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# National Country Report

# *France*



## ACKNOWLEDGMENTS

This report was written by Claire Salignat, Project Officer at Forum réfugiés-Cosi and edited by ECRE.

The findings presented in this report stem from background desk research, interviews with field practitioners and lawyers, as well as feedbacks from French NGOs and the Paris based UNHCR office and finally statistics shared by the French authorities. These results have been gathered and compiled between February and April 2013. An update of the report has been carried out between October and November 2013.

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### **Caveat**

In France, asylum policies – including reception procedures - are largely under prefectural execution. This review of practices is mostly based on observations in the *départements* of Rhône, Allier and Alpes-Maritimes. However, the conclusions presented in this report on the concrete implementation of asylum policies have been cross-checked and triangulated with observations of these practices in other regions (in Paris for instance) and are supported by findings presented in other reports – be they official or drafted by civil society organisations.

In addition, despite a particularly worrisome situation in Mayotte, these issues could unfortunately not be treated in this report. We are aiming at making up for this deficiency in one of the next updates.

### **Important information**

With a view to prepare for a reform of the French asylum procedure in spring 2014, the French Ministry of Interior had initiated in July 2013 a large scale consultation of the main stakeholders, led by two MPs, Valérie Létard and Jean-Louis Touraine. After four rounds of workshops, the two MPs have submitted their [recommendations](#) to the Minister on 28 November 2013<sup>1</sup>.

These scenarios for the reform will be used in the discussions in early 2014 to shape the new asylum system in France.

Acknowledging that consensus had not been reached on all issues, the report includes a number of recommendations on the procedures and the reception conditions.

### *Procedure:*

- Simplifying the administrative procedures by removing the “domiciliation” prerequisite (requirement of an address) with a view to accelerate the entry in the procedure (the address would be required only at a later stage)
- Granting a temporary residence permit (APS) for normal as well as for accelerated procedures (but with exceptions such as the Dublin procedure)
- Allowing the presence of a third person at the OFPRA interview (designation and modalities for their interventions would have to be supervised)
- Opting for the recording of the OFPRA interviews rather than the transcription with the possibility of making comments
- Considering the prioritisation of the examination of claims from asylum seekers in need of special procedural guarantees (including unaccompanied minors)
- Considering the extension of the use of the accelerated procedure in case “the applicant has only raised issues that are not relevant” or in case the “applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations”.

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<sup>1</sup> [Report](#) on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013.

- Reviewing the list of countries considered as safe countries of origin and foreseeing a mechanism for an urgent suspension or crossing off some countries when sudden changes justify so
- Looking into the possibility of granting a suspensive effect to appeals against transfer under the Dublin procedure
- Exploring the establishment of implicit withdrawal and of inadmissibility procedures
- Imposing an obligation of simultaneity of the appeal registration and the legal aid request. This would entail removing the possibility to request free legal aid during the one month period granted to make the appeal.
- Considering the transfer of the asylum competence to regular administrative courts (i.e. removing the authority of the National Court of Asylum (CNDA) for some cases)
- Considering granting a suspensive effect to the appeals made under the accelerated procedure (under some strict conditions)

#### *Reception*

- Establishing a new national orientation mechanism to provide asylum seekers with housing solutions thanks to transit centres used for short period of times (maximum 15 days) prior to a mandatory distribution of persons on the territory (quotas per region are proposed).
- Changing the calculation of the temporary waiting allowance to better take into account the household composition

In addition, the report considers the creation of centres dedicated to rejected asylum seekers where they would be put on house arrest.

**The information in this report is up-to-date as of 2 January 2014.**

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public and includes the development of a dedicated website which will be launched in the second half of 2013. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



**This report is part of the AIDA project (Asylum Information Database) funded by the European Programme on the Integration and Migration (EPIM)**



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## Statistics

	Total applicants in 2012 <sup>2</sup>	Refugee status (both instances)	Subsidiary protection (both instances)	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary protection rate	Humanitarian rate	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
<b>Total numbers</b>	47467	7414	2562	0	41672	14%	5%	0%	81%
<b>Breakdown by countries of origin of the total numbers</b>									
<b>DR Congo</b>	4333	658	79	0	3812	14%	2%	0%	84%
<b>Russia</b>	3520	917	89	0	2248	28%	3%	0%	69%
<b>Sri Lanka</b>	3297	799	52	0	2943	21%	1%	0%	78%
<b>Kosovo</b>	2608	366	178	0	1396	19%	9%	0%	72%
<b>China</b>	2215	398	14	0	2139	16%	1%	0%	84%
<b>Turkey</b>	2164	298	14	0	1693	15%	1%	0%	84%
<b>Armenia</b>	1978	171	137	0	2837	5%	4%	0%	90%
<b>Pakistan</b>	1919	77	13	0	1515	5%	1%	0%	94%
<b>Georgia</b>	1888	110	42	0	1738	6%	2%	0%	92%
<b>Albania</b>	1744	27	75	0	431	5%	14%	0%	81%
<b>Others<sup>3</sup></b>									
<b>Afghanistan</b>	444	183	301	0	316	23%	38%	0%	40%
<b>Syria</b>	458	162	123	0	21	53%	40%	0%	7%
<b>Iran</b>	213	136	4	0	90	59%	2%	0%	39%
<b>Somalia</b>	458	53	147	0	492	8%	21%	0%	71%

Source: OFPRA Activity Report 2012 (Annex 3)

<sup>2</sup> Including subsequent applications but excluding accompanying children

<sup>3</sup> Other main countries of origin of asylum seekers in the EU

**Table 2: Gender/age breakdown of the total numbers of applicants in 2012**

	Number	Percentage
<b>Total number of applicants</b>	<b>47467</b>	
<b>Men</b>	30396	64%
<b>Women</b>	17071	36%
<b>Unaccompanied children</b>	492	1%

Source: OFPRA Activity Report 2012 (Annex 3 and 4)

**Table 3: Comparison between first instance and appeal decision rates in 2012**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	46020		37350	
<b>Positive decisions</b>				
<b>Total</b>	4348	9%	5680	15%
<i>Refugee Status</i>	3163	7%	4290	11%
<i>Subsidiary protection</i>	1185	3%	1390	4%
<i>Hum/comp protection</i>	0	0%	0	0%
<b>Negative decisions</b>	41672	91%	31670	85%

Source: OFPRA Activity Report 2012 (Annex 3); National Court of Asylum (CNDA), Activity Report 2012 (p11and p14)

**Table 4: Applications processed under an accelerated procedure in 2012**

	Number	Percentage
<b>Total number of applicants</b>	47467	
<b>Number of applications treated under an accelerated procedure at first instance</b>	14796	31%

Source: OFPRA Activity Report 2012 (Annex 12)

**Table 5: Subsequent applications submitted in 2012**

	Number of subsequent applications submitted
<b>Total number</b>	6213
<b>Top 5 countries of origin</b>	
<b>Sri Lanka</b>	13,9%
<b>Bangladesh</b>	12,7%
<b>Russia</b>	10,4%
<b>Kosovo</b>	8,4%
<b>Armenia</b>	7,3%

Source: OFPRA Activity Report 2012 (p12)

## Overview of the legal framework and practice

### **Main legislative acts relevant to asylum procedures, reception conditions and detention**

Title in English	Original title	Abbreviation	Weblink
Code of Entry and Residence of Foreigners and of the Right to Asylum	Code de l'entrée et du séjour des étrangers et du droit d'asile	Ceseda	<a href="http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070158&amp;dateTexte=20130416">http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070158&amp;dateTexte=20130416</a>
Code of Administrative Justice	Code de justice administrative	CJA	<a href="http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070933">http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070933</a>
Code of Social Action and Families	Code de l'action sociale et des familles	CASF	<a href="http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006074069">http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006074069</a>

### **Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.**

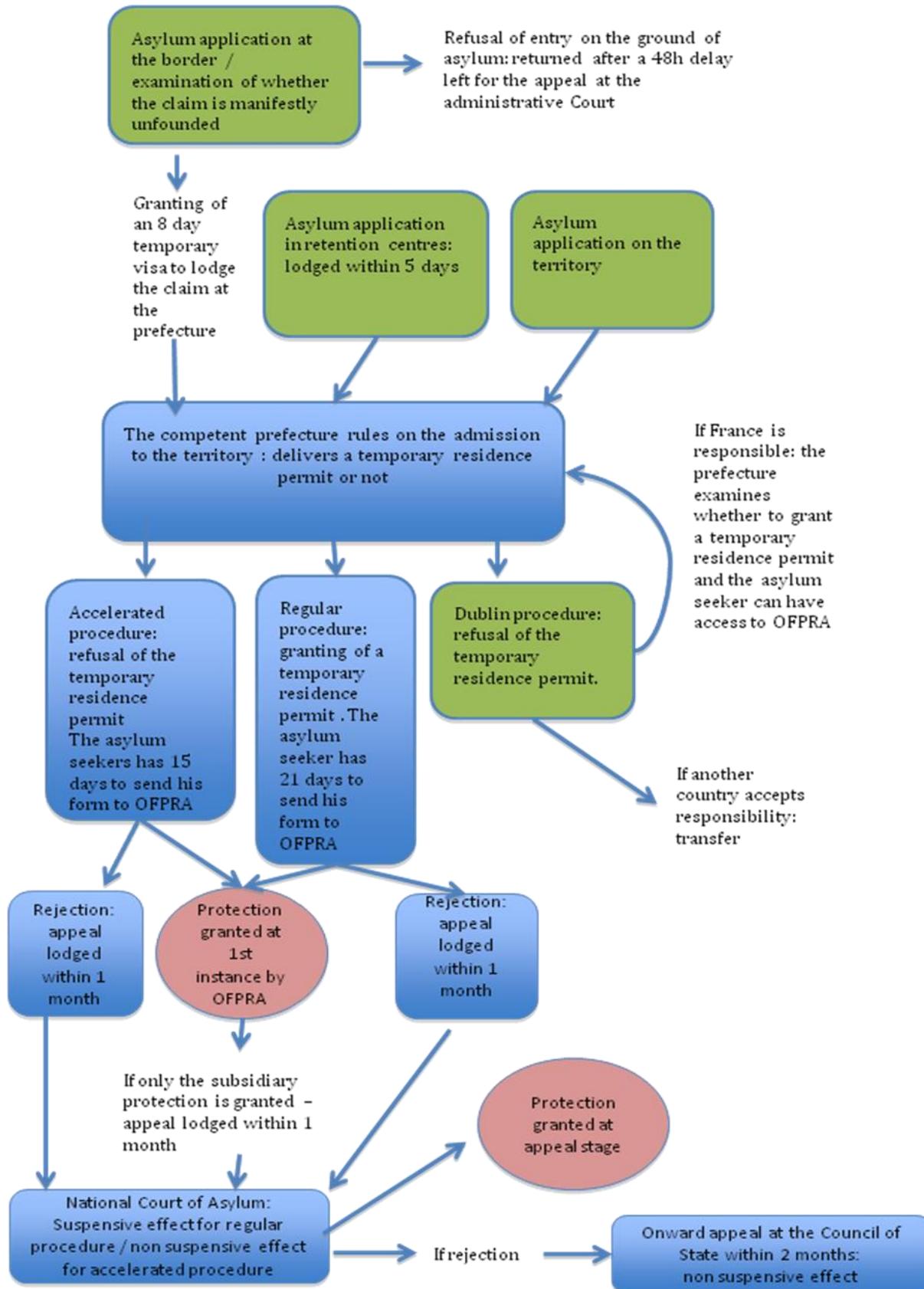
Title in English	Original title	Weblink
Circular on the implementation of Dublin and accelerated procedures	Circulaire IOCL1107084C du 1er avril 2011 relative au droit d'asile (Règlement Dublin et procédures prioritaires)	<a href="http://www.interieur.gouv.fr/fr/Media/Immigration/Files/Circulaire-IOCL1107084C-du-1er-avril-2011-relative-au-droit-d-asile.-Application-du-reglement-CE-n-343-2003-du-Conseil-du-18-fevrier-2003-dit-Reglement-Dublin-Mise-en-oeuvre-des-procedures-d-examen-prioritaire-de-certaines-demandes-d-asilement">http://www.interieur.gouv.fr/fr/Media/Immigration/Files/Circulaire-IOCL1107084C-du-1er-avril-2011-relative-au-droit-d-asile.-Application-du-reglement-CE-n-343-2003-du-Conseil-du-18-fevrier-2003-dit-Reglement-Dublin-Mise-en-oeuvre-des-procedures-d-examen-prioritaire-de-certaines-demandes-d-asilement</a>
Circular on the management of the emergency scheme for asylum seekers	Circulaire n° IOCL1113932C du 24 Mai 2011 sur le pilotage du dispositif d'hébergement d'urgence	<a href="http://circulaire.legifrance.gouv.fr/pdf/2011/05/cir_33217.pdf">http://circulaire.legifrance.gouv.fr/pdf/2011/05/cir_33217.pdf</a>
Circular on the missions of asylum seekers reception centres	Circulaire IOC/L/11/14302/C du 19 août 2011 relative aux missions des centres d'accueil pour demandeurs d'asile	<a href="http://www.interieur.gouv.fr/content/download/.../40_IOCL1114301C.pdf">www.interieur.gouv.fr/content/download/.../40_IOCL1114301C.pdf</a>
Circular on the implementation of alternatives to administrative detention of families	Circulaire INTK1207283C du 6 juillet 2012 sur la mise en œuvre de l'assignation à résidence prévue à l'article en alternative au placement des familles en rétention administrative	<a href="http://circulaire.legifrance.gouv.fr/pdf/2012/09/cir_35851.pdf">http://circulaire.legifrance.gouv.fr/pdf/2012/09/cir_35851.pdf</a>
Decision on the associations entitled to send representatives to access administrative detention facilities	Décision INTV1305938S du 1er mars 2013 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder aux lieux de rétention	<a href="http://www.interieur.gouv.fr/Publications/Textes-officiels/BOMI/Decision-du-1er-mars-2013-fixant-la-liste-des-associations-humanitaires-habilitees-a-proposer-des-representants-en-vue-d-acceder-aux-lieux-de-retention">http://www.interieur.gouv.fr/Publications/Textes-officiels/BOMI/Decision-du-1er-mars-2013-fixant-la-liste-des-associations-humanitaires-habilitees-a-proposer-des-representants-en-vue-d-acceder-aux-lieux-de-retention</a>

Circular on third country nationals who voluntarily obstruct their identification with unusable fingerprints	Circulaire IMI/A /1000106/C du 2 avril 2010 relative à la jurisprudence du Conseil d'État en matière de refus d'admission au séjour au titre de l'asile - sur les étrangers qui rendent volontairement impossible l'identification de leurs empreintes digitales	<a href="http://circulaire.legifrance.gouv.fr/pdf/2010/05/cir_31071.pdf">http://circulaire.legifrance.gouv.fr/pdf/2010/05/cir_31071.pdf</a>
Decision on the list of associations entitled to propose representatives for access to waiting areas	Arrêté INTV1222472A du 5 juin 2012 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente	<a href="http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00025984047&amp;dateTexte=&amp;categorieLien=id">http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00025984047&amp;dateTexte=&amp;categorieLien=id</a>
Circular on the organisation of education for migrants children	Circulaire REDE1236614C n° 2012-143 du 2 octobre 2012 sur l'organisation des Centres Académiques pour la scolarisation des nouveaux arrivants et des enfants du voyage (Casnav)	<a href="http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=61527">http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=61527</a>
Circular on the missions of asylum seekers reception centres	Circulaire N° DPM/CI3/2007 du 3 mai 2007 relative aux missions des centres d'accueil pour demandeurs d'asile, aux modalités d'admission dans ces centres et de sortie de ces centres et au pilotage du dispositif	<a href="http://www.gisti.org/IMG/pdf/norsann073317c.pdf">http://www.gisti.org/IMG/pdf/norsann073317c.pdf</a>
Decree setting the technical characteristics of the communication means to be used at the CNDA	Arrêté NOR: JUSE1314361A du 12 juin 2013 pris pour l'application de l'article R. 733-20-3 du code de l'entrée et du séjour des étrangers et du droit d'asile et fixant les caractéristiques techniques des moyens de communication audiovisuelle susceptibles d'être utilisés par la Cour nationale du droit d'asile	<a href="http://www.legifrance.gouv.fr/affichTexte.do?sessionId=?cidTexte=JORFTEXT000027563257&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id">http://www.legifrance.gouv.fr/affichTexte.do?sessionId=?cidTexte=JORFTEXT000027563257&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id</a>
Decree on the compensation for the missions of Legal aid carried out by lawyers at the CNDA	Décret n° 2013-525 du 20 juin 2013 relatif aux rétributions des missions d'aide juridictionnelle accomplies par les avocats devant la Cour nationale du droit d'asile et les juridictions administratives en matière de contentieux des étrangers	<a href="http://www.legifrance.gouv.fr/affichTexte.do?sessionId=?cidTexte=JORFTEXT000027591918&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id">http://www.legifrance.gouv.fr/affichTexte.do?sessionId=?cidTexte=JORFTEXT000027591918&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id</a>
Circular on the modalities for the assistance provided to foreign unaccompanied minors: national scheme for shielding , evaluating and orientating	Circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers: dispositif national de mise à l'abri, d'évaluation et d'orientation NOR: JUSF1314192C	<a href="http://www.textes.justice.gouv.fr/art_pix/JUSF1314192C.pdf">http://www.textes.justice.gouv.fr/art_pix/JUSF1314192C.pdf</a>
Decree of 16 August 2013 on the procedure related to the CNDA	Décret n°2013-751 du 16 août 2013 relatif à la procédure applicable devant la Cour nationale du droit d'asile	<a href="http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027845620&amp;categorieLien=id">http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027845620&amp;categorieLien=id</a>

# Asylum Procedure

## A. General

### 1. Organigram



## 2. Types of procedures

### Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure:                   yes                    no
- border procedure:                    yes                    no
- admissibility procedure:            yes                    no
- accelerated procedure (labelled as such in national law): yes  no
- Accelerated examination (“fast-tracking” certain case caseloads as part of regular procedure):  
  yes                    no
- Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure):                    yes                    no
- Dublin Procedure                    yes                    no

## 3. List of the authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority in EN	Competent authority in original language (FR)
Application at the border	Border division - French Office for the Protection of Refugees and Stateless People	Division de l’asile à la frontière (OFPRA)
Application on the territory	Prefectures	Prefectures
Dublin (responsibility assessment)	Prefectures	Prefectures
Refugee status determination	French Office for the Protection of Refugees and Stateless People (OFPRA)	Office Français de Protection des Réfugiés et Apatrides (OFPRA)
Appeal procedures : -First appeal  -second (onward) appeal	- National Court of Asylum  - Council of State	-Cour Nationale du Droit d’asile (CNDA)  - Conseil d’Etat
Subsequent application (admissibility)	French Office for the Protection of Refugees and Stateless People (OFPRA)	Office Français de Protection des Réfugiés et Apatrides (OFPRA)

## 4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
French Office for the Protection of Refugees and Stateless People (OFPRA)	475 (162 exclusively working on asylum requests examination) in 2012	Ministry of Interior	No

## 5. Short overview of the asylum procedure

An asylum application in France may be lodged either on the territory (obtaining the application from the prefecture) or at the border (in case the asylum seeker does not dispose of valid travel documents to enter the territory, at any time while in the waiting area) or from an administrative detention centre (in case the person is already being detained for the purpose of removal).

The examination of an asylum application lodged on the territory in France involves three main stages:

- (1) The Prefectures examine whether France is responsible for the examination of the claim by applying the criteria of the Dublin Regulation and also decide whether to place an application under the regular or the accelerated procedure
- (2) The French Office for the Protection of Refugees and Stateless People (OFPRA) undertakes an examination on the merits of the asylum application
- (3) The National Court of Asylum (CNDA) examines a potential appeal against a negative decision of OFPRA

To lodge an asylum application in France, asylum seekers must present themselves to the local prefecture to obtain a temporary residence permit on asylum ground. If such a permit is granted, the person enters into the regular asylum procedure and has to complete their application form (in French) and send it to OFPRA within a 21 calendar days period.

The Prefecture may refuse to grant a temporary residence permit for three reasons leading to the decision to treat the application under an accelerated procedure: a) the foreign national seeking asylum is a national of a country considered to be a safe country of origin (this is currently the case for 18 countries<sup>4</sup>); b) or the presence of the foreign national in France constitutes a serious threat to public order, public safety or state security; c) or the asylum request is based on a deliberate fraud or constitutes an abuse of the asylum procedure, or has only been made to prevent a notified or imminent removal order. In these cases, an accelerated procedure means that the person has 15 calendar days to lodge their application with OFPRA and that OFPRA has, in theory, 15 days to review and decide on the case. This also entails fewer social rights and fewer procedural guarantees than for a normal procedure.

Asylum seekers under a Dublin procedure do not receive either a temporary residence permit. They will not get access to OFPRA if another State accepts responsibility for their asylum claim.

The Prefectures as well as the first instance determination authority (OFPRA) are under the administrative supervision of the Ministry of Interior.

OFPRA is an administrative authority specialised in asylum and responsible for examining and granting, refusing, or withdrawing refugee status or subsidiary protection. It is independent in taking individual decisions on asylum applications and is not taking any instructions from the Ministry of Interior. A single procedure applies and includes a possibility for a person granted subsidiary protection to lodge an appeal to the CNDA in order to obtain refugee status. The French legislation provides for quasi-systematic personal interviews of applicants at first instance (four grounds are set in the law for omitting a personal interview). All personal interviews in the regular procedure are conducted by OFPRA. At the end of the interview, the protection officer writes an account and a proposition of decision, which is then submitted to the validation of their section manager.

The National Court of Asylum (CNDA) is the Administrative Court handling appeals against first instance negative decisions of the Director General of OFPRA. This appeal must be lodged within 30 calendar days after the OFPRA decision has been notified to the applicant. The appeal has an automatic

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<sup>4</sup> Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, Kosovo, FYROM, Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia, Tanzania, Ukraine.

suspensive effect for applicants under the regular procedure. However, it does not carry a suspensive effect for asylum seekers under an accelerated procedure and this appeal does not prevent the implementation of a removal order in those cases. The National Court of Asylum examines the appeal on facts and points of law. It can annul (therefore granting subsidiary protection status or refugee status) or confirm the negative decision of OFPRA.

An onward appeal before the Council of State can be lodged within two months. The Council of State does not review all the facts of the case, but only some legal issues such as the respect of rules of procedure and the correct application of the law by the CNDA. If the Council of State annuls the decision, it refers to the CNDA to decide again on the merits of the case, but it may also decide to rule itself for good on the granting or refusal of protection. The appeal before the Council of State has no suspensive effect on a removal order issued together with a negative decision of the CNDA.

A specific procedure to request an admission into the country on grounds of an asylum claim is established in the French legislation for persons arriving on the French territory through airports or harbours. The Border division of OFPRA interviews the asylum seekers and formulates an opinion that is communicated to the Ministry of Interior, which takes the final decision to authorise entry into France or not. In theory, this interview is conducted to check whether or not the given facts are manifestly irrelevant. If the asylum request is not considered to be manifestly unfounded, the foreign national is authorised to enter the French territory and is given an 8-day temporary visa (safe passage). Within this time frame, upon the request from the asylum seeker, the competent prefectures will examine whether they grant the person a temporary residence permit (allowing the asylum seeker to lodge their asylum request to OFPRA) or whether they implement the accelerated procedure for this request. If the asylum request is deemed as manifestly unfounded, the Ministry of Interior refuses to grant entry with a reasoned decision. This entails, after the possibility of an appeal to the Administrative Court within a 48-hours deadline, the removal of the foreign national.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes       No
- If so, and if available specify:
  - o the time limit at the border:            none
  - o the time limit on the territory:        none but lateness can result in the claim being considered as abusive
  - o the time limit in detention:            5 days
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs?       Yes  No

An asylum application in France may be lodged either on the territory (obtaining the application from the prefecture) or at the border (in case the asylum seeker does not dispose of valid travel documents to enter the territory, at any time while in the waiting area) or from an administrative detention centre (in case the person is already being detained for the purpose of removal).

Asylum has to be claimed in person at the prefecture,<sup>5</sup> where the asylum seeker will be granted a temporary residence permit (*autorisation provisoire de séjour*) during an appointment which has to take place within a maximum of 15 days in theory.<sup>6</sup> In order to lodge an asylum request, asylum seekers must provide an address (*domiciliation*)<sup>7</sup>. It is only once the temporary residence permit has been granted that a form to formally register their asylum claim is handed over; upon doing so the asylum seeker has 21 calendar days to fill in the application form and send it by registered mail to OFPRA (Office Français de Protection des Réfugiés et Apatrides /French Office for the Protection of Refugees and Stateless Persons), a state institution under the administrative supervision of the Ministry of Interior that is responsible for the registration of the asylum applications.

Granting of a temporary residence permit may be refused on three grounds: a) the asylum seeker is a national of a country considered to be a safe country of origin (see the Section on safe country concepts); b) they constitute a serious threat to public order, public safety or state security; c) the asylum request is based on a deliberate fraud or constitutes an abuse of the asylum procedure, or has only been made to prevent a notified or imminent removal order. Asylum seekers not granted a temporary residence permit are channelled into an accelerated procedure, where they only have 15 working days to file their application to the prefecture which will in turn transmit the form to OFPRA.

The first instance determination authority in France is OFPRA. When OFPRA receives a complete application within the required deadlines, it is tasked with registering it and sends a confirmation letter to the applicant. A refusal to register the application is notified to those arriving beyond these deadlines. Such refusal can be challenged at the Administrative Court of Melun. This challenge can be useful if a "valid" excuse can be argued (e.g. health problems during the period).

French law does not lay down strict time limits for asylum seekers to lodge an application for asylum after entering the country. In practice, the lateness of the filing of an asylum application is sometimes used to consider the application as an abuse of asylum procedures and can result in the treatment of the request under the accelerated procedure. Jurisprudence of several appeal courts emphasises, however, that late submission of an asylum application does not constitute in itself an element proving an abuse of asylum procedures<sup>8</sup>. It should also be noted that in administrative detention centres, it is indicated to the persons held that their asylum applications will not be admissible if it is lodged more than five calendar days after the notification of their rights read upon arrival).<sup>9</sup>

A specific procedure to request an admission into the country to seek asylum is established in the French legislation<sup>10</sup>, for persons arriving on the French territory through airports or harbours. The request must imperatively be taken into account and the Border Police has to take a statement of the request for an admission on the basis of an asylum claim. The person is held in a waiting area for an initial duration of 4 days<sup>11</sup> to give the authorities some time to check that the asylum request is not manifestly unfounded. There is no strict deadline to apply for asylum when applicants are waiting for their admission at the border, the person may apply for asylum at any time during their holding in the waiting zone.

Several difficulties can be highlighted in practice for asylum seekers with regards to the registration of their claim. For instance, the requirement to obtain a temporary residence permit from the prefecture

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<sup>5</sup> Since 2009, the authority in charge of taking the fingerprints and of granting (or refusing) the temporary residence permit for asylum seekers is the prefecture head of the region. This rule has several exceptions for the following regions which have several prefectures responsible for this step in the procedure: Ile-de-France, Alsace, Corsica, Pays de la Loire, Provence Alpes Cote d'Azur, Rhone Alpes and Bourgogne. See additional information on the Ministry of Interior [website](#).)

<sup>6</sup> As set for in article R. 742-1 of Ceseda.

<sup>7</sup> The address provided can be a personal address or a postal address through a registered NGO.

<sup>8</sup> See for instance the Administrative Court of Appeal of Bordeaux decision n°08BX025815, 26 March 2009.

<sup>9</sup> Article L. 551-3 of Ceseda (Code of Entry and Residence of Foreigners and of the Right to Asylum).

<sup>10</sup> Paragraphs of article L. 221 of Ceseda.

<sup>11</sup> Art. L. 221-3 of Ceseda.

before they can lodge their asylum application with OFPRA in fact imposes an additional delay for asylum seekers as some prefectures do not succeed in respecting the prescribed time limit of 15 days<sup>12</sup> between the filing of the required documents and the appointment at the prefecture to deliver the temporary permit. Indeed, short of enough staff, some prefectures sometimes take several weeks to several months before granting an appointment to applicants.<sup>13</sup> An official report from the General Controllers has described that asylum seeking families in Paris can only hope to lodge their asylum claim after a waiting period of 7 months and a half. In 2013, it was taking 4 months to get an appointment to obtain a 'domiciliation' address; an additional 3 months to get an appointment at the prefecture to request the temporary residence permit and another 3 weeks to receive the decision and to eventually be handed over an asylum application form.<sup>14</sup>

Similarly, the two members of Parliament in charge of the report on the reform of the asylum procedure have highlighted that the waiting period to obtain an appointment at the prefecture of Essone was 2 days, while it was 16 days in Moselle, 20 days in Seine-Saint-Denis and 99 days in Lille<sup>15</sup>.

Similarly, the UNHCR noted in July 2012<sup>16</sup> that "it is necessary that competent authorities solve the problem of "domiciliation" in some departments, the postal address required by the prefectures for filing an application for asylum and to be able to contact the applicant until he is admitted to a reception centre. This process is sometimes so long and complicated that asylum seekers are not able to access OFPRA and a possibility of material support before many months, this being in contradiction with the European Directive on Reception Conditions of 27 January 2003". Even though these delays do not pertain to the registration of the asylum application per se, they can have a dramatic impact on the time spent before access to the asylum procedure is really effective.

Besides, the requirement to write the asylum application in French is a serious constraint. For asylum seekers who are not supported through the procedures and who may face daily survival concerns, the imposed period of 21 days (or 15 days for the accelerated procedure) is very short.

#### Note / Asylum application lodged from administrative detention centres

For people seeking asylum in administrative detention, there is also the issue of the difficulty of preparing such an application in a place of confinement: very limited time to develop the reasons for the claim, no free access to an interpreter to write the application in French, dysfunctions during the transmission from the centre to OFPRA which jeopardises the confidentiality, stressful conditions prior to the interview with OFPRA, difficulties to locate and gather the necessary evidence, etc. The administration requires that the person held lodges their application for asylum within 5 days after placement in retention (the deadline is set at midnight on the 5<sup>th</sup> day). OFPRA has then 96 hours<sup>17</sup> to examine the request. This extremely brief period of time drastically reduces the chances of benefiting from an in-depth examination of the claim. The systematic placement of asylum seekers in administrative detention in accelerated procedures is also very questionable. The administration frequently considers that the only purpose of the request is to prevent the execution of the removal. Indeed, France is yet to enact rules to draw lessons from the European Court of Human Rights decision in the *IM vs. France* case.<sup>18</sup>

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<sup>12</sup> As set for in article R. 742-1 of Cesda.

<sup>13</sup> [Information report n°130](#), prepared by MM. Jean-Yves Leconte et Christophe-André Frassa, Sénat, 14 november 2012

<sup>14</sup> [Report](#) from the General controllers of social matters, the General controller of finance and the General controller of the administration, "Housing and the financial assistance to asylum seekers", Published on 12 September 2013

<sup>15</sup> [Report](#) on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013.

<sup>16</sup> Soumission du Haut Commissariat des Nations Unies pour les réfugiés pour la compilation établie par le Haut-Commissariat aux droits de l'Homme, Examen périodique universel, [Rapport sur la France](#), (Submission of UNHCR for the Compilation established by the OHCHR, Universal Periodic Review, French Report), July 2012

<sup>17</sup> Article R 723-3 of Cesda. In 2012, the median period for a decision under the accelerated procedure in administrative detention was of 4 days (OFPRA, [2012 Activity report](#), 25 April 2013).

<sup>18</sup> European Court of Human Rights, *I.M. v. France* (application no. 9152/09), 2 February 2012

## 2. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 6 months but not binding
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
- As of 31<sup>st</sup> December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: 14 000 at 1<sup>st</sup> instance and 26 625 at the CNDA stage

The first instance authority in France, OFPRA (French Office for the Protection of Refugees and Stateless People) is a specialised institution in the field of asylum, under the administrative supervision of the Ministry of Interior since November 2007. The law does not set a strict time limit for OFPRA to make a decision in the regular procedure. When a decision cannot be taken within six months, the Office has to inform the applicant within fifteen calendar days prior to the expiration of that period.<sup>19</sup> However, under accelerated procedures, the Office is supposed to decide within fifteen calendar days after the asylum application is submitted. This period is reduced to 96 hours if the asylum seeker is held in administrative detention.<sup>20</sup> There is no specific consequence if the Office does not comply with these time limits. In practice, some asylum seekers under the accelerated procedure wait for months before receiving the decision from OFPRA. The (total) average length for OFPRA to make a decision was of 186 days in 2012 (average for all types of procedures).<sup>21</sup> This average has increased in 2013: the waiting period for a decision was 204 days at the end of September 2013.<sup>22</sup> The average length of the appeal procedure at the Court of Asylum (CNDA) in 2012 was 9 months and 29 days<sup>23</sup> and 9 months and 11 days as of the end of September 2013.<sup>24</sup>

At first instance, there was a backlog of 14 000 cases on 31 December 2012 for which no decision had been taken after more than one year after the registration of the claim. At the appeal stage, there was a stock of 25 625 claims to be examined on 31 December 2012. Most of the files dated from 2012 (22 758), some dated from 2011 (2 310) but a few were pending since 2009 (428), 2009 (112) and even 2008 (16).<sup>25</sup>

There is no system in France foreseen to give a priority<sup>26</sup> to some applications (e.g. vulnerable persons). There is an informal possibility to ask for a quick summon to a hearing but this is granted on a case by case basis in exceptional circumstances. As a general rule, NGOs often lack resources to provide the yet very crucial specific support for these vulnerable persons. Resettled refugees (under a UNHCR mandate) must also lodge an asylum application, like other categories of asylum seekers. This procedure is however usually much faster than for regular asylum seekers.

There is no official accelerated examination procedure or a prioritised examination procedure as part of the regular procedure in France but it is important to note that in practice, it has happened that OFPRA decided to accelerate the examination of claims from a specific nationality. For instance, in July 2013,

<sup>19</sup> Article R 723-2 of Ceseda

<sup>20</sup> Article R 723-3 of Ceseda

<sup>21</sup> OFPRA, [2012 Activity report](#), 25 April 2013

<sup>22</sup> Report on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013

<sup>23</sup> Cour nationale du droit d'asile, [2012 Activity report](#), June 2013

<sup>24</sup> Report on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013

<sup>25</sup> Cour nationale du droit d'asile, [2012 Activity report](#), June 2013

<sup>26</sup> The accelerated procedure is called "procédure prioritaire" in French and may lead to some misunderstanding. This is not a procedure granting priority to these applications.

OFPPA carried out a mission to Lyon to examine around 600 claims from asylum seekers from Albania or Kosovo. These interviews took place in Lyon (therefore not at OFPPA headquarters) with the aim to reduce the length of the first instance procedure to 2 months.<sup>27</sup>

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - Yes       No
  - o if yes, is the appeal  judicial       administrative
  - o If yes, is it suspensive  Yes       No
- Average delay for the appeal body to make a decision: 9 months and 11 days as of the end of September 2013

Following the rejection of their asylum application by the Director General of OFPPA (French Office for the Protection of Refugees and Stateless People), the applicant may challenge the decision to the National Court of Asylum (CNDA) within one month by registered mail. A new decree on the procedure related to the CNDA of 16 August 2013<sup>28</sup> has introduced a longer period for asylum applications lodged in French overseas departments<sup>29</sup>; these asylum seekers have a total of 2 months to appeal the OFPPA decision. There is not a specific form to submit this appeal but it has to be written in French. This is an appeal made before an administrative court. This appeal has a suspensive effect for asylum seekers under a regular procedure but not for asylum seekers subjected to an accelerated procedure. The appeal is assessed on points of law and facts (documents and evidence supporting the claim have to be translated into French to be considered by the CNDA). The clerk informs OFPPA of the existence of an appeal against its decision and asks for the asylum application file to be transferred within 15 calendar days.

The receipt of registration notifies the applicant of their right to consult their file, of their right to be assisted by a lawyer, that the information concerning their application are subject to an automated processing, of the possibility that their appeal will be processed by order (“*ordonnance*”, namely without a hearing by the three judges), of their right to apply for legal aid and indicates the terms and conditions of this application. The same receipt requests the applicant to indicate the language in which they wish to speak at the appeal hearing in order to select the interpreter. In case the appeal had been lodged after the set deadline, and in case of dismissal (non-lieu) or withdrawal of the applicant, the president of the court or the president of one of the divisions can dismiss the appeal “by order” (*ordonnance*). If the appeal does not contain any serious elements to question the decision of OFPPA, it can also be dismissed “by order”.

There is no time limit set in law for the reviewing body to make a decision. The CNDA has ruled on 37.350 appeals in 2012. The average length of the appeal procedure at the CNDA in 2012 was of 9 months and 29 days.<sup>30</sup>

The new decree on the procedure related to the CNDA (16 August 2013)<sup>31</sup> has modified some of the procedural steps pertaining to the appeal stage. The decree has brought forward the deadline for

<sup>27</sup> See [Le Parisien](#), *Hausse des demandes d'asile: mission spéciale de l'Ofpra à Lyon (Increase of asylum applications: special mission of OFPPA to Lyon)*, 31 July 2013

<sup>28</sup> Decree n°2013-751 of 16 August 2013 on the procedure related to the CNDA, official journal n°0191 – A useful explanatory [note](#) has been published on the CNDA website in September 2013.

<sup>29</sup> Guadeloupe, Guyana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, Mayotte, Saint Pierre and Miquelon, French Polynesia, the Wallis and Futuna Islands, New Caledonia and the French Antarctic Lands 2012 Activity report, Cour nationale du droit d'asile (National Asylum Court).

<sup>31</sup> Decree n°2013-751 of 16 August 2013 on the procedure related to the CNDA, official journal n°0191

closing the inquiry into the appeal to a minimum of 5 days before the date set for the hearing (instead of 3 days until now). This means that, as of 30 April 2014, it will be possible to add further information to the appeal case only until 5 days before the hearing.<sup>32</sup>

Unless the appeal is rejected by order (*ordonnance*), the law provides for a hearing of the asylum seeker. In 2012, asylum seekers were summoned for a hearing generally 3 weeks, and at the latest 7 days, in advance. The decree of 16 August 2013 foresees that, as of 30 April 2014, a summon for a hearing will have to be communicated to the applicant at least 30 days before the hearing day.<sup>33</sup> These hearings are public unless the President of the section decides that it will be held *in camera* (this decision is taken most of the time following a specific request from the applicants) and take place at the CNDA headquarters near Paris. Asylum seekers who are not housed in reception centres have to organise and pay themselves their journey, even if they live in distant regions. Only asylum seekers who do not receive the temporary allowance may receive an “emergency support” to cover these transport costs<sup>34</sup>. The hearing begins by calling the file by the hearing Secretary, followed by the presentation of the report by the *rapporteur*. If the applicant is assisted by a lawyer, they are invited to make oral submissions, the administrative procedure before the CNDA being written. The judges can also interview the applicant. Following these discussions, the case is placed under deliberations. Decisions of the Appeal body are read in public and then published (posted on the walls of the court building) during a period of 2 to 3 weeks. Rejection decisions are transmitted to the Ministry of Interior.

Henceforth, a decree from 12 June 2013 seeks to transpose article L. 733-1 of Ceseda, allowing the use of video conferencing for the CNDA hearings. The applicant will be informed by registered mail and will have 15 days to refuse it; however, this only applies to those living in mainland France.<sup>35</sup>

Finally, it is interesting to note that the new decree on the procedure related to the CNDA of 16 August 2013<sup>36</sup> foresees that in cases where the CNDA plans to reject the appeal by order (*ordonnance*) due to the absence of serious elements capable of contesting the negative OFPRA decision, the Court has the obligation to inform the applicant about their rights to access their file.<sup>37</sup> Besides, the same decree provides that if the Court fails to provide an interpreter in the language indicated by the applicant, the Court has to inform the latter that they will be heard in another language one can reasonably think they understand.<sup>38</sup>

The atmosphere<sup>39</sup> surrounding the hearings at the CNDA has raised many critics and has contributed to the onset of a strike of lawyers in May 2012. A mediator had been designated to find a solution to the crisis and one of his findings points at the fact that the presence of OFPRA representatives at these hearings is a requirement that should be fulfilled. At the moment, OFPRA is almost never present and this absence twists the hearing. The mediator states that “this is a legal anomaly as it places the CNDA *rapporteur* in a situation of proximity with the report which they should not have”.<sup>40</sup>

Also, asylum seekers face several obstacles to challenge a negative OFPRA decision. Indeed, despite the translation of time limits and appeal modalities at the back of the refusal notification, sometimes one can note a lack of understanding. This is a problem for people who are not accommodated in reception

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<sup>32</sup> New article R.733-13 of Ceseda.

<sup>33</sup> R. 733-19 of Ceseda; In case of “emergency” however, the period between the summon and the hearing can be reduced to 7 days.

<sup>34</sup> See Objective 5.6 of the [reference framework](#) for first reception services for asylum seekers (in orientation platforms).

<sup>35</sup> Decree of 12 June 2013 setting the technical characteristics of the communication means to be used at the CNDA, Official journal 18 June 2013, NOR: JUSE1314361A.

<sup>36</sup> Decree n°2013-751 of 16 August 2013 on the procedure related to the CNDA, official journal n°0191.

<sup>37</sup> New article R. 733-4 5

<sup>38</sup> New article R. 733-8.

<sup>39</sup> In their report, two French Senators were referring to hearings sometimes taking place in an atmosphere that is far from being serene. See, *Information report n°130* prepared by MM Jean-Yves Leconte and Christophe-André Frassa, Sénat, 14 November 2012.

<sup>40</sup> Report - propositions on the CNDA procedure, by the mediator nominated by the vice-president of the Council of State, 29 November 2012

centres. In 2012, these are no longer eligible to the support for the preparation of their appeal within the orientation platforms. They can only rely on volunteer assistance from NGOs, whose resources are already overstretched.).

An onward appeal before the Council of State is provided in the law<sup>41</sup> in case of a negative decision on the first appeal (CNDA) or in case OFPRA decides to appeal against the CNDA decision to grant a protection status. This appeal must be lodged within two months of notification of the decision of the CNDA<sup>42</sup>. The Council of State does not review all the facts of the case, but only some legal issues such as the respect of rules of procedure and the correct application of the law by the CNDA. If the Council of State annuls the decision, it refers to the court to decide again on the merits of the case, but it may also decide to rule itself on the granting or refusal of protection.

This appeal before the Council of State must be presented by a lawyer registered with the Council of State. If the asylum seeker's income is too low to initiate this action, they may request legal aid to the Office of legal aid of the Council of State.

It should be noted that this appeal is not suspensive and the applicant may be returned to their country of origin during this period.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in practice in most cases in the regular procedure?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
- Are interviews ever conducted through video conferencing?  Frequently  Rarely  Never

The French legislation provides for systematic personal interviews of applicants.<sup>43</sup> Four grounds are set in the law for omitting a personal interview: a) OFPRA (French Office for the Protection of Refugees and Stateless People) is about to take a positive decision from the evidence at its disposal b) The applicant is a national of a country for which the provision in article 1.C(5) of the Geneva Convention has been implemented (cessation clause); c) the evidence submitted in support of the application is manifestly unfounded d) medical reasons prohibit the conducting of the interview. In practice, OFPRA rarely omits to conduct interviews (for first applications at least). In 2012, taken globally, 94% of the asylum seekers were summoned for an interview (the rate for interviews actually taking place is 75%).<sup>44</sup>

All personal interviews in the regular procedure are conducted by protection officers from OFPRA, the authority responsible for taking decisions on asylum applications. At the end of the interview, the protection officer writes a written account and a proposition of decision which is then submitted to the validation of their section manager. This report is not a verbatim of the interview as the protection officer is on their own to take notes at the same time they conduct the interview. The report is a summary of the questions asked and the answers provided. It also mentions the duration of the interview and conditions of writing the account. Furthermore, since the report is sent to the asylum seeker together with the notification of the rejection, the applicant does not have the opportunity to make further comments before a first instance decision is taken. The section on the opinion of the

<sup>41</sup> Article L 511-1 of the Code of administrative justice

<sup>42</sup> See CNDA [website](#) .

<sup>43</sup> Article L. 723-3 Ceseda

<sup>44</sup> OFPRA, [2012 Activity report](#), 25 April 2013

protection officer is not included in the document received by the asylum seeker; but it can be obtained upon special request. The report is written in French and is not translated for the applicant. In practice, the quality of the interview notes can be very variable. Problems encountered are inherent to an interview summary: it is difficult to reflect the reality and avoid simplifying the remarks made. According to the mediator for the CNDA procedures, "especially since the interviews at OFPRA have become systematic, the reports are not offering, according to several sources, all the qualities that we could expect."<sup>45</sup> Audio or video recording of the personal interview is not required under national legislation.

The presence of an interpreter during the personal interview is provided if the request had been made in the application form. They are usually available<sup>46</sup> but some difficulties are frequently observed (for instance translation in Russian is often imposed even though the language requested was Chechen and Serbo-Croatian can be imposed even if the Romani language had been requested). Rare languages (such as Susu, or Edo) are often not well represented. It is not set in the legislation that the choice of the interpreter is to be made according to gender considerations but it is possible to ask to be heard by a protection officer of the same sex when filling in the OFPRA application form. According to some stakeholders, the quality of the translations provided can vary widely. Some asylum seekers have reported issues with translations that are too simplified (approximate translations or not in line with their answers) or with inappropriate behaviours (inattentive interpreters or taking the liberty to make personal reflections). Finally, sometimes the protection officers are themselves acting as interpreters and this can have diverse impact. Some asylum seekers are reporting difficulties to open up to a person who speaks the language of the country involved in the invoked persecutions. Nevertheless, it has also been reported that there are sometimes advantages to the fact that the protection officer can speak the language of the applicant; such as demonstrating a particular interest for the region of origin.

Interviews can be conducted through video conferencing. The number of interviews conducted via videoconferencing has increased from 1,000 in 2010 to 1,562 in 2012. Their share now stands at 4.5% of the total. In 2012, the majority of asylum seekers from the Comoros (who applied for asylum in the French department of Mayotte) have been interviewed through video conferencing (670 interviews).

In mainland France, a new video connection was set up between OFPRA and the administrative detention centre in Toulouse. Operational since September 2011, this connection also covers administrative detention centres of Perpignan, Sète and Hendaye (150 interviews in 2012).

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
 Yes       not always/with difficulty       No
- In the first instance procedure, does free legal assistance cover:  
 representation during the personal interview       legal advice       both
- In the appeal against a negative decision, does free legal assistance cover  
 representation in courts       legal advice       both

<sup>45</sup> Report - propositions on the CNDA procedure, by the mediator nominated by the vice-president of the Council of State, 29 November 2012

<sup>46</sup> The 2012 OFRPA activity report states that 79% of the interviews have been carried with an interpreter in 2012.

The modalities and the degree of legal assistance provided to asylum seekers in the first instance are dependent on reception conditions they enjoy.

- If the applicant is hosted in a reception centre for asylum seekers (CADA), they can be supported in the writing of their application form by staff of the reception centres. According to the missions set in their framework agreement,<sup>47</sup> CADA teams (legal advisers or should also assist the applicant in the preparation of their interview at OFPRA (French Office for the Protection of Refugees and Stateless People) or their hearing at the CNDA (National Court of Asylum). The team can provide advice and support to find a lawyer, either under the legal aid scheme or outside of it.
- If the applicant cannot be accommodated in a reception centre, then the “reference framework” for asylum seekers orientation platforms<sup>48</sup> (December 2011<sup>49</sup>) applies (with the exception of those benefiting from support provided in some emergency reception structures who can benefit from the assistance provided in those centres). These asylum seekers are assisted in their paperwork, such as their application for legal aid and their residence permit renewal process for example (for asylum seekers in the regular procedure). Asylum seekers may also be assisted in the constitution of their application for asylum but the preparation for the interview is theoretically excluded. These downgraded conditions are applied in practice by the platforms thus asylum seekers have to largely rely on legal support provided by NGO volunteers.

Depending on where these structured legal assistance services take place (CADA or orientation platforms), they are funded by the French Office of Immigration and Integration (OFII), by the Ministry of Interior and/or by EU funding (European Refugee Fund). Some local authorities sometimes contribute to this funding.

Access to legal assistance is therefore uneven depending on the type of reception conditions provided. Asylum seekers in the most precarious situations, those without reception conditions, are offered fewer services than those housed in CADA. The two Members of Parliament in charge of the report on the asylum reform admitted themselves that this situation leads to unequal treatment between asylum seekers housed in CADA centres, who receive support and in-depth assistance, and asylum seekers housed in emergency facilities, who are without direct support and are sometimes located far away from the regional orientation platforms. Furthermore, these platforms do not have the same capacity as in CADA centres, greatly limiting the services provided to these persons<sup>50</sup>.

At the appeal stage before the CNDA (National Court of Asylum), asylum seekers in the regular procedure continue to receive legal assistance from people supporting them in reception centres. Access to this support is much more difficult for asylum seekers not accommodated in CADA or transit centres as legal support for the preparation of appeals to the CNDA are no longer funded within the “reference framework” of the orientation platforms.

Since 1 December 2008, the law<sup>51</sup> foresees the granting of a legal aid (*aide juridictionnelle* for lawyers) to file an appeal to the CNDA in case of rejection of the asylum application by OFPRA<sup>52</sup> (thus removing the entry and residence conditions imposed since 1991). Legal costs can therefore, upon certain conditions, be borne by the State. Legal aid can be granted if: the appellant’s resources do not exceed a certain threshold (929 Euros per month for full legal aid and 1,393 Euros per month for partial legal aid for a single person in 2012),<sup>53</sup> if the appeal does not appear to be manifestly inadmissible or unfounded;

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<sup>47</sup> See page 5 of Annex 1, [Circular NOR IOCL1114301C](#)

<sup>48</sup> In France, these orientation platforms (*plateformes d'accueil*) can have several missions: they can receive asylum seekers to provide administrative, legal and social support and can also handle requests for housing and postal address (*domiciliation*). 23 of these platforms are managed by NGOs.

<sup>49</sup> [Reference framework](#) for first reception services for asylum seekers, Page 10.

<sup>50</sup> [Report](#) on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013.

<sup>51</sup> Article 93 of law n° 2006-911 of 24 July 2006 on immigration an integration.

<sup>52</sup> Legal aid is not available in the first instance procedures (lawyers are not involved at this stage). Lawyers or other legal assistance providers cannot be present during the first instance personal interview.

<sup>53</sup> See Ministry of Justice [website](#) for more information.

and if the legal allowance application is submitted no later than one month after receiving the confirmation of receipt of their appeal by the CNDA. This allowance must be requested in writing by the applicant themselves or by their lawyer. If the request is filled during the set period for the appeal to be lodged, this one month delay to appeal is then suspended until a decision on granting legal aid is made. A new period starts after the receipt of the decision of the legal aid office of the CNDA.<sup>54</sup> At the CNDA the recipient of legal aid has the right to choose their lawyer freely or to have one appointed for them by the Legal Aid Office.<sup>55</sup> The refusal to grant legal aid may be challenged to the President of the CNDA within eight days. This legal aid for asylum seekers is funded through the State budget for the general legal aid system.

In practice, legal aid is rather widely granted. In 2012, the CNDA's legal aid office registered 21 206 requests (26% more than in 2011) and has taken 21 969 decisions. These requests have been accepted in 79.2% of the cases.<sup>56</sup> To our knowledge, there is no denial of legal aid on the ground that the appeal is deemed to be unfounded (in regular procedures). In 2012, 88,5% of the claimants were assisted by a lawyer at the CNDA hearing.

In 2012, lawyers in the field of asylum were granted a lower financial compensation (8 credits, or 182 Euros per file) than the fee allocated for common law cases before administrative courts. The Ministry of Justice itself has admitted<sup>57</sup> that this level of compensation does not encourage lawyers to volunteer as these cases are often complex and that contacts with their clients are difficult because of the language barrier. A decree from 20 June 2013 doubles the unit value (16 credits (380 euros) for appeals with a hearing and 4 credits (95 euros) for appeals without a hearing) for appeals brought before the CNDA.<sup>58</sup>

However, this compensation is still deemed insufficient<sup>59</sup> by many asylum actors in France, preventing lawyers from doing serious and argued work for each case. In particular, it is not enough to resort to an interpreter during the preparation of the case.<sup>60</sup> This is so off-putting that lawyers specialised in asylum law refuse most of the time to work under the legal aid scheme. Often, lawyers are court-appointed by the CNDA.<sup>61</sup> The difficulty is that court-appointed lawyers are informed of the name of their client very shortly before the hearing (about 3 weeks) and do not meet with them until the last moment (as these lawyers are often based in Paris). These lawyers sometimes refuse to help with the writing of the appeal and only undertake the representation in court. This poses great difficulties for asylum seekers to organise and prepare properly for the hearing. Asylum seekers who are not accommodated in reception centres are therefore on their own to write their appeal and face a high risk of seeing their appeal rejected by order (*ordonnance*) due to insufficient arguments.

### 3. Dublin

#### Indicators:

- Number of outgoing requests in the previous year: 4 982
- Number of incoming requests in the previous year: 2 431
- Number of outgoing transfers carried out effectively in the previous year: 598 persons
- Number of incoming transfers carried out effectively in the previous year: 920 files (not persons)

<sup>54</sup> See the CNDA [website](#) for more information.

<sup>55</sup> See the CNDA [website](#) for more information.

<sup>56</sup> Cour nationale du droit d'asile, *2012 Activity report*, June 2013

<sup>57</sup> Ministry of Justice, *2013 Budget*, October 2012

<sup>58</sup> Decree n° 2013-525 of 20 June 2013 on the compensation for the missions of Legal aid carried out by lawyers at the CNDA.

<sup>59</sup> The Court is based in Paris and a return train ticket from other cities (such as Lyon) already takes a large part of the fee received.

<sup>60</sup> MM Jean-Yves Leconte and Christophe-André Frassa, *Information report n°130*, Sénat, 14 November 2012.

<sup>61</sup> The decree n° 2013-525 of 20 June 2013 on the compensation for the missions of Legal aid carried out by lawyers at the CNDA also extends the possibility to designate court-appointed lawyers to all lawyers registered in any Bar in France (it was previously restricted to the Bars of Paris and Versailles).

## Procedure

### Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? not available

The Dublin procedure is applied to all asylum seekers above 14 years old without exception (as per the Regulation). The official policy of the French Dublin unit is that it does not transfer unaccompanied children under the Dublin Regulation. Unaccompanied children can however be placed under a Dublin procedure by prefectures. Several cases have been identified in different areas in 2012.

During the application process, the officers in prefectures are requested to take fingerprints for each and every asylum seeker above 14 years old and they have a duty to check these fingerprints in the EURODAC system. An exception is made for asylum seekers who have fingerprints that are said to be unfit for identification (i.e. unreadable). In this case, asylum seekers will be summoned again within a month and then they will be placed in an accelerated procedure if their fingerprints are still unfit for identification.<sup>62</sup>

In practice, the elements taken into account to determine the state responsible can vary from one prefecture to another but it has been observed that the taking of fingerprints (and therefore the identification of another responsible state) is always taking precedence over the application of the other criteria. This is actually stated in the circular of 1st April 2011:<sup>63</sup> the taking of fingerprints will be decisive in the search of the most likely responsible state.

Some information on the Dublin procedure is given at the desks in prefectures. The presence of interpreter at that stage is not guaranteed and practice varies widely depending on the prefectures (e.g. in Nice, an interpreter is called to translate the written information when the applicant does not speak French). In the Rhône department, the applicant is informed that a take back or a taking charge procedure has been initiated through the information written at the back of his Dublin notice document (information translated in the applicant's language). However, there is not necessarily information neither about the country which was contacted nor on the criteria leading to this referral.

The asylum seeker is not necessarily informed about the date when the country determined to be responsible for their application is contacted and sometimes does not know the date of the requested Member State's response either. Asylum seekers subjected to the Dublin procedure are formally informed about these dates through the notification of readmission order letter delivered to them once the decision to "take charge" or "take back" has been made. In Lyon, this decision is generally explained and indicates the deadline until when the transfer must take place.

It is difficult to know how the sovereignty clause is applied partly because the prefectures simply allow the asylum seeker to lodge a regular application for asylum, without having to explain why and without mentioning whether it is under one clause or the other.<sup>64</sup> In Paris, it seems that the humanitarian clause was used for asylum seekers who were deemed not fit for travel and for whom no transfer could be carried out. These clauses are not widely used in any case in France. For example, in the prefecture of

<sup>62</sup> Foreseen in the circular IMIA1000106C of 2 April 2010 and confirmed by Council of State jurisprudence n°347187 of the 8 march 2011.

<sup>63</sup> Circulaire du 1er avril 2011 n° [NOR IOCL1107084C](#), Application du règlement CE n°343/2003 du Conseil du 18 février 2003 dit "règlement Dublin". Mise en oeuvre des procédures d'examen prioritaire de certaines demandes d'asile mentionnées à l'article L.741-4 du CESEDA (Circular of 1st April 2011 on the application of Council; Regulation 343/2003, the so-called 'Dublin regulation'. Implementation of accelerated procedures of some asylum claims mentioned in art L741-4 CESEDA).

<sup>64</sup> European network for technical cooperation on the application of the Dublin II regulation, [French report](#), p35-37.

Nice there has been a case where an asylum seeker who was ill was transferred to Poland whilst his wife had applied for asylum in France.

When a Member State has agreed to take charge of an asylum seeker, 3 transfer modalities are available:

- Voluntary transfer initiated by the applicant themselves. A *laissez-passer* is provided as well as a meeting point in the host country
- Controlled transfer : the applicant is accompanied by police forces up until the boarding of the plane
- Transfer under escort: the applicant is accompanied by police forces up until the transfer to the authorities of the responsible state.

The modalities put in place to arrange transfers can vary from one prefecture to another. In the Rhône department, a refusal of voluntary transfer (refusal to accept the transfer upon notification) does not necessarily results in immediate administrative detention.

Concerning access to the asylum procedure upon return to France under the Dublin Regulation, these applications are treated in the same way as any other asylum applications. If the asylum seeker comes from a safe country of origin then their application is examined under the accelerated procedure.

If the asylum application has already received a final negative decision from the National Asylum Court (CNA), the asylum seeker may apply to OFPRA for a re-examination only if they possess new evidence (see section on subsequent application).

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:  
 Yes  No
  - o if yes, is the appeal  judicial  administrative (2 types of appeal)
  - o If yes, is it suspensive  Yes  No
- Average delay for the appeal body to make a decision: not available

The system for appeals against decisions taken during a Dublin procedure is quite different from the possible appeal in the regular procedure.<sup>65</sup>

Two types of appeals are available:

- An informal administrative appeal (*recours gracieux*<sup>66</sup>) can be lodged at the prefecture against the decision of placement in the Dublin procedure. Applicants receive a written reasoned response within four months. Appeals have succeeded when it was possible to identify the presence in France of family members who reside there legally or when elements of proof of a stay out of the European Union for 3 months can be provided. Actually, these appeals succeed for situations in which a Dublin procedure should not have been started in the first place (absence from the territory of the EU for more than 3 months)
- *Court appeals*: If the asylum seeker does not agree with the transfer decision, he may file a regular appeal against it before the administrative court within two months. In such cases, legal aid may be granted but the appeal does not carry a suspensive effect.

<sup>65</sup> See additional information in the French report of the European network for technical cooperation on the application of the Dublin II regulation .

<sup>66</sup> This is a discretionary remedy to request the Prefect not to apply the Dublin procedure.

In addition, the appeal for interim measures in order to suspend an administrative decision (*référé suspension*<sup>67</sup>) enables the suspension of a transfer order in the event of an emergency and where there is serious doubt about the legality of the decision. According to French jurisprudence, a situation of emergency is generally granted when the claimant is actually detained in an administrative detention centre. Although processed relatively rapidly, appeals for interim measures do not have a suspensive effect during the examination of the claim.

We have little information on the outcome of the appeals before the administrative court since the applicants under the Dublin procedure are not accommodated in reception centres any longer after their initial departure date. It seems that transfer suspensions are rarely implemented, apart for cases that fall under the European Court on Human Rights or Council of State jurisprudence (as in the case of transfers to Greece for instance).

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in practice in most cases in the Dublin procedure?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No

Asylum seekers under the Dublin procedure are not eligible for a temporary residence permit like the other asylum seekers.<sup>68</sup> They do not benefit from an examination of their application for asylum by OFPRA and therefore they do not have an interview on the substance of their application for asylum in France in the framework of this procedure. The merit of their asylum claim will be examined if France is designated as the responsible State at the end of the process.

There is no ‘interview’ as such in the Dublin procedure in France. The claimants fill in a form (Dublinet or residence permit form) during an appointment at the prefecture to apply for a residence permit based on their submission of an asylum application<sup>69</sup>. Most of the time, NGOs do not attend those appointments so it is hard to know the details of its proceedings.

During this appointment, questions are asked about civil status, family of the applicant, modalities of entry into the French territory, countries through which the applicant possibly travelled prior to their asylum application, etc. This is when the applicants have the possibility to mention the presence of family members residing in another member state. These questions are asked by the officers at the desks in prefecture. All asylum seekers are affected by this process. The form is written in French and in English. It must be filled by the applicant in French, during the interview. The presence of an interpreter during this appointment can vary; the translation in the applicant’s language is often done by a compatriot. Those appointments are not recorded. There is no transcript of the meeting.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision?  Yes  not always/with difficulty  No

<sup>67</sup> Article L.521-1 of the code of administrative justice.

<sup>68</sup> Article L.741-4 1° and L.723-1 of the Ceseda.

<sup>69</sup> Scheduled in theory within 15 calendar days after the asylum seekers has voiced their request to be admitted on the territory on the ground of an asylum claim.

Apart from cases where applicants under a Dublin procedure have access to reception facilities through the emergency scheme, they only have access to the legal assistance provided by the orientation platforms.

Access to legal aid can be obtained after the notification for transfer towards the responsible member state has been issued (upon conditions of low income). The applicants must request this allowance at the office for legal aid of the relevant administrative court (*Tribunal administratif*). This office can ask for further information and a short account of the legal and *de facto* reasons why the asylum seeker thinks the contested decision is unlawful or unfounded and may, for instance, lead to a violation of their fundamental rights. Access to legal aid can be refused if the arguments are deemed unfounded.

### Suspension of transfers

#### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?  Yes  No
  - o If yes, to which country/countries? Greece

As a consequence of the European Court on Human Rights ruling of 21 January 2011 in *MSS vs. Belgium and Greece*, the Ministry of Interior has asked the Prefects to stop, on a temporary basis and awaiting further instructions, transfers towards Greece by a telegram dated 14 March 2011. Consequently, prefectures must apply the sovereignty clause of the Dublin Regulation and therefore declare France responsible for examining the asylum application.<sup>70</sup> As a general rule, applicants who should have been transferred to Greece according to the Dublin Regulation have a direct access to a temporary residence permit with a view to lodge their application for asylum in France.

## 4. Admissibility procedures

The French legislation does not foresee a specific procedure to decide on the admissibility of the asylum claims (but see the specificity of the asylum procedure at the border).

## 5. Border procedure (border and transit zones)

### General (scope, time-limits)

#### Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs?  Yes  No
- Can an application made at the border be examined in substance during a border procedure?  
 Yes  No

<sup>70</sup> Circulaire du 1er avril 2011 n° NOR IOCL1107084C, Application du règlement CE n°343/2003 du Conseil du 18 février 2003 dit "règlement Dublin" (Circular of 1st April 2011 on the application of the Dublin Regulation).

A specific procedure to request an admission into the country on asylum grounds is established in the French legislation,<sup>71</sup> for persons arriving on the French territory through airports or harbours. Nobody is exempt from the application of this procedure. Unaccompanied children are also subject to these provisions.<sup>72</sup> Foreign children do not have access to more favourable provisions than adults. An unaccompanied child may be held in a waiting area, as confirmed by a decision of the Court of Cassation of 2 May 2001, which ruled that the 1945 Ordinance<sup>73</sup> does not give any indication of the age of the persons that can be held in a waiting area. As a result, there is nothing to prevent children from being held there.<sup>74</sup> In the smaller waiting areas, unaccompanied children are therefore held together with adults, without any specific guarantees provided for them.

This procedure is framed by Article R 213-2 of Ceseda: *When a foreign national who has arrived at the border makes a request for asylum, they are immediately informed, in a language they can reasonably be considered to understand, of the asylum request procedure, their rights and obligations over the course of this procedure, the potential consequences of any failure to meet these obligations or any refusal to cooperate with the authorities, and the measures available to help them present their request.* Article L. 221-4 also provides that *foreign nationals held in waiting areas are informed, as soon as possible, that they may request the assistance of an interpreter and/or a doctor, talk to a counsel or any other person of their choice, and leave the waiting area at any point for any destination outside of France. This information is communicated in a language the person understands.*

The asylum request must imperatively be taken into account and the Border Police has to take a statement of the request for an admission on the basis of an asylum claim. The person is held in the waiting area for an initial duration of 4 calendar days<sup>75</sup> to give the authorities some time to check that the asylum request is not manifestly unfounded. This procedure is separate from and prior to the procedure for recognition of refugee status, which cannot begin until the asylum seeker at the border enters French territory.<sup>76</sup>

The Judge of Freedom and Detention (JLD) is competent to rule on extending the stay in the waiting area<sup>77</sup>. The JLD must rule "within twenty-four hours of submission of the case, or if necessary, within forty-eight hours of this, after a hearing with the interested party or their lawyer if they have one".<sup>78</sup> It is the administrative authority that must make a request to the JLD to extend custody in the waiting area and who must explain the reasons for this (impossible to return the foreign national due to lack of identity documents, pending asylum request, etc.).

The duration of the stay in the waiting area can be up to 20 calendar days (26 days in exceptional cases). According to the official figures of the Ministry of the Interior, in 2011 the average duration of the stay in the waiting areas were 3.5 days at Roissy CDG and 1.9 days at Orly. This means that many foreigners are returned before having been able to present their situation before the judge.<sup>79</sup>

There is no set period between registering the request and the interview, although in practice it is often very short (one or two days). The Border Police at Roissy (Charles de Gaulle) airport have indicated to the NGO ANAFE that any person wishing to make a request at the airport, when they are refused entry,

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<sup>71</sup> Article R 213-2 of Ceseda.

<sup>72</sup> See detailed additional information on the risks for children in waiting areas in the Anafé, [La procédure en zone d'attente: Guide théorique et pratique de l'Anafé](#) (Theoretical and practical Guide, Procedure in waiting areas), , January 2013.

<sup>73</sup> Ordonnance n° 45-174 du 2 février 1945 relative à l'enfance délinquante (Order of 2 February 1945 on delinquent youth).

<sup>74</sup> Court of Cassation, civil chamber, 2 May 2001, Stella I., appeal no. 99-50008.

<sup>75</sup> Article L. 221-3 Ceseda.

<sup>76</sup> ANAFE, *Rapport annuel 2011- zones d'ombre à la frontière - observations et interventions de l'Anafé en zone d'attente*, (Annual Report 2011 -, Shadow zones at the border), December 2012.

<sup>77</sup> The oversight of waiting areas is covering all third country nationals placed in waiting areas (i.e. not only asylum seekers).

<sup>78</sup> Article L222-3 of CESEDA.

<sup>79</sup> ANAFE, *Annual Report 2011*, December 2012.

must explicitly use the word "asylum" for their request to be registered at this stage. A new "rules of procedure" document is being drafted to harmonise the practices of the border police throughout the country (it should be ready by December 2013).

The decision on whether an asylum request is manifestly unfounded is made by the Ministry for Interior. This decision is taken after having consulted the opinion delivered by OFPRA (Office for the Protection of Refugees and Stateless Person)'s Border Division. In 2012, the asylum requests made at the border have seen their lowest level since 2004 with only 2 223 registrations of requests to enter the French territory on the grounds of an asylum claim.

Top 5 nationalities of asylum seekers at the border in 2012 were Filipinos (8.6%), Nigerians (7.6%), Syrians (7%), Sri Lankans (5.5%), and Malians (4.7%).<sup>80</sup>

The competent administrative authority for delimiting waiting areas is the Prefect of the *Département* and in Paris, the *Préfet de Police* (Chief of Police). The decision to hold a foreign national in the waiting area, which must be justified in writing, is taken by the Head of the National Police service or the Customs and Border Police, or by a civil servant designated by them. In August 2012, there were 51 waiting areas in mainland France and overseas. Most of the activities takes place at the Roissy CDG airport <sup>81</sup> (it concentrates 81.7% of all opinions).

During the border procedure, asylum seekers are held within waiting areas. Waiting areas are located between the arrival and departure points and passport control. The law provides that they may include, within or close to the station, port or airport, or next to an arrival area, one or several places for accommodation, offering hotel-type facilities to the foreign nationals concerned. In these accommodation areas, there should be an area for lawyers to hold confidential meetings with the foreign nationals<sup>82</sup>. Besides, since the modification of the asylum law (Ceseda) of 16 June 2011, waiting areas can be extended within 10km from a border crossing point, when it is found that a group of at least 10 foreigners just crossed the border. The group of 10 can have been identified on a same location or various locations within the 10km area. This exceptional extended waiting area can be maintained for a maximum of 26 days.<sup>83</sup> This possibility has not been implemented until now.

According to the law, waiting areas can include "hotel type" accommodation areas. In practice, those are only established in the Roissy CDG airport (ZAPI 3) and can accommodate up to 160 persons. In the other waiting areas, the material conditions for accommodation can vary greatly: foreign nationals are sometimes accommodated in a nearby hotel (like in Orly at night time), or in rooms within police stations. They do not all have access to "hotel-type" services.<sup>84</sup>

The Border division of OFPRA formulates an opinion that is communicated to the Ministry of Interior, which takes the final decision to authorise entry into France or not. In theory, the authority in charge of checking whether the asylum request is manifestly unfounded should only examine whether the given facts are manifestly irrelevant to the criteria of the Geneva Convention, or the criteria used to grant subsidiary protection. This review could resemble a procedure to verify admissibility. It should only be a superficial review, not an in-depth one, of the asylum request. In practice, the assessment usually covers the verification of the credibility of the account (interview reports contain comments as to stereotypical, imprecise or incoherent accounts, with a lack of written proof). This practice of examining the request on the merits is extremely problematic. If the asylum request is not considered to be manifestly unfounded, the foreign national is authorised to enter the French territory and is given an 8-day temporary visa (safe passage). Within this time frame, upon a request from the asylum seeker, the competent prefectures will grant a temporary permit to remain, allowing the asylum seeker to lodge their

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<sup>80</sup> OFPRA, 2012 Activity report, 25 April 2013.

<sup>81</sup> Anafé, *Theoretical and practical Guide, Procedure in waiting areas*, January 2013.

<sup>82</sup> Article L.221-2 of Ceseda.

<sup>83</sup> Art. L. 221-2 of Ceseda.

<sup>84</sup> ANAFE, *Annual Report 2011*, December 2012.

asylum request to OFPRA. Refusals entail the removal<sup>85</sup> of the foreign national, usually to their country of origin (in application of annex 9 of the Chicago Convention).

Any refusal should be accompanied with an argued decision by the Ministry of Interior. The deadline for the decision is not set out in the legislation. In practice, in 2011, 80% of requests received a response with 48 hours of being placed in the waiting area, and 94% within 96 hours.<sup>86</sup> In 2008, the rate of positive opinions given by OFPRA decreased significantly compared with that of 2007, from 44.6% to 31.1%. This trend was confirmed in 2009 (26.8%) and 2010 (25.8%) and reinforced in 2011 with a dramatic drop in 2011 to only 10.1% of positive opinions.<sup>87</sup>

## Appeal

### Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?
  - Yes       No
  - o if yes, is the appeal  judicial       administrative
  - o If yes, is it suspensive?  Yes       No

The appeal process for a border procedure differs significantly from appeals in a regular procedure. When the request for asylum made at the border is rejected, the foreign national is considered to be "not admitted" into French territory. They then have 48 hours to make an appeal to the Administrative Court to overturn the decision. This appeal has suspensive effect.<sup>88</sup> The provisions concerning the period available to the administrative judge to decide on the appeal have evolved recently<sup>89</sup>: the decisions must henceforth be delivered at a hearing.<sup>90</sup>

Indeed since January 2012, asylum seekers are informed on the day of the hearing about the decision of the appeal court. However, sometimes they only receive the reasoned decision of the court on their appeal several days later, provided they have not been returned beforehand. No other appeal can be made against the decision to refuse entry on the basis of asylum (except for appeals for the implementation of provisional measures, based on Article 39 of the European Convention on Human Rights). The foreign national may request the services of an interpreter from the President of the Court and can be assisted by a lawyer if they have one. They may ask the President of the Court to designate one. The decision of this Administrative Court can be challenged within fifteen days before the President of the competent Administrative Court of Appeal. This appeal does not have suspensive effect.

During 2012, Forum Réfugiés-Cosi noticed a change in practice for designating the competent Administrative Court for the appeal. Based on "considerations of the proper application of justice", the Council of State assigns the case to the Administrative Court that is closest to the concerned waiting area<sup>91</sup> and not anymore only to the administrative court of Paris.

There are many practical obstacles for lodging appeals effectively at the border. Modalities for the implementation of appeals are too restrictive for most foreign nationals held in waiting areas, who should in principle have access to an effective appeal procedure. Although it has suspensive effect, this appeal is very difficult to carry out because it has to be made within 48 hours, with a legal justification, in

<sup>85</sup> Unless an appeal is lodged against this decision within forty-eight hours, thereby preventing the immediate return before the appeal decision.

<sup>86</sup> OFPRA, *Activity Report 2011*.

<sup>87</sup> Anafé, *Theoretical and practical Guide, Procedure in waiting areas*, January 2013.

<sup>88</sup> Article L 213-9 of Cesda.

<sup>89</sup> See Decree No. 2012-89 of 25 January 2012 which amended Article R. 777-1 of the Code of Administrative Justice.

<sup>90</sup> Contrary to what was provided in the article L. 213-9 of cesda, which stated that the administrative judge had a period of 72 hours to decide – after the hearing.

<sup>91</sup> Article R 351-8 of the administrative code of justice.

French, otherwise it might be rejected without a hearing by the Administrative Court. Language is an important obstacle to lodge an appeal, as there is no free interpreting service available in the waiting area. ANAFE and other NGOs such as Forum Réfugiés-Cosi rely on some volunteer interpreters but they are not always available<sup>92</sup>. There is no “on duty” lawyers systems in the waiting area and, in most waiting areas, NGOs try to provide a legal advice telephone service. Besides, as the procedure for examining asylum requests at the border is so poorly defined, arguments linked to an infringement of the procedure are difficult to substantiate. The justification for the appeal therefore has to be based on the demonstration that the asylum request is well-founded in order to challenge the ministerial motivation. Finally, the 48-hour period starts from the time of notification of the rejection decision. Beyond this strict deadline, no other appeal is possible (with the exception of appeals to the European Court on Human Rights). Some notifications of rejection are made in the middle of the night, which means that by the time the asylum seekers are able to contact a lawyer or speak with advisers, the time available is drastically reduced.<sup>93</sup>

The NGO Anafé has publicly denounced in December 2013 the case of an Eritrean asylum seeker, whom the Border police has tried to board on a plane to Bahrain within the 48 hour period after the rejection of his asylum claim by OFPRA and therefore disregarded his right to lodge an appeal to the administrative court.<sup>94</sup>

Finally, two locations for “off site” appeal hearings have been discussed vividly in France in autumn 2013. Indeed a hearing room has opened in September in the administrative detention centre of Le Mesnil-Amelot (near Paris) and another one is foreseen to be used in the waiting area of Paris-Charles de Gaulle airport as of January 2014. The authorities have justified the relocation of these appeal hearings explaining that it will avoid costly transfers, sometimes conducted in conditions, which do not respect the dignity of the persons concerned. Many NGOs<sup>95</sup> have raised concerns with regards to this initiative as it gives the impression that foreigners are not appellants like any other. The Council of Europe Commissioner for Human Rights, Nils Muižnieks has sent a letter to the Justice Minister, Ms Christiane Taubira, on 2 October 2013, in which he mentioned that “these off-site” proceedings entail holding hearings in the immediate proximity of a place of deprivation of liberty, in which the applicants are being held or detained. This situation, combined with the fact that this place is under the authority of the Ministry of the Interior, which is also a party to the proceedings, could undermine the independence and impartiality of the court concerned, at least in the eyes of the applicants”<sup>96</sup>.

On 15 October 2013, the Justice Minister has responded to these concerns by setting-up an enquiry mission in charge of determining if the off-site hearing room located at Roissy airport is complying with European and national obligations.<sup>97</sup>

The two rapporteurs (Bernard Bacou, former president of the administrative appeal court of Aix en Provence and Jacqueline de Guillenchmidt, former member of the Constitutional council) have handed over their conclusions to the Justice Minister on 17 December who has immediately announced the freezing of the opening of the site in the waiting area of Paris-Charles de Gaulle airport. The report does not challenge the necessity to have the judges come to the airport but stresses that several changes have to be made to respect the migrants’ rights: for instance the door between the court and the waiting area needs to be walled up and the control the hearing should not be carried out by the border police<sup>98</sup>. The Justice Minister will start discussions with the ministry of interior on these issues. Some NGOs like

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<sup>92</sup> ANAFE, *Newsletter no. 10, testimony of support workers*, December 2012.

<sup>93</sup> ANAFE, *Annual Report 2011*, December 2012.

<sup>94</sup> Anafé, [Zone d'attente de l'aéroport de Roissy](#) : La France tente de refouler illégalement un demandeur d'asile érythréen, 3 December 2013

<sup>95</sup> See the [collective action](#) launched in June 2013, “Défendre et juger sur le tarmac : stop à la délocalisation des audiences”. (*Representing and judging on the tarmac: no to the relocation of hearings*)

<sup>96</sup> [Letter](#) from Nils Muižnieks to Ms Christiane Taubira, 2 October 2013.

<sup>97</sup> See the [Press release](#) from the Ministry announcing the enquiry mission.

<sup>98</sup> [Rapport](#) on the off-site hearing room located in the at Roissy airport, Bernard Bacou and Jacqueline de Guillenchmidt, 17 December 2013.

GISTI have however stressed that the root of the problem lie in the fact that “nobody will go until the air freight zone to attend a hearing”, depriving these migrants from the public nature of these judgments<sup>99</sup>.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in practice in most cases in a border procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  
 Frequently  Rarely  Never

This procedure is very different from the regular procedure. All asylum seekers subject to a border procedure are interviewed by the border section of OFPRA (French Office for the Protection of Refugees and Stateless Persons, French determining authorities) so that it can provide the Ministry of Interior with an opinion on whether their request is well-founded or not (this opinion is not binding for the Ministry).

In 2012, 2 223 requests have been registered in waiting areas and 1 954 opinions have been delivered on an admission to the French territory on asylum grounds.<sup>100</sup> OFPRA gave a positive decision in only 13.1% of these 1 954 cases.<sup>101</sup> According to the latest OFPRA activity report, 79% of the asylum claims have been examined within 48 hours and 94% in less than 96 hours.

The law sets provisions on interviews in the border procedure: *"If the interview of the asylum seeker requires the assistance of an interpreter, it is paid for by the state. This interview is subject to a written report which includes information related to the identity of the foreign national and that of their family, the places and countries they travelled through or stayed in, their nationality(ies), or at least the countries they have lived in and any previous asylum requests, their identity documents and travel documents, as well as the reason why they are seeking international protection."*<sup>102</sup> At Roissy CDG airport, the OFPRA Border section interviews the asylum seeker in the waiting area (ZAPI3). With the exception of the Roissy CDG airport waiting area the interviews are done by phone, with translation provided by an interpreter who is included in the phone call.

These interviews should be very different to the interviews in the regular procedure, as they are only supposed to look at whether the given facts are manifestly irrelevant to the criteria set out in the Geneva Convention, or the criteria used to grant subsidiary protection. In practice, the review is often extended to include the verification of the credibility of the account (some rejection decisions contain reports of stereotypical, imprecise or incoherent accounts, with a lack of written proof).<sup>103</sup>

Besides, the Border police itself acknowledges that not all unaccompanied children in the Roissy airport waiting area are assisted by a legal representative (*Administrateur Ad-Hoc*) as the law provides:<sup>104</sup> in

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<sup>100</sup> The difference between the two figures can be explained by the fact that some asylum seekers held in waiting areas can be released by the JLD Judge for other reason than the asylum claim, before OFPRA delivers its opinion.

<sup>101</sup> OFPRA, *2012 Activity report*, 25 April 2013.

<sup>102</sup> Article R 213-2 of Ceseda.

<sup>103</sup> The association Anafé has been able to attend a few OFPRA interviews at the border in Summer 2013. More information will shortly be available on their [website](#).

<sup>104</sup> Article L221-5 Ceseda.

2009, 584 unaccompanied children were assisted by a legal representative out of 637 identified and in 2010 there were 370 on a total of 518 to have met a legal representative.<sup>105</sup>

Finally, the interview notes are only provided at the same time as the rejection decision. In the waiting areas of Orly airport and outside Paris, the OFPRA protection officer now asks during the telephone interview whether the asylum seeker would like the interview report to be sent to them personally by e-mail or whether they would prefer it to be sent directly to their lawyer, or as a last resort, to the Border Police fax machine.<sup>106</sup> Sending the report like this does not guarantee the confidentiality of the information and it is contrary to the law,<sup>107</sup> which states that OFPRA should send the foreign national a copy of the report in a sealed envelope.

In a decision of 28 November 2011, the Council of State also clarified that the 48-hour deadline to lodge appeals does not begin until the OFPRA report is received by the asylum seeker in a sealed envelope as provided by the law (however, "failure to transmit this report, if it is an obstacle to the initiation of the appeal deadline, and the automatic execution of the ministerial decision to refuse entry on the basis of asylum, has no influence on the legality of this decision"<sup>108</sup>).

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure?  Yes  not always/with difficulty  No

There is no permanent legal adviser or NGO presence in the French waiting areas.<sup>109</sup> Asylum seekers must therefore try to get hold of an adviser by phone from the waiting area. Many concerns have been raised about effective access to a telephone.<sup>110</sup> These difficulties have also been highlighted by the Controller General of places of freedom deprivation: "In waiting areas, there are telephones generally in good condition, but without any explanation on how to use them through posters or information within the documents provided to the foreign national. These telephones can only be used by purchasing phone cards, and therefore, by those who have money to buy one."<sup>111</sup> No legal adviser is present during the OFPRA<sup>112</sup> (French Office for the Protection of Refugees and Stateless people) interview (the only exception for the presence of a third party is the presence of legal representatives for unaccompanied children). Article 213-9 of Ceseda outlines the possibility of receiving assistance from a lawyer or asking the President of the Court to designate an appointed lawyer for appeals to the Administrative Court against a decision to refuse entry to French territory on the basis of asylum. The asylum seekers can also request to be assisted by a court appointed lawyer during their hearing before the Judge of Liberties and Detention (JLD) competent to rule on extending their stay in the waiting area. In theory, the asylum seeker should have hired one previously at their own expense, or prepared a sufficiently well-argued request in French by themselves, in terms of facts and points of law. This is another illusory measure that does not guarantee the asylum seeker access to an effective remedy.

<sup>105</sup> Anafé, *Theoretical and practical Guide, Procedure in waiting areas*, January 2013.

<sup>106</sup> ANAFE, *Annual Report 2011*, December 2012.

<sup>107</sup> Article R 213-3 and R 213-2 Ceseda.

<sup>108</sup> Court ruling of the Council of State, 28 November 2011 (Council of State case, 7th and 2nd sub-sections, 28/11/2011, 343248).

<sup>109</sup> Only the Anafé is occasionally present in the waiting area in Roissy CDG.

<sup>110</sup> In Lyon, there is a phone number indicated above the phone, with the explanation in five languages that an NGO staff can be available for legal advice.

<sup>111</sup> Controller General of prisons and detention centres, *2011 Activity report*, April 2012.

<sup>112</sup> This is also the case for cases heard at OFPRA in the procedures on the territory.

## 6. Accelerated procedures

### *General (scope, grounds for accelerated procedures, time limits)*

The reasons for placing an asylum seeker in an accelerated procedure are outlined in Article L 741-4 of CESEDA. This procedure can be applied if:

- the foreign national seeking asylum is a national of a country for which Article 1.C.5 of the Geneva Convention applies, or a country considered to be a safe country of origin (46% of the accelerated procedures in 2012 were justified by the fact that the person came from a safe country of origin<sup>113</sup>).
- the presence of the foreign national in France constitutes a serious threat to public order, public safety or state security.
- the asylum request is based on a deliberate fraud or constitutes an abuse of the asylum procedure, or has only been made to prevent a notified or imminent return order. Abuse of the asylum procedure is constituted in particular by the fraudulent presentation of several requests to remain on asylum grounds under different identities. An asylum request based on deliberate fraud is constituted by a request made by a foreign national who provides false information, hides information about their identity, their nationality or their journey into France, in order to deceive the authorities.

There is no system in place for exemption from the application of the accelerated procedure - even for vulnerable persons. Elderly or disabled people can also be placed under an accelerated procedure (and are therefore given less favourable reception conditions).

Legally, the provisions that allow for placement in an accelerated procedure are indicative only and they can be bypassed by the Prefectures who have to carry out an individual assessment of the person's situation.<sup>114</sup> For example, very occasionally, in the case of multiple nationalities in a single family, the Rhône department *Prefecture* grants temporary leave to remain even though one of the family members originates from a safe country of origin. However, the 2012 OFPRA activity report clearly demonstrates a wide use of accelerated procedures for asylum seekers coming from countries listed as safe countries of origin<sup>115</sup> (91% of these requests are treated under the accelerated procedure<sup>116</sup>).

OFPRA (French Office for the Protection of Refugees and Stateless Persons) is the authority responsible for the decision at first instance in accelerated procedures. Its decisions should in theory be made within 15 calendar days.<sup>117</sup> In 2012, the median period for the examination of first asylum requests in accelerated procedure was 45 days.<sup>118</sup>

The accelerated procedure represented 31.2% of the total of asylum cases in 2012. This is a 25% increase in comparison to 2011. Placements under an accelerated procedure often result from the use of the safe country of origin concept, from evaluations carried out by the authorities that the requests are abusive (suspected falsification of identity) and from the frequent use of the accelerated procedure for asylum requests lodged from administrative detention centres. With regard to administrative detention, UNHCR declared that "the conditions for exercising the right to asylum cannot be considered to be effective. The deadline of 5 days to formulate a request when detained (UNHCR recommends an extension to 10 days), the fact that the request has to be written in French without the availability of an

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<sup>113</sup> OFPRA, *2012 Activity report*, 25 April 2013.

<sup>114</sup> Art L 741-4 Ceseda.

<sup>115</sup> See the updated list [here](#). On 29 December 2013 it concerned: Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, Kosovo, Former Republic of Macedonia (FYROM), Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia, Tanzania, and Ukraine

<sup>116</sup> OFPRA, *2012 Activity report*, 25 April 2013.

<sup>117</sup> Article R.723-3 of Ceseda.

<sup>118</sup> OFPRA, *2012 Activity report*, 25 April 2013.

interpreter, the 96-hour deadline for OFPRA to make a decision (which is often not respected by OFPRA, particularly for complex cases, which shows its unsuitability) are just some examples."<sup>119</sup>

## Appeal

### Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
  - Yes  No
- o if yes, is the appeal:
  - judicial  administrative
- o If yes, is it suspensive?
  - Yes  No

The procedure for appeal before the CNDA (National Court of Asylum) is similar to the one in the regular procedure. Persons placed in an accelerated procedure must appeal within the same time period - 1 month after the negative decision. As the preparation of these appeals is hardly supported by NGOs (assistance to draft the appeal was removed from the mandate of the orientation platforms by the new reference framework in 2011), asylum seekers may not be aware of these deadlines and face serious difficulties to draft a well-argued appeal. They can nonetheless lodge a request to benefit from legal aid (*aide juridictionnelle*).

One difference with serious consequences is the lack of suspensive effect of the appeal in the accelerated procedure on a return decision given jointly with a negative decision on the asylum claim. Some Prefectures systematically order returns with compulsory removal orders from France, after OFPRA has rejected an asylum seeker placed in an accelerated procedure (even if in reality the removal orders are not always implemented). In any case, the risk and the fear of being arrested and returned restrict the freedom of movement of these asylum seekers, and limit their possibility of receiving assistance with the preparation of their appeal. Stressing the potentially grave consequences of a removal before a final decision on an asylum request, Forum réfugiés-Cosi has for many years called for a suspensive appeal for all asylum seekers, regardless of the procedure imposed on them.

In its submission for the Universal Periodic Review of the situation in France by the Human Rights Council in 2013, the UNHCR strongly recommended "the introduction of suspensive effect to appeals at a legislative and regulatory level, in order to make the appeals effective for accelerated procedures, and called for a more limited application of the conditions leading to accelerated procedures, particularly on the basis of the safe country of origin concept."<sup>120</sup>

Until the end of 2013, the CNDA was making the interpretation that both the provisions of Article 1A (2) of the Geneva Convention and the provisions of Article 2 of the EU Qualification Directive implied that asylum seekers seeking protection must necessarily be outside their country of origin. Therefore, it used to consider that the involuntary returns of applicants to their countries of origin had the effect of temporarily suspending the examination of their cases as, under these circumstances, their appeals were temporarily groundless. However, the Council of State has stated in its judgment of 6 December 2013 that no disposition of the Geneva Convention nor of the Ceseda subordinates the examination of the appeal at the CNDA to a presence on the French territory during the appeal procedure. A residence outside of the French territory is therefore not a reason not to examine the appeal lodged by an asylum seeker.<sup>121</sup>

<sup>119</sup> Submission of the High Commissioner of the United Nations for Refugees, based on the summary provided by the High Commissioner for Human Rights, Universal periodic review, France report, July 2012.

<sup>120</sup> Submission of the High Commissioner of the United Nations for Refugees, *op. cit.*

<sup>121</sup> See [judgment](#) of the Council of State, n°357351, 6 December 2013

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in an accelerated procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  
 Frequently  Rarely  Never

Interviews for asylum seekers placed in an accelerated procedure take place under the same conditions as interviews in a regular procedure. The same grounds for omission apply. For first asylum requests processed under the accelerated procedure, 97.3% of the applicants were called for an interview in 2012.<sup>122</sup>

All personal interviews in the regular procedure are conducted by the authority responsible for taking decisions on asylum applications (OFPRA). At the end of the interview, the protection officer writes an account and a proposition of decision which is then submitted to the validation of their section manager. There is no audio recording of the initial interviews. The report produced is not a verbatim report of the interview. The problems arising from the quality of the reports and of the interpretation are also true of accelerated procedures.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure?  Yes  not always/with difficulty  No

In theory, asylum seekers placed in an accelerated procedure have the same rights with regard to access to legal assistance than in a regular procedure. In reality, the specific situation of persons placed under an accelerated procedure arises from the difficulty they have in accessing reception conditions where legal assistance is available. As they do not usually have access to the CADAs (asylum seekers' reception centres), these persons are dependent on legal advice provided by the initial orientation platforms (limited to the preparation of the official form to lodge an asylum application) and must rely on volunteers from charities. The initial orientation platforms are only supposed to explain the procedure for requesting legal aid (*aide juridictionnelle* – available only at the appeal stage). With little support with their request, and often living in extremely precarious conditions, these persons may find it difficult to obtain a positive response from the Legal Aid Office (some requested documents are not easily accessible for people living in emergency shelters). These appeals can appear to have little merit as they are written without any legal assistance.

<sup>122</sup> OFPRA, 2012 Activity report, 25 April 2013.

## C. Information for asylum seekers and access to NGOs and UNHCR

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  Yes  not always/with difficulty  No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  Yes  not always/with difficulty  No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No

The provision of information is codified by article R-751-2 of Ceseda: "The competent service of the Prefecture must inform the foreign national who would like to request refugee or subsidiary protection, of the asylum procedure, their rights and obligations over the course of this procedure, the potential consequences of failure to meet these obligations or any refusal to cooperate with the authorities and the measures available to them to help them present their request. This information should be provided in a language they can reasonably be expected to understand."

A guide is supposed to be provided within the *Prefecture* and is available in several languages (the 2011 Asylum Seekers Guide was available in French, Albanian, English, Arabic, Armenian, Bengali, Chinese, Haitian, Creole, Spanish, Georgian, Lingala, Mongol, Urdu, Pashto, Farsi, Portuguese, Romanian, Russian, Serbian, Swahili, Tamil, Chechen, Tigrinya, Turkish, and Vietnamese). This document has been updated in June 2013 and available on the Ministry of the Interior website (only in French at the moment)<sup>123</sup>. Practices vary from one *Prefecture* to another, and many still fail to provide the guide. In addition, a leaflet with information about the issue of "domiciliation" (legal address) is handed out in some orientation platforms (as in Lyon for instance). According to the national consultative committee on Human rights this information brochure has not always been effectively distributed within the *Prefectures*.<sup>124</sup> Furthermore, the European Agency for Fundamental Rights highlighted the inadequacy of information for asylum seekers in France in 2010, at the time of its thematic report on "The duty to inform applicants about the asylum procedure: the asylum seekers' perspective".<sup>125</sup>

With regards to the information provided about the Dublin procedure, it varies greatly from one *Prefecture* to another. In the Rhône department, the asylum seeker knows when a take charge or a take back procedure has been initiated, due the information provided on the back of their Dublin summons (information translated into the language of the asylum seeker). There is, however, no information about the country to which a request has been sent, nor on the criteria that have led to this decision.

Research within the framework of the DIASP (Assessing the Dublin Regulation's impact on asylum seekers' access to protection and identifying best practice implementation in the European Union)

<sup>123</sup> See the Ministry of Interior [website](#)

<sup>124</sup> National Consultative Committee on Human Rights *Avis sur l'accueil des demandeurs d'asile en France (Opinion on the reception of asylum seekers in France)*, plenary meeting of 15 December 2011.

<sup>125</sup> Fundamental Right Agency, [The duty to inform applicants about asylum procedures: The asylum-seeker perspective](#), September 2010

project<sup>126</sup> has demonstrated that many asylum seekers under a Dublin procedure clearly fall through the cracks of the provision of information. Many interviewees said that the state authorities did not provide with information when they asked for it. Besides, it appears from the interviewees' answers that the simple provision of leaflets does not alleviate the feeling of misinformation. They have identified diverse reasons for the difficulties to get the right information: complexity of the procedures, scarcity of the information given, stressful circumstances and language barriers.<sup>127</sup>

In administrative detention centres, the Controller General of places of freedom deprivation has indicated, once again in 2011, that while current regulations state that persons detained should be informed in advance of their departure, the absence of prior warning is current standard practice, and information is exceptional.<sup>128</sup>

French law regulates strictly the access of asylum seekers to NGOs in administrative detention centres (CRAs). Some NGOs have a quasi-permanent presence (5-6 days a week) in CRAs as part of their mission to provide information to foreign nationals, and to help them to exercise their rights as outlined in Article R. 553-14 of CESEDA. In 2012, these included La Cimade, l'Ordre de Malte, Forum Réfugiés-Cosi, France Terre d'Asile and ASSFAM. Several other persons can access the CRAs facilities. Some people benefit from a free access (the Human Rights Commissioner of the Council of Europe, members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Members of the French and European Parliaments, the Controller General of Places of Freedom deprivation, Prefects, State Prosecutors and the Judges for Liberty and Detention) while others have more limited access (Consular representatives, lawyers, family members of the persons held). In addition, by a decision of 1 March 2013,<sup>129</sup> the Ministry of the Interior established the list of accredited NGOs that can nominate representatives to access the administrative detention facilities. Two NGOs are currently accredited: Forum réfugiés-Cosi and France Terre d'asile. UNHCR does not have access to CRAs.

The Controller General of places of freedom deprivation has also highlighted in 2013 some deficiencies with regards to the information provided to asylum seekers while in administration detention. His recommendations included: to make compulsory the dissemination of explanatory brochures about the asylum procedure (in several languages) addressing persons in detention and staff working in detention centres; to insist on the mandatory nature of the transmission of the asylum claim to OFPRA, even if it is submitted late; and to ensure that an interpreter is at the disposal of asylum seekers assisting them with the procedure.<sup>130</sup>

It should be noted that in October 2012, the association Reporters without Borders challenged the rejection of the request to access CRAs that they made to the Ministry of the Interior on 27 February, as part of the Open Access campaign. The association, like all French journalists who had made such a request in France, was denied access to the centres, without any reason being given.<sup>131</sup> In 2013 however, several journalists were able to visit certain administrative detention centres together with French MEPs in occasion of [the Open Access visits](#).<sup>132</sup>

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<sup>126</sup> A project led by the Jesuit Refugee Service Europe, carried out from October 2011 to March 2013.

<sup>127</sup> These findings are extracted from the DIASP project (interviews conducted for the writing of the report on France.

<sup>128</sup> General controller of places of freedom deprivation, *Activity Report 2011*, April 2012.

<sup>129</sup> Circular INTV1305938S of 1 March 2013.

<sup>130</sup> General controller of places of freedom deprivation, *Activity Report 2012*, February 2013 (pages 212-213)

<sup>131</sup> Reporters sans frontières, [RSF conteste le rejet de sa demande d'accès en centre de rétention](#) (RSF contests the rejection of its request to access detention centres, Press Release), 3 October 2012.

<sup>132</sup> See some press articles: 1) Le Nouvel Observateur, Detention Centres: 2 European officials visit Lyon ("[Centres de rétention: deux députées européennes en visite à Lyon](#)"), 17 July 2013, and 2) Rue 89 Lyon, Journalist, I entered the detention centre in Lyon ("[Journaliste, je suis entré au centre de rétention de Lyon](#)"), 17 July 2013.

In the waiting zones at the border, Forum Réfugiés-Cosi notes a serious lack of information on the possibility of requesting admission to French territory on the basis of asylum (see Border Procedures, General section). When a person is arrested at the border, they are notified of an entry refusal, in theory with the presence of an interpreter if necessary.<sup>133</sup> However, many stakeholders doubt that the information provided and the rights listed therein are effectively understood. For example, it is very surprising to note that those intercepted nearly all agree to renounce their right to a “clear day” notice period (24 hours during which the person cannot be returned) and tick the box confirming their request to leave as soon as possible. The Controller General of places of freedom deprivation stated that his officers “noticed that the decision to renounce this right is often taken by the agents themselves without the person held even being informed of this in any intelligible way.”<sup>134</sup> In reality, according to witness statements collected by the NGO ANAFE, information on rights and their effective application differs from one person to another and depends on the goodwill of the Border Police officer, on any difficulties that may arise with interpretation, and also on the ability of the person concerned to understand the situation.<sup>135</sup> As the telephone in certain waiting areas is not free of charge, contact with NGOs or even UNHCR, who are on the outside, is not easy. Several decisions by the Courts of Appeal have highlighted the irregularity of the procedure for administrative detention in a waiting area, due to the restrictions placed on exercising the right to communicate with a lawyer or any person of one's choice.<sup>136</sup> The fact that asylum seekers may have no financial means of purchasing a phone card is therefore a restriction on this fundamental right.

The list of the NGOs accredited to send representatives to access the waiting areas was established by order of the Ministry of the Interior on 5 June 2012.<sup>137</sup> it includes Accueil aux médecins et personnels de santé réfugiés en France (APSR- Reception of Refugee Medical and Healthcare Staff in France), Amnesty International France, L'Association nationale d'assistance aux frontières pour les étrangers (ANAFE National Association for the Assistance of Foreigners at the Borders), La Cimade, the French Red Cross, France Terre d'asile, Forum réfugiés-Cosi, Groupe accueil et solidarité (GAS-Reception and Solidarity Group), Le Groupe d'information et de soutien des immigrés (GISTI – Immigrants Support and Information Group), the Human Rights League, Le Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP- Movement against Racism and for Friendship between Peoples), Médecins sans frontières (MSF- Doctors without Borders), Médecins du monde (Doctors of the World) and the Order of Malta. This authorisation is valid for a duration of three years from 9 June 2012.

## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes       No
- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance       Yes       No       Not systematically
  - o At the appeal stage       Yes       No       Not systematically
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance       Yes       No       Not systematically
  - o At the appeal stage       Yes       No       Not systematically

<sup>133</sup> Article L.213-2 of Ceseda.

<sup>134</sup> Controller General of prisons and detention centres, *2011 Activity report*, April 2012.

<sup>135</sup> ANAFE, *Annual Report 2011*, December 2012.

<sup>136</sup> Article L 221-4 of Ceseda.

<sup>137</sup> Arrêté NOR: INTV1222472A, 5 June 2012.

After the rejection of an asylum request by the CNDA (National Court of Asylum), it is possible to ask OFPRA (French Office for the Protection of Refugees and Stateless Persons) to re-examine the request if there is "new evidence", subsequent to the date of the CNDA decision or prior to this date but which the asylum seeker only learned subsequently, and which is of a nature to justify personal fears of persecution or the risk of serious threats arising if the person returns. This new evidence must be proven and relevant, and able to demonstrate that the request is well-founded.<sup>138</sup> OFPRA has registered 6 213 subsequent requests in 2012 (a 20% increase in comparison to 2011).

The asylum seeker must again request, at the prefecture, a temporary residence permit. In order to obtain one, the person will have to convince the prefecture that he has credible new evidence to present to OFPRA.

- Either the *Prefecture* grants temporary residence permit for 15 days, and provides the OFPRA re-examination request form. The asylum seeker then has 8 days to submit all the details of the case to OFPRA, who registers it and decides whether to admit the request for re-examination.
- Or the *Prefecture* refuses to grant temporary residence permit and places the person in an accelerated procedure (it has been the case for 87% of the subsequent requests lodged in 2012<sup>139</sup>). It then provides a form to be completed as well as a summons to return to the *Prefecture* headquarters within 15 days, with all the details of the case in a sealed envelope. As soon as the re-examination file is received, the *Prefecture* sends it to OFPRA, with a message to indicate its urgency.

A removal order that may have been issued at the end of the first asylum request will be suspended during the examination of the subsequent application, but only at first instance if the person has been placed in an accelerated procedure.

However, the circular of 1 April 2011<sup>140</sup> invites the Prefects to reject requests for temporary residence permit almost systematically for re-examination cases.

There is no preliminary examination of the admissibility of the re-examination request as such. However, in practice, the discretion given to the *Prefectures* to decide on the validity of subsequent request is problematic. In practice, the Rhône *Prefecture*, by deciding if the new information is pertinent or not and by placing the asylum seekers in accelerated procedures, is acting as a kind of preliminary filter.

In the first place, OFPRA rules on the basis of the evidence provided, on the admissibility of subsequent request. During this preliminary examination, OFPRA can decide not to proceed with an interview and reject the re-examination request. If it is admitted, the asylum seeker is summoned for an interview.

In the event that OFPRA rejects the subsequent request, it is possible to appeal to the CNDA<sup>141</sup> within a time period of 1 month, on points of law and facts. If the re-examination request is processed under an accelerated procedure at OFPRA, the CNDA appeal does not have suspensive effect on a return decision. According to the law, "legal aid may not be requested for an appeal against an OFPRA decision to reject a subsequent request when the claimant has, at the time of the previous request, had a hearing with this office, as well as with the CNDA, assisted by a lawyer designated under the legal aid system."<sup>142</sup> Rejected asylum seekers who make a subsequent request are not or are no longer accommodated in reception centres. They therefore live in extremely precarious conditions that are not conducive to writing a well-constructed re-examination request, and they no longer receive assistance from specialised NGOs working in reception centres or in orientation platforms (they rely on volunteers

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<sup>138</sup> Jurisprudence of the CNDA, Ms F., application number 09002323, 4 November 2010.

<sup>139</sup> OFPRA, *2012 Activity report*, 25 April 2013.

<sup>140</sup> Circular IOCL1107084C of 1<sup>st</sup> April 2011 on the right of asylum (Dublin regulation and accelerated procedures).

<sup>141</sup> OFII, *Asylum seeker's guide*, 2011.

<sup>142</sup> Article L. 731-2 of *Ceseda*.

working for charities). It is also difficult to provide new information and to prove their authenticity. These people often have difficulties in accessing the documents needed to prove the new information (difficulty in contacting their country of origin to obtain the evidence). In practice, asylum seekers under a re-examination procedure often do not get a hearing – only 7% of them had been called for an interview at OFPRA in 2012<sup>143</sup>. Indeed, decisions of rejections “by order” are made more and more systematically for re-examination requests. These are therefore not decided by collegial sections. Some nationalities see their subsequent applications directly decided « by order ».<sup>144</sup>

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  No  Yes, but only for some categories
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories (Unaccompanied children)

In France there is no specific mechanism in place for identifying asylum seekers in need of specific procedural guarantees. No additional time is allocated for vulnerable asylum seekers. The only specific guarantee lies in the possibility of requesting a closed-door audience with the National Court of Asylum (CNDA), if the Head of Section agrees. The Head of Section may also do this automatically if they feel that it is preferable with regard to the circumstances of the person. Unaccompanied asylum-seeking children are interviewed at OFPRA (Office for the Protection of Refugees and Stateless Persons) under the same conditions as adults. Their status as children is not specifically taken into account. The only difference is the presence of an authorised, trusted, third party (the legal representative or *Administrateur ad hoc*). The children often report having been intimidated by the atmosphere of OFPRA. Although children are supported, they are not necessarily fully informed of the purpose of the interview. In fact, there are very few reception centres specialised in the care of unaccompanied asylum-seeking children. Many of them are looked after by traditional child protection facilities, whose staff is rarely trained in asylum requests issues.

### 2. Use of medical reports

#### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  Yes  Yes, but not in all cases  No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?  Yes  No  More or less

The legal framework does not foresee the use of medical reports when examining asylum requests. However, applicants often present medical certificates from specialised centres. In some cases,

<sup>143</sup> OFPRA, 2012 Activity report, 25 April 2013.

<sup>144</sup> Comments received from UNHCR during the consultation process.

certificates have been a deciding factor, depending on the judge. Some doctors say that all too often, their certificates are not taken into account (apparently OFPRA often dismisses them as evidence, without seeking a second opinion). The medical report is paid for by the asylum seekers via the state supported medical insurance (CMU or AME).

A medical certificate to confirm the absence of a female circumcision is requested during the examination of an asylum request presented by a young woman or girl that is based on the risk of female genital mutilation (FGM) in her country of origin. During the OFPRA interview, she will be asked to demonstrate that she has not been subject to FGM, if this is the reason she fears persecution if she returns to her country of origin. Once protection has been granted – be it refugee status or subsidiary protection, the requirement of a medical certificate remains. OFPRA requests that a medical certificate is sent to them each year, proving the person has still not undergone FGM, as a required document for the renewal of protection and the right to remain.<sup>145</sup>

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

The term unaccompanied child has no explicit definition in French law. The protection of these young people is therefore based on the notion of children under threat, as outlined in French legal provisions on child protection, which is applicable regardless of nationalities. *Départements* have the responsibility of unaccompanied children in France, and so it is difficult to obtain an overview of the situation for unaccompanied children at the national level. In France there is no specific procedure in place for identifying unaccompanied children. Protection measures taken are initiated by children who turn to NGOs or judges for help. When they arrive at the *Prefecture* headquarters, the authorities verify only whether a legal guardian is present or not. If this is not the case, a legal representative to support and represent the child in asylum procedures (*ad hoc administrator*) should be appointed. There were some local initiatives to set up assessment centres for unaccompanied children in 2012 but for now there is no coherent national mechanism. For example, an Advice and Reception platform for unaccompanied children in Paris (Permanence d'accueil et d'orientation des mineurs isolés étrangers – PAOMIE) is a unique point of entry for their care provisions<sup>146</sup>. This new arrangement aims to reorganise admission to child support provisions by way of a pre-reception centre for unaccompanied children in Paris. It carries out an initial evaluation of the situation for unaccompanied children in Paris and provides appropriate introductory information. As another example, since 2005, Forum réfugiés-Cosi carries out missions of information, legal support and accompaniment of hundreds of asylum seeking unaccompanied minors arriving in the Rhône– in complement to the activities of the French authorities.

The French authorities have recently attempted to harmonise the modalities for the reception and assistance provided to unaccompanied children (including asylum-seeking children) with a circular from 31 May 2013.<sup>147</sup> The circular aimed at limiting the disparities between the *départements* in terms of arrivals of unaccompanied children and at harmonising the practices throughout the country.

<sup>145</sup> Note on the non-excision certificate prepared by the French coordination for the right to asylum (CFDA), October 2012.

<sup>146</sup> See more information [here](#).

<sup>147</sup> Circular of 31 May 2013 on the modalities for the assistance provided to foreign unaccompanied minors: national scheme for shielding, evaluating and orientating, NOR: JUSF1314192C

It describes a procedure that should be followed everywhere, based on a homogeneous evaluation protocol and some funding from the national authorities. Therefore from June 2013, funding from the State covers reception costs of the children during the first 5 days while the evaluation and the orientation is carried out. If minority is admitted, the State prosecutor then either allocates a reception place in the *département* or resorts to a national cell based in Paris which will indicate in which other *département* the child could be placed. However, in practice, some *départements* refuse to accept these children and the State prosecutors hardly resort to binding measures even though the circular enables them to do so.<sup>148</sup>

The use of procedures to determine the age varies between *Départements*. Some *Départements* place the emphasis on civil status documentation, others conduct a social evaluation and some proceed to a bone examination. Procedures for bone examination are highly controversial, even more so when civil status documentation (if there is any) is brought into question, without a thorough examination of the case. According to the UNHCR,<sup>149</sup> these young people should get the benefit of the doubt in the event that an evaluation cannot establish their exact age. Once again, practice is not uniform across the country. Young people are rarely given the benefit of the doubt in practice, and less and less frequently. The State Prosecutor is the authority that decides on an age assessment procedure. In fact, the Prosecutor is responsible for issuing the order to place the child in care (temporarily or not) and may therefore request additional tests if there is a doubt about their status as a child. The Border Police may proceed to interview the person to make them admit that they are over 18. In these cases, the young people risk being sent immediately to appear before the authorities for fraud, and if relevant, use of false documents. The Public Prosecution department can request three months of imprisonment and issue a detention warrant, as well as an interdiction from French territory that can last for a duration of between one and three years. The 31 May circular also aimed at imposing a common evaluation procedure for determining the age. The evaluation should be supported by a set of concordant items of evidence which includes interviews, following a common template, verification of the authenticity of civil status documents and "if doubts prevail after these steps and only in this case", a medical check. The harmonisation impact of the circular is still to be determined.

As unaccompanied children do not have legal capacity, they must imperatively be represented in any act concerning them (for all procedures, including Dublin). When they are deprived of legal representation (i.e. if no guardian has been appointed by the guardianship judge before placement in care), the Public Prosecutor, notified by the prefecture, should designate an *ad hoc administrator* (legal representative) who will represent them throughout the asylum procedure. The law of 4 March 2002 on parental authority provides for the nomination of those legal representatives (*administrateur ad hoc*). In practice, the appointment of an ad hoc administrator can take between 1 and 3 months. In the case of asylum requests at the border, Article L221-5 of CESEDA states that an ad hoc administrator should be appointed "without delay" for any child held in a waiting area. "When an unaccompanied minor is not authorised to enter the country, the State Prosecutor is immediately advised of this by the administrative authority, and appoints an ad hoc administrator without delay. This person assists the minor during their stay in the waiting area and ensures they are represented in the legal and administrative procedures related to their stay." In practice however, some delay in the appointment of the legal representative can lead to a situation whereby an unaccompanied child does not meet with such a person.<sup>150</sup>

Every four years, within the jurisdiction of each Appeal Court, a list of ad hoc administrators is drawn up, designated to represent children held in waiting areas or who have requested refugee status. "To be included on the list, any individual person must meet the following criteria: 1. Be aged between 30 and 70 2. Have declared an interest for a sufficient period in matters of child protection and have relevant ability 3. Be resident within the jurisdiction of the Appeal Court 4. Never have been subject to criminal

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<sup>148</sup> See the [press release](#) from France terre d'asile, 14 October 2013

<sup>149</sup> UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, Geneva, 1997.

<sup>150</sup> See statistics in Roissy where 370 on a total of 518 unaccompanied had met a legal representative in 2010 (Anafé, *Theoretical and practical Guide, Procedure in waiting areas*, January 2013).

convictions or administrative or disciplinary sanctions contrary to honour, probity, or good morals 5. Not have experienced personal bankruptcy or been subject to other sanctions in application of book VI of the commercial code with regard to commercial difficulties".<sup>151</sup> These ad hoc administrators receive a flat allowance to cover their expenditures. The ad hoc administrator is the only person authorised to sign the asylum request form and transmit it to OFPRA.

Finally, it is interesting to note that – in border waiting areas - unaccompanied children are not yet assisted by a legal representative (Administrateur ad hoc) at the time of the notification of the possibility offered to them to benefit from a “clear day” (24 hours during which they cannot be returned). There is a risk that unaccompanied children do not understand the interest of this possibility and therefore that they end up deprived from this right.

## F. The safe country concepts

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of safe third country concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure?  Yes  No
- Is there a list of safe countries of origin?  Yes  No
- Is the safe country of origin concept used in practice?  Yes  No
- Is the safe third country concept used in practice?  Yes  No

The notion of safe countries of origin was introduced into French Legislation by the Law of 10 December 2003.<sup>152</sup> By law, a country is considered safe "if it ensures respect for the principles of liberty, democracy and the rule of law, as well as human rights and fundamental liberties".<sup>153</sup> The first list of safe countries of origin was established in June 2005 by the OFPRA (Office for the Protection of Refugees and Stateless Persons) Management Board. Every time a country is removed from or added to the list, the deliberations of the management board are published in the Official Journal. This list can be reviewed in OFPRA Board meetings (no system of regular re-examination). The list of countries considered to be safe countries of origin is public. On 29 December 2013, it included the following 18 countries: Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia Ghana, India, Kosovo, Former Republic of Macedonia (FYROM), Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia, Tanzania, and Ukraine<sup>154</sup>

The information report of Senators Leconte and Frassa from November 2012 highlighted that "the inclusion of a country on the list of safe countries of origin is rather motivated by the desire to reduce the influx of asylum requests, than by the objectively safe nature of the political and social situation of any given country"<sup>155</sup>. In 2012, the share of asylum claims coming from countries deemed as safe countries

<sup>151</sup> Article R. 111-14 of Ceseda.

<sup>152</sup> Law on the right to asylum n° 2003-1176 of 10 December 2003.

<sup>153</sup> Article R. 111-14 of Ceseda.

<sup>154</sup> It is to be noted that Bangladesh was withdrawn from the list on 4 March 2013 in a Council of State decision on recourse against the decision of 6 December 2011 to include Armenia, Bangladesh, Moldova and Montenegro on the list of safe countries of origin. Croatia was withdrawn from the list by the management board of OFPRA following its accession to the EU on 1<sup>st</sup> July 2013. See an updated list [here](#).

<sup>155</sup> Information report n°130 prepared by MM Jean-Yves Leconte and Christophe-André Frassa, Sénat, 14 november 2012.

of origin jumped to 14.4% of all asylum claims (7% in 2011). This is the highest proportion since the initiation of the safe country of origin concept in 2005<sup>156</sup>.

Decisions to add a country to the list can be challenged before the Council of State by third parties. Many countries have been removed from the list since 2005, following decisions from the Board or the Council of State: Albania and Nigeria in February 2008; Georgia in December 2009; Armenia, Turkey, Madagascar and Mali (for women only in Mali) in July 2010; Albania and Kosovo in March 2012.

In December 2012, the management Board of OFPRA has decided to withdraw Mali (which was still on the list of countries of safe origin for men) from the list. The same management board has decided on 16 December 2013 to modify again the list of safe countries of origin and has added Albania, Georgia and Kosovo to the list.<sup>157</sup>

The consequences of this provision affect the procedure in a fundamental way. Asylum seekers from countries included in this list cannot obtain a temporary residence permit on asylum grounds. Their request is therefore processed by OFPRA within an accelerated procedure and their potential appeal before the National Court of Asylum (CNDA) does not have suspensive effect. Placed in an accelerated procedure, these asylum seekers are usually not accommodated in reception centres and are subject to more precarious reception conditions than asylum seekers in a regular procedure.

The safe country of origin concept is frequently used in practice. 91% of the asylum seekers coming from countries deemed as safe countries of origin have been assigned to an accelerated procedure. The average recognition rate for these asylum seekers stands at only 4% in 2012.<sup>158</sup>

## G. Treatment of specific nationalities

Asylum seekers that are nationals of countries considered to be of safe origin are dealt with under an accelerated procedure (see Safe country concepts section).

According to the practical observations of many actors in the field of asylum in France, the processing of asylum claims for people of Rwandan nationality can take a particularly long time.

Syrian asylum seekers do not get a specific treatment in France, the only remarkable difference lies in the very high recognition rate they benefit from at the moment. Protection was granted by OFPRA to asylum seekers from Syria in 243 instances in 2012, which amounts to a recognition rate of 92%). This rate is to be compared with an average recognition rate of 9.4% for all decisions of OFPRA. Syrian citizens have by far the highest recognition rate among all nationalities (Iraqis with a 68.5% rate rank second).<sup>159</sup> Based on OFPRA's annual report for 2012<sup>160</sup>, 77% of Syrian nationals granted protection are granted refugee status (based on the Geneva Convention) while 23% of them obtained subsidiary protection. In a declaration to AFP, the executive director of OFPRA stressed that these requests were treated in very short timeframes (3 months when the average length of the first instance procedure is 6 months).<sup>161</sup>

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<sup>156</sup> OFPRA, *2012 Activity report*, 25 April 2013.

<sup>157</sup> Décision du 16 décembre 2013 modifiant la liste des pays d'origine sûrs (Decision of 16 December 2013 modifying the list of safe countries of origin), [JORF n°0301](#) of 28 december 2013 (page 21652)

<sup>158</sup> OFPRA, *2012 Activity report*, 25 April 2013.

<sup>159</sup> [ECRE/ELENA, Information Note on Syrians seeking protection in Europe, November 2013](#)

<sup>160</sup> [OFPRA Annual Report 2012](#)

<sup>161</sup> See *L'express, Ofpra : 700 demandes d'asile de Syriens en France depuis janvier (OFPRA: 700 asylum claims from Syrians in France since January)*, 29 August 2013.

It should be noted that France has not seen a very high level of arrivals of Syrian asylum seekers in 2013 in comparison to other European countries. From 1 January to 31<sup>t</sup> July 2013, Syrian nationals submitted 688 asylum applications, among which 485 applications were submitted by adults and 203 by dependent children. In proportion this is however a striking increase as only 637 and 119 asylum claims had been lodged by Syrian nationals in 2012 and 2011 respectively. In any case, the French first instance authority does not seem to resort to any policy of "freezing applications" or postponing the taking of decisions. Of the 458 requests<sup>162</sup> made to OFPRA in 2012 by Syrian nationals, 264 were examined by OFPRA.

Moreover, the French authorities have not designed a status specifically for applicants from Syria whose asylum application has been rejected. There is no official position with regards to returns to Syria (no moratorium) but there has been no reports of returns of Syrian nationals to Syria from France in 2012 and early 2013.<sup>163</sup> These rejected asylum seekers do not have an official status in France but they can go to the administrative courts (*tribunal administratif* and then *Cour d'appel*) to argue for a potential violation of Art. 3 ECHR, in case of removal to Syria. According to the ECRE/ELENA Information Note on Syrians seeking protection in Europe

“there is divergent French jurisprudence in relation to returns to Syria. For example, in accordance with Article L. 513-2 of the Code for Entry and Residence of Foreigners in France and the Right of Asylum (CESEDA), the Paris Court of Appeal confirmed the impossibility of removing a Syrian citizen to Syria, due to the potential violation of Art. 3 ECHR.<sup>164</sup> The same Court specified that a person cannot be returned to Syria, as it is “a country ravaged by civil war”.<sup>165</sup> The Versailles Court of Appeal refused to return Syrian nationals to their country of origin on the basis of Article 3(1) of Convention on the Rights of the Child,<sup>166</sup> which requires the "best interests of the child" to be a 'primary consideration'. The decision to return the Syrian father to Syria while the mother and the child stayed in France was said to potentially deprive the child of the presence of both parents. The Bordeaux Court of Appeal also refused to return nationals to Syria on the basis of article L. 511-1 of the CESEDA. This article provides that foreigners who may not be treated medically in their country of origin have to stay in France.<sup>167</sup> At the same time, the Bordeaux and Lyon Courts of Appeal considered that Syrian citizens who are unable to establish the reality of risks in Syria should return to Syria.<sup>168</sup>”

Syrian nationals who have been granted a refugee status benefit from the same rights as any other recognised refugee in France: a residence permit valid for 10 years (renewable), right to family reunification if family members were in the country of origin at the moment of the granting of the protection, access to the labour market after having been granted status (as soon as the person receives the *récépissé*). Similarly, Syrian nationals who have been granted a subsidiary protection status benefit from the same rights as any other subsidiary protection beneficiaries in France: a residence permit valid for 1 year (renewable) and access to the labour market right after the granting of their status (as soon as the person receives the *récépissé*).

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<sup>162</sup> This statistic includes both subsequent and new applications, but excludes applications submitted by accompanied children. The number with the applications from children stands at 637 applications. Clarification provided by France Terre D'Asile [[ECRE/ELENA, Information Note on Syrians seeking protection in Europe, November 2013.](#)].

<sup>163</sup> However, there have been returns to Italy for instance under readmission procedures or Dublin II procedures.

<sup>164</sup> Cour administrative d'appel de Paris, 5 July 2012, n° 12-00.285.

<sup>165</sup> Cour d'appel de Paris, December 8<sup>th</sup> 2012, n° 12-04.542, n° 12-04.543 ; Cour d'appel de Paris, June 5<sup>th</sup> 2013, n° 13-01.776).

<sup>166</sup> Cour administrative d'appel de Versailles, April 3<sup>rd</sup> 2012, n° 11-01.995

<sup>167</sup> Cour administrative d'appel Bordeaux, February 21<sup>st</sup> 2013, n° 12-01.875

<sup>168</sup> Cour administrative d'appel de Bordeaux, June 12<sup>th</sup> 2012, n° 11-03.127 ; Cour administrative d'appel de Lyon, May 30<sup>th</sup> 2013, n° 12-02.253.

As a side note, it is interesting to note that a special resettlement effort has been announced on 16 October 2013 by President François Hollande after a meeting with the UN High Commissioner for Refugees, when he declared that France will resettle 500 Syrian refugees.<sup>169</sup> Specific information has not been shared until now as to which profiles or which regions would benefit from this operation (coming in addition to the French resettlement quota established at 100 cases examined per year). It is not clear yet if they will benefit from a true resettlement programme or a humanitarian status.

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<sup>169</sup> Article on [RFI](#), “*Réfugiés syriens en France: quels actes après les promesses? (Syrian refugees in France : what actions after the promises ?)*”, 26 October 2013.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During the accelerated procedure?  
 Yes       Yes, but limited to reduced material conditions       No
  - o During border procedures:  
 Yes       Yes, but limited to reduced material conditions       No
  - o During the regular procedure:  
 Yes       Yes, but limited to reduced material conditions       No
  - o during the Dublin procedure:  
 Yes       Yes, but limited to reduced material conditions       No
  - o During the appeal procedure (first appeal and onward appeal):  
 Yes       Yes, but limited to reduced material conditions       No
  - o In case of a subsequent application:  
 Yes       Yes, but limited to reduced material conditions       No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?       Yes       No

Asylum seekers going through a regular procedure are entitled to housing and an allowance. They can receive the temporary waiting allowance (ATA) if they are not accommodated in a reception centre, or the monthly subsistence allowance (AMS) if they are being housed in reception or transit centres. They are entitled to healthcare through a system of universal healthcare (couverture maladie universelle-CMU). The payment of the temporary financial allowance stops one month after a negative decision by the CNDA is received.

Asylum seekers placed under an accelerated procedure are eligible for emergency reception scheme. They do not have a residence permit and therefore have no access to the universal healthcare scheme (CMU) but they are entitled to state medical assistance (AME – with a three month waiting period). Those who are placed in an accelerated procedure because they are from a safe country of origin can receive the temporary waiting allowance (ATA). The allocation of the ATA allowance stops as soon as they receive a rejection by OFPRA on first instance.

Asylum seekers who fall under the Dublin procedure can in theory benefit from emergency accommodation up until the notification of the decision of readmission (in practice, many live in the street). In early 2013, they were still excluded in practice from the temporary waiting allowance. In April 2013, the French government has taken steps to comply with the Reception Directive and with the Court of Justice of the European Union decision<sup>170</sup> as the Ministry of Interior has given instructions on 23 April 2013 to provide allowance to asylum seekers under the Dublin procedure who request it at Pole emploi, the unemployment agency (when the requirements are met).<sup>171</sup> Asylum seekers under the Dublin procedure who had requested the allowance after 27 September 2012 and who had received a negative response can in theory request a retroactive payment. In practice, these retroactive payments seem to have been difficult to obtain.

<sup>170</sup> [Case C-179/11](#), *Cimade and GISTI v Ministre de L'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'immigration*, 27 september 2013.

<sup>171</sup> Instruction of the Ministry of Interior, 23 April 2013 (not yet publicly available) following the Council of State judgment of 17 April 2013, n°335924.

Upon entrance into the reception centres for asylum seekers, asylum seekers are asked to declare that they have no resources but this lack of resources is not verified in practice. With regards to the ATA, the asylum seeker has to declare their level of resources and justify that he has an income lower than 492.90 Euros for a single person, or 739.35 Euros for a couple without child.<sup>172</sup>

## 2. Forms and levels of material reception conditions

### *Indicators:*

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): 330 euros (ATA)

Different forms of material reception conditions exist in the legislation, it includes: accommodation in reception centres, accommodation in emergency schemes, and financial benefits.

### Reception centres for asylum seekers:

Only those who have an authorisation to remain and who have a pending asylum claim are eligible to stay in reception centres.<sup>173</sup> Asylum seekers under a Dublin procedure are for now excluded from the possibility to access these centres. The place in centres for asylum seekers is offered by the prefecture where the application has been made. The average length of stay in CADA reception centres in 2012 was of 576 days – that is to say one year and seven months.<sup>174</sup> If the asylum seeker does not accept this offer, they will be excluded as a consequence from the benefit of the temporary waiting allowance (ATA). If there is no place in a reception centre, the asylum seeker is placed on a waiting list, in the meantime, they will be directed to other provisional accommodation solutions.<sup>175</sup> However, if the asylum seekers did not succeed in getting access to a reception centre before lodging his appeal, their chances to benefit from one at the appeal stage are very slim.<sup>176</sup> In case of shortage of places, it can happen that these asylum seekers have no other solutions than relying on night shelters or living in the street.

There are in France also two ‘transit’ centres which are tasked to receive temporarily asylum seekers and to organise their orientation towards the national reception scheme. Under special circumstances, some asylum seekers under Dublin or accelerated procedures can also be accommodated for a while there.

Emergency reception scheme: Because of shortages of places in regular reception centres, the state has developed emergency schemes in every department (20 637 places have been funded in 2012 and almost 22 000 places were to be financed in 2013). They can either be hotel rooms (56 %), flats (23%) or collective emergency facilities (20%)<sup>177</sup>. These facilities can house asylum seekers prior to their entry

<sup>172</sup> Those [amounts](#) are those used to calculate a social welfare allowance granted to people with low wages, the Active Solidarity Income (RSA- Revenu de Solidarité Active ).

<sup>173</sup> Circulaire N° DPM/CI3/2007 du 3 mai 2007 relative aux missions des centres d'accueil pour demandeurs d'asile, aux modalités d'admission dans ces centres et de sortie de ces centres et au pilotage du dispositif national d'accueil (Circular relating to the missions of reception centre for asylum seekers, to the entry and exit criteria of those centres and to the piloting of the national reception arrangement).

<sup>174</sup> Activity report 2012, Office Français de l'immigration et de l'intégration, July 2013.

<sup>175</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>176</sup> European migration network – French contact point, The organisation of reception structures for asylum seekers in France, September 2013.

<sup>177</sup> European migration network – French contact point, The organisation of reception structures for asylum seekers in France, September 2013.

into a reception centre as well as asylum seekers who are not eligible to accommodation in a reception centre (for instance Asylum seekers subject to the Dublin procedure).<sup>178</sup>

Temporary waiting allowance (ATA): This allowance<sup>179</sup> is provided to asylum seekers older than 18 years old for the whole duration of the examination of their application. It is granted to asylum seekers who cannot be accommodated in reception centres even though they have accepted the offer from the prefecture – because of shortage of places available. The ATA allowance is renewed every month until a final decision on the claim is taken, provided that the conditions of resources are still fulfilled. Since two Council of State decisions in 2008 and 2011, asylum seekers under an accelerated procedure should also benefit from the ATA allowance (but only during the first instance stage). Pôle emploi (the French employment agency) has the overall responsibility for the distribution of the allowance (including decisions regarding its application or rejection). The amount of ATA in 2013 was €11.20 a day/per adult,<sup>180</sup> or €336 in a month of 30 days.

According to the National Consultative Commission on Human Rights,<sup>181</sup> “the amount of the ATA allowance is insufficient, as the French Council of State has underlined several times<sup>182</sup> and is not enough to survive when housing is not provided”. The inadequacy of the level of ATA allowance had also been underlined by the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg in his letter to Eric Besson, then French Minister for immigration, integration, national identity and solidarity development on 3rd August 2010<sup>183</sup> (the allowance had only been increased by 18 cents per day since 2010). In addition, the fact that the allowance is provided only to adults, causes inequalities between households of asylum seekers as the same amount will be granted to a single man and to a single parent with three under-aged children.<sup>184</sup>

Monthly subsistence allowance (AMS): This allowance is allocated by the reception centres to each person (not only each adults) and replaces the ATA allowance once the asylum seeker enters the centre, if they do not have a sufficient level of resources.<sup>185</sup> The amount of AMS can vary between a total of 91 and 718 € a month, depending on the “services” provided by the reception centre and the family situation of the asylum seeker.<sup>186</sup>

These allowances are set by law and are published in the official journal.<sup>187</sup>

Refugees and beneficiaries of subsidiary protection can, upon request, stay in asylum seekers reception centres until an accommodation offer is available, within a strict timeframe of three months (renewable once in special cases) from the final decision. Upon request, those whose claims have been rejected are able to stay in a centre for up to one month from the notification of the decision to reject their claim. Afterwards, they might access emergency accommodation through emergency aid (if a place is available).

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<sup>178</sup> Circular n° IOCL1113932C of 24 May 2011 on the management of the emergency scheme for asylum seekers .

<sup>179</sup> Created by the law n° 2005-1719 of 30 December 2005 for the 2006 budget (articles L. 5424-8 et L. 5423-9 of Labour Code).

<sup>180</sup> A Decree on 27 December 2013 has set the daily amount of the allowance at 11.35 euros from 1st January 2014 ([Décret n° 2013-1274 du 27 décembre 2013 revalorisant l'allocation temporaire d'attente, l'allocation de solidarité spécifique, l'allocation équivalent retraite et l'allocation transitoire de solidarité](#))

<sup>181</sup> Opinion on the reception granted to asylum seekers in France, National Consultative Commission on Human Rights , plenary assembly, 15 December 2011.

<sup>182</sup> See Council of State decisions n° 341289 of 19 July 2010 and n° 351324 of 10 August 2011.

<sup>183</sup> Thomas Hammarberg, [Letter to the French Minister for Immigration, Eric Besson](#), 3 August 2010 (in French).

<sup>184</sup> A reform of this method of calculation has been discussed in the framework of the consultations for the reform of the French asylum procedure – see the Report on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013.

<sup>185</sup> Article R. 348-4 of the Code of Social Action and Families.

<sup>186</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>187</sup> See decree n° 2012-196 of 9 February 2012 for the 2012 amount.

Since the implementation of the circular of 24<sup>th</sup> May 2011, asylum seekers in an accelerated procedure are only able to benefit from a place in the emergency reception scheme until the decision, either positive or negative, of OFPRA (French Office for the Protection of Refugees and Stateless People) is taken.<sup>188</sup> Under specific exemption, they can stay for a maximum of one month after the definitive decisions by the OFPRA, even if an appeal is under way. Asylum seekers who fall under the Dublin regulation are only able to benefit from emergency housing until the notification of the decision of transfer. Under specific exemption they can stay in this housing for up to a month after the decision to be re-admitted.

In practice, reception centres in France have a varied application of these deadlines. In case of asylum seekers over-staying in these reception centres, the managers expose themselves to budget reductions or withdrawal of accreditations (even if these occur rarely in practice).<sup>189</sup>

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 21,656 on 31 December 2012
- Number of places in private accommodation: not available
- Number of reception centres: 271
- Are there any problems of overcrowding in the reception centres?  Yes  No
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
- What is, if available, the average length of stay of asylum seekers in the reception centres?  
576 days in 2012
- Are unaccompanied children ever accommodated with adults in practice?  Yes  No

Asylum reception centres in France are managed by the semi-public company Adoma or by NGOs that have been selected through a public call for tender. These centres fall under the French social initiatives (*action sociale*) and are funded by the State.

The national reception scheme includes 270 regular reception centres for asylum seekers (CADA), 1 centre especially suited to unaccompanied children asylum seekers and 2 'transit' centres (in Villeurbanne and in Créteil). In addition, there are several thousands of emergency scheme places.<sup>190</sup>

At the end of 2012, there were 21 656 places in regular reception centres (CADA) while France had registered 55 255 asylum requests (adults and children). The number of reception centres is therefore clearly not sufficient for the French scheme to provide access to housing to all the asylum seekers who should benefit from it in accordance with the Reception Conditions directive. No phenomenon of overcrowding in each of the centres is observed but the overall reception capacities are clogged. On 31 December 2012, there was 12,256 asylum seekers who were on a priority waiting list to obtain a place in a CADA reception centre; which amounted to an average waiting period of 11 months.<sup>191</sup>

<sup>188</sup> Circular n° IOCL1113932C of 24 May 2011 on the management of the emergency scheme for asylum seekers.

<sup>189</sup> Circular NOR IOCL1114301C.

<sup>190</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>191</sup> Activity report 2012, Office Français de l'immigration et de l'intégration, July 2013.

Under the circular of 3 May 2007 on the missions assigned to CADA centres,<sup>192</sup> the persons who should benefit from a priority admission in these centres were: the newly arrived asylum seekers (at the first stages of the procedure); families with children, single women, persons joining asylum seekers already accommodated in a reception centre (spouse, dependent parents, grandparents and children), single young adults, young applicants who have been declared adults following an age assessment; asylum seekers with health problems who have a motivated medical notice and finally those who have been flagged by the Ministry of Foreign Affairs. In France, families, single women or traumatised asylum seekers are not necessarily accommodated in separated facilities or separate wings (but this can happen in some centres). Accommodation in CADA centres are foreseen in collective structures or in separate flats.

Unaccompanied children are not accommodated in foster families. As a general rule, after identification, unaccompanied children (including those between 16 and 18) are placed in specific children shelters that fall under the responsibility of the departmental authorities.

Given the lack of places in CADA centres, the State authorities have developed emergency schemes in all departments. They can take the form of places in special hotels, of collective emergency centres or flats. This system is managed by the prefects.<sup>193</sup> Thus, in addition to the common use of hotels, in some areas there is a trend to open emergency centres dedicated to asylum seekers, open temporarily for the winter period or more permanently, but with less social workers available than in CADA centres. The average length of stay in hotels in Lyon was of 127 days for instance.<sup>194</sup> These centres have the merit, unlike the shielding of asylum seekers in hotels, to offer at least some sort of administrative and social support. In theory, only accommodation is provided in the context of these emergency reception centres. Food or clothing services may be provided by charities. However, in the Rhône department for instance, these emergency schemes are also saturated; in 2013 in Lyon, the average waiting period before an asylum seeker could have a place in a hotel was of 10-12 weeks (therefore relying on social emergency shelters or living in the street in the meantime). Thus, for example, at the end of November 2013, 290 vulnerable persons whose case should have been prioritised (families with minor children, pregnant women for instance) had no housing in the Rhône.

In September 2013, the emergency scheme has attracted a lot of media attention through the situation in Clermont-Ferrand. The NGO handling the emergency housing for asylum seekers had to stop paying for the nights in hotels due to budget constraints and 200 to 300 asylum seekers, including many children, were forced to sleep on the streets for several nights. The NGO explained that the funding they received from the State authority could cover for 30 hotel rooms per night for a year when in reality they have to house 362 persons.<sup>195</sup>

As another example, on 18 November 2013, prior to the imminent evacuation of a camp under a bridge in Lyon, Forum réfugiés-Cosi organised, in consultation with the prefecture, the temporary housing of 315 asylum seekers in eight municipalities of the departments of Rhône, Ardèche and Isère, in partnership with Adoma which organised the housing of 105 people. These asylum seekers will benefit from these emergency housing facilities until 31 March 2014.<sup>196</sup>

Despite significant efforts by public authorities that will lead to the creation of 4 000 additional CADA places by December 2014 (after the 1 000 places created in 2010), the facilities of the National Asylum Scheme (DNA) remain inadequate, in comparison to the 55 255 requests registered by OFPRA (French Office for the Protection of Refugees and Stateless Persons) in 2012. Taking into account an average

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<sup>192</sup> Circulaire N° DPM/CI3/2007 of 3 May 2007 on the missions of reception centre for asylum seekers – This circular has been revoked afterwards but these criteria are still used unofficially.

<sup>193</sup> Circular n° IOCL1113932C of 24 May 2011 on the management of the emergency scheme for asylum seekers.

<sup>194</sup> Between 1 January 2013 and 22 October 2013.

<sup>195</sup> Article in Le Monde, [La crise du 115, à Clermont, illustre la difficulté de l'Etat à financer l'hébergement d'urgence](#) (The crisis of the 115 in Clermont demonstrates the difficulty of the State to finance emergency housing), 4 September 2013.

<sup>196</sup> See Le Monde, [Lyon: : expulsion d'un campement de 300 demandeurs d'asile albanais](#) (Lyon: eviction from a camp of 300 Albanian asylum seekers), 23 October 2013.

length of procedure of 17 months, this reduces the real annual capacity to 15 000 places. These observations are largely shared by at least two recent official reports.<sup>197</sup>

According to the National Consultative Commission on Human Rights, this situation is due to the marginalisation of normal reception centres in favour of the emergency scheme options: “in 2010, the funds assigned to emergency measures are well above those devoted to CADA reception centres. Such short-term management results in organising housing through more expensive schemes, that are in addition less suitable and do not include social and legal support”.<sup>198</sup> Also, in its opinion on the 15th December 2011<sup>199</sup>, the Commission estimated that “the rationalisation of the national reception scheme undertaken over the last few years has worked to weaken [the asylum seekers’] rights, without generating a significant reduction in associated costs.” UNHCR shared the concern of increasing precariousness, “UNHCR considered that such unequal treatment, which depended in particular on the place of asylum application, undoubtedly posed a problem. In that respect, UNHCR noted that since 2009 only one third of the asylum seekers had been placed in an asylum seeker reception centre (CADA).”<sup>200</sup>

In regions where arrivals are high, asylum seekers desperately wait for housing solutions in a scheme that is in theory designed for them and in the framework of which they have signed a document accepting any offer. Forum réfugiés-Cosi has stressed for many years that the rule for asylum seekers’ housing should be the regular reception centres (CADAs) and that emergency housing solutions should remain an exception that steps in temporarily to mitigate the current crisis.

Recognising that asylum seekers housed in regular reception centres benefit from a better support and - in equal situations - have more chances to obtain protection, the General Controllers report argued in 2013 that housing in dedicated reception centres must become again the norm and cover 2/3 of the asylum seekers, meaning a total of 35,000 places.<sup>201</sup>

Finally, in the context of the procedure for asylum requests at the border, asylum seekers are held in the “waiting areas” while awaiting a decision on their application for an authorisation to enter the territory on the ground of an asylum application. This zone may include accommodations “providing hotel type services” as this is currently the case for the area of the Paris Roissy CDG airport (in the ZAPI 3 - zone d’attente pour personnes en instance), which can receive up to 160 people. In other waiting areas, the material accommodation conditions vary: third country nationals are sometimes held in a nearby hotel (like in Orly airport at night) or in rooms within police stations. Not all are equipped with hotel type services.<sup>202</sup>

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<sup>197</sup> The information report prepared by the Committee for Evaluation and Oversight of Public Policy on Emergency Accommodation in January 2012 advises an increase in the number of CADA places in particular. Likewise, the report by the Parliamentary deputy Béatrice Pavy, on behalf of the Committee on Finance, Economics and Budgetary Oversight on the 2011 budget (no. 3775) states that “development in this area is not sufficient to meet the needs created by strong growth in the number of asylum requests, combined with a reduced turnover of the people accommodated in the CADA centres”.

<sup>198</sup> National Consultative Commission on Human Rights, plenary assembly, [Opinion on the reception granted to asylum seekers in France](#), 15 December 2011.

<sup>199</sup> *Ibidem*.

<sup>200</sup> Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2, 9 November 2012.

<sup>201</sup> [Report](#) from the General controllers of social matters, the General controller of finance and the General controller of the administration, “Housing and the financial assistance to asylum seekers”, Published on 12 September 2013.

<sup>202</sup> Anafé, *2011 Annual Report*, December 2012.

#### 4. Reduction or withdrawal of reception conditions

*Indicators:*

- Does the legislation provide for the possibility to reduce material reception conditions?  
 Yes       No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes       No

Even though access to the reception scheme is conditional to the level of resources of the asylum seekers, if they acquire some income during the process of their application for asylum (benefiting from a right to work thanks to another residence permit), this is not a reason for them to be excluded from the reception centre (CADA). However, a financial contribution for their stay in CADA centres will be asked and the monthly allowance (AMS) will no longer be paid.<sup>203</sup> Article 11 of the Rules of operation<sup>204</sup> which should be common to all CADA centres establishes that the exclusion from the centre may be imposed by the management in case of false statements concerning the identity or personal situations of the asylum seekers accommodated. Finally, asylum seekers can be excluded from the centres if they do not respect the rules of community life. Such decisions of exclusion are pronounced by the CADA manager, on last resort, with a preliminary approval by the Prefect.

The temporary allowance (ATA) can also be withdrawn for instance:

- if an asylum seeker has been offered a place in a reception centre, whether he accepts it or not,<sup>205</sup>

if OFPRA has given a negative decision for an asylum seeker under the accelerated procedure.

In their report published in September 2013, the General Controllers have recommended to introduce new grounds to withdraw the benefit of the temporary allowance: the ATA allowance would not be granted to asylum seekers who have lodged their asylum claim more than 3 months after having entered the French territory and to asylum seekers asking for a re-examination of their claim for the 2<sup>nd</sup> time.<sup>206</sup> These recommendations are being considered for the 2014 reform of the asylum procedure.

#### 5. Access to reception centres by third parties

*Indicators:*

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes       with limitations       No

In France, reception centres for asylum seekers are not closed centres. They are accessible to visitors of the family accommodated in the centres and to other stakeholders within the limits set by the rules of operation (usually subject to a preliminary notification of the manager).

Many reception centres are managed by NGOs, whose staff is therefore present on a daily basis.

<sup>203</sup> Article R348-4 of the social action and family code.

<sup>204</sup> An example is included in the Circular NOR IOCL114301C of 19 August 2011 on the missions of reception centres for asylum seekers.

<sup>205</sup> Article L. 542-9 of the Labour code

<sup>206</sup> [Report](#) from the General controllers of social matters, the General controller of finance and the General controller of the administration, "Housing and the financial assistance to asylum seekers", Published on 12 September 2013.

## 6. Addressing special reception needs of vulnerable persons

### Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice?  Yes  No

There is no mechanism in France dedicated to the identification and care of vulnerable groups and persons with special reception needs. Some sort of identification of vulnerable persons is made during the social assessment carried out by the orientation platforms. Some motivated requests for an exceptional protection with an access to housing can be transmitted to the prefectures by the asylum seekers or the persons supporting them in their asylum application. Even if not regulated by law, some reception centres provide differentiated or separate reception facilities for vulnerable persons. In practice, places in CADA reception centres are in fact mostly allocated to the most vulnerable asylum seekers (families with young children, pregnant women, and elderly asylum seekers). This however has the side effect of marginalising isolated asylum seekers as young males are not considered as a priority.<sup>207</sup>

Unaccompanied children are housed in separate facilities managed by the departmental authorities (see types of accommodation, chapter on Reception). The NGO France terre d'asile has opened a specialised reception centre for unaccompanied asylum-seeking children, called Caomida (Reception and Orientation Centre for Asylum-seeking Unaccompanied Children), which has a national range.<sup>208</sup>

The "Caomida" is located in the Val-de-Marne department (near Paris) and can accommodate 33 children and provide them with a wide range of social, educational and legal services adapted to their specific needs. There is also a specialised centre at the department level managed by Coallia in Côtes-d'Armor (Samida).<sup>209</sup>

## 7. Provision of information

The provision of information for asylum seekers accommodated in reception centres (CADA) about the modalities of their reception is governed by the Circular on the missions of CADA centres of 19 August 2011.<sup>210</sup> Upon the admission in the CADA centres, the manager is tasked to deliver to the asylum seeker any useful information on the conditions of its stay in the centre, in a language that they understand and under the form of a welcome booklet. These modalities can vary in practice from one area to the other. In any case, core information about procedural rights during the asylum procedure are shared with the accommodated asylum seekers on a regular basis and upon request if necessary. Each centre also has its own information procedures. Generally, in a CADA centre managed by Forum réfugiés-Cosi for instance, the asylum seeker becomes aware of these legal reception provisions via the residence contract and operating rules they sign upon entry in the reception centre. On this occasion, an information booklet on the right to health is handed over to the asylum seeker. As some asylum seekers do not have an easy access to written information, more pedagogical collective information sessions through collective activities are also organised in reception centres managed by Forum réfugiés-Cosi.

<sup>207</sup> European migration network – French contact point, The organisation of reception structures for asylum seekers in France, September 2013

<sup>208</sup> See France Terre d'asile [website](#); for more information [see](#).

<sup>209</sup> Information on the various schemes for unaccompanied minors is available [here](#).

<sup>210</sup> Circulaire NOR IOCL1114301C du 19 août 2011 relative aux missions des centres d'accueil pour demandeurs d'asile (CADA) et aux modalités de pilotage du dispositif national d'accueil (DNA).

## 8. Freedom of movement

Asylum seekers benefit from freedom of movement in France. However, according to the internal rules of CADA centres, in theory any absence of more than 5 days should be authorised beforehand by the manager of the centre.

## B. Employment and education

### 1. Access to the labour market

#### Indicators:

- Does the legislation allow for access to the labour market for asylum seekers?  Yes  No
- If applicable, what is the time limit after which asylum seekers can access the labour market:  
1 year
- Are there restrictions to access employment in practice?  Yes  No

Access of asylum seekers to the labour market is allowed only if the first instance determination authority (OFPRA – French Office for the Protection of Refugees and Stateless Persons) has not ruled on the asylum application within one year after the registration of the application and only if this delay cannot be attributed to the applicant. In this case, the asylum seeker is subjected to the rules of law applicable to third country national workers for the issuance of a temporary work permit.<sup>211</sup> This is also the case where an appeal is brought before the national Court of Asylum (CNDA), this time without any waiting period, and where the asylum seeker has obtained the renewal of their residence permit.<sup>212</sup>

In reality, asylum seekers have a very limited access to the labour market, due to a number of constraints. Prior to being able to work, the applicant must have sought and obtained a temporary work permit. To obtain this work permit, the asylum seeker has to provide a proof of a job offer or an employment contract. The duration of the work permit cannot exceed the duration of the residence permit associated with the asylum claim (3 months). It may possibly be renewed. The competent unit for these matters is the Regional Direction for companies, competition, consumption, work and employment (DIRECCTE – Ministry of Labour). In any case, the employment situation is constraining this right. In accordance with Article R. 341-4 of the Labour Code, the Prefect may take into account, to grant or deny a work permit, some elements of assessment such as "the current and future employment situation in the profession required by the foreign worker and the geographical area where he or she intends to exercise this profession". In France in early 2013, 30 fields of work were experiencing recruitment difficulties which justified allowing third country nationals to work in these without imposing restrictions. These professions are listed by region - only six professions are common to the whole country.<sup>213</sup>

### 2. Access to education

#### Indicators:

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- Are children able to access education in practice?  Yes  No

<sup>211</sup> Article R-742-2 of Ceseda.

<sup>212</sup> Article R-742-3 of Ceseda.

<sup>213</sup> [Ministerial Order](#) of 18 January 2008– Official Journal of 20/01/2008.

While no provision of the Education Code covers the particular case of children of asylum seekers, the law provides that they are subject to compulsory education as long as they are between 6 and 16 years old,<sup>214</sup> on the same conditions as any foreign child. The primary school enrolment can be done at the local town hall. The enrolment in a secondary school (high schools) is made directly to the institution closest to the place of residence of the child. If the children seem to have a good enough command of the French language, the evaluation process will be supervised by a Counselling and Information Centre (Centres d'information et d'orientations – CIO). This state structure is dedicated to the educational guidance of all students.

When the children are not French-speaking or do not have a sufficient writing command of the language, their evaluations fall under the competency of the Academic Centre for Education of Newcomers and Travellers Children (CASNAV).<sup>215</sup> The test results will enable teachers to integrate the child within the dedicated schemes (e.g. Training in French adapted to non-native speakers (FLE) or initiation classes).

Barriers to an effective access to education are varied. Beyond the issue of the language level, there are also a limited number of specialised classes and limited resources dedicated to these schemes. Besides, some schools require an address before enrolling children and this can be an issue for asylum seekers who do not have a personal address. Finally, access to education for children aged 16 to 18 is much more complicated as public schools do not have the obligation to accept them. They may be eligible for French courses offered by charities but the situation varies depending on the municipality. Access to apprenticeship is not possible as it would imply an access to a work permit that is usually not granted to asylum seekers. As a general rule, there is no training foreseen for adults. French language courses are organised in some reception centres depending on the availability of volunteers. Young adults and adults are often forced to put aside their career or training, pending the decision on their asylum application. For young people, this represents a considerable loss of time.

### C. Health care

#### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Yes, to a limited extent       No

Asylum seekers in the regular procedure, like any other third-country nationals under a certain income level, have access to healthcare thanks to the universal healthcare insurance (CMU) system.<sup>216</sup> Asylum seekers are exempted from the 3 months residence requirement applied to other third country nationals. The request to benefit from the CMU is made to the social security services (CPAM) of the place of residence or domiciliation. The asylum seeker must submit documentary evidence of the regularity of their stay in France, marital status and the level of their resources. The claimant must have an annual income lower than € 6,744 to benefit from the CMU. In the absence of official document attesting the level of resources, the claimant may make a sworn statement on the level of their resources.

<sup>214</sup> Article L. 131-1 Ceseda.

<sup>215</sup> See Circular n° 2012-143, 2 October 2012.

<sup>216</sup> Article L-380-1 of the Social security code.

Asylum seekers in an accelerated procedure or Dublin procedure, which are not eligible for the CMU, can benefit from the state medical aid (AME).<sup>217</sup> This medical aid is a social benefit for migrants who are not admitted to remain on the territory, enabling the beneficiaries to receive free treatments in hospitals as well as in any doctors' offices.<sup>218</sup> On 1 March 2011, the access to the AME had been made conditional upon payment of an annual fee of 30 Euros per beneficiary but the French Parliament abolished this tax on 19 July 2012. It should be noted that access to the AME is possible only after 3 months of residence in France.

Individuals with low income and who are still awaiting health insurance and needing healthcare quickly can turn to the All-Day Healthcare Centres (PASS) at their nearest public hospital. This is therefore also a possibility for asylum seekers under the accelerated and Dublin procedures. There, they will receive care and, if necessary, the medical letter needed to speed up the processing of their application for public health insurance. According to the law, all public hospitals are required to offer PASS services, but in practice, this does not always occur.

The Comede (Comité médical pour les exilés, a specialised NGO), the Health Ministry and the National Institute for Prevention and Health Education (INPES) have published in 2006 a handbook to help migrants understand the French public health care system. This handbook is available in 22 languages (bi-lingual presentation) and includes a lot of practical information on the access to health care in France.<sup>219</sup>

As a general rule, difficulties and delays for an effective access to healthcare vary from one city to the other in France. Access to the CMU goes rather well in the Rhone department (effective within a month), while there are long waiting periods to obtain access to the CMU in Nice. The NGO Doctors of the world has reported that among the 2'226 asylum seekers they had received in their health centres (Caso) in 2012, only 11% of them were benefiting from the coverage of an health insurance<sup>220</sup>. The main obstacles mentioned were the administrative difficulties, unawareness of their rights and the language barrier. 28% of them had declared having renounced to treatment during the past 12 months.

Finally, some of the problems with regards to medical care are not specific to asylum seekers. Some doctors are reluctant to receive and treat patients who benefit from the AME or CMU and tend to refuse taking appointments with them even though these refusals of care can in theory be punished.<sup>221</sup>

The national legislation does not guarantee any specific provision for access to care related to mental health issues. Asylum seekers can theoretically benefit from a psychiatric or psychological counselling thanks to their health care covers (AME or CMU). This access remains difficult in practice because many professionals refuse to receive non-Francophone patients as they lack the tools to communicate non verbally and / or funds to work with interpreters.

In 2012, 84 % of the asylum seekers followed by the Comede have declared having been victims of violence (30% of acts of torture and 17% of gender-related violence).<sup>222</sup>

Besides, victims of torture or traumatised asylum seekers can be counselled in a few NGO structures that specifically take care of these traumas. This adapted counselling is provided at the Primo Levi Centre in Paris as well as the Osiris centres in Marseille, Mana in Bordeaux, Forum réfugiés-Cosi Essor Centre in Lyon, Awel in La Rochelle for instance. These specialised centres are however too few in France, unevenly distributed across the country and cannot meet the growing demand for treatment.

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<sup>217</sup> Decree of 28 July 2005 on the modalities of admission of requests for state medical aid/ Décret n°2005-860 du 28 juillet 2005 relatif aux modalités d'admission des demandes d'aide médicale de l'Etat .

<sup>218</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>219</sup> An update of these [handbooks](#) was provided on 27 August 2013 but is available only in French at the moment.

<sup>220</sup> Observatory of access to health care – report 2012, French mission – Doctors of the world, October 2013.

<sup>221</sup> Circular DSS n° 2001-81, 12 February 2001 on the care refusal for beneficiaries of the CMU.

<sup>222</sup> Observatory of access to health care – report 2012, French mission – Doctors of the world, October 2013.

The “regular” health system cannot currently cope with this adapted care for victims of torture and political violence. These regular structures lack time for consultations, funds for interpreters and training for professionals. The White Paper published by the association Primo Levi in June 2012 highlights the disparity between care supply and the demand from this population which is off-tracks of regular health priorities. Centres managed by NGOs are also often over-subscribed. According to the white paper, only 6 000 people are currently receiving appropriate support out of a total of 50 000 persons estimated to have been affected by torture (minimum estimation among the number of refugees living in France: 160 500 in 2010).<sup>223</sup>

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<sup>223</sup> Primo Levi Association, [Livre blanc](#) (*White Paper*), June 2012

## Detention of Asylum Seekers

Despite a particularly worrisome situation in Mayotte, this issue could unfortunately not be treated in depth in this first report. A forthcoming update of this report will address the situation in Mayotte in more detail.

*Caveat: The asylum seekers covered in this section are the ones who have lodged a request for asylum while in a detention centre (asylum seekers are not present otherwise in detention centres).*

### A. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention): 1 140 persons applied for asylum while in administrative detention centres in 2012
- Number of detention centres: 25
- Total capacity: 1.711

There are 25 administrative detention centres (CRA) on France's territory (including in overseas departments). This amounts to a total 1 711 places (144 in the overseas departments).<sup>224</sup> The article R.- 553-3 of Ceseda foresees that each centre's capacity should not exceed 140 places. The maximum capacities for these centres are not reached in mainland France. However, even if the capacities are not exceeded, one should note that when the centres are almost full, this induces a lack of privacy which can be the source of tensions. However, there is a very serious situation of overcrowding in Mayotte, an overseas island close to Madagascar.<sup>225</sup> Initially planned for 60 people, this centre has been used to detain around 140 persons for several years following orders from the local authorities. Through an order of 19 April 2012, the Prefecture has made official this capacity, thereby legitimising a chronic overpopulation of the CRA. A new prefectural order dated of 20 December 2012 has set the capacity to 100 persons (1,37m<sup>2</sup> per person<sup>226</sup>).

In 2012, 1.140 third country nationals have lodged an asylum application while in administrative detention.<sup>227</sup> Most asylum seekers present in administrative detention centres are either: third country nationals who lodged a claim while being detained; or rejected asylum seekers who ask for a subsequent examination of their asylum claim.

One should note however that, especially in the Paris region, newly arrived asylum seekers can happen to be arrested and placed in administrative detention. This can happen when they have started the process to register their asylum claim and got arrested while waiting for the official confirmation of this registration. Indeed, in the Paris region, these procedures can take several weeks (waiting for a registered address through an association, waiting for the appointment at the prefecture) before a temporary residence permit is issued. These asylum seekers do not always have the necessary documents proving their pending registration with them when they get arrested. As a result, a removal decision can be taken and the person is placed in administrative detention. In practice, certain

<sup>224</sup> See this [webpage](#) of the Ministry of Interior for more information (including a map locating the CRAs).

<sup>225</sup> Despite a particularly worrisome situation in Mayotte, this issue could unfortunately not be treated fully in this first report.

<sup>226</sup> [Arrêté](#) préfectoral du 20 décembre 2012 modifiant l'arrêté du 22 janvier 2004 portant création d'un CRA à Pamandzi (Prefectoral Order of 20 december 2012 amending the order of 22 January 2004 on the creation of a detention centre in Pamandzi –Mayotte).

<sup>227</sup> A total of 23,537 persons have been placed in retention in France (mainland) in 2012.

administrative courts order the release of such asylum seekers upon presentation of proof of steps taken on the territory to have their claim registered; but this is far from being automatic.<sup>228</sup>

## B. Grounds for detention

### Indicators:

- In practice, are most asylum seekers automatically detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently (prior to the transfer to the responsible state)  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
- If frequently or rarely, are they only detained in border/transit zones?  
 Yes  No
- Are asylum seeking children in families detained in practice?  
 Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (inc extensions): 45 days
- In practice, how long in average are asylum seekers detained? Not available

In France, there is no policy for an automatic administrative detention of asylum seekers. Persons are placed in administrative detention centres only for the purpose of removal. The persons who claim asylum during their period of administrative detention are not automatically freed (almost never) as a result of this request. They remain in administrative detention during the examination of their claim. These cases are mostly examined through an accelerated procedure.

In addition, the legal framework also enables the placement in administrative detention of asylum seekers under an accelerated procedure from the moment they receive a rejection from OFPRA (French Office for the Protection of Refugees and Stateless People) at first instance and a return decision has been made consequently (even if they lodge an appeal against the decision).<sup>229</sup> This decision of administrative detention placement is taken by the prefect of the *Department*. In practice, it appears that few asylum seekers in the accelerated procedure who await a reply on their appeal from the CNDA (National Court of Asylum) are detained.

Asylum seekers under the Dublin procedure can be placed in administrative detention with a view to the enforcement of their transfer once the re-admission decision has been notified.

In the law, there is no rule excluding some categories of asylum seekers from the application of decisions concerning detention placement. In theory unaccompanied children cannot be returned and therefore cannot be detained as a consequence.<sup>230</sup> Nevertheless, it is important to stress that in 2012, the five NGOs working in administrative detention centres have met 300 detained persons who declared

<sup>228</sup> See more detailed information on page 27-28 of the report: Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 december 2013.

<sup>229</sup> Article L 551-1.6 of Ceseda.

<sup>230</sup> Article L. 511-4 of Ceseda.

themselves to be children. These were young persons whose age had been disputed by the authorities and had been considered as adults, as a result of a medical exam for instance.<sup>231</sup>

In addition, for persons with health issues, the doctor in the administrative detention centre can seize the local healthcare referee who will issue a recommendation on the compatibility of the administrative detention and removal with the state of health of the person. The prefect is not forced to follow this recommendation.

A person can remain in administrative detention for a maximum of forty-five days.<sup>232</sup> Very few removals actually take place after the end of the 32<sup>nd</sup> day of administrative detention (398 foreigners have been returned between the 32<sup>nd</sup> day and the 45<sup>th</sup> day, i.e. 4% of the removals) and, therefore, many stakeholders argue that prolonging the detention after 30 days is not decisive.<sup>233</sup> The decision of placement in administrative detention taken by the administration is valid for five days. Beyond this period, a request before the judge of freedom and detention has to be lodged by the prefect to prolong the administrative detention duration.<sup>234</sup> This judiciary judge can order an extension of the administrative detention for an extra twenty days after the initial placement. The foreigner's rights are thus guaranteed thanks to this jurisdictional control – only however, if the person is presented in front of the judge before being returned.<sup>235</sup> The second prolongation for twenty days is only granted under certain conditions, in particular if the persons deliberately obstruct their return by withholding their identity, the loss or destruction of travel documents<sup>236</sup> or the fact that despite the goodwill of the executing administration, the removal measure has not yet been finalised. Beyond this period of 45 days, the foreigner who has not been removed must be released.<sup>237</sup> The length of stay of asylum seekers (those who have claimed asylum in administrative detention centres) is difficult to assess. There are no cases of persons detained beyond a period of 45 days.

The law on immigration and asylum (*Ceseda*) foresees three types of alternatives to administrative detention:

**a) House arrest in the case of an absence of reasonable prospects of removal:**<sup>238</sup> The law foresees a house arrest for a maximum period of six months (renewable once or several times, within the total limit of one year) when “the foreigner can justify being unable to leave the French territory or can neither go back to his country of origin, nor travel to any other country” and that as a result, the execution of the removal measure is compromised on medium or long term.

**b) House arrest as an alternative to administrative detention:**<sup>239</sup> The Prefect can put under house arrest for a period of 45 days, renewable once, those people who can produce representation guarantees and whose removal is postponed only for technical reasons (absence of identification, of travel documents, or of means of transport). When foreigners subjected to a return decision and who are accompanied by their minor children, do not have a stable address (decent housing within legal conditions), it is possible to envisage a house arrest in hotel-like facilities.

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<sup>231</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 december 2013.

<sup>232</sup> Originally set at a maximum of 7 days, the length of administrative detention has been extended to 32 days in 2003 and to 45 days in 2011.

<sup>233</sup> The “Fekl report” recommends to reduce the length of administrative detention to 30 days (page 54). Report to the Prime minister, “Sécuriser les parcours des ressortissants étrangers en France”, Matthias Fekl, 14 May 2013, page 43.

<sup>234</sup> Article L. 552-1 of *Ceseda*.

<sup>235</sup> The JLD (Judge of freedoms and detention) who, prior to the reform, used to intervene after 48 hours has seen its role greatly reduced since it now intervenes only at the end of the 5th day of retention, which makes possible the return of a person before the judicial court has had time to exert its control.

<sup>236</sup> The person can also be prosecuted for obstruction to his removal on the grounds of non-communication of the document enabling the return.

<sup>237</sup> See this [webpage](#) of the Ministry of Interior for more information .

<sup>238</sup> Article L561-1 of *Ceseda*.

<sup>239</sup> Article L561-2 *Ceseda*.

**c) House arrest with electronic monitoring for parents of minor children residing in France for 45 days (this measure is not implemented as far as we know).<sup>240</sup>**

The law does not foresee an obligation to prove the impossibility to set up alternative measures before deciding to detain third country nationals. If the person can present guarantees of representation and unless proved to the contrary, house arrest should be given priority. It appears that the 'prefectures' hardly resort to these alternative measures, which are only a possibility left to the discretion of the administration. In practice, placement in administrative detention remains the rule and the French authorities resort to this quasi systematically.<sup>241</sup> In 2012, 288 asylum seekers who were present in administrative detention centres in France had been placed subsequently under house arrest (242 of them were a judicial decision and 42 of them were an administrative decision). While calling for an increased use of alternatives to administrative detention, many NGOs raised some concerns with regards to the (lack of) access to legal and social support for people placed under house arrest.

Since the 6 July 2012 circular<sup>242</sup> dealing with the removal of families accompanied by children, Prefects are encouraged to make house arrest a rule, and limit the placement of children with their families in administrative detention to a last resort measure (it is important to note that the circular is not applicable to Mayotte).<sup>243</sup> This principle was already foreseen in the Ceseda following the 2011 amendment of the law.

The placement of families with children in administrative detention has constantly increased since 2004 but for the first time, an important drop in numbers has been noticed in 2012. The five NGOs working in the administrative detention centres have recorded a total of 52 families<sup>244</sup> (85 adults and 99 children) detained in these centres in 2012 (for an average length of stay of 3 days)<sup>245</sup>. The 6 July 2012 circular has proved to be efficient: 50 families had been detained before 5 July and 2 families had been detained (in mainland France) afterwards. Overall in 2012, 52% of these families have been released, 8% have been put under house arrest and 40% have been expelled to their country of origin or readmitted to another EU country.<sup>246</sup>

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<sup>240</sup> Article L562-2 of Ceseda.

<sup>241</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte , *Centres et locaux de rétention administrative, Rapport 2011 (Administrative detention centres and facilities, Report 2011)*, 20 November 2012.

<sup>242</sup> Circulaire INTK1207283C of 6 July 2012 / sur la mise en œuvre de l'assignation à résidence prévue à l'article en alternative au placement des familles en rétention administrative (Circular on the implementation of house arrest as an alternative to the administrative retention of families).

<sup>243</sup> Circular enacted in response to the ECHR decision Popov vs. France, 19 January 2012.

<sup>244</sup> These were not necessarily all asylum seeking persons

<sup>245</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte , *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 december 2013. As a side note, it should be noted that 2 575 children have been detained in the the administrative detention centre of Mayotte.

<sup>246</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte , *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 december 2013.

## C. Detention conditions

### Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures?  Yes  No
- Do detainees have access to health care in practice?  Yes  No
- If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  Yes  Yes, but with some limitations  No

The persons held in administrative detention, and who have asked for asylum, are generally not released. Despite being held together with other third country nationals, they are never held with common law criminals.

Article R. 553-3 of Ceseda frames the conditions of administrative detention. They must meet the following standards :

- 1° A minimum usable surface of 10m<sup>2</sup> per detainee comprising bedrooms and spaces freely accessible during opening hours ;
- 2° Collective bedrooms (separation men/women) for a maximum of six persons ;
- 3° Sanitary facilities, including wash-hand basins, showers and toilets, freely accessible and of sufficient number, namely one sanitary block for 10 detainees ;
- 4° A telephone for fifty detainees freely accessible ;
- 5° Necessary facilities and premises for catering ;
- 6° Beyond forty persons detained, a recreational and leisure room distinct from the refectory, which is at least 50m<sup>2</sup>, increased by 10m<sup>2</sup> for fifteen extra detainees ;
- 7° One or several rooms medically equipped, reserved for the medical team ;
- 8° Premises allowing access for visiting families and the consulate authorities ;
- 9° Premises reserved for lawyers ;
- 10° Premises allocated to the OFII (French Office for Immigration and Integration)<sup>247</sup> ;
- 11° Premises, furnished and equipped with a telephone allocated to the NGOs present in the centre ;
- 12° An open-air area ;
- 13° A luggage room.

Overall, the administrative detention conditions are deemed correct in France (mainland) but there are variations. For instance, the administrative detention centre of Nice is described as ill-adapted to the mission (it had been built for the army a century ago) – the place is so small that it is often difficult to pass each other in the corridors.<sup>248</sup> The location of certain centres (noise pollution due to the proximity of the airport runways) as well as their conception can result in difficult living conditions. The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published in 19 April 2012 its observations following its visit in the administrative detention centres (CRA) of Rouen-Oissel and Paris-Vincennes in November 2010.<sup>249</sup> While noting that the delegation had not received any complaint about degrading treatment and that the open door policy in

<sup>247</sup> State agency responsible among others of organising voluntary returns.

<sup>248</sup> See France 3, [Nice : Dans l'exigu centre de rétention, l'attente angoissée des migrants](#) (Nice: in the cramped detention centre, the anguished waiting of migrants), 30 October 2013.

<sup>249</sup> Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment – Report to the French government (visits between 28 November and 10 December 2010, CPT/Inf (2012) 13

force in the 3 centres visited had to be welcomed, the report stresses that the heating was deemed insufficient. The CPT had also recommended that the provision of psychological care had to be reinforced.

According to the 'General Controller' of places of freedom deprivation, while the capacity of the CRA does not call for major criticism, «the maintenance of the premises, inevitably subject to severe degradations, leaves a great deal to be desired. [...] A state of disrepair (broken lights, unusable window closures, blocked pipes, odours...) is present in many of the centres visited».<sup>250</sup> The Controller revealed also in 2011 that the material conditions of the meals preparation were often flawed (the clean circuits were not distinct from the dirty circuits...) and the quality and even the quantity served were insufficient. In addition, « none of the centres visited served dishes suitable to religious instructions of a great number of persons detained ».<sup>251</sup>

The state of the administrative detention centre in Mayotte is dramatically more preoccupying. In 2011, it was not yet equipped with mattresses, tables or chairs and the persons were reduced to remain standing up or on the ground. Therefore, on 20 February 2012, the administrative court of Mamoudzou declared<sup>252</sup> that the conditions at the CRA in Mayotte were so bad that they represented inhuman and degrading treatment for the detainees.

Sanitary and social support is provided by medical and nursing staff. Their availability varies from one centre to the other (from 2 days to 7 days a week). The care is given by doctors and nurses who belong to an independent hospital staff. They are grouped in medical administrative detention centres (UMCRA).<sup>253</sup> In principle, each person placed in administrative detention is seen by the nurse upon arrival. The person is seen by the doctor upon request or on the request of the nurses, in principle within 2 days of arrival. According to the 2012 report of the five NGOs working in CRA centres, some people suffering from serious psychological problems are held in detention centres. The threshold to determine that a health status is incompatible with the administrative detention seems to vary a lot depending on the doctors and the detention centres.<sup>254</sup> In case of high-risk pregnancy, doctors of the UMCRA may provide certificate stating the incompatibility of the health of the person with the placement in administrative detention – but this is not automatic.

The practical problems observed regarding the access to healthcare relate to a lack of consideration for psychological or psychiatric problems of the detainees.<sup>255</sup> Another issue is the lack of medical confidentiality. For instance, the General Controller of places of deprivation of freedom observed in 2011 that medical files were located in places accessible to all, (for example the doors of the healthcare stations were left open, sometimes allowing hearing the exchanges between carers and patients)<sup>256</sup>.

Separate places are provided for families in the 10 centres, which are duly authorised. Access to education is not foreseen in France in CRA since children are not supposed to stay there. However, the prohibition of administrative detention for children is only applicable to unaccompanied children; children with their families (although it should be exceptional as of July 2012) can be detained for 45 days without access to educational activities.

Access to open-air areas depends on the facilities. The facilities built after 2006 have become prison-like. In the majority of the centres, no activity is provided. Depending on the CRAs, there may be a TV

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<sup>250</sup> General controller of places of freedom deprivation, *Activity Report 2011*.

<sup>251</sup> General controller of places of freedom deprivation, *Activity Report 2011*.

<sup>252</sup> Administrative Court of Mamoudzou, 20 February 2012, n° 1200106, 1200107, 1200108.

<sup>253</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>254</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 December 2013.

<sup>255</sup> Retention centres Report, 2011.

<sup>256</sup> General controller of places of freedom deprivation, *Activity Report 2011*.

room, a few board games, a table football or even several ping pong tables but, in any event, this proves to be very insufficient when the administrative detention can last up to 45 days.<sup>257</sup>

Five NGOs<sup>258</sup> are present quasi-permanently (5 to 6 days a week) in the centres as a result of their mission of information towards foreigners and the assistance to exercise their rights (see more information in the section on access to information).

In addition, some people enjoy free access to the CRAs: the Commissioner of Human Rights of the Council of Europe; the members of the European Committee for the Prevention of Torture ; the French and European Members of Parliament; the General Controller of places of freedom deprivation; the 'Prefects' ; public prosecutors and the judges of freedom and administrative detention. Some others have a more limited access: Consulates staff; lawyers; families of persons held.<sup>259</sup> Only families (or friends) are subjected to restricted hours. The others can come and go at any time. The UNHCR does not have a specific access to the centres in France.

Since 2011, some accredited NGOs<sup>260</sup> can have access to all CRAs (two NGOs have been accredited so far: Forum réfugiés-Cosi and France Terre d'asile). These accredited NGO representatives must inform the head of department of the CRA, at least twenty-four hours prior to their planned visit and agree with them on the practical details of their visit beforehand.<sup>261</sup> The NGOs which have access to the CRAs should not hinder the functioning of the centre. The Minister in charge of immigration sets the list of accredited associations able to propose representatives.<sup>262</sup> Accreditation can only be requested by NGOs regularly registered for at least five years and working on, according to their statutes, the protection of foreigners, the defence of human rights or medical and social assistance.

Finally, in cases where alternatives to detention are implemented (persons under house arrest), the key question of the exercise of rights of these persons is still to be dealt with in France. In fact, persons put under house arrest have neither access to information and free administrative and legal assistance by a specialised association, nor formalised social support and free health care.

In July 2013, two journalists (from Rue89 and AFP) were able to visit the administrative detention centre in Lyon together with two French MEPs in the framework of a project on access to detention centres ([Open Access Now](#))<sup>263</sup>. Other visits have taken place later in the year, such as in the administrative detention centre of Nice on 30 October 2013. The Ministry of Interior is currently examining the possibility of a decree enacting the access for journalists to all places of deprivation of freedom if accompanying members of parliament.

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<sup>257</sup> Retention centres Report, 2011.

<sup>258</sup> Lot 1 (Bordeaux, Nantes, Rennes, Toulouse et Hendaye) : La Cimade ; Lot 2 (Lille 1 et 2, Metz, Geispolsheim) : Ordre de Malte; Lot 3 (Lyon, Marseille et Nice) : Forum Réfugiés ; Lot 4 : (Nîmes, Perpignan et Sète) : La Cimade ; Lot 5 (Outre mer) : La Cimade; Lot 6 (Le Mesnil-Amelot 1, 2 et 3) : La Cimade ; Lot 7 (Palaiseau, Plaisir, Coquelles et Rouen-Oissel) : France Terre d'Asile ; Lot 8 (Bobigny et Paris) : Assfam.

<sup>259</sup> See this [webpage](#) of the Ministry of Interior for more information .

<sup>260</sup> Regulated by decree n° 2011-820 of 8 July 2011 for the application of the law of 16 June 2011.

<sup>261</sup> Article R.553-14-7 of decree 2011-820. See also article R553-14-4 and R553-14-5.

<sup>262</sup> Circular INTV1305938S of 1 March 2013.

<sup>263</sup> See some press articles: 1) Le Nouvel Observateur, Detention Centres: 2 European officials visit Lyon ("[Centres de rétention: deux députées européennes en visite à Lyon](#)"), 17 July 2013, and 2) Rue 89 Lyon, Journalist, I entered the detention centre in Lyon ("[Journaliste, je suis entré au centre de rétention de Lyon](#)"), 17 July 2013.

## D. Judicial Review of the detention order

### Indicators:

- Is there an automatic review of the lawfulness of detention?  Yes  No

French law foresees a judicial review of the lawfulness of the administrative detention: an administrative judge controls the legality of the administrative decisions of detention and removal and a judicial judge examines the conformity of the deprivation of freedom.

- The administrative judge is seized by the foreigner (the asylum seeker if relevant) who contests the legality of the decisions taken by the Prefect: the measures of removal and/or administrative detention placement.<sup>264</sup> Measures of placement in administrative detention can be challenged within a period of 48 hours. This period starts from the moment when the measure is notified (and not from the arrival at the administrative detention centre). The administrative judge can for example verify that the Prefect has not committed a gross error of appreciation by choosing administrative detention rather than house arrest. The administrative judge must rule within 72 hours.
- The judge of freedoms and detention – whose competences are set out in article 66 of the Constitution – is seized by the Prefect at the end of the 5 days of administrative detention in order to authorise a prolongation after having examined the lawfulness of the administrative detention. For example, they will check whether the police have respected the procedure and the rights of the person during the arrest, the legality of the police custody and the placement into administrative detention. He will also check that the custody is compatible with the personal situation of the detainee.<sup>265</sup> This judge can also be seized at any moment by the person detained in administrative detention centres but these requests have to be very solidly argued (serious health problems for instance) and are hardly considered admissible<sup>266</sup>.

Presentation in front of these two judges is not systematic. Appeals lodged solely against the measure of placement in administrative detention do not suspend the execution of the removal. It happens that persons are returned even though a hearing in front of the judge had been set. In fact, the law only provides for a suspensive effect for appeals against a removal decision. Challenging decisions of placement in administrative detention and of all other measures linked to a removal decision does not guarantee a possibility to see an administrative judge.

These two challenges are independent from each other. Before 2011, the judge of freedoms and of detention (JLD) used to rule before the administrative judge. Since the inversion of the interventions of the judges in July 2011, there is absolutely no control regarding the legality of administrative detention for the cases of those persons removed before the hearing with the judge of freedoms and of detention (as the administrative judge only looks at the legality of the decisions taken by the Prefect).

In practice it meant that the 5,935 persons who have been removed during the first 5 days (62 % of the 9,636 removals carried out in 2012) have not been able to see the JLD judge<sup>267</sup> and therefore did not benefit from a judicial review. This figure is even more impressive in French overseas departments where 96% of the removals are carried out during these first 5 days.<sup>268</sup>

<sup>264</sup> Article L.512-1 of Ceseda.

<sup>265</sup> Article L. 552-1 of Ceseda.

<sup>266</sup> Article R. 552-17 of Ceseda

<sup>267</sup> Report to the Prime minister, "Sécuriser les parcours des ressortissants étrangers en France" (Secure the journey of foreigners in France), Matthias Fekl, 14 May 2013, page 43.

<sup>268</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 December 2013.

This is emphasised as a problem by many NGOs as the causes of irregularity of a judicial procedure are far more frequent than the causes of illegality of an administrative act.

In the context of a reform discussed in 2013, many NGOs and other stakeholders (see the recommendations in the report from Member of Parliament Matthias Fekl) have pleaded for going back to an earlier access to a judicial review.

## E. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  
 Yes       No
- Do asylum seekers have effective access to free legal assistance in practice?  
 Yes       No

Legal assistance for persons held in administrative detention (including asylum seekers) is provided by law. Currently, five NGOs which assist foreigners are authorised, by agreement (public procurement) with the Ministry of Interior, to provide “on duty” legal advice in the administrative detention centres (CRAs). They inform the foreigners and help them to exercise their rights during the retention procedure (hearings in front of the judge, filing of an appeal, request for legal aid...).<sup>269</sup> These NGOs are present in the administrative detention centres quasi-permanently (5 to 6 days a week).

As for the assistance given by lawyers, the legislation foresees that the asylum seeker held can be assisted by a lawyer for their appeals [during the hearing] in front of the administrative court or for their presentation in front of the judge of freedoms and detention. Therefore, for the prolongation of administrative detention by the judge of freedoms and detention, article R.552-6 of Ceseda foresees that « the foreigner is informed of their right to choose a lawyer. The judge can appoint one automatically if the foreigner so requests ». Within the context of the procedure in front of the Administrative Court, « the foreigner can, at the latest at the start of the hearing, ask for a lawyer to be appointed automatically. They are informed by the Clerk of the Court at the time of the beginning of their request.»<sup>270</sup>

<sup>269</sup> See this [webpage](#) of the french public administration for more information .  
<sup>270</sup> Article R. 776-22 of the Code of administrative justice.