

SEEKING PROTECTION: AFGHAN ASYLUM APPLICANTS IN THE EU

ECRE'S ANALYSIS OF DEVELOPMENTS IN POLICIES AND PRACTICES AFFECTING AFGHANS SEEKING INTERNATIONAL PROTECTION IN EUROPE

I. INTRODUCTION

Afghan nationals represent one of the most significant populations of globally displaced people due to the long decades of conflict and human rights violations. Since the Taliban takeover in August 2021, over [1.6 million Afghan nationals](#) have had to leave their country, resulting in a total of 8.2 million Afghans displaced globally, with most in the countries neighbouring Afghanistan. Inside Afghanistan, there are an estimated 6.3 million Internally Displaced Persons (IDPs). In Europe, Afghans seeking international protection remain the second-largest group of asylum applicants, following people from Syria. In 2023, over 100,000 Afghan nationals submitted first-time applications for international protection across the European Union (EU) 27 Member States (MS). Compared to the numbers of displaced Afghans inside Afghanistan and in the neighbouring countries, the figure is small, however the challenges confronted by people reaching Europe are significant. They include obstacles and risks encountered during the journey, “pushbacks” at borders, including at the EU’s external borders, difficulties accessing asylum procedures, and inconsistencies in the treatment of asylum applications across EU MS.

This policy note will provide a brief update on the current situation in Afghanistan and on the situation of Afghan refugees in Iran and Pakistan. It will then analyse the treatment of international protection applications from Afghan nationals in the EU 27, considering recent developments, policies and guidelines in the EUMS. It will conclude with recommendations to the EU, its MS and its agencies.

II. ANALYSIS

OVERVIEW OF THE SITUATION IN AFGHANISTAN

For the [eighth consecutive year](#), Afghanistan holds the unfortunate distinction of being the least peaceful country in the world, followed by Yemen, Syria, South Sudan, and the Democratic Republic of the Congo. The United Nations Assistance Mission in Afghanistan (UNAMA) documented credible reports of severe human rights abuses by the Taliban de-facto government between August 2021 and June 2023. [These reports](#) encompass over 800 cases of extrajudicial killings, arbitrary arrests and detentions, torture, ill-treatment, and enforced disappearances targeting individuals associated with the former government. These instances only represent a small sample of the actual number of security-related incidents and human rights violations in Taliban-controlled Afghanistan.

One of the most severe humanitarian crises globally is happening in Afghanistan. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA), in a recent [report](#), found that over 23 million people need humanitarian assistance in the country. The demand for humanitarian aid is rapidly growing due to new challenges such as a recent deadly earthquake in western Afghanistan and deportations from neighbouring countries. At the same time, humanitarian assistance is shrinking as significant donor countries are cutting or reducing their aid to Afghanistan, in part due to the Taliban's violation of human rights, particularly their restrictions against women.

Two of the countries bordering Afghanistan, Pakistan and Iran, continue to deport thousands of Afghans on a daily basis. For example, Pakistan [recently altered its policy towards Afghan refugees](#), expressing the intention to deport nearly all Afghans back to Afghanistan, irrespective of their documentation. [According to the IOM](#), between 13 September 2023 and 13 January 2024, over 500,000 Afghans were deported from Pakistan and currently reside in uncertain conditions or in temporary shelters. Deportations contradict [UNHCR's non-return advice](#) and ignore international calls to suspend deportations.

PROTECTION IN EUROPE

In the EU 27, Afghan nationals have consistently constituted the second-largest group of asylum seekers in recent years. In 2023, the [Eurostat database](#) shows that 100,930 Afghan nationals lodged an application for international protection in the EU 27, [primarily](#) in Germany (43%), Greece (15%), and France (17%). Moreover, the Eurostat database also shows that overall EU protection rates at first instance for Afghan nationals increased to 80% (including national forms of protection), up from 57% in 2020 and 53% in 2019.

Despite this positive trend, the treatment of Afghan nationals seeking international protection varies considerably throughout Europe, and they continue to experience challenges when seeking asylum, such as long waiting times in the asylum procedure and inconsistencies in the treatment of their applications across MS.

Prolonged waiting times

Asylum applicants across Europe face long delays in the asylum procedure. Overall, as of the end of 2023, [approximately 883,000 cases](#) awaited a first-instance decision across the EU+ (the EU 27 plus associated countries), a 39% increase compared to the previous year. This is the highest figure since the so-called refugee crisis of 2015 and 2016. Long waiting times are a general problem, but Afghan applicants may be more affected due to suspensions in processing and the rapidly changing situation in the country.

According to Eurostat, as of November 2023, there were over [91,000 pending cases](#) for Afghan national seeking international protection. In many instances, asylum applicants reside for months in reception centres. For example, as highlighted in ECRE's Asylum Information Database (AIDA) [country report for Belgium](#), the average length of stay for asylum seekers in the reception system is 14.9 months, which places a significant strain on reception capacity and keeps asylum seekers in uncertainty, while also hampering their integration into society because centres are often in remote areas. ECRE urges MS to expand their asylum processing capabilities to ensure fair and swift asylum procedures, including for Afghan asylum applicants.

Inconsistency in protection rates

ECRE has long emphasised the "asylum lottery" – the divergent protection rates facing asylum applicants and particularly Afghans. Since the Taliban seized control in August 2021, the disparity in protection rates for Afghan asylum applications has been reduced due to an increase in protection rates in countries where they were lower than the EU average. Nonetheless, there remains significant variation, with the protection rate for Afghan asylum applications ranging from 12% to 99% in 2023.

Eurostat [shows](#) that first-instance protection rates for Afghan nationals in 2023 were 99% in Ireland, 94% in Denmark, 94% in Finland, 93% in Austria, 93% in Germany and 89% in the Netherlands. However, rates were as low as 12% in Bulgaria, 35% in Belgium, 40% in Romania, and 52% in Sweden, still significantly below the EU

average. There are no credible or objective reasons for such a discrepancy. Back in 2017, the European Commission, in a letter, [expressed concern](#) to the Bulgarian authorities regarding the treatment of Afghan asylum seekers, as the protection rate was notably lower than in other European countries.

As a consequence of differential treatment and the related risks of refoulement to Afghanistan and of human rights violations, an increasing number of courts are suspending Dublin transfers to countries with low protection rates for Afghan nationals. For instance, in Germany, [the Administrative Court of Freiburg](#) annulled the transfer of an Afghan national to Bulgaria due to fundamental deficiencies in the asylum procedure specifically for Afghan nationals (including extremely low recognition rates, discrimination, and the use of Türkiye as a safe third country), as well as due to systemic deficiencies in the Bulgarian asylum system as a whole. In March 2023, the [Constitutional Court of Austria](#) ruled against the Dublin transfer of an Afghan national to Bulgaria due to the asylum authorities' failure to investigate the risk of chain refoulement to Türkiye.

Changes in forms of protection

Following the developments in Afghanistan in August 2021, there has been a shift in EUMS treatment of Afghan asylum applications and the types of protection offered to Afghan asylum applicants, with decision-making reflecting these changes and incorporating evidence of the changed situation in the country. Most EUMS, including Belgium, Germany, Greece and France, now mainly grant refugee status to Afghan nationals seeking international protection. At the same time, subsidiary protection status under EU law is still used, albeit to a lesser extent than refugee status, for instance by Austria, Germany, France, and Italy.

Germany, along with certain other EUMS, is also offering a temporary form of protection to Afghan asylum applicants under national law ([National ban on deportation](#)). ECRE acknowledges the value of such forms of protection, which can prevent Afghan asylum seekers entering irregularly and grants them certain rights, however such protection should only be granted after a thorough assessment of individual applications to consider whether another status is appropriate. Furthermore, individuals granted this form of temporary status should be entitled to family reunification rights, especially considering the role of family reunification as a safe pathway.

Certain EUMS, including Belgium, Greece, Luxembourg and Finland, have completely halted the granting of subsidiary protection status to Afghan nationals under Article 15(c) of the recast Qualification Directive (rQD), which refers to "serious and individual threats to a civilian's life or person by reason of indiscriminate violence". This decision is attributed to the perceived reduction in indiscriminate violence within the country. ECRE maintains the position that the situation in Afghanistan remains highly unstable, and the risk of indiscriminate violence persists. As underscored in ECRE's [previous Working Paper](#), drawing on a preliminary [ruling](#) by the Court of Justice of the European Union (CJEU), a comprehensive assessment is needed and should not be based solely on the quantitative assessment of civilian casualties but instead on a thorough assessment of the individual case, geographical scope, the duration of the conflict, the number of civilians killed, and the warfare tactics used.

The assessment that there is no indiscriminate violence in Afghanistan is paradoxical given the positions of EUMS' Foreign Ministries and Diplomatic Services, which strongly advise their citizens against traveling to Afghanistan due to the high risk of being killed, arrested or kidnapped, as is the case for [Belgium](#) and [Germany](#)

In line with obligations under EU asylum law, when examining applications for international protection, reference to the latest EUAA and UNHCR guidance is necessary both for the granting of refugee status and subsidiary protection. If the up-to-date guidance is unavailable, asylum authorities should look at the latest independent sources, including CSOs, academics and media outlets of the country in question.

In response to the ongoing crisis in Afghanistan, several EUMS have granted subsidiary protection under EU law based on Article 15b rQD, which refers to "torture or inhuman or degrading treatment or punishment of an applicant in the country of origin" and humanitarian status under their national law. In 2022, an [ad-hoc query](#) from the European Migration Network of Belgium was directed to 23 EUMS, inquiring, among other issues, whether they consider that the humanitarian situation in Afghanistan warrants protection either under the EU rQD or their national law. The majority of these MS, including Austria, Bulgaria, Croatia, Cyprus, Germany, Hungary, Italy, Latvia, Lithuania and Poland, affirmed that they offer some form of protection to Afghans due to the human rights violations stemming from the dire humanitarian situation in the country. ECRE suggests that other EUMS should similarly consider the current humanitarian situation and incumbent risks as a ground for protection.

Finally, the recent [CJEU preliminary ruling](#) on Afghan women and girls seeking protection in Europe also needs to be fully reflected in policy, practice and decision-making on statuses by the EUMS.

Return decisions

Some EUMS persist in issuing rejections and return decisions for Afghan nationals who are seeking international protection despite international recognition of the gravity of the situation in the country. This includes

UNHCR's [Guidance Note](#), which reiterates its call for states to suspend the forcible return of Afghan nationals and protect them from refoulement in accordance with international and regional law obligations, and the recent United Nations Committee Against Torture's [decision](#) that an Afghan family's deportation from Sweden to Afghanistan would violate Article 3 of the 1984 Convention against Torture.

Eurostat data [shows](#) that 23,515 return orders were issued for Afghans in the EU27 in 2023. During the year only 65 Afghan nationals "returned" to Afghanistan – presumably all voluntary returns as neither the EU nor individual MS have return and readmission agreements with the Taliban de facto government in Afghanistan. Most of the return orders were issued by Bulgaria, Germany, France, Greece, Croatia and Belgium. In Belgium, Afghan nationals rank among the top three countries of asylum seekers receiving return decisions, prompting many to either embark on secondary movements to other European countries to obtain protection or to remain in Belgium in an irregular situation, and thus without access to rights and services.

ECRE asserts that Afghan nationals denied protection cannot be returned due to the country's situation and the principle of non-refoulement, which should be considered when applying Article 5 of the [recast Return Directive](#) (rRD). The suspension of return and deportation should continue until security and stability are established. Before deciding to issue a return decision, the authorities must assess whether returning the rejected applicant would comply with fundamental rights, including those outlined in Article 3 of the ECHR and Article 19 of the EU Charter of Fundamental Rights. As an alternative measure to rejection of applications, granting subsidiary protection under the EU law or a form of protection under national law are viable solutions and may prove essential to safeguarding human rights and maintaining a dignified standard of living in the host country. This perspective is aligned with the rRD where, in recital 12 of the preamble, MS are directed to address "the situation of third-country nationals staying illegally but who cannot be removed".

III. RECOMMENDATIONS:

Fair and swift asylum procedure

- » MS should ensure fair and swift access to asylum procedures for international protection to Afghans arriving in Europe, irrespective of how they arrive.
- » MS should take measures to address and reduce the backlog of cases of asylum applicants including Afghan nationals.
- » MS should ensure that material reception conditions are accessible to applicants when they submit their application for international protection as outlined in Article 17 of the recast Reception Condition Directive (rRCD).
- » The European Commission should investigate MS with low protection rates for Afghan asylum seekers to ensure that decision-making is in accordance with EU and international refugee law.
- » Access to precise and up-to-date information about the situation in Afghanistan is crucial for fair asylum decision-making. This may involve fact-finding government missions or commissioning reports from independent sources, such as non-governmental organisations, academic institutions and independent media outlets.
- » The EUAA should ensure the availability of updated Country Guidance and ensure that decisions made by asylum authorities rely on the most recent Country of Origin Information (COI) and Country Guidance.

Alternative to rejection in Afghan applications for international protection

- » MS should comply with CEAS obligations, including Article 5 rRD as well as the aforementioned articles.
- » MS should provide protection to Afghan nationals seeking international protection until the situation is significantly changed and the situation of human rights are improved.
- » Asylum authorities should use up-to-date Country of Origin Information (COI) and Country Guidance from the EUAA and UNHCR.
- » Asylum authorities should refrain from issuing return decisions to Afghan nationals seeking international protection until the situation allows a safe, dignified, and sustainable return.
- » MS should not send back Afghan nationals seeking international protection to MS with low protection rates where there is a risk of ill-treatment or refoulement.
- » Asylum authorities must thoroughly examine the individual circumstances and the general situation in the country before issuing a return decision. Alternative forms of protection available under EU and national law should be granted to persons whose return to Afghanistan may violate the non-refoulement principle.