Asylum statistics in Europe: Briefing

Context
Statistics on asylum matters have become a central part of political debate in Europe in recent years, in particular, statistics on protection rates or recognition rates – the percentage of the people seeking asylum who are recognised (or declared) to be entitled to international protection – are often used in arguments about the reasons for migration and the appropriate policy responses. A common argument is to present protection rates as “low” or to argue that a majority of those arriving in Europe are not entitled to protection and that therefore policy responses should focus on repatriation and prevention of arrivals. In recent years, ECRE has analysed the use of asylum statistics and has also contributed the gathering and dissemination of asylum statistics through its Asylum Information Database (AIDA). Here, ECRE sounds a note of caution in regard to the presentation and use of statistics.

Sources of statistics: Eurostat and EASO

Eurostat’s mission is to provide high quality statistics; its statistics on asylum and migration provide statistical information on third-country nationals (non-EU citizens including stateless persons) applying for international protection (asylum seekers) and entering, residing and working in the European Union Member States and Schengen Associated countries (EUMS+). The statistics available from Eurostat are collected from the EU and from EFTA Ministries of Interior and related immigration agencies. In its annual report on the situation of asylum in Europe, the European Asylum Support Office (EASO) derives statistical data primarily from Eurostat. The report is a reference document, which aims to provide a comprehensive overview of asylum matters, covering legislation, policy and practice, both at EU level and in national asylum systems. Both sources are thus key references in the field of asylum.

The figures presented in the database and in particular the way they are then used in political debates, should be treated with caution, to avoid misrepresentation of the actual situation. This briefing provides an overview of four of the limitations of asylum statistics, and the related risk of underrepresenting both the number of people who have obtained protection and who are in need of protection in Europe. It makes suggestions as to how to improve the use of statistics in each case.

Limitation One: The focus on first-instance decision-making

According to Eurostat statistics on asylum decision-making at first instance, the 32 European Union (EU) and Schengen Associated countries decided on cases in recent years as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Refugee status</th>
<th>Subsidiary protection</th>
<th>Humanitarian status</th>
<th>“Rejected”</th>
<th>Total decisions</th>
<th>Recognition rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>228,705</td>
<td>156,590</td>
<td>71,735</td>
<td>527,950</td>
<td>984,980</td>
<td>46.3%</td>
</tr>
<tr>
<td>2018</td>
<td>129,690</td>
<td>63,105</td>
<td>41,435</td>
<td>367,210</td>
<td>601,440</td>
<td>38.9%</td>
</tr>
<tr>
<td>2019</td>
<td>128,710</td>
<td>54,460</td>
<td>50,765</td>
<td>350,875</td>
<td>584,805</td>
<td>40%</td>
</tr>
</tbody>
</table>

Source: Eurostat

These figures indicate that nearly 40% of asylum applications were successful at first instance in both 2018 and 2019, compared to 46% in 2017. The figures should be read with caution however. First instance rates are not a reliable indicator of protection needs or even of asylum decision-making, given
that a significant number of negative decisions are successfully challenged on appeal. According to Eurostat, 96,095 appeals decided in 2017 (33.2% of the total) were positive, with 118,640 positive appeals in 2018 (37.6% of the total) and 102,520 positive appeals in 2019 (32.3%).

<table>
<thead>
<tr>
<th>Year</th>
<th>Refugee status</th>
<th>Subsidiary protection</th>
<th>Humanitarian status</th>
<th>&quot;Rejected&quot;</th>
<th>Total decisions</th>
<th>Recognition rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>49,890</td>
<td>31,250</td>
<td>14,955</td>
<td>192,725</td>
<td>288,815</td>
<td>33.2 %</td>
</tr>
<tr>
<td>2018</td>
<td>43,380</td>
<td>38,880</td>
<td>36,380</td>
<td>196,235</td>
<td>314,875</td>
<td>37.6 %</td>
</tr>
<tr>
<td>2019</td>
<td>42,630</td>
<td>30,885</td>
<td>29,005</td>
<td>214,135</td>
<td>316,650</td>
<td>32.3 %</td>
</tr>
</tbody>
</table>

Source: Eurostat. In the Eurostat database these figures are presented under the term 'final decision'.

Thus, in many of these cases a first-instance refusal of international protection was overturned at appeal stage and substituted by a granting of status. This indicates that a majority of those arriving in Europe are actually granted international protection. Unfortunately, it is not possible to calculate an accurate cumulative figure as, in any given year, the figures for first instance and second instance decisions refer to different caseloads due to the time it takes for appeals and reviews to be completed. Nevertheless, the fact that every year in over 30% of the appeals, a protection status is recognised or granted, clearly indicates that the protection rate is higher than often presented. As a side point, this also indicates that improving the quality of decision making should remain a priority. Better decision making at first instance would reduce the need to use and rely on second instance decision-making. Unfortunately, rather than focusing on improvements in decision-making, policy makers tend to propose legislative reform that erodes the right to an effective remedy.

For some countries (such as Belgium, Greece) the protection rate after legal remedies (when all possibilities of appeal have been exhausted) does not significantly increase compared to the first instance protection rate. Reasons differ widely: from the quality of first instance decision-making to the (non-)effectiveness of legal remedies, and the (lack of) quality of legal assistance, especially at second instance. In other countries, the protection rate is considerably higher after appeals. For example, more than half of the final decisions of 2019 on appeal led to an international protection status (refugee status or subsidiary protection) in the United Kingdom. Similarly, in Sweden, 38.8% of appeals resulted in the granting of a protection status.

**ECRE’s Recommendation**

In any area of law, legal processes are not complete until effective remedies have been exhausted. Thus, in asylum statistics and policy-making, it would be more accurate to use figures after the completion of legal processes, rather than focusing on first instance decisions. This could involve presenting the cumulative protection rate after first instance and second or final instance decisions.

---

1. Final decision is defined as: decision taken by administrative or judicial bodies in appeal or in review and which are no longer subject to remedy. The true “final instance” may be, according to the national legislation and administrative procedures, a decision of the highest national court. However, it is not intended that asylum statistics should cover rare or exceptional cases determined by the highest courts. Thus, the statistics related to the final decisions should refer to what is effectively a final decision in the vast majority of all cases: i.e. that all normal routes of appeal have been exhausted.

2. In 2019, 7% of decisions appealed at second instance resulted in the granting of international protection.

3. In 2019, 5% of decisions appealed at second instance resulted in the granting of international protection.

Limitation Two: Running together in-m merit and admissibility decisions

According to Eurostat technical guidelines, “rejection” decisions in the Eurostat database include both in-m merit negative decisions and inadmissibility decisions (“Dublin” decisions are not included). Inadmissibility decisions are refusals of international protection based on grounds such as “safe third country” concepts or subsequent applications without new elements, in which the authorities stop short of examining whether or not an individual qualifies for international protection. These grounds have been differently transposed and used and are employed to varying degrees in national practice.

In light of this, statistics can distort asylum authorities’ decision-making record and recognition rates:

- In Belgium, the Office of the Commissioner General for Refugees and Stateless persons (CGRS) reported that in 2019, in 36.9% of its decisions (first instance), the CGRS considered that the applicant was in need of protection. The protection rate decreased further in 2019 compared to the previous years. The CGRS clarified this decrease mainly due to a rise in decisions declaring inadmissible a subsequent application or an application from an applicant with a protection status in another EU member state. Leaving aside these two categories, the CGRS reported that the protection rate still amounts to 50.5%, meaning that there are still many applicants who need protection.

- In Greece, national statistics for 2019 show a first instance recognition rate of 55.9% as it only concerns in-merit decisions, whereas Eurostat figures show for 2019, a 53% rate because inadmissibility decisions are also included.

- The distortion in recognition rates between national statistics and Eurostat is also visible when looking at specific nationalities in a given country. In Sweden for example, the recognition rate at first instance for Syria is 97% according to national statistics, compared to 82.3% according to Eurostat. Similarly, the recognition rate at first instance for Afghanistan is 45% according to national statistics compared to 37.7% according to Eurostat.

ECRE’s Recommendation

To ensure accuracy, ECRE recommends calculating recognition rates on the basis of decisions on the merits of asylum claims and encourages Member States to clearly distinguish decisions on the merits from admissibility decisions in their practice.

Limitation Three: The “asylum lottery”: poor decision-making

Low recognition rates do not automatically point to the conclusion that an individual or particular group is not in need of international protection. Decision-making across Europe continues to be an “asylum lottery”: a person’s chances of obtaining protection vary dramatically depending on the country examining their claim. Some countries’ decision-making is marred by gaps in quality which expose individuals to risks of refoulement. These risks are increasingly acknowledged by fellow Member States’ judicial authorities and by the European Commission. There is no evidence that the discrepancies can be explained by objective differences in caseloads (i.e. characteristics of the individual cases), and in any case, the divergence is so large that such factors could only ever constitute a partial explanation.

According to Eurostat, first instance recognition rates for Afghans in 2019 ranged from 93.8% in Italy to 4.1% in Bulgaria. In between lies a spectrum covering the Netherlands (24.6%), Belgium (32.2%), Sweden (37.7%), Germany (44.4%) and Greece (72.5%). For Iraqis recognition rates varied from 66.8% in France and 67.5% in Greece to 8.3% in Denmark, 17.2% in Sweden and 21.6% in Finland.

Thus, among those receiving negative decisions, there are likely to be people who do have protection needs but whose protection needs were not recognised due to flaws in decision-making (which may be exacerbated by the lack of respect for procedural guarantees). Of course, it may also be the case that people receive positive decisions when they do not in fact need international protection due to the same or different weaknesses in decision-making. Given the political and legal context in Europe, and the factors influencing decision-making, the latter seems less likely.
ECRE's Recommendation
The “asylum lottery” is one of the flaws in the implementation of the Common European Asylum System. Flawed decision-making undermines the fundamental rights of those in need of protection, not least through contributing to refoulement but it also a factor beyond onward movement within the EU+. It is best addressed through supporting compliance with the provisions of the CEAS. The European Commission and EASO can support Member States to allocate adequate resources to decision-making, training legal professionals, legal aid and judicial independence. While the asylum lottery persists, asylum statistics should be used with caution and disaggregated by Member State whenever relevant.

Limitation Four: statistics and forms of protection

With few exceptions, most EUMS+ primarily granted refugee status in recent years. Nevertheless, there has been an increase in the use of other forms of protection and Member States continue to grant different statuses to similar cases. In the use of asylum statistics and resulting political conclusions, this can be misused to claim that people do not need protection because they are not granted refugee status. A closer look at the statistics shows a more complex picture.

While most Member States provided refugee status for the Afghans granted protection in 2019, the overall numbers for the 32 EUMS+ showed that more Afghans received subsidiary protection (9,165) and not refugee status (7,905) because countries where there are a significant number of Afghan applicants (e.g. DE, FR, GR), more often grant subsidiary protection. The dominant form of protection for Syrians also varies significantly across the EU.

In EU law, the Qualification Directive (recast) established the primacy of refugee status because subsidiary protection status may only be granted once a person does not qualify for refugee status. But by introducing a subsidiary form of protection, EU legislators did not intend to offer a choice between forms of international protection. The complementarity of subsidiary protection status has also been emphasised in the CJEU case law.5 When subsidiary protection was introduced, it was assumed that it was of a temporary nature but this has proven not to be the case. As a result of the intended temporariness, the Directive allows Member States the discretion to grant a lower level of rights in certain respects. The Commission itself has acknowledged that as the assumption of temporariness was inaccurate, “it is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified.”6 Further discussion on the content of protection is beyond the scope of this paper, however, the presentation of statistics should avoid implicitly or explicitly promoting the notion of subsidiary protection as inferior.

Eurostat also includes data on humanitarian protection statuses, which are part of national rather than EU legal orders. Humanitarian protection status offers solutions for people in need of protection who do not fall under classic concepts of refugee status or subsidiary protection (although it should not be a substitute for these statuses if either applies). Humanitarian protection covers a wide variety of often complex cases and situations, and it is a useful tool in responding to contemporary protection needs, which legal frameworks may not explicitly address. In statistical debates, as with subsidiary protection, humanitarian protection can be misrepresented, with the suggestion often made that people in this category do not deserve protection or do not face threats and risks. This includes via selective use of examples and misrepresentation of Member States’ valid employment of humanitarian protection.

ECRE's recommendation
Generally, use figures for overall protection rates, rather than “refugee recognition rates” in order to give an accurate picture of all in need of protection in Europe. In the presentation of statistics, caution should be employed to avoid categorising certain protection-holders as “undeserving” and over-simplifying contemporary protection needs.

---