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Accelerated Asylum Procedures: Comparing international practice

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Accelerated Asylum Procedures:

Comparing international practice

With asylum systems around the world facing ever-increasing backlogs and delays, many governments are implementing various forms of accelerated processing to speed up asylum procedures. Fair and fast asylum processing is in the best interest of both governments and asylum applicants. However, many existing approaches to acceleration tilt the balance too far towards efficiency, at the cost of fairness. This article examines the proliferation of accelerated procedures around the world, highlighting both commonalities and differences, as well as key concerns. It situates the Swiss accelerated asylum procedures within comparative practice around the world. The Swiss procedures include key safeguards absent in other jurisdictions, and come closest to balancing fairness and efficiency. However, regardless of these safeguards, acceleration comes with risks, including an increased likelihood of incorrect decisions, and the removal of people owed international protection, in violation of international law.

I. The expansion of accelerated procedures globally

Recent years have seen the proliferation of accelerated procedures for assessing asylum claims and facilitating removal of undocumented migrants globally.[1] With reference to examples from the refugee receiving regions of the global north – Europe, North America and Australia – this article examines the aims and shared characteristics of accelerated procedures and the risks they pose for individuals subject to them.

Refugee Status Determination (RSD) is the process through which refugee law is applied to a specific individual, guiding a decision-maker's deliberations as to whether a claimant's fear of returning home entitles them to refugee protection.[2] Fair and effective RSD procedures are an essential element of a well-functioning asylum system. At the same time, it's important that decision-making can be done fast. Long delays in processing can be devastating to the physical and mental health of asylum seekers, and for those who are found to be refugees, for integration into their new community.[3] Yet, international refugee law is largely silent on the content and requirements of these procedures. This allows each state 'to establish the procedure that it considers the most appropriate, in conformity with its particular constitutional and administrative structure'.[4]

One of these has been the adoption of accelerated procedures. States have been considering accelerated asylum policies since at least the 1980s. Accelerated procedures now exist in almost all liberal democratic states of the global north. While there is a great deal of variation in the procedures adopted in states around the world, in this article we identify common trends and areas of concern. We begin by surveying the key characteristics of accelerated procedures, including the criteria for inclusion in the procedures and the rights that are curtailed. We then compare and contrast the Swiss accelerated procedures with other approaches from around the world.

II. Defining accelerated procedures and relevant international law

There is no settled definition of accelerated procedures. In a general sense, they are processing mechanisms that aim to accelerate decision-making for specific categories of asylum seekers. Accelerated procedures operate under various labels – including 'fast-track', 'prioritised' and 'expedited', but all share common characteristics. Most accelerated procedures target asylum seekers who are somehow deemed as less deserving of protection and aim to facilitate their prompt removal from the country. Accelerated procedures aim to speed up the processing of

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[1] For a more in-depth analysis of the spread of accelerated asylum procedures around the world, and the politics and mechanisms that are facilitating this, see Ghezelbash, 'Fast-Track Asylum Procedures as a Tool of Exclusion' in Dauvergne (ed), *Research Handbook on Law and Politics of Migration* (Elgar, 2021) 246-259. See also European Asylum Support Office (2021) *EASO Asylum Report 2021*, 4.3.3 Accelerated Procedures <https://euaa.europa.eu/easo-asylum-report-2021/433-accelerated-procedures>.

[2] Ghezelbash, D 'Refugee Status Determination Procedure' in Chetail, V (ed) *Elgar Encyclopedia of Migration Law* (Elgar, forthcoming).

[3] Procter et al. (2017) 'Lethal hopelessness: Understanding and responding to asylum seeker distress and mental deterioration', *International Journal of Mental Health Nursing* 448-454; Åslund et al. (2024) 'Limbo or leverage? Asylum waiting and refugee integration', *Journal of Public Economics* 105-118.

[4] UNHCR (2019) *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, 189.

asylum claims by introducing strict time limits for each stage of the RSD process and/or reducing procedural safeguards. They are generally framed as exceptional procedures, which deviate and act alongside the standard, and more robust, RSD procedures.

The main risk of accelerated procedures is that the resulting processes are not robust enough to identify individuals in need of protection, and that individuals may be returned to harm in breach of states' *non-refoulement* obligations. While the Refugee Convention and human rights treaties give states some discretion in how to run RSD processes, this is limited by the principle of good faith and the standard of reasonable efficacy and efficient implementation in international law.[5] In the context of the asylum process, this requires states to adopt procedures that are *fair* and *effective*. There is growing consensus amongst the United Nations High Commissioner for Refugees (UNHCR), academics and domestic and supra-national courts around certain minimum constituent elements, including: an in-person interview or hearing with the decision-maker; access to lawyers and interpreters; an opportunity to present supportive evidence and respond to adverse information; and access to independent review.[6] The UN Executive Commissioner's Programme (ExCom) has recognised that accelerated procedures may be appropriate in certain limited circumstances – restricting their use to dealing with manifestly unfounded or abusive claims, and emphasising the importance of not deviating from the core procedural safeguards outlined earlier.[7] Accelerated procedures currently being used around the globe go well beyond this, both in terms of the categories of asylum seekers they target, and the erosion of basic procedural rights. Yet, as will be discussed in more detail, not all accelerated procedures are created equally, and some operate more fairly than others.

III. Criteria for the application of accelerated procedures

In most instances, accelerated procedures target applicants who are designated as being less deserving of protection. While originally use of accelerated procedures was restricted to manifestly unfounded or abusive claims, the procedures have since been applied to a much wider cohort, targeting asylum seekers based on their mode of arrival, the geographic location at which they are intercepted, or the period of time for which they have been in the country.

1. Manifestly unfounded and well-founded claims

Almost all states with accelerated procedures use them to target applicants which they have pre-identified as having weak or manifestly unfounded claims. Some states, such as Canada, adopt accelerated procedures as a means of enhancing access to protection for vulnerable individuals or groups.[8] However, this is far less common. Where the focus is on manifestly unfounded claims, this has often been achieved through the designation of safe third countries. States have kept pre-defined lists of countries which they deem to be safe, and thus give rise to a presumption that the claim for protection is manifestly unfounded. This was the basis for the earliest accelerated procedures introduced in Europe in the 1990s. The practice is now sanctioned at the European Union (EU) level, with 'safe country of origin' being included in the EU's 2013 recast asylum procedure directive[9] setting out the grounds which can engage accelerated procedures (Article 31(8)).

Several states have also applied more informal mechanisms to direct applicants from certain countries into accelerated procedures.[10] For example, some target nationalities from which applicants have had low recognition rates. Sweden channels applicants from countries with a recognition rate below 15% to *de facto* accelerated procedures.[11] In the United Kingdom, the now suspended Detained Fast Track (DFT) system applied to any adult asylum-seeker in detention, where it appeared their case could be decided quickly, regardless of their country of origin.[12] Other common criteria used to assign applicants to accelerated procedures include where an applicant had misled authorities or used false documents, or where the applicant has made a repeat application.

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[5] Goodwin-Gill, G & McAdam, J (2021) *The Refugee in International Law*, 4th edition, Oxford University Press, 601.
[6] Dastyari, A & Ghezelbash, D (2020) 'Asylum at Sea: The Legality of Shipboard Refugee Status Determination Procedures', *International Journal of Refugee Law,* 32(1): 1–27.
[7] ExCom (1984) Conclusion No 30 (XXXIV) The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum.
[8] Immigration and Refugee Board of Canada (2020) 'Less complex claims: The short-hearing and file-review processes' https://www.irb-cisr.gc.ca/en/information-sheets/Pages/less-complex-claims.aspx.
[9] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180 2013, 60.
[10] See the report by Rapid Research Evaluation and Appraisal Lab, 'Methods Used by France, Germany, Italy, and Sweden to Process Asylum Claims' (2023), which provides overviews of France, Germany, Italy and Sweden's streamlined asylum procedures <https://www.cape.ac.uk/wp-content/uploads/2023/07/Dated-POST_RREAL-Asylum-review.pdf>
[11] AIDA (2024) *Sweden Country Report: Accelerated procedure.*
[12] 'Detained Fast Track', Detention Action (2018), see https://detentionaction.org.uk/get-involved/detained-fast-track/.

2. Other criteria

A number of states are adopting criteria for their accelerated procedures which are unrelated to the strength of the asylum claim. Entry without authorisation, or undocumented status when making the claim for protection is a common requirement used to designate applicants to accelerated procedures. This is one of the pre-requisites for being subject to expedited removal proceedings in the United States and the now abolished fast-track procedures in Australia. Similarly, irregular entry or stay is one of the prescribed criteria in the EU asylum procedure directive.

Several states designate applicants to accelerated procedures based on their mode of arrival. Australia was the most prominent example of this practice, with the former fast-track procedures specifically targeting those that arrived by boat without authorisation. The United States has used a similar practice since 2002, channelling all undocumented aliens that arrive by sea into expedited removal procedures.

In other instances, individuals are designated for accelerated procedures based on their geographic location when they apply for asylum.[13] In the US, expedited removal procedures originally only targeted arriving undocumented aliens at ports of entry. It was later expanded to apply to certain unadmitted aliens found within 100 air-miles of the US southwest land border. The criteria was again expanded in 2019, to target undocumented asylum seekers encountered anywhere in the US, who have not been physically present in the country for more than two years. Operation Streamline, which began in 2005, and holds daily hearings en-masse at several courts across the southwest of the United States (regularly 70 persons or more at a time), though targeting undocumented migrants rather than asylum seekers, also applies a geographical focus to those who have entered the US within certain sectors of the southern land border.

IV. Rights curtailed

Accelerated procedures can target any stage of the RSD process. Most commonly, the procedures begin with a pre-screening or admissibility check. In some instances, those that do not pass the preliminary assessment are completely excluded from further status determination procedures and review (e.g. pre-screening carried out at airports and transit zones around the world; pre-screening at sea by Australia and the US). In other instances, those screened in the preliminary stage as meeting the prescribed criteria for fast-track processing progress onto further stages of assessment. These operate in parallel to the standard RSD procedures, but have fewer safeguards and/or stricter time limits. That means the restrictions may cover any stage of the RSD process, including pre-screening/admissibility, first-instance assessment, administrative review, judicial review and removal.

We have identified three common restrictions across the various stages: shortened deadlines; restrictions on review; and restrictions on mobility.

1. Shortened deadlines

The defining feature of accelerated procedures are the shorter deadlines used. This can apply to any or all of the stages discussed above. The deadlines may apply to applicants, requiring the lodgement of documents within certain time periods. Alternatively, they may apply to decision-makers, limiting the time they can take to reach their decision.

The concern is that shortened time frames mean that applicants lack the opportunity to adequately prepare their case. A critical feature of a fair and effective RSD is the opportunity to prepare a case and respond to adverse information.

There are also concerns that accelerated procedures may be in fact *slowing* the determination process. This was particularly the case in the UK's DFT in which appeals to have clients removed from the track, or due to the use of detention pending removal, resulted in lengthy periods of waiting. In Australia, the Immigration Assessment Authority (IAA) faced a years-long backlog of fast-track cases following judicial review.[14]

2. Restrictions on review

Fast-track procedures often involve legal and practical limits on accessing review of adverse determinations. Some states exclude certain fast-track applicants from review mechanisms completely, while in other countries, separate

[13] A report by the American Immigration Council explains the use of expedited removal in the United States, see AIC, Expedited Removal Explainer, 2023 < https://www.americanimmigrationcouncil.org/research/expedited-removal>.
[14] Bridle, M & Ghezelbash D (2025) 'Fairness and Efficiency in the Review of Asylum Decisions: Data-driven insights and lessons from Australia's failed Fast Track process' *Refugee Studies Quarterly* (forthcoming).

inferior review processes are established (e.g. the now abolished IAA in Australia). In other instances, applicants are permitted to lodge a request for review, but this is considered to be non-suspensive, meaning they can be removed from the country before their case is heard. Of equal concern are the practical limitations to accessing review, even in instances where it may be available as a matter of law and policy. This is particularly relevant in the context of admissibility or so-called 'pre-screening' measures at airports, ports of entry, or at sea, where applicants are held incommunicado and cannot access information or legal advice that would allow them to seek review of the decision to deny them entry.

According to UNHCR, the prohibitions on *refoulement* and the general obligation of states to provide an effective remedy enshrined in the International Covenant on Civil and Political Rights (ICCPR) require a review process which is accessible, deals with the substance of the claim and can grant appropriate relief. If the right of review in the context of accelerated procedures, in law or practice, effectively prevents an asylum applicant from accessing an effective remedy and thereby prevents them from pursuing an asylum claim, these international obligations are not met.[15]

3. Restrictions on mobility

Accelerated procedures are often accompanied by measures that restrict the mobility of applicants. In the US (as well as Australia's now abolished fast-track procedures) asylum seekers are subject to mandatory detention potentially for the entirety of the fast-track/expedited procedures. The hotspot approach used in Greece and Italy involves applicants confined to certain limited geographic locations,[16] while in Germany the fast-track procedures ("*Direktverfahren"*) require the confinement of some applicants to so called 'anchor centres'.

These restrictions on mobility may constitute arbitrary detention, in violation of article 9(1) of ICCPR. The UN Human Rights Committee has stated that immigration detention will be arbitrary if it is 'not necessary in all the circumstances of the case and proportionate to the ends sought'.[17] It is unlikely that arguments in relation to efficiency can be sufficient to justify detention measures, as they would not meet this proportionality test. Moreover, detention can adversely affect the quality of interviews and decision-making, and hinder access to legal assistance and psychological support.[18]

V. Swiss accelerated procedures

The Swiss accelerated procedures have a number of distinct features safeguards that better balance fairness and efficiency when compared to other jurisdictions.[19] They are, however, by no means perfect, and replicate some of the flaws and risks evident in other accelerated procedures.[20].

In relation to the approach to allocating applicants to accelerated procedures, the Swiss system is unique in that the default position is the accelerated procedures for applicants, with an 'off-ramp' for more complex cases. Early in the process, a decision-maker assesses whether it will be possible to fairly assess the case within the short timeframes of the accelerated procedures. If not, the complex cases are streamed into the extended procedures, which have more flexible procedural timelines. In practice, the accelerated procedures are used for cases where the facts point to a high likelihood of a person being found to be owed protection, as well as those that are unlikely to succeed. It can thus loosely be described as a hybrid of both the manifestly well-founded and manifestly unfounded approaches to streaming. The benefit of such an approach is that all applicants are treated equally, and the decision as what procedures they are allocated to is based on an individual assessment of the complexity of their case. Moreover, it prioritises efficient processing for all applicants, to the extent it is possible to do this fairly.

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[15] UNHCR (2010) *Statement on the right to an effective remedy in relation to accelerated asylum procedures*, [21].
[16] European Parliament (2023) *The hotspot approach in Greece and Italy*.
[17] *Shafiq v Australia,* 2006, [7.2]; *A v Australia,* 1997, [9.2].
[18] FRA (2018) *Beyond the Peak: Challenges Remain, But Migration Numbers Drop,* 17.
[19] For a recent analysis of the Swiss procedures and the lessons they hold for other jurisdictions, see Ghezelbash, D & Hruschka C (2024), 'A Fair and Fast Asylum Process for Australia: Lessons from Switzerland' Kaldor Centre Policy Brief No 14 <https://www.unsw.edu.au/content/dam/pdfs/law/kaldor/2024-10-a-fair-fast-asylum-process-in-australia-lessons-from-switzerland.pdf>.
[20] An independent evaluation from NGOs working in the sector during the first year of the application of the new system raised particular concerns around overly accelerated timelines, the funding model for legal assistance, and conditions in Federal Asylum Centres where applicant are held for the duration of the accelerated procedures. See Bündnis unabhängiger Rechtsarbeit im Asylbereich, Zur Neustrukturierung des Asylbereichs - Bilanz zu einem Jahr der Umsetzung, 2020 <https://xn--bndnis-rechtsarbeit-asyl-vsc.ch/wp-content/uploads/2020/09/DOSSIER_Rechtsarbeit_DE.pdf>, 6-13. Another report by the Swiss Center of Expertise in Human Rights from August 2021 evaluating the legal protection and the quality of asylum decisions in the new accelerated asylum procedure also highlights several challenges mentioned in this section, see SCHR, Evaluation PERU Rechtsschutz und Entscheidqualität Schlussbericht, 2021 <https://www.sem.admin.ch/dam/sem/de/data/asyl/beschleunigung/peru/bericht-evaluation-peru-tp2.pdf.download.pdf/bericht-evaluation-peru-tp2-d.pdf>.

However, there have been concerns raised around the consistency of decision-making when allocating cases to the accelerated or extended procedures, and that not enough cases were being transferred to the extended procedures. This has improved somewhat since the introduction of checklists for decision-makers, but is an area that requires ongoing monitoring.

In terms of restrictions imposed on applicants as part of the accelerated procedures, these in many ways reflect similar practices around the world. Decision-making is subject to very short procedural deadlines, with strict timelines for each step and a target processing time of 140 days, which includes both first instance decision-making and review. Certain applicants are subject to even faster decision-making timeframes that can be as short as 24 hours. The ability of applicants to properly prepare their claims and submit their applications in such short timelines is an area of ongoing concern.[21] While substantive review rights are generally not curtailed, the short timeframes for lodging appeals to the Federal Administrative Court can impact the ability of applicants to properly prepare their case. Applicants are also required to reside in Federal Asylum Centres for the duration of the accelerated procedures. The conditions and overcrowding of these centres have been a particular area of concern.[22]

These limitations notwithstanding, there are a number of distinguishing features of the Swiss asylum procedures that enhance its fairness when compared to the practice of other jurisdictions. First, rather than omitting key procedural steps and rights, such as access to an in-person interview, and ability to respond to adverse information, the Swiss procedures retain these steps, but subject them to short procedural deadlines. Second, and perhaps most importantly, all applicants are given access to government funded legal representation. This key concession greatly enhances (but of course does not completely ensure) the ability of applicants to navigate the short procedural deadlines. This stands in stark contrast to other jurisdictions, including Australia, which moved to restrict access to legal representation for applicants in its fast-track procedures.

These concessions indicate an awareness of the fact that fairness and efficiency are not necessarily in tension, but that fairness, may in fact contribute to efficiency. Such a view is supported by the failure of other accelerated procedures around the world succeeding in their goal of increasing efficiency of processing. For example, in both Australia and the United States, acceleration which focused on limiting the ability of applicants to properly put forward their cases has backfired, leading to an increase in appeals, and longer systemic delays.[23]

The consultative approach taken in designing the Swiss accelerated procedures is also noteworthy. The government engaged in extensive consultation and consensus building that informed the design and implementation of the procedures. Through these consultations, representatives from all levels of government, the Federal Administrative Court, UNHCR, NGOs and lawyers were able to identify and agree on essential parameters, including acceleration, efficiency, fairness and the rule of law. The participation of a wide range of actors in the policy development process, as well as the willingness of all state and non-state actors to compromise, built trust and gave the policy making process a high degree of credibility. It is noteworthy that the Swiss procedures are the only accelerated procedures we are aware of which have been endorsed, at least in principle, by the local office of the United Nations High Commissioner for Refugees (UNHCR) and many leading refugee sector NGOs, as well as a large majority of the local population.[24]

Conclusion

Accelerated procedures have become a common tool of exclusion in states of the global north. In this article, we have set out the common features of the procedures and the risks which they entail. We also compared and contrasted the Swiss accelerated procedures with other international practice. While elements have been the subject of ongoing critique, the Swiss procedures strike a better balance between fairness and efficiency than in other jurisdictions.

An area ripe for further exploration is the role that policy and legal transfer is playing in the diffusion of accelerated policies. States appear to be learning from and adapting restrictive policies from abroad.[25] This process may therefore be facilitating a push towards increased restriction. Identifying the mechanisms and pathways which are enabling this in the context of accelerated procedures will lay the groundwork for counteracting this trend. At the same time, this may create opportunities for highlighting good practices, and promoting their diffusion and

[21] Ibid.
[22] Ibid.
[23] Bridle and Ghezelbash (n 11).
[24] The reform was confirmed by a popular vote with a majority of 67.8% in a referendum against the new law in June 2016. See Federal Chancellery, 'Votation populaire du 05.06.2016' <https://www.bk.admin.ch/ch/f/pore/va/20160605/>.
[25] Ghezelbash, D (2018) *Refuge Lost: Asylum Law in and Interdependent World,* Cambridge University Press.

adoption in other countries. In this regard, the limitations of the Swiss approach notwithstanding, it does hold a number of positive lessons for other countries around the world when it comes to designing fair and fast asylum procedures.[26]

[26] For these lessons, see Ghezelbash & Hruschka (n 17).