

Access to the asylum procedure

What you need to know



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Table of content

1	What is international protection?	6
2	What is <i>non-refoulement</i> and who does it apply to?	7
3	Who will be granted international protection in the EU?	8
4	What is the difference between a migrant and a person in need of international protection?	10
5	Is it my duty to decide whether a person is in need of international protection?	11
6	What rights do persons who may be in need of international protection have when I come into contact with them?	12
7	What is my responsibility towards vulnerable persons?	13
8	What is my responsibility towards a child or a person who claims to be a child?	14
9	Could a victim of human trafficking also be in need of international protection?	16
10	Who can apply for international protection?	18
11	Can a person with fraudulent documents or without any documents also apply for international protection?	19
12	How do I recognise that someone may wish to apply for international protection?	

13	When and how should I provide information to people may wish to apply for international protection?	22
14	When does someone become an applicant for international protection?	24
15	How do I recognise that a person is asking for international protection?	25
16	What should I do if a person has expressed the wish to apply for international protection to me?	26
17	What should I do if there are indications that someone may be in need of protection, but they have not expressed the wish to apply?	28
18	What if a person applied for asylum, but I suspect they are trying to abuse the system?	30
19	What happens if I fail to identify a person wishing to apply for international protection?	31
20	Sometimes I feel exhausted or even feel angry at the persons I have to deal with on a daily basis. Is this normal?	32
	Access to the Asylum Procedure	33

1 What is international protection?

People in need of international protection do not have basic human rights and physical security guaranteed in their home countries. They have been forced to escape from the risk of persecution, inhuman or degrading treatment or other serious human rights violations. Therefore, the international community needs to step in and fulfil its obligation under international and EU law to grant international protection to those who lack protection in their home countries.

The EU asylum *acquis* provides for two forms of international protection: refugee status and subsidiary protection status.

Based on the principle of a uniform status for refugees or for persons eligible for subsidiary protection, beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees. They should be subject to the same conditions of eligibility. In addition, your state may also provide for other forms of protection, based on humanitarian grounds.

Access to safety and an adequate asylum procedure is an essential element to ensure that persons in need of international protection enjoy the rights to which they are entitled. As a first-contact official, you play a crucial role in ensuring access to protection for persons in need.

2 What is non-refoulement and who does it apply to?

Non-refoulement refers to the obligation of EU Member States to **refrain from expelling or returning any individual in any manner to the frontiers of territories or to any place where they may face persecution**, the death penalty, torture or other inhuman or degrading treatment or punishment. *Non-refoulement* applies even if the person is in an irregular migratory situation. In the asylum context, the principle of *non-refoulement* entails a requirement to grant individuals seeking international protection access to the territory. It also entails access to fair and efficient asylum procedures to determine if the person will be granted international protection or not.

The prohibition of *refoulement* is applicable to any form of forcible removal. This includes deportation, expulsion, extradition, informal transfer or ‘renditions’, and non-admission at the border. **This also includes indirect *refoulement*, which is the return of a person to a third country where the risk of *refoulement* exists.** No asylum seeker should be returned to a third country for the determination of their claim without sufficient guarantees in each individual case. These guarantees include that the person will be readmitted to that country, will enjoy effective protection against *refoulement*, will have the possibility to seek and enjoy asylum and will be treated according to accepted international standards.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section ‘Key role of first-contact officials’, p. 8.

3 Who will be granted international protection in the EU?

The **EU asylum *acquis*** provides for **two forms of international protection: refugee status and subsidiary protection status**. In addition, your EU Member State may also provide for other forms of protection based on humanitarian grounds.

- A **refugee** is a person who was forced to flee the country of nationality, or in the case of stateless persons the country of former habitual residence, because of a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, and is unable or, owing to such fear, unwilling to return to it.
- **Subsidiary protection** is granted to people who do not qualify as refugees but are still in need of international protection. Across the EU, subsidiary protection is provided to those facing a real risk of **serious harm** if returned to their country. Serious harm consists of:
 - the **death penalty** or **execution**;
 - **torture, inhuman** or **degrading treatment** or **punishment**;
 - **serious** and **individual threat** by reason of **indiscriminate violence** in situations of **international** or **internal armed conflict**.

As a first-contact official, your responsibilities include the proper identification and referral of persons who may be in need of international protection as well as other persons with special needs, including children and victims of human trafficking. Sometimes people may have multiple needs and multiple referrals may be necessary.

Remember that when you come into contact with persons who may be in need of international protection, you are representing not only your country, but also the EU as a whole.

What is the Common European Asylum System?

The Common European Asylum System (CEAS) is a common system based on the full and inclusive application of the 1951 Refugee Convention and its 1967 Protocol. It aims to ensure the fair and human treatment of applicants for international protection, to harmonise asylum systems and to reduce the differences between EU Member States on the basis of binding legislation. It also aims to strengthen the practical cooperation between national asylum administrations and the external dimension of asylum.

The CEAS is composed of the following legal instruments, setting out common high standards and stronger cooperation to ensure that applicants for international protection are treated equally in a fair and efficient system wherever they apply for international protection:

- The recast **asylum procedures directive** (Directive 2013/32/EU) that aims at fair, quick and good quality asylum decisions.
- The recast **reception conditions directive (Directive 2013/33/EU)** that ensures that there are humane material reception conditions for asylum seekers across the EU. It ensures that the fundamental rights of the concerned persons are fully respected.
- The recast **qualification directive (Directive 2011/95/EU)** that clarifies the grounds for granting international protection. Its provisions also foresee a series of rights and integration measures for beneficiaries of international protection.
- The recast **Dublin regulation (Regulation (EU) No 604/2013)** clarifying the process of establishing the Member State responsible for examining the application.
- The recast **Eurodac regulation (Regulation (EU) No 603/2013)** improving the functioning of the EU asylum fingerprint database.

4 What is the difference between a migrant and a person in need of international protection?

'Migrant' is a wide-ranging term that covers persons who leave one country or region to settle in another. Some migrants voluntarily decide to move for a variety of reasons, most of them for reasons that are not protection-related, for instance because of family ties or due to economic hardship. **Persons in need of international protection**, however, **are forced to flee to save their lives or preserve their freedom**. They have no protection in their country of origin; in fact it is often their own government that is threatening to persecute them. If other countries do not let them in and do not offer them protection, they may be exposing them to death, persecution or other serious human rights violations.

Modern migratory patterns are often mixed. Within mixed migration flows, those who are in need of protection and those whose reasons are not protection-related travel alongside each other, making use of the same routes and means of transport. Such journeys may be long, hard and dangerous, often organised in an irregular manner. Identifying those who may wish to apply for international protection under those circumstances is a challenging but extremely important task.

5 Is it my duty to decide whether a person is in need of international protection?

No. It is not your responsibility to assess whether a person is in need of international protection or if their account is credible.

A different procedure will follow at a different place. It will be conducted by officials of the asylum determination authority to assess the application to determine if the person qualifies for international protection or not according to EU and international law.

Your duty is to identify persons that may wish to apply for international protection, provide them with information on the possibility to do so and refer those who expressed the wish to apply to the competent authority.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section 'Key role of first-contact officials', p. 8.

6 What rights do persons who may be in need of international protection have when I come into contact with them?

Persons who may be in need of international protection are entitled to certain rights regardless of whether they have explicitly applied for international protection or not. In many instances, it will be your duty to ensure that these rights are guaranteed.

As such, the principle of ***non-refoulement*** applies to all persons regardless of whether their status has or has not been formally determined. EU Member States are obliged to refrain from returning individuals to any place where they may face persecution as well as inhumane or degrading treatment or punishment, including torture, even if they are in an irregular migratory situation.

Other rights include **effective access to asylum procedure, the right to information** in a language they can understand about the possibility to apply, including access to an **interpreter**, and the **opportunity to communicate with UNHCR or other organisations** providing legal advice or counselling to applicants.

Remember that all persons must be treated with full **respect for human dignity** and according to fundamental and human rights, including the provision of emergency healthcare and meeting basic needs. Vulnerable persons, including children and victims of trafficking in human beings, must be identified and referred to appropriate procedures.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section 'Key role of first-contact officials', p. 8.

7 What is my responsibility towards vulnerable persons?

Vulnerable persons include children, unaccompanied children, disabled people, elderly people, pregnant women, single parents with children, victims of human trafficking, persons with serious illness or mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Border-crossing points and detention facilities are among the primary locations where the special needs of vulnerable persons may be declared or detected. As a front-contact official, you have the responsibility to **identify the special needs of vulnerable persons** and **refer them for further assessment and/or support** to national authorities and other stakeholders. This includes entities such as non-governmental organisations and UNHCR, which are specialised and mandated to respond to their needs according to national legislation and practice. Make sure you are aware of the national referral procedures and have the relevant contact details at hand.

Emergency health considerations and basic needs should always be addressed immediately and should take priority over migratory concerns. Family unity should be preserved to the extent possible and children should not be separated from their parents or relatives.



See the *Practical Guide on Access to the Asylum Procedure*, Section 'Pay attention to vulnerabilities', p. 14.

8 What is my responsibility towards a child or a person who claims to be a child?

In line with the relevant international and European legal standards and legislation, **a child is any human being below the age of 18 years** unless, under the law applicable to the child, majority is attained earlier. Even if you are not sure if the person who claims so is really a child, they must still be referred to the responsible authority for age assessment according to national legislation and practice.

Children are inherently vulnerable and it is very important to be particularly sensitive to their special needs, especially if they are unaccompanied or separated. Unaccompanied and separated children should be identified and referred to the responsible authorities as quickly as possible according to national legislation and practice and in line with the guarantees provided by EU law. Make sure you are aware of the national referral procedures and have the contact details of specialised child protection services and other responsible stakeholders at hand.

Always remain observant and pay attention to possible indications of trafficking. Is there anything unusual about the situation you see? Is the child quiet, detached/distant, incoherent, scared, upset? Is a person waiting for the child or is the child looking at another adult? At any time, if there is a reasonable suspicion that the child may be at risk of trafficking, or is otherwise in need of protection, the referral mechanism and initial investigation must be applied immediately according to national legislation and practice.

Remember to **communicate in a child-friendly manner**, considering the age and maturity of the child. **Keep the child informed** of what is happening and what is going to happen. Ensure **access to basic services**.

The best interests of the child must be a primary consideration in all actions and decisions concerning the child. As a general rule, children should not be separated from their accompanying parents or relatives, unless there is reasonable suspicion that staying with the parents or relatives is not in their best interests. In such a case, specialised child protection services should be informed immediately according to the national legislation and practice.

The principle of *non-refoulement* must be applied. If the child is subject to a return procedure, the safeguards for children stipulated in Article 10 of the return directive must be observed.



See the [Practical Guide on Access to the Asylum Procedure](#), Section 'Unaccompanied or separated children', p. 15.

For further information, consult the Frontex Vega Children Handbook (*)

(*) Frontex, [VEGA Handbook: Children at airports — Children at risk on the move: Guidelines for border guards](#), 2015.

9 Could a victim of human trafficking also be in need of international protection?

If there are reasons to believe that a person may be a victim of human trafficking, they should be referred to the responsible authorities and services according to national legislation and practice for relevant assistance and support. Make sure you are aware of the national referral procedures for victims of human trafficking and have the relevant contact details at hand.

However, in some cases, victims of human trafficking may also be in need of international protection and must be given access to the asylum procedure. In all cases, all victims of human trafficking should be properly informed of their right to seek asylum.

Be aware that the trafficker may still be around. It is important that everyone has the opportunity to speak with you on their own behalf, freely and in private. Make sure that nobody intervenes and/or answers questions on behalf of another person apart from when acting in their best interests. Particular attention to possible indications of trafficking should be given in cases of unaccompanied or separated children.

In cases of women and girls, the presence of a female first-contact official should be ensured, if possible. Women and girls should not be urged to talk about incidents or crimes related to sexual exploitation or violence. If appropriate, considering their age, women should be sensitively asked if they might be pregnant and, if needed, be informed of available assistance.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section 'Persons with multiple special needs', p. 21.

10 Who can apply for international protection?

Everyone has the right to apply for international protection.

The right to asylum is recognised in the Refugee Convention, the Charter of Fundamental Rights of the EU, and other international and European legal instruments. However, this does not mean that every person who applies for international protection will receive it. In every asylum system, some applications will be rejected and some accepted, but all of them must be assessed according to European and international law.

Access to safety and adequate procedures is an essential element of the effective enjoyment of the right to asylum. As a first contact official, you have a crucial role to identify those who may wish to apply for international protection and ensure their access to asylum procedure.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section 'Who may wish to make an application?', p. 20.

11 Can a person with fraudulent documents or without any documents also apply for international protection?

Yes. Everybody has the right to apply for international protection regardless whether they have entered the Member State, or are present on its territory illegally, using false or fraudulent documents or without any documentation at all.

Most persons in need of international protection are confronted with life-threatening situations of violence, which rarely give them the opportunity to gather the requisite documentation to be granted access to the EU through legal channels.

According to the Refugee Convention and the Schengen Border Code, applicants for international protection cannot be penalised on account of their illegal entry or presence, provided they present themselves without delay to the authorities. Even during the investigation of false and fraud documents, the person may apply for international protection. In this case, the police investigation will be stopped and the asylum procedure will be initiated.



See the *Practical Guide on Access to the Asylum Procedure*, Section 'Who may wish to make an application?', p. 20.

12 How do I recognise that someone may wish to apply for international protection?

Many persons who may be in need of international protection do not actively apply for asylum in the country in which they arrive. Many of them may not know their rights and obligations. Others may choose not to ask for protection because of their specific situation or because of being misinformed by others, including smugglers, about their options.

Therefore it is important to observe and pay attention to indications that a person may wish to apply for international protection.

Indications that a person may wish to apply for international protection may be revealed in different ways. You may observe them, learn them through direct contact with the person or with other persons, deduce them from the documents the person presents, and/or come across them under other circumstances. In order to detect the indications quickly and precisely, **pay particular attention to following elements:**

- 1. Who the person is** (age; gender; family status; ethnicity, religion and nationality)
- 2. Where the person comes from** (country of origin; general circumstances of arrival)

3. What the person says/fears:

- being killed or executed
- persecution
- torture
- war
- return.

4. What the person wants:

- help
- protection
- to see a representative of UN / UNHCR / a lawyer.

5. What can you observe (appearance and behaviour):

- approaching / avoiding the officer;
- fear, stress or unusual silence;
- unusual behaviour and/or attitude;
- appearance (injuries, scars, clothing, belongings, etc.).

The provision of information is a key element in ensuring effective access to the asylum procedure. As a first-contact official, your role is to make sure that people who may wish to apply for international protection are able to do so. Therefore you need to proactively provide them with information on the right to apply for asylum, including on the rights and obligations it triggers.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section 'Non-exhaustive list of indications', p. 21.

13 When and how should I provide information to people may wish to apply for international protection?

As a first-contact official, your role is to make sure that people who may wish to apply for international protection are able to do so. Therefore you need to proactively provide them with information on the right to apply for asylum, including on the rights and obligations it triggers. The main purpose of providing information is to ensure that persons who may be in need of international protection have effective access to the asylum procedure.

In general, information on the possibility to apply for international protection must be provided in detention facilities and at border-crossing points, including transit zones and at external borders. However, it can be understood as a good practice that such information is provided also at the moment where people trying to circumvent the border-crossing points are stopped by the authorities responsible for border surveillance.

Make sure that you are aware of the information to be provided based on national legislation and practice and according to EU law. The information should be provided in a **timely manner** and should be as complete as possible. It is necessary to communicate in a **language understood by the person**. If needed, interpretation should be ensured. **Language** and **communication** should be adapted to the **gender, age, physical** and

mental state and/or **education** level of the person in front of you. In cases of women and girls, the presence of female first-contact official and female interpreter should be ensured, if possible.



See the *Practical Guide on Access to the Asylum Procedure*, Section 'Non-exhaustive list of indications', p. 21.

14 When does someone become an applicant for international protection?

A person becomes an applicant for international protection when they have made an application.

Under EU asylum *acquis*, a person is considered to make an application *when they express, in whatever form and to any authority, the wish to apply for international protection*, or when they can be understood to be seeking international protection. It is not necessary to use the exact word ‘asylum’ or ‘refugee’. Applicants for international protection are granted all the rights and obligations attached to this status.

As a first-contact official, you are often the first representative of your country with whom a person who may be in need of international protection comes into contact. In many cases, such persons will have, for the first time, the chance to express the wish to apply for international protection to you.

Remember that many persons who may be in need of international protection fear persecution from officials in their own country or have been ill-treated by officials in other countries during their journey. In many cases, they may not approach you directly or actively apply for asylum. First-contact officials play a key role in creating an **atmosphere of trust** and **proactively identifying persons who may wish to apply for international protection**, providing them with **relevant information** on the **right to apply for asylum** and **referring** them to appropriate procedures.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section ‘What to do next if a person applies for international protection’, p. 26.

15 How do I recognise that a person is asking for international protection?

As a first-contact official, you will often be the first representative of your country with whom third-country nationals reaching the EU come into contact and to whom they have the chance to express their wish to apply for asylum for the first time.

Be aware that people may express an intention to apply for international protection in a variety of ways. **Any expression of fear of persecution or serious harm if refused entry, expressed either verbally or in writing, qualifies as such a request.** It is not necessary to use the exact word 'asylum' or 'refugee'.

Some of the key words, expressions or messages that may signal that a person may wish to apply for international protection include **fear of being killed, persecution, torture, war** and/or **fear of being returned**. The person may also ask for **help, protection** or may want to see the **UN, UNHCR office** or a **lawyer** etc.

Any person who has **expressed the wish to apply for international protection** becomes an **applicant** with all the **rights and obligations** attached to this status and must be **referred** to the responsible authorities for further assessment. Remember that your judgement at the point of entry has crucial and critical importance. Consult your superior whenever you have any doubts about the intentions of the person in front of you.



See the [*Practical Guide on Access to the Asylum Procedure*](#), Section 'Recognise making of the application for international protection', p. 26.

16 What should I do if a person has expressed the wish to apply for international protection to me?

As soon as a person has expressed the wish to apply for international protection, **they become an applicant** and must be **referred** to the responsible authorities for further assessment. As an officer of the authority that is likely to receive applications for international protection, you have the duty to inform the applicant where and how the application should be lodged.

Applicants for international protection are **entitled to certain rights** and there are **guarantees** attached to this status. This includes the right to remain, the right to basic material reception conditions, adequate support in case of special procedural and/or reception needs, the right to receive more detailed information on the asylum procedure in the language they understand and guarantees in cases of detention. As a first-contact official, you are responsible for helping to ensure these rights, for example by referring the applicants to the relevant authorities and organisations.

After an application has been made, it must be registered.

- If you work for an authority with the **competence to register the application, you are required to do so** within three working days.

- If you work for another authority, you should **refer** the application to the **competent authority so that it is registered** no later than six working days after the application was made. It is recommended to keep a written record that you have received the application, according to your national legislation and practice.

Remember, that **applicants for asylum must not be penalised** on account of their **illegal entry or presence**, provided they present themselves without delay to the authorities.



See the *[Practical Guide on Access to the Asylum Procedure](#)*, Section 'What to do next if a person applies for international protection', p. 26.

17 What should I do if there are indications that someone may be in need of protection, but they have not expressed the wish to apply?

Many persons who may be in need of international protection do not actively apply for asylum. For example, they may not know of the right or the procedures to do so, they may be victims of trafficking or may suffer trauma related to persecution or the difficult journey. In addition, persons in need of international protection often lack information about their rights and obligations, have relatives in another Member State whom they hope to join, or they may have been misinformed by others, including smugglers, about their options. It is unrealistic to expect them to have complex knowledge of the asylum and Dublin procedures, full trust in authorities to directly raise their fear at borders or in detention, or to know the right words and expressions that could grant them access to the procedure.

Provision of information is a key element in ensuring that persons who may be in need of international protection have **effective access to the asylum procedure** and are able to make well-informed decisions about whether to apply for international protection or not.

Remember that it is part of your obligation to ensure that no person, even if they have not applied for international protection, is returned to a place where they may face persecution, inhumane or degrading treatment or punishment, including torture, even if they are in an irregular

migratory situation. Any returns should follow established procedures, including the required legal safeguards and guarantees.

Consult your superior whenever you have any doubts about the intentions of the person in front of you, especially if their return to the country of origin or transit would constitute a possible breach of European or international law.



See the *Practical Guide on Access to the Asylum Procedure*, Section 'What to do next if a person who may have protection needs does not want to apply for international protection', p. 28.

18 What if a person applied for asylum, but I suspect they are trying to abuse the system?

who has expressed the becomes an with all the attached to this status and must be to the responsible authorities for further assessment. Remember that it is not your task to assess whether a person is in need of international protection or if their account is credible. It is the responsibility of the asylum authority. In every asylum system some applications will be rejected and some accepted, but all of them must be assessed according to European and international law.

Nevertheless, you may wish to consult your superior or to inform the responsible authority about the reasons of your doubts.



See the *Practical Guide on Access to the Asylum Procedure*, Section 'Who may wish to make an application?' p. 20.

19 What happens if I fail to identify a person wishing to apply for international protection?

An incorrect identification and failure to refer the person to the competent authorities may have serious consequences for the person. They may be **returned** to a country where their **life or freedom would be threatened** or where they would face **persecution, death, cruel and inhuman degrading treatment** or other **serious human rights violations**.

As a first-contact official you have a crucial role in ensuring access to protection for persons in need. Consult your superior whenever you have any doubts about the intentions of the person in front of you.

20 Sometimes I feel exhausted or even feel angry at the persons I have to deal with on a daily basis. Is this normal?

Every first-contact official performs their tasks under demanding circumstances, frequently encountering people from different cultures, different social backgrounds and with different life experiences. This interesting but extremely demanding working environment can have an impact on your psychological well-being. In the discharge of your duties, you may experience varied emotions, ranging from compassion, through to indifference or rejection of the individuals you encounter every day. This, in turn, can affect the effectiveness and quality of your work, and your ability to make appropriate decisions and take appropriate actions.

It is important to be aware of those mitigating factors as well as of your personal circumstances and make a constant effort to minimise their impact. If needed, do not hesitate to ask your colleagues or supervisors for support or to seek professional counselling.



See the *Practical Guide on Access to the Asylum Procedure*, Section 'Be aware of your personal circumstances', p. 19.

Access to the Asylum Procedure

- **Every human being must be valued and respected**
- **Emergency healthcare and basic needs should always be addressed first**

1 Anyone can be a refugee.

Anyone can have protection needs, regardless of their country of origin, ethnicity, appearance or behaviour.

2 Everyone is entitled to protection against *refoulement*.

No one can be expelled or returned to a situation where they would face a risk of persecution, the death penalty, torture or other inhuman or degrading treatment or punishment. This rule also applies to non-admission at the border and to any form of forcible removal.

3 Vulnerable persons must be identified and adequately supported.

Measures taken at border-crossing points and in detention facilities are crucial, where the special needs of vulnerable persons, including children and victims of trafficking in human beings, may be declared or detected.

4 The best interests of the child take precedence in all actions concerning children.

In assessing the best interests of the child, due account must be taken, on a case-by-case basis, regarding factors such as safety and security, family reunification possibilities, the child's wellbeing and the views of the child according to their age and maturity.

5 Anyone who may wish to apply for international protection must be informed about their right to do so.

Information on this right to asylum must be provided to all persons who may be in need of international protection to ensure that they have effective access to the asylum procedure.

6 **Everyone has the right to apply for international protection.**

No one can be denied access to the asylum procedure, even if that person did not fulfil all the entry conditions.

7 **Any sign or expression of fear if refused entry can be understood as a request for international protection.**

People may express an intention to apply for international protection in a variety of ways. Any expression of fear of persecution or serious harm if refused entry – verbally or in writing – qualifies as such a request. It is not necessary to use the word ‘asylum’ or ‘refugee’.

8 **Applicants for international protection must not be penalised due to their illegal entry or presence.**

Those who present themselves without delay to the authorities must not be penalised as a result of their illegal entry or presence.

9 **Each application must be registered or referred for registration to the responsible authority.**

After an application has been made it must be registered by the responsible authority. The registration should be completed as soon as possible, within the time limits prescribed by law.

10 **The principle of *non-refoulement* must be ensured, even when a person who may need protection decides not to apply for asylum.**

Any returns should follow established procedures, including the required legal safeguards and guarantees. Nobody can be returned to a country where they are at risk of torture, inhuman or degrading treatment or punishment, even if they are in an irregular migratory situation.

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