

Refugee Status Determination (RSD) in Albania

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A study of Refugee Status Determination decisions in Albania – a relatively new European country of destination – reveals some shortcomings, despite the country's efforts to develop its procedures in line with international standards.

In October 2012, the European Commission recommended that Albania be granted European Union (EU) candidate status, subject to the completion of key measures in certain areas, including in asylum. One of the government's objectives was to align Albania's Refugee Status Determination (RSD) procedures with the EU Directives concerning RSD.

Albania acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereafter, Refugee Convention) in August 1992, and the rights of refugees

and other persons seeking asylum in Albania were enshrined in the Albanian Constitution of 1998¹ and in the Albanian Law on Asylum and the Law on Integration.²

We studied RSD decisions rendered in Albania between 2006 and 2011 in order to evaluate how far Albania's practice at that stage conformed to the EU legal framework. We analysed 11 RSD decisions: three refusals and eight decisions granting refugee status. Six of the 11 claimants were Chinese, three Kosovar, one Serbian and one Iranian. The analysis of the decisions

was carried out according to criteria listed in the EU Asylum Procedures Directive³ in force in 2006-11 and in the light of the 1998 Albanian Law on Asylum.

Right to be informed and to legal and interpreting assistance

We found that applicants were informed about their rights and obligations but not about the different stages of the procedure. All applicants should receive the services of an interpreter for submitting their case to the competent authorities whenever necessary and should also be given an opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR). Information about the interpreter and legal assistance was provided in all cases studied and both the interpreters and the legal representatives were present during the hearings. However, the names of the interpreters and legal representatives were not mentioned in eight of the decisions. This impedes the verification of their professional status and therefore impedes verification of the representation. In practice, during this period there was only one legal adviser – someone offered by UNHCR. There is no case of an applicant being represented by a lawyer appointed on the free market; this appears to be due to the applicants not knowing that they can choose a lawyer on their own, to lack of resources to cover lawyers' fees and to a shortage of professional advisers in Albania.

Composition and competencies of deciding authorities

RSD decision-making authorities are required by the EU Directive to have special competencies in refugee matters but this is not provided for in the Albanian Law on Asylum. Moreover, the Albanian Law on Asylum mentions only the number of Directorate for Nationality and Refugees (DfNR) members – who make the RSD decisions – but is silent about the quorum necessary to make a valid decision. In the cases we reviewed the quorum was constantly changing; some decisions were examined by five members and some by only three, potentially undermining fairness of practice. More recently, it was

decided that all members need to be present; however, between mid-2011 and September 2012 the DfNR did not examine any RSD applications because one member of staff was on long-term leave and no substitution had been agreed, thereby paralysing the DfNR's decision-making capacity.

Type of evidence gathered

Both the Asylum Procedure Directive and the Qualification Directive binding at the time provide that the determining authority should take into consideration the individual position and personal circumstances of the applicant. In the decisions studied, although some took into account detailed individual information, in others the recognition of status was based on general facts only – not specific to persecution of the individual – or even solely on country reports. Shockingly, one decision relied primarily on information dating from before Albania became a signatory – in 1992 – to the 1951 Refugee Convention.

Due justification and examination of decisions by the authorities

The Asylum Procedure Directive indicates that the decisions should be taken after appropriate examination, and the Albanian Law on Asylum states that the authorities should verify the facts provided before reaching a decision. Eight of the decisions were based on a thorough examination of the facts gathered in the procedure, with references to external sources of information (although there were no references to UNHCR sources of information, despite this being strongly recommended in Article 8.2 of the Asylum Procedure Directive).

Only three of them, however, analysed separately the RSD requirement to prove persecution of the individual and the lack of state protection. A disturbing finding was that three of the decisions included admitting as true statements that had not been expressed by the applicant. In one, for example, where the applicants makes only general statements about the situation of the Uighurs in China, the deciding authority says that "in the statements of the asylum seeker it is clear that he left Turkestan because of being a victim

of different insults, offences, personality violations and his religious beliefs". If facts have not been stated by the applicant, they cannot be admitted as true in the justification of the decision. Overall, only three out of 11 decisions contained examination of all the requirements of the definition from the Article 1A of the Refugee Convention.

Conclusions

We consider the most relevant criteria for reaching a competent RSD decision to be a thorough gathering of evidence and its competent assessment, as these directly influence the decision to grant or deny asylum.

To ensure a high standard of protection of refugees in Albania, the deciding authority should use a set of previously elaborated questions in line with the Qualification Directive to obtain sufficient evidence from the applicant. An agreed set of questions will allow for equal treatment of all applicants and will shape the interview to gather only relevant information, thereby improving the efficiency of the procedure.

All of the components of the refugee definition as provided in the article 1/1 of the Albanian Law on Asylum with reference to the Refugee Convention Article 1 A(2) should be examined:

"...the term "refugee" shall apply to any person who: ...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country;"
Article 1A(2)

The assessment of the evidence should be carried out according to the standards set by UNHCR⁴ and the Qualification Directive.

Assessment of the evidence should be based on the facts proved as true, should indicate why a specific fact was considered as true and should indicate why a specific fact was not given credibility. Such an analysis should make reference to all the facts stated by the applicant and should never consider as stated a fact which has not been mentioned by the applicant.

Information about the different stages of the procedure should be provided to applicants in a clear manner, preferably in writing in the applicant's language, or in one of the UN official languages, as regulated under Article 23 of the Albanian Law on Asylum. There should be clear reference to the competencies of the members of DfNR and the composition of the body rendering decisions.

Beyond the year 2011, and especially since 2014, the number of RSD applications increased after the reception in Albania of Iranians who had been residents of a temporary transit location camp in Iraq. In the first half of 2015, 50 people (mostly Iranians and Syrians) were granted asylum. Following the granting of EU candidate status to Albania in June 2014, a new law on asylum – approved in September 2014⁵ – replaced the provisions of the 1998 law. This new law further develops RSD standards, based on the 2005 EU directive on minimum standards for granting and withdrawing refugee status. However, according to UNHCR and a November 2015 report by the European Commission⁶, despite this new legal framework Albania's procedures for determining international protection status still need improvement. One concern expressed lies in the perceived weakening of the regulation governing the composition of the body that makes asylum decisions; if not addressed, this may yet pose an obstacle to Albania's accession to the European Union.

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