Chapter 6

Asylum procedures


In paragraph 6.2, I address the asylum procedures in first instance. Rules on appeal proceedings are discussed in paragraph 6.3; grounds for refusal in paragraph 6.4, and rules on procedures on withdrawal or termination of protection statuses in paragraph 6.5. In paragraph 6.1, I address some peculiarities of the scope of the Procedures Directive and its relation to other instruments that are relevant for asylum procedures.

6.1 Introduction

[361] At the outset, it should be observed that the reading of the Procedures Directive is complicated because of a number of incongruities that are due to the troublesome legislative history of that instrument. The original Commission Proposal presented on 24 October 2000\(^1\) met so much opposition in the Council that the Commission was asked to redraft it.\(^2\) The Amended Proposal, presented on 18 June 2002,\(^3\) was subject to further extensive debates in the Council; the initiative of Austria for a Council Regulation on the qualification of safe third countries,\(^4\) a matter also addressed by the Procedures Directive, may have complicated matters further. As a result, the Directive suffers from a number of inconsistencies that must be addressed in order to sort out the scope and content of this instrument.

[362] According to Article 1 PD, the purpose of the Procedures Directive is “to establish minimum standards on procedures in the Member States for granting or withdrawing refugee status.” Its rules apply to “applications for asylum”.\(^5\) Pursuant to this definition the personal scope may differ among the Member States (see number [263]). In Member States that run separate procedures for refugee protection and for other forms of protection, the Directive
applies only to the processing of the application for refugee protection,6 but in
States that have a single procedure for refugee and subsidiary protection, the
Procedures Directive also applies to requests for the latter form of protection.

Although the Procedures Directive does apply in some Member States to
requests for subsidiary protection, several provisions such as the definition of
the purpose of the instrument, refer to examination of the “qualification as a
refugee” only.7 Should we assume that such provisions do not address the
qualification of a person as eligible for subsidiary protection? The Directive
explicitly addresses protection under instruments of international asylum law
other than the Refugee Convention.8 And it would be unreasonable to assume
that application of the Directive’s rules to requests for subsidiary protection
serve, in the terms of Article 1 PD, only the purpose of setting standards on
procedures for granting refugee protection. We must therefore assume that
Procedures Directive provisions that refer to “qualification as a refugee by
virtue of the Qualification Directive” only, may be equally applicable to
“qualification as a person eligible for subsidiary protection status” in those
Member States where the instrument also applies to procedures for the gran-
ting of subsidiary protection. This extensive reading accommodates both
objectives of the Directive - observance of human rights, and preclusion of
secondary movements (see paragraph 4.6).

The Dublin Regulation and the Temporary Protection Directive also set
some rules on procedures concerning the granting of international protection.
How do these rules relate to the rules on procedures in the Procedures
Directive?

Pursuant to the Dublin Regulation, the Member State where an applica-
tion was lodged may decide that it will not “examine” the application when
another state is “responsible” (see paragraph 7.2.1). This decision not to
examine the claim is subject to some procedural rules in the Dublin
Regulation.9 As a decision on an “application for asylum”, it also falls with-
in the scope of the Procedures Directive.10 It would follow that all relevant
Procedures Directive provisions apply to decisions to transfer the applicant
pursuant to the Dublin Regulation (and hence not to examine the merits of the
claim). However, the Preamble to the Procedures Directive states that “[t]his
Directive does not deal with procedures governed by [the Dublin
Regulation]”.11 The Dublin Regulation makes a similar distinction in its defi-
nition of “examination”:

“‘examination of an asylum application’ means any examination of […] an
application for asylum by the competent authorities in accordance with