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ASSEMBLEIA DA REPÚBLICA

Act n.º 27/2008

of 30 de June

Establishes the conditions and procedures for granting asylum or subsidiary protection and the status of asylum, refugee and subsidiary protection to applicants, by transposing into the national legal framework Directives numbers 2004/83 EC, of the Council, of 29 April; and 2005/85 EC, of the Council of 1 December.

The Parliament decrees, in accordance to sub-paragraph c) of article 161 of the Portuguese Constitution, the following:

CHAPTER I

General Provisions:

Article 1

Subject-matter

1 — This Act establishes the conditions and procedures for granting asylum or subsidiary protection and the status of refugee and subsidiary protection applicants, by transposing into the national legal framework the following communitarian Directives:

a) Directive no. 2004/83 EC, of the Council, of 29 April, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection, as well as on the contents of the respective status and on the content of the protection granted; and

b) Directive no. 2005/85 EC, of the Council of 1 December.

a) Directive no. 2004/83/CE, of the Council, of 29 April, establishing minimum standards regarding conditions to be met by nationals of third countries or stateless persons to be granted the status of refugee or person who, for other reasons, may require international protection, as well as regarding the respective status and the contents of the granted protection;

b) Directive no. 2005/85/CE, of the Council, of 1 December, regarding minimum standards applying to the procedure of granting and withdrawing the refugee status.

2 — Simultaneously, the national right of transposing Directive no. 2003/9/CE, of the Council of 27 January by means of Law no. 20/2006, of 23 June, establishing minimum standards as for hosting asylum seekers in Member States is consolidated.

Article 2.

Definitions

1 — For the purposes of the provisions of this law it is understood the following:

a) «Residence permit» the permit issued by Portuguese authorities according to legal terms which allows an alien or a stateless person to live in national territory;

b) «Accommodation Centre» any place used as collective reception of asylum seekers;

c) «Conditions for the reception» the set of measures adopted on behalf of the asylum seekers according to this law;

d) «Material conditions for the reception» the conditions for the reception comprising accommodation, food, clothes and transport expenses, provided in kind or by means of subsidies or coupons or subsidies for daily expenses de;

e) «Geneva Convention» the convention regarding status of refugees, signed in Geneva on 28 July 1951, changed by New York Protocol of 31 January 1967;

f) «Subsidiary Protection Status» the recognition, by the competent Portuguese authorities, of a alien or a stateless person as a qualifying person to be granted residence permit for humanitarian reasons;

g) «Refugee status» the recognition, by the competent Portuguese authorities, of a alien or a stateless person as a refugee who in that capacity is authorized to stay in national territory;

h) «Members of the family» the asylum seekers' family mentioned in legal system regarding entry, residence, exit and removal of aliens from national territory for the purposes of the right to family unity;

i) «Unaccompanied minor» any nationals of third countries or stateless persons with less than 18 years of age who enter national territory non accompanied by an adult who, by force of law or custom, takes responsibility for them, whilst they are not actually taken care of by that person, or have been abandoned after entering national territory;

j) «Reasons for persecution» those which cause well founded fear felt by the applicant of being persecuted, which should be judged taking into account:

i) «Race», which includes, namely, considerations associated with colour, ancestry or the fact of belonging to a specific ethnic group;

ii) «Religion», which comprises, namely the fact of having theistic, non theistic and atheistic convictions, the participation or abstention from participation in private or public worship ceremonies, both as an individual and together with other people, in other religious acts or expressions of beliefs, or ways of personal or community behaviour based on religious beliefs founded in religious creeds or imposed by the latter;

iii) «Nationality», which is not limited to citizenship or its absence, but includes also, namely the belonging to a certain group of cultural, ethnic or linguistic identity, by its common geographical or political origins or its relation with the population of another State;

iv) «Group», a specific social group in such cases as:

The members of that group share a inborn characteristic or a common history which cannot be changed, or share a characteristic or belief deemed to be so critical for the of the group members' identity or conscience that they cannot be asked to give it up; and

That group has a different identity in the country in question, because it is considered to be different by the society that surrounds it;

v) «Political opinion», which includes, namely the fact of having an opinion, idea or ideal in subjects related to the potential agents of persecution, to their policies or methods, whether that opinion, idea or ideal are or not expressed by acts of the applicant;

l) «Home country» the nationality country or countries or, for the stateless persons, the country where they normally live;

m) «Safe home country» the country of which the applicant is a national or being a stateless person, his usual residence, regarding which the applicant has not invoked any serious reason to consider it that the latter is not safe, taking into account the applicant's personal circumstances as for meeting the conditions to be considered a refugee and assessed based on a set of sources of information including, especially, information of other Member States, the United Nations High Commissioner for the Refugees (UNHCR), of the Council of Europe and other pertinent international organizations;

n) «Safe Third-Country» the country where the asylum seeker has been or gone through before arriving in Portugal and where he is, confirmedly, not subject to any threats to his life and freedom, where the principle of non-refoulement and the right not to be subject to torture or cruel, inhuman or degrading treatment, are guaranteed and where he may apply for the refugee status and if the latter is granted, to receive protection, under the terms of Geneva Convention, in compliance with the following rules:

i) A connection between the asylum seeker and the third-country in question which, in principle, allows for that person to go to that country;

ii) Certification that the concept of safe third-country may be applied to a certain country or certain applicant, including the casuistic analysis of the country's safety for a certain applicant and the national title of countries deemed to be generally safe;

iii) Individual assessment, under international law, of the safety of the third-country, in question, regarding a specific applicant and which, as a minimum, allows the applicant to challenge the suitability of the concept of safe third-country, claiming that he would be submitted to torture, cruel, inhuman or degrading treatment or sentence;

o) «Application or application for asylum» application submitted by a foreign citizen or stateless person which may be considered as an application of international protection addressed to the Portuguese authorities, under the Geneva Convention;

p) «Loss of international protection» the effect resulting from cessation, revocation, suppression or refusal of renewal of the asylum right or subsidiary protection;

q) «Stay in the Country» the stay in Portugal, including the border and transit zones of the national territory;

r) «Especially vulnerable people» people with special needs, such as minors, unaccompanied minors, handicapped people, the elderly, pregnant women, members of mono parental families with underage children and people who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence;

s) «First asylum country» the country in which the applicant has been recognized as a refugee and may also benefit from that protection or enjoy in that country of effective protection, under the terms of Geneva Convention, and where he, confirmedly, is not subject to any threats to his life and freedom, where the principle of non-refoulement and the right not to be subject to torture or cruel, inhuman or degrading treatment, are complied with, if he is readmitted to that country;

t) «Prohibition of refusing» (principle of non -refoulement')» the principle of the right to international asylum, provided for in article 33 of Geneva Convention, according to which the asylum seekers should be protected against direct or indirect expulsion or return, to a place where his life or freedom are susceptible to be threatened due to his race, religion, nationality, affiliation to a certain social group or political opinions. This protection shall not apply to whom represents a threat to national security or has been the object of a final conviction for a particularly serious crime or offence;

u) «Procedures» and «judicial impugnation» the procedures and form of legal proceedings provided for in Portuguese law;

v) «International Protection» the status of subsidiary protection and the refugee status, established in sub-paragraphs f) and g);

x) «Refugee» the foreign citizen, who, rightly, fearing to be persecuted in result of an activity exercised in the State of his nationality or his usual residence, on behalf of democracy, social and national freedom, of peace among peoples, of freedom and human rights or due to his race, religion, nationality, political beliefs or belonging to a certain social group, is out of the country of his nationality and may not or, due to any fear, or do not wish to request that country's protection, or the stateless person who, being out of the country where he had his usual residence, for the same above mentioned reasons may not, or due to the mentioned fear, does not wish to come back to that country, and to whom the provisions of article 9 do not apply;

z) «Representative» the person who acting on behalf of an organization represents an unaccompanied minor, in the capacity of his legal tutor, the person who acts on behalf of a national organization which, according to the law, is responsible for the minors'

assistance and welfare, or any other suitable representative appointed, according to the law, to defend the unaccompanied minors' interests;

aa) «Applicant» or «asylum seeker» a foreign citizen or stateless person who has submitted an asylum or subsidiary protection application which has not yet been the object of a final decision.

2 — For the purposes of sub-paragraph iv) of paragraph j) of the previous number, depending on the circumstances of the home country, a specific social group may include a group based on gender identity or a common characteristic of sexual orientation, and this may not be understood as including typified acts such as crime, according to the law, as well as consider aspects related to gender, although gender in itself, should not be susceptible to create a presumption for the qualification as a group.

CHAPTER II

Beneficiaries of International protection

Article 3

Granting the right of asylum

1 — Right of asylum is granted to foreign citizens and stateless persons persecuted or seriously threatened with persecution, in result of an activity exercised in the State of his nationality or his usual residence, on behalf of democracy, social and national freedom, of peace among peoples, of freedom and human rights.

2 — Foreign citizens and stateless persons who, rightly, fearing to be persecuted due to their race, religion, nationality, political opinions or belonging to a certain social group, may not, or due to that fear, do not wish to come back to the State of their nationality or their usual residence also have the right of being granted asylum.

3 — Asylum may only be granted to the foreign citizen who has more than one nationality when the reasons for persecution mentioned in the previous numbers are true regarding all States of his nationalities.

4 — For the purposes of no. 2, it is irrelevant that the applicant actually has a characteristic associated to race, religion, nationality, social or political group which leads to persecution, provided that characteristic is ascribed to him by the persecution agent.

Article 4

Effects of granting the right of asylum

The granting of the right of asylum under the provisions of the previous article bestows on the beneficiary the refugee status, according to this law, notwithstanding the provisions of international treaties or conventions of which Portugal is a party or has joined.

Article 5

Persecution acts

1 — For the purposes of article 3, persecution acts susceptible to justify the right of asylum should constitute, by their nature or reiteration, serious violation of fundamental rights, or represent a set of measures, which by their cumulating, nature or repetition, affect the foreign citizen or stateless person in a similar way as that of a serious violation of fundamental rights.

2 — The persecution acts mentioned in the previous number may take on the following forms:

- a) Acts of physical or mental violence, including of sexual nature;
- b) Legal, administrative, police or judicial measures when they are discriminatory or if applied in a discriminatory way;
- c) Disproportionate or discriminatory legal actions or sanctions;
- d) Refusal of access to judicial redress resulting in disproportionate or discriminatory sanction;
- e) Legal actions or sanction due to refusal of doing military service in a situation of conflict in which doing military service would involve the practice of crime or act susceptible to cause the exclusion from the status of refugee, according to the provisions of sub-paragraph c) of no. 1 of article 9;
- f) Acts performed specifically for reasons of gender or against minors.

3 — Information required for making decisions on the refugee status cannot be obtained in such a way that the persecution agents can get information on the fact that the status of the asylum seeker is being considered or cause a threat to the physical integrity of the asylum seeker or his family in Portugal or in their home country.

Article 6

Persecution agents

1 — Persecution agents are:

- a) The State;
- b) Parties or organizations controlling the State or a significant part of respective territory;
- c) Nongovernmental agents, if it is proved that the agents mentioned in sub-paragraphs a) and b), are incapable or do not wish to provide protection against the persecution, according to the provisions of the following number.

2 — For the purposes of subparagraph c) of the previous number, it shall be considered that protection exists whenever the agents mentioned in subparagraphs a) and b) of the previous number adopt suitable measures to prevent the practice of persecution acts, by

means, namely, of the introduction of an effective legal system to detect, take legal action and punish those acts, provided the applicant has access to effective protection.

Article 7

Subsidiary Protection

1 — Residence permit is granted due to humanitarian reasons to aliens and stateless persons to whom the provisions of article 3 do not apply and who are prevented or cannot return to the countries of their nationalities or their usual residence, both due to the systematic violation of human rights occurring there and because they are under risk of suffering serious offence.

2 — For the purposes of the previous number, serious offence is considered to be the following:

a) Death penalty or execution;

b) The applicant's torture, inhuman or degrading sentence or treatment in his home country; or

c) Serious threat against the applicant's life or physical integrity, resulting from indiscriminate violence in situations of international or internal armed conflict situations or of general and indiscriminate violation of human rights.

3 — The provisions of the previous article apply correspondently.

Article 8

“Sur place” protection

1 — The confirmed fear of being persecuted, according to the provisions of article 3, or the risk of suffering serious offence, according to the provisions of the previous article, may be based on events occurred or activities practiced after leaving the State of nationality or usual residence, especially if it is proved that the activities in which the application for asylum are the expression and maintaining beliefs or already expressed in that State.

2 — The provisions of the previous number do not apply when the fear or risk are originated in circumstances created by the alien or stateless person after leaving the State of his nationality or usual residence, exclusively with the aim to benefit, with no sufficient grounds, from the refugee or subsidiary protection status.

Article 9

Exclusion and refusal of asylum and subsidiary protection

1 — The alien or stateless person cannot benefit from asylum or subsidiary protection whenever:

a) Being covered by the scope of point D of article 1 of Geneva Convention, regarding protection or assistance by the United Nations bodies or agencies, other than UNHCR, provided that protection or assistance has not ceased for any reason before the situation of the person in question has been finally solved in compliance with the applicable resolutions of United Nations General Assembly;

b) The competent authorities of the country where he has established his residence consider he has the rights and duties of who has that country's nationality or equivalent rights and duties;

c) There are ponderous reasons to assume that:

i) He/she has committed crimes against peace, war crimes or crimes against humanity, according to the provisions of international instruments establishing provisions regarding these crimes;

ii) He/she has committed fraudulent crimes of ordinary law punishable with prison sentence greater than three years outside the national territory, before being admitted as a refugee;

iii) He/she has practiced acts against the United Nations purposes and principles expressed in preamble and articles 1 and 2 of Charter of the United Nations.

2 — Asylum or subsidiary protection can be refused whenever its granting results in danger or confirmed threat for internal or external security or public order.

3 — Subsidiary protection may also be refused if the alien or stateless person has committed one or more crimes not covered by subparagraph c) of no. 1 which would be punishable with prison sentence if they had been committed in national territory and the former has left his/her home country only with the aim to avoid sentences arising from those crimes.

4 — For the purposes of the provisions of subparagraph c) of no. 1 and the previous number, persons to whom the provisions of article 26 and 27 of Criminal Code apply are also considered.

CHAPTER III

Procedure

SECTION I

Ordinary provisions

Article 10

Application for asylum

It is assumed that any application for international protection is an application for asylum, except if the person in question applies expressly for another sort of protection which may be the object of a different application.

Article 11

Right to remain in national territory

1 — The asylum seekers are authorized to remain in national territory, for the purposes of asylum granting, until the decision on the admissibility of the application is reached.

2 — This right to remain does not qualify the applicant to the issuing of a residence permit.

Article 12

Effects of the application for asylum on offences regarding the entry in the country.

1 — Submitting the application for asylum opposes the knowledge of any administrative or criminal proceedings due to irregular entry in national territory sued against the applicant and his/her family members accompanying him/her.

2 — The proceedings are filed in case the asylum is granted and it is proved the corresponding offence was caused by the same facts which have justified the asylum granting.

3 — For the purposes of the provisions of the previous numbers, the application for asylum and the decision on the latter are notified to the entity in charge of the administrative or criminal proceeding by Alien and Border Service, within two working days.

Article 13

Submission of the request

1 — The alien or stateless person entering national territory with the aim at getting asylum, should submit without any delay his/her request to Alien and Borders Service or any other police authority, in writing or orally, and in this case an official report should be drawn up.

2 — Any police authority receiving the request mentioned in no. 1 sends it to Alien and Borders Service within forty eight hours.

3 — Alien and Borders Service informs the representative of UNHCR and Portuguese Refugee Council upon receiving the application for asylum.

4 — The applicant may require, until the decision on the application for asylum is made, the application to be extended to his/her family members accompanying him/her, whether being minors or of full age, and in this case, the application should be preceded by express previous consent of the dependant people, or it shall be considered inadmissible.

5 — The applicant who is a minor may submit an application in his name.

Article 14

Documentary evidence of submission and information application

Within three days after registration the applicant will be handed a declaration documenting the submission of the application for asylum, which simultaneously certifies that its holder is authorized to remain in national territory while his/her application is pending, and he/she must be made aware of his/her rights and obligations.

Article 15

Contents of the application

1 — The applicant should submit all elements required to justify the application for asylum, namely:

- a) Identification of the applicant and all members of his/her family;
- b) Statement of his/her nationality, country or countries and previous place or places of residence;
- c) Statement of all previous application for asylum;
- d) Report on the circumstances or facts justifying the asylum.

2 — For the purposes of the provisions of the previous number, the applicant should, in addition to the application of asylum, submit all available identification and travel documents, as well as all evidence, and may present witnesses but no more than 10.

Article 16

Declarations

1 — Before any decision on the application for asylum is pronounced, the applicant is granted with the right to make declarations, in conditions of due confidentiality and enabling him/her to explain the circumstances which justify the respective claim.

2 — The declarations are made individually, except if the members of the family are required to be present for a suitable assessment of the situation.

3 — For the purposes of the previous numbers, upon receiving the application for asylum, Alien and Borders Service notifies at once the applicant to make declarations within five days.

4 — If the application is submitted by a minor or unqualified person, it is incumbent on Aliens and Borders Service to notify Portuguese Refugee Council of that fact for representation purposes.

5 — Giving declarations can only be waived:

- a) If there are already conditions to decide in favour of the admissibility of the application based on available evidence;
- b) If the applicant has already provided by other means the required information for the respective judgment;
- c) If the applicant is considered to be inapt or unqualified for the purpose due to permanent circumstances, regardless of his/her will.

6 — When no declarations are made according to the previous number, Aliens and Borders Service will endeavour so that the applicant or dependant person give, by any other means, further information.

Article 17

Report

1 — After the diligences mentioned in the previous articles, Aliens and Borders Service draws up a written report comprising all essential information regarding the application.

2 — The report mentioned in the previous number is notified to the applicant so that he/she can express himself on it within five days and, simultaneously, notified to the representative of UNHCR and Portuguese Refugee Council.

Article 18

Assessment of application

1 — For the judgment of each application for asylum, it is incumbent on Aliens and Borders Service to examine all pertinent elements, such as the applicant's declarations made according to the provisions of the previous articles and all available information.

2 — When assessing the application, Aliens and Borders Service takes into consideration specifically:

- a) The pertinent facts regarding the home country at the date of the decision on the application, including the respective legislation and regulation and the guarantees of their enforcement;
- b) The applicant's personal situation and circumstances, so as to assess, based on that personal situation, if the former suffered or may suffer from persecution or serious offence;
- c) If the applicant's activities, from the moment he/she left his/her home country, had the only and main purpose of creating the necessary conditions to require international protection, so as to judge if those activities may expose him/her to persecution or serious offence, in case of returning to the mentioned country;

d) If it is reasonable to anticipate that the applicant may use another country's protection of which he/she may claim his/her citizenship.

3 — It is a serious sign of justified fear of being persecuted or of the risk of suffering a serious offence, the fact that the applicant has already been persecuted or directly threatened of persecution or having suffered, or having been directly threatened of serious offence, except if there are justified reasons to consider that the grounds for such persecution or serious offence have ceased and shall not be repeated.

4 — The applicant's declarations should be confirmed by means of documentary evidence or other means of proof admitted in law, unless the following conditions are cumulatively present:

a) The applicant has made a genuine effort to justify his application;

b) The applicant submits all available elements and a satisfactory explanation for the possible lack of others deemed to be pertinent;

c) Declarations made by the applicant are considered to be coherent, plausible, and not contradictory in regards with the available information;

d) The application has been submitted within the shortest time period possible, unless the applicant encloses a due justification for doing otherwise;

e) The applicant's general credibility has been assessed.

Article 19

Expedited procedure

1 — The application has expedited procedure and is considered inadmissible when by means of procedure provided for in this law the following situations occur:

a) Another member State has granted the applicant the refugee status;

b) A country, other than a member State, is considered to be the first country of asylum for the applicant;

c) The applicant is authorized to remain in the national territory for other reasons and, due to that fact, has benefited from a status granting him rights and benefits equivalent to those of the refugee status;

d) The applicant is authorized to remain in the national territory for other reasons which protect him from "refoulement" pending from the result of a procedure to establish the status, under the provisions of subparagraph c);

e) The applicant has submitted a similar application after the final decision is pronounced;

f) A person dependant on the applicant has submitted an application after having agreed, under the provisions of no. 4 of article 13, that his/her case should be covered by an application made in his name and there are no elements regarding that person's situation which may justify a separate application.

2 — The application should also be considered as inadmissible and subject to expedited procedure, when it becomes obvious it does not meet any of the criteria established by Geneva Convention and New York protocol, because:

- a) If any of the causes provided for in nos. 1 and 3 of article 9 occur;
- b) The applicant, when submitting the application and relating the facts, has invoked only non pertinent or of minimum relevance issues to examine the compliance with the conditions to be considered as a refugee;
- c) The applicant does not clearly meet the conditions to be considered a refugee or to be granted the status of refugee in a member State;
- d) The application for asylum is considered unfounded because:
 - i) The applicant comes from a safe country;
 - ii) The country which is not a member State is considered a safe third-country for the applicant;
- e) The applicant has led the authorities into error, submitting false information or documents or concealing information or important documents, regarding his/her identity or nationality, susceptible to have a negative impact on the decision;
- f) The applicant has submitted another application for asylum with different personal data;
- g) The applicant has not submitted information which allows to establish, with a reasonable degree of certainty, his/her identity or nationality or because it is susceptible that in bad faith, he/she has destroyed or misled identity or travel documents susceptible to contribute for the establishment of his identity or nationality;
- h) The applicant has made incoherent, contradictory, unsusceptible or insufficient declarations which clearly withdraw credibility to the allegation of having been subject to persecution;
- i) The applicant has submitted subsequent application invoking new pertinent facts regarding his specific circumstances or the situation in his/her home country;
- j) The applicant has not submitted the application earlier, with no valid reasons, and having had the possibility to do so;
- l) The applicant submits the application only with the purpose to delay or prevent the application of a previous or imminent decision resulting in his withdrawal;

- m) The applicant, with no valid reasons, did not comply with the obligations mentioned in article 15;
- n) The applicant has entered or lengthened illegally his stay in national territory and, deceitfully, has not come before the authorities as soon as he could, given the circumstances of his entry in the territory;
- o) The applicant represents a danger for internal security or public order;
- p) The applicant has been the object of an enforceable decision of expulsion for serious reasons of public security and public order, pursuant to national law;
- q) The applicant refuses to submit to mandatory registration of his/her finger prints according to community and national law;
- r) The application has been submitted by a minor single person who, according to the provisions of no. 4 of article 13, has been covered by a previous application, when the application of the parent or parents responsible for the minor has not been considered admissible and no new pertinent elements regarding his/her specific circumstances or situation in his home country have been submitted.

Article 20

Capacity to assess and decide

- 1 — It is incumbent on the national director of Alien and Borders Service to pronounce a well-founded decision on inadmissible applications within 20 days counting from the end of the period provided for in no. 2 of article 17
- 2 — In case no decision has been pronounced within the timeframe provided for in the previous number the application is considered as having been granted.
- 3 — The decision on the application for asylum is notified to the applicant and simultaneously to the representative of UNHCR and the Portuguese Refugee Council.

Article 21

Effects of the decision

- 1 — The decision is notified to the applicant within 48 hours, mentioning that he/she has to leave the country within 20 days, or shall be expelled immediately once the timeframe has elapsed, as well as the rights granted to him/her, according to the provisions of the following article.
- 2 — In case the applicant does not comply with the provisions of the previous number, Aliens and Borders Service should promote the process with a view to his/her immediate expulsion, according to the provisions of the legal system of entry, residence, exit and removal of aliens from national territory.

Article 22

Judicial impugnation

1 — The decision pronounced by national director of Aliens and Borders Service is susceptible of judicial impugnation before administrative courts, within eight days, with suspended effect.

2 — Judicial decision is pronounced within eight days.

SECTION II

Applications submitted at border posts

Article 23

Special scheme

1 — The decision on applications asylum submitted in border posts by aliens who do not meet the legal requirements necessary to enter national territory is subject to the scheme provided for in the previous articles with the changes included in this section.

2 — The officials who receive asylum seekers in border posts have the suitable training and knowledge of the pertinent standards applicable in the field of right of asylum and refugees.

Article 24

Judgment of application and decision

1 — Aliens and Borders Service notifies the representative of UNHCR and the Portuguese Refugee Council, immediately, about the submission of applications for asylum mentioned in the previous number, who may pronounce their judgment on the subject, within forty eight hours as a maximum, and interview the applicant, if they wish to do so.

2 — Within the period of time mentioned in the previous number, the applicant is informed about his/her rights and obligations and gives statements which are deemed to be, for all purposes, a previous hearing of the person concerned.

3 — The provisions of article 16 apply to the giving of statements mentioned in the previous number.

4 — National director of Aliens and Borders Service pronounces the decision grounded on inadmissible applications within a maximum of five days, but never before the timeframe provided for in no. 1 has elapsed.

5 — The decision provided for in the previous number is notified to the applicant with the information about the judicial impugnation rights he/she is entitled to and simultaneously, notified to the representative of UNHCR and the Portuguese Refugee Council.

Article 25.

Judicial impugnation

1 — The decision pronounced by national director of Aliens and Borders Service is susceptible of judicial impugnation before administrative courts, within seventy hours, with suspended effect.

2 — The concerned person has the benefit of legal protection, Law no. 34/2004, of 29 July being applicable, with due adjustments, in the provided scheme for the appointment of the defence attorney of the offender for urgent proceedings; he may also require the swift appointment of forensic representative, under conditions to be established by protocol between the Home Office and the Bar Association.

3 — Judicial decision is pronounced within seventy two hours.

Article 26.

Effects of the application and of the decision

1 — The applicant remains in the international area of the port or airport, while he/she awaits notification of the decision of national director of Aliens and Borders Service, the procedures and other guarantees provided for in article 4 of Law no. 34/94, of 14 September being applicable.

2 — Temporary accommodation of unaccompanied or separated minors complies with special conditions, according to international recommendations, namely of UNHCR, UNICEF and International Committee of the Red Cross.

3 — Notwithstanding the provisions of the previous article, the decision of the application's inadmissibility establishes the applicant's return to the place where he/she started his/her travel, or, in case of impossibility, to the State where the travel document with which he/she travelled was issued, or another place where he/she can be admitted, such as a safe third-country.

4 — The decision of the application admission or the lapse of the timeframe provided for in no. 4 of article 24 without the notification of the decision being given, establishes the applicant's entry in national territory, the preparation of the procedure for granting the right of asylum starting according to the provisions of the following articles.

SECTION III

Preparation of the procedure for granting the right of asylum

Article 27

Provisional residence permit

1 — Aliens and Borders Service issues a provisional residence permit in favour of the persons covered by the application for asylum which has been admitted, with a validity of four months counting from the date of the decision of the application admission and renewable for equal periods of time until a final decision of the latter or in the situation provided for in article 31, until the timeframe provided there expires.

2 — The residence permit form provided for in the previous number is established by decree order of the member of the Government who is responsible for the Home Office.

3 — The applicant's family members to whom the effects of the asylum have been extended shall be issued a residence permit, according to the provisions of no. 1 of this article.

4 — While the asylum procedure is pending, the provisions of this law and the legal scheme of entry, stay, exit and removal of aliens from national territory apply to the applicant.

Article 28

Preparation

1 — Aliens and Borders Service duly endeavours to inquire into all facts the knowledge of which is deemed convenient to reach a fair and swift decision, being incumbent on it the preparation of procedures for granting asylum.

2 — The timeframe for the preparation is 60 days, extendable for equal periods of time up to the limit of 180 days, when deemed justifiable.

3 — In the scope of the preparation of the procedures for granting asylum, Aliens and Borders Service may, if necessary, require the opinion of experts on specific issues, such as those of medical or cultural nature.

4 — During the preparation, the representative of UNHCR or of the Portuguese Refugee Council may attach to the procedure reports or information on the respective home country and gather information on the status of the procedure.

Article 29

Decision

1 — When the preparation is finished, Aliens and Borders Service draws up a well-founded proposal for asylum granting or refusal.

2 — The applicant is notified about the contents of the proposal mentioned in the previous number, and may state his/her opinion on the former within five days.

3 — The proposal mentioned in the no. 1 is simultaneously notified to the representative of UNHCR and the Portuguese Refugee Council, who may, within the same period of time, state their opinion about the contents.

4 — After the timeframe mentioned in the previous numbers has elapsed, the well-founded proposal is sent to national director of Aliens and Borders Service, who submits it to the member of the Government who is responsible for the Home Office within 10 days, accompanied with the opinions provided for in the previous number, in case they were issued.

5 — The member of the Government who is responsible for the Home Office decides within eight days counting from the date of the submission of the proposal mentioned in the previous number.

6 — Aliens and Borders Service notifies the applicant about the pronounced decision mentioning the right granted to him/her according to the provisions of the next article and notifies simultaneously also the representative of UNHCR and the Portuguese Refugee Council.

Article 30

Judicial impugnation

1 — The decision pronounced according to the provisions of the previous article is susceptible of judicial impugnation before administrative courts, within 15 days, with suspended effect.

2 — Judicial decision is pronounced within 15 days.

Article 31.

Effects of the decision of refusal

1 — In case of decision of international protection refusal, the applicant can remain in national territory for a temporary period, not greater than 30 days.

2 — The applicant is subject to the legal system of entry, stay, exit and removal of aliens from national territory after the timeframe provided for in the previous number has elapsed.

Article 32

Termination of the procedure

1 — The procedure is declared terminated whenever the asylum seeker expressly withdraws his/her application, or, due to cause ascribable to him/her, that application procedure has been stopped, for more than 90 days.

2 — The declaration of termination of the procedure is incumbent on the entity who, according to the provisions of this law decides on the application or the granting of the right of asylum.

3 — Even if the procedure is declared to be terminated according to the provisions of the previous number, the asylum seeker who appears before the authorities has the right

to reopen the procedure, and in this case the latter shall be resumed from the stage where it was interrupted.

SECTION IV

Subsequent Application

Article 33

Submission of a subsequent application

1 — The alien or stateless person to whom the right of asylum has been denied, notwithstanding the lapse of the timeframes provided for in the respective judicial impugnation, may submit a subsequent application, whenever he/she has new elements of proof which allow him/her to benefit from the right of international protection or when he/she believes the reasons that caused the decision of inadmissibility or the refusal of the application for asylum have ceased.

2 — The subsequent application is addressed to Aliens and Borders Service and should be prepared including all documentary evidence which have founded its submission, and Aliens and Borders Service may grant the applicant with a reasonable period of time to submit new facts, information or documentary evidence.

3 — Aliens and Borders Service notifies the representative of UNHCR and the Portuguese Refugee Council as soon as the subsequent application is submitted to it.

4 — Aliens and Borders Service carries out the preliminary judgment of the application within 10 days counting from its submission or the date of submission of the elements, which according to the provisions of no. 2, have been required from the applicant.

5 — When from the preliminary judgment signs arise indicating that the applicant meets the conditions to benefit from the right of asylum, the procedure follows the provisions of articles 27 and following ones, the production of evidence, which is in favour of the applicant, and have already been made in the previous procedure may be excused.

6 — If the national director of Aliens and Borders Service comes to the conclusion that new documentary evidence has not been submitted, he pronounces a decision of the application's inadmissibility, notifying immediately the applicant on the reasons for the decision, taking into consideration the result of the preliminary judgment, as well as the possibility of judicial impugnation, before administrative courts, in general terms and with the mere purpose of devolution.

7 — When the applicant is in national territory, the notification of the decision mentioned in the previous number should also mention that the former should leave the country within 20 days and is subject to the legal system of entry, stay, exit and removal of aliens from national territory at the end of that timeframe, except when the applicant already benefits from a more favourable timeframe, pursuant to the provisions of this law.

Article 34

Extensive implementation

The provisions of sections I, II, III and IV of this chapter apply correspondingly to the situations provided for in article 7.

SECTION V

Resettling Refugees

Article 35

Application for resettlement

1 — Applications for resettlement of refugees under UNHCR are submitted to the member of the government responsible for the Home Office.

2 — Aliens and Borders Service ensures to duly endeavour as to the application's procedure and decision within 10 days.

3 — Portuguese Refugee Council is notified on the submitted applications and may issue judgments on the latter within five days.

4 — The member of the government responsible for the Home Office decides on the acceptance of the application for resettlement within 15 days.

5 — The acceptance of the application for resettlement grants the concerned person with an identical status provided for in chapter VII.

CHAPTER IV

Special procedure to determine which State is responsible for examining the application for asylum

Article 36.

Determining the responsible State

Whenever and according to the applicable international instruments, there is the need to determine the State responsible for examining an application for asylum lodged in one of the member States of the European Union, a special procedure is organized governed by the provisions of this chapter.

Article 37

Application for asylum lodged in Portugal

1 — When there are strong signs that it is another one the member State responsible for taking or retaking charge of the asylum seeker, according to the provisions of

Regulation (CE) no. 343/2003, of 18 February, Aliens and Borders Service requests its acceptance to the respective authorities.

2 — Once the State addressed accepts the responsibility, the national director of Aliens and Borders Service pronounces, within five days, the decision to transfer responsibility which shall be notified to the representative of UNHCR and the Portuguese Refugee Council.

3 — Notification provided for in the previous number s accompanied with delivering to the applicant a pass, to be issued by Aliens and Borders Service according to a form to be approved by decree-order of the member of the government responsible for the Home Office.

4 — The decision pronounced by national director of Aliens and Borders Service is susceptible of judicial impugnation before administrative courts within five days, with suspensive effect.

5 — Judicial decision is pronounced within five days.

6 — In case of a negative response from the State addressed to the application made by Aliens and Borders Service, according to the provisions of no. 1, the provisions of Chapter III shall be complied with.

Article 38

Implementation of the transfer decision

It is incumbent on Aliens and Borders Service to implement the applicant's transfer decision, whenever the latter does not leave on his/her own free will the national territory.

Article 39

Suspension of the timeframe for the decision

The preparation of the proceedings for the determination of the State responsible for the application for asylum analysis suspends, until the final decision, the counting of the timeframe provided for in no. 1 of Article 20 and in no. 4 of Article 24

Article 40

Application for asylum submitted in another Member State of the European Union.

1 — It is incumbent on the national director of Aliens and Borders Service to decide if the Portuguese State shall accept the responsibility for the application for asylum analysis submitted in other Member States of the European Union.

2 — The decision provided for in the previous number shall be passed within the maximum timeframe of two months, counting from the reception date of the acceptance request formulated by the State where the applicant for asylum is staying or where the application for asylum was submitted.

3 — In the cases qualified as being urgent by the State where the application was submitted, the timeframe referred in the previous number is reduced to eight days.

CHAPTER V

Loss of the right for international protection

Article 41

Reasons for the cessation, revocation, suppression or refusal to renew the right for international protection

1 — The right for asylum ceases whenever the alien or stateless person:

a) Voluntarily decides to resort again to the protection of the country of his/her nationality;

b) Having lost his/her nationality, voluntarily recovers it;

c) Acquires a new nationality and becomes protected by the country of his/her new nationality;

d) Voluntarily returns to the country he/she abandoned or stayed away due to be afraid of being persecuted;

e) Can not continue to refuse resorting to the protection of his/her home country, as the circumstances which resulted in being recognised as a refugee ceased to exist;

f) In the case of a person without any nationality who is in conditions to return to the country where he/she has its usual residence, as the circumstances that made him/her to be recognized as a refugee, ceased to exist;

g) Expressly waives the right of asylum.

2 — The alien or stateless individual ceases to be eligible for subsidiary protection whenever the circumstances that led it to be granted have ceased or have altered to such an extent that the protection is no longer necessary.

3 — For the purposes established in paragraphs e) and f) of no. 1 and in no. 2, and notwithstanding the established in Article 47, the cessation can only be stated if Aliens and Borders Service concludes that the alteration in the circumstances of the State of the nationality or usual residence of the beneficiary of the right for asylum or of subsidiary

protection is sufficiently significant and lasting to avert the grounded fear of persecution or the risk of suffering serious harm.

4 — It is revoked, suppressed or refused the renewal of the right for asylum or of subsidiary protection whenever it is verified that the foreigner or stateless individual:

a) Should have been or may be excluded from the right to benefit from the right of asylum or of subsidiary protection, according to the terms of Article 9;

b) Have misrepresented or omitted facts, including the use of false documents, which were decisive to benefit from the right of asylum or of subsidiary protection;

c) Represents a danger for the internal security;

d) Having been condemned by *res judicata* for common law felony punishable with prison for more than three years, represents a danger for internal security or for public order.

5 — Aliens and Borders Service notifies the beneficiary of the beginning and the result of the proceedings, that should be indicted within eight days and communicates it simultaneously, to the ACNUR representative and to the Portuguese Counsel for the Refugees, who may, should they wish to, have its say within the same timeframe.

Article 42

Effects resulting from the loss of the right for international protection

1 — The loss of the right for international protection based on no. 4 of the previous Article is enough grounds for being expelled from national territory, except whenever it derives from the situations provided for in paragraphs a) and b) of no. 1 of Article 9

2 — The loss of the right for international protection for the reasons provided for in n.ºs 1 and 2 of the previous Article anterior determines the submission of its beneficiary to the juridical system regarding the entry, stay, exit and removal of aliens from national territory, notwithstanding the established in the next number.

3 — Whenever the loss of the right for international protection does not constitutes any grounds for being expelled from national territory, the interested party may ask for the concession of a residence permit with the dispensation for the presentation of respective visa, in accordance with the terms of the juridical system regarding the entry, stay, exit and removal of aliens from national territory.

Article 43

Competency to state the loss of the right for international protection and expulsion

1 — Without prejudice of the established in the next number it is incumbent on the member of the Government responsible for the internal administration area, upon proposal of the national director of Aliens and Borders Service, to declare the loss of the right for international protection.

2 — Whenever the loss of the right for international protection constitute grounds for expulsion, the decision is judicial, being applicable, with the due adaptations, the provisions of Act no. 23/2007, of 4 July, regarding the imposition of the accessory penalty for the expulsion and the autonomous measure for the judicial expulsion.

Article 44

Judicial impugnation

The decision made in accordance with the established in no. 1 of the previous Article is liable to be judicially impugned before the administrative courts, within a timeframe of eight days, with *supersedeas* (suspensive effect).

Article 45

Communications

The ACNUR and the Portuguese Refugee Council are always informed about the situations to which Article 43 refers to, in order to exercise their competencies.

Article 46

Execution of the expulsion order

Whenever there is a judicial order for the expulsion, a certificate is sent to Aliens and Borders Service, which should execute the expulsion order contained therein, informing the representative of the ACNUR and the Portuguese Refugee Council of that fact.

Article 47

Prohibition of expelling or of repelling

1 — From the expulsion of the beneficiary from international protection, according to the terms of Article 42, cannot result his/her placement in a territory of the country where his/her freedom may be at risk for any of the causes that, in accordance with Article 3, may constitute the grounds for the granting of asylum or which in any way violate the prohibition of expelling or repelling (principle of non-refoulement) in accordance with the international obligation of the Portuguese State.

2 — No one shall be returned, removed, extradited or expelled to a country where he/she shall be subject to torture or to cruel and degrading treatment.

CHAPTER VI

Status of the asylum and subsidiary protection seeker

SECTION I

General provisions

Article 48

Effects of the asylum and subsidiary protection over the extradition

1 — The granting of asylum or of subsidiary protection prevents the follow-up of any request for the beneficiary's extradition, based on the facts on which the international protection is granted.

2 — The final decision on any extradition process of the applicant which is pending, shall be suspended while the request for international protection is being appreciated, either in the administrative phase or in the jurisdictional phase.

3 — In order to comply with the established in the previous number, the submission of the request for international protection is communicated by Aliens and Borders Service to the entity where the respective process shall take place within a timeframe of two working days.

Article 49

Rights of the applicants

1 — Notwithstanding the established in the next Articles, the asylum or subsidiary protection seekers benefit from the following assurances:

a) To be immediately informed or, whenever the application has been submitted through another entity, up to five days starting at the application registration, in a language they understand, about their rights and obligations they are subject to in what concerns the hosting country issues, namely about:

i) The timeframes and resources at their disposal for the compliance of submitting the pertinent elements for the application appreciation;

ii) The proceduring ;

iii) The organizations or groups of people that provide specific juridical assistance;

iv) The organizations that can support or inform in relation to the available reception conditions, including medical assistance;

v) The consequences of the occasional fulfilment of the obligations and the lack of cooperation provided for in the next Article;

b) To be informed regarding the decision on the application admissibility as well as respective content, although through a proxy, if they have procured the services of a lawyer;

c) To benefit, whenever required, of the services of an interpreter to assist them in the formalization of the application and during respective proceedings;

d) To benefit from judiciary support in accordance with the established by law.

2 — Notwithstanding the established in paragraph a) of the previous number, Aliens and Borders Service provided to the asylum or subsidiary protection seeker an information leaflet in a language he/she can understand, notwithstanding the fact that the same information can be given orally.

3 — An interpreter may be used for the purposes established in paragraph b) of no. 1 whenever the applicant does not know or is not proficient in Portuguese or in cases which are especially provided for in the criminal procedural law.

4 — ACNUR and the Portuguese Refugee Council may provide direct juridical counselling to the asylum or subsidiary protection seekers in all the proceedings phases.

5 — The lawyers or any other consultants who represent the asylum or subsidiary protection seeker have access to the information contained in their processes, except if respective diffusion puts at risk national security, the security of information sources or the safety of the people it concerns or if the application analysis or the international relations of the Portuguese State gets compromised.

6 — The lawyers or any other consultants who represent the asylum or subsidiary protection seeker have also the right of access fenced areas, such as detention or transit places, to be able to provide counselling to the asylum seeker, although the visits may be limited provided the access limitation is foreseen in the law and is absolutely necessary for security, public order, administrative management of the area or to assure an effective appreciation of the application and such limitation does not seriously restrict or renders impossible that access to the lawyer or other consultants who represent the applicant.

7 — The asylum or subsidiary protection seekers may be accompanied, when giving statement referred in Article 16, by a lawyer or other consultant, as well as of representatives of ACNUR or of the Portuguese Refugee Council, notwithstanding respective absence does not prevent the realization of that procedural action.

Article 50

Obligations of the asylum or subsidiary protection seekers

The asylum or subsidiary protection seekers should keep Aliens and Borders Service informed about their residence in Portugal, communicating immediately any address change to this service.

SECTION II

Provisions regarding the welcome conditions

Article 51

Means of subsistence

1 — To the asylum or subsidiary protection seekers in an economical and social needy situation as well as to his/her family shall be granted social support for housing and food, in accordance with the established in the legislation in force.

2 — For the purposes of the established in the previous number, when granting accommodation, adequate measures should be taken, with the asylum seekers' agreement, to maintain as much as possible the unification of the family members present in national territory, namely those provided for in paragraphs a) and b) of no. 1 of Article 59.

Article 52

Medical and medical drugs assistance

1 — It is recognized to the asylum or subsidiary protection seekers and respective members of the family the access to the National Health Service, according to the terms to be defined by common decree from the members of the Government responsible for the Home Office and health.

2 — The documentary evidence of the application for asylum or subsidiary protection submission, issued in accordance with Article 14.º, is considered to be enough to prove the quality of applicant, for the purposes of the established in the previous number.

3 — For the purposes of this Article, the health authorities may demand, for public health reasons, that the applicants are subjected to a medical examination in order to be certified that they do not have any of the diseases defined in the applicable instruments of the World Health Organization or any other contagious infectious or parasitic diseases object of protection in national territory, which results are confidential and do not affect the asylum process.

4 — The medical examinations and measures mentioned in the previous number should not have a systematic nature.

5 — Medical assistance or any other assistance deemed necessary shall be rendered to particularly vulnerable applicants.

Article 53

Access to schooling

1 — Under age children of the asylum or subsidiary protection seekers or under age asylum or subsidiary protection seekers have access to the schooling system under the same conditions of national citizens and other citizens whose mother tongue is not Portuguese.

2 — The possibility of continuing with secondary schooling cannot be denied based on the fact that the minor has become major of age.

Article 54

Right to work

1 — The asylum or subsidiary protection seekers to whom a provisional residence permit have been already issued, it is assured the access to the labour market, in accordance with the established in the general law. From the moment they get a remunerated job, the application of the social support scheme provided for in Article 56 shall cease.

2 — The access to the labour market is only interdicted to the asylum or subsidiary protection seekers during the period within the submission of the application and the decision about its admissibility, except if the applicant is the holder of a residence permit or any other capacitating document for the stay in national territory, which allows them to exercise a professional activity, either subordinated or not.

3 — The interdiction period of access to the labour market referred in the previous number cannot last more than 20 days starting from the date of the application submission.

4 — In the cases of judicial impugnation of a negative decision given by the member of the Government responsible for the home affairs area, the right of access to the labour market shall stand until the applicant is notified of a negative judicial decision.

Article 55

Employment and professional training programmes and measures

1 — The asylum or subsidiary protection seekers have access to employment and professional training programmes and measures under conditions to be established by the ministries that have the tutelage of the relevant area, independently of having or not access to the labour market.

2 — The access to professional training related to a labour contract remains subordinated to the possibility of the applicant having access to the labour market in accordance with the established in the previous Article.

SECTION III

Reception and health care material conditions

Article 56

Social support

1 — To the asylum or subsidiary protection seekers and respective family members, who do not have sufficient resources to enable their subsistence, shall be assured the reception material conditions as well as the health care established in this section with the aim of guaranteeing the satisfaction of their basic needs under human dignity conditions.

2 — To the asylum or subsidiary protection seekers and particularly vulnerable family members and to the asylum or subsidiary protection seekers who are at the border posts, shall be also assured the adequate material reception conditions, as well as the appropriate health care.

3 — For the purposes of no. 1, any applicant that requires resources of any nature or of any value inferior to the social support subsidy, estimated in accordance with the established in the applicable law, shall be considered as not having sufficient resources.

4 — Should it be proved that an applicant has enough resources, a total or partial contribution might be demanded from him/her to cover the expenses deriving from the material welcoming and health care conditions.

5 — Should it be proved that an applicant has enough resources to bear the cost of the material welcoming and health care conditions at the time those needs were provided for, the competent entity may demand their respective reimbursement.

Article 57

Granting modalities

1 — The welcoming material conditions may cover the following modalities:

- a) Housing in kind;
- b) Food in kind;
- c) Monthly social support cash benefit, for food, clothing, hygiene and transports expenses;
- d) Complementary subsidy for housing, in a monthly basis;
- e) Complementary subsidy for personal and transport expenses.

2 — The housing and food in kind may be as follows:

- a) In any facilities parallel to the accommodation centres for asylum seekers, in the cases where the application is made at the border posts;
- b) In the accommodation centre for asylum seekers or parallel establishment that provided adequate life conditions;
- c) In private houses, apartments, hotels or any other facilities adapted to receive asylum seekers.

3 — The following reception modalities may be accumulated:

- a) Housing and food in kind with the complementary subsidy for personal and transport expenses;

b) Housing in kind or complementary subsidy for housing with the social support cash benefit.

4 — As an exception and for a set timeframe, material welcoming conditions may be established which are different from those provided for in the previous numbers, whenever:

- a) It is required initial assessment of the applicant's specific needs;
- b) In the geographic area where the applicant is, the material welcoming conditions provided for in no.2 are not available;
- c) The accommodation capacities available are temporarily out; or
- d) The asylum or subsidiary protection seekers are in a retention system in a border post that does not have premises parallel to accommodation centres.

Article 58

Subsidies' value

The cash benefits referred to in paragraphs c) and d) of no. 1 of the previous Article are calculated through reference to the social support subsidy provided in the applicable legislation and should not exceed the following percentages:

- a) The social support cash benefit, in a monthly basis, for food, clothing, hygiene and transport expenses, corresponding to 70% of the amount ascertained;
- b) Complementary subsidy for housing, in a monthly basis, corresponding to 30 % of the amount ascertained;
- c) Monthly subsidy for personal and transport expenses, corresponding to 30 % of the amount ascertained.

Article 59

Supplementary guarantees in relation to the accommodation

1 — The entity responsible for the granting of accommodation in kind, in the ways provided for in no. 2 of Article 57, should:

- a) Provide protection to the applicant's family life;
- b) Make the necessary arrangements, if applicable, for the applicant's under age children or the under age applicants to be housed with their parents or with an adult member of the family who's responsible for them by the force of law;

c) To assure the applicants the possibility to communicate to their family or their legal representatives, as well as with the representatives of ACNUR and of the Portuguese Refugee Council;

d) To take the adequate measures to prevent any aggression within the premises and the accommodation centres referred to in no. 2 of Article 57.

2 — The transference of the asylum or subsidiary protection seekers from one accommodation facility to another can only be done whenever that becomes necessary for the good conduct of the procedure or to improve the accommodation conditions.

3 — To the applicants transferred according to the established in the previous number it is assured the possibility of informing their legal representatives of their transference and of their new address.

4 — To the legal advisers or other applicants, to the representatives of ACNUR, to the Portuguese Refugee Council and to other non-governmental organizations that develop any activities in this area and are recognized as such by the State it is assured the access to the accommodation centres and other accommodation facilities in order to provide assistance to the asylum or subsidiary protection seekers. Any access restrictions can only be established if duly grounded and whenever safety reasons of the centres and facilities are at stake as well as those of the applicants.

5 — Adequate training shall be given to the people working at the accommodation centres, who are under the obligation to maintain the confidentiality of all information they might acquire while performing their functions.

SECTION IV

Reduction or cessation of the accommodation conditions benefit

Article 60

Reduction or cessation of the accommodation conditions benefit

1 — Social support ends with the final decision given to the application for asylum or subsidiary protection, independently of the lodging of the competent judicial remedy.

2 — The cessation of the support in accordance with the established in the previous number does not take place whenever, after assessing the applicant's economical and social situation, it is concluded that it is necessary to maintain it.

3 — The accommodation conditions may be totally or partially withdrawn if the asylum or subsidiary protection seeker, without any due justification:

a) Abandons the residing place established by the competent authority without informing Aliens and Borders Service or without the required authorization;

b) Abandons his/her residing place without informing the competent entity for the accommodation;

- c) Does not fulfil his/her obligation to show up whenever requested to do so;
- d) Does not supply the requested information or does not show up at the individual interviews, when summoned for that purpose;
- e) Has dissimulated his/her financial resources and thus, unduly benefit from the material accommodation conditions.

4 — If, after the cessation of the accommodation conditions, the applicant is found or presents himself/herself voluntarily to the competent authorities, a duly grounded decision should be made based on the reasons of his/her disappearance in relation to the re-establishment of the benefit of some or all the accommodation conditions.

5 — The decisions regarding the reduction and the cessation of the accommodation conditions benefit in the situations mentioned in no. 1 are made in an individual, objective, impartial way and should be duly grounded.

6 — The decisions referred to in the previous number should be exclusively based in the particular situation of the person in question, especially in what concerns particularly vulnerable individuals, bearing in mind the principle of proportionality.

7 — The reduction or cessation of the benefits does not prejudices the access to urgent health care.

8 — The decisions referred in no.3 can be appealed according to the established in no. 1 of Article 63

SECTION V

Assurance of the accommodation system effectiveness

Article 61

Competences

1 — It is incumbent on the Home Office to guarantee the asylum or subsidiary protection seekers, who are confined at the border posts the accommodation conditions and the access to health care, as well as the satisfaction of the expenses associated to the grating of the material accommodation conditions, until the decision as to the application admissibility. Those may be assured by other non-profit public or private entities, according to the terms defined in a protocol.

2 — It is incumbent on the Labour and Social Solidarity Ministry to bear the expenses resulting from the attribution of the material accommodation conditions to the asylum or subsidiary protection seekers, whose application was admitted, until the final decision about it; those expenses can be directly settled by the aforesaid ministry or by any other non-profit public or private entities with which it may sign a protocol.

3 — It is incumbent on the entities responsible for the National Health Service to assure the access of the asylum or subsidiary protection seekers and members of their family, to health care, under the terms of the applicable legislation.

4 — The access of minors to the schooling system is guaranteed by the responsible entities within the scope of the Ministry of Education.

5 — The decisions referred to in Article 60 are the competence of the entities responsible for the granting of the material accommodation conditions provided for in this law.

Article 62

Staff and resources

The authorities and other organizations referred in the previous Article should give the adequate basic training to its employees, so that they can provide for the needs of the asylum or subsidiary protection seekers from both genders.

Article 63

Guarantees

1 — The negative decisions regarding the granting of benefits, under this law, or the decisions made within Article 60 terms, which may individually affect the asylum or subsidiary protection seekers are liable of having the general administrative and jurisdictional guarantees exercised.

2 — The modalities of access to legal aid, in the above referred cases, are governed by the legislation related to the access to justice.

Article 64

Non-governmental organizations' collaboration with the State

1 — Non-governmental organizations may cooperate with the State in the realization of the measures provided in this law.

2 — The cooperation of the non-governmental organizations with the State in the realization of the measures regarding the asylum or subsidiary protection seekers, referred in the previous number, can be consubstantiated in the organization of the information and in the voluntary work, legal aid, by providing support in the reception and in other ways of providing social support, by means of protocols or any other means of mutual binding.

CHAPTER VII

Status of the refugee and subsidiary protection

Article 65

Rights and obligations

The beneficiaries of the refugee and of subsidiary protection status have the same rights and are subject to the same obligations as the resident foreigners in Portugal, provided those rights and obligations are not contrary in any way to the established in this law, in the 1951 Geneva Convention and in the 1967 New York Protocol, and are under the obligation, namely, to comply with the laws and regulations, as well as the provisions aimed at the maintenance of public order.

Article 66

Information

When notifying the granting of status of refugee or subsidiary protection, Aliens and Borders Service shall inform the beneficiary of his/her rights and obligations in relation to respective status, in a language that he/she can understand.

Article 67

Residence Permit

1 — A renewable residence permit shall be granted to the beneficiaries of the refugee status which shall be valid for the initial period of five years, except if imperative reasons related to national security or public order prevent it, notwithstanding the established in CHAPTER V.

2 — A renewable residence permit shall be granted to the beneficiaries of the subsidiary protection status for humanitarian reasons, which shall be valid for the initial period of two years, after the analysis of the applicant's home country situation evolution, except if imperative reasons related to national security or public order prevent it, notwithstanding the established in CHAPTER V.

3 — An extraordinary residence permit shall be issued to the beneficiary's relatives mentioned in the next Article, with the same period of validity as the one granted to the beneficiary of asylum or subsidiary protection, which shall be granted by the member of the Government responsible for the home office area, exempt from the requirements for the entrance, stay, exit and removal of foreigners in national territory.

4 — It is incumbent on the national director of Aliens and Borders Service to prepare a grounded proposal for the granting and renewal of the residence permits provided in the previous numbers.

5 — It is incumbent on the member of the Government responsible for the home office area, upon proposal from the national director of Aliens and Borders Service, exempt from any fee, the residence permit provided for in this Article, in accordance with form established by administrative rule issued by the aforementioned member of the Government.

6 — It is incumbent on the Aliens and Borders Service to issue documentary evidence of the residence to be granted in accordance with the terms of this Article.

Article 68

Preservation of the family unity

1 — The beneficiaries of the refugee or subsidiary protection status are entitled to family regrouping with the members of their family, according to the terms defined in the legal system ruling the entrance, stay, exit and removal of foreigners in the national territory.

2 — The effects of the asylum or subsidiary protection should be declared extensive to the members of the family referred in the previous number.

3 — The established in the previous numbers does not apply to the cases in which the member of the family is excluded from the status of refugee or of subsidiary protection or loses it under the terms of this law.

Article 69

Travelling documents

1 — The beneficiaries of the refugee status shall be issued, upon application, a travelling document in accordance with the established in the annex to the Geneva Convention that shall allow them to travel abroad, except if otherwise required due to imperative reasons regarding national security or public order.

2 — The beneficiaries of the subsidiary protection status, who has been proved that they cannot obtain a national passport, upon request from the interested parties, shall be issued a Portuguese passport for foreigners which will allow them to travel abroad, except if otherwise required due to imperative reasons regarding national security or public order.

3 — The fee due for the issue of those documents is established by administrative rule from the member of the Government responsible for the home affairs area.

Article 70

Access to education

1 — Minors who are granted the status of refugee or subsidiary protection shall be granted full access to the schooling system, in the same conditions as national citizens.

2 — Adults who are granted the status of refugee or subsidiary protection shall be granted access to the schooling system in general, as well as to training, vocational improvement or refreshing courses, in the same conditions as national citizens.

3 — In what concerns the procedures in force regarding the recognition of diplomas, certificates and any other evidence of foreign official qualifications, it is assured the

equality of the process between beneficiaries of the status of refugee or subsidiary protection and respective nationals.

Article 71

Access to employment

1 — It is assured the access to the labour market to the beneficiaries of the status of refugee or subsidiary protection, in the general terms of the law. The application of the social support scheme provided for in Article 56 shall cease upon the obtainment of a remunerated job.

2 — It is equally assured to the beneficiaries of the status of refugee or subsidiary protection the opportunity to receive training related to adult employment, vocational training and practical experience on-the-job, in the same conditions as national citizens.

3 — In matters of remuneration and other conditions related to employment shall be applied the legal provisions regarding remuneration and other conditions related to employment.

Article 72

Social Security

Legal provisions related to the social security system are applicable to the beneficiaries of the refugee or subsidiary protection status.

Article 73

Health Care

1 — The beneficiaries of the refugee or subsidiary protection status and their respective family members have access to National Health Service, in the same conditions as national citizens.

2 — Suitable health care is ensured to beneficiaries of the refugee or subsidiary protection status who are part of groups of particularly vulnerable people in the same conditions as national citizens.

3 — It is considered as having special needs for the purposes of the previous number pregnant women, handicapped people, victims of torture, rape or other serious forms of physical, psychological or sexual violence, minors having suffered any form of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatments or the effects of an armed conflict.

Article 74

Accommodation

To the beneficiaries of the refugee or subsidiary protection status is ensured the access to accommodation, in conditions equivalent to those of aliens living legally in Portugal.

Article 75

Free movement in national territory

The free movement within national territory is guaranteed to the beneficiaries of the refugee or subsidiary protection, in the same conditions as those of aliens living legally in Portugal.

Article 76

Integration Programmes

So as to facilitate the integration of refugees and beneficiaries of subsidiary protection in the Portuguese society, integration programmes should be promoted by the competent entities.

CHAPTER VIII

Provisions common to applicants' status and asylum and subsidiary protection beneficiaries

Article 77.

Provisions regarding particularly vulnerable persons

1 — When providing the material hosting conditions, as well as health care, the situation of particularly vulnerable persons is taken into consideration, according to the provisions of the following articles.

2 — When the application for asylum or subsidiary protection is submitted, or at any stage of the procedure, the competent entity should identify the persons whose special needs have to be taken into consideration, according to the provisions of the previous number.

Article 78

Minors

1 — When applying this law, the higher needs of minors should be taken into consideration.

2 — For the purposes of the provisions of the previous number the following situations are considered as the minor's higher interest:

- a) Its settlement with their respective apt parents; or, if these are not to be found,
- b) Its settlement with their adult, apt family members; or if these are not to be found,

c) With foster families, in special accommodation centres for minors or in places with the suitable conditions for that purpose;

d) The non separation of phratries (siblings);

e) The stability of life, changing their place of residence as little as possible.

3 — Competent entities of Public Administration ensure that minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatments or the effects of an armed conflict have access to rehabilitation services, as well as suitable psychological assistance, providing, if necessary qualified support.

Article 79

Unaccompanied minors

1 — Notwithstanding the protective measures applicable under protective legislation regarding minors, the latter being applicants or beneficiaries of asylum or subsidiary protection, may be represented by entity or nongovernmental organization or any other form of representation legally accepted.

2 — Minors' needs should be taken into consideration by means of the respective tutor or appointed representative, being the object of periodical assessment by the competent authorities and their opinions taken into account, depending on their age and degree of maturity.

3 — For the purposes of the previous numbers, the rules provided for in the previous article apply to unaccompanied minors, as soon as they are authorized to enter national territory up to the moment when they have to leave it.

4 — Unaccompanied minors, of 16 years of age or older, may be placed in reception centres for adult asylum seekers.

5 — With the purpose to protect the higher interests of the unaccompanied minor, Aliens and Borders Service, in articulation with other entities involved in the procedure and the Ministry of Foreign Affairs, should endeavour to find the members of the minor's family.

6 — In the cases when the life and physical integrity of a minor and his/her close relatives are at risk, namely if they remain in their home country, the gathering, processing and dissemination of information regarding those people are carried out under strict confidentiality, to prevent compromising their safety.

7 — Staff working with unaccompanied minors should have the suitable training regarding the minors' needs and is subject to the confidentiality duty as for the information they become aware in the course of their duties.

Article 80

Victims of torture or violence

People than have been victims of acts of torture, rape, or other serious violence acts are ensured special treatment suitable with the damage caused by the mentioned acts, namely by means of special attention and follow up by the respective district centre of Instituto de Segurança Social, I. P., (social institute for security) and health care services or the entities with whom these have signed protocols of support.

Article 81.º

Voluntary repatriation

Applicants and asylum or subsidiary protection beneficiaries may be provided with assistance when they express the will to be repatriated, namely by means of programmes of voluntary return.

CHAPTER IX

Final Provisions

Article 82

Notification form

1 — Notifications to the applicant are carried out personally or by means of registered letter, with a form for acknowledge of receipt, to be sent to the latter's last known address.

2 — In case the letter is returned, such fact should immediately be notified to the representative of UNHCR and Portuguese Refugee Council, the notification being considered as to have been made if the applicant does not show up in Aliens and Borders Service within 20 days counting from the date of the mentioned return.

Article 83

Training and confidentiality

The parties in the procedure for granting the right of asylum, as well as everyone working with asylum seekers, beneficiaries of the refugee and subsidiary protection status, namely in reception centres and border posts, should be provided with suitable training, and are bound to confidentiality duty as for information they become aware of during the course of their duties.

Article 84

Free and urgent procedures

The procedures for granting or refusal of the right of asylum or subsidiary protection and those are expelled are free of charges and are urgent, both at the administrative and judicial stage.

Article 85

Simplification, dematerialization and identification

The provisions of article 212 of Law no. 23/2007, of 4 of July are applicable, with due adjustments, regarding simplification, dematerialization and identification of people.

Article 86

Interpretation and integration

The provisions of this Law should be construed and integrated in harmony with Universal Declaration of Human Rights, European Convention on Human Rights, Geneva Convention of 28 July 1951 and Additional Protocol of 31 January 1967.

Article 87

Law no. 67/2003, of 23 August

The provisions of this law does not prejudice the legal system provided for in Law no. 67/2003, of 23 August (transposes for national law Directive no. 2001/55/CE, of the Council of 20 July).

Article 88

Revocatory procedure

Laws nos. 15/98, of 26 March, and 20/2006, o 23 June are revoked.

Article 89

Coming into force

This law comes into force 60 days after the date of its publication and applies to pending applications for asylum.

Approved in 8 May 2008.

The President of the Assembly of the Republic, Jaime Gama.

Promulgated on 20 June 2008.

To be published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Ratified on 20 June 2008.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.

