



# Protect

## The Right to International Protection

WP3 Policy briefing on how to  
devise legal and institutional  
frames for asylum procedures



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## WP3 POLICY BRIEFING ON HOW TO DEVISE LEGAL AND INSTITUTIONAL FRAMES FOR ASYLYM PROCEDURES

- The international protection regime shows, in the countries investigated, responsiveness to salient contextual factors in origin countries. Violation of rights and violence lead to higher recognition of protection. However, the impact of institutional designs regarding asylum recognition in destination countries is not negligible. In addition, the EU and its member states have made considerable efforts to externalise the management of borders, which has dire consequences on asylum seekers fleeing persecution.
  - **States signatory of the 1951 Geneva Convention need to reaffirm their commitment to international protection and uphold their responsibility of protecting those whose state no longer protect. The following policy recommendations detail how this can be achieved.**
- The Asylum Office (AO) decides on protection claims. It is usually located within larger administrative structures—such as the ministry to which it is attached—which may affect its autonomy by subjecting it to political pressures. So demonstrates historical insights into AO's functioning from the 1950s to nowadays. In addition, administrative capacity shows to be an effective barrier to political pressure on asylum decision-making. A capable administration with dense sets of rules guiding case-workers is well equipped to carry out its tasks.
  - **Asylum Offices need to function in full autonomy to guarantee appropriate examination of asylum claims, independently from political pressures. Institutional design should reflect the pursuit of autonomy.**
- Having trained professionals process claims is not to be taken for granted. History shows that processing asylum claims can result in a trade-off between speed and quality, all the more so in cases of sudden increase in applications. While swift evaluation is desirable both for the administration and the asylum seekers, accurate assessment of claims is of prime importance. Measures should also be in place to face sudden increases.
  - **Asylum Offices must be adequately staffed, both in terms of quantity and quality of personnel. Case workers must be satisfactorily trained to carry out their activities. Facing sudden increases in asylum claims remains a challenge that can be met through having trained reserve civil servants in other administrative sectors and through reinforcing solidarity between EU member states in operational matters.**
- People who have fled their countries in haste, travelled long distances--sometimes for years— or destroyed their documents to reduce risks of persecution may fail to produce travel documents (such as visa or passport) when they lodge their protection claim. The risk of considering claims inadmissible—and thus not examining them against Geneva Convention criteria—on this basis outweighs its benefit.
  - **States should refrain from considering claims inadmissible on the grounds that an asylum seeker fails to produce identification or travel documents. Failure to produce said documents may be circumstantial and not an attempt to mislead case-workers.**
- Extensive procedural rights in access procedures guarantee their legitimacy and abidance by the Rule of law principle. Lack of proper remedy (conditional appeal or no suspensive effect of appeals) and failure to provide legal counsel risks leading to wrongful expulsion orders which, if enforced, could put lives in danger.



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- **States must ensure that asylum seekers have adequate means at their disposal to challenge decisions rendered on their applications in access procedures. The right to appeal should be unconditional, appeals should suspend expulsion, and legal counsel should be provided.**
- Guaranteeing rights are enforced also implies a proper provision infrastructure be in place. Formally defined rights are only as good as the efforts made to ensure they are actually enjoyed by asylum seekers. While NGOs are doing tremendous work on the ground to help people in need, their resources are not infinite and their territorial coverage is limited.
  - **States must guarantee enforcement of rights through positive means to ensure asylum seekers effectively benefit from the rights formally provided for in the law.**
- Detention of asylum seekers as a practice has grown over the years. Whilst it is legal in all its effects, it is often more expensive than hosting asylum seekers in open reception centres. Deprivation of liberty is also disproportionate a means and should only be used as a last resort. Asylum seekers in detention likely face difficulties to build and defend their case.
  - **Detention is unnecessary hardship on asylum seekers and costly for states. States should thus refrain from using detention of asylum seekers and, instead, resort to the many alternatives already outlined by NGOs and Inter-governmental organizations.**
- The external dimension of the EU's migration and asylum policies comprises a myriad of agreements with different levels of bindingness. Most policy instruments in this domain are geared towards the control of human mobility and *de jure* or *de facto* delegates border controls to neighbouring countries. Because it may prevent would-be asylum seekers from reaching the Union, it comprises the risk of breaching the EU's commitment to international protection by delegating it to countries with potentially lesser standards.
  - **The EU and its member states should strive for a more balanced approach to migration overall. If they are willing to externalise the control of their borders, they should also provide for means to claim asylum from neighbouring countries.**
- The fact that asylum policy is merged with migration, border management and security policies in the European Union's New Pact on Migration and Asylum, contributes to the undermining of the EU Member States' responsibility to protect refugees. When conflated with another policy area, asylum and refugee policy tends to be undermined in the implementation phase.
  - **Following the example of the two separate global migration and refugee compacts of the United Nations, the European Union is recommended to implement its international protection responsibility through legislation, in a new EU Asylum Pact which is strictly separate from migration, border, security, development, and external policy concerns.**

For more information, please refer to the research working papers and academic articles listed below:

***For the historical analysis of RSD institutional architectures:***

Caestecker F. and Ecker E. (2022) The Right to International Protection. Institutional Architectures of Political Asylum in Europe (Part I, 1970-1992). *PROTECT Working Paper series*. DOI:

<https://zenodo.org/record/7437875>



# Protect

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Caestecker F. and Ecker E. (2022) The Right to International Protection. Institutional Architectures Historical Analysis in Selected EU Countries (Part II, until 2018). *PROTECT Working Paper series*. DOI: <https://zenodo.org/record/7525600>

Linley C. and Atak I. (2023) Mapping Canada's Refugee Determination System: 1950-2020. *PROTECT Working Paper series*. DOI: <https://zenodo.org/record/7521407>

Maple N., Vanyoro K. and Vearey J. (2022) The Role of Institutional Architecture in the Reception of Refugees in South Africa. *PROTECT Working Paper series*. DOI: <https://zenodo.org/record/7437478>

**For the effect of RSD institutional architectures on protection recognition:**

Van Wolleghem P.G. and Sicakkan H.G. (2022) Asylum seekers in the machinery of the state: administrative capacity vs. preferences. Recognition rates in EU member states. *European Union Politics*. DOI: <https://doi.org/10.1177/14651165221135113>

Van Wolleghem P.G. and Sicakkan H.G. (2022) The role of the quality of the administration in asylum decision making. Comparing recognition rates in EU member states. *PROTECT Working Paper series*. DOI: <https://zenodo.org/record/6334203>

Van Wolleghem P.G. and Sicakkan H.G. (2023) Recognizing international protection: do institutional architectures matter? *PROTECT Working Paper series*. Soon to be available.

Sicakkan H.G. and Van Wolleghem P.G. (2023) Do National Refugee Status Determination Procedures Affect International Refugee Protection? *PROTECT Working Paper series*. Soon to be available.

**For the external dimension of the EU's migration and asylum policy:**

Longo F. and Fontana I. (2022) Mapping the external dimension on EU migration and asylum policies: what impact on the governance of asylum?, *PROTECT Working Paper series*. DOI: <https://zenodo.org/record/6483343>

Longo F. and Fontana I. (2022) When securitization spills over across EU borders: A quantitative mapping of the external dimension of EU migration and asylum policies. *European Foreign Affairs Review*, Vol. 27(4), pp. 485-512. DOI: <https://doi.org/10.54648/eerr2022032>

Longo F., Panebianco S. and Cannata G. (2023) The External Dimension of the European Migration and Asylum Policy: the EU's Organized Hypocrisy in Cooperation with Southern Neighbor Countries. *PROTECT Working Paper series*. Soon to be available.

Panebianco S. (2021) Towards a *Human and Humane* Approach? The EU Discourse on Migration amidst the Covid-19 Crisis. *The International Spectator*, Vol. 56(2), pp. 19-37, DOI: [10.1080/03932729.2021.1902650](https://doi.org/10.1080/03932729.2021.1902650)

Panebianco S. (2023) Mediterranean migration governance and the role of the Italian coast guard: varying political understandings of maritime operations in the 2010s. *Contemporary Italian Politics*, Vol. 15(1), pp. 43-59, DOI: [10.1080/23248823.2022.2057046](https://doi.org/10.1080/23248823.2022.2057046)

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