrative authorities:
- (b) Judicial authorities:

2.5 Describe the procedure followed (including the applicant's situation pending a decision)

Describe any links with the procedure for determining refugee status under the Geneva Convention:

3. Statistics:

(a) "Geneva Convention" refugee status:

Number of applications per year:

Number of applications granted:

(b) Other forms of protection:

Number of applications per year:

Number of applications granted:

4. General assessment of application of the legislation in force:

BELGIUM

Alternative forms of protection to refugee status under the Geneva Convention

1. Yes
 - 1.1. No
 - 1.2. (a) Office of the Commissioner-General for Refugees and Stateless Persons
(b) Permanent Commission on Appeal for Refugees
 2. Yes, displaced persons status for Bosnians, and then Kosovars
 - 2.1. Persons from certain regions (Bosnia, Kosovo) where a conflict is in progress
 - 2.3. Right of temporary residence, right to work
 - 2.4. (a) Aliens' Office
 3. In 1999: 35778 applications for recognition
1480 applications granted
-

DENMARK

Alternative forms of protection to refugee status under the Geneva Convention

Definition of the term 'refugee' in national legislation

1. Does the definition of the term 'refugee' as given in Article 1 of the Geneva Convention apply directly?

Reply:

Article 1 A of the Convention relating to the Status of Refugees has been incorporated into Danish law by § 7 (1) of the Aliens Law.

If not, does your domestic law contain a definition based on that given in Article 1 of the Geneva Convention? Please specify:

Reply:

Yes, pursuant to § 7 (1) of the Aliens Law, residence authorisation is granted on request to an alien who is covered by the Convention relating to the Status of Refugees of 28 July 1951.

- 1.1. Does the term 'refugee' apply to categories of persons other than those referred to in Article 1 of the Geneva Convention?

Yes.

If so, what other persons are considered as refugees under domestic law?

Reply:

Pursuant to § 7 (2) of the Danish Aliens Law, residence authorisation is also granted to an alien who is not covered by the Convention relating to the Status of Refugees of 28 July 1951, but where, for reasons similar to those referred to in the Convention or for other serious reasons which give rise to a well-founded fear of persecution or similar injustice, the person concerned should not be forced to return to his country of origin (de facto refugees).

Persons covered by the UNHCR's mandate where appropriate, specify under what conditions:

Reply:

Pursuant to § 8 of the Danish Aliens Law, residence authorisation is also granted to an alien who comes to Denmark under the terms of an agreement with the United Nations High Commissioner for Refugees or a similar international agreement (quota refugees).

Members of a refugee's family if so, specify which:

Reply:

Spouses and minor children of the same nationality who enter Denmark with the refugee are granted consequential status, i.e. the same status as the principal.

Other cases specify:

Are these persons eligible for the protection system set up by the Geneva Convention?

Reply:

In principle, refugees to whom refugee status under the Convention or de facto status is granted are treated the same way under Danish legislation.

However, refugees who are granted refugee status under the Convention are issued with a Convention passport, while de facto refugees are issued with an alien's passport. This affects *inter alia* the refugee's eligibility to enter other countries.

Specify the provisions of the Geneva Convention which apply to them:

1.2. What authorities are competent to determine refugee status within the meaning of the definition(s) contained in your legislation?

(A) Administrative authorities:

Reply:

The Danish Immigration Service takes the decision at first instance.

(B) Judicial authorities

.....

Reply:

The Refugee Board, an administrative body of a quasi-judicial nature, takes the decision at second instance. The Refugee Board's decision is final.

'Non-Geneva Convention' systems for protection

Q.2. Does your national legislation provide for alternative forms of protection to that introduced by the Geneva Convention?

Yes.

If so, specify the wording used for distinguishing them from 'Geneva Convention' refugee status:

Reply:

As already stated in the reply to Question 1.1, pursuant to § 7 (2) of the Danish Aliens Law, residence authorisation is also granted to an alien who is not covered by the Convention relating to the Status of Refugees of 28 July 1951, but where, for reasons similar to those referred to in the Convention or for other serious reasons which give rise to a well-founded fear of persecution or similar injustice, the person concerned should not be forced to return to his country of origin (de facto refugees).

In addition, pursuant to § 9 (2) (5) of the Aliens Law, residence authorisation may be granted on request to an alien who holds such authorisation pursuant to the Law on temporary residence permits for certain persons from the former Yugoslavia, other than in the cases referred to in § 7 (1) and (2), or to an alien from the province of Kosovo in the former Yugoslavia who holds or has held residence authorisation pursuant to the Law on temporary residence permits for distressed persons from the province of Kosovo in the former Yugoslavia, and who may be assumed to require temporary protection.

2.1. Which persons may be eligible for these alternative forms of protection?

Reply:

See the reply to Question 2.

Persons covered by the UNHCR's mandate, members of a refugee's family

If so, specify which:

Persons coming from a country in a state of conflict

Persons who may invoke the risk of inhuman or degrading treatment within the meaning of Article 3 of the European Convention for the Protection of Human Rights if they were to return to their country of origin

Reply:

Article 3 of the European Convention for the Protection of Human Rights has been incorporated into Danish law and is interpreted accordingly when the provisions of the Aliens Law are applied.

Persons who may invoke humanitarian grounds

Reply:

Pursuant to § 9 (2) (2) of the Aliens Law, residence authorisation may be granted on request if the alien - other than in the cases referred to in § 7 (1) and (2) - is in such a situation that important considerations of a humanitarian nature present a strong case for complying with his request.

Pursuant to § 9 (2) (4) of the Aliens Law, residence authorisation may also be granted on request if there are other exceptional grounds for doing so, e.g. if it has not been possible to expel the person concerned during a period of at least 18 months.

Specific case of unaccompanied minors

Reply:

Minor asylum seekers who are not considered sufficiently mature to undergo the usual asylum procedure are granted residence authorisation pursuant to § 9 (2) (4).

Minor asylum seekers may also be dealt with in accordance with the usual asylum procedure, but with the procedure speeded up and a Danish Red Cross observer sitting on the Refugee Board.

Other cases
specify:

- 2.2. What are the various regimes provided for by your national legislation?

Reply:

See the replies to Questions 2 and 2.1.

- 2.3. What are the rights involved in these forms of protection? (Making a distinction, as appropriate, between the various forms of protection)

Right of residence

Specify the type of residence granted (duration, how regularly and how automatically renewed):

Reply:

Residence authorisation pursuant to § 7 (1) and (2) is granted with a view to permanent residence. The authorisation is valid for three years, after which time the person concerned may be granted unlimited residence authorisation.

Residence authorisation pursuant to § 9 (2) (2), § 9 (2) (4) and § 9 (2) (5) is granted with a view to temporary residence. Residence authorisation with a view to permanent residence may be granted at a later stage.

Right to work

Yes.

Social rights (social insurance, unemployment benefits etc.)

Yes.

- 2.4. Which authorities are competent to determine the entitlement of those concerned to these forms of protection?

(A) Administrative authorities:

Reply:

Decisions on residence authorisation on humanitarian grounds (cf. § 9 (2) (2) of the Aliens Law) are taken by the Ministry of the Interior.

Decisions on residence authorisation on exceptional grounds (cf. § 9 (2) (4) of the Aliens Law) are taken by the Danish Immigration Service, with the possibility of appeal to the Ministry of the Interior.

Decisions on residence authorisation for distressed persons from Kosovo (cf. § 9 (2) (5) of the Aliens Law) are taken by the Danish Immigration Service, with the possibility of appeal to the Ministry of the Interior.

Decisions on residence authorisation for certain persons from the former Yugoslavia (cf. § 9 (2) (5) of the Aliens Law) are taken by the Danish Immigration Service.

(B) Judicial authorities:

Reply:

The courts have the usual right to review the administrative authorities' decisions.

2.5. Describe the procedure followed (including the applicant's situation pending a decision)

Reply:

Applications for residence authorisation which are not covered by §§ 7-8 of the Aliens Law fall outside the sphere of competence of the Refugee Board, and hence no further explanation can be given here of the way in which such cases are dealt with.

Describe any links with the procedure for determining refugee status under the Geneva Convention:

Reply:

Persons whose asylum applications are refused can subsequently apply for residence authorisation on humanitarian grounds (cf. § 9 (2) (2) of the Aliens Law).

Applications are dealt with by the Ministry of the Interior.

It is also possible to submit a subsequent application for residence authorisation on exceptional grounds pursuant to § 9 (2) (4). Such applications are dealt with by the Danish Immigration Service at first instance.

Certain persons from the former Yugoslavia and distressed persons from Kosovo whose asylum applications are refused can subsequently have their applications dealt with pursuant to § 9 (2) (5) of the Aliens Law. Such applications are dealt with by the Danish Immigration Service.

3. Statistics:

Reply:

It should be noted that the statistics referred to below are based on information contained in the Danish Immigration Service's 1999 annual report.

(a) "Geneva Convention" refugee status:

Number of applications per year:

Reply:

In 1999, 6.467 spontaneous asylum seekers were registered in Denmark.

Number of applications granted:

Reply:

In 1999, 1.136 asylum seekers were granted refugee status under the Convention (cf. § 7 (1) of the Aliens Law).

In 1999, 2.618 asylum seekers were granted de facto refugee status (cf. § 7 (2) of the Aliens Law).

Residence authorisation was also granted to 518 quota refugees in 1999 (cf. § 8 of the Aliens Law).

(B) Other forms of protection:

Number of applications per year:

Reply:

**It should be noted that the figures referred to below are based on information from the Danish Immigration Service in its 1999 annual report.
The Refugee Board does not have any figures itself.**

Number of applications granted:

Reply:

In 1999, residence authorisation on humanitarian grounds (cf. § 9 (2) (2) of the Aliens Law) was granted to 39 persons.

In 1999, residence authorisation on exceptional grounds (cf. § 9 (2) (4) of the Aliens Law) was granted to 81 persons.

In 1999, residence authorisation pursuant to § 9 (2) (5) of the Aliens Law was granted to 105 persons.

4. General assessment of application of the legislation in force:

Reply:

Decisions on asylum applications are taken on the basis of a specific examination of the applicant's reasons for seeking asylum, together with any available background information concerning the applicant's country of origin.

GERMANY

Alternative forms of protection to refugee status under the Geneva Convention

Definition of the term "refugee" in national legislation

1. Does the definition of the term "refugee" as given in Article 1 of the Geneva Convention apply directly?

Yes.

The Geneva Convention has been part of German domestic law, with the status of an ordinary legislative act "Gesetz", since 1953.

In practice, however, the term "refugee" does not play the central role, since domestic application of the Geneva Convention ranks below an article in the German constitution, whereby those persecuted on political grounds enjoy the right of asylum (Article 16a(1) of the Basic Law). This goes farther than the Geneva Convention in two respects: it gives foreigners seeking protection a personal right to refuge and this right has constitutional status, which means that it takes precedence over an ordinary legislative act. However, right of asylum under the Basic Law is confined in principle to people who have not entered the country from an EU Member State or another safe third country. The Federal Constitutional Court takes the term "person persecuted on political grounds" to mean someone who has suffered, or is at imminent risk of, state persecution on grounds relevant for asylum purposes, above all race, religion, nationality, membership of a particular social group and political conviction. In practice, "refugee" and "person persecuted on political grounds" thus often amount to much the same thing. However, the term "person persecuted on political grounds" thus is slightly narrower than "refugee" as defined in the Geneva Convention; for example, a person who has created grounds for persecution himself, after leaving his home country (e.g. organisations in exile) is regarded as a "refugee" under the Geneva Convention, but is not, as a rule, deemed to have been "persecuted on political grounds". In order to guarantee protection for all those defined as "refugees" under the Geneva Convention, a special procedure has been created (§ 51(1) of the Aliens Law) to protect people against deportation to the persecuting state. Here too the foreigner has a personal right which is indirectly protected by the basic rights of the constitution.

1.1. Does the term "refugee" apply to categories of persons other than those referred to in Article 1 of the Geneva Convention?

Yes.

If yes, what other persons are considered as refugees under domestic law?

Persons covered by the UNHCR's mandate?

No.

Members of a refugee's family?

Yes.

Spouses and unmarried under-age children. However, there are a number of limitations (e.g. applies only to families of those "persecuted on political grounds" not to all "refugees"; the marriage must have existed in the country of origin).

Other cases

- (a) Aliens taken in under humanitarian relief programmes (Law on Measures in Aid of Refugees taken in under Humanitarian Relief Programmes).
- (b) Refugees from war and civil war (§ 32a of the Aliens Law).
- (c) Refugees from the former GDR and displaced persons (German nationals and/or ethnic Germans displaced, under certain specific circumstances, since 30 January 1933 (Law on Matters relating to Displaced Persons and Refugees).

Are these persons eligible for the protection system set up by the Geneva Convention?

- (a) Yes, in full.
- (b) No; only for temporary protection status. However, persons who are also "refugees" within the meaning of the Convention can also choose the general protection system.
- (c) No, there is no need, because these people either have German nationality already or can acquire it without fulfilling any further requirements once they have been accepted as displaced persons.

1.2. What authorities are competent to determine refugee status within the meaning of the definition(s) contained in your legislation ?**(a) Administrative authorities**

- The Federal Office for the Recognition of Foreign Refugees deals with applications for asylum, including applications for protection under the Geneva Convention; it also decides whether there are other reasons why deportation should not take place, depending on the "state of destination".
- Representations abroad, the Federal Ministry of the Interior and/or the aliens authorities of the Länder [regions] deal with those taken in as part of the Federal Republic of Germany's humanitarian relief programmes or as refugees from war or civil war.
- Federal Administrative Office and the refugee administrations of the Länder, for refugees from the former GDR and displaced persons.

(b) Judicial authorities

It is open to asylum seekers and the Federal Commissioner for Asylum Affairs, representing the public interest, to appeal against the Federal Office's decisions through the administrative courts.

The successive stage of appeal are to an administrative court, a higher administrative court and the Federal Administrative Court.

Asylum seekers can then still appeal to the Federal Constitutional Court with a claim that their fundamental rights have been violated.

In the same way, appeals can be made to the administrative courts and the Federal Constitutional Court, even from abroad, against negative decisions by other authorities.

"Non-Geneva Convention" systems for protection**2. Does your national legislation provide for alternative forms of protection to that introduced by the Geneva Convention?**

Yes:

- Recognition of entitlement to asylum within the meaning of Article 16a(1) of the Basic Law.
- Temporary refuge for refugees from war or civil war or those taken in under the Federal Republic of Germany's humanitarian relief programmes.
- Right of residence may be granted for reasons of international law, on humanitarian grounds or to secure the political interests of the Federal Republic of Germany.
- Deportation is not allowed in individual cases where:
 - there is a threat of torture;
 - there is a risk of the death penalty;
 - deportation is otherwise inadmissible pursuant to the European Convention on the Protection of Human Rights and Fundamental Freedoms.
- Discretionary power to grant relief from deportation in individual cases on other humanitarian grounds (real substantial risk to person, life or liberty).
- Discretionary power to grant collective relief from deportation for reasons of international law, on humanitarian grounds or to secure the political interests of the Federal Republic of Germany.

2.1. Which persons may be eligible for these alternative forms of protection?

The **categories of person** can be seen from the above.

Throughout legislation on aliens and asylum, **minors** are, in principle, regarded as having legal capacity from the age of 16. This does not affect the recognition of family ties. The guardianship court may have to appoint a guardian for unaccompanied minors who do not have legal capacity, as it would for adults who are legally incapable and travelling unaccompanied. In principle, age is not relevant to measures to terminate residence, but depending on the circumstances of the individual case it may be crucial to the decision on whether, when and how the residence of a minor can be terminated.

2.2. What are the various regimes provided for by your national legislation?

As described in section I.1, the "right of asylum" regime takes precedence over the protection afforded by the Geneva Convention, even for spouses and single under-age children, for all those who are eligible because of their entry route (not from a safe third country) and who choose to apply for it. A person entitled to asylum has the same legal status as under the Geneva Convention, but enjoys greater advantages in terms of residence and work permits and access to other state benefits.

The legal status afforded refugees under the Geneva Convention also goes beyond the minimum guarantees offered by the Geneva Convention. The legal status afforded by other regimes is either the same or less favourable.

2.3. What are the rights involved in these forms of protection (making a distinction, as appropriate, between the various forms of protection)?

- Entitlement to asylum:
 - unlimited residence permit;
 - employment and social rights in accordance with the Geneva Convention, sometimes with further privileges, including more favourable rules on labour market access;
 - spouse and single under-age children may follow.
- Refugee within the meaning of the Geneva Convention:
 - residence licence for a limited period (maximum 2 years, renewable; spouse and single under-age children may follow; unlimited residence permit after 8 years at the earliest);
 - employment and social rights in accordance with the Geneva Convention, with more favourable rules on labour market access.
- Refugee under the Federal Republic of Germany's humanitarian relief programmes:
 - same legal status as Geneva Convention refugees.
- Others given refuge:
 - residence licence for a limited period, (as above);
 - employment and labour market access as for Geneva Convention refugees;
 - social rights as for "normal" foreigners.
- Refugees from war or civil war:
 - residence licence for a limited period (as above), with restrictions as to family reunification and place of residence; in addition, applications for asylum not allowed;
 - employment allowed, labour market access subject to situation and developments; after 6 years, as for Geneva Convention refugees;
 - social rights: no social assistance, but subsistence for asylum seekers; if employed, social insurance cover.

- Protection from deportation:
 - no right of residence, but under a duty to leave the country, documented by exceptional leave to remain for a limited period (maximum 1 year, renewable), which expires on leaving the country;
 - employment can be forbidden or limited, labour market access subject to situation and developments;
 - social rights : as for refugees from war or civil war.

2.4. Which authorities are competent to determine the entitlement of those concerned to these forms of protection?

(a) Administrative authorities

The Federal Office for the Recognition of Foreign Refugees is responsible for decisions on entitlement to asylum and on refugee status within the meaning of the Geneva Convention; under the appropriate procedure, it may also establish the existence of impediments to deportation on the basis of other risks – including application of the ECHR – in the country to which the applicant is to be deported.

Representations abroad and/or the Federal Ministry of the Interior are responsible for granting refuge under the Federal Republic of Germany's humanitarian relief programmes or for other reasons mentioned above.

Local aliens authorities in all other cases; for refugees from war or civil war, an order is required from the highest Land [regional] authority by agreement with the Federal Ministry of the Interior; the same applies to measures on collective relief from deportation (agreement by the Federal Ministry of the Interior only required for measures lasting longer than 6 months).

(b) Judicial authorities

See I.1.2(b).

2.5. Describe the procedure followed (including the applicant's situation pending a decision)

Asylum seekers are to be turned back at the border, or as appropriate deported, if they have come from a safe third country, if it is obvious that they have already found refuge in another third country or if they pose a threat to the public (sentenced to at least three years' imprisonment for a particularly serious criminal offence).

Where asylum seekers arrive by air, the asylum procedure should usually be conducted before entry in the case of:

- . asylum applicants from safe countries of origin, and
 - . asylum applicants with no valid passport or substitute papers,
- provided that accommodation can be provided at the airport for the duration of the procedure.

In other cases (i.e. mainly illegal entry, the time and place of which cannot be properly verified) asylum seekers are directed to a reception facility, where they can lodge their applications for asylum at the relevant branch of the Federal Office for the Recognition of Foreign Refugees.

Residence is allowed while the procedure is being conducted. Asylum seekers are allocated to the various Länder [regions] according to a fixed allocation scale and then, in some cases, within the Länder themselves. Residence is limited to the area of the local aliens authority. They are subject to strict cooperation and reporting requirements during the procedure. Employment (never self-employment) can be allowed only when the Federal Office or an administrative court has granted the application. Access to the labour market is subject to the situation on the labour market and any developments therein. Asylum seekers not in employment do not have any claim to social security. They are given subsistence benefits under the Law on Benefits for Asylum Seekers, which fall far below social security levels in type and extent. Schooling is compulsory for children.

An application for recognition as entitled to asylum includes an application for recognition as a refugee under the Geneva Convention, with the result that persons claiming "only" refugee status under the Geneva Convention have an equivalent status.

If an application for recognition of a right to asylum or for refugee status under the Geneva Convention is refused, the Federal Office or administrative court must also decide whether there is any impediment to deportation, resulting from conditions in the intended country of deportation.

There is no specific procedure for the other protection regimes. Decisions on refuge for humanitarian or other reasons and on taking in refugees from war or civil war are usually taken on the spot by foreign representations on the basis of general rulings (usually by the Bund [federal authorities] and the Länder [regions], sometimes in cooperation with the UNHCR (as for Kosovo). Once the new arrivals have been brought to the country and allocated amongst the Länder, they are usually accommodated in local reception facilities. Their residence status is settled by the local aliens authorities on the basis of the relevant decision to grant refuge.

3. Statistics

- (a) There are no separate statistics kept of applications for Geneva Convention refugee status and for other types of protection.

(b)
1999

Total asylum applications:	95 113
Recognised refugees within the meaning of the Geneva Convention pursuant to Article 16a of the Basic Law and § 51 of the Aliens Law:	10 261 persons
Relief from deportation pursuant to § 53 of the Aliens Law:	2 100 persons

4. General assessment of application of the legislation in force

The German system is distinguished by its constitutional guarantee of asylum and by its constitutional guarantee of a judicial remedy against any state action with adverse effects, irrespective of nationality or place of residence. As a result of these fundamental decisions the guarantee of protection, even during the course of the asylum procedure, goes far beyond that afforded by the Geneva Convention. The high degree of protection guaranteed even while the procedure is still going on is probably in part responsible for the above-average influx of asylum seekers, compared with other EU countries. This has led to lengthier procedures, thus providing a further incentive to immigration. In the past, these causal links have often led to restrictions on procedural rights and social benefits. The fact that substantive law seems to be applied more restrictively than in other EU countries may also be in part attributable to the large numbers of asylum seekers.

With carriers now held liable if travellers do not have valid passports and visas and Germany now entirely surrounded by safe third countries by virtue of its EU membership and agreements with its neighbours, there are only a few cases in which a constitutional right of asylum can still be claimed, e.g. by those already in the country when the reason for asylum arose. In the future therefore the vast majority of applications will have to be decided "only" in terms of whether they qualify for refugee status within the meaning of the Geneva Convention, so that should the length and the outcome of procedures in EU countries soon become more readily comparable.

Differing national assessments as to the personal scope of the protection afforded by the Geneva Convention have little impact on the Federal Republic's basic guarantee of protection. There is a range of provision to cover every imaginable eventuality, offering the same status as or similar status to that enjoyed by Geneva Convention refugees in Germany. It can, however, be a rather cumbersome business to apply these instruments where agreement between the Bund [federal authorities] and the Länder [regions] is needed for their implementation. Aliens can also claim every imaginable impediment to deportation and have their claims tested in court. However, it has to be said that the status of those merely given limited exceptional leave to remain on these grounds is rather weak in terms of residence entitlement and barely adequate in social terms to live for an unforeseeable length of time.

GREECE

1. Yes.

- 1.1. Yes. In accordance with Article 7 of Presidential Decree 61/99, an alien who has been granted refugee status may ask, within the framework of family reunion, for family members to come and live with him, i.e. his spouse, unmarried children below the age of 18 and also his parents provided they lived with and were supported by the refugee before his arrival. The entry and stay of family members is allowed subject to certain preconditions relating to the obligation to live with the refugee, the requirement of the refugee having work, the family members having travel documents and entry visas, etc. Where they enter Greece legally within the framework of family reunion, family members have the same rights and obligations as the refugee (refugee's identity card, residence permit, etc.).
- 1.2. Under Greek legislation, the administrative authorities are competent. Specifically, asylum applicants are recognised as refugees and are granted asylum following a decision by the General Secretary of the Ministry of Public Order on a proposal from the Aliens Directorate, in the first instance. In the event of a negative decision, the applicant has a right of appeal to the Minister for Public Order (in the second instance), who takes the final decision.

2. Yes.

- 2.1. Greek legislation provides for: (a) particularly on humanitarian grounds, temporary residence for an alien whose asylum application has been rejected, until such time as he is able to leave the country; (b) the adoption of a joint ministerial decision which determines the specific regime of temporary protection for specific categories of aliens who have fled to Greece for reasons of *force majeure*.
- 2.2.-2.3. (a) Those allowed to stay temporarily are granted a one-year residence permit (renewable for one year) and may be employed (work) temporarily in order to cover their immediate living needs. (b) in the case of persons fleeing to Greece for reasons of *force majeure*, the regime under which they may reside and work is determined subsequently by joint ministerial decision.
- 2.4. The administrative authorities are competent.
- 2.5. For an alien to have the right to submit an application for temporary residence on humanitarian grounds, the prerequisite is that his application for refugee status must have been definitively rejected.

3. STATISTICAL DATA

	1997	1998	1999	2000(to July)	TOTAL
ASYLUM APPLICATIONS					
APPLICATIONS	4 376	2 953	1 528	1 677	10 534
GRANTED	130	156	146	146	578
RESIDENCE ON HUMANITARIAN GROUNDS					
APPLICATIONS	638	444	419	58	1 559
GRANTED	613	386	407	46	1 452

SPAIN

1. Yes.

- 1.1. Yes. To members of the refugee's family: spouse or person linked by a similar relationship except legal or de facto separation and divorce, children until the age of majority or family independence and parents provided that they are dependent on the refugee.

If the marriage takes place after the granting of recognition of refugee status, the spouse will not receive this treatment.

This applies even if those family members themselves fulfil the requirements of the 1951 Geneva Convention for recognition as refugees under it.

These persons benefit from the protection regime laid down in the Geneva Convention.

- 1.2. (a) Minister for the Interior, on a proposal from the Interministerial Asylum and Refugee Committee. If there is a disparity of criteria, the Council of Ministers takes a decision.

(b) National High Court (Chamber for Contentious Administrative Proceedings).

2. Yes. This applies to persons who, as a result of serious conflicts or disturbances of a political, ethnic or religious nature, have been obliged to leave their country and who do not fulfil the requirements laid down in the definition of refugee. Protection is also provided for humanitarian cases.

- 2.1. The previous definition covered persons coming from a country in conflict, cases where Article 3 of the European Convention on Human Rights applies and humanitarian cases.

- 2.2. (a) Regime for displaced persons. This includes temporary protection.

(b) Humanitarian reasons.

Regime	Non-return	Residence permit	Work permit	Social security cover
Displaced persons	Yes	Yes	Usually	(1)
Humanitarian reasons	No	Yes	Not automatically	(2)

- (1) They have the same reception system as refugees. Specific social benefits such as unemployment benefit will depend on whether such rights are in accordance with the general Spanish system for unemployment protection.
- (2) The social security cover they may receive will depend on their rights under the Spanish social security system.

2.4. (a) Minister for the Interior/Council of Ministers.

(b) National High Court (Chamber for Contentious Administrative Proceedings).

2.5. Alternative protection is always based on an asylum application in accordance with the 1951 Geneva Convention when the applicant does not fulfil the requirements for recognition as a refugee and, despite that, needs international protection. There is no provision for the possibility of applying exclusively for a protection regime other than that of the 1951 Geneva Convention.

Therefore, the procedure is the asylum procedure. The decision to grant alternative protection is contained in the same decision which refuses the recognition of refugee status.

YEAR	Number of asylum applicants *	Refugee status	Other types of protection granted
1996	4 730	243	168
1997	4 975	156	205
1998	6 764	238	758
1999	8 405	294	679

* As has been stated there is no provision for the possibility of applying exclusively for protection other than asylum under the 1951 Geneva Convention.

4. The assessment of the system is satisfactory. A single procedure for the various categories of protection, both to save resources by having applications studied in detail by specialist officials, and for the guarantee which it provides.

FRANCE

Definition of the term "refugee" in national legislation

1. Does the definition of the term refugee as given in Article 1 of the Geneva Convention apply directly? If not, does your domestic law contain a definition based on that given in Article 1 of the Geneva Convention? Please specify:

☐ Yes.

- 1.1. Does the term "refugee" apply to categories of persons other than those referred to in Article 1 of the Geneva Convention?

☐ Yes.

If yes, what other persons are considered as refugees under domestic law?

Article 2(2) of the Law of 25 July 1952 on the right of asylum provides that, apart from those who satisfy the conditions of Article 1 of the Geneva Convention, refugee status is granted to:

- anyone persecuted on the grounds of his activities to promote liberty,
- anyone covered by the competence of the United Nations High Commissioner for Refugees in accordance with Articles 6 and 7 of its Statute as adopted by the UN General Assembly on 14 December 1950.

Moreover, the status of refugee is accorded to the refugee's immediate family members in accordance with the principle of family reunification as established by case law.

☐ **Persons covered by the UNHCR's mandate**

Where appropriate, specify under what conditions:

The competence of the UNHCR is one of the possible bases for granting refugee status in France. However, competence must be exercised on the basis of Articles 6 and 7 of the UNHCR Statute, which rules out eligibility for refugee status on that basis for persons falling within an "extended" competence, for instance persons with regard to whom the UNHCR applies these "good offices" and whose situation will be examined individually under Articles 1A and 2 of the Geneva Convention. This requirement, which arises from case law and results from an amendment made by the Law of 24 August 1993, means that refugee status is granted to persons who are in a situation very similar to that of refugees recognised as such on the basis of the Geneva Convention.

Members of a refugee's family

If so, specify which:

In the mid-1950s the Refugee Appeals Board acknowledged that the spouse and under-age children of the refugee had to be granted the same status in accordance with the principle of family unity. This principle, which was extended to the refugee's common law spouse, was established by the *Conseil d'Etat* (CE, ass., 2 December 1994, *Agyepong*)¹, which established it as one of the general principles of refugee law.

It follows from this decision that it is with regard to the situation of the person who has been recognised as a refugee on the basis of Article 1 of the Geneva Convention that application of the principle of family unity should be considered. It is in fact the requirement that the refugee be accorded the full protection provided for under the Geneva Convention by allowing him, in particular, to preserve family ties already forged in the country of origin and thus to lead a normal family life in the host country that justifies extending the same status to his spouse or common law spouse, provided that marriage to or cohabitation with the refugee was entered into before the latter applied for admission to that status.² In order to benefit from the same principle, the refugee's child must have been a minor on the date of his entry into France.³

Other cases

Specify:

A person persecuted for his activities to promote liberty within the meaning of the preamble to the 1946 Constitution, a case incorporated into the 1952 Law by the Law of 11 May 1998. This provision has a limited scope. It is in fact rarely invoked by applicants, but the Refugee Appeal Board may of its own motion invoke this means of recognising refugee status.

Are these persons eligible for the protection system set up by the Geneva Convention?

Yes, fully.

1.2. What authorities are competent to determine refugee status within the meaning of the definition(s) contained in your legislation?

(a) Administrative authorities:

The French Office for the Protection of Refugees and Stateless Persons (OFPRA), set up by the law of 25 July 1952 relating to the right of asylum (Article 1).

(b) Judicial authorities:

The Refugee Appeal Board, set up by the law of 25 July 1952 relating to the right of asylum (Article 5). A judge with full decisional powers, the Board itself rules on the right of applicants to refugee status in accordance with all circumstances of fact and of law substantiated on the date of its decision.⁴

¹ "... the general principles of law applicable to refugees, arising in particular from the provisions of the Geneva Convention, lay down that the same status be granted to a person of the same nationality who was related by marriage to a refugee when the latter applied for admission to that status and to the under-age children of said refugee, so as to accord the refugee the full protection provided for in said Convention ...".

² *Agyepong* as above for the spouse and *Conseil d'Etat*, 21 May 1997, *Gomez Botero* for the common law spouse.

³ *Conseil d'Etat*, 21 May 1997, *Sirzum*.

⁴ (*Conseil d'Etat*, section, 8 January 1982, *Aldana Barrena*).

"Non-Geneva Convention" systems for protection**2. Does your national legislation provide for alternative forms of protection to that introduced by the Geneva Convention?**☐ **Yes.**

If yes, specify the wording used for distinguishing them from "Geneva Convention" refugee status: Territorial asylum. This is a right of residence which may be granted by the Minister for the Interior under conditions consistent with the interests of the country and after consultation of the Minister for Foreign Affairs. It mainly applies to victims of non-State persecution.

2.1. Which persons may be eligible for these alternative forms of protection?☐ **Persons coming from a country in a state of conflict**☐ **Persons who may invoke the risk of inhuman or degrading treatment within the meaning of Article 3 of the European Convention for the protection of human rights if they were to return to their country of origin****2.2. What are the various regimes provided for by your national legislation?****Territorial asylum is governed by:**

- **Article 12b of the Ordinance of 2 November 1945**
- **the above-mentioned provisions of the Law of 25 July 1952**
- **and by the provisions of the Decree of 23 June 1998 adopted for the application of the aforementioned Law and relating to territorial asylum**

2.3. What are the rights involved in these forms of protection? (making a distinction, as appropriate, between the various forms of protection)☐ **Right of residence**

Specify the type of residence granted (duration, how regularly and how automatically renewed):

The granting of territorial asylum results in the automatic issue of a temporary residence permit (Article 12b of the Ordinance of 2 November 1945 and Article 4 of the Decree of 23 June 1998) whose validity may not exceed one year. A temporary residence permit is also automatically issued to the spouse and minor children of the person concerned.

A temporary residence permit issued to someone granted territorial asylum is not automatically renewed. The reasons for its non-renewal are not specified in the Decree of 23 June 1998 but in a Circular dealing with cases in which the alien poses a threat to public policy and cases in which *"the grounds which originally justified the granting of territorial asylum have ceased to obtain"* and in particular *"if the situation in the alien's country of origin has returned to normal or if the frequency with which the alien has returned to his country of origin in the course of the past year and the length of his stays show that he does not have anything in particular to fear"*.

Refusal to renew is subject to prior consultation of the Minister for the Interior who, having assessed the situation of the person concerned, instructs the *Préfet* where appropriate to renew the residence permit.

However, although renewal of a residence permit obtained by virtue of territorial asylum is not automatic, it should be noted that Article 14 of the 1945 Ordinance provides that aliens who can substantiate a legal and uninterrupted stay in France of at least three years may obtain a residence permit valid for 10 years.

☐ **Right to work**

A temporary residence permit grants the right to practise an occupation (Article 12b of the Ordinance of 2 November 1945).

☐ **Social rights (social insurance, unemployment benefits, etc.)**

2.4. Which authorities are competent to determine the entitlement of those concerned to these forms of protection?

(a) Administrative authorities:

Minister for the Interior.

(b) Judicial authorities:

An administrative judge in matters of ordinary law, in other words, the administrative court in the jurisdiction in which the alien is domiciled.

2.5. Describe the procedure followed (including the applicant's situation pending a decision)

– submission of an application for territorial asylum: an alien who applies for territorial asylum must report to the *Préfecture* in order to fill in an application form for a temporary residence permit and a questionnaire stating the grounds for his application. He must include a chronological, detailed account describing the threats to which he is personally exposed. The *Préfecture* consults the aliens database, the wanted persons database and the Schengen Information System (SIS) and registers the application. If the person concerned does not already possess a residence permit he is given a summons setting the date for the hearing regarding his application.

– examination of the application: this task is entrusted to an official of the *Préfecture* tasked with the application of aliens law, in particular territorial asylum and the hearing of applicants. The hearing, provided for in Article 1 of the Decree of 23 June 1998, is held within one month of receipt of the application. The applicant may be assisted by an interpreter and must be allowed to set forth and substantiate his reasons for regarding himself as being exposed to a threat to his freedom or life or at risk of treatment in contravention of Article 3 of the European Convention on Human Rights. The hearing is recorded in a written report. The applicant is issued with a document of the same type as that given to an applicant for refugee status (valid for 3 months, renewable until the pronouncement of the Minister's decision and not granting the right to practise an occupation). The application is forwarded to the Minister for the Interior (Directorate of Civil Liberties and Legal Affairs) within two weeks of the hearing.

By way of derogation from the above procedure, the Minister may deliver an urgent decision if the applicant is in administrative detention in accordance with Article 35a of the Ordinance of 2 November 1945, if the alien's presence poses a threat to public policy or if the application is abusive, fraudulent or dilatory.

Describe any links with the procedure for determining refugee status under the Geneva convention:

Territorial asylum is an alternative solution to the recognition of refugee status. It follows that if an alien simultaneously or successively applies for territorial asylum and recognition of refugee status, examination of his application for territorial asylum is postponed until a final decision has been delivered on refugee status (Article 7 of the Decree of 23 June 1998).

Furthermore, Article 2, last paragraph of the Law of 25 July 1952 as amended by the Law of 11 May 1998 provides that, "*Without prejudice to the other channels for admission to territorial asylum, the Head of the Office or the Chairman of the Board shall refer to the Minister for the Interior in the case of all persons who have not been granted refugee status but who they consider fall within the scope of territorial asylum.*"

3. Statistics:

(a) "Geneva convention" refugee status:

number of applications per year: 3 1855

number of applications granted: 4 659

(b) **Other forms of protection:**

Number of applications per year in 1999: approx. 6000

Number of applications granted in 1999: 10% of applications

IRELAND

LUXEMBOURG

Alternative forms of protection to refugee status under the Geneva Convention

Re 1

The definition of the term "refugee" as given in Article 1 of the Geneva Convention is directly applicable in Luxembourg. There is no definition of the term in Luxembourg's legislation.

Re 1.1.

The term "refugee" does not apply to categories of persons other than those referred to in Article 1 of the Geneva Convention.

Re 1.2.

- (a) Administrative authority competent to determine refugee status: Minister for Justice;
- (b) Judicial authorities with jurisdiction to determine refugee status: legal action against the decision of the Minister for Justice may be brought before the administrative tribunal acting as a court of first instance, and its judgement may be appealed before the Administrative Court which takes the final decision.

Re 2

Yes, Luxembourg's legislation does provide for alternative forms of protection to that introduced by the Geneva Convention.

Luxembourg's legislation distinguishes this alternative protection from that governed by the Geneva Convention by describing it as a "temporary protection scheme".

Re 2.1.

Persons fleeing an area of armed conflict, war or widespread violence are eligible for this form of alternative protection. It is, however, for a Grand-Ducal decree to be adopted pursuant to Luxembourg's legislation to determine the specific groups of persons covered by the scheme, the duration of which should also be established by the same Grand-Ducal decree and must not, however, exceed three years.

Persons benefiting from the temporary protection scheme may apply for family reunification for their spouse and minor children under the same scheme.

Re 2.2.

The only scheme provided for by Luxembourg's legislation other than the system established by the Geneva Convention is that referred to under the term "temporary protection scheme".

Re 2.3.

By decision of the Minister for Justice, and if the persons concerned meet all the eligibility requirements for the temporary protection scheme, they are issued with a specific certificate stating that they are covered by the temporary protection scheme provided that they are at least 14 years old. This certificate serves as an identity document. It does not, however, entitle the holder to a residence permit. Moreover, persons covered by the temporary protection scheme may not be granted right of residence in Luxembourg. The certificate's period of validity depends on the decision taken by the Minister for Justice, as there is no such provision in the legislation governing the scheme, with it being understood, nevertheless, that the total duration of the scheme, to be established by Grand-Ducal decree, may not exceed three years. Moreover, the legislation applicable contains no indication as to how regular or automatic any renewal of the above certificate may be.

Persons covered by the temporary protection scheme receive either social assistance under the same terms as asylum seekers who have submitted an application on the basis of the Geneva Convention or a temporary work permit under the terms of the rules determining the measures applicable to the employment of foreign workers in the Grand Duchy of Luxembourg.

Re 2.4.

- (a) Administrative authority competent to determine the entitlement of those concerned to these forms of protection: the Minister for Justice;
- (b) Judicial authorities with jurisdiction to decide on an appeal lodged against a related decision taken by the Minister for Justice: at first instance, the administrative tribunal and, at second instance, the Administrative Court which takes the final decision.

Re 2.5.

A person wishing to be covered by the temporary protection scheme must submit a request to the Minister for Justice. In the absence of legislative or regulatory provisions, it must be assumed that the presence on Luxembourg territory of the person concerned is tolerated pending the decision of the Minister of Justice following the introduction of the request.

The procedure for the examination of applications for refugee status under the Geneva Convention submitted by beneficiaries of the temporary protection scheme is suspended for the duration of the scheme.

Upon expiry of the individual certificate issued by the Ministry of Justice to persons covered by the temporary protection scheme, asylum seekers are informed by registered letter that their application for recognition of political refugee status under the Geneva Convention will be regarded as withdrawn unless a request to continue the procedure is submitted within one month of the registered letter being sent.

Likewise, persons covered by the temporary protection scheme and who have not submitted a request for recognition of refugee status under the Geneva Convention are informed before expiry of the certificate that they may submit such a request within one month of the registered letter being sent on pain of being time-barred.

Re 3

Statistics:

(a) Refugee status (Geneva Convention)

Annual number of requests: during the period from 1 January to 30 June 2000, 303 files concerning 547 persons

Numbers granted status: during the same period, 5 files concerning 14 persons

(b) The legislation introducing the temporary protection scheme only dates from 18 March 2000 and has not yet given rise to specific applications.

Re 4

No comments.

THE NETHERLANDS

AUSTRIA

In general, the following (national) legal bases apply:

Federal Law on the granting of asylum (1997 Asylum Law)

Federal Law on the entry, residence and establishment of aliens (1997 Aliens Law)

Refugee status within the meaning of the Geneva Convention

Re Q 1. The definition of the term "refugee" is applied directly.

§ 7 Asylum Act: On application the authority must grant asylum to an asylum seeker by means of an official ruling when there is convincing evidence that he risks persecution in his country of origin (Article 1 Section A(2) of the Geneva Convention relating to the Status of Refugees) and there are no grounds for termination or exclusion pursuant to Article 1 Section C or F of the Geneva Convention.

*** A refugee's family members**

These are: the parents of a minor, the spouse (when the marriage was concluded at the latest within one year of the alien's entry) and under-age, unmarried children.

They can claim protection in accordance with the Geneva Convention.

§ 10 Asylum Act

(1) Aliens shall request by means of an application for extension of asylum that asylum which has been granted to a family member either further to an application for asylum or *ex officio* be extended.

(2) Applications for extension of asylum may be filed at the earliest at the same time as the related application for asylum. Such applications are admissible only for the parents of a minor or for the spouse and under-age, unmarried children; moreover, they are only admissible for the spouse when the marriage was concluded at the latest within one year of entry of the alien who submitted the application for asylum."

§ 11 Asylum Act

(1) The authority must grant asylum by extension further to an admissible application when the asylum seeker is unable to continue his existing family life within the meaning of Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, published in the Federal Law Gazette BGBl. No 210/1958, with the family member in another State.

(2) ...

Re Q 1.1 The term "refugee" is applied to categories of person other than those referred to in the Geneva Convention:

*So-called "quota" refugees

Aliens can be granted asylum within the meaning of § 9 of the Asylum Act *ex officio* and without further proceedings (i.e. without comprehensive investigations) by means of an official ruling when the Republic of Austria has declared under international law that it is prepared to do so.

Re Q 1.2 Competent authorities

First instance:

Federal Asylum Office (under the Federal Ministry of the Interior)

Second instance:

Independent Asylum Appeal Board (appellate body in the form of a court; in the Federal Chancellery)

Extraordinary legal remedies:

Possibility of appeal on points of law to the Constitutional Court or the Higher Administrative Court.

It should also be noted that proceedings before the Independent Asylum Appeal Board are two-party proceedings and that the possibility of appeal on points of law is open not only to the asylum seeker but also to the Federal Minister for the Interior – both for and against the asylum seeker.

Re Q 2 Provision under national legislation for alternative forms of protection to that introduced by the Geneva Convention

*** *Refoulement* – Protection**

When an asylum application has been rejected, the admissibility of the return, removal or deportation of the alien must be determined *ex officio* at the same time as the decision on the appeal.

§ 8 Asylum Act

Where an asylum application is to be rejected, the authority must determine *ex officio* by means of an official ruling whether the return, removal or deportation of the alien to his country of origin is admissible (§ 57 Aliens Act); this decision must be joined with the rejection of the asylum application.

§ 57 Aliens Act

(1) The return, removal or deportation of an alien to a country is not permissible if there is good reason to believe that he risks inhuman treatment or punishment or the death penalty there.

(2) The return or removal of an alien to a country is not permissible if there is good reason to believe that his life or freedom would be threatened there on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33(1) Geneva Convention, BGBl. No 55/1955, in the version of the Protocol relating to the Status of Refugees, BGBl. No 78/1974).

* Right of residence

Until the final conclusion of the asylum proceedings the asylum seeker has temporary right of residence, bearing in mind that appeals on points of fact have suspensory effect. An appeal on points of law to the highest courts (Higher Administrative Court or Constitutional Court) may be accorded suspensory effect by the highest courts, which is generally the case. Asylum seekers can therefore await the decisions of all instances on Federal territory (§ 15 Asylum Act).

If an asylum application has been rejected but prohibition of *refoulement* has been decreed pursuant to § 8 of the Asylum Act, the rejected asylum seeker is given a temporary residence permit which is valid for a maximum of one year and can be extended for a maximum of three years at a time after the second extension.

* Displaced persons (people from regions of conflict)

There are special rules allowing displaced aliens to be taken in by Austria for a limited period without having to apply for asylum and without their right to file an application for asylum being restricted.

§ 29 Aliens Act

(1) In times of armed conflict or other circumstances threatening the safety of entire population groups, the Federal Government may, in consultation with the Main Committee of the National Council, grant groups of directly affected aliens who cannot find protection elsewhere (displaced persons) a temporary right of residence on Federal territory by means of an ordinance.

(2) The ordinance pursuant to paragraph 1 must determine the entry and duration of the aliens' stay taking the circumstances of the specific case into consideration.

(3) The right of residence granted by the ordinance must be confirmed in the alien's travel document by the authority.

(4) If permanent integration proves necessary because the circumstances pursuant to paragraph 1 prevail for longer, the ordinance may lay down that certain categories of those granted the right of residence may effectively make an application for the issue of an establishment permit within the country.

To date the above provisions have been applied in respect of the Balkan conflict (ordinances of the Federal Government awarding the right of residence to refugees of war from Bosnia and Herzegovina and Kosovo).

The possibility was also allowed, subject to certain conditions, for the group of beneficiaries to be permanently integrated (e.g. Federal Law safeguarding a further right of residence for integrated displaced persons from Bosnia and Herzegovina, BGBl. I 1998/85).

Re Q 3

It should be borne in mind that the Independent Federal Asylum Board only keeps statistics on decisions on appeal and only began working in 1998.

In 1998 and 1999 the Independent Federal Asylum Board ruled on roughly 9 500 cases.

Not including decisions based on procedural technicalities (such as missed deadlines, applications for resumption or reinstatement, withdrawal of asylum applications or discontinuation of proceedings for non-appearance), the Independent Federal Asylum Board has allowed approximately 2 400 appeals against decisions of the Federal Asylum Office at first instance.

Of these, asylum was granted and refugee status recognised in 1 679 cases, of which some 1 450 cases involved asylum seekers from Kosovo; all other appeals allowed related to the question of safe third countries, or proceedings on the basis of the Dublin Convention or to determine whether an application was manifestly unfounded; appeals were dismissed in approximately 3 000 cases.

PORTUGAL

1 – Yes

Portuguese law contains the definition of the term "refugee" as given in Article 1 A of the Geneva Convention.

1.1 – No

The term "refugee" applies only to persons meeting the conditions set in Article 1 A of the Geneva Convention.

1.2 – The granting of refugee status is a matter for the administrative authorities.

2. – Yes

Portuguese law provides for alternative forms of protection. These are:

- **subsidiary protection**, as provided for in Article 8 of the Portuguese Asylum Act (Act No 15/98 of 26 March 1998), which states that:

"A residence permit shall be granted on humanitarian grounds to foreign nationals or stateless persons not covered by the provisions of Article 1 and who are prevented or do not feel they can return to the country of their nationality or of their habitual residence for reasons of serious insecurity owing to armed conflicts or systematic violation of human rights which are occurring there.";

- **temporary protection**, as provided for in Article 9 of the Portuguese Asylum Act (Act No 15/98 of 26 March 1998), which states that:

"The Portuguese State may grant temporary protection for a period not exceeding two years to persons displaced from their country as a result of serious armed conflicts which lead to large-scale flows of refugees."

The Portuguese State grants (by a resolution of the Council of Ministers) **temporary protection** to persons displaced from their country as a result of serious armed conflicts which lead to large-scale flows of refugees.

To date, temporary protection status has been granted in two instances, namely in connection with Guinea Bissau and Kosovo.

In both cases the persons involved were identified and registered under a special reception programme upon arriving in Portugal.

2.1 – The alternative protection provided for in Portuguese law is intended for the persons referred to in Articles 8 and 9 of the Portuguese Asylum Act – Act No 15/98 of 26 March 1998 (already mentioned under 2).

2.2 – Portuguese asylum legislation – Act No 15/98 of 26 March 1998 – provides for the following protection regimes:

- **grant of refugee status** within the meaning of the Geneva Convention, as provided for in Article 1 of the Portuguese Asylum Act – Act No 15/98 of 26 March 1998;
- **subsidiary protection** (residence permit on humanitarian grounds), as provided for in Article 8 of the Portuguese Asylum Act – Act No 15/98 of 26 March 1998;
- **temporary protection**, as provided for in Article 9 of the Portuguese Asylum Act – Act No 15/98 of 26 March 1998.

2.3 – **Refugee status**: persons with refugee status within the meaning of the Geneva Convention enjoy practically all the rights conferred upon Portuguese nationals, i.e. the right to work, the right to health care, education and social assistance, etc.

Subsidiary-protection regime (residence permit on humanitarian grounds): a residence permit may be issued for one or two years and is renewable up to 5 years.

Persons benefiting from this type of protection also have the right to work, health care, education and social assistance.

Temporary-protection regime: persons covered by this regime are entitled to a residence permit valid for a maximum period of two years.

They too have the right to education, health care and social assistance.

2.5 – The Portuguese Asylum Act – Act No 15/98 of 26 March 1998 – provides for two procedural stages: a first stage to decide on admissibility, during which an objective check is made to verify whether or not the formal requirements for asylum applications are met, and a second stage to analyse the merits of the asylum application. The first stage is referred to as the "admissibility assessment stage" – Articles 10 to 16 (Section I of Chapter II) of Act No 15/98 of 26 March 1998 – and the second as the "asylum-granting stage" – Articles 21 to 25 (Section II of Chapter II) of Act No 15/98 of 26 March 1998.

As regards structure, the procedural stages laid down in the Asylum Act are identical for both refugee status and subsidiary-protection cases.

3 – See the attached tables – A, B, C and D

A – ASYLUM PROCEDURES
APPLICATIONS LODGED IN PORTUGUESE TERRITORY

Aggregate flows
 Jan./Jul. 2000

Nationality	Data Applic.	Family
Afghanistan*	1	0
Albania	1	2
Algeria	2	0
Angola	4	0
Angola*	3	0
Angola**	1	0
Angola***	1	0
Armenia	1	1
Armenia	1	0
Armenia*	2	4
Benin	2	0
Belarus	1	0
Brazil	1	0
Bulgaria	2	0
Cameroon	1	0
Chad	1	0
Colombia*	2	0
Congo	2	0
DR Congo	7	0
France	1	0
FRY	2	0
Gambia	1	0
Ghana	1	0
Georgia	1	0
Germany	1	0
Guinea-Bissau	2	0
Guinea Conakry	7	0
India	1	0
Iran	2	0
Iran*	1	0
Iraq	1	0
Kazakhstan	1	0
Kenya*	1	0
Liberia	3	0
Lithuania	1	0
Nigeria	12	0
Nigeria*	1	0
Pakistan	2	0
Pakistan*	1	0
Pakistan**	2	0
Peru*	1	0
Russia	9	0
Russia*	1	0
Senegal	1	0
Sierra Leone	27	0
Sierra Leone*	1	0
Sierra Leone**	2	0
Slovakia	2	4
Sri Lanka	4	0
Grand total	129	11

- * – Transferred applicants within the meaning of the Dublin Convention.
- ** – Applications for residence permits (Article 8 of Act No 15/98).
- *** – Resettlement (Article 27 of Act No 15/98).

B – ADMISSIBILITY DECISIONS

Aggregate flows
Jan./Jul. 2000

	Data						
Nationality	Adm/SEF *	Inadm/SEF	Transf/SEF	Adm/ tacit	Adm/CNR**	Inadm/CNR	Transf/CNR
AFGHANISTAN	1	0	0	0	0	0	0
ALBANIA	0	0	1	0	0	0	0
ALGERIA	0	2	0	0	2	1	0
ANGOLA	0	6	1	1	0	6	0
ARMENIA	0	3	0	0	0	3	0
BENIN	0	1	0	0	0	0	0
BOSNIA	0	0	1	0	0	0	0
BRAZIL	0	0	1	0	0	0	1
BULGARIA	0	2	0	0	0	0	0
CAMEROON	0	0	1	1	0	0	0
CHAD	0	1	0	0	0	0	0
CONGO	0	2	0	0	0	2	0
FRANCE	0	1	0	0	0	1	0
DRC	0	6	0	0	0	7	0
FRY	0	1	1	0	0	1	0
GAMBIA	0	2	0	0	0	1	0
GEORGIA	0	0	1	0	0	0	0
GERMANY	0	1	0	0	0	0	0
GHANA	0	1	0	0	0	1	0
GUINEA-BISSAU	0	2	0	0	2	2	0
GUINEA CONAKRY	0	6	0	0	0	3	0
INDIA	0	1	0	0	0	0	0
IRAN	2	0	0	0	1	0	0
IRAQ	0	0	1	0	0	0	1
KAZAKHSTAN	0	0	1	0	0	0	1
KENYA	0	1	0	0	0	1	0
LIBERIA	0	3	0	0	0	3	0
NIGERIA	0	12	1	0	0	7	0
PAKISTAN	0	3	1	1	0	2	0
PALESTINE	0	1	0	0	0	0	0
PERU	0	1	0	0	0	1	0
RUSSIA	0	5	3	0	0	3	1
SENEGAL	0	1	0	0	0	0	0
SIERRA LEONE	3	26	2	0	14	30	0
SRI LANKA	2	0	2	0	0	0	0
SUDAN	0	0	0	0	0	1	0
UKRAINE	0	0	4	0	0	0	1
Grand total	8	92	22	3	19	75	5

* SEF = Serviço de Estrangeiros e Fronteiras (Aliens and Frontiers Department)

** CNR = Comissário Nacional para os Refugiados (National Commissioner for Refugees)

C – ASYLUM APPLICATIONS GRANTED
YEAR/2000

Nationality	Year/2000	Grand total
ANGOLA	1	1
G.-BISSAU	3	3
INDIA	1	1
TOTAL	5	5

NB: – Data updated to 31 July 2000.

D – MINISTERIAL DECISIONS

Residence permits granted on humanitarian grounds

Aggregate flows
Jan./Jul. 2000

Nationality	Residence permits granted on humanitarian grounds
AFGHANISTAN	1
ALGERIA	2
ANGOLA	
ARMENIA	
BOSNIA	
COLOMBIA	1
CONGO	
DRC	
FRY	
G-BISSAU	1
GEORGIA	
INDIA	
IRAQ	
LIBERIA	
NIGERIA	
ROMANIA	
SIERRA LEONE	11
SUDAN	
Grand total	16

FINLAND

DEFINITION OF THE TERM "REFUGEE" IN NATIONAL LEGISLATION

1. DOES THE DEFINITION OF THE TERM "REFUGEE" AS GIVEN IN ARTICLE 1 OF THE GENEVA CONVENTION APPLY DIRECTLY? IF NOT, DOES YOUR DOMESTIC LAW CONTAIN A DEFINITION BASED ON THAT GIVEN IN ARTICLE 1 OF THE GENEVA CONVENTION? PLEASE SPECIFY:

In Finland the Convention has been implemented by means of a decree. Section 30 of the Aliens' Act is based on Article 1(A) of the Convention. Under Section 30 an alien is to be granted asylum and issued with a residence permit if, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, he resides outside his country of origin or habitual residence and if, owing to such fear, he is unwilling to avail himself of the protection of the said country.

Section 30 also provides for situations in which asylum may be refused. Under this section asylum may be refused particularly if the alien has committed a crime against peace, a war crime or a crime against humanity according to the terms of international agreements or has committed another serious crime other than a political offence.

Section 35 of the Aliens' Act defines refugees. A refugee is an alien who

- (1) has been granted asylum in Finland
- (2) has been issued a residence permit as a refugee admitted to Finland within the quota
- (3) is a family member of an alien referred to in subsection 1 or 2 who has been issued a residence permit on the basis of a family tie if he is to be regarded as a refugee taking the circumstances into consideration.

Section 36 of the Aliens' Act covers abrogation of refugee status. Under this provision a person ceases to be a refugee if he

- (1) voluntarily re-avails himself of the protection of the country of his nationality;
- (2) having lost his nationality, voluntarily re-acquires it;
- (3) acquires a new nationality and is able to enjoy the protection of the country of his new nationality;
- (4) voluntarily re-establishes himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) evidently no longer needs protection as the circumstances which caused him to be a refugee have ceased to exist.

Finnish legislation does not contain a provision corresponding to Article 1(D) of the Convention.

1.1. DOES THE TERM "REFUGEE" APPLY TO CATEGORIES OF PERSONS OTHER THAN THOSE REFERRED TO IN ARTICLE 1 OF THE GENEVA CONVENTION?

No.

IF YES, WHAT OTHER PERSONS ARE CONSIDERED AS REFUGEES UNDER DOMESTIC LAW?

PERSONS COVERED BY THE UNHCR'S MANDATE

WHERE APPROPRIATE, SPECIFY UNDER WHAT CONDITIONS:

MEMBERS OF A REFUGEE'S FAMILY

IF SO, SPECIFY WHICH:

OTHER CASES

SPECIFY:

ARE THESE PERSONS ELIGIBLE FOR THE PROTECTION SYSTEM SET UP BY THE GENEVA CONVENTION?

SPECIFY THE PROVISIONS OF THE GENEVA CONVENTION WHICH APPLY TO THEM:

1.2. WHAT AUTHORITIES ARE COMPETENT TO DETERMINE REFUGEE STATUS WITHIN THE MEANING OF THE DEFINITION(S) CONTAINED IN YOUR LEGISLATION?

(A) ADMINISTRATIVE AUTHORITIES:

Directorate of Immigration

(B) JUDICIAL AUTHORITIES:

The Administrative Court of Helsinki and the Supreme Administrative Court

"NON-GENEVA CONVENTION" SYSTEMS FOR PROTECTION

2. DOES YOUR NATIONAL LEGISLATION PROVIDE FOR ALTERNATIVE FORMS OF PROTECTION TO THAT INTRODUCED BY THE GENEVA CONVENTION?

Yes.

IF YES, SPECIFY THE WORDING USED FOR DISTINGUISHING THEM FROM "GENEVA CONVENTION" REFUGEE STATUS:

Aliens may be granted residence permits on the basis of need for protection.

2.1. WHICH PERSONS MAY BE ELIGIBLE FOR THESE ALTERNATIVE FORMS OF PROTECTION?

PERSONS COVERED BY THE UNHCR'S MANDATE

MEMBERS OF A REFUGEE'S FAMILY

IF YES, SPECIFY WHICH:

PERSONS COMING FROM A COUNTRY IN A STATE OF CONFLICT

PERSONS WHO MAY INVOKE THE RISK OF INHUMAN OR DEGRADING TREATMENT WITHIN THE MEANING OF ARTICLE 3 OF THE EUROPEAN CONVENTION FOR THE

PROTECTION OF HUMAN RIGHTS IF THEY WERE TO RETURN TO THEIR COUNTRY OF ORIGIN

PERSONS WHO MAY INVOKE HUMANITARIAN GROUNDS

SPECIFIC CASE OF UNACCOMPANIED MINORS

OTHER CASES

SPECIFY:

An alien residing in Finland may be granted a residence permit on the basis of need for protection if in his country of origin or habitual residence he faces a threat of capital punishment, torture or other inhuman or degrading treatment or if he cannot return there because of an armed conflict or environmental disaster.

2.2. WHAT ARE THE VARIOUS REGIMES PROVIDED FOR BY YOUR NATIONAL LEGISLATION?

An initial decision on an application is taken by the Directorate for Immigration; that decision may be appealed against to the Helsinki Administrative Court. The decision of the Administrative Court may be appealed against to the Supreme Administrative Court, but only if the Administrative Court grants leave to appeal.

2.3. WHAT ARE THE RIGHTS INVOLVED IN THESE FORMS OF PROTECTION? (MAKING A DISTINCTION, AS APPROPRIATE, BETWEEN THE VARIOUS FORMS OF PROTECTION)

RIGHT OF RESIDENCE

SPECIFY THE TYPE OF RESIDENCE GRANTED (DURATION, HOW REGULARLY AND HOW AUTOMATICALLY RENEWED):

A permit for permanent residence may be issued to a person who has been granted asylum or a residence permit on the basis of need for protection. After two years' continuous residence in the country a permanent residence permit may be issued. The two-year period is calculated from the day on which the residence permit became valid. For refugees the period of residence under the permit is calculated from the day of arrival in the country.

RIGHT TO WORK

A refugee or a person who has been issued with a residence permit on grounds of need for protection is exempt from the work permit requirement.

SOCIAL RIGHTS (SOCIAL INSURANCE, UNEMPLOYMENT BENEFITS ETC.)

In Finland residence-based social security covers persons who have been granted asylum or a residence permit based on need for protection.

2.4. WHICH AUTHORITIES ARE COMPETENT TO DETERMINE THE ENTITLEMENT OF THOSE CONCERNED TO THESE FORMS OF PROTECTION?

(A) ADMINISTRATIVE AUTHORITIES:

(B) JUDICIAL AUTHORITIES:

See reply to question 1.2.

2.5. DESCRIBE THE PROCEDURE FOLLOWED (INCLUDING THE APPLICANT'S SITUATION PENDING A DECISION)

The asylum application is lodged with the police or the passport control officer. The asylum application includes a residence permit application. The Directorate for Immigration or the police conducts an asylum hearing. At present the hearing is conducted by the police, but the intention is that this task be transferred to the Directorate for Immigration. An initial decision is taken on the application by the Immigration Directorate and may be appealed against to the Helsinki Administrative Court. The Administrative Court's decision may be appealed against to the Supreme Administrative Court, but only if the former grants leave to appeal.

DESCRIBE ANY LINKS WITH THE PROCEDURE FOR DETERMINING REFUGEE STATUS UNDER THE GENEVA CONVENTION:

The procedure is the same as above. No distinction is made as in the question.

3. STATISTICS:

In 1999 a total of 3 106 people applied for asylum in Finland, and 1 272 in 1998. 2 472 had applied up to 31 July of this year. No distinction is made according to types of application.

(A) " GENEVA CONVENTION" REFUGEE STATUS:

NUMBER OF APPLICATIONS PER YEAR: as above.

NUMBER OF APPLICATIONS GRANTED: Asylum was granted to 7 applicants in 1998 and to 29 in 1999. Up to 31 July of this year asylum had been granted to 13 applicants.

(B) OTHER FORMS OF PROTECTION:

NUMBER OF APPLICATIONS PER YEAR: as above.

NUMBER OF APPLICATIONS GRANTED: Secondary protection was granted to 356 persons in 1998 and to 425 in 1999. 159 persons had been granted secondary protection up to 31 July of this year.

4. GENERAL ASSESSMENT OF APPLICATION OF THE LEGISLATION IN FORCE:

An amendment to the law on asylum procedures came into force in Finland on 10 July 2000. The purpose of the amendment is to speed up procedures. The new act provides for accelerated procedures for situations in which the applicant comes from a safe country of origin or asylum, the Dublin Convention can be applied, the application is considered to be manifestly unfounded or, following a refusal to grant asylum or a residence permit, a new application has been lodged which contains no new grounds for remaining in the country which are likely to affect the decision. The appeal procedure is clarified by the amendment as the same right of appeal applies to all asylum decisions. There has not been much time to gain experience of the reform in practice, but no problems of application have emerged.

SWEDEN

1. No, the definition of the term "refugee" as given in article 1 of the Geneva Convention does not apply directly.

The definition is transformed in to the Aliens Act (1989:529) and is on the whole consistent with the convention.

Chapter 3, Section 2

The term refugee as used in this Act refers to an alien who is outside the country of his nationality owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. This applies irrespective of whether persecution is at the hands of the authorities of the country or these cannot be expected to offer protection against persecution by private individuals.

A stateless person who for the same reason is outside the country of his former habitual residence and who is unable or, owing to such fear, is unwilling to return to that country, shall also be deemed a refugee.

1.1 No, the term "refugee" does not apply to categories of persons other than those referred to in article 1 of the Geneva Convention.

1.2 The Swedish Migration Board is the central agency in charge of alien affairs and one of its tasks is to determine refugee status. An appeal against a decision by the Swedish Migration Board can be lodged with the Aliens Appels Board. The Aliens Appeals Board is an administrative agency with powers similar to those of a court of law. The Aliens Appeals Boards decisions cannot be appealed. However, in special cases the Aliens Appeals Board can submit a case to the Government for a decision. This possibility is also open to the Swedish Migration Board. It concerns mostly cases of great importance for the development of case law.

Q.2./2.1. Yes, the Swedish legislation provide for alternativ forms of protection. We would like to refer to Chapter 3, Section 3, of the Aliens Act.

The term "alien in need of protection" otherwise used in this Act refers to an alien who in cases other than those referred to in Section 2 has left the country of his nationality because he

1. has a well-founded fear of being sentenced to death or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment,

2. due to an external or internal armed conflict he needs protection or, on account of an environmental disaster, he cannot return to his country of origin, or

3. because of his/hers sex or homosexuality, he/she has a well-grounded fear of persecution.

A stateless person who for the same reason is outside the country of his former habitual residence and for reasons given in the first paragraph cannot return to that country or, owing to fear, is unwilling to return, shall also be deemed to be an alien in need of protection.

The term asylum as used in the Aliens Act refers to a residence permit awarded to an alien because he is a refugee. An alien otherwise in need of protection is also entitled to a residence permit (but not asylum). A person may be granted a residence permit for humanitarian reasons directly related to the individual, e.g. serious illness, for circumstances related to a long period of residence in Sweden or because he/she has close relatives residing in Sweden.

In cases where a child is involved special attention shall be given to what is required bearing in mind the child's health and development and the best interests of the child otherwise.

2.2. Permanent residence permit as a rule but also time-limited residence permits can be granted.

Please note Chapter 2, Section 4a, of the Aliens Act

*Regarding a specific group of aliens, the Government may issue regulations to the effect that an alien applying for a residence permit by virtue of Chapter 3 who is considered to have a temporary need of protection in this country, may be granted a time-limited residence permit.
A time-limited residence permit may be granted for a total period of at most two years. If a programme in preparation for return has started prior to this, the residence permit may be extended by at most two years.*

2.3. If a person is granted asylum or a residence permit as a person otherwise in need of protection, he or she will as a rule be granted a permanent residence permit. This means that the person is entitled to stay in Sweden for as long as he or she likes. If the person moves away from Sweden, the permit will be revoked.

If a person is granted a time-limited residence permit it is up to the Government, the Swedish Migration Board or the Aliens Appeals board to decide how long the person is entitled to stay in Sweden. The applicant then has to make a new application if he wants to stay in Sweden.

Asylum-seekers

Asylum-seekers in Sweden are offered a place at one of the Migration Boards reception centres. If they prefer to make their own housing arrangements and have no money they can apply to the Board for housing benefit. They can also apply for daily benefit or benefit for certain needs.

Asylum-seekers are offered a free health check. If they are taken ill they are entitled to emergency medical care and emergency dental care.

Children between the ages of 7 and 15 are entitled to go to compulsory school. Upper secondary school entrance studies or special instruction at upper secondary school level are arranged for young persons aged 16-18.

Most adult asylum-seekers have the opportunity of attending Swedish language lessons and general instruction about life in Sweden.

If the asylum case, as far as one can see, will take more than four months to decide, the asylum-seeker is entitled to work in Sweden and will receive a certificate showing that he or she are exempt from the requirement of a work permit.

Time-limited residence permit

If you are granted a time-limited residence permit you have the same rights as an asylum-seeker.

Permanent residence permit

Immigrants granted a permanent residence permit are entitled to work and to be registered as a resident in Sweden.

If you are a resident you have - in all major aspects - the same rights as Swedish citizens when it concerns social security, unemployment benefits, medical care and so on.

2.4. The Swedish Migration Board, the Aliens Appeals Board and, under special circumstances, the Swedish Government.

2.5 A person coming to Sweden to seek asylum first applies to the Migration Board at the border or in a town somewhere else in the country. The Migration Board then makes an inquiry into the asylum-seeker's reasons for staying in Sweden. He/she will meet one of the Migration Board's handling officers and is always heard about his/hers reasons for staying. In some cases relating to the Aliens Act the alien is entitled to a public counsel, either a barrister or other lawyer. The state defrays all legal expenses. When the inquiry is completed the handling officer presents the case to another officer at the Migration Board who makes a decision. An appeal against this decision can be lodged with the Aliens Appeals Board.

The Aliens Appeals Board is headed by a Director-General. The Judges' Division consists of the Director-General, eight other permanent judges and six temporary judges. These judges are originally from a general court or an administrative court. The Board also includes 30 members or lay judges appointed by the Government at the proposal of the political parties represented in Parliament.

When a case arrives at the Aliens Appeals Board it is given to a rapporteur. The case is investigated and additional facts are obtained when necessary.

The Aliens Appeals Board automatically deals with all circumstances to which the applicant refers for residence permit, such as asylum or need of protection otherwise, family ties or humanitarian circumstances.

Following a presentation of a case, it is decided by the Aliens Appeals Board in various compositions. If the case is a simple one, the decision may be taken by a judge alone. When it is not considered a simple case, the decision is taken by a board consisting of a judge and two lay judges. Where a decision may constitute a precedent, it is taken by a full board, which consists of two judges, one of whom is the Director-General, and four lay judges.

There is no opponent party against the applicant, in other words there is no "two-party procedure". Sometimes the alien and other persons are summoned to a hearing.

The Aliens Appeals Boards decisions cannot be appealed. However in special cases it can submit a case to the Government for a decision. This possibility is also open to the Migration Board. It concerns mostly cases of great importance for the development of case law. It has to be pointed out that the Government is not allowed to interfere in individual cases by its own initiative.

The Aliens Appeals Board is the only body that deals with applications for residence permits submitted by aliens who have been ordered to leave Sweden pursuant to a previous decision which has entered into legal force. Such a "renewed application" can only be granted if the Application is based on circumstances which have not previously been examined and if the alien either is entitled to asylum or needs protection otherwise or if it would be contrary to the requirements of humanity to execute the expulsion decision.

3. (A) During the year 1999 the total number of applications was: 11 231.
This number includes all applications of protection but does not include some applicants from Kosovo.

The number of applications granted was 7 662 including approximately 7000 persons from Kosovo, granted refugee status and temporary permits to stay.

(B) Number of applications per year: see (A).

The number of applications granted was 814 not including applications granted on political-humanitarian reasons.

UNITED KINGDOM

1. Does the definition of the term ‘refugee’ as given in article 1 of the Geneva Convention apply directly?

Yes

1.1. Does the term ‘refugee’ apply to categories of persons other than those referred to in Article 1 of the Geneva Convention?

No

2. Does your national legislation provide for alternative forms of protection to that introduced by the Geneva Convention?

No, but leave may be granted outside of the Rules.

If yes, specify the wording used for distinguishing them from “Geneva Convention” refugee status

Exceptional Leave to Remain (ELR).

2.1 Which persons may be eligible for these alternative forms of protection?

- Persons who may fall within the meaning of Article 3 of the European Convention on Human Rights if they were to return to their country of origin.
- Persons whose circumstances are so exceptional and compassionate that they warrant leave to remain in the UK.

2.2 What are the various regimes provided for by your national legislation?

2.3 What are the rights involved in these forms of protection? (Making a distinction, as appropriate, between the various forms of protection)

Exceptional leave to remain in the United Kingdom is normally granted for a period of four years. Persons granted such leave are entitled to take up employment and use the National Health Service and where eligible can receive Social Security benefits. They may apply for a Home Office certificate of Identification if they have no national passport.

2.4 Which authorities are competent to determine the entitlement of those concerned to these forms of protection?

The Immigration and Nationality Directorate.

2.5 Describe the procedure followed (including the applicant’s situation pending a decision)

If an asylum applicant does not meet the Convention criteria for recognition as a refugee, consideration is then automatically given to any humanitarian factors which might justify the grant of leave to remain in the UK, exceptionally outside the Immigration Rules.

Describe any links with the procedure for determining refugee status under the Geneva Convention.

See above.

3. Statistics:

(a) **Geneva Convention Refugee Status:**

Number of applications per year: In 1999, 71160 applications were made for asylum.

Number of applications granted: In 1999, 7,075 applicants were recognised as a refugee and granted asylum, that is 36% of all initial decisions made.

(b) **Other forms of Protection:**

Number of applications made: There is no direct avenue at present. Consideration is given to their asylum application in the first instance. However after 2nd October direct application under the European Convention on Human Rights will be possible.

Number of applications granted: Exceptional leave to remain was granted to 2,110 applicants who had not been recognised as refugees but were granted leave to remain for 4 years for humanitarian reasons.

4. General assessment of application of the legislation in force:
