



IRCT proposed amendments to the Proposal for an Asylum Procedures Regulation (July 2016)

In the next section, changes suggested by the IRCT are in blue. Suggestions for deletion of text are shown via strikethrough to the relevant text.

Recital 15 should be amended to ensure consistency with Directive XXX/XXX/EU (Reception Conditions Directive). Furthermore, the meaning of the phrase “before a decision is taken” should mean before a decision on admissibility is taken.

(15) Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence. It is necessary to systematically assess whether an individual applicant is in need of special procedural guarantees and identify those applicants as early as possible from the moment an application is made and before a decision is taken. **The results of the assessment should be provided in writing, specifying the measures to be taken and the authorities responsible for their implementation. The situation of applicants with special procedural guarantees should be monitored throughout their application.**

Recital 16 should be amended to reinforce safeguards for applicants in need of special procedural guarantees and to ensure consistency with Directive XXX/XXX/EU (Reception Conditions Directive).

(16) To ensure that the identification of applicants in need of special procedural guarantees takes place as early as possible **and that appropriate support is provided where required**, the personnel of the authorities responsible for receiving and registering applications should be adequately trained to detect **and respond** to signs of **vulnerability signs such needs** and they should receive appropriate instructions for that purpose. Further measures dealing with identification and documentation of symptoms and signs of **gender-based harm, torture, rape** or other serious acts of physical, ~~or~~ psychological **or sexual violence, including acts of sexual violence**, in procedures covered by this Regulation should, inter alia, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Recital 17 should be amended to exempt applicants with special procedural guarantees from the application of special procedures, as they are incompatible with

(17) Applicants who are identified as being in need of special procedural guarantees should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. **Applicants in need of special procedural guarantees should always be exempted from accelerated examination procedures and border procedures. ~~Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures.~~** The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.

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*The IRCT enjoys
consultative status
with the UN Economic
and Social Council
and participatory
status with the Council
of Europe.*

Recital 18 should be amended to reinforce safeguards and guarantees for applicants with special procedural needs. In particular, provisions aiming to create a more favourable environment for the disclosure of gender-based persecution should also be applicable to men, who may have been victims of gender-related harm (LGBTIQ applicants) or sexual violence. In such cases, disclosure to male personnel may be more difficult, especially as interpreters tend to come from the same community or have the same cultural background. As a result any applicant, either male or female, should be able to choose the gender of the interviewer and the interpreter. Similarly, with regard to procedures that may be invasive, such as medical examinations, male applicants who have been victims of gender-based harm (LGBTIQ applicants) or sexual violence may also be re-traumatised if the procedure is carried out by another man. As a result, they should also be provided with the choice of the gender of their medical practitioner.

(18) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution. For this purpose, women should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. Where possible, ~~women and girls should be provided with female~~ applicants should be given the opportunity to choose the gender of their interpreters and interviewers. Medical examinations on women and girls should be carried out by female medical practitioners, in particular having regard to the fact that the applicant may have been a victim of gender-based violence. ~~Where possible, male applicants who may have been victims of gender-based harm or sexual violence should be given the opportunity to choose the gender of the medical practitioner responsible for carrying out their medical examination.~~ The complexity of gender-related claims should be properly taken into account in procedures based on the concept of first country of asylum, the concept of safe third country, the concept of safe country of origin and in the notion of subsequent applications.

Recital 19 should be amended to reflect the same commitment to gender-sensitive approach as detailed in Recital 18. For the reasons outlined above, applicants should be able to choose the gender of the person carrying out the search.

(19) When, in the framework of an application being processed, the applicant is searched, that search should be carried by a person of the ~~same sex~~ sex chosen by the applicant. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.

Recital 25 should be amended to scrap all language indicating a rejection of an application based on perceived non-compliance of obligations.

(25) The applicant should be informed properly of his or her rights and obligations in a timely manner and in a language that he or she understands or is reasonably meant to understand. ~~Having regard to the fact that where, for instance, the applicant refuses to cooperate with the national authorities by not providing the elements necessary for the examination of the application and by not providing his or her fingerprints or facial image, or fails to lodge his or her application within the set time limit, the application could be rejected as abandoned, it is necessary that the applicant be informed of the consequences for not complying with those obligations.~~

Recital 30 should be amended to ensure applicants in need of special procedural guarantees are effectively provided with adequate support before a decision is taken. For instance, no personal interview should be carried out and no negative decision should be taken if a torture victim in need of psychological support is not provided with any such assistance.

(30) In order to guarantee the rights of the applicants, decisions on all applications for international protection should be taken on the basis of the facts, objectively, impartially and on an individual basis after a thorough examination which takes into account all the elements provided by the applicant and the individual circumstances of the applicant, [including an effective response to any special procedural guarantee that may be needed](#). To ensure a rigorous examination of an application, the determining authority should take into account relevant, accurate and up-to-date information relating to the situation in the country of origin of the applicant obtained from the European Union Agency for Asylum and other sources such as the United Nations High Commissioner for Refugees. The determining authority should also take into account any relevant common analysis of country of origin information developed by the European Union Agency for Asylum. Any postponement of concluding the procedure should fully comply with the obligations of the Member States under Regulation (EU) No XXX/XXX (Qualification Regulation) and with the right to good administration, without prejudice to the efficiency and fairness of the procedure under this Regulation.

Recital 32 should be amended to ensure applicants in need of special procedural guarantees are effectively provided with the support to which they are entitled. For special procedural guarantees to be adequately applied, the personnel in charge of taking decision should be fully trained to understand the needs of such applicants, the impact on the asylum procedure and the measures they have to take or implement to guarantee the rights of these applicants. For instance, interviewers should be properly trained in carrying out interviews with applicants in the presence and with the support of a psychologist.

(32) It is necessary that decisions on applications for international protection are taken by authorities whose personnel has the appropriate knowledge and has received the necessary training in the field of international protection, and that they perform their activities with due respect for the applicable ethical principles. [Personnel should be adequately trained in dealing with requests for special procedural guarantees and the application of such guarantees](#). This should apply to the personnel of authorities from other Member States and experts deployed by the European Union Agency for Asylum deployed to assist the determining authority of a Member State in the examination of applications for international protection.

Recital 33 should be amended to ensure that, where needed, time-limits can be extended in the case of applicants in need of special procedural guarantees. Indeed, torture victims may require additional time before being able to meaningfully engage with the asylum procedure (see summary of views, above).

(33) Without prejudice to carrying out an adequate and complete examination of an application for international protection, it is in the interests of both Member States and applicants for a decision to be taken as soon as possible. Maximum time-limits for the duration of the administrative procedure as well as for the first level of appeal should be established to streamline the procedure for international protection. In this way, applicants should be able to receive a decision on their application within the least amount of time possible in all Member States thereby ensuring a speedy and efficient procedure. [However, time-limits shall be extended where appropriate and required by the applicant as a special procedural guarantee](#).

Recital 36 should be amended to avoid the concept of first country of asylum to be applied as a ground for inadmissibility. This provision could lead to non-refoulement violations and may even be a violation of international refugee obligations. Instead, claims should be processed through the accelerated procedure. Existing procedural guarantees, especially those applying to applicants with special needs, should be applied. Furthermore, any assessment of the concept of 'sufficient protection' in a first country of asylum must include

practical access to holistic rehabilitation services according to international human rights standards in that country.

(36) The concept of first country of asylum should be applied as a ground ~~for inadmissibility to activate the accelerated procedure~~ where it can reasonably be assumed that another country would grant protection in accordance with the substantive standards of the Geneva Convention or the applicant would be provided sufficient protection in that country. In particular, the Member States should ~~not examine the merits of an application~~ ~~apply the accelerated procedure~~ where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant has enjoyed and will continue to enjoy protection in that country in accordance with the Geneva Convention or has otherwise enjoyed and will continue to enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and education, ~~the right to rehabilitation~~ and the right to family reunification in accordance with international human rights standards.

Recital 37 should be amended to avoid a safe third country should to be applied as a ground for inadmissibility. This provision could lead to non-refoulement violations and may even be a violation of international refugee obligations. Instead, claims should be processed through the accelerated procedure. Existing procedural guarantees, especially those applying to applicants with special needs, should be applied. Furthermore, any assessment of the concept of ‘sufficient protection’ in a first country of asylum must include practical access to holistic rehabilitation services according to international human rights standards in that country.

(37) The concept of safe third country should be applied as a ground ~~for inadmissibility to activate the accelerated procedure~~ where the applicant, due to a connection to the third country including one through which he or she has transited, can reasonably be expected to seek protection in that country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant will have the possibility to receive protection in accordance with the substantive standards of the Geneva Convention or will enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and education, ~~right to rehabilitation~~ and the right to family reunification in accordance with international human rights standards.

Recital 38 should be amended as inadmissibility could lead to non-refoulement violations and should therefore not be applied under any circumstances.

(38) An application for international protection should be examined on its merits to determine whether an applicant qualifies for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). ~~There need not be an examination on the merits where an application should be declared as inadmissible in accordance with this Regulation.~~ However, where from a prima facie assessment it is clear that an application may be rejected as manifestly unfounded, the application may be rejected on that ground without examining its admissibility.

Recital 39 should be amended so that there are strong safeguards for torture victims. In particular, where there are any indications or signs of past torture or ill-treatment, Member States must cease applying the accelerated procedure.

(39) The examination of an application should be accelerated and completed within a maximum of two months in those instances where an application is manifestly unfounded because it is an abusive claim, including where an applicant comes from a safe country of origin or an applicant is making an application merely to delay or frustrate the enforcement of a removal decision, or where there are serious national security or public concerns, where the applicant does not apply for international protection in the first Member State of entry or in the Member State of legal residence or where an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document is taken back under the Dublin Regulation. In the latter case, the examination of the application should not be accelerated if the applicant is able to provide substantiated justifications for having left to another Member State without authorisation, for having made an application in another Member State or for having otherwise been unavailable to the competent authorities, such as for instance that he or she was not informed adequately and in a timely manner of his or her obligations. Furthermore, an accelerated examination procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation. *Where there are allegations or indications that the applicant may be a victim of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence, the relevant authorities should not or, or in cases where the accelerated procedure has already been activated, should cease to apply the accelerated procedure and, where relevant investigate those allegations or indications.*

Recital 40 should be amended to include the possibility of transferring torture victims away from the border procedure to the regular procedure, so as to facilitate their access to rehabilitation services, ensure they are exempted from detention, benefit from regular time-limits and access to legal and social support, etc.

(40) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for an examination on admissibility or an examination on the merits which would make it possible for such applications to be decided upon at those locations in well-defined circumstances. The border procedure should not take longer than four weeks and after that period applicants should be allowed entry to the territory of the Member State. It is only where a disproportionate number of applicants lodge their applications at the borders or in a transit zone, that the border procedure may be applied at locations in proximity to the border or transit zone. A border procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation. *Where there are allegations or indications that the applicant may be a victim of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence, the relevant authorities should not or, or in cases where the border procedure has already been activated, should cease to apply the border procedure and investigate those allegations or indications and should grant access to the territory of the Member State to the applicant and their dependants.*

Recital 43 should be amended as references to implicit withdrawals of applications based on non-compliance of obligations should be rejected.

(43) Where an applicant ~~either explicitly withdraws his or her application of his or her own motion, or does not comply with the obligations arising from this Regulation, Regulation (EU) No XXX/XXX (Dublin Regulation) or Directive XXX/XXX/EU (Reception Conditions Directive) thereby implicitly withdraws his or her application,~~ the application should not be further examined and it should be rejected as explicitly withdrawn or abandoned, and any application in the Member States by the same applicant further after that decision should be considered to be a subsequent application. ~~However, the implicit withdrawal should not be automatic but the applicant should be allowed the opportunity to report to the~~

~~determining authority and demonstrate that the failure to comply with those obligations was due to circumstances beyond his control.~~

Article 4 - Definitions

Article 4(2) should be amended to ensure the identification of special procedural guarantees is followed by appropriate measures and to ensure consistency.

2. In addition to paragraph 1, the following definitions apply: [...]

(c) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances and who requires special assistance in this regard; in particular, the following applicants should be regarded as potentially being in need of special procedural guarantees: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, lesbians, gays, bisexual, trans, intersex and queer persons, persons with serious illnesses, persons with mental disorders and persons who have been subjected to gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

Article 5 – Responsible authorities

Article 5(5) should be amended to ensure the personnel in charge of receiving, registering, examining and taking decisions on applications for international protection are properly trained in dealing with the needs specified in special procedural guarantees. When required, further assessments should however not be carried out by such personnel but by specialised services, including the documentation of symptoms and signs of violence.

5. Member States shall ensure that the personnel of the determining authority, or of any other authority responsible for receiving and registering applications for international protection in accordance with paragraph 3, have the appropriate knowledge and are provided with the necessary training and instructions to fulfil their obligations when applying this Regulation. Personnel should be adequately trained in detecting signs concerning the need for special procedural guarantees, to respond to such needs and should receive appropriate instructions to that end. Further measures dealing with documentation of gender-based harm, torture, rape or other serious acts of physical, psychological or sexual violence in procedures covered by this Regulation should, inter alia, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Article 7 – Obligations of applicants

Article 7(7) should be amended relevant authorities should take care not to traumatise or re-traumatise applicants when carrying out body searches. The consent for such a search must be attained prior to the search and the applicant should be allowed to choose the gender of the person carrying out the body search.

7. Where it is necessary for the examination of an application, the applicant may be required by the responsible authorities to be searched or have his or her items searched. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Regulation shall be carried out by a person ~~of the same sex~~ with full respect for the principles of human dignity and of physical and psychological integrity. Informed consent for such a search must be attained by responsible authorities prior to the search and the applicant shall be allowed to choose the gender of the person carrying out the search.

Article 8 – General guarantees for applicants

Article 8(3) should be amended to ensure proper training of interpreters. In the experience of IRCT members, interpreters are, too often, not specialised in protection-related issues and are not trained in dealing with such sensitive and intimate information, leading to inaccurate translations and vicarious trauma. Attendance to awareness-raising sessions on the impact of torture on the applicants and the personal interview should be a pre-requisite for interpreters.

3. The determining authority shall provide applicants with the services of an interpreter for submitting their case to the determining authority as well as to courts or tribunals whenever appropriate communication cannot be ensured without such services. [The interpretation services shall be paid for from public funds. Interpreters shall be adequately trained, including in managing sensitive personal information such as accounts of violence.](#)

Article 8(4) should be amended to ensure victims of violence are informed of their right to go through a medical examination and document the signs and symptoms of the acts to which they have been subjected.

4. The determining authority shall provide applicants with the opportunity to communicate with United Nations High Commissioner for Refugees or with any other organisation providing legal advice, [medico-legal reports](#) or other counselling to applicants in accordance with national law.

Article 10 – Admissibility interview

A **new paragraph** should be added to **Article 10** to ensure no decision is taken on the admissibility before the applicant's needs for special procedural guarantees are assessed. As previously mentioned, torture victims may exhibit distrust of authorities and reluctance to disclose accounts of violence, especially at such an early stage of the procedure. As a result, their application may be wrongly dismissed at the admissibility stage. It is therefore necessary to ensure no admissibility interview is carried out before potential needs for special procedural guarantees are assessed.

3. [Admissibility interviews shall not be carried out before the assessment provided for by Article 19 is completed.](#)

Article 11 – Substantive interview

Article 11(2) should be amended to ensure the applicant's ability to effectively participate in the procedure is appropriately taken into account, especially when past acts of gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence could adversely impact the applicant's ability to engage in the process.

2. In the substantive interview, the applicant shall be given an adequate opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and he or she shall provide all the elements at his or her disposal as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which may be missing or any inconsistencies or contradictions in the applicant's statements, [taking into account his or her ability to effectively engage with the interview process, in particular when it could be adversely affected because of past acts of gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence.](#)

Article 12 – Requirements for personal interviews

Article 12(2) should be amended to ensure no personal interview is carried out if special procedural guarantees have not been provided when a need has been identified.

2. The personal interviews shall be conducted under conditions which ensure appropriate confidentiality and which allow applicants to present the grounds for their applications in a

comprehensive manner. To that end, the determining authorities shall ensure that special procedural guarantees have been provided to applicants in need before the personal interview is carried out.

As previously explained, **Article 12(8)** should be amended to ensure proper training of interpreters. IRCT Member Centres report that, too often, interpreters are not specialised in protection-related issues and are not trained in dealing with sensitive and intimate information, leading to inaccurate translations and vicarious trauma. Attendance to awareness-raising sessions organised by the responsible authorities on the impact of torture on the applicants and the personal interview should be a pre-requisite for interpreters.

8. An interpreter who is able to ensure appropriate communication between the applicant and the person conducting the interview shall be provided for the personal interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. **Interpreters shall be adequately trained, including in managing sensitive personal information such as accounts of violence.**

In addition, **article 12(8)** should be amended to reinforce safeguards and guarantees for applicants with special procedural needs. In particular, provisions aiming to create a more favourable environment for the disclosure of gender-based persecution should also be applicable to men, who may have been victims of gender-related harm (LGBTIQ applicants) or sexual violence. In such cases, disclosure to male personnel may be more difficult, especially as interpreters tend to come from the same community or have the same cultural background. As a result any applicant, either male or female, should be able to choose the gender of the interviewer and the interpreter.

Where requested by the applicant, the determining authority shall ensure that the applicant is given the opportunity **to choose the gender of the interpreter and interviewer** provided that this is possible and the determining authority does not have reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner.

Article 16(4) – the Commission should clarify that, within the meaning of Paragraph 4, psychologists and other health professionals should also be allowed to attend the personal interview.

Article 17 – Conditions for the provision of free legal assistance and representation

Article 17(1) should be amended to ensure accredited legal advisers and counsellors are trained in working with victims of violence. It is necessary for legal advisers to learn interview techniques with these particular clients, to properly document their cases without re-traumatising them. As these skills are usually not taught in law schools as part of the mandatory common curriculum, accreditations should be made conditional upon attendance to awareness-raising sessions organised by the responsible authorities on the impact of torture and other serious forms of harm or gender-based violence on applicants.

1. Free legal assistance and representation shall be provided by legal advisers or other counsellors permitted under national law to assist or represent the applicants or non-governmental organisations accredited under national law to provide advisory services or representation. **Legal advisors and other counsellors shall be adequately trained in working with victims of gender-based harm, torture, rape or other serious acts of psychological, physical or sexual violence.**

Article 19 – Applicants in need of special procedural guarantees

Article 19(3) should be amended to exempt applicants in need of special procedural guarantees from special procedures. The current wording only reinforces the possibility of ceasing to apply these procedures when adequate support cannot be provided but does not systematically exclude them.

3. Where that adequate support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41, ~~in particular where~~ or where the determining authority considers that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical, sexual violence or gender-based violence, the determining authority shall not apply, or shall cease to apply those procedures to the applicant.

In addition, **Article 19(3)** should be amended to ensure assessments of special procedural guarantees are carried out in a uniform way through the European Union so that applicants have equal chances to be provided with special procedural guarantees.

4. The Commission ~~may~~ shall specify the details and specific measures for assessing and addressing the special procedural needs of applicants, including of unaccompanied minors, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.

Article 20 – General principles for the assessment of special procedural needs

Article 20(1) should be amended to ensure the applicant's need for special procedural guarantees are assessed before any decision is taken on the admissibility of the case. Torture victims may show distrust of authorities and reluctance to disclose accounts of violence, especially at such an early stage of the procedure. As a result, their application may be wrongly dismissed at the admissibility stage. It is therefore necessary to ensure potential needs for special procedural guarantees are assessed before the admissibility interview is carried out.

1. The process of identifying applicants with special procedural needs shall be initiated by authorities responsible for receiving and registering applications as soon as an application is made ~~and~~ before the **admissibility interview** and shall be continued by the determining authority once the application is lodged.

Article **20(2)** should be amended in three ways: (1) any reference to the concept of “vulnerability” should be removed and replaced by references to special needs; (2) the first indications that the applicants may require special procedural guarantees shall not only be inferred from visible signs or spontaneous declarations but should be proactively sought for to ensure the assessment is systematic; (3) specific measures for addressing special procedural needs should be clarified; (4) assessments should be carried out with the support of an interpreter, where needed; (5) the personnel of responsible authorities should not only be trained in identifying signs of special needs but also in addressing those needs.

2. The personnel of the authorities responsible for receiving and registering applications shall, when registering the application, **systematically ask applicants about any special procedural needs they may have** and indicate whether or not an applicant presents first indications ~~of vulnerability which that he or she~~ may require special procedural guarantees and may be inferred from physical signs or from the applicant's statements or behaviour. **Where necessary, this assessment should be carried out with the support of a trained interpreter paid for by public funds.**

The information that an applicant presents first signs of ~~vulnerability~~ **special procedural needs** shall be included in the applicant's file together with the description of the signs ~~of vulnerability~~ presented by the applicant that could require special procedural guarantees, **measures to be taken to address these needs, authorities responsible for the implementation of these guarantees and to which the applicant shall be referred where needed.**



Member States shall ensure that the personnel of the authorities referred to in Article 5 is trained to detect and respond to first signs of vulnerability special procedural needs of applicants that could require special procedural guarantees and that it shall receive instructions for that purpose.

The IRCT welcomes the clarifications provided by **Article 20 (2) and 20(3)**. The IRCT strongly recommends their adoption, as well as the use of the [PROTECT questionnaire](#) to implement these provisions. However, referrals should be systematic once signs are detected and not based on the potential impact on the procedure that these signs may have, as evaluated by the agent in charge of carrying out the evaluation. Such an evaluation of the needs of victims of violence should be carried out jointly with trained health professionals. Besides, article 20(3) should be amended to ensure health professionals in charge of the second-stage evaluation of victims of violence are adequately trained, as in most Member States curriculum do not include training on post-traumatic stress disorder and intercultural medical evaluations. Interpreting services should also be provided at this stage, where needed, and paid out of public funds.

3. Where there are indications that applicants may have been victim of [gender-based harm](#), torture, rape or of another serious form of psychological, physical or sexual or [gender-based violence](#) ~~and that this could adversely affect their ability to participate effectively in the procedure~~, the determining authority shall refer the applicants to a doctor or a psychologist for further assessment of their psychological and physical state [with the support of a qualified interpreter](#). [This doctor or psychologist shall be trained in carrying out that type of assessment](#).

Article 20(3) should be further amended to provide the applicant with access to the results of the assessment. Would a separate assessment be conducted on special reception needs, the applicant should be able to share these results to avoid multiple assessments and potential re-traumatisation. In addition, it should be made clearer that not having special procedural needs does not necessarily mean not being in need of international protection. For instance, torture victims do not necessarily have special procedural needs.

The result of that examination shall be taken into account by the determining authority for deciding on the type of special procedural support which may be provided to the applicant [and communicated in writing to the applicant](#).

That examination shall be without prejudice to the medical examination referred to in Article 23 and Article 24 [and the evaluations on the admissibility or on the merits of the claim](#).

Finally, **Article 20(4)** should be amended to allow for applicants whose needs have not been initially identified to restart their application when the lack of special procedural guarantees may have had a significant impact on the procedure. For instance, torture victims from safe countries of origin who, during their admissibility interview, may have been unable to disclose acts of severe violence and, as a result, would have had their claims assessed in the accelerated procedure, should be provided with an opportunity to have their claim assessed in the normal procedure.

4. The responsible authorities shall address the need for special procedural guarantees as set out in this Article even where that need becomes apparent at a later stage of the procedure, without having to restart the procedure for international protection, [except if the lack of support have had a significant impact on the procedure](#).

Article 23 – Medical examinations

Paragraph 1 should be amended to reflect existing international obligations and standards in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) with regards to investigation and documentation of torture.

~~1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and subject to the applicant's consent, it shall arrange for a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm.~~

Subject to the applicant's consent, the determining authority shall arrange for a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm where:

(a) There are allegations, signs and symptoms that might indicate that the applicant is a victim of gender-based harm, torture, rape or another serious form of psychological, physical or sexual violence and the medical examination is relevant to the outcome of the application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). The determining authority should not take a negative decision on the application where there are such signs or symptoms without first having conducted an effective investigation including through a medical examination in accordance with the Istanbul Protocol.

(b) The determining authority otherwise deems it relevant for the assessment of the application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation).

Paragraph 2 should be amended to clarify conditions under which medical examinations are carried out. In particular, examinations should be conducted in accordance with international standards, including the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Additionally, when Member States designate the health professionals authorised to carry out such examinations, applicants should be given the opportunity to choose between authorised professionals to carry out the examination. Such examinations require a high level of trust between the professional and the victim as they may be very invasive and may recall the scenes of violence. Free choice may prevent the applicant from having the feeling that the examination is forced upon them and from being re-traumatised. Finally, these examinations should, where needed, be carried out with the support of trained interpreters paid for out of public funds

2. The medical examination shall be carried out by qualified medical professionals [according to international standards, such as the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(Istanbul Protocol\) and where needed with the support of a trained interpreter paid out of public funds](#). Member States may designate the medical professionals who may carry out such medical examinations [and the applicant should be authorised to choose between them](#). Those medical examinations shall be paid for from public funds.

Paragraph 4 should be amended to ensure medico-legal reports are correctly interpreted by the determining authorities. Medico-legal reports are technical and extensive medical documents that often require professional interpretation to properly be taken into account in the assessment of international protection claims. As protection officers usually have a legal and not a medical background, the determining authorities should always be able to be assisted by medical professionals when evaluating

4. The results of the medical examination shall be submitted to the determining authority as soon as possible and shall be assessed by the determining authority along with the other elements of the application, [where needed with the support of qualified medical professionals](#).

A **new paragraph 5** should be added to ensure medico-legal reports are effectively taken into account once requested by preventing the determining authority from taking a decision on the claim before the results of the examination have been communicated. Establishing a medico-legal report according to international

standards can be a lengthy process that may conflict with the obligation to take a decision on the claim within the 6-month period. This time-limit shall not have precedence over the medico-legal process.

5. A decision on the claim shall not be taken before the communication of the results of the medical examination.

Article 33 – Examination of applications

Article 33(2) should be amended to ensure special procedural needs of the applicants and results of medical examinations are effectively taken into account.

2. The determining authority shall take decisions on applications for international protection after an appropriate examination as to the admissibility or merits of an application. The determining authority shall examine applications objectively, impartially and on an individual basis, **after ensuring that special procedural needs of the applicants have been addressed**. For the purpose of examining the application, it shall take the following into account:

(a) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm **and, where relevant, the results of the medical examination referred to in Article 23;**

Article 33(5) should be amended to ensure the prioritisation of applications of applicants with special reception needs takes into account the best interest of the person. For instance, torture victims may have special reception or procedural needs but may also require additional time to be fully prepared for the personal interview or to disclose past persecutions. Thus the prioritisation should only occur when the determining authority is going to take a positive decision on the claim.

5. An examination of an application for international protection may be prioritised in accordance with the basic principles and guarantees of Chapter II, in particular, where:

(a) the application is likely to be well-founded;

(b) the applicant has special reception needs within the meaning of Article 20 of Directive XXX/XXX/EU (Reception Conditions Directive), or is in need of special procedural guarantees, in particular where he or she is an unaccompanied minor, **and it is in the best interest of the applicant.**

Article 34 – Duration of the examination procedure

Article 34 should be amended to ensure the time-limit set by the Regulation to assess international protection claims is extended in due cases. This time-limit shall not hinder the provision of special procedural guarantees. Similarly, the determining authority shall be able to extend the time-limit when it is in the best interest of the applicant. For instance, torture victims may require additional preparation time before their personal interview. This safeguard should be explicitly guaranteed in this article.

2. The determining authority shall ensure that an examination procedure on the merits is concluded as soon as possible and not later than six months from the lodging of the application, without prejudice to an adequate and complete examination **and to the provision of special procedural guarantees to applicants who may need them.**

3. The determining authority may extend that time-limit of six months by a period of not more than three months, where:

(a) a disproportionate number of third-country nationals or stateless persons simultaneously apply for international protection, making it difficult in practice to conclude the procedure within the six-month time limit;

(b) complex issues of fact or law are involved;

(c) the application necessitates it because of circumstances such as past acts of gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence that could adversely affect his or her ability to participate effectively in the procedure.

Article 36 – Decision on the admissibility of the application

Articles 36(1)(a) and **36(1)(b)** should not be included as grounds for inadmissibility. Instead, the IRCT recommends applying the accelerated procedure in cases of a first country of asylum and a safe third country, with the exception of applicants with special procedural needs.

1. The determining authority shall assess the admissibility of an application, in accordance with the basic principles and guarantees provided for in Chapter II, and shall ~~reject an application as inadmissible where any of the following grounds applies~~ apply the accelerated procedure where:

(a) a country which is not a Member State is considered to be a first country of asylum for the applicant pursuant to Article 44, unless it is clear that the applicant will not be admitted or readmitted to that country;

(b) a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 45, unless it is clear that the applicant will not be admitted or readmitted to that country;

2. The determining authority shall assess the admissibility of an application, in accordance with the basic principles and guarantees provided for in Chapter II, and shall reject an application as inadmissible where any of the following grounds applies:

(a) the application is a subsequent application, where no new relevant elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation) or relating to the inadmissibility ground previously applied, have arisen or have been presented by the applicant;

(b) a spouse or partner or accompanied minor lodges an application after he or she had consented to have an application lodged on his or her behalf, and there are no facts relating to the situation of the spouse, partner or minor which justify a separate application.

Article 39 – Implicit withdrawal of applications

Article 39 should be scrapped in its entirety as they effectively punish torture victims for exhibiting basic symptoms associated with torture trauma and risks violating the principle of non-refoulement.

~~1. The determining authority shall reject an application as abandoned where:~~

~~(a) the applicant has not lodged his or her application in accordance with Article 28, despite having had an effective opportunity to do so;~~

~~(b) a spouse, partner or minor has not lodged his or her application after the applicant failed to lodge the application on his or her own behalf as referred to in Article 31(3) and (8);~~

~~(c) the applicant refuses to cooperate by not providing the necessary details for the application to be examined and by not providing his or her fingerprints and facial image pursuant to Article 7(3);~~

~~(d) the applicant has not appeared for a personal interview although he was required to do so pursuant to Articles 10 to 12;~~

~~(e) the applicant has abandoned his place of residence, without informing the competent authorities or without authorisation as provided for in Article 7(4);~~

~~(f) the applicant has repeatedly not complied with reporting duties imposed on him or her in accordance with Article 7(5).~~

~~2. In the circumstances referred to in paragraph 1, the determining authority shall discontinue the examination of the application and send a written notice to the applicant at the place of residence or address referred to in Article 7(4), informing him or her that the examination of his or her application~~

~~has been discontinued and that the application will be definitely rejected as abandoned unless the applicant reports to the determining authority within a period of one month from the date when the written notice is sent.~~

~~3. Where the applicant reports to the determining authority within that one-month period and demonstrates that his or her failure was due to circumstances beyond his or her control, the determining authority shall resume the examination of the application.~~

~~4. Where the applicant does not report to the determining authority within this one-month period and does not demonstrate that his or her failure was due to circumstances beyond his or her control, the determining authority shall consider that the application has been implicitly withdrawn.~~

~~5. Where an application is implicitly withdrawn, the determining authority shall take a decision to reject the application as abandoned or as unfounded where the determining authority has, at the stage that the application is implicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).~~

Article 40 – Accelerated examination procedure

Article 40 should be amended to include strong safeguards to ensure that torture victims are not included in accelerated procedures. No decision on accelerated procedures should happen before an assessment of special procedural guarantees. Two new paragraphs should be introduced to specify safeguards for torture victims. **New paragraph 6** should be introduced to ensure that torture victims can be re-routed into the regular procedure.

6. Where there are allegations or indications concerning gender-based harm, torture or ill-treatment, rape or other serious forms of psychological, physical or sexual violence, the relevant authorities should not, or in cases where the accelerated procedure has already been activated should cease to, apply the accelerated procedure and investigate those allegations or indications.

New paragraph 7 should ensure that identification of applicants in need of special procedural guarantees takes place before a decision on the procedure has been made and that continuous monitoring of the applicant happens throughout.

7. Determining authorities shall examine whether an applicant is in need of special procedural guarantees, including those due to gender-based harm, torture rape or other serious forms of psychological, physical or sexual violence before a decision on the accelerated examination procedure has been taken. Determining authorities shall continue to detect signs and symptoms of vulnerabilities throughout the accelerated examination procedure.

Article 41 – Border procedure

A new paragraph should be introduced to grant torture victims access to the Member State's territory when they lodge an application for international protection at the border.

6. Where an assessment of special procedural needs has shown the applicant to be a victim of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence, the applicant and their dependants should be granted access to the territory of Member State.

Article 42 – Subsequent applications

Article 42(4) should be amended to ensure torture victims can submit a subsequent application when justified. It is common for torture victims not to be able to disclose the past persecutions and acts of violence to which they have been subjected, especially when they have not been properly identified during the first procedure or when their needs have not been adequately addressed. These circumstance should be taken into account in order for Member States to make exceptions in these situations.

4. A new procedure for the examination of the application for international protection shall be initiated where:

- (a) relevant new elements or findings as referred to in paragraph 2(a) have arisen or have been presented by the applicant;
- (b) the applicant was unable, through no fault on his or her own part, to present those elements or findings during the procedure in the context of the earlier application, unless it is considered unreasonable not to take those elements or findings into account. *In particular, the determining authority shall take into account the applicant's ability to participate effectively in the procedure, when this ability may have been adversely affected because of past acts of gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence.*

Article 44 – The concept of first country of asylum

Article 44 should be amended so that any assessment of the concept of 'sufficient protection' in a first country of asylum take into consideration the availability of rehabilitation services in that country. The IRCT advocates that "appropriate access to the labour market, reception facilities, healthcare and education" within the meaning of Article 44, paragraph 2, sub-paragraph (f) should include the availability of rehabilitation services in the safe third country or the first country of asylum.

2. The determining authority shall consider that an applicant enjoys sufficient protection within the meaning of paragraph 1(b) provided that it is satisfied that: [...]

- (h) *there is a right to rehabilitation in accordance with international human rights standards.*

Article 45 – The concept of safe third country

Article 45 should be amended so that any assessment of the concept of 'sufficient protection' must take into consideration the availability of holistic rehabilitation services for torture victims. The IRCT holds that the prohibition of removal in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, would be violated if Member States return torture victims to countries where they will not have effective access to appropriate rehabilitation services.

1. A third country shall be designated as a safe third country provided that: [...]

- (f) *there is a right to rehabilitation in accordance with international human rights standards.*

Article 52 – Procedural rules

The IRCT holds that **withdrawal procedures should not be introduced in the Regulation**. The lack of certainty regarding status constitutes an obstacle and may hinder rehabilitation and integration. If withdrawal procedures are introduced, safeguards to protect torture victims should follow. **Article 52(1)** should be amended so that special procedural needs are identified and addressed during withdrawal procedures. A new assessment is required as the withdrawal may happen after an extended period of time after the initial assessment.

1. Where the competent authority is considering withdrawing international protection from a third-country national or stateless person, including in the context of a regular status review referred to in Articles 15 and 21 of Regulation (EU) No XXX/XXX (Qualification Regulation), the person concerned shall enjoy the following guarantees, in particular:

- (a) he or she shall be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and
- (b) he or she shall be given the opportunity to submit, within reasonable time, by means of a written statement and in a personal interview, reasons as to why his or her international protection should not be withdrawn; and



(c) his or her special procedural needs should be re-assessed following the procedure referred to in Article 19 and addressed accordingly.

Article 53 – The right to an effective remedy

Article 53(3) should be amended to ensure torture victims can submit new elements during appeal procedures when justified. It is common for torture victims not to be able to disclose the past persecutions and acts of violence to which they have been subjected, especially when they have not been properly identified during the first instance procedure or when their needs have not been adequately addressed. These circumstances should be taken into account in order for Member States to make exceptions in these situations.

3. An effective remedy within the meaning of paragraph 1 shall provide for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).

The applicant may only bring forward new elements which are relevant for the examination of his or her application and which he or she could not have been aware of at an earlier stage or which relate to changes to his or her situation, **except when the applicant's ability to participate effectively in the procedure may have been adversely affected because of past acts of gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence.**