

Stakeholder Review from No Borders Iceland

Summary

0. When summarized, the below demonstrates the following main points:

- Asylum seekers' right to have their cases reviewed by the courts is effectively violated in practice (also recognised in the Constitution of Iceland, art. 70).
- Asylum seekers' right to choose their representatives before the authorities has been greatly limited by recent developments.
- Independence and objectivity of the appellate committee and their decisions is compromised.
- All of the above compromises the whole process of asylum applications in Iceland.

Access to courts

A contract between Ministry of the Interior and Icelandic Red Cross

1. In June 2014 a contract was made between the Ministry of the Interior (MI) and the Icelandic Red Cross (IRC), regarding IRC becoming responsible for legal representation to all asylum applicants. The state would cover the funding for the IRC legal team. Before the contract was made, independent lawyers who took on asylum cases had been paid by the state.

2. From one point of view, the contract can be seen as a significant improvement since it gives every asylum seeker access to the same legal service, whereas before the contract was made some asylum seekers had very good legal representation while others had inexperienced lawyers and poor legal representation.

3. However, the contract also means that no other lawyers than the ones working for the IRC are able to take on paid asylum cases. That means that the access that asylum seekers have to a lawyer, and to choosing their own lawyers, is severely limited.

4. In addition, a contract made by the MI regarding the IRC taking on every single case of an asylum seekers can be seen as controversial in the light of the declared objectivity of the Red Cross. In cases where there might be a reason for directly criticizing the state, even officially, the lawyers of the Red Cross might not have the same liberty to speak out as an independent lawyer.

Free legal aid denied

5. No Borders Iceland is concerned with the recent number of rejections of asylum seekers' applications for legal aid, when attempting to bring their cases to the courts. According to our sources the legal aid committee only takes into account one of many legal grounds for granting or denying legal aid, instead of looking at the multiple factors often at stake in the individual cases.

Short notice to file a complaint to court

6. In practice, free legal aid is now only provided to asylum seekers at the administrative level since most asylum seekers who wish to take their cases to the courts get denied legal aid from the state. Since the contract between IRC and MI (which takes only to cases at the administrative level) took effect, asylum seekers do not generally get in contact with a lawyer who is able to bring their cases to the courts while their cases are ongoing in the administrative sector. People are generally not allowed to bring their cases to court themselves in Iceland, only lawyers.

7. Nonetheless, asylum seekers who wish to bring their cases to the courts only have seven days to find a lawyer willing and able to do so on their behalf - a lawyer who will most likely have to work pro bono, and who needs to be able and willing to file an application for the suspension of legal effects, i.e. deportation, before those seven days have passed. When that seven day deadline is up, the lawyer, new to the case and working pro bono, has only five days to prepare a case and bring it to the courts.

Appellate Committee

8. In 2014 the laws on the process of asylum cases was changed. Before that the Ministry of the Interior received all legal complaints regarding the asylum process at the Directorate of Immigration. After the change, an *Appellate Committee on Matters of Foreigners* took on that task. The chairman of the committee is appointed by the Ministry, while two other members are appointed by the Human Rights Office and the University. However, according to the law (Act no. 64/2014, art. 3.b, sect. 2) the committee is permitted to hand over power in decisions regarding complaints about the asylum process by the Directorate of Immigration and suspension of legal effects, to the chairman of the committee, who is the only member who is fully employed by the committee.

9 We want to express concern about the chairman of the appellate committee being appointed by the Minister instead of an independent body, with emphasis on the excess power he has individually over decisions regarding complaints about the asylum process. A bill presented as a comprehensive review of immigration laws, which include provisions regarding asylum, will further increase the power of the chairman, shall it be passed.

Suspension of legal effects

10. We also want to point out that the appellate committee issues decisions regarding the suspension of legal effects, i.e. decision whether asylum seekers will be deported before or after their cases are reviewed by the courts. The suspension of legal effects has been denied more frequently in the recent months, making it even more difficult for asylum seekers to bring their cases to court. The denial of suspension of legal effects demands asylum seekers have access to teleconference equipment and everything else needed to make use of it, such as reliable internet and electricity, or being wholly absent in their court case.

11. Since the appellate committee issues decisions regarding the suspension of legal effects, the committee is effectively reviewing their own decisions.

Usage of the Dublin Regulation

12. The Icelandic state does not send asylum seekers to Greece on grounds of the Dublin Regulation following the decision of the European Court of Human Rights; *M.S.S vs. Belgium and Greece* [2011]. However, the usage of the Dublin Regulation is continued in the case of most other European countries, deeming them ‘safe third countries’ without proper respect to individual cases and differing circumstances of asylum applicants. The authorities claim they don’t send refugees/asylum applicants who belong to vulnerable groups back to countries where the services and security provided to them are limited e.g. due to the numbers of people seeking asylum there. Despite that we know of cases regarding LGBT people, pregnant women and families with young children getting deported to countries where those are the circumstances.