

# Input by ECRE to the 2021 EASO Asylum Report

## Instructions

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Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- ✓ New developments and improvements in 2020 and new or remaining challenges; and
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2020.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments

## Contributions by topic

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1. **Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)**

### Access to the territory

**Bulgaria:** Access of asylum seekers to the territory remained severely constrained in 2020. The Ministry of Interior reported that it had apprehended a total of 2,495 third-country nationals, out of which 2,184 were new arrivals. This represents a 60% increase compared to 2019r, thus indicating similar levels of migration pressure and related prevention despite COVID-19. Asylum seekers and government officials have both long admitted that the border fence can easily be crossed, e.g. by using blankets, ladders or by passing through damaged sections of the fence, which is a persisting and frequently reported problem. However, Bulgaria traditionally experiences much lower numbers than the neighbouring country Greece. This is due *inter alia* to the long-standing practice of the Bulgarian authorities to prevent Turkish nationals from accessing both the procedure and international protection, and to return them back including, in some cases, in violation of the *non-refoulement* principle. In return, the Turkish authorities to a large extent divert the migratory pressure from the Bulgarian to the Greek border. The latest example in this respect was the March 2020 border crisis in Pazarkule-Kastanies region, when the attempted entries to Bulgaria were close to zero. Since 1 January 2017, the Ministry of Interior no longer discloses the number of prevented entries in its publicly available statistics. Thus, in 2020, only 296 asylum seekers were able to apply for international protection at the national entry borders and only 1.4% of them (i.e. 15 individuals) had direct access to the asylum procedure without detention. The remaining 99% who were able to apply at entry borders were sent to the Ministry of Interior's pre-removal centres. Moreover, one of the most negative development in 2020 related to the *refoulement* implemented by the MOI Migration Directorate with regard to 2 asylum seekers. Despite being first-time applicants in possession of valid documents and cleared from the security services, they were deported to their countries of origin Iraq and Turkey in violation of Article 33 of the Refugee Convention

**Austria:** In March 2020, the Ministry of Social Affairs, Health, Care and Consumer Protection issued a decree concerning restrictions of access to the territory in the context of COVID-19. It regulated that entry is only permitted with a valid health certificate. This measure also applied to persons seeking international protection as confirmed by a high official from the Ministry of Interior at a press conference on 27 March 2020. Given that this undermines the right to asylum and the possibility to request international protection in front of any public security agent, a criminal complaint was lodged by an NGO against the Ministry of Interior. The prosecutor's office rejected the complaint as the Ministry declared the document was not an internal decree but only a non-binding "legal opinion". The Ministry of Interior refused to share data on the number of persons that were denied entry as a result of this measure, pointing that it is the responsibility of the Ministry of Health to implement these restrictions. The Ministry of Health stated, however, that it is not responsible for asylum related matters and asylum applicants. Thus, no information was made available on the number of persons seeking international protection that were denied entry to the territory. The Ministry of Health only informed about 6 persons apprehended on 1 March 2020 that did not apply for asylum and where then brought to a Police detention centre (PAZ) in Vienna. The decree restricting access to the territory was finally amended on 30 April 2020 and clarified that persons will be allowed entry when Austria is bound by international law obligations. As of February 2021, the 68th amendment to the decree on restrictions of access to the territory was still in force and enables asylum seekers to access the territory without a health certificate.

In November 2020, a complaint was filed by a Moroccan national living in Bosnia against measures of the Austrian police in Styria. Despite having asked for asylum in September after crossing the green border from Slovenia to Austria along with a group of other asylum seekers, he was handed over to the Slovenian police who also ignored his claim. He was subsequently returned to Croatia and pushed-back to Bosnia. The Ministry of Interior denied the fact that a request for asylum had been made, including for another case involving a Syrian national, as a result of which the concerned persons were handed over to Slovenian Police based on a readmission agreement. In 2020, 514 persons from 48 different countries were handed over to Slovenian authorities based on this ad hoc agreement.

As a response to the allegations of illegal push backs taking place at the Southern border to Slovenia and the fact that the readmissions to Slovenia has doubled in 2020, the initiative "Push back alarm" was founded by activists. Similar to "Alarm phone", the initiative offers a phone number where persons that crossed the border can request a follow up with the police and ask whether their asylum application is being accepted.

Hungarian police reports further mention that Austria sent 5 persons to Hungary on 23 December 2020, and 3 persons on January 2021. These individuals were subsequently pushed back to Serbia. There is no verified information about whether the Syrian and Afghan nationals have requested asylum in Austria.

**France:** The closure of the border has been maintained and several police operations have been reinforced in recent years. The current temporary border control is valid since 1 November 2020 and up until 30 April 2021. Reports of people being refused entry without their protection needs being taken into account at the Italian border persisted in 2020, as confirmed by the High administrative court (Council of State) in a decision of 8 July 2020 in which it reminded the State of its legal obligations in matters of asylum at the border. The Council of State concluded that by refusing the entry to the territory the authorities had manifestly infringed the right to asylum. In a joint statement, six NGOs welcomed the ruling, condemning the fact that these illegal practices are systematically being carried out by the police. The NGOs also urged the Ministry of the Interior to issue public instructions to the border police so that people wishing to seek international protection in France can do so at the French-Italian border as well.

Illegal police operations at the border have been extended from the Menton and Nice areas to the Hautes-Alpes since 2016. Such practices of mass arrest have had an effect on shifting migratory routes, leading migrants to take increasingly dangerous routes through the mountains. By way of illustration, the Italian organisation Doctors for Human Rights (MEDU) denounced at the beginning of 2021 the critical situation of migrants who attempt to reach France from Italy through the Alpine border, highlighting inter alia that snow and freezing winter temperatures make the journey through the mountains particularly dangerous. Racial profiling by the Border Police and other police forces deployed in the region of Hautes-Alpes have also been reported, whereby passengers who appear to be of African origin are being controlled in board trains arriving from Italy. Moreover, persons who explicitly express the intention to seek asylum have been refused entry

by the French authorities on the basis that Italy is responsible for their claim, without being placed under the formal procedure foreseen by the Dublin Regulation. Media reports have documented incidents of unaccompanied children refused entry by police authorities and directed towards the Italian border. Several NGOs further published a report in October 2020 on the illegal practices of the French authorities in this regard, which seem to be applied at several borders. Despite strong condemnation by monitoring bodies, civil society organisations, as well as court rulings condemning Prefectures for failing to register the asylum applications of people entering through Italy, practice remains unchanged

As regards the Franco-Spanish border, Spanish media have reported that migrants are returned from France to Spain without appropriate guarantees, in procedures lasting less than 20 minutes. Reports have shown Border Police officials controlling groups of migrants in Hendaye, placing them on board a van and leaving them at the border instead of handing them over to their Spanish counterparts. In February 2021, the border police illegally returned a 16-years old unaccompanied child from Bayonne (France) to Irun (Spain). The NGOs which reported the incident indicated that these illegal practices are recurrent and recalled that the authorities must take into account the best interest of the child, in accordance with the United Nations Convention on the Rights of the Child. Civil society organisations have denounced what appears to be a practice mirroring the methods of the Border Police on the Italian border. According to the media, 11,000 refusals of entry decisions have been issued at the Spanish land border in the area of Pyrenees Orientales during the first 10 month of 2020, i.e. twice as many as in 2019.

As regards access to the procedure at airports, ANAFE (the National Association of Border Assistance to Foreigners – Association nationale d'assistance aux frontières pour les étrangers) reported in its Annual Report in September 2020 several difficulties in accessing the right of asylum at airports. According to the latter, there is a general lack of information on the right to seek asylum and difficulties occur in the registration of asylum claims at the border. It further highlights the important role of the Police in practice and the obstacles it may create regarding the asylum application. The functioning of the French border procedure was further recently analysed by ECRE in the context of the EPRS study on border procedures (see below – border procedures).

**Ireland:** Media reports in December 2019 stated that immigration control measures in place at Dublin Airport were targeting individuals seeking to disembark from arriving aircraft with false documentation. One such report indicated that “airlines have been told to take such individuals back on return flights before any opportunity to claim international protection arises.” The Irish Refugee Council wrote to the then-Minister for Justice and Equality, Charlie Flanagan, in January 2020, requesting clarification regarding these instructions, the criteria used and their adherence to Ireland’s legal obligations. A written response from the Department of Justice stated that the purpose of these checks on arrival was to determine whether an individual was permitted leave to land, rather than any assessment of asylum. A freedom of information request made by the Irish Refugee Council for information on the policies and procedures on this issue was declined. Despite indications from the Department of Justice that this practice had been largely scaled back, media reports suggest that the policy continued to operate as of March 2020. Moreover, following the onset of Covid-19, newly arrived asylum seekers were subject to medical checks at Dublin airport. Applicants were screened on the basis of health questionnaires, subject to temperature checks and were required to self-report symptoms of Covid-19. Based on their personal situation and circumstances, applicants were then transferred to designated facilities for the purposes of self-isolation for a two-week period.

**Hungary:** From March 2017 to 26 May 2020, most asylum applications were examined in the transit zones and asylum seekers were required to remain in these transit zones, with the exception of unaccompanied children below the age of 14, who were placed in a childcare facility, and with the exception of those lawfully staying in the territory. Very sporadic admittance to the transit zones happened between January and March 2020. From then on, the Government suspended the admission to the transit zones indefinitely, claiming that there is a connection between COVID and ‘illegal’ migration. This policy hindered access to the asylum procedure for most asylum seekers arriving at this border section of the EU. Since 26 May 2020, only one family was granted a single-entry permit to apply for asylum in Hungary, after submitting their statement of intent at the Embassy in Belgrade. Pushbacks and violent policing practices in the Balkan Region remain a serious matter of concern in 2020, according to a report published by the Border Violence Monitoring Network. On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it recommended ending the pushbacks and to stop the violence by Police

and border police inflicted on children during removal. On 17 December 2020 the CJEU issued a judgement in the case C-808/18 and ruled that moving illegally staying third-country nationals to a border area, without observing the guarantees surrounding a return procedure constitute infringements of EU law. No legislative amendments followed the judgement and the practice still remains the same. Hungary had pushed back over 4,400 people since the CJEU's ruling.

**Cyprus:** In 2020, the Cypriot authorities, for the first time, carried out push-backs of boats carrying mainly Syrians, Lebanese and Palestinians who had departed from Turkey or Lebanon. 9 push backs were carried out in total, although other failed attempts of boats trying to reach Cyprus from Lebanon were reported. In December, one final push-back attempt was made, but due to damages the boat was eventually rescued. The AIDA reports provides detailed information on the different push-backs that were carried out in March, June, August and September 2020, incl. by on the number of applicants concerned, countries of origin, practices of the authorities etc.

**Slovenia:** In 2020 the Ministry of Interior proposed a new amendment to the Foreigners Act that incorporates the concept of a "complex migration crisis on the field of migration". If a "complex crisis" arises in the field of migration, the Ministry of Interior could be allowed to close the border for 6 months and restrict access to the asylum procedure. The proposal to activate the articles must involve an assessment of the situation and the effects of the "complex crisis" on the security treat level for the protection of fundamental constitutional social values, especially regarding the effective functioning of the legal and welfare state, the protection of public order and peace, the efficient functioning of the economy, the protection of health and the life of the population, and the level of security. According to the proposal, the police would have the authority to determine whether a person can apply for international protection. In the case that the police determines that an individual can be returned to another country, they can return the individual regardless of the provisions of the IPA. Exceptions would apply to unaccompanied minors and individuals whose health conditions prevent a return. The assessment of whether someone is an unaccompanied minor would be made by the police based on the person's appearance, behaviour and other circumstances. An appeal against the police order would not have a suspensive effect. The proposal is currently being discussed in the National Assembly. The government tried to activate the provisions of the Defence Act during the pandemic that would give the army additional powers at the border, but the proposal was not supported by Parliament and was heavily opposed by NGOs.

In practice the police are not conducting any identification of persons in need of protection in migration groups entering the Slovenian territory. In 2020 the police detected 14,592 irregular crossings of the Slovenian border. According to the statistics only 4.008 individuals expressed their intention to apply for international protection. The discrepancy between the number of irregular crossings and the number of people that actually enter the procedure for international protection - supported by numerous reports on pushbacks - shows that access to the asylum procedure is systematically denied to individuals in the police procedure. After the police procedure, individuals are returned to Croatia based on the readmission agreement. Readmission agreements form a system outside EU law and the CEAS provisions, and do not uphold the standards that these require. In practice, no assessment of whether the principle of non-refoulement could be violated by a return from Slovenia is conducted. Therefore, there is no possibility for individuals in the procedure to argue that there has been a violation of the non-refoulement principle, or to challenge the decisions of the police. It is also not evident from the police documentation if individuals expressed an intention to apply for international protection, and if so, whether the police informed the individual of the right to asylum and how the person responded. This issue was also highlighted by the Slovenian Ombudsman in its reports.

In 2020 the Slovenian police returned 10,025 of the 14,592 apprehended migrants to neighbouring countries based on the readmission agreements. 9.950 were returned to Croatia. Reports show that migrants still in the police procedure were not able to effectively access the asylum procedure. According to testimonies given upon their return to Bosnia, misinformation was given to migrants by the police during the police procedure, e.g. that there is no asylum in Slovenia, that they are not entitled to asylum or that they would be placed in asylum facilities but were in fact returned to Croatia. Based on the readmission agreements, Slovenia also received 1,116 individuals from Italy. In August 2020, individuals started to report pushbacks from the Austrian border to Slovenia. The number of people returned based on the readmission agreement between Slovenia and Austria increased from 23 people being returned by the end of July to 98 people being returned

by the end of August. 176 people in total were returned from Austria to Slovenia in 2020. Individual testimonies of individuals show that some were returned to Croatia by the Slovenian authorities after being readmitted from Italy or Austria.

**Croatia:** Pushback practices persisted throughout 2020. In March 2020, the ECtHR asked the Croatian government a series of questions about its push-back practice, on the grounds of individual complaints against Croatia, which the Syrians SB, AA and AB filed with ECCHR and PRO ASYL in April 2019. The Danish Refugee Council (DRC) reported that 16,425 people were pushed back from Croatia to January to BH in the course of 2020. Pushbacks were recorded irrespectively of people's age, gender or country of origin, meaning that it also concerned unaccompanied children, families with children and single women. A certain number of those who were push backed reported that access to the asylum procedure was denied to them after explicitly requesting it to Croatian police. Some reported to DRC they were silenced, laughed at or beaten when requesting asylum. Some of the interviewees reported being pushed back to BH, despite never having passed through the country to enter Croatia. Theft and destruction of property, physical violence, and degrading treatment by Croatian officials were reported to DRC. Persons reported having their possessions (mobile phones, power banks, clothes, footwear, etc.) confiscated and/or destroyed (set on fire) their personal documents (including passports) taken away from them and/or burnt. A list of examples of abusive and degrading treatment is included in the AIDA report, as well as statistics collected by medical staff on the type of injuries inflicted in 52 cases (wounds, contusions, hematomas etc.). During 2020, a certain number of people reported to DCR chained pushbacks from Slovenia through Croatia to BH; from Italy, through Slovenia and Croatia to BH as well as from Austria, through Slovenia and Croatia to BH. (mobile phones, power banks, clothes, footwear, etc.) Information provided to DRC by interviewees indicates that there exists a level of communication and coordination between authorities of different EU Member States, with interviewees reporting being "handed over" by the authorities of one state to those of another

Centar for Peace Studies (CPS) also confirmed that the practices of push backs and denying of access to asylum system as well as actions of the Croatian police at the borders continued to be the most problematic aspects in relation to access to asylum system. According to CPS illegal deportations continued and became even more violent. According to CPS the Border Violence Monitoring Network, of which CPS is a member, in 2020 recorded 110 testimonies of pushbacks including 1,656 persons. In 58.59% of cases, persons expressed intention to seek asylum in Croatia, and in 39% cases persons were under the age of 18. In almost 90% of cases some form of torture or degrading treatment was recorded. Centre for Peace Studies, together with Border Violence Monitoring Network, Society for Psychological Assistance and Welcome Initiative published „Pushback report on children and unaccompanied children in Croatia“. The report contains testimonies of children and their families as well as of unaccompanied children on violent and illegal methods that prevent access to the procedure for international protection. On 18 December 2020, the Border Violence Monitoring Network (BVMN) released the 'Black Book of Pushbacks' which presents evidence on these violations and documents the violence on the EU's external borders.

**Serbia:** Access to territory for persons in need of international protection has remained a serious concern in 2020, especially after August 2020 when Serbia has established a barbwire fence at its southern border with North Macedonia. Also, the COVID-19 pandemic was used as an excuse for imposing contentious border polices, including an absolute prohibition of entering on Serbian territory during the state of emergency that was in force from 15 March to 6 May 2020. This had significantly decreased the number of entries of refugees and migrants to Serbia in the period March-May 2020. Additionally, the practice of collective expulsions continued, regardless of the pandemic circumstances. The findings of BVMN and of UNHCR indicate that refugees and asylum seekers who were arriving from North Macedonia were subject to a short-term deprivation of their liberty, searches and a denial of access to basic rights. Next, they were removed and forced back to North Macedonia without an assessment of their special needs e.g. age, mental or medical state, risks of refoulement, but also the risks of chain refoulement further to Greece or Turkey. They did not have the possibility to apply for a remedy with suspensive effect in order to challenge their forcible removal. Another common trend detected in 2020 are collective expulsions to North Macedonia conducted directly from reception facilities, such as those in Preševo and Tutin. A total of 361 persons were collectively expelled to North Macedonia according to UNHCR and its partners. Additional information on the restrictions to the access to the Serbian asylum procedure, including at the airport which continues to be a serious matter of concern, can be found in the AIDA report.

Wide-spread push-backs towards Serbia have been documented along the green border between with Bosnia, Croatia, Hungary and Romania where refugees and asylum seekers are systematically denied access to the territory and the asylum procedure, and are often subjected to various forms of ill-treatment, some of which might amount to torture. In 2020, the UNHCR office in Serbia and its partners documented that 25,180 persons were pushed backs from Croatia, Bosnia, Hungary and Romania, of whom 13,459 persons was pushed back from Romania, 9,011 from Hungary, 1,975 from Croatia and 735 from Bosnia. People pushed-back to Serbia frequently face obstacles in accessing the asylum procedure. In October 2020, a documentary 'Pushbacks and Dangerous Games' was broadcasted on N1 television. This documentary presented an overview of Croatian push back policies and presented several testimonies from refugees collectively expelled from Croatia. BVMN published 3 testimonies encompassing 30 people who were pushed back from Hungary to Serbia, 9 testimonies involving 93 people who were pushed back from Croatia, 3 testimonies referring to 67 persons who were pushed back from Romania, and 2 testimonies given by 7 persons who were collectively expelled from Bosnia. APC was also reporting on cases of collective expulsions which included severe forms of violence.

**Romania:** According to Romanian Border Police reports, asylum seekers arrive in Romania mainly by land through the south-western border with Serbia, the southern border with Bulgaria, and through the northern border with Ukraine. UNHCR Serbia reported that 13,409 persons were collectively expelled from Romania to Serbia from 1 January to 31 December 2020, i.e. the highest number of push backs registered since UNHCR Serbia began monitoring pushbacks in spring 2016. JRS reported that there were cases of push-backs of single men, families and groups (at least 5 incidents were documented by JRS), but many remain unknown, because JRS Romania has no access to all the cases. The AIDA report further lists a list of testimonies and evidence of ill-treatment from border guards, i.e. violent and aggressive behaviours, threats, beatings discrimination, limited or no access to food and medical assistance as well as confiscation of personal belongings. Please refer to the AIDA report for more details. In 2020, asylum seekers also tried to enter in Romania by crossing the Danube River by boats or swimming coils. In April 2020, 7 migrants drown after a boat carrying 16 migrants capsized on the Danube River between the Serbian and Romanian border. In August 2020, another asylum seeker drowned in the Danube River after trying to enter into Romania with the help of swimming coils.

According to the Romanian Border Police, all persons apprehended at the border with Bulgaria were "taken over by the Bulgarian Border Police, according to the Romanian-Bulgarian agreement, in order to continue the investigations and to arrange the legal measures that are required". The same was reported also for the most of the foreigners apprehended at the border with Ukraine. JRS also reported that access to the territory was affected in 2020 due to the pandemic. The Border Police triggered a series of specific actions, such as: increasing surveillance actions, border control measures in the field of combating illegal migration and tightening the border verification measures, both at border crossing points and at border strips. The number of border guards was supplemented with approximately 4,000 border officers. Unaccompanied children who were apprehended trying to cross irregularly the border from Serbia to Romania continued to be prosecuted for having crossed illegally the border and for migrant smuggling. JRS representative reported 8 case of unaccompanied minors from Afghanistan who were under criminal investigation for crossing the border illegally and migrant smuggling. The children were/ are held in pre-trial detention

**Switzerland:** Access to Swiss territory was the main obstacle to applying for asylum during 2020, since due to many border closures across Europe, fewer people were able to actually get to the Swiss borders. Switzerland closed its border on 13 March 2020. Despite several exceptions were foreseen, for example for crossborder workers who could continue to enter Swiss territory, no exception concerned persons claiming international protection at the border. During a press conference in March 2020, Federal Councilor Keller-Sutter emphasized that entry into Swiss territory may be refused even to asylum seekers and this would be legitimate since they would be able to claim asylum in neighboring countries such as Italy, France or Germany. Moreover in 2020, the NGO Asylex reported two cases of pushbacks occurring at the Southern border. In one case, the person having been sent back to Italy had spent four days in Switzerland. He had tried to submit his application in a federal asylum centre not mandated to register new applications and, after having been temporarily detained by the canton, he had been invited to submit his application in Chiasso. Arrived in Chiasso, however, he was put on a train to Milan without any possibility to apply for asylum. This removal was not documented so that it was not possible to legally contest it.

**Spain:** As stated by the European Commission, arrivals in Spain, and in particular to the Canary Islands, significantly increased (+46%, 35,800) in 2020 compared to 2019. In Spain, the impact of COVID-19 restrictions on irregular arrivals was temporary: since August 2020, the number of arrivals to Spain was consistently greater than in 2019. National statistics confirm this trend and even indicate a higher number of arrivals than the one provided by the European Commission. According to the national authorities, a total of 41,861 persons arrived in Spain in 2020. This refers to 1,755 arrivals by land, and 40,106 arrivals by sea, thus demonstrating that the vast majority of persons arrived by boat.

In recent years, the main obstacles regarding access to the Spanish territory are faced at the Ceuta and Melilla borders and checkpoints. These obstacles are mainly due to the impossibility of asylum seekers to cross the border and exit Morocco. There are several reported cases concerning refusal of entry, *refoulement*, collective expulsions and push backs, including incidents involving up to a thousand persons during 2018, and hundred persons during 2019 and 2020. Similarly to the AIDA 2019 report, the AIDA 2020 report provides an exhaustive list of incidents that were reported at the border in 2020 and the beginning of 2021 (i.e risks taken by asylum seekers to cross the border; number of jumps over the enclaves; the building of new fences etc.). These incidents demonstrate that migrants and asylum seekers continue to resort to dangerous ways to enter Ceuta and Melilla, sometimes resulting in deaths. Further incidents at the border are likely to continue in 2021. Since the event in El Tarajal case, each year many NGOs, groups activists and other stakeholders join in Ceuta at the border, in order to commemorate the deaths and strive for justice. Amnesty International denounced again in 2021 the lack of accountability for what happened, as well as the lack of compensation to victims' families, and the illegality of push-backs. PICUM also underlined that the Tarajal case testifies the racism of Spain's migration system and enforcement.

In 2020, pushback practices continued to be reported. At the beginning of January 2020, the Guardia Civil further pushed-back 42 persons (including 26 women and 2 children) to Morocco after arriving to the Spanish Chafarinas islands. Almost 400 human rights NGOs signed a statement denouncing such illegal pushbacks. On 19 January 2020, the NGO ELIN reported the summary expulsion of two people who managed to cross the border between the Spanish enclave Ceuta and Morocco. According to the NGO based in the Spanish enclave, the Moroccan authorities had blocked the attempt of over 300 people to climb the border fence a few hours earlier on that day. Witnesses reported that the Moroccan police brutally repressed the crossing and inflicted injuries on many persons that had to be brought to the hospital. In May 2020, eleven NGOs referred to the Public Prosecutor the case of a push-back of an unaccompanied child from Ceuta to Morocco. They asked for an independent investigation and recalled that this push back is a violation of Spanish Immigration law and the UN Convention on the rights of the Child. Later in 2020, a joint parliamentary question on a push back of a Sub-Saharan man to Morocco after he had jumped over the fence in Ceuta was referred to the Government by a member of the Parliament on behalf of the PSOE and Unidas Podemos parties. The Government refused to answer the question, arguing that the concept of push backs does not exist in Spanish and European law. In 2020, during a session at the Senate, the Spanish Ombudsman also denounced the abuse carried out by police authorities at borders and the collective expulsion being carried out in Ceuta and Melilla. In addition, the body referred to the difficulties faced by international protection seekers, in the case of Melilla, and the impossibility, in the case of Ceuta, to seek international protection regularly at the borders. In January 2021, around 100 NGOs reached out to political groups to oppose push-backs and require from the Government to immediately stop such practices.

As regards the arrivals by sea, more than a half (23,023 persons) disembarked on the Canary Islands, which became one of the main destination for boats since the last months of 2019, while 16,610 persons arrived on mainland and the Balearic Islands. Only a few migrants (473 persons) disembarked in Ceuta and Melilla. The NGO Camindando Fronteras (Walking Borders) estimated that 1,851 the persons died while reaching Spain through the Canary route in 2020. It further reported that within the last week of October 2020, i.e. a period of 7 days, 480 persons died in the Atlantic Ocean while trying to reach the Canary Islands. It is very likely that the Canary Island will continue to be the main point of entry to Spain for migrants and refugees throughout 2021, especially given the increased border controls at the Ceuta and Melilla border points and the increased capacity of Morocco to control the Northern part of the country, inter alia through EU funds. UNHCR warned against the danger of the 'Canary route' and the risks of deaths as this deadly route continues to be used by migrants. It has also stated that around the 40% of the persons arriving to the Canary Islands could be in need of international protection. While the focus has continuously been on the Canary Island throughout

2020, the so-called 'Algerian route' has also recorded an increase of activities towards the end of 2020. Thus, many migrants and refugees reached the Balearic Islands, Alicante and Murcia or were rescued in these areas.

**Sweden:** Despite the fact that the reintroduction of border control at the internal borders must be applied as a last resort measure, in exceptional situations, and must respect the principle of proportionality, Sweden has regularly re-introduced border controls at its internal borders in recent years. The current temporary border control is valid up until 11 May 2021. The decision to re-introduce border controls is based on the government's assessment that there is still a threat to public order and internal security in Sweden, including an important terrorist threat, and that there are shortcomings in the control of the external borders around Schengen. Checks are thus set up accordingly to address the threat. While Sweden has not introduced any measures directly affecting the right to seek asylum, the access to the asylum procedure was rendered more difficult in 2020 as a result of COVID-19, inter alia due to travel restrictions. On 19 March 2020, the Swedish government introduced a temporary ban on non-necessary travels to Sweden from countries other than EU countries, Great Britain, Norway, Iceland, Liechtenstein and Switzerland. In its directives to the Police Authority for 2020, the government states that it shall prioritise and take the necessary measures to be able to carry out a fully functioning regular border control at external borders during all the months of the year. In addition, the authority shall continue to develop its preparedness and ability to conduct an appropriate border control at internal borders if necessary.

**Poland:** Throughout the last couple of years, independent monitoring visits to the border crossing point in Terespol held by the Commissioner for Human Rights, Amnesty International, and Human Rights Watch as well as NGOs: the Legal Intervention Association (SIP) and Helsinki Foundation for Human Rights HFHR) confirmed the existence of grave systemic irregularities with accepting applications for international protection at the border. There have been numerous reports on this situation and several cases have been brought before the ECtHR. The most recent information on this issue was gathered for the purpose of the submission to UN Special Rapporteur on the human rights of migrants on push back practices, prepared by a Commissioner for Human Rights and the Consortium of NGOs. (Consortium of NGOs, Submission to the UN Special Rapporteur on the human rights of migrants on push back practices from 01 February 2021, available (EN) at: <https://bit.ly/2ZdTMbJ>). Despite the ECtHR *M.K. and others*' judgement, repeated reports and interventions, the Polish government still denied in 2020 the application of unlawful practices at the border. Contrary to the ECtHR findings, the government states that the applicants in the *M.K. and others*' case were economic migrants and they did not ask for international protection. They were not within the Polish territory when the interim measure was granted by the ECtHR, so it could not have been applied, because interim measure cannot constitute a basis for entry or for an application for international protection. With pro bono assistance of lawyers, the cases of push backs were also brought before the domestic courts. There have been 25 judgements delivered by the Supreme Administrative Court and all of these cases resulted in revoking administrative decisions on refusal of entry issued by Border Guards. (see HFHR, Submission to the UN Special Rapporteur on the human rights of migrants on push back practices from 1 February 2021, available (EN) at: <https://bit.ly/2ZdTMbJ>)

The COVID-19 pandemic and limitations in cross border movement added even more obstacles to access to international protection in Poland. As the Commissioner for Human Rights pointed out, persons intending to apply for international protection were not included in the regulation of the Ministry of Interior and Administration of 13 March 2020 on the temporary suspension or limitation of border traffic at specific border crossing points as persons allowed to enter Poland during the pandemic, which did not guarantee access to procedure. Also, rail connections were suspended, including the rail border crossing in Terespol. According to the Border Guard Headquarter however, applying for international protection was made possible for those in need. The overall number of applicants in 2020 was 2,803, in comparison with 4095 in 2019. It is the lowest number of applicants since 1999. In April-July 2020 there was no application for international protection submitted at the border crossing point in Terespol nor in Medyka (main entry border crossing point to Poland from Ukraine). According to the statistics provided by the Border Guard for 2020, only 448 persons applied for international protection at the border crossing point in Terespol, while in 2019 it was 1610 persons. In 2020, 1989 persons were refused entry in Terespol and the appeals against these decisions were submitted by 162 persons (while in 2019 4378 persons were refused entry and 81 persons appealed against these decisions).



**United Kingdom:** Juxtaposed border controls in France and Belgium allow the UK to limit access to the territory. Since 2018, possibly as a result of the increased security measures in the Sandhurst agreement the number of people attempting to cross the channel in small boats increased, with much media attention. The government responded with statements condemning the actions and pledging both to return those who travel from France and promising to treat such people in the criminal justice system as well as making agreements with the French government to prevent people from leaving in this manner. The Home Secretary appointed a Clandestine Channel Threat Commander in August 2020. In September a parliamentary committee opened a new inquiry on the issue of channel crossings and asylum seeking routes thought e EU and has taken written and oral evidence. At her political party's annual conference the Home Secretary pledged to amend the system; giving the message that the mode of arrival is relevant to the way someone's claim should be dealt with. In the autumn the government increased the transfers under the Dublin Regulation, apparently as the deadline for such transfers was approaching. It began tweeting this information from the Home Office's account on a regular basis, usually conflating the transfers with removal of former offenders. The Clandestine Threat Commander stated that this was part of a deterrent measure. These transfers, often using charter flights, were widely criticised, particularly as it was revealed that people arriving irregularly from France, primarily in small boats, were subject to superficial questioning to ascertain little more than their recent journey and failure to identify vulnerabilities. This practice had to cease when it was challenged legally; the Home Office was ordered to conduct the interviews according to its regular procedure.

### Border monitoring

**Bulgaria:** In 2020, the Bulgarian Helsinki Committee carried out 509 border monitoring visits at the border with Greece and Turkey, as well as at Sofia Airport transit hall. During these visits, the Bulgarian Helsinki Committee can also obtain information from police records when needed to cross-check individual statements, but has access only to border detention facilities, not to border-crossing points *per se*.

**Croatia:** In November 2020, the European Ombudsman Emily O'Reilly launched an investigation into the lack of efficiency of the border monitoring mechanism. The European Ombudsman has opened an inquiry into a complaint from Amnesty International against the European Commission. The inquiry focuses on how the Commission seeks to ensure that the Croatian authorities respect fundamental rights in the context of border management operations. Amnesty International and other organisations have raised concerns about border management by the Croatian authorities, drawing attention to alleged human rights violations linked to 'pushbacks' of migrants and other border operations. The complainant has raised doubts as to whether such a mechanism has been set up, and claims that the Commission has failed to verify that the Croatian authorities have done so or how the allocated funds have been spent.

The Ombudsman has set out a series of questions to the Commission and asked it to reply by 31 January 2021. The questions seek to establish the nature of the monitoring mechanism and how the Commission has verified it has been set up. If it has been created, the questions seek to establish how the Commission has verified its effectiveness and, more generally, how the Commission ensures that border management operations that receive EU funds ensure respect for fundamental rights.

**Slovenia:** There is no systematic border monitoring in Slovenia. Border monitoring is conducted by UNHCR. In 2020 UNHCR conducted 19 visits to police stations where they checked police records and conducted talks with the police. Border monitoring is also conducted by the Slovenian Ombudsman within the National Preventive Mechanism framework. In 2020 the Ombudsman visited 16 police stations. During its visits the Ombudsman detected several problems regarding access to the asylum procedure. The lack of any screening of persons in need of international protection is one of the biggest problems in Slovenia. The Ombudsman noted that the police do not conduct screening and do not provide information on international protection in the case that individuals express an intention to apply for international protection. The Ombudsman recommended that the police should process foreigners individually and that they should record whether the individual was informed about the right to asylum and if they want to claim it. The Ministry of the Interior, however, responded that the police do not have the obligation to inform each migrant about the right to asylum.

Throughout 2020, the Border Violence Monitoring Network continued to report cases of individuals who claimed that they did not have access to the asylum procedure in Slovenia, while PIC also detected cases of

asylum seekers claiming they were unable to apply for asylum after several attempts. Cases of pushbacks were also detected from Italy to Slovenia and for the first time from Austria to Slovenia. The reports along with the police statistics on the number of people returned to Croatia based on the bilateral readmission agreement indicate that people continue to have limited access to the asylum procedure in Slovenia.

**Romania:** In Romania there is a framework of border monitoring, which takes place under a bipartite agreement between UNHCR and the General Inspectorate of the Romanian Border Police (Inspectoratul General Politia de Frontiera, IGPF). JRS Romania is the implementing partner of UNHCR, as described in the Memorandum of Understanding. In 2020, the border monitoring activities were affected by the pandemic. During the state of emergency no visits were conducted and during state of alert only essential visits were conducted. A part of the monitoring actions were held over the phone and via email. A total of 25 monitoring visits were conducted by JRS in 2020, out of which 9 were conducted at the border and 16 at the detention centres. Monitoring visits were conducted jointly with UNHCR at Moravita and Jimbolia border crossing points and at the Territorial Inspectorate of Border Police. JRS carried out monitoring visits at Otopeni and Cluj-Napoca airports, Giurgiu, Moravita and Jimbolia border crossing points, Bucharest and Giurgiu reception centres and Mangalia Border Police. No cross-border monitoring visits were conducted in 2020.

**Belgium:** In Belgium, there is no actual border monitoring system in place that corresponds to the definition set forth by UNHCR. However, several organisations have formed a coalition active in the field of administrative detention of migrants. Since January 2021, this coalition is officially in place and known by the name MOVE. Currently, the members of the steering Committee of MOVE are Vluchtelingenwerk Vlaanderen, JRS Belgium, Caritas International Belgium and Ciré, but the goals of MOVE are achieved in full collaboration with an advisory committee composed of other NGO's. The members of MOVE build on almost 20 years of experience in the field of immigration detention and possess vast expertise in the four specific pillars of the coalition:

- visits and monitoring of detention centers, in order to give to the detainees psychosocial support, neutral information and legal aid. The visitors observe the conditions in the detention centers.
- quality legal expertise offered to visitors and other legal practitioners, in order to increase access to legal defense for the detainees
- field observations and recommendations for concrete changes are carried out by the political pillar, which maintains close contact with politicians;
- a media and communication pillar, that works on fundamentally questioning detention for migratory reasons in the public space.

## 2. Access to information and legal assistance (including counselling and representation)

### Legal assistance at first instance

**Bulgaria:** Asylum seekers have the right to ask for the appointment of a legal aid lawyer from the moment of the registration of their asylum application. However, legal aid in first-instance procedures has still not been implemented as of the end of 2020. At the end of 2017, the National Legal Aid Bureau, the national body assigned to provide state sponsored legal aid, received funding under the AMIF national programme to commence for the first time ever in Bulgaria the provision of legal aid to asylum seekers during the administrative phase of the asylum procedure. Legal aid under this 80,000 € pilot project was implemented until 31 January 2021 and was limited to the vulnerable categories among applicants for international protection. The project was extended until 31 July 2021.

The provision of legal aid for vulnerable asylum applicants commenced in March 2018 and in 2020 was secured to 818 asylum seekers at first instance. Other asylum seekers did not enjoy access to legal aid at the first instance of the asylum procedure. Amendments to the law introduced at the end of 2020 foresee a major change in the legal representation of unaccompanied asylum seeking and refugee children. The obligation to represent these children not only in the procedure, but also after the recognition and before all agencies and institutions with regard to their rights and entitlements, was shifted from the municipalities to the National Legal Aid Bureau. The law also introduced conditions for the qualification of the appointed legal aid lawyers

and requirements for a representation in the child's best interest. The selection and the following training of selected lawyers are expected to be carried out in early 2021.

**Ireland:** Applicants for protection are directed to the international protection unit within the Legal Aid Board for free legal assistance and support completing the questionnaire, once they have entered the international protection process. However, the Irish Refugee Council has assisted a number of people who had registered with the Legal Aid Board and had been told to complete the questionnaire by themselves due to a general lack of capacity within the Legal Aid Board or a lack of capacity within the solicitors on the Legal Aid Board panel, with anecdotal reports that the level of funding provided to the panel is insufficient to cover the number of hours required to give comprehensive representation. This issue persisted throughout 2020. The Irish Refugee Council's Law Centre and Information and Referral Service have assisted with approximately 318 questionnaires since the coming into force of the IPA. A number of other issues arising in connection with the questionnaire include (on the basis of Irish Refugee Council casework): translation errors in a number of the non-English questionnaires; persons with special needs being provided with the questionnaire but provided with no assistance completing it (i.e. illiterate applicants being provided with the questionnaire despite being unable to read it); people receiving questionnaires in English where there exists no version in their preferred language. This issue persists for a small number of languages such as Tigrinya.

**Slovenia:** The IPA does not provide free legal representation for applicants in the first instance procedure. This was provided by the non-governmental organisation Legal-Informational Centre (PIC) and financed through the Asylum, Migration and Integration Fund (AMIF) to all asylum seekers until the end of April 2020. At the end of April 2020, the AMIF program concluded. This coincided with the formation of a new government in Slovenia that decided that they will not open a new call for the AMIF project. Since then, legal advice and representation is no longer provided to all asylum seekers in Slovenia. PIC continues to provide free legal help and representation, but on a smaller scale. In 2020 PIC assisted more than 1,341 asylum seekers. PIC lawyers provide legal information about asylum, represent them during the application and throughout the first instance procedure.

**Austria:** Access to legal assistance is one of the main changes to the Austrian asylum system in 2020 and as of 2021 (For background information on this, see ECRE Legal Note of 2019: Reforming Legal Assistance in Austria: An End to Independent Provision?, available at: <https://bit.ly/38DXIRt>). In short: the Government officially cancelled the extension of the contracts with the NGOs previously providing legal assistance, who thus no longer receive funding to that end. At the beginning of 2021, only 10% of the staff of Diakonie Flüchtlingsdienst were still employed as a result of the contract cancellation in 2020. The lack of funding will thus inevitably affect the activities of the relevant NGOs and raises serious concerns as regards the quality of legal assistance that will be provided to asylum seekers as of 2021. The responsibility for legal assistance was shifted to the new Federal Agency – the BBU GmbH – which started providing legal counselling and representation on 1 January 2021. It provides open counselling in first instance as long as “possibilities are available”. The counselling services are provided at the buildings of the regional directorates of the BFA. There is no funding for transportation costs for persons willing to receive counselling at this stage. At first instance, the BBU GmbH has the legal obligation to provide legal counselling in all procedures where the first interview by the BFA is conducted within 72 hours. In these procedures, the counsellors of the BBU also have to take part in the interviews carried out with the BFA. At the time of writing, this concerned mainly subsequent applications, fast track procedures and procedures at the airport. The BBU GmbH is not being appointed in Dublin cases by the BFA and therefore is not involved in interviews in these procedures in general in first instance.

The BBU GmbH counselling unit is now composed of former employees of Diakonie Flüchtlingsdienst and VMÖ. The BBU GmbH was obliged to offer jobs to all employees of the latter organisations. As of January 2021, a total of 120 counsellors were working in 12 different offices throughout the country. While in the past legal advisers did not have to meet specific qualifications or training standards, all future advisors must hold a degree in law from an Austrian University and have completed a compulsory internship at a court. These requirements do not apply, however, to all previous staff already employed at VMÖ and ARGE organisations. The start of the activities of the BBU GmbH in January 2021 was described as chaotic and not very well organised due to a lack of interest of the Ministry of Interior which does not seem eager to invest in a working legal representation system. Nevertheless, within three weeks, the BBU GmbH had already taken over

representation in almost 3,000 cases and over 180 court sessions. For additional information on the new legal aid system, please refer to the AIDA report.

**Spain:** As regards the access to the asylum procedure, several shortcomings have been reported in 2020, especially regarding the lack of legal assistance for migrants arriving by sea to the Canary Islands, resulting in important violations of their rights and the law. In particular, migrants do not receive legal assistance within the 72 hours after their arrival as foreseen by the law and lawyers are agreeing to (i.e. signing) expulsion orders without having seen nor talked with their clients. Detainees that are held at the CIE have no access to the outside world and are not allowed to call their family to inform them about their expulsion. Similarly, an important lack of adequate interpretation has been reported. Many stakeholders have expressed concerns about the absence of legal rights for migrants arriving by sea to the Canary Islands. The NGO CEAR and the Sub-Commission of Foreigners and International Protection at the General Council of the Spanish Legal Profession (Subcomisión de Extranjería y Protección Internacional del Consejo General de la Abogacía) reported that migrants are not receiving legal assistance in the framework of the expulsion procedure, that they are not informed their rights and that collective expulsions are being carried out. The President of the General Council of the Spanish Legal Profession pointed to the lack of proper coordination in the implementation of the law. In this context, UNHCR also called for an enhanced provision of legal assistance to migrants reaching the Canary Islands. In July 2020, it announced the future deployment of the Agency's professionals at the Archipelagos, with the aim of supporting institutions and organisations in identifying international protections needs of newcomers, and subsequently refer them to the asylum procedure. UNHCR's activities on the Canary Islands thus started in January 2021.

**Netherlands:** The 2019 AIDA report mentioned that the Dutch Secretary of State had announced that she was drafting a proposal to adjust the Aliens Decree which would limit the free legal assistance at first instance. This measure was part of the 2017 Coalition Agreement of the Dutch administration. On 9 April 2020, the Secretary of State announced that free legal assistance would be kept in place. On the same day, however, it was announced that asylum seekers would no longer receive legal penalties in case the IND does not decide upon their application within the legal time frame.

**Cyprus:** In practice, the only free legal assistance available at the first instance examination is extremely limited and under funded projects. Due to the lack of state-provided legal assistance, UNHCR has consistently funded the project "Strengthening Asylum in Cyprus", implemented by the NGO Future Worlds Centre from 2006-2017 and by the Cyprus Refugee Council since 2018 until present. The project provides for three lawyers for all asylum seekers and beneficiaries of international protection in the country and, therefore, concentrates on provision of legal advice and legal representation only for precedent-setting cases. In 2020, approximately 400 persons received legal advice from the CyRC whereas the number of pending asylum applications are approximately 19,000.

**Switzerland:** The Coalition of Independent Jurists for the right of asylum, gathering several lawyers and NGOs working on asylum cases, has published an independent evaluation of the first year of implementation of the asylum reform. The report partly focuses on the work of the mandated legal protection, pointing at a series of problematic issues. On one hand, the Coalition raises the question of the independence of such mandated organizations, noting that they are very cautious when it comes to taking position in the public space. The geographical proximity with the SEM in the federal centers is also reflected in the perceptions of asylum seekers, who do not always take the independence of their legal representative for granted. The report also points at insufficient coordination among the various mandated organizations, that have missed, so far, an opportunity to jointly influence the development of case law in the interests of asylum seekers.

As regards the impact of COVID-19 on legal assistance, the Ordinance on Measures Taken in the Field of Asylum due to Coronavirus (Ordinance COVID-19 Asylum) states at art. 6 that in case the legal advisor cannot participate in the interview due to circumstances related to the coronavirus, the interview can be conducted and is legally effective. This provision has been strongly criticised by the Swiss Refugee Council and other organisations as well as in a legal note concluding that interviews carried out without the legal representative shall be considered formally invalid. As a consequence, this provision has not been used in practice, except in a few cases at the beginning of the pandemic. Moreover, in some cases, asylum-seekers awaiting a decision at first instance or for whom an appeal has been lodged have been allocated to a canton without their legal representative being informed. Furthermore, due to COVID-19, some applicants have been transferred to

other centres within the same asylum region or even in another region without the legal representatives being informed beforehand. During 2020, the SEM has also not provided access to legal assistance and representation to people applying for asylum while in prison or detention, although there have been several judgements ruling that such access must be guaranteed.

**Croatia:** State funded free legal aid for applicants for international protection ended on 31 March 2020. New public call for providers of legal counselling was published in November 2020. In 2020, the Croatian Law Center as an implementing partner and with the financial support of the UNHCR, implemented the project "Legal Support in the Asylum System". Due to the COVID-19 virus pandemic, the provision of legal information to targeted groups of beneficiaries including those for international protection, was usually provided by telephone, mobile applications (WhatsApp) and e-mail or in the case of direct contact with the beneficiaries in compliance with all epidemiological measures and recommendations. In 2020, Jesuit Refugee Service (JRS) reported that due to measures introduced to combat the spread of the COVID-19 they provided legal assistance in limited scope as they had been prevented from carrying out their legal counseling activities in the Reception Centre in Zagreb. In 2020, CLC participated as a partner in the project "Croatian Lawyers Asylum Network (CALN), aimed for building a network of lawyers who are working in the field of asylum and migration, financed through STEP UP Fund – capacity-building for NGO on refugee protection and inclusion and lead by Dutch Council for Refugees. The project will end on 30 April 2021. Within the mentioned project, it is planned to launch an online platform with the aim of connecting all actors who provide legal assistance and support to applicants for international protection and beneficiaries of international protection. The platform will be used as a virtual space for the exchange of legal opinions, practical challenges and problems observed in legislation.

**Portugal:** While the number of spontaneous asylum applications significantly reduced in 2020, the pressure on services did not follow this trend as, for instance, there was an increase in the need of support of persons undergoing the regular procedure (before the final decision) and an increase of cessation procedures requiring legal assistance. Furthermore, the coronavirus pandemic posed significant challenges to the provision of assistance due to, inter alia, the lockdowns and nation-wide restrictions to movement, the need to adapt spaces, and work methods (e.g., significant reinforcement of remote assistance). The serious capacity challenges faced by Portuguese Refugee Council (CPR) have restricted the provision of information during the first stage of the asylum procedure, particularly regarding asylum seekers placed in private accommodation in more remote locations. Moreover, in November 2020, the Ministry of Home Affairs, the Ministry of Justice and the Bar Association signed a protocol to ensure the provision of legal counselling and assistance to foreigners to whom entry into national territory was refused (at Lisbon, Porto, Faro, Funchal and Ponta Delgada airports). According to information available at the time of writing of the AIDA report, this protocol was made within the framework of article 40(2) of the Immigration Act and is not intended to cover asylum procedures.

### Legal assistance at second instance

**Bulgaria:** The AMIF-funded pilot project on legal aid, which was carried out up until 31 January 2021, also covered assistance in the preparation of appeals before the court. As mentioned above, the project has been extended until 31 July 2021. Otherwise, for regular applicants on appeal, national legal aid arrangements only provide for state-funded legal assistance and representation after a court case has been initiated, i.e. after the appeal has been drafted and lodged. As a result, asylum seekers rely entirely on NGOs for their access to the court, namely for drafting and lodging the appeal. Presently, the Bulgarian Helsinki Committee provides this type of assistance independently of EU funding. In 2020, BHC assisted 4,835 asylum seekers and beneficiaries of international protection, of whom 3,525 were new applicants in 2020 and 383 were asylum seekers with cases pending from previous years.

**Sweden:** In September 2020, a parliamentary committee proposed that an inquiry should be initiated looking into the public counselling system of the administrative court process, with an emphasis on the migration process.

**Portugal:** In general, asylum seekers enjoy unhindered access to free legal aid at appeal stage. Nevertheless, the practical implementation of the "means test" conducted by ISS and the "merits test" conducted by free legal aid appointed lawyers have been recently raising some concerns:

- In the case of the “means test” conducted by the ISS, the fact that asylum seekers admitted to the regular procedure are issued a provisional residence permit and are therefore entitled to access the labour market (see Access to the Labour Market) has at times resulted in asylum applicants having a level of income that excludes them from free legal aid. In this case, given the usually limited levels of income, they can still be offered more favourable conditions to access legal aid such as instalments. While this is not problematic, by the end of 2020, CPR was informed of some cases, mainly outside of the Lisbon area, where applicants within the regular procedure whose legal aid applications have been refused due to the residency documents presented and to the lack of proof of income (notably in cases where such applicants were benefiting from social support provided by the ISS due to the lack of income).
- In the case of the “merits test”, as reported in previous years, the practice of the Portuguese Bar Association remained inconsistent. Since 2019, CPR witnessed an increasing number of cases where, following a refusal by the appointed lawyer to provide free legal aid on the grounds that the chances of success were limited, the Bar Association chose not to appoint a replacement. In some instances, this happened following the assessment of only one lawyer. Furthermore, the objective criteria for such decisions are not clear. This continued to happen in 2020. While some of the decisions adopted in 2019 were later reversed following revision requests submitted with the support of CPR, throughout 2020, CPR observed that reversals were less frequent. Up until now, this practice has mostly impacted applicants within Dublin/Admissibility/Accelerated procedures. This remains a concerning practice that may have an impact on the effective access to legal aid by asylum seekers.

**Croatia:** JRS advocates for the introduction of a certain control mechanism for persons which are on the list of free legal aid providers before administrative courts. Namely, JRS received complaints from applicants about a lack of communication with legal aid providers during the proceedings, which reflects on applicant's unpreparedness at the hearings and accordingly affects the outcome of the dispute.

**Slovenia:** In 2020, migrants faced challenges in accessing the refugee advisors. Until the end of April 2020 all asylum seekers were represented by PIC lawyers that helped asylum seekers in obtaining a refugee advisor to represent them before the Administrative Court. The AMIF project that enabled PIC to represent asylum seekers was concluded at the end of April 2020. Since then, the Migration directorate gives asylum seekers the list of refugee advisors, together with a decision, in their language. In addition, they are also instructed that they must obtain the help of the refugee advisor themselves, or contact the Migration directorate to provide one for them. Cases of individuals who could not access refugee advisors before the deadline for the appeal were reported. Detained asylum seekers had problems in accessing the help of refugee advisors since many had no access to a phone. Lack of translation, wrongly translated decisions and illiteracy also prevented asylum seekers from obtaining the representation of refugee advisors in 2020. There have been reported cases of more than one refugee advisor lodging an appeal at the Administrative Court against the decision of an asylum seeker.

**United Kingdom:** The legal aid fixed fee for appeals was changed in 2020 ; whilst it was raised lawyers were required to conduct more work and the complex fee structure meant that in fact lawyers lost money in the new system. Following a successful challenge the new regulations were revoked and until a full consultation is completed, the rates have been amended.

**Poland:** In 2020, 311 applicants appealing the decision of the Head of the Office for Foreigners benefited from the system of free legal aid. Taking into account the overall number of appeals (1,943) in 2020, the capacity for providing legal aid within the system funded by the State is clearly not sufficient. The Association for Legal Intervention (SIP) as one of the few NGOs providing legal aid within the system is also of the opinion that providing assistance only in the second instance is not enough. Main evidence is gathered in the first instance proceedings – that is when the applicants are interviewed, country of origin information is collected and witnesses can be heard. And this is the phase of the proceedings, where cost- free legal assistance is not provided (of course private lawyer can be arranged, but it means the applicant bears the costs). SIP gives examples of cases, where some evidence from the country of origin were presented in the appeal were not taken into account by the second instance authority, because the applicants should have presented them in the first instance. The argument, that the applicant had not been advised by the lawyer on what evidence can be relevant for the procedure was not considered. There is also a separate free legal aid system for the administrative court proceedings (onward appeal). In 2020 the Voivodship Administrative Court in Warsaw (examining all the complaints against decisions regarding international protection) granted free legal

assistance in 87 cases and refused to grant it in 30 cases. Before the system of legal aid was created, legal assistance had been provided by NGOs under European Refugee Fund (ERF)-funded projects. This funding, now provided under AMIF, practically has been suspended since mid-2015. Many NGOs, with qualified lawyers, continued to provide free legal assistance in the proceedings (including first instance), but this assistance is not stable, since it depends on short-term funding within projects. Due to the lack of funding NGOs generally lack resources and cannot provide assistance to applicants on a wider scale covering the presence during interview.

### Access to information

**Bulgaria:** The written information provided by the authorities is complicated and not easy to understand. This opinion is shared by all NGO legal aid providers active in the field. The common leaflet and the specific leaflet for unaccompanied children drafted by the Commission as part of the Dublin Implementing Regulation are not being used in Bulgaria or being provided to asylum seekers. The same applies to the information provided on the SAR's website, which is also available only in Bulgarian. The applicants who are placed in closed centres should further receive information about the internal rules applicable to the respective centre as well as about their rights and obligations. Under national law, this information should be provided in a language that they understand. This obligation was not met in 2020. As regards urban asylum seekers and refugees living in the Sofia region, UNHCR has funded an Information Centre, run by the Red Cross and located in Sofia, which will be maintained throughout 2021. In 2020 altogether 491 asylum seekers and beneficiaries of international protection were provided different types of information in this center.

**Ireland:** The lack of transparency with respect to the information and legal assistance provided to persons refused access to the international protection procedure, particularly at the frontiers of the State who are refused 'leave to land', remains an ongoing concern in 2020. The Concluding Observations of the UN Committee against Torture specifically called on the Irish State to ensure that all persons refused 'leave to land' are provided with legal advice informing them of their right to seek international protection, in a language they can understand. As regards information on the Dublin procedure, anecdotal evidence suggests that it is not always clear that the asylum seeker understands that they are being subject to the Dublin procedure. The onus is at all times placed on the asylum seeker to read and understand the content of the Dublin information leaflet, rather than ensuring that it is properly explained to the applicant by a caseworker or Authorised Officer.

At the outset of the Covid-19 pandemic, public health information was distributed to residents through the circulation of notices in multiple languages. However, as previously noted, when steps were taken to move people out of Direct Provision at the height of the pandemic so as to permit residents additional space to social distance, this was largely achieved without consulting residents, while notice provided was extremely short and residents were not informed as to whether the move would be temporary or permanent in nature.

**France:** The general "Guide for asylum seekers in France" (guide du demandeur d'asile en France) has been updated in September 2020 and is available in French and 30 other languages. During the COVID period, the responsibility for providing information on the health situation and the consequent suspension of asylum activities has been shifted on to the NGOs. Thus, some information documents on sanitary and health measures has been translated for migrants at the initiative of the authorities, NGOs or UNHCR through the information site "Refugies.info". However, the OFPRA's website was updated regularly with information for asylum seekers on a dedicated page (only available in French). Most of the information was thus available to asylum seekers and refugees during the pandemic.

**Hungary:** As people submitting a statement of intent at the Embassy are not yet considered as asylum seekers, there is no specific obligation to provide them with information. The only information available can be accessed on the NDGAP website, and even that information is only available in Hungarian. The website in English is outdated and does not even mention the Embassy procedure.

**Romania:** The Border Police stated that the territorial structures of the Border Police have leaflets in several languages of international circulation, as well as Arabic, Kurdish, Pashto, Farsi. The leaflets cover information on the rights and obligations of asylum seekers and information regarding the assistance provided by NGOs. According to JRS, though, some of the migrants declared that they received no information at the border



crossing point and other stated the contrary. It was further mentioned by JRS representative that it is difficult to validate these statements. However, the lack of interpretation at border crossing points has been reported at several occasions throughout the year, thereby hindering access to information.

**Portugal:** The provision of information and assistance to asylum seekers placed in detention at the border by CPR during the first quarter of 2020 (i.e. up until when the border procedure was still applied) continued to be challenging and was aggravated by shorter deadlines, communication problems, bureaucratic clearance procedures for accessing the restricted area of the airport where the CIT is located (in particular regarding interpreters), and limitations in the timely provision of information by SEF on the dates of interviews and language skills of the asylum seekers. Within the context of the coronavirus pandemic in particular, additional efforts were made in all the reception centres managed by CPR to provide health-related information and support in relation to the understanding and application of preventive measures. In addition to the provision of information in individual contacts with all CPR's services, group information sessions with healthcare staff were organised, leaflets were distributed and the recommendations from the health authorities were often recalled by the staff whenever possible. The distribution of hygiene products such as hand sanitiser and protective materials (e.g., masks) was also ensured.

**Slovenia:** The law does not specify in what form the information is to be provided. After the applicants have undergone their medical examination and before they lodge their asylum application, information is provided through a video that was made in 2020. The duration of the information video is approximately 7 minutes. The video contains information about the procedure, the rights and obligations of asylum seekers, and the right to appeal. It does not contain information concerning the reasons for asylum, nor on the NGOs working on the field of international protection. In 2020, there was no available information video tailored to unaccompanied minors. The information is also not tailored for the specific needs of asylum seekers, e.g. potential victims of trafficking, persons in the Dublin procedure. The brochure containing information on international protection was also updated in 2020. However, asylum seekers did not receive it upon lodging the application. In practice, asylum seekers can read the brochure in the lobby while waiting to lodge the application, but they cannot keep it for future reference.

As regards information on reception, information meetings were held in March 2020 with all accommodated asylum seekers during which they were provided with information regarding COVID-19, the importance of preventive measures and proper hygiene, and the procedure in case of symptoms. Interpreters were present during these meetings. All national instructions and decrees were regularly interpreted in different languages and posted over all reception centres. Picture posters were also made. During their accommodation, individuals were also informed orally of the preventive measures. Asylum seekers were provided with masks and available hand sanitizers. As part of the preventive measures, food distribution was reorganized as well as group activities.

**Malta:** AWAS reported that information is provided regarding asylum procedures (based on material prepared with EASO's support) but also education, employment, health and housing. Some leaflets are distributed and some info sessions were organised early in the year but these activities were discontinued due to COVID-19. Information is also given by AWAS to residents regarding the rules of the centres. Information is given to residents entering the centres about their rights and rules of the centres. AWAS also established an information point at the end of 2020, a space for information, either by appointment or drop in. This MAU Advisory Unit has an office in each centre and someone from AWAS is present on site on a daily basis. These arrangements were put in place at the end of 2020 and their effectiveness remains to be observed at this point.

### **Access to NGOS**

**Bulgaria:** As regards the access of NGOs and third parties to reception centres, it was fully prohibited in 2020 as a prevention of COVID-19. However, this prohibition was not only in place during the state of alarm but has been prolonged up until today, thereby heavily restricting the access to asylum seekers.

**France:** According to an OFPRA Decisions of 10 December 2018 and 30 July 2020, 38 organisations are authorised to accompany asylum seekers in interviews. These organisations are frequently requested to accompany asylum seekers, most of the time from applicants not accommodated in the centres they run.



However, the lack of specific funding dedicated to this mission renders such assistance difficult in practice. Only 1.7 % of asylum seekers interviewed in 2019 were accompanied by a third party, compared to 1.9% in 2018 and 1,8% in 2017. Figures for the year 2020 were not available at the time of writing of the AIDA report.

**Ireland:** Throughout the Covid-19 pandemic and associated restrictions all visits to Direct Provision centres and temporary accommodation centres were suspended, except in circumstances whereby the visit was deemed to be for an essential purpose. Nevertheless, the Irish Refugee Council's advocacy and support services remain open and available for the duration of the Covid-19 pandemic in order to provide advice, information and support to asylum seekers. Caseworkers are working remotely and are contactable by phone or email, with client consultations taking place on a largely remote basis, by audio-video link or telephone.

**Romania:** During the state of emergency, JRS staff were present in the regional centres 2 or 3 days per week, while others were present everyday. When they were not present in the centre asylum seekers could contact them through phones or WhatsApp. During the state of alert most of them were present in the centres on a daily basis. However, IGI-DAI reported that during the state of emergency (16 March- 14 May 2020) access of visitors and those who do not carry out activities in the regional centers was restricted. Granting permissions to leave the centre was suspended. It was recommended to limit the movement of people outside the regional centres for 2 hours per day per person only for grocery shopping and other emergencies. During the state of alert (15 May 2020 until the drafting of the AIDA report) the movement of people outside the centre was still limited.

**Austria:** After the take over of the BBU GmbH at the start of 2021, there were rumors that access for NGOs to return centres, located in remote areas, would be restricted in future. The BBU GmbH clarified however that Diakonie Flüchtlingsdienst will have access to the centre and will be provided with a room for counselling services. The centre in Schwechat is not used as a return centre since 11 September 2020 as it is used as an accommodation for asylum applicants at the first stage of their procedure (self isolation due to Covid 19 pandemic). These return centres and their effectiveness is highly disputed: There are many persons accommodated there up to two years. There were more than 400 persons accommodated in the return centres during 2019 and 2020, and only 33 opted for a voluntary return.

**Hungary:** On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it found worrying that NGOs are excluded from consultation and cannot conduct activities in a free environment, including NGOs working on asylum and detention. The HHC is also not involved in provision of information or legal assistance to migrants located in Serbia or Ukraine, who wish to submit an intent at the Embassy. As regards the access of NGOs to reception centres, access was denied from mid-march to end of June as a result of COVID-19. Since November 2020, access is possible only with masks, following a control of the fever and after having disinfected the hands.

**Switzerland:** During the lockdown in spring 2020, many legal advisory offices for asylum seekers had to close their open consultations or restrict access to them. Following the lockdown, they could at least partially re-open to the public. Some offices have reinstituted open consultations while others have restricted access and require from the asylum seekers to make an appointment unless they have very urgent matters

**Spain:** During COVID-19 NGOs continued to support asylum seekers via remote tools such as phones or video calls. After the first lockdown, assistance in person was also ensured in accordance with COVID-19 measures. After the declaration of the State of Alarm in Spain, NGOs in Spain have been declared as essential activities.

**Croatia:** In 2020, as a result of COVID-19, access to reception centres was restricted from March 2020, with the exception of personnel of the Ministry of Interior, Croatian Red Cross and MdM who ensured the normal functioning of the facilities. According to information provided by the Initiative Welcome, other civil society organisations, apart from CRC and MdM, had to stop with their activities in the centres. The Jesuit Refugee Service (JRS) reported that due to measures introduced to combat the spread of the COVID-19 during 2020, they had been prevented from carrying out their legal counselling activities in the Reception Centre in Zagreb. As a result a significant number of applicants did not have access to free legal aid.

**Poland:** COVID-19 has affected the access to the reception centres. In the periods of March-May and November-December 2020, no permissions to access the reception centres were given and the permissions already given were withdrawn if the presence of persons or organizations in the centre was not indispensable. Legal, psychological and educational assistance and activities were continued online or by phone. Visits of the family members were excluded. NGOs could access reception centres only in January-February and June-September 2020.

**Malta:** In 2020, access to NGOs was denied again for several months to NGOs but also UNHCR, officially in reason of the COVID-19 pandemic. Access was authorised again in July but was denied again in August until October, thus leaving hundreds of asylum-seekers with no information or assistance. During some months in 2020 group sessions with applicants were not authorised. These were subsequently not possible due to Covid-19 measures. Meetings were only possible with individual clients, limiting the monitoring activities.

**Cyprus:** Since March 2020, with the outbreak of Covid-19, several restrictions have been imposed regarding access of detainees to either their lawyer, NGOs, or family and friends. During the first lockdown, from the end of March until the end of May 2020, nobody was permitted to visit Menogia, including lawyers. The measure had been applied for the First Registry and Reception Center in Kokkinotrimithia and the Asylum Seeker Accommodation Center in Kofinou. From May 2020, a restriction with regards to family members and friends continued, however, NGOs, and lawyers had access to the Menogia, as well as the aforementioned centres. From November until present, and based on a Ministerial Order, no person can enter or exit migrant reception and/or detention centres without prior authorisation by the Minister of Interior. This restriction does not apply to new arrivals and people having to enter/exit for work related reasons or humanitarian reasons.

**Belgium:** From 13 March 2020 until 15 July 2020, due to the covid-19 pandemic, visits in detention centres from NGO's and other instances were suspended. In April 2020 Myria was authorised to reprise their visits. Individual parliamentarians could continue their visits to the centre during this period, yet were denied access to the common area's and detainees. Moreover, at the time of writing of the AIDA report, family visits were restricted because of the Covid-19 sanitary measures. All detained asylum seekers have the right to a visit by one adult person a week, minors can accompany an adult when visiting. The visit takes place behind a screen and while wearing masks, touching each other is strictly prohibited.

### 3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)

#### Interpretation

**Bulgaria:** Both at first and second instance, interpretation continued to be difficult in 2020, and its quality was often poor and unsatisfactory. Interpretation in determination procedures remains one of the most serious, persistent and unsolved problems for a number of years. Interpretation is secured only from English, French and Arabic languages, and mainly in the reception centres in the capital Sofia. Interpreters from other key languages such as Kurdish (Sorani or Pehlewani), Pashto, Urdu, Tamil, Ethiopian and Swahili are scarce and largely unavailable. With respect to those who speak languages without interpreters available in Bulgaria, the communication takes place in a language chosen by the decision-maker, not the applicant. In the past there were also cases where the determination was conducted with the assistance of another asylum seeker. In both cases it is done without the asylum seeker's consent or evidence that he or she understands it or is able to communicate clearly in that language. It has to be noted however that, in 2020, this represented only 0.2% of the cases, therefore it can be concluded that this serious procedural gap was been finally addressed.

58% of the monitored court hearings were assisted by interpreters. In 2020 the regional administrative court in Haskovo regularly omitted to engage interpreters in the first hearing on asylum cases in attempt to make savings, if the appellants failed to appear before the court. It created undue delay in the cases where the appellants duly appeared as far as the hearings had to be postponed in order to arrange the interpretation. This malpractice created serious problems with respect to the level of understanding and communication between the court and the appellants as the latter were not informed in a language they understand about

the next hearings scheduled and the other instructions by the judge in this respect, which often caused subsequent failure to appear and to be guaranteed a fair hearing before a court of law.

**France:** In 2020, interpretation was still conducted in-person and not by phone or videoconference despite the health crisis. OFPRA set up a health protocol, including temperature reading, mandatory masks for the asylum seeker, the interpreter and the protection officer, and protective plexiglass. According to some stakeholders, the quality of interpretation can vary significantly. Some asylum seekers have reported that translations are too simplified (e.g. approximate translations or not in line with their answers) or carried out with inappropriate behaviour (e.g. inattentive interpreters or interpreters taking the liberty to make personal reflections or laughing with the protection officer). Moreover, OFPRA's protection officers may sometimes act as interpreters themselves, which can have a diverse impact. Some asylum seekers report difficulties to open up to a person who speaks the language of the country involved in the alleged persecution. Nevertheless, some advantages have also been reported, such as demonstrating a particular interest for the region of origin.

**Portugal:** The quality of interpretation services used for interviews remains a serious challenge, as in many cases service providers are not trained interpreters but rather individuals with sufficient command of source languages. According to CPR's experience, securing interpreters with an adequate command of certain target languages remains challenging – e.g., Tigrinya, Pashto, Bambara, Lingala, Tamil, Kurdish, Mandinka, Nepalese, Sinhalese, Bengali and to a lesser extent Arabic and Farsi

**Austria:** NGOs providing legal advice continued to report to asylkoordination that asylum seekers often realise that mistakes in the translation or the transcript were made when they receive a negative first instance decision and a legal adviser explains them the details of the transcript.

**Hungary:** In 2020, HHC lawyers reported that the main problem was the interpretation through videoconferencing. The connection was often very bad, sometimes it completely broke down and a decision had to be communicated to the applicant through a phone call. The sound over the videoconference was of very poor quality, almost not audible. The quality of the interpreters proved to be a challenge in cases, where an applicant only spoke one dialect of certain language (e.g. Sorani dialect of Kurdish language). Arabic interpretation can be problematic, when the Arabic national interpreter and the Arabic national applicant are from different countries and use different vocabulary. Certain asylum seekers would also prefer to have a translator that comes from the same country as them, but this was not always possible (e.g. Afghan translator would translate for Iranians). It was also difficult to find an interpreter for Eritrean applicants and it happened that on certain occasions the applicant speaking English would translate to others. Once a Russian woman claimed the translator did not understand her well enough. At the end of the hearing, she accepted the interview minutes as it was, however, only because she understood Hungarian well enough, i.e. the interview was read to her in Hungarian. In one other case, there was a communication issue between a Sudanese woman and the translator in Pidgin English. It did not jeopardise the efficiency of the hearing, but slowed it down significantly.

**Romania:** According to JRS the Border Police claims that they inform, orally or in writing, foreigners at the border about the possibility to make an asylum application in a language widely used internationally (such as English or French or through a translating telephone application), but there is no interpreter when they discuss with foreigners who express their willingness to submit an asylum application. The Border Police informed JRS that, when necessary, they have the support of the interpreters used by IGI-DAI, especially when there are indications that migrants want to apply for asylum at the border. Nevertheless, JRS still is of the opinion that there is a need for more means of communication in remote areas, such as the green borders and border crossing points, in order to ensure proper information provision to all asylum seekers. The AIDA report documents a number of other occasions at registration stage or during the procedure where there seems to have been an overall lack of interpretation.

**Slovenia:** The quality of interpretation varies considerably and, in some cases, does not meet required standards. Interpreters are selected based on a public call. During the selection, interpreters are not subject to a test to determine their level of knowledge of the Slovenian language or the language they interpret. The decisive factor in the public call is the price of the interpreter's services. Those with the lowest prices are prioritised on the list of interpreters that the Migration directorate can use in the procedures. The Migration

directorate does not monitor the quality of the translation. In practice, interpreters are required to operate in languages in which they are not fluent, but which are used in their countries of origin. As they cannot write in these languages, decisions on asylum are often wrongly translated by interpreters. There were also cases where the translation stated that the person does not have the right to appeal the asylum decision. The lack of proper interpretation affects the credibility assessment of asylum seekers. Systematic changes in the selection of interpreters should be made in order to provide asylum seekers with proper interpretation in the asylum procedure, and protect their ability to obtain international protection in Slovenia. In practice, asylum seekers often complain upon second reading that their statements were wrongly interpreted, and that their statements were not properly read to them by the interpreter, meaning that they were not aware of the content of the minutes made during the interview

**Poland:** In 2020 there was a temporary problem with Tamil language and 1 person was heard in English with his consent. The Office for Foreigners also reports that in 2020 there was a problem with approaching a female interpreter for some of rare languages and with the limited number of interpreters, which in 2020 meant that if someone was in quarantine, the interview had to be postponed.

**Ireland:** Under ordinary circumstances, where requested, interpreters are obliged to attend international protection interviews in person at the International Protection Office. However, following the outbreak of Covid-19 in Ireland, interpretation services have typically been provided to applicants on a remote basis whereby interpreters have been required to dial -in by telephone to client interviews. As it stands, there is no recognised qualifications framework or established standards, set out in legislation or elsewhere, on the recruitment of interpreters by public bodies, including the IPO. Most interpreters are sourced from a private company that has a contract to provide access to interpreters, with such contracts typically valid for between 2 and 4 years. The result is that quality of interpreting, in the experience of Irish Refugee Council, varies significantly, with anecdotal reports of interpreters interpreting in the 3rd person, having a standard of English which is lower than that of the applicant, or having insufficient or inappropriate vocabulary to deal with particular claims – e.g. claims related to sexual orientation or gender identity or religious conversion claims. Since 2016, the Irish Refugee Council has rolled out an interpreter training programme for French and Arabic interpreters that focuses on promoting best practice interpreting techniques, interpreting practice, terminology used in the asylum process, and, ethics and a code of conduct. The training also provides interpreters with practical exposure through role-playing, involvement in Irish Refugee Council casework and an overview of the asylum process. To-date , 41 people have been trained under the programme. Additionally, in 2020, 11 trained interpreters attended a focused training on how to work remotely hosted by the Irish Refugee Council. The Irish Refugee Council also delivered training to three organisations working in international protection on how to work effectively with interpreters.

**Spain:** A serious lack of interpreters to ensure proper communication between the newcomers and the authorities has been reported. Moreover, problems of overcrowding at the CETI, where people are placed after having jumped over the fence, have been reported throughout 2020. Following the COVID-19 outbreak in 2020, interpreting services were adapted accordingly, mainly through the increase in the use of technological tools (i.e. phone and programmes such as Meet, Zoom, Teams), with overall positive outcomes. Challenges arose in some cases, however, due to the difficulty for asylum seekers to access computers or the internet.

**United Kingdom:** Interpreters are required by the Immigration Rules and are provided by the Home Office. There is a code of conduct for these interpreters, which was revised in 2020 but in practice asylum seekers are unaware of it and of what to expect from their interpreter unless they have a legal adviser who has informed them about this beforehand. Since inconsistencies on matters of detail in the asylum interview are a common reason for refusing asylum, problems with interpreting can have a significant impact. If the asylum seeker has a representative present, best practice, and guidance issued to Home Office caseworkers, in the case of interpreting problems, suggests that the representative is permitted to interrupt the interview to raise the problem. Home Office caseworkers are not always familiar with this, and it can be difficult for problems of interpretation to be raised and rectified at the time they occur. Asylum seekers are allowed to take an interpreter of their own choosing to the interview, but there is no public funding for this in most adult cases, so taking one's own interpreter is unusual. The Independent Chief Inspector of Borders and Immigration published its report into the use of language services, including interpreters, in 2020.

**Cyprus:** Although interpreters are always present in interviews, they are not professionals, often inadequately trained, and do not have a specific code of conduct. Asylum seekers often complain about the quality of the interpretation as well as the impartiality / attitude of the interpreter, yet such complaints are seldom addressed by the Asylum Service. During monitoring of interviews at the Asylum Service, it has been noted that although asylum seekers are asked by the interviewing officer whether they can understand the interpreter, most of the time they are reluctant to admit that there is an issue with comprehension and prefer to proceed with the interview as they feel they have no other choice or are unwilling to wait for a longer period of time (sometimes months) for another interview to be scheduled. In addition, there have been cases where the applicant has complained about the interpreter regarding the quality of interpretation or attitude, and this has been perceived as a lack of cooperation on behalf of the applicant.

#### 4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)

##### Dublin: General information, statistics and COVID-19

**ECRE - Dublin Implementation since 2016:** In February 2020, ECRE's study on the implementation of the Dublin Regulation III was published by the European Parliament Research Service (EPRS) which commissioned it. Drawing largely on statistics from AIDA, and on ongoing Dublin-related litigation, the study uses the European Commission's own Better Regulation toolbox. The Better Regulation framework is designed to evaluate any piece of Regulation against the criteria of effectiveness, efficiency, relevance, coherence and EU added value.

See: EPRS/ECRE, Dublin Regulation on international protection applications, February 2020, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS\\_STU\(2020\)642813\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS_STU(2020)642813_EN.pdf).

Later in 2020, the study was further published in French. See: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS\\_STU\(2020\)642813\\_FR.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS_STU(2020)642813_FR.pdf)

**ECRE/AIDA – Dublin Implementation in 2019 and beginning of 2020:** In August 2020, ECRE published a report providing a detailed overview of developments in legislation, policy and practice relating to the application of the Dublin III Regulation, based on current practice, case law and up-to-date statistics in 29 European Countries. It also illustrated the challenges faced by the Dublin system in times of COVID 19.

See: ECRE/AIDA - The implementation of the Dublin III Regulation in 2019 and during COVID-19, August 2020, available at: [https://asylumineurope.org/wp-content/uploads/2020/11/aida\\_dublin\\_update\\_2019-2020.pdf](https://asylumineurope.org/wp-content/uploads/2020/11/aida_dublin_update_2019-2020.pdf)

**Bulgaria:** Due to the COVID-19 pandemic, all Dublin transfers were officially suspended during the national lockdown from 13 March to 13 May 2020. However, even after the end of the lockdown, many of the already consented transfers were not implemented due to ongoing lockdowns, quarantine and other COVID 19 measures in the receiving countries, which congested flights and reception arrangements. In 2020, Bulgaria received 1,904 incoming requests and made 116 outgoing requests, compared to 3,088 incoming and 80 outgoing requests in 2019; 3,448 incoming and 125 outgoing requests in 2018 and 7,934 incoming and 162 outgoing requests in 2017. Bulgaria did not apply the sovereignty clause in 2020 and issued only 3 "take charge" requests based on the humanitarian clause of Article 17(2) and received 1 request based on the humanitarian clause, which was accepted. In 2020, 24 outgoing transfers were carried out compared to 116 requests, indicating a 21% outgoing transfer rate.

**Austria:** In 2020, the BFA did not suspend Dublin procedures. Even during the first lockdown there were incoming and outgoing requests. However, between March and April 2020 no Dublin transfers (incoming and outgoing) were completed. After the general easing on travel restrictions due to the COVID-19 pandemic, Dublin member states were informed on 16 June 2020 that Dublin transfers to Austria via Vienna-Schwechat Airport are possible again. As regards incoming transfers during the COVID-19 pandemic, Austria adopted the following measures: notifications of transfer were checked on a case-by-case basis; the time for notification of transfer was extended so that appropriate national arrangements could be adopted to place Dublin returnees; information on the current state of health of the person to be transferred had to be shared in the

transfer form including, where possible, whether he or she has been infected with COVID-19; and a negative PCR test was required in the interests of reciprocity.

**France:** Statistics on the application of the Dublin Regulation are not made available by the authorities prior to their publication on the Eurostat database. However, some data has been shared NGOs at the beginning of 2021. In 2020, 24,970 outgoing Dublin requests have been made by French authorities, compared to 47,633 in 2019 (it differs from Eurostat data which indicates 45,907 outgoing requests). At the end of 2020, 17,451 of them were still in a Dublin procedure and 7,519 persons were re-channelled from a Dublin procedure to a regular or accelerated procedure (requalifiés). As regards the actual implementation of transfers in 2020, no detailed statistics were available at the time of writing of this report. Nevertheless, the Ministry of Interior indicated that 3,500 transfers have been carried out in 2020, equalling to a 14%% transfer rate (compared to 5,670 transfers in 2019). Out of the 3,500 transfers that have been implemented, the majority were carried out to Germany (1,662), Italy (1,573) and Spain (949). More detailed data and a breakdown by country/nationality on transfers was not available at the time of publication of this report. During COVID-19, no specific measures have been taken by the authorities with regard to the Dublin procedure and Dublin transfers were only suspended to countries which did not accept Dublin returnees. Thus, the authorities continued to process applications for international protection under the Dublin III Regulation and to issue requests accordingly during the pandemic. Persons who were falling under the Dublin procedure prior to the closure of the GUDAs continued to check in regularly if they were not under house arrest, or continued to be detained pending their Dublin transfer.

**Ireland:** Following the implementation of measures to restrict the spread of Covid-19, the International Protection Office cancelled all interviews in accordance with Article 5 of the Dublin Regulation in line with Government guidelines. The International Protection Appeals Tribunal suspended all Dublin Regulation Appeals in a similar manner. Ireland has nevertheless continued to request other responsible EU Member States to 'take charge' of any identified applicant. Other Member States who identify that Ireland is responsible for an applicant have, throughout the pandemic, continued to apply the Dublin process to Ireland. Transfers under the regulation continued, albeit at lower numbers. Statistics provided by the IPO indicate that a total of 8 individuals were transferred in 2020. These transfers occurred notwithstanding a stay being placed on the vast majority of deportations for the duration of the Covid-19 pandemic. The Government justified the continuation of transfers on the basis that no deportation order is made in respect of Dublin III cases and the individual concerned is not returned to their country of origin. As of June 2020, the IPO had suspended the issuing of decisions pursuant to the Dublin process owing to Covid-19 restrictions. Anecdotal evidence indicates that the IPO has resumed the issuing of decisions, albeit with significant delays.

**Sweden:** The Dublin procedure was not suspended during COVID-19, with the exception of the two-weeks period in March 2020 when the Swedish Migration Agency suspended its activities. This means that the Migration Agency continued to issue and receive requests; as well as to receive and carry out transfers to countries which accepted Dublin returnees, albeit at lower levels due to travel restrictions and other applicable COVID-19 measure. In 2020 Sweden received 5,588 Dublin incoming requests and issued 2,173 outgoing requests to other Dublin States. The average processing time for all Dublin cases in 2020, i.e. until a transfer decision was issued, was 49 days, down from 58 in 2019 and 72 in 2018.

**Belgium:** In 2020 the total number of outgoing take charge and take back-requests was 6,607 (1,325 take charge and 5,282 take back requests), of which none for dependency reasons, and one for humanitarian reasons. A total of 3,813 requests were accepted. A total of 454 persons were transferred from Belgium to other Member States in 2020. 406 of these transfers were carried out within six months, 43 within 12 months, and 5 within 18 months after the acceptance by the other Member State. In 2020 there was a total of 2,985 incoming take charge and take back requests (401 take charge requests and 2,584 take back requests, of which none for dependency reasons, and 47 for humanitarian reasons. Out of the total of incoming requests, 1,655 were accepted, of which one for dependent persons and 3 for humanitarian reasons. 346 persons were effectively transferred to Belgium.

According to available statistics, the Immigration Office accepted 779 persons under the sovereignty clause. In 2020 Belgium further became responsible "by default" for 16,733 persons: 3,142 persons were not transferred in time, and 29 were not transferred due to the deficiencies in the asylum or reception system

which could lead to an inhumane and degrading treatment in another Member State or because no Member State responsible could be designated on the basis of the criteria listed in the Dublin III Regulation.

**Switzerland:** Dublin transfers were not officially suspended in Switzerland due to the pandemic and related travel restrictions, however in practice transfers to most countries were not possible during spring 2020 and partly during the rest of the year. The transfer rate outgoing Dublin transfers was particularly low due to travel restrictions related to the pandemic. It was 23% in 2020 (941 transfers out of 4,057 requests, of which 2,567 accepted).

**Poland:** Dublin transfers were suspended between 16 March and 8 July 2020. Later on the transfers were carried out, but the procedure of testing for COVID on 72 hours before the plane was to land in the territory of another Member State and then waiting for results delayed purchasing plane tickets. Apart from that some Member States expected additional documents regarding health (e.g. Spain). According to the Office for Foreigners, transfers to Greece were the most problematic in 2020. Greece did not accept the requests and, when it did, transfers were not possible.

**Romania:** During the state of emergency (13 March 2020- 14 May 2020) Dublin transfers were suspended. As regards outgoing and incoming requests, no specific measures were imposed. During the state of alert (which was still in place at the time of writing of the AIDA report) transfers were gradually resumed. In practical terms, this meant that initially, between 15 May 2020 and 14 October 2020, only foreigners who were still considered asylum seekers by Romania were transferred. Transfers were only possible under certain administrative and preventive measures in place which had to be respected by the other Member States. As from 15 October 2020 transfers for all categories of foreigners were resumed, with the obligation of authorities from all member states have to respect the measures to contain the spread of the virus, such as: prior COVID test, cancelling the transfer in case of positive test results. Dublin transfers to Romania are taking place under the following conditions: information about the transfer should be submitted 10 working days before the expected date of transfer; information about quarantine of the foreigner who will be transferred should be provided. Annex XI of the 118/2014 Regulation should be submitted jointly with the transfer data; information about past COVID-19 infection of the foreigner should be provided; transfers through commercial flights should be avoided; transfers should be carried out through charter flights; the foreigner should be tested for COVID-19 72h prior to the transfer; the test results should be transmitted 1 day before the transfer, at the latest; foreigners who are transferred from areas with a high risk of infection and spread of COVID-19, upon arrival, will be quarantined for 14 days. As for transfers from Romania to other Member States, the rules and measures imposed by each Member States are followed.

**Cyprus:** During 2020, and despite the measures implemented during covid 19, transfers were not suspended and had to be carried out within the designated deadline. In the event that the transfer was not executed within the deadline the responsibility shifted back to Cyprus.

**Netherlands:** In 2020, Dublin transfers were temporarily suspended due to Covid-19. In light of recommendations of the European Commission, the State Secretary acknowledged that there are no possibilities to extend the transfer deadlines because of Covid-19. The State Secretary concludes that in cases where the deadline has been exceeded the asylum application will be processed by the Dutch authorities. As a result, approximately 1,500 Dublin cases for which the Netherlands was in first instance not the responsible Member State, will be processed in the Dutch asylum procedure. Dublin transfers were eventually resumed in July 2020, but several Member States continued to impose additional conditions on accepting Dublin transfers to their territory, such as the submission of a recent negative COVID-19 test. Also, the number of countries imposing such additional conditions has increased since September 2020. The State Secretary expects that the requirement to show a negative COVID-19 test can lead to a significant additional influx of asylum seekers into the Dutch asylum procedure as she expects that as a result of this additional requirement deadlines for Dublin transfers may not be met.

**Slovenia:** The low number of transfers in 2020 can be attributed to the travel restrictions put in place due to the COVID-19 pandemic. The suspension of transfers was not officially announced by the authorities. In cases where the transfer was not carried out within 6 months, the Slovenian authorities took on the responsibility of processing the asylum seeker's application. Before COVID-19, the transfer of asylum seekers who did not abscond was usually carried out successfully.

**Malta:** Dublin transfers were suspended in Malta for three months between mid-March and mid-June 2020. During this period, Malta continued to issue and send requests. The responsibility of applicants shifted back to Malta in cases where the transfer was not carried out within six months unless the applicant was recorded as having absconded .

**United Kingdom:** The UK left the EU on 31 January 2020 but has remained subject to the Dublin Regulation during the Transition Period (TP). The UK issued guidance explaining how to process cases where a Dublin Regulation responsibility request was made by a Dublin State to the UK prior to the end of the TP at 23h 00 on 31 December 2020 but either no decision has been made in relation to that request or a decision has been made but the transfer has not taken place before the end of the TP.

Cases introduced after the Transition period can be treated under the new inadmissibility rules on safe third countries. "The rules allow an inadmissibility decision to be taken on the basis of a person's earlier presence in or connection to a safe third country, even if that particular country will not immediately agree to the persons return." The guidance on inadmissibility of asylum claims explains that: "the safe countries most likely to be identified in asylum claims will be the UK's near neighbours in the EU. Other EU member states, the wider EEA countries (Iceland, Liechtenstein and Norway) and Switzerland may also be identified, as may country such as the United States of America, Canada, Australia and New Zealand" (see further under: inadmissibility).

### Dublin procedure

**Bulgaria:** Following recommendations from EASO, information relevant to Dublin procedures is gathered during the initial registration interviews with asylum seekers in a separate checklist, which mainly focuses on eventual family members in other Member States. Amendments of the law in 2020 were introduced to optimise the decision-making in Dublin procedures by removing the requirement of a formal decision and rendering an automatic legal effect to the majority of acts. However, many problems are still created by the fact that the decision-making process remains multi-staged and centralised as far as the Dublin decisions are concerned, as such decisions can be issued only by the SAR's Dublin Unit, which is located in the headquarters of the SAR in Sofia. This creates problems with respect to observation of the 3-month deadline under the Dublin Regulation for issuing a request to another Member State, as sometimes the congested communication between the Dublin Unit and the local reception centre where applicants are accommodated can consume time before all relevant documentation is prepared in order to make a proper Dublin request.

**France:** In 2018, the Ministry on Interior has implemented a regionalisation plan for the Dublin procedure whereby the Dublin procedure is carried out by one Prefecture (pôle régional) per region, with a view to ensuring higher convergence across the French territory. The regionalisation plan creates difficulties for asylum seekers who have no means of travelling to the competent Prefecture after receiving a Dublin notice document, as missing an appointment led to reception being withdrawn and applicants becoming exposed to destitution. The Council of State clarified In 2018, however, that where the applicant is required to travel from his or her place of residence to appear before the pôle régional, the transport costs have to be borne by the Prefecture. However, problems persisted throughout 2020 as transport vouchers were sometimes delivered too late. As a result, asylum seekers were not always able to attend their appointment.

**Croatia:** In June 2020, a meeting was held between representatives of the Ministry of Interior and representatives of the Ministry of Labour, Pension System, Family and Social Policy to improve cooperation in the implementation of family reunification within the Dublin procedure. As a result, a standard operative procedure (SOP) is currently being drafted to contribute to the coordination in process of family reunification of unaccompanied minors.

**Ireland:** Limited information is available on how Dublin procedure interviews are conducted in practice but applicants are provided with the common information leaflet stating that they are in the Dublin procedure. However, it is not always clear that the asylum seeker understands that they are having a specific Dublin procedure interview. Anecdotal evidence continues to suggest that Dublin procedure interviews are presented merely as an interview just asking questions about the person's journey to Ireland without fully explaining the implications in terms of which country is responsible for the person's asylum application and



that it means that the person may be transferred there. The onus is placed on the asylum seeker to be able to read the Dublin information leaflet rather than ensuring that it is properly explained by the caseworker and not the interpreter at the Dublin personal interview

**Sweden:** In 2020, the Swedish government adopted two acts relevant to fingerprinting. The first act entered into force on 1 December 2020 and foresees that the Swedish Migration Agency, the Swedish Police and Sweden's diplomatic missions abroad are allowed to process sensitive data under the Aliens Data Act (2016:27). They would also be authorised to test and develop the existing system of managing third-country nationals' personal data. The second act entered into force on 28 December 2020 and amends the Aliens Act and the Act on the Schengen Information System (2000:344). It foresees that third-country nationals will have to be fingerprinted and photographed at entry and exit for checks against the Schengen Information System (SIS). It also allows several authorities such as the Swedish Migration Agency, the Swedish Police, the Swedish Customs and the Coast Guards to take individuals' photos and fingerprints for counter-checking against data in SIS.

**Malta:** It is important to mention that when a Dublin decision is confirmed in appeal, applicants see usually their Asylum-Seeker document withdrawn since a transfer to another Member State is to be conducted. However, such transfers can take some time to be carried out. In case of delayed transfer, IPA does not extend the documentation, stating that following a final Dublin decision (either because the time limit to appeal the Dublin transfer decision has lapsed, or because the IPAT upholds the decision taken by the Dublin Unit), the person is no longer to be considered as an applicant for international protection in Malta, seemingly contradicting legislation and CJEU jurisprudence in this regard.

**Hungary:** All asylum seekers, including asylum seekers under Dublin procedure, except minors below 14 years of age were held in transit zones until 21 May 2020, for the whole duration of the asylum procedure (including Dublin procedure). In 2020, the HHC successfully facilitated Dublin procedures for unaccompanied minors to Germany, based on Article 8 (1) and (2) of the Dublin Regulation. The German authorities unnecessarily prolonged the cases and issued very schematic rejection decisions before finally taking responsibility.

**Switzerland:** The relatively short time limit of five working days for lodging an appeal against a Dublin transfer decision constitutes a real obstacle to appealing, especially under the circumstances relating to the COVID-19 pandemic. This is even more problematic in cases where the free legal assistance decides not to appeal as it considers that lodging an appeal would be doomed to fail. In those cases, applicants could theoretically approach a non-state-funded entity for legal advice to ask for support. However, this is very difficult due to the remote locations of federal centres, given that most independent legal advisory offices are situated in urban areas. Access to such offices was also restricted this year for reasons related to COVID-19, which constituted a further obstacle to appealing.

**Netherlands:** In a general position statement of 8 April 2020, the State Secretary pointed out that the current exceptional situation as a result of Covid-19 will result in deadlines for carrying out Dublin transfers to be jeopardized. After all, exceptional circumstances do not allow for deadlines for transfers to be exceeded. According to the Secretary of State it is therefore logical to grant suspensive effect to an appeal, as the time limit for the implementation of the transfer starts with the decision on appeal. It is therefore that the State Secretary takes the position that she does not oppose granting suspensive effect in cases where the asylum seeker has appealed the decision of the Immigration Service not to handle his/her asylum request. In most cases, however, lawyers withdrew their request for suspensive effect pending the appeal.

**United Kingdom:** The screening process was criticised and legally challenged in 2020 after it was revealed that some questions were not being asked of asylum seekers; the omitted questions related to the identification of characteristics that may have resulted in them not being transferred under the Dublin Regulation. An order in relation to the challenge forced the Home Office to ensure these questions would be asked.

### **Suspension of transfers**

**Bulgaria:** In 2020, the courts in some Dublin States have continued to rule suspension of Dublin transfers to Bulgaria with respect to certain categories of asylum seekers due to poor material conditions and lack of proper safeguards for the rights of the individuals concerned.

**France:** In 2020, individualised guarantees were still not requested by Prefectures prior to ordering a Dublin transfer, even though Tarakhel v. Switzerland foresees that States have to check what reception conditions and procedural provisions will be guaranteed to asylum seekers when returned to the determined responsible country. That should particularly be applied to vulnerable asylum seekers and families.

**Austria:** Individualised guarantees were still not requested systematically as of the end of 2020. Their content depends on the individual circumstances of each case according to the BFA. This raises serious concerns when persons are transferred to countries with dysfunctional asylum and reception systems. There are reports of Syrian and Afghan nationals being forcibly returned from Austria to Hungary in December 2020 and January 2021. However, it could not be verified whether these persons applied for asylum or not.

### Situation of Dublin returnees

**Bulgaria:** Since 1 January 2019 the health care database has been re-organised to automatically restore the Dublin returnees' health care status and register them as individuals with uninterrupted medical insurance as soon as their asylum procedures is being reopened at the SAR. However, this applies only to those who left Bulgaria in 2019 and were subsequently returned back. Access to healthcare for asylum applicants who left Bulgaria prior to 1 January 2019, and who are now being returned under Dublin III, is still not ensured. In order for them to access medical care, the SAR must issue a written notification to the national IRS. Only then can the access to the medical care be restored, which takes couple of days in the majority of the cases, although there have been cases in which it took longer periods of time. In order to solve the issue in 2020 the law was amended to explicitly provide uninterrupted health care rights for asylum seekers whose procedures were re-opened after being previously discontinued - a situation that typically applies to Dublin cases. However, the arrangement is not applicable for the Dublin returnees whose applications have been decided on the substance in absentia before their return to Bulgaria. It is also not clear how this arrangement will be applied in practice and whether the IRS will be able to make the necessary adaptations in its software in order to ensure asylum seekers' access to health care in these cases.

**France:** Dublin returnees continued to face serious obstacles in accessing reception centres; i.e. they face the same difficulties as all asylum seekers in France in securing housing. This is due to the fact that there is approximately a 50% gap of available places.

**Austria:** Dublin returnees are brought to EAST Traiskirchen where an interview is conducted. Dublin returnees are then accommodated in Traiskirchen or detained in deportation centres. Since the outbreak of Covid-19 pandemic Dublin returnees are accommodated for self-isolation for the first 7 days in the federal facilities in Schwechat or Bergheim. If the applicants are without symptoms and deliver a negative Covid-19 test after 7 days, the applicants are then transported to Traiskirchen again.

**Spain:** In recent years, including in 2019 and 2020, there have been reports of Dublin returnees not being able to access reception conditions. This has resulted in a homelessness and destitution in certain cases. In a series of rulings, the Superior Court (Tribunal Superior de Justicia, TSJ) of Madrid condemned the Spanish Government for denying reception to asylum seekers returned to Spain within the Dublin procedure. For this purpose, the Ministry of Labour, Migration and Social Security issued an instruction establishing that asylum seekers shall not be excluded from the reception system if they left voluntarily Spain to reach another EU country. During the summer 2020, the organisation "Coordinator of Neighbours" (Coordinadora de Barrios) supported and documented at least 15 cases of Dublin returnees in Madrid that were not able to access reception as a result of a lack of available places, thus resulting in homelessness. The NGO also reported that the situation worsened during the first months of the COVID-19 pandemic, when the capacity of shelters was reduced in order to comply with physical distancing and quarantine measures. This issue persisted in Spain throughout the year and as of the end of October 2020, there were around 8,000 asylum seekers waiting for a place in the reception system. The media reported similar issues that affected asylum seekers transferred back from the United Kingdom to Spain, as 11 Syrian asylum seekers had to wait 8 hours at the Madrid Airport without any information on how to access reception conditions. While Dublin returnees face important

obstacles in accessing the reception system, they may also face obstacles in re-accessing the asylum procedure given the persistent general deficiencies of the asylum system described throughout this report. The OAR prioritises their registration appointment for the purpose of lodging an asylum application. If their previous asylum claim has been discontinued, they have to apply again for asylum. However, that claim is not considered a subsequent application

**Switzerland:** In January 2020, the Swiss Refugee Council has published a report on the reception conditions in Italy, focusing on the situation of Dublin returnees in Italy. It showed that the legislative changes had led many obstacles in accessing adequate accommodation and health care. Throughout 2020, the Swiss Federal Administrative Court has cancelled a significant number of Dublin decisions because the SEM had not sufficiently clarified the health situation of the applicant or the question of access to health care and adequate accommodation in Italy, or it had not obtained sufficient individual guarantees. A list of accommodation for families issued by Italian authorities in April 2020 was also considered by the Court as providing insufficient individual guarantees. Since the entry into force of a new decree on 22nd October 2020 (Decree 132/2020, transformed into law in December 2020), asylum seekers can be accommodated in SPRAR centres (now called SAI) again if there are enough places at disposal. The impact of these changes on Swiss case law is still unclear. The Swiss Refugee Council will continue to document transfers to Italy in 2021 within the framework of the Dublin Returnee Monitoring Project (DRMP). Individual cases can be reported or referred to it.

## 5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

### Border procedures

**ECRE's analysis of border procedures:** In 2020, ECRE's contribution to the implementation of asylum procedures at the border, has been published by the European Parliament Research Service (EPRS) which commissioned it. The entire European Implementation Assessment paper on border procedures contains three parts. Besides the in-house research conducted by the EPRS itself, there is also part on the legal assessment of Article 43 on border procedures carried out by Dr Galina Cornelisse and Dr Marcelle Reneman of the Free University of Amsterdam, and the comparative analysis on the application in practice of Article 43 of the Asylum procedure directive that was carried out by ECRE (p.145 and further).

The study carried out by ECRE covers seven countries: **France, Germany, Greece, Hungary, Italy, Spain and Portugal**. It offers a comparative analysis of the implementation of border procedures as foreseen in Article 43 of the recast Asylum Procedures Directive and formulates recommendations accordingly. Using the EU's Better Regulation framework, the provision was also assessed against the principles of effectiveness, efficiency, fundamental rights, and coherence with the aims of the recast APD and the Common European Asylum System (CEAS) as a whole. Moreover, on top of the comparative analysis, ECRE prepared detailed country profiles on the functioning of the border procedure in each of the 7 Member States which have been added as Annexes. Each of these country profiles include detailed statistics on border procedures and extensive information on their implementation at national level.

See: EPRS/ECRE, Asylum procedure at the border, November 2020, available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU\(2020\)654201](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2020)654201)

**Portugal:** The border procedure was regularly applied in practice to applications made at border points (in particular airports) until March 2020. Since then, and after the reinstatement of air traffic, asylum seekers that apply for international protection at the border have been granted entry into national territory, not subject to detention, and their applications have been processed according to the rules applicable to applications made in the territory.

**Switzerland:** In 2020, the number of asylum applications lodged at the airport has significantly decreased due to the COVID-19 pandemic. In Zurich, the few applications made at the airport were directly handled in an ordinary accelerated procedure in a federal asylum centre, so no airport procedure has taken place since

March 2020. According to data provided by SEM, in the whole year 66 requests of entry were lodged (70% less than in 2019), out of which 43 in the airport of Geneva (compared to 93 in 2019) and 23 in Zurich (compared to 126 in 2019). The main countries of origin were Turkey, Cameroon and Congo DRC in Geneva; Iran, Congo RDC, Cuba and Turkey in Zurich.

**Netherlands:** The Aliens Act has been amended to ensure that border detention of asylum seekers with rejected asylum applications can be continued. The Council of State ruled that, following the Ghandi and C.S.J. judgments of the CJEU, the former legal basis for prolonging detention at the border after the rejection of an asylum application at least during the period for lodging an appeal was not valid.

**Romania:** The JRS representative reported the case of a single parent family (mother and child) whose application was processed under the border procedure at Cluj-Napoca Airport. They were granted access to territory, but the application was dismissed through accelerated procedure. They applicants stayed at the airport for 3 days before they were transferred to Somcuta Mare, where they stayed in isolation for 14 days. While in isolation in the basement of the building, where the specially designed closed spaces are, the applicant and her daughter received 3 meals per day from the city hall. There were only 3 asylum applications processed under the border procedure in 2020.

### Admissibility procedure

**Ireland:** Section 21 IPA is amended by the enactment of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020. Section 119 of the Act of 2020 amends s. 21(2) IPA by the insertion of subsection (c) which states that an application for international protection may be determined inadmissible whereby the applicant arrives in the State from a safe third country that is regarded as a safe country for that person. A “safe country” will be regarded as such whereby:

- a. The individual has a sufficient connection with the country concerned on the basis of which it is reasonable for them to return there;
- b. They will not be subjected to the death penalty, torture or inhuman or degrading treatment or punishment if returned to the country concerned;
- c. The applicant will be readmitted to the country concerned pursuant to the Dublin Regulation.

According to s.119(d), in determining whether an individual has “sufficient connection with the country concerned, regard will be had for the period the individual has spent in the country, whether lawfully or unlawfully, any relationship between the individual and persons in the country concerned, including nationals and residents of that country and family members seeking to be recognised in that country as refugees, the presence in the country concerned of any family members, relatives or other family relations of the individual concerned and the nature and extent of any cultural connections between the individual and the country concerned. Section 122 of the Act makes provision for s.72A IPA, permitting the Minister for Justice to designate a particular state as a safe third country whereby the state concerned meets certain conditions relating to safety and asylum practices. It should be noted that the United Kingdom was recently designated a safe third country for the purposes of s.119.

**Hungary:** A request for judicial review against the NDGAP decision declaring an application inadmissible has no suspensive effect, except for judicial review regarding inadmissible applications based on safe third country grounds. This is very worrying in light of the Gov decree 570/2020. (XII. 9.) in force as of 1 January 2021. Its Section 5 removes the possibility to ask for an interim measure in order to prevent expulsion in case of violation of epidemic rules or when expulsion is ordered based on the risk to national security or public order. This can have serious consequences for people, who have been expelled prior to submitting their asylum application, as in case their asylum application is rejected as inadmissible, the appeal does not have a suspensive effect and even if it is requested, it does not suspend the expulsion that was ordered prior to the asylum procedure.

**United Kingdom:** The only admissibility procedure in the UK strictly speaking is the safe third country procedure, either removal to an EU country using the Dublin Regulation or another Safe Third Country. There is no screening for admissibility on the basis of the merits of the case. During 2020 the policy and process was separate for Dublin transfers and other safe third country returns. In December 2020 Immigration Rules were changed so that from 1st January 2021 the applicant, if there is evidence that they have a connection with or

travelled through another 'safe' country prior to their claim in the UK, may be transferred to any 'safe' country that will accept the. At the time of writing no return agreements had been reached to this effect. It is understood that individual casework will include attempts to return applicants under this policy. New Immigration Rules were laid in December 2020, in part to replace the Dublin procedure but widened the scope of inadmissibility to any country that would agree to take responsibility for the person's asylum claim, even if there is no connection with that country.

**Cyprus:** According to the law, before a decision on admissibility is taken, the Asylum Service allows the applicant to state his or her views on the application of the grounds and, for this purpose, carries out a personal interview on the admissibility of the application. In practice a short interview will be carried out and always in the presence of an interpreter. However, in the case of subsequent applications the Law was amended in 2020 according to which the admissibility of the new elements or findings is examined without conducting an interview. Moreover, and again according to the amendment of article 16D in 2020, when the Head of the Asylum Service is assessing new element brought forth by the applicant in a subsequent application that was not previously before the Asylum Service when examining their claim at first instance, the Head can reject the application as inadmissible if they consider that the applicant has not provided new elements.

**Malta:** The new International Protection Act provides for a new definition of "inadmissible applications". The different grounds for considering an asylum application inadmissible are listed in the AIDA report. It is important to note that coming from a safe country of origin is no longer a ground for the application to be deemed inadmissible. The definition of inadmissible in national legislation is now in line with the Asylum Procedure Directive. According to Article 24.3 of the new International Protection Act, the IPA shall allow applicants to present their views before a decision on the admissibility of an application is conducted. In practice, applicants coming from a first country of asylum or a safe third country are usually heard during an interview. Interviews for applicants already granted protection in another Member State are usually limited to a preliminary interview. Applicants submitting a subsequent application with no new elements are usually not given the opportunity of a personal interview.

### Accelerated procedure

**Bulgaria:** Firstly adopted as a ground for inadmissibility in 2020 the "safe third country" concept was re-arranged as a ground to refuse the application as manifestly unfounded in Accelerated Procedure. The law presently requires more detailed investigation in order a country to be considered as a "safe third country" including findings that the applicants will be accepted back to its territory. The "safe third country" concept cannot be used as a sole ground for considering the application manifestly unfounded unless there is a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country and, a case-by-case consideration is implemented of the safety of the country for a particular applicant. In 2020, the law transposed the requirement in Article 38(3)(b) of the recast Asylum Procedures Directive for an applicant to be granted a document in the language of the safe third country, stating that his or her claim was not examined on the merits.

In 2020, 1,202 asylum applicants have been rejected under the accelerated procedure. Of those, 828 came from Afghanistan, 110 from Iraq, 89 from Morocco, 52 from Pakistan, 31 from Algeria, 17 from Bangladesh and 75 from other nationalities. More notably, 20 of them were processed in conditions of detention, of which 9 concerned asylum seekers in closed reception facilities, but 11 related to asylum seekers in pre-removal detention centres, in violation of the law.

**Portugal:** According to the information available to CPR, at least 222 applications filed in 2020 were rejected under the accelerated procedure, of which 183 were made on the territory and 39 at the border. In CPR's experience, most of rejections in accelerated procedures continued to be based on inconsistency or irrelevance.

**Hungary:** The Asylum Act lays down an accelerated procedure, where the NDGAP is expected to pass a decision within the short timeframe of 15 days. In 2019 and in 2020, the accelerated procedure was not used. As of 1 January 2021 a Gov decree 570/2020. (XII. 9.) is in force and its Section 5 removes the possibility to ask for interim measure in order to prevent expulsion in case of violation of epidemic rules or when expulsion

is ordered based on the risk to national security or public order. This can have serious consequence for people, who have been expelled prior to submitting their asylum application, as in case their asylum application is rejected in an accelerated procedure, the appeal does not have a suspensive effect and even if it is requested, it does not suspend the expulsion that was ordered prior to the asylum procedure. The HHC is so far aware of one such case, where an asylum applicant was rejected in an accelerated asylum procedure and was deported prior his appeal even reached the court. The rejection decision was communicated to the lawyer in an email when the applicant was already on the plane.

**Malta:** In 2020, lawyers assisting asylum-seekers noticed that the vast majority of Bangladeshis, Moroccans or Ghanaians applicants were channelled to the accelerated procedure while they were detained as their claim was almost automatically considered manifestly unfounded. They were therefore not allowed to appeal the negative decision. In fact, all applications deemed inadmissible or manifestly unfounded are examined without in a proper appeal since such cases are simply reviewed by the Tribunal without giving an opportunity to applicants to present their views. This is particularly problematic considering the possible misuse of the manifestly unfounded concept. The vast majority of applicants coming from a safe country of origin are rejected as manifestly unfounded.

**Romania:** In 2020, there was a significant increase of accelerated procedure. IGI-DAI reported 885 applications assessed under the accelerated procedure in 2020, up from 315 in 2019, up from 167 in 2018 and up from 382 in 2017. The nationalities concerned by accelerated procedures in the different regions are described in detail in the AIDA report. They included applicants from Algeria, Tunisia, India, Sri Lanka, Morocco, but also from Afghanistan.

**Slovenia:** In 2020, 122 applications were processed in the accelerated procedure and rejected as manifestly unfounded. One application was lodged by an unaccompanied minor. This is a large increase in comparison to 2019 when only 60 applications were processed in the accelerated procedure. This large increase is attributed to the change in practice regarding detention from May 2020 to the end of August 2020. During that time period, the authorities began to detain asylum seekers again, despite the fact that there were no legislative changes made since the decision of the Supreme Court in March 2019. The Supreme Court found that the provisions of the IPA are insufficient, as they do not contain the definition of the risk of absconding. If possible, detained individuals were processed in the accelerated procedure in order to ensure that the procedure would be finished before the end of the detention, so as to facilitate the return of those refused asylum. However, cases of those who were refused asylum and were then returned to Croatia based on the readmission agreement, instead of their countries of origin, were detected. The readmission agreement with Croatia allows the return of those refused asylum, if their asylum procedure has been completed within less than one year. Refused asylum seekers were processed in the accelerated procedure and returned to Croatia, from where they were returned to Bosnia. The practice was finished by the end of August 2020. The majority of asylum seekers whose applications were rejected as manifestly unfounded in the accelerated procedure were from Morocco (58), Algeria (29) and Pakistan (22).

**Cyprus:** The accelerated procedure was initiated in the Pafos district in order to respond to the influx of one nationality, specifically Georgian nationals. In 2020, the procedure was not applied as expected due to measures taken to address Covid-19 as well as in expectation of the amendment to the Law in October 2020 which reduced the deadline for appeal in such cases from 75 days to 15 days. At the time of publication of this report, the procedure is still not widely applied

### Subsequent applications

**Bulgaria:** In 2020, 67 asylum seekers in total submitted subsequent applications, and additional 13 subsequent applications were pending from 2019, thus bringing the total number of subsequent applications to 80 in 2020. Out of them, 69 (86%) were declared inadmissible and 11 were granted access to further determination. A breakdown per country of origin was not made available in 2020, however.

**Sweden:** In 2020, a total of 12,768 subsequent applications were submitted and the Migration Agency decided on 13,242 subsequent applications. Out of them, 798 subsequent applications were accepted, but a more detailed breakdown on type of decisions is not available. The main countries of origin of applicants



lodging a subsequent application were Afghanistan (2,465); Iraq (1,972); stateless (621); Iran (483) and Somalia (325).

**France:** Out of the total of 95,600 applications registered by OFPRA in 2020, 8,830 were subsequent applications, thus representing 9.2% of the total number of applications registered (compared to 9,084 subsequent applications in 2019).

**Austria:** In 2020, 1,668 applications have been submitted by applicants originating from 17 different “safe countries of origins”, which represents 11.8% of the total numbers of applications for international protection. The largest numbers of applications were lodged by the following nationalities: Morocco (714), Algeria (370) and Tunisia(154).

## **6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

### **Access to reception conditions**

**Ireland:** Ireland has transposed the recast Reception Conditions Directive into Irish law through the enactment of the European Communities (Reception Conditions) Regulations 2018. The extent to which the provisions of the Regulations have been implemented in practice continues to vary. Following the onset of the Covid-19 pandemic, specific targeted measures were introduced for newly arrived asylum seekers. Upon arrival in the State, new applicants were screened on the basis of health questionnaires, subject to temperature checks and were required to self-report symptoms of Covid-19. Based on their personal situation and circumstances, applicants were then transferred to designated facilities for self-isolation. Additionally, in the experience of the Irish Refugee Council, a number of clients experienced difficulty in accessing accommodation at the very early stages of the pandemic. The Irish Refugee Council Independent Law Centre assisted several individuals who had their material reception conditions withdrawn after being refused re-entry to Direct Provision accommodation centres. This occurred in circumstances where clients had been absent from their centre for more than one night, in order to visit family or friends, or for the purposes of employment. In many cases, there was no written reasoning provided for the withdrawal and the possibility of withdrawal of accommodation on the basis of absences was not communicated widely prior to the policy being implemented by IPAS. Residents were told that in order to re-access accommodation, they would be required to make a formal request to IPAS.

Individuals were prevented from accessing emergency accommodation and owing to delays in re-accommodation, a number of clients became street homeless or were forced to stay in cars or with friends. Some clients had to wait up to 10 days prior to accommodation being restored and this only occurred after IRC entered direct written correspondence with IPAS, with intervention by IRC’s CEO to senior IPAS staff. With advocacy and assistance from IRC, reception conditions were restored in the vast majority of cases.

**Austria:** The law passed in June 2019 foresees that the new Federal Agency (BBU GmbH) should be responsible for providing reception conditions (basic care) as of July 2020. The Ministry of Interior postponed the start of the activities of the Federal Agency by decree until December 2020. Thus, the BBU GmbH is in charge of providing Basic Care to asylum seekers during the admission procedure since 1 December 2020. During Covid-19, asylum applicants were transported to EAST after registering the asylum applications in front of public security agents. There are no reports that access to basic care was denied. The management of the authorities was quite chaotic in the first months, however: After the first cases of Covid-19 were detected in the EAST Traiskirchen, the whole camp was put under quarantine until the end of April. Only after some time, separate areas were created inside the centre. In the second half of 2020, the asylum seekers were offered a voluntary self isolation period in the federal facilities in Schwechat or Bergheim. After testing negatively after 10 days the applicants are either returned to Traiskirchen or already transferred to the provinces when

their application was declared admissible. By January 2021, 26,623 persons received basic care. This refers to 14,125 applicants for international protection and 12,498 beneficiaries of international protection.

**Belgium:** Between March and October 2020 a significant number of applicants for international protection had no access to the reception system. This was mostly due to the introduction of the online registration system for applications for international protection introduced by the Immigration Office. According to the law, applicants for international protection are only entitled to material aid from the moment they make their application for international protection. Since some applicants for international protection had to wait multiple weeks before they were able to make their application for international protection, they had no access to the reception system during this waiting period. In addition, since the dispatching service of Fedasil in the arrival centre was closed from 17 March 2020 onwards, applicants who needed to re-integrate the reception system (e.g. because they had left their reception place or after having received a decision that their subsequent application for international protection was declared admissible) had no access to the reception system either. Because of a ruling of the Brussels court of first instance in October 2020, the Immigration Office was forced to suspend the online registration system and went back to the old system of physical registrations at the arrival centre. Applicants have since then regained immediate access to reception conditions. As for the re-integration in the reception system, Fedasil confirmed in October 2020 that it was possible for people having previously received a 'code 207 No Show' to make an appointment with the Dispatching service in order to receive a place in the reception system

**Sweden:** In 2020, access to reception was not restricted as a result of COVID-19. The Migration Agency maintained the possibility to apply for asylum and subsequently to access the reception system. Moreover in 2020, new rules have been implemented for asylum-seekers who choose to settle in so-called socio-economically challenged areas. The rules foresee that these persons are no longer entitled to a daily allowance. The aim with this measure is to combat segregation and encourage more asylum-seekers to settle in areas with better prospects. Municipalities could report if certain areas or the whole municipality was "socio-economically" challenged. The government decided that the Country Administrative Boards shall decide which areas may be considered as "socio-economically challenged". As of the end of 2020, a total of 11 municipalities reported that their municipality was facing socio-economic challenges. However, the legislation covers 32 municipalities. Recent reports from the Swedish Migration Agency indicate that this legislative change did not result in a change of practice yet, as asylum seekers continue to settle in "socio-economically challenged areas". Between the 1 July and 30 December of 2020, 2,195 asylum seekers settled in such areas.

**Netherlands:** During the actual procedure, asylum seekers stay in a process reception location (POL) and while they wait for the decision of the IND, they stay in an AZC. Asylum seekers whose asylum application is processed in 'Track 2', however, must – as of September 2020 – stay in a 'austere' reception centre. In this reception centre they receive benefits in kind, they have to report daily, and extra security is present. Even if the asylum seeker appeals after the rejection of his asylum application, he will remain in the austere reception centre. Children and vulnerable asylum seekers are excluded from the austerity of reception but must adhere to the austerity regime (reporting daily) in the AZC.

**Slovenia:** In 2020, due to the obligatory quarantine, asylum procedures were suspended in May 2020, and a high number of asylum-seeking individuals were also accommodated in containers. In Logatec, individuals can move on the premises of the centre freely, although they are not allowed to leave the premises.

**Spain:** Shortcoming and delays in accessing the reception system have been reported during 2020. In October the Minister of Inclusion, Social Security and Migration reported that there were around 8,000 asylum seekers waiting to be assigned a reception place. A report published by the Barcelona Centre for International Affairs (CIDOB) in 2020 reports that the Spanish asylum reception system has not been able to effectively respond to the increase of asylum seekers since 2018. It also highlights the dynamics and problems that asylum seekers face in accessing the asylum procedure at the borders of Ceuta and Melilla, due to the discriminatory practices based on skin colour as well as push-back practices. Refugees International stressed how the COVID-19 pandemic magnified the need to improve the Spanish asylum system, recommending to the Spanish Government, inter alia, to increase the reception capacity and integration system, to improve conditions in first-reception centres in the Spanish enclaves and on the Canary Islands, as well as to increase protection and guarantees for vulnerable asylum seekers. Similarly, Euromed Rights also called the EU and the Spanish



Government to increase reception places on the Canary Islands in order to guarantee proper accommodation to all migrants disembarking at the archipelago and to speed up transfers to mainland.

The Spanish Reception Handbook was updated in June 2020 and elaborates the different forms of reception conditions offered in each phase of the reception system. In practice, major obstacles for asylum applicants are faced after passing the first phase, as the system foresees an initial degree of autonomy and self-maintenance which is hardly accomplishable in 6 months' time, and almost impossible in the case of applicants who have difficulties in learning and speaking the Spanish language, and thus face greater barriers to access to employment. Evictions or attempts to conduct evictions of Syrian and Palestinian asylum seekers from their houses have been reported during 2020 in Zaragoza and near Madrid, due to the above mentioned challenges they face in securing material resources to pay their rent. In October 2020, however, an eviction of a Palestinian family near Madrid was suspended by a judge, in light of the documentation and the vulnerability report submitted by the organisation SOS Racismo.

**Hungary:** From 2017 until 21 May 2020 the main form of reception had been detention carried out in the transit zones. Following the FMS and Others judgment, open reception centres gained back their significance for a short period of time when all the 280 asylum-seekers had been transferred to one of the open reception facilities. However, the number of residents in Vámoszabadi and Balassagyarmat had significantly decreased. Additionally, under the new "Embassy procedure" only 5 new applicants (one family) entered Hungary, who were subsequently placed in Vámoszabadi. According to the NDGAP, on 31 December 2020 there were altogether four asylum seekers in Vámoszabadi and one asylum seeker in Balassagyarmat. The only family arriving as a result of the "Embassy procedure" to Hungary on 1 December 2020 was placed in Vámoszabadi and was being quarantined subsequently for 10 days.

Moreover, until 21 May 2020, asylum seekers who had been residing lawfully in the country at the time of submitting their asylum application, and did not ask to be placed in a reception centre, had the right to request private accommodation as their designated place to stay during the asylum procedure. However, similarly to the previous years, the majority of applicants submitted their asylum application in one of the transit zones until March 2020. As of March though no one was let in due to the COVID-19 pandemic. There were only a small number of asylum seekers who had been already provided with a visa (or came from a country having no visa requirements) or residence permit at the time of their asylum application. In this latter case, asylum seekers were not provided with any material reception condition since their subsistence is deemed to be ensured.

**Poland:** In the proposal of the 'Polish migration policy – diagnosis of the initial status' published in January 2021, the obligation to provide material reception conditions to asylum seekers is seen as a burden. The document mentions only two challenges and risks in regard to reception conditions:

- 1) Costs of material reception conditions remain high despite smaller number of asylum applications;
- 2) The possible reduction of material reception conditions may result in negative reactions of asylum seekers and be instrumentally used in campaigns against the Polish migration policy.

Problems with reception conditions that asylum seekers face in Poland – that are described in the AIDA report – were not noticed (except the lack of a sufficient training for teachers working with foreign pupils). Moreover in 2020, due to the COVID-19 pandemic, asylum seekers had problems with accessing asylum proceedings, thus also with obtaining material reception conditions. When the applications for international protection could not have been lodged, mostly the 'declarations of intention to submit the asylum application' were accepted and registered by the Border Guards. However the persons who 'declared the intention to submit the asylum application' were not covered by the medical and social assistance since they are not considered yet as applicants in the national law. The Consortium of NGOs, in the letter to the Ministry of the Interior and Administration, raised the need to include these persons in the social system for asylum seekers. In 2020, due to pandemic COVID-19, the Office for Foreigners encouraged asylum seekers to live outside the reception centres.

**Portugal:** While spontaneous asylum applicants do not face systematic obstacles in gaining access to available material reception conditions (e.g. due to delays in the issuance of the individual certificate of the asylum application or a strict assessment of resources), some concerns remain regarding access to support. These include support provided by CPR to asylum seekers accommodated in private accommodation in remote locations due to the lack of information from SEF's regional representations regarding available assistance

and costs associated with travel and communications for initial and follow-up interviews with social workers at CPR. Another concern stems from the potential exclusion of asylum seekers from material reception conditions in the regular procedure in case of refusal to accept the dispersal policy in place managed by the GTO.

**Romania:** As of 21 November 2020, Serbia has been included on the list (called the 'yellow list') of countries at high risk of COVID-19 transmission, meaning that all those who cross the border into Romania from Serbia must be quarantined for 14 days. This had a major impact on the asylum seekers arriving from Serbia to Timisoara. In order to ensure their quarantine, they needed to be accommodated in a facility separate from the reception centre. Due to the lack of preparedness of authorities, asylum seekers which arrived in the following days had to sleep in front of the regional centre for 2 nights, according to the director of Timisoara Regional Centre. This was also echoed by JRS representative, who stated that foreigners were sleeping in front of the centre on polystyrene, covered with blankets. During that period the temperature at night was dropping to zero degrees in Timisoara. After 2 days they were taken over by the Border Police and in 5 days they were quarantined. The AIDA report further describes in detail the access to reception centres in the different regions.

**Switzerland:** During 2020, there was a higher number of cases in which the length of stay in federal centres went significantly beyond the maximum of 140 days. This was due to the fact that during several months, the attributions to the cantons were significantly restricted because cantonal structures were already at their maximum capacity under the new measures related to COVID-19. The SEM needed to open a few additional facilities to cope with this situation. In some cases, asylum seekers were transferred to other federal centres without their legal representation being informed beforehand. Also, in some cases it has happened that applicants were transferred to centres situated in another asylum region; an exception related to the complications brought by the pandemic.

### Reception capacity

**Bulgaria:** Reception centres are managed by the SAR. As of the end of 2020, there were 4 reception centres in Bulgaria. 1,032 asylum seekers resided in reception centres as of the end of 2020, thereby marking an occupancy rate of 25%. Alternative accommodation outside the reception centres is allowed under the law, but only if it is paid for by the asylum seekers themselves and if they have consented to waive their right to the social and material support. As of 31 December 2020 only 172 asylum seekers lived outside the reception centres.

**Belgium:** Despite the numerous warnings of the federal reception agency for asylum seekers Fedasil as well as civil society actors, a reception crisis had emerged in 2019. Although new reception centres opened throughout 2019, the occupancy rate was at 96 % on 1 January 2020 - while saturation is already reached at 94 % of occupancy. In the course of 2020, 14 new reception centres were opened, while 3 centres were closed. Combined with a significant decrease of asylum applications of 39% in 2020, this led to a decrease of occupancy rate of the reception system to 85% on 1 January 2021. In line with the new Secretary of State's intention to develop a more stable reception system, Fedasil announced it would continue to look for new reception places in 2021, in order to ensure flexibility in case of fluctuations of the influx of asylum seekers.

**Austria:** The number of reception centres has been consistently reduced since 2017. At the start of Covid-19 pandemic only 10 centres were operating. Reluctantly, the Ministry of Interior opened up two facilities in Villach and Vienna. At the end of 2020, there were 12 federal facilities accommodating 2,009 persons, while the maximum capacity is at 2,763 places.

**Slovenia:** Due to the obligatory quarantine period, a high number of arrivals and a lack of capacity, individuals who were waiting to lodge an application were also accommodated in containers outside the Asylum Home. In 2020, individuals waited up to 20 days to lodge their applications.

**Cyprus:** 2020 was a challenging year for the reception system. The decisions of the authorities pointing towards stringent measures concerning handling of immigration and refugee flows and the outbreak of covid-19 pandemic have impacted the ability of the reception mechanisms to address the needs of newly arrived persons. In the beginning of 2020, and before the outbreak of the pandemic, the Ministry of Interior

announced the creation of closed reception centres in an effort to discourage migration and refugee flows. Pournara first registration Centre, operating under Asylum Service and originally meant to receive asylum seekers for a few days for purposes of lodging asylum applications, issuing documents and performing medical screenings, started accommodating all irregularly arriving asylum seekers for an undefined period of time. In the meantime, the measures adopted for tackling the pandemic by the government were used to justify evictions of hundreds of asylum seekers already residing in the community, either in private accommodation which they had secured on their own, or in low budget hotels where they were placed by Social Welfare Services due to being homeless or vulnerable.

Given the existing shortcomings in regard to available services and infrastructure of Pournara Centre and despite the reluctant release of individuals from time to time, this practice quickly led to extreme overcrowding and severe deterioration of living conditions for the approximately 1600 residents. It also raised valid safety concerns for vulnerable residents (UASC, traumatized persons, families, women, Victims of Trafficking) which as of today continue to reside under conditions which cannot guarantee their safety and well-being. The situation is better in Kofinou Reception Centre, however the movement restrictions imposed due to the pandemic intensified the challenges in facilitating the transition of people granted International Protection in the community.

**Malta:** The total reception capacity of the centres is approximately 2,800 places (up from 1,500 in 2018). No new centre was built but capacity of existing ones was further increased. At the end of 2020, around 2000 (up from 913 in 2017) persons were accommodated in open centres. In order to deal with the afflux of applicants and the lack of capacity of the reception system, the authorities revised their policy regarding length of stay in the reception system. Single men are now allowed to remain in the reception centres for no more than six months, while families still benefit from a one-year contract. AWAS indicated working closely with the communities to find alternative accommodation for applicants. Residents receive a written reminder to leave, six weeks before the end of their contract. AWAS indicated that the list of people evicted is always reviewed by the psychosocial team. People are entitled to challenge that eviction with AWAS, and the decision shall be reviewed by a care team but with no formal procedure in place. According to NGOs, AWAS might reconsider such decision on a case-by-case basis depending on the vulnerability of the applicant. Families are requested to leave after a year and upon assessment and if needed they can receive the financial assistance for the first three more months. Upon arrival, applicants are briefed about the reception rules and the length of their stay in the reception centre.

Nevertheless, such evictions remain a major problem in Malta where accommodation is very hard to secure due to high prices in a largely unregulated private rental market and the fact that landlords are usually extremely reluctant to rent accommodation to asylum-seekers. Moreover, in 2020, the COVID-19 crisis also made the situation more difficult with many applicants not being able to work for several months. Thus, these evictions often result in homelessness. Several media outlets reported in 2020 that people were sleeping in the streets outside of the capital city following evictions from reception centres. Moreover, due to the delays in processing asylum applications, individuals are usually evicted while they are still applicants for international protection holding only a three months renewable asylum-seeker document making difficult for them to find employment and accommodation, the monthly 134€ allowance not being sufficient to find a place to rent.

**United Kingdom:** The accommodation estate suffered severe pressure, in part as a result of the decision not to evict anyone when they received a decision on their claim. Contingency accommodation was procured by the accommodation providers: some hotels were repurposed for use as Initial Accommodation and several former military barracks were rapidly repurposed. People entitled to 'section 95' support were not always moved to more independent accommodation. Late in 2020 the government agreed to pay a small amount of cash to such people when they were living in full board accommodation.

**Ireland:** As of September 2020, there were 44 Direct Provision accommodation centres located nationwide. There were a further 36 emergency accommodation locations such as in hotels and guest houses. Approximately 6,911 people resided in Direct Provision and emergency accommodation. Capacity in Direct Provision continued to be a significant issue throughout 2020, with approximately 1,382 asylum seekers housed in emergency accommodation as of September 2020. The housing crisis in Ireland continued to exacerbate the situation, meaning that a significant number of individuals who have been granted protection

status or permission to remain have been unable to move out of Direct Provision accommodation owing to a lack of available and affordable housing. As of September 2020, of the 7,097 individuals in the Direct Provision system, 810 had some form of status in the State.

Additionally, the onset of the Covid-19 pandemic resulted in the opening of a number of new emergency centres at very short notice so as to enable residents to socially distance and reduce overcrowding. These centres were also used to facilitate self-isolation. These included the contracting of an additional 650 beds at newly set up centres in Dublin, Galway and Cork, Galway. Moreover, from 18 March 2020, approximately 100 asylum seekers were gradually moved from emergency centres in Dublin to the Skellig Star Hotel in Cahersiveen, Co. Kerry in order to reduce capacity in Direct Provision centres. This centre subsequently closed and residents were moved out on a phased basis. It is understood that the last remaining residents were transferred from the centre in September 2020. Additionally, two new centres were also opened to facilitate off-site self-isolation. One centre is used to facilitate self-isolation where a resident tests positive for Covid-19, while the other is used to facilitate a mandatory 14-day quarantine period in circumstances where a resident has left their IPAS accommodation temporarily and subsequently seeks to return.

**France:** In 2020 the number of asylum seekers accommodated remained far below the number of persons registering an application. At the end of the year, the Ministry of Interior stated that 51% of asylum seekers eligible to material reception conditions – i.e. 145,253 persons in total at the end of December 2020 - were effectively accommodated compared to 48% at the end of 2019. This means that at least 90,000 asylum seekers were not accommodated in France as of the end of 2020. In recent years, figures have demonstrated that a substantial number of applicants were left out of accommodation every year. Therefore, France has an established track record of non-compliance with Articles 17(2) and 18(1) of the recast Reception Conditions Directive, requiring reception conditions which ensure an adequate standard of living for applicants. Moreover, At the end of 2020, 10% of the places in accommodation centers were occupied by individuals who were no longer authorised to occupy these places such as rejected asylum applicants or beneficiaries of international protection, and 4% of the places were vacant. 4,500 new places (3,000 in CADA and 1,500 in CAES) will further be opened for asylum seekers in 2021.

Although the capacity of CADA – the main form of reception for asylum seekers - has been steadily developed throughout the years, France has exponentially increased the capacity of emergency accommodation through the creation of PRAHDA and the expansion of local HUDA from 11,829 places in mid-2016 to 51,796 places at the end of 2020. This means that the emergency accommodation network (PRAHDA, HUDA) is more important than the CADA and formally forms part of the national reception system. It appears therefore that “emergency accommodation” in France no longer serves the purpose of temporarily covering shortages in the normal reception system. In fact, it is the default form of accommodation for certain categories of asylum seekers such as those under a Dublin procedure, since they are excluded altogether from CADA. Where centres are overcrowded, applicants can also be accommodated in hotel rooms. To illustrate, 13% of places in HUDA were in hotel rooms at the end of 2020.

**Switzerland:** In order to prevent COVID-19 infections and respect the hygiene and distancing rules issued by the Federal Office of Public Health, at the beginning of the pandemic the SEM has decided to lower the maximum capacity of the federal asylum centres to 50%. This was possible given the low numbers of new applications and the opening of six new centres operating as federal asylum centres. Masks were not immediately at disposal but were accessible to asylum seekers within a few weeks since the beginning of the pandemic. An obligation to wear them was also introduced in the federal centres, outside the dormitories. Information videos and posters were put at disposal of the asylum seekers and the temperature was measured after every exit from the centre. However, the distancing rule can hardly be observed in collective centres. Due to the difficulties in enforcing the measures, staff members have been especially burdened and overload. Persons belonging to particularly high-risk groups have been accommodated in separate areas or centres. Infected persons were placed in isolation and in a few cases, entire centres have been quarantined. As of January 2021, 230 asylum seekers tested positive to COVID-19 have been registered; none of them has died.

**Netherlands:** As of 2020, the total capacity of the Dutch reception system reached 27,800 and the AZCs are full. The COA is thus almost at the maximum occupancy. An even higher occupancy entails risks for the quality of life, manageability and safety of locations. 5,000 extra shelter places are urgently needed. The COA has

been asking for this for more than a year and is therefore preparing with escalation options. Possibilities include hiring hotels and bonuses for municipalities that quickly accommodate status holders. The last escalation option is the emergency shelter in sports halls. 5,000 additional places have been announced for 2020 to tackle the significant delays in the rest and preparation period and the subsequent length of stay of asylum seekers in reception centres. At the end of 2020, there were 27,846 persons residing in reception centres managed by COA.

**Poland:** There is no problem of overcrowding in these centres. As of 31 December 2020, the occupancy rate was 15% in first reception centre in Biała Podlaska, 30,28% in Dębak and between 28,74% and 87,86% in the accommodation centres. The numbers are lower than in 2019 due to the Office for Foreigners' policy of encouraging asylum seekers to live outside of the reception centres to stop the spread of the COVID-19 pandemic.

**United Kingdom:** The availability of housing in a region depends on procurement by the private company, which is affected by local housing markets, and local authority policy. There has been an increase in the use of institutional accommodation including repurposed military barracks which has resulted in media attention. . 1 January 2020 the Independent Chief Inspector of Borders and Immigration announced an inspection into the use of contingency accommodation and in March 2020 released some key findings following the team's visit to both sites formerly used as military barracks. There has also been a huge increase in the use of hotel and other full-board accommodation during 2020. The Home Office has issued a statement about the use of hotels and other temporary accommodation. A challenge was made by three unaccompanied children who were being accommodated in a hotel by a local authority, which argued that it was appropriate. A judge ordered that the case could be heard and in the meantime ruled that a hotel was not appropriate for unaccompanied children.

At the end of 2020, initial accommodation centres, hotels and former military barracks were accommodating people receiving section 98 support. The numbers were much higher than usual as the pandemic resulted in the Home Office providing accommodation to more people seeking asylum; this was due to an agreement (and subsequently a court order) that people would not be evicted to destitution, and also because of an increasing backlog of asylum decisions. It was not due to a rise in the number of people seeking asylum. The number of people supported under section 98 at the end of 2020 was 12,235 (3 times higher than at the end of 2019).

### Standards for reception

**Ireland:** Following public consultation, the final draft of the National Standards on Direct Provision was published by the Working Group on National Standards in August 2019. The National Standards are designed to constitute a set of standardised rules for every Direct Provision accommodation centre in Ireland and aim to provide a framework for the continual development of services and support for residents, while also ensuring consistent accommodation conditions across all Direct Provision centres in Ireland. The National Standards became applicable and legally binding on 1 January 2021. The Department of Children, Equality, Disability and Integration and Youth are currently engaged in talks with the Department of Health and the Health Information and Quality Authority (HIQA) with regard to undertaking the role of monitoring the implementation of the National Standards. It is hoped that monitoring will begin in the coming months. However, in the interim, accommodation centres continue to be subject to inspections by both IPAS and an independent inspectorate company

On 6 October 2020, the Oireachtas Special Committee on Covid-19 Response published its final report, highlighting the areas requiring ongoing oversight and accountability, including Direct Provision. The Report highlighted the need for a stronger regulatory framework, as well as a rapid and robust test and trace system for individuals living in Direct Provision. Arising out of its consideration of the topic, the Committee also referred a number of issues to the Joint Committee on Children, Disability, Equality and Integration, including the need for the Department to review the practice of accommodating people seeking international protection in direct provision centres, hotels and B&Bs, the need for better data sharing between Departments so that adequate services can be provided to residents, and the need to ensure that staff working in Direct Provision services receive appropriate training, including in infection control measures.

On 21 October 2020, the Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process was published. The Advisory Group, chaired by Dr. Catherine Day, was established in October 2019 with a view to advising on the development of a long-term approach to the provision of support, including accommodation, to persons in the international protection process. The report makes a series of recommendations to end Direct Provision and transform the international protection process by mid-2023. In its Programme for Government 2020, the Government committed to ending Direct Provision and replacing it with a new accommodation policy based on a not-for-profit approach.

**France:** On 18 December 2020, the Ministry of Interior published its 2021-2023 national reception plan for asylum seekers and the integration of refugees. This plan makes it possible to adapt the reception policy to the migration context and to the specific characteristics of the regions, inter alia through a better distribution of asylum seekers across national territory. It is based on two pillars: better accommodation and support.

**Spain:** The reception system is currently divided into three phases. However, a new Instruction was adopted in January 2021 by the SEM, establishing that persons can access the second phase (i.e. the last phase) only if they have been granted international protection, while the rest of asylum applicants will – as formulated in the instruction- “complete the full itinerary” in the previous phase. Depending on each phase, asylum seekers and beneficiaries of international protection receive different forms of reception conditions (i.e. assistance, accommodation, financial support, etc.), with the aim to increase the integration process.

**United Kingdom:** Following a tender process new contracts to provide accommodation were announced in January 2019. One of the previous providers did not receive a contract this time. In March 2019 the government responded to the Parliamentary Committee’s report about this process and its recommendations for smooth transition. The transition was heavily criticised, and the service provided under the new contracts continue to receive attention including in a joint report in July 2020 . The accommodation and support contracts were also investigated by the National Audit Office which has a responsibility to audit the use of public funds. Its report, in July 2020, was then, as a matter of protocol, discussed by the parliamentary committee the Public Accounts Committee , The theme of all the criticism is that the contractors are not meeting the needs of people in the asylum system. By the time of the Public Accounts Committee inquiry the focus had moved to the increased use of ‘contingency accommodation’; the use of which increased from the beginning of the Covid-19 pandemic although had begun before that time. The Home Affairs Select Committee conducted an inquiry specifically into the use of contingency institutional accommodation with a focus on the response the pandemic. Its key recommendation to the Home Office was to work on a strategy to end the use of this type of accommodation. The government’s response largely repeated its position in the support and advice provided.

Moreover, quality of decision making on support applications has been a significant obstacle, particularly in relation to the destitution test. Between 1 April 2019 and 31 March 2020 the Asylum Support Tribunal allowed 66% of the appeal cases where the client was represented by lawyers from the Asylum Support Appeals Project (ASAP) and remitted a further 9% back to the Home Office to retake the decision .

**Portugal:** In November 2020, a much-anticipated resolution of the Council of Ministers establishing a single system of reception and integration of applicants for and beneficiaries of international protection was published. According to the Resolution, the main features of this single system are:

- It covers all applicants and beneficiaries of international protection, including unaccompanied children, resettled refugees and relocated asylum seekers;
- A Single Operative Group (SOG) is established. SOG has a restricted and an extended line-up;
- The restricted line-up ensures the coordination and is composed by ACM, SEF and ISS;
- The extended line up develops technical and operational tasks and, in addition to ACM, SEF and ISS also includes: the Directorate General for Higher Education (DGES), DGEstE, Portuguese Institute of Sports and Youth (IPDJ), IEF, ANQEP, SCML, ACSS, DGS, and IHRU. The resolution further establishes that other entities with competences in the fields of reception and integration, namely CPR, are also part of this line up.
- ACM is responsible for organising the periodic meetings (at least one every month), providing logistical and administrative support, preparing the regulation of the Single Operative Group;
- The resolution further details the responsibilities of ACM, SEF and ISS within the context of the SOG;
- The SOG is established for 5 years with possibility of extension and that instruments concerning reception

and integration of applicants for and beneficiaries of international protection currently in force must be adjusted to the provisions of the resolution.

At the time of writing of the AIDA report, meetings within this new framework had not started yet.

### Specialised reception centres

**Switzerland:** The new legislation of March 2019 introduced a legal basis for the creation of special centres for uncooperative asylum seekers. Article 24a AsyLA states that asylum seekers who endanger public security and order or who by their behaviour seriously disrupt the normal operation of the federal asylum centres may be accommodated by the SEM in special centres that are set up and run by the SEM or by cantonal authorities. Although applications cannot be lodged in those centres, procedures are carried out according to the same rules than in the usual federal asylum centres. The only centre of this type ever opened is situated in Les Verrières, Canton of Neuchâtel and has a capacity of 20 places. It opened in December 2018 but was temporarily closed on 1 September 2019 after nine months with on average two inhabitants. During 2020, the centre was not in function, however the SEM has decided to reopen it in February 2021 due to an increase in applicants disturbing the functioning of the centres or endangering its security. It was originally planned to open a second special centre in the German-speaking part of Switzerland, but plans were put on hold because of the low numbers of asylum applications.

### Reception conditions

**Bulgaria:** Apart from the Vrazhdebna shelter in Sofia and the safe-zone for unaccompanied children in Voenna Rampa and Ovcha Kupel shelters, living conditions in national reception centres remain poor, i.e. either below or at the level of the foreseen minimum standards and despite some partial renovations periodically conducted by the SAR. Regular water, hot water, repair of utilities and equipment in bathrooms, rooms and common areas remain problematic. Moreover, measures to prevent sexual and gender-based violence (SGBV) are not sufficient to properly guarantee the safety and security of the population in the centres. Except for **Vrazhdebna** shelter in Sofia, the security of asylum seekers accommodated in reception centres is not fully guaranteed. Verbal and physical abuse, attacks and robbery committed against asylum seekers in the surroundings of **Voenna Rampa** shelter, usually not investigated or punished, escalated in 2017 to an extent to provoke a joint letter by numerous non-governmental organisations, requesting the Sofia Police Directorate to step in and take effective preventive and investigative measures as prescribed by the law. No response or measures have been announced by the police in this respect and the situation did not improve in 2020. Due to COVID-19 pandemic all activities in reception centres were cancelled. The Red Cross re-organised online its language courses and managed to provide ten of them throughout the year. All children accommodated in the centers were supplied with laptops, purchased by the Red Cross with AMIF co-funding, to secure children's online access to primary and secondary education.

**Portugal:** The coronavirus pandemic exacerbated the shortcomings in the reception system previously reported by CPR (i.e. the pressure resulting from the increased number of applicants in recent years, the delays in the transition into accommodation provided by SCML/ISS, the lack of available properties in the private market and increased market prices, particularly in the Lisbon area, and the consequent overcrowding of facilities). As such, the provision of material reception conditions, in particular housing, to asylum seekers, was quickly flagged by CPR as a concern (also due to the communitarian setting of most accommodations available). On 17 April 2020, an asylum seeker was tested positive to COVID-19 in one hostel in Lisbon, which was immediately communicated to the competent authorities. On 19 April 2020, a joint operation ensured that all applicants accommodated in the facility were tested and the building was disinfected. Around 170 tests were performed, out of which 138 were positive, with only one person showing symptoms. All persons tested were later transferred to a military base in Ota for the purpose of quarantine. CPR, ACM and SCML continued to accompany the cases during this time.

Following these events, and in line with previous decisions to conduct testing operations in communitarian accommodation facilities (e.g., nursing homes), the health authorities decided to test all asylum seekers accommodated in other facilities in Lisbon. These were public health operations that also included an information-sharing component and involved various governmental and non-governmental actors, including CPR. Despite the dissemination of information on Covid-19 by CPR and other entities, asylum seekers reported feeling anxious and found it difficult to understand why they had to remain isolated since they were

not feeling sick. In the meantime, an integrated plan to address the impact of Covid-19 as well as the provision of accommodation to applicants for international protection was discussed under a Crisis Working Group, created by the end of April 2020, gathering an array of relevant stakeholders, including CPR. This was a positive step to address the chronic reception problems. The measure, that was accompanied by a memorandum of understanding between CPR and SCML and an increase in the number of meetings of the GTO, allowed for a quick decrease on the number of asylum seekers benefiting from CPR's support and to address the reception conditions at the hostels.

**Hungary:** After the outbreak of the COVID-19 pandemic, asylum seekers were given disposable masks and gloves, and for certain periods of time the fever control was introduced in the reception facilities. Hand sanitizers were provided at disposal in the reception centres, as well. Asylum seekers were continuously updated by the social workers – with the help of the HHC attorneys and the Menedék Association - about the newly adopted regulations, such as rules of curfew and the time slots based on age introduced in the supermarkets. In general, asylum seekers were treated in the same way as Hungarian citizens with regard to the COVID-19 measures. In 2020, there was one social worker of the NDGAP providing development programs and another one offering Hungarian language classes for children in Vámoszabadi. According to the HHC's knowledge, the services were provided with less intensity in Balassagyarmat. The community room in Vámoszabadi had been closed down, the residents could not use it until early 2020 when upon the Menedék Association's request the room was re-opened, thus children could again play with the toys stored in there. The internet room became accessible again, as well in both reception facilities.

The Menedék Association for Migrants similarly to the previous year, continued its activity in Vámoszabadi in 2020 providing regular individual support, information provision, legal counselling (information on the rights and obligations, furthermore on rules of employment, accommodation etc.) and organized community programs for the residents. Their community programmes covered a wide range of activities from children and sport programmes to cultural activities. The organisation was also present in Balassagyarmat in the beginning of the year 2020 providing programs aiming at easing the distress of the residents caused by the long detention conditions in the transit zones or in asylum detention centre. The organisation continued its activities online during the lockdown introduced in March 2020. Since then due to the low number of residents in the community shelter, it suspended its activities there. The organization was also present in Fót. They offered activities to the unaccompanied children, such as art and craft programmes, Hungarian language class, psycho-social support, table tennis, board games or cinema visits. During the lockdown periods the Menedék Association provided the services online three times a week and via other telecommunication means.

**Slovenia:** Due to the large number of asylum seekers accommodated in the Asylum Home and its branches, the risk of infection with COVID-19 was high. Preventive measures were taken in all centres. Masks were obligatory and hand sanitizers were installed in all centres. All gatherings of larger groups were prohibited including workshops and language classes. Food was distributed and eaten in rooms instead of the cafeteria. People were instructed to leave the premises of the Asylum Home or its branch only if needed. Each person with COVID-19 symptoms was tested including his or her roommates and isolated. Most activities were suspended in 2020 due to the COVID-19 pandemic. Workshops, language classes and other activities that are carried out in groups had to be suspended while other individual activities such as individual counselling continued in accordance with the obligatory preventive measures (masks, distance, sanitizing etc.)

**Romania:** Conditions in Regional Centres are monitored, inter alia, by the Ombudsman, who visits the centres on a regular basis. However, in 2020 no visits were conducted by the Ombudsman, except the one in Stolnicu Regional Centre, in order to assess the situation of unaccompanied minors. It is not possible to provide a comprehensive overview of reception conditions here, as they are described in detail centre by centre in the AIDA report. Please refer to the latter for further information.

**Switzerland:** In its latest report published in January 2021, the NCPT draws its conclusions on the visits carried out between 2019 and 2020 in 8 federal asylum centres. On a positive note, it highlights the introduction of schooling for children in the centres. The Commission observed shortcomings in several areas. The identification of vulnerable persons (victims of trafficking, victims of torture, etc.) is still insufficient and so is the level of care offered to them. There is a need to reinforce the first medical consultations and to provide a psychological assessment upon arrival at the federal asylum centre. According to the Commission, there is



also potential for improvement in the area of conflict management and the prevention of violence. The NCPT recommends improving the training of security personnel and providing for the establishment of a complaint management system. It also recommends avoiding systematic searches of asylum seekers at the entrance of the centres, clarifying the use of the "reflection room" and formalizing the decisions on disciplinary sanctions, which should always take place in writing.

During 2020, there was a number of cases in which violence escalated in the federal asylum centres. The media reported about excessive use of physical force by security personnel. According to the information received by the NCPT, the security personnel intervened several times with physical fixations, pepper gel and the use of the "reflection room". Repeatedly, bruises and hematomas resulted from the interventions. Several criminal proceedings were initiated against security staff, with allegations of disproportionate or arbitrary violence and abuse of authority. The security staff comes from private companies. In the Commission's assessment, there is considerable potential for improvement in the handling of conflicts, in the prevention of violence and in allegations of violence, namely through the introduction of a low-threshold and systematic complaint management system. The NCPT has also recommended that security companies recruit experienced and competent personnel and improve their training, reinforce the role of assistance staff and introduce consultation hours for persons with addictions (on the basis of a best practice tested in Kreuzlingen). The SEM is currently finalising a violence prevention concept to be applied to all federal asylum centres. One positive measure that was already taken is that security agents wear an identification number on their uniform. A complaint management system is also foreseen. However, this will most probably be managed internally by SEM despite the claims of several NGOs such as the Swiss Refugee Council or Amnesty International that demanded an independent complaint and monitoring system or an ombudsman's office.

**Croatia:** Due to the spread of COVID-19, Reception Centres for applicants of international protection were adapted to epidemiological measures, the daily presence of a physician was ensured, while the access for persons not necessary for the functioning of these facilities was limited. Persons being accommodated in Reception Centres for Applicants of International Protection were placed in two-week self-isolation and tested for COVID-19 based on medical assessment. Throughout the year 1,348 applicants for international protection were under measure of self-isolation.

In 2020, according to the Welcome Initiative, a fence was built around the open Porin Reception Centre for Applicants of International Protection in Zagreb amidst the COVID-19 crisis. Residents of the centre published a letter in which they expressed concern that the fence would create even more division, panic and intolerance. In March 2020, access to Reception Centres for Applicants of International Protection became subject to visitation restrictions, so only personnel of the Ministry of Interior necessary for the normal functioning of the Centre was allowed access while civil society organizations had to stop with their activities in the centres, with the exception of the Croatian Red Cross and MdM. Staff was working in the shifts, however after two months of limited activities and 14- day shifts in the Reception Centres in Zagreb and Kutina, Ministry of Interior, Croatian Red Cross and Medicines du Monde resumed their regular work on 11 May 2020. Restrictions for nonessential entries to the centers remained in place. Centre for Peace Studies reported that applicants for international protection told them about the problematic conditions of the self-isolation part within the Reception Centre for Applicants of International Protection in Zagreb - where persons in self-isolation are accommodated in a crowded space (often one family per room) where it is impossible to keep distance.

In 2020, the NGO Rehabilitation Centre from Stress and Trauma raised concerns about the reception conditions of applicants for international protection. These included the lack of effective identification mechanisms for possible torture victims; restricted freedom of movement to prevent the spread of COVID-19; suspended integration activities; and restricted access to education for those young applicants who are outside the regular educational system. Due to COVID-19 outbreak in 2020. UNHCR provided hand and surface sanitizers for reception centers in Zagreb and Kutina in order to contribute to the government efforts in maintaining adequate hygiene measures. The sanitizers were also donated to homes in Zagreb and Split that care for unaccompanied and separated children (UASC).

**Ireland:** Direct Provision has been under intense scrutiny since its inception in 2000 for the conditions imposed on residents, exacerbated by the fact that systemic delays in the asylum procedure result in people spending far longer in Direct Provision than was originally intended by the State. The system of Direct

Provision has been criticised by numerous prominent organisations. The onset of the Covid-19 pandemic further highlighted the unsuitability of Direct Provision as a means of accommodating asylum seekers. As a congregated setting, individuals in Direct Provision share intimate spaces, including bathrooms, dining areas, communal living spaces and laundries. This means that social distancing has been near impossible at the majority of centres. Significant outbreaks of Covid-19 have occurred at accommodation centres across the country throughout the pandemic. Particular issues of concern emerged in relation to the Skellig Star Hotel in Co. Kerry, where one of the first major outbreaks occurred in May 2020. Various issues had been reported prior to the hotels opening, including the rushed opening of the centre, repair issues, lack of running water and heating, and staff not being Garda vetted. Individuals were also moved at very short notice from Dublin and residents were initially sharing rooms with one another. During the outbreak, residents reported that they were unable to leave the hotel, or were given a strong impression that they could not leave their accommodation. Individuals, including children, were forced to spend all day in hotel rooms and reports suggested a lack of sanitation and deep cleaning of the property, even after 22 residents had tested positive. Conditions at the centre prompted residents to go on hunger strike in July 2020, while the local community and various migrant rights organisations called for the hotel to be closed. It was subsequently announced that the centre was to close and residents were to be moved out on a phased basis. It is understood that the last remaining residents were transferred from the centre in September 2020. In August 2020, several Direct Provision centres reported outbreaks of Covid-19 linked to clusters at meat factories where a number of residents worked. The vast majority of residents were moved to designated facilities to self-isolate. In late December 2020, a further significant outbreak was reported at Kinsale Road accommodation centre in Co. Cork. It is understood approximately 40 residents were removed from the centre in order to facilitate social distancing, while the remaining residents were told to remain in their rooms and isolate.

The Irish Refugee Council also became aware of a number of reports of individuals being transferred from temporary accommodation to communal facilities. In one such instance, a resident and her two children were moved from their temporary accommodation in Dublin, to Cahersiveen, where communal facilities with other residents were shared. One child tested positive for Covid-19 and the family were moved to a self-isolation facility for 3 weeks. Fearing reinfection if they were returned to live in communal facilities, the family requested a transfer to a self-contained family unit. This request was initially refused and only with sustained advocacy from IRC and other agencies was the decision reviewed and self-contained accommodation eventually offered.

As regards, hygiene and sanitary measures, all accommodation centres, including emergency accommodation centres were required to complete contingency planning for Covid-19 with a view to limiting the possible spread of disease throughout centres. Contingency plans were subject to review by IPAS and HSE Community Healthcare Organisations (CHOs). Public health information was distributed to residents through the circulation of notices in multiple languages. Each centre was also asked to generate a self-isolation capability for use by persons with a positive Covid-19 test result. Moreover, in September 2020, it was announced that a comprehensive programme of Covid-19 testing was to be established across all Direct Provision and emergency accommodation centres. The testing programme followed numerous outbreaks of Covid-19 within Direct Provision centres throughout the country over the course of the pandemic.

Additionally, the HSE established a temporary accommodation scheme for healthcare workers at the outset of the pandemic. Under the scheme, healthcare workers or individuals providing home support who are resident in Direct Provision were entitled to apply for temporary accommodation in certain defined circumstances. As of May 2020, 40 residents had been granted alternative accommodation under the HSE-provided scheme, while approximately 15 were forced to stop working owing to childcare issues. In the experience of the Irish Refugee Council, while there have been some problems with the scheme, particularly around availability of facilities, the vast majority of residents seeking access to the scheme have been accommodated.

**Poland:** In general, conditions in the reception centres are considered to have improved in recent years. It results from the greater attention given to the living conditions when a contractor for running a centre is being chosen and the renovations conducted in the recent years in the centres that are managed by the Office for Foreigners. Nevertheless, some asylum seekers continued to complain in 2020 on certain conditions, mentioning for instance bed bugs in the rooms. In the research conducted in the centre in Grupa foreigners predominantly complained on the food served in the centre. They assessed the centre's cleanliness,

appearance and furnishings mostly as 'average' or 'bad'. In January 2020, the Office for Foreigners conducted the anonymous survey in all centres concerning the asylum seekers' level of satisfaction in regard to i.a. accommodation, food, medical assistance, but the findings are not publicly available. In 2020, one protest occurred in the centre in Warsaw that is dedicated to women and single mothers. Asylum seekers opposed to the limitations that resulted from the COVID-19 quarantine. According to the Office for Foreigners, thanks to immediate reaction of the Office, medical operator and NGOs, the situation was quickly under control. Moreover, due to the COVID-19 pandemic, the access to the reception centres for persons whose presence there was not indispensable has been limited. Psychological, legal and educational assistance was provided online or by phone (since March 2020). NGOs were able to access the reception centres again in June-September 2020, but the limitations in this regard were re-introduced again in November 2020.

**Malta:** According to the authorities AWAS significantly increased its capacity by putting in place two coordinators in each centre, one being in charge of the welfare of residents. They also established a Migrant Advise Unit in order to provide information to residents. EASO is said to be supporting this initiative by providing information material and interpreters. AWAS indicated that there is now an info point available in each centre (with interpreters) for people to go either by appointment or drop-in. AWAS acknowledges that this system is just beginning as it was put in place in November 2020 and will be developed in the coming years with the support of EASO. Despite this increased presence, most residents still report lack of information and access to services. They are accommodated in the centres after months spent in detention and are usually in need of assistance. AWAS further reported having improved the conditions in AWAS centres throughout 2020 by increasing its capacity and setting up a quality assurance department, introducing Internet access in all AWAS centres, and initiating two pilot community projects.

However, despite these improvements, the living conditions in the open centres, save for a few exceptions, remain extremely challenging. Low hygiene levels, severe over-crowding, a lack of physical security, the location of most centres in remote areas of Malta, poor material structures and occasional infestation of rats and cockroaches are the main general concerns expressed in relation to the open centres. According to NGOs regularly visiting the centres, the situation has not improved in recent years and the living conditions in the reception centres remained deplorable in 2020, especially in the Hal Far centres. Sanitary facilities are run down and quickly become unsanitary due to the number of people. Cabins are very cold in winter and very hot in the summer. Residents are not allowed to have fridges in their cabin or cook their own food which leads to intense frustration. Food is provided daily but residents often mention the poor quality and lack of variety of food. In 2020, the conditions in the reception centres continued to deteriorate significantly, due to over-crowding and the COVID19 pandemic. Issues include a lack of cleaning, difficult access to bathrooms, very limited hot water, or air conditioning and heating not being available

**Spain:** Overcrowding in the CETI in Ceuta and Melilla is a serious issue that has persisted in recent years, including in 2020, resulting in poor or substandard reception conditions for asylum seekers and migrants. Since the beginning of the pandemic, many stakeholders have been asking the Minister of Interior to increase transfers to mainland, in order to relieve the centres. Amnesty International collected 5,266 signatures requesting the immediate transfer to mainland of vulnerable migrants (i.e. pregnant women, LGTBI+ persons, persons with chronic illness); and the NGO CEAR further demonstrated the negative consequences as well as the increased vulnerability of persons which were not transferred to mainland. In August 2020, five blind Moroccan migrants asked the President of Ceuta and the Government Delegation to be transferred to mainland after 1 year of staying at the CETI. Other NGOs such as Save the Children, Jesuit Migrant Service, Doctors of the World, but also the General Confederation of Workers (Confederación General de Trabajadores - CGT), called for an evacuation to the mainland. Similar calls were made by the Spanish Ombudsman. In May 2020, the latter urged the Ministry of Interior to transfer from the CETI of Melilla to mainland at least children and single women, because they are at risk of sexual and other forms of violence in the overcrowded centre, that reached up to 1,600 persons at that time. In April 2020, the same body urged the urgent transfer to mainland of a Moroccan woman victim of domestic violence with her three children, because her asthmatic condition increased her vulnerability to coronavirus. The Association Coordinator of Neighbourhoods (Coordinadora de Barrios) lodged a claim at the Public Prosecutor Office for the "torturing" conditions at the CETI of Melilla, asking to investigate the situation of overcrowding and the lack of assistance to migrants and asylum seekers. When the spread of the virus increased around April 2020, infecting at least 85 persons out of the 1,300 persons hosted at the CETI in Melilla, Amnesty International reiterated its concerns regarding the issue of overcrowding and the impossibility to follow distancing rules. Given the lack

of response of the Minister of Interior, other Health or Migration authorities were called upon to alleviate the situation of overcrowding at the centre. Nevertheless, the tension increased at the centre, resulting in a riot where police officers were injured and 26 persons detained. Several other protests and hunger strikes were organised in April and June 2020, as documented in further detail in the AIDA report. In 2020, several international organisations and NGOs have expressed their concerns about the conditions in the CETI, in particular in Melilla.

- In August 2020, IOM and UNHCR asked the Spanish authorities for an urgent coordinated response to the reception conditions at the CETI of Melilla, that they qualified as “alarming”. Both organisations recommend to adopt a rapid assessment procedure and adequate measures which would facilitate the transfer of asylum seekers to the mainland, voluntary return, family reunification etc.
- The Council of Europe Commissioner for Human Rights also urged the Spanish authorities to find alternatives to accommodation for migrants and asylum seekers living in substandard conditions in Melilla.
- In its World Report 2021, Human Rights Watch expresses the same concerns on overcrowding at the CETI in Melilla and at a temporary shelter set up in a local bullring. It reports also about two decisions adopted by the first-instance judge of Melilla (Juzgado de Primera Instancia e Instrucción) that rejected the authorities’ attempts to lockdown the CETI and other five social centres after the outbreak of Covid-19 cases.
- Oxfam Intermón joined the call to the Spanish Government to transfer migrants and asylum seekers to mainland in order to avoid in Melilla a tragedy similar to the one in Moria, Greece.
- Save the Children also denounced the lack of resources to guarantee education, health and leisure activities to the 200 children present at the CETI in Melilla during 2020.

Many challenges in providing adequate reception conditions to migrants and asylum seekers were reported in particular on the Canary Islands. This is due to the significant increase of arrivals as described in Arrivals by sea, but also because of the overall lack of reception facilities and the deficient humanitarian assistance system on the Canary Islands. Thus, different temporary reception options have been adopted on an ad hoc basis, such as encampments, hotels, using parts of the CIE as reception facility, or using buildings belonging to the Ministries of defence and Home Affairs for the purpose COVID-19 quarantine. The AIDA country report provides detailed information on the different initiatives and calls made by NGOs (e.g. Amnesty international, CEAR, Doctors of the World, Spanish Red Cross etc. ) but also other stakeholders (e.g. Spanish Ombudsman, Judges for Democracy etc.) to ensure adequate living conditions. The situation at the encampment at the dock of Arguineguín (Gran Canaria), created impromptu in August 2020 to address the increase of arrivals, is also described in detail in the AIDA report. The camp ended up hosting up to 2,600 persons despite an initial capacity of 400 persons, thereby resulting in deplorable living conditions (for ex no access to showers for more than 20 days in certain cases). The dock was renamed “the dock of shame” and became the symbol of the failure of the Spanish (and EU) migratory policy

Despite the numerous calls of stakeholders to transfer to mainland, between January and November 2020, the Ministry of Inclusion, Social Security and Migration only transferred between 10% and 15% of all the newcomers to the mainland, out of which around 2,000 were vulnerable migrants and asylum seekers. The deterrence policy followed by the Government on the Canary Islands is similar to the one applied in Ceuta and Melilla, whereby only a minority of transfers are carry out to mainland. In December 2020 the Council of Ministries adopted different measures aiming at ensuring the functioning and improvement of the reception system on the Canary Islands with a budget of € 83 millions. Despite this investment, the Minister of Interior stated in December 2020 that the main objective remains to resume deportations as soon as possible, and that expulsion of migrants is one of the main axes of his migratory policy. For additional information on the Canary Islands, including the opening of new reception centres in early 2021 and future plans, please refer to the AIDA report. Please note that the AIDA report also describes the worrying living conditions in Cañada Real of Madrid and the living conditions in other informal settlements across Spanish territory – which have also been under particular scrutiny in 2020 and remain a serious matter of concern.

### Homelessness and destitution

**France:** Despite the increase in reception capacity and creation of new forms of centres, a number of regions continue to face severe difficulties in terms of providing housing to asylum seekers. In Paris, there are still several informal camps as of early 2021, despite many dismantlement operations by the authorities. In

January 2020, authorities lead the 60th dismantlement operation since 2015 and 1,436 migrants have thus been accommodated in emergency centers following the operation. On 17 November 2020, a camp with about 2,800 migrants has been dismantled near Paris but solutions were not offered to everyone. As a result, on 23 November 2020, about 500 migrants (mainly from Afghanistan) supported by NGOs have settled in a large square in Paris (Place de la République) to protest and request accommodation solutions. The evacuation of the square was carried out with the use of excessive force including attacks with teargas, shock grenades and truncheons against migrants, journalists and protestors. The French Human Rights Defender (Défenseur des droits) ensuring human rights and freedom under the French constitution as well as the General Inspectorate of the National Police (Inspection générale de la Police nationale – IGPN) launched investigations. The Council of Europe Commissioner for Human Rights, Dunja Mijatović also confirmed that she is following them closely. The conduct by police has been widely condemned by NGOs and politicians.

In Calais, regular dismantlement operations have been carried out since 2015, as described in the previous updates of this report. Yet, hundreds of migrants were still living in makeshift camps in Calais area throughout 2020. In January 2020, NGOs stated that 850 migrants were in Calais and surrounding, and in July 2020, this number increased to 1,200 migrants according to NGOs (700 to 750 according to authorities). Following a visit to the informal camp in Calais in September 2020, carried out upon the request of 13 NGOs, the French Public Defender of Rights noted sub-standard living conditions. An estimated 1,200-1,500 people, including women with young children and unaccompanied children, were sleeping in the woods, including in bad weather conditions. They experienced harassment by police during evacuations. Sanitary facilities were far from living areas, with only one water point; and measures to contain the spread of COVID-19 were insufficient. The Public Defender of Rights expressed particular concerns about the situation of women and children. The lack of specific facilities for women makes them particularly vulnerable to sexual exploitation and gender-based violence. Children, some only 12-14 years old, were at risk of falling prey to illegal networks.

At the end of September 2020, the largest dismantlement operation since 2016 took place in Calais with about 800 migrants directed to accommodation centres. According to figures from Human Rights Observers (HRO), a non-profit that monitors police evictions in northern France, 973 evictions took place in Calais in 2020, with police confiscating and destroying belongings. In December alone, 526 tents were seized, and 41 arrests were made. Reports of abuse, excessive force and violence have described children being teargassed, a person inside a tent being dragged by a tractor, and a man shot in the face with a rubber bullet from 10 metres, hospitalising him for two months. These evictions have contributed to pushing hundreds of migrants into the streets without any shelter, while weather conditions during winter have become very harsh.

On 10 February 2021, the National Consultative Commission on Human Rights (CNCDH) issued an opinion where it stated that, five years after its previous visit on site, the dignity of the people exiled in Calais and Grande-Synthe is still being violated. It confirms that in 2020 more than 1,000 evictions were carried out in Calais, and 33 evictions in Grande Synthe. Access to drinking water, food, showers, toilets as well as basic health services is not guaranteed. It calls for the re-establishment of a dialogue and cooperation between all the stakeholders involved in order to ensure the protection and dignity of the concerned individuals. It also recalls the best interest of the child and the necessity to introduce guarantees for unaccompanied minors as well as vulnerable groups such as women or victims of human trafficking.

**Malta:** Following evictions from reception to reduce occupancy, asylum seekers often end up homeless. Several media outlets reported in 2020 that people were sleeping in the streets outside of the capital city following evictions from reception centres. NGOs reported that it is now difficult for asylum-seekers to have access to shelters and centres run by Appoġġ, the National Agency for children, families and the community. Appoġġ offers services to children, families and adults in vulnerable situations and/or at risk of social exclusion, and communities. They also run several shelters and centres to accommodate people in need and in the past, some vulnerable asylum-seekers could be accommodated in such places when no other solution was available for them. NGOs noticed that, due to the current situation, Appoġġ appears not to accept asylum-seekers any longer. In 2020, authorities have constantly and publicly stated that Malta has no more capacity to welcome migrants. The Foreign Affairs minister stated in May 2020 that “centres are full and we have no place for more migrants”. However, it was pointed out by NGOs on several occasions that Malta failed to build the expected new centre mainly funded by the EU .

**Cyprus:** During 2020, there were instances of persons who had recently arrived irregularly and, according to the new policy, should have been referred to Pournara, the First Reception Centre in Kokkinotrimithia. However, due to overcrowding they were not accommodated and were instead left homeless and unregistered. In an attempt to address this, the authorities set up tents outside the gates of Pournara, where 200 asylum seekers were hosted with extremely limited hygiene facilities and in early 2021 the number remained at 100 persons.

**Spain:** Issues of homelessness and overcrowding issues persisted during 2020. At the beginning of the year, many asylum seekers were forced to sleep on the streets in cold temperatures in Madrid, as both the asylum reception system and the reception places that the Municipality of Madrid activates every winter for homeless persons under the “Campaign of Cold” (Campaña de Frío) are overcrowded. In November 2020, it was further reported that a group of 50 asylum seekers, including 13 children, had to sleep in front of the Samur Social (the Social Service for the Municipal Assistance to Social Emergencies) while waiting a reception solution due to the lack of places within the reception system. Reports of migrants and asylum seekers left with no reception solution and on the streets have been further registered throughout the year on the Canary Islands. Following the COVID-19 outbreak in Spain and the declaration of the State of Alarm, the DGIAH adopted a communication with a set of instructions on the management of the reception asylum system. Many NGOs urged for guarantees to protect vulnerable persons, especially migrants, refugees, domestic workers, victims of domestic violence, sex workers, migrants living in informal settlements (i.e. in Huelva), and expressed concerns about reception and detention centres that are usually overcrowded (i.e. CETIs and CIEs).

During the summer of 2020, migrants arriving by boat to Andalucía were also forced into homelessness. In particular, migrants were not transferred from the CATE (where they were initially accommodated) to other reception centres in cases where they were not in possession of a negative PCR test. NGOs have called for more coordination between the Government and the Autonomous Community of Andalucía in order to grant access to reception to these persons, as there were available places. This situation affected around 400 persons. In a report published by Save the Children in September 2020, the organisation reported many challenges that asylum seeking families faced in accessing the asylum reception system and often resulted in homelessness. Homelessness also affected hundreds of seasonal workers in the city of Jaén (Andalucía) during 2020. Different organisations and anti-racist groups further denounced the use of violence by law enforcement authorities to enforce Covid-19 measures, as well as ethnic profiling to that end.

**United Kingdom:** The numbers of refused asylum seekers who are absolutely destitute in the UK is unknown. The British Red Cross used to provide regular updates on its website on the asylum seekers it helps because of destitution. In its annual report of 2019 it stated that it had helped 40,500 refugees and asylum seekers, including 14,300 people facing destitution because of their legal status.

### Financial allowances

**France:** The allowance for asylum seekers (allocation pour demandeur d’asile, ADA) is paid to asylum seekers on a monthly basis directly by OFII on a card, similar to a debit card that can be used by asylum seekers. It is not necessary for asylum seekers to open a bank account to benefit from ADA (except in some cases where asylum seekers are overseas) and use the card. Many problems which persisted in 2020 have been raised by local stakeholders regarding ADA. On many occasions, the allowance has been paid late. In addition, some asylum seekers are not familiar with using a bank card or a cash machine. In some accommodation centres, asylum seekers do not receive the same amount even if they are in similar situation (e.g. same date of arrival and registration, same family composition or same duration of accommodation in the centre). These issues can create tensions between asylum seekers and may expose social workers to a lot of pressure and complicate their work. Moreover, it is really difficult to interact with OFII, according to local NGOs, to resolve such problems. Despite the presence of local representations of OFII in regions, they usually do not intervene at the level of the allowance distribution (although it should be noted that there are some exceptions, where OFII’s offices are accessible to asylum seekers in certain cities such as Lyon, Clermont-Ferrand or Toulouse).

Moreover, the credit card on which the financial allowance is being provided can no longer be used for the withdrawal of cash since November 2019. The card can only be used for payments, both online and in shops. This development limits the possibility for asylum seekers to use their money and has been strongly criticized

by NGOs. As a result, asylum seekers cannot buy food in local markets or small shops nor clothing in second hands shops, or pay for public transportation when there are no electronic means available, or pay a deposit in cash for a rent. Moreover, in summer 2020, all asylum seekers had to change their card due to a technical issue. As of the end of December 2020, a total of 145,253 asylum seekers benefitted from ADA (compared to 151,386 at the end of 2019).

**Netherlands:** In 2020, asylum seekers who received penalties from the IND because the decision upon their asylum application was not on time, were considered to have enough resources. The COA considered these penalty payments as assets. As the COA often did not reclaim this immediately, asylum seekers had already spent it, for example, on air tickets for their family members. A solution has not been found yet.

**Poland:** Asylum seekers face difficulties as regards receiving financial allowance. It is paid through post services (very exceptionally, on bank account ). It is a positive development, as asylum seekers are no longer obliged to personally receive payments every month in the centre or in the Office for Foreigners, which led to many practical problems. However, now the date for receiving money is unpredictable, as it depends on how swift the Office for Foreigners sends the allowance and on the efficiency of the postal services. Furthermore, when a foreigner does not pick up the financial allowance from the post office (where it is held for 14 days), it is sent back to the Office for Foreigners. The concerned asylum seeker can apply for the allowance to be resend but it takes time , leaving him without financial resources in the meantime. Moreover, asylum seekers who change the form of material reception conditions from being accommodated in one of the reception centres to being granted the financial allowance and living in a private accommodation, must leave the reception centre at the end of one month, but receive their first financial allowance up until 15th day of the next month.. They are not entitled to any payments in advance, despite the fact that owners often require paying a first rent or a deposit before they rent an apartment. No support is offered in finding a suitable and affordable private accommodation, even though the asylum seekers most often do not know Polish enough to communicate with owners.

Moreover, attempts to increase the amount of the financial allowance were unsuccessful. In 2020, SIP submitted a complaint to the European Commission that Poland is not abiding by its obligations stemming from the 2013/33/EU Directive [Article 17(2)]. SIP stressed that the amount of the financial allowance that is granted in Poland does not ‘provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health’. In consequence, asylum seekers may be forced to live in the extreme poverty or even their life can be in danger. Meanwhile, in the proposal of the ‘Migration policy’ published by the authorities in January 2021, it is stated that “possible reduction of material reception conditions may result in negative reactions of asylum seekers and be instrumentally used in campaigns against Polish migration policy” , which suggests that the reduction rather than the increase in this regard is taken into account by Polish authorities.

## Food

**Ireland:** As regards the quality of food, in February 2021, approximately 100 residents at Ashbourne House accommodation centre in Co. Cork went on hunger strike in a protest action over the provision of food materials at the centre. It is understood that the centre has a small kitchen area where residents are permitted to cook for themselves, however, management have repeatedly turned down requests by residents for food items they could prepare themselves. The protest began following an unsuccessful meeting with centre management, with residents having subsequently written to the Minister for Children, Equality, Disability, Integration and Youth, Roderic O’ Gorman. The protest remained ongoing at the time of writing. It should be noted that in approximately half of Direct Provision Centres, residents receive all meals and are not permitted to cook for themselves.

**Hungary:** In Balassagyarmat over the course of 2020, asylum seekers were given either food allowances or food and hygienic items in kind. However, Menedék Association reported in the last two years that food was provided again in kind. According to them despite the law giving the opportunity to the asylum seekers to choose from the forms of food provision, in practice beyond a certain number of applicants, reception facilities leave no choice and provide food exclusively in kind

Moreover, foreigners in the alien policing procedure, whose asylum cases were no longer pending still did not receive food in 2020. The HHC obtained 12 interim measures based on Rule 39 in 2019 and seven interim measures in 2020, ordering the Government to provide food to the applicants.

### Reduction or withdrawal of reception conditions

**Ireland:** The Irish Refugee Council assisted several individuals who had their material reception conditions withdrawn after being refused re-entry to Direct Provision accommodation centres at the onset of the pandemic. This occurred in circumstances where clients had been absent from their centre for more than one night, in order to visit family or friends, or for the purposes of employment. In many cases, there was no written reasoning provided for the withdrawal and the possibility of withdrawal of accommodation on the basis of absences was not communicated widely prior to the policy being implemented by IPAS. Residents were told that in order to re-access accommodation, they would be required to make a formal request to IPAS.

Individuals were prevented from accessing emergency accommodation and owing to delays in re-accommodation, a number of clients became street homeless or were forced to stay in cars or with friends. Some clients had to wait up to 10 days prior to accommodation being restored and this only occurred after IRC entered direct correspondence with IPAS, with intervention by the CEO to senior IPAS staff. With advocacy and assistance from IRC, reception conditions were restored in the vast majority of cases.

**Belgium:** Due to the critical reception capacity at the beginning of 2020, policy measures were adopted to withdraw reception conditions of certain asylum applicants. Through instructions of 3 January 2020 (applicable from 7 January 2020 onwards), Fedasil limited the material reception to medical assistance for two categories of applicants:

- a) applicants for international protection who have received an Annex 26 quater on the basis of the Dublin III Regulation, but for whom Belgium becomes responsible by default due to failure to transfer within the six months deadlines (Article 29(2) Dublin III Regulation);
- b) applicants for international protection who make a first application in Belgium but who already have an international protection status (i.e. refugee or subsidiary protection status) in another EU Member State.

Several national, Flemish and French speaking NGOs introduced an appeal with the Council of State aiming for the suspension and the annulment of the Fedasil instructions. In September 2020, right before the hearing before the Council of State was scheduled, Fedasil withdrew the instructions of 3 January 2020. Both categories of asylum seekers have thus since regained their full right to material assistance, including reception, during their asylum procedure

**Sweden:** According to the LMA the right to financial assistance ceases when there is a deportation decision that is legally enforceable and when the time limit for voluntary departure (which is usually four weeks) has expired. In 2020, there were 6 594 persons with legally enforceable removal orders registered with the Migration Agency and who had not absconded in this situation. They also lose the right to work after a final decision is taken on their case. However, according to Section 11 LMA, if a deportation decision is not practically enforceable and the applicant has cooperated to the furthest extent possible, then there could be an exemption from the removal of aid. This always applies if there are minor children in the household but the level of support for the adults is in any case also when such exemption is granted, reduced from 61 SEK/6.02 EUR a day to 42 SEK/4.15 EUR. However, if the family goes into hiding or leaves the reception system then no allowance is paid.

At the time of writing of this report, there was another case pending before the Supreme Administrative Court. The Court has to clarify whether a refusal to cooperate to leave the country is an act falling within the scope of Section 10 of the LMA, which states that aid can be reduced if a person without a valid reason refuses to cooperate to an action necessary in the process of enforcing a removal decision

**Austria:** Until the end of 2020, asylum seekers who violate the house rules were sometimes placed in less favourable reception centres in remote areas, but such sanctions are not foreseen by law. This practice is not confirmed by the authorities but reported by persons concerned. There are no reports yet whether this practice continues after the take over of BBU GmbH in December 2020. Although the freedom of movement is considered as not being limited in this case, presence at night is compulsory.



**Netherlands:** Following the Haqbin judgment the COA is not allowed to (temporarily) withdraw all of the reception conditions. Therefore, COA announced to start sanctioning with the use of 'time-out rooms'. There is not much known about the use of this sanction yet. Another sanction that has been used throughout 2020 is the placement of asylum seekers aged 16 or more who seriously violated the house rules of reception centres or who demonstrated aggressive behavior to so-called Enforcement and Surveillance Location (Handhaving en toezichtlocatie, HTL).

**Romania:** According to IGI-DAI, 803 withdrawals of reception conditions decisions were taken in 2020, compared to 639 in 2019, thus marking an important increase. All decisions to withdraw the reception conditions were taken because the asylum seekers departed from the reception centre without prior notification. Practices in the different regions in this regard are documented in the AIDA report.

**Slovenia:** While reception conditions had never been reduced nor withdrawn in 2016 and 2017, the authorities gradually resorted to these measures since 2018, in particular as of 2019. This continued in 2020, as the UOIM issued 181 decisions to withdraw this monthly allowance. 179 of these were issued because the person did not return to the premises of the Asylum Home in time, and 2 were issued because the person deliberately caused damage to the Asylum Home property.

**United Kingdom:** Home Office guidance provides that asylum seekers may stay in initial accommodation for a short time after their initial support under Section 98 has ended. Where further support has been refused this can be up to 7 days; where leave has been granted, up to 28 days; where leave has been refused, 21 days. If there are children, support can continue. This also continued in response to the Covid-19 pandemic and although the Home office began to cease support to refused applicants in the autumn of 2020, this was legally challenged and an order from the judge ensured that at the time of writing refused applicants support usually continued, although this was not automatic and cessation of support letters had to be appealed. ( High Court Interim relief order in QBB v Secretary of State and Asylum Support Tribunal available to download from: <https://bit.ly/2NBeskp>)

### Access to the labour market

**Bulgaria:** In 2020, the SAR issued 123 labour permits to asylum seekers pending status determination and reported 25 asylum seekers to have engaged in employment following the issue of the permit. In practice, it is still difficult for asylum seekers to find a job, due to the general difficulties resulting from language barriers, the recession and high national rates of unemployment. Statistics on the number of asylum seekers in employment is not collected, with the exception of those officially registered as seeking employment which in 2020 amounted to 8 asylum seekers.

**Belgium:** After the outbreak of COVID-19 in Belgium, the 4-month waiting period was temporarily suspended by the Special Powers Decree of 27 April 2020 until 30 June 2020, in order to mitigate a shortage of workers in certain sectors due to the border closure. This measure enabled recently registered asylum seekers to work without observing the 4-month waiting period, provided that their asylum application had been registered on 18 March 2020 at the latest and that their employer ensured accommodation. This measure was not extended after 30 June 2020.

**Sweden:** Asylum seekers can generally not work in areas that require certified skills such as in the health care sector, so their choice is limited in practice to the unskilled sector. Jobs are not easy to get because of language requirements and the general labour market situation with high youth unemployment and a general unemployment rate of 6,8% in 2019. The situation did not improve in 2020, as the general unemployment rate further increased to 8.3%.

**Slovenia:** In practice, asylum seekers face systematic and practical obstacles when searching for work and employment such as the language barrier, cultural differences, lack of certificates bringing evidence of education, lack of work experience, medical problems, discrimination, structural imbalances in the labour market and lack of employers' trust

**Hungary:** The Menedék Association is not aware of any asylum-seeker applying for or actually undertaking a job in 2020.

**Cyprus:** Asylum seekers face significant obstacles in accessing the labour market. These obstacles are described in detail in the AIDA report. It should be further noted that, since the outbreak of Covid-19, asylum seekers already registered with the Labour Department, may scarcely receive job referrals through email and telephone, and their access to reception conditions continues. Difficulties in communicating through email with the Labour Dept Officers were reported, because of linguistic barriers and unfamiliarity with digital means. The labour Dept encouraged job seekers to utilise an online system for securing job referrals which is available on their website, however unfamiliarity of persons with this system, combined with linguistic barriers, has yielded poor results among refugee population. The outbreak of the pandemic has had severe implications in the economy, resulting in a sharp decline of offered positions, as well as termination of employment for many persons. Given the lengthy procedures required for being hired and the inability of many to receive referrals from Labour Dept, Asylum seekers' access to employment has been particularly impacted.

**Croatia:** One attorney reported that it was observed that applicants who have been granted the right to work by the Ministry of Interior, have not been informed or did not understand that this right lasts only until the enforceability of the decision on international protection. In 2020, the Administrative Court in Zagreb received 2 lawsuits in relation to certificates granting the right to work, which were rejected. Are You Syrious (AYS) reported that during 2020 they provided information to applicants of international protection on the right to work and provided support in job searching (e.g. drafting CVs, contacting employers etc.). As a shortcoming of the current legislative solution, they pointed out the 9 month period for implementation of right to work, which prevents early integration into the labour market.

**Malta:** In recent years JobsPlus, the national employment agency, implemented an AMIF project targeting asylum-seekers and protection beneficiaries and focusing on language training and job placement. Organisations such as KOPIN or Hal Far Outreach try to offer support with drafting CVs and Job Search support. JRS also organised an empowerment workshop in 2020, specifically looking at skills for employability. Due to the COVID 19 crisis, many migrants lost their jobs or remained unable to work for several months.

**Ireland:** Permission to access the labour market was previously for a six-month, renewable period, however in January 2021, this was extended to 12 months. As a result of the Covid-19 pandemic, applicants whose work permits were due to expire between 21 January 2021 and 20 April 2021 will have their permission extended automatically. This applies whereby an applicant has not yet received a final decision on their international protection claim. This also applies whereby an applicant holds a current, valid permission or a permission that has already been extended under the previous notices issued. As of July 2020, a total of 6,986 applications for access to the labour market were received by the Department of Justice. 5,109 permissions had been granted, of which 3,889 (76%) were granted to residents in Direct Provision. Employers reported employing 2,539 applicants for international protection, of whom 1,786 were residents in Direct Provision.

At the onset of the Covid-19 pandemic, the Pandemic Unemployment Payment (PUP) was not made available to individuals who were employed and living in Direct Provision on the basis that the payment was tied to jobseekers' allowance and constituted a form of social welfare payment for the purposes of s.15 of the Social Welfare and Pensions (No. 2) Act 2009. More than 40 organisations jointly wrote to the Minister for Social Protection requesting a €20.00 increase of the Daily Expense Allowance provided to international protection applicants living in Direct Provision. This request was refused on budgetary grounds. However, in August 2020, following sustained advocacy from various migrant rights groups, PUP was extended to people living in Direct Provision as well as applicants for international protection who live outside the Direct Provision system. The payment is payable whereby an individual meets the conditions of the scheme: they must have been in employment prior to the 13 March, lost their employment owing to the pandemic and must not be in receipt of any income from their employer. The rate payable under PUP depends on the wage the individual was paid prior to losing their employment. Where an individual earned less than €200 per week, the rate payable is €203 per week. Where an individual earned between €200-€300 per week, the rate payable is €203 and where an individual earned over €300, the rate payable is €250. The Pandemic Unemployment Payment is due to continue until April 2021, however, it was recently announced that the payment is likely to be extended for months to come.

**Portugal:** According to CPR's experience, asylum seekers and beneficiaries of international protection face many challenges in securing employment that are both general and specific in nature. Even though the economic situation of the country has improved from pre-crisis levels, in December 2020 the unemployment rate still stood at around 6.5% for the general working population. This adverse context is compounded by specific fragilities that include poor language skills and professional skills that are misaligned with the needs of employers.

**Spain:** In March 2020, the State Secretary for Migration adopted an instruction addressed to the Autonomous Communities (which are in charge of the protection and guardianship of unaccompanied migrant children), with the aim of providing work permits to adolescents aged between 16 and 18. The measure aims at improving the situation of unaccompanied migrant children and at assuring them the access to the labour market within the same conditions as Spanish nationals. Moreover, in response to the COVID-19 situation, the Government announced in May 2020 the automatic prolongation for 6 months of the work and residence permits that would have expired during the State of Alarm declared in Spain. Many NGOs asked the Government to take a further step by regularising all undocumented migrants in Spain. They denounced the inadequacy of measures to ensure access to employment to migrants and refugees, especially regarding the sectors of health and agriculture. During the same month of May 2020, the Council of Ministers adopted a Royal Decree, which grants a work and residence permit for 2 years (renewable for an additional 2 years) to young migrants who have arrived as unaccompanied minors and are regularly present in Spain and who work in the agricultural field. Moreover, in September 2020 the Ministry of Inclusion adopted an instruction providing that, all those that worked in the agricultural field in accordance with the mentioned instruction can maintain their residence and work permit for an additional 2 years, and work also in other job sectors. During 2020, domestic workers further called on the Spanish Government to ratify the 189 ILO Convention on domestic workers to guarantee their rights. In February 2021, the Government announced that it will start carrying out inspections to employers who hire domestic workers full time without having updated the professional minimum wage. Domestic workers' groups welcome the measure as a step to guarantying them better rights.

### Access to education

**Bulgaria:** No preparatory classes are offered to facilitate access to the national education system except those organised by NGO volunteers. In 2020 due to COVID-19 pandemic all such activities were cancelled. All children accommodated in the centers were provided access to laptops, purchased by the Red Cross with AMIF co-funding, to secure children's online access to primary and secondary education.

**Ireland:** Following the onset of Covid-19, particular issues of concern were raised with regard to access to education for children living in Direct Provision. Following the closure of primary and secondary schools in line with public health advice, the vast majority of schools in the state moved to remote learning through a variety of online resources. Residents reported that a lack of access to laptops and internet connectivity presented a significant difficulty for their children in accessing remote education. In addition, it should be noted that school is often regarded by many children resident in Direct Provision as a welcome reprieve from the confines of living within the system. With the indefinite closure of schools as a result of the Covid-19 pandemic, many children have reported feeling a loss of their sense of normality and interaction that comes with the ability to attending school.

On 10 August 2020, the Department of Further and Higher Education announced significant changes to the student support scheme for asylum seekers. Prospective applicants are no longer required to have completed the Leaving Certificate examination or have attended an Irish school for three years. Applicants are required to have been accepted on an approved third level course, to have been in the protection process for a combined period of three years and to have been resident in the State for a combined period of three years as of 31 August 2020.

A number of Irish Universities have taken steps to improve access for protection applicants. A total of seven out of the eight Irish universities offered full-time scholarships. Eight of the 11 institutes of technology also offer scholarships or access support. The Irish Refugee Council's Education Fund, using donations from members of the public, makes grants to support access to higher education. In the academic year 2020-2021 the Fund gave grants to 60 students.

**Spain:** Due to increase in arrivals on the Canary Islands, hundreds of presumed unaccompanied children waiting to undergo age determination procedures were not able to access to education as of the beginning of 2021.

**Romania:** Save the Children Romania offers as part of the “Protecting the Children of Asylum Seekers and Refugees” program, educational and social services addressing the specific needs of asylum-seeking children and refugees, including unaccompanied minors. The activities are running in 5 Regional Centres, with the exception of Giurgiu. In 2020, Save the Children provided educational and social services to 677 children (including 410 accompanied minors) and 1,077 adult asylum seekers and beneficiaries of international protection. Save the Children provided material support for 545 children and 737 adults (food, clothing, medicine, hygiene, social vouchers), educational services and recreational activities for 236 children, psychological counselling for 36 children and 8 adults. In the context of the COVID-19 pandemic, Save the Children continued to provide its services, social workers being present in reception centers to provide material support and counselling - respecting all preventive measures. They provided tablets with internet connection for children to be able to articulate to online school classes and also other educational materials, sanitary products, clothing, food and social vouchers. Different educational activities carried out in the different centres are further described in the AIDA report.

**France:** During the first lockdown in the context of COVID-19 from March to May 2020, schools were closed and no alternatives were available for asylum seekers.

**Portugal:** Due to the coronavirus pandemic, in-person classes were suspended from 16 March 2020 until the end of the 2019/2020 academic year (with the exception of the upper secondary level). Remote learning was ensured through specific activities organised by schools and by the television broadcast of classes for all years of primary and lower secondary education levels.

**Switzerland:** Schooling mostly takes place inside the federal centres in school rooms provided by the Confederation. In the centres visited by the NCPT in 2019 and 2020, classes were taking place at least three days and up to five days per week and were provided by teachers by training. In a few centres, there was ambiguity regarding whether children between 15 and 16 could attend classes and the lack of occupation programs for this age was reported. In 2020, Save the Children has developed recreational material for children residing in federal or cantonal asylum centres with different kinds of activities and tasks that can easily be done also during quarantine or restricted possibilities for social contact. Pursuing of apprenticeships for rejected asylum seekers is currently problematic, since young asylum seekers are often obliged to interrupt their training after a negative decision. In December 2020, the National Council has accepted a political motion to solve this problem and allow these people to finish their apprenticeship before the removal decision being enforced. However in future there will no longer be many of such situations given the acceleration of the asylum procedures since 1st March 2019.

**Hungary:** Upon the closure of the transit zones in May 2020, children who were placed with their families to Városszabadi got enrolled in a local school in Győr, the education was not integrated though. In 2020 the education was the following: schoolteacher visits the camp once a week, children go to the local school in Győr twice a week and on the remaining days the social worker of the NDGAP assists them with teaching. Due to the COVID-19 pandemic though, there were certain periods when children were not allowed to leave the centre, thus the schoolteacher visited them in the reception centre.

**Poland:** There are different obstacles to accessing education in practice. The biggest problem is a language and cultural barrier. The Supreme Audit Office published in 2020 report on education of all foreign children staying in Poland (and Polish children who returned to Poland). The report confirmed that the Ministry of Education for many years have had no interest in this topic, despite the significant increase in the number of foreign pupils in Polish schools. No monitoring was conducted on the situation of foreigners in schools. Despite having public funds for training for teachers who work with foreigners, they were not spend. The Supreme Audit Office monitored also 24 schools that foreigners attended in years 2017-2020. Many violations of Polish law were found. In general, the responses to foreigners needs and problems were considered insufficient. In 23 schools, additional Polish language lessons were conducted. In 13 schools, compensatory classes were also organized. However, in this regard, it was also found that i.a. the specific needs of foreign

pupils were not recognized before commencing Polish language and compensatory classes, Polish language classes were organized only for one hour a week and too many pupils attended one class. In 21 schools no adjustment was made in the curriculum to respond to the foreign pupils' needs. No integration activities or only incidental ones were provided. Moreover, teachers' training on working with foreign pupils was not sufficiently (or at all) supported by the schools' directors.

Pandemic COVID-19 hampered the access to education even more. Schools were closed and children had to start online education. Not all asylum-seeking children had laptops or computers they could use to access education online, thus they could not attend school for some time. They often could not be assisted by their parents who lacked essential digital and linguistic competences. According to the Office for Foreigners, staff in the reception centres assisted asylum-seeking children and their parents with adjusting to this new situation and motivated them to participate in the school online. In all centres access to wifi was ensured. In some centres special places for online schooling were created. They were gathered by the Office for Foreigners, school and private persons and sent to one of the reception centres. The contractors who manage two reception centres have also given some mobile equipment to children staying in their centres. NGOs are conducting some public collects in this regard. Moreover, NGOs stepped in to provide asylum-seeking children with online Polish language classes and to organize support in online compulsory education.

**Cyprus:** Throughout the covid-19 pandemic, schools remained closed for prolonged periods. Classes are systematically delivered online for the last three year classes of elementary education, high School and Lyceums. For the first three years of elementary schools, classes usually involve some days of online teaching depending on each schools arrangements. Asylum seeking children, especially those in the first classes, face significant obstacles in effectively accessing education, due to linguistic barriers including their families, inability to access the necessary digital means and infrastructure, and the lack of adequate familiarisation with Cypriot education system.

**Croatia:** In 2020, due to COVID 19 school classes were also in some periods organized online, and for the younger children educational or school programmes were broadcasted on television as the Croatian Ministry of Science and Education's Action plan included a combination of remote and face-to-face teaching. According to the Croatia Red Cross, asylum-seeking children were able to use the computer room in the Reception Centre in Zagreb to attend online classes. The possibility for children in reception centres to follow school programmes broadcast on television was introduced by the government. To support effective access to education of asylum seeking children under remote learning arrangements, UNHCR donated computers and a TV set to the Reception Centre in Kutina, complementing the existing capacities. However, the educational system in Croatia faced serious challenges during the COVID-19 lockdown, as online schools did not pay special attention to those who are still learning Croatian, including applicants for international protection and refugees. Are you Syrious reported that after the transition to online classes, preparatory classes for children who do not know or do not know sufficient Croatian language were not organised online or in any other form (for example, as part of the programme "School on the third" which was broadcasted on television), which has delayed the learning of Croatian language for asylum seeking children.

### Access to health care

**Sweden:** A study conducted by the Karolinska Institute revealed that the suicide rate among asylum-seeking young people reached 51.2 out of 100,000 persons; while for the general population (but the same group of age) the suicide rate was as low as 5.2 out of 100,000 persons. The study further documented 43 suicides by 2017, an issue that persisted up until 2020 as six suicides and three suicide attempts were recorded during that year. In another study from 2020, the Red Cross University College and the Swedish Public Health Agency looked at the prevalence of post-traumatic stress among young newcomers living at the municipalities between 2014-2018. The results indicated that 56% of asylum-seeking young people from Afghanistan suffered from post-traumatic stress. As regards access to health care in 2020, it should be noted that medical assistance in the context of COVID-19 is considered as urgent care, meaning that asylum seekers and undocumented migrants have access to it. Covid-19 vaccines will further be offered for free to everyone in Sweden, including asylum seekers and undocumented migrants.

**Cyprus:** Until recently, free access to health care was granted upon the presentation of a "Type A" Hospital Card, issued by the Ministry of Health. This document was provided to all residents of the Kofinou Reception

Centre, while for persons residing in the community, a welfare dependency report indicating lack of resources was required by the Ministry of Health. Since November 2020, a positive development was observed: MoH grants all asylum seekers with free access to hospitals, regardless of whether one receives MRC by Social Welfare Services. Asylum seekers now need to submit a new simplified application in order for MoH to confirm their residence status. Hospital cards are then sent to beneficiaries by post and are typically valid for one year. Asylum seekers residing both in Kofinou and Pournara centres as well as the community, will participate in the National Covid-19 Vaccination Plan. Due to the fact that asylum seekers are not covered by GESY, the national health system, participation in the program for those residing in the community will be granted with the submission of an application form, accompanied with a copy of a valid hospital card.

**Romania:** The ICAR Foundation, in partnership with AIDRom, implemented the project “Health Services Accessible to the Needs of Asylum Seekers (S.A.N.S.A.)”, between 13.08.2019 - 12.08.2020, funded through the AMIF national programme. Under the project they ensure the basic needs in terms of physical and mental health of asylum seekers are met. The project was implemented in all 6 regional centres. As of 26 September 2020 and up until 25 September 2021, the ICAR Foundation, in partnership with AIDRom, implements the project „Health Insurance for Asylum Seekers in Romania (ASIG - RO)”. Under this project the indicators provided are at least 432 asylum seekers who will benefit from medical services provided and at least 216 asylum seekers will benefit from specialized psychological assistance and counselling.

**Hungary:** In contrast to the previous years, in 2020 due to the COVID-19 pandemic the Cordelia Foundation had no access to the reception facilities between mid-March and end of June and in November and December 2020. In the rest of the year, the Foundation similarly to the previous years, would have the capacity for regular visits on fortnightly basis, nonetheless, as a result of the low number of asylum seekers (and beneficiaries of international protection), the regularity of the visits of psychiatrists and psychologists was hectic throughout the year 2020. The Foundation was in contact with the management of the reception facilities in Vámoszabadi, Balassagyarmat and Fót, as well as with UNHCR and upon request arrived to the centres. There was a short period in September and October 2020, when the psychologist of the Foundation was present in Fót once in a fortnight. The Foundation also plays a key role in the lives of asylum seekers and beneficiaries of international protection (and of those migrants who have a “refugee story”, for instance students from Syria) who are residing in Budapest. In 2019, the Foundation provided therapeutic services to 86 persons in Budapest, while in 2020 by four psychiatrists, two psychologists and one art therapist the NGO assisted 46 persons in person. Due to the COVID-19 pandemic the organization also provided online therapy to 26 people. The psychologist of the Menedék Association also visited Fót and Vámoszabadi regularly in 2020.

**Poland:** In 2019-2020, the Office for Foreigners registered 13 and 5 complaints respectively, all of them concerned medical assistance. In 2020, the Office for Foreigners claimed that the complaints resulted from the lack of understanding of the Polish health system and of the limitations stemming from the pandemic. Some complaints concerned specific doctors and nurses. This overview of the subject-matter of the complaints does not match up with the information given by the NGOs of the significant problems that some asylum seekers have had with health care in Poland. Due to pandemic COVID-19, medical consultations by phone were introduced. Information about that and necessary telephone numbers has been provided in English and Russian online (website of the Office for Foreigners and Petra Medica) and in the reception centres. According to the Office for Foreigners, all asylum seekers who were ill or suspected of having symptoms of the COVID-19 had access to medical assistance. Specialised treatment is still reported as an issue due to the absence of psychologists and the lack of proper treatment of traumatised persons.<sup>0</sup> Some asylum seekers consider psychologists working in the centre as not neutral enough as they are employed (indirectly) by the Office for Foreigners.

**Slovenia:** In 2019, during the increase of arrivals, hygiene conditions were low in the pre-reception area of the Asylum Home which was overcrowded, as well as the common activities area where they were temporarily accommodated. In 2020, the conditions worsened while asylum procedures were temporarily suspended in April and May 2020 because of COVID-19. Due to the high number of individuals waiting to lodge an application, people were also accommodated in containers outside the Asylum Home. Due to the backlog of applications, people had to wait up to 2 months before being able to lodge their application. Medical examinations, which are normally conducted one day before an individual lodges their application, were conducted shortly after the arrival of persons. Those who did not show any signs of COVID-19 during

the quarantine period were permitted to lodge an application. In this time, individuals were in contact with asylum seekers and employees of the Asylum Home. The circumstances represented a health risk for both the asylum seekers and people working in the Asylum Home.

**Croatia:** In 2020, an Ordinance on health care standards for applicants for international protection and foreigners under temporary protection entered into force regulating, amongst other, initial and supplementary medical examinations and the scope of health care for the applicants of international protection. Additionally the scope of health care for vulnerable groups is regulated by the Ordinance, granting them the right to psychosocial support and assistance in appropriate institutions.

In 2020, MdM has produced the publication "Everyone has the right to healthcare: A model of healthcare mediation/support intended for asylum seekers in Croatia – outline, challenges & recommendations". The publication describes various components of the health care model, as well as the results in terms of facilitating access to health care for applicants of international protection in Croatia. The publication was published in Croatian and English.

The devastating earthquake which hit the central Croatia at the end of 2020, was significantly felt in Zagreb. All staff working in the Reception Centre as well as applicants accommodated both in the quarantine as well as in open part of the Centre were evacuated immediately. Although, no one was physically injured, a significant number of applicants showed signs of an acute stress response or re-traumatization, especially applicants accommodated in the quarantine section of the Reception Centre. In order to assess the condition of applicants and the need for additional interventions, prevention of long-term symptoms and stabilization of emotional responses to a crisis event, applicants were provided with psychological support by MDM-BELGIQUE team. Due to the facts that tremors have continued, additional psychological support is planned.

**United Kingdom:** The people who are not registered with a GP are highly likely to be excluded from routine vaccination against Covid-19 as this is being organised through GP practices. Direct access centres will often ask for ID documents that asylum seekers will not have. Although everyone is eligible to receive the vaccine significant barriers exist for many migrants, including some people in the asylum system. A campaign to remove the barriers has received support from over 300 organisations.

### Freedom of movement

**Ireland:** Asylum seekers were subject to the same public health measures as Irish nationals throughout the Covid-19 pandemic, for example the right to exercise within a 5km radius of the centre and travel for essential purposes such as medical appointments, food and other necessities as established in Government Guidelines. However, particular issues of concern emerged at accommodation centres where outbreaks of coronavirus occurred. Residents reported that they were not permitted to leave their accommodation or were given a strong impression that they could not leave and were required to spend all day in their rooms, even in circumstances where they had tested negative for Covid-19. Moreover, all non-essential visits and activities, including transfers between centres, were cancelled to curb the spread of the virus. Additionally, a two-week quarantine period was imposed for individuals who had left and subsequently returned to their accommodation.

**Spain:** During a hearing at the Senate in February 2021, different organisations (i.e. CEAR, IOM and the Red Cross) called for the territorial solidarity mechanisms allowing the relocation of migrants and asylum seekers between the Autonomous Communities, in order to avoid persons being stuck on the Canary Islands. See more information on freedom of movement under question 16 on jurisprudence – i.e. the recent Supreme Court rulings recognising the right to freedom of movement of asylum seekers.

**Switzerland:** As a consequence of the COVID-19 pandemic, asylum seekers can be set in quarantine and isolated in single rooms when they are tested positive, have symptoms or have had contacts with infected persons. In a few cases, whole reception centres have been set in quarantine for approximately two weeks without any possibility to exit the centre for the residents (staff being able to enter and exit though). According to information available to the Swiss Refugee Council, this has been the case in Giffers and Flumenthal. The centre of Zurich and the centre for unaccompanied minors in Basel were also set in quarantine for some time. Furthermore, it was reported that the possibility to spend the weekend outside has been suspended in several federal asylum centres, asylum applicants being obliged to spend the night in



the centre during weekend. The Swiss Refugee Council considers this provision unlawful since it has no legal basis and contradicts the Ordinance of the FDJP on the management of federal reception centres , as well as inadequate to prevent infections.

**Slovenia:** In March 2020, the Government issued a general ordinance prohibiting individuals from travelling outside of their municipality, due to the COVID-19 pandemic. This ordinance included asylum seekers. The ordinance was revoked in February 2021.

**Malta:** Due to the Covid-19 pandemic, residents of open centres were forcibly quarantined for several weeks in Hal Far. Decision was taken to quarantine the centre after 8 persons were found positive in April 2020. The residents that were positive to the novel coronavirus were isolated and those who were in a medically vulnerable state were transferred out of the centre to be cared for in a more controlled environment. The army was called to ensure such quarantine was adhered to.

**Cyprus:** In February and March 2020, individuals were not allowed to leave 'Pournara' the First Reception Centre before completion of its construction due to the Action Plan to address flows of migrants in the country and as part of measure to address Covid-19 respectively. This policy continued throughout 2020 and into early 2021, with persons remaining in the center for up to 5-6 months. Around 10 to 20 people could leave per day, with priority given to vulnerable persons and women, but only if they could present a valid address. In view of the obstacles in accessing reception conditions, identifying accommodation remains extremely difficult unless they applicants are already in contact with persons in the community. The policy has resulted in severe overcrowding, substandard living conditions, and de facto detention. The situation has also raised concerns among UNHCR and the EU Commission.

## **7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

### **Detention capacity and statistics on detention**

**Malta:** Depending on their nationalities, applicants are either detained under the Reception Conditions Directive, or the Health Regulations. In 2020 the vast majority of applicants were detained without any legal ground, for the sole reason that there was no space available in reception centres. Due to COVID-19, access by NGOs and legal practitioners was strictly limited since March 2020, resulting in a lack of basic information on the asylum procedure as well on available legal support provided to applicants. Asylum-seekers were often left in detention for several months without any information on the reason for their detention, and without any access to the outside world. Officially, minors and vulnerable applicants are not supposed to be detained. However, in 2020, since all applicants arriving irregularly were automatically detained without any form of assessment, vulnerable applicants and minors were detained for months before a proper assessment was conducted. In 2020, hundreds of vulnerable applicants and minors were left in detention for months. NGOs have called relentlessly all year for the immediate release of people held in detention without justification reminding the authorities that arbitrary detention is unlawful.

**Cyprus:** 2020 saw an increase in the number of persons detained, including asylum seekers. Moreover, there was a substantial deterioration in the duration of detention for asylum seekers, from 1-2 months in 2019, to indefinite detention in 2020. Once detained, an asylum seeker will only be released if they are granted international protection. Whilst removal procedures had in practice been suspended from March 2020 to June 2020 due to Covid-19, no steps had been taken to release asylum seekers and other third-country nationals (TCN) already in detention. Furthermore, there has been a substantial increase in the use of holding cells in police stations for detention purposes throughout the country, the standards of which are considered unacceptable.

**Bulgaria:** In 2020, the number of persons issued a pre-removal detention order was 3,487. This included 2,781 asylum seekers. Nevertheless in 2020, the capacity of pre-removal detention centres was not exceeded, while



the overall number of persons in detention gradually increase from 119 persons at the end of 2019, to 337 at the end of 2020. Out of the 337 persons being detained in immigration detention centers at the end of 2020, 33 were asylum seekers. Asylum seekers can also be placed in closed reception centres i.e. detained under the jurisdiction of the SAR for the purposes of the asylum procedure. In 2020, 9 asylum seekers have been detained in the asylum closed facility, situated in the premises of the 3rd Block in the Busmantsi pre-removal centre, the only closed centre for that purpose. 4 asylum seekers were held there at the end of the year 2020.

The law does not allow the SAR to conduct any determination procedures in the pre-removal detention centres. However, as of 2018 and presently, the SAR continues to register, fingerprint, and determine asylum seekers in pre-removal detention centres and to keep them there after issuing them asylum registration cards. Their release and access to asylum procedure is usually secured only by an appeal against detention and a court order for their release. In principle, this affected individuals who are deemed deportable for having valid passports or other original national identity documents. Since the beginning of 2020 a total of 11 applicants – 0.4% of all new applicants – had their cases determined by the SAR in the detention centres of Busmantsi and Lyubimets.

**Sweden:** The number of detainees decreased by half from 4,144 in 2019 to 2,528 in 2020. This includes 7 children and 2,521 adults, out of which 231 were women and 2,290 men (compared to 3 children and 3,816 adults - 358 women and 3,445 men – in 2019). The decrease in the number of detainees is mainly due to COVID-19 in order to reduce crowding as well as cases where the removal conditions could not be enforced for a foreseeable future or within the 12 months time limit because of travel restrictions. Moreover in 2020, detention centres limited the number of places in each centre from 519 to an average of 282.

**Austria:** In practice, asylum seekers are subject to detention mainly under Dublin procedures as well as de facto detention in the airport procedure. Persons who submit a subsequent asylum application are often detained as well. If a person applies for asylum while in detention, he or she may be detained during the admissibility procedure. Since December 2020, the Federal Agency BBU GmbH is in charge of providing basic care at the airport detention facility. There is a capacity for accommodating 28 persons at the airport. During the first months of the pandemic in 2020, no cases arrived, increasing to a very low number in the summer reaching average occupation with around 25 persons per months in November 2020.

**Poland:** Due to COVID-19 pandemic the number of places in detention centres in Lesznowola and Białystok was reduced. Furthermore, detention centre in Biała Podlaska and Białystok (only one part of the centre) was closed due to its renovation.

**Belgium:** The government decided on 14 May 2017 to maximise the number of places in existing detention facilities. In 2019 the open reception centre (Holsbeek) has thus been turned into a closed centre for 60 women. Two additional detention centres will be established in Zandvliet and Jumet. The new government-coalition, that was inaugurated on the 1st of October 2020 has confirmed the construction of additional places. The construction of additional detention centres in Zandvliet ( 200 places) and Jumet (120 places) by the end of its legislation. Together with plans for the expansion of the number of places in the centres 127bis and Merksplas, these plans will bring Belgium's detention capacity up to 1,066 places. Additionally the new Government has announced the replacement of the centre in Bruges, as the condition of the current centre is deemed 'very bad'.

**Romania:** According to IGI-DAI, during the state of emergency, visits in the public custody centre were restricted. In order to compensate this measure, detainees were allowed to use their personal phones, in accordance with the house rules. Access to the money sent by the relatives was facilitated. Weekly shopping for detainees was not suspended. The premises and cars were disinfected. Staff members and other persons working in the centre were medical screened when entering the facility. In Otopeni medical assistance was ensured 24/7. JRS representative reported that in the context of the COVID-19 pandemic the management of the detention centres implementend the following measures: meals are served in small groups; detainees are taken outside in the courtyard also in small groups; access to detention centres is partially restricted for visitors; the only entities allowed to visit the centres are the NGO representatives, lawyers and consular officers. The management of the detention centres reported to JRS that IGI staff received gloves, masks and hygiene products and there is no need for other supplies. Moreover in 2020 due to the high number of arrivals in Radauti, Somcuta Mare, Galati, the specially designed closed spaces were used in order to accommodate

asylum seekers. For detailed measures applied in the different centres, they are documented in the AIDA report. In 2020, a total of 1,241 foreigners were detained in the public custody centres, compared to 377 in 2019. 171 asylum applications were made from detention, of which 148 in Arad and 23 in Otopeni. Thus, in 2020, Arad centre reached the maximum capacity of 206 places. Detainees were placed in the common rooms or extra mattresses were placed in the rooms on the floor. According to the director of Arad this situation lasted around 3 days, because detainees were transferred to Otopeni

### Detention centres and places of detention

**Ireland:** A dedicated immigration detention facility was scheduled to open at Dublin Airport in late 2019 in response to ongoing criticism regarding the detention of asylum seekers in general prisons. The unit was set to contain facilities for individuals refused permission to land in Ireland. However, media reports indicate that as of August 2020, the facility had yet to open.

**Malta:** There are currently three detention centres: Safi barracks, (which include several facilities), Lyster Barracks and China House. No official data is available but the capacity of detention has been increased regularly since 2018 in order to accommodate the new policy of systematic and automatic detention. AWAS indicated that in 2020, the closed section of the IRC represents around 10% of the centre and is used to accommodate disembarked families for the necessary checks before accommodating them in reception centres

**Spain:** Please refer to the AIDA report for detailed developments in 2020 regarding Detention Centre for Foreigners (CIEs), i.e. the closure and re-opening of the different CIEs. In its 2019 Annual Report published in 2020, the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture, highlights the necessity to shut down or reform the Detention Centre for Foreigners (CIEs). In addition, it expresses concerns about the lack of legal assistance, the use of coercive measures, the difficult access to judicial authorities and visitors, as well as the limited communication possibilities with the outside world. In its 2020 Annual Report on the situation of CIEs, the Jesuit Migrant Service also underlined several elements which need to be significantly improved to ensure adequate conditions and guarantee the rights of detainees. Issues reported include structural deficiencies, the lack of identification of unaccompanied children, the inadequate treatment of persons with health problems, the obstacles faced to apply for asylum, the lack of interpretation services, the limited access to mobile phones and NGOs, the deficiencies in the provision of socio-cultural and legal assistance, and the poor management of crisis situations. Given the extent of these issues, the Jesuit Refugee Service calls for the closure of all CIEs – or at least their improvement until they are all officially closed. The Commission of Home Affairs at the Senate asked the Government to publish an annual report on the situation of the CIEs and the CETIs, providing information inter alia on detainees and residents, human and material resources, and the number of officers in charge of the protection of migrants. Moreover, during its 9th Annual Meeting, the national campaign for the closure of CIEs and for stopping deportations asked for the immediate release of persons from CIEs and CATEs. They highlighted the deterioration of the situation of detained migrants during the COVID-19 pandemic, the systematic detention of vulnerable persons, as well as the lack of legal assistance in all CIEs.

**France:** Border controls have also led to new forms of Detention, including de facto detention in areas such as the police station of Menton, which cannot be accessed by civil society organisations. This has been upheld by the Council of State as lawful during the period necessary for the examination of the situation of persons crossing the border, subject to judicial control. In a report on detention conditions in the context of immigration in France, published in March 2020, the European committee for the prevention of torture (CPT) reported that the material conditions in the premises in Menton were extremely poor and could undermine the dignity of the people placed there. The Committee has expressed serious doubts on whether people who are refused entry to the territory are able to know, understand and exercise their rights.

**United Kingdom:** When asylum seekers are detained, they are detained in immigration removal centres (IRC), usually under the same legal regime and in the same premises as other people subject to immigration detention. 65% of immigration detainees in 2020 were asylum seekers. The centres consist of 7 IRC and 2 short-term holding facilities (STHF). The published statistics now include immigration detainees held in prisons; in 2020 there were 2,709 immigration detainees held in prison at some point during the year, but it is not known how many of these claimed asylum either prior to being detained or whilst in detention. .

## Grounds for detention

**Hungary:** The new asylum system introduced on 26 May 2020 (see Embassy procedure) foresees that persons arriving in Hungary with a single entry permit in order to apply for asylum can be placed in a closed facility for 4 weeks following the registration of their asylum application, without any available legal remedy to challenge the placement. Nevertheless, the only family that was admitted in Hungary since May 2020 in order to apply for asylum was not detained

**Netherlands:** During the first Covid 19-lockdown from March 2020, multiple organizations argued that the grounds for detention could not be met as international transport was minimized. Despite these calls, detainees were not released, except for 64 Dublin detainees who were released on March 18, 2020

**Malta:** In 2020, the vast majority of people disembarked in Malta and immediately placed in detention were detained without any form of legal basis. People were simply placed in detention without any assessment and without being given any document or information on the reasons for their detention. Moreover, in 2020, lawyers assisting people in detention noticed that asylum-seekers from Bangladesh, Ghana or Morocco safe countries according to Malta, were usually detained under the first two criteria of the Regulations, namely in order to determine or verify his or her identity or nationality; and in order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding on the part of the applicant. In most cases, such detention orders were issued several weeks or months after arrival, meaning that asylum-seekers were often detained irregularly for long periods of time. Moreover, such detention orders are taken automatically, without any individual assessment, simply based on the nationality of the individual. In relation to review or appeal possibilities, although these detention orders could be challenged, this rarely happened due to the lack of information available and the restrictions in access for NGOs and lawyers.

**Slovenia:** in 2019, the Supreme Court had ruled that detention in the Dublin procedure is not lawful since the IPA does not contain the proper legal ground for detention. ( Supreme Court Decision, X Ips 1/2019 from 13 March 2019, available at: <https://bit.ly/39Gd4mV>) However, the provisions of the IPA were not changed since the Supreme Court judgment, and the authorities continued to detain asylum seekers in 2020. However, the asylum seekers were not detained because of a pending Dublin procedure, but on other grounds defined in the IPA. In 2020, 217 individuals were detained. Most were from Pakistan, Morocco and Afghanistan. Individuals who were apprehended by the police and could not be returned to Croatia based on the readmission agreement were taken to the Aliens Centre where they expressed their intent to apply for international protection. They lodged their applications in the Aliens Centre after which they were detained on the premises by the Migration Directorate. This practice was new, and not in accordance with the International Protection Act, which stipulates that the individual has to be taken to the Asylum Home after the preliminary procedure.

In the past, individuals who expressed their intent to apply for international protection would be taken from the Aliens Centre to the Asylum Home where they would lodge the application. The new practice meant that reasons for detention were not established based on the individual circumstances of each case but were detained (based on the Aliens Act) before lodging the application. Many of the detained asylum seekers claimed that they expressed their intent to lodge the application but were unable to access the asylum procedure. Due to a large number of detainees and the COVID-19 pandemic, the reception conditions in the Aliens Centre worsened. Individuals were accommodated outside of the Aliens Centre in containers. Detained asylum seekers also had trouble in obtaining legal help and representation from refugee advisors. Although 217 detention orders were issued, only 206 appeals against the detention orders were made.

Apart from asylum applicants, the Aliens Centre also detains aliens in return procedures, which is the main purpose of the institution. In 2020, the number of detained aliens was much higher, with 2,266 being detained throughout the year. The highest number of detainees were nationals of Pakistan, Afghanistan, Morocco, Bangladesh, Turkey and Iraq. At the end of the year, 26 individuals were detained in the Aliens Centre. In 2020, asylum seekers who expressed their intention to apply for international protection in the Aliens Centre continued to be detained after lodging the application. 938 asylum seekers expressed their intention to apply for international protection in the Aliens Centre.

## Alternatives to detention

**Bulgaria:** In practice, in the overwhelming majority of cases, alternatives to detention are not considered by the Migration Directorate (MOI) prior to imposing detention. The situation has not changed in 2020.

**France:** In 2020, many Prefectures systematically continued to impose house arrest as soon as asylum seekers are placed in the Dublin procedure, without conducting an individualised assessment to establish whether an alternative to detention is required.

**Malta:** NGOs that alternatives to detention could be imposed when no ground for detention is found to exist. The wording of the legislation and the Strategy Document seem to imply that alternatives to detention may apply in all those cases where detention is not resorted to, including those cases where there are no grounds for the detention of the asylum seeker. This goes against the letter and the spirit of the Directive where alternatives to detention should only be applied in those cases where there are grounds for detention. These concerns remained valid in 2020 as most asylum-seekers released from detention were imposed “alternatives to detention” arrangements even though there was never any ground to detain them in the first place. NGOs reported that there is no clear pattern on the reason, when and why ATD are applied to asylum-seekers. However, it transpires very clearly from the policy that alternatives to detention are seen by the authorities not as an alternative but as a natural continuation of the status post detention, the said detention being most of the time without legal basis.

Following release from detention, applicants face difficulties retrieving the possessions the Immigration Police would have confiscated from them immediately following their arrival. These possessions include money, jewellery and mobile phones. Applicants are often required to rely on the intervention of NGOs to reclaim their possessions, at time months after their release from detention. This was exacerbated in 2020 as so many people were detained and released throughout the year. Police informed that an investigation is conducted following every boat arrival and that possessions can only be retrieved at the end of the said investigation, which can take more than a year. Asylum-seekers are never informed or requested to consent that their phones and personal belongings will be searched and investigated and are never informed when items are ready for collection.

**Spain:** Alternatives to detention are not applied in practice. As confirmed by the Global detention Project, there are long-standing concerns that authorities routinely fail to consider all criteria before imposing detention measures. During 2020 many stakeholders called on the Government for the implementation of alternatives to migration detention, in particular following the closure of CIEs from March to September 2020 due to the COVID-19 outbreak in Spain. However, a report published by Caritas in December 2020 demonstrates that alternatives to detention are not applied by the police nor by judges in Spain.

**Ireland:** There are no formal alternatives to detention. Section 20(3)(b) IPA could be considered a possible alternative in that it allows an immigration officer or other authorised person to require an applicant for asylum to reside or remain in particular districts or places in the country, or, to report at specified times to an immigration officer or other designated person. However, as of January 2021, there are no known cases of this being applied in practice

**Poland:** In the NGO assessment, courts examine the possibility of using alternatives to detention in a superficial way. Courts held very often that it is not possible to impose an alternative to detention on the basis that asylum seekers have no place to stay ignoring the fact that asylum seekers have a right to live in open centers for foreigners managed by the Head of the Office for Foreigners

**Cyprus:** During Spring 2020, all deportations had been suspended due travel limitations throughout the world. Following the recommendations of the Commissioner for Human Rights of the Council of Europe, the Cyprus Refugee Council recommended that detainees under removal procedures be released as removal was not possible. However, no detainees were released during the lockdown which lasted from March until the end of May 2020. Furthermore, in April 2020, the CRMD started releasing detainees from Menoyia by ordering alternatives to detention, however the alternative was to move them to Pournara, the First Reception Center which has been operating as a closed Center from February 2020. In October 2020, the CRMD appointed an

officer to examine the use of alternative measures to detention. The officer performs visits to places where undocumented migrants or asylum seekers are being detained and carries out screening interviews. A report is prepared based on the interview, which recommends whether alternatives to detention should be used or not. The CRMD when setting up this new procedure has been collaborating with CyRC and since the beginning it has showed great progress. Nevertheless, the assessment only included persons already in detention and it therefore can be seen as “alternative to release” and not “alternative to detention”.

In general, “alternatives to detention” are examined after a detention is ordered and not prior. Throughout 2020, any person released from detention, was released with a decision ordering alternatives to detention based on the Refugee Law. According to Article 95T(3) the person needs to sign a document accepting the terms of his/her release, which usually includes reporting to the immigration police unit of their city of residence, which is the article regarding the use of alternatives to detention. were always order when detainees are released from detention. The only instance were alternatives/conditions are not ordered are in cases of detainees who have challenged their detention order in Court successfully. As such, the Court orders their immediate release without imposing any conditions.

### Duration of detention

**Bulgaria:** In 2020 the authorities applied a mandatory fourteen days quarantine to all newly detained third country nationals. In case of a positive PCR test at the end of the quarantine, the detention period could be repeatedly extended by a week until a negative test result, at which point the quarantine was lifted. During quarantine, the individuals were not able to receive legal advice or assistance to apply for asylum. As a result, the quarantine period is not included into the detention duration, which is calculated from the date of formal submission of the asylum application. The average detention duration of first-time applicants, excluding quarantine, thus reached 8 calendar or 6 working days. As regards asylum detention, the average asylum detention duration in 2020 decreased to 48 days compared to 109 days in 2019 and 196 days in 2018, but this remains far from the legal standard set in the law according to which detention should last for the “shortest period possible”.

**Slovenia:** In 2020, the average duration of detention of asylum seekers in the Aliens Centre was 36 days. The average duration of detention of other migrants was five days. The average duration of detention for minors was 1.3. days and the average duration of detention of unaccompanied minors was 3.8 days.

**Sweden:** The average period of detention was 55.3 days in 2020, thus increasing from 27.8 days in 2019 and 29.1 days in 2018. This refers to an average 57.9 days for men and 31.3 days for women in 2020 (compared to 28.3 and 21.4 days respectively in 2019). The increase of the length of detention 2020 is due to COVID-19 as travel restrictions hindered the Agency to carry out departures from Sweden.

**Malta:** In the past, applicants formally detained in line with the grounds of the Reception Conditions Directive are were usually released after two or three months and placed under alternatives to detention. However, this policy changed in 2020 as the majority of asylum-seekers detained under the RCD were those applicants coming from safe countries of origin, such as Bangladesh, Ghana or Morocco. They were no longer released after the mandatory period of time. They remained in detention until their case was processed throughout the accelerated procedure since considered manifestly unfounded, often taking up to six months to finalise. In most cases seen by lawyers, these applicants ended up receiving their rejection from IPA, followed almost immediately by the automatic review from the IPAT, the removal order and return decision. Therefore, they remain in detention awaiting potential return. Applicants detained under the Health Regulations and de facto detainees are kept in detention until there is space available in open centres. Therefore, applicants may remain in detention for several months even though they have been medically cleared and no valid grounds for their detention remains or ever even existed. The Immigration Police officially indicated that the average duration of detention for asylum-seekers is two months. However, this is not in line with numerous reports by NGOs and lawyers assisting asylum-seekers in detention. The UNHCR Representative indicated that if “the length of time asylum-seekers spent in detention varied in 2020 (...), many had been detained eight months or longer”.

**Hungary:** From March 2017- March 2020, asylum seekers who were de facto detained in the transit zone remained there until the end of their asylum procedure

**Romania:** In 2020, IGI-DAI reported an average duration of detention of 26,4 days. Nevertheless, according to the JRS representative, in Arad there were 3 Indian nationals detained for 15 months, 2 Iraqi nationals detained for 7 months, 13 months respectively, 1 Bangladeshi and 1 Algerian national detained for 7 months and a Syrian national detained for 6 months. In Otopeni, JRS reported 1 Indian national who was detained for 9 months, 1 Moroccan national and one Sri- Lankan national detained for 8 months and 1 Afghan national detained for 7 months.

**Cyprus:** In 2020, there was a substantial deterioration in the duration of detention for asylum seekers, from around 1-2 months in 2019, to indefinite detention. Once detained, an asylum seeker will only be released if they are granted international protection. For asylum seekers detained in Menoyia Detention Center, the duration of examination of the asylum application is on average 2 months, whereas if detained in a holding cell it will take much longer, often reaching 6 months.

**Netherlands:** in the context of COVID-19 measures, detainees have been detained for 21 hours a day with 2 persons in 1 cell. No – or almost no – activities were organized during the other three hours. Detainees were allowed to receive visitors or goods from outside the detention centre. Soap was not provided for a long time.

**Spain:** During 2020, human rights activists and organisations called for more guarantees for detainees held at the CATEs and called for their closure (i.e. along with the closure of any other detention-like facility). This call emerged as a result of the fact that 33 persons were held in poor detention conditions and were not released after 72 hours as foreseen in law. Similarly, at the beginning of 2021, one of the 418 migrants and asylum seekers staying in a tent used as CATE in Barranco Seco (Canary Islands) reported to have been held for 16 days at the facility in extremely poor conditions; i.e. with no access to showers, bad weather conditions and water leaks in the ceiling. A child spent 8 days at this facility before being formally identify as minor, facing the same deplorable conditions (i.e. no water, no electricity, rationing of food and water, etc.) .

### Detention conditions

**Bulgaria:** Overall conditions with respect to means to maintain personal hygiene as well as general level of cleanliness nevertheless remain unsatisfactory. Shower and toilets available are not sufficient to meet the needs of the detention population, especially when premises are overcrowded. Detainees are allowed to clean the premises themselves. However, they are not provided with means or detergents therefore they have to buy them at their own cost. Clothing is provided only if supplied by NGOs. Bed linen is not washed on a regular basis, but usually once a month. Nutrition is poor, no special diets are provided to children or pregnant women. Health care is a big issue as not all detention centres have medical staff appointed on a daily basis. Staff interpreters are not required by law, nor provided in practice. Verbal abuse, both by staff and other detainees, is reported often by the detainees. In 2020, as in previous years, detainees have complained about the lack of tailored and translated information and uncertainty on their situation. This has led to risks of re-traumatisation for persons with vulnerabilities.

**Belgium:** During the initial phase of the covid-19 pandemic in March 2020, the group regime in the closed centres, together with the shutting down of most international traffic, gave rise to the adoption of drastic measures by the Immigration Office. First and foremost, between 13 March 2020 and 10 April 2020, a large number of detainees were released in order to better organise social distancing within the facilities. The Federal Migration Centre, Myria, ascertained that only after this initial phase, the necessary stocks of protective equipment was stocked up, which caused additional stress to those people that remained detained. Myria researched the living conditions in the detention centres after it had received complaints from people in detention. During its visits in the centres of Merksplas, Brugge and Vottem between 10 April and 14 May 2020, Myria also observed that the medical facilities were not always adequate (a fortiori when isolation-cells were used to organise medical isolation), access to telecommunication for detainees is not always adequate and the internal procedures varied between the different centres. By the end of 2020 the closed centre of Brugge faced a covid-19 outbreak after which the detainees were moved to a different centre.

**Austria:** The commission of the Austrian Ombudsman Board (AOB) can visit detention centres at any time. During the first months of the COVID-19 pandemic they suspended their visits in detention centres. After the

lockdown, they resumed their visits to police detention centres identifying challenges in relation to visiting modalities, staffing level, solitary confinement and access to the yard. During the first lockdown, a number of detainees were released due to the travel restrictions. Especially persons, that had committed a criminal offense but have served the term were not released even though deportations were not feasible. In many cases, the maximum time of 18 months were applied with the argument that a deportation within the maximum time might be possible. In periodic court reviews foreseen by law, the BFA argued from May 2020 onwards that “in the next month” a deportation to Afghanistan is very probable to be scheduled. Nevertheless, no deportation to Afghanistan took place until December 2020.

**Netherlands:** The Bill regarding return and detention of aliens was introduced in 2015 but is still being debated and will enter into force once it is accepted by the Senate. In 2020 the file was still pending because an addition to the Bill had been presented to Parliament. The addition concerns measures for nuisance causing aliens. The Bill stresses the difference between criminal detention and detention of aliens which does not have a punitive character. It proposes an improvement in detention conditions for aliens who are placed in detention at the border and on the territory. For instance, aliens would be free to move within the centre for at least twelve hours per day.

**Slovenia:** In 2020, detention conditions deteriorated due to the large number of detained persons. Due to the lack of reception capacity, individuals were also accommodated outside the Aliens Centre in containers. The deteriorating conditions prompted the Slovenian Ombudsman to visit the Aliens Centre twice in 2020. Based on the visit the Ombudsman concluded that the individuals were not able to leave the area where the containers were located and did not have the possibility to enjoy outdoor activities. The Ombudsman also advised that service dogs should not be used in the presence of migrants. The Ombudsman also remarked that the time limit regarding the lodging the application should be respected. In practice, those who expressed their intention to lodge their application were able to lodge the application a few weeks later. Due to poor conditions in the centre, hunger strikes and protests were often organized by the detainees. Videos of protests and the conditions in the centre had broad media coverage and prompted civil society to organize protests before the Aliens Centre to oppose mass detention, and the violation of human rights at the border and during detention.

Due to language barriers, illiteracy, lack of access to a telephone and a short deadline for the appeal, some asylum seekers could not appeal their detention order. In some cases, asylum seekers obtained more than one refugee counsellor and more than one appeal was lodged at the Administrative Court. The Migration directorate did not obtain information on whether an individual has managed to ensure the representation of a refugee legal advisor, and therefore often did not provide individuals with one in practice. In 2020, out of 217 issued detention orders, only 206 were challenged before the court. Due to a lack of representation, some individuals were not able to access the refugee counsellors in order to obtain representation. In 8 cases, the appeals were dismissed because they were not lodged within the 3-day time limit. In 108 cases, the appeal was granted and the detention order was lifted.

**Ireland:** A In late November 2020, the European Committee for the Prevention of Torture released its 7th periodic visit report on Ireland. In the report, the Committee reiterated its long-standing call for Irish authorities to suspend the use of prisons for immigration detention, noting that “a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence.” The Committee reported that it had met with several immigration detainees who detailed the harassment and abuse they had received from other prisoners. It noted, for example, a case whereby a “middle-aged diminutive foreign national was placed in a cell with two young remand prisoners who allegedly attempted to rape him as well as physically aggressed and verbally intimidated him.” Particular issues of concern also emerged regarding the spread of Covid-19 in prisons that are used to hold immigration detainees. In this regard, a number of measures were implemented in prisons in an attempt to combat the spread of Covid-19. At the onset of the pandemic, the Minister for Justice granted temporary release to a number of low risk prisoners in order to reduce occupancy and enable greater social distancing throughout the prison system. Information leaflets and newsletters are regularly handed out to prisoners and staff in order to raise awareness of the particular risks posed by Covid-19 in a custodial environment and to provide updates on the measures being taken by the service to keep prisoners and staff safe. The Irish Prison Service has also implemented Covid-19 screening measures at all prisons and any prisoner who experiences symptoms of Covid-19 is immediately assessed by prison healthcare staff, isolated and tested where necessary. The Irish



Prison Service has opened a specific unit at Cloverhill Prison to allow for the isolation of confirmed Covid-19 cases among the prison population. This unit is used to accommodate symptomatic prisoners until such a time as they are cleared from isolation through the Covid-19 testing process.

**Switzerland:** During 2020, several detained persons have been released following a decision of cantonal administrative authorities, a judicial review procedure or a request for release. The ground for release was that enforcement of removal was not foreseeable due to the pandemic and related travel limitations. In some cantons, all detained persons were released at the beginning of the pandemic. This was the case in Basel-Stadt and in the French-speaking cantons of Geneva, Vaud and Neuchâtel. Some cantons released Dublin detainees only, while some other released detainees without criminal records but maintained in detention those with criminal records, a questionable practice since administrative detention is not related to criminal prosecution. Following the first months of the pandemic, most cantons have started to detain people again in view of removal. The question of foreseeability of removal remains crucial since the enforcement of removals encounters many obstacles due to the pandemic and related travel restrictions. The way of examining the question of foreseeability of removal varies consistently between cantons. Following appeals introduced against cantonal courts, the Federal Supreme Court has corrected the cantonal evaluation in several individual cases, stating that detention pending deportation was unlawful since removal was not enforceable in foreseeable future. The Court has also clarified that coercive detention is only lawful when removal is objectively possible in foreseeable future, the level of cooperation of the foreigner being irrelevant in this evaluation. During 2020 and due to the COVID-19 pandemic, there were significant restrictions on freedoms and rights of detained persons in the different detention facilities. In the Zurich airport prison, for example, visitors were not allowed during several months, occupation programs were significantly reduced, the fitness room was closed and newly detained people had to spend the first 10 days of their detention in quarantine, which is equivalent to solitary confinement.

**France:** In a report on detention conditions in the context of immigration in France, published in March 2020, the European committee for the prevention of torture (CPT) noted several points: lack of specialised training for staff, no systematic health examination before admission, almost total absence of activities and little contact with staff, prison-like environment, almost no activities in most of the places visited, information notices on rights which often only exist in French, no consultation with a psychologist, but also good practice of wide access to outdoor courtyards. Moreover, in July 2020, the Controller General of Places of Deprivation of Liberty published a report on the fundamental rights of persons deprived of their liberty in times of the COVID-19 pandemic. The report voiced concerns about the situation in pre-removal detention facilities, including waiting zones at the border, in conditions that put the detainees' health at risk. It noted that, in view of drastically reduced air traffic, immigration detention has become "an unjustified measure in practice [and] highly questionable in law" due to the lack of a reasonable prospect of removal. By the end of 2020, the detention framework was adapted to the crisis in certain respects (e.g. reduction in the capacity of centers, compliance with health rules, isolation of patients etc.) but certain points remained problematic (e.g. detention of people who cannot be expelled, insufficient measures and resources in certain centers, etc.).

**Malta:** Detention conditions deteriorated further in 2020 with increased overcrowding. Asylum-seekers were also left detained for months without being given any information, without the possibility to contact anyone and without being supported by anyone since access to detention was restricted for UNHCR and NGOs for several months. Detainees regularly report about terrible living conditions with severe overcrowding, insanitary conditions, caused by very limited availability of shared toilets and showers. Most detainees report the lack of appropriate clothes or shoes but also lack of sheets and blankets. Lawyers assisting detainees report seeing their clients only wearing underpants and open sandals even in winter. Following a visit, OHCHR also reported severe overcrowding conditions with little access to daylight, clean water and sanitation. Several protests and riots were organised throughout 2020 to denounce inadequate living conditions. In February 2021, five young migrants were sentenced to prison after pleading guilty to participating in a riot at Safi detention centre which occurred in September 2020. Two were sentenced to 30 months imprisonment while the other three, minor at the time, received a 18 months sentence. The death of a migrant trying to escape detention was also reported in September 2021. Lawyers assisting people in detention also report limited access to medical assistance, as asylum-seekers are very often in poor medical conditions due to prolonged detention in atrocious conditions. It was noticed at several occasions that many of them have scabies.



The CPT published a report in March 2021 on a rapid reaction ad hoc visit carried out in Malta, focussing on immigration detention, and the response of the Maltese government. The Committee urged the authorities to change their approach towards immigration detention and to ensure that migrants deprived of their liberty are treated with both dignity and humanity. Overall, the CPT found an immigration system that was struggling to cope: a system that purely “contained” migrants who had essentially been forgotten, within poor conditions of detention and regimes which verged on institutional mass neglect by the authorities. Indeed, the living conditions, regimes, lack of due process safeguards, treatment of vulnerable groups and some specific Covid-19 measures were found to be so problematic that they may well amount to inhuman and degrading treatment contrary to Article 3 of the ECHR. On 11 March 2021, the ECtHR confirmed in the *Feilazoo v. Malta*, judgment the Inadequate immigration detention conditions with COVID-19 quarantine and ineffective legal representation before Court; thereby violating Arts 3 and 34 ECHR.

**Cyprus:** In 2020, there was a substantial rise in the use of holding cells. There has been no official justification for the increase of use of police holding cells, however it seems to be due to the lack of space in Menoyia Detention Center. Furthermore, Menoyia should only be used to detain persons who are in removal procedures. Therefore, persons who have applied for asylum whilst in a holding cell and the detention order is issued based on the Refugee Law should not be transferred to Menoyia. The national Ombudsman as National Preventive Mechanism of Torture, raised the issue in a report in September 2020, based on a monitoring visit of a Pafos police station. The report states among other that holding cells are not used for purposes of immigration detention and that persons are moved to Menoyia within 48 hours. In a report of September 2020 published following a monitoring visit of a Pafos police station, the Ombudsman recommends not to use holding cells for purposes of immigration detention and moving persons to Menoyia within 48 hours. Other recommendations include increasing access to telephone and online communication; fixing doors to cells to ensure privacy; posting in every cell the rights of detainees; creating an entertainment area and improving/fixing infrastructure on hygiene facilities. Finally the report states that the practice of making detainees clean hygiene facilities must be terminated.

**Sweden:** Several civil society organisations expressed their concerns regarding the increased risk of infection for persons in detention who cannot be returned due to COVID-19-related obstacles. The umbrella organisation Swedish Network of Refugee Support (FARR) organised an online survey with questions relating to hygiene, cleaning routines, access to information and health care inside the centres; based on which the public authorities were able to adopt adequate COVID-19 measures. Five out of the six detention centres were requested to contribute through anonymous answers and a total of 22% of the detained persons at that time participated to the survey. The respondents reported issues of overcrowding, the impossibility to follow distancing rules between detainees, and shortcomings in cleaning and hygiene routines. 57% of the respondents informed that they had experienced covid-19-related symptoms, but that only 13.8% of them were able to consult a nurse to that end. Further, many respondents added that they felt their concerns and worries were not taken seriously by the detention staff. They also informed they were reluctant to tell staff about their condition and potential symptoms, out of fear of being moved to a section with infected people , as a result of which they would be even more at risk of becoming sick.

Moreover, the Parliamentary Ombudsmen (JO) carried out an inspection regarding the COVID-19 situation at the detention facilities under the supervision of the Swedish Migration Agency. Due to the risks of infection, the Migration Agency set up two different sections in all the detention centres; namely one designed for confirmed COVID-19 cases; and another section for suspected COVID-19 cases. As regards the possibility to respect physical distancing, reports from staff and detainees at the detention centres of Flen and Märsta revealed that this was difficult to implement in practice as many rooms were shared by six people. Staff informed that they had not received proper training nor information as to how to use protective equipment against the virus besides a link to an “instruction-video” illustrating how to use the safety equipment. Regarding access to information, the JO was informed that some of the detainees had received information verbally and a few had received written information on how how to wash hands and other hygiene-related information.

There was a case in the Märsta detention centre where a detainee received a positive COVID-19 test on 18 March 2020 and was released from detention on the same day. The man was informed he could leave the detention centre but said he did not want to leave as he had nowhere to go and did not want to potentially infect other people. His condition deteriorated and he was examined on 21 March 2020 by ambulance

personnel but did not need hospital care. His condition further deteriorated and he was hospitalised on 23 March 2020. He deceased on 14 April 2020.

**Portugal:** In March 2019, the Criminal Police arrested three SEF inspectors on suspicions of having killed a man in the detention centre at Lisbon airport. According to media reports, a 40-year-old man from Ukraine who was refused entry into national territory was found dead in the detention centre with signs of having been violently assaulted. Media outlets also reported alleged efforts to conceal the facts. While the case was under investigation at the time of writing, both the Director and Deputy Director of Borders (Lisbon) were removed from office. The Minister of Home Affairs requested an internal investigation to the direction and functioning of the detention centre and ordered disciplinary inquiries to all the involved members of SEF. The three inspectors arrested reportedly denied the claims. The Minister of Home Affairs was in the meantime at the Parliament where he expressed his outrage and vowed to do his best for the situation not to be repeated. The Minister further announced changes to be implemented in the detention centre that, at the time, was closed due to the coronavirus epidemic. While details were not available at the time of writing, measures such as the provision of better support to persons refused entry by the Bar Association, and the reinforcement of monitoring (including by external entities) and security measures were referred. The Minister also affirmed that asylum seekers would no longer be detained in this detention centre. The implications of such statements are not yet clear.

**Spain:** Even though under the law CIE do not have the status of a prison, the reality in practice suggests otherwise and conditions of detention therein are still a serious matter of concern. Information on the conditions inside detention centres can be found in the reports from the visits conducted to the CIE by the Spanish Ombudsman, including within its responsibilities as National Prevention Mechanism for Torture. The findings, facts and recommendations concerning the CIE visited by the Ombudsman are available in the Annual Report of 2019, published in 2020, as well as in the report issued by the Spanish Ombudsman in his capacity of National Prevention Mechanism against Torture. CIE continued to be the object of high public scrutiny and have attracted media and NGO attention during 2020 due to several incidents that took place throughout the year, as described in detail in the AIDA report.

Following the COVID-19 outbreak in Spain in March 2020, different organisations forming the 'National Campaign for the Closure of CIE' (Campaña Estatal por el Cierre de los CIE) urged the Government to release persons detained at CIEs and to stop issuing new detention orders. On 18 March 2020 the Government started to release persons from the CIE of Aluche in Madrid that could not be deported before 29 March 2020 due to the emergency situation and the closure of borders by many countries of origin. On 23 March 2020, the 'National Campaign for the Closure of CIE' expressed concerns on the delays in releasing individuals. While acknowledging the release of all migrants at the CIE of Barcelona and of other detention centres across Spain, the organisations composing the campaign reported that only 35% of detainees have been released so far and that the Minister of Interior still maintained around 300 non-expellable persons in detention. By the end of March 2020, deportation procedures were suspended, and by 6 May 2020, all CIEs were emptied. Upon release, migrants were referred to the reception system under the humanitarian assistance programs managed by NGOs. After the closure of the CIEs, several stakeholders such as the Jesuit Migrant Service or the campaign CIEsNO urged the Government to close these facilities definitely; i.e. in order to avoid that they would be re-opened after the COVID-19 pandemic.

However, at the end of September 2020, the Government re-opened CIEs and resumed detentions and deportation flights. According to available information, out of the 700 available places in migrant detention facilities, 186 persons were being detained at CIEs as of 20 October 2020. During the same month, the CIEs in Madrid, Barcelona, Murcia and the Canary Islands re-opened. Many NGOs (i.e. CEAR, SOS Racismo, etc.) criticised the Government's decision to re-open CIEs and denounced that CIEs do not comply with hygienic and sanitary measures. The NGO Iridia also expressed concerns and called for the closure of all CIEs, underlining that their closure during four months, along with the suspension of deportation flights due to the COVID-19 situation, demonstrated that these facilities are not necessary for migration management. Following the re-opening of CIEs, several riots, protests and hunger strikes were organised. The re-opening of CIEs also raised criticism and opposition from certain instruction judges, who refused to issue detention orders. For more information on these incidents, please refer to the AIDA report where they are described in detail. It should be noted, however, that the re-opening of CIEs was further contested for their inadequacy in particular with COVID-19 restrictions and sanitary measures.

As regards the detention conditions at border facilities, the Madrid Barajas Airport continued to raise serious concerns because of its deplorable conditions. In its Annual Report published in 2020, the Spanish Ombudsman reiterates similar concerns expressed in recent years and confirmed that it received numerous complaints on the transit zones. It reiterated that the non-admission rooms in Madrid Barajas Airport do not comply with the minimum applicable standards. This includes inter alia the fact that men and women are hosted together, the interdiction to use mobile phones (regardless of whether they are denied asylum or not), the limited access to towels and the fact that bed linens are deteriorated. Moreover, the play zone for children is used as warehouse, there is a lack of hot water and overall the infrastructures are not properly maintained nor conserved.

**United Kingdom:** One HMIP Inspection report was published in relation to an IRC in 2020, following an inspection undertaken in 2019. Morton Hall was reported to have improved since the previous inspection although levels of self-harm remained high and levels of force described as too high. The vulnerability of the population was noted and criticism of the length of time that some detainees had been held; for example one person had been waiting for 11 months for a decision on their asylum claim. Given the prevalence of Covid-19 cases in detention and the lack of opportunity for the Home Office to remove people from the UK there were calls throughout the year to release everyone from immigration detention. Whilst this call was not heeded, the use of detention fell during 2020. Guidance was issued to IRCs and STHF for how to manage detention during Covid-19 including responding to outbreaks, Preventative measures including cohorting and controlling of visits.

#### Access of NGOs to detention facilities

**Bulgaria:** NGOs' and legal aid providers' right to access to asylum seekers is explicitly regulated and expanded to also include border-crossing points and transit zones. However, the Bulgarian Helsinki Committee was the only NGO in 2020 visiting border and detention centers as well as the SAR closed facility as all the rest refrained from visitations due to COVID-19.

**Sweden:** In the context of COVID-19, the Swedish Migration Agency had decided on 15 March 2020 to limit the detainees' access to visitors as indicated by the Parliamentary Ombudsman (JO) following an inspection. However, detainees could still request visits which were assessed on a case-by-case basis. The JO concluded, however, that detainees were not properly informed about this possibility. The Swedish Church also reported to the FRA that detainees were unable to receive visitors (including priests) as a result of COVID-19. It was also reported that detainees were becoming more mentally unstable compared to before the coronavirus.

**Spain:** Throughout recent years, the Ombudsman reiterated several recommendations with the aim of improving social, legal and cultural assistance in CIEs, as well as the necessity for a deeper reform of such facilities. In its Annual Report published in 2020, the body expresses concerns on the necessity of establishing common guidelines for the management of the social, legal and cultural assistance at CIEs. It further highlighted that the provision of such services based on the current internal regulation is not in line with applicable standards. There is also a general lack of proper health assistance. The Jesuit Migrant Service denounced the same deficiencies, as well as the obstacles that NGOs face in accessing CIEs. It should be further noted that, in December 2020, Cáritas Española published guidelines to any legal professional that can intervene in a CIE. The publication collects a set of Q&A on different aspects of migration detention in Spain, such as the applicable legal framework, the material conditions and infrastructure of facilities, the provision of health, social and legal assistance in detention, the detainees' rights and obligations, the functioning of CIEs, etc. It also includes samples of a broad variety of claims and reports that can be submitted according to different aspects related to migrants' detention.

#### Differential treatment of nationalities in detention

**Bulgaria:** In 2020, discrimination against certain nationalities has persisted, but has taken another form. Asylum seekers who are subject to unlawful registration and determination procedures in pre-removal centers in violation of the law are no longer selected according to their nationality, but on the basis of their potential deportability – namely when they possess valid travel documents or where such documents can

easily be obtained. However, due to COVID-19, this particular malpractice was applied restrictively and affected only 11 asylum seekers throughout 2020.

**Malta:** The legal regime of persons detained depended significantly on their nationalities. In 2020, a practice was noted whereby, asylum-seekers coming from a safe country of origin are usually detained under the Reception Conditions Directive. These applicants usually remain in detention during the whole asylum procedure since the automatic review of their detention, when conducted, never questions the lawfulness of their detention. Applicants coming from other countries of origin are usually de facto placed in detention and might be released when space is available in reception centres or when a lawyer can file an habeas corpus when alternative accommodation is available.

It was further noticed that detainees are usually kept together by nationalities. They are also regularly moved from one detention centre to another, without being given any information for such change, which creates anxiety among applicants. The Detention Service indicated that detainees are “housed according to their different protection and socio political needs” and that moving are done “to prevent potential conflict between different cultures”.

## **8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management - including backlog management)**

### **Determining authorities**

**Malta:** Malta amended its Refugees Act in August 2020, transforming the Office of the Refugee Commissioner (RefCom) into the International Protection Agency (IPA) without changing its mandate.

### **Registration**

**Belgium:** Due to the outbreak of the covid-19 pandemic, the Immigration Office decided to close its doors to the public on 17 March 2020. On 3 April 2020 the Immigration Office re-opened with a new system for the registration of applicants for international protection. Applicants wanting to make their application had to fill in an online registration form, after which they were invited on a later date to officially make and lodge their application for international protection. Because of various shortcomings of this system that are described in detail in the AIDA report, a multitude of civil society organisations decided to declare the Belgian state in default at the Brussels court of first instance. On 5 October 2020 the court condemned the Belgian state , after which the Immigration Office returned to the previous system of physical registrations on 3 November 2020 (Brussels Court of First Instance, decision nr. 2020/105/C of 5 October 2020, available in French at: <http://bit.ly/3bpjgCU>.)

In the context of the covid-19 sanitary measures, the three-phase system was changed and applicants now immediately lodge their application at the arrival centre on the moment of making the application. They immediately receive the Annex 26. The aim is to avoid unnecessary movements of applicants between the different services and to respect the 3-day time limit of article 50(2) of the Aliens Act even if confinement is necessary. This system is currently still being applied. Consequently, asylum applications are currently being made, registered and lodged on the same day.

**France:** Registration activities have been temporarily suspended following the closure of the single desks for asylum seekers (Guichet unique pour demandeur d’asile – GUDA) from mid-March to the beginning of May 2020. Subsequently, access to the asylum procedure and to reception conditions were suspended. This measure has no legal basis and mainly resulted from the lack of available civil servants within State agencies. On April 2020, 7 NGOs and 7 asylum seekers asked to the Administrative court to reopen access to asylum application in Paris and its region. The court ruled in favor of the applicants, but the Ministry of Interior and OFII lodged an appeal. On 30 April 2020, the Council of State confirmed the first decision and urged the

authorities to reopen access to GUDA in this region. (Council of State, Decisions n° 440250 and 440253, 30 April 2020, available in French at: <https://bit.ly/3am2Kly>)

Serious concerns continue to be reported regarding the telephone appointment system established in the Ile de France region since May 2018. In December 2020, OFII reported that 200,682 calls were answered and 151,478 appointments were granted during the first 600 days operation. However, figures (“chiffres noirs”) made available by the Prefecture of Ile-de-France reveal much higher numbers of calls made to the platform. According to the NGO La Cimade, these figures indicate that nearly 90% of calls made to the OFII telephone service until the end of 2018 were unsuccessful. The NGO also reported that the number of appointments available throughout 2019 was reduced from 300 to 255 per day at the end of October 2019. A further decrease of appointments was observed in 2020, inter alia due to COVID-19, reaching only 198 appointments per day in September, 200 in October and 235 since November 2020. NGOs have criticised the telephone platform as inefficient, referring to people unsuccessfully attempting to call several times, or waiting for over half an hour on the phone before speaking to OFII. According to La Cimade, the telephone platform is only operative a couple of hours per day and after 12:00 pm, individuals are asked to call again on the next day as all the appointments have already been booked. As a result, the access to the asylum procedure reaches 1 month on average. In addition, despite initial announcements of free-of-charge access, calls to the telephone platform are charged 0,15 to 0,19 € per minute by phone operators. The cost can be exorbitant for asylum seekers given that they have no access to reception conditions before their claim is registered and are often destitute. In December 2020, 16 migrants supported by 12 NGOs have again asked the court to note that the telephone platform is, for many, inaccessible and constitutes an obstacle to access to asylum applications. The court's response was still pending by the time of publication of the AIDA report.

**Ireland:** Following the outbreak of Covid-19 in Ireland, the IPO continues to accept new applications for international protection and is providing a limited registration service to new applicants. Applicants are permitted to attend the IPO on a restricted basis in order to make their application for asylum. Once an applicant presents to the IPO, the applicant makes a formal declaration that they wish to apply for international protection, outlined under Section 13 IPA. The applicant is interviewed by an authorised officer of the IPO to establish basic information. This interview usually takes place on the day that the person attends the IPO, though due to restrictions associated with the Covid-19 outbreak and resultant delays, sometimes applicants were called back for their initial interview on a separate day after their claim had been registered. In such circumstances, the time period between a claim being registered and the initial interview taking place varies on a case-to-case basis. In the experience of the Irish Refugee Council, typical waiting periods are approximately 2-4 weeks. However, the Irish Refugee Council Information and Referral Service is aware of cases whereby it has taken clients 2-3 months to complete the preliminary interview in circumstances where the client themselves has had to follow up numerous times with the IPO.

**Cyprus:** In early 2020, due to measures to address Covid-19, the Aliens and Immigration Unit stopped receiving asylum applications. No official decision or announcement has been made in relation to this and there was a lack of clarity as to whether this was a measure taken in response to Covid-19 or the high numbers of applicants. Some applications were refused on the basis that they were required to show a national passport while others were refused due to the reported lack of capacity at Pournara Center. Although lockdown measures were lifted in May 2020, and new arrivals of asylum seekers was at an all-time low, access to asylum did not return to normal until August and after repeated interventions toward the authorities.

**Netherlands:** On 20 October 2020, the Secretary of State presented a draft proposal to amend the Aliens Decree regarding the registration procedure. The proposed amendment would not only formally establish the registration phase and the registration interview, it would abolish the first interview in the asylum procedure altogether. This also entails that asylum seekers will be asked about their asylum motives during the registration interview, when they do not benefit from any legal assistance yet and when they have not had a rest and preparation period. The proposal further entails an amendment to the Regular Asylum Procedure and proposes to shorten the procedure from eight to six days. In addition, a possibility is created to extend the General Asylum Procedure in more situations, for example when asylum seekers change their statements on an essential point. This proposal will likely enter into force in 2021, drastically changing the registration phase of the Regular Procedure.

As a general rule, the rest and preparation period takes six days after which the actual asylum procedure starts. Since 2018, this period has been considerably extended. In March 2020, 15,350 asylum applications of people who applied for asylum before 1 April 2020 were passed on to a newly established Task Force, with the aim of clearing the backlogs before the end of 2020. The Task Force has not succeeded in doing so. On 18 November 2020, asylum seekers received a letter from the IND which stated that its Task Force would not meet its goal and that the Task Force will continue to decide on the remaining applications in 2021. The aim is to complete these by mid-2021. By 31 December 2020 the Task Force had decided upon 8,200 applications, meaning that over 7,000 applications have been postponed to 2021. Because of the delays, the IND had to pay a large sum of legal penalties (dwangsommen) to asylum seekers whose application had not been decided upon within the legal time frame. The total sum of legal penalties the IND is expected to pay over the years 2020 and 2021 amounts to 43.5 million euros. Because of these legal penalties, the 'Temporary act on suspension of penalties for the IND (Tijdelijke wet opschorting dwangsommen IND)' was passed by the Dutch Parliament and entered into force on 11 July 2020. Under the Temporary act, asylum seekers are excluded from receiving a legal penalty in cases where the IND does not decide upon their application in time. The Temporary act does not apply to cases in which the legal time frame had already past and the IND had already been given notice of default by the asylum seeker. As the name suggests, the Temporary act will expire one year after its entry into force. However, a draft bill has been published on 15 October 2020 which would stipulate that foreign nationals will be excluded from these legal penalties altogether.

In a letter dated 15 May 2020 the Secretary of State stated that, due to the ongoing pandemic and its effects on the examination of asylum cases, the statutory decision period for asylum applications would be extended by six months. The Secretary of State referred to the European Commission's Guidance, which mentioned that Article 31(3)(b) of the Asylum Procedures Directive allows Member States to extend the six months period for concluding the examination of applications. The statutory decision period was extended by six months on 20 May 2020 ; on 16 December 2020, the Council of State ruled that this extension is not unreasonable and not contrary to Union law.

**Portugal:** While the asylum procedure was suspended during the first lockdown due to the coronavirus pandemic, SEF-GAR remained open for the purposes of receiving and registering new applications for international protection. According to available information, the suspension was in force between 27 March and 2 May 2020. While the state of emergency re-entered into force on 9 November 2020, the asylum procedure was not suspended at that point.

**Malta:** Delays in registration further deteriorated in 2020 due to the systematic detention of all asylum-seekers arriving irregularly in Malta. Furthermore, the IPA remained closed for several weeks from 12 March 2020 to 25 May 2020 in reason of the COVID-19 pandemic. Detained asylum-seekers are registered in the detention facility by staff deployed by EASO. No data is publicly available, but practice shows that registration takes place months after arrival and before that, migrants are kept detained and receive no information. Asylum-seekers who arrived regularly and who expressed a wish to apply for protection when the IPA was closed due to COVID, were requested to send an email indicating basic information (name, surname, date of birth, arrival in Malta, nationality, family situation, address in Malta). They were later contacted and given an appointment to formally register their application. In the meantime, confirmation by the IPA by email could be used as a proof of an asylum-seeker status.

**Switzerland:** There was no specific obstacle to registering an asylum application due to the COVID-19 pandemic reported in 2020. The most significant problem in this regard was access to the territory due to the closing of the borders on 16 March 2020, which prevented applicants from entering Switzerland and filing their application. However, it remains unclear if or how many persons who wanted to apply for asylum at the border were actually rejected in practice. A significant obstacle was also access to the border from the heavily guarded Italian side.

**Austria:** In 2020, a total of 14,192 applications for international protection were lodged in Austria. This marks a slight increase of 10.14% compared to 2019, where 12,886 applications were lodged. While there was a sharp decrease of application during the first lockdown (up to -65% in April), the numbers increased from August onwards. The BFA has never suspended all of its activities during the pandemic. During the first months of the pandemic from March to May, only very few interviews were conducted. The offices were not open to public except for asylum applicants. These had to be brought in in person, all other submissions had

to be sent in written form. Due to the fact that the asylum applications were very low during this time the access was not restricted. Problems surged when asylum seekers had to lodge their asylum application at the EAST consequently. The main EAST in Traiskirchen was put under quarantine from 24 March 2020 until 13 April 2020 meaning that people entering the EAST were not allowed to leave until the end of the quarantine. It took some time to establish a system for newly arrived asylum seekers. In the meantime many federal accommodation facilities were put under quarantine when new cases of Covid-19 were detected resulting in the deprivation of liberty of all inhabitants of the camps during this time.

**Sweden:** In 2020, a total of 12,991 applications for international protection were lodged in Sweden. This marks a decrease of 41% compared to 2019, where 21,958 applications were lodged. This is mainly due to the impact of COVID-19, as travel restrictions made it difficult to reach Sweden. Nevertheless, the possibility to apply for asylum was maintained throughout the year despite the COVID-19 situation. In 2020, 12,991 applications were lodged in Sweden, where the majority were lodged in Stockholm (6,269), in Gothenburg (2,540) and in Malmö (2,181). There have been no problems reported for asylum seekers regarding the registration of their claim in practice in 2020, i.e. registration remained accessible during COVID-19..

**Poland:** Due to COVID-19 pandemic, direct customer service in the Office for Foreigners was suspended on 16 March. Personal visits in the office were possible only in matters 'absolutely necessary' and only after a prior telephone appointment. Foreigners were asked to contact the Office for Foreigners in writing (by post and e-mail) or by phone. In the building of the Office for Foreigners in Warsaw, there is also a Border Guard unit, where applications for international protection can be submitted. The direct customer service was resumed by the Office on 25 May 2020 and since then service is provided in accordance with the sanitary rules resulting from the pandemic in Poland. Moreover, the validity of temporary ID was automatically prolonged until 30 days after epidemic state in Poland is finished. When the applications for international protection could not be lodged, mostly the 'declarations of intention to submit the asylum application' were accepted and registered by the Border Guards. However the persons who 'declared the intention to submit the asylum application' were not covered by the medical and social assistance since they are not considered yet as applicants in the national law. The Consortium of NGOs, in the letter to the Ministry of the Interior and Administration, raised the need to include these persons in the social system for asylum seekers. According to the Office for Foreigners, there were 298 persons who declared the intention to apply for international protection in 2020, in comparison to 165 in 2019.

**Romania:** According to IGI-DAI, during the state of emergency, the registration of asylum applications were organised in such a manner to allow the presence of only one person, except the cases where the presence of the legal representative, attorney, parent was required. Asylum applications were received and forms and other requests were filled out in dedicated spaces for these activities. The temporary identity documents issued were valid during the state of emergency. The photography and fingerprinting was carried out in the usual spaces. When asylum seekers were isolated or quarantined these activities were conducted afterwards. In addition, hygienic-sanitary measures were taken (masks, gloves, plexiglass panels, social distancing). During the state of alert the same measures were applied, with the exception of the validity of the temporary identity document. The validity was extended according to the stage of the procedure.

**Slovenia:** Following its visits in 2020, the Ombudsman reiterated several concerns regarding the registration procedure. This includes a lack of proper documentation of the police procedure; translation; providing information regarding asylum; procedural guarantees for unaccompanied minors; and individually conducted procedures. Moreover in 2020, the waiting period to lodge an application increased again due to the COVID-19 pandemic. In April 2020, asylum procedures were suspended from April to May 2020. Asylum seekers therefore had to wait until the procedures recommenced at the start of May 2020. During this time, they were de facto detained.

**Spain:** Due to the increase in asylum applications in Spain in recent years, which slowed down the functioning of the Spanish asylum system, applicants have to wait long periods of time before getting an appointment to be interviewed by the OAR. Since 2017 and up until the end of 2020, there have regularly been long queues of asylum seekers waiting to register their application for international protection at the Aluche police station in Madrid. This was further exacerbated during the COVID 19 pandemic, rendering it difficult to respect the distancing rules, as pointed out by the trade union Comisiones Obreras (CCOO) in the 38 reports it issued in this regard. In order to shed light on the situation, the Spanish Ombudsman opened an investigation looking

into the measures taken by the General Commissariat for Aliens and Borders (Comisaría General de Extranjería y Fronteras) of the Police to avoid long queues. The investigation further assesses the conditions to which asylum seekers in Madrid are confronted to when lodging their application. In August 2020, the Ombudsman recommended that the Ministry of the Interior urgently adopts measures to facilitate access to the appointment system after receiving numerous complaints about the difficulties faced by persons in need of international protection to lodge their application for asylum. An answer from the Government was still pending at the time of writing of this report. In December 2020, following a claim lodged by the Jesuit Migrant Service, the Spanish Ombudsman urged again the Police to stop subjecting asylum seekers to requirements not foreseen in law, such as providing certain documents (i.e. certificate of registration of residence) in order to access the asylum procedure

Shortcomings have also been reported concerning the possibility to claim asylum from administrative detention due to the difficulties faced by detained persons in accessing legal assistance. In particular, the Ombudsman highlighted the difficulties faced by detainees to apply for asylum at CIEs. In its 2019 Annual Report, published in 2020, the Spanish Ombudsman highlighted again that it received many complaints relating to the access to the procedure from CIEs, especially in Madrid. The Ombudsman thus reiterated its recommendation to the General Commissariat for Aliens and Borders of the National Police. It seems that the access to the procedure has slightly improved since then, and that detainees are provided information on the right to asylum by the Spanish Red Cross.

**United Kingdom:** New rules were laid in 2020, coming into force on 31/12, to designate the place of claim. It has been explained that this is to make clear that claims cannot be made in territorial waters and that anyone attempting to do so will be brought to the UK to make their claim. It should be further noted that temporary facilities were opened in April 2020 at six additional Home Office premises, to reduce the need for travel during the pandemic. These remain in place at the time of writing. At the screening interview, fingerprints are taken for comparison with databases including Eurodac and the route of travel is inquired into. As from 2021 access to Eurodac is limited to transfer requests made prior to the beginning of 2021.

The policy is to treat unaccompanied children differently and this system is now the norm. The policy guidance, first issued in July 2016 and updated, most recently in December 2020 reflects the practice that had emerged following a report by the Office of the Children's Commissioner for England, and a judgment of the Court of Appeal. Children encountered prior to them being cared for by a local authority are interviewed by an immigration officer in a 'welfare interview' which is designed to elicit information about the safety of the child and enable a referral to be made. If the child is already in the care of the local authority the appointment with an immigration officer is to register the claim. At both types of interview the child's biometrics are taken. If under 16, the process requires a responsible adult (independent of the Home Office) to be present for the biometrics.

#### **Frist instance procedure**

**Bulgaria:** Whereas the number of asylum applications has constantly decreased from 2015 to 2019, the percentage of already registered asylum seekers who abandoned their asylum procedures in Bulgaria continued to be high in 2020, reaching 30% of all decisions and 22% of all caseloads. Out of the decisions taken, 15% of asylum procedures were terminated (discontinued) and 13% suspended *in absentia*. Nationalities from certain countries such as Ukraine, Algeria, Morocco and Tunisia are discriminatorily treated as manifestly unfounded applicants under the Accelerated Procedure, resulting in zero recognition rates, i.e. 100% rejection. This also applied to Afghan nationals who faced a 99% rejection rate. Afghanistan has been the top country of origin in Bulgaria for five consecutive years since 2016.

**Belgium :** Due to the outbreak of the covid-19 pandemic, the CGRS closed its doors on 13 March 2020. From this day, no more personal interviews were organised. The CGRS continued to work on pending cases and took decisions in cases in which a personal interview had already taken place. From 8 June 2020 onwards, personal interviews were gradually resumed, under strict respect of sanitary and distancing measures. In 2020, the CGRS was planning to reduce the backlog of cases. Due to the outbreak of the covid-19 virus –and the temporary suspension of personal interviews- the CGRS was unable to reduce this backlog. As a result, the total work stock of the CGRS - i.e. the number of files for which the CGRS has not yet taken a decision - has steadily increased to 12,633 asylum files by the end of 2020. Out of them, 8,463 of these files can be



considered as backlog cases, while 4,200 files are part of the normal work stock. This results in longer waiting times for persons in the asylum procedure. Throughout 2020, the average processing time of cases by the CGRS was 213 days, counting from the moment the file was sent to the CGRS until the first decision by the CGRS. This mainly involves cases for which the CGRS had already taken a decision but that were sent back to the CGRS after being annulled by the CALL.

**Hungary:** Until 26 May 2020, asylum could only be sought at the border (inside the transit zone), due to the current status of mass migration emergency, although in practice no new entries were allowed in the transit zones as of March 2020, due to COVID. Only those lawfully staying could apply for asylum in the country. On 26 May 2020 the Governmental decree and from 18 June 2020 the Transitional Act introduced new rules on asylum. Those wishing to seek asylum in Hungary, with a few exceptions noted below, must first personally submit a “statement of intent for the purpose of lodging an asylum application” at the Embassy of Hungary in Belgrade or in Kyiv. The embassy must then forward the “statement of intent” to the NDGAP in Budapest, which shall examine it within 60 days. The NDGAP should make a proposal to the embassy whether to issue the would-be asylum seeker a special, single-entry permit to enter Hungary for the purpose of lodging an asylum application. The law does not clarify the criteria to be considered by the NDGAP in deciding on such applications. Applicants receive an email, with one paragraph stating that the NDGAP decided either to suggest or not to suggest the issuance of a single-entry permit. The decision therefore bears no reasoning and is the law does not foresee any remedy. Those issued a single-entry permit can then travel to Hungary in order to submit an asylum application. Only people belonging to the following categories are not required to go through the process described above:

- Beneficiaries of subsidiary protection who are staying in Hungary.
- Family members of refugees and beneficiaries of subsidiary protection who are staying in Hungary.
- Those subject to forced measures, measures or punishment affecting personal liberty, except if they have crossed Hungary in an ‘illegal’ manner.

It is therefore clear that anyone who arrives at the border with Hungary, anyone who enters Hungary unlawfully and anyone who is legally staying in Hungary and does not belong to the three categories mentioned above, cannot apply for asylum in Hungary. This clearly denies asylum seekers access to a fair and efficient asylum procedure as it raises fundamental concerns over the possibility of a substantive assessment without appropriate procedural guarantees being in place as required by international and EU law. The government aims to justify severe restrictions to access to protection incompatible with domestic, EU, and international law with the pretext of minimising exposure to COVID-19. Nevertheless, this system, besides all its human rights concerns, actually increases the risk of infection, by generating unnecessary cross-border movements. UNHCR expressed its criticism over the new system and on 30 October 2020 the European Commission decided to launch an infringement procedure against Hungary.

**Cyprus:** At the end of 2019, 17,171 applications for asylum were pending. In 2020, 6651 new asylum applications were submitted and 7,389 decisions were issued (90 refugee status, 1020 subsidiary protection and 4,355 negative). By the end of 2020, there were 18,995 pending asylum applications. Throughout 2020 due to the pandemic, there were periods where the examination of asylum applications was suspended, which led to further delays on the examination of these cases. However, efforts by the Asylum Service, with support from EASO, to increase the number of caseworkers examining cases including vulnerable cases have continued.

**Ireland:** Following the onset of the Covid-19 pandemic in March 2020, all substantive protection interviews at the IPO were postponed. Interviews recommenced in July 2020 in line with government guidelines. However, following the reintroduction of Covid-19 restrictions in October 2020, all scheduled protection interviews were suspended from 22 October until 10 December. Restrictions were implemented once again in late December and with effect from the 30 December 2020, all substantive interviews were cancelled until further notice. All scheduled hearings at the International Protection Appeals Tribunal (IPAT) were suspended in a similar manner, although the Tribunal continues to accept and process appeals. Further to the introduction of the latest set of Covid-19 restrictions in December 2020, the Tribunal indicated that its previous blanket Covid-19 policy, under which late filing of Notices of Appeal were accepted, would no longer apply. Instead, the Tribunal has indicated that it will consider applications for the late acceptance of appeals on a case-by-case basis, pursuant to the relevant legal test established in the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017. The Tribunal has further indicated that it is also open to appellants to withdraw their request for an oral hearing and instead have their appeal dealt with on

the papers, where the assigned Tribunal Member is of the opinion that such a course of action is in accordance with fair procedures and natural justice.

**Sweden:** The Migration Agency decided on 50,012 applications for international protection in 2020. This included 20,980 decisions on new applications and 29,032 prolongation decisions where renewal of a temporary protection permit was requested. The backlog of pending cases was further cut by half from 14,890 at the end of 2019 to 7,155 at the end of 2020.

**Croatia:** In 2020, the main challenge which directly influenced also asylum system in Croatia was COVID- 19 pandemic. The Government introduced a website on COVID-19 measures and related news available at: <https://www.koronavirus.hr/en>. The National Civil Protection Authority also issued a number of decisions aimed to prevent the spread of COVID-19. The general recommendations related to the outbreak of COVID-19 can be found on the website of Croatian Institute for Public Health . Pandemic, followed by those measures and recommendations, targeted directly and/or indirectly applicants for international protection and, beneficiaries of international protection. In addition a series of strong and devastating earthquakes hit Croatia in the course of 2020, which in combination with the pandemic influenced the work of institutions and the mental health of people.

**Netherlands:** Due to the measures relating to the COVID-19 pandemic, the asylum procedure has been suspended from 15 March 2020 up to 28 April 2020. During this period, the registration of asylum seekers had been limited to the of taking fingerprints to search the Dutch and European databases, frisking, searching luggage and taking possession of documents. This process is carried out in the application centre in Ter Apel by the Aliens Police, Identification and Human Trafficking Division (AVIM). After the registration and before they were able to lodge the official application for asylum, asylum seekers were taken to an emergency accommodation in Zoutkamp. They could not freely leave this accommodation. The emergency location was closed on 12 May 2020.

**Switzerland:** During the first wave of the COVID-19 pandemic there was no suspension of the asylum procedure. The SEM only suspended the interviews during two weeks at the end of March until the rooms were equipped with plexiglass and masks were at disposal. The Ordinance on Measures Taken in the Field of Asylum due to Coronavirus (Ordinance COVID-19 Asylum), entered in force in April 2020, foresees the limitation of the number of persons present in the same room during the interview. The SEM officer and the asylum seeker are in the same room, while the interpreter, the minute keeper and the legal advisor can be situated in another room and participate in the interview through appropriate technical means. In practice, the interview setting differs from one region to another and was mostly adapted to single cases. In some cases, the interpreter was in the same room as the asylum seeker and SEM officer, while in other cases, the legal advisor was in the same room while the interpreter was connected via video or audio means. In most cases, only audio transmission was used and not video, which the SEM motivated with data protection issues. As of January 2021, interviews mainly take place in large rooms allowing for all participants to attend them in the same room. If one of the participants belongs to a category of higher risk regarding COVID-19 or if there is no such large room available, the interview takes place in two separate rooms. Since January 2021 there is a mask obligation for all participants in the interviews. 3,852 applications were pending at first instance on 31 December 2020, representing a very significant decrease since 2019, when 8,377 applications were still pending.

**Spain:** The backlog of asylum applications in Spain has been an important concern in recent years. As stated by the Spanish Ombudsman in its 2019 Annual Report, the high number of pending cases accumulated over the years is due inter alia to the historical lack of human and material resources of the OAR and the very few measures adopted to tackle the issue. Nevertheless, the Government announced that the Annual Budget of the Ministry of Interior would be doubled in 2021, so it remains to be seen if this will reduce the backlog of pending cases and accelerate the duration of the asylum process. In its 2020 annual report the NGO CEAR highlights the challenges faced by the Spanish asylum system, both in terms of access to the procedure and to reception. It highlights the fact that 2019 was marked by a record in asylum applications and by major challenges in accessing the asylum procedure. The report also expresses concerns regarding the high number of pending cases.

In February 2020, the Spanish Government announced that it is working on a new asylum law that will introduce restrictions to the right to asylum, in line with EU trends and policies. The proposed amendments include the possibility to introduce a deadline for the lodging of an application for international protection; or similarly to introduce a 10-days deadline for persons detained in CIEs to apply for asylum as they are informed of their right to asylum etc. The opposition party “Unidas Podemos” challenged the proposal. There was no follow-up on the bill as of February 2021, however.

#### Length of first instance procedure

**Bulgaria:** According to monitoring activities in 2020, the general decision-taking 6 months deadline was observed in 94% of the cases, leaving 6% of the cases with prolonged determination duration. According to the SAR, the average duration of asylum procedures on the merits ranges from 3 to 6 months, including for nationalities such as Syria, Afghanistan and Iraq.

**Austria:** In 2020, the average duration of the asylum procedure at first instance amounted to 3.9 months , compared to 2.3 months in 2019, 6.6 months at the beginning of 2018 and 14 months at the beginning of 2017. The increase of the average length of the procedure in 2020 is due inter alia to the impact of COVID-19. The BFA never suspended all its activities but only conducted interviews in cases where a convicted person was involved or when the application was manifestly unfounded. The BFA issued asylum decisions but the interim legal measures taken foresaw that the appeal period did not start before 1 May 2020 when a negative decision was issued and delivered between 21 March and 1 May 2020. This means that during this period, personal interviews were only conducted at a very small scale and fewer decisions were issued. It should be further noted that the Austrian Ombudsman continued to receive complaints on the length of asylum procedures at first instance in individual cases, similarly to previous years.

**Slovenia:** According to the official statistics, the average duration of the procedure in 2020 was 59 days. In practice, due to the COVID-19 pandemic, the duration of the asylum process continued to increase.

**France:** In 2017, the Government set a target processing time of 2 months for asylum applications examined by OFPRA. However, the average first-instance processing time for all procedures was 262 days in 2020, due to the impact of COVID-19 on OFPRA’s activity, up from 161 days in 2019 and 150 days in 2018.

**Portugal:** The Portuguese Refugee Council (CPR) was able to gather information on 52 regular procedure decisions issued in the course of 2020, including decisions communicated by SEF in accordance with the law, and decisions that reached CPR’s knowledge by different avenues, i.e., through direct contacts with applicants. In these 52 cases, the total duration of the procedure ranged from 204 to 1,966 days, with an average duration of 833 days. CPR is uncertain whether the low number of notifications of asylum decisions is related to gaps in communication or indicates further delays in the decision-making process.

**Ireland:** The International Protection Office continues to process cases. However, there has been a significant decline in the number of protection applications as a result of the Covid-19 pandemic, with a decrease of approximately 67.3% in the numbers claiming protection in 2020 (1,566 as of December 2020) compared with the previous year (4,781). Prior to the outbreak of Covid-19 in Ireland, persons whose circumstances fell outside the prioritisation criteria were waiting between 8-10 months for their substantive interview, whilst applicants who successfully requested prioritisation were likely to be interviewed within 5 months. Following the outbreak of Covid-19, however, restrictions on the operation of the International Protection Office have resulted in significant delays to the overall procedure. As of December 2020, individuals whose circumstances fell outside the prioritisation criteria were waiting approximately 18 months for the processing of their application, while those who successfully requested prioritisation were waiting approximately 14 months.

Media reports in May 2020 indicated that the IPO had suspended the issuing of first instance decisions, with this suspension entirely due to the impact of Covid-19 restrictions. Anecdotal evidence suggests that the issuing of decisions has now resumed, albeit with significant delays

**Poland:** The COVID-19 pandemic had impact on the processing time of applications. As the Office for Foreigners informs, from 16 March to 25 May 2020 direct service was suspended and face to face interviews were not carried out. From 31 March to 23 May all the time limits in the administrative proceedings was also

suspended. In 2020 the average processing time for a decision on the merits was 207 days (in comparison to 152 days in 2019). The longest processing time took 2,345 days and the shortest 1 day.

**Romania:** According to IGI-DAI statistics, in 2020 the average duration of the asylum procedure was 30-60 days in case of regular procedure and 3 days in case of accelerated procedure and border procedure. Nevertheless, some delays were reported in certain regions. In Bucharest, according to the JRS representative, the 30-day deadline was not respected in several cases. In the case of a Syrian asylum seeker, the decision was communicated after 2 months. In Rădăuți, the JRS representative reported that there were cases in which the deadline was extended with 15 days, because 4 case officers had been infected with COVID-19. In Galati, the procedure lasted 1-2 weeks longer in case of Afghan asylum seekers due to a lack of interpreters.

**Malta:** Applicants channelled through the regular procedure and free from detention may wait for more than a year just to be called to a personal interview. Those in detention and channelled through the accelerated procedure, mainly due to their country of origin, can receive a decision within six months.

**Sweden:** The average length of the asylum procedure (i.e. for all tracks) had significantly decreased from 507 days in 2018 to 288 days 2019, but increased again to a total of 302 days in 2020: The increase of the average length of the procedure in 2020 is due *inter alia* to the impact of COVID-19. The Migration Agency suspended most of its interviews for a two-week period in March 2020. The Migration Agency increased its capacity to conduct interviews remotely via video and the interview rooms were equipped with protective equipment during the summer.

**United Kingdom:** It is not possible to say how many applicants have been waiting for an initial decision for over a year, because the published figures are of decisions pending for less than six months – 14,642 at the end of 2020 – and for more than six months – 36,679 at the end of 2020.

### Personal interview

**Bulgaria:** Amendments in 2020 extended the opportunity to gather expert opinions, including on age, gender, medical, religious, and cultural issues as well as such specific to children. The law also introduced instructions on COI sources and information gathering. No particular issues have been reported in 2020, except with respect to timely notification about the date of the interview, which often is issued when the interview in question has already begun. Since January 2019, the SAR abandoned the standard set of questions used during eligibility interviews and relied entirely on caseworkers' ability to structure the interview on open questions. However, there are no guidelines or a code of conduct for asylum caseworkers to elaborate on the methodology for conducting interviews specifically. Similarly, there are currently no gender-sensitive mechanisms in place in relation to the conduct of interviews, except for the asylum seekers' right to ask for an interpreter of the same gender. This has resulted in a poor quality of examination of asylum claims; i.e. little investigation of the individuals' statements and refugee stories.

Notwithstanding the small number of asylum seekers who presented any evidence to support their claims, caseworkers continued to omit their obligation to collect these pieces of evidence with a separate protocol, a copy of which should be served to the applicant. In 12% of the monitored cases in 2020, the evidence submission was not properly protocolled as one of the safeguards for proper credibility assessment, which is an improvement in comparison to 2019 when it was made in 20% of the monitored cases.

**Belgium:** In the context of the covid-19 sanitary measures, the CGRS has granted the refugee status on the basis of the elements in the file – so without conducting a personal interview – in more than 500 cases in the course of 2020. No exact statistics are available. A large part of these cases (more than 50%) concerned Syrian nationals. However, other nationalities also qualified for this approach. Although there are no fixed criteria to determine whether or not a case qualifies for this approach, it concerns cases containing manifestly sufficient elements in order to recognise the person concerned, and not containing any problematic elements such as indications that the person might have to be excluded from international protection or indications that the person already obtained a protection status in another EU member state. The application is investigated on the basis of the elements and documents provided by the applicant, internet and social media research etc.

**Malta:** The new IPA's director, appointed in October 2019, expressed her willingness to revise the interview and assessment templates in order to process cases more efficiently and in line with accepted standards. This was done in 2020 with the support of EASO and after receiving feedback from UNHCR and local NGOs. The new interview and assessment template is shorter, clearer and clearly differentiate the establishment of material facts and the legal analysis. It leaves more space for the caseworker to develop a reasoned individual assessment.

**Austria:** In the first months of the pandemic, asylum applications had to be lodged in person and the interview concerning the way of travel was conducted. All further steps were suspended in most cases since more than 50% of the personnel of the BFA was working remotely on cases where interviews have already been conducted or cases of prolongation of subsidiary protection (when a personal interview was not necessary). All submissions had to be brought in by electronic communication by the asylum seekers during the first months. Applications for humanitarian status (Article 57 AsylG) could be submitted in writing. Interviews were conducted in cases where persons had committed a criminal offense at all times since the start of the pandemic.

As regards remote interviews through video conferencing, several concerns were raised as there is no standard procedure to handle these new tools and they raise issues of confidentiality and procedural rights. Lawyers have reported that there has been an increase of videoconferencing by the BFA and BVwGH during 2020. In most cases, it is up to the applicant and the legal representative to arrange the necessary technical equipment. Issues reported in certain cases include: a judge turning off the video during a court session; the impossibility to see the translator on video; the fact that in certain cases the judges did not allow the legal representative to sit in the room as the applicant; or the fact that in certain cases a protocol was sent without encryption.

**Ireland:** In light of the outbreak of Covid-19, a small number of applicants for international protection were offered the possibility of conducting their substantive international protection interview remotely under a pilot process. Interviews took place via video-link, with the applicant attending from a remote location in Co. Cork and the interviewer attending at the IPO. Following the resumption of face-to-face interviews in July, legal representatives and interpreters were required to attend client interviews remotely via telephone dial-in. The IPAT recently announced that it is now in a position to conduct some appeal hearings remotely by way of audio-video link. The IPAT has indicated that it will identify those cases in which a remote hearing may be suitable and will be in direct contact with appellants and their legal representatives in due course.

**Cyprus:** In 2020, attempts were made to interview newly arrived asylum seekers residing in Pournara during their stay in the Center by utilising the recently established Asylum Examination Centre adjacent to 'Pournara' First Reception Centre. In such cases the interview took place soon after the lodging of the asylum application and often close to the vulnerability assessment, with no access or extremely limited access to legal advice. In practice the quality of the interview, including the structure and the collection of data, differs substantially depending on the individual examiner. The absence of Standard Operating Procedures and mechanisms for internal quality control to date contribute to the diverse approaches. In 2020 due to measures taken to address Covid-19, interviews were at times conducted via video conferencing with the interviewer and interpreter being in another location than the asylum seeker. There were cases where the asylum seeker complained that other staff were going in and out of the room while the interview was taking place, which was distracting and affected the sense of confidentiality.

**Portugal:** There were no cases where a decision was taken without a personal interview and personal interviews were generally conducted in practice. Furthermore, CPR is not aware of interviews conducted remotely by the national authorities in 2020. Nevertheless, throughout 2020, CPR was informed by SEF of the adoption of decisions not to proceed with the analysis of the application due to the impossibility to perform the personal interview (e.g because the applicant absconded) on the basis of general administrative procedure rules. Procedures were also suspended in cases where age assessment procedures were triggered by the Family Courts and while results were pending. Within the context of the coronavirus pandemic, decisions suspending the procedure were also adopted when it was not possible to conduct an interview due to quarantine/isolation of the applicant.

**Romania:** According to IGI-DAI, interviews, including preliminary interviews were conducted in the spaces for these activities. If the asylum seeker was isolated/ quarantined the interview was held afterwards. In addition, hygienic-sanitary measures were taken (masks, gloves, plexiglass panels, social distancing). Interviews were not postponed nor suspended during the state of emergency or the state of alert. In Bucharest, during the state of emergency, asylum seekers were transported by IGI-DAI from Stolnicu centre to Tudor Gociu centre, where the interviews are conducted. According to the director of Timisoara centre, asylum seekers received masks from IGI-DAI and from NGOs. According to the JRS representative in Timisoara, during the state of emergency interviews were held in shipping containers installed in the centre's courtyard.

**France:** An OFPRA Decision of 23 December 2020 has established the updated list of approved premises intended to receive asylum seekers, applicants for stateless status, refugees or beneficiaries of subsidiary protection heard in a professional interview conducted by OFPRA by an audio-visual communication procedure. This includes several administrative detention centres, as well as waiting zones. In 2019, 2.3% of all interviews were conducted through video conferencing, compared to 2.2% in 2018, 3.1% in 2017 and 4.2% in 2016. Statistics on the number of interviews conducted through video conferencing in 2020 were not available at the time of writing of this report. However, the OFPRA did not use videoconferencing during the first lockdown in the context of COVID-19 as a way of maintaining its activity. Instead, all personal interviews on the metropolitan territory were cancelled between 16 March and 11 May 2020.

**Netherlands:** In March 2020, 15,350 asylum applications that were all lodged before 1 April 2020 were passed on to a newly established IND Task Force, with the aim of clearing the IND's backlogs. The written interview was introduced as a measure to clear the backlogs faster. The IND hopes that by using a form, it will be able to decide more quickly on asylum applications. Asylum seekers fill in the form themselves at the IND. Currently, the written interview is limited to asylum seekers with the following nationalities: Syrian, Yemenite, Eritrean, Turkish and Iranian. Unaccompanied minors are not invited for the written interview, as well as asylum seekers with medical issues or, of course, asylum seekers who are unable to read or write. Important to note is that the IND will always carry out an interview in person if they cannot decide positively on the asylum application on the basis of the written interview. It is not mandatory to participate in the written interview. If an asylum seeker does not want to fill in the form, a regular interview is carried out. In practice, however, asylum seekers have indicated that they agree to the written interview in fear of having to wait even longer.

Moreover, in order to minimise physical contact during the COVID-19 pandemic, the IND has started conducting videoconference interviews since April 2020. The interviews by videoconference take place via a secure link for video conferencing. Via this link, the asylum seeker is able to speak with the IND staff members working from Zevenaar, Den Bosch, Schiphol or Ter Apel. Lawyers can use the facilities, too. Unaccompanied minors and asylum seekers with medical problems are excluded from videoconference interviews.

**Sweden:** The possibility to conduct individual interviews were limited during the spring in 2020 due to the COVID-19 situation, i.e. when the Migration Agency suspended most of its interviews for a two week period in March 2020. The Migration Agency focused primarily on applications for extensions of residence permits for persons already granted international protection as they do not require interviews to the same extent as first-time applicants. The Migration Agency also increased the use of interviews via videoconference and, during the summer, introduced protective equipment in their interview rooms. After having equipped the interview rooms accordingly, the Migration Agency could return to normal capacity. During the autumn, the Migration Agency prioritised new applications and reallocated resources to conduct interviews which had been cancelled during the spring and summer.

In 2020, several issues were reported with regard to remote interview techniques, including that it is difficult to appropriately communicate feelings such as fear of being subject to persecution and that it might be difficult to accurately assess credibility through remote interview techniques. The Migration Agency argued, however, that conducting interviews by video is not a new procedure, that it has been conducted for several years and that it works well. The Migration Agency also stated that online interviews allow for respect of legal safeguards equally as physical meetings do. Several NGOs such as the Swedish Refugee Law Center, Save the Children, Amnesty Sweden and Stockholm City Mission further reported that individual applications may be negatively affected as applicants could not meet their public counsel due to COVID-19 restrictions.

**Poland:** In 2020 videoconferencing was applied on a larger scale because of the pandemic, but the applicants still had to come to the Office for Foreigners. Interviewee and interviewer were sitting in separate rooms, but after the conversation through an application for videoconferencing was finished, the interviewee still had to sign the protocol of the interview. According to the Office for Foreigners, protocols are mainly prepared on the computer, not handwritten.

**Switzerland:** The Ordinance on Measures Taken in the Field of Asylum due to Coronavirus (Ordinance COVID-19 Asylum) foresees the possibility, if health reasons related to the coronavirus require it, to exceptionally hold the interview in such a way that the asylum seeker and the officer are in separate rooms and that the interview is conducted using appropriate technical means, however this option seems to have not been used. As of January 2021, the SEM allows to postpone an interview until after vaccination if the situation is deemed too risky for the applicant. Persons at higher risk can also have a FFP2-mask from SEM to use during interview.

**Spain:** When the case is then forwarded to the OAR for examination, the caseworker in charge may decide to hold a second interview with the applicant when he or she considers the information in the case file to be insufficient. The case examination reports do not systematically make reference to whether or not a second interview is necessary, although the law states that the decision to hold further interviews must be reasoned. However, since March 2020 second interviews are not held because of COVID-19 circumstances.

Moreover, concerns about inadequate and collective interviews have been expressed by Amnesty International in a report on the identification of trafficked persons in Spain published in October 2020. The report refers to the practice in place in Málaga, denouncing the lack of minimum standards in providing juridical and humanitarian assistance to migrants. It also reported the lack of separation between men and women during collective interviews, which were carried out in a small room at the port and without any proper space to guarantee confidentiality. In its report, Amnesty International Spain further denounces the general deficiencies of CATEs and the poor conditions of such facilities, as well as the lack of specialised and trained personnel on migration, asylum and trafficking in human beings. In line with the Spanish Ombudsman's findings, the organisation denounces again that migrants and refugees arriving to Spain do not receive proper information on their rights, nor effective legal support, and that a proper access to the international protection procedure with adequate guarantees is not ensured.

**United Kingdom:** Personal interviews are usually conducted by the authority responsible for taking the decisions, i.e. by the Home Office caseworkers, although it will not always be the same individual. In 2020 the Home Office trialled the use of external Agency staff to assist with interviews but no information is publicly available in this regard. Substantive interviews were paused between mid-March and the end of June 2020. When they resumed they mainly take place via video link; the asylum seeker is invited to the usual Home Office premises but the interviewing officer may be working from home or in a different office. Some face-to-face interviews have resumed.

### Evidence assessment

**Ireland:** SPIRASI's services include the provision of MLR to the protection process, multidisciplinary assessments of survivors of torture, therapeutic interventions, psycho-social support, outreach and early identification, language and vocational training and training to third parties on survivors of torture. SPIRASI puts the waiting time for appointments for reports at eight-ten months from the date of referral, however it is understood that applicants waiting for a report for an IPAT appeal hearing will be prioritised. Following the onset of Covid-19, there have been further delays in SPIRASI's services owing to restrictions on the ability of staff to meet clients and carry out assessments.

**Hungary:** The HHC attorneys report that no COI is shared by the NDGAP with the applicants, before a decision in their asylum case is made. It is therefore not possible to provide any comments to the COI before the appeal phase. It is also quite common that nearly no COI is collected with regard to the reasonableness part of internal protection alternative (IPA). Or very often COI is just mentioned in the decision, but not quoted, only referred to in a footnote, only by a link and never by the exact location of the information in question (no pages are given). Furthermore, the NDGAP usually does not refer to COI from EASO and UNHCR and in those very rare cases when they do, they are presented selectively.



Based on the adopted amendments of the Asylum Act, as of July 2020 the asylum authority might seize the electronic device of asylum seekers if the facts of the case could not be ascertained without the seizure, or without it, the ascertainment would result in a significant delay or if without the seizure the success of the procedure would be at stake. In the view of HHC, the new regulation violates the asylum seekers' right to private and family life (right to correspondence), as it gives the NDGAP unlimited access to all the personal data stored on the device. Furthermore, it is also in breach of the right to an effective remedy, since the decision on the seizure can only be subject to judicial review together with the petition submitted against the decision on the application. The legislation is not necessary because the obligation has already been imposed on the asylum seeker to cooperate with the asylum authority, by which he/she is obliged to reveal the circumstances of his/her flight, to provide all the necessary information in order to ascertain his/her identity, moreover, he/she is obliged to hand over all the documents in his/her possession to the case officer. All these obligations, therefore, should be enough to ascertain the facts of the case. The provision is also in breach of Article 4(5) Qualification Directive which does not require the provision of further evidence in case the asylum seeker lacks documents or other evidence substantiating his/her citizenship, identity and the reasons of fleeing. Finally, the provision is not in line with the legal observations of the UNHCR issued on the Seizure and Search of Electronic Devices of Asylum-Seekers either by not providing any room for requesting the consent of the applicant prior to the implementation of the measure. HHC is not aware of the application of the provision yet.

**Sweden:** The government decided on 14 March 2019 to expand their annual directives to the Migration Agency by requesting them to assure legal quality and uniform application in asylum cases where religious conviction is a basis for the claim. In the region which is in charge of the majority of cases on religious grounds, the Migration Agency has provided specific trainings on the topic. In 2020, the Agency also analysed cases concerning Afghans, which is a category of cases where claims based on religion occur, that had been changed in the courts in 2019. The Agency found that the proportion of cases changed were not remarkably high, namely 10% compared to 8% in other cases. Out of the cases that were changed by the courts, the courts had made a different assessment of whether the person had a genuine religious belief or atheist conviction in 17% of the cases. The Migration Agency mentions that conversion is a process that takes place over time and that persons could therefore have a stronger religious belief during the court process than during the first instance procedure. However, the Migration Agency also carried out a mapping based on automated searches in their case handling system on cases concerning conversion and atheism. It showed that the term conversion was present in about 10% of the cases. The mapping further demonstrated regional differences in the level of cases granted, varying between 18% and 33%. There was also a regional difference in the courts, varying between 2% and 15% of the appeals being successful. The Migration Agency acknowledged that, based on this mapping, there seems to be a lack of uniformity on cases concerning conversion of religion

Moreover, on 24 September 2020, the UN Committee on the Rights of Persons with Disabilities (CRPD) published its decision in a case litigated by the Swedish Refugee Law Center concerning the expulsion to Iraq of a woman suffering from severe depression. The CRPD considered that the Swedish authorities should have assessed whether the woman would be able to access adequate medical care if removed to Iraq and found that Sweden had failed to fulfil its obligations under Article 15 of the Convention on the Rights of Persons with Disabilities

**Croatia:** In 2020 the Ministry of Interior continued to automatically issue a negative decision or decides to annul international protection in cases where the Security and Intelligence Agency provided a negative opinion. However, there has been an improvement in such cases, as some information was nevertheless made available to the decision-maker and the applicant, which allows argumentation. However, despite that, sometimes the evidence in such a situation is in vain. For example, international protection was annulled because it was subsequently established that the applicant lied when applying for international protection about the essential circumstance that was the reason for granting protection. At the same time, the applicant proposed as a proof, an indirect evidence of origin and hearing of the witness, but those proofs were denied. The evidence on the 'alleged lying' was classified as a secret.

**Switzerland:** In the most recent practice asylum has quite frequently been granted to applicants coming from the middle-East area (Afghanistan, Iraq, Syria) because of their membership in one of the social groups listed above. Much more controversial is the assessment of claims of 'honour' killings, domestic violence, or forced marriage, lodged by 'western' women, especially the ones coming from the Balkan area and Turkey. In these

cases, most of the times, applications are rejected, on the basis of the fact that these States have been designated as 'safe countries of origin' (or, in the case of Turkey, on the basis of settled case-law) and that State authorities would be willing and able to offer adequate protection to women/girls targeted by these types of gender-based persecution

Practice concerning victims of sexual violence is also problematic. Despite noting, in its Handbook, that persecutions inflicted for one of the Convention grounds could take the form of sexual violence, the Administration sometimes failed, in practice, to properly link this form of mistreatment to the appropriate Convention ground. In such cases, allegations of rape were then dismissed as 'common misadventures' that took place because of the general situation of instability/ war existing in the country of origin, thus neglecting the fact that this very typical form of gender-specific persecution can be used to assess or perpetuate political, racial or religious structures of power. The SEM finally changed its approach, as evidenced by Handbook which now devotes a new paragraph to "Women in Conflict Situations". In this new section, the SEM explicitly admits that «it cannot be ignored that women, solely because of their sex, are particularly and specifically affected by sexual violence in the context of conflicts», that «the examination of asylum applications from persons coming from countries facing war or conflict will therefore have to determine whether the person concerned has been personally targeted because of his or her characteristics, including his or her sex». These are certainly positive changes, which incorporate the TAF case law as well as international recommendations on the subject. It will be important to continue to monitor the case law in the coming months to see if it will be effectively implemented in daily practice

### Recording and report

**Bulgaria:** The law provides for mandatory audio or audio-video tape-recording of all eligibility interviews as the best safeguard against corruption and for unbiased claim assessment. The positive practice in this regard persisted in 2020, as 100% of all monitored interviews were tape-recorded. This being said, the benefits of such a procedure are biased by the fact that, in practice, caseworkers take a decision based on their own notes rather than the actual audio recording.

Moreover, in 22% of the procedures monitored, the interview or the registration reports were not read out to asylum seekers before being served for signature, raising concerns over compliance with EU standards. Nevertheless, practices in 2020 marked a slight progress in comparison with previous years, as this omission was made in 46% of the monitored cases in 2019, 36% of the cases in 2018, and in 26% of the cases in 2017. Under such circumstances, the information recorded in the report of the interview could be prone to potential manipulation, and the applicant would require a phonetic expertise requested in eventual appeal proceedings in order to validly contest the content of the report in case of inaccuracies. Court expertise expenses in asylum cases have to be met by the appellants, however.

**Sweden:** Video interviews were being conducted even prior to COVID-19, but was then typically applied only when the applicant was residing at long distances from the Migration Agency's designated interview office. However, as a result of COVID-19, video interviews have increased in 2020, in particular before the interview rooms were adapted to COVID-19 with protecting equipment during the summer.

**Hungary:** HHC lawyers observed that if they are present, the interview transcripts are always read back to the asylum seeker. However, the HHC did hear of some complaints from people representing themselves that the transcript was not read back to them.

**Switzerland:** Neither audio nor video recording of the personal interview is required under Swiss legislation. The recording of interviews with asylum seekers is a long-standing demand of the charitable organizations, which has so far not been implemented by the federal authorities. In a letter of January 2020, sixty-six experts in asylum law requested the introduction of audio recording of asylum interviews, to which the SEM answered vaguely in May 2020 that it needed to examine a series of aspects before considering such an introduction.

**United Kingdom:** In 2020 the NGO Freedom From Torture published research based on interview transcripts and testimonies from survivors of torture and their experiences of being interviewed in relation to their asylum claim. The criticisms and recommendations have wider applicability than the subject of the research.

**Portugal:** SEF produces a written report summarising the most important elements raised during the interview. Until 2020, the interview report was immediately provided to the applicant who had 5 days to submit comments. Since the second half of 2020, CPR observed a shift in the practice of SEF in this regard. Currently, while the interview report is provided to the applicant upon completion of the personal interview, he/she is not given the 5-day deadline to comment/correct/add information to the document. Instead, SEF notifies the asylum seeker of another document, that summarises the key information that will underlie the decision to deem the application admissible/not unfounded and, as such, submit it to the regular procedure, or to reject it as inadmissible/unfounded (accelerated procedure). The applicant then has 5 days to submit comments to the summary report. The summary report broadly contains information on: (i) identification of the applicant; (ii) family members; (iii) time and place of the application for international protection; (iv) prior information; (v) itinerary; (vi) summary of the facts that will underlie the decision; (vii) the prospective decision to be taken (brief reference to the relevant legal basis). According to CPR's observations, in many instances, the summary report is notified to the applicant right after the personal interview, which raises concerns about the proper consideration of the relevant facts and available information. CPR has also been made aware that when the interview is conducted following admission to the regular procedure, the applicants are not, at least in some instances, given the corresponding written report. Moreover, such reports are also not communicated to CPR on a systematic basis. This practice is problematic as it curtails the applicant's right to submit comments and corrections to the report and may also impact the applicant's ability to fully exercise other procedural rights at later stages of the procedure.

### Safe country concepts

**Sweden:** On 19 June 2019, the government ordered an investigation regarding the possibility to introduce a list of safe countries of origin. A government memorandum was published on 30 January 2020, which outlined the legislative changes necessary to achieve that aim. The government has expressed as a goal to implement the required legislative changes during the fall of 2020. The Government has presented a law proposal introducing safe country of origin concept and giving the Migration Agency the possibility to develop list of safe countries. The law proposal is suggested to enter into force on 1 May 2021.

**Spain:** The OAR has increasingly applied the "safe third country" concept since 2016 up until 2020, in particular for Moroccans, and in 2020 the concept was also applied to Venezuelans as the authorities consider that any other South American country is a safe third country. The Government does not expressly refer to the "safe third country" concept, but the motivation of the dismissal of the application is essentially based on it.

**Belgium:** The Royal Decree of 14 December 2020 on Safe Countries of Origin reconfirmed the list of safe countries of origin that was adopted in 2017: Albania, Bosnia-Herzegovina, Northern- Macedonia, Kosovo, Serbia, Montenegro, India and Georgia. In 2020, a total of 1,063 persons from safe countries of origin applied for asylum.

**Cyprus:** A new list of of safe countries of origin was published in May 2020, increasing the number of safe countries of origin from 1 to 21 countries, with the intention to utilise widely the accelerated procedures however in practice it was not used as much as expected.

**France:** In September 2020, the Management Board of OFPRA decided to suspend the placement of Benin as safe country of origin during 12 months.

**Ireland:** The safe country of origin list continues to be applied in practice, namely in response to a significant increase in the numbers of applicants to Ireland from those countries since 2017. In 2019, Albania and Georgia were the top two countries of origin for international protection applicants in Ireland with 972 and 631 applications respectively. According to the latest application figures, South Africa is amongst the top 5 countries of origin for international protection in Ireland, with 77 applications, accounting for 5.5% of the total applications, as of November 2020.

**Malta:** The Safe country of origin concept is now implemented speedily to reject applications, especially from nationals of Bangladesh, Morocco and Ghana. It also concerns applicants having claims within scope of the refugee or subsidiary protection definition who might see their applications deemed manifestly unfounded

and, as a consequence, denied the possibility to appeal. On the basis of application of this principle, they would immediately receive a return decision/removal order once the IPAT confirms the application as being manifestly unfounded.

**Romania:** According to information shared by IGI-DAI, the safe country concepts were not used in 2020.

**Netherlands:** The AIDA report documents the different changes that were made to the list of safe countries of origin (involving several countries such as India, Brazil, Morocco and Algeria). Please refer to the AIDA report for further details.

**United Kingdom:** The rules on the safe third country concept were amended in December 2020, to come into force at the exact time the UK left the transition period of exit from the EU. The new rules make no distinction between EU and non EU states. The new rules remove the requirement for the individual to have a connection to the country to which it is proposed they be returned. The rules explicitly state that “When an application is treated as inadmissible, the Secretary of State will attempt to remove the applicant to the safe third country in which they were previously present or to which they have a connection, or to any other safe third country which may agree to their entry.” Moreover, the Immigration Rules relevant to claims in 2020 set out a number of non-exhaustive criteria (listed in the AIDA report) for establishing a connection between the individual applicant and a safe third country. Since the change in rules it is clear that a case may be considered under the inadmissibility policy if there is evidence that an applicant has spent time in or travelled through a country where it is deemed they could have made a protection claim and benefitted from the principle of non-refoulement. However, the instruction goes on to state that removal can be to any country that will accept them. Whilst no return agreements are in place at the time of writing the stated intention is that people seeking asylum will be returned despite the lack of participation in Dublin III as a mechanism to facilitate that.

#### Differential treatment of nationalities in asylum procedures

**Ireland:** Legislation in Ireland does not single out any particular nationality as manifestly well-founded in the context of the regular procedure. However, with respect to the scheduling of substantive interviews of applicants, the IPO may prioritise cases of certain nationalities on the basis of ‘the likelihood that applications are well-founded due to the country of origin or habitual residence of applicants.’ The Department of Justice has specified that applications from persons from Syria, Iraq, Afghanistan, Iran, Libya, Eritrea and Somalia may be prioritised on the basis ‘of country of origin information, protection determination rates in EU member states and UNHCR position papers indicating the likely well foundedness of applications from such countries.’ Prioritisation of protection applicants from these states continued throughout 2020.

**Portugal:** Similarly to 2019, CPR observed in 2020 that, in a significant number of applications lodged by Venezuelans, SEF deemed the applications unfounded within accelerated procedures, and referred the cases to regularisation procedures through the humanitarian clause of the exceptional regularisation regime of the Immigration Act. According to these decisions, this was done due to the political, social and humanitarian crisis in the country and its impacts in the regular functioning of institutions and public services

**Poland:** In Poland there is generally no official policy implemented with regard to the nationals of particular countries of origin because every application is examined individually. However, in 2020 the most dynamic trend was that of Belarussian nationals, due to political situation there. The number of Belarussian applicants increased from 37 applicants in 2019 to 407 applicants in 2020. The Government introduced many policies enabling the Belarussians entering Poland as migrants – such as visa facilitations and facilitations in obtaining residence permit. According to the Office for Foreigners, Belarussians constitute the second-largest group of foreigners in Poland, with 28,000 currently holding residence permits.

**Malta:** The IPA confirmed that applications lodged by applicants claiming to be Bangladeshi nationals or Moroccan nationals have been prioritised in 2019. No official information is available for 2020 but lawyers assisting asylum-seekers report that it is still the case in 2020 for Bangladeshis, Moroccans and also Ghanaians, as these cases are processed when applicants are still in detention. Such cases are generally rejected as manifestly unfounded despite having been examined after a personal interview and full assessment of the claim on the merit. When channelled through the accelerated procedure, applicants are not entitled to appeal and are usually immediately issued a return decision together with a detention order.

Therefore, in 2020, applicants to which this procedure was applied were not released from detention after the final decision of their asylum application and remained in detention awaiting a possible return. In January 2021, more than two years after the announcement that Bangladeshi nationals shall face an expedient return, dozens of Bangladeshis were indeed returned to their country of origin. They had entered Malta irregularly by boat in 2018, 2019 and 2020. They spent all the duration of their stay in Malta in detention. Their applications were processed through the accelerated procedure and declared manifestly unfounded so they were never entitled to appeal their negative decision.

**Sweden:** Sweden is one of the main destinations of Syrian asylum seekers. In 2020, out of a total of 12,991, 1,208 came from Syria; 401 from Georgia; 782 from Iraq; 526 from Eritrea; 375 were stateless, 593 from Afghanistan and 443 from Somalia. The recognition rate at first instance was 29% in 2020, down from 35% in 2019 and 39% in 2018. At first instance, the recognition rates in 2020 significantly decreased compared to 2019 as follows: 63% (1,422) for Syrians, down from 97% in 2019; 64% (454) for Eritreans, down from 91% in 2019; 39% (366) for Afghans, down from 45% in 2019; 33% (236) for stateless persons, down from 60% in 2019; 29% (222) for Somalians, down from 47% in 2020; and 28% for Iranians. As regards second instance, the Migration Courts approved 7% of appeals in 2020, compared to 17% of appeals in 2019. The high rate in 2019 was mainly due to the possibility to be granted a residence permit to study in upper secondary school in the so-called “new high school law” between 1 July and 30 September 2018.

Applicants from countries with a recognition rate below 20% have their cases treated under the accelerated procedure (“Track 4B”) even if they are individually assessed. By way of illustration, the recognition rate for Iraq decreased to 17% (231) in 2020 compared to 24% in 2019. In 2020, this also applied to applicants origination from Nigeria (11%, i.e. 46), and from Egypt (8%, i.e. 33). Decision-making resources are diverted to this group when there is a large influx of applicants in order to meet the 3-month time limit for dealing with a case as manifestly unfounded. Even though Sweden only registers the nationality of asylum seekers and not their ethnicity, many asylum seekers in this group are of Roma origin. Similar procedures are followed with regard to asylum applications from Mongolia.

**Cyprus:** No differences in treatment, based on asylum seekers’ nationality, are generally observed. However recently in Pournara emergency reception centre, and upon the introduction of initial measures to tackle the Covid-19 spread, as well as the recent announcement on taking more stringent measures by the Minister of Interior regarding migration flows, it was observed that persons coming from African countries were either not allowed or faced sudden restrictions in exiting the Centre. That was in contrast to Syrian families who were able to exit the Centre more easily. Throughout 2020, this trend continued, primarily due to the Syrians’ tightest relations with friends and relatives in the community, which enabled them to secure accommodation and gather the necessary documents, more easily than the residents originating from African countries.

**Spain:** Another concern expressed by the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture relates to the discriminatory treatment of certain migrants based on nationality. In practice, if a person comes from a Sub-Saharan country or from Asia, he or she will be referred to an NGO within 72 hours, while Algerians or Moroccans are regularly sent to CIEs. Clarifications have been requested to the Directorate-General of the National Police on the matter. These concerns are also shared by the Association for Human Rights in Andalucía (APDHA – Asociación pro Derechos Humanos en Andalucía) in its 2020 annual report on the Southern border.

Differential treatments are also visible in Spain in the decision-making process. On 5 March 2019, the CIAR announced a policy granting one-year renewable residence permits “on humanitarian grounds of international protection” to Venezuelan nationals whose asylum applications have been rejected between January 2014 and February 2019. As a result, a total of 35,130 humanitarian status were granted within a single year to Venezuelans, thus exceeding by far the number of refugee status. Only 50 Venezuelans were granted a refugee status in Spain in 2019 according to Eurostat statistics. Similarly in 2020, 40,396 Venezuelans obtained a residence permit on humanitarian grounds, and only 5 Venezuelans were granted refugee status according to Eurostat statistics. Lawyers have expressed deep concerns regarding the individual assessment of asylum claims lodged by Venezuelans. It seems that some of them are being granted a residence permit on humanitarian grounds although they are entitled to the refugee status (e.g. in the case of political opponents). In addition, it appears that some applications for international protection have been rejected because asylum seekers have a police record (not a criminal record).

Another non-official practice of differential treatment concerns applications presented by Syrian nationals, who are in their vast majority granted subsidiary protection, and no case by case assessment is realised on the requirement to receive international protection. According to Eurostat, 1,075 subsidiary protection status have been granted to Syrians in 2019, compared to 35 refugee status. Similarly in 2020, only 5 Syrians were granted refugee status, compared to 530 subsidiary protection status.

## 9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)

### Appeal authorities

**Bulgaria:** At the end of 2019, the Chairperson of the Supreme administrative court took the controversial decision to move the asylum cases from the 3<sup>rd</sup> to 4<sup>th</sup> department, which has never dealt with such cases before. The 3<sup>rd</sup> department of the SAC had been dealing with asylum cases for more than twenty-two years since the establishment of the Supreme Administrative Court in 1997. This new arrangement undermines the quality of the decisions issued on asylum cases at this highest court instance, whose jurisprudence sets the standards to all lower national administrative courts. In 2020, it affected in almost 100% negative SAC decisions issued on asylum cases. Thus, in practice, asylum seekers did not enjoy two-instance court revision as the control exercised from the Supreme Administrative Court's 4<sup>th</sup> department proved to be purely formal and superficial.

**Malta:** An appeal mechanism of the first instance decision is available before a board formerly known as the Refugee Appeals Board (RAB) and now called the International Protection Appeals Tribunal (IPAT) following the amendment made to the Refugees Act, now the International Protection Act. According to the new Act, the IPAT now consists of one Chairperson on a full-time basis and two or more members on a part-time basis. Originally composed of three Chambers, the Home Affairs Ministry increased the RAB's Tribunal's capacity by adding an additional Chamber in 2019. Each Chamber is made of a Chairperson and two other members, all appointed by the President acting on the advice of the Prime Minister. NGOs assisting applicants at appeal stage have called for a reform of the appeal procedure for years. However, if the establishment of a full-time Chairperson was welcome, they criticised the modalities of appointments of the members where the Prime Minister appoints directly members of a tribunal that is supposed to be independent and impartial.

**Austria:** Following the increase of appeals and backlog of cases at second instance, judges from different fields of law have gradually been assigned to decide upon asylum procedures since 2017; despite their lack of expertise on asylum-related matters. For the year 2021, it is foreseen that 123 out of around 230 judges of the BVwG will be assigned to take decision in asylum and alien's law cases.

**Hungary:** Szeged Administrative and Labour Court had jurisdiction over the asylum cases in the transit zone until February 2019. From then on, all decisions in asylum cases have been issued in Budapest and therefore the Metropolitan Court of Budapest has jurisdiction to adjudicate the cases from the transit. This however changed again, when the amendments to the Code of Administrative Court Procedure entered into force in April 2020, following which the administrative branches of the district courts have jurisdiction. Following the closure of the transit zones and the placement of previously arbitrarily detained asylum-seekers to open facilities, several cases pending before the courts were suspended. There was a heavily divergent practice among judges as to whether the change in placement would also mean a change in jurisdiction. The ensuing legal procedures to appoint the Court with jurisdiction prolonged the procedures considerably.

At the judicial stage, asylum seekers held in the transit zones were not heard if the case is adjudicated by the Metropolitan Court. The reason was that the technical requirements were not met by the court, as the videoconference system was not set up at all and the court would not want to summon the clients – even if there is a credibility issue – from the transit zones, as that would require transport by the police which they deem problematic in terms of costs, time, logistics etc. This was extremely problematic as the Metropolitan

Court had the sole territorial jurisdiction to adjudicate all asylum cases, as mentioned above. This changed in April 2020. HHC is aware of a recent case, where the Metropolitan Court judge actually ordered the applicants from the transit zone to be brought to the Court for a hearing. But the NDGAP filed an objection, claiming that according to the law, due to the mass migration crisis, the hearing can only take place through the video conference and that the law does not allow the applicants to be brought to the court. After that the judge established that since there is no possibility to conduct a videoconference at the Metropolitan Court, the applicants will not be heard.

**Poland:** It is questionable whether the administrative court proceedings in Poland is in compliance with the EU law, since in the light of the judgment of the CJEU of 29 July 2019, C-556/17, Alekszj Torubarov v. Bevándorlási és Menekültügyi Hivatal the administrative court should be given powers enabling enforcement of final court judgments. These powers must include the possibility of issuing a judgment on the merits if a final judgment is not complied with in subsequent administrative proceedings. In Poland the law does not provide such a possibility – the administrative courts do not decide on the merits.

### **Second instance procedure and suspension of activities during COVID -19**

**Ireland:** Following the onset of the Covid-19 pandemic in March 2020, all appeals before the IPAT were suspended. Appeals recommenced for a short period in July 2020, however, in October 2020, following the reimplementation of restrictions, all scheduled appeals were postponed from 22 October until 10 December, in line with government guidelines. Restrictions were re-introduced in late December 2020 and with effect from 30 December 2020, all appeals were once again cancelled until further notice.

The IPAT, as an essential service, continues to accept new appeals, correspondence and submissions., However, in line with Covid-19 public health advice, all correspondence and communication with the Tribunal should be made by email, where possible. The IPAT also recently announced that it is now in a position to conduct some appeal hearings remotely by way of audio-video link. The IPAT has indicated that it will identify those cases in which a remote hearing may be suitable and will be in direct contact with appellants and their legal representatives in due course.

Throughout 2020, the High Court continued to implement measures to reduce the backlogs in the 'Asylum List', remaining fully operational throughout the Covid-19 pandemic and associated restrictions, albeit on a largely remote basis. The latest available statistics demonstrate a 30% decrease in new asylum cases lodged, down from 530 cases in 2018 to 368 cases in 2019. Moreover, the High Court more than doubled the number of asylum cases decided or resolved in court, with a total of 262 cases decided in court in 2019, while 135 cases were settled outside of court.

**Cyprus:** Following on from the global escalation of Covid-19, the procedures before all national courts were suspended during the general lockdown (March-May 2020 and late Jan-Feb 2021) with the exception of urgent cases and/or case with a deadline set by the Constitution, as is the case with those related to asylum. During these periods, the Court Registrar of the IPAC received legal aid applications and appeals against asylum decisions and other related asylum cases (i.e., family reunification) but the proceedings are suspended. Only proceedings on detention orders are considered urgent and are examined.

**Austria:** During the first months of the pandemic (until Mid-April), there were no court hearings at all. In the second half of April court hearings were held in some cases with increasing numbers of court hearings in the following months. Due to the fact that all possible measures concerning Covid-19-prevention were seen as an interference with the independence of judges, there were no mandatory Covid-19-rules inside the Court rooms. Some judges asked everyone present in the room to wear a mask and opened windows whereas in other cases there were hardly any measures applied. Especially in cases where vulnerable persons were involved, the legal representation tried to postpone the Court hearing which often was respected. In many cases, the access of the general public to court hearings was restricted arguing that a participation of more people would increase the health danger. This is practiced by some judges until the time of writing, a litigation against this restriction of access is planned by NGOs. Video Conferencing tools are available at a small scale at the Courts but are used very rarely.



**Romania:** Information provided by regional courts and administrative courts demonstrate different practices, with some suspending their court hearings and others maintaining them or carrying them through videoconferences. More information on the different practices of the courts can be found in the AIDA Report. At the same time, in order to prevent the spread of coronavirus infection, courts took all necessary measures such as: mandatory masks, hand sanitizers, ventilation of court rooms at short intervals, social distancing etc.

**France:** In 2020, the CNDA registered 46,043 appeals and took 42,025 decisions, compared to 59,091 appeals and 66,466 decisions in 2019. The important decrease of appeals and decisions is due to the impact of COVID-19. During the first lockdown in March-April 2020, the CNDA was closed during 8 weeks. The appeal is processed by a Court panel in the regular procedure, while in the Admissibility Procedure and Accelerated Procedure only one single judge – either the President of the CNDA or the President of the section – rules on the appeal. In 2020, the CNDA took 23,149 decisions in collegial function, up down from 31,102 collegial decisions in 2019. During that year, it further took 18,876 single-judge decisions following a hearing or by order, compared to 35,362 in 2019. The average processing time for the CNDA to take a decision increased to 8 months and 8 days in 2020 compared to 7 months and 5 days months in 2018, due to the suspension of activities during 8 weeks in the context of COVID-19. During 2020, the average processing time 10 months and 19 days for the regular procedure; and 3 months and 21 days for the accelerated procedure.

Decisions of the CNDA are published (posted on the walls of the court building) after a period of 21 days following the hearing under regular procedure and after one week under accelerated procedure. Negative decisions are transmitted to the Ministry of Interior, i.e. OFPRA and Prefectures. Since the COVID-19 crisis and considering the restrictions to access Courts, the Court also publishes the anonymised list of its decisions on its website, thus enabling all applicants to be informed of decisions, including those who do not live in Paris.

Asylum seekers face several obstacles in challenging a negative OFPRA decision. Although time limits and appeal modalities are translated at the back of the refusal notification, some asylum seekers sometimes do not understand them, in particular those who are not accommodated in reception centres. Applicants are not eligible for support for the preparation of their appeal within the PADA. They can only rely on volunteer assistance from NGOs, whose resources are already overstretched. In addition, reception centres do not officially offer legal assistance regarding the appeal. Their mission is circumscribed to a legal orientation to lawyers and to filling the legal aid request form. In practice, most accommodation centres keep on assisting asylum seekers in writing and challenging their claim to the CNDA.

**Hungary:** As of 1 January 2021 a Government decree 570/2020. (XII. 9.) is in force and its Section 5 removes the possibility to ask for interim measure in order to prevent expulsion in case of violation of epidemic rules or when expulsion is ordered based on the risk to national security or public order. This has serious consequence for people, who have been expelled prior to submitting their asylum application, as in case their asylum application is rejected in an accelerated procedure, the appeal does not have a suspensive effect and even if it is requested, it does not suspend the expulsion that was ordered prior to the asylum procedure.

**Malta:** Applicants who receive a negative decision, either because their application was deemed manifestly unfounded or inadmissible, are not entitled to appeal against such decision. The IPA's decision is automatically transferred to the IPAT who shall review the decision and confirm it within three days . Such reviews do not allow the applicant to express his/her views or to be heard. The decision generally consists of a one sentence document confirming the IPA's decision. No data is available but from NGOs' experience, such reviews systematically confirm the original rejection. Moreover, asylum seekers in detention can face obstacles in appealing because there are no clear and established procedures in place for them to lodge an appeal. For instance, standard appeal forms are not always available to asylum seekers in detention as such forms are mostly provided by NGOs who are not present in detention facilities on a daily basis. Some parts of detention centres are not equipped with phones so applicants may not reach legal assistance in time. UNHCR visits detainees on a regular basis and may refer applicants wishing to appeal to NGOs, but this remains random and not comprehensive. Moreover, access to detention was denied for several months in 2020 due to COVID-19 (including to UNHCR), as a result many applicants were not in capacity to exercise their right to appeal.

**Poland:** The Refugee Board may annul the first instance decision, overturn it, or confirm it. In 2020, appeals were submitted in case of 1,943 applicants. In case of 1,737 applicants the negative decision was upheld, meaning that the chances of success of appeals are very low in practice. In 2020, refugee status was not granted at all by the appeal body and subsidiary protection was granted in case of 9 persons. When the negative decision or a decision on discontinuing the procedure for international protection is served, the person concerned has 30 days to leave Poland (unless they are in detention). In 2020, on the basis of the COVID Law the time limit to leave Poland has been prolonged until 30 days after the epidemic state (or the state of epidemic threat) is finished.

As regards the onward appeal before the Voivodeship Administrative Court, the issue of no longer granting suspensive effect to appeals persisted in 2020. During that year, it granted suspensive effect in 80 cases and in 91 cases refused to grant suspensive effect to any complaint regarding international protection (that means that these statistics cover also cases of deprivation of international protection) as a response to 210 motions for granting suspensive effect. This leads to the conclusion that presence of the applicant is not guaranteed in the appeal proceedings before the court.

**Romania:** At the national level, there is a court's portal available online, but only the asylum cases registered at the Regional Court of Giurgiu are published on it. Practice suggests that, without the support from NGOs or attorneys, it is impossible for the asylum seekers to learn about the decision of the appeal courts. In certain instances, it is even an obstacle for NGOs and attorneys. This has a direct effect on their access to onward appeal. The practice regarding the publication of the decisions of the Regional Court varies. Until 2020, the appeals reviewed by the Regional Court of Rădăuți and Administrative Country Court of Suceava were all published on the national portal. In 2020 no information was published on the portal. Thus, in order to learn the decision of the court, legal counsellors must call the Court's Registry. Other instances of difficult access to decisions are described in the AIDA report.

**Switzerland:** Different obstacles in appeals have been identified. One important obstacle is the fact that the Court may demand an advance payment (presumed costs of the appeal proceedings, usually amounting to 750 Swiss francs (i.e. EUR 6800), under the threat of an inadmissibility decision in case of non-payment. Only for special reasons can the full or part of the advance payment be waived. Another issue results from the limitation of the competence of the Federal Administrative Court. Notably, in many cases, the Court only cancels the first instance decision without reforming it. In the first 18 months of application of the new procedure introduced in March 2019, the Federal Administrative Court has cancelled 95 decisions taken under the accelerated procedure due to formal reasons and transmitted back to the SEM for further instruction and a new examination, while only 31 appeals were (partially or totally) admitted, meaning that the Court decided on the merit and ordered the SEM to provide the appellants with asylum or temporary admission. These numbers show significant problems of instruction and too low quality of the decisions, as pointed out by several independent assessments. A comparison with the judgements provided in the same time period for cases treated under the ancient procedure shows that a much higher proportion of judgements was reformative (473 judgements vs. 291 cases in which the decision was cancelled and the case transferred back to the SEM).

Finally, the fact that the appeal procedure is exclusively carried out in writing can represent an obstacle since the appellant has no direct contact with the judges and can only express him/herself in written form. The Court has the possibility to order a hearing if the facts are not elucidated in a sufficient manner, however in practice, it does not make use of this possibility.

**United Kingdom:** In 2020 a report was published following a research project involving observations and interviews with appellants, representatives and, staff. It concluded that asylum seekers at their appeal hearings are hampered by six factors; confusion, anxiety, mistrust, disrespect, communication difficulties and distraction and 34 recommendations are made.

**Sweden:** The appeal is formally addressed to the Migration Court but is sent first to the Migration Agency, which has the legal obligation to review its decision based on any new evidence presented. In 2020, the Migration Agency changed its initial decision in only one case, out of the 15,299 decisions issued that year. By way of comparison, in 2019, the Migration Agency had changed its initial decision in 4 cases (out of 14,760 decided cases). This demonstrates that the SMA almost never changes its initial position. When the Migration Agency does not change its decision, the appeal is forwarded to the Migration Court which can independently

decide if further translation is necessary. In 2020, a total of 15,056 cases were forwarded to the Migration Courts within 8 days, thus marking a slight increase compared to 14,345 decisions forwarded in 2019 within 10 days to the Courts.

### Length of second instance procedure

**Cyprus:** In 2020, the Republic of Cyprus (RoC) amended the Cyprus constitution and key legislation to reduce time limits to submit an appeal against a decision before the International Protection Administrative Court (IPAC). In view of the amendment, appeal times were reduced from 75 days to 30 days for decisions issued in the regular procedure. For decisions issued in the accelerated procedure, as well as for unfounded and inadmissible decisions; subsequent applications; implicit and explicit withdrawals; decisions related to reception conditions; decisions related to detention, determination of residence and freedom of movement; and decisions related to Dublin Regulation, appeal times were reduced to 15 days.

**Malta:** The new International Protection Act now provides for time limits to take a final decision on the appeal. Each case shall now be concluded within three months of the lodging of the appeal. In cases involving complex issues of fact or law, the time limit may be further extended under exceptional circumstances but cannot exceed a total period of six months. The introduction of time limits for appeals, which have suspensive effect, is an undeniable improvement as the procedure could, previously, take up to several years. However, lawyers assisting asylum-seekers reports that many applicants have been waiting for much longer periods than the foreseen time limits. Moreover, it is not clear how one can challenge the fact that appeal decisions are not taken in time. In practice, processing times at the appeal stage vary significantly. No data was provided for 2020, but the majority of cases are usually examined under the accelerated procedure which provides for a three-day review for all decisions deemed inadmissible or manifestly unfounded by IPA. The decisions taken through the regular procedure following a hearing and assessment can take up to several years. So far the time limits provided by the new Act do not show any effect in practice. Moreover, In 2020, applicants channelled through the regular procedure saw their waiting time seriously increase due to the COVID-19 pandemic and the related shut down of the IPAT for several months.

**Ireland:** The IPAT have a target median processing time of 12 weeks for appeals at the beginning of 2020, however, this has been impacted as a result of the pandemic and resulting suspension of oral hearings before the Tribunal. Data relating to median processing time of appeals in 2020 was on average 9 months.

**Hungary:** Similarly to 2019, the HHC observed significantly extended asylum procedures in 2020. This is due to the fact that most of the negative decisions are quashed at the court and the NDGAP has to conduct a new procedure that in many cases results in another negative decision that is then quashed again by the court. The average therefore increased to 6 – 10 months. Following the closure of the transit zones and the placement of asylum-seekers to open facilities, several cases pending before the courts were suspended. There was a heavily divergent practice among judges as to whether the change in placement would also mean a change in jurisdiction. The ensuing legal procedures to appoint the Court with jurisdiction prolonged the procedures considerably.

**Romania:** IGI-DAI statistics refer to 1 to 2 months average duration of the appeal procedure. In practice, the average processing time for the first instance judicial court defers from region to region, as described in detail in the AIDA report.

**Croatia:** The average processing time for asylum cases at second instance in 2020 was 159 days (in case of citizens of Syria, Iraq and Afghanistan - 180days) in Zagreb. Administrative courts have not reported if any changes were implemented in their work with regard to the pandemic. However, one attorney reported that there were some changes observed in the work of the court due to the pandemic in terms of postponement of hearings and the obligation to wear protective masks, but no major problems occurred. It was reported that postponed hearings were held approximately in a period of 2 months.

**Belgium:** The CALL must decide on the appeal within 3 months in the regular procedure. There are no sanctions for not respecting the time limit. In practice, the appeal procedure often takes longer. In 2020, the average processing time (the total of the delays divided by the total number of files) was 217 calendar days or 7 months, for 5.616 files

## Oral hearings

**Sweden:** Oral hearings at the Migration Court are not mandatory but can be requested by the asylum seeker. A decision has to be made by the judge on the matter of an oral hearing before the case is examined by the court. Where the court refuses an oral hearing, the applicant is given a set date by which the appeal must be completed. In 2020, the prevalence of oral hearings varied significantly across the migration courts. A total of 2,317 oral hearings were held in Migration Courts. This is a significant decrease compared to 5,194 hearings in 2019, most likely as result of the COVID-19 situation. The most cases held with oral hearings were conducted in Malmö (37.02%), followed by Luleå (25.63%), Göteborg (16.29% and lastly Stockholm (14.16%). As regards decision making at second instance in 2020, the Migration Court in Malmö changed the decision of the Migration Agency in 11.3% of the asylum cases, followed by the Migration Court of Gothenburg (11%), the Migration Court of Luleå (9.7%) and the Migration Court of Stockholm (4.6%). In total, 7% of the decisions were changed by the Migration Courts and a further 5% were remitted, which marks a decrease compared to 2019 when the Migration Courts changed the decision of the Migration Agency in 17 % of cases and a further 12% of cases were remitted.

**France:** Out of the total of 42,025 decisions taken by the CNDA in 2020, 28,178 of them were issued following a hearing, of which 23,149 hearings were held in collegial function and 5,029 in single-judge format. The remaining 13,847 decisions were taken by order (ordonnance). The CNDA held 104 video hearings in 2020, down from 223 in 2019. In practice, videoconferencing has only been applied to appeals lodged overseas, where it replaced mobile court hearings. It has not been applied to mainland France in 2020, although a recent CNDA decision provides that videoconferencing will be established in the premises of the Administrative Court of Appeal of Lyon and Nancy for all appeals lodged after 1 January 2019.

The 2018 reform has been severely criticised in this regard, with practitioners referring to technical deficiencies in the videoconferencing system in Lyon. This negatively affects the quality of hearings and raises important fundamental rights concerns, which are exacerbated in cases involving vulnerable applicants. This measure has been suspended, and a mediator was appointed to find a solution that would suit both the Court and the lawyers. As a result, the Court and the lawyers organisations reached an agreement in November 2020, providing for the express consent of the applicant as a prerequisite for the videoconferencing and for the holding of decentralised mobile hearings in Lyon and Nancy. The implementation of this agreement will be monitored by a mixed steering committee of Court, lawyers, interpreters, doctors representatives and of audio-visual technics experts.

**Spain:** Following the COVID-19 outbreak and the declaration of the State of Alarm, Courts suspended their activities from mid-March 2020 to 8 May 2020. Judicial deadlines started to run again on 4 June 2020

**Malta:** There is no information available on the number of oral hearings that have been held in 2020. , NGOs' experience suggests that most appellants treated through the regular procedure have oral hearings conducted by the chambers. However, due to the COVID-19 situation, lawyers assisting asylum-seekers at appeal stage noticed a decrease in the number of oral hearings held this year.

## 10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

Nothing to report.

## 11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)

## Identification of vulnerabilities

**Bulgaria:** Until the end of 2020, the law did not envisage any specific identification mechanisms for vulnerable categories of asylum seekers, except for children. The identification of vulnerability was mainly stated to be mainstreamed in the training of caseworkers, but special trainings are rarely provided. However, at the end of 2020, amendments to the law introduced a mandatory vulnerability assessment and recommendations, as well as an obligatory referral of vulnerability reports to the case workers. The implementation of these amendments remains to be seen in practice. As regards previous initiatives on the creation of SOPs (namely on unaccompanied children or victims of Sexual and Gender-based Violence) they were still not finalised nor implemented as of 31 December 2020.

Nevertheless, monitoring in 2020 indicated improvements in the identification of vulnerable applicants in practice. In 62% (232 monitored cases), the applicants confirmed that they went through needs assessment during a social interview, while a follow-up assessment was ordered in 1% of the cases (i.e. 4 cases). However, complete assessment forms or templates could not be found in the applicants' individual files. In 94% of the monitored cases concerning unaccompanied children, the files lacked the mandatory social report by the respective statutory child protection service. It has been confirmed, however, that these reports are prepared in practice, but that they are not shared in their vast majority. The improvement of vulnerability identification mechanism resulted in a notable increase in the absolute number of asylum seekers formally recognised to have special needs. While this concerned 179 asylum seekers in 2016, 122 asylum seekers in 2017, 99 asylum seekers in 2018, and, 797 asylum seekers in 2019; the number rose to 1,259 asylum seekers considered as vulnerable in 2020 (36% of all new applicants).

**Austria:** The report published by the OHCHR in October 2018 following a mission in Austria indicates that interviews conducted by the police and the BFA take place in an atmosphere of mistrust, whereby the authorities focus on the identification of Dublin cases rather than on the identification of vulnerability. The report also stated that there was generally little cooperation among different actors, including governmental entities and a broad range of civil society organizations working with migrants in vulnerable situations. These issues persisted in 2020.

**Malta:** The screening of vulnerability was previously conducted upon arrival when asylum-seekers were disembarked in Malta and accommodated at the Initial Reception Centre. According to the current practice all asylum-seekers arriving irregularly in Malta are automatically and systematically detained without any form of assessment. Therefore, there is no systematic screening of vulnerability anymore.

Nevertheless, the International Protection Agency recently set up a fast-track procedure for vulnerable persons. The purpose of this fast-track process is to have the possibility to prioritise and quickly process applications for international protection submitted by particularly vulnerable individuals, who may be at risk of further psychological or other harm if their asylum determination procedure is protracted for a period of time. To be considered vulnerable and benefit from this fast-track procedure, an asylum-seeker must be referred to IPA by AWAS or by external entities such as EASO, UNHCR, NGOs or lawyers. Such referral must be accompanied by a medical, social, psychological or psychiatric report signed by a professional and attesting the vulnerability. Additional information on this new procedure is provided in the AIDA report.

**France:** On 18 December 2020, a "national plan for the reception of asylum seekers and the integration of refugees for 2021-2023" was published. It includes measures aimed at identifying vulnerabilities at an early stage and strengthening the management of these vulnerabilities. This national plan mentions the publication of an "action plan for the care of the most vulnerable asylum seekers and beneficiaries of protection" in January 2021 in order to guide the actions carried out jointly by State services and operators for the coming years", but the latter was still not published at the time of writing of this report. It remains to be seen to which extent it will actually improve the identification of specific vulnerabilities of asylum seekers. In practice, however, the lack of proper identification mechanisms, inter alia because interviews with the OFII are not always (or not properly) carried out, continues to be a serious matter of concern.

**Sweden:** In 2020, 366 cases of suspected human trafficking were identified at the Migration Agency, including: 221 women and 145 men. 48 were children, out of which 14 girls and 34 boys. The majority of the reported cases concerned persons originated from Nigeria (51), Thailand (27) and Morocco (21). The

Migration Agency provided information to the Police in 237 cases. Moreover in 2020 a total of 86 persons accepted temporary residence permits, out of which 49 women (3 girls) and 15 men (3 boys).

**Ireland:** Prior to January 2021, there was no formal mechanism for the identification of vulnerable people, except for unaccompanied children under the IPA. In July 2020, the Irish Refugee Council Independent Law Centre was granted leave to seek judicial review by the High Court so as to challenge the State's failure to carry out vulnerability in accordance with Ireland's obligations under the Reception Conditions Directive in respect of two individuals. These matters were subsequently settled and it was confirmed by the State that four individuals had undergone vulnerability assessments as part of a pilot program.

At the end of January 2021, a pilot project to assess the vulnerability of asylum seekers was established at Baleskin reception centre in Dublin. Officials from the International Protection Accommodation Service (IPAS) are carrying out assessments with the assistance of a social worker from the IPO. In January 2021, the Minister for Children, Roderic O' Gorman indicated that four assessments had taken place. According to media reports, assessments are now taking place on a daily basis and monthly figures should be published in the coming weeks. While the introduction of the pilot programme is a welcome development, migrant rights organisations have expressed concern that the pilot project falls short of national standards and fails to include situations whereby individuals could be at risk of suicide, addiction or domestic violence.

The onset of Covid-19 has also highlighted the lack of information held by the Government in relation to applicant's vulnerabilities and health issues. When the need to move people out of Direct Provision became apparent at the height of the pandemic, the Department of Justice and Equality lacked adequate data in which it could rely upon to identify residents with particular health conditions or vulnerabilities. In the experience of the Irish Refugee Council, in some cases, centre managers were asked to identify residents with specific health vulnerabilities and many residents reported discomfort at the prospect of having to share their sensitive medical history with a third party.

**Switzerland:** The law does not specifically provide for the screening of vulnerabilities and there is no standard procedure in practice to assess and identify them. Furthermore, since 1 March 2019, all but very complex asylum claims should be assessed and decided within 140 days. The fast-paced new procedure puts the administrative authorities and the legal representatives under increased pressure, which, coupled with the lack of standard identification tools, may result in overlooking potential vulnerabilities. A report published by UNHCR in 2020 details the protection gaps existing in the Swiss asylum system, and advances concrete suggestions to overcome them. According to the UNHCR report, there remain wide margins for improvement in the screening and identification of vulnerable applicants. A general document, detailing the State Secretary for Migration's guidelines for the identification and protection of particularly vulnerable asylum seekers is due for publication at the beginning of 2021. Unfortunately, the content of such guidelines was not available at the time the AIDA report was published. The same concerns are also raised by the National Commission for the Prevention of Torture (NCPT), which published its latest report on federal reception centres in January 2021.

**Slovenia:** No special measures exist in law for the support of persons with vulnerabilities in terms of their participation in asylum procedures. The provisions are rarely used in practice. Whether an individual's vulnerabilities are taken into account during the interview depends on the person conducting the interview. Female asylum seekers often face difficulties when requesting female interpreters during their interviews. Interviews with children are not adjusted to children's needs, and often not conducted in a child-friendly manner. The psychological state of children is not taken into consideration during the interview and during the procedure. If an asylum seeker has a severe mental disorder or illness that impacts their ability to understand the meaning of the procedure and their capability to cooperate in the procedure, they are not assigned a legal guardian.

**Croatia:** The Rehabilitation Centre for Stress and Trauma (RCT) reported that appropriate procedures for identifying vulnerable groups, including victims of torture, are still not applied. Consequently, applicants for international protection who are victims of torture are not provided with the necessary treatment and access to appropriate medical and psychological rehabilitation and care. RCT also reported that the health and social care system completely ignores specific needs and the rights of torture victims as vulnerable groups, whether they are applicants for international protection or have been granted international protection. Nevertheless,

it should be noted that in 2020, the Ministry of Demography, Family, Youth and Social Policy prepared, in cooperation with other ministries and agencies, guidelines on the protection of unaccompanied migrant and asylum-seeking children in the context of a pandemic, to fully uphold their best interest.

**Romania:** Practice in several regions such as Rădăuți, Somcuta Mare, and Bucharest suggests that vulnerable asylum seekers, including unaccompanied minors, are treated the same way as other applicants, i.e. no special attention is given to these cases during the interviews. In Galati, however, it was reported that special attention is given to vulnerable persons, inter alia in the way of formulating questions during the interview.

**Spain:** Major shortcomings regard victims of trafficking. Despite the adoption of two National Plans against Trafficking of Women and Girls for the purpose of Sexual Exploitation, and of a Framework Protocol on Protection of Victims of Human Trafficking, aiming at coordinating the action of all involved actors for guaranteeing protection to the victims, several obstacles still exist. Spain has not adopted a policy tackling all forms of trafficking and any victim so far, and the fight against trafficking is focused on girls and women trafficked for the purpose of sexual exploitation. In addition, not only is early identification of victims of trafficking very difficult, and their assistance and protection still challenging, but they also face important obstacles in obtaining international protection. This fact is highlighted by the low number of identified victims of trafficking who have been granted refugee status in Spain. In its 2020 report, the NGO CEAR expresses concerns about the change of criteria in detecting trafficked persons in need of international protection at Madrid-Airport by the National Police, as well as regarding the fact that almost all applications of international protection lodged by presumed trafficked persons are rejected by the OAR. Positive developments reported in 2020 regarding identification of vulnerabilities relate to the fact that the OAR now considers Female Genital Mutilation as an indicator for gender persecution, that LGBTQI+ cases are better assessed (especially those of Sub-Saharan asylum applicants), and that there has been an increase in recognition of a form of international protection to Moroccan women victims of gender-based violence.

**Cyprus:** The lack of an effective identification procedure prevents or delays (depending on the specific vulnerability and support consequently required) access to any available support, which in itself is limited. In cases of victims of torture or violence, the lack of access to support will often impair the efficient examination of asylum applications, since they do not receive prior counselling - psychological or legal - that may assist them to present their asylum claim adequately. However, when persons are identified and referred to caseworker trained on vulnerable cases the asylum seeker will receive an appropriate examination of their asylum claim and in many cases receive a form of international protection. It should be further noted that in recent years steps are being taken gradually to improve the identification and assessment of vulnerable persons by the Asylum Service with the support of EASO and UNHCR and the results of these efforts are steadily becoming evident.

**United Kingdom:** Draft policy has been issued to bring victims of modern slavery into the remit of the adults at risk policy. Subject to Parliamentary approval this will come into force in May 2021.

### Age assessment procedures

**Bulgaria:** In 2020, the SAR conducted age assessments in 51 cases, in 47 of them (92%) concluding applicants to be adults. The monitoring of the status determination procedures demonstrated that the SAR continues to conduct age assessment by means of X-ray expertise of the wrist bone structure and without any evidence of prior consent by the children's representatives. If the children are considered to be of age they are not appointed statutory municipality representatives to assist them to contest the refusal of their asylum claims nor of their age assessments. Reports from medical organisations consider the X-ray as invasive but, more importantly, inaccurate with an approximate margin of error of 2 years. In 2019, an expert group representing both governmental and non-governmental organisations was established to create a national age assessment procedure based on a multidisciplinary approach. The aim is also to lay down some basic legal safeguards to be applied by asylum, immigration and/or other administrations that request age assessment in practice. Some of these legal safeguards were thus included by the SAR to its LAR amendments proposal. The draft methodology on age assessments was finalised and referred for adoption to the government. However, mainly due to COVID-19 pandemic the national legislative agenda was significantly re-directed, which prevented the endorsement of the draft. Thus, it was still pending as of 31 December 2020.



**Sweden:** In 2020, a total of 114 persons have been considered as adults following an age assessment procedure. The methods of age assessment continue to be heavily criticised by the medical community and even by those obliged to carry out the tests. In December 2018, the Swedish Medical Ethics Council (Smer) invited the Government to set up an independent review of the age assessments and in April 2019 the Social Democrats and the Green Party decided that a commission of inquiry would be set up. It has been decided that the commission of inquiry will assess the situation through an independent review and shall submit its findings by 31 May 2024 at the latest. However, the latter has received criticism because of its composition as the designated experts are known for having defended medical age assessments.

**France:** Young people who are not assessed as minors by Départements have the possibility to seize the juvenile judge in order to be protected as minors, but during this procedure they will not have access to specialised reception centres that provide adequate care to children. Moreover, while they have the possibility to reach out to emergency and homeless shelters for adults, they cannot be accommodated if they claim to be minors. In summer 2020, 72 children who were considered as adults were evicted from an informal camp in the centre of Paris and referred to services for adults, multiple NGOs and support groups reported. The same civil society organisations challenged these young people's age assessment before a court, arguing that they were children and deprived of child-protection services pending appeal. No statistics are available on the use of age assessment nationwide. A total of 9,501 young persons reported as unaccompanied minors were integrated in the national mechanism for childcare protection in 2020, a 43% increase compared to 16,670 in 2019.

**Netherlands:** If there is still doubt regarding the age of the (alleged) minor, further investigation will take place. In practice, this investigation is often carried out by the Dublin Unit and consists of research into (age) registrations in other EU Member States. In case of an Eurodac or EU-Vis 'hit' in which the (alleged) minor is registered as an adult in another Member State, the (alleged) minor will be registered as an adult by the IND and/or AVIM. In a report published on 30 November 2020, the Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) argues that this practice makes it near impossible for (alleged) minors to prove their minority in case another Member State has registered them as an adult.

**Malta:** The Age Assessment Procedure has been improved but it is still plagued by a lack of adequate procedural guarantees, including a lack of information about the procedure. Moreover, since all people disembarked in Malta are automatically detained, minors who are not undoubtedly children are also detained pending age assessment which can be conducted months after their arrival. Minors receive very little information about the procedure and they are not supported by anyone during the process. NGOs assisting asylum-seekers in detention noticed that when assessed as adults, applicants are usually not notified of the outcome of the assessment and of the decision, leaving them thinking the procedure is still open. AWAS acknowledged some issues with the notification process and indicated that it is being reviewed. Moreover, minors are usually not informed of the possibility to appeal age assessment decisions and do not receive any legal support to appeal. Such appeals are to be filed before the Immigration Appeals Board within three days. Such conditions usually do not allow them to make use of this legal remedy. In 2020, AWAS indicated that 580 people claimed to be minors upon arrival. 430 age assessments were conducted, 161 applicants were declared adults, 101 were declared minors and 165 were finally declared adult as they changed their declaration during the procedure. Reports were received by lawyers that persons claiming to be minors were told by Government officials to declare themselves as adults during the age assessment, in order to enter or facilitate the relocation scheme. In 2020, AWAS established a UAM Protection Service in order to better assist UAMs in the reception centres. No more information is available at that stage as it was created very recently.

**Switzerland:** In September 2020 the Committee for the Rights of the Child found that, by removing two minor children with their mother to Italy without properly hearing them, Switzerland had violated art. 3 and 12 of the CRC. The CRC decision addresses a common problem in Swiss practice, where very young minors, especially if accompanied by their families, are only seldom heard, because it is assumed that their interests coincide with their parents'. Such practice is against the CRC, and it remains to be seen whether this recent decision by the Committee will contribute to some changes in this regard.

**Hungary:** On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it recommended that age assessment has to be in line with international standards.

**Slovenia:** In 2020, age assessment procedures were not conducted. Due to the large costs of medical examinations and the logistical problems owing to the remote location where MRI can be conducted, the Ministry of the Interior is only conducting age assessments in exceptional cases.

**Portugal:** While SEF was unable to provide statistics, in 2020, CPR observed that age assessment procedures were triggered by Family and Juvenile Courts regarding almost all unaccompanied children. The absence of objective criteria to establish what constitutes reasonable doubt, who must undergo an age assessment, and the nature of the initial age assessments remains particularly problematic. The initial age assessment is conducted by SEF and does not involve child protection staff. Second stage assessments fail to meet the holistic and multidisciplinary standards recommended by UNHCR. The assessment is conducted by the National Institute of Legal Medicine and Forensic Science (INMLCF) and relevant methods used include wrist and dental X-rays. While an examination of genitals was not used in age assessment in the past, the INMLCF published a procedural note in 2019 on the estimation of age in living and undocumented persons that includes the evaluation of sexual development as part of the age assessment procedure. The grounds for this (regrettable) change of practice are not known but, according to the information gathered by CPR, these methods were indeed applied in 2019, and continued in 2020. Nevertheless, following workshops with children on age assessment funded by the Council of Europe organised in early 2020, the National Commission for the Promotion of Rights and the Protection of Children and Young People, published a leaflet with information on age assessment procedures to children. The leaflet is available in Portuguese, English and French.

**Spain:** During 2020, the Committee reiterated its concerns regarding age assessment procedures in Spain and their violation of the UN Convention on the Rights of the Child. It affirmed that, in 14 cases assessed and decided by the Committee, Spain failed to carry out a proper age assessment procedure. It also recalled UNHCR's information according to which the method (i.e. radiography) used in Spain presents a margin of error of four years. In addition, the Committee underlined that identity documents, if available, should be considered valid unless there is proof of the contrary, and that the best interests of the child must be a primary consideration throughout the age determination process. Similarly, during a hearing at the Senate in July 2020 the Spanish Ombudsman reported again the persisting problems in relation to age-assessment and DNA tests at CETIs and CIEs. In particular, the body expresses concern about the excessive delays in DNA tests, which may result in the separation of families and summary expulsions. Similar concerns were expressed by Save the children, as described in the AIDA report.

Due to the increase of arrivals to the Canary Islands, an important shortage in quickly carrying out age assessment procedures was reported during 2020. These issues persisted at the beginning of 2021 as thousands of children continued to be accommodated in adult reception facilities pending the age assessment procedure. The Government of Canarias had already urged the Autonomous Communities in November 2020 to relocate around 500 unaccompanied children, but no transfers have been carried out as of January 2021. Similarly, Save the Children asked the Government to urgently act to protect migrant children arriving to the Canary Islands and to speed up their transfer to mainland, inter alia by adopting a protocol on sea arrivals adapted to children's needs. One of the main reasons for the delay in age assessment procedures seems to be the lack of human resources. In order to speed up the tests, the Public Prosecutor of Gran Canaria authorised the possibility to carry out age assessments in private medical centres.

At the beginning of 2021 the Spanish Ombudsman translated into several languages an animated video elaborated by EASO and the Council of Europe on age assessment procedures that must respect and comply with children rights standards. It was translated into Wolof, Bambara and the Moroccan Arabic. The Spanish Ombudsman shared the video with all relevant authorities involved in identifying and protecting children, and recommended its use in particular on the Canary Islands.

### **Legal representation of unaccompanied children**

**Bulgaria:** At the end of 2020, amendments to the law introduced a major change in the legal representation of unaccompanied asylum seeking and refugee children. The obligation to represent these children not only in the procedure, but also after the recognition and before all agencies and institutions with regard to their rights and entitlements, was shifted from the municipalities to the National Legal Aid Bureau. It includes

requirements related to the qualification of the appointed legal aid lawyers and representation implemented in the child's best interest. The amendment is expected to correct the long-standing absence of guardians, proper legal representation and care for the best interests of unaccompanied children in asylum procedures so far, which has resulted in high rates of absconding and related protection and safety risks. The number of unaccompanied child applicants rose to 799 unaccompanied children in 2020, compared to 524 in 2019, 481 in 2018, 440 in 2017 and 2,772 in 2016.

**Austria:** It is still unclear whether there will be major changes concerning guardianship of unaccompanied minors following the establishment of the Federal Agency (BBU-GmbH) in 2021. The improvement of the protection and legal status of refugee children is set as an objective in the 2020-2024 coalition programme. Measures securing a swift access to childcare for unaccompanied minor refugees is foreseen and the child's welfare is meant to be taken into consideration during the asylum procedure. NGOs, and UNHCR, IOM and UNICEF, have urged the government to take measures without delay to implement a better protection.

**Sweden:** On 1 January 2020, the Convention on the Rights of the Child was incorporated into Swedish national law and entered into. However, according to Save the Children and Stockholm City Mission the incorporation has not yet resulted in any improvements for children in asylum procedures as of November 2020. The Swedish Migration Agency has explained that the legislative change mainly aims to strengthen the rights of children in law and practice, but it remains to be seen how this will be implemented in practice. The Migration Agency also state that the new functioning of age assessment procedures will depend on developments in case law.

**Hungary:** From March 2017 until 21 May 2020, unaccompanied children above the age of 14 needed to await the end of their asylum procedure in the transit zone. Since the closure of the transit zones, all unaccompanied minors fall under the regular rules again and should have a guardian appointed within 8 days. However, there have been significant, weeklong delays with appointing guardians and delivering other administrative decisions enabling the cases of unaccompanied minors to be processed in an effective manner. This is due to a change in the jurisdiction of the competent guardianship authority. Professionals working with unaccompanied minors have signalled these shortcomings to the guardianship authority consistently, to no avail.

**Cyprus:** In practice regarding the representation carried out by the Social Welfare Services, the appointed officer does not have adequate knowledge or training on legal or asylum issues. During the interview, the representative is always present, but as they usually have knowledge or training on legal or asylum issues they are not in a position to contribute in a substantial way. In all cases monitored by the Cyprus Refugee Council, the representative has never asked any questions or made any comments after the interview. In 2020, there was an increase in the number of Social Welfare Officers assigned as guardians to unaccompanied children. Specifically, 3 guardians are assigned for the UASC in Nicosia, 3 in Larnaca, and 3 in Limassol and 1 in Paphos. As such their involvement with the children has substantially improved as they are in a position to have frequent meetings with them and have a knowledge of each child's history and needs. Issues arising from lack of knowledge on the asylum framework and asylum procedures remain, despite the increased number of Social Welfare Officers acting as guardians.

**Slovenia:** In practice, the adequacy of guardians to perform their duties with a view to a positive involvement in the child's procedure and care has raised questions in some cases. In one case, the social services removed a legal guardian from the list. In 2020 the UOIM (Office for Support and Integration of Migrants) sent negative reports about three legal guardians to social services, initiating the procedure of objection to the work of the legal guardians. The procedures were not concluded by the end of 2020. Absconding of unaccompanied minors continued to be a significant issue in 2020. Out of 550 unaccompanied minors that lodged the application, 536 absconded before the first instance decision. The absconding rate was therefore 97,5% in 2020. Unaccompanied minors represented 15,5% of asylum seekers in 2020.

**Croatia:** At the end of September 2020, the Agreement for the project "New Home" was signed within the AMIF with an estimated project duration of 24 months. The goal of the project is to contribute to the better integration of unaccompanied children into community life, to ensure early integration through reception, accommodation, care and psychosocial support and to support their inclusion in the life of the local community. Moreover, CLC is a partner in the project "Integrative support for unaccompanied children",

which is carried out by the Croatian Red Cross. The project will increase the social inclusion of 120 unaccompanied children. In the trainings envisaged through project, 130 experts will acquire adequate competencies for work. In addition, a system of easily accessible and specialised professional assistance to special guardians and experts in institutions where unaccompanied children are accommodated, will be provided. It is planned that CLC's lawyer will participate in activities aimed at education of relevant actors.

**Poland:** In the shadow report to UNICEF from 2020, NGOs stress that some guardians do not have any personal contact with the unaccompanied minor they represent and because of such a practice, the child does not have much information on their legal situation. Children do not have access to any information that would be adjusted to their age (leaflets, websites). Also, guardians are not supported by interpreters, which makes the communication ever more difficult.

**Malta:** The Minor Protection (Alternative Care) Act was recently amended and came into force on 1 July 2020. It replaced earlier legislation on the protection of children in need of care and support, including unaccompanied minors and/or separated children. The Act establishes the position of the Director (Protection of Minors) within the Foundation for Social Welfare Services, Malta's welfare entity, who is responsible for protecting minors. It introduces the duty for all persons to report any minor who is at risk of suffering or being exposed to significant harm, and establishes various forms of protection orders the Juvenile Court may impose, including care orders. In relation to UAMs, the Act introduces a judicial procedure where the Director files an application for the issuing of a care order. It is also the Court that appoints a legal guardian and a child advocate, in order to secure the child's best interests. Age assessments may be requested by the Director as part of the Court application process. Being the Act's first year of implementation, 2020 saw a number of practical challenges. The vast majority of minors did not have any legal guardian appointed to them, mainly due to short-comings in the new judicial procedure. This resulted in minors having their asylum procedures put on hold, as well as the issuing of documentation attesting their status as asylum-seekers.

**Romania:** According to Save the Children Romania, legal representation of minors raises many issues. Although legal representatives are appointed shortly after the arrival of unaccompanied minors, most minors are not aware who is their legal representative; they cannot contact them directly and they are not assisted for accessing the various social benefits and rights. The activities of legal representatives are limited to assisting the children during interviews and signing documents related to the procedure. There are also communication impairments between legal representatives and unaccompanied children caused not only by the language barriers but also by the lack of involvement of legal representatives. Given that there are no clear provision regarding the role and duty of legal representatives, there have been cases in which legal representatives are managing the cases differently.

**Spain:** Shortcomings and problems have been raised concerning the guardianship systems for unaccompanied minors, and mostly with regard to the excessively long duration of the procedures for issuing an identification document when children are undocumented. Moreover, serious concerns have been reported regarding children who have been under the guardianship of the Autonomous Communities and are evicted from protection centres once they turn 18 even if they have not been documented or have not yet received a residence permit. In these cases, children are left in streets, homeless and undocumented. These issues persisted in 2020 and unaccompanied migrant children continued to face homelessness, inter alia due to a lack of sufficient specific resources and reception places, as well as the fact that residence permits are not issued to children while they are still minors. UNICEF and the Moroccan Association for Integration also raised concern about this situation. In May 2020, APDHA reported that 150 children were left on the street without any alternatives during the State of Alarm declared following the Covid-19-pandemic. The Jesuit Migrant Service further denounced the situation faced by many unaccompanied migrant children (especially from Morocco) that become undocumented when they age-out, despite the fact that the administration is obliged to provide them with documentation while they are still minors. The report especially refers to cases in Melilla, where the lack of documentation impedes them from travelling to mainland and thus obliges them to live on the streets. When they do not receive residence permits as minors, they further face a risk of receiving expulsion orders when becoming adults. The campaign "A passageway without exit" (#uncallejonsinsalida) aims at changing the Aliens Act in order to allow and guarantee a better future for unaccompanied migrant children. In view of the reform of the Ruling of the Immigration Law, different organisations presented in early 2021 a set of proposals for reforming the provisions related to

unaccompanied migrant children, especially regarding their registration and documentation in order to ensure their effective integration in Spain

### Reception of vulnerable applicants and specialised reception facilities

**Bulgaria:** A safe zone for unaccompanied children in the refugee reception centre (RRC) of Sofia at the Voenna Rampa shelter is available since mid-2019, where children are provided round-the-clock care and support tailored to their needs. However, only unaccompanied children originating from Afghanistan, Iran and Pakistan are accommodated in this centre. This being said, some Afghan children were also accommodated in other reception centres such as the RRC of Harmanli in 2020. A second safe-zone at the RRC Sofia, in the Ovcha Kupel shelter, opened on 20 January 2020 to accommodate children originating from Arab speaking countries. Both safe-zones are operated by the International Organisation for Migration (IOM) Bulgaria and funded by AMIF, and will be extended until 2022.

**Hungary:** Until 21 May 2020, in the transit zone regime even obvious and visible vulnerabilities, such as pregnancy, old age, being an unaccompanied minor or disability were absolutely disregarded and only in exceptional cases were the applicants transferred to reception centres from the confinement and dire conditions the transit zones comprised. Hungary has no specific reception facility for vulnerable asylum seekers except for unaccompanied children. Single women, female-headed families, and victims of torture and rape, as well as gay, lesbian or transgender asylum seekers are accommodated in the same facilities as others, with no specific attention, while there are no protected corridors or houses

**Austria:** After the outbreak of the COVID-19 pandemic, the transfer to reception facilities in the provinces was massively delayed in 2020, partly due to insufficient COVID-19 test-management. This resulted in very high numbers of unaccompanied minors accommodated in large and inadequate federal facilities. In November 2020, around 240 children were accommodated in those facilities whereas in 2017 – when the number of applicants was much higher – only 91 were housed in federal centres. As of 21 January 2021, there were still 200 unaccompanied children accommodated in the federal reception centres. An important concern is that from January until September 2020, only 126 children out of 888 minor applicants were transferred from the federal system to the states. Given that only around 200 children were being accommodated in federal facilities as of January 2021, it is still unclear what happened to the other children and where they are being accommodated. The NGO asylkoordination has counted around 350 missing children between January and September 2020 whereas 228 missing children with non-EU-citizenship were registered in the SIS II, of whom 61 were under 14 years old.

**Ireland:** The Regulations provide for a vulnerability assessment. However, no standardised assessment was carried out in respect of applicants throughout 2020, despite this being a clear requirement in law. In July 2020, the Minister for Justice, Helen McEntee, confirmed that vulnerability assessments would be implemented by the end of the year. At the end of January 2021, a pilot project to assess the vulnerability of asylum seekers was established at Baleskin reception centre in Dublin. Officials from the International Protection Accommodation Service (IPAS) carried out assessments with the assistance of a social worker from the IPO. As of the end of January 2021, the Minister for Children, Equality, Disability, Integration and Youth, Roderic O' Gorman had indicated that four assessments had taken place. According to media reports, assessments are now taking place on a daily basis and monthly figures relating to the undertaking of assessments should be published in the coming weeks. While the introduction of the pilot programme is a welcome development, migrants' rights organisations have expressed concern that the pilot project falls short of national standards and fails to include situations whereby individuals could be at risk of suicide, addiction or domestic violence.

**Sweden:** Accommodation facilities can be problematic for LGBTQI asylum seekers as they can end up experiencing harassment. However, they can always request a transfer and also use the Applicants' Ombudsman, a complaints mechanism within the Migration Agency, or address their complaint to the Discrimination Ombudsman. Between 2009 and 2020, a total of 17 complaints from asylum seekers regarding their accommodation have been addressed to the Discrimination Ombudsman. However, none of these complaints lead to any further investigation.

**Slovenia:** Vulnerable groups are accommodated according to the category of vulnerability they belong to. In 2020, 891 asylum seekers were recognized as vulnerable. The vulnerable individuals consisted of 228 children, 550 unaccompanied children, 13 elderly people, 2 disabled people, 8 pregnant women, 2 people with mental health issues, 65 individuals with severe mental issues, and 14 victims of torture, rape or other forms of physical or psychological violence.

**Romania:** In February 2020, UNHCR notified the Romanian Ombudsman regarding the situation of a number of asylum-seeking children under 16 accommodated in Stolnicu Regional Centre because a lack of capacity at DGASPC District 2 Bucharest. Representatives of the Romanian Ombudsman conducted an investigation at the regional centre Stolnicu and DGASPC. Among other things it was found that out of 15 unaccompanied children accommodated in the centre only 9 had a legal representative appointed, as for the other 6 children DGASPC did not respond to IGI-DAI notifications. The Ombudsman stated that although there is no time limit prescribed by the law for the appointment of the legal representative for unaccompanied minors, the time frame in which DGASPC Sector 2 achieves this, sometimes up to almost 3 weeks, is far too long. As for the living conditions in Stolnicu centre the Ombudsman reported that are completely inadequate for a decent life and breaching many hygiene rules (e.g. unbreathable air in the hall ways and rooms, poorly oxygenated and the smell is hard to bear; messy rooms; dirty or even no bed linen; inadequate furnitures such as broken chairs, windows frames, dirty linoleum etc. Similar concerns were reported on the bathrooms i.e. infiltrations, rusty toilet tanks, chipped sinks, showers (which were connected directly to the sink) were broken. During the visit, the Ombudsman representatives were informed that during the year (2020) the centre will be rehabilitated.

**France:** In a report sent to the United Nations Committee on the Rights of the Child in July 2020, the French Public Defender of Rights pointed out several shortcomings in the childcare system concerning migrant children with families and unaccompanied children. This includes using former hotels to accommodate children, in substandard living conditions and with limited prospects of integration. It further highlights that the lack of adequate services and the long distance between hotels and these services is likely to lead to children dropping out of school. Moreover, on 28 February 2019, the ECtHR ruled in case Khan v. France that the failure of the French authorities to provide care for an unaccompanied minor in the Calais refugee camp was in breach of Article 3 of the Convention. In September 2020, French Ombudsman sent a communication to the Committee of Ministers concerning this case, highlighting several difficulties in accessing protection for unaccompanied minors in France. On 2-4 December 2020, the Council of Europe Committee of Ministers invited the French authorities to adopt specific measures to protect unaccompanied minors in transit; in light of the Khan judgement.

**Portugal:** CACR offers unaccompanied children appropriate housing and reception conditions regardless of the stage of the asylum procedure. Given the specific needs and contexts involved, the average stay in 2020 stood at 305 days. The official capacity stands at 13 places but the existing gap in specialised reception capacity has also resulted in overcrowding that has been partially averted by different arrangements. Although living conditions remain adequate, overcrowding puts a strain on the timing and the quality of support provided. To address overcrowding in the facility, CPR revisited its accommodation policy for unaccompanied children in 2019. While some were provisionally accommodated at CAR due to shortage of places at CACR, young applicants at more advanced stages of the integration process were transferred from CACR to CAR II in a process of progressive autonomy. This strategy continued to be applied in 2020. Absconding and the subsequent risk of human trafficking remain relevant concerns. A total of 9 out of 84 (11%) unaccompanied children accommodated by CPR absconded in 2020. In 2020, CACR's team continued to report cases where unaccompanied children were suspected to be victims of human trafficking to the Observatory on Trafficking in Human Beings.

**Cyprus:** A joint vulnerability assessment procedure was established in Pournara Centre during 2020, with the participation of UNHCR, CyRC, Social Welfare Services, Asylum Service staff and EASO. New referrals to the Centre are screened against vulnerabilities, and relevant reports are shared with the Asylum Service appointed RSD officers and Social Welfare Services staff. A vulnerability assessment is currently conducted by 6 professionals, deployed in the Centre by UNHCR (1), CYRC (1), and Talos (3) (sub-contractor of Asylum Service). EASO is expected to allocate one more person to conduct vulnerability assessments. Due to the facility being heavily overcrowded and people not allowed to exit, the conditions are unsuitable to address the needs of vulnerable individuals. Many single women and families are still scattered all over the centre,

including the quarantine sections, with many persons remaining there for more than 4 months. Identification of vulnerable cases is a time consuming process, and there are still no official guidelines for effectively attending the needs of the identified individuals both inside and outside the Centre. From time to time, usually following interventions of vulnerability assessment staff, identified persons, such as pregnant women, traumatized individuals and families are allowed to exit, after providing an address. Still, handling of those cases in the community is problematic and varies greatly, since no defined procedure to guaranty effective support, is followed.

At the end of 2020, a safe zone area within the First Arrival Registration Centre (Pournara) was set up. The safe zones were designed to host families with children and unaccompanied children, in different areas.<sup>315</sup> The placement of an UASC in one of the shelters will only take place after the conclusion of the age assessment procedures. However, prior to being transferred to the safe zone area, the children were placed in the quarantine areas along with adults, not related to them.<sup>316</sup> Furthermore, in November, by way of a Ministerial Decision, the Pournara Reception Centre was turned into a closed centre which hindered the transfer of children to shelters following the completion of the quarantine period and registration. To add to this, the shelters had positive Covid-19 cases among their residents and were in effect not in a position to receive new residents, following instructions from the medical team overseeing the situation.

**Switzerland:** According to the latest report of the National Commission for the prevention of torture, the reception and accommodation of unaccompanied children has improved. The commission visited the federal reception centres between 2019 and 2020 and found for instance that all centres guarantee children access to basic education. Some concerns remain, though, for older children (15 and above) because, once compulsory schooling ends, there are no occupational programs in place. In a previous report, dating back to 2019, the NCPT found that in some cases unaccompanied minors were still accommodated with adults. These observations related to federal asylum centres in use *before* the new Asylum Act entered into force. According to caseworkers now working in the federal centres this can still happen, though, especially because of the difficulties in assessing the asylum seekers' age. In any event, not all centres accommodate unaccompanied minors in separate buildings and therefore in some cases unaccompanied minors are just on a separate floor, which cannot always ensure separation between them and the adults.

**Croatia:** In 2020 , the NGO Rehabilitation Centre for Stress and Trauma informed FRA that they noted difficulties in ensuring the standards laid down in the Receptions Conditions Directive, especially for vulnerable applicants. They reported that an applicant with amputated legs was placed in a facility for the elderly with mental problems, which was not adapted for people in wheelchairs. They also highlighted the lack of effective mechanisms to identify torture victims.

Centre For Peace Studies also pointed out that there is still an inadequate system for identifying vulnerable groups within Reception Centers for Applicants of International Protection

**Spain:** The lack of a protocol for the identification and protection of persons with special needs in CETI has always been criticised and continues to be a concern in 2020. Vulnerable groups such as single women, families with children, trafficked persons, LGBTI+ people, and religious minorities, cannot be adequately protected in these centres. In addition, it is stressed that such factors of vulnerability, coupled with prolonged and indeterminate stay in the CETI, has a negative influence on the mental health of residents and serious personal consequences. The persistent claim by many NGOs and other stakeholders is that those identified as being vulnerable should be quickly transferred to mainland in order to access protection in more adequate facilities.

Reception places for asylum-seeking victims of trafficking are very few, managed by Adoratrices – Proyecto Esperanza, APRAMP association and Diaconia. In July 2020, different NGOs part of the Network against Trafficking in Andalucía (Red Antena Sur contra la Trata) called for the creation of multidisciplinary teams to welcome migrants arriving by boat to the Spanish coasts, in order to detect victims of trafficking. They also called for the adoption of a comprehensive law addressing trafficking, and warned against the increased vulnerability of victims of trafficking following the COVID-19 pandemic. Similarly, UNHCR raised concerns over the risk of refugees becoming victims of trafficking as a result of COVID-19.

Several concerns were also raised regarding the reception of unaccompanied children. There are no specialised resources for unaccompanied asylum seeking-children, and they are thus hosted in general



centres for unaccompanied children or left destitute. The issue of homelessness of unaccompanied children when they reach their majority has also been reported as a concern in 2020, including the negative impact this has on their mental health. Moreover, the worrying and poor the living conditions in the centre *La Purísima*, which accommodates unaccompanied children in Melilla, continues to be a serious matter of concern. Overcrowding, inadequate living conditions and other relevant problems persisted. In March 2020, some pictures indicating overcrowding and inhuman conditions of the centre leaked, showing almost 900 unaccompanied children in a facility with a capacity of 350 places. The Ombudsman continued to reiterate his concerns about the reception of unaccompanied children in Melilla at the La Purísima centre. Overcrowding (exceeding three times the capacity of the centre), children sleeping on mattresses on the ground, and rooms with no ventilation were also issues reported at that centre. In January 2020, the Prosecutor General's Office (Fiscalía General del Estado) called on the Autonomous Communities, which are in charge of the protection of unaccompanied children, to agree on the distribution of unaccompanied children arriving to Andalucía, Ceuta and Melilla; i.e. the Spanish regions recording the highest number of arrivals. In September 2020, the 68 organisations forming the Childhood Platform (Plataforma de Infancia) asked for the immediate transfer of 143 children crowded at the CETI of Melilla, denouncing the poor living conditions and the issues resulting from overcrowding (i.e. 1,375 persons were accommodated there at that time, for a total capacity of 782 places). The Platform further denounced the lack of education and leisure activities children, in violation of the Convention on the Rights of the Child. The situation of unaccompanied children in the Canary Islands raised concern during 2020 and the beginning of 2021, counting more than 2,000 children not receiving adequate assistance and protection.

Another issue denounced in 2020 relates to the separation of children from their parents. This was carried out in the practice by the Public Prosecutor following boat arrivals at Las Palmas de Gran Canaria (Canary Islands). Children were separated from their parents for up to two months in order carry out DNA tests, which was heavily criticised. During this time, children are hosted in centres for unaccompanied migrant children, while their parents are in centres for adults. Due to the evident violations of children rights, the Superior Public Prosecutor of the Canary Islands asked for clarifications on the protocol in place at Las Palmas, while the Spanish Ombudsman opened an investigation on the issue, after receiving two complaints.

As regards reception of LGBTQI+ persons, the National federation of lesbians Gays, Trans and Bisexuals (Federación Estatal de Lesbianas, Gais, Trans y Bisexuales – FELGTB) urged the Government to adopt specific protocols to assist LGBTQI+ persons in the reception system and the international protection procedure. In November 2020, the first reception facility for LGBTQI+ asylum seekers was opened by the NGO Kifkif with 20 places. The organisation also called for the creation of a law on trans persons, with a migrant and intercultural perspective. In January 2021, around 500 women and 80 feminist groups further signed a manifesto for the gender self-determination and for the rights of trans persons. At the beginning of 2021, the NGO Kifkif raised concerns about the increase HIV positive cases among LGTBIQI+ refugees, especially trans women. The National Federation of Lesbians, Gays, Trans and Bisexuals (Federación Estatal de Lesbianas, Gais, Trans y Bisexuales - FELGTB) called UN Special Rapporteurs and Experts to provide recommendations to the the Spanish Government on how to guarantee the rights of trans persons, especially regarding their self-determination.

### Detention of vulnerable applicants

**Bulgaria:** In 2020, 512 children were detained in pre-removal detention centres. Among them, the Bulgarian Helsinki Committee identified 294 unaccompanied children, including children detained as “attached” to an adult or wrongly recorded as adults.

**Belgium:** In August 2018, the government opened five family units in the 127bis repatriation centre, as a result of which families with children were being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure. However the Royal Decree of 22 July 2018 that establishes the rules for the functioning of the closed family units near Brussels International airport, has been suspended by the Council of State in April 2019, and thus no more families have been detained. The council of state still has to pronounce its decision on the annulation of this Royal Decree. The current government, however, has agreed that it can no longer detain children in closed centres, as a matter of principle. New, alternative measures will be developed to avoid that this measure would be abused to make return impossible. Nevertheless, two minor boys were held in detention because of doubts about their

declared age in 2020. Because the Belgian authorities did not want to carry out a bone test while the boys were in confinement for sanitary reasons (covid-19), it eventually took 22 days before they were officially declared minors and released from detention. This practice has in the meantime been adapted and in 2021, most minors have been released in 6 days after their arrival.

**France:** In 2020, the Public Defender of Rights reported that the widespread use of immigration detention of children with families, and instances of keeping the child in pre-removal detention alone while the parents are not held (particularly in Mayotte), remained problematic issues. Moreover, in May 2020, some deputies filled a proposal for a law (not debated to date) aiming to “strictly regulate the administrative detention of families with minors”. The National Consultative Commission on Human Rights criticised in an opinion the “proposed law to strictly regulate the administrative detention of families with children”. The draft does not categorically prohibit immigration detention of children; it merely limits such detention to 48 hours, with a possible extension of three days. Recalling that the ECtHR found France guilty of arbitrary detention on multiple occasions, the opinion calls on the National Assembly to amend the legislative proposal.

**Austria:** As of the end of 2020, there was still no mechanism to identify vulnerable people in detention centres, which is a serious matter of concern. Previous recommendations formulated by the Austrian Ombudsman Board remain unimplemented. In 2019, 25 minors were detained whereas in 2020, 12 minors were kept in deportation centre (between 3 and 17 days).

**Slovenia:** In 2020, 97 children and 304 unaccompanied children were detained in the Aliens Centre. Two women with mental health problems were also detained. They were both provided with psycho-social support, health checks and examinations. They were enabled daily contact with friends and family members. A man with severe eyesight issues was also detained. He was also provided with psycho-social support, health checks, and regular access to outdoor activities.

**Poland:** In the opinion of NGOs the problem with identification of victim’s torture and violence persists. Identification should be conducted before placing in detention and not in detention. Indeed, a poor mental condition is hardly ever accepted by courts as sufficient ground for not placing in or releasing an asylum seeker from detention. Practice shows that neither the Border Guard nor the courts take the initiative to assess if an asylum seeker is a victim of violence. In 2019 the court appointed only in 4 cases the psychologist or psychiatrist as an external consultant, which means that expert was appointed in 0.5% of detention cases. Additionally, courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs), and they rely on short opinions (very often it is one sentence stating there are no obstacles to prolonging the stay in guarded centre) of the physician who works in detention centre. In practice, only courts of higher instance call on experts to determine applicants’ mental health state but this happens very rarely. Additionally, courts do not conduct their own evidentiary proceedings. As regards children, detention decisions still did not consider the best interest of the child or did not consider the individual situation of the child. When placing a child in a guarded center together with parents, the courts either do not mention children in a justification of the detention decision or justify detention relying on the best interest of the child principle, or limit their assessment to statement that children will be with their parents or detention centres ensure medical and psychological support to foreigners. In 2020, at total of 91 children were detained in 2020 (children in families, in asylum and return procedure). In 2020, children (in asylum and return procedure) stayed in detention centres in average for 70 days. Children in asylum procedure stayed (in the guarded centre of Biała Podlaska in average for even 137 days (as for 30 June 2020) and for 134 days in Ketrzyn as for 1 January 2020. The shortest stay of families with children in detention centre was for 69 days in Ketrzyn at the end of 2020 and in Biała Podlaska at the beginning of 2020.

**Ireland:** Places of detention are set out in S.I. 666/2016 – International Protection Act 2015 (Places of Detention) Regulations 2016, which was amended by the Reception Conditions Regulations 2018 to designate places of detention as “Every Garda Síochána Station [and] Cloverhill Prison.” Prior to the Regulations, women were generally detained at the Dóchas Centre in Dublin which has a capacity of 105 places. Men were generally detained at Cloverhill Prison in west Dublin which has a capacity of 431. Following the introduction of the Regulations, the Dóchas Centre was not listed as a place of detention and it is therefore unclear where female detainees are to be held in practice. However, according to reports from various observers, the Dóchas Centre remains the primary detention facility for holding female detainees.

**Malta:** Upon arrival at the border, families and children whose age is undisputed are taken to the closed section of the IRC for necessary checks before being accommodated in reception centres. However, alleged unaccompanied minors and other vulnerable persons are immediately detained waiting for assessments to be conducted, which may take several months. EASO deployed staff in 2020 in order to support AWAS with the vulnerability screening. The “vulnerability assessment response team” assesses potential vulnerable applicants. The team consists of 15 assessors, all deployed by EASO and translators are also available. This team started to operate in September 2020 and conducted 136 assessments in detention, 84 assessments were conducted at the end of the year in the reception centres.

**Spain:** Although detention of asylum seekers or vulnerable categories is not explicitly allowed by law, in practice several exceptions have been reported concerning unaccompanied children and victims of trafficking. This is due to the lack of identification of the minor age of the person, or of his or her status of victim of trafficking. The Jesuit Migrant Service denounced in 2020 the persistent problem of a lack of identification of unaccompanied children when already detained at CIEs, and the inadequate treatment of persons with health problems. In January 2020, the Platform ‘CIEs No’ reported that the case of a 16-years-old Algerian child who remained detained in the CIE in Valencia, despite the fact that he could prove his minority. The judge considered, however, that his identification documents, which had been sent by his family, were not valid as they were severely damaged (i.e. split in half). APDHA also expresses concerns about the presence of unaccompanied migrant children within CATEs; the fact that they are detained in common cells with adults, as well as the lack of healthcare and legal assistance. It also reiterates the concerns about the loophole and lack of legal framework over these facilities, as well as the limited remedies in case of human rights violations. Save the Children has also reported that the new system of CATEs allows the detention of children and their families up to 72 hours at points of disembarkation in Spain.

**United Kingdom:** In 2020 the government changed the use of Yarl’s Wood IRC from a women’s removal centre to hold those arriving having crossed the channel in small boats. The decision to repurpose a prison in Hassockfield to hold women detainees has prompted a campaign to prevent its opening.

## 12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

### Integration

**Bulgaria:** Since 2013 and including in 2020, Bulgaria followed a “zero integration year”. The first National Programme for the Integration of Refugees (NPIR) was adopted and applied until the end of 2013, but since then all beneficiaries of international protection have been left without any integration support. This resulted in extremely limited access or ability by these individuals to enjoy even the most basic social, labour and health rights, while their willingness to permanently settle in Bulgaria was reported to have decreased to a minimum. In 2020, 39% of asylum applicants abandoned their status determination procedures in Bulgaria, which were thus subsequently terminated. In comparison, this percentage was 86% in 2019, 79% in 2018, 77% in 2017, 88% in 2016, 83% in 2015 and 46% in 2014. The decrease in 2020 was mainly due to COVID-19 measures, which hindered secondary movement in and across Europe.

**Croatia:** In 2020 a new Action Plan for integration of persons who have been granted international protection for the period 2020-2022 was still under development and was not adopted by the end of 2020. In October 2020, the Office for Human Rights and the Rights of National Minorities of the Government of the Republic of Croatia held its first meeting of integration coordinators at the local level (within the project “INCLuDE”) where the draft Action Plan for the integration of persons granted international protection 2021-2023 was presented, emphasizing the importance of including as many local and regional self-government units as possible. The AIDA report further provides detailed information on the different projects that are being implemented by NGOs to foster integration of beneficiaries of international protection.

According to the Ombudsman's report for 2020, the main challenges for successful integration continued to be the lack of language skills, difficulties in recognising qualifications and checking skills and finding a job, which were further aggravated by COVID-19. The Croatian Red Cross reported that persons under international protection in 2020 most often encountered difficulties in exercising their right to health care, Croatian language courses and housing. Centre For Peace studies (CPS) reported that in 2020, beneficiaries of international protection encountered a number of institutional barriers as well as discrimination practices in exercising their rights. CPS pointed out that a major health crisis due to COVID-19, combined with several earthquakes during 2020 in Zagreb, Petrinja, Sisak and the surrounding areas, made these barriers even greater and put beneficiaries in an even more unequal position.

### Residence permits

**Portugal:** On 13 March 2020, the government enacted Decree-Law no. 10-A/2020, establishing temporary and exceptional measures in response to the new coronavirus. It was determined, inter alia, that documents expired after the entry into force of the Decree-Law or within the 15 days prior, were valid until 30 June 2020. This extension of validity is applicable to visas and documents related to the residency of foreign nationals. Said Decree-Law was subsequently amended, further extending the validity of such documents. At the time of writing, it was last amended by Decree-Law no. 87-A/2020, determining inter alia that:

- Documents expired since the entry into force of the Decree-Law, or within the 15 days prior to its entry into force, are accepted as valid until 31 March 2021. This includes visas and documents related to the residency of foreign nationals.
- After 31 March 2021, such documents continue to be accepted providing the holder has an appointment for its renewal.

**Austria:** During the first lockdown, the application time for renewal of subsidiary protection was suspended until 1 May 2020 in cases where the residence permit expired between 23 March and 1 May 2020. As the application for prolongation could be submitted in written form no exception was necessary.

**Poland:** During the COVID-19 pandemic, the validity of those residence cards was prolonged by law until 30 days after the end of the epidemiological state in Poland. Moreover, refugees and beneficiaries of subsidiary protection had to make appointment in advance (by phone or e-mail) in order to give fingerprints and pick up the residence permit.

**Cyprus:** In 2020 the Civil Registry and Migration Department (CRMD) continued to refuse to issue residence permits for family members including spouses, underage children, and children who reached the age of maturity as refugees in Cyprus, regardless of the country of origin of the spouses or the length of time they had already been in the country, leaving them without status and full access to rights. This led to persons who have been living for many years in the country to lose their employment and other rights. According to the CRMD, spouses will receive a humanitarian status without defining if they will have access to rights. Humanitarian status, as it currently stands, provides a right to remain but no access to rights (although exceptionally the right to labour may be provided).

**France:** In 2020, due to health crisis resulting in the temporary closing of Prefectures, the duration of residence permits expiring between 20 March and 15 June 2020 have been automatically extended by 180 days. According to provisional Ministry of Interior statistics, France granted 18,610 residence permits to refugees and stateless persons and 9,460 to subsidiary protection beneficiaries in 2020. According to OFPRA, more than 33,000 persons (including accompanying minors) have received protection in 2020.

**Hungary:** The Lutheran Church reported though in 2019 that the ID cards of beneficiaries of subsidiary protection were not prolonged during their status review procedure, therefore beneficiaries were without ID card for months. The same incident was reported by the Lutheran Church in 2020, when the ID cards of the older children of a family, having a pending procedure before the court on the revocation of their subsidiary protection, was not renewed, while their new-born baby was not provided by an ID card at all. Long waiting time for the issuance of the ID cards was also reported in the case of a woman and her children arriving in Hungary as a result of family reunification procedure. They were granted subsidiary protection status in September 2020, nonetheless their ID cards were issued only in November which prevented them from

arranging an address and health insurance card. Due to the absence of official documents, they could not receive official mails, obtain family financial aid and kindergarten placement.

Due to the COVID-19 pandemic the government office responsible for the arrangement of official documents require a prior online appointment booking. As the website is run exclusively in Hungarian, beneficiaries of international protection face language barriers and necessarily need help. Additionally, the offices are overburdened, therefore appointments are only available with quite long waiting time. During the state of danger introduced in March as a result of the COVID-19 pandemic, the regulation according to which expired ID documents and passports were deemed to be valid was not applicable to non-Hungarian (or EU) citizens amounting to a clear discriminatory situation. This restriction was not introduced again in the autumn.

**Ireland:** In June 2020, an online immigration permission renewal system was launched. The system was initially made available to students living and studying in Dublin and has subsequently been extended to all applicants living in the Dublin area. Under the new online system, applicants must complete their renewal form online, upload copies of supporting documents and pay the applicable fee. It should be noted that applicants living outside of Dublin must still appear in person at their local Garda station in order to renew their immigration status, while first-time registrations must also be done in person, regardless of where the applicant lives.

A revised online appointment booking system was established in December 2020 for applicants living outside of Dublin. However, following the implementation of further restrictions to curb the spread of Covid-19, refugee and subsidiary protection beneficiaries, whose permission to reside in the State was due to expire between 21 January 2021 and 20 April 2021, received automatic renewal of their permission to reside in the State on the same basis as the existing permission and with the same conditions attached. This was the sixth extension of immigration permissions implemented since the outset of the pandemic in March 2020.

**Malta:** In 2020, protection status documentation renewal was temporary suspended for several weeks the IPA being closed for several weeks due to the COVID-19 pandemic. The IPA remained responsive over emails even when the office was closed for several weeks, providing standard information on all correspondence, explaining on line procedures and how to proceed information for beneficiaries. Upon request, the IPA would confirm status via email and would inform the relevant authorities including health authorities about entitlement of protection status so individuals could have access to relevant services. However, these temporary arrangements remained challenging for a number of beneficiaries not speaking English or not in capacity to access the Internet

**Sweden:** A new system was introduced in July 2016 with the adoption of a temporary law, valid for three years. The law was prolonged for an additional two year-period from July 2019 to July 2021 as a result of a political agreement between four parliamentary parties. The law limits asylum seekers' possibilities of being granted residence permits and the possibility for the applicant's family to come to Sweden. The government openly admitted that the law was proposed in order to deter asylum seekers from coming to Sweden. A Cross-party Committee of Inquiry on Migration in Sweden was tasked in 2020 with developing proposals for Sweden's future migration policy that should be "sustainable in the long term". Among the 26 changes proposed to the Alien Act, one proposal foresees that temporary residence permits shall be the general rule for beneficiaries of international protection; while resettled refugees may be granted permanent permits. Residence permits should remain limited to three years for refugees and 13 months for subsidiary protection status holders, extendable by two years subject to a new assessment, as is already currently the case through the temporary law. To get permanent residence permits, beneficiaries of international protection would need to demonstrate civic education skills, a good knowledge of Swedish language, their ability to provide for themselves and, already as of the age of 15, so-called 'good repute', i.e. a criminal record copy (vandelskrav). Several civil society organisations have raised concerns over these proposals, as they are likely to increase legal uncertainty and hinder the integration of beneficiaries of internal protection. The government stated it would consult national authorities and other stakeholders before developing a draft bill, which will need to be endorsed by the Council of Legislation before going to the parliament.

**United Kingdom:** An additional problem has increased during 2020 although is not specifically a result of travel restrictions due to Covid-19. Applicants for visas and extensions of permission to stay, including

refugees applying for Indefinite Leave following five years refugee leave, are required to re-register their biometrics at a Service and Support Centre run by a private company. Whilst they are required to provide free appointments to those who make free applications (including refugees) there are very few centres with free appointments available. The Independent Chief Inspector has begun an inspection into this issue.

### Civil registration

**Portugal:** Within the context of the coronavirus pandemic the registration desks at maternity wards have been (temporarily) closed since 23 March 2020. Birth registrations continued to be performed in civil registry offices in urgent cases upon appointment. Since 13 April 2020, birth registration can be performed online. According to article 7(9) of Law 1-A/2020, of 19 March, as amended by Law 4-A/2020, of 6 April, the deadline for birth registration was suspended due to the pandemic.

**Hungary:** in 2020 HHC is aware of a family whose new-born child was not registered due to the lack of original birth certificates (and their official translation) of the parents. As a solution the parents requested an official certificate on their refugee status from the NDGAP which was accepted as a replacement for the birth certificates. It should be further noted that children of persons with international protection do not receive Hungarian citizenship *ex lege* at birth. This is a clear violation of Article 1(2)(a)-(b) of the 1961 Convention on the Reduction of Statelessness and Article 6(2)(b) of the 1997 European Convention on Nationality. Furthermore, it is in breach of Articles 3 and 7 of the 1989 Convention on the Rights of the Child. According to the Menedék Association, the struggle of obtaining citizenship for the child leads to frustration and anxiety for parents with international protection. The problem persisted in 2020.

**Romania:** ASSOC representatives reported that access to relevant information on marriage registration is hindered as the information is provided only in Romanian, rendering it very difficult for beneficiaries of international protection to marry without the assistance of NGOs. In Somcuta Mare, 2 marriages were officiated between 2014 and 2021. They were assisted by the NGOs by providing information on the legal procedure, translating the required documents and identifying an authorized translator, who offered his/her services for free. As regards birth registration, ASSOC mentioned that the procedure is very difficult. Asylum seekers and beneficiaries of international protection have no documents. As a consequence they have to make a declaration at the notary regarding the place of birth, the names of the parents and the name of the newborn. In Somcuta Mare, ASSOC representative participated as a translator and mediator in this procedure. During 2014-2021, 15 children obtained a birth certificate. In 2020 only 1 child was assisted.

### Naturalisation

**Bulgaria:** From 2014 to 2020, Bulgaria granted citizenship to 281 beneficiaries of international protection, namely 75 refugee status holders and 206 subsidiary protection holders.

**Ireland:** According to research published by the European Migration Network in August 2020, Ireland has more favourable conditions for acquiring citizenship by naturalisation than many other EU Member States. However, long processing delays and lack of clarity regarding eligibility conditions have been raised as issues of significant concern by NGOs and in parliamentary debate.

Moreover, the onset of the Covid-19 pandemic and associated restrictions has resulted in significant disruption to the delivery of services by the Citizenship Division of the Immigration Service Delivery. As of December 2020, the processing time for standard naturalisation applications was approximately 12 months. On 18th January 2021, it was announced that the obligation to attend citizenship ceremonies would be temporarily replaced during COVID-19, with an alternative requirement for citizenship applicants to sign an affidavit declaring loyalty to the State. Upon the return of a fully completed declaration, the Department of Justice will issue a certificate of naturalisation. It is anticipated that this system will remain in place until at least the end of May 2021.

**Sweden:** In 2020, the Migration Agency registered 84,111 new applications for citizenship. A total of 80,220 decisions were handed down in 2020, with 105,629 open cases at the end of the year. A total of 68,079

persons were granted citizenship. In most of the cases, it concerned applicants from Syria (25,629); Afghanistan (4,171); Iraq (3,841); Stateless (3,706) and Somalia (2,927).

**Hungary:** According to the law, the constitutional exam can be substituted by a certificate issued by an accredited school proving that the person had attended the program equating to 8 years of elementary school. Nonetheless as per the experience of HHC, in 2020 the government offices did not accept the certificate of one specific school that is considered to provide a lower quality educational program by the authorities. Applicants presenting such certificates were instructed by the officers to take the constitutional exam. In the view of the HHC this practice is unlawful as the mentioned school is accredited in Hungary and there is no legal basis for such a rejection for the certificate.

In 2020, 82 beneficiaries of international protection applied for Hungarian citizenship. In the same year 23 (breakdown by the three main nationalities was 5 Iraqis, 4 Afghan and 4 Iranian) refugees and 11 (breakdown by the three main nationalities was 3 Afghan, 2 Egyptian and 2 unknown citizen) subsidiary protection beneficiaries obtained citizenship. The applications of beneficiaries of international protection were rejected in 54 (breakdown by the three main nationalities was 26 Afghan, 5 Russian and 4 Iraqis) cases. Compared to 2019 the number of citizenship grants has almost doubled, while the figure of rejection grew only with two cases. The number of applicants showed a 17% increase in 2020 in comparison with the previous year

**Poland:** Both, refugees and subsidiary protection beneficiaries, to be declared as a Polish citizen, have to prove that they know the Polish language. In 2020, the Polish Commissioner for Human Rights intervened before the Ministry of Education, pointing out to the foreigners' problems with the access to exams (i.e. exams organized too rarely, not enough places for all interested persons). The Ministry answered that they are working on the improvements in this regard, however it concluded that the present system is generally sufficient. During the COVID-19 pandemic, access to the exams was hampered even more as many exam sessions were cancelled.

**France:** In practice, refugees encounter many difficulties during naturalisation procedures beyond the mere ones linked to their knowledge of the language that does not reach the required level. The interview conducted aims also to determine the level of integration on the French society of the candidates. This assessment is very wide since, according to lawyers supporting refugees in this process, economic and cultural aspects are taken into account, as well as their ties with their original community. The Prefecture will particularly scrutinise the relationship claimants have with French people. In that sense, claimants are used to submitting more documents than those required by law. For example, they will produce testimonies from teachers if they have children, proof of their economic situation or testimonies of French friends. A total of 41,927 persons were granted French citizenship by decree in 2020 compared to 49,671 in 2019, 55,830 in 2018 and 65,654 in 2017, though this number is not limited to beneficiaries of international protection.

### Cessation procedures

**ECRE Legal Note:** On 24 February 2021, ECRE published a legal note on the 'Cessation of International Protection and Review of Protection Statuses in Europe'. The note sets out the legal obligations relating to cessation under international and EU law. It then examines the key decision of the CJEU in *Abdulla* and highlights developments subsequent to the *Abdulla* decision, including most recently the CJEU's decision in *OA*. The note focusses, inter alia, on six main legal issues which have been raised by national state practice of cessation in Europe. Firstly, it assesses whether the test for cessation is the 'mirror image' to that for recognition of refugee status and finds that, while *Abdulla* held that this to be the case, there has nevertheless been some divergence in the approach of national courts on the issue. Secondly, the note explores the standard of proof for cessation and notes slightly different approaches taken by European countries. It continues to examine the issue of cessation and non-state actors of protection, in particular whether international organisations, multinational forces or militias can constitute 'actors of protection' and whether family members can constitute 'actors of protection for the purpose of cessation. It further discusses cessation in the context of international protection alternatives. The note examines how the 'compelling circumstances' exception to cessation should be applied and examines national case law taking humanitarian considerations such as living standards into account in a cessation assessment.

The Legal Note is available at: <https://www.ecre.org/wp-content/uploads/2021/02/Legal-Note-7-Cessation-February-2021.pdf>



**Bulgaria:** In 2020 an amendment to the law introduced an additional clause, which allows cessation or revocation of international protection where the status holders fails to renew his/her expired Bulgarian identity documents, or to replace them if they have been lost, stolen or destroyed, in a period of 30 days. Despite being contrary to 1951 Refugee Convention, the amendment aims to legalise a malpractice applied by the SAR since 2018. This broadened interpretation of the recast Qualification Directive introduces de facto an additional cessation ground in violation of national and EU legislation. The undue cessation of international protection has affected 4,264 status holders in total, respectively – 770 persons in 2018; 2,608 persons in 2019; and 886 persons in 2020.

**Hungary:** In the last years, the HHC experienced that there have been many cases where Afghan beneficiaries of subsidiary protection did not have their status renewed after 3 years because the asylum authority considered their return to Afghanistan safe. In these cases, the authority systematically established either the city of Kabul or the province of Balkh as an internal protection alternative for Afghans whose region of origin is struggling with instability, despite of the deteriorating situation of both destinations reported by different sources and the lack of family links or sufficient means of subsistence. The problem regarding Kabul as an internal protection alternative (IPA) persisted.

**Netherlands:** In January 2020, the IND decided that it would no longer consider certain parts of Sudan to be in a conflict that reaches the Article 15c QD-standards. At the same time, the IND announced starting a reassessment of all subsidiary protection statuses that were granted in line with the country policy stating that there was a 15c-situation in some parts of Sudan. The IND announced that around a hundred statuses were going to be reassessed because they believed that the change of circumstances in Sudan had such a significant and non-temporary nature that the fear of persecution or the real risk of serious harm could no longer be regarded as well-founded (article 3.37g Aliens Regulation). Although the concerned beneficiaries of subsidiary protection received a letter around May 2020 that their status would be reassessed within 6 months, most of the beneficiaries are still waiting for the IND to decide whether their status will be maintained or the cessation procedure will be started with written intention to surcease.

**Poland:** HFHR concludes that Russian citizens have mostly been deprived of protection as a result of travel to their country of origin after they obtained international protection. The finding is confirmed by the SIP. According to this NGO, returning to the country of origin – even only in order to obtain needed documents or to take care of ill family members – is a reason to deprive refugees and beneficiaries of subsidiary protection of their status. The same effect may be entailed by obtaining a passport in the embassy of the country of origin. SIP also points out that beneficiaries of international protection are deprived protection due to a changed situation in Chechnya. However, in their opinion, both individual and general circumstances of those cases are not scrutinized sufficiently by Polish authorities

### Withdrawal procedures

**Bulgaria:** The procedure for withdrawing status in the law is the same as for Cessation of status. In 2020 a total of 8 withdrawals were made.

**Hungary:** In 2020, the matter of status withdrawal based on national security reasons came into the forefront of the HHC as a result of the relatively increased number of such cases concerning not only beneficiaries of international protection but asylum-seekers and third-country nationals residing otherwise lawfully in Hungary. According to the Asylum Act, the Counter-Terrorism Office (CTO) and the Constitutional Protection Office (CPO) involved in the asylum procedure might establish that the third-country national poses a threat to the national security without any further reasoning. In these cases, the underlying data substantiating the national security threat is classified by these special authorities with reference to the protection of public interest, i.e. the activity of Hungary concerning its national security. The opinions on the special authorities oblige the NDGAP to withdraw the international protection status.

The NDGAP withdrew the status of 57 beneficiaries of international protection in 2020. The refugee status was withdrawn in 12 cases (including 2 Syrian, 2 Nigerian, 2 former Yugoslavian refugees), whereas subsidiary protection was withdrawn in 45 cases (the majority of the beneficiaries, 27 persons had Afghan citizenship, followed by 6 Iraqis and 5 Syrians).

**Romania:** ASSOC and JRS representative in Somcuta Mare reported the case of an unaccompanied minor from Syria whose international protection was withdrawn. In Bucharest a single case of withdrawal of protection status of unaccompanied minor was reported. The case is still pending before the domestic court. IGI-DAI issued 7 decisions of withdrawal of protection status (Syria) in 2020.

### Family reunification

**Bulgaria:** In 2020, a total of 85 family reunification applications were submitted to the SAR, out of which 70 were approved and 15 rejected.

**Belgium:** Beneficiaries of international protection continue to face important obstacles in the context of family reunification procedures, stemming inter alia from the difficulty to obtain visas and to prove family ties, the financial cost of the procedure, its strict conditions and the narrow definition of family members.

**Ireland:** Following the onset of Covid-19 and associated restrictions, applicants experienced significant delays in the processing of applications for family reunification. DNA testing was suspended, which has further delayed a number of cases, and there has been no indication of a recommencement date.

**Romania:** IGI-DAI reported that applications for family reunification were suspended during the state of emergency (16 March 2020- 15 May 2020). During the state of alert (as of 16 May 2020) no measures were imposed. If family members were arriving from countries or areas that are considered at high epidemiological risk, the same measure was imposed as in the case of other persons arriving from the same countries or areas. The measure referred to by IGI-DAI is the 14 days quarantine. In 2020, IGI-DAI reported a total of 212 applications for family reunification (90 Somalia, 80 Syria, 15 Iraq, 27 other), of which 96 were admitted and 10 dismissed.

**Sweden:** A Temporary law introduced new legislation in 2016 that affects persons' ability to get a residence permit, the length of the residence permit as well as the ability to reunite with their family members. This law has been prolonged a further two years until July 2021. A parliamentary commission of inquiry was tasked with proposing new legislation to enter into force when the Temporary law expires on 20 July 2021. The commission presented its proposal on 15 September 2020. The proposal raises serious concerns as it basically aims to render most of the restrictions introduced through the Temporary law permanent, including by limiting the right to family reunification to core family members only. It also limits the income and housing requirements for beneficiaries of international protection whose family members apply for family reunification more than three months after the beneficiary was granted protection status. In addition to the commission's proposal, the Government subsequently presented some additional proposals including a possibility of granting a residence permit for family reunification for persons who intend to marry or cohabitate if the relationship was established already in the country of origin. This proposal is primarily aimed at enabling family reunification in same sex relationships where the partners were not able to formalise their relationship or cohabitate in the country of origin, as well as situations where partners in heterosexual relationships were not able to live together because their relationship was not tolerated in their culture.

In 2020, 33,466 first time applications for family reunification were lodged and a total of 39,051 decisions were issued, out of which 52% were approved. By the end of the year, a total of 25,839 family reunification procedures were pending. It should be further noted that COVID-19 also impacted the possibility in 2020 to carry out interviews and related activities in embassies – i.e. such as visa services, family reunification procedures as well as the issuance of residence permits for studies. By way of illustration, requests for visa applications declined by 86% compared to 2019. In some embassies this was further exacerbated by local restrictions. For example, the Swedish embassy in Tehran announced on 17 August 2020 that all interviews would be postponed to January 2021. The Migration Agency added that it may take months before applicants receive a new date for the interview. This affected mostly persons who have applied for a residence permit to study and applications for family reunification. However, some embassies do accept a limited number of appointments of shorter visits to leave fingerprints, take photos or collect residence permit cards, or to submit an application.

**Spain:** During COVID-19, family reunification procedures were suspended from mid-March until beginning of May 2020. They were resumed after the State of Alarm came to an end.

**Croatia:** In Croatia, due to the COVID-19 outbreak, the resettlement programme and family reunifications have been suspended, preventing legal and safe entry of refugees to the country, the Jesuit Refugee Service reported to FRA.

**Switzerland:** At the beginning of the COVID-19 pandemic in spring 2020, family reunifications were suspended. In addition, many embassies around the world closed their counters and prevented family members to pursue their family reunification procedures

**Hungary:** As a result of the COVID-19 pandemic the NDGAP suspended the family reunification procedures in the spring. Moreover, the Hungarian embassies in the countries of origin were closed preventing family members from submitting their applications. There were applicants whose procedure was halted for half a year. Since autumn 2020, family members can again enter Hungary with a visa enabling them to obtain their residence permit for the purposes of family reunification upon their arrival.

In Hungary, only refugees are entitled to family reunification under preferential conditions within three months following the recognition of their status. They are exempted from fulfilling the usual material criteria: subsistence, accommodation, health insurance. No preferential treatment is applied in case of beneficiaries of subsidiary protection. The reasons for fleeing their countries of origin of beneficiaries of subsidiary protection are often similar to those of refugees. They rarely have the means to fulfil the strict material conditions for family reunification. It demands sacrifice and even luck to find a job or multiple jobs where the beneficiary could earn a salary that is high enough to meet the criteria of the family reunification. Consequently, the lack of any preferential treatment de facto excludes many beneficiaries of subsidiary protection from the possibility of family reunification, which often has a harmful impact on their integration prospects as well. In 2020, 5 families of subsidiary protection could reunite with the assistance of the HHC despite the difficulties detailed above. This trend is very promising in regards to respect of right to family life and right to family reunification, however the uncertainty of the expected financial means and the discretionary right of the NDGAP to decide case-by-case about the sufficiency of these financial means remain.

Moreover in 2020, some of the family members could not prove their family link with the sponsor because the submitted certificates turned out to be falsified/not accepted as original by the NDGAP without the family members' knowledge of any falsification. The HHC requested the NDGAP to order DNA tests in some of these cases as DNA tests cannot be initiated by the applicants as of 2017, but they have to be ordered by the NDGAP. No DNA tests were ordered, and these family reunifications were rejected by the NDGAP based on submission of false data and attempted deception of the authority without considering other proof of the family link despite of a previous judgment banning this way of proceeding.

**Cyprus:** As described in detail in the AIDA report, the family reunification procedure and requirements are constantly changing. In 2020 the EU Commission requested information from the CRMD on the procedures and cases and at time of publication the inquiry had not been concluded. Throughout 2020 cases were not being decided on and the examination of cases has once again become very slow with cases pending up to three years. According to the Law once the Director approves a family reunification request, he or she immediately authorises entry for members of the refugee family into the areas under the control of the Republic and notifies the relevant consular authorities of the Republic so they may facilitate any necessary visas. However there have been cases where a positive decision has been issued by the CRMD but the Ministry of Foreign Affairs via the consular authorities have refused to facilitate the issuance of visas. A relevant case is currently pending before the International Protection Administrative Court.

Furthermore, the Asylum Service has set up a procedure by which they assess the protection needs of family members and if it is decided that there are protection needs a new decision is issued granting international protection which includes the names of the family members. However, in practice such decisions have been issued only for minor children of beneficiaries of protection and not for spouses or adult children, leaving them without status, residence permit and access to rights. This has led to persons who have been living for many years in the country to lose their employment and other rights. According to the CRMD spouses will receive a humanitarian status without defining if they will have access to rights; humanitarian status as it currently stands provides a right to remain but no access to rights (exceptionally the right to labour may be provided) At the time of publication, the issue remained unresolved.

**Netherlands:** Since the previous AIDA update, not many changes can be reported on the conditions for family reunification in the Netherlands. Family reunification has been enormously hindered by the measures against the Covid-19 measures. Many family members who already had permission to reunite were not able to obtain the visa from the Dutch embassies, or could not travel to the Netherlands on the visa that had been issued. The Dutch Immigration Services and the department of Foreign Affairs agreed that family members of whom the permission to obtain visa or the visa itself had expired, were offered new visa directly from the embassy if they could not reach the embassy within three months of expiration. Family members who could not meet that condition were offered an expeditious handling of their subsequent application at the Immigration Office. The focus on proving the identity of the family member and family ties with the sponsor is still the main bottleneck for family reunification. The Council of State ruled that a subsequent application for family reunification of an unaccompanied minor should be done within the regular framework if the unaccompanied minor has reached the age of 18 in the meantime, or has been taken care of by one of his parents. The Council ruled that the circumstances as to why family reunification could not take place during the first application, should be taken into account in the subsequent procedure within the regular framework.

**Slovenia:** Family reunification procedures were not suspended during the pandemic. Strict rules for entry into Slovenia were in place, meaning that an individual had to submit a negative COVID-19 test at the border. In practice, travel restrictions in countries of origin or countries of transit prolonged the duration of the family reunification process, as individuals were unable to leave the country they were in. Applicants for family reunification had difficulties obtaining original or notarized documents of family member in order to prove family ties. They also had problems obtaining identification documents of family members, especially in cases when the family members were residing outside their country of origin. Family members had difficulties in obtaining exit visas. Sending Slovenian documents to countries without IOM, UNHCR and Slovenian embassies also presented difficulties in the cases of Syrian, Afghan and Palestinian nationals. In 2020, 49 applications for family reunification were submitted. 48 were submitted by persons with refugee status and one was submitted by a person with subsidiary protection. The Ministry issued 53 decisions on family reunification. 37 applications were granted (33 of persons with refugee status and 4 of persons with subsidiary protection), 8 applications were rejected, 1 was dismissed and 7 procedures were stopped.

**United Kingdom:** During 2020 there were many efforts by campaigners to force the government to negotiate 'replacements' for the family unity clauses of Dublin III. The UK government published draft agreements, which were not reciprocated by the EU. The two proposals related to general returns agreement and a specific measure to allow unaccompanied children to unite with family members. The UK has indicated it will attempt to negotiate returns agreements with individual EU member states. The revised inadmissibility guidance advises that if a person can be removed to another country, including a Dublin III state, the claim should be refused as inadmissible in the UK.

During the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 the government agreed to publish the existing routes for family reunification in the UK. This was fulfilled on 31st December with a document outlining existing routes (most not specific to refugee or people seeking asylum). The government also committed to a review of safe and legal routes to the UK; in February 2021 it fulfilled its obligation to update parliament with routes available to reunite families, which was a reiteration of the December 2020 document.

### Travel documents

**Bulgaria:** During the period 1 January 2014 to 31 December 2020, the Ministry of Interior issued 12,325 refugee travel documents and 9,017 travel documents for subsidiary protection holders. In 2020 these figures refer to a total 353 refugee travel documents and 966 travel documents for subsidiary protection holders.

**Switzerland:** Recognised refugees cannot travel to their home country or they might lose their refugee status. Since 1 April 2020, the Foreign Nationals and Integration Act (FNIA) also includes a provision prohibiting them to travel to neighbouring countries of their country of origin, when there is a justified suspicion that the ban on travel to the home country will be disregarded. This provision has entered in force but was still not implemented in January 2021. It allows the SEM to pronounce collective travel bans to certain neighbouring countries for all refugees coming from one specific country.

**Ireland:** Following the onset of the Covid-19 pandemic, the government advised against all travel outside of Ireland for non-essential purposes. In February 2021, following a significant increase in the rate of Covid-19 infection in Ireland, new restrictions targeting non-essential travel overseas were announced by Government. These included fines for those leaving the country for non-essential purposes, as well as mandatory hotel quarantine on arrival from certain destinations. Legislation enforcing these restrictions is due to be introduced by mid-February 2021.

Following the announcement of further restrictions on travel, the Irish Refugee Council wrote to the Minister for Justice, Helen McEntee and the Minister for Health, Stephen Donnelly, outlining the importance of ensuring continued access to the protection process and raising issues with regard to mandatory hotel quarantine. It was emphasised that access to the protection process at Irish airports should not be affected or curtailed by any of the changes made as a result of banning non-essential travel. Moreover, particular concern was raised in relation to the cost of mandatory quarantine for individuals arriving under family reunification procedures of the International Protection Act 2015 or to seek international protection under the Act. It was requested that both categories of individuals be considered in the bracket of travellers who cannot afford hotel quarantine costs. In addition, it was noted that individuals seeking protection may require particular services, including medical assistance and legal advice and that special supports were likely to be needed for asylum seekers in circumstances where they were required to isolate for 14-days alone in a hotel room.

**Cyprus:** Up to 2020 beneficiaries of subsidiary protection were issued with one-page travel documents valid for a one-journey trip (*laissez passer*), which are very problematic as the vast majority of countries did not accept these, including the Schengen Area. The Civil Registry and Migration Department had stated since early 2016 that they were carrying out procurement procedures in order to issue Convention Travel Documents as well as Alien travel documents for beneficiaries of subsidiary protection in line with the requirements of the International Civil Aviation Organisation. In mid 2020 the Department announced the issuance of the travel documents which led to high demand by Syrian nationals holders of subsidiary protection as the vast majority of Syrian nationals receive subsidiary protection and had been waiting for many years for the travel document in order to visit relatives mainly in the EU. Due to influx of requests the Department announced that travel documents will only be issued for SP holders who do not have access to a national passport and a preliminary examination will be carried out to examine this prior to issuing travel documents. To date no travel documents have been issued by the CRMD for beneficiaries of subsidiary protection.

## Housing

**Bulgaria:** In practice due to lack of any integration support, beneficiaries of international protection are allowed to remain in the reception centres up to 6 months, unless in situations of mass influx or increased new arrivals. At the end of 2020, the number of beneficiaries staying in reception centres was 170.

Beneficiaries face acute difficulties in securing accommodation due to the legal 'catch 22' surrounding Civil Registration. Holding valid identification documents is necessary in order to enter into a rental contract, yet identification documents cannot be issued if the person does not state a domicile. The situation has been exacerbated since the SAR has prohibited beneficiaries from stating the address of the reception centre where they resided during the asylum procedure as domicile for that purpose. It led to corruption practices of fictitious rental contacts and domiciles stated by the beneficiaries of international protection in order to be able to obtain their status holders' identification documents.

**Belgium:** Access to housing remains problematic for people having obtained a protection status. This is mainly due to the current "housing crisis" and the general shortage of qualitative and affordable housing for beneficiaries of protection, including vulnerable groups.

**Ireland:** On top of the serious issues in the Irish reception system and the housing crisis, the Covid-19 pandemic and associated restrictions resulted in significant obstacles to securing housing for beneficiaries of international protection. Restrictions on the operation of local authorities and administrative bodies have resulted in delays in the processing of social housing applicants and entry on to housing lists. This in turn impedes individuals' ability to access Housing Assistant Payment (HAP) and ultimately, secure housing.

Caseworkers have noted, however, that the pandemic has positively impacted the availability of housing for beneficiaries of international protection in that a decrease in demand for rental property has opened up the market significantly for HAP tenants.

**France:** Despite several measures taken to enable beneficiaries to access accommodation, high numbers of status holders leave reception centres with nowhere to go. Access to housing was more difficult in 2020 in the context of COVID-19. In the first semester of 2020, only 1,755 people exited the reception system with housing solution compared to 7,600 in 2019 (although the latter is all full-year figure). As a result, many beneficiaries of protection are living in the streets or in camps. In Paris, amongst thousands of migrants living in camps that are regularly dismantled, 15 to 20% are refugees.

**Sweden:** The average delay between the granting of a permit and moving to municipal housing was 58 days in 2020, down from 60 days in 2019, and just within the two-month deadline for leaving Migration Agency accommodation. A total of 631 beneficiaries with residence permits were living in Migration Agency accommodation at the end of 2020.

**Malta:** Access to housing remained a serious matter of concern and even more in 2020 due to the COVID-19 crisis, with NGOs working in the social sector commenting that access to private accommodation was increasingly challenging for several groups, including migrants and beneficiaries of international protection, resulting in higher numbers of homeless persons or of persons living in squalid conditions. In April 2020, 41 NGOs issued a press statement to urge the authorities for immediate and shelter initiative. They stated that they were receiving numerous alerts of people about to be evicted for not being able to pay their rent. They stressed that most people, especially the migrant population, might not be able to rely on the Government's support packages or simply not be aware of it. They added that community or NGO's initiatives are not enough to meet the escalating demand for assistance. They urged the authorities to implement an emergency food and shelter initiative. Following the press release, the Ministry for Social Accommodation engaged in a dialogue with NGOs. They indicated that evictions are strictly regulated and all cases should be referred to the Housing Authority to verify such evictions are legal. They also announced that people struggling to pay rent may apply for housing benefit which was increased due to COVID.

**Croatia:** Important obstacles in securing housing persisted in 2020 and were exacerbated by COVID-19 and the earthquake, as reported by several NGOs such as CRC, CPS and RCT. The Croatian Red Cross (CRC) reported challenge in looking for new accommodation for beneficiaries whose right to paid housing has expired. Although this problem existed before, it became even more difficult in the context of COVID 19 as well as a result of the earthquake. NGOs also observed discrimination when renting apartments. It is especially difficult to find an apartment for large families. In addition, after expiration of two years of substituted housing, it is difficult for both families and single people to provide enough financial resources for housing and independent living as the average salary of beneficiaries is not enough to cover the total cost of housing and the cost of basic living needs. The Centre for Peace Studies (CPS) also pointed out that there is a continuing problem with not-preparing local communities for the reception of refugees and the failure to provide funds or support to local governments to develop local integration plans. It further highlighted several issues in the context of COVID 19, resulting in a higher risk of homelessness, including for families. A letter calling for urgent solutions was sent to the authorities, but the latter rejected the proposals and did not recognise beneficiaries of international protection as a particular vulnerable group in the context of the pandemic. The AIDA report further describes the different initiatives and assistance provided by different NGOs and projects to assist beneficiaries of international protection in securing housing.

**Hungary:** NGOs and social workers continued to report extreme difficulties for beneficiaries of international protection moving out of reception centres and integrating into local communities. Due to the lack of apartments on the market, the rental fees are too high to be affordable for beneficiaries who have just been granted status. In addition to this struggle, landlords usually prefer to rent out their apartments to Hungarians rather than foreign citizens. Accommodation free of charge is provided to a very limited extent exclusively by civil society and church-based organisations. HHC is aware of a case from 2020 when a German lawyer contacted several organisations (also the ones listed below) in order to know if there was available accommodation for a family with international protection in case of their return. The contacted organisations could provide no solution for the family which clearly shows the limits of the housing capacities. The Evangelical Lutheran Church in Hungary arranged short-term crisis placement for 45 persons with

international protection (together with the family members a total of 95 people benefitted from the services) in Budapest in 2020. Out of the 95 people there were 12 single women or mother. The Baptist Integration Centre opened its temporary home for families in June 2020, however, there was no families with international protection status accommodated there last year. Moreover in 2020, Kalunba supported around 40 people international protection status for a 3-month time with rented apartments. Due to Covid-19, this time based on the individual situation everyone was given an extension

**Netherlands:** More people are awaiting housing once they obtained an international protection status. On 4 January 2021 there were 8,398 refugees with a permit residing in COA reception centres, compared to 5,385 at 6 January 2020.

**Spain:** The lack of available social housing, the insufficient financial support foreseen for paying the rent, high requirements and criteria in rental contracts and discrimination exposes many beneficiaries of protection to very vulnerable economic conditions and in some cases leads to destitution. Although many NGOs who work with refugees and asylum seekers during the first phase try to mediate between refugees and house holders at the time they start looking for private housing, there is not a specialised agency or intermediate service for helping beneficiaries finding a home. Also, even with the mediation of NGOs, asylum seekers face serious discrimination in renting apartments. Some of them face homelessness and are accommodated in homeless shelters. A 2020 report published by the NGO Provivienda underlines the obstacles that third-country nationals (i.e. including migrants, asylum seekers and beneficiaries of international protection) face in accessing housing and renting apartments, i.e. the racism and xenophobia existing in the real estate-sector.

**Poland:** Many beneficiaries still experience homelessness. Stereotypes and negative attitude towards foreigners prevail. Finding accommodation for large families is even more challenging. IPI is not tailored to tackle these problems. Another extensive study on integration from 2020 shows that housing is of the major issues for both asylum seekers and beneficiaries of international protection in Poland. Applicants who had lived outside the facilities run by the Office for Foreigners during the procedure, seem to be better prepared for the numerous challenges, such as finding adequate housing for a reasonable price. The shortage of affordable housing makes the situation of persons with international protection particularly difficult. Consequently, inadequate quality of housing results in slowing down the process of adaptation of foreigners to the new socio-cultural conditions of the host country, and may have a negative impact on their physical and mental health. The difficulty of finding adequate and affordable housing is one of the important reasons why some beneficiaries of international protection decide to leave Poland and search for better living conditions in the countries of Western Europe where there might be denser diaspora and other support networks.

### Access to the labour market

**Ireland:** The onset of the Covid-19 pandemic resulted in significant loss of employment across a wide variety of sectors. According to research published by the Economic and Social Research Institute, migrant workers are over-represented in sectors severely affected by Covid-19 closures, including accommodation and food provision. For those who lost their job as a result of Covid-19, a social welfare payment known as Pandemic Unemployment Payment, was made available. Under s. 53(b) IPA, beneficiaries of international protection are entitled to access this payment on the same basis as Irish citizens.

For those who lost their job as a result of Covid-19, a social welfare payment known as Pandemic Unemployment Payment, was made available. Under s. 53(b) IPA, beneficiaries of international protection are entitled to access this payment on the same basis as Irish citizens. In order to access the payment, an individual must have been in employment prior to the 13 March, lost their employment owing to the pandemic and are not in receipt of any income from their employer. The rate payable under PUP depends on the wage the individual was paid prior to losing their employment. Whereby an individual earned less than €200 per week, the rate payable is €203 per week. Whereby an individual earned between €200-€300 per week, the rate payable is €203 and whereby an individual earned over €300, the rate payable is €250.

**France:** During COVID-19 in 2020, unemployment increased in France, affecting also the access to the labour market for beneficiaries of international protection. In January 2021, the Ministry of Interior launched a national call for projects for the year 2021 on the integration of newcomers, including beneficiaries of international protection.



**Romania:** AIDRom reported that many beneficiaries face discrimination on the grounds of color / race and language barriers. Most beneficiaries have no documents proving their professional qualifications or experience; there are cases where persons with higher education are working in the unskilled sector. As for the impact of the pandemic in accessing the labour market AIDRom stated that there have been many layoffs or reduced working hours and therefore wage cuts. Many of their beneficiaries worked in the HORECA sector, which was the most affected.

**Austria:** The imbalanced distribution of supply and demand within Austria also presents a challenge to integration into the labour market. Many persons with protection status relocate into urban centres, especially Vienna, where the unemployment rate is also higher than in the western federal provinces. There is a great demand for workers in the tourism regions of the West. In the public debate, the tense situation of the Austrian labour market is one area, which militates for the closing of borders. At the end of December 2020, 35,632 (beneficiaries of the Labour Market Service (AMS) were registered as unemployed, compared to 31,137 in 2019. Out of them, 24,026 were seeking work and 11,606 were completing trainings (compared to 20,688 and 10,449 in 2019 respectively).

**Croatia:** JRS observed that employees of various services are not familiar with the rights of persons granted international protection. Therefore, beneficiaries often rely on employees from the non-governmental sector when going to institutions. The Covid 19 crises further affected the access to the labour market. Beneficiaries of international protection who were not entitled to subsidised accommodation and lost their jobs during the COVID-19 pandemic were transferred to the reception centre for homeless people. The language barrier continues to be reported as one of the main obstacles in accessing employment and, overall, NGOs consider that more work is needed to foster integration of beneficiaries of international protection, which was hampered by the pandemic.

**Hungary:** As per the experience of HHC and as reported by the contacted organisations the economic backlash due to the COVID-19 pandemic affected refugees and subsidiary protection beneficiaries to a great extent. Many worked in the hospitality and tourism, therefore lost their jobs and even if they could keep it but the working hours were reduced. Reportedly, after many of them started to work again full time, their working hours were not set back officially by the employer which is disadvantageous especially for those who want to get reunified with their families or apply for Hungarian citizenship later as these procedures require the proof of sufficient income where a part-time job does not qualify. Those who lost their jobs could hardly find new employment; therefore many people remained without work for months. It posed difficulties also on those who just received their status and try to undertake employment, as well as those receiving aftercare as due to the lockdown they could not work, thus their subsistence was threatened as the aftercare assistance is solely not enough to cover all their expenses. Beneficiaries similarly to many Hungarians have no savings. According to the Maltese the available jobs were shrinking, as the majority of the companies suspended their hiring processes, therefore the applications for the available places surged. For the vacant positions the companies opted for Hungarian applicants speaking properly the language in the detriment of beneficiaries of international protection.

**Slovenia:** In practice, beneficiaries of international protection face discrimination and reluctance from employers on the labour market. Individuals who cannot obtain proof of education from countries of origin in practice cannot gain certificates of higher education. In practice, beneficiaries of international protection are often employed in positions that require hard physical work. Due to COVID-19-related restrictions, a general lockdown and the prohibition of certain activities beneficiaries of international protection and their family members faced additional challenges on the labour market. Cases of individuals who became unemployed or could not obtain employment were detected by NGOs.

**Cyprus:** Beneficiaries of International Protection have the right to participate in vocational trainings offered by the competent state institutions. Access to such vocational training is very limited due to insufficient language use, since courses are taught predominately in Greek, and a lack of information and guidance. During 2020, due to the covid-19 restrictions, a significant drop in the number of job-related trainings was observed. Some courses, mainly from EU-funded sources were available online, however overall participation was low, due to unfamiliarity of population with online training means. Employers are not adequately familiarized with beneficiaries' rights of full access to the labour market, which places an additional obstacle

for beneficiaries to find a job. In order to address this gap, the Cyprus Refugee Council in collaboration with the UNHCR Representation in Cyprus has launched a digital platform that connects employers and training providers with beneficiaries and also acts as an advocacy tool to familiarize employers with beneficiaries' rights of full access to the labour market.

**Poland:** In 2020, key issues in accessing the labour market were as follows: insufficient knowledge of Polish by beneficiaries of international protection, modest linguistic skills of the labour market services and low social capital of refugees, which often act as barriers for them to find a job. Assistance provided by social workers within IPI in most cases consist of support in completing documentation necessary to register at labour office, in searching for job offers and contacting a potential employer as well as informing about the possibility of participating in vocational training in Polish. Vocational trainings on the other hand do not respond to market needs. Despite early and effective inclusion in the labour market which gives a greater chance for integration of beneficiaries of international protection with Polish society, there is a lack of mechanism in mainstreaming integration of beneficiaries of international protection in labour market. There is also a lack of monitoring system for acquisition of work skills, and recognition of qualifications as well as for labour market inclusion of beneficiaries of international protection. Moreover, data related to trainings and effectiveness of IPI in relation to labour market inclusion are not collected in a systematic way. Polish NGOs play an invaluable role in helping migrants and refugees and it is not different in the area of integration on the labour market. The report lists all the projects and activities NGO have ran in 2020 in order to facilitate access to labour market for beneficiaries. The COVID-pandemic made it ever harder to obtain and maintain workplace. Some NGOs raised money for alimentation for beneficiaries who lost their jobs during pandemic.

### Access to education

**Spain:** In February 2020 the UN Committee on the Rights of the Child issued an opinion urging the Spanish authorities to adopt measures for the immediate access of a girl to the public system of primary education of Melilla. The concerned girl, along with around 100 other children, has been claiming her right to education to the authorities in Melilla and the Minister of Education for several years. The situation remains unsolved since three years and in July 2020 the Association for Children Rights (Asociación pro Derechos de la Infancia - Prodein) denounced again that around 100 children would not be allowed to access education the course 2020-2021, due to bureaucratic obstacles that seem to indicate institutional racism. Following a parliamentary request raised by the Parliament's member Jon Iñarritu of the Basque party Euskal Herria Bildu, the Government answered that the right to education of children should prevail regardless of the legal status of their parents and should be guaranteed in any part of the national territory. Save the Children, the Secretariat for Roma People (Fundación Secretariado Gitano) and the Spanish Committee of Representatives of People with Disabilities (Comité Español de Representantes de Personas con Discapacidad - CERMI) joined forces to establish an alliance for inclusive education and combat school segregation. They asked the Government to adopt a set of legislative reforms and measures in order put and effective end to school segregation by 2030.

Following two claims received in October and December 2020, the Spanish Ombudsman requested the Ministry of Education and Professional Training to immediately provide schooling to three children in Melilla, in light of the resolution of the UN Committee on the Rights of the Child and of the documentation submitted that demonstrated the effective residence in Melilla. At the time of writing of the AIDA report, the Ombudsman's requests remained unanswered.

**France:** According to the OFII, 3,482 beneficiaries of international protection received a student scholarship in 2020.

**Hungary:** Access to effective education remained difficult in practice. As a result of the COVID-19 pandemic the introduced online education system posed further hurdles to refugee children. In the course of home-schooling in the spring of 2020 the problem had mainly two causes. On the one hand there was a lack of electric devices available in the families (Menedék Association, certain districts in Budapest and other NGOs helped the families in need with computer rent), on the other hand parents could not help them efficiently with the studies mainly due to language barriers.

**Romania:** IGI-DAI reported that during the state of emergency and also during the state of alert the Romanian language course were not held by the County School Inspectorates. However, the Romanian language courses were held online by NGOs. Because many beneficiaries had no devices to participate to these courses, the integration officers based on an individual assessment of each case extended the integration program.

**Croatia:** The Rehabilitation Centre for Stress and Trauma (RCT) reported that there is still an important problem of systematic and accessible free learning of the Croatian language. The standard number of hours is insufficient, especially for those beneficiaries who want to continue their education. In addition, different treatment of persons who were granted international protection in regular procedure opposed to those who came through resettlement was observed by RCT as it was more difficult for the former to get a free language course. RCT also stated that courses are sporadic and that there is no publicly announced plan when they will be available and where. The AIDA report further documents the hurdles in accessing education during COVID-19 and the inadequacy of remote education classes in absence of adequate IT equipment. Some NGOs also point out to the non-standardization of certain procedures in regard to the inclusion of refugee children in primary schools. JRS stated that there are very different methods and ways of assessing a child in order to determine the class in which child needs to be enrolled, most often improvising, and taking into account different factors such as age, family situation, previous education and wishes of the child

**Slovenia:** During the pandemic, education was mostly conducted remotely, which represented an additional burden to beneficiaries of international protection and their family members. Computers and internet were necessary in order to attend classes. This represented a logistical and financial burden for beneficiaries, especially for families with children. The situation was especially difficult for children in elementary schools since a large portion of school work demanded the help and cooperation of parents. In practice, parents had trouble in providing necessary help to children due to the language and educational barriers.

**Poland:** Even though there are instruments stipulated by the law and designed for foreign children, such as additional Polish language classes, compensatory classes, preparatory classes and cross-cultural assistants, their implementation is often inadequate due to insufficient funding. It turned out that the biggest shortcoming of the inclusion of refugee children in the education system is lack of trainings and methodological support for teachers who work with them. With regard to education of adults, the most important issues appeared to be learning of Polish language and recognition of education obtained in the countries of origin. It turned out that the attendance of beneficiaries of international protection in the courses is very low (approx. 35 percent) which results from either lack of the courses in some localities, inability to reconcile work with participation in a course due to the latter's hours, or low attractiveness of the courses (i.e. their failure to meet the needs of refugees) The procedures of recognition of qualifications from the country of origin, are expensive and complicated. However, in order to enable continuation of education for refugees, many universities in Poland offered facilitation in the mentioned procedures together with providing scholarships that would ease refugees' acceptance for studies.

### Health care

**Ireland:** Beneficiaries of International protection are included within national measures to stop the spread of Covid-19 and are, therefore, entitled to access to Covid-19 tests and vaccinations on the same basis as Irish nationals. The rollout of Covid-19 vaccines in Ireland is currently underway, with individuals who are most at risk from Covid-19 vaccinated first. This includes those over 65 living in long-term care facilities, frontline healthcare workers and those over aged 85 and older living in the community.

**Portugal:** According to CPR's experience within the provision of support to resettled refugees, access to healthcare worsened within the context of the pandemic given the overburdening of healthcare services. According to the publicly available information, such difficulties are common to the whole population and not particular to refugees.

**Croatia:** The Croatian Red Cross (CRC) also reported problems related to health care and provision of services in healthcare facilities as healthcare professionals are not sufficiently familiar with the rights of persons under international protection and the way in which they can exercise their right to health care. The similar issue was reported by Rehabilitation Centre for Stress and Trauma (RCT) . RCT stressed that doctors working in

student's polyclinics are not familiar with the rights of beneficiaries in the health system and refuse to treat them because they do not have health insurance

**Hungary:** According to the Hungarian Health Act, beneficiaries of international protection fall under the same category as Hungarian nationals. Although for 6 months after refugees and persons with subsidiary protection are granted status, they are entitled to health services under the same conditions as asylum seekers. Therefore, the asylum authority funds the health care expenses of the beneficiaries for 6 months, if they are in need and cannot establish other health insurance format. However, as per the Menedék Association's experience, in practice this is not accepted by the health care service providers. The Evangelical Lutheran Church reported such difficulties in 2020 in case of a mother obtaining international protection and with another person with subsidiary protection. Overall, barriers to the access to health care include language difficulties, i.e. the lack of interpreters or the lack of basic English spoken by the doctor. NGOs' assistance is the only available solution for that. The obstacles, furthermore, might stem from administrative difficulties or simply from the lack of law awareness.

**Cyprus:** Beneficiaries of international protection are included in the new health system. The transition to the new health system was, however, not smooth due to various coordination challenges between the appointed relevant governmental departments, a lack of translated material in the language of beneficiaries and confusion among medical and hospital staff in regard to refugees' rights to health care. The situation has been improved during 2020. The most prominent obstacle still present is the fact that persons which received international protection and whose residence permit is under issuance are not able to access GESY services. This creates serious obstacles as the waiting time for the issuance / renewal of a residence permit is long.

**Slovenia:** In practice, beneficiaries of international protection and employed asylum seekers have troubles in obtaining a personal doctor due to lack of personal doctors in Slovenia. However, this is not connected to their status, and Slovenian citizens face the same difficulties.

**Poland:** Barriers in accessing healthcare are linguistic ones and linked with the stereotypical perception of persons coming from a specific part of the globe or belonging to a given ethnic or religious group. Similar to citizens of Poland, persons with international protection who cannot wait to see a specialist and have an adequate funding use the services of the private medical sector. One of the clear gaps in the medical services is the specialized treatment for victims of torture or traumatized refugees. There is a clear lack in the country of the qualified psychologists and therapists specializing in treating trauma, in particular in an intercultural context.

### Social welfare

**Hungary:** Due to the COVID-19 pandemic, many became unemployed. The unemployment benefit is available for a maximum of 90 days (equals to the amount of 60% of the last payment). The application form for unemployment benefit, available only in Hungarian, is not easy to fill in, therefore people in need must have requested the help of NGOs, such as Kalunba with that. The latter distributed food packages on a daily basis for around 30 people.

**Croatia:** JRS reported that unemployed persons who were granted international protection are often not entitled to financial support from the Croatian Health Insurance Fund at the birth of a child due to the shorter length of stay in Croatia. In addition, persons granted international protection often do not meet the conditions for receiving financial support for the birth of a child from local and regional self-government units. Moreover, according to the Croatian Red Cross the process of obtaining the minimum guaranteed compensation took two months in practice which affected the financial situation of beneficiaries.

### Freedom of movement

**Ireland:** Beneficiaries of international protection were subject to the same public health measures as Irish nationals throughout the Covid-19 pandemic. For example, as of February 2021, this included a limit on exercise within a 5km radius of one's home and travel for essential purposes only, such as medical appointments, food and other necessities as established in Government Guidelines.

### 13. Return of former applicants for international protection

**ECRE Policy Note:** On 5 June 2020, ECRE published the Policy Note 'Return as "non-essential travel" in the time of pandemic' which discusses the European Commission's guidance on implementing EU rules on asylum and return procedures and on resettlement and expresses ECRE's position on how return-related measures established in the Return Directive should be applied in the context of the Covid-19 pandemic.

The Policy Note is available at: [https://www.ecre.org/wp-content/uploads/2020/06/PN\\_26.pdf](https://www.ecre.org/wp-content/uploads/2020/06/PN_26.pdf)

***Return is not a topic covered by the AIDA country reports.***

### 14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

***Resettlement is not a topic covered by the AIDA country reports. Nevertheless, limited information on resettlement was extracted from some of the AIDA reports as follows:***

**Spain:** The Government reported that in 5 years more than 3,900 persons have been resettled or relocated in Spain, out of which 200 persons were resettled/relocated in 2020. This information was shared following a parliamentary request by two members of the party *Unión del Pueblo Navarro (UPN)*.

**Switzerland:** For the years 2020-2021, the Federal Council decided to resettle in Switzerland 1,600 particularly vulnerable recognised refugees, mainly victims of the Syrian conflict. In 2020, 512 refugees were resettled to Switzerland (compared to 1,009 in 2019).

**United Kingdom:** The first specific resettlement programme was announced in January 2014; this had no specific quota. In September 2015 the government committed to resettle 20,000 Syrians by the end of the parliament in 2020. By the end of 2020, 19,776 of these had arrived in the UK. 823 resettled refugees came to the UK in 2020. In June 2019 the then Home Secretary committed to resettling 5,000 refugees in the year following the end of the current programme (from April 2020). The resumption of resettlement arrivals, suspended in March 2020 due to the Covid-19 pandemic, has not yet been announced.

The government has also committed to resettling an additional 3,000 individuals under a 'children at risk' programme. In partnership with UNHCR, the UK will bring children from the Middle East and North Africa (MENA) region; a minority of whom are expected to be unaccompanied. The government announced the programme in response to calls to bring children from Europe. By the end of December 2020, 1,747 individuals had been resettled under this programme.

### 15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

***Relocation is not a topic covered by the AIDA country reports. Nevertheless, limited information on relocation was extracted from some of the AIDA reports as follows:***

**Bulgaria:** In 2020, following the incidents and fire at the Greek Moria Camp, Bulgaria pledged to relocate unaccompanied children. Out of 32 children who initially consented to be relocated to Bulgaria only 15 arrived by the end of 2020 and were accommodated in a specially prepared unit in Harmanli reception center.

**France:** In February 2021, 275 asylum seekers (and 131 unaccompanied minors) have been transferred from Greece to France as part of the 'voluntary relocation scheme from Greece to other European countries'.

**Malta:** In 2020, IOM Malta supported the voluntary relocation of 270 people from Malta, including 28 children under the age of 12. The first relocation in 2020 took place in May when 17 people were relocated to France despite travel restrictions.

**Romania:** In 2020 Romania resettled 37 Syrian refugees from Turkey and 4 migrants rescued in the Mediterranean Sea, were relocated from Malta. As regards specific measures imposed during the pandemic, the Syrian refugees were tested for COVID-19, 72 h before their scheduled departure. Upon their arrival they were quarantined for 14 days. Assistance, counselling and accommodation was provided by a NGO for 45 days through a AMIF funded project.

**Portugal:** In 2020, Portugal committed to receive 500 unaccompanied children from Greece. According to the information provided by the Minister of the Presidency to the Parliament on 21 December 2020, 72 unaccompanied children from 14 countries of origin were transferred from Greece to Portugal throughout the year (See Dublin: Procedure). According to the Minister, at the time of the statement, the arrival of a group of 6 unaccompanied children was being prepared. In September 2020, following the tragic events in Moria, Portugal announced that it communicated to the European Commission its availability to participate in the common effort for the reception of persons that were at the camp, within the framework of its two bilateral agreements with Greece.

## 16. National jurisprudence on international protection in 2020 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))

### General

The **European Database of Asylum Law (EDAL)** is an online database, managed by the European Council on Refugees and Exiles (ECRE) and containing case law from 22 European states interpreting refugee and asylum law as well as from the CJEU and ECtHR. EDAL summarises relevant case law in English and the Member State's national language and provides a link to, and/or pdf. of, the full text of the original judgment where available.

EDAL is searchable in English and the original language of the decision. The website interface is available in English only. The case summaries are searchable by a free text / full text search, as well as by keyword, applicable legal provisions, country of decision, country of applicant and date.

- EDAL is available at: <https://www.asylumlawdatabase.eu/en>

Moreover, the **ELENA Weekly Legal Update (WLU)** provides information about important recent developments in international and European asylum law. The update covers the asylum-related judgments of the European Courts and domestic case law as well as asylum legal news from across Europe.

- EWLW is available at: <https://www.ecre.org/our-work/elena/weekly-legal-updates/>

Thus, the national jurisprudence which is provided below is strictly limited to selected cases documented through AIDA. For a more comprehensive, detailed and up-to date overview of national jurisprudence on international protection in 2020, **EDAL and the EWLW should be consulted.**

### Asylum at embassies

**Spain:** Up until 2020, applications for international protection could not be lodged at Spanish embassies or consular representations, despite the fact that Article 38 of the Asylum Act foresees that possibility. This was due to the absence of a Regulation to the 2009 Asylum Act, as a result of which the 1995 Regulation – which regulates the previous Spanish Asylum Act - is still being currently applied in practice. Yet, the latter does not foresee the possibility to apply for international protection at embassies or consulates.

However, through a landmark judgement of October 2020, the Supreme Court finally clarified that the loophole resulting from the lack of the Regulation does not impede the exercise of the right to apply for international protection at Spanish Embassies and Consulates. The Court specified that Ambassadors and Consuls have the duty to assess whether the integrity of the applicant is at risk, in which case he or she must be transferred to Spain accordingly. Thus, the judgement overturns previous practice in this regard and officially recognises the right to apply for asylum at embassies and consulates. It remains to be seen how it will be applied in practice (Supreme Court, Sala de lo Contencioso, STS 3445/2020, 15 October 2020, available in Spanish at: <https://cutt.ly/whkz8eN>).

### Access to territory

**Spain:** On 19 November 2020, the Spanish Constitutional Court (Tribunal Constitucional) endorsed the Organic Law on the protection of citizen security, which establishes a special regime for the rejection at the borders in Ceuta and Melilla. After analysing the constitutional doctrine and the ECtHR's jurisprudence, the Constitutional Court concluded that the law is in line with the Spanish Constitution. As regards specifically the legal framework on Ceuta and Melilla, the Court concluded that the special regime foreseen is constitutional because it is in line with the ECtHR's jurisprudence on the material execution of a rejection at the border. Nevertheless, the Court underlined the importance of judicial control and effective remedies to appeal a rejection at the border. In addition, the Court stated that a rejection decision at the border should be issued in light of all the guarantees provided by national and international law, and that the procedure for allowing or refusing legal entry to Spain must be real and effective. The Court further held that law enforcement officials have to pay particular attention to vulnerable groups (i.e. children, pregnant women and elderly persons). See the decision at: Tribunal Constitucional, Recurso de inconstitucionalidad STC 2015-2896, 19 November 2020, available in Spanish at: <https://cutt.ly/VhYglhu>; Tribunal Constitucional, NOTA INFORMATIVA Nº 108/2020. El Pleno del TC avala la constitucionalidad de la ley de protección de la seguridad ciudadana de 2015 salvo las grabaciones "no autorizadas" a la policía, 19 November 2020, available in Spanish at: <https://cutt.ly/EhYgLWZ>. Following the decision, more than 80 NGOs asked the Government to "put an end to such practices, at least up until a legislative framework is adopted in line with the Constitutional Court's requirements.

**France:** Reports of people being refused entry without their protection needs being taken into account at the Italian border persisted in 2020, as confirmed by the High administrative court (Council of State) in a decision of 8 July 2020 in which it reminded the State of its legal obligations in matters of asylum at the border. The Council of State concluded that by refusing the entry to the territory the authorities had manifestly infringed the right to asylum (Council of State, Decision n°440756, 8 July 2020, available in French at : <https://bit.ly/3acd5QQ> )

Moreover, in a decision issued in November 2020, the Council of State indicated that European law does not allow to issue a refusal of entry to a foreigner arrested while crossing an internal border or close to it, nor does it automatically deprive an asylum seeker from reception conditions i.e. accommodation. The rules from Return directive must apply. (Council of State, Decision n° 428178, 27 November 2020, available in French at : <https://bit.ly/3ac7REC>)

In December 2020, the administrative court of Marseille suspended the decision of the Prefect prohibiting access of NGOs to the place where migrants are kept at the border in Hautes-Alpes. A similar decision has been issued by the administrative court of Nice regarding access to the police station in Menton, but a new decision issued by the Prefect continues to deny the access to NGOs. In 2020, French Administrative courts have regularly condemned the Prefecture for its illegal practices at the border violating the rights of the children. (See e.g. Administrative Court of Nice, Orders n° 2000856, 2000858, 24 February 2020 ; Administrative Court of Nice, Orders n° 2000570, 2000571 2000572, 7 February 2020)

**Serbia:** A landmarking ruling of the Constitution Court of 29 December 2020 involving a collective expulsion of 17 Afghans in 2017 confirmed that illegal border practices have been carried out by the authorities. This decision is the first official recognition that relevant state authorities deny access to the territory and carry out collective expulsions in practice. (Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>).



**Croatia:** The reports on chained pushbacks by Croatia were confirmed by a court decisions. As reported by the Border Violence Monitoring Network (BVMN), a coalition of 14 organisations monitoring pushbacks and other human rights abuses in the Western Balkans, a ruling from the Court of Rome has been released in January 2021, finding in favour of an applicant who was subject to an illegal chain pushback from Italy, via Slovenia and Croatia, to Bosnia-Herzegovina. (Court of Rome, N.R.G. 56420/2020, available at: <https://bit.ly/3rHI8eP>)

**Slovenia:** Two cases in relating to incidents occurring at the border were issued in 2020:

- A first judgment was also made by the Administrative Court in a case of a Moroccan citizen who applied for international protection in Slovenia and was rejected. After the asylum procedure was finished he was returned to Croatia based on the bilateral readmission agreement and subsequently to Bosnia and Herzegovina. The applicant started a subsidiary judicial procedure by filling a complaint before the Administrative Court alleging violation of his human rights. The Administrative Court ruled that in the procedure that the applicant was unable to object his return based on the prohibition of non-refoulement and did not have an effective legal remedy since he was not issued with a written decision. The Ministry of Interior appealed against the decision to the Supreme Court which found that the fact that a written decision was not issued to the applicant was not unlawful. The case was referred to the Constitutional Court on the initiative of the Ombudsman. (Supreme Court Decision, I Up 21/2020, 8. July 2020)
- A first judgment from the Administrative Court was also made in a case concerning a Cameroonian national in 2020. The Cameroonian national crossed the Slovenian border in August 2019 with the intention of applying for asylum in Slovenia. The applicant claimed that he had expressed the intention of applying for international protection several times while in the police procedure. The police did not register his intention and did not refer him to the preliminary procedure. Instead, he was taken to the Croatian border and returned to Croatia on the basis of the readmission agreement. The Croatian police then returned him to Bosnia and Herzegovina. The Administrative Court found that the police had violated the prohibition of non-refoulement, the prohibition of collective expulsion, and the right to access the asylum procedure by returning the applicant to Croatia on the basis of the readmission agreement. It also decided that Slovenia should allow the applicant to enter the territory and apply for international protection, and that the applicant should be paid 5000 euros in compensation. The decision was annulled by the Supreme Court and returned to the Administrative Court. In the new procedure the Administrative Court decided again that the Slovenian authorities had violated the prohibition of non-refoulement, the prohibition of collective expulsion and the applicant's right to access the asylum procedure. The Ministry of the Interior appealed the decision again and the case is currently before the Supreme Court. (see respectively: Administrative Court, Decision, 1490/2019, 22. June 2020; Supreme Court Decision, I Up 128/2020, 28. October 2020; Administrative Court Decision, I U 1686/2020, 7. December 2020).

### Use of videoconferencing

**Netherlands:** There has only been one case in which the asylum seeker argued that he was put at a procedural disadvantage because of the use of a videoconference interview instead of a physically attended interview. According to the Regional Court of Utrecht, the Secretary of State (IND) gave sufficient reasons as to why he could suffice with a video interview instead of an interview in person. The fact that this way of conducting an interview is different from the usual way - because of the lack of direct contact - does not mean that this method does not meet the (minimum) requirements, according to the Court. Nor has it emerged that the third-country national would have made other statements during an interview in person than during an interview via video connection. The Court has also not found that the third-country national did not understand the interpreter and / or the person who conducted the interview (Regional Court of Utrecht, Decision No NL20.13775, 5 January 2021)

**Belgium:** In light of the covid-19 sanitary measures, the CGRS announced in November 2020 that, in certain cases, it would conduct interviews with people residing in open reception centres through videoconference. The aim was to introduce interviews by videoconference on a structural level. However, civil society organisations instituted an urgency procedure before the Council of State against this decision, arguing the CGRS had no legal competence to take this decision. In a judgment of 7 December 2020, the Council of State suspended the decision, ruling that the CGRS had indeed overstepped its competences. Any adaptations of

the conditions of the personal interview ought to be taken by Royal decree or law. (Council of State judgment no. 249 163 of 7 December 2020)

In one later judgment, the CALL extended the ruling of the Council of State to the longstanding practice of interviews through videoconference for people residing in closed detention centres given that, here too, that practice was based solely on a CGRS decision. The CGRS now expressed its intention to recommend the Secretary of State to take legal initiative to ground interviews through videoconference in the Royal Decree. (CALL judgment no. 247 396 of 14 January 2021.)

### Right to an effective remedy

**Switzerland:** In a leading decision of June 2020 the Federal Administrative Court ruled that, given the different deadlines for appeal applicable to the different procedures, a wrong assessment of whether or not a case is a complex one needing assignment to the extended procedure may constitute a violation of the right to an effective remedy. (Federal Administrative Court E-6713/2019 of 9 June 2020).

A case needs to be considered complex and requiring an extended procedure if a second interview on the grounds for asylum is necessary, if the applicant has submitted a large amount of evidence pieces or if further clarifications need to be mandated in the country of origin. (See e.g. Judgements of the FAC E-3447/2019 of 13.11.2019, c. 5.3.2, E-244/2020 of 31.01.2020, c. 3.7, E-5850/2019 of 21.01.2020, c. 8.4; 9, D-6508/2019 of 18.12.2019, c. 5.6.)

The extended procedure also needs to be ordered when the deadlines cannot be met, for example when the medical situation of the applicant could not be sufficiently assessed, and especially if the asylum seeker is still residing in a federal asylum centre after 140 days. (See for example judgement E-3447/2019 of 13.11.2019 or E-5490/2019 of 5.11.2019)

### Dublin procedure

**Belgium:** In February 2020 the Immigration Office started a new practice with regards to the organisation of the voluntary return procedure for applicants who had received a negative Dublin transfer decision with order to leave the territory (annex 26quater). Upon receiving this decision, applicants had to fill in a 'voluntary return form', confirming they would cooperate with their transfer to the responsible member state, and send this back to the Immigration Office within ten days. If they failed to do so, the transfer deadline would be extended from 6 to 18 months. In July 2020 the CALL ruled this practice to be in conflict with the CJUE Jawo judgement and its definition of the term 'absconded'. Based on this judgement, the Immigration Office ended this practice altogether in July. (CALL, Decision No 237903, 2 July 2020 and Myria, Contact Meeting 16 September 2020, paragraph 16)

As regards transfers, they were suspended to Italy at the height of the COVID-19 pandemic. Transfers started again in the summer. In July, the CALL suspended a decision by the Immigration Office because it did not consider the risks imposed by the pandemic in Italy on the reception and sanitary conditions for AIP. (CALL, Decision No 238 756, 22 July 2020)

In two cases of August, however, the CALL found that the applicants did not demonstrate that the situation of COVID-19 in Italy constituted a real risk of inhuman or degrading treatment for them specifically. (CALL, Decision No 239 671, 13 August 2020; No 239 854, 19 August 2020)

**Sweden:** On 26 February 2020, the Migration Court of Appeal found in the case MIG 2020:4 that a decision by the Migration Agency to not take charge an asylum seeker upon request from another member state cannot be appealed. In the case, the Migration Court of Appeal also rejected a request from the individual concerned that the Court should request a preliminary ruling from the Court of Justice of the European Union, despite courts in Germany and the UK having found that asylum seekers do have a right to appeal rejections of take charge requests. (Migration Court of Appeal, MIG 2020:4, 26 February 2020, see EDAL summary at: <https://bit.ly/3bN6BZ>).

**Ireland:** In a judgment delivered on 24 July 2020, Justice Charleton held that the discretionary power established pursuant to Article 17 had not been vested in the International Protection Office and in turn, the International Protection Appeals Tribunal, by virtue of Regulation 3(1) (a) of the EU (Dublin System) Regulations 2014. Consequently, it is now evident that the Minister for Justice retains sole discretion in

considering the transfer of applications pursuant to Article 17 of the Dublin III Regulation. (N.V.U & Ors -v- The Refugee Appeals Tribunal & Ors [2020] IESC 46, available at: <https://bit.ly/3nJhCyZ>)

Following the ruling, the precise position regarding the procedure for making an appeal pursuant to Article 17 remains ambiguous. In this regard, the practice of the Irish Refugee Council Independent Law Centre has been to make ad-hoc submissions on behalf of clients directly to the Minister for Justice. Following engagement with the Department of Justice, the Dublin Transfer Unit has indicated in correspondence that the Minister for Justice is currently in the process of establishing a procedure to deal with applications pursuant to Article 17.

**Switzerland:** In a leading case judgment, the Federal Administrative Court stated that asylum seekers in Dublin procedures can evoke Article 8 ECHR if they have family members with a temporary admission in Switzerland. The status of temporary admission will then be taken into account as one of the factors when deciding on the balance of interests in the sense of Article 8 (2) ECHR. (Federal Administrative Court, Decision E-7092/2017, 25 January 2021.) This is a new development for Dublin constellations, as Swiss practice in other areas generally considers a “stable residence status” in Switzerland as a prerequisite for evoking Article 8 ECHR and thus for examining Article 8 (2) ECHR, a temporary admission usually not being considered stable enough (except in special individual circumstances).

On 11 February 2020 the Court has made a reference judgement on the question of systemic deficiencies in Bulgaria. Although the Court itself explained in a very detailed manner the problems in the Bulgarian asylum system, it concluded that there were no systemic flaws in the asylum procedure and reception conditions in Bulgaria which would justify a complete suspension of transfers to that country. A case-by-case examination will be required to determine whether or not the transfer to that country of a particular asylum seeker should be suspended. The court also mentioned the possibility to request individual guarantees from the Bulgarian authorities. (Federal Administrative Court, Decision F-7195/2018, 11 February 2020)

In April 2020, the court ruled, in a case concerning a family, that the SEM had not sufficiently examined the reception conditions in Bulgaria and would need to require individual guarantees of adequate accommodation for the family. (Federal Administrative Court, Decision D-5126/2018, 15 April 2020)

In April 2020, Italian authorities provided a new list of accommodation centres that were specific for families, but the Court stated that this was not sufficient individual guarantee within the meaning of *Tarakhel* case law. (Federal Administrative Court, Decision F-4872/2020 of 5 November 2020, c. 4.4.) In 2020, a number of other cases were referred back to the SEM for further instruction with the requirement of obtaining individual guarantees from Italian authorities (Federal Administrative Court, Decisions D-4067/2019 of 14.01.2020, D-1869/2019 of 22.01.2020, D-552/2020 of 5.02.2020, E-6810/2016 of 11.03.2020, F-2751/2019 of 17.03.2020, D-5952/2020 of 4.12.2020.)

**Netherlands:** Several rulings related to the Dublin procedure were issued by Dutch Courts in 2020:

- In 2020 the Council of State ruled again that as to the application of Article 17 of the Dublin Regulation, the Courts should limit themselves to testing the decision-making by the State Secretary against the requirements set by the law. The Courts should refrain from substituting their own judgment for that of the State Secretary (Council of State, ECLI:NL:RVS:2020:545).
- In 2020, the Council of State also ruled on the question whether there may be indirect refoulement by transferring an asylum seeker to the responsible Member State. According to the Council of State, the fact that Dutch and Swiss policy, regarding protection against refoulement for illegally traveling Eritreans, differs does not mean that the State Secretary cannot rely on the principle of mutual trust concerning Switzerland. Since the illegally traveled Eritrean has failed to demonstrate that he will be forcibly deported by the Swiss authorities, the Council of State considers that there is no risk of indirect refoulement by transferring him to Switzerland. According to the Council of State this concerns an *acte clair*, as a result of which it is not necessary to submit a preliminary question to the European Court of Justice. According to the Council of State, it follows from CJEU case law that any shortcomings must reach a particularly high threshold of seriousness, in order to assume a risk of (indirect) refoulement exists. (Council of State, ECLI:NL:RVS:2020:2592, 4 November 2020.)
- According to the Council of State Covid-19 is a temporary, de facto impediment to the transfer of the

asylum seeker to the responsible authorities, which does not alter the determination of (in this case Italy as) the responsible Member State. (Council of State, ECLI:NL:RVS:2020:1032, 8 April 2020)

- In a case where the receiving Member State stated that transfer could only take place under the condition that the asylum seeker would be quarantined on arrival, the Regional Court ruled that the interests of the State Secretary in implementing the Dublin Regulation weigh more heavily than the interests of the asylum seeker in avoiding quarantine. (Regional Court Arnhem, ECLI:NL:RBDHA:2020:6250.
- In two judgments made on the same day, the Council of State perpetuated its case law in 2020 and concluded that no guarantees from the Italian authorities were necessary prior to transfer regarding a single mother and her baby and a psychologically particularly vulnerable man. (Council of State, ECLI:NL:RVS:2020:987, 8 April 2020 and Council of State, ECLI:NL:RVS:2020:986, 8 April 2020). It is worth noting that the Regional Court Haarlem does not follow the case law of the Council of State regarding the interpretation of the Tarakhel judgment. Contrary to the Council of State, the Court considers the requirements set by the ECtHR in Tarakhel relevant as to the question whether the reception conditions in Italy are adequate, given the special vulnerability of the asylum seeker and her son. (Regional Court Haarlem, ECLI:NL:RBDHA:2020:13014.)
- At the beginning of January 2021, a request for a preliminary ruling was made by the Regional Court Haarlem (full bench panel). The court was faced with the question whether an asylum seeker has the right to bring an effective legal remedy against the rejection to take him/her over based on Article 8, second paragraph, of the Dublin Regulation. (Regional Court Haarlem, ECLI:NL:RBDHA:2020:12927, 17 January 2021)

### Subsequent applications

**Ireland:** On 13 October 2020, the Supreme Court of Ireland handed down a judgment in the case of *Seredych v. The Minister for Justice* [2020] IESC 62. This case concerned the question of whether the Minister for Justice and Equality is obliged to revoke a deportation order or otherwise facilitate a person to enter the State, in circumstances where that person has been granted consent to make a subsequent application for international protection under section 22 of the International Protection Act 2015. Justice Baker, giving judgment for the Court, adopted the analysis of the Court of Appeal of England and Wales in *R (on Application of AB) v. The Secretary of State for the Home Department* [2018] EWCA Civ 383, which indicated that there is nothing within the Procedures Directive (Directive 2013/32/EU) that obliges a Member State to readmit to its territory an applicant who had previously chosen to leave the State while their application remained pending. (*Seredych v. The Minister for Justice* [2020] IESC 62, available at: <https://bit.ly/3ssE96R>)

**Netherlands:** On 31 August 2020, the Regional Court of Utrecht ruled that the Secretary of State (IND) had not given sufficient reasons for not conducting an interview with an asylum seeker who had lodged a subsequent application. (Regional Court of Utrecht, Decision No NL20.9117, 31 August 2020).

**Malta:** The International Protection Agency created a standard form that applicants or their representatives need to fill in order to file a subsequent application. This form is meant to facilitate the filing of such applications by exempting applicants to draft submissions.

### First country of asylum

**Ireland:** In July 2019, the Irish High Court referred three questions to the CJEU regarding the application of this concept in *M.S. (Afghanistan) v. The Minister for Justice and Equality*; *M.W. (Afghanistan) v. The Minister for Justice and Equality*; *G.S. (Georgia) v. The Minister for Justice and Equality*, following the Minister's refusal of the appellants' applications for international protection on the grounds that they had benefitted from subsidiary protection from another state. Delivering judgment on 10 December 2020, the CJEU determined that Article 25(2) of the Procedures Directive 2005 must be interpreted as not precluding the enactment of legislation in a Member State which render inadmissible an application for international protection in circumstances whereby the applicant benefits from subsidiary protection in another Member State. (Case C-616/19, *M.S., M.W. and G.S. v. Minister for Justice and Equality*, ECLI:EU:C: 2020:1010, available at: <https://bit.ly/3iBvHhc>)

## Vulnerable groups

**Belgium:** In a judgment of 22 October 2020, the CALL annulled a decision of the CGRS in a case concerning a woman with important psychological problems. On the basis of the psychological reports provided by the applicant and mentioning inter alia symptoms of posttraumatic stress disorder, the CGRS had decided she had particular procedural needs. During the personal interview, the woman had frequently mentioned she felt unwell and she wanted a break. Each time, a break was allowed. However, the interview had lasted 6 hours in total, whereas the internal charter of the CGRS prescribes a personal interview of 4 hours, in exceptional cases to be prolonged with maximum 30 minutes. The CALL judged that given the psychological vulnerability of the woman, a personal interview of 6 hours was inadequate to properly assess the credibility of her story. (CALL, Decision No 242762, 22 October 2020)

**Sweden:** On 22 December 2020, the Migration Court of Appeal issued a ruling concerning a 14 year old child born and raised in Sweden. The Court found that his expulsion was in breach of the UN Convention on the Rights of the Child and that it was unproportionate given the child's strong connection to Sweden (Migration Court of Appeal, Decision MIG 2020:24, 22 December 2020).

**Spain:** In a decision issued in June 2020, the Spanish High Court (Tribunal Supremo) reiterated the necessity to ensure the validity of the documentation issued by Embassies and Consulates to children, in light of the principles and guidance made by the UN Committee on the Rights of the Child on age-assessments in Spain. It is hoped that the practice will change and that the Public Prosecutor for Minors will stop systematically denying the validity of original documentation. (See: Tribunal Supremo, Sala de lo Civil, Decision nº 307/2020, 16 June 2020, available in Spanish at: <https://bit.ly/38z1Na0>)

**Switzerland:** European Court of Human Rights ruled in November 2020 that Switzerland had violated art. 3 ECHR in the case of a Gambian homosexual person who faced removal to Gambia. The European Judges took specific issue with the fact that the Swiss authorities had simply gone by the assumption that the applicant would have been able to live discretely in case of removal to the country of origin, furthermore benefitting from the improved situation for LGBTI-people since the election of a new, more LGBTI-friendly president in 2016. This had led the Swiss authorities to completely overlook whether the Gambian authorities would be able and willing to protect LGBTQI\* people against ill treatment by non-State actors. On the contrary, the Court underlined that the applicant's sexual orientation could still be discovered in case of return, and that the Swiss courts had failed to sufficiently assess the availability of State protection against acts of persecution stemming from non-state actors, leading to a violation of art. 3. (ECHR, B and C v. Switzerland, 17 November 2020 (application nos. 43987/16 and 889/19) See EDAL summary at: <https://tinyurl.com/y6hvo8ek>)

**Netherlands:** In a recent judgment, the Council of State confirmed that the Secretary of State (IND) should have investigated appropriate forms of information gathering, taking into account the medical history of the asylum seeker. The file showed that the asylum seeker could not be interviewed by the IND for medical reasons, which should have led the Secretary of State to involve the Medical Advice Office (Bureau Medische Advisering), for example. The State Secretary could not suffice with simply asking the asylum seeker to demonstrate his need for international protection in an alternative manner. (Council of State, Decision No 202001510/1, ECLI:NL:RVS:2020:2057, 26 August 2020)

**United Kingdom:** In January 2020 a judge ruled that although the local authority was not legally bound by the 'over 25' threshold as the Home Office was due to BF (Eritrea) nevertheless the abbreviated assessment in this case was judged to be unlawful as it failed to adequately acknowledge the potential margin for error. (AB v Kent County Council EWHC [2020] 109 (Admin), available at: <https://bit.ly/3cvpfoa>) A summary of some of the key age related Judicial Reviews of 2020 was published in December. (Age assessments in 2020; A year in review, Doughty Street Chambers <https://bit.ly/3pfLp3X>)

## Case-law on specific nationalities

**France:** Since a CNDA judgment of March 2018, Afghan nationals widely benefitted from protection. The CNDA held that the situation of indiscriminate violence in Kabul is of such degree for Article 15(c) to be triggered by a person's mere presence. However, in a Grand chamber decision of 19 November 2020, the



CNDA changed its position, now considering that the level of violence in Kabul is not high enough to justify a protection for all people arriving at airports. (CNDA, Decision N° 19009476 R, 19 November 2020 available in French at : <https://bit.ly/2KCsYXX>; CNDA, Decision N° 18054661 R, 19 November 2020, available in French at: <https://bit.ly/3d5uJsB>.)

This means that individual circumstances need to be assessed again and puts Afghan nationals at risk of return and refoulement. It is also likely to have important consequences in practice given that Afghans have been the first nationality of applicants in France since 2018 and recent Eurostat statistics indicate that a total of 17,520 applications for international protection of Afghan nationals were pending as of the end of December 2020. The new CNDA ruling is thus likely to impact their situation in the future.

**Slovenia:** Following the change of practice of the determining authority to stop automatically granting international protection to Eritreans in 2019, appeals of Eritrean nationals were lodged in front of Administrative Courts. In 2020 the Administrative Court made first decisions on the rejected applications of Eritrean applicants. The Administrative Court ruled that these decisions were lawful and that the applicants did not meet the conditions for international protection. In one case, the Court stated that there are systematic deficiencies regarding obligatory army service in Eritrea, since individuals are subjected to unlimited army service and forced labour. However, in the opinion of the Court, this obligatory army service does not amount to persecution, since all Eritreans are subjected to such treatment and therefore the applicant does not meet the conditions for international procedure as they are not a member of a particular social group. (Administrative Court Decision, I U 7/2020, 10. June 2020)

The Administrative Court stated in another case that general inhumane and degrading treatment was applied to all prisoners in Eritrea, and therefore the applicant does not meet the condition for subsidiary protection, since the discriminatory nature of the treatment of certain groups of prisoners could not be established. (Administrative Court Decision, I U 117/2020, 15. May 2020).

**Belgium:** Since July 2020, the CALL has annulled several decisions by the CGRS, ruling that the information on UNRWA it used in assessing asylum applications from Gazan Palestinians was outdated. As a result, the CGRS could on the basis of that information not correctly assess whether UNRWA could still provide the necessary protection in Gaza. After an update of the country information by the CGRS in the beginning of 2021, the CALL has rendered several arrests in the course of February and March 2021 granting the refugee status to UNRWA-registered applicants from Gaza, stating that the difficulties UNRWA is currently facing makes the protection and assistance it is supposed to offer to refugees in Gaza ineffective. (For example: CALL, Decision No 249 780, 24 February 2021; Decision No 249 955, 25 February 2021)

Belgium: On 5 November 2020, the CALL aligned its case law with the CGRS policy in three judgments rendered in Unified Chambers. The CALL acknowledged that government protection in El Salvador is not always available or effective, but is nevertheless not absent either. The standard of proof to demonstrate the lack of efficient government protection is therefore low, but should nonetheless be provided in every individual case. (CALL judgments No 243 676; 243 704 and 243 705 of 5 November 2020.)

Furthermore, it ruled that the situation in El Salvador – though precarious and riddled with targeted violence – is not one of “indiscriminate violence” as defined in art. 15 (c) of the Qualification Directive as a condition to grant subsidiary protection. A fear for a return to El Salvador is in itself not sufficient to grant an applicant protection in Belgium according to the CALL. Only in specific individual circumstances can that suffice to be granted asylum. However, in three judgements rendered on 25 January 2021, the CALL annulled the decisions of the CGRS refusing international protection to Salvadorian applicants, stating that the country information about the risk for Salvadorians upon return to their country after having left because of extortion by the gangs, is too general and does not allow a concrete assessment of the precise risk incurred by these applicants upon return. (CALL judgments No 248 102; 248 104 and 248 105 of 25 January 2021)

### Reception conditions

**France:** The issue of homelessness in France has also been scrutinised by the European Court of Human Rights (ECtHR). On 2 July 2020, the ECtHR published its judgment in *N.H. and others v France* concerning the living conditions of homeless asylum applicants as a result of the failures of the French authorities. The case concerns 5 single men of Afghan, Iranian, Georgian and Russian nationality who arrived in France on separate occasions. After submitting their asylum applications, they were unable to receive material and financial

support and were therefore forced into homelessness. The applicants slept in tents or in other precarious circumstances and lived without material or financial support, in the form of Temporary Allowance, for a substantial period of time. All of the applicants complained, inter alia, that their living conditions were incompatible with Article 3 ECHR. (European Court of Human Rights published, N.H. and others v France (Application No. 28820/13), 2 July 2020, see EDAL summary at: <https://bit.ly/3ppxQhw>)

However, in the case of B.G. and others v. France, the ECtHR unanimously ruled on 10 September 2020 that, inter alia, the living conditions in a French tent camp on a carpark did not violate Article 3 ECHR. (ECtHR, B.G. and others v. France (Application no. 63141/13), 10 September 2020, see EDAL summary at: <https://bit.ly/37eckGi>)

**Switzerland:** The reception standards are the same as for asylum seekers of other nationalities with the notable exception of the distribution of pocket money. Thus, nationals of countries exempt from the visa requirement do not receive the 3 CHF granted by the SEM as pocket money to asylum seekers housed in the federal centres. In 2020, the Federal Administrative Court has observed that an automatic application of this rule could lead to a violation of the constitutional principle of equality before the law in the case of a person claiming a legitimate need for protection – although in the present case the Court concluded that the differential treatment was justified. (Decision F-3150/2018 of 20 July 2020, c. 7.6.)

**Netherlands:** During the rest and preparation period an individual is already considered an asylum seeker under the RVA because this person has made an application for asylum. So already during the rest and preparation period an individual is entitled to reception. However, daily allowances are reduced during the rest and preparation period. Due to the long waiting times starting from 2019, this has become an issue. The RVA distinguishes between asylum seekers awaiting the start of their asylum procedure and asylum seekers awaiting the decision. On 29 July 2020, the Council of State ruled that this distinction is permitted by the Reception Conditions Directive. The applicants pointed to Article 2(f) RCD for arguing that the distinction made by the RVA is not in accordance with EU-law. Article 2(f) RCD states that ‘material reception conditions’ include reception provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance. However, the Council of State concluded that this article in the RCD is merely an article giving definitions and cannot be used as a legal basis for the right to receive a financial allowance for daily expenses. Therefore, the Council of State found that the distinction made in the RVA, resulting in not giving daily allowances to asylum seekers in the RVT, is not in contradiction with EU-law (Council of State, ECLI:NL:RVS:2020:1803, 29 July 2020).

Moreover, the Council of State ruled that asylum seekers, whose application is deemed inadmissible because they received protection in another EU-member state, had the right to reception during the period following the inadmissibility decision in which they were able to appeal. (Council of State, ECLI:NL:RVS:2020:8, 6 January 2020).

**United Kingdom:** The provision of suitable accommodation to people with disabilities, in particular the delays in providing such accommodation, was found to be unlawful in a case in December 2020. (AA v Home Office <https://bit.ly/3buURvU>) A challenge to the provision of unsuitable accommodation to pregnant women and mothers of new-borns is ongoing. (<https://bit.ly/30v95qi>)

### Special centres for uncooperative asylum seekers

**Switzerland:** Although the law did not foresee a separate remedy against such a decision to place an individual in a special centre for uncooperative asylum seekers, the Federal Administrative Court has ruled that it must be possible to contest such decision within 30 days. In the same judgement, the Court stated that placement in a special centre constitutes a significant restriction of liberty but not deprivation of liberty. (Federal Administrative Court, judgement F-1389/2019 of 20 April 2020.)

### Freedom of movement

**Spain:** As documented in the previous updates of the Spanish AIDA report, there has been extensive case law and litigation on the right to freedom of movement in recent years, with various Spanish courts regularly recognising the right to freedom of movement of asylum seekers. By way of illustration, the limitation to the



right to freedom of movement across Spanish territory has been declared unlawful by Spanish courts in more than 18 cases from 2018 to 2020. More recently, the TSJ of Madrid issued a decision in January 2020 according to which a restriction to access all the Spanish territory has no legal basis. Thus, a red card indicating 'valid only in Melilla' is illegal. (Tribunal Superior de Justicia de Madrid, Decision nº 26/2020, 14 January 2020, available in Spanish at: <https://cutt.ly/zYVMc0;>)

In practice, however, the authorities continued to restrict asylum seekers' access to the mainland up until 2020. This means that applicants must stay within the CETI, and that they are not free to move outside the two enclaves. This also encourages potential asylum seekers to wait before lodging their asylum claim, as persons may prefer to wait to be transferred to the peninsula as "economic migrants" and lodge their application for international protection on mainland in order to benefit from a greater freedom of movement and avoid staying confined within the two enclaves. There is a general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly denounced and criticised by human rights organisations.

In two landmark decisions issued in July 2020, the Supreme Court (Tribunal Supremo) concluded that neither domestic nor EU law contain any provisions that justify limiting asylum seekers' right to move freely across Spanish territory. Thus, the judgement explicitly recognises the right to free movement of asylum seekers from Ceuta and Melilla and declares the practice of the Ministry of Interior unlawful. (Tribunal Supremo, Sala de lo Contencioso, STS 2497/2020, 29 July 2020, available in Spanish at: <https://bit.ly/3bBeLWw> and Tribunal Supremo, Sala de lo Contencioso, STS 2662/2020, 29 July 2020, available in Spanish at: <https://bit.ly/2N6iqBt>.)

However, the implementation of the ruling in practice remains contested. In August 2020, many asylum seekers in Ceuta protested as they were not able to leave Ceuta, thereby demonstrating that the Supreme Court's judgment was not being applied in practice. The Ministry of Interior reportedly increased its requirements to allow transfers to the mainland, e.g. by asking asylum seekers to demonstrate that they can rely on someone on the mainland to provide housing and support. This affected around 100 asylum seekers. In October 2020 a Yemeni asylum seeker, trapped in Melilla for around a year, was denied access to a boat from the enclave to mainland. The Jesuit Migrant Service also denounced in its last report of December 2020 that the police has continued to impede embarkation of asylum seekers in Melilla.

These issues also occurred on the Canary Islands and in February 2021 the Spanish Ombudsman reminded the Ministry of Interior its duty to ensure asylum seekers' freedom of movement within the national territory. He addressed "a reminder of legal duty" to the Directorate General of the Police, pointing to "its legal duty to prevent any limitation of the fundamental rights to free movement and residence of applicants for international protection who wish to move from the autonomous cities of Ceuta and Melilla or from the autonomous community of the Canary Islands to the mainland". The reminder responds to a complaint raised in early 2020 following the prevention of departure to the mainland of an asylum seeker in Gran Canaria. The Spanish Ombudsman also asked the National Police to provide information on the reasons to block migrants from reaching the Canary Islands as well as the impossibility to access flights and boats to mainland, even for persons holding identification documents and passports.

In February 2021, the Supreme Court (Tribunal Supremo) established again the right to free movement of asylum seekers from Melilla, in a case brought by the Jesuit Migrant Service (Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decision nº 173/2021, 10 February 2021, available in Spanish at: <https://bit.ly/3qpUOqa>) In light of that, the NGO called the General-Commissariat for Foreigners and Borders of the National Police to fully recognise the fundamental right of asylum seekers to freely move from Ceuta and Melilla, and complained about the restrictions imposed by the Police on this right.

### Access to the labour market

**Ireland:** On 14 January 2021, in a judgment delivered in the case of K.S. & Ors v. The International Protection Appeals Tribunal & Ors, the Court of Justice of the European Union determined that Article 15 of Directive 2013/33 (Reception Conditions Directive) must be interpreted as precluding national legislation whereby such legislation excludes an applicant for international protection from accessing the labour market on the basis that the applicant has been subject to a transfer decision under the Dublin III Regulation. (Case C-322/19 and

C-385/19, K.S. and Ors v. The International Protection Appeals Tribunal and Ors, ECLI:EU:C: 2021:11, available at: <https://bit.ly/2NndwQL>)

Following the ruling, persons subject to a Dublin transfer have the right to enter the labour market in Ireland whereby no decision on their substantive protection claim has issued within nine months and the individual is not responsible for the delay in progressing their transfer. Taking legal action to challenge the transfer will not be regarded as a delay attributable to the applicant in the circumstances. Approximately 223 judicial review cases, involving 281 persons, were stayed pending the decision.

**United Kingdom:** The lack of discretion in the policy allowing the Home Office to grant permission to take up employment not on the -shortage occupation list was challenged successfully at the end of 2020. Two cases, one specifically relating to a refugee who was also a victim of trafficking and a refugee who was not successfully challenged the fact that discretion to grant such permission had never been used; therefore the policy was declared unlawful. No change has yet been made (See respectively: LJ (Kosovo) v Secretary of State for the Home Department, available at: <https://bit.ly/3a6wfYt>, <https://bit.ly/38o3LJt>)

### Detention

**France:** On 25 June 2020, the ECtHR condemned France about a situation that take place in 2013. Two children had been arbitrarily associated with an unrelated adult in respect of their return order, and were also detained in the same location and conditions as other adults. Moreover, it was apparent that no administrative detention order had been issued to the children, but it was made in conjunction with the same adult. As a result, the Court held, inter alia, that the children had effectively entered a legal vacuum without the possibility to challenge their removal and without the accompaniment of an adult able to legally act on their behalf. (ECtHR, Moustahi v France, Application No. 9347/14. 25 June 2020)

**Switzerland:** Coercive detention under Article 78 FNIA can be ordered when a legally enforceable removal or expulsion order cannot be enforced due to the personal conduct of the foreigner. It is aimed to persuade the person to change his or her behaviour in cases where the enforcement of removal is impossible without his or her cooperation. In a recent case in relation with the COVID-19 pandemic, the Federal Supreme Court has clarified that coercive detention is only lawful when removal is objectively possible in foreseeable future, the level of cooperation of the foreigner being irrelevant in this evaluation. (Judgement of the Federal Supreme Court C\_408/2020, 21 July 2020)

**Switzerland:** According to Article 81(2) FNIA, “detention shall take place in detention facilities intended for the enforcement of preparatory detention, detention pending deportation and coercive detention. If this not possible in exceptional cases, in particular because of insufficient capacity, detained foreign nationals must be accommodated separately from persons in pre-trial detention or who are serving a sentence”. This formulation was introduced on 1st June 2019 in order to align the provision with Article 16(1) of the Return Directive and sets a clearer framework for immigration detention, which requires specialised facilities. In a judgement rendered in March 2020, the Federal Supreme Court analysed this new legal provision and stated that detention for immigration related purposes must take place in facilities especially dedicated and conceived for this scope and that detention in a non-specialised facility – even in a separated section – is only admissible for short time, in exceptional and well-founded cases. (Decision of the Federal Supreme Court 2C\_447/2019, 21 March 2020)

**Netherlands:** The Council of State has referred a question for a preliminary ruling to the CJEU on the review of the detention of aliens on the 23 December 2020 (C-704/20). The Council questions whether judges are obliged to rule of their own motion upon all the conditions of detention, even when the detainee has not complained about certain conditions. The question follows from the Mahdi-case (C-146/14) in which the Council of State has not read this obligation before. However, some regional courts did rule of their own motion that – for example – the IND or DT&V had not acted expeditiously. (Council of State, ECLI:NL:RVS:2020:3061, 23 December 2020.)

**Hungary:** From 28 March 2017 until 21 May 2020, all asylum seekers entering the transit zones of Röszke and Tompa were de facto detained, although the Hungarian authorities refused to recognise that this is detention - On 14 May 2020, the CJEU delivered its judgment in the joint cases of C-924/19 PPU and C-925/19 PPU, ruling among others that the automatic and indefinite placement of asylum-seekers in the transit zones

at the Hungarian-Serbian border qualifies as unlawful detention. A week after the judgment was delivered, the government shut down the transit zones.

- On 22 May 2020, the UNWGD delivered its Opinion No. 22/2020 concerning Saman Ahmed Haman (Hungary) based on an individual complaint. The Working Group concluded that “the detention of Mr. Hamad was arbitrary and falls within category IV (when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy).”
- On 17 December 2020 the CJEU issued a judgement in the infringement procedure case C-808/18 and ruled that Hungary by unlawfully detaining applicants for international protection in transit zones constitute infringements of EU law.

**United Kingdom:** In 2020 it was confirmed by the court that detainees held in prisons should have the same access to legal advice as those held in IRCs. This has been a long-standing issue and the government has been ordered to take action to ensure that it facilitates this. (R(SM) v the Lord Chancellor, Bail for Immigration Detainees intervening <https://bit.ly/3rKlpig>)

**Poland:** On 25 March 2020, the European Court of Human Rights published its judgment and found that the detention of the children amounted to a violation of Article 5 (1) (f). In the opinion of the Court, the conditions at the detention centre were similar to penitentiary institution, and therefore the court found the detention unlawful. Additionally, the Court noted that Polish authorities had not treated detention as a measure of last resort and did not assess the possibility of applying alternatives to detention. The Court also found that their stay in the guarded center was too long. (ECtHR, Dagmara BILALOVA against Poland, Application No 23685/14, lodged on 25 March 2014, available at: <https://bit.ly/37kQJu3>.)

**Malta:** On 29 October 2020, the Maltese Court of Magistrates ordered the immediate release of an Ivorian national, on the basis of medical reasons, stating that his detention had no basis in law. The Court underlined that it had encountered several cases in which people were detained without a legal basis and expressed its concern regarding the impact of such detention on the rule of law . (See EDAL summary: <https://bit.ly/3bICSCn>)

In November 2020, four men were released by a Maltese Court, the magistrate declaring the detention unlawful. The magistrate also condemned the policy of systematic detention because of the lack of reception space as “abusive and farcical”. These four men were disembarked in Malta in June 2020 and were put in detention without being given any official document justifying their detention . (see relevant article at: <https://bit.ly/3eG8pH3>)

**Cyprus:** In 2020 after a series of Habeas Corpus applications before the Supreme Court, 4 detainees who had been detained for reasons of “national security” were released due to their prolonged detention. (Supreme Court, Application 4/2020, 24 February 2020, available in Greek at: <https://bit.ly/3qMfTKK> ; Supreme Court, Application 64/2020, 9 July 2020, available in Greek at: <https://bit.ly/2OQnDy0> ; Supreme Court, Application 28/2020, 28 July 2020, available in Greek at: <https://bit.ly/2OqgLYk> ; Supreme Court, Application 56/2020, 15 September 2020, available in Greek at: <https://bit.ly/3bGzCaA>)

In July, the Court ordered the release of a Syrian detainee after 16 months of detention for “national security reasons”. The Supreme Court decided that the applicant’s detention was in violation of the Refugee Law because the applicant was not held for the shortest period possible and because of the administrative delays as no steps had been taken for his removal although the application for asylum had been rejected. The Court also commented that the state, as well as European Union institutions, need to identify solutions with regards to detention of third-country nationals who are considered as a threat to national security. S(upreme Court, Application 64/2020, 9 July 2020, available in Greek at: <https://bit.ly/3leuHRI>)

In September 2020, the Supreme Court ordered the release of an asylum seeker of Egyptian origin that was also detained for reasons of national security. The first time the detainee had applied for Habeas Corpus was five months after being detained and the application failed. The applicant was eventually detained for 19 months and was suspected of being a member of a terrorist organisation, without any evidence that he was active in any way. The Court found that the administration had made no attempt to assess the reason for

detention and, therefore, the element of “necessity” for his detention was not satisfied. (Supreme Court, Application 56/2020, 15 September 2020, available in Greek at: <https://bit.ly/2PZdQXc>)

In early 2021, another decision was issued by the Supreme Court on a Habeas Corpus application of a Syrian national who was detained for reasons of “national security”. The applicant had been detained for 21 months during which his asylum application had been examined and he had been excluded from Subsidiary Protection as he was considered to be a threat to national security due to his participation in a terrorist group. As he has appealed the exclusion decision, which is still pending, he is still considered to be an asylum seeker. The Court ordered his release stating that since he cannot be returned to Syria, the criminal investigation of his case was concluded on the 3/2/2020, no criminal proceedings were ordered, and no other actions have been taken in relation to the terrorist charges his detention can no longer be justified. (<https://bit.ly/3csAUoL>)

### Content of international protection

**Spain:** As regards the applicable status to resettled beneficiaries of international protection, an important decision was issued in December 2020. The High Court (Tribunal Supremo) established that refugees resettled in Spain must keep their status as refugees. It therefore reverts the decision adopted by the previous judge which denied the refugee status to four Syrian refugees resettled to Spain in 2015, by subsequently granting them subsidiary protection. (Tribunal Supremo, Decision nº 1773/2020, 17 December 2020, available in Spanish at: <https://bit.ly/3p4L7Mc>)

**Switzerland:** Between 2018 and 2020, the SEM examined and reviewed the temporary admission of 3,400 Eritrean nationals, concluding that removal was reasonable and revoking the temporary admission status in 83 cases (2,4%). 63 of these decisions have entered into force by December 2020, while six appeals were admitted and the 14 cases are still in appeal procedure. In October 2020, the Federal Administrative Court has clarified that revocation of temporary admission after such review requires an exam of proportionality taking into account the degree of integration of the person concerned. (Judgement of the Federal Administrative Court E-3822/2919 of 28 October 2020)

### Family reunification

**Ireland:** The 12-month time limit for family reunification in Ireland was the subject of a challenge of constitutionality before the Supreme Court in the case of A v. Minister for Justice & Equality & Ors, S v. Minister for Justice & Equality & Ors and I v. Minister for Justice & Equality & Ors. [2020] IESC 20. The case concerned an applicant who became estranged from her family in 2011 and travelled to Ireland as an unaccompanied minor. She subsequently applied for, and was granted, international protection in 2014. After resuming phone contact with her family in 2018, she applied for family reunification with her parents and sister but the applicant was refused on the basis that the application was not brought within the 12-month time frame specified by s.56(8). In a judgment delivered on 8 December 2020, Justice Dunne determined that the 12-month time limit established pursuant to s.56(8) of the 2015 Act was not unconstitutional nor was it incompatible with the ECHR. The Court noted in its decision that it remained open to the applicant to apply under the 2016 Family Reunification Policy Document, whereby the Minister for Justice can exercise her discretion to grant family reunification on humanitarian grounds. (A v. Minister for Justice & Equality & Ors, S v. Minister for Justice & Equality & Ors and I v. Minister for Justice & Equality & Ors. [2020] IESC 20, available at: <https://bit.ly/3oHD5JW>.)

**France:** In practice, beneficiaries and their family members face difficulties in gathering the documentation proving their family ties. In case of traditional or religious unions, they do not have any certificate of the celebration and cannot then prove they are married or partners. The same problems have been identified concerning birth certificates. Such documentation does not even exist in some countries and the delays for being issued a visa in order to come to France, in the framework of family reunification, can be very long. On 23 March 2020, the Administrative court of Nantes issued a decision concerning the refusal of the French consulate in Athens to register a family reunification request of a separated Afghan family. (Administrative Tribunal of Nantes, 23 March 2020, Decision No. 2001918, see EDAL summary: <https://bit.ly/3qxUQf>)

Due to COVID-19, family reunification was suspended for months in 2020: this situation was not foreseen in the decision listing exceptions allowing entry into France. This decision was challenged, and the Conseil d’Etat

decided in January 2021 that family reunification should not be limited in the context of health crisis. It ruled, inter alia, that this decision disproportionately infringes the right to normal family life and the best interests of the child.. Consequently a new decision was issued allowing the entry to territory to persons coming for the purpose of family reunification. (Council of State, Decisions Nos 447878, 447893, 22 January 2021, Available in French at : <https://bit.ly/37xWWol>)

**Netherlands:** In its judgments of 23 November 2020 the Council of State ruled that unaccompanied minors couldn't lodge a subsequent application for family reunification within the favourable framework if they no longer meet the age condition or unaccompanied condition. In the cases before the court the subsequent applications were lodged because, in one case, the parents were not able to leave their country to conduct DNA-research at the Dutch embassy. In the other case, the mother could reunite but the father had been missing. At the time of the subsequent applications the minor had reached the age of 18 or was taken into care by his mother respectively. The Council ruled that only subsequent applications within the regular framework were open to these (former) UAMs. The Council ruled that the circumstances as to why family reunification could not take place during the first application should be taken into account in the subsequent procedure within the regular framework. (Council of State, Decisions 201906347/1/V1 (about requirement: minor) and 201900263/1/V1 (about requirement: unaccompanied), 23 November 2020)

### Discrimination

**Ireland:** In practice, protection applicants face significant barriers accessing bank accounts due to difficulties in producing satisfactory identity documents for the purposes of anti-money laundering requirements. This situation continued in to 2020. People in the asylum process also face difficulties in accessing a driver licence. In January 2020, the Workplace Relations Commission found that denying the applicant the means to learn how to drive and therefore earn a living was "indirect discrimination". In this case, the individual's application for a learner driver licence was refused after he provided his asylum seeker's Temporary Residence Certificate, his public services card, a copy of his passport and his permission from the Minister for Justice to access the labour market. The State appealed the decision of the Workplace Relations Commission and on appeal, the applicant, whose circumstances had changed, sought only to uphold the award of compensation. The appeal was resolved on the basis that the appeal would be allowed but the RSA would make a payment of €4,000 to the applicant.

Subsequently in July 2020, the Dublin Circuit Court overturned a separate Workplace Relations Commission declaration that the refusal to issue driving licences to asylum seekers was discriminatory. This case concerned an applicant who held a full driving licence in her country of origin. She requested a learner's permit so that she could learn to drive in Ireland with a view to accessing better employment and childcare facilities. Justice O' Connor concluded that, on the basis that the respondent was in the State for the purposes of making an application for asylum, the status of her residence meant that she did not enjoy the same rights as an Irish citizen. Moreover, he did not accept that the state had discriminated against the respondent on account of her race in refusing to provide her with a licence. (See *Road Safety Authority v. A.B* [2020] IECC 3, available at: <https://bit.ly/3nGr9XJ>).

On 21 October 2020, the Department of Justice announced that legislation would be brought forward by the Minister for Transport prior to year- end in order to ensure access for asylum seekers to driving licences. In February 2021, the Minister of State at the Department of Transport confirmed that officials in the Department of Transport and the Road Safety Authority are working in close collaboration with various stakeholders to ensure the provision of drivers licences to asylum seekers. However, a definitive date for the implementation of legislation was not provided .

**Cyprus:** In September 2020, the Department of Transportation issued a circular concerning the criteria and the procedures for obtaining or renewing a driving license in Cyprus. The circular established additional requirements for non-Cypriot citizens including asylum seekers, which hindered the implementation of the Driving Licences Law. The obstacles in obtaining/renewing a driving license hinders access of asylum seekers in one of the few allowed job sectors, i.e., food delivery. Article 5 of the Driving Licences Law of 2001 (94(I)2001), which transposed article 12 of EU Directive 2006/126 on Driving Licences, requires the normal residence of the applicant in Cyprus to be 6 months to issue a driving licence, without indicating which documents can prove this, and without any referral to the residence status of the applicant. In October 2020,

the Department issued an updated circular clarifying that, because of a temporary technical problem with the issuance of the residence permits, they would accept as a residence permit a certificate issued by the CRMD.

## 17. Other important developments in 2020

### Asylum in times of emergencies

**ECRE Legal Note:** On 24 June 2020, ECRE published a Legal Note entitled ‘Derogating from EU Asylum Law in the Name of “Emergencies”: The Legal Limits Under EU Law’. The Note examines whether, and in what circumstances, Member States may lawfully bend legislative processes as a result of emergency measures and justify non-compliance with EU and International asylum obligations. The analysis is effectively presented in two sections. The first lays out the derogations which exist in EU asylum law and which Member States could potentially use as a legal basis to displace obligations under the asylum acquis. The second offers an examination of the principles that underpin the application of derogations in EU asylum law. The Legal Note is available at: [https://www.ecre.org/wp-content/uploads/2020/06/LN\\_6-final.pdf](https://www.ecre.org/wp-content/uploads/2020/06/LN_6-final.pdf)

### Asylum and the UN Treaty System

**ECRE Legal Note:** On 12 March 2021, ECRE published a legal note on ‘Asylum and the UN Treaty System’. The note aims to analyse how access to asylum can be advanced via international legal avenues, especially by focusing on the prohibition of refoulement as an imperative element of an accessible, effective and fair asylum procedure. To this end, it explores the meaning of the principle of non-refoulement under international human rights law and, in particular under the ICCPR, CAT, CEDAW, CRC, CRPD, CED and CERD. The note focuses on the standards that the monitoring bodies responsible for the implementation of each Treaty has developed in their jurisprudence, as well as through their General Comments and Recommendations. It aims to provide an analysis of these standards in the hope that it will assist in their application in national litigation and ensure compliance with international law both in policy and decision-making. In its conclusion, the note recognises that the case law of the UN Human rights treaties enriches the international understanding of asylum related guarantees around the world and widens the scope of non-refoulement by engaging the international responsibility of states to prevent serious human rights violations for every individual concerned.

The Legal Note is available at: <https://www.ecre.org/wp-content/uploads/2021/03/Legal-Note-8.pdf>

### Temporary humanitarian protection

**Malta:** The amendments to the Refugees Act formalised the Temporary Humanitarian Protection (THP) status into legal norms. This status was initially granted by the IPA to failed asylum-seekers who, for personal and specific reasons unrelated to international protection needs, were unable to return to their countries of origin. It was only a policy-based approach granting regularisation and a set of rights to the persons. Over the years, THP was granted to hundreds of people, including elderly persons, unaccompanied minors and persons suffering from chronic illness. Being only policy-based, there was a broad margin of discretion and the set of rights attached to such status was not fully clear. THP is now included in the International Protection Act. It is granted to “an applicant for international protection who does not qualify for refugee status or subsidiary protection status, but who is deemed to qualify for protection on humanitarian grounds”. The law is listing several categories of persons eligible for such status. THP is now included in the asylum procedure in the sense that the Act specifies that the decision concerning the granting of THP will be given in conjunction with the determination that the applicant does not meet the criteria of a refugee or a subsidiary protection beneficiary. The Act also mentions that no appeal shall lie from a decision by the IPA not to grant THP. THP set of rights will be similar as the ones attached to the subsidiary protection status.

NGOs reacted positively to the legalisation of such status but deplored the fact that the assessment of THP is now included in the interview for asylum, as the assessments of eligibility to these different statuses require an entirely different approach and a different set of elements, information and documents to examine. The lack of possibility to appeal was also pointed out as it leaves all discretion to the IPA. No information is available about the number of THP status granted in 2020.



### Bilateral agreements with third countries

**Spain:** Spain has signed different bilateral agreements with third countries such as Mauritania, Alegria and Morocco, in order to swiftly return individuals back. Since 2019, Mauritania has become the main country to receive deportation flights from Spain (chartered by Frontex), inter alia due to the increase of arrivals to the Canary Islands. This is based on a bilateral agreement signed back in 2003. In January 2020, a total of 72 persons from Mali, out of which at least 14 were asylum seekers, have been returned to Mauritania in the framework of a bilateral agreement with Spain, as Mauritania accepts returned migrants who have transited through its territory. One of the returned persons stated that they had not been provided food during three days; that they had been abandoned at Mali's border with Mauritania; and that they were subject to mistreatment by the Mauritanian authorities. This case of return takes part as one of the seven flights that the Spanish Ministry of Interior has been carrying out since June 2019. As denounced by different organisations, these practices amount to indirect pushbacks, are in violation with the no-refoulement principle and are contrary to UNHCR's call to not return Malians to their country of origin.

In November 2020, Spain further resumed the expulsion of migrants which had been suspended following the Covid-19 spread. The authorities returned 22 migrants to Mauritania that had arrived to the Canary Islands. Amnesty International denounced that the repatriations from the Canary Islands are carried out without guarantees. Migrants are not provided legal assistance and risk to be expelled without having the possibility to apply for international protection.

In December 2020, Algeria joined Morocco and Mauritania as third countries accepting repatriations of migrants. Algerian migrants were thus returned from Spanish CIEs, and, during the same month, Spain increased the deportation of Moroccan migrants arriving to the Canary Islands.

Following an agreement reached between Spain and Senegal, the Government announced in February 2021 that it was resuming deportation flights to Senegal by the end of the month. The agreement also foresees the reinforcement of the Spanish monitoring mechanism in Senegal against irregular migration, through the allocation of a Guardia Civil's patrol boat and an airplane.

It should be further noted that a tender of €10 million has been addressed by the Government to airlines and aims to fund exclusively deportation flights. Moreover, in 2020, the Minister of Interior announced that it was tripling financial support to African countries with the aim of stop irregular migration. In November 2020 the Government also adopted a worrying plan which aims at providing third countries (e.g. Senegal, Mauritania and Morocco) with equipment such as vessels, helicopters and airplanes in order to stop migration and increase expulsions of rejected applicants for international protection.

### Discrimination and hate crime

**Malta** In 2020, migrants were regularly blamed for COVID-19 in the public discourse. The Prime Minister himself explained in August 2020 that the drastic spike of COVID-19 cases during the summer was due to the inclusion in official statistics of rescued migrants tested positive. Such comments raised many reactions. The Medical Association of Malta promptly reacted and qualified his comments as unfair adding that "the government's decision to allow mass events like parties, despite the expert advice of the superintendent for public health, was the only cause of this spike since migrants have been quarantined immediately." The NGO Repubblika also condemned the Prime Minister's use of language, suggesting it could incite racial prejudice

**Spain:** Discrimination and hate crimes against migrants and refugees continued to be an increasing concern in 2020. In its 2019 Annual Report on Hate Crime, published in July 2020, the Ministry of Interior indicated an increase of 11,6 % of hate crimes in 2019 compared to 2018. 76.7% of these crimes are motivated by racism and xenophobia. The AIDA country reports documents several incidents of discrimination and hate crime in 2020, as well as the complaints lodged at the Public Prosecutor in this regard. developments relating to discrimination and hate crime were reported throughout 2020. A study published by the Council for the Elimination of Racial or Ethnic Discrimination (Consejo para la Eliminación de la Discriminación Racial o Étnica) on the perception of racial discrimination by its potential victims in 2020 underlines the existing institutional discrimination in multiple contexts, and the high level of exclusion existing in Spain. The report also refers the discrimination that victims face in accessing basic rights and services, such as education or health services, as well as discrimination by police.



The significant increase in arrivals to the Canary Islands has also contributed the rise of racist incidents. In the south of Gran Canaria, migrants were threatened with a machete. The Moroccan Association for the Integration of Migrants (Asociación Marroquí para la Integración de los Inmigrantes) also expressed concerns on the growing tension on the Canary Islands. Criminalisation and hate messages against migrants are spreading, and no measures are adopted to avoid such incidents. The NGO called for the transfer of migrants to the mainland. Similarly, the NGO Fundación Cruz Blanca denounced the aggression of 7 Moroccan men aged between 18 and 45 years-old within 5 days after their arrival in Las Palmas. In different parts of the archipelagos neighbours and municipalities started taking action against racism (i.e. meeting with NGOs and institutions in order to raise awareness on migration and fostering integration). The Public Prosecutor of Gran Canarias also started to investigate different messages used by certain groups to organise assaults against migrants.

Unaccompanied children also continued to face serious discrimination in Spain and to be criminalised during the year 2020. A report published in July 2020 by the Fundación Raíces collected the testimony of 55 unaccompanied children and denounces the physical and psychological assaults they have suffered under the public protection system by reception staff, the police and the security personnel. Three videos disseminated during July 2020 showed the harassment and assaults suffered by unaccompanied children while in reception facilities in Madrid. In October 2020, neo-Nazis groups organised a protest in San Blas, Madrid, including in front of an apartment accommodating unaccompanied migrant children. The protest was encouraged by the right-wing party Vox. The Network for Migration and Support to Refugees (Red de Inmigración y Ayuda al Refugiado) lodged a complaint at the Public Prosecutor Office to investigate this hate crime. The Fundación Roma Secretariat (Fundación Secretariado Gitano) also warned about the stigma suffered by Roma migrant children at schools.

The climate of hate seems to be driven by certain political parties, as described in the AIDA report. This has led to an investigation by the Spanish Ombudsman into the right wing party Vox and the Public Prosecutor also denounced several hate crime actions undertaken in 2020. Discrimination and incidents against LGBTQI+ asylum seekers have also been reported during 2020. Please refer to the AIDA report for more information on this.

## References and sources

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### 18. Please provide links to references and sources and/or upload the related material in PDF format

#### ECRE Policy Notes

- ECRE Policy Note 25 [Migration Control Conditionality: a flawed model](#), January 2020
- UNHCR/ECRE, "[Follow the Money III](#)" Solidarity: The use of AMIF funds to incentivise resettlement and relocation in the EU, March 2020
- PICUM/ECRE, Policy Note [Partnership in practice: the role of civil society in EU funded actions for the inclusion of migrants and refugees](#), April 2020
- ECRE Policy Note 26 [Return as "Nonessential Travel" in the Time of Pandemic](#), June 2020
- ECRE Policy Note 27 ['No reason for returns to Afghanistan' \(Dari\)](#), June 2020
- PICUM/ECRE, [Policy Note Ensuring an inclusive recovery for all: ECRE and PICUM comments on the Next Generation EU package and REACT-EU](#), July 2020
- PICUM/ECRE, [Policy Paper the Future EU Action Plan on Integration and Inclusion: Ensuring an Approach Inclusive of All](#), October 2020
- ECRE Policy Note 28: [AMIF: Incentivising Resettlement, Relocation and Integration, Not Dublin Returns](#), October 2020

- ECRE Policy Note 29, [Relying on a fiction: New Amendments to the Asylum Procedures Regulation](#), December 2020
- ECRE Policy Note 30: [Screening out rights? Delays, Detention, Data concerns and the EU's Proposal for a Pre-entry Screening process](#), December 2020
- ECRE Policy Note 31: [Moving on With the EU Asylum Agency](#), January 2021
- ECRE Policy Note 32: [Alleviating or Exacerbating Crises? The Regulation on Crisis and Force Majeure](#), February 2021
- ECRE Policy Note 33: [The regulation on Asylum and Migration Management: Giving with One Hand, Taking Back with the Other](#), February 2021
- ECRE Policy Note 34: [Tightening the Screw: Use of EU External Policies and Funding for Asylum and Migration](#), March 2021
- ECRE Policy Note 35: [The JDMC: Deporting People to the World's Least Peaceful Country](#), March 2021

#### ECRE Comments on the New Pact

- ECRE COMMENTS: [ON THE AMENDED PROPOSAL FOR AN ASYLUM PROCEDURES REGULATION COM\(2020\) 611 BORDER ASYLUM PROCEDURES AND BORDER RETURN PROCEDURES](#), December 2020
- ECRE COMMENTS: [ON THE COMMISSION PROPOSAL FOR A SCREENING REGULATION COM\(2020\) 612](#), December 2020
- ECRE COMMENTS: [ON THE COMMISSION PROPOSAL FOR A REGULATION ON ASYLUM AND MIGRATION MANAGEMENT COM\(2020\) 610 2020/0279 \(COD\)](#), February 2021
- ECRE COMMENTS: [ON THE COMMISSION PROPOSAL FOR A REGULATION ADDRESSING SITUATIONS OF CRISIS AND FORCE MAJEURE IN THE FIELD OF MIGRATION AND ASYLUM COM\(2020\) 613](#), February 2021

#### ECRE Legal Notes and interventions

- ECRE Legal Note 6: [Derogating From EU Asylum Law in the name of "emergencies": the legal limits under EU law](#), June 2020
- UN Special Procedures, [Submission on Child Detention](#), May 2020
- ECRE intervened in following cases:
  - [SB v Croatia](#), Application No. 18810/19, December 2020
  - [T.K. and S.R. v. Russia](#), Application no. 28492/15, September 2020
  - H.T. v Greece and Germany, Application No. 13337/19, May 2020 (not publicly available yet)
  - Intervention before the Italian Council of State, case 4809/2019, against the Ministry of external affairs (on the responsibility of the State for providing funding to the Libyan coastguard) – Intervention not publicly available yet
- ECRE Legal Note 7: [Cessation of international protection and review of protection statuses in Europe](#), February 2021
- ECRE Legal Note 8: [Asylum and the UN Treaty system](#), March 2021

#### ECRE Working Papers

- ECRE Working Paper, [CONTRIBUTION DE LA SOCIÉTÉ CIVILE À LA COOPÉRATION UNION EUROPÉENNEAFRIQUE EN MATIÈRE DE MIGRATION:LE CAS DU NIGER](#), February 2020
- ECRE Working Paper, [CONTRIBUTION DE LA SOCIÉTÉ CIVILE À LA COOPÉRATION UNION EUROPÉENNEAFRIQUE EN MATIÈRE DE MIGRATION : LE CAS DU MAROC](#), February 2020
- ECRE Working Paper, [CONTRIBUTION DE LA SOCIÉTÉ CIVILE À LA COOPÉRATION UNION EUROPÉENNEAFRIQUE EN MATIÈRE DE MIGRATION :LE CAS DU SÉNÉGAL](#), February 2020
- ECRE Working Paper, [CIVIL SOCIETY INPUT TO EU AFRICA COOPERATION ON MIGRATION:EU-AU RELATIONS](#), February 2020
- ECRE Working Paper, [CIVIL SOCIETY INPUT ON EU AFRICA COOPERATION MIGRATION: THE CASE OF KENYA](#), February 2020
- ECRE Working paper, [CIVIL SOCIETY INPUT TO EU-AFRICA COOPERATION ON MIGRATION:THE CASE OF ETHIOPIA](#), February 2020

- ECRE Working paper, [CIVIL SOCIETY INPUT TO EU AFRICA COOPERATION ON MIGRATION: THE INCLUSION OF REFUGEES IN KENYA](#), February 2020
- ECRE Working paper, [CONTRIBUTION DE LA SOCIÉTÉ CIVILE À LA COOPÉRATION UE-AFRIQUE EN MATIÈRE DE RETOUR, DE RÉADMISSION ET DE RÉINTÉGRATION : LE CAS DU MAROC](#), November 2020
- ECRE Working paper, [CONTRIBUTION DE LA SOCIÉTÉ CIVILE À LA COOPÉRATION UE-AFRIQUE EN MATIÈRE DE RETOUR, DE RÉADMISSION ET DE RÉINTÉGRATION : LE CAS DU MAROC](#), November 2020
- ECRE Working paper, [CIVIL SOCIETY INPUT TO EU-AFRICA COOPERATION ON MIGRATION: THE CASE OF THE GAMBIA](#), December 2020
- ECRE Working Paper, [Transforming Eurodac from 2016 to the New Pact](#), January 2021
- ECRE Working Paper 14: [EU External Expenditure on Asylum, Forced Displacement and Migration 2014-2019](#), March 2021

#### ECRE's research for the EPRS

- EPRS, [Dublin Regulation on international protection applications – European Implementation Assessment](#), February 2020
- EPRS, [Asylum procedures at the border](#), November 2020
- EPRS, [The state of play of Schengen governance An assessment of the Schengen evaluation and monitoring mechanism in its first multiannual programme](#), November 2020

#### ECRE statements

- [Joint statement: The new Pact on Asylum and Migration: An Opportunity Seized or Squandered?](#), February 2020
- [ECRE Statement on the Situation at the Greek Turkish Border](#), March 2020
- [Joint Statement: "Protect our laws and humanity!"](#), March 2020
- [Joint Statement: Afghanistan is Not Safe: the Joint Way Forward Means Two Steps Back](#), September 2020
- [Joint Statement: Resettlement Can't Wait!](#), September 2020
- [Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded](#), October 2020
- [Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability](#), November 2020
- [Joint Statement Last call: The Future Asylum, Migration and Integration Fund](#), November 2020

#### ECRE information sheets on COVID-19 measures related to asylum and migration

- [Information sheet of 8 April 2020](#)
- [Information sheet of 23 April 2020](#)
- [Information sheet of 5 May 2020](#)
- [Information sheet of 28 May 2020](#)
- [Information sheet of 7 December 2020](#)

#### AIDA Country reports

- [Austria](#), March 2020
- [Belgium](#), April 2020
- [Bulgaria](#), February 2020
- [Cyprus](#), April 2020
- [Germany](#), July 2020
- [Spain](#), April 2020
- [France](#), April 2020
- [Greece](#), June 2020
- [Croatia](#), April 2020
- [Hungary](#), March 2020
- [Ireland](#), June 2020

- [Italy](#), May 2020
- [Malta](#), April 2020
- [Netherlands](#), April 2020
- [Poland](#), April 2020
- [Portugal](#), May 2020
- [Romania](#), April 2020
- [Sweden](#), May 2020
- [Slovenia](#), March 2020
- [United Kingdom](#), March 2020
- [Switzerland](#), April 2020
- [Serbia](#), May 2020
- [Turkey](#), April 2020

#### **AIDA statistical updates**

- ECRE/AIDA Briefing: [Asylum statistics in Europe](#), June 2020
- AIDA, [The implementation of the Dublin III Regulation in 2019 and during COVID-19](#), August 2020

### **19. Feedback or suggestions about the process or format for submissions to the EASO Asylum Report**

## Contact details

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**Name of Organisation:** European Council on Refugees and Exiles (ECRE)

**Name and title of contact person:** Jean-David Ott (Legal Officer)

**Email:** [jdott@ecre.org](mailto:jdott@ecre.org)

☒ I accept the provisions of the EASO [Legal and Privacy Statements](#)