



Input by civil society to the EASO Annual Report 2018

EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries. Previous reports are [available for review at EASO's website](#).

We would like to kindly invite you to take part in this process, by sharing your observations **on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on page 2**. The topics listed there reflect the structure of Chapter 4 of the EASO report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2017, including **improvements and new/remaining concerns**. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2016 Annual Report](#). If you do not consent on EASO making your submission available, please inform us accordingly.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input by filling in this document (with attachments, if needed) and returning it to ids@easo.europa.eu **AND** consultative-forum@easo.europa.eu **by 15 March 2019**.

Within each area, please highlight the following **type of information**:

- NEW positive developments; improvements and NEW or remaining matters of concern;
- Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.

You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent

developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.

Name of the contributing stakeholder: European Council on Refugees and Exiles (ECRE)

1) Access to territory and access to asylum procedure

1.1 Access to territory

New/remaining matters of concern

Austria – In 2018, Austria decided to intensify controls at the borders with Hungary and Slovenia until May 2019. The letter from the Minister of Interior that was addressed to the Commission, the Council and the Parliament to justify this measure refers to the high number of asylum seekers and irregular migrants in Austria.

AIDA, Country Report Austria, 2018 Update, March 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

Bulgaria - Push backs, violence, robbery and humiliating practices continue to be widespread along the border with Turkey. Turkish agencies and organisations report figures of 10,000 individuals and above on a monthly basis, pushed back collectively from Bulgaria and Greece. Low new arrivals figures in Bulgaria in the first half of 2018 and the triple increase in the second half indicate unofficial, though effective, cross-border cooperation between Bulgarian and Turkish governments to fully prevent the access through this external EU border, at least for the duration of the Bulgarian Presidency of the EU Council. Alongside push backs this cooperation rendered even more difficulties for access to the territory and international protection of those in need of it.

AIDA, Country Report Bulgaria, 2018 Update, January 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Croatia - Reports of *refoulement* or push backs at the border have continued in 2018. The Ombudswoman requested an investigation but was denied access to data and information. The non-governmental organisations Are you Syrious and the Centre for Peace Studies, as well as attorneys, accused the Ministry of Interior of putting pressure on human rights organisations and lawyers with the aim of diverting the public attention from an investigation into the death of a six-year-old Afghan girl, Madina Hosseini, who died in 2017 after her family was pushed back to Serbia from Croatian territory. The case *M.H. v. Croatia* was brought by the family of Madina Hosseini before the European Court of Human Rights (ECtHR) and was communicated on 11 May 2018.¹

AIDA, Country Report Croatia, 2018 Update, March 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2018update.pdf

France – Reports of people simply being refused entry without their protection needs being taken into account at the Italian border continue and France plans to maintain controls at its Schengen borders after the end of April 2019. On the basis of instructions which have reportedly introduced a practice of racial profiling, the Border Police and other police forces deployed in the region board trains arriving from Italy and control passengers who appear to be of African origin. 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. Despite strong condemnation by monitoring bodies, civil society organisations, as well as court rulings condemning Prefectures for failing

¹ ECtHR, *M.H. and others v. Croatia*, Application No 15670/18, available at: <https://bit.ly/2Se4QF5>.

to register the asylum applications of people entering through Italy, practice remains unchanged. In response to a report by the General Controller of Places of Detention (CGLPL), the Ministry of Interior stated in June 2018 that refusals of entry are not in contravention of the law and implied that asylum applications are made before French officials on Italian soil. The restrictions on access to the territory have been coupled with criminalisation of humanitarian assistance, as convictions continue to be delivered in other cases.

As regards the French-Spanish land border, it has become one of the main entry points to France in 2018. Spanish media have reported that migrants are pushed back 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. Civil society organisations and local authorities have denounced what appears to be a practice mirroring the methods of the Border Police on the Italian border.

AIDA, Country Report France, 2018 Update, March 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Greece - The persisting practice of push backs involving arbitrary detention and violence at the Evros land border has continued throughout 2018, and has been decried *inter alia* by UNHCR, Council of Europe bodies, the National Commission for Human Rights and civil society organisations. During 2018, there have also been numerous reports of deaths at the Evros border. Moreover, despite the increasing number of allegations regarding push backs at the Greek Turkish land border in Evros, no proper official investigation has been launched following these allegations as the Greek authorities deny the allegations

AIDA, Country Report Greece, 2018 Update, March 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Hungary – There were 4,151 push backs in 2018 and the police in Hungary apprehended some 840 migrants close to the border and in an irregular situation between 1 September and 31 October 2018. According to the data of the National Headquarters of the Police, these persons were escorted back to the outer side of the fence at the Hungarian-Serbian border. Moreover, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report in 2018 on their visit to Hungary in autumn 2017, which confirmed ill-treatment of migrants along the Hungarian-Serbian borders. AIDA, Country Report Hungary, 2018 Update, March 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Ireland – The Irish Refugee Council's services have witnessed a number of cases throughout 2018 of applicants describing that they had only been permitted entry for the purposes of seeking asylum subject to rigorous examination by the border authorities. Data obtained through Freedom of Information requests indicate that 3,558 persons were refused entry at Dublin Airport from January to early December 2018; therefore figures do not capture numbers refused entry at other ports of entry, such as the border with the North of Ireland or sea ports.

AIDA, Country Report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

Italy - Since June 2018, the Italian Government has seriously delayed and hindered the access to the territory to potential asylum seekers rescued at sea as part of operations coordinated by the Italian Maritime Rescue Coordination Centre (MRCC) or by ships operating under the Sophia operation or by naval units of the Italian State. The systemic "closure of ports" has therefore extremely delayed the access of rescued persons to the asylum procedure (e.g. Aquarius, Sarost, Diciotti, Sea Watch etc.). Moreover, since August, the Government

has repeatedly threatened to repel people rescued at sea in Libya, thereby violating the principle of *non-refoulement*. Hundreds of migrants have been returned to Libya throughout 2018. In the context of the Sea Watch case, the ECtHR has requested the Italian Government “to take all necessary measures to provide all the applicants with adequate medical care, food, water and basic supplies as necessary.” Regarding the 15 unaccompanied minors on board of the Sea Watch, it specifically requested the Italian Government to provide them legal guardianship.

AIDA, Country Report Italy, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

Malta - The on-going debate on search and rescue missions as well as disembarkation of rescued migrants and potential asylum seekers reached its peak in 2018, as Malta and other countries refused to assume responsibility for the rescued persons of several ships (Aquarius, Mission Lifeline, Sea-Watch 3).

AIDA, Country Report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Poland - The main challenge regarding access to the asylum procedure and the territory remain the push-backs at the Terespol border crossing point. Notwithstanding several interim measures imposed by the ECtHR on the Polish authorities prohibiting removal where the applicant expressed an intention to apply for asylum, this practice continued in 2018 and the Commissioner for Human Rights as well as NGOs continued to challenge this practice. There have been some judgments with regard to push backs at the national level, while the cases challenged before ECtHR are still pending.²

AIDA, Country report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Romania - Up to 2018, asylum seekers or other migrants apprehended while trying to irregularly cross the border into Hungary were only fined. The situation changed in 2018 when the Regional Court of Chişineu-Criş started delivering convictions with a sentence of six months’ imprisonment, coupled with a two-year entry ban from the territory of Romania and in some cases even legal expenses of 1,000 RON / 212 €. At least 19 persons have been convicted, including a family with minor children.

AIDA, Country Report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

Slovenia – According to the Legal Informational Centre (PIC)’s field visit to Velika Kladuša and Bihać in the Bosnia and Herzegovina, foreigners have not been appropriately informed about the possibility to apply for international protection and were not included into the preliminary procedure that would enable them to lodge the asylum application. They received misleading information from the police, to the effect that they would be processed in the asylum procedure, and were later returned to Croatia without any option to apply for international protection.

AIDA, Country Report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

² ECtHR, M.K. v. Poland, Application No 40503/17; M.A. and Others v. Poland, Application No 42902/17; M.K. v. Poland, Application No 43643/17; D.A. v. Poland, Application No 51246/17.

Spain - The main obstacles regarding access to the Spanish territory are faced mostly at the Ceuta and Melilla borders and checkpoints. 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. In July, almost 800 migrants attempted to enter Ceuta by jumping the border fences, and almost 600 ultimately entered the city. This is considered as one of the main attempts to enter the enclave by land registered so far. According to the declarations made by the Minister of Interior, those migrants who were pushed back “had not technically reached Spanish soil yet”. At the end of August, the Spanish Government revived a readmission agreement signed in 1992 with Morocco in order to return 116 Sub-Saharan migrants to Morocco within 24 hours. In its 26 years of existence, such agreement had been used only in exceptional cases and for a very limited number of migrants. Criticisms of the Spanish policy of push backs have continued by several organisations and institutions during 2018, such as the Spanish Ombudsman, the Melilla Bar Association, the Council of Europe’s Special Representative on Migration and Refugees, UNHCR and the European Union Agency for Fundamental Rights (FRA). In January 2019, the Spanish Government announced its intention to reduce irregular migration by 50%, following a record number of 64,298 persons entering the country in 2018. To that end, it designed a plan aiming at avoiding active patrol by the Salvamento Marítimo in the Mediterranean coasts and at prohibiting to the rescue boats managed by NGOs from setting sail from Spanish shores. The plan also foresees pressure on the Italian Government to open ports to boats close to its territory.

AIDA, Country Report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Relevant national jurisprudence

France - On 17 and 18 February 2018, a joint action by Italian and French organisations and lawyers on the border enabled legal assistance to people, namely unaccompanied children, unlawfully rejected by the French authorities. Thanks to the action, the French lawyers lodged 20 appeals before the Administrative Court of Nice against readmissions made by the French authorities in Italy, out of which 19 appeals concerning unaccompanied children were accepted, suspending the rejection provisions.³

AIDA, Country Report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Poland - A May 2018 judgment of the Supreme Administrative Court, dismissing Border Guard practice whereby only a memo instead of a full protocol is issued concerning interviews to establish the purpose of stay, is ignored by the Polish authorities on the basis that this is not required under the Schengen Borders Code.⁴

AIDA, Country Report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

1.2 Access to the asylum procedure

Cyprus - Waiting times for the lodging of asylum applications reached up to 2 months in 2018, due to limited capacity within the Aliens and Immigration Unit of the police. Toward the end of 2018 a new practice was implemented by which documents titled “Verification of intention to submit application for asylum” were issued to persons who expressed the intention to apply for asylum but the Aliens and Immigration Unit did not have the time to proceed with the lodging of the application. However, the practice has not been applied

³ ASGI, ‘Frontiera Francia-Italia : associazioni ed avvocati si mobilitano per il diritto d’asilo e la protezione dei minori stranieri’, 20 February 2018, available in Italian at: <http://bit.ly/2Hgrk7d>.

⁴ Polish Supreme Administrative Court, Judgment 17 May 2018, II OSK 2766/2017 available in Polish at: <http://bit.ly/2GNOupv>.

holistically but mainly for persons residing temporarily at the Emergency Centre in Kokkinotrimithia and some cases in Paphos. Another development noted throughout 2018 and early 2019 was the referral to Kokkinotrimithia of groups of persons entering irregularly and stating their intention to apply for asylum.

AIDA, Country Report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

France – In 2018, asylum seekers have continued to face difficulties in accessing the orientation platform for asylum seekers (PADA). In the Ile de France region, as of May 2018, the French Office of Immigration and Integration (OFII) operates a telephone appointment system whereby applicants obtain an SMS appointment to appear before a PADA, which in turn books them an appointment with the “single desk” (GUDA) to register their application. The telephone appointment system therefore constitutes an additional administrative layer in the registration process. 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. In addition, despite initial announcements of free-of-charge access, calls to the telephone platform are charged 0.06 € 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. Civil society organisations have challenged this system before the Administrative Court (see “relevant jurisprudence” below).

AIDA, Country Report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Greece - In June 2018 the Director of the Asylum Service confirmed that access to the asylum procedure through Skype remains the “Achilles’ heel” of the procedure. Moreover, he added that technical solutions are under examination. However, these have not been put in place as of February 2019. Access to the asylum procedure for persons detained for the purpose of removal also remained highly problematic. For example, according to the Greek Council for Refugees (GCR)’s experience in 2018, an average period of one to one and a half months was needed for the registration of applications by persons detained in Amygdaleza and Corinth.

AIDA, Country Report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Hungary – In 2018, it is still only possible to apply for asylum in the transit zones and all asylum seekers, with the exception of unaccompanied minors below age of 14, have to remain in the transit zone for the whole duration of the asylum procedure. The stay in the transit zone is *de facto* detention and has no time limit. Since 23 January 2018, only one person is allowed in each transit zone per day. In the first week of July 2018, no asylum seeker was allowed to enter into the transit zones. The Hungarian Helsinki Committee (HHC) is further aware of cases where children would be kept in the transit zone for more than 80 days without any decision. FRA reports (1 May–30 June 2018) that the length of asylum procedures vary significantly, and that in many cases the administrative decisions have been issued several months after the lodging of the asylum claim. At present two transit zones are in operation: the Röske transit zone is suitable for accommodating 450 asylum seekers whereas the Tompa transit zone is suitable for accommodating 250 asylum seekers. Both of them are in remote locations and made out of containers built into the border fence.

AIDA, Country Report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Italy - There have been several reports of denial of access to the asylum procedure in 2018:

- The Questura of Naples for example has introduced an online appointment procedure since January 2018, which is only available once a week and allows around 40-45 people to apply; this means that within a few minutes access to the procedure through that system is closed. The failure of this system has led an ASGI lawyer to file an appeal to the Civil Tribunal of Naples in February 2019, as his client had tried to make an asylum application since July 2018.
- Access to the asylum procedure is also limited in Rome, forcing people to sleep in front of the Questura with the hope to access the immigration offices the following day.

AIDA, Country Report Italy, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

Netherlands - The rest and preparation period is supposed to last 6 days before the actual asylum procedure starts. However, in 2018, due to capacity problems within the Immigration and Naturalisation Service (IND), the rest and preparation period faced substantive delays and took about 12 months before the asylum procedure could start.

AIDA, Country Report Netherlands, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

Belgium – At the end of 2018 the Aliens Office introduced a quota allowing the registration of no more than 50 asylum seekers per day at the “Petit-Château” / “Klein Kasteeltje” in central Brussels, which serves as the new temporary registration centre since 3 December 2018. As a result, more than one hundred people, including families with children, were queuing outside the facility every day, many of them unsuccessfully. Civil-society organisations challenged the measure before the Council of State (see below). Following the judgment of the Council of State, the authorities did not manage to provide access to the asylum procedure to all applicants on their first day at the Aliens Office. During a couple of weeks, the access to the asylum procedure was therefore automatically refused almost one day per week, during the weekend, or during holidays. Asylum applicants, particularly single men, who were refused access were requested to come back the next day and were not accommodated for the night.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Spain - As it was the case in summer 2017, media reports in autumn 2018 showed long lines of hundreds of asylum seekers sleeping rough and waiting for their appointment to lodge their asylum claim in front of the offices of the Provincial Brigade for Alien Affairs of the National Police of Aluche in Madrid. Severe concerns were raised as the Aluche police station started to process only 99 asylum seekers per day, and to give appointments for lodging of applications as late as December 2020. In order to shed light on the situation, the Spanish Ombudsman opened an investigation to inquire into the measures undertaken by the General Commissariat for Foreigners and Borders (Comisaría General de Extranjería y Fronteras) to avoid the long queues and the conditions that those seeking asylum in Madrid are obliged to face. At the time of writing, the average waiting time for an appointment is 6 months, even though delays vary depending on the province. Waiting times can range from 1 month to 1 year.

Moreover, given that the Ombudsman had highlighted that detainees have to apply for asylum at Detention Centres for Foreigners (CIE), the General Commissariat for Foreigners and Borders of the Minister of Interior accepted in July 2018 the recommendation made by the Spanish Ombudsman, thus it issued instructions to all CIE to adapt their systems for registration of asylum applications to the existing law.

AIDA, Country Report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Relevant national case-law

France - In February 2019, following an urgent action (référé-liberté) brought by several civil society organisations, the Administrative Court of Paris ordered OFII to deploy at least two more full-time staff members until the end of February 2019 so as to reinforce the capacity of its telephone platform.⁵ For the asylum seekers directly concerned by the action, the Court ordered OFII to grant appointments within 48 hours. The Court acknowledged the efforts of OFII to overcome delays and avoid physical queues before the different PADA in Paris. However, it held that the technical and practical obstacles to access to the telephone platform have resulted in “virtual queues” of asylum seekers who do not manage to receive a response despite repeated attempts during several days.

Moreover, although the 5-day deadline to apply for asylum in detention centres is strictly applied in practice, the National Asylum Court (CNDA) has shown some flexibility in the specific cases of persons transferred between detention centres. In one case decided in April 2018, the individual had been notified of the right to seek asylum within 5 days upon his arrival in a detention centre. Four days later – before the expiry of the deadline – he was transferred to another facility and was informed again of the right to make an asylum application within 5 days. The Court found that, since the former deadline had not expired upon the second notification of the right to claim asylum, the applicant could rely on the latter notification in good faith.⁶

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Belgium - On 20 December 2018, the latter concluded that the contested measure was a barrier to the effective exercise of the fundamental right to make an asylum application, as enshrined in the 1951 Geneva Convention and national law.⁷ It therefore suspended the measure introducing a cap on the number of asylum applications.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Italy - The 2018 update of the AIDA Country report on Italy provides extensive case-law on national cases in which the access to the asylum procedure was denied by the authorities but then granted by Courts.

AIDA, Country Report Italy, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

2) Access to information and legal assistance

2.1. Legal assistance

New/remaining matters of concern

Austria - The government announced that legal assistance would be provided through a federal agency as of 2020. However, this initiative has not been put into practice so far and the implementation seems to be delayed.

AIDA, Country Report Austria, 2018 Update, March 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

⁵ Administrative Court of Paris, Order 1902037, 13 February 2019, available in French at: <https://goo.gl/Fv4vG4>.

⁶ French National Asylum Court, M. D., Decision No 17024302, 6 April 2018, available in French at: <https://bit.ly/2BP0geZ>.

⁷ Belgian Council of State, Decision No 243.306, 20 December 2018.

Cyprus – As regards appeals, access to legal aid is severely constrained in practice due to the restrictive interpretation of the “merits test” by the Administrative Court. In 2018, none of the legal aid applications submitted by asylum seekers were granted.

AIDA, Country Report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

Hungary - Since mid-November 2018, the Immigration and Asylum Office (IAO) has been rejecting the power of attorney of the HHC providing legal representation in the transit zones, claiming that it is not in compliance with the requirement of the private documents with full probative value, as it did not contain the signature of the interpreter.

AIDA, Country Report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Malta - In 2018, responsibility for legal aid for appellants was shifted to Legal Aid Malta. Under the new system, lawyers providing legal aid within the national pool may opt to add “asylum” as a service to be provided. Although training has been provided by UNHCR, it is unclear whether these lawyers have any specialisation or in-depth knowledge of asylum legislation and practice. As regards unaccompanied children, UNHCR reported that, in 2018, there were delays of several months in the issuance of the care orders, leading to delays in the appointment of a legal guardian as well. Subsequently, these children were prevented from having access to the asylum procedure for several months.

AIDA, Country Report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Netherlands - The Coalition Agreement limits the access to legal assistance at first instance when an asylum seeker has to submit his or her views against the IND’s written intention to reject his or her asylum application. As a result, the applicant will not be able to discuss his or her case before the start of the actual asylum procedure. The Secretary of Justice has announced that a proposal to adjust the Aliens Decree is currently being prepared to implement this measure. However, the Dutch Parliament has requested a feasibility test to be conducted by the IND before implementing the measure. The Secretary has not responded to this request yet.

AIDA, Country Report Netherlands, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

Poland - Access to legal assistance remains problematic due to lack of funding for NGOs and obstacles for asylum seekers to access the aid system. Whereas 1,929 appeals were lodged to the Refugee Board in 2018 according to the Office for Foreigners, only 356 asylum seekers benefited from free legal aid.

AIDA, Country Report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Portugal - The overall quality of free legal aid at appeal stage remains a concern due to the current selection system of lawyers based on a random / automatic procedure. The unscrupulous activity of a limited number of private lawyers at the Lisbon Airport’s Temporary Installation Centre (CIT), providing poor quality services in exchange for excessively elevated fees, remained a problem in 2018. This concern has been raised by the Portuguese Refugee Council (CPR) with the Aliens and Borders Service (SEF) and the Portuguese Bar Association but is still ongoing despite past criminal investigations conducted by the SEF that have resulted

in criminal charges related to smuggling and trafficking in human beings. In September 2018, the SEF reported that an investigation was in course involving a lawyer in the Lisbon area. The topic was covered by multiple media outlets that emphasised that the lawyer incited “abusive” asylum applications.

AIDA, Country Report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

Romania - In 2018, the Bar Associations in Romania did not organise any training on asylum law for the lawyers registered in the legal aid register and other interested lawyers. Nevertheless, JRS Romania organised a training for the lawyers registered in the legal aid register in Bucharest. However, legal counsellors in Giurgiu and Bucharest stated that they do not read the case, they are not prepared for the court hearings and they have no knowledge in asylum law.

Moreover, the Romanian National Council for Refugees (CNRR) stated that the request for legal aid has been rejected only in a limited number of cases. However, according to the answer provided by the Regional Court of Giurgiu, out of 61 appeals received by the court as of the end of October 2018, an application for legal aid was made in 17 cases while 13 legal aid applications were rejected. Only two applicants further lodged a review of the application for legal aid, but both were rejected. According to CNRR, the reasons for the dismissal of the requests is that the applicants had access to legal counselling.

AIDA, Country Report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

Spain – In 2018, shortcomings in access to legal aid have persisted for persons arriving by sea. In order to guarantee asylum seekers’ rights, some Bar Associations from the southern cities of Andalucía have created *ad hoc* teams of lawyers. Nonetheless, assistance has been undermined by obstacles such as the lack of information on asylum to newly arrived persons and the lack of possibility to access a lawyer. The CATE and CAED facilities established for newly arrived persons in 2018 have not resulted in improvements in this regard, although in the CAED operated by the Spanish Commission for Aid to Refugees (CEAR) migrants are reported to receive legal assistance.

AIDA, Country Report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Positive developments

Switzerland - As part of new asylum procedure from March 2019 onwards, the legislative amendments introduce a right for asylum seekers to receive free advice and legal representation in first instance procedures. This accompanying measure, which aims to ensure fair asylum procedures, was introduced in order to compensate the acceleration of the process leading to a decision. Legal representation is provided until the decision rendered in the case of accelerated or Dublin proceedings comes into force or when legal representation estimates that an appeal is doomed to failure. This new form of legal protection is currently being tested in the test centres of Zurich and Boudry.

AIDA, Country Report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

Relevant national case law

Belgium - The most important change – that has been ruled unconstitutional in 2018 - entailed the introduction of a ‘flat fee’. This meant that legal aid was no longer entirely free. In June 2018 the

Constitutional Court annulled this legal provision, stating that such an obligation entailed a significant reduction of the protection of the right to legal aid, as guaranteed by article 23 of the Constitution.⁸

AIDA, Country Report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Hungary – In January 2019 the Szeged Administrative and Labour Court confirmed that the power of attorney is a private document having full probative value and that the IAO violated the right to a lawyer of the applicant. Therefore, the Court annulled the ruling of IAO and ordered the conduct of a new procedure.⁹ Despite the court judgments, the IAO has not given up with its unlawful practice and has been obstructing the right to legal representation of asylum seekers throughout the year 2018.

AIDA, Country Report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

3) Providing interpretation services

New/remaining matters of concern

Bulgaria - In 2018, 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. In its May 2018 report, the CPT found insufficient access to health care and communication problems with health care staff due to the language barrier. The report stressed the need for particular attention to the mental health and psychological state of detainees, some of whom are asylum seekers and may have experienced difficult situations, including torture or other forms of ill-treatment, in other countries.

AIDA, Country Report Bulgaria, 2018 Update, January 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

France - Following the 2018 asylum reform, the language declared by the asylum seeker upon registration at the GUDA is binding for the entire procedure and can only be challenged at the appeal stage.

AIDA, Country Report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Hungary – In 2018, the HHC reported several bad experiences with interpreters in different cases, including cases of false interpretation, intimidation, and mockery of asylum seekers.

AIDA, Country Report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Poland - NGOs confirmed in 2018 that interpretation is still problematic in some cases, namely for asylum seekers speaking French and Arabic who could not communicate with doctors in the first reception centre in Dębak and in a medical point in the Office for Foreigners in Warsaw. Interpretation services were not provided.

AIDA, Country Report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

⁸ Constitutional Court, Decision No 77/2018, 21 June 2018, available in French at: <https://bit.ly/2RNAd1D>.

⁹ Administrative and Labour Court of Szeged, Decision 19.K.27.020/2019/9, 22 January 2019.

Romania - According to the JRS representative in Timișoara asylum seekers complain about the lack of interpreters at the stage of registration and lodging of the asylum application. The same issue was reported in Giurgiu and Rădăuți. In Rădăuți for example, asylum seekers still complain about the fact that the Border Police does not use interpreters who speak their native language and, as a consequence, their names, date of birth and reasons for their asylum application are not recorded correctly. Therefore potential errors and contradictions may appear between the statements made at the border and those made during the personal interview. The CNRR stated that there are no means and no modalities available for verifying the quality of interpretation, and that appreciations are subjective.

AIDA, Country Report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

Slovenia – The lack of interpreters was one of the key issues highlighted by persons who had expressed the intention to apply for international protection in Slovenia but were returned to Croatia. Interpretation was not guaranteed in all return procedures, interviews were sometimes conducted in English without any interpreter, and – when provided - the quality of the translation as well as the professionalism of the interpreters was questioned. Individuals pointed out that they felt they had not received all the information that the police wanted to convey to them, or that the information they wanted to pass on was not forwarded by the interpreter to the police. In a few cases, individuals reported that the interpreters mocked, insulted and threatened them that they would be returned to Croatia. There is no systematic monitoring over the conduct of proceedings by the police and the work of interpreters.

AIDA, Country Report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Spain – Interpretation is provided by a private company named Ofilingua. Several shortcomings have been reported, mainly due to the fact that the agency is not specialized in migration and asylum related matters. A lack of proper expertise in interpretation techniques has also been reported, such as personal comments going beyond the interpretation role and which influence the asylum interview. In addition, interpreters who were working before with NGOs have reported a reduction of pay and deterioration of working conditions, thereby potentially affecting the quality of their work. Moreover, in cases of less common languages, asylum interviews are postponed and the concerned asylum seeker is informed only on the day of the cancelled interview. There have also been cases in which interpretation has been carried out by phone.

AIDA, Country Report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Positive developments

France - OFPRA published a Code of Conduct for interpreters in November 2018. It has also conducted trainings for interpreters, specifically concerning certain vulnerabilities of asylum seekers.

AIDA, Country Report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Hungary - Amendments that entered into force on 1 January 2018 introduced a new procedural safeguard regarding the selection of interpreters. The IAO is required to take into account the possible differences/contrast in terms of the country of origin and the cultural background of the interpreter and that of the applicant, as indicated by the applicant to the authority.

AIDA, Country Report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Relevant national jurisprudence

France – The Council of State ruled in 2018 that where the asylum seeker has been unable to communicate and be understood during the interview, due to the absence of an interpreter for his or her language or a language he or she sufficiently comprehends, and the deficiency is imputable to OFPRA, the asylum decision shall be annulled by CNDA.¹⁰

AIDA, Country Report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Romania - In Rădăuți, IGI-DAI uses double interpretation from Kurdish to Arabic and from Arabic to Romanian. The interpreter for Kurdish was an asylum seeker and the interpreter for Arabic was not qualified. This was brought to the attention of the court in an appeal lodged by an asylum seeker against a negative decision taken by IGI-DAI, which acknowledged contradictions and vague statements due to double interpretation. The Regional Court of Rădăuți dismissed the appeal and the applicant's criticisms regarding the double interpretation was found to be "exaggerated and taken out of context, given that the applicant said he understood well the Kurdish asylum seeker used as interpreter, insisting on bringing him to the interview". The Court also highlighted the low number of Kurdish interpreters in Romania and that most of them refused to help due to pecuniary and long travel distances.¹¹ The shortcomings of double interpretation were also referred to in a decision of the Regional Court of Giurgiu.¹²

AIDA, Country Report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

4) Dublin procedure

4.1. Application of Dublin criteria

New/remaining matters of concern

Greece - In 2018, there has been an important decrease in the number of outgoing requests compared to the previous year and the majority of them continue to take place in the context of family reunification. Throughout 2017, in cases where a subsequent separation of the family took place after their asylum application in Greece, rejections of Dublin requests stated that such 'self-inflicted' separation exposes children to danger and that reunification with such parents might not be in the child's best interests or that the separation of the family took place in order for the family provisions of the Regulation to be invoked in an abusive manner. This was contrary to previous practice and failed to take into consideration the individual circumstances of the case such as the reception conditions facing applicants in Greece. In 2018, the Asylum Service partly adopted this argumentation. As a result, in cases of 'self-inflicted' family separations, the Dublin Unit announced it would no longer send outgoing take charge requests based on the family provisions or the humanitarian clause, arguing that this is not in the best interests of the child. This practice should be further monitored as regards compliance with the right to family life.

AIDA, Country Report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Positive developments

¹⁰ French Council of State, Decision No 412514, 11 April 2018, EDAL, available at: <https://bit.ly/2NiyFrb>.

¹¹ Regional Court Rădăuți, Decision 2201/2018, 7 June 2018. Unofficial translation by the AIDA report author.

¹² Regional Court Giurgiu, Decision 5170/2018, 24 October 2018. Unofficial translation by the AIDA report author.

Hungary - The Dublin Unit also ceased its practice of relying on Article 17(2) in the cases of unaccompanied children and instead started referring to Article 8. Despite the positive changes at the Hungarian Dublin Unit, it became evident in 2018 that Dublin transfers could hardly take place without the active involvement of competent lawyers. HHC lawyers and attorneys experienced an increasingly strict and negligent attitude from the authorities of Austria, Germany and France.

Before 2018, the Hungarian authorities refused to apply Article 19(2) of the Dublin III Regulation with regard to Bulgaria in cases of asylum seekers who have waited more than 3 months in Serbia before being admitted to the transit zone. According to Article 19(2), the responsibility of Bulgaria should have ceased in such situations, but the Hungarian authorities argued that this is not something that the applicants can rely on, but it can only be invoked by Bulgaria.

Relevant national jurisprudence

Hungary – In a case of two brothers, the Szeged Administrative and Labour Court annulled a Dublin decision in 2018, reasoning that since one brother was under 14, Hungary is responsible. As to the other brother, the Court applied Article 10 of the Dublin Regulation.¹³

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Slovenia - In relation to asylum seekers subject to Dublin procedures, the Supreme Court clarified in 2018 that asylum seekers retain the right to reception conditions until the moment of their actual transfer to another Member State, despite the wording of Article 78(2) IPA. The Court stated that, to ensure an interpretation compatible with the recast Reception Conditions Directive and Article 1 of the EU Charter, Article 78(2) should not apply in Dublin cases.¹⁴

AIDA, Country report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Switzerland - In the case of a woman whose parents were recognised as refugees in Switzerland and who herself was in a very bad state of health, the Federal Administrative Court recognised a mutual dependency between the daughter and her parents to such an extent that non-application of Article 16 of the Dublin Regulation could not be justified; the State Secretariat for Migration (SEM) was ordered to proceed with the material assessment of the applicant's asylum claim under the national procedure.¹⁵

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

United Kingdom

- The Upper Tribunal detailed in the case of *MS* the state's duty to "act reasonably" and to take "reasonable steps" in discharging the duty to investigate the basis of a "take charge" request sent by another country. This includes the option of DNA testing in the sending country or, if not, in the UK.¹⁶
- As regards the processing of requests under Article 17(2), the Upper Tribunal held in *HA* that there is a wide discretion available to the country receiving a "humanitarian clause" request under Article 17(2), but it is not untrammelled. It was therefore for the Home Office to take into account Article 7 of the EU Charter /

¹³Administrative and Labour Court of Szeged, Decision No 4. 10.K.27.051/2018/5, 7 February 2018.

¹⁴Supreme Court, Decision Up 10/2018, 12 June 2018.

¹⁵Federal Administrative Court, Decision D-3566/2018, 28 June 2018.

¹⁶Upper Tribunal, *MS v Secretary of State for the Home Department* [2019] UKUT 9 (IAC), 19 July 2018.

Article 8 ECHR and the best interests of the child when assessing whether a “humanitarian clause” request should be accepted.¹⁷

- With regard to Article 9, the Upper Tribunal clarified in April 2018 that a family member acquiring citizenship in the UK after having received international protection remains a “family member who is a beneficiary of international protection” for the purposes of the Dublin Regulation.¹⁸

AIDA, Country report United Kingdom, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

4.2. Procedural guarantees / situation of Dublin returnees

New/remaining matters of concern

France - The need to strictly apply the Dublin Regulation in response to important secondary movements was recalled by the Ministry in a circular of 23 March 2018. Moreover, following a pilot tested in the regions of Hauts de France and Provinces-Alpes-Côte d’Azur, the Ministry of Interior rolled out a regionalisation plan in 2018 whereby the Dublin procedure will be carried out by one Prefecture (pôle régional) per region, with a view to ensuring higher convergence across the French territory. The regionalisation plan had created difficulties for asylum seekers who had no means of travelling to the competent Prefecture after receiving a Dublin notice document, as missing an appointment led to reception conditions being withdrawn and applicants becoming exposed to destitution.

AIDA, Country Report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Italy – A new circular letter of 8 January 2019 was sent from the Italian Dublin Unit to all Member states and which indicated that families will no longer be placed in SPRAR centres but in first reception centres and emergency reception centres.

AIDA, Country report Italy, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

Malta - No information is provided by the Dublin Unit on the interpretation of the duty to obtain individualised guarantees prior to a transfer, in accordance with the ECtHR’s ruling in *Tarakhel v. Switzerland*. Yet lawyers report that in 2018 there were a number of cases wherein the Refugee Appeals Board commented that it is not its duty to explore the treatment the appellant would be subjected to following the Dublin transfer. Moreover, in 2018 there were a number of cases where Malta was required to assume responsibility for applicants due to delays in processing the transfer, including in cases of possible chain *refoulement*.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Poland – In 2018 the Office for Foreigners submitted requests to any relevant country without restriction, unless the case concerned vulnerable persons. In the latter case, it is unclear whether in 2018 the sovereignty clause was applied automatically. Where Greece, Hungary or Bulgaria accepted the request, Poland asked these countries to present individual guarantees for the applicants concerned. When the guarantees were not presented, Poland did not perform the transfer and proceeded with the application for international protection.

AIDA, Country report Poland, 2018 Update, March 2019, available at:

¹⁷ Upper Tribunal, *HA v Secretary of State for the Home Department* [2018] UKUT 297 (IAC), 19 April 2018.

¹⁸ Upper Tribunal, *HA v Secretary of State for the Home Department* [2018] UKUT 297 (IAC), 19 April 2018.

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Spain - In 2018, there have been reports of Dublin returnees not being able to access reception conditions. In January 2019, the Superior Court (Tribunal Superior de Justicia, TSJ) of Madrid condemned the Spanish Government for denying reception to asylum seekers transferred to Spain under 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. The instruction is not public yet.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Relevant national jurisprudence

France - With regard to the time limit for carrying out the transfer, the Council of State clarified in 2018 that the 6-month deadline under Article 29 of the Dublin Regulation is suspended if the asylum seeker appeals the transfer decision, and continues to run from the delivery of the Administrative Court judgment, regardless of its outcome and only once. This means that even if the Administrative Court annuls the transfer and the Prefect lodges an onward appeal, the 6-month deadline is not renewed.¹⁹

The Council of State also clarified 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.²⁰

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Portugal – In 2018, the Central Administrative Court (TAC) Lisbon annulled a transfer decision on the basis that, according to its interpretation of Article 17 of the Asylum Act, the SEF has to inform the applicant and give him or her the opportunity to reply not only to the statements provided during the Dublin interview, but also to a report containing the information that underlies the decision to apply the Dublin Regulation.²¹

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

United Kingdom - The Upper Tribunal held in *SM* that, in the case of a “particularly vulnerable person”, failure to consider whether to apply the “sovereignty clause” is likely to render the transfer decision unlawful.²²

With regard to judicial review against the refusal to accept a “take charge” request, the Upper Tribunal held in 2018 that the principle of fairness requires the applicant to be given an opportunity to know the ‘gist’ of what is submitted against him or her in respect of the application of the Dublin criteria. Therefore in judicial review against the rejection of a “take charge” request by the UK, it is for the court or tribunal to decide whether the Dublin criteria have been correctly applied.²³

AIDA, Country report United Kingdom, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

¹⁹ Council of State, Decision 420708, 24 September 2018.

²⁰ French Council of State, Order 422159, 26 July 2018.

²¹ TAC Lisbon, Decision 275/18.9BELSB, 12 April 2018.

²² Upper Tribunal, *R (SM) v Secretary of State for the Home Department (Dublin Regulation – Italy)* [2018] UKUT 429 (IAC), 4 December 2018.

²³ Upper Tribunal, *MS v Secretary of State for the Home Department* [2019] UKUT 9 (IAC), 19 July 2018

4.3. Suspension of transfers

New/remaining matters of concerns

In November 2018, ECRE published a [policy note](#) which analyses the obstacles to the application of Dublin created by policy choices, focusing in particular on divergent decision-making outcomes and hostile political discourse and measures on migration. One area where policy choices on the application of Dublin come into tension with human rights law relates to onward deportation. Since 2017, a fresh body of case law has emerged on the suspension of Dublin transfers to Member States where an asylum seeker would unfairly be denied international protection and would face removal to his or her country of origin.

Such suspensions on account of indirect *refoulement* have been most prominent vis-à-vis applicants from Afghanistan: due to human rights risks stemming from their unduly strict policy on granting protection to Afghan claims, domestic courts have ruled against transfers of individuals in following decisions:

Suspensions of Dublin transfers on account of indirect <i>refoulement</i> in 2018				
Country suspending the transfer	Country to which the transfer was addressed	Judicial authority	Case	Date of decision
France	Germany	Administrative Court of Bordeaux	180412	15 June 2018
	Austria	Administrative Court of Rouen	1801386	31 May 2018
	Belgium	Court of Appeal of Nantes	17NT03167	8 June 2018
	Finland	Administrative Court of Appeal of Lyon	17LY02181	13 March 2018
Italy	Norway	Civil Court of Rome	58068/2017	25 May 2018
Germany	Sweden	Administrative Court of Saarland	5 L 140/18	27 February 2018

Moreover, in 2018, some transfers to Italy have been halted on account of the government's decisions to forbid search and rescue boats from disembarking in Italian ports, its plans to slash funding for asylum seekers, its hostile discourse on migrants, and the increase in incidents of racist violence. Transfers have also been halted following the recent dismantling of the country's standards through legislative reform.

Suspensions of Dublin transfers to Italy in 2018			
Country	Judicial authority	Case	Date of decision
France	Administrative Court of Paris	1807362/8	25 June 2018
	Administrative Court of Paris	1810819/8	3 August 2018
	Administrative Court of Bordeaux	1803602	29 August 2018
	Administrative Court of Melun	1807266 and 1807354	18 September 2018
	Administrative Court of Versailles	1807048	11 October 2018
	Administrative Court of Pau	1802323	15 October 2018
	Administrative Court of Toulouse	1805185	9 November 2018

	Administrative Court of Appeal of Lyon	18LY00381	2 October 2018
	Administrative Court of Appeal of Nantes	18NT00965	5 October 2018
Portugal	Central Administrative Court (TAC) Lisbon	1353/18.0BELSB	17 September 2018
Netherlands	Regional Court Amsterdam	NL18.17748	18 October 2018

Alongside official policy and discourse on asylum seekers, the acquiescence in police violence by Bulgaria – and the overall reception conditions in the country - have also been deemed a ground for suspending Dublin transfers.

Suspensions of Dublin transfers to Bulgaria in 2018			
Country	Judicial authority	Case	Date of decision
Germany	Higher Administrative Court Lower Saxony	10 LB 82/17	29 Jan 2018
Germany	Federal Constitutional Court	2 BvR 863/17	29 Aug 2018
Austria	Federal Administrative Court	W233 2146827-1	12 Jan 2018
Austria	Constitutional Court	E2418/2017	11 Jun 2018
France	Administrative Court Paris	54-035-03-C	06 Jul 2018
Switzerland	Federal Administrative Court	E-6725/2015	04 Jun 2018
	Federal Administrative Court	E-4498/2018	19 Nov 2018
	Federal Administrative Court	E-3356/2018	6 May 2018
Romania	Regional Court of Rădăuți	375/2018	29 Jan 2018
-	European Court of Human Rights	32442/18 (Rule 39)	06 Jul 2018
-	European Court of Human Rights	34398/18 (Rule 39)	24 Jul 2018

ECRE, “To Dublin or not to Dublin?”, November 2018, available at: <https://bit.ly/2EbDosN>.

Relevant national jurisprudence

Belgium - In 2018, the Council of Alien Law Litigation (CALL) annulled different Dublin transfers, as they did not take the necessary individualised guarantees of the asylum seeker into account and therefore violated Article 3 of the ECHR (see table below). This included *inter alia* annulling the transfer to Spain of an asylum seeker with a new-born child,²⁴ a transfer to Germany of an asylum seeker having with diabetes and Parkinson’s disease,²⁵ a transfer of an asylum seeker living with HIV,²⁶ a transfer of two young children who were accompanied by their parents,²⁷ and a transfer of a single women due to her vulnerability as victim of sexual assault.²⁸ Moreover, in June 2018, the government tried to perform a Dublin transfer to Hungary, which was suspended by the CALL. Subsequently, in September 2018, the Aliens Office confirmed that there were still no transfers to Hungary. However, in 2018, Belgium continued to transfer asylum seekers to Greece, which has been ruled by the CALL as non-contradictory with the ECHR in two cases.²⁹

²⁴ CALL, Decision No 203 865, 17 May 2018.

²⁵ CALL, Decision No 207 355, 30 July 2018.

²⁶ CALL, Decision No 201 167, 15 March 2018.

²⁷ CALL, Decision No 203 861, 17 May 2018.

²⁸ CALL, Decision No 210384, 1 October 2018.

²⁹ CALL, Decision No 205104, 8 June 2018 and CALL, Decision No 208991, 6 September 2018.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Romania – Practice on transfers to Bulgaria remained inconsistent in 2018. Several 2018 cases, both allowing and annulling transfers to Bulgaria, are described in the AIDA country report. Moreover, according to the Jesuit Refugee Service representative in Bucharest, a number of asylum seekers were transferred from Germany to Romania, as case law of German courts has mostly upheld the legality of Dublin transfers to Romania. Belgium and the UK also transferred asylum seekers to Romania.

AIDA, Country report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

4.4. Bilateral agreements

ECRE has published a [Policy Paper](#) analysing the recent bilateral arrangements between EU Member States on responsibility for asylum seekers and urging against attempts to disregard and undermine the standards set out in the CEAS. These bilateral arrangements have been presented by Germany as an interim response to the political deadlock preventing the adoption of the CEAS reform. While some agreements such as the German-Portuguese arrangement adhere to and operate within the EU legal framework, others, namely the German-Greek and German-Spanish arrangements, bypass the rules set out in the Dublin system with the aim of quickly carrying out transfers. The effect of the latter arrangements is the neutralisation of crucial safeguards contained in the Dublin Regulation such as the right to a personal interview, the right to appeal, and the prevention of transfers when human rights risks arise.

ECRE, Bilateral agreements: implementing or bypassing the Dublin Regulation?, December 2018, available at:

<https://bit.ly/2rvGNur>.

Portugal – In October 2018, the authorities announced a bilateral agreement with Greece to implement a pilot relocation process for 100 asylum seekers from Greece to Portugal. The arrangement is yet to be implemented.

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

5) Specific procedures (border, accelerated, admissibility)

5.1. Border procedure

New/remaining matters of concern

Italy – Article 28bis(1ter) of the Procedure Decree, as amended by Law 132/2018, has introduced a border procedure according to which an accelerated procedure applies to asylum applications made at the border or in transit areas. The accelerated procedure further applies at the border to asylum seekers who come from designated safe countries of origin. The entire procedure can therefore be carried out directly at the border or in the transit area.

AIDA, Country Report Italy, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

Portugal - While pregnant women, families with children and the severely ill were generally exempted from border procedures and such guarantee was also generally extended to unaccompanied asylum-seeking children, between 2017 and July 2018 the immediate release of families with children and pregnant women from border points and exemption from border procedures was no longer standard practice.

AIDA, Country Report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

Spain – In 2018, the Ministry of Interior affirmed that the deadline provided by the Asylum Act for the border procedure did not apply to asylum applications lodged from the Detention Centres for Foreigners (CIE). This means that, in case the Office of Asylum and Refuge (OAR) did not provide a positive decision on the application within 4 days, the applicant kept being detained in the CIE instead of being released. The Ministry of Interior considered that in such cases the 1-month time limit foreseen for the regular procedure applied, instead of applying the mentioned 4-day time limit provided for the border procedure.

AIDA, Country Report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

5.2. Admissibility

New/remaining matters of concern

Belgium - Following the reform that entered into force on 22 March 2018, the Aliens Act contains the “safe third country” concept, as a ground for inadmissibility. The CGRS has already stated that it will only apply this concept very exceptionally and that there will not be a list of safe third countries. In 2018 the concept has not been applied by the Commissioner-General for Refugees (CGRS).

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Croatia – In 2018, 140 applications were dismissed as inadmissible. Namely, the concept of safe third country was applied to 29 persons from Afghanistan.

AIDA, Country report Croatia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2018update.pdf

France – The safe country concepts were heavily debated in the context of the 2018 asylum reform. While the government had announced preliminary plans to codify the concept of “safe third country” in French law, this was later abandoned in the bill.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Hungary - A new inadmissibility ground was introduced into the Asylum Act in July 2018, consisting of a hybrid between the safe third country and first country of asylum concepts. Compliance of such a ground with the recast Asylum Procedures Directive was raised in a preliminary reference by the Metropolitan Court, while it also led the European Commission to start an infringement procedure (see **Other relevant developments**). There is no automatic suspensive effect of the appeals against the inadmissible decision based on the new ground. All asylum seekers applying for asylum after July 2018 have received inadmissible decisions, except for the former Prime Minister of North Macedonia who was granted refugee status.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Malta – Given their significant increase since 2017, NGOs expressed concerns over the application of inadmissibility procedures and the lack of effective remedy against the inadmissibility decisions taken in the accelerated procedures. This is subject to a legal challenge in court in the case of a Palestinian asylum seeker.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Netherlands - In November 2018 the Dutch government has further presented a proposal to adjust Article 3.118b of the Aliens Decree to abolish the interview during a subsequent asylum procedure in certain circumstances. This proposal is laid down in the Coalition Agreement, and has been criticised by the Dutch Council for Refugees.

AIDA, Country report Netherlands, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

Portugal - As regards the safe third concept, it has been used only in two cases in 2018 as a ground for rejecting asylum claims as inadmissible. In those limited cases the analysis conducted by the SEF into the conditions of the concept generally focused on the legal status of the applicant, failing to adequately assess security risks in the first country of asylum alleged by the applicant.

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

Spain - In 2017, the OAR dismissed 23 applications as inadmissible, of which 14 in the border procedure. This number increased considerably in 2018, with at least 1,455 applications dismissed as inadmissible, of which 577 concerning nationals of Algeria and 492 nationals of Morocco. Information on the inadmissibility grounds applied is not available.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Relevant national jurisprudence

France - The assessment of admissibility of subsequent applications has been further interpreted by case law. The Council of State has upheld the CNDA position stating that the preliminary assessment of the admissibility of a claim must fulfil two cumulative conditions: (a) the alleged facts or circumstances must be “new”; and (b) their probative value must be such as to warrant a modification of the assessment of the well-foundedness of the claim.³⁰ With regard to the first limb, the Council of State ruled later in 2018 that a final judgment by the ECtHR finding that a removal measure to the country of origin would constitute a violation of Article 3 ECHR constitutes new evidence, warranting admissibility of the subsequent application.³¹

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Switzerland - In a case concerning a Kurdish journalist for whom the SEM had issued an inadmissibility decision and an expulsion order to Brazil, the Federal Administrative Court recalled that, unlike third countries designated as safe by the Federal Council, the SEM must, when it comes to a return to another third country, examine in each case whether the latter offers sufficient protection against *refoulement*. In the present case, the Court considered that the reasoning put forward by the SEM, which concluded that there was effective protection against any *refoulement* in the country of origin, was insufficient.³²

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

5.3. Accelerated procedure

New/remaining matters of concern

³⁰ Council of State, Decision No 3979611, 26 January 2018; CNDA, Decision Nos 15025487 and 1502488, 7 January 2016.

³¹ Council of State, Decision No 406222, 3 October 2018.

³² Federal Administrative Court, Decision D-635/2018, 8 February 2018.

Cyprus - In practice the accelerated procedure is never used but the Ministry of Interior expressed its intention to start using it to tackle the large backlog of cases in late 2018. However, this had not materialised by the end of the year.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

Italy – Decree-Law 113/2018 has introduced a new definition of manifestly unfounded applications, which now also refers to applications submitted by people originating from safe countries of origin.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

France – Following the 2018 reform, appeals in the accelerated procedure have automatic suspensive effect, except for those based on: (a) safe country of origin; (b) subsequent application; and (c) threat to public order. These exceptions were added by the 2018 asylum reform and entail a loss of the right to remain on the territory upon notification of the negative decision. Asylum seekers can, however, appeal before the Administrative Court within 15 days – or 48 hours in case of detention – to request that the CNDA appeal be given suspensive effect. The request to the Administrative Court has suspensive effect.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Relevant national jurisprudence

Portugal - According to the information available to CPR, the SEF resorted to accelerated procedures only once regarding unaccompanied asylum-seeking children in 2018 and that decision was later overturned at appeal stage for being in breach of the Asylum Act and the recast Asylum Procedures Directive.³³

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

6) Reception of applicants for international protection

6.1. Legal framework

Transposition of legislation

Greece - Law 4540/2018 transposed the recast Reception Conditions Directive into national law in May 2018, almost three years after the transposition deadline set by the Directive.

AIDA, Country report Greece, 2018 Update, March 2019, available at

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Ireland – Ireland transposed the recast Reception Conditions Directive into Irish law through the enactment of the European Communities (Reception Conditions) Regulations 2018. However, the extent to which these provisions are being effectively implemented as of January 2019 appears to be limited and the fact that many provisions have not been implemented in practice is cause for serious concern according to the Irish Refugee Council.

AIDA, Country report Ireland, 2018 Update, February 2019, available at

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

³³ TAC Lisbon, Decision 869/18.2BELSB, 24 June 2018, unpublished.

New/Remaining matters of concern

Belgium – Different limitations on the enjoyment of reception conditions can be imposed for infractions of the house rules of a reception centre. Two long awaited decrees on this theme were published in 2018: a royal decree on the system and operating rules in reception centres and the modalities for checking the rooms (2 September 2018) and a ministerial decree on common house rules in reception centres (21 September 2018).

AIDA, Country report Belgium, 2018 Update, March 2019, available at

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

6.2. Freedom of movement

New/remaining matters of concern

Austria - In 2017, new measures have been introduced to restrict the freedom to settle and the freedom of movement of asylum seekers. According to the basic care agreement, an asylum seeker may not establish his/her residence outside of the federal state which provides him/her basic care. However, since 1 September 2018, the restriction of residence shall cease to apply if the asylum seeker has been granted the subsidiary protection or if a humanitarian residence permit has been issued.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

France – Following the 2018 reform, allocation to a specific region is conducted even if the applicant is not offered an accommodation place. Non-compliance with the requirement to reside in the assigned region entails a termination of reception conditions. Freedom of movement is therefore restricted to a region defined by the Office for Immigration and Integration (OFII).

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Relevant national jurisprudence

Greece – On 17 April 2018, the Council of State annulled the (then applicable) Decision of the Director of the Asylum Service on the ground that it did not set out legal grounds for the imposition of restrictions on asylum seekers' freedom of movement.³⁴ It further highlighted that the regime of geographical restriction on the Greek islands has resulted in unequal distribution of asylum seekers across the national territory and significant pressure on the affected islands compared to other regions, including negative effects on their economy and public order. However, some days after the judgment, on 20 April 2018, a new Decision of the Director of the Asylum restored the containment policy on the islands. An application for annulment has also been lodged by GCR before the Council of State against this Decision. The hearing is scheduled for April 2019.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Spain - The Superior Court (TSJ) of Madrid delivered three new interim measure orders in 2018, stating again that once asylum seekers pass the admissibility phase, they must be considered as documented and their

³⁴ Council of State, Decision 805/2018, 17 April 2018, EDAL, available at: <https://bit.ly/2GmVbTI>.

freedom of movement cannot be restricted.³⁵ Until now, however, no measure has been taken regarding this issue. In October 2018 the TSJ of Madrid issued a similar decision stating the same principle in relation to asylum seekers in Melilla.³⁶

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

6.3. Reception capacity and housing

New/remaining matters of concern

Austria – As of August 2017, the Ministry of Interior had established 32 reception centers, but their number was reduced to 20 centers as of July 2018. Out of them, 3 centers are special care units, 3 are initial reception centers, 7 are distribution centers and 7 are federal reception centres. However, given the low occupation in these centers, the Ministry of Interior has announced that 7 out of the 20 federal centres will be closed until the end of 2019. Moreover, in March 2019, the Ministry of Interior has decided to rename the initial reception centres (EAST) into “departure centres”.

AIDA, Country report Austria, 2018 Update, March 2019, available at

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

Belgium - In the beginning of 2018, the government decided again to close 2,500 collective reception places and 4,000 individual places. By the summer of 2018 it became clear that - due to these closures and a growing number of asylum requests in comparison to the previous year - there would be a lack of reception capacity. Therefore, the government decided to keep 7 collective centres open at the end of September 2018. By the end of the year, the capacity of the reception system was still too limited, forcing the immigration office to refuse access to the asylum procedure and thus to access the reception system.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Bulgaria – At the end of 2018, there were 4 reception centres in Bulgaria. On 17 December 2018, Vrazhdebna shelter was closed for an indefinite period of time and residents were transferred to other reception centres. Vrazhdebna for long was the only national asylum reception facility with decent living conditions and had just recently been fully renovated with EU funding. The State Agency for Refugees (SAR) stated to have been unable to accomplish tendering and selection procedures for shelters’ security services.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Cyprus - In 2018, securing private accommodation became even more difficult for asylum seekers the majority of whom live in the community. The combination of highly restrictive policy relating to the level of allowance, the sharp increase in rent prices as well as the reluctance on behalf of homeowners to rent properties to refugees has resulted in an alarming homelessness problem, repeatedly highlighted by UNHCR and NGOs, as well as asylum seekers living in appalling conditions.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

³⁵ TSJ Madrid, Order 197/2018, 19 June 2018, available in Spanish at: <https://bit.ly/2SZXJFq>; Order 196/2018, 19 June 2018, available in Spanish at: <https://bit.ly/2DjocIE>; Order 276/2018, 27 June 2018, available at: <https://bit.ly/2CuK8i9>.

³⁶ TSJ Madrid, Decision 817/2018, available in Spanish at: <https://bit.ly/2HiAswR>.

France - The number of asylum seekers accommodated remained far below the number of persons registering an application. Whereas 139,330 persons received an asylum claim certification, only 56,399 persons were placed in accommodation in the course of the year. This number reflects severe and persisting shortages in reception capacity, with only 40% of asylum seekers registered by Prefectures in 2018 effectively obtaining accommodation. In case of a shortage of places, asylum seekers may have no other solutions than relying on night shelters or living on the street. For 2019, the Ministry of Interior has announced a target of a further 1,000 places in reception centres for asylum seekers (CADA) and 2,500 in emergency reception centres. Moreover, the amendments that were introduced in 2018 in Articles L.744-7 and L.744-8 Ceseda extended the grounds on which material reception conditions can be refused or withdrawn to an applicant.

Hundreds of migrants are still living in makeshift camps in Calais area as of early 2019. Secours catholique – Caritas stated that 600 migrants were in Calais and surroundings at in January, denouncing ongoing police harassment. In a report published in December 2018, the Ombusman denounced a "degradation" of the health and social situation of migrants living in camps in the north of France, with "unprecedented violations of fundamental rights.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Greece - The practice of indiscriminate imposition of geographical restrictions, initially by the police and then by the Asylum Service, against every newly arrived persons on the islands since the launch of the EU-Turkey Statement and for the implementation of the Statement, has led to a significant deterioration of the living conditions on the islands, which do not meet the basic standards provided by the Reception Conditions Directive. Newly arrived persons are obliged to reside for prolonged periods in overcrowded facilities, where food and water supply is reported insufficient, sanitation is poor and security highly problematic, while their mental health is aggravated.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Hungary: The majority of asylum seekers (558 persons) in 2018 were detained in the transit zones, while only a few applicants were waiting for their first instance asylum decision in one of the open reception facilities in 2018. As a consequence, some reception facilities were closed or functioned to a limited extend (e.g. limited activities in the centres, limited food provisions, limited visits of psychiatrists and psychologists, limited transportation to the centre etc.). Furthermore, as of 1 January 2019, the reception facilities and detention centres fall under the management and supervision of the central Refugee Affairs Directorate.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Ireland - In 2018, the Direct Provision estate reached capacity and no accommodation was available for newly arriving asylum seekers, rendering them homeless upon arrival in Ireland. The Irish Refugee Council further received reports of overcrowding within accommodation centres as well as poor living conditions in some Direct Provision centres and the impact that quality of living there can have on residents. After intensive representations and media attention on the issue, alternative accommodation was provided by the Reception and Integration Agency on an emergency basis. This involved the contracting of accommodation in hotels and holiday homes to house asylum seekers on a temporary basis pending contracting for more permanent accommodation centres. These centres are known as "satellite centres".

AIDA, Country report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

Italy – Decree Law 113/2018, approved by Law 132/2018, has drastically changed the Italian reception system. It draws a clear line of division between the reception system for asylum seekers and the one for beneficiaries of international protection. Only unaccompanied minors will have immediate access to the reception in the former SPRAR, now named SIPROIMI (“reception system for beneficiaries of international protection and unaccompanied foreign minors”). On the contrary, adults have to wait for the recognition of a protection in order to potentially have a place in the second reception system. The two reception systems are therefore two parallel systems. The new system further foresees large reception centres rather than small structures and apartments. This goes against organisations that had advocated for integrated and decentralised reception facilities not only for SPRAR but also for the reception in emergency reception centres (CAS).

AIDA, Country report Italy, 2018 Update, February 2019, available at

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

Malta - The initial reception centre (IRC) in Marsa has been unofficially converted back to a detention centre in 2018, on public health grounds. As regards other reception centres, NGOs regularly visiting them stated that the situation has not improved in recent years and the living conditions remain deplorable in 2018, especially in the Hal Far centres.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Portugal - The significant increase in the number of referrals from SEF meant that overcrowding in the refugee reception centre (CAR) persisted throughout the year. Between July and December 2018, CPR provided accommodation at CAR and in private accommodation to 820 applicants. Aggravating factors included the fact that the CAR was partially closed for long due renovation works and that despite the existing arrangements, asylum seekers who have appealed the rejection of their application at the border are systematically referred to the CAR upon their release for purposes of transitional accommodation. Furthermore, the transition into private accommodation has experienced significant delays throughout the year. Along with the difficulties faced by asylum seekers in finding private housing due to the lack of available properties and increased market prices all these factors contributed to stays in CPR’s CAR or private accommodation of up to 6 months.

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

Slovenia - The increase of asylum seekers affected reception conditions: the lack of reception resulted in lower hygienic standards and health risks which was one of the main problems in the first half of 2018. Given there was no systematic solution for accommodation of unaccompanied minors, the Office for Support and Integration of Migrants (UOIM) prolonged the pilot project in the Student Dormitory Postojna for a year.

AIDA, Country report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Spain - In 2018, the increase in asylum applications has caused longer waiting periods reaching up to 4 months in hotels, and some asylum seekers have also been hosted in the humanitarian reception system.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

United Kingdom - In 2018, asylum accommodation was again sharply criticised for failing to provide security, respect for privacy and basic levels of hygiene and safety, particularly for women; as reported in the media and in the latest House of Commons Home Affairs Select Committee report published in December 2018.

AIDA, Country report United Kingdom, 2018 update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

Switzerland - The first specific centre for uncooperative asylum seekers opened its doors in Les Verrières, Canton of Neuchâtel on 3 December 2018. The State Secretariat for Migration has indicated that only men would be placed in such centres. As it is still too early to learn from the experience currently underway in Les Verrières, it will be necessary to carefully examine whether adequate access to legal assistance and adequate residence conditions are ensured in centres which are geographically isolated.

AIDA, Country report Switzerland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

Netherlands - As of 2019, minors aged 16 years old or more can be transferred to the Extra Guidance and Supervision Locations (Extra begeleiding en toezichtlocaties, EBTL). These are special and restricted reception centres for asylum seekers who have caused tensions or any form of nuisance at an asylum seekers' centre (AZC), e.g. by bullying other inhabitants, destroying material, being aggressive or violating the house rules of the Central Agency for the Reception of Asylum Seekers (COA).

AIDA, Country report Netherlands, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

Positive developments

Croatia – In July 2018, the Government announced plans to build a Reception Centre for asylum seekers near Petrinja, in the place of Mala Gorica.

AIDA, Country report Croatia, 2018 update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2018update.pdf

Portugal - Following consecutive yearly increases in the number of asylum applications, CPR has developed a new reception centre with the financial support of the Council of Europe Development Bank and in partnership with the Ministry of Internal Administration. The new centre located in S. João da Talha, Municipality of Loures, was inaugurated in December 2018 and will come into operation in 2019.

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

Romania - In most centres (Șomcuta Mare, Timișoara, Rădăuți) the staff shortage was no longer an issue in 2018, except for the Regional Centre of Bucharest.

AIDA, Country report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

Relevant national jurisprudence

Austria - In a judgment of 25 June 2018, the Austrian Federal Administrative Court based its decision on the Reception Conditions Directive to state that asylum seekers should have effective access to the labour market.³⁷

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

6.4. Financial assistance

Positive developments

Ireland - On 8 October 2018, the Minister for Finance, Paschal Donohue, announced an increase in the Direct Provision allowance in Budget 2019. This increase amounted to €38.80 for adults and €29.80 for children. This increase is in line with the recommendation contained in the McMahon Report. The increase is due to come into effect the week beginning 25 March 2019.

AIDA, Country report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

6.5 Access to healthcare

New/remaining matters of concern

Greece - Due to the lack of medical services at the Reception and Identification Centre (RIC) of Fylakio, MSF implemented a project between July 2018 and December 2018 in order to cover crucial gaps in the provision of health care services and to provide the authorities the opportunity to fill the gaps. Before the launch of the MSF project, no doctor had been present there for a period of 8 months, while according to MSF, despite the fact that “the authorities had ample time to organize medical services, yet these needs are still not being covered” as of December 2018.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Poland – According to some experts and many NGOs, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice. NGOs still point at the lack of proper treatment of persons with PTSD. The available psychological assistance is considered an intervention, not a regular therapy. Moreover, there are only 3 specialised NGOs that provide psychological consultations and treatment to asylum seekers.

AIDA, Country report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Positive developments

Croatia – As of 1 November 2018, the implementation of the project funded by AMIF has started, according to which Médecins du Monde (MdM) provides health care at the Reception Centre in Zagreb and Kutina every working day from 10 am to 6pm. The Ministry of Interior has also concluded agreements with NGOs who provide psycho-social support and counselling at the Reception Centres in Zagreb and Kutina. They further buy supplies and help with the transfer to healthcare institutions. Officials that are present in the reception centres coordinate the organisation of examination between asylum seekers, MdM, other NGOs and clinics

³⁷ BVwG, Decision, No W209 2184750-1, 25 June 2018.

and ambulances. Also, according to the Ministry of Interior, interpreters can be provided for medical examinations, when necessary. However, according to the Centre for Children, Youth and Family (Modus), the availability of psychiatric treatment is still a substantial issue, as people are usually hospitalised only for one or two days, regardless of the severity of their mental health problems.

AIDA, Country report Croatia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2018update.pdf

Spain - In September 2018, the Government approved a decree reinstating universal access to the Public Health System, thus covering irregular migrants as well. Moreover, the Centre for the Reception and Integral Assistance to Persons with Mental Health Problems (Centro de Acogida y Atención Integral a Personas con Problemas de Salud Mental) opened and is dedicated to asylum seekers, beneficiaries of international protection and to migrants in a situation of vulnerability. The purpose of the residential centre is to offer a space for assistance, care and coexistence to people whose mental illness impedes their integration.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

6.6 Access to the labour market

New/remaining matters of concern

Austria - Until October 2018, asylum seekers below the age of 25 had the right to get a work permit for an apprenticeship in shortage occupations. However, the ministerial decrees of 2012 and 2013 were revoked, and asylum seekers below the age of 25 are not offered this possibility anymore.

From April 2018 onwards, the Minister of Interior has the power to regulate which NGOs will be able to enlist asylum seekers on a voluntary basis for charitable activities and to set the maximum amount for such work. The minimum fee is regulated for each sector e.g. 11.75€ an hour for gardening. The monthly income for this kind of employment is limited to 600€.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

Cyprus - Toward the end of 2018 the waiting period to access the labour market for asylum seekers was reduced from 6 months to 1 month. However, in early 2019 this was not implemented. Furthermore, no provisions were made for vulnerable asylum seekers or asylum seekers who are not able to work e.g. due to lack of language skills. As a result, the initially positive development of providing early access to the labour market did not lead to a substantial increase of asylum seekers accessing employment but rather an increase in administrative obstacles to access material reception conditions as all asylum seekers are now obliged to register at the Labour Office and actively seek employment upon one month, at which time registration of the asylum application is in most cases incomplete.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

Hungary - Asylum seekers did not have access to the labour market in 2018. They are neither entitled to work in the premises of the reception centres nor at any other work place. The law is clearly in violation of Article 15 of the recast Reception Conditions Directive.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Ireland - Despite the transposition of the recast Reception Conditions Directive, the Irish Refugee Council has received numerous reports of employers not recognising the official documents granting permission to work and not employing asylum seekers on this basis. This has been echoed by media reporting on the topic in September 2018. It is an offence under the Regulations to fail to comply with these requirements, with an employer potentially subject to a fine of 5,000€ and/or a prison term of 12 months.

AIDA, Country report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

Switzerland - From 1 March 2019 asylum seekers staying in a federal processing centre will not be allowed to engage in a gainful employment. Asylum seekers who are entitled to pursue gainful employment in accordance with the immigration provisions or who participate in charitable occupational programmes are not subject to the ban on employment.

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

Positive developments

Austria - Since 1 April 2018, asylum seekers admitted to the regular procedure for 3 months or more can also be employed through service vouchers in private households for certain type of activities such as gardening, cleaning or child care. Vouchers can be bought at the post office or online. However, in practice, the necessary registration seems to be complicated and this possibility is not very known nor used.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

Belgium - Until the end of 2018, asylum seekers needed a work permit C to be able to work, but since January 2019 the right to work is mentioned directly on the temporary residence permit they receive. A separate work permit is no longer needed.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

6.7. Access to education

New/remaining matters of concern

Malta - In 2018, access to education for unaccompanied children was significantly hindered, as a consequence of delays in the registration of the asylum applications.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Positive developments

Ireland - In 2018, a number of Irish Universities have taken steps to improve access for asylum seekers. For example, a total of 31 full-time scholarships were available in Irish universities, with an additional 6 available in institutes of technology, along with a variety of other access routes and online courses available.

AIDA, Country report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

Poland - Following an amendment introduced in the law on the Polish education system in 2016, preparatory classes for foreign children are being organized in some schools in 2018 (particularly those where asylum-seeking minors are attending).

AIDA, Country report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

7) Detention of applicants for international protection

7.1. Automatic detention / Grounds for detention

Transposition of legislation

Austria - The grounds for detention under the recast Reception Conditions Directive have now been incorporated into Section 76 of the Aliens Police Act (FPG) in compliance with the case law of the Administrative Court. Persons placed under the open asylum procedure may be detained in detention centres if, in addition to the risk of absconding, there is also a danger of public order and security within the meaning of Article 67 FPG. This is characterised as an ‘actual, present and sufficiently significant danger’.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

New/remaining matters of concern

Belgium - In 2018 the government made it priority to apprehend so-called migrants in transit who were subsequently sent to the detention centre 127bis. Many of them were released after a few days, and would regularly be apprehended, detained and set free again.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Bulgaria

- At the end of 2016, the Law on Aliens in the Republic of Bulgaria (LARB) introduced “short-term detention” to be used for security checks, profiling and identification. The law entered into force on 6 June 2018. This did not lead to a change in practice except for the fact that all initial detention orders issued to persons apprehended for irregular entry since then were short-term for 30 days. In practice, after their expiry, the Migration Directorate extends detention to pre-removal detention for up to 6 months. Asylum seekers who applied in detention centres are usually within the initial short-term duration.
- Moreover, the SAR continued, though in a limited number of cases, to conduct asylum procedures in pre-removal centres, in violation of the law. In contrast to previous years, in 2018 this practice affected “deportable” applicants in possession of valid national documents, while courts continued to find the violation insignificant for not severely damaging asylum seekers’ rights.
- Finally, very few asylum seekers have been ordered asylum detention pending their procedures based on the grounds envisaged in the national and EU law. However, the length of the detention in these cases exceeded by far the purpose and the limits of the law, reaching 196 days on average.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Cyprus – In 2018 there was an increase in the number of asylum seekers detained under the Refugee Law, which was amended to include provisions regulating the detention of asylum seekers under the Dublin Regulation, and in particular specifying when it is considered that a significant risk of absconding is present. Moreover, as detention under the Refugee Law is indefinite, coupled with the suspension of the fast-track examination of asylum seekers in detention in late 2017, there was a rise in the number of asylum seekers in detention throughout the year as well as a rise in the duration of detention. By April 2018 the number of detainees in Menogia had reached maximum capacity which eventually led to the release of detainees, however the duration and the criteria upon which asylum seekers are released are still not clear.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

France - A person can remain in administrative detention for a maximum of 90 days. Prior to the 2018 reform, the maximum time limit was 45 days.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Greece - As regards persons arriving on the Eastern Aegean islands and thus subject to the EU-Turkey Statement, a detention measure, either *de facto* under the pretext of a decision restricting the of freedom within the premises of the RIC for a period of 25 days or under a deportation decision together with an detention order, was systematically and indiscriminately imposed to all newcomers. As of 2018, this remains the case for newly arrived persons on the islands of Lesbos, Kos and to a certain extent Leros, who belong to a so-called “low recognition rate” nationality and, who are still immediately detained upon arrival pursuant to the “pilot project”. This project consists in newly arrived persons belonging to particular nationalities with low recognition rates immediately being placed in detention upon arrival and remaining there for the entire asylum procedure.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Hungary – In 2018, most asylum seekers were *de facto* detained in the transit zones, for which no alternative is prescribed in the law.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Slovenia - Due to the large increase of the number of arrivals, the number of persons detained also rose significantly. *De facto* detention of persons waiting to lodge their application was one of the main challenges in 2018. Due to the deterioration of detention conditions in 2018, PIC sent a letter containing an analysis of the practice to UOIM and met with the representatives of the Ministry of Interior. The head of the Ombudsman’s National Preventive Mechanism was also informed about the situation and performed an unannounced visit to the Asylum Home. No systemic solutions were put in place and people are still *de facto* detained before lodging their applications.

AIDA, Country report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Spain – In 2018, it appears that in Malaga detention orders in CIE are issued just for Moroccan and Algerian nationals. The Spanish Ombudsman has asked for a clarification on this practice.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

United Kingdom - In November 2018 the government announced it would close Campsfield Immigration Removal Centre in May 2019. The centre was closed down in December 2018.

AIDA, Country report United Kingdom, 2018 update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

Positive developments

Bulgaria - The delays in the release and registration of asylum seekers applying while in pre-removal detention centres were largely overcome, by registrations made within 9 calendar / 7 working days, or with just a one-day delay on average.

AIDA, Country report Bulgaria, 2018 Update, January 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

United Kingdom - New guidance relating to Immigration Bail was issued in August 2018. This guidance includes the process for referring detainees for automatic bail consideration, in most cases, four months after the person was first detained and every four months thereafter. Moreover, in response to the second report by Stephen Shaw on the detention of vulnerable people, the government announced that some specific projects (alternatives) would be developed in partnership with the voluntary sector. Details of the first of these was announced in December 2018.

AIDA, Country report United Kingdom, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

Relevant national jurisprudence

Bulgaria - The Supreme Administrative Court ruled in 2018 that the lodging of an asylum application entitles the asylum seeker to apply for immediate release from detention.³⁸ However, The SAR continued, though in a limited number of cases, to conduct asylum procedures in pre-removal centres, in violation of the law. In contrast to previous years, in 2018 this practice affected “deportable” applicants in possession of valid national documents, while courts continued to find the violation insignificant for not severely damaging asylum seekers’ rights. Also, 100% of interviews conducted in pre-removal centres are in violation of the law, as they are not tape-recorded.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Cyprus – In early 2019 the Supreme Court delivered a positive decision on a Habeas Corpus application with reference to alternatives to detention, ordering the immediate release of an asylum seeker who was detained for nearly one year. Specifically the Court clarified that the possibility to order less coercive alternatives exists not only upon the issuance of the detention order but during the entire period of detention, and should be examined when detention exceeds reasonable time limits. The Court noted that detention shall be imposed for the shortest period possible and shall be carried out without undue delay. Therefore delays in processing

³⁸ Supreme Administrative Court, Decision No 77, 4 January 2018.

the asylum application of a person in detention which cannot be imputed to the applicant do not justify the continuation of detention.³⁹

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

Malta - The Court of Magistrates clarified in 2018, in the case of an asylum seeker returned to Malta under the Dublin Regulation, that a “risk of absconding” is not a self-standing ground for detention. Since the applicant had provided most of the elements needed for the determination of his asylum claim, his detention was unlawful.⁴⁰

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Netherlands - As a result of the *Gnandi* judgment of the CJEU, territorial detention under the present law cannot be applied to asylum seekers during their asylum procedure or pending the appeal procedure. The Court of Haarlem confirmed that the current Dutch regulation does not allow for the detention of an asylum seeker at the border pending the appeal procedure.

AIDA, Country report Netherlands, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

Slovenia - In May and June of 2018 there was a large increase in asylum seekers from Algeria, Morocco and Tunisia. The Ministry of the Interior issued the majority of them detention orders and processed their applications in an accelerated procedure, rejecting their applications as manifestly unfounded. Judicial review was filed against the detention orders and in most cases the Administrative Court ruled in favour of the asylum seekers, ordering their immediate release. The practice ended in July 2018.

AIDA, Country report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Germany - Local courts often do not sufficiently examine if the detention order is necessary and proportionate and it has been further reported that basic procedural standards were sometimes violated.⁴¹ The Federal Supreme Court has therefore frequently ruled such detention orders as unlawful. Recent decisions of the Federal Supreme Court in which a detention order was ruled unlawful include cases where: a lawyer was not given the opportunity to attend a hearing;⁴² the authorities were not able to justify the necessity and the proportionality of a 21 days pre-removal detention period;⁴³ the court had wrongfully assumed that a delay in presenting identity documents was in itself constituting a „danger of absconding“.⁴⁴

AIDA, Country report Germany, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_de_2018update.pdf

7.2. Detention conditions

New/remaining matters of concern

³⁹ Supreme Court, Application 1/2019, 24 January 2019, available in Greek at: <https://bit.ly/2GgJeKM>.

⁴⁰ Court of Magistrates, *Rana Ghulam Akbar v Kummissarju tal-Pulizija*, 26 February 2018.

⁴¹ Stefan Keßler, *Abschiebungshaft*, socialnet.de, 14 January 2019, available in German at: <https://bit.ly/2TiNCji>.

⁴² Federal Supreme Court, Decision No V ZB 79/18, 6. December 2018, available in German at: <https://bit.ly/2EQAPeO>.

⁴³ Federal Supreme Court, Decision No V ZB 54/18, 22 November 2018, available in German at: <https://bit.ly/2lWq4vP>.

⁴⁴ Federal Supreme Court, Decision No V ZB 151/17, 13 September 2018, available in German at: <https://bit.ly/2SL9wqg>.

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. Moreover, 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. A nurse and/or a doctor visits detention centres on a weekly basis, but the language barrier and lack of proper medication make these visits almost a formality and without any practical use for the detainees.

AIDA, Country report Bulgaria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Cyprus – Conditions in the holding cells of the various police stations vary. In a report issued by the Ombudsman’s Office following a monitoring visit of the holding cell in Oroklini, Larnaca the conditions were found to be below accepted standards and included issues related to lack of access to open-air spaces, overall cleanliness and hygiene issues, access to information and access to full set of rights.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

France – The practical problems observed regarding access to healthcare relate to a lack of consideration for psychological or psychiatric problems of the detainees. Dozens of suicide attempts are reported each year in these centres. In some detention centres, the lack of continuing presence of medical units leads police officers to assess the needs of patients, as is the case for example in Guadeloupe. The lack of medical confidentiality remains another concern.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Germany – In 2018, the facility Darmstadt-Eberstadt (Hesse) was opened and only few reports about the conditions have been published. However, in June 2018, local activists accused the staff of the facility of brutality against inmates. They claimed that “ill-treatment, restraining of detainees and incommunicado detention” were “commonplace” at the facility. Authorities rejected these allegations and claimed that isolated incidents had been generalised and exaggerated by local activists. Moreover, in January 2018, the facility of Büren was visited by the National Agency for the Prevention of Torture. It published a report on 30 October 2018 in which it severely criticises the detention conditions in Büren, especially regarding the special security measures that are applied, as they are not based on a thorough individual assessment and do not offer sufficient safeguards to comply with the principles of necessity and proportionality. They are further very similar to security measures applied in regular prisons.

AIDA, Country report Germany, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_de_2018update.pdf

Greece - Pre-removal centres face substantial medical staff shortage at the moment. Specifically, there was no doctor present in Paranesti, Lesvos and Kos and no psychiatrist in any of the pre-removal detention centres at the end of 2018. Psychologists were not present in Paranesti and Xanthi. Furthermore, detainees in police stations live in substandard conditions i.e. poor sanitary conditions, no outdoor access, no natural light, no provision of clothing or sanitary products, insufficient food, lack of medical services, no interpretation services. In January 2018, the Ombudsman visited the Police Station of Pagrati and confirmed the above

observations. The CPT made similar preliminary observations following its latest visit in Greece in 2018. Special mention should be made of the detention facilities of the Aliens Directorate of Thessaloniki (Μεταγωγών). Although the facility is a former factory warehouse, completely inadequate for accommodation, it continues to be used for administrative detention.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Spain - Protests and riots are continuous in the CIE of Aluche in Madrid. In August 2018, 13 Algerian nationals escaped from the centre. In October 2018 a riot started following an escape attempt by some Algerian nationals and led to injuries of 11 police officers and one detainee. In 2018, the organisation SOS Racismo published a report on the situation of CIE between 2014 and 2017, highlighting that there were at least 15 hunger strikes, 3 collective riots involving high numbers of persons, 7 attempts of suicide and 11 attempts of escape in the CIE of Aluche during that period.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

7.3. Access to detention facilities

New/remaining matters of concern

Croatia – Problems with access and communication with detained asylum seekers in the Reception Centre for Foreigners were reported by attorneys. The Centre for Peace Studies was not allowed to access the Reception Centre for Foreigners in Ježevo and Transit Reception Centre in Tovarnik. The newly adopted Ordinance of stay in the Reception Centre for Foreigners restricts visits to the Centre for non-governmental organisations, attorneys, and even representatives of institutions such as the Ombudsperson.

AIDA, Country report Croatia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2018update.pdf

Germany - The support group “Hilfe für Menschen in Abschiebehaft Büren” reported in January 2018 that the general access to the detention centre in Büren, as well as the access to certain particular detainees, was “massively impeded” by the facility. The group reiterated its criticism in a statement to a parliamentary committee in November 2018. Nevertheless, several welfare organisations are offering independent counselling services to detainees in the Pforzheim facility of Baden-Württemberg.

AIDA, Country report Germany, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_de_2018update.pdf

Greece - NGOs’ capacity to access detainees in practice is limited due to human and financial resource constraints. Another major practical barrier to asylum seekers’ communication with NGOs is that they do not have access to free telephone calls. Therefore access inter alia with NGOs is limited in case they do not have the financial means to buy a telephone card. Moreover, it should be noted that in a number of detention facilities such as Tavros and all police stations people are not allowed to use their mobile phones.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Hungary - In 2018, the United Nations Working Group on Arbitrary Detention was denied access to the transit zones in Hungary as the authorities considered that transit zones do not fall under their mandate, as these were not places of deprivation of liberty. Moreover, HHC attorneys or any other non-government affiliated

attorneys do not have access to the transit zones. The HHC attorneys can only represent the clients if the asylum seekers explicitly communicate the wish to be represented by the HHC attorney to the IAO and sign a special form. Once this form is received by the IAO, the HHC attorney can meet the client – accompanied by police officers – in a special container located outside the living sector of the transit zone. This way the legal aid in the transit zone is seriously obstructed, as free legal advice does not reach everyone in the transit zone, but only those explicitly asking for it. Besides, it is impossible to obtain legal assistance by the HHC attorney during the first IAO interview, since the interview usually happens immediately when the person is admitted to the transit zone and therefore there is no opportunity to access an attorney first.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Malta – Access to the Initial Reception Centre (IRC) is regulated by Agency for the Welfare of Asylum Seekers (AWAS), and is only granted to UNHCR and one NGO.

AIDA, Country report Malta, 2018 Update, March 2019, available at

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

8) Procedures at First Instance

New/remaining matters of concern

Austria

- The 20-day period for the admissibility procedure was deleted and the in-merit procedure can be carried out during the admissibility procedure. In such cases, the regular procedure will no longer be carried out at the regional directorates and the asylum seekers remain at the reception center of the federal government.
- The extension of the decision period from 6 to 15 months for the Federal Office for Immigration and Asylum (BFA) and to 12 months for the Federal Administrative Court (BVwG) has expired on 31 May 2018. However, it still applies to proceedings that were pending in first instance or in Court at that time.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

Greece - Following a legislative reform in 2018, in case of urgent need, the Asylum Service may be supported by Greek-speaking personnel provided by EASO for the registration of applications and during interviews. EASO experts have a rather active role within the scope of the Fast-Track Border Procedure, as they conduct first instance personal interviews, they issue opinions regarding asylum applications and they are also involved in the vulnerability assessment procedure. Following the 2018 reform, Greek-speaking EASO personnel can also conduct any administrative action for processing asylum applications, including in the regular procedure.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Ireland - The International Protection Office continues to deal with cases lodged prior to the International Protection Act 2015 commencement, in addition to steadily increasing new arrivals. According to most recent official data, due to the transitional case backlog, persons who made an application after January 2017 and whose cases fall outside of the prioritisation criteria will likely be waiting at least 18-20 months before they receive a date for their substantive interview. However, in the experience of the Irish Refugee Council's

casework, applicants who successfully request prioritisation have been granted an interview within 2 to 6 months.

AIDA, Country report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

Netherlands - Since 7 January 2019, every asylum seeker has to fill out a registration form (as opposed to the previous practice that applied only to certain nationals) and the questions now include further information, such as the person's work, religion and information on his or her relatives. During the registration procedure, asylum seekers do not obtain information from the Dutch Council for Refugees and are not assisted by a lawyer. This new policy is laid down in a recent Aliens Circular and a IND work instruction has been introduced in that regard.

AIDA, Country report Netherlands, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

9) Procedures at Second Instance

New/remaining matters of concern

Austria - Following the law amendment that came into effect on 1 September 2018, the time limit for appeals has been set at 2 weeks for applications that were found inadmissible and in cases of status withdrawals. Moreover, an appeal has no suspensive effect in cases in which an asylum seeker has attempted to mislead the BFA by providing false information or documents, by concealing important information or by withholding documents about his/her identity or nationality. The authorities are not required to inform the applicant of the consequences this engenders.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

Bulgaria - The effectiveness of the appeal system as the sole avenue for independent revision of first instance decisions is likely to be seriously undermined following some recent developments.

- In March 2018, the recently appointed Chair of the Supreme Administrative Court, announced to have ordered measures to compensate delays in the appointment of hearings relating to some types of cases, including asylum ones. As a result, 100 asylum cases were moved from the 3rd Section, specialised in asylum and refugee law, to the 4th Section of the Court, which has never ruled on such cases. All cases were heard and decided by this Section prior to 30 June 2018 with 94% refused, including by overruling positive court decisions of the previous instance. The overwhelming majority of the judgments shared similar and purely formal reasoning without any individual assessment. This practice with identical results continued during the course of the whole year.
- Moreover, in September 2018, amendments were made to the Administrative Procedure Code, which, if not abolished by the Constitutional Court in the pending conformity procedure, would subject the access to this highest instance of all individuals, including asylum seekers, to the unfettered and sole discretion of the judge rapporteur. These amendments were strongly criticised by the National Bar Association, the Judges Union, the Ombudsperson, the President and many opposition parties and members of the academia as evidently anti-constitutional and undermining core democratic and judicial principles.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Cyprus - The law on the establishment and operation of the International Protection Administrative Court (IPAC) was enacted in 2018. The new Court is expected to start operating in May 2019 and will take over from the Administrative Court. It has yet to be clarified if the existing backlog of the Administrative Court, which is reported at the end of 2018 to be 555 cases, will be transferred on to the new Court. If the backlog is indeed transferred it is expected to hamper the speedy examination of asylum cases, just like in 2016. The Refugee Reviewing Authority remains in operation and continues to receive new cases, with a backlog of 1,490 cases, despite a significantly low number of staff. There is no indication as to when it will cease to receive new cases.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

France

- The average processing time for the CNDA to take a decision increased to 6.5 months in 2018 compared to 5 months and 6 days, due to a rise in the number of appeals registered and to strikes. For the regular procedure, the average processing time was 8 months and 4 days.
- As of 1 January 2019, the CNDA may use videoconferencing even without the consent of the applicant, to ensure “a proper administration of justice”. The interpreter sits in a room together with the asylum seeker; if this is not possible, he or she is present from the side of the Court. Where videoconferencing is used, the CNDA shall prepare two transcripts, one in the seat of the Court and one in the hearing room where the applicant is present. 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 until 2019, 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 2019.⁴⁵ The 2018 reform has been severely criticised in this regard, with practitioners referring to technical deficiencies in the videoconferencing system in Lyon which would prevent quality hearings.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Hungary - As regards jurisdiction in asylum cases, there has been a dispute going on between the courts in 2018. According to the Code on Administrative Litigation that came into force on 1 January 2018, the asylum judicial procedure shall be conducted by the court under whose territorial jurisdiction the administrative activity subject to the dispute is performed. Since April 2018 the Szeged Administrative and Labour Court has declared lack of jurisdiction in asylum cases based on the argument that the administrative activity is performed in Budapest. Nonetheless, in October 2018, the Metropolitan Administrative and Labour Court reinterpreted the jurisdiction and, by referring to a ruling of the Metropolitan Regional Court, claimed that the administrative activity shall be determined based on the place of issuance of the decision. Since none of the courts took responsibility on conducting the judicial review, the Metropolitan Regional Court decided on the jurisdiction in November last year. The Court rendered the jurisdiction to the Szeged Administrative and Labour Court based on the argument that the place of issuance of the decision determines the place of the activity performed by the administrative body. Therefore, since November 2018 decisions issued in the transit zones are adjudicated in Szeged.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

⁴⁵ CNDA, Decision 2018.12.DK.01 of 17 December 2018, available in French at: <https://goo.gl/CksrSR>.

Italy - During 2018, the Questura of Naples made an incorrect interpretation of the law, claiming that, for all appeals submitted after the entry into force of Law 46/2017, suspensive effect had to be requested and obtained. The Questura deemed that all applicants automatically fell within the accelerated procedure on the ground that they had applied for asylum after being apprehended for avoiding or attempting to avoid border controls or found irregularly on the territory with the sole aim of avoiding removal or refusal of entry. Following a ruling of the Court of Appeal of Naples which clarified the nature of the accelerated procedure, ASGI requested the Questura to immediately stop this unlawful practice.

AIDA, Country report Italy, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

Relevant national jurisprudence

Poland – In 2018, the Supreme Administrative Court in numerous cases decided not to grant suspensive effect to an appeal against a final negative asylum decision, on the basis that it does not impose an obligation to leave the territory (only a return decision does so), and therefore the condition of a risk of irreparable harm is not fulfilled.⁴⁶ In the 20 December 2018 ruling, the Supreme Administrative Court held that, although in numerous cases the same Court was of the opinion that suspensive effect due to the threat of irreparable harm can only be granted to an appeal against a final return decision, this can be an insufficient safeguard and therefore decided to suspend the enforcement of the final negative asylum decision.⁴⁷ According to the information provided by the Voivodeship Administrative Court, in 2018 the Court refused in 86 cases to grant suspensive effect and only in one case decided to grant suspensive effect to the onward appeal against a negative asylum decision.

AIDA, Country report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Positive developments

Romania – As opposed to last year, judges of the Regional Court of Bucharest District 4 started hearing the asylum seekers *ex officio*. The hearing consists of asking the asylum seeker if he has something else to add or to clarify certain aspects.

AIDA, Country report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

10) Availability and use of Country of Origin Information

11) Vulnerable applicants

11.1. Reception of vulnerable groups

New/remaining matters of concern

Belgium - Due to a lack of places for adults in the second half of 2018, Fedasil started sheltering adults in the wing of the collective centres that is normally reserved to minors (up to maximum 25% of the places). Fedasil selected these adults and they usually are young adults who still go to school, or families who agreed to be sheltered in that part of the centre.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

⁴⁶ See e.g. Supreme Administrative Court, II OZ 872/18, 14 September 2018, available at: <http://bit.ly/2Haucpl>.

⁴⁷ Supreme Administrative Court, II 1239/18, 20 December 2018, available at: <http://bit.ly/2T6Zq8d>.

Bulgaria - IOM Bulgaria received AMIF emergency funding to build safe zones for unaccompanied children in Ovcha Kupel and Voenna Rampa shelters in Sofia, which had to be ready in June 2018. However, none of the two foreseen safe zones were ready or functioning as of the end of 2018. While the safe zone in Voenna Rampa shelter is expected to start operation in March-April 2019, nothing is yet done in Ovcha Kupel shelter. Thus, in 2018 many unaccompanied asylum-seeking children in Bulgaria continued to be accommodated in mixed dormitories and, in the majority of the cases, in rooms with unrelated adults.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

France - The 2018 reform provided for the creation of an automated data processing system for unaccompanied children, aiming at “better guaranteeing child protection and at the prevention of illegal entry and stay of foreigners in France” . A Decree of 30 January 2019 has further detailed this database and the evaluation process for unaccompanied children. As a result, all young persons applying for support as unaccompanied children are from now on required to register at Prefectures their personal data, including fingerprints, photograph and documents, while Childcare Protection may ask the Prefecture for help in the evaluation process as regards the identity of a young person.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Hungary – On 26 June 2018, the HHC released “Safety Net Torn Apart”, an extensive study on the situation of vulnerable asylum seekers in Hungary. The research relies on first-hand information provided by asylum seekers in the transit zones and lawyers working with them, as well as official information provided by the IAO through freedom of information requests. The report accounts for a lack of careful assessment of individual vulnerabilities in the transit zone, lack of places where women can have privacy without men present, no specific, tailored information for women and minors in detention, inadequate basic healthcare services and ineffective psycho-social assistance and improper education.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Romania - Based on information provided by Save the Children Romania, there have been cases where unaccompanied children below the age of 16 were left in the Regional Centres for months before being accommodated in a Directorate-General for Social Protection and Child Protection (DGASPC) centre – probably due to a shortage of accommodation places. As regards the conditions in DGASPC facilities, Save the Children stated that the facilities are decent but there are no interpreters, so that interaction with these children is limited. In most cases the staff is not trained to work with foreign children and the services provided are not adapted to their needs.

AIDA, Country report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

Slovenia - Since the number of unaccompanied children in 2018 was higher than the reception capacity of the Student Dormitory, in practice only unaccompanied children under 16 were accommodated in Postojna while the rest were accommodated in the Asylum Home even though it is not a suitable accommodation for unaccompanied children. The reason for that is that, although an age assessment procedure is set out in law,

it was not carried out in practice, thereby raising the risk of adults falsely claiming to be children being accommodated together with actual children.

AIDA, Country report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Spain - Due to the high increase in arrivals during 2018, many unaccompanied children have been left with no safe accommodation and have been forced to sleep in police stations. The Committee on the Rights of the Child issued its Observations on Spain in 2018, where it expressed serious concerns about the reception of unaccompanied children (e.g. deficiencies of the facilities, overcrowding, ill-treatment, isolation, erroneous medical diagnosis and wrong medical treatments, lack of surveillance systems and of reporting mechanisms to the authorities). As regards Melilla's Centre of Protection of Minors, unaccompanied children prefer to live on the streets and try to reach the Spanish Peninsula hiding in transport. This concerned between 50 and 100 children in 2018.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

United Kingdom - If it comes to light that an asylum seeker has been trafficked, they may be referred to special accommodation run by the Salvation Army where specific support is given and the trafficking case considered. In 2018 the amount of subsistence paid to these individuals was cut to bring it in line with others in the asylum support system. This change was challenged in court and was successful.⁴⁸ In January 2019 guidance was issued by the government advising affected victims how to claim backdated payments arising from the unlawful cut.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

Positive developments

Belgium - Following the new instruction on the transfer to an adapted place for medical reasons of 7 May 2018, a transfer can be requested if the place is not adapted to the medical needs of the asylum seeker. Moreover, a transfer based on other grounds than medical reasons can be requested if it is not possible to adapt the assigned place to the individual needs of the asylum seeker and if he/she meets certain criteria. However, Fedasil's end report of December 2018 concludes that there is a significant divergence between the identification of vulnerabilities conducted at the very beginning of the procedure by the Aliens office and the Dispatching desk, and the one conducted once the asylum seeker is placed in an assigned reception centre.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Belgium - Following the reform that entered into force on 22 March 2018, it is now clearly provided that asylum seekers should, at the start of the asylum procedure, fill in a questionnaire determining any specific procedural needs. In practice, this has led the Immigration Office to ask the asylum seeker whether he or she has medical or psychological problems that might influence the interview, if she/he would like his/her partner to be present during the interview, if she/or he would prefer a male or a female interpreter, as well as asking pregnant asylum seekers about the impact of their pregnancy.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

⁴⁸ High Court, R (K and AM) v Secretary of State for the Home Department [2018] EWHC 2951 (Admin), 8 November 2018, available at: <https://bit.ly/2Fy4WJE>.

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Hungary - Amendments that entered into force on 1 January 2018 describe detailed procedural safeguards for interviewing children. These include the requirement for the IAO to conduct the asylum interview in an understandable manner and by taking into account the age, maturity, the cultural and gender particularities of the child. This includes a child-friendly interview room for children below the age of 14. Any subsequent interview needs to be conducted by the same case officer in case the child needs to be heard. Finally, case officers interviewing children must possess the necessary knowledge on interviewing children.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Poland – In 2018, the Office for Foreigners in partnership with NGOs continued to implement a comprehensive system of child protection against violence in the centres. In the framework of the project “We protect children in the centres for foreigners”, trainings of centre staff were organised and standards of child protection were developed.

AIDA, Country report Poland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

United Kingdom - The Immigration Act 2016 included provision for the legal transfer of responsibility for unaccompanied children from the initial local authority to a second local authority which has volunteered to take over the care. Initially possible only in England; in 2018 the government extended it to Scotland, Wales and Northern Ireland. A protocol, along with information and advice for social workers is available on the ADCS website. Funding is provided to local authorities for the care of unaccompanied children and those who have left care but are still the responsibility of the local authority.

AIDA, Country report United Kingdom, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

11.2. Detention of vulnerable groups

New/remaining matters of concern

Belgium - In August 2018, the Belgian government resumed the detention of families with children, in specially created facilities right next to Brussels National Airport. In August 2018, the government opened five family units in the 127bis repatriation centre, as a result of which families with children are being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure. This is a practice that Belgium had suspended after it was convicted by the ECtHR in the past.⁴⁹

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Bulgaria - In the cases of undocumented children from 14 to 18 years, whose age cannot be evidently established by their appearance, the police continues to employ detention through “attachment” to unrelated adults or registration as adults. The Ministry of Interior has refused to credit their statements about their age and commenced implementation of age assessment based solely on X-ray wrist expertise prior to any referral to child care services.

⁴⁹ ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Greece – On many occasions in 2018, GCR has found third-country nationals, including persons belonging to vulnerable groups, detained on the basis of a removal order issued due to “lack of legal documentation” according to the justification provided by the police, who argued that despite multiple efforts they did not manage to gain access to the asylum procedure through Skype.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Hungary - On 26 June 2018, the Hungarian Helsinki Committee released “Safety Net Torn Apart”, an extensive study on the situation of vulnerable asylum seekers in Hungary. The report accounts for a lack of careful assessment of individual vulnerabilities in the transit zone, lack of places where women can have privacy without men present, no specific, tailored information for women and minors in detention, inadequate basic healthcare services and ineffective psycho-social assistance and improper education.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Malta - In 2018, according to NGOs' experiences, vulnerable persons arriving in Malta by boat were detained in the IRC, often for more than 14 days. Alleged minors were mixed with adult asylum seekers upon arrival. In some cases, children were detained in the IRC even after having been found to be minors as a result of the age assessment procedure.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Poland - In 2018 the Commissioner for Human Rights visited another 3 detention centres and in the reports the Commissioner reminds that the internal algorithm, on the basis of which the identification is performed, does not clearly state, that vulnerable persons, once identified, should be immediately released from detention. The Commissioner observes that lack of accessible treatment and therapy in the detention centres is rather deepening the trauma. Torture survivors are present in detention centres and even if they are identified at a later stage – they are not released from detention. There is a lack of expertise among medical staff and psychologists in the detention centers (poor knowledge of Istanbul Protocol). Moreover, in 2018, the best interest of the child is still not considered in decisions on detention

AIDA, Country report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Portugal - The report of the European Commission against Racism and Intolerance (ECRI), published in October 2018, made reference to the excessive use of detention in the context of asylum. Following the public debate during the summer of 2018 regarding the detention of vulnerable asylum seekers and the detention conditions at the Lisbon Airport, the Ministry of Interior adopted a decision on 24 July 2018 determining among others an inquiry into the functioning of the detention facility by the General Inspectorate of Internal Administration (Inspeção Geral da Administração Interna – IGAI) and a report from the SEF to the Ombudsman regarding the state of implementation of its report recommendations from 2017. The results of these initiatives have not been made public to date.

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

Romania – In 2018, several cases of unaccompanied minors being detained were reported. This included cases in which no requests for age assessments were made, but also cases in which the authorities had registered them as unaccompanied children and still proceeded to detention. When an age assessment is requested, the child is treated as an adult and placed in detention pending the age assessment, until his or her age is confirmed. During 2018, there were also two pregnant women from Vietnam and Kosovo detained in Arad who were later transferred to Otopeni. Moreover, Save the Children stated that a family from Cuba with a minor child and the child's grandmother was detained in Otopeni for a few months in 2018 until they were released and granted tolerated status. This was confirmed by a lawyer, who stated that the child's grandmother was not released.

AIDA, Country report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

Slovenia - Due to organisational difficulties such as the unavailability of interpreters and doctors, there have been cases of persons, including families and unaccompanied children, held in the reception area of the Asylum Home for 5-6 days on average. The trend continued in 2018 due to a large number of arrivals.

AIDA, Country report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Positive developments

Bulgaria – An amendment to the Law on Aliens (LARB) Regulations entered into force on 10 July 2018 to introduce rules and procedures for immediate and direct referral of unaccompanied migrant children from the police to the child protection services in order to avoid their detention. The reform resulted in almost immediate change in the national police practices on detention of unaccompanied minor children below 14 years of age. Children are assisted by the police and child care services to apply for asylum, thus ensuring their free and direct access to asylum procedure.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Relevant national jurisprudence

Greece - On 28 February 2019, the ECtHR delivered its judgment in the case *H.A. and others v. Greece* (application no. 19951/16), regarding the detention of unaccompanied minors who were apprehended at Greece's borders and were placed under "protective custody" in police stations in Northern Greece before being transferred to the Diavata centre. The Court found that the detention conditions to which the applicants had been subjected in the police stations represented degrading treatment and could have caused them to feel isolated from the outside world, with potentially negative consequences for their physical and moral well-being. The Court also held that the living conditions in the Diavata centre, which had a safe zone for unaccompanied minors, had not exceeded the threshold of seriousness required to engage Article 3. It further took the view that the applicants had not had an effective remedy.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf .

Poland - On 10 April 2018, the European Court of Human Rights issued a judgment in case of Bistieva and others against Poland (application no. 75157/14). The case concerned a family of five, placed in the detention centre in Kętrzyn for almost 6 months. In this case, the court ruled that their right to family life was violated and Polish authorities did not assess the impact of the detention on the family, did not consider alternatives to detention and detention as a measure of a last resort. Furthermore, the Court held that no sufficient reason was provided to justify the detention and the best interest of the child was not taken into account. The court held that the family was in the detention centre for too long and that the preceding concerning family with children should be conducted faster and with greater diligence. Now an action plan is awaited.

AIDA, Country report Poland, 2018 Update, March 2019 available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

11.3. Identification of vulnerabilities

New/remaining matters of concern

Cyprus - The Commissioner of Children's Rights issued an updated report on age assessment of unaccompanied children at the end of 2018 which notes important gaps that still remain (e.g. the lack of an overall multidisciplinary approach; absence of best interest determinations when deciding to initiate the age assessment procedure; the lack of remedy to challenge the decision that determines the age; issues relating to the role of the guardian and the representative in the age assessment procedures and the conflict of interest that arises as both roles are carried out by the same authority as well as the lack of independency of both of these roles as they also act on behalf of the national authority they represent).

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

Ireland - As it stands, while the Reception Regulations prescribe the Minister for Justice, the Minister for Health and the Health Service Executive as responsible for conducting vulnerability assessments in the reception context, in practice it is not clear which authority has responsibility. In the experience of Irish Refugee Council casework, as of January 2019, there is no systematic assessment – as envisaged in the Regulations – being carried out.

AIDA, Country report Spain, 2018 Update, February 2019, available at

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

Portugal – There are still no (specific) mechanisms, standard operating procedures or unit in place to systematically identify asylum seekers who need special procedural guarantees. In 2018, however, the SEF/GAR has introduced two general questions in the questionnaire used in first instance asylum interviews that address the applicant's self-assessed health condition and capacity to undergo the interview, as well as a couple of questions in Dublin interviews on health-related vulnerabilities. In 2018, of the 1,190 spontaneous asylum applicants whose cases were communicated by the SEF, a total of 468 were identified as vulnerable.

AIDA, Country report Portugal 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

Spain

- During 2018 the new Spanish Government started putting in place new resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral have been created: these are referred to as Centres for the Temporary Reception of Foreigners (Centros de Acogida Temporal de Extranjeros, CATE) and Centres for

Emergency Reception and Referral (Centros de Acogida de Emergencia y Derivación, CAED). However, as far as the author of the AIDA report is aware, the Government has not adopted (or at least not published) any legal instrument defining and regulating these two new types of centres created to manage sea arrivals. The inadequacy of these centres has been highlighted, as there are some places of arrival where conditions have been considered unacceptable. The Police Trade Union (Sindicato Unificado de Policía) denounced the lack of appropriate health conditions of the facilities of the CATE of San Roque, including cases of scabies, as well as the lack of sufficient resources, health staff and of interpreters during arrivals at night.

- The lack of a protocol for the identification and protection of persons with special needs in the Migrant Temporary Stay Centres (CETI) has been criticised in a recent report, which highlights that vulnerable groups such as single women or mothers with children, trafficked persons, LGBTI people, religious minorities, unaccompanied children and victims of domestic violence 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. The report recommended that those identified as being vulnerable should be quickly transferred to mainland in order to access protection in more adequate facilities.
- Concerns about the identification of trafficked persons and the need for more proactive detection of victims of trafficking among asylum seekers and migrants in an irregular situation have further been highlighted by relevant international organisations, such as the Council of Europe Special Representative on Migration and Refugees and GRETA. They also stressed the need of providing the staff working in CETI with training on the identification of victims of trafficking in human beings and their rights.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Switzerland - It remains very difficult to identify victims of human trafficking in the context of the asylum procedure, as the conditions of the asylum interviews and the limited time are not favorable to build the necessary trust between the applicant and the authorities. Also, so far the efforts to improve the identification have been limited.

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Positive developments

Slovenia - In 2018 the Ministry of Interior concluded negotiations with medical institutions that will perform age assessment examinations. Before the agreement, the age assessment procedure was not used in practice. The lack of age assessment procedures meant that adults claiming to be children were sometimes accommodated together with unaccompanied children. Although no age assessment procedures were conducted in 2018, the Ministry of Interior initiated the procedure in two cases.

AIDA, Country report Slovenia, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2018update.pdf

Relevant national case-law

France – On 21 December 2018, the Court of Cassation referred a preliminary question to the Constitutional Court on the constitutionality of bone examinations for age assessment. The hearing will take place on 19 March 2019.⁵⁰

⁵⁰ Constitutional Court, 2018-768 QPC, available in French at: <https://bit.ly/2EjEYb8>.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Spain - On 27 September 2018, the Committee on the Rights of the Child issued an opinion in *N.B.F. v. Spain*, providing relevant guidance on age assessment. In particular, it stressed that, in the absence of identity documents and in order to assess the child's age, states should proceed to a comprehensive evaluation of the physical and psychological development of the child and such examination should be carried out by specialised professionals such as paediatricians. The evaluation should be quickly carried out, taking into account cultural and gender issues, by interviewing the child in a language he or she can understand. States should avoid basing age assessment on medical examinations such as bone and teeth examinations, as they are not precise, have a great margin of error, can be traumatic and give rise to unnecessary procedures.

AIDA, Country report Spain, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_es_2018update.pdf

Switzerland - The Federal Administrative Court confirmed the Swiss practice of determining age assessment by mostly relying on medical procedures such as wrist, collarbone and teeth X-rays even if such an approach is not entirely respondent to international best practices.⁵¹

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

11.4. Legal representation

New/remaining matters of concern

Cyprus – At the end of 2018, the Commissioner for the Rights of the Child issued a series of three reports related to unaccompanied children, including a report on the representation of unaccompanied children. In this report the Commissioner once again raises serious concerns on many issues related to representation and considers the existing framework to be in violation of the Asylum Directives.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

Romania – As regards the legal representation of children, Save the children Romania stated that the practise varies from case to case. There have been cases where the Directorate-General for Social Assistance and Child Protection (DGASPC) appointed the legal representative in 1-2 months and there have been cases in which IGI-DAI and NGOs were unaware of whether a legal representative had been appointed, as they were not receiving the state's financial allowance for children. Moreover, the unaccompanied child usually meets for the first time his or her legal representative at the interview and not beforehand, and it was reported that the duties of the legal representative end when the procedure is finalised.

AIDA, Country report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

Bulgaria - In 100% cases of monitored procedures in 2018, unaccompanied asylum-seeking children are not appointed a legal guardian.

AIDA, Country report Bulgaria, 2018 Update, January 2019, available at: <https://bit.ly/2GOBaQP>.

⁵¹ Federal Administrative Court, Decision E-891/2017, 8 August 2018.

12) Content of protection – situation of beneficiaries of protection

12.1 Upgrade appeal

New/remaining matters of concern

Cyprus - In recent cases subsidiary protection has been suspended where the person has filed an upgrade appeal to obtain refugee status. More such cases have been reported in 2018, confirming this practice. However, the overall interest in appealing decisions granting subsidiary protection is low but it is not clear if this is due to fear of reverting to the status of asylum seeker, the low success rate in appeals or the lack of access to legal representation.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

12.2. Social assistance

New/remaining matters of concern

Bulgaria – 2018 was a “zero integration year”. The first National Programme for the Integration of Refugees (NPIR) was adopted and applied until the end of 2013, and 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.

AIDA, Country report Bulgaria, 2018 Update, January 2019, available at: <https://bit.ly/2GOBaQP>.

Relevant national case-law

Austria - In 2018, the Constitutional Court dealt with the restriction of the minimum wage in the different provinces. The regulation of the province of Lower Austria, which aimed at limiting the social benefits, was ruled as unconstitutional.⁵² However, the regulation applicable in Vorarlberg, which is more flexible and allows cash benefits to be replaced by contributions in kind, was considered constitutional.⁵³ The CJEU considered that the reduced benefits that were granted to asylum-seekers due to the temporary right of residence in Upper Austria were not compatible with the recast Qualification Directive. The Ministry of Social Affairs presented the draft of its Social Assistance Basic Law in November 2018, which has been heavily criticised as beneficiaries of subsidiary protection are excluded from social assistance.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

12.3. Housing

New/remaining matters of concern

Austria – A study conducted by the Technical University of Vienna found that, due to several obstacles, refugees are extensively excluded from the benefit of municipal accommodations in practice and beneficiaries of the subsidiary protection do not have access to municipal housing at all. Cases of exploitation and discrimination in the private sector have also been reported. A worrying informal sub-market has emerged, offering housing at inflated prices, such as sleeping places – that are not even real rooms – and cost about 200 to 350€ per month. Facilities for homeless persons are also sometimes visited by refugees.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

⁵² VfGH, Decision V 101/2017-11, 12 December 2017, available in German at: <http://bit.ly/2EMeAnP>.

⁵³ VfGH, Decision G 308/2018-8, 1 December 2018.

Belgium - Several civil society organisations describe the current situation as a "housing crisis", as 1 out of 5 recognised refugees has to extend his or her stay in the collective centres due to a lack of available housing. There is not only a shortage in social housing, but there is also a general shortage of qualitative and affordable housing for vulnerable groups. Discrimination also plays an important role in the difficulties that beneficiaries of international protection experience in finding affordable housing.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2018update.pdf

Greece – Pro Asyl and Refugee Support Aegean have followed up on cases of returned refugees from other European countries to Greece and documented homelessness or stay in precarious conditions in squats in Athens without access to electricity or water. According to the findings of the organisations, "refugees still have no secure and effective access to shelter, food, the labour market and healthcare including mental health care. International protection status in Greece cannot guarantee a dignified life for beneficiaries of protection and is no more than protection 'on paper'". According to GCR's experience, those in need of shelter who lack the financial resources to rent a house remain homeless or reside in abandoned houses or overcrowded apartments, which are on many occasions sublet.

AIDA, Country report Greece, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

Hungary - Accommodation free of charge is provided exclusively by civil society organisations and church-based organisations. The situation was aggravated by the fact that the Ministry of Interior withdrew all the calls for tenders funded by AMIF in the beginning of 2018. This means that by 30 June 2018 all those programs had ceased of which integration support activity relied on this fund.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf

Ireland – Difficulties exist for beneficiaries on accessing housing once status is granted as there is currently a housing crisis in Ireland which impacts everyone. This means that beneficiaries have difficulty leaving Direct Provision and finding suitable housing. This is exacerbated by the accommodation crisis in Ireland, where waiting lists for social housing are long and rental costs exceed the amounts paid in rent supplements. Discrimination is also reported in the rental market. As of 17 January 2019, there were 700 persons with some form of protection status residing in Direct Provision.

AIDA, Country report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

Italy – As the new reception system differentiates between the reception of asylum seekers and beneficiaries of international protection and since it does not regulate the transfer from one centre to another, some public administration offices consider that material conditions may immediately cease after the status recognition. Moreover, certain prefectures (e.g. in Trieste) informed the organisations involved in managing accommodation centres that beneficiaries of international protection are allowed to stay in reception centres only if they have obtained an electronic residence permit. The legal basis allowing for the withdrawal of the right to accommodation for beneficiaries of international protection is also unclear, as Article 23 of LD 142/2015 only relates to asylum seekers. Beneficiaries of international protection therefore face serious risks of destitution and homelessness. As regards the access to public housing, it is subject to a minimum residence

requirement on the national territory in certain regions (5 years of uninterrupted residence in the region of Friuli Venezia Giulia for example).

AIDA, Country report Italy, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_it_2018update.pdf

Malta - NGOs working in the social sector commented that, in 2018, access to private accommodation is increasingly challenging for several groups including migrants and protection beneficiaries, resulting in higher numbers of homeless persons or of persons living in squalid conditions.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Netherlands - The “accommodation for residence permit holders” scheme (*“logeerregeling vergunninghouders”*) was prolonged and, as of 1 February 2018, a new pilot ‘accommodation scheme’ (*logeerregeling*) came into effect. The goal of the new *logeerregeling* is not to avoid the shortage of places in reception centres but to assess whether staying with families and friends has a positive effect on the integration and participation of beneficiaries of protection in society. The pilot was completed in January 2019. COA is now evaluating the pilot and will decide whether to continue the *“logeerregeling vergunninghouders”* or not. As long as the evaluation has not been finalised, persons can still make use of the *“logeerregeling vergunninghouders”*.

AIDA, Country report Netherlands, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

United Kingdom - There is still a high incidence of homelessness amongst newly recognised beneficiaries, who receive accommodation only for 28 days following the grant of status. Despite a wealth of evidence, and efforts through parliamentary means to extend the period, the issue continues to affect many new refugees and other beneficiaries of leave, resulting in homelessness and destitution.

AIDA, Country report United Kingdom, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

Positive developments

Romania – The Jesuit Refugee Service implemented the project “A New House” in all the Regional Centres, funded through the AMIF national programme, which covered partially or entirely the rental fees and/or the utility costs for beneficiaries of international protection until June 2018. For each case, a request is made to IGI-DAI in order to receive their approval for assisting the case.

AIDA, Country report Romania, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ro_2018update.pdf

12.4 Residence permits / long-term residence / naturalisation

New/remaining matters of concern

Cyprus – In practice, delays are systematically encountered in the issuance and renewal of residence permits for both refugees and beneficiaries of subsidiary protection that lead to obstacles in accessing rights. Specifically, a person, once granted international protection or in the case of renewal, will approach the responsible authority in order to apply for a residence permit and will be given an appointment to submit the application. The appointment is given within 2 weeks up to 2 months and during this time beneficiaries of

international protection do not have access to all rights afforded by the law, such as access to state benefits and access to the labour office.

AIDA, Country report Cyprus, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_cy_2018update.pdf

Netherlands - The period during which a person must not have received a prison sentence, nor a training or community service order, or paid or had to pay a large fine in the Netherlands or abroad in order to be naturalised has been extended. While this period was set at 4 years until 1 May 2018, it is now set at 5 years.

AIDA, Country report Netherlands, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

Poland - Since 12 February 2018 foreigners have to prove additionally knowledge of the Polish language at least on level B1 to obtain the EU long-term residence card. Those examinations are organised rarely (e.g. only twice in 2016 and 2017, scheduled three times in 2018 and 2019) and they are costly (travel to the examination place, accommodation etc.) which may constitute an obstacle to naturalisation.

AIDA, Country report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Positive developments

Malta - On 15 November 2018 Malta adopted the Specific Residence Authorisation (SRA), a policy regularising a specific category of failed asylum seekers. The SRA was introduced to replace the former Temporary Humanitarian Protection New (THPN) status. SRA recognises the needs of failed asylum seekers who have been residing in Malta for a period of 5 years and are actively contributing to Maltese society. SRA holders are entitled to a residence permit valid for 2 years with the possibility of renewal, access to core welfare benefits similarly to beneficiaries of subsidiary protection, employment licence, travel document and access to state education and medical care.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

Portugal – The Nationality Act was recast in July 2018 and reduced the residence requirement from 6 to 5 years to be eligible for naturalisation.

AIDA, Country report Portugal, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

12.5 Education

New/remaining matters of concern

Austria - The previous legal obligation to grant access to German classes to asylum seekers who have a high probability of recognition has been limited. As of now, they can receive appropriate integration assistance only depending on existing financial means and organisational resources. In addition, the responsibility regarding the latter has been shifted from the Ministry of Interior to the Ministry of Foreign Affairs, which is responsible for integration issues.

AIDA, Country report Austria, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2018update.pdf

Bulgaria - No preparatory classes are offered to facilitate access to the national education system. In 2018 the Red Cross organised licensed trainings in Bulgarian language to 50 at their Information Centre in Sofia. Similar language trainings were provided by Caritas to asylum seekers and recognised refugees and subsidiary protection holders in their Integration Centre in Sofia, tailored in groups for adults, children, mothers with children, employed individuals, etc.

AIDA, Country report Bulgaria, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Positive developments

Malta - In 2018, the government introduced the “I Belong” Programme which is available for beneficiaries of international protection as well. The initiative consists of English and Maltese language courses and basic cultural and societal orientation as part of the integration process. It is important to note that integration requests are accepted from all persons of migrant background regardless of their grounds of residence.

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

12.6 Labour market

Positive developments

France - In February 2018, a report from Member of Parliament Aurélien Taché put forward 72 proposals aiming at reinforcing integration policy for migrants in France, among them beneficiaries of international protection. A National Strategy for Integration based on this report was announced in June 2018, while several provisions of the 2018 reform reflect some of the recommendations.

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

Switzerland - In 2018, several measures were adopted to facilitate access to professional activity for persons benefiting of a temporary admission. Thus, the special charge of 10% of the salary (up to CHF 15,000 / 13,000 €, additional to the regular taxes) that had to be paid by temporarily admitted foreigners was abolished. In addition, the requirement of authorisation for employment has been replaced by a simple reporting obligation.

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

12.7 Family reunification

Remaining matters of concern

United Kingdom – Refugee children are not eligible to sponsor their parents and or siblings for family reunification. Two Private Members’ Bills have been introduced into Parliament to address that issue; the first was debated in December 2017. The second was debated in the House of Commons on 16 March 2018 and passed that stage. It is due to enter the next stage in 2019 where it will be examined by a Committee of MPs.

AIDA, Country report United Kingdom, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_uk_2018update.pdf

Positive developments

Ireland - If passed, a new bill will amend the IPA with a view to enabling a wider range of family members to apply for family reunification, including grandparents, siblings, children (over the age of 18), grandchildren, where dependency can be demonstrated. Moreover, the Family Reunification Humanitarian Admission Programme (FRHAP) has been renamed to the International Humanitarian Admission Programme (IHAP).

AIDA, Country report Ireland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ie_2018update.pdf

France - Following the 2018 reform, unaccompanied children beneficiaries of international protection may be reunited with their first degree parents and their dependent children.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Relevant national jurisprudence

Netherlands – The most important change results from the judgment of the CJEU on 12 April 2018, according to which a minor applying for asylum is still considered as such in the meaning of article 2(f) of the Family Reunification Directive, even when he or she reaches the age of 18 when he or she is granted a protection status and applies for family reunification.⁵⁴

AIDA, Country report Netherlands, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2018update.pdf

12.8. Withdrawal and cessation of protection

New/remaining matters of concern

France – The 2018 asylum reform has rendered withdrawal of international protection mandatory, whereas it was previously only optional for OFPRA. The conditions in which refugee status shall be withdrawn are regulated in Articles L.711-4 and L.711-6 Ceseda, as amended by Article 5 Law n. 2018-778 of 10 September 2018.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Poland - Beneficiaries of international protection from the Russian Federation continued to be deprived of international protection status in Poland in 2018, although the cessation and withdrawal is not systematically applied to them. Russian citizens were deprived of refugee status on the basis that they have voluntarily accepted the protection of the Russian Federation. Subsidiary protection was withdrawn from Russian citizens predominantly on the basis that the reason for granting international protection no longer existed or have changed in such a way that protection is no longer required.

AIDA, Country report Poland, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_pl_2018update.pdf

Switzerland - In 2018, the State Secretariat for Migration launched a project to review the temporary admission of 3,400 Eritrean nationals. This project follows a significant tightening of the practice of both the State Secretariat for Migration and Federal Administrative Court with regard to asylum applications submitted by Eritreans.

⁵⁴ CJEU, Case C-550/16, *A and S v. the Netherlands*, 12 April 2018.

AIDA, Country report Switzerland, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2018update.pdf

Relevant national jurisprudence

France

- In relation to children, the CNDA held in 2018 that, in line with the principle of family unity, a child benefitting from the same refugee status as his mother could not be subject to cessation by the mere fact of reaching the age of 18, as long as the mother maintained refugee status.⁵⁵
- In 2018, the CNDA further refused to apply cessation to refugees from DRC and Sri Lanka due to the fact that the change of circumstances was not of a significant and durable nature.⁵⁶
- In a case concerning two girls at risk of FGM in Mali, the CNDA refused to apply cessation despite statements from the girls' mother that the prevalence of FGM was dropping in the country of origin. The Court relied on the best interests of the child principle enshrined in the Convention on the Rights of the Child, and the protection against FGM set out in Article L.752-3 Ceseda, to conclude that there was no change of circumstances.⁵⁷
- In the case of a refugee who was issued a driver's licence in the country of origin without physically returning to the country – as the procedure was handled by his wife – the issuance of an official document could not constitute re-availment of the protection of the country of origin pursuant to Article 1C(1) of the Convention.⁵⁸
- In 2018, the CNDA also confirmed a ruling of the Council of State of 2017,⁵⁹ according to which the CNDA shall examine the applicability of all cessation clauses and not limit itself to the specific cessation ground raised by OFPRA.⁶⁰
- The CNDA has interpreted the concept of fraud for the purposes of withdrawal under Article L.711-4 Ceseda. It found on two occasions in 2018 that refugee status cannot be withdrawn if the fraudulent elements of the claim were not determinant for the grant of protection.⁶¹

AIDA, Country report France, 2018 Update, February 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

13) Return of former applicants for international protection

14) Resettlement and humanitarian admission programmes

Belgium - On 25 October 2018 the then Secretary of State for Asylum and Migration announced that Belgium's resettlement engagement would be suspended until at least the end of the year, but most likely until May 2019. 250 remaining refugees who were about to leave were not able to benefit from the resettlement programme. The reason invoked was an increase in the number of asylum applicants and a lack of capacity of reception centres.

AIDA, Country report Belgium, 2018 Update, March 2019, available at:

⁵⁵ CNDA, *M. O.*, Decision No 17013391, 31 December 2018.

⁵⁶ CNDA, *M. K.*, Decision No 18001386, 17 October 2018 (DRC); *M. L.*, Decision No 17047809, 25 May 2018 (Sri Lanka).

⁵⁷ CNDA, *Mme S and Mme F.*, Decision Nos 17038232 and 17039171, 26 November 2018.

⁵⁸ CNDA, *M. H.*, Decision No 16029914, 14 September 2018.

⁵⁹ CE, Decision No 404756, 28 December 2017.

⁶⁰ CNDA, *M. M.*, Decision No 15003496, 28 November 2018.

⁶¹ CNDA, *M. G.*, Decision No 14020621, 15 February 2018, where the Court found that the refugee's overall credibility was unaffected by the fraudulent representation of certain dates during the asylum procedure; CNDA, *M. B.*, Decision No 13024407, 28 September 2018, where the refugee's fraudulently declared identity (that of one of his brothers) did not affect his well-founded fear of persecution on ethnic and political grounds upon return to Turkey.

15) Relocation

Remaining matters of concern

France – Differential treatment of specific nationalities seems to be applied in the framework of *ad hoc* relocation schemes implemented since June 2018. Following “boat-by-boat” agreements following disembarkation in Italy, Malta and Spain, over 280 persons have been relocated to France. All relocated persons have previously undergone interviews with OFPRA, for the Office to assess their need for protection and potential threats to public order. No official data are available about this mechanism or the nationality of selected persons. However, it appears through communication on arrival in France from OFII and the Ministry of Interior that relocated persons are mainly from Sudan, Eritrea and Somalia. Following their arrival, these persons have been quickly received by OFII and granted refugee status by OFPRA.

AIDA, Country report France, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf

Malta - Relocations from Malta continued to happen on an *ad hoc* basis throughout 2018, involving non-binding, informal agreements with other EU Member States. This practice prevented many asylum seekers to have access to the asylum procedure and even to the territory of Malta for the time needed to secure the agreement of other EU Member States to take in a number of rescued persons on an *ad hoc* basis. The nature of the *ad hoc* relocation processes also entailed a series of systemic shortcomings (e.g. no possibility to make an application, no access to information, Dublin procedures not being initiated, limited access to lawyers, *de facto* detention etc.)

AIDA, Country report Malta, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf

16) Other relevant developments

16.1 Infringement proceedings

Bulgaria - The European Commission sent a letter of formal notice on 8 November 2018 concerning the incorrect implementation of EU asylum legislation in Bulgaria. The Commission has found shortcomings in the national asylum system and related support services, in breach with asylum *acquis* and the Charter of Fundamental Rights. Concerns related to: accommodation and legal representation of unaccompanied children; correct identification and support of vulnerable asylum seekers; provision of adequate legal assistance; and detention of asylum seekers, as well as safeguards in detention procedures.

AIDA, Country report Bulgaria, 2018 Update, January 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf

Hungary - On 19 July 2018, the European Commission decided to refer Hungary to the CJEU for non-compliance of its asylum and return legislation with EU law. Among other issues, the Commission considers that Hungarian legislation falls short of the requirements of the recast Asylum Procedures Directive as it only allows asylum applications to be submitted within such transit zones where access is granted only to a limited number of persons and after excessively long waiting periods.

AIDA, Country report Hungary, 2018 Update, March 2019, available at:

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2018update.pdf